



**NATIONAL HUMAN RIGHTS ACTION PLAN  
OF THE REPUBLIC OF KAZAKHSTAN  
2009-2012**

**National Human Rights Action Plan of the Republic of Kazakhstan 2009-2012.** Under the edition of Tastemir Abishev, Sagynbek Tursinov – Astana, 2007 – 166 pgs.

The National Human Rights Action Plan of Kazakhstan for the years 2009-2012 (further referred to as the “National Plan”) herein presented to readers constitutes a consolidated program of planned concrete steps for the improvement of legislation and practices of its application, the national system of protection of human rights, and the education of the population regarding human rights and mechanisms of their protection.



The National Human Rights Action Plan was approved by the President of Kazakhstan on the 5<sup>th</sup> of May 2009, No. 32-36.125.

The National Plan was prepared and founded according to the results of the baseline report “On the Situation of Human Rights in Kazakhstan,” as analyzed by governmental agencies, nongovernmental organizations for the protection of human rights, and international organizations, using data from a sociological survey.

Establishing positive dynamics in the development of the country’s mechanisms for the protection of human rights, the National Plan reveals the presence of gaps in the legislative base and practices of application of rights, and the absence of sufficient coordination and systematization in the work of governmental institutions and nongovernmental organizations for the protection of human rights.

Implementation of the recommendations of the National Plan will allow Kazakhstan to make new achievements in the formation of a legal government, strengthen governmental and social mechanisms for the protection of human rights, and create a well-developed civil society on a level with generally accepted international standards.

The material contained in the National Plan will be beneficial to legislative, executive, and judicial branches of government, law-enforcement agencies, lawyers, representatives of extrajudicial institutions for the protection of human rights, nongovernmental and international organizations, and other public associations or diplomatic services accredited in Kazakhstan.

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This publication is published with the technical assistance of the British Embassy to Kazakhstan and Kyrgyzstan. It does not necessarily reflect the official views of the Embassy.

## **Introduction**

The adoption of Kazakhstan's National Human Rights Action Plan, the first in its history, is an eloquent testimony to President Nursultan Nazarbayev's commitment to the further democratization of our country.

The first article of the Constitution of the Republic of Kazakhstan stipulates that the highest values of our state are "an individual, his life, rights and freedoms." Therefore, all our efforts during these years of independence have been directed toward the realization of the fundamental rights of the individual and society as a whole. During this time, Kazakhstan has been continually loyal to its international obligations in the sphere of human rights and supports the efforts of the UN, OSCE and other international organizations in this direction.

The practice of integrated activities of the state for the protection of human rights has successfully proven itself in various countries and regions of the world. Kazakhstan, adopting such a plan for the first time, is a pioneer of its use in the post-Soviet era. I am confident that this plan of action will become a valuable tool to improve Kazakhstan's legislation and law-enforcement practices in the sphere of protection of human rights. Thus, the plan gives consideration to the improvement of national legislation and law-enforcement practices, the activities of national human rights institutions in accordance with international standards, the interaction of the authorities and institutions of civil society, the definition of the level of legal protection of an individual and his awareness of his rights and the key problems of law-enforcement mechanisms and measures for their resolution.

The recommendations and procedures of the National Plan address issues regarding the improvement of mechanisms for the realization of the constitutional rights of citizens. Particular attention is paid to reinforcing the independence of the judicial system, the development of non-judicial mechanisms for the protection of human rights and the protection of the civil, political, social, economic and cultural rights of citizens, including the rights of socially vulnerable groups, in harmony with international standards.

The National Human Rights Action Plan for the years of 2009-2012, presented today, not only launches the development of goals and objectives of the new Concept of Kazakhstan's legislative development, but also will serve as criteria for the success of further steps toward the improvement of the mechanisms for the protection of human rights.

We are grateful to the UN Development Program, the Embassies of the Kingdom of the Netherlands and Great Britain in Kazakhstan, the members of the work group and international and non-governmental human rights organizations for their support in the development and publication of this very important document.

**Secretary of State Republic of Kazakhstan  
Kanat Saudabaev**

**Greeting Words of the UN Resident-Coordinator/UNDP Resident  
Representative in Kazakhstan Mr. Haoliang Xu**

The first plan of the kind in the country, the National Human Rights Action Plan in the Republic of Kazakhstan for 2009-2012 aims to strengthen the national system of human rights protection, through specific activities and focus on improvement of the legislation and the law enforcement practice.

United Nations firmly place human rights at the centre of their development discourse, seeing promotion and protection of human rights as the bedrock requirement for the realization of the Charter's vision of a just and peaceful world. The attention of the UN system to the promotion and protection of human rights is demonstrated by the use of a human rights-based approach in the formulation of development interventions, and by the multitude of initiatives dedicated to addressing human rights issues at country, regional and global level.

The preparation of the Human Rights Action Plan for Kazakhstan is the result of a successful cooperation between the Government, the United Nations Development Programme, non-governmental organizations, other UN agencies and other partner organizations who definitely supported this endeavor, such as British Embassy to Kazakhstan, The Netherlands Embassy to Kazakhstan and the OSCE Center in Astana. The preparation of the Plan was preceded by a baseline study and report on human rights in Kazakhstan that analyzed the national legislation, the law enforcement practice and compliance with international law provisions in human rights protection. The Human Rights Commission and the group working on the Action Plan took note of the international experience and the successes and lessons learnt. Along with this stream of work, Kazakhstan has actively supported the establishment and work of the UN Council on Human Rights, and is initiating the Universal Periodic Review process, thus sending clear signals of its commitment to the human rights agenda.

I firmly believe that the implementation of the Human Rights Action Plan in Kazakhstan will contribute to better and more effective policy implementation, will strengthen the rule of law and the respect for human rights and freedoms, and will take to new levels the dialogue between the civil society and the Government. The plan is instrumental for the implementation of the "Path to Europe" programme of the Government of Kazakhstan, and more specifically for the Government's commitment to bring the national legislation in compliance to international standards on the threshold of Kazakhstan's Chairmanship in the OSCE in 2010.

I would like to express my sincere appreciation and thank all the organizations and individuals who contributed to the preparation of the National Human Rights Action Plan and wish it successful implementation!

**Haoliang Xu**  
**UNDP Resident Representative**  
**UN Resident Coordinator in Kazakhstan**

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## Introduction

As is well known, the concept of National Human Rights Action Plans was developed as part of the World Conference on Human Rights held in Vienna in 1993. The Vienna Declaration and Programme of Action for the development of concrete universal measures for effective and long-term improvement of the human rights situation, adopted within the framework of the given conference and approved by the UN General Assembly, recommended that each State consider the desirability of drawing up a National Human Rights Action Plan.

Kazakhstan, having become an independent State possessing the rights of a member of the world community, actively demonstrates the importance of developing human rights and a democratic society, and concentrates its efforts on the formation of legal frameworks and the creation of mechanisms for their support. In its years of independence, Kazakhstan has made serious steps toward the application of international human rights standards in its national legislature.

At the same time, practice shows that in Kazakhstan, the work of governmental institutions and nongovernmental organizations in the sphere of the development and protection of human rights is characterized by the absence of unity and coordination. A series of initiatives on the side of governmental institutions in the given sphere do not meet an appropriate response from the side of Kazakhstan's nongovernmental and international organizations, and there is no provision for participation in them by governmental agencies.

The basic reasons for the development of this situation are the lack of sufficient experience and traditions, conceptual systematical adaptations of international law-enforcement conceptions to our present day life, and the necessary legal foundation. Based upon this, today it is important to create a law-enforcement mechanism which will promote a systematical and coordinated organization of work in the sphere of protection and promotion of human rights. The current National Human Rights Action Plan of Kazakhstan 2009-2012 (further referred to as "the National Plan"), is a consolidated program, stipulating concrete steps for the perfection of human rights legislation, the national system for the protection of human rights, and also the improvement of the education of the population about human rights and mechanisms of their protection.

The National Plan is the first comprehensive document in the history of the countries of Central Asia and Kazakhstan, formulating fundamental guidelines for the internal and foreign policies of Kazakhstan in the sphere of human rights and containing concrete proposals for the perfection of mechanisms and procedures for their protection.

The National Plan was conceived and prepared by a work group educated in harmony with the resolution of the international round table of April 17, 2006, and dedicated to the development of the National Human Rights Action Plan 2009-2012. The membership of the work group was selected on a parity basis: 50% of the work group members were representatives of nongovernmental organizations and 50% were representatives of governmental organizations.

The objective of the National Plan is the information of Heads of State, Parliament, and the Government of Kazakhstan regarding the human rights situation in Kazakhstan, the gaps in the national legislature and law-enforcement practices, the level of legal protection of the individual and his knowledge of his rights, the improvement of the activities of institutions for the protection of rights, and the main problems in the sphere of human rights protection and concrete steps for their resolution.

In addition, the National Plan promotes:

- The definition of prioritized guidelines for work in the sphere of human rights protection, requiring the urgent coordinated action of all branches of government and nongovernmental organizations with the wide and active support of the general population;

- The directing of the attention of governmental agencies and the public to unfavorable situations and unresolved problems in the sphere of human rights;

- The definition of basic guidelines for the development of legislation and law-enforcement practices in Kazakhstan in the areas of human rights, contributory to the creation of an integrated system for the protection of human rights, combining internal and international standards and norms, and governmental and public mechanisms;

- The establishment of close coordination of national systems for the protection of human rights with international legal systems;

- The development of the legal education of the population.

In the preparation of the National Plan were used recommendations from the baseline report and yearly reports by the Human Rights Commission, data provided by governmental institutions, nongovernmental organizations for the protection of rights in Kazakhstan, international nongovernmental organizations, and international organizations accredited in Kazakhstan, and also the results of the sociological survey "Human Rights In Kazakhstan: The General Opinion", conducted per the request of the United Nations Development Program in Kazakhstan by independent associations of sociologists in Kazakhstan which are permanent members of the International Association of Sociologists (ISA). In the National Plan was also used information received as a result of visitations by work group members to institutions of the penitentiary system, health care, social protection, education, cultural, construction sites, and other organizations; and material from international conferences, "round tables," and seminars, training conducted by the Human Rights Commission jointly with governmental institutions and nongovernmental organizations of Kazakhstan, international human rights organizations during the period of the years 2000 to 2008, and results of general conclusions and analyses presented by physical and legal entities to the Human Rights Commission.

Questions regarding the guarantee of civil, political, social, economic, and cultural human rights are analyzed in the conceptual portion of the national plan.

In the first section are analyzed in detail questions regarding the observance of the human right to life and the inviolability of private life, to freedom of

movement and residence, to freedom of thought, conscience, and religion, to freedom to form trade unions, to hold peaceful assemblies and meetings, to participate in the government (free and fair elections), to freedom of speech and the receipt of information, to the protection of health and medical assistance. In the context of the observance of civil, social and economic rights the results of special studies by the work group are presented, dedicated to the actual question of the observance of human rights and the guarantee of legality in the spheres of migratory and labor relations. Furthermore, in the given section issues of current importance are reflected, in the observance of the rights of individuals with limitations (invalids), the Oralman, children, women, and national minorities, and the right to education of the population. In the second section of the National Plan, questions are analyzed regarding the guarantee of the rights of citizens to receive free qualified legal assistance, and the observance of human rights in the course of preliminary investigation and inquest, in the sphere of the performance of justice in criminal, civil and administrative matters, in the stage of executive fulfillment, and in the penitentiary system.

It would be well to note that Kazakhstan is a participant in more than 60 multilateral universal international agreements in the sphere of human rights, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention against Torture and Other Cruel, Inhumane or Degrading Forms of Treatment or Punishment, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination Against Women, and the Convention Relating to the Status of Refugees and its Protocol.

In the context of the above-listed ratified international agreements, comparative analyses of national legislation regulating the human rights sphere are presented in all chapters of the National Plan, with the object of its compliance with international standards, and also conclusions and recommendations for the improvement of national legislation and law-enforcement practices in the area of human rights protection. Concrete measures are specified, to be realized by the government of Kazakhstan in the sphere of human rights protection for the years of 2009-2012.

A situational analysis of sociological research and assessment of the effectiveness of the activities of governmental institutions for the protection of rights, nongovernmental organizations, and mass media in the sphere of human rights protection within the framework of the project "Human Rights in Kazakhstan: The General Opinion" is quoted in all chapters of the National Plan in context with concrete forms of human rights.

The expected results of the realization of the National Action Plan are summarized in the conclusion, and future trends are formed for the improvement of mechanisms for the protection of rights in Kazakhstan.

## The Right to Life

The Right to Life constitutes the fundamental principle of all other rights and freedoms included in this sphere. It represents the absolute value of world civilization, in that all other rights lose their meaning in the instance of the death of the individual. It is fully acceptable to consider this fundamental right as the right of the individual to freedom from any illegal infringement on his life by the government, its representatives, or private individuals.

Social conditions for the right to life are provided for in a series of constitutional guarantees: the right to safe and hygienic working conditions (Paragraph 2 Article 24 of the Constitution of Kazakhstan), social security in old age and in the case of disease, disability, or loss of a breadwinner (Article 28), the right to protection of health and medical assistance in state and private medical institutions, the development of systems of health protection (Article 29), and other guarantees.

As a matter of fact, all other rights one way or another are correlated to the right to life. For example, rights such as the right to social protection, to favorable environmental conditions, to a meaningful life, as well as the right to freedom from cruel forms of treatment or punishment serve as supplementary instruments, ensuring its effective realization. The government is obligated to recognize these rights and create favorable conditions for human life with all available resources. It is not accidental that crimes against the life or health of an individual are categorically considered particularly heavily punishable criminal acts.

A separate issue in this area is the right of the government to apply the death penalty as an exceptional measure of punishment of individuals committing particularly heinous crimes. The right to life serves as a limitation of the death penalty.

In Article 15 of the Constitution of Kazakhstan, 1995, it is stated:

1. Everyone shall have the right to life.
2. No one shall have the right to arbitrarily deprive a person of life. The law shall establish the death penalty as an extraordinary measure of punishment for terrorist crimes resulting in the death of people, and also for especially grave crimes committed in times of war, with the provision of the right of the condemned to solicit pardon.

The wording, “No one shall have the right to arbitrarily deprive a person of life. The law shall establish the death penalty as an extraordinary measure of punishment for terrorist crimes resulting in the death of people, and also for especially grave crimes committed in times of war, with the provision of the right of the condemned to solicit pardon” corresponds with Paragraph 2 Article 6 of the International Covenant on Civil and Political Rights (ICCPR) and the interpretation of this article, quoted in Paragraph 7 of the UN Human Rights Committee “General Comment No. 6”.

In harmony with Section 5 Article 6 of the Criminal Code of Kazakhstan, the death penalty in the case of a pardon may be replaced by lifelong deprivation of

freedom or the deprivation of freedom for a term of twenty-five years, serving the penalty in a correctional colony with a special regime, which is in harmony with Paragraph 4 Article 6 of the ICCPR.

On December 17, 2003, the President of Kazakhstan, Nursultan Nazarbayev signed the Decree “On the Introduction to Kazakhstan of a Moratorium of Capital Punishment”. The given Decree was signed by the Head of the government in compliance with Paragraph 1 of Article 15 of the Constitution of Kazakhstan, reinforcing the right of everyone to life, which was directed to the realization of determined Conceptions regarding the legal policies of Kazakhstan on the further humanization of criminal legislation, and is an appropriate continuation of the course toward the limitation of the application of the death penalty.

Many sociological surveys bear witness to the fact that the majority of the population of our country considers the complete abolition of the death penalty premature. It is impossible not to take into consideration the opinion of society; therefore, as an intermediate step toward the further limitation of the application of exceptional measures of punishment, a moratorium on the execution of the death penalty was chosen.

The decree makes the provision for the abeyance of the execution by judges of death penalty sentences. The introduction of lifelong deprivation of freedom as an alternative to the death penalty may be considered warrantable. At the same time, the death penalty in itself as a form of criminal punishment is not abolished, but the execution of death sentences pronounced by judges is only halted. The moratorium does not have a time limit, but may be revoked due to necessity.

There is good reason to believe that the establishment of institutions for life imprisonment will keep the instances of execution by judges of death sentences to a minimum and create the necessary prerequisites for the possible complete abolition of the death penalty.

Currently, discussions are taking place regarding the signing and ratification by Kazakhstan of the Second Optional Protocol to the International Covenant on Civil and Political Rights and the complete renunciation by our country of the execution of the death penalty as a criminal punishment. This is directly related to the declaration of the Constitution of Kazakhstan of the principle of the inalienable value of human life and its protection.

The introduction of amendments to Article 15 of the Constitution of Kazakhstan significantly constricts the scope of execution of the death penalty, delegating the final resolution of these issues to the law. But the law until now has not been passed, because of disagreement on the issue of the necessity to preserve the death sentence, or on the contrary, to fully abolish its execution.

Advocates of the preservation of the death sentence give as reasons for their position the danger of increase in particularly serious crimes. Meanwhile, from the day of the introduction of the moratorium on the execution of capital punishment, such an occurrence has not been observed, although penalties in the form of the death sentence practically did not occur. The convicted, condemned by past sentences (mainly before the introduction of the moratorium) to the death penalty,

were held in places of imprisonment and served their sentences with the deprivation of freedom. At present, other forms of penalty have replaced all of their death penalties.

Confidence may be boldly expressed that the moratorium on the execution of capital punishment, in coming years, and possibly altogether, will not be revoked. Consequently, even if the death penalty will be given by sentence at some time, it will not be executed. The questions arise: Why, then, from year to year, accumulate the number of such convicted? Isn't it really so, that in the future they will again be pardoned? But before that, the status of individuals condemned to the death sentence, upon whom is applied the effect of the moratorium, is legally uncertain, which fundamentally violates their rights.

Many countries have revoked the death penalty; among them, developed European countries and countries with problems in areas of economics, political life, and law and order.

The inclusion of the death penalty in the Criminal Code is only grounds for affirmation of the repressiveness and inhumanness of the legal policies of Kazakhstan. It follows, that it is necessary to bring about corresponding changes to the Criminal Code.

In Kazakhstan, there have been no instances of extrajudicial or arbitrary sentences or the forced disappearance of people, executed by law-enforcement agencies or agencies for national security.

Nevertheless, in order to realize the position of the ICCPR, it is necessary to come to as broad as possible interpretation of the right to life, including compliance with Paragraph 5 of the UN Human Rights Committee "Remarks on General Order No. 6," that protection of this right in a broad sense requires the application of constructive measures in various spheres, for example, the reduction of children's mortality and the increase of the average life span, the fight against poverty and disease, etc.

No.	Action	Deadline	Executors
1.	With the aim of perfecting national mechanisms for the protection of human rights and citizens of Kazakhstan, the reinforcement of international mechanisms for the protection of human rights and for the full revocation of the death sentence, ratify the Second Optional Protocol of the International Covenant on Civil and Political Rights of December 15, 1989, directed at the revocation of the death penalty (UN General	2011	Ministry of Justice, Ministry of Foreign Affairs, with the participation of Of the Prosecutor General, The Supreme Court, and the Human Rights Commission

	Assembly Resolution 44/128 of December 15, 1989).		
2.	The conducting of “round tables,” seminars, and conferences on the issue of revocation of the death sentence	2009-2010	Ministry of Justice, Prosecutor General, Supreme Court, Ministry of Foreign Affairs, Human Rights Commission, nongovernmental human rights organizations (per agreement), UN Development Program (per agreement), The Center of OSCE in Astana (per agreement)

### **The Right to Privacy and Protection of Personal Information**

Private life (privacy) is a fundamental human right, acknowledged in the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and many other international and regional agreements. Privacy lies at the foundation of human dignity and other key values, such as freedom of assembly, freedom of conscience, freedom to create trade unions, and freedom of speech. Privacy has become one of the most meaningful human rights in modern times.

Almost all countries of the world acknowledge the right to privacy in their constitutions. As a minimum, these constitutional norms include the right to the inviolability of dwelling and secrecy of communication. In some new constitutions there are also mentions of limitations to the right of access to personal information.

According to Article 17 of the International Covenant on Civil and Political Rights, ratified by Kazakhstan: “1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, or to unlawful attacks on his honor and reputation.*

2. *Everyone has the right to the protection of the law against such interference or attacks.*”

In 1988, in its thirty-second session, the UN Human Rights Committee passed the “General Comment No. 16” to this article of the ICCPR:

“1. *Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honor and reputation. In the view of the Committee this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State*

*to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right . . .*

*3. The term “unlawful” means that no interference can take place except in cases envisaged by the law. Interference authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims, and objectives of the Covenant.*

*4. The expression “arbitrary interference” is also relevant to the protection of the right provided for in Article 17. In the Committee’s view the expression “arbitrary interference” can also extend to interference provided for under law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims, and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances . . .*

*7. As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual’s private life the knowledge of which is essential in the interests of society as understood under the Covenant . . .*

*10. The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.”*

International practice in the area of protection of privacy and personal information is leading in the direction of the passing of special laws designed for the protection of an individual’s privacy.

The main reasons for the substantiation of the necessity to pass such legislation are:

- The necessity to correct mistakes of years gone by. The adoption of corresponding legislation allows the correction of the consequences of human rights under totalitarian regimes of past years;
- The promotion of the development of electronic business. Legislation concerning privacy is included in packages of legislation directed toward the establishment of unified regulations of electronic trade;
- The guarantee of compliance of national legislation to international circumstances.

Nevertheless, international experience in the passing and realization of legislature and other forms of protection shows that the violation of privacy, as always, remains a large problem. In many countries lawmakers do not keep up with technical processes, and this leads to the appearance of large gaps in the area of protection of human rights. Sometimes, law-enforcement organizations and special services prove to be endowed with exclusive power. Eventually, in the absence of proper control of the execution of the law, the existence of the law in itself does not yet mean active protection.

In many democratic countries, human rights violations in connection with the control of communication are widespread.

Even in countries with strict laws regarding privacy, law-enforcement agencies even so keep a large dossier on citizens who are not accused of anything and are not even suspected of the committing of crimes.

As a whole, the protection of the right to privacy has many threats.

The complexity of information technology increases continually. New methods of collecting, analyzing, and distributing information on private individuals are emerging, and this compels consideration of the urgent introduction of corresponding legislature. Recent research in the area of medicine and health care, telecommunications, and the many means of transportation and transfer of financial resources has significantly increased the quantity of attainable information on each individual. Powerful computers connected by high-speed lines may be used for the compilation of a detailed dossier on any member of society, and for that a central mainframe computer is not required. New technology, developed originally for defense needs, is used for the armament of law-enforcement agencies, governmental structures, and private companies.

As shown in surveys of public opinion, people in many countries of the world are now more afraid of the violation of privacy than at any other time in modern history. Entire groups of citizens in various countries express their concern about the invasion of their privacy, and this compels ever greater numbers of governments to pass legislation especially designed to protect privacy.

Today, it is evident that information technology develops with enormous speed. Opportunities for the invasion of privacy – or, at least, potential opportunities – also are increasing.

In addition to these obvious aspects, there are a whole series of important factors affecting the violation of privacy:

*Globalization*, that is, the disappearance of geographical borders to the flow of data. The development of the Internet is possibly the most well known example of this.

*Convergence*, that is, the destruction of technological barriers between systems. Contemporary information systems freely interact, and can exchange with each other and process various types of data.

*Multimedia*, that is, contemporary forms of presentation of data and images, presented in one format, may be easily converted into another format.

Under these conditions, corresponding international tendencies and contemporary summons for legal regulations guaranteeing the right to privacy are necessary.

Of all human rights which are well known in international legislature, privacy is the most complicated to determine and classify. The definition of privacy varies widely depending upon circumstances. In many countries, the conception of privacy is restricted to the protection of information (privacy is interpreted in terms of protection of personal information). Outside of these sufficiently strict frameworks, privacy often is considered as a boundary over which society should not cross, interfering in private life.

In this case, privacy can be divided into:

Informational privacy, which includes the regular gathering and processing of personal data, such as banking or medical information;

Physical privacy, pertaining to the protection of the physical integrity of a person from outside interference, such as investigation by internal organizations;

Privacy of communication, which means the safety and inviolability of postal messages, telephone conversations, electronic messages, and other forms of communication, and also

Territorial privacy, including intrusion of residences, and also of the work place and in public areas.

At the heart of contemporary models guaranteeing privacy lays the principle of “the protection of rights.” In compliance with this principle, the State is obligated to provide legislative protection of the personal information of its citizens.

This legislative protection should touch upon:

- *The use of personal cards or files*, which to one extent or another are used in practically all countries of the world. The type of card, its purpose, and the amount of information varies and the personal information contained in them is used for various purposes. Systems for collecting information may be aimed at the fight with extremism or terrorism, or may be simply a part of the national registration system. A national identification system requires strengthening of its protection of privacy.

- *Biomeasurement*, that is, the process of collection, processing, and storing of data regarding physical characteristics of a person for the purpose of his identification. The most popular biomeasurement systems are retinal scanning, fingerprinting, dactyloscopy, voice-recognition, and digital (stored in electronic format) photography. Biomeasurement is attracting the attention of governments and private companies, since, unlike other forms of individual identification (cards or documents), it ensures full and accurate identification. In this regard, DNA identification technology causes the most controversy. It uses the latest technological achievements, allowing within a few minutes the comparison of DNA analyses with an enormous database. This also requires an effective means of legislative protection of privacy.

- *Monitoring of communication*, inasmuch as practically in every country there is the possibility of monitoring telephone, telex, and telefax communications. In the majority of cases, this monitoring is done at the initiative and with the direct participation of law-enforcement agencies. Unlawful access to communications exists in the majority of countries, and the volume of information obtained in such manners reaches enormous proportions. Law-enforcement agencies traditionally work together with telecommunication companies in order to make monitoring systems for telephone conversations “convenient” for use at a distance. These agreements have the appearance of providing special service access to communications to the extent of the installment of systems for the automatic recording of information. Legislative limitations to such activities are necessary for the guaranteeing of privacy and the protection of the human right to a private life.

- *Interception of Internet messages and mail*. In recent decades the Internet has become the most important means of communication and research. Technology develops by the exponent, and the quantity of users increases each year by the millions. The Internet is used more and more in commercial operations. The abilities, speed, and security of the Internet constantly increase, and together with them the quantity of new approaches to using the Web. But this flexible structure is not protected from intrusion and monitoring by authorities. Inasmuch as computer networks are a relatively new phenomena, for them legislative rights similar to those that have been approved for the regulation of telephone rights have not yet been created. Law-enforcement agencies and national security services in all the world are working on developing systems of interception and analysis of electronic mail and all information conveyed through the Internet. In this situation privacy guarantees are also necessary.

- *Video surveillance*. In recent years the use of video camera surveillance has been accepted worldwide on an unprecedented scope. Their use in the private sector has become more and more popular. These systems are based on complex technology, including night vision, computerized control, and motion sensors (the system can be programmed so that an alarm signal will sound if any motion takes place in the camera’s field of view). It would be well to note that hidden video surveillance in some places could be done without any sound. The use of such video surveillance also should be subject to legislative regulation with the aim of protecting privacy.

- *Surveillance at the work place*. Workers in practically all countries are subject to careful observation on the part of management. Legislative protection, as a rule, in such instances is little, because observation often is one of the conditions for acceptance to work. While companies strive to legalize this monitoring, it is becoming clear that not all of its forms are actually legal. In this connection, legislative limitations on video surveillance and the definition of the responsibilities of employers to coordinate such issues with their workers are necessary.

Kazakhstan’s legislature contains a series of norms relating to the protection of privacy.

First, Article 18 of the Constitution of Kazakhstan states:

*“1. Everyone shall have the right to inviolability of private life, personal or family secrets, protection of honor and dignity.*

*2. Everyone shall have the right to confidentiality of personal deposits and savings, correspondence, telephone conversations, postal, telegraph, and other messages. Limitations of this right shall be permitted only in the cases and according to the procedure directly established by law.”*

Second, Article 25 of the Constitution of Kazakhstan states:

*“1. Housing shall be inviolable. Deprivation of housing shall not be permitted unless otherwise stipulated by a court decision. Penetration into housing, its inspection and search shall be permitted only in cases and according to the procedure stipulated by law.”*

The further inviolability of privacy is indirectly protected by remedial legislation.

According to Article **16 of the Criminal Procedure Code of Kazakhstan:**

*“Private life of citizens, personal and family secrets shall be under the protection of the law. Everyone shall have the right to secrecy of personal savings and investments, letter exchange, telephone conversation, postal, telegraph and other communication. The restrictions of these rights in the course of the criminal procedure shall only be allowed in the cases and in accordance with the procedure directly established by the law.”*

The basis and procedure for the seizure of correspondence, the interception of communication, and the listening to and recording of telephone conversations are stated in Articles 235-237 of the Criminal Procedure Code of Kazakhstan.

According to Article 17 of the Criminal Code of Kazakhstan: *“Housing shall be inviolable. The penetration of housing against the will of people who occupy it, the performance of its inspection and search shall only be allowed in the cases and in accordance with the procedure established by the law.”*

The basis and procedure for the penetration of housing for the performance of its inspection and search are stated in Chapters 27 and 29 of the Criminal Procedure Code of Kazakhstan.

According to Article 10 of the Civil Procedure Code of Kazakhstan: *“Private life of citizens, personal and family secrets shall be under the protection of the law. Everyone shall have the right to secrecy of personal savings and investments, letter exchange, telephone conversation, postal, telegraph, and other communication. The restrictions of these rights in the course of the civil procedure shall only be allowed in the cases and in accordance with the procedure directly established by law.”*

Finally, according to Article 18 of the Code of Administrative Procedure of Kazakhstan (CAP RK): *“Private life of citizens, personal and family secrets shall be under the protection of the law. Everyone shall have the right to secrecy of personal savings and investments, letter exchange, telephone conversation, postal, telegraph and other communication. The restrictions of these rights in the course of the procedure for administrative offenses shall only be allowed in the cases and in accordance with the procedure directly established by the law.”*

In Articles 142, 143, 144, and 145 of the Criminal Code of Kazakhstan, criminal responsibility is established correspondingly for the infringement on the inviolability of privacy, unlawful violation of the secrecy of letter exchange, telephone conversations, postal, telegraph, and other communication, the unauthorized disclosure of medical information, and the infringement on the inviolability of housing.

Nevertheless, the given legislative norms are not sufficient to ensure the guarantee of the observation of these rights by all governmental agencies, private individuals, and organizations. Administrative legislation altogether does not contain articles directly relating to accountability for the violation of the rights of a citizen to privacy. Accountability for the refusal to provide information (Article 84 CAP RK), the dissemination of information regarding guilt prior to a valid guilty sentence of the court (Article 86 CAP RK), or accountability for the violation of disturbing the silence (Article 333 CAP RK) are difficult to relate to measures for the protection of the right to privacy.

In connection with this, in order to bring legislation into compliance with international standards in the area of protecting the right to privacy, it is necessary to adopt special legislation that would guarantee protection from both legal and unlawful and arbitrary interference, as is reflected in the UN Human Rights Committee General Comment.

It is necessary that Kazakhstan's legislation contain a definition of all the concepts used in Article 17 of the ICCPR, in compliance with the recommendations of the UN Human Rights Committee and international practice.

For example, the concept "housing" should for this purpose be defined not only as the place where a person lives, but also where he carries out routine business, including the work place.

It should be noted that the infringement on the right of a citizen to the inviolability of his private life and personal and family secrets by Kazakhstan's Customs agencies is often met in practice. In particular, these violations point to the Customs regulation currently in force on the mandatory submission by citizens of videocassettes, audiocassettes, discs, and photographic film that they have brought into the country to preview them for forbidden information.

In the opinion of the project work group, these Customs agency requirements evoke the valid censure of citizens by virtue of the difficulty of their fulfillment and contribute to corrupt violations of the law on the side of Customs agency workers.

*A survey conducted by the Association of Sociologists in Kazakhstan among 1,500 respondents showed that 19% of those surveyed gave a negative assessment of the situation in the area of the protection of the right to inviolability of privacy. 65.3% of those surveyed gave a positive assessment of governmental mechanisms of protection of the right to inviolability of privacy. 15.7 % of those surveyed were at a loss how to answer. As a whole, the results of the sociological analysis of the situation with the protection of the human right to inviolability of privacy allows the conclusion that governmental mechanisms for the protection of the right to the*

*inviolability of privacy are improving, taking into consideration Kazakhstan's international obligations in the sphere of human rights, with the exception of some instances of the violation of the law and human rights by individual officials or other persons.*

In conclusion, it is necessary to determine which agencies are responsible for the protection of the right to privacy, and which effective procedures exist for doing so.

No.	Action	Deadline	Executors
1.	Study the experience of other countries in the adoption of various forms of protection of privacy	2 <sup>nd</sup> -3 <sup>rd</sup> quarter 2009	Ministry of Justice, Prosecutor General, Human Rights Commission
2.	The conducting of "round tables," seminars, and conferences on the issue of adoption of various forms of protection of privacy	4 <sup>th</sup> quarter 2009	Ministry of Justice, Prosecutor General, Supreme Court, Ministry of Foreign Affairs, Human Rights Commission, human rights NGOs (per agreement), UN Development Program (per agreement), OSCE Center in Astana (per agreement).
3.	Development of conceptual legislation on the protection of the right to privacy	2 <sup>nd</sup> quarter 2010	Ministry of Justice with the participation of the Prosecutor General
4	Discussion of conceptual legislation on the protection of the right to privacy with the conducting of a round table (conference)	3 <sup>rd</sup> quarter 2010	Ministry of Justice, Prosecutor General, Supreme Court, Human Rights Commission
5.	Development of a draft law on the protection of privacy and personal information and a project law on the introduction of amendments and additions to existing legislative acts on issues of protection of privacy	4th quarter 2010	Ministry of Justice
6.	Discussion of the project law on the protection of privacy and personal information and the project law on the introduction of amendments and additions to	1 <sup>st</sup> quarter 2011	Ministry of Justice

	existing legislative acts on issues of protection of privacy by the conducting of a round table		
7	With the aim of the guaranteeing of the constitutional right of citizens to the inviolability of privacy and personal and family secrets, examine the compliance of norms of bylaws affecting the customs regulation on importing and exporting belongings by physical persons, Constitutional norms, laws of Kazakhstan, and its international obligations in the sphere of human rights, and bring the procedure of Customs processing of the belongings of physical persons into compliance with generally acknowledged international standards	2010-2011	Ministry of Justice, Prosecutor General, Customs Control Committee, Ministry of Finance
8	Regularly highlight in mass media issues of current importance regarding the protection of human rights to a wide cross-section of the population of the State, including the publication of an instructive booklet on human rights in case of detainment or arrest, in concluding contracts, on entrance to institutes of higher education, at work, when dismissed from work, etc.	2009-2012	Ministry of Culture and Information, Prosecutor General, Ministry of Justice, Ministry of Education and Science, Ministry of Labor and Social Protection, Human Rights Commission

### **The Right to Freedom of Movement and Choice of Residence**

In compliance with generally accepted international legal principles and norms, the Constitution of Kazakhstan establishes that “Everyone who has a legal right to stay on the territory of the Republic of Kazakhstan shall have the right to freely move about its territory and freely choose a place of residence except in cases stipulated by law.” (Paragraph 1 Article 21)

Furthermore, in agreement with Article 16 of the Law of Kazakhstan “On the Legal Status of Foreign Citizens,” foreign citizens may freely move about the areas of Kazakhstan which are open to foreign citizens and choose a place of

residence in compliance with the procedure established by the legislation of Kazakhstan.

International standards on freedom of movement are founded on the following basic principles:

- Freedom of movement inside the country is the assumed right of everyone who is legally in its territory, to freely move about its territory and choose a place of residence without the need to request particular permission from authorities. This right applies in equal measure to citizens of the country, foreign citizens, individuals without citizenship, refugees, and legal immigrants.

- The right to leave one's country and the right to return to one's country is a personal human right and should be guaranteed by law.

- Limitations of exit-entry or freedom of movement inside the country may be imposed only by law in the interests of guaranteeing national security, defense of public order, protecting health and morality, or protecting the rights and freedoms of other people. These limitations should correspond to other internationally acknowledged rights and freedoms, serve a clear goal, and be reasonable, necessary, and sufficient.

- In regard to refugees or individuals seeking asylum, the main principle is the principle of non-deportation, that is, the responsibility of the government not to deport and not to return them to the border of the country where their life or freedom is threatened with danger by reason of their race, religion, social affiliation, citizenship, or political convictions.

Current emigration legislation of Kazakhstan began to be formed after the collapse of the USSR. At the very beginning – the mid 90's – the principle legislative acts in this area were passed. In December 1991, the Law of Kazakhstan "On Citizenship of the Republic of Kazakhstan" was passed, and in June of 1995 – the Presidential Decree of Kazakhstan "On the Legal Situation of Foreign Citizens in the Republic of Kazakhstan." The foundation of emigration legislation is in the Constitution of Kazakhstan, ratified in August 1995, fixed in Article 21 as the right to freedom of movement and choice of place of residence, and in Paragraph 4 of Article 12 as the equality of rights and responsibilities of foreign citizens and stateless persons with citizens of Kazakhstan, "unless otherwise stipulated by the Constitution, laws, and international treaties." In December 1997, the Law of Kazakhstan "On the Emigration of the Population" was passed.

However, many migratory issues remain untouched by current legislation. Issues of entry, stay in Kazakhstan, exit from Kazakhstan, formation of documents for the right to temporary and permanent residence in the State, and many others are regulated by Government decrees, orders of the Ministry of the Interior, or instructions from various ministries and departments. Among them are the regulation of the Government of Kazakhstan of January 28, 2000 "Individual Issues Regarding the Legal Regulation of the Residence of Foreign Citizens in Kazakhstan," the instructions "On the Procedure for Application of Regulations on Entry and Residence of Foreign Citizens in the Territory of Kazakhstan, and also

their Exit from Kazakhstan,” the instructions “On the Issuance by Agencies of Interior Affairs Permission for Exit to a Permanent Residence Beyond the Borders of Kazakhstan,” and many others. An approximate estimate of the total quantity of bylaw documents regulating the area of migration exceeds 100. Some bylaws contain limitations to the rights and freedoms of foreigners on the territory of Kazakhstan, which is a violation of Article 39 of the Constitution of Kazakhstan, stating: “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.”

Limitations to the right to freedom of movement about the territory of Kazakhstan remain in existence in Kazakhstan’s institution of obligatory registration of place of residence, descended from the Soviet passport system and registration procedure. It is important to note that issues of social security, the realization of voting rights, the right to leave Kazakhstan, and others are dependent on the institution of registration.

A selective analysis conducted by the Human Rights Commission of individual normative legislation shows their noncompliance with the norms of the Constitution, guaranteeing citizens freedom of person and movement.

For example, Paragraph 1 Article 76 of the Administrative Code of Kazakhstan establishes that, as a disciplinary measure, a minor may be assigned limitations on his spare time and special requirements of conduct.

Inasmuch as the Code does not stipulate by which institutions such measures may be assigned, today, essentially these measures may be assigned by, in addition to judges, any establishment considering matters of administrative violations. This does not comply with the requirements of Articles 16 and 21 of the Constitution of Kazakhstan.

Such noncompliance is found in the norms of Article 11 of the Law “On Associations of Internal Affairs of Kazakhstan” and Article 30 of the Law “On the Rights of Children in Kazakhstan,” according to which children may be placed in rehabilitation centers without their consent and without the permission of the court.

In connection with this, with the aim of the protection of constitutional rights of children, the Human Rights Commission before the Head of State recommends that the Government of Kazakhstan conduct an analysis of all legislation and supplement it with norms that any restriction of freedom of a minor or his freedom of movement take place only by the decision of the court.

In harmony with Paragraph 2 Article 21 of the Constitution of Kazakhstan: *“Everyone shall have the right to leave the territory of the Republic. Citizens of the Republic shall have the right to freely return to the Republic.”*

Institutions of the Procurator receive many appeals from foreign citizens regarding the violation of their rights by members of law-enforcement agencies.

An investigation conducted by institutions of the Procurator has established that law-enforcement officials, after considering a matter of an administrative violation and the pronouncement of a decision to impose an administrative penalty in the form of a fine, confiscate the foreigner’s national passport.

As a substantiation of the legality of their actions, law-enforcement officials refer to Sub Paragraph 5 Part 1 of Article 618 of the Code of Administrative Offenses of the Republic of Kazakhstan (*further referred to as "the Code"*), where it is determined that in the interests of guaranteeing the execution of an accepted decision in a matter, an official representative has the right, within the boundaries of his authority, to employ in his relations with the physical person a measure guaranteeing execution in a matter of administrative violation in the form of confiscation of documents and other items.

At the same time, they understand the regulation "guaranteeing the execution of an accepted decision in a matter" as the right of officials to hold a citizen's passport, taken with administrative authority as security until full payment of the fine which they imposed.

Application of the given regulation by law-enforcement officials contradicts other requirements of the Code, including procedures defined for the execution of individual types of administrative penalties (Chapter 44 of the Code), and international standards.

Not having a passport with him, a foreigner cannot obtain tickets or freely exit the country, and is limited in his legal rights, which is a violation of Paragraph 2 Article 21 of the Constitution of Kazakhstan and Paragraph 2 Article 12 of the International Covenant on Civil and Political Rights, ratified by Kazakhstan in 2005.

A passport, for foreign citizens in the territory of Kazakhstan, is not only a document establishing identity and necessary for movement, staying in a hotel, and conducting banking operations including the payment of fines, but also for the realization of vitally important needs, for example, medical care.

Furthermore, the movement of a foreigner around the territory of Kazakhstan without a passport is a violation of Part 1 Article 394 of the Code, in connection with which, after the confiscating of his passport, he will be subject to administrative violations per the above-mentioned article.

In this manner, appointed individuals in law-enforcement agencies, having confiscated the passport of a foreign citizen, restrict their rights and freedoms guaranteed by international treaties and the Constitution.

On the basis of the above-stated, in the interests of preventing the improper application of regulations of administrative legislation and the violation of rights of physical persons, the Human Rights Commission and the Prosecutor General are introducing appropriate motions within the framework of the currently developing Administrative Procedure Code project.

An analysis shows that the quantity of immigrants arriving in the country is increasing yearly. Growth is also taking place in the number of individuals violating regulations on the residence of foreigners in Kazakhstan, in connection with which measures of administrative force are applied, including administrative expulsion from the territory of the State.

In connection with insufficient legislative regulation of the mechanism of deportation of foreigners, currently problems arise in the execution of court decisions for the administrative expulsion of the violator.

For example, by agencies of the Prosecutor only, during the course of a planned investigation of the application of legislation regulating the use of the labor of foreign citizens in Kazakhstan in the 3<sup>rd</sup> quarter of 2008, criminal prosecution was commenced in regards to 5 foreigners per Article 330-1 (*failure to execute a court decision on expulsion*) of the Criminal Code of Kazakhstan.

The procedure for the expulsion of foreigners is regulated by Article 731 of the Code of Administrative Offenses of the Republic of Kazakhstan (*further referred to as "the Code"*), where there is the provision that the execution of the decision for the administrative expulsion from Kazakhstan of foreigners and individuals without citizenship takes place by officially handing over foreigners and individuals without citizenship to the representative of the government of the foreign citizen, onto whose territory the person is expelled, or, by means of controlled independent exit of the expelled person from Kazakhstan. If the handing over of the expelled person to the representative of the foreign government is not provided for in an agreement between Kazakhstan and the foreign government, expulsion takes place in a place determined by border control agencies.

Currently, in connection with the absence of legislative regulation, the handing over of foreigners to the representative of the government of the foreign citizen, that is, to the embassy of the country of citizenship of the violator by emigration police does not take place.

Also, legislative acts of the State do not take into consideration the understanding of "controlled independent exit of the expelled person," stated in Article 731 of the Code, and mechanisms of its execution (fulfillment).

Furthermore, Border Service agencies have not determined a location for the deportation of foreigners.

Consequently, the necessity arises to pass legislation regulating the mechanism and procedure of realization of Article 731 of the Code.

The condition of the governmental borders of Kazakhstan has considerable influence in the sphere of counteracting illegal emigration.

In this connection, improvement of legislation regulating activities at government border crossing points is necessary.

Up until now, there is no single list of all existing border crossing points in Kazakhstan with a description of the status of each of them (*international, multilateral or two-sided, daytime or 24-hours, etc.*). Earlier published legislation by the Cabinet of Ministers of Kazakhstan regarding border crossings have undergone many revisions and additions that partially contradict norms of other legislation.

For example, in Paragraph 1 of the Cabinet of Ministers of Kazakhstan Regulation of 30.10.1992 No. 906 "On Border Crossings in Kazakhstan," the

“Dostyk” border crossing (Almaty Region) is designated as an automobile crossing.

However, in the Government Regulation of the State of 26.08.2003 No. 870 “On Measures for Further Development of International Railroad Border Crossing Dostyk-Alashankoi, the Railroad Section Aktogai-Dostyk and the International Automobile Border Crossing Korgas in 2004-2005,” it is listed as the international railroad crossing “Dostyk-Alashankoi.”

Moreover, in Paragraph 4 of the “List of Railroad Border Crossings on the Governmental Border of Kazakhstan,” as approved by the Government Regulation of Kazakhstan of 03.07.2003 No. 648, “Dostyk” is designated as entirely a railroad border crossing.

In connection with the above statements, it is considered a necessity to develop legislation establishing a single list of border crossings in Kazakhstan.

Together with this, the steady growth of the stream of immigrants to the State observed in recent years also requires the improvement of systems of governmental immigration control.

Earlier, the Human Rights Commission in addressing the Government of Kazakhstan and key governmental agencies, has repeatedly put forward the proposal to examine the issue of designating a governmental agency responsible for the realization of governmental policies in the sphere of immigration.

Furthermore, in the current year this proposal has come under the framework of the work group for the improvement of immigrational legislation, created by a decree of the Prime Minister of Kazakhstan, but has not found support.

Today, despite a united goal and the objective of immigration policies, the system of immigrational control in Kazakhstan consists of several governmental agencies. At the same time, each agency has responsibility only for the fulfillment of its separate commission.

The result of such a state of affairs at the given moment is the absence of unified immigration policy, proper coordination between governmental agencies, efficiency, and a low level of control over migratory processes, which in the final analysis negatively reflects also on the effectiveness of governmental policies in the sphere under consideration.

Currently the task of realization of immigration policies lies with the Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Labor and Social Protection, Ministry of Justice, Ministry of Agriculture, the Border Service, the Committee for National Security, and also Akimats of regions and the cities of Astana and Almaty.

In some instances, the function of one governmental agency duplicates or supplements another, which leads to the situation that not one of the above-mentioned agencies has accurate statistics regarding the issues defined.

For example, “Work Visas” for foreign citizens are given exclusively by foreign institutions of the Ministry of Foreign Affairs (further referred to as “MFFA”), and their renewal is carried out by representative agencies of the Ministry of the Interior (further referred to as “the MININT”).

In turn, initial visas in the “Business” category may be issued by agencies of the MFFA as well as the MININT, and both agencies have the right to their renewal.

Questions regarding the formulation of documents for the receipt of citizenship of the State are considered by agencies of the MININT, and their documentation is the prerogative of the Ministry of Justice.

Also, according to the Law of Kazakhstan “On the Migration of the Population,” the central executive agency, handling internal coordination and direction in the sphere of migratory processes, is defined as the Committee for Migration of the Ministry of Labor and Social Protection.

However, the Committee, in connection with the absence of corresponding legislative leverage, is not properly fulfilling its functions, limiting its actions to only the filling of its quota with the immigration of the Oralman.

The designation of a single agency responsible for coordination and development of migrational policies of the government would contribute toward effective control and regulation of migratory processes, and also the strengthening of the national security of the country.

Furthermore, in view of the similarity of migratory processes, we propose a study of the experience of the Russian Federation, where there is a single agency in the system of the Ministry of the Interior of the Russian Federation – the Federal Migrational Service, under the function of which, together with the management of unified migrational policies, comes the function of the consideration of issues of citizenship, documentation, registration of the population, control of exit, residence, and entry of foreigners, and the giving of permission for the bringing in of a foreign work force.

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The tendency of increase in illegal labor emigration to Kazakhstan is observed – so called “seasonal workers.” This, in the first place, pertains to citizens of the Central Asian countries of the CIS – Uzbekistan, Tajikistan, and Kyrgyzstan, where there is a slow pace of economic development, a low standard of living, and tension in the social and political situation. Considering the given factors, the poorer part of the population strives to leave the country in search of work and better living conditions, including within Kazakhstan. For a series of objective and subjective reasons, they often must enter and work in a foreign country illegally, creating a deficit of jobs in the local labor market and prerequisites for the development of such phenomena as unemployment. At the same time, employers in Kazakhstan, being interested in an inexpensive work force, willingly hire illegal migrants, which deepens the situation in the labor market and does not pay a significant sum of taxes to the country’s budget. Often, citizens of Tajikistan, Uzbekistan, and Kyrgyzstan, having come to Kazakhstan in search of work, become victims of deceit, fraud, and exploitation by employers. These citizens, having agreed to the completion of work without the conclusion of a contract or agreement with an individual, not having proper licenses, at the same

time residing in Kazakhstan illegally, become potential victims and subject themselves to similar criminal infringements.

*To the question, “Are the rights of workers – that is, people who have come to Kazakhstan for work – being observed?” out of 1,500 respondents only 18% answered positively. At the same time, 42.5% of respondents think that rights of migrant workers are being partially observed, and 16.8% think that rights of migrant workers are not observed at all. The given results witness to the necessity of improvement of national legislation and law-enforcement practices in relation to migrant workers and members of their families.*

Illegal labor migration and the search for effective methods of its regulation is one of the most serious problems of Kazakhstan’s migration politics. The positive influence of the immigration flow on the development of economy, the demographical situation, and the ensuring of the migrational security of the country depends largely on the making of timely and proper decisions in this area. The main objective in this connection is not only the strengthening of measures to suppress illegal immigration, but also the creation of conditions for the expansion of legal labor migration and legalization of migrants currently employed.

As a whole, an analysis of the situation of human rights in the course of migratory processes shows, that despite ongoing work, there are isolated instances of the violation of the law and human rights by governmental agencies and their responsible officials, and also by migrants themselves.

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Kazakhstan has encountered issues regarding *refugees* in recent years. On January 1, 2009, 237 families (578 people) were officially registered as refugees in the State. Individuals receiving refugee status are mainly from Afghanistan (575 people).

Refugee status is given in compliance with the Law on the Conferment of Refugee Status, approved by decree by the Ministry of Labor and Social Protection of Kazakhstan on November 20, 2007 No. 273-P, registered in the Ministry of Justice of Kazakhstan on February 19, 2008.

The activities of government agencies dealing with the problem of refugees are based on articles of the Geneva Convention of 1951 “On the Status of Refugees” and its Protocol of 1967, and the Law “On the Legal Position of Foreign Citizens in Kazakhstan.”

On December 15, 1998, Kazakhstan officially endorsed the Convention of 1951 on the Status of Refugees and its Protocol of 1967, and took upon itself certain responsibilities in relation to refugees before the international community. , These are, first of all, the principles of non-deportation, accessibility of procedure, information, opportunity to appeal a decision, and provision of registration for the term of consideration and appeal. Kazakhstan’s endorsement of the Convention significantly preceded constructive cooperation between governmental officials and the office of the UN High Commission for Refugees (UNHCR) in Kazakhstan.

In harmony with the law, “On Migration of the Population,” the procedure for working with individuals petitioning for acknowledgement as refugees and definition of their status in Kazakhstan and their registration was begun in 1998.

Refugees in Kazakhstan are foreigners petitioning Kazakhstan for their acknowledgement as refugees, who, in view of valid danger could become victims of persecution for political convictions, racial characteristics, religious beliefs, citizenship, nationality, or belonging to a certain social class, those who are forced outside of their country of citizenship and do not have the right to make use of the protection of their country or not wish to on account of such dangers, or individuals without citizenship, outside of the country of their former usual residence, who can not or do not wish to return to it on account of these dangers.

The majority of refugees – 88,1%, live in the city of Almaty, and the rest in the Southern Kazakhstan and Karaganda Regions. Regarding education, 99 refugees have higher education, 14 have secondary specialized education, 248 have secondary general education, 126 have primary education, and 18 refugees have no education.

In compliance with the requirements of the Code of Administrative Offenses of the Republic of Kazakhstan, the observance of regulations on the residence of refugees is continually monitored, and a monthly consultative advisory meeting is conducted with representatives of social organizations on the legal protection of refugees.

In November 2007, in a meeting with the Head of State, the UN High Commissioner for Refugees, Mr. António Guterres, giving a positive assessment of the situation with human rights in Kazakhstan, noted the necessity of the fulfillment by the State of its international responsibilities in the area of rights of refugees, and requested the passing of a special Law of Kazakhstan “On Refugees.”

With the goal of improving national legislation and law-enforcement practices in regards to refugees, we consider advisable the expedited passing of the Law of Kazakhstan “On Refugees” by Parliament.

**In harmony with the foregoing, we recommend the Government and Parliament of Kazakhstan during the period of 2009-2012 put into practice the following measures of the National Plan:**

1. Eliminate contradictions between legislation and bureaucratic instructions regulating the freedom of movement within the country.

2. Develop mechanisms and procedures for monitoring and suppressing the exit from the country of citizens of Kazakhstan with the goal of permanent residence abroad whose exit is forbidden (bearers of government secrets, individuals for whom was chosen preventive punishment in the form of a written statement not to leave the country, etc.).

3. For the effective coordination of work with migrants, in 2012 create a single governmental agency for migration within the Government of Kazakhstan.

4. In 2012, ratify the UN International Convention on the protection of the rights of all migrant workers and members of their families.

5. Expedite the adoption of the Law of Kazakhstan “On Refugees.”
6. Develop a procedure of dealing with individuals seeking refuge and migrants, not permitting their deportation or extradition without a judicial decision.
7. Create and introduce a modern system of border and migrational control and network of temporary holding points for foreign citizens, individuals without citizenship, and individuals seeking refuge or not having a certain legal status at border crossing points of the Border Service of Kazakhstan.
8. Create an open and accessible system of informing foreign citizens or individuals without citizenship of legislation regarding entry and residence in the territory of Kazakhstan and the migrational legislation of the country.
9. Conclude international agreements on legal assistance in criminal cases and the extradition of individuals from countries to which they illegally take citizens of the Republic of Kazakhstan for the purpose of sexual, labor, or other exploitation.
10. In 2010, write and pass the Law “On Documents of Identity of a Citizen of the Republic of Kazakhstan.”
11. In 2012, write and pass the Law “On the Introduction of Amendments and Addendums to Legislation of the Republic of Kazakhstan Regarding Issues of the Registration of the Population.”

### **The Right to Freedom of Forming Associations**

The right to form associations in the Republic of Kazakhstan is regulated by Articles 5 and 23 of the Constitution, Section VII Chapter 2 of the Civil Code, laws on non-commercial organizations, political parties, public associations, trade unions, freedom of conscience and religious associations, some statutes of legislation on national security and the counteraction of extremism, criminal, administrative, and tax legislation, and also entire and acts and bylaws: instructions, regulations, statutes, etc.

The freedom to form associations gives people the right to collectively voice, pursue, and defend common interests exactly in the same manner as these are voiced, pursued, and defended by the individual.

The guarantee of the right to form associations is contained in fundamental international documents on human rights – The Universal Declaration of Human Rights (Article 20), the International Covenant on Civil and Political Rights (Article 22), in many UN Conventions, and in regional documents on human rights.

A series of provisions regarding responsibilities of guaranteeing the right to form associations are contained in OSCE documents, adopted at its meetings.

The Republic of Kazakhstan ratified the International Covenant on Civil and Political Rights, and upon joining the UN and the OSCE, has taken upon itself certain responsibilities in the observance of fundamental human rights and freedoms including the right to form associations.

These responsibilities are set out not only by the establishment in the Constitution and national legislature of the right to form associations, but in the perceptions of the contemporary interpretation of this right, its regulating, and the legality of the validity and adequacy of limitations imposed.

Consequently, the matter not only includes the political responsibility to guarantee the right to form associations, but also how this responsibility is fulfilled in concrete situations.

## **1. Issues Regarding the Legal Position of Public Associations in the Republic of Kazakhstan**

Paragraph 1 Article 23 of the Constitution of RK establishes that citizens of the Republic of Kazakhstan shall have the right to the freedom of forming associations. The activities of public associations shall be regulated by law.

If the first phrase of the given Paragraph is interpreted strictly, the Constitution of RK is in full compliance with the international law guaranteeing a citizen the right to unite with other citizens with the goal of forming public associations.

However, based upon the sense of the second phrase of Paragraph 1 Article 23 and Article 5 of the Constitution of RK, only one form of association is supported – public associations, the activity of which are regulated by law.

Thus, according to Article 5 of the Constitution of RK, the formation and functioning of public associations pursuing the goals or actions directed toward a violent change of the constitutional system, violation of the integrity of the republic, undermining of the security of the state, inciting social, racial, national, religious, class and tribal enmity, as well as formation of unauthorized paramilitary units shall be prohibited.

Analogous prohibitions are contained in Article 5 of the Law on Public Associations of May 31, 1996 (with amendments and addendums). Therein is established the additional prohibition on the activities of unregistered public associations.

The given prohibition contradicts international standards.

In support of this statement we turn, for example, to such documents as “Fundamental Principles on the Status of Non-Governmental Organizations in Europe,” (2002) approved by Decision of the European Council of Ministers on April 16, 2003.

Taking into consideration that practically all European countries are participants in the Organization for Security and Co-operation in Europe (OSCE), in essence, this document defines the understanding of international standards regarding the right to unite which are set out in the responsibilities of those within the framework of the OSCE.

According to this document, the term “NGO” is understood to apply to associations, unions, public associations, funds, charitable organizations, noncommercial organizations, etc. The sphere of activities of an NGO are also

diverse, because an NGO can be either a small local organization with few members such as, for example, a village chess club, or an international association well-known in the entire world, especially organizations involved in activities regarding the protection of rights. Examples of various types of NGOs are listed in the text of Fundamental Principles, but the list is not exhaustive. Trade unions or religious organizations are not found in the list. In some countries, all or part of these structures come under the sphere of influence of legislation regarding public associations, whereas in other countries they act within the framework of individual laws. Political parties are not considered NGOs.

As is shown in Paragraph 4 of Fundamental Principles, the fundamental characteristic of an NGO is the absence of the receipt of income among its main aims. Common traits among all NGOs are self-government and voluntariness.

From the viewpoint of the responsibilities of registration of an NGO, Paragraph 5 of the above-mentioned document is very important: “An NGO may be either an informal organization or a structured organization possessing a legal personality. With the aim of highlighting differences in financial or other forms of support received by an NGO in addition to legal personality, they may use various statuses in harmony with national legislation.”

In other words, the case in point is regarding the difference between NGOs not wishing to obtain a legal personality and NGOs having the status of a legal entity. In the legislature of the majority of countries, as well as in the text of Principles are found a series conditions relating exclusively to NGOs having a legal personality. Nevertheless, principles are acknowledged in the document, in harmony with which NGOs have the right to accomplish their activities without the obtainment of such status. At the same time, the importance of stating this in national legislature is also emphasized.

Consequently inasmuch as the given Principles are common to European governments, in all European countries it is acknowledged that an NGO may be either a formal or informal organization.

As previously indicated, Kazakhstan’s legislation contains a prohibition of the activity of unregistered public associations which also creates certain problems in the use of legal terms and understanding.

First of all, there are no legal grounds for use of the term “unregistered public associations.”

A public association is a legal form of noncommercial organization that in its turn is one type of legal entity (Civil Code of RK 1994, Article 34). This is a legal status. Before the registration of a public association in agencies of justice, it does not legally exist, but exists as a group of citizens striving to obtain the status of a legal entity in the form of a noncommercial organization and the legal form of a public association. In other words, if a group of citizens calls itself a committee, council, club, public association, etc. it does not mean that it is in fact a public association.

Secondly, legislation for some reason contains a prohibition on the creation and activities of unregistered public associations only, although among

noncommercial organizations are also such legal forms as institutions, public funds, etc.

Thirdly, if the creation and activity of unregistered public associations is prohibited, it is not understandable whether this applies only to organizations that have ten (the minimum quantity of citizen initiators for the establishment of a public association per Kazakhstan's legislature) or more members, or to those in which the quantity of members is less. For example, the issue arises regarding the legality or illegality of a public committee for the cleaning of a courtyard in the quantity of five persons in a chapter with a chairman. Furthermore, it is unclear how it is determined that an organization legally exists if it is not yet registered in compliance with the procedure established by law.

Consequently, the following conclusion can be drawn: the circumstance of registration of associations of citizens and the legal norms regarding responsibility for their activities only by reason of lack of registration do not conform to international standards.

In connection with this, in order to bring national legislation into compliance with international standards of human rights and freedoms, it is necessary to establish the right of a person to create or join an association or union, including those of an informal character.

For that, it is necessary to either pass an individual law on the right of citizens to form associations (for example, based on the experience of the Republic of Poland), or the individuals stipulated by law should apply to the Constitutional Council with the request to give an interpretation of Paragraph 1 Article 23 of the Constitution of RK, in particular the right of a citizen to freedom to unite in any form, in formal as well as informal organizations.

## **2. Issues Regarding Legal Forms of Public Associations in Kazakhstan**

It is necessary to resolve a problem connected with limiting the amount of legal forms of noncommercial organizations as types of legal entities. This problem has existed since the beginning of the '90s of the XX century. The first attempt to correct the situation was undertaken in the Civil Code of RK of 1994, where in Chapter VII "Noncommercial Organizations," other legal forms of public associations aside from public associations appeared: institutes and public funds. It is important to note that in the Civil Code of RK, for the first time, public associations listed as legal forms received noncommercial status.

Moreover, in Article 34 of the Civil Code of RK, apart from the above-listed forms of noncommercial organizations that are legal entities, there is the provision for the possibility of the existence of other forms of noncommercial organizations, which should be "provided for by legislation." Admittedly, no other legislation reinforcing the possibility of formation and function of other legal forms of noncommercial organizations other than those listed in the Civil Code has yet been passed.

Consequently, in the course of seven years (1994-2001) before the passing in 2001 of the Law of RK “On Noncommercial Organizations,” the only legislative act which mentioned other forms of noncommercial public associations was the Civil Code of RK, in which two more forms were mentioned: institutions and public funds.

As a result of this, all public initiatives by citizens for the creation and activity of public associations were practically limited to only three legal forms: public associations, institutions, and public funds. This created and is creating serious problems in the course of the development of the third sector in the country.

Let's consider the situation in practice.

A group of citizens decided to unite for the attainment of their common goals and objectives and create a public organization with the status of a legal entity. Which legal form should they choose? A public association? But then, according to the Law on Public associations these citizens should number no less than ten, their organization should have membership and a certain structure of administration, etc.

But, if these citizens number less than ten and they do not want to have a membership organization, hold general meetings as a structure of administration, etc., then they must create a noncommercial organization in the form of an institution or a public fund.

However, an institution as a legal form of noncommercial public organization has its disadvantages, especially in that the founder is personally liable for the debts of the organization in the case of deficit of assets of the noncommercial organization. Furthermore, per current tax legislation an institute does not come under the category of noncommercial organizations for taxation purposes. It is understandable that this situation “frightens away” the social initiative of citizens.

A fund has another nature from the standpoint of its relationship to noncommercial public organizations, and is most often considered in the context of charitable activities, which is understood as “a means of voluntary charitable (gratuitous) assistance (including the transfer of possessions or money, provision of services, and other support), existing in the interests of support and protection of groups of individuals who, by virtue of physical or other circumstances are not capable of satisfying their needs without assistance, or defending their rights and legal interests.” Hence, a fund should be considered as a legal form of noncommercial organization, involved in charitable or other analogous activities.

As a result, as already noted, all public organizations created in Kazakhstan from 1994 to 2001, and until now, “maneuver” between three legal forms: public associations, institutions, and funds.

Dozens of funds have appeared in the country, which in principle are not funds, inasmuch as they do not accumulate financial and other resources and are not involved in charity or in the distribution of these resources. Citizen founders,

creators of many institutions, constantly feel the threat of bringing upon them a personal property suit in connection with a deficit of assets of the institution.

Finally, hundreds of public associations have followed a more logical course – the creation of public associations, although many of their initiators did not have the desire to seek additional members for fulfillment of the requirement of the law – no less than 10 citizen initiators.

It makes sense to introduce amendments to the Law “On Noncommercial Organizations,” defining the understanding of “public associations” as noncommercial organizations or other legal forms.

### **3. Issues Regarding Members, Organizers, and Founders of Public associations in the Republic of Kazakhstan**

The International Covenant on Civil and Political Rights, which the Republic of Kazakhstan ratified in 2005, contains the following formulation: “Each person shall have the right to association with others . . .”

The comprehensive character of the word “each” indicates that the freedom to unite, in principle, encompasses those individuals who are not citizens also (in other words, individuals who are citizens of other governments, refugees, individuals without citizenship, and the Oralman).

This international right acknowledges the possibility of the introduction of a few limitations to the political activity of individuals who are not citizens of the government that propagates the freedom to unite. However, only those limitations which correspond to principles of political democracy, freedom and supremacy of the law are considered acceptable. Therefore, the prohibition on membership in political parties by a non-citizen is justifiable, inasmuch as the party participates in the formation of national organs of power.

In harmony with Paragraph 15 of Fundamental Principles, any physical person or legal entity, citizen of a country or foreigner, or a group of such persons, should be free to create NGOs. At the same time, an Explanatory note to the Fundamental Principles indicates, that there should be no foundation for limiting foreign citizens from creating NGOs. Naturally, this does not include political parties, which, as already noted, are not NGOs.

Consequently, based upon the position of international documents on human rights and foreign experience, the following conclusion may be drawn: no limitations exist for foreign citizens, refugees, individuals without citizenship, and the Oralman in the creation, membership, or participation in the activities of noncommercial organizations, except a few limitations of their political activities (especially, their participation in the activities of political parties, financing of voting campaigns, etc.). Furthermore, there is no limitation to any citizen in the right to lead noncommercial organizations or their branches (agencies).

### **4. Issues of Registration of Public Organizations in the Republic of Kazakhstan**

As already noted, in compliance with international standards and practices of many countries of the world, a NGO may exist with or without the attainment of the status of a legal entity.

Nevertheless, the majority of NGOs prefer the attainment of such status (in the form of a noncommercial organization) inasmuch as this allows them to receive tax privileges, support of the government and altogether simplifies their operation.

In the Fundamental Principles it is indicated that any physical person or legal entity, citizen of the country or foreigner, or group of such persons, has the freedom to create a NGO. Two or more persons should have the right to found a NGO based on the principle of membership. For the attainment of the status of a legal entity a greater number of members may be required, however the number should not be set on a level that hinders the formation of the NGO. Any person should have the right to found a NGO by means of a will or the gift of belongings, as a result of which a fund is usually created.

In the Explanatory note to the Fundamental Principles it is made clear that the issue of the minimum number of individuals needed for the foundation of a NGO has been under lengthy discussion in the course of the development of the document, inasmuch as in the laws of different countries the number varies. In some countries one person is sufficient, while in others a greater number is established by law – two, three, or even five or more persons. Finally it was decided to differentiate between informal organizations and organizations wishing to obtain a legal personality. In the first instance, for foundation of a NGO based on principle of membership, two people are sufficient, whereas for the obtainment of a legal personality, a greater number of members may be required. But, in this case, the given number should not hinder by its magnitude the foundation itself of the organization.

The procedure itself for the creation of an organization with the receipt of the status of a legal entity differs among countries of the European Union. Organizations may receive status of a legal entity as a result of declaration (the announcement of its creation), notarial certification of its charter, notification of the competent authorities, or registration.

The registration system for the attainment of the status of a legal entity is used in Kazakhstan.

Regarding the registration of noncommercial organizations, the legislation of RK does not contain a direct prohibition on the activity of NGOs without registration (without the receipt of the status of a legal entity). Such a direct prohibition, as previously noted, is established only in relation to public associations.

However, from the law-enforcement practices of agencies of justice and the Procurator it follows that in a series of incidents, NGOs created by a group of citizens not claiming the status of a public association, and not obtaining the status of a legal entity, are considered as nonregistered public associations and its

organizers are subject to administrative charges. Similar problems arise with unregistered religious associations.

It would be good to note that in the Republic of Kazakhstan, there is an established procedure for the registration of legal entities. This procedure in the state provides for the responsibility of the government to register organizations if its founders fulfilled all corresponding requirements of legislation pertaining to the creation of such organizations.

In itself, the procedure and requirements extending to the procedure of attaining the status of a legal entity in Kazakhstan are established in the Law on Governmental Registration of Legal Entities (passed in 1995) and Regulations on Governmental Registration of Legal Entities (passed in 1999).

It is necessary to note a series of problematic issues connected with the registration procedure for noncommercial organizations in Kazakhstan.

The first issue is the amount of the registration fee for noncommercial organizations (around \$70 dollars USA). At the same time institutions financed from budgeted funds, official organizations, and cooperatives of housing (apartment) owners have the advantage (registration fee – not much more than \$10 dollars USA). Children's and youth associations have privileges (registration fee – not much more than \$15 dollars USA). Even legal entities that belong to small business undertakings have the advantage (registration fee – not much more than \$35 dollars USA). But public noncommercial organizations by registration fee are equated with commercial organizations. Kazakhstan's NGOs have pointed out this injustice during the course of a number of years but a decision has not yet been made.

Secondly, is the differentiation of activities of one legal form (noncommercial organizations) of public association by territorial criteria: local, regional, and state. For registration of a regional public association it is necessary to have branches in more than one region of the republic, and state organizations – more than half the regions of Kazakhstan including the capitol and cities of state significance.

In connection with the above-stated, in order to bring Kazakhstan's legislation into compliance with international standards of human rights and freedoms in the area of the attainment of legal status for noncommercial organizations, it is necessary to:

- Guarantee in legislature and in practice simplification of the procedure for registration of noncommercial legal entities;
- Lower the amount of the registration fee for noncommercial organizations with the goal of making it easier for them to obtain legal status and contributing toward the development of civil society;
- Establish in legislature those additional rights or privileges which are provided to public associations per confirmation of regional or state status or exclude these positions from legislation on public associations;
- Establish in legislation regarding noncommercial organizations, as a minimum, one more legal form of nonmember NGO, for example, under the name

of “public association,” in order to make it possible for citizens in quantities less than ten to create nonmember NGOs, but at the same time not making use of the legal form fund or institution.

## **5. Issues Regarding Limitations on the Right to Unite and the Responsibilities of Public Organizations in the Republic of Kazakhstan**

According to Article 5 of the Constitution of the Republic of Kazakhstan, the formation and functioning of public associations pursuing the goals or actions directed toward a violent change of the constitutional system, violation of the integrity of the Republic, undermining the security of the state, inciting social, racial, national, religious, class and tribal enmity, as well as formation of unauthorized paramilitary units is forbidden in Kazakhstan.

Fundamentally, the given constitutional position meets the requirements of international laws.

Furthermore, in harmony with Article 39 of the Constitution of RK, 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. This position also meets international standards from the standpoint of the introduction of limitations to one right or another.

However, a straightforward analysis of legislation concerning the regulation of the right to unite indicates that contained in them a significant quantity of limitations which are connected to a broad interpretation of constitutional norms and do not meet the requirements of such limitations according to international legal theory and practice.

In Article 374 of the Code of Administrative Offenses of RK it is stated, that “actions committed by leaders and members of public associations, going beyond the bounds of the goals and objectives defined by the founders of these public associations or violating legislation of the Republic of Kazakhstan on public associations, after the receipt of a written warning necessitates a warning or fine on the persons on the board of directors of the social organization, in the amount of up to twenty monthly indices. The violation of the legislation of the Republic of Kazakhstan by public associations or the repeat of such actions in the course of a year after the imposition of administrative penalties provided for in the first part of the given article necessitates a fine on the persons on the board of directors of the public association, in the amount of up to twenty monthly indices with the halting of the functioning of the public association for a term of six months. Those same actions, if repeated within the course of a year after the imposition of administrative penalties, as provided for in the first and second parts of the current article, necessitate the banning of the activities of the public association.

As a whole, in current administrative legislation a public association is the only form of legal personality which is threatened with the banning of its activities

for repeat violations within the framework of all existing legislation regarding public associations.

Banning the activities of any legal personality is the most extreme measure of action and therefore, in legislation as well as in practice, the necessity, validity, and appropriateness of this measure should be confirmed.

If the goals or actions of a social society are directed toward a violent change of the constitutional system, violation of the integrity of the Republic, undermining the security of the state, inciting various types of enmity, creation of paramilitary units, infringement of health or moral principles, then, taking into consideration the seriousness of the violation and possible consequences, such a measure may be justified. However, any small violation, even repeated or multiple, should not be deserving of the halting or banning of activities.

In this connection, it is logical to suggest the introduction of amendments to administrative legislation in the parts detailing administrative responsibility for administrative violations in the sphere of the activities of noncommercial organizations, including public associations so that these norms correspond to the requirements of predictability, flexibility, and effectiveness, and do not make their wide interpretation possible.

Therefore, it is necessary to consider the issue of more clear requirements harmonizing with international standards in the area of acceptable limitations for a group, the legality or illegality of the goals, objectives, and activities of noncommercial organizations and their reflection in the charters of NGOs.

It is also necessary one more time to return to the positions of our criminal legislation in the area of responsibility of leaders and members of public associations.

In the Criminal Code of RK there are a series of articles considering the criminal responsibility of members of public associations and their leaders in comparison with citizens who are not members of public associations.

Thus, in Article 336 of the Criminal Code of RK, criminal responsibility is established for “the impediment legal activities of state bodies by members of public associations,” in which the sanctions provided for by law for members of public associations consists of a fine or arrest for a term of up to four months, and for heads of a public association as much as imprisonment for a term of up to one year. It is notable, that for normal citizens or workers in commercial organizations similar articles in the Criminal Code are not provided. In other words, it is obvious that, having committed such actions, they would be charged with responsibility per the articles “Disorderly Conduct,” “The Use of Violence In Regard to Representatives of the State,” or per a series of articles in Chapter 5 of the Criminal Code of RK: “Crimes Against the Basis of the Constitutional Order and the Safety of the State.”

As a while, administrative and criminal legislation of RK in the area of the responsibility of public associations requires perfecting, from one side, with the goal of removing “disparities” between public associations and other legal forms of noncommercial organizations or commercial organizations, and from the other

side, for the bringing of limitations and sanctions into compliance with international standards and criteria acceptable for such limitations.

### **The Right to Create and Join Trade Unions**

By the Law of RK “On Trade Unions” the right to create and join trade unions is provided to citizens. At the same time, the quantity of trade unions created within the boundaries of one profession is not limited. All trade unions are provided equal rights and opportunities.

There have been incidents of the hindrance of the creation and activities of trade unions on the side of employers. Thus, per data collected by the Atyrau branch of the trade union of construction workers and manufacturers of industrial construction materials, during the course of 2007 the creation of trade unions was opposed by managers of 16 enterprises, the majority of whom were conducting contractual work on the projects Tengizshevroil Ltd. and Adzhip KKO. The largest of the companies were Atyrau-Bolashak Ltd., Tengizstroiservis, Senimdi Kurylys, Khemimontazh, Pundzh Lloyd Kazakhstan, Iurest Reiteon Support Services, Saipen, Kaspian Vender Park, and others. In 2007, these organizations experienced collective labor conflicts and spontaneous actions of workers.

For suitable protection of the rights and interests of workers, not only is the creation of trade unions necessary, but also the entry of trade union organizations into the local union chapter. For example, in the course of 2007, under administrative pressure in Intergas of Central Asia Corp., (a chain of Kazmunaigaz) meetings were conducted and the creation of a trade union organization was concluded which includes approximately 6,000 gas transport workers. The first talks regarding their invitation to join the local branch of the state trade union of gas transport workers have so far led to nothing. The management of the newly created trade union, being fully independent from administration, is discussing creating its own union branch, although there is the provision in the Charter for joining a higher trade union organization. The situation complicates itself when new trade union organizations come under the control of their employer’s management, which gives birth to “pocket” trade unions. These types of trade unions leave workers without the conditions and benefits provided for in wage agreements.

Locally, difficulties in concluding collective agreements are also observed.

Per statistics from the state branch of geology, geodesy, and cartography workers’ trade union, in 26 organizations through the fault of administration collective agreements have not been concluded, and trade unions are practically dismissed. There have been instances of the interference of employers in the activities of trade unions. Thus, in Volkov Corp. in Almaty, trade union organizations were accused by their employers of the violation of the use of union dues. In response, the administration of the corporation dissolved the trade union organization.

**The above-stated circumstances allow us to recommend the Government of the Republic of Kazakhstan in the period of 2009-2011 put into practice the following measures:**

1. Legislatively simplify the procedure for the registration of public associations of citizens.
2. In legislature, the right of each person to create or join associations or unions, including those of an informal character, should be clearly fixed. For this purpose it would be appropriate to pass a separate Law “On the Right of Citizens to Form Associations.”
3. Guarantee in legislature and in practice simplification of the registration procedure for noncommercial legal entities.
4. Lower the amount of the registration fee for noncommercial organizations with the goal of simplifying their obtainment of the status of a legal person and assisting the development of civil society.
5. Introduce a regulation into the Tax Code on the exemption of an NGO from tax payments for business activities carried out within the framework of chartered objectives, or use another mechanism of tax benefit based upon the experience of developed countries.
6. Introduce a regulation into the Tax Code on the introduction of tax payments for commercial organizations and individual enterprises, setting aside a portion of their revenue for the support of Kazakhstan’s NGOs.
7. Establish in legislature on noncommercial organizations, as a minimum, one more legal form of non-member based NGO, for example under the name of “Public Organization,” in order to give citizens the ability to create non-membership based NGOs with a quantity of less than ten people without making use of the legal forms fund or institution.
8. In 2011, develop and pass a new Law of RK “On Trade Unions.”
9. Simplify the procedures of registration, re-registration, and liquidation of political parties by means of legislation.

### **The Right to Freedom of Thought, Conscience, and Religion**

In its years of independence, fundamental and necessary favorable political conditions for a democratic social system and the development of civil society have been created in Kazakhstan: internal stability, interethnic and interfaith peace and accord.

In its years of independence, the number of religious associations has increased six times. In the 1990s, 671 religious associations were active, and the status on March 1, 2009, was that 3993 religious institutions are active in Kazakhstan representing more than 40 confessions and denominations. 3034 of these institutions are valid religious associations.

A simplified mechanism for the registration of religious associations in force since 2004 and also the tax policy of the government, directed toward the freeing

of religious associations from the payment of taxes on profits and church collections, facilitates the free development of registered religious associations on the territory of the State.

Multinationality and interfaith have been defined as some of the fundamental priorities of governmental policy in the sphere of religion – that is the establishment of interfaith agreement as a necessary condition for the maintaining of stability in society and the observance of human rights.

Experience with interfaith dialogue in Kazakhstan received acknowledgement and support from world religious leaders. In Astana in 2003 and 2006 were held two Congresses of Leaders of World and Traditional Religions. In 2003, 17 delegations from various religious confessions were at the conference, and at the second conference 29 delegations from 43 countries participated, including not only leaders of religious confessions but of political activities, scientists and experts from European and Asian countries, leaders and representatives of leading international organizations – the UN, OSCE, and UNESCO. The humanitarian concept of Congresses has had a large part in the strengthening of mutual understanding.

In June, 2006, the President of Kazakhstan signed the Decree on the Approval of the Conception of the Development of Civil Society, the goal of which is acknowledged as further improvement of legislative, social-economic, and organizational bases for comprehensive development of institutions of civil society and their equal partnership with the government in compliance with international legal instruments in the framework of international agreements and pacts in the area of human rights and the human dimension. Among institutions of civil society are also indicated religious associations. A key instance of interaction of government authorities and institutions of civil society is the guaranteeing of religious freedom and the right of citizens to form associations.

In 2007, the State Programme on the Provision of Freedom of Belief and Enhancement of State-Confessional Relations in the Republic of Kazakhstan for 2007-2009 was passed, the fundamental goal of which is the creation of conditions for the implementation of religious freedom in the Republic of Kazakhstan.

In addresses, Kazakhstan has been given a series of positive assessments by the OSCE, UN, and other international organizations on the grounds of the effectiveness of models of civil peace and accord currently functioning in the country.

A high assessment of the models of interfaith accord existent in Kazakhstan was given by Pope John Paul the Second during his visit to the country in 2002 and other leaders of various confessions visiting Kazakhstan for conferences of leaders of world religions.

It would be good to note that the guarantee of the right to freedom of thought, conscience, and religion in the Republic of Kazakhstan is contained in Article 22 of the Constitution of RK.

“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 of the Constitution of RK establishes:

“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.”

Furthermore, Paragraph 3 of Article 39 of the Constitution of RK includes freedom of conscience in the list of rights and freedoms that shall not be restricted in any event.

The legal regulation of the right to freedom of conscience and religion in Kazakhstan is in effect per the Law “On Freedom of Religion and Religious Associations” (further referred to as “the Law on Freedom of Religion”), the Civil Code and other legislation.

The total quantity of normative legislation influencing the existence of freedom of conscience and religion to one extent or another is numbered at approximately 100.

In international regulations the guarantee of the right to freedom of thought, conscience, and religion is contained in fundamental international documents on human rights: the UN Declaration of 1981 on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (further referred to as “DEIDRB”), the International Covenant on Civil and Political Rights (further referred to as “ICCPR”) and in the responsibilities which governmental members of the Organization for Security and Co-operation in Europe (OSCE) take upon themselves.

Article 18 of the ICCPR defines the understanding of freedom of thought, conscience, and religion in the following manner: “This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Article 1 of the DEIDRB expands this understanding of the principle conditions of *expression*: “This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief . . .” (further per the text of Article 18 of the ICCPR).

The understanding and contents of the freedoms of thought, conscience, religion, and belief are more fully developed in Concluding Documents Meetings on the highest level of the OSCE (Helsinki 1975, Madrid 1980, Vienna 1989, Copenhagen 1990, Paris 1990, Budapest 1994). Especially, in Paragraph (9) of the Copenhagen Document of 1990, participating States of the OSCE confirmed, “(9.4) everyone will have the right to freedom of thought, conscience, and religion. This right includes freedom to *change* one’s religion or belief and freedom to manifest one’s religion or belief, either alone or in community with others, in public or in private, through worship, *teaching*, practice and observance. Here, the understanding of the freedom of thought, conscience, religion and belief is

expanded to the freedom to *change* them, and the *manifestation* of these freedoms includes also the *freedom to teach*.

Consequently, the contemporary understanding of the freedom of religion, including freedom of thought, belief, and religion consists of the following: *The right to have or not to have, accept or change any belief or religion of his choice, and also to manifest and express his beliefs or religion, either alone or in community with others, in public or in private, through teaching, worship, practice and observance.*

The including of freedom of religion as a constituent of freedom of conscience is more fully covered in the positions of the Concluding Document of the Vienna Meeting of 1986, to which member States of the OSCE obligated themselves:

“(16.4) - Respect the rights of these religious communities to:

- Establish and maintain freely accessible places of worship or assembly;
- Organize themselves according to their own hierarchical and institutional structure,
- Select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State;

- Solicit and receive voluntary financial and other contributions,

(16.5) - Engage in consultations with religious faiths, institutions, and organizations in order to achieve a better understanding of the requirements of religious freedom;

(16.6) - Respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others;

(16.7) - In this context respect, *inter alia*, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;

(16.8) - Allow the training of religious personnel in appropriate institutions;

(16.9) - Respect the right of individual believers and communities of believers to acquire, possess and use sacred books, religious publications in the language of their choice, and other articles and materials related to the practice of religion or belief;

(16.10) - Allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials;

(16.11) - Favorably consider the interests of religious communities to participate in public dialogue, including through the mass media.

(17) The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion, or belief.

(32) They will allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries, *inter alia* through travel, pilgrimages and participation in assemblies and other religious events. In this context and commensurate with such contacts and events, those concerned will be allowed to acquire, receive and carry with them religious publications and objects related to the practice of their religion or belief.

Constitutional guarantees of the freedom of thought, conscience, and religion in the Republic of Kazakhstan are expressed in the following principles: respect for the principles and norms of international law, the priority of international law over the laws of the Republic – Paragraphs 1 and 3 Article 4, Article 8; acknowledgement of the absolute and inalienable right of everyone to freedom of thought, conscience and religion and the forbidding of limitations of the freedom of conscience under any circumstances – Paragraphs 1 and 2 Article 12, Paragraph 1 Article 18, Paragraph 1 Article 19, Paragraph 1 Article 22, Paragraph 3 Article 39; the equality before law and the freedom from discrimination under any circumstance – Article 14; the equality of rights of citizens and non citizens – Paragraph 4 Article 12; legislative and judicial protection – Paragraphs 1 and 2 Article 4, Paragraphs 2 and 3 Article 74, Article 78.

Consequently, the Constitution of the Republic of Kazakhstan guarantees that: everyone (citizens of Kazakhstan, foreigners legally on its territory, refugees or stateless persons) has the right to freedom of conscience, (in other words, subject to the regulations of international law, which are part of the current laws of the Republic of Kazakhstan, the right to have, accept, or change religion or belief at one's choice); no one may be forced to disclose their thoughts or affiliation with one religion or belief or another; no one may be subject to discrimination on the grounds of his relationship toward religion, or his affiliation with various religious trends, groups or associations.

Constitutional guarantees of the freedom to manifest one's religion or beliefs "either alone or in community with others, in public or in private" are expressed in the following principles: respect for the principles and regulations of international law and the priority of international law over the laws of the Republic – Paragraphs 1 and 3 Article 4, Article 8; ideological diversity – Paragraph 1 Article 5; equality before the law – Paragraph 2 Article 5; freedom to form associations and to assemble – Paragraph 1 Article 23 and Paragraph 1 Article 32; freedom from discrimination under any circumstances – Article 14; equality of rights of citizens and non citizens – Paragraph 4 Article 12; the forbidding of illegal interference by the government in the affairs of associations and by associations in the affairs of the government, and also the forbidding of the imposition of functions of governmental agencies on associations – Article 1, Paragraph 3 Article 5; legislative and judicial protection – Paragraphs 1 and 2 Article 4, Paragraphs 2 and 3 Article 74, Article 78.

Consequently, the Constitution of the Republic of Kazakhstan guarantees that: religious institutions (of all forms) are separate from the government; in the government there is no State supported religion, and no religion is a factor in the formation of the government; no confession fulfills any governmental function; no one religion, religious group or association may have any privileges in relation to other religions, religious groups or associations; no one (citizens of Kazakhstan, foreigners legally in the territory of Kazakhstan, refugees or stateless persons) may be subject to discrimination by reason of religion, affiliation with various religious trends, groups, or associations.

Constitutional limitations of the freedom to manifest religion or belief “either alone or in community with others, in public or in private” are based on the following positions: the exercise of human rights and freedoms must not violate rights and freedoms of other persons, infringe on the constitutional system and public morals – Paragraph 5 Article 12; the goals or actions of associations must not be directed toward a violent change of the constitutional system, violation of the integrity of the Republic, undermining the security of the state, inciting social, racial, national, religious, class and tribal enmity, as well as formation of unauthorized paramilitary units, – Paragraph 3 Article 5; the prohibition of the actions of religious parties – Paragraph 4 Article 5; the activities of foreign religious associations on the territory of the Republic as well as appointment of heads of religious associations in the Republic by foreign religious centers shall be carried out in coordination with the respective state institutions of the Republic – Paragraph 5 Article 5; and the 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 – Paragraph 1 Article 39.

### **Legislative Guarantees of Freedom of Thought, Conscience and Religion**

Legislation on freedom of conscience and religion in Kazakhstan, as a whole, is liberal to a sufficient extent. Therefore, in compliance with international standards, the law on freedom of religion does not provide for the mandatory governmental registration of religious associations; however, Article 375 of the Code of Administrative Offenses (CAO) makes provision for the punishment of a religious association for acting without governmental registration. In practice, this contradiction in legislation is settled by judges most often in favor of the norms of the CAO, which has led to multiple violations of the law on freedom of religion, Article 39 of the Constitution, and international standards, especially the right to freedom of religion “in association with others.”

In 2005, with the goal of fighting extremism and strengthening national security, three laws were passed: The Law of February 18, 2005 “On Counteracting Extremism,” the Law of February 23, 2005 “On the Introduction of Additions and Amendments to Laws of the Republic of Kazakhstan Relating to

Counteracting Extremist Activity,” and the Law of RK of July 8, 2005 “On the Introduction of Additions and Amendments to Laws of the Republic of Kazakhstan Relating to National Security.”

Paragraph 3 of Article 18 of the ICCPR does not include “national security” in the number of acceptable reasons for the imposition of limitations on freedom of thought, conscience or religion.

In compliance with the Syracuse Principles regarding the interpretation of the limitation and derogation from the position of the International Covenant on Civil and Political Rights, “the interests of national security” may be invoked to justify measures limiting certain rights only in situations when such limitations lead to the protection of “the existence of the nation or its territorial integrity or political independence against force or threat of force.” “National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order,” and it cannot “be used as a pretext for imposing vague or arbitrary limitations,” and it is “may only be invoked when there exists adequate safeguards and effective remedies against abuse.” “Interests of national security” may serve as justification for limitations only of certain groups of rights and freedoms: freedom of movement and choice of residence; limitation of the presence of the public and press at juridical processes; freedom of speech, freedom to form associations and freedom of assembly. The freedom of thought, conscience, and belief is absent from the list of rights and freedoms, the limitation of which is acceptable “in the interests of national security.”

*Nondiscrimination and equality before the law on the grounds of religion or opinion* (Article 26 of the ICCPR).

For religious associations, in comparison with other legal persons, unequal responsibility is established by law for the violation of legislation. A wider basis for suspension and a more complicated procedure for renewal of activities are established for them (Article 723 CAP and Article 10-1 of the Law on Freedom of Religion).

Distinctions in comparison with other legal persons are established also in regards to the basis for the liquidation of a religious association.

The activity of a religious association as a legal person may be forbidden by court in the following instances: the violation of legislation of the Republic of Kazakhstan; the systematical carrying out of activities in contradiction to the charter, and similarly the failure to remove within the set period of the violation the basis for the suspension of activities (CAP, Article 375, Parts 4 and 5).

*The right to freedom to manifest religion or belief “in community with others and in public or private, . . .in worship, observance, practice and teaching.”* (Paragraph 1 Article 18 of the ICCPR).

Kazakhstan’s legislation contains limitations of this right, going beyond the bounds of Paragraph 3 Article 18 of the ICCPR and Paragraphs 1 and 3 of Article 39 of the Constitution of Kazakhstan. These limitations concern the ability to practice religion regardless of legal status, the possibility of receiving legal status, the freedom to preach (“missionary activity”) and teach (spiritual instruction).

*Freedom of religion regardless of legal status.*

The activity of unregistered religious associations is forbidden (Part 4 Article 4 of the Law on Freedom of Religion) and is punished in administrative procedure up to the forbidding of activity (Articles 374-1 and 375 of CAP).

If a religious group did not undergo governmental registration (by reason of lack of funds, a small amount of members, or bureaucratic impediments to registration) or refuses to register because of religious reasons, it is considered illegal. In practice, this is reflected in that the group is forbidden from all forms of practicing religion “in association with others,” prayerful meetings (including those conducted in private homes and apartments), teaching of religion, preaching, distribution of religious literature, etc.

The Law on Freedom of Religion contains the understanding “a religious group with a small amount of numbers, not having acknowledgement as a legal person,” which may function after undergoing registration in local governmental agencies (Articles 6-1 and 6-2). However, conditions and procedures for undergoing registration are not defined in the Law.

*The possibility of receiving legal status.*

The Law on Freedom of Religion makes the provision of four forms of legal personality for religious groups: local religious associations (community), religious offices (centers), theological instructional establishments, and monasteries (Article 7). A legal personality in the form of a “religious association” may be formed at the initiative of a group of 10 citizens (Article 9).

In contrast to all other types of legal entities in Kazakhstan that undergo registration with the Committee of Registration Services of the Ministry of Justice of RK and its territorial divisions, a distinct procedure of governmental registration is established for religious associations. Religious offices (centers) and associations active in the territory of two or more regions of the republic and also theological institutions, monasteries and other associations formed by them are registered by an authorized state body – The Committee for Religious Affairs of the Ministry of Justice of RK. The procedure for governmental registration of religious associations, in comparison with other forms of legal entities is complicated by the circumstances that the authorized state body may at its discretion assign reviews by religious experts and others, and also require the conclusions of the specialists regarding the given religious organization in document form (Article 9). The basis, the procedure for the assignment and procedures for the conducting of reviews and conclusions are not stipulated in the Law, and are determined by State bylaws. The Law provides also for the interruption of the term of registration for the time of the conducting of reviews, but does not restrict this period to any time frame.

Although the Law does not provide a basis for the refusal of registration of a religious association, in practice, complicated procedures allow the drawing out of the registration process indefinitely. Because of this, groups awaiting registration fall into the position of “illegal” their right to freedom of religion “in association with others” is infringed.

### *Missionary activity*

The Law on Freedom of Religion defines missionary activity as “preaching and distribution by means of religious proselytizing activity beliefs which are not contained in the chartered position of the religious organization carrying out its activities in the territory of the Republic of Kazakhstan.” (Article 1-1, Paragraph 2). “Citizens of the Republic of Kazakhstan, foreign citizens and stateless persons (further referred to as “missionaries”) may carry out missionary activity in the territory of the Republic of Kazakhstan after undergoing official registration. The carrying out of missionary activity without official registration is forbidden.” (Article 4-1)

In contrast to the official registration of “religious groups with few members not having acknowledgement as a legal person,” the Law establishes clear regulations regarding the official registration of missionaries. (Article 4-2)

### *Theological education*

The Law allows only religious associations (centers) the right to found theological educational institutions. (Article 7).

In compliance with the Constitution of RK, the Law on Freedom of Religion states that state education in Kazakhstan has a secular character (Article 5), and does not contain direct requirements for the governmental licensing of theological educational activities. In practice, governmental agencies require from theological educational institutions licensing in harmony with Articles 40 and 57 of the Law of RK “On Education” and Article 23 of the Law of RK “On Licensing.”

### *The right to alternative service*

The Law on Religious Freedom establishes that “No one has the right by reason of his religious beliefs to refuse the fulfillment of civil responsibilities, with the exception of instances provided for by law. The exchange of the fulfillment of one responsibility for another by reason of religious belief is allowed only in compliance with the legislation of the Republic of Kazakhstan.” (Article 3) A law on alternative service does not exist in Kazakhstan.

Based upon the above-stated, The National Human Rights Action Plan contains the following series of measures directed toward the improvement of legislation and law-enforcement practices in the area of the guarantee of the constitutional right of citizens to freedom of thought, conscience and religion.

No.	Action	Deadline	Executor
1.	The study of foreign experience on the regulation of freedom of thought, conscience and religion	During 2009	Ministry of Justice
2.	Consideration and approval by an advisory panel of the Human Rights Commission under the President of the Republic of Kazakhstan of recommendations for the amendment of legislation	2 <sup>nd</sup> quarter of 2010	Human Rights Commission, NGOs (per agreement)

	in the sphere of the guarantee of freedom of thought, conscience and religion, prepared by non-governmental organizations		
3	Monitoring the observance of the right to freedom of religion in the RK	Yearly	Ministry of Justice, Prosecutor General NGOs (per agreement)
4	Conducting of a round table in the framework of the preparation of the Republic of Kazakhstan for chairmanship of the OSCE in regards to freedom of thought, conscience, and religion	4 <sup>th</sup> quarter of 2009	Ministry of Justice, Human Rights Commission, NGOs, religious associations (per agreement)
5	Conducting of meetings of the Council for Relations with Religious Associations with the Government of the Republic of Kazakhstan regarding the issue of the observance of the right to freedom of religion in Kazakhstan PK	4 <sup>th</sup> quarter of 2009	Ministry of Justice
6	Conducting meetings of the Council for Relations With Religious Associations with Akimats of regions and cities of Astana and Almaty regarding the issue of observing the right to freedom of religion in their regions	2010- 2012	Akimats of regions and the cities of Astana and Almaty
7	Development of a draft law on the introduction of amendments and additions to legislation on the guarantee of freedom of thought, conscience and religion on the basis of recommendations, prepared by non-governmental organizations and approved by an advisory panel of the Human Rights Commission under the President of the Republic of Kazakhstan	1 <sup>st</sup> quarter of 2011	Ministry of Justice
8	Release of a national report on the observance of the right of freedom	2010	Ministry of Justice with participation of

	of religion in the Republic of Kazakhstan		NGOs, religious associations (per agreement)
9	Introduction of a draft law on the introduction of amendments and additions to legislation on the guarantee of freedom of thought, conscience and religion to the Parliament of the Republic of Kazakhstan	4th quarter of 2011	Ministry of Justice
10	Develop a Concept regarding alternative military service, allowing conscientious objectors to fulfill their civil duty without infringing on their religious convictions.	2012	Ministry of Defense

### **The Right to Freedom of Peaceful Assembly and Association**

The guarantee of the freedom of peaceful assembly in the Republic of Kazakhstan is contained in Article 32 of the Constitution of RK: *“Citizens of the Republic of Kazakhstan shall have the right to peacefully and without arms assemble, 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, and protection of health, rights and freedoms of other persons.”*

In addition to this, Article 39 of the Constitution of RK establishes: *“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 ...”*

The legal regulation of the freedom of peaceful assembly in Kazakhstan exists by means of the passing of the Law of the Republic of Kazakhstan of March 17, 1995 “On the Procedure for the Organization and Conducting of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations in the Republic of Kazakhstan” with amendments of December 20, 2004 (further referred to as “the Law”).

Individual regulations concerning the legal regulation of the freedom of peaceful assembly in the Republic of Kazakhstan are contained in the Law of RK of December 21, 1995 “On Agencies of Internal Affairs of the Republic of Kazakhstan,” and the Law of RK of June 26, 1998 “On the National Security of the Republic of Kazakhstan.”

Bylaws regulating the freedom of peaceful assembly in Kazakhstan include the Decree of the Ministry of the Interior of RK of December 31, 1993 “On the Organization of the Work of Agencies of Internal Affairs in Relation to Public Associations;” the Decree of the Ministry of the Interior of RK of December 6, 2000 “On Approval of the Regulation on the Organization of the Work of Subdivisions of Agencies of Internal Affairs Regarding the Guarantee of Guarding Public Order and the Safety of Citizens when Conducting Events of Public Associations on Streets and in other Public Places;” the Decree of the Ministry of the Interior of July 5, 2002 “On Approval of the Regulation of Patrol Post Services of Agencies of Internal Affairs of the Republic of Kazakhstan Regarding the Guarantee of Guarding Public Order and Security;” the Decision of the Maslikhat of the City of Astana of May 2, 2002 “On Additional Regulation of the Procedure and Places for Conducting Peaceful Assemblies, Meetings, and Pickets” and the Decision of the XVII session of the Maslikhat of the City of Almaty of July 29, 2005 “Some Issues Regarding the Rational Use of Places of City Infrastructures.”

Finally, the Code of Administrative Offenses of the Republic of Kazakhstan (Article 373) and the Criminal Code (Article 334) contain sanctions for the violation of legislation on the procedure for organization and conducting of peaceful assemblies, meetings, processions, pickets, and demonstrations from fines and administrative arrest for a term of up to 15 days up to imprisonment of a term of up to one year.

Considering international standards in the area of the guarantee of the freedom of peaceful assembly, as set forth in the International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Kazakhstan, and other international documents on human rights, in decisions of the European Court of Human Rights and the Office for Democratic Institutions and Human Rights (ODIHR) developed on their basis, and in the OSCE document “Guidelines on Freedom of Peaceful Assembly” published in the end of March, 2007, an analysis of current legislation of the Republic of Kazakhstan in this sphere highlights its noncompliance to the given standards in some parameters.

Since the existing definition in the Law On the Procedure for Conducting Assemblies and Meetings . . . does not correspond with the category of peaceful assemblies acceptable in international practice, inasmuch as besides meetings, processions, demonstrations, and pickets (in the given instance, hunger strikes in public places, the erection of yurts and tents, defined in Kazakhstan’s legislature, may be considered as special forms of protest actions, similar to pickets) the word “assembly” is used separately. In other words, not only are peaceful assemblies held as public actions in open public areas regulated in legislation, but all assemblies as such.

In current legislation, nowhere is the interpretation of the understanding of “assembly” given, nor the understanding of “demonstration,” “procession,” “meeting” or “picket,” which violates the principles of legal predictability and specificity and makes possible the purely arbitrary designation of one or another aggregation, group or action of citizens as an illegal assembly or picket.

The legal regulation of all forms of peaceful assemblies, as encompassed by law, has a permissive and not advisory character, and exists by means of identical regulations.

Since, for the conducting of peaceful assemblies, an application in written form is given to the local executive agency, no later than 10 days before the named date of its being held. In the application must be indicated the objective, form, location for the conducting the event or the route of movement, time of its beginning and end, estimated quantity of participators, the last name, first name and patronymic of its representatives (organizers) and individuals responsible for the observance of public order, the place of their residence and work (school), the date of submitting the application. The submission date of the application is counted from the day of its registration with the local executive agency. The local executive agency considers the application and informs the representatives (organizers) of their decision no later than five days before the time of the holding of the event, as stated in the application (Article 3 of the Law).

A similar procedure applies to all types of peaceful assemblies defined in the Law: assemblies, meetings, processions, demonstrations and pickets.

This makes practically impossible the carrying out of spontaneous actions connected with the expression of protest or another public manifestation in connection with events arousing urgent public reaction.

The local executive agency in the interests of the guarantee of rights and freedom of others, public security, and also the normal function of transport, places of infrastructure, the protection of green areas and small architectural forms may, according to need, offer those applying another time or place of conducting the event (Article 4 of the Law).

In addition to this, Article 10 of the Law makes the provision that, *“local representative agencies may additionally regulate the procedure for the conducting of assemblies, meetings, processions, pickets and demonstrations taking into account local conditions and in compliance with the requirements of the current Law.”*

The representative agency (Maslikhat) of the city of Astana used this position of the Law in making the decision *“in the interests of the guarantee of rights and freedom of citizens, public security, and also the uninterrupted functioning of transportation and objects of infrastructure, the protection of green areas and small architectural forms . . . the places for the conducting of peaceful assemblies, meetings and pickets in the city of Astana have been defined as the territories belonging to the buildings PKF “Gazservis” (1 Vtoraya Nagornaya St.) and OAO Okan Amriko (Mikrorayon 3).”* (Decision of the Maslikhat of the City of Astana of May 2, 2002 “On Additional Regulation of the Procedure and Places for Conducting Peaceful Assemblies, Meetings, and Pickets”)

A similar decision was made by the Maslikhat of the city of Almaty: *“To recommend to the Akimat of the city of Almaty to use: . . .2) the square beyond the movie theater “Sari-Arka” for the conducting of nongovernmental events of a public political character.”* (Decision of the XVII session of the Maslikhat of the

City of Almaty, third calling, of July 29, 2005 “Some Issues Regarding the Rational Use of Places of City Infrastructures.”) At the same time, the main city squares are set aside for government events.

Consequently, the peaceful assembly in itself, in the form of a demonstration, meeting or picket loses all sense, inasmuch as usually such actions are an expression of public interests, including protests, directed toward the attracting of public attention to the expression of their opinion regarding a governmental decision, action or process, namely in front of the buildings of those agencies or offices of those organizations which made the decisions or took the action.

Moreover, similar decisions by representatives of agencies of authority, although of a recommendational nature, are directly guided by local executive agencies, making such forms of peaceful assembly such as parades, processions or demonstrations practically impossible for citizens living in the capitol of Kazakhstan, Astana or in the city of Almaty, inasmuch as these forms of peaceful assembly in themselves involve movement from one point to another.

In contradiction to international standards, current legislation does not contain any differentiation between participators and passers-by who chance to be at the place of the event, and also observers: journalists, law-enforcement and others from the viewpoint of bringing them to accountability in the instance of illegal action. As a result, in a series of instances, journalists and bystanders, etc. have been held accountable.

Current legislation does not contain the understanding or the guarantee of the right to counter-demonstrate, nor the procedure of action for agencies in support of public order and the protection of rights of participators of the main event as well as counter-demonstrations.

Current legislation does not contain the position obligating governmental agencies, and most of all law-enforcement, to assist citizens in realizing their rights to peaceful assembly and to protect participators of legal peaceful assemblies.

According to Article 2 of the Law, the application to hold an assembly, meeting, procession, picket or demonstration can be given by representatives of work collectives, public associations or individual groups of citizens of the Republic of Kazakhstan who are more than 18 years of age.

Based upon similar application, the conclusion can be drawn that an individual person does not have the right to turn in an application on a picket or a meeting, and this is a clear contradiction to international norms, inasmuch as they guarantee the freedom of peaceful assembly to each person, including, under certain limitations which do not infringe upon human rights, minors (Article 15 of the UN Convention On Rights of the Child).

According to Article 11 of the Law, *“the procedures for organizing and conducting assemblies and meetings, established by the current Law, are not applicable to assemblies and meetings of labor collectives and public associations, conducted in compliance with legislation and their charters and located in enclosed areas.”*

Based upon the formulation of this article, it follows that any other assembly or meeting, organized in enclosed areas which are not of labor collectives or public associations, but, for example, of individual citizens, groups of citizens, commercial organizations, funds or institutions, come under the procedure established by the given Law. In other words, the necessity to turn in an application 10 days in advance, etc.

The above-quoted analysis allows us to make the following conclusion: the legislation and law-enforcement practices of the Republic of Kazakhstan concerning the right to peaceful assembly, to some extent do not correspond to international standards, including responsibilities under the International Covenant on Civil and Political Rights, other international human rights agreements and also responsibilities within the framework of the Organization for Security and Co-Operation in Europe, especially the OSCE Guidelines on Freedom of Peaceful Assembly.

The main problems in legislation are summarized as follows:

1. The Law establishes strict permissive but not informative procedures. Permission for conducting any assembly is given by local executive agencies. Applications must be submitted 10 days in advance of conducting the assembly, and a violation of this regulation is an administrative violation.

2. The Law does not give clear definitions of types of peaceful assembly, which violates the principles of legal predictability and specificity. Any cluster of people in such a situation could be potentially termed an assembly in the sense of the Law, and correspondingly, illegal, if there was no permission given by an executive agency of the government. In other words, citizens seeking to lay flowers on a memorial or carrying a petition to the authorities, participants of flash mobs, courtyard meetings of apartment residents, etc may be held to administrative accountability. In addition, the Law does not contain a distinction between who is considered a participant in an assembly and who is not. This makes it possible to hold accountable anyone found in the location where an assembly is held.

3. The law does not provide for the submitting of an application to conduct an assembly by an individual person. This directly contradicts Article 21 of the ICCPR, which provides for freedom of assembly not only for groups but also for individuals.

4. The Law, together with decisions of local representative agencies limits the places for holding assemblies of citizens and public associations. In a series of cities, are established strictly out-of-the way places, as a rule, located on the outskirts of the city. Higher officials and local authorities, and also some political organizations, for the holding of assemblies, have the unfounded exclusive right to use squares in the city center, in comparison with citizens and their associations, which is discrimination. In addition to the element of discrimination, this is a violation of the essence of freedom of assembly. In fact, there can be no reasonable substantiation, from the viewpoint of international standards, to bind the realization of freedom of assembly to one location. Moreover, not all forms of

assembly can be held in such conditions, since pickets, demonstrations or processions virtually cannot be contained to one place in the city.

5. Article 373 of the Code of Administrative Offenses and Article 334 of the Criminal Code excessively broadly interpret violations in the sphere of the freedom of peaceful assembly. Administrative responsibility per these articles may occur in the instance of the violation of the procedure for conducting assemblies as stated in the Law. At the same time, law-enforcement agencies may independently determine the margin of public danger of an action.

Legislation does not establish the line by which administrative and criminal responsibility may be clearly distinguished. In compliance with Paragraph 2 Article 373 of the CAP, a third party rendering assistance to an assembly unsanctioned by the authorities comes under administrative responsibility. This type of limitation is unnecessary in a democratic government and unjustified from the viewpoint of the availability of vital public and social necessities, and, consequently, is disproportionate.

6. The Law contains a large quantity of prohibitions of the holding of an assembly. These prohibitions are so broadly stated that they allow the possibility for their abuse from the side of executive agencies. In them is no clarity regarding the question: whose violations and in what quantity may influence the prohibition of the holding of an assembly, and the responsibility of authorities to take into consideration concrete circumstances is absent.

7. The Civil Procedure Code does not support effective measures of legal protection in the case of appeal of a refusal of the authorities of the holding of an assembly. In it is established a monthly time for the consideration of civil suits. Consequently, even if the prohibition of authorities would be acknowledged as illegal, the holding of the assembly may become irrelevant.

As indicated by the observations of non-governmental organizations for the protection of rights, including monitoring conducted by the public fund "Charter for Human Rights," law-enforcement practices are also imperfect and require cardinal improvement.

Thus, the following problems were disclosed:

1. Freedom of assembly is interpreted by local authorities as a collective right, which contradicts both the Constitution and international standards. As a result, the situation is created in which a person individually does not have freedom of peaceful assembly.

2. Judges do not apply the principle of proportionality to limitations of the freedom of assembly when considering suits regarding the appeal of refusal to hold an assembly, and when considering administrative matters regarding the charge of violation of legislation on freedom of assembly.

3. Law-enforcement agencies are not always guided in the detainment of demonstrators by the existence of an actual threat, in consequence of which a large quantity of unfounded detainments is allowed. Detainment often takes place on the grounds of suspicion only of the intent to participate in an assembly.

4. Conduct of officials of law-enforcement agencies creates the feeling of uncertainty and unpredictability in citizens. In a series of instances of the forced termination of assemblies, the police do not warn participators of their actions. There have been frequent instances of assault and detainment of journalists and independent observers collecting information at the place of the event.

5. Local authorities, considering applications for the holding of assemblies, are inclined to apply extreme measures in the form of a denial, often on a formal basis. At the same time, the possibility is often ignored of requesting additional information from applicants and engaging in preliminary discussions with organizers regarding the holding of assemblies.

Based upon all the above-stated, The National Human Rights Action Plan contains a series of measures directed toward the improvement of legislation and law-enforcement practices in the sphere of guaranteeing the constitutional right of citizens to freedom of peaceful assembly.

No.	Action	Deadline	Executors
1.	Study of foreign experience in the regulation of the freedom of peaceful assembly	2009	Ministry of Justice, Human Rights Commission, Human Rights NGOs (per agreement)
2.	Conducting of an international round table in the framework of preparation of the Republic of Kazakhstan for chairmanship of the OSCE, with the participation of members of OSCE expert groups on the freedom of peaceful assembly, developers of the OSCE Guidelines on Freedom of Peaceful Assembly	4 <sup>th</sup> quarter of 2009	Human Rights Commission, Ministry of Foreign Affairs, UNDP (per agreement), OSCE Center in Astana (per agreement), OSCE ODIHR (per agreement), Human Rights NGOs (per agreement)
3.	Development of a project for a new law on freedom of peaceful assembly and a draft law on the introduction of additions and amendments to other legislation on issues of freedom of peaceful assembly on the basis of draft laws prepared by groups of NGOs and approved by the Advisory Panel of the Human Rights Commission under the President of the Republic of Kazakhstan	2 <sup>nd</sup> quarter of 2010	Ministry of Justice with the involvement of Human Rights NGOs (per agreement)
4.	Discussion of the project for a new	3 <sup>rd</sup> -4 <sup>th</sup>	Ministry of Justice,

	law on freedom of peaceful assembly and the draft law on the introduction of addition and amendments to other legislation on issues of freedom of peaceful assembly with the holding of a round table (conference)	quarter of 2010	Public Chamber under the Majilis of Parliament, Human Rights Commission, Human Rights NGOs (per agreement)
5.	Introduction of the project for a new law on freedom of peaceful assembly and the draft law on the introduction of amendments and additions to other legislation on issues of freedom of peaceful assembly to the Parliament of the Republic of Kazakhstan	4 <sup>th</sup> quarter of 2010	Ministry of Justice
6.	Development and adoption of agency-level instructional material, defining the procedure for consideration by local executive agencies of notices regarding the conducting of peaceful assemblies, including cooperation with organizers of peaceful assemblies	1 <sup>st</sup> -2 <sup>nd</sup> quarter of 2011	Normative decisions of Maslikhats of regions and the cities of Astana and Almaty
7.	Development and adoption of agency-level instructional material, defining rules of conduct for officers of law-enforcement agencies in support of public order during peaceful assemblies, including cooperation with their organizers and participators	3 <sup>rd</sup> quarter of 2011	Ministry of the Interior
8.	The fulfillment of complex training of officers of law-enforcement agencies, authorized to keep order at peaceful assemblies, skills of cooperation with organizers of assemblies and participators in them, the protection of the assembly from provocation, skills of holding conversations with aggressively minded participators in an assembly, and also international	2010-2012	Ministry of the Interior, UNDP in Kazakhstan (in coordination), OSCE in Kazakhstan (in coordination), Human Rights NGOs (in coordination)

	standards for the use of special measures and physical force		
9.	The adoption of a normative decree of The Supreme Court of PK on judicial practices when considering matters related to the realization of the right to the freedom of peaceful assembly	2011	Supreme Court
10.	The conducting of a widespread explanatory campaign for the formation of public opinion in favor of the use of nonviolent forms of protest and the civilized expression of their opinion when holding assemblies	2009-2012	Ministry of the Interior, Ministry of justice, Human Rights NGOs (in coordination)

### **The Right to Freedom of Speech and the Receipt of Information**

In the Constitution of the Republic of Kazakhstan, the right to freedom of speech and creativity is guaranteed, censorship is forbidden, and the right of everyone to receive and distribute information by any means not forbidden by law is reinforced.

Moreover, limitations also exist, accepted in international practice. Paragraph 3 of Article 20 of the Constitution of RK does not allow propaganda of or agitation for the forcible change of the constitutional system, violation of the integrity of the Republic, undermining of state security, and advocating war, social, racial, national, religious, class and clannish superiority as well as the cult of cruelty and violence.

These freedoms, rights and limitations are repeated in Article 2 of the Law of RK “On Tools of Mass Information.”

One of the most important instruments for the realization of the right and freedom of citizens to information is the mass media.

In Kazakhstan, over the last years cardinal transformation in the sphere of the activity of the mass media have been executed. Privatization of the mass media sector occurred, the result of which, today **more than 80% of mass media is nongovernmental.**

Market reforms have resulted in the growth in quantity and quality of instruments of mass media. Kazakhstan today leads the majority of countries of Central Asia and Transcaucasia in the pace of mass media development. The fact that the Annual Eurasia Media Forum is held in the country testifies to Kazakhstan’s leadership in the development of media infrastructures.

Nevertheless, in practice, instances of the limitation of freedom of speech of citizens have arisen. As noted by some NGOs, in Kazakhstan there have been

instances of the violation of the human right to freedom of speech. There have been isolated instances of the death of journalists, and some instances of the bodily injury of representatives of instruments of mass information.

*Data from the sociological survey "Human Rights in Kazakhstan: The General Opinion." witnesses to the restriction of the right of citizens to freedom of speech. Of 1500 respondents to the question, "How do you assess the situation in the sphere of the protection of the right of citizens to freedom of speech?" 27,3 % gave a negative assessment of the governmental mechanism for the protection of the constitutional right of citizens to freedom of speech, 51,7% gave a positive assessment, and 21,0% of respondents had difficulty in answering. The results of the sociological survey lead to drawing the conclusion regarding the necessity to improve legislation and law-enforcement practices in regard to mass media in Kazakhstan, in compliance with international standards.*

A significant event in the year 2006 was the approval on June 25, 2006, of the Decree of the President of the Republic of Kazakhstan on the Concept of Civil Society Development in the Republic of Kazakhstan in the years 2006-2011.

The Concept defines the basic direction of development of institutions of civil society and the possibilities of realization of civil initiatives, and has become a basis for the development of target programs and legislative and other normative legal acts, directed toward the creation of favorable conditions for the functioning of institutions of civil society.

The main objective of the Concept is the further improvement of the legislative, social-economic and organizational basis for the comprehensive development of institutions of civil society and their equivalent partnership with the government and business sector in compliance with international legal instruments within the framework of international treaties and covenants in the area of human rights and the human dimension.

With the goal of the realization of the Concept of Civil Society Development in the Republic of Kazakhstan in the years 2006-2011, an Outline of Measures for the Realization of the Concept of Civil Society Development in the Republic of Kazakhstan for the years 2006-2011 was prepared and approved September 30, 2006 by the Government of RK.

**With the aim of guaranteeing the Constitutional right of citizens to freedom of speech and the receipt of information, we recommend that the Government of the Republic of Kazakhstan implement the following measures in the period of 2009-2011:**

1. Improve legislation regulating the activities of mass media, taking into consideration international legislation in the sphere of human rights, ratified by the Republic of Kazakhstan.

2. With the aim of fully guaranteeing the constitutional right of citizens to the receipt of information, in 2011 develop and pass the Law "On the Access of Citizens to Information."

3. Strengthen legislative responsibility (material, administrative, criminal) of officials and individuals who hinder the legal activity of journalists and other representatives of implements of mass media.

4. Halting the activity of an implement of mass media should be allowed only by decision of the court.

5. Legislatively establish limitation periods regarding matters of the protection of honor and dignity.

6. Strengthen instruments of cooperation with governmental agencies and institutions of civil society and create favorable conditions for the effective realization of the governmental social decree.

### **The Right to Participate in the Government (Free and Fair Elections)**

The right to participate in the government, the right to elect and be elected into governmental agencies and institutions of local government are established in Article 33 of the Constitution of the Republic of Kazakhstan, and also in Article 21 of the Universal Declaration of Human Rights and in Article 25 of the International Covenant on Civil and Political Rights.

The Head of the government, Parliament, and local representative institutions are chosen on an electoral basis. Elections of the President, deputies of the Majilis of Parliament and Maslikhat of the Republic are held on the basis of the universal, equal, and direct electoral right by secret ballot. Elections of deputies of the Senate of Parliament are held on the basis of the indirect electoral right by secret ballot.

Citizens of Kazakhstan have active voting rights upon reaching 18 years of age, despite their parentage, social, official, and material status, sex, race, nationality, language, religion, beliefs, place of residence, and any other circumstances.

In harmony with Paragraph 3 Article 33 of the Constitution of the Republic of Kazakhstan, the right to elect and be elected, to participate in the all-nation referendum shall not extend to the citizens judged incapable by a court as well as those held in places of confinement on a court's sentence. According to Paragraph 4 of Article 4 of the Constitutional Law of the Republic of Kazakhstan "On Elections in the Republic of Kazakhstan," (further referred to as "the Law on Elections") individuals having previous convictions which have not been acquitted or withdrawn according to the procedure established by law may not be candidates for the President of the Republic of Kazakhstan, deputies of the Parliament of the Republic of Kazakhstan, included on party lists, the Maslikhat, and also candidates for membership in any other institution of local government.

The Constitution establishes a residential qualification, an age requirement, and a series of other requirements for candidates for electoral office.

The President may be a citizen of the Republic of Kazakhstan, by birth not younger than 40 years of age, freely speaking the State language, and having lived in Kazakhstan the last 15 years.

A deputy of Parliament may be an individual who is a citizen of the Republic of Kazakhstan and who has continually lived on its territory the last 10 years. A deputy of the Senate of Parliament may be an individual who has reached 30 years of age, having a higher education and length of service of not less than five years, and has been a permanent resident for not less than three years on the territory of the respective oblast, major city or the capital of the Republic. A deputy of the Majilis of Parliament may be an individual who has reached 25 years of age.

A deputy of the Maslikhat may be elected by citizens of the Republic of Kazakhstan when he has reached 20 years of age.

In Kazakhstan, there is a four-level system of electoral commissions. In all, in the Republic of Kazakhstan there are 13,283 electoral commissions, in which work 92,981 people.

It would be good to note the fact that in the sphere of the guaranteeing the active electoral right of citizens it is necessary to improve conditions for the participation in elections and referendums by individuals with limitations (handicapped). This involves the installation of ramps at voting points, the use of special voting ballots for blind voters, and the application of new technology for voting by handicapped individuals. In this connection, it would be beneficial to study corresponding foreign experience (uppermost, USA and countries of the European Union) and implement a corresponding legislative basis for the guarantee of full participation of the handicapped in the electoral process.

## **1. Registration, Voter Lists**

International standards require the guaranteeing of the full and comprehensive transparency of the entire process of working with lists. At the same time transparency means that voter lists should be documents open to the public and available for verification without expense to the individual requiring verification.

In the opinion of experts, sufficient transparency in the compiling of voter lists is not provided for in Kazakhstan's legislature. In order to be included in a voter list, a citizen should be registered at his place of residence. Later, local executive institutions compose voter lists on the basis of this information. How they compose them, and how accurately, is impossible to control. Citizens may check themselves if they are on the list, however, the overwhelming majority do not do this. Political parties, candidates and NPOs have no rights to verify the accuracy of the compilation of voter lists.

Furthermore, regulations forbidding the unauthorized use of personal data of citizens are absent from legislature.

## 2. Political Parties and Candidates

According to international standards, legislation regulating the formation and registration of political parties should not contain unduly difficult requirements for the formation of a political party.

The Law of RK “On Political Parties” contains a sufficiently large amount of requirements for the formation and registration of political parties.

The collection of the minimum number of signatures of registered voters for the nomination of candidates as representatives of governmental agencies and for the registration of political parties corresponds to international standards. It is necessary to perfect the mechanisms for checking the signatures of citizens.

Kazakhstan’s legislation regarding the requirements, procedure and refusal of registration require reconsideration and bringing into compliance with international standards.

The absence of a clear interpretation of the understanding of “*agitation*” in comparison with “*the distribution of information and propaganda as the goal and objective*” allows a sufficiently arbitrary interpretation of the actions of various political parties and groups from the viewpoint of holding them accountable for so-called untimely “agitation.” This problem concerns both individual candidates for deputies of Parliament as well as for President of the Republic of Kazakhstan. Therefore, legislative permission to bring the given interpretation regarding the expression of one’s opinion and the distribution of one’s political views into compliance with international standards is required.

In harmony with international practice, a particular problem is the permitting from time to time within the framework of legislation the early termination of deputy mandate as a result of changing his political party alliance. The chosen candidate should be responsible before voters. This responsibility may be undermined in the case when legislation requires the candidate who changed party alliance to present his credentials.

## 3. Equal Treatment by and Access to Mass Media

According to international standards, political parties and candidates should be provided equal access to mass media and should have the guarantee of equal treatment by mass media belonging to or controlled by the government with a view of objective and impartial information of electors regarding political platforms and views and goals of political parties and candidates. This is true of all forms of mass media including radio, television, newspapers, and developing forms of media such as the Internet.

One of the factors which can ensure this standard is a requirement to grant political parties the right to free radio and television time on a continual basis and not only during elections.

The standard of equal treatment by and equal access to mass media is discredited if the mass media belonging to or controlled by the government in

its news, political reviews, discussions or editorials display preference for one political party or candidate over another.

In harmony with international practice, democratic elections are impossible where legislation hinders speeches and expression of opinions or lowers their tone during the course of election campaigns.

In CIS countries that are in transition to democracy, legislation in practice ensures the censoring of speeches by using sanctions for speeches that “slander” or “insult” another person. This person could be understood to be the government, an official, or a candidate during an election campaign. These regulations are often found in Election Codes or in legislation regulating the mass media or public information. These regulations are also found in constitutional legislation as well as the civil, criminal and administrative codes.

Any law regulating slanderous sayings against another person or affecting his reputation should be a part of applicable civil legislation.

Such restrictions of freedom of expression violate international standards in the field of human rights. In addition, such regulations usually violate the guarantee of freedom of speech stipulated by the Constitution of the country.

Lack of clear criteria for the differentiation between the expression of one’s opinion and “*materials and other information deliberately discrediting the honor, dignity and business reputation of a candidate or political party*” creates the basis for violent interpretation of these concepts and a selective approach to application of similar provisions of the law.

In this regard, Kazakhstan’s legislation is in need of reconsideration, decriminalization of “slander” and “insult” and determination of clear and sound criteria for the differentiation between the expression of one’s opinion and dissemination of information contrary to facts and discrediting honor, dignity or business reputation.

### **Review of Election Legislation of the Republic of Kazakhstan. Recommendation on Improvement of Election Legislation.**

Since the initial enactment of the Election Law of September 28, 1995, it was amended and added nine times with a view to its improvement and the bringing of it into harmony with the standards of international election legislation – by the Constitutional Laws of June 19, 1997, May 8, 1998, November 6, 1998, May 6, 1999, June 28, 1999, April 14, 2004, April 15, 2005, December 25, 2006 and June 19, 2007.

The main innovations of the year 2004 were: non-alternative elections and preliminary voting were excluded; the principle of formation of elective committees by Maslikhats for the representation of political parties was introduced; restrictions were cancelled according to which the following people could not be registered as candidates for elective positions: 1) those who during the period of one year before registration were called to disciplinary account for a corruption violation; 2) those who during the period of one year before registration

were given in court an administration penalty for an intentional violation; candidates who stood in preliminary elections received the right to participate in second elections (earlier, the law prohibited this); into the law was included a full and exhaustive list of violations which can serve as a basis for cancellation of registration for candidacy; the voting procedure and counting of votes were regulated in more detail; candidates and political parties were allowed to have a greater quantity of trustees who are granted the right to require the recounting of ballots at election centers; the principle for the compilation of voter lists was changed so that voters are listed according to their registration by place of residence; a clear definition of the concept “agitation” was introduced into legislation; charity was prohibited during election campaign which, in the same way as bribery of electors, is a violation of principles of free declaration of citizens’ will; the mass media was imposed with the duty to realize impartial coverage of election campaign candidates or political parties without preferences given to any of them; guarantees of equal access for candidates to mass media were established; inappropriate election campaigning was prohibited and as its main features were defined (the provision of goods, services, or securities for free or on preferential terms to voters as well as the conducting of raffles or charity activities, paying out of money or promising to do so); and the possibility of using an automated information system for elections was foreseen.

Regulations regarding the significant expansion of observer rights were included in the law in 2004. Earlier, the Election Law did not cover rights of observers such as: to remain in the voting room at so-called “closed election centers;” to be in the vehicle during the transportation of portable ballot boxes; to observe the voting; to observe the counting of votes in conditions ensuring the clear view of all procedures; to be present during the course of voting outside the voting room in case it is impossible to remain inside the voting room; to make photo, audio and video recordings; to read election committee protocols regarding voting results; and to receive their verified copies. These rights are now established.

Changes in the year 2005 resulted in filling gaps in election legislation which were revealed by the election campaign in the year 2004: citizens were granted the opportunity to vote with detachable certificates; measures were taken to enhance the responsibility of candidates for elective positions (candidates as well as their mates prior to registration must submit their income and property statements to their local tax authorities on the first date of month of the period of nomination); the quantity of trustees of candidates was limited to a number not exceeding three people per every election center in corresponding election areas; regulations regarding the financing of election campaigns were specified and detailed and issues of financial reporting and financial operations in the period of elections were itemized in more detail.

The ban introduced in the year 2005 on any form of expression of public, group or private interests or protest which would influence voters or members of election committees beginning from the moment of completion of the election

campaign and lasting until the official publication of election results was cancelled in 2006 by means of the removal of Paragraph 6 of Article 44 of the Election Law.

In June 2007, as a result of amendments to the Constitution made in May 2007, the Election Law was greatly changed. A new procedure for the formation of the Majilis of Parliament according to party lists was established; the amount of election fees paid by political parties was differentiated according to the number of votes obtained in support of the political party in the course of previous elections; opportunities of political parties to participate in the work of election committees were expanded: political parties not having representatives in the election committee have the right to delegate a representative with the right of advisory vote for the period of preparation and conduction of the election campaign, and he is empowered with all the rights of a member of the election committee; the rule restricting the election of individuals without a higher legal education for the position of chairman or secretary of the Central Election Commission was excluded, which resulted in the expansion of the circle of people able to qualify for the above-mentioned positions; the procedure for production and issue of detachable certificates of voting right was regulated at the legislative level: now detachable certificates are not issued to voters wishing to vote in another election area or at another election center in the limits of one population center; the status and powers of local observers and those from foreign countries or international organizations as well as powers of trustees are determined. Thus the guaranteed observance of internationally recognized observer rights is ensured, including the right to be present at all stages of election process, to receive from the election committee information on the progress of the election campaign, to meet with all participants in the election process, to have access to all election centers during the voting and counting of votes, to observe the transfer of protocols on election results to higher election committees, to inform members of election commissions about their observations and violations revealed, to make recommendations, and to make public statements after the announcement of election results.

The Central Election Commission interacts with the Office for Democratic Institutes and Human Rights of OSCE (further referred to as “ODIHR/OSCE”) with regard to the improvement of the election legislation of the Republic of Kazakhstan. It discussed with ODIHR/OSCE the recommendations on improvement of the election legislation as set out in four documents: 1) The ODIHR/OSCE evaluation regarding the Constitutional Law of the Republic of Kazakhstan “On Elections in the Republic of Kazakhstan” (August 24, 2004); 2) The ODIHR/OSCE Mission report regarding the observations of the elections of the Majilis of Parliament of the Republic of Kazakhstan on September, 19 and October 3, 2004; 3) The final report of the ODIHR/OSCE Mission regarding the observations of presidential elections in the Republic of Kazakhstan on December 4, 2005; 4) The final report of the ODIHR/OSCE Mission regarding the observations of special elections of Parliament on August 18, 2007.

In 2006, two round tables were held with participation of all interested parties including representatives of international organizations. Three

consultations with ODIHR/OSCE experts were also held. The above-mentioned amendments and additions to the Election Law were the practical implementation of the ODIHR/OSCE recommendations. A series of ODIHR/OSCE recommendations were implemented at the level of Central Election Commission regulations; for instance, the informing of observers of a recount votes and providing them the opportunity to watch the recount (Enactment of the Central Election Commission dated August 2, 2007, No. 103/218).

Some ODIHR/OSCE recommendations are unacceptable, since they can lead to the worsening of the situation of election participants. In particular, this is the ODIHR/OSCE recommendation to reduce the 10-day period of appeal against actions (inaction) and decisions of election committees as stipulated by the Election Law. Considering the long distances in the country and related difficulties in rapid collection of all original documents needed for appeal, the experts of the Central Election Commission have convinced ODIHR/OSCE experts that the above-mentioned 10-day period was optimal and has proved that judicial recourse and other appeal actions could be taken during any day during this period.

In 2008, with a view to the preparation of a set of recommendations on amendments and additions to the Election Law, a special work group was created by the Decree of the Chairman of the Central Election Commission. It included deputies of both Chambers of Parliament, as well as representatives of state authorities, political parties and nongovernmental organizations. The work group has collected and systematized the suggestions of all interested parties, and these were sent to ODIHR/OSCE in June 2008.

Issues regarding the reformation of election legislation were discussed in the course of two round tables organized by the Central Election Commission together with ODIHR/OSCE. The first round table on the theme “Participants in the Election Process: Their Problems and Opportunities” was held on March 28, 2008, and the second round table on the theme “Election Technologies and Procedures” was held on June 13, 2008. In March, June and October 2008, consultation meetings with ODIHR/OSCE experts and the OSCE High Commissioner on National Minorities took place.

On the basis of the prepared suggestions for the improvement of election legislation, the Ministry of Justice of the Republic of Kazakhstan developed the draft law “On the Introduction of Amendments and Additions to Constitutional Law of the Republic of Kazakhstan ‘On Election in the Republic of Kazakhstan’” which on November 14, 2008 the Government submitted to the Majilis of Parliament of the Republic of Kazakhstan. In January 2009, the draft law was ratified by the Parliament and in February, the Head of State signed the Law.

The Law ensures the legal mechanism allowing the formation of Parliament with the involvement of not less than two parties even if the second party does not pass the 7% barrier.

Moreover, the Law ensures the restriction of people guilty of corruption crimes or violations to stand as a presidential contender, deputy of Parliament or Maslikhat, or as a member of any other local authority.

With a view of the provision of equal opportunities in elucidation of election activities of all political parties, Paragraph 7 of Article 27 of the Law was added, with the second part ensuring the equal size of printing pages and amount of telecasting time in the course of dissemination of information about the activities regarding the nomination and registration of candidates and party lists in mass media.

The Law regulates the deadline of elections of deputies of the Maslikhat instead of former deputies. It empowers the Central Election Commission to interpret election legislation and produce the detachable certificates of voting rights. It regulated the operation of regional election committees. During the period of preparation and holding of elections it improves the material provision of election committee members who are not governmental officials. It ensures the reimbursement from the state budget of costs for the services of specialists to maintain the operation of the electronic election system.

Paragraph 4 of Article 28 of the Law was amended to ensure equal and uniform conditions for the provision of facilities for voter meetings as well as publication of the voter meeting schedule in mass media.

From Paragraph 2 of the fourth part of Article 20-2 of the Law, the rule was excluded which stipulated that people not having experience in election observation are not accredited observers of international organizations and foreign states. Thus, the opportunities to participate in international election observation were expanded.

In whole, it is worth noting that the process of improvement of election legislation is not limited to the above and is being implemented continuously.

### **Implementation of International Standards in Election Legislation of the Republic of Kazakhstan.**

The implementation of standards of OSCE international acts into the election legislation and practice of Kazakhstan is being accomplished by means of their inclusion into the standards of elective legislation of Kazakhstan. Thus, Paragraph 7 of the OSCE Copenhagen Document of 1990 regarding the necessity of free elections with reasonable frequency was expressed in Article 2 of the Election Law “Freedom of Elections,” in Article 51 “Regular Elections of the President of the Republic,” in Articles 69 and 85 (regarding regular elections of the Senate and Majilis of Parliament correspondingly), and in Article 101 “Timing of Elections of Deputies of Maslikhats.” Paragraph 7.6 of the same Copenhagen document regarding the necessity of creation of conditions needed for legal guaranties for participants of the election process, which would allow “them to compete with each other on the basis of equality to the law and authority,” corresponds to Article 27 of Kazakhstan’s election law which states that election

campaigns are held, in particular, by means of the conducting of “public election debates and discussions, assemblies, processions and demonstrations.”

A second element ensuring the implementation of standards of international agreements in the field of the election legislation of Kazakhstan is the realization of relevant recommendations of ODIHR/OSCE missions regarding the elections in Kazakhstan. The ODIHR/OSCE has studied the election legislation of Kazakhstan on an expert level with regard to its accordance to OSCE international obligations, the findings of which were expressed in the document “ODIHR/OSCE Evaluation of the Constitutional Law of the Republic of Kazakhstan “On Elections in the Republic of Kazakhstan” (August 24, 2004).

A noteworthy element of the mechanism by means of which conditions for the implementation of the standards of international agreements and acts into the election legislation and practice of Kazakhstan are created, is the conferences and seminars on issues of the human dimension annually arranged by the OSCE and its structures.

Another element of the mechanism for implementation of the standards of international covenants (agreements) on election matters is the enactment of the legislative act regulating the procedure for their application. Thus, on June 7, 2007, the Law was approved that ratified the CIS Convention on Standards of Democratic Elections of October 7, 2002. Since June 7, 2007, this law obliged competent governmental authorities of the Republic to begin the implementation of international standards into domestic legislation and law-enforcement practices of the Republic of Kazakhstan. In the case of contradictions between the standards of Kazakhstan’s national election legislation and the given Convention, unconditional priority will be given to the norms of the Convention.

Among the elements of the mechanism for implementation of the standards of the international agreements into the election legislation and practice of Kazakhstan is the use of special references to international agreements (acts) in order to direct competent governmental authorities towards the application of corresponding international agreements. A reference to the international agreement (act) takes place when a legislator in Kazakhstan gives priority to the application of the international agreement (convention) in case of a contradiction during the course of settlement of a legal issue.

In addition, it is worth noting that the election legislation of the Republic of Kazakhstan in whole conforms to fundamental international documents regulating the procedure for conducting elections and referendums. Along with this, Kazakhstan needs to further improve its election legislation in harmony with the international standards established by the UN and OSCE.

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As a result of ratification of the Optional Protocol to the International Covenant on Civil and Political Rights by the Republic of Kazakhstan, citizens of the Republic of Kazakhstan have the opportunity to appeal to the UN Human

Rights Commission regarding the violation of civil and political rights. In this regard, the Republic of Kazakhstan needs to take measures to improve the available mechanisms of human rights protection in order to prevent the large flow of complaints to this international remedial institution and thus to actually settle the claims and complaints of the citizens inside the country.

First of all, it is necessary to give attention to the improvement of the Law of the Republic of Kazakhstan of January 12, 2007 “On the Procedure for Claims of Individual and Legal Persons” as well as to the raising of the efficiency of investigation of citizens’ claims by judicial and local executive authorities. In this regard, it would be advisable to carry out a legal examination of the laws regarding authorities of the interior, advocacy, judicial system, and status of judges, as well as of other laws related to investigation of claims and complaints during elections.

**In connection with the above-stated, we recommend that the Central Election Commission of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan in the period of 2009-2011 implement the following measures:**

1. Continue the work on further improvement of election legislation in harmony with international standards established by the UN and OSCE.

2. Considering the fact that one’s rights to free and fair elections depends on the observance of many other civil and political rights, introduce changes to legislation regarding mass media, political parties and public unions, and peaceful assemblies (mass-meetings, processions, marches) with the goal of bringing it into conformity to international standards and OSCE responsibilities.

3. Ensure the involvement of representatives of all political parties registered in the established order in the activity of election committees, which involvement should not depend on the political composition of the Maslikhats which elect committees members but should be based on the mechanism ensuring the objective participation of all political forces in the activity of election committees.

4. Legislatively ensure the transparency of voter listings.

5. Legislatively establish public control of the electronic voting system at the stage of counting of votes and at the stage of making protocols on the results of the vote count at the election center.

### **Human Rights in the Sphere of Labor Relations - The Right to Social Security**

As a result of consistent state policy in the Republic of Kazakhstan in the field of remuneration of labor, a legal basis was established which allows organizations basing their legal form on the conditions of a market economy to settle matters of remuneration of labor in the course of social dialogue by means of collective agreements and branch agreements.

As is well known, the Constitution of the Republic of Kazakhstan establishes the minimum wage, lesser than which employers have no right to pay citizens. The principle of the contractual regulation of salary was introduced to control relations between employees, employers, and trade unions by means of collective agreements and contracts in the conditions of a market economy. The salaries of employees of state organizations are controlled.

Thus, by annually estimating the level of the minimum wage and increasing the salary of employees of state organizations, the Republic reaches its economic potential, since uncontrolled increase can be incommensurable with the capacities of the state budget. At the same time, to settle the issue of the determination of the minimum wage, the Government takes certain steps. Annual increase of the minimum wage surpasses corresponding inflation growth.

In addition, presently, the minimum wage is based on the minimal subsistence level.

According to data from the Statistical Agency of the Republic of Kazakhstan the number of employees who in 2008 received a salary comparable to the minimum wage was *1,5 % (40,520 people)* of the total number of employees in the country.

The Government of the Republic of Kazakhstan incrementally increases the salary of employees of the state organizations with the simultaneous improvement of the labor remuneration system. Thus, the salary of employees of state organizations (excluding government employees) during the period of 1998 through 2008 increased from 6,851 tenge to 35,253 tenge, or by 5.1 times.

However, despite measures taken to increase the salary of employees of state organizations, the level of their salaries remains low in comparison with the average level in the Republic.

In the mid-term period, in compliance with the Message of the Head of State to the People of Kazakhstan on February 6, 2008, the salary of employees of state organizations will be doubled by the year 2012 in comparison with the year 2008.

In 2009, the salaries of employees of state organizations were already increased by 25% (Enactment of the Government of the Republic of Kazakhstan of December 24, 2008, No. 1257).

Currently, a work group involving representatives of trade unions and central state authorities is working under the Ministry of Labor and Social Protection. This group jointly with JSC "National Analytical Center Under the Government and National Bank of the Republic of Kazakhstan" is working to improve the labor remuneration system for employees of state organizations.

Based on their work, the development of a three-tiered system of labor remuneration is suggested, ensuring:

- 1) Distribution of civil employees into managerial, main and auxiliary levels in accordance with their functions and level of responsibility, with a corresponding amount of official salary;

- 2) Optimization of the system of additional payments and bonuses considering the specifics of the branch;

3) The third component is the proposed introduction of compensation payments to reduce regional differences in standard of living.

The issue raised by the Trade Union Federation of the Republic of Kazakhstan (TUF RK) regarding the replacement of the base official salary (BOS) used for the calculation of salaries of employees of the state organizations with the minimum wage (MW) is also under consideration by the work group of the Ministry of Labor and Social Protection.

According to data from TUF RK, labor legislation is being violated in the Republic, adequate labor conditions and protection are far from being provided, employee discrimination is allowed, especially against women and youth, and an imperfect and unfair system of labor remuneration divides society into the poor and the rich.

The most important part the activity of trade unions are issues regarding salary, which vary in different branches and regions.

Thus, in November 2008, the average monthly nominal salary in the Republic reached the level of 59,575 tenge; however, however, the average in the agricultural sector amounted only to 46.3 percent of the national average; in health care organizations – 41.2 percent, and in educational organizations – 42.7 percent.

At the same time, the average salary of an employee in the financial sphere in November 2008 amounted to 127,000 tenge, in the mining industry – 107,500 tenge, in the transport and communication industries – 80,400 tenge, and in the construction industry – 82,600 tenge – that is 1.4-2 times more than the average national level.

In a regional cross-section there are also significant differences: in the Zhambyl, Northern Kazakhstan, and Southern Kazakhstan regions the average salary in October 2008 amounted to a little bit more than 40,000 tenge, while at the same time in the Atyrau and Mangistau regions – 114,000 and nearly 98,000 tenge correspondingly.

In the opinion of the Trade Union Federation, the Republic of Kazakhstan needs to take legislative measures to eliminate unfair disproportion in the field of labor remuneration of employees of various categories, to ensure a fitting salary for employees in the fields of education, health care, culture, and agriculture. Considering the economic growth of the regions and increased opportunities for businesses and organizations, it is necessary to reform the labor remuneration system. Correspondingly, the salary should be indexed quarterly according to the growth of prices for goods and services.

Taking into account that the Constitution declares that Kazakhstan is a social state, in 2007 the Trade Union Federation has developed suggestions on a formula for the determination of the National Standard of Living. These were sent to the Government, the Parliament, and NDP “Nur Otan.” The President of the Republic of Kazakhstan commissioned the Administration of the President to review and evaluate the reasonableness of the suggestions of the Trade Union Federation.

For this formula, the trade unions stress labor remuneration, pension security, the consumer basket, standards of medical and educational services,

family social support, the provision of housing, and the provision of utility services.

First of all, they have in mind the determination of an approach to the establishment of a minimal subsistence level as the main basis for calculation of the minimum wage and other social payments.

Presently, state authorities are considering the suggestions on the National Standard of Living, taking into account the requirements of the Trade Union Federation of the Republic of Kazakhstan (further referred to as “TUF RK”).

Based on a study of the practical experience of CIS countries in the field of improvement of methodology for establishment of a minimal subsistence level, TUF RK has suggested that the Government of the Republic of Kazakhstan calculate the minimal subsistence level with due consideration to the zoning (regionalization) of the country in regards to the living conditions of the population.

In addition, TUF RK demands the re-calculation of the consumer basket based on the actual needs of the population.

It is necessary to increase the minimum wage guaranteed by legislation to a higher social indicator – the minimal consumption budget and the poverty limit should be determined at the level of minimal subsistence.

The Head of State has offered new parameters in social policy – *by means of doubling the gross domestic product (GDP), to double the social expenditures of the State and eventually double the standard of living.* However, the labor situation in whole reveals the unfair distribution of its results.

In Kazakhstan, the proportion of labor remuneration (even with “shady” payments) amounts to only 31.2% of the GDP, while in European Union countries it remains 50-56%. Therefore, TUF RK thinks it is necessary to increase proportion of salary to the gross domestic product.

**To implement the task of determination of the National Standard of Living, we recommend that the Government of the Republic of Kazakhstan ensure the following primary measures in the years 2009-2012:**

Jointly with social partners, develop and approve the **Concept of Principles of Social Policy in the Republic of Kazakhstan** in order to determine the direction of forthcoming work and the rights and duties of agents of social policy regulation – state authorities, local authorities, entrepreneurs, business, and public associations;

Develop and approve the new Laws of the Republic of Kazakhstan: “On the Minimum Wage” and “On Employers;”

Ratify the International Labor Organization Convention No.131 “Minimum Wage Fixing Convention,” No.95 “Protection of Wages Convention,” No.26 “Minimum Wage-Fixing Machinery Convention,” and No.103 “Maternity Protection Convention;”

Ratify the International Labor Organization Convention No.102 “Social Security (Minimum Standards) Convention” in order to increase pension payments

and on the basis of its provisions, to correspondingly amend the Law “On Pension Security;”

Establish in the Republic a special state office that would regulate prices since this function is not included in the powers of the Agency of the Republic of Kazakhstan on Regulation of Natural Monopolies and Protection of Competition. Since there is no clear policy on regulation of prices in the Republic, the prices for goods of the first necessity keep on growing and the tariffs for utility and other services keep increasing.

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In the Republic of Kazakhstan, there has long been a need to revise the employment policy with regard to categories such as “self-employed.” According to official data, the number of self-employed is 34.7%. The majority of these are women who are not paid for leave for pregnancy and birth, sick days, annual vacations, or pension installments, and who do not come under compulsory social insurance for damage to their health.

Another concern is the sum of employees’ salary debts, in view of which the social tension in labor collectives is increasing. In March 1, 2009, overdue salary debt amounted to nearly 2 billion tenge. The largest debts owed to employees belong to companies of the mining, processing, and construction industries, by region – Eastern Kazakhstan, Karaganda and Zhambyl.

According to records for the year 2008, state labor inspectors have revealed 6,008 violations of salary payment periods. In regards to the individuals who committed these violations, 3,216 written warnings were issued and 2,212 administrative fines were imposed to the sum of more than 73.5 million tenge.

The main reasons for unpaid salary violations are the impact of the world economic crisis on the country’s economy, the reduction of production, and the shutdown of companies, especially in the construction sector.

In addition, more than 13,000 companies and organizations in the Republic owe payments to pension funds.

As a result of inspections held in 2008, state labor inspectors revealed 649 instances of the unwarranted dismissal of employees. With regard to violations committed, 208 written warnings were issued and 154 administrative fines were imposed to the sum of more than 2 million tenge.

The review of violations related to the unwarranted dismissal of employees shows that employers violate laws due to lack of knowledge of labor legislation or its incorrect application, the negligence of responsible employees to their functions, or inefficient organization of labor.

There have been instances of discrimination against employees in the course of labor relations. Lack of individual standards in the Labor Code prohibiting the discrimination against citizens with regard to their right to labor remuneration, does not allow state labor inspectors to implement preventive punishment. Consequently, the people of Kazakhstan, working in their homeland, are discriminated against by foreign employers and work in unequal and more restricting conditions than foreigners.

Up to the present, foreign employers pay foreign employees salaries that dozens of times exceed the salaries of specialists from Kazakhstan fulfilling the same work and having the same qualifications.

For instance, in “Petro Kazakhstan Kumkol Resources JSC” last year the income of their foreign expert including salary and lump sum traveling costs amounted to **30 million** tenge, while during the same period, the income of the expert from Kazakhstan fulfilling the same work amounted to **2.2 million** tenge.

According to the labor agreement of “SNPS-Ai Dan Munai JSC,” Chinese specialists in the Republic of Kazakhstan are provided with an annual paid leave 90 calendar days long not counting travel time, while employees from Kazakhstan are given leave 24 calendar days long, additional paid leave 9 calendar days long for residence in environmentally unfriendly regions and 6 calendar days for work in hazardous (especially hazardous) and (or) in dangerous working conditions. In this company, the salary of foreign specialists amounts to 351,200 tenge, while the salary of Kazakh employees in the same positions amounts to 82,400 tenge. As a result, the difference in labor remuneration is more than four times. Discrimination in labor remuneration between foreign and domestic specialists is noted almost in all other companies.

Similar instances of discrimination are not unique and are revealed in foreign companies in the city of Almaty, and in the Aktyube, Atyrau, Western Kazakhstan, and Mangistau regions.

A review of the causes and conditions for such violations showed that despite the prohibition of discrimination for any reason, stipulated by Articles 14 and 24 of the Constitution of the Republic of Kazakhstan, the Labor Code of the Republic of Kazakhstan does not directly prohibit discrimination against employees with regard to labor remuneration.

However, these provisions are stipulated in the international agreements that are ratified not only by the Republic of Kazakhstan but also by the countries whose companies carry out their activity in our country.

Thus, according to Article 1 of the International Labor Organization Convention No. 111 “Discrimination (Employment and Occupation) Convention” (further referred to as “the Convention”), discrimination is defined as any difference, exclusion or preference made on the basis of foreign origin, resulting in elimination or violation of equality of opportunities or treatment in the field of labor and occupations.

In addition, Article 7 of the International Covenant on Economic, Social and Cultural Rights determines that the countries participating in the Covenant acknowledge the right of each person to fair and favorable working conditions, including a fair wage and equal remuneration for work of equal value without any differentiation.

It should be noted that, in harmony with Paragraph 2 of Article 1 of the Convention, any difference, exclusion, or preference with regard to certain work based on specific requirements is not considered discrimination.

In this connection, the above-mentioned problematic issues relate only to employees with the same qualifications and fulfilling the same work.

It should be noted that such social inequality causes an environment of conflict that can develop into mass and uncontrolled encounters at the international level and can destabilize the social and political situation both in individual regions and in the whole Republic.

The Labor Code of RK has established a legal framework in the field of labor protection. In the opinion of trade unions, the public inspector for labor protection is the most objective and most popular link in public control of labor safety and protection in the organizations. The public inspector for labor protection working continuously among the employees of his department affects the attitudes of employees towards the issue of labor safety and protection like no one else. The life, health, and work capability of employees depend on his competence in the field of labor safety and protection and on his active work. Meanwhile, according to data from the Emergency Ministry, in 2008 more than 216,000 violations of safety rules and standards occurred in industrial companies of Kazakhstan. According to their statistics, out of ten months of the year 2008, the total number of industrial accidents reported in the Republic of Kazakhstan amounted to 1990. The number of fatal accidents during these ten months of the year 2008 was 327.

In 2006, jointly with the International Labor Organization, the National Program of Decent Work was developed and approved for the years 2007-2009 in the Republic of Kazakhstan. The goal of the Program is the promotion of decent work as the main component of development strategy as well as the state policy maintained by the government and its social partners. It is necessary to take additional measures to improve the efficiency of labor protection specialists including the enhancement of the training system and the implementation of a systematical approach to labor protection in small companies. It is necessary to pay special attention to the adjustment of management systems to international standards.

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The citizens of the Republic of Kazakhstan have the Constitutional right to a minimum pension and social security in old age, sickness, disability, or loss of breadwinner.

Foreigners and individuals without citizenship continually living in the Republic of Kazakhstan have the right to pension payments from the Center and government social benefits on the same level as the citizens of the Republic of Kazakhstan.

Since January 1, 2007, pensions and benefit payments are paid out on the principle “month to month.”

Starting from the year 2006, the uniform base social indicator for calculation of the state base social benefit payment is the minimal subsistence level.

Along with an annual increase of the minimal subsistence level, the state basic social benefit payments for disability, loss of breadwinner, or old age are

incremental. Since January 1, 2009, due to the increase of the minimal subsistence level from 12,025 tenge to 13,470 tenge, the amount of the state social benefit (SSB) was increased on an average of 12 %. In the framework of the Message of the Head of State on February 6, 2008, a 9% average annual increase of the SSB is ensured with a view toward the further enhancement of the standard of living of the population.

In the Republic of Kazakhstan there is a multilevel system of pension security.

The introduction of the base pension payment in 2005, being the first (base) level, became the most important step to increase the income of elderly people.

Since 2008, its amount was established at 40% of the minimal subsistence level and it is proposed to retain this ratio until the year 2011.

Beginning in the year 2011, the amount of the base pension payment will be increased to 50% of the minimal subsistence level with subsequent incremental increases to 75%.

The second (compulsory) level of the pension security system is pensions paid from the solidarity system provided that individuals have a work record before January 1, 1998 (state budget), and from accumulation pension funds due to compulsory pension contributions.

More than 1.6 million pensioners are provided with pensions from the solidarity system, which is financed from the State budget.

Pension payments are increased annually according to the inflation level, and, beginning in the year 2005, the indexing was done in advance of the Consumer Price Index.

Since January 1, 2009, pension payments were increased by 30% for all recipients of pensions, taking into account the limitation of 75% of 28 times the monthly calculation indicator, but not less than by 22%. Because of this, the income restriction used for calculation of pension payments was raised from 25 times to 28 times the monthly calculation indicator (from 29,200 tenge to 35,644 tenge).

As a result there was an increase:

- Of 30 % - for more than 1332,800 pensioners;
- Of 22 % - for more than 1,500 pensioners;
- Of 30% with account to restriction of 26,733 tenge, but not less than by 22% - for more than 251,200 pensioners.

On the average, this allowed the increase of the average amount of pension payments by 25%.

During the last 9 years (2000-2009):

- The minimum pension payment with due account for the base pension payment was increased by 4.4 times (from 3,500 to 15,263 tenge);
- The average pension payment with due account for the base pension payment was increased by 5 times (from 4,462 to 22,493 tenge);
- The maximum pension payment was increased by 4 times (from 8,156 to 32,121 tenge).

The third (supplemental) level is pensions from voluntary individual and voluntary employer pension contributions.

The increase of pensions and state social benefit payments will be continued as well as the incremental increase of base pension payments.

Considering the fact that the accumulation pension system has existed during a relatively short period of time (by estimate, the optimal period of pension contribution allocation is over 40 years), the amount of pension payments from the accumulation pension funds are small.

With a view toward the implementation of the Message of the Head of State to the people of Kazakhstan “New Kazakhstan in the New World,” since January 2008, compulsory social insurance of pregnancy, birth and maternity for employed women has been introduced.

In case of loss of income due to pregnancy and birth, employed women receive a social benefit payment from the State Social Insurance Fund at the rate of the average monthly salary for all the days of their maternity leave as well as the social benefit payment for child care up to the age of one year in the amount of 40% of the average monthly income, provided that social benefit payments were allocated to the State Social Insurance Fund timely and fully.

If, previously, women were excluded from the accumulation pension system during their maternity and child care leave, upon the implementation of compulsory social insurance of pregnancy, birth and maternity, 10% of obligatory social payments are deducted as compulsory pension contributions and are transferred to the accumulation pension funds.

Thus, women during maternity leave and child care leave until the age of one year continue to accumulate their pension.

The increase of solidarity pensions and of the base social payment as well as the incremental increase of the state base pension payment will be continued.

**The situation in the field of social relations as described above causes us to recommend that the Government of the Republic of Kazakhstan and the Ministry of Labor and Social Protection of the Population of the Republic of Kazakhstan develop and approve the following legislative acts during the years 2009-2011:**

1) “On Amendments and Additions to Some Legislative Documents of the Republic of Kazakhstan with Regard to Social Security of Certain Categories of Citizens” (directed at the implementation of the Message of the Head of State to the people of Kazakhstan of 2008, time of execution – the year 2009);

2) “On Amendments and Additions to Some Legislative Documents with Regard to Migration” (time of execution – fourth quarter of 2009);

3) To improve the Labor Code, to make additions with regard to any kind of discrimination regarding labor remuneration of employees in foreign companies regardless of their nationality and citizenship.

4) In 2011, to ratify the International Labor Organization Convention No. 128 Concerning Invalidity, Old Age and Survivors' Benefits (Geneva, June 29, 1967).

5) Take measures to toughen state control of compliance with labor legislation in companies with foreign shares; for every uncovered fact to take legislative measures to ensure the protection of the internal labor market against illegal migration and the ungrounded import of labor force into the Republic.

6) In 2010, develop and ratify the Law of RK “On Collective Agreements.”

### **The Right to Protection of Health and Medical Assistance**

The Constitution of the Republic of Kazakhstan ensures the right of citizens to the protection of health, to guaranteed free medical assistance and paid medical care established by the law, and to medical assistance from state and private health care institutions as well as from private medical practitioners for which they pay.

The health of the population is the most important factor that ensures the national safety of the Republic. The main principle and objective of State policy in the field of health care is the observance of the constitutional rights of the citizens of the Republic of Kazakhstan to health protection, obtainment of quality medical services and provision of State guarantees.

The Head of State and the Government pay special attention to these issues considering them as national priorities; therefore, the improvement of the population’s health condition and further development in the field of health care is thought to be the compulsory condition for Kazakhstan to be numbered among the competitive countries of the world.

Currently, the development of health care is entering the stage of institutional reforms, development of the potential of personnel, and security of quality medical services. Preventive health care and formation of a healthy life-style have become priority, which is expressed in the Message of the Head of State to the People of Kazakhstan on February 6, 2008 “Enhancement of the Welfare of Citizens of Kazakhstan – the Main Objective of State Policy.”

Improvement of citizens’ health implies such goals as the improvement of the health of mother and child, the reduction of the burden of socially significant illnesses and injury, the security of sanitary and epidemiological welfare, and the cultivation of a healthy life-style and correct nutrition.

During the last three years, the birth rate in Kazakhstan has increased by 13%, the total mortality rate has stabilized, and therefore the rate of natural increase of the population is 1.6 times greater.

Along with the implementation of the Program for Reduction of Maternal and Child Mortality, logistical support of organizations for children and obstetrics and their equipment with updated instrumentation (mainly diagnostic and rehabilitative) keeps on improving; the ratio of recovery of sick children detected in the course of preventive inspections is being increased; and pregnant women, sick children and people registered at health centers according to the approved list of illnesses are provided with free medications. There is a trend toward reduction of maternity mortality rate.

Socially significant illnesses result in great economic loss and reduction of life expectancy.

During the last three years, there was a reduction of the illness rate (by 11%) and the tuberculosis mortality rate (by 19%); however, there is a need of further logistical support and intensification of activities related to compulsory treatment and isolation of sick ones with resistant forms of tuberculosis.

According to WHO, Kazakhstan is at the concentrated stage of the HIV/AIDS epidemic – 0.2% of population compared to the world average of 1.1%. With the purpose of stabilization of HIV-infection distribution, the implementation of the Program for Counteraction of AIDS will be continued which will ensure the expansion of preventive activities.

Mortality due to injuries, accidents and poisoning is second ranked of the reasons for mortality of the population in the Republic of Kazakhstan. It is necessary to intensify the coordination of the operation of transport and communication services in regard to traffic safety issues as well as to enhance labor safety protection at the work place.

The stabilization of the sanitary and epidemiological situation and the improvement of public health remains the essential task. With the purpose of the improvement of the drinking water supply to guaranteed quality in compliance with the State Program “Drinking Water,” measures for the modernization and installation of upgraded laboratory equipment are being implemented at existing laboratories of the sanitary and epidemiological offices, which fulfill laboratory control of drinking water.

During the last three years, the amount of medication being sold on Kazakhstan’s market has almost doubled. In spite of this, the availability and quality of medication still remain a problem. With the objective of the improvement of the medication supply to the population, a uniform medication distribution system will be created and the system of outpatient medication supply will be improved.

Every year, the deficit of health care personnel tends to grow, especially in rural localities. In harmony with the commission of the Head of State, a work group for the development of suggestions with regard to the assignment of medical personnel to rural localities and to the determination of social services for young specialists has been created under the Government of the Republic of Kazakhstan. The number of students admitted to medical universities will be raised.

In order to improve the quality of medical and pharmacological education in the Republic, measures for the implementation of the Concept of Reformation of Medical and Pharmacological education in the Republic of Kazakhstan approved by the Enactment of the Government of the Republic of Kazakhstan on April 24, 2006, No. 317 are being taken. The construction of university clinics for four medical universities is planned in order to enhance the quality of clinical practice.

The low level of salary of medical employees affects the quality of services rendered. To solve this problem, the list of specialties where the salary increase ratio will be raised for psychological and physical stress is expanded. In addition,

effective motivation and stimulation mechanisms including the improvement of labor remuneration for medical employees will be introduced.

The National Medical Holding, based on a medical cluster of 6 modern clinics founded in Astana, will become a scientific and practical base for highly specialized assistance and a center for the training and retraining of medical personnel that meets world standards.

World experience shows that in order to improve the quality of medical services, in addition to training qualified personnel, it is necessary to develop the private sector of health care and to stimulate the competitiveness of medical services. In this regard, it is necessary to secure the right of citizens to the free choice of doctor.

The right to health protection is stipulated by Article 29 of the Constitution of the Republic of Kazakhstan, and the obtainment of qualified medical assistance by the Law of RK of July 7, 2006 No. 170-III “On Health Protection of the Citizens,” by the State Program of Reformation and Development of Health Care in the Republic of Kazakhstan during the years 2005-2010, ratified by the Order of the President of the Republic of Kazakhstan on September 13, 2004 No.1438, by the Strategic Plan of the Ministry of Health Protection of the Republic of Kazakhstan during the years 2009-2011, ratified by the Enactment of the Government of RK on December 23, 2008 No. 1213, and by the List of Guaranteed Free Medical Assistance during the years 2008-2009, ratified by the Enactment of the Government of the Republic of Kazakhstan on September 28, 2007 No. 853.

With the purpose of implementation of the commission of the Head of State and establishment of a uniform policy in the field of health protection and the improvement of the legislative base, the Draft Law of the Republic of Kazakhstan “On the Health of People and the Health Care System” was developed and submitted for the consideration of the Majilis of the Parliament of the Republic of Kazakhstan. This Law will cover issues such as the rights and duties of patients and medical employees, the responsibilities of health care agents, and issues regarding medical ethics and public health protection. In addition, health protection standards and plans for raising the knowledge of the population and increasing the transparency of the health care system will be developed; and memorandums between the ministry and Akimats will be concluded which will serve as the basis for the implementation of strategical direction of state policy in the field of health care protection.

Codification of legislation in the field of health care will allow the enhancement of the status of medicine, the organization of the large quantity of legislative documents in the sphere of health protection, the harmonization of them with international legislation, the improvement of the level of medical services provided to the citizens, and the changing of the public attitude towards health care issues.

*It should be noted that citizens of remote rural localities cannot obtain highly qualified medical assistance. This fact restricts the right of citizens to the receipt of accessible qualified medical care.*

**On the basis of the above-stated, we recommend that the Government of the Republic of Kazakhstan and the Parliament of the Republic of Kazakhstan implement the following measures during the years 2009-2011:**

1. Accelerate the adoption of the Code of the Republic of Kazakhstan “On the Health of People and the Health Care System.”
2. Implement the programs recommended by WHO for the improvement of medical assistance to women and children.
3. Establish departments (hospitals) for nursing the terminally ill.
4. Improve the training of medical personnel with regard to medical assistance in accordance with advanced foreign experience.
5. Train and retrain managerial personnel in the field of health protection concerning management, resource management, and financing.
6. Develop and implement a procedural base in the field of safety and protection of rights of the patient.
7. Improve the system of labor remuneration of medical employees with the purpose of improvement of material welfare and motivation. Low labor remuneration of medical employees has resulted in common lack of personnel at the primary level – children’s treatment and ambulatory institutions as well as in rural localities. To attract personnel to work in rural localities and remote regions, it is necessary to revise the system of benefits and incentives for specialists.
8. Assess the activity of all levels of antituberculosis services, to implement a system of strict epidemiological control of treatment of people having tuberculosis, and to toughen the quality requirements of purchased antituberculosis medications.
9. Ensure the establishment and improvement of a modern food safety control system including effective control as to genetically modified sources of food imported from abroad.
10. Ensure the adequate control of implementation of activities in the framework of the Republican Program “For Counteraction of the AIDS Epidemic in the Republic of Kazakhstan During 2006-2010.”
11. Implement a new pattern of medication supply to the population at outpatient clinics with the use of fixed prices for medications.
12. Ensure the quality and competitiveness of state medical institutions as well as scientific research in the field of health protection.
13. Develop and adopt a standard and a legal document on donation and transplantation of human organs and tissues.
14. Take measures for the implementation of Article 44 of the Law of the Republic of Kazakhstan of May 19, 1997 “On Health Protection in the Republic of Kazakhstan” to ensure the rights of the citizens to the free choice of medical organization as well of doctor. In this regard, it is necessary to amend the decree

of acting Minister of Health Protection of the Republic of Kazakhstan of December 15, 2004 No. 874 “On Approval of Rules of Ambulatory and Clinical Assistance.”

### **Rights of Individuals with Limitations (Disabled)**

The security of the basic rights of the disabled and the creation of equal opportunities for public life is one of the functions of the social state.

*The relevance of this* issue is related not only to the great number of disabled individuals in the country, but also to significant changes in interpretation of disability and new approaches to the arrangement of the social protection of individuals with limitations.

According to international standards, *disability* implies not only functional inadequacy and limitation of opportunities, but is characterized by failure to interact with the environment and public conditions. It hinders the human in the fulfillment of his/her social role and causes discrepancy between the actual capabilities of the human and those capabilities that could be expected at his/her age under normal conditions with education, culture, and professionalism available.

This approach to the interpretation of *disability* allows the determination of activities and methods which would compensate or replace for the disabled the lost vital activity and would create an opportunity to exercise basic human rights.

According to data of January 1, 2009, the number of disabled people in the Republic of Kazakhstan amounts to 466,300 people (or 3% of the total population), nearly 10% (43,100) of which are children.

#### **1. Medical and Social Examination and Ascertainment of Disability**

According to statistics from the year 2008, the frequency index of primary disability amounted to 28.2 cases per 10,000 people, which is slightly higher in comparison to the preceding year, but lower than in the years 2003-2006.

In a regional context, the level of primary disability remains high in the Karaganda (36.8 cases per 10,000), Southern Kazakhstan (33.0), Akmola (32.7), Mangistau (31.9), Northern Kazakhstan (31.9), and Western Kazakhstan (30.3) regions.

*In extent of severity*, disability of the first and second categories prevails - 23,500 people or 64 % of the disabled (in comparison to last year, an increase of 2%). There are 13,100 people (36% of the disabled) who are in the third category.

*By age*, the average age of the disabled is decreasing. According to statistics from the year 2008, in the Republic 44,400 people received disability status, and of these, 75.4% were people of working age, 7.0% were elderly people, and 17.5% were children.

As is well known, disability and its extent depend on a range of reasons – the health condition of the nation, the level of development of health care and the

availability of medical services, the level of social and economic development and its priorities, historical and political reasons, etc.

There is an increasing trend of primary disability in children. In 2007, 7,300 children received disability status, while in 2008 this number was 7,800 children.

As in preceding years, last year disability due to congenital defects was the largest reason for disability in children (*2,300 children, or 32.6%, received disability status according to this pathology while in 2007, the quantity was 2,100 children, or 31.8%*).

Primary disability due to congenital defect requires great attention in the cities of Almaty (39.9% of the disabled) and Astana (38.7%), and in the regions of Akmola (36.4%), Karaganda (35.7%) and Southern Kazakhstan (34.2%).

Illnesses of the nervous system are second – an average of 25.3% of the disabled (in 2007 – 24.4%). This percentage remains high in the Zhambyl (28.2%) and Kostanay (29.2%) regions.

The third largest reason for disability is mental disorders, – 11.8% of the disabled (in 2007 – 13.0%). This percentage remains high in the Kostanay (19.6%), Kyzylorda (20.0%) and Mangistau (18.1%) regions.

Thus, the increasing trend of primary disability is related to the increase of major and complicated forms of sickness such as diseases of the circulatory system, tuberculosis, and cancer, which accordingly lead to severe categories of disability. This is a result of the low quality of clinical examinations, especially among chronically and frequently sick patients as well as a lack of medical institutions for the rehabilitation of chronically ill patients and the disabled in some regions.

To increase the efficiency of disability preventive measures, it is necessary to direct the combined efforts of medical and social inspections and health care organizations at the prevention and timely detection of originated defects (physical, mental, psychological, and sensory), at not allowing the defect to become a functional limitation (disability).

With the purpose of the elimination of administrative barriers in the course of disability ascertainment and improvement of conditions for socially vulnerable groups of the population, the Enactment of the Government of the Republic of Kazakhstan of November 29, 2008 No. 1113 makes additions and amendments to the Rules of Conduction of Medical and Social Examinations ratified by the Enactment of the Government of the Republic of Kazakhstan of July 20, 2005 No. 750, with regard to the simplification of the procedure of medical and social examination of individuals with anatomic defects as well as the extension of the list of anatomic defects from 27 to 44 paragraphs, in case of which the disability category is ascertained without a re-assessment period. At the same time, the period needed for a territorial department to make an expert opinion is reduced by half, and the responsibility of medical organizations for quality and validity of referrals to MSE (certificate 088/u) was intensified.

## **2. Efficiency Criteria of State Policy with Regard to Disabled Individuals. Legislative Base for Social Protection of Disabled Individuals**

The effectiveness of governmental policy with regard to disabled individuals is assessed by a series of criteria: objectives, existence of social legislation, the opportunity to exercise civil rights, availability of a system of benefits and compensation, and accessibility to the physical and information environments.

In Kazakhstan, governmental policy with regard to the disabled has a long history. A turning point was the year 1991, when the Law of RK was adopted “On Social Protection of Disabled Individuals in the Republic of Kazakhstan.” This Law declared that the first objective of governmental policy was not to assist the disabled person, but “the creation of social, economic, legal, and organizational conditions for equal opportunities in the lives of disabled individuals.” In this way, the Law declared an approach to the disabled individual applied by the world community.

However, the practical implementation of the new approach that was declared in the policy failed. There was a discrepancy between the formally declared goals of the open society for the disabled individuals and their real involvement in labor and public life due to the fact that society (first of all, financial and economic) was not ready to take such an approach.

Actual conditions for this were established only by the middle of the current decade. In 2005, a new Law was adopted “On Social Protection of Disabled Individuals in the Republic of Kazakhstan,” which declared that the objective of governmental policy was the prevention of disability and the creation of conditions needed for integration of the disabled into society.

Along with this law, the legislative base of governmental policy with regard to the disabled individuals includes the Laws of RK: “On State Social Benefits for Disability, Loss of Breadwinner and Old Age in the Republic of Kazakhstan,” “On Special State Benefit Payments in the Republic of Kazakhstan,” “On Social, Medical, and Pedagogical Correction Support of Children with Limitations,” “On Compulsory Civil Employer’s Liability Insurance for Life and Health Damage of Employee in the course of Fulfillment of Labor (Service) Duties,” and “On Special Social Services.”

With a view toward the more effective realization of the rights of the disabled individuals, on December 11, 2008 the Decree of the President of the Republic of Kazakhstan No. 711 “On Signing of the Convention on the Rights of Disabled Individuals and Optional Protocol to the Convention on the Rights of Disabled Individuals” was adopted; this will promote the strengthening of Kazakhstan’s position on the international scene, will prove the adherence of the government to the implementation of international standards in the field of human rights and will create the legal basis for the more effective realization of the rights of disabled individuals in our country.

To develop the suggestions on creation of conditions for participation of the Republic of Kazakhstan in the UN Convention on the Rights of Disabled People and Optional Protocol to it, a work group was established by the Decree of the Prime Minister of the Republic of Kazakhstan on October 8, 2008 No. 251-P. Upon the completion of its work, the group sent the relevant suggestions to the Government of the Republic of Kazakhstan.

### **3. System for the Social Protection of the Disabled**

The current system for the social protection of the disabled *is comprehensive and is based on state guarantees*. It includes:

- *A multilevel social security system* (state social benefit payments, special state benefit payments, and lump sum social payments);
- *Provision of technical auxiliary (compensatory) means* (prosthetics and supply of orthopedic prosthesis items, supply of devices and assistance to deaf and blind people);
- *Provision of special social services* (social services and rehabilitation in medical and social institutions);
- *Material support* (target social assistance, housing assistance).

The levels of the state security system are:

*The first level* of guaranteed social protection is state benefit payments to disabled people (in case of the loss of working ability, the base social payment is the state social benefit payment for disability which is provided to certain categories of citizens regardless of their career record and former salary, at the expense of the state budget);

*The second level* is compulsory social insurance paid at the expense of the employer to the social insurance fund. (The main goal of the system of compulsory social insurance is the compensation of the portion of income lost as a result of social risk. In this case, the amount of social payment directly depends on the former income of the employee and the duration of payments to the system.)

*The third level* is voluntary savings of the citizens, which in the future will be transformed into social payments for employees who suffered in the course of fulfillment of service duties.

Social support of the disabled is provided in conformity with the Laws of RK “On the State Social Benefit Payment for Disability, Loss of Breadwinner or Old Age in the Republic of Kazakhstan,” and “On Special State Benefit Payments in the Republic of Kazakhstan.” In accordance with these laws, disabled individuals receive the state social allowance for disability (further referred to as “SSA”) and especial state allowance instead of benefits (further referred to as “ESA”).

In harmony with the Message of the President to the People of Kazakhstan, the amount of the state social allowance for disability starting from January 1, 2009 was increased in comparison with the amount paid in July 1, 2008 by 12%, and in comparison with January 1, 2008, by 28%.

In 2009, the total monthly payment for social allowances paid to the disabled on common grounds (SSA and ESA) is:

For disabled people of the first category – 20,102 tenge;

Second category – 16,061 tenge;

Third category – 10,732 tenge;

For disabled children up to 16 years – 14,616 tenge, and from 16 to 18 years – depending on the disability category:

First category – 20,102 tenge;

Second category – 16,735 tenge;

Third category – 12,483 tenge.

Additional sources of income for the disabled who are participants in the system of compulsory social insurance are social payments from “The State Fund of Social Insurance JSC” (further referred to as “the Fund”).

The system of compulsory social insurance is financed due to transformation and personification of a portion of the social tax. Payees of compulsory social tax payments are employers and self-employed people.

The system of compulsory social insurance covers more and more of the population every year: from 3.9 million people in 2005 to 5.5 million people in 2008. The number of recipients of social payments from the Fund increased from 1,851 people in 2005 to 321,531 people in 2008.

#### **4. Creation of Equal Opportunities and Security of Civil and Political Rights of the Disabled**

The rights of the disabled people established by the legislation of the Republic of Kazakhstan correspond to the human rights, the international standards and include the rights to social protection, medical assistance, education and labor, the right to marriage, upbringing of children, right to judicial recourse as well as political rights.

Exercising civil and political rights by the disabled people directly depends on arrangement and results of rehabilitation process.

Upon the adoption of the Law “On Social Protection of the Disabled People in the Republic of Kazakhstan,” a system model for rehabilitation of the disabled people was created which included medical, social, and vocational rehabilitation.

With a view of improvement of the rehabilitation system, intensification of social support and enhancement of life quality of the disabled people, the Program of Rehabilitation of the Disabled People during the years 2006-2008 was developed and implemented in the framework of which the following measures were realized: disability prevention; improvement of medical and social examination and development of new technologies for determination of limitation extent of the citizens; development of social security to the disabled people and intensification of social support to them, expansion of range of services for medical, social and vocational rehabilitation; development of forms of employment of the disabled people; development of the network of rehabilitation institutions, improvement of forms and methods of their activity, enhancement of the logistics;

increase of satisfaction of needs of the disabled people in technical auxiliary (compensatory) means, orthopedic prosthesis items; creation of the conditions for unimpeded access for the disabled people to facilities of social, transport and recreational infrastructure; improvement of personnel in the field of medical and social examination, rehabilitation, arrangement of social service of the disabled people and in rehabilitation industry.

#### **4.1. Medical Rehabilitation**

*Medical rehabilitation* includes restorative therapy (medication, physical therapy, treatments in sanatoriums, or other methods of treatment) or reconstructive surgery. These methods are implemented incrementally in the framework of inpatient, outpatient and sanatorium levels. Special attention in this regard is given to specialized rehabilitation assistance in regional and state rehabilitation centers, health centers, large clinics of scientific and research institutes, and sanatoriums.

A low level of medical rehabilitation is noted in the regions of **Karaganda** (74.3%), **Mangistau** (83.5%), and **Eastern Kazakhstan** (85.2%), and in the city of **Almaty** (87.8%).

This is related to the insufficient number of inpatient, outpatient and clinical departments for medical rehabilitation in regional (city) hospitals and disability rehabilitation centers, of which there are only 10 in the Republic.

In case the desired effect is not reached at the stage of medical rehabilitation and the disabled person still has limitations due to incomplete recovery of function, he needs *social rehabilitation*.

#### **4.2. Social Rehabilitation**

Social rehabilitation includes the teaching primary social skills to the disabled, social services for the disabled at home or in medical or social institutions, and the rendering of special social services.

Disabled children are compensated for the costs of education at home. The quota for the number of disabled educated in secondary and higher institutions is established on the basis of a governmental order.

On the basis of need, the disabled are provided with orthopedic prostheses, special wheelchairs, and technical compensatory equipment. Disabled individuals with special needs are provided with necessary hygienical substances, services of sign language interpreters, and individual assistants.

Disabled people needing constant nursing are provided with social services in nursing homes for the elderly and disabled, or in psychoneurological nursing homes.

102 state medical and social institutions are available in Kazakhstan (51 general nursing homes for the elderly and disabled, 31 psychoneurological nursing homes, 3 nursing homes for disabled children with impaired musculoskeletal systems, and 17 children's psychoneurological nursing homes) in which more than 16,000 disabled and elderly people live.

In 2008, 1,073.9 million tenge were allocated from the state budget for the development of the design and estimate documentation and start of construction of six medical and social institutions in the Karaganda, Kyzylorda, Atyrau and Zhambyl regions.

However, the network of rehabilitation and social institutions does not satisfy the need of the people for social services; and this is especially true of institutions for psychoneurological patients.

There are 10 rehabilitation centers for social protection of the disabled (in the Almaty, Atyrau, Zhambyl, Kostanay, Pavlodar, Northern Kazakhstan and Southern Kazakhstan regions).

The Enactment of the Government of RK “On Some Issues Regarding the Rehabilitation of the Disabled” of July 20, 2005 No. 754 is planned to be amended and added to with the objective of the utmost satisfaction of the needs of the disabled for technical compensatory equipment and special wheelchairs meeting modern requirements, with a view toward the determination of periods of their replacement, and the medical indications and contraindications for the provision of rehabilitation assistance to the disabled of hygienic items or the social services of individual assistants or sign language interpreters.

In the framework of the Message of the President of the Republic of Kazakhstan of March 1, 2006 “The Strategy for the Inclusion of Kazakhstan in the 50 Most Competitive Countries of the World (Kazakhstan on the Verge of New Spurt in its Development),” on December 29, 2008 the Law of the Republic of Kazakhstan “On Special Social Services” was adopted, directed at the creation of conditions needed to overcome difficult situations in life, which Law provides the strategical direction for the development of the system of special social services.

According to Article 6 of the Law, special social services are provided to individuals in difficult situations in life, including:

- Impairment of early psychophysical development of children from birth to three years;
- Permanent impairment of function of organism due to physical and (or) mental impairment;
- Inability for self-help due to advanced age or as a result of disease and (or) disability.

Issues regarding access for disabled people to facilities of the social infrastructure require special attention, and the disabled rightly criticize these issues.

Local executive authorities do not fully implement measures for the provision of unimpeded access to residential, public and industrial buildings existing or under construction, as well as to the facilities of the social infrastructure.

An inventory of the operating facilities of the social transportation and recreation infrastructure is not complete; only 17,349 facilities (89.6%) have been inventoried out of 19,351. This inventory should have been finished in 2006.

In the Eastern Kazakhstan region, an inventory has been made at only 227 out of 1080 facilities (21%), and in the Mangistau region, 144 of 288, or 50%.

At the time of inspection by the Ministry of Labor and Social Protection, in the Mangistau and Karaganda regions, in the state institution “Karakaralin Psychoneurological Nursing Home” in the village of Linda, and in some departments for social employment programs of the Mangistau region there were no ramps.

In the Atyrau, Almaty, Southern Kazakhstan, Northern Kazakhstan, Mangistau, Kyzylorda, and Zhambyl regions and in the city of Almaty there is no provision for vehicles adapted for the disabled.

Construction of passenger bus stops for the disabled is very slow in the Almaty, Zhambyl, and Pavlodar regions, and in the cities of Almaty and Astana. In the Atyrau and Kyzylorda regions, this issue is only under consideration.

In view of the non-fulfillment of certain standards of legislation in the field of social protection of the disabled, including the standard ensuring access for disabled people to facilities of the infrastructure, presently it is impossible to ratify the Convention on the Rights of Persons with Disabilities.

### **4.3 Vocational Rehabilitation of the Disabled**

Much effort will be needed to provide the disabled access to the labor market, since adequate vocational rehabilitation is defined as making a disabled person competitive in the labor market and practically assisting him with employment.

In order to provide employment for the disabled, local executive authorities determine quotas of work places for disabled people at the rate of 3 % of the total number of employees, create additional work places for the disabled by means of the development of individual entrepreneurship and small and medium businesses, and they set up special as well as social work places.

In the course of the Program, 144 special work places for disabled people were set up, equipped with special devices and equipment for the convenience of individuals with limitations.

It should be noted that these special work places have been created only in 8 regions out of 16 (in the region of Akmola – 27 work places, Aktyube – 5, Western Kazakhstan – 8, Southern Kazakhstan – 9, Eastern Kazakhstan – 1, Kostanay – 53, Mangistau – 18, and Pavlodar – 23).

3,493 disabled individuals are employed, while there are 16,961 work places available as stipulated by quota. However, work places are not provided per the quota in the city of Almaty, in the Zhambyl region only 12 work places were provided, in the Kyzylorda region – 14, in the Atyrau region – 76, and in the city of Astana – 46.

In the Mangistau region, despite the available 3,140 work places, only 24 disabled people are employed. The same situation is found in the Southern

Kazakhstan region, where 164 disabled people are employed with 2,531 work places available.

73 disabled individuals were directed to temporary work, and 1,390 to public work.

Considering the low competitiveness of the disabled, according to the Individual Program of Rehabilitation (IPR), during the year 2008, 717 disabled people were directed to vocational training and retraining, out of which only 240, or 33.4% were employed.

These numbers illustrate that the majority of the disabled who are able to work do not have the conditions for vocational rehabilitation.

#### **4.4. Implementation of a Central Database of the Disabled**

A compulsory condition for the improvement of the system for rehabilitation of the disabled is the establishment of the Central Database of the Disabled (further referred to as “CDD”), which was completed in 2008.

The CDD contains information on the quantity of disabled, their condition and cause of disability, and measures taken for their rehabilitation. It ensures the control of the quality and efficiency of the rehabilitation work in compliance with the individual program of rehabilitation of the disabled individual.

Despite the measures taken and positive improvements in the system of social protection of the disabled, the following problems persist:

- As previously, a weak link in the work with the disabled is disability prevention among the frequently and chronically ill, and, as a result, the number of disabled is quickly increasing, especially due to cardiovascular and oncology diseases. As has been said, the highest rate of disability out of the general disability rate is among the population of working age;

- An insufficient quantity of rehabilitation centers and departments in hospitals results in more severe categories of disability. There are no rehabilitation centers in the Akmola, Aktyube, Western Kazakhstan, Eastern Kazakhstan, Karaganda, Kyzylorda, or Mangistau regions, or in the cities of Astana and Almaty.

- The provision of hospital treatment only for the purpose of functional rehabilitation is not sufficient for the implementation of inpatient rehabilitation (currently, in the Republic the number of hospital beds provided for departments of medical rehabilitation is only 3.0% of the total number);

- There are very few facilities for modern forms of care and rehabilitation of the disabled (outpatient centers, small nursing homes);

- The disabled have limited access to facilities of social infrastructure and transportation.

- Despite funds allocated in budgets of local authorities, the disabled criticize local executive authorities for the lack of unimpeded access to existing facilities and those under construction. Not all social, entertainment, or sports facilities under construction will provide adequate access for the disabled. There is

much criticism of public transport which is not equipped with special devices for the disabled, and bus stops are also not equipped for the handicapped.

- The low level of vocational rehabilitation of the disabled is complicated by their low competitiveness.

## **5. Involvement of NGOs and the Use of Opportunities of Civil Society**

The formation and development of a contemporary system of social security for the disabled and expansion of opportunities for their active participation in public life are impossible without the participation of the non-governmental sector. The Ministry of Labor and Social Protection closely cooperates with public associations of the disabled with a view toward solving the problems of the disabled and the development of legislation.

A Coordination Council has been established and is operating in the field of social security of the disabled (Enactment of the Government of the Republic of Kazakhstan of December 21, 2005 No. 1266), which consists of representatives of interested state authorities and non-governmental organizations. The Council is a consultative advisory board under the Government of the Republic of Kazakhstan which was founded with the purpose of development of suggestions and recommendations on issues regarding the social security of the disabled and the interaction of central and local executive authorities, organizations, and public associations of the disabled.

Within the framework of implementation of the Law “On Special Social Services” during the years 2009-2001, 1,686.9 million tenge were allocated to the non-governmental sector from the state budget.

In addition, within the framework of the state social order, in 2009 three social projects have been planned to the sum of 8,100,000 tenge, at the expense of the state budget, including:

- “Development of the Standard of Special Social Services to the Disabled with Psychoneurological Illnesses;”

- “Production of Social Video Advertisement ‘Integration of Disabled Children into the Healthy Environment (Prevention of Social Orphanhood and Severe Disabling Pathologies);””

- “Support of Internet resources and the Organization of Information, Legal and Social Support to Individuals in Difficult Life Situations.”

All these directions and new approaches to social security of the disabled are a practical response to the challenges of our time. In addition, it is necessary to remember that the preservation of social stability and the improvement of the welfare of the population to a large extent depend not only on the government, but also on the mobilization of the efforts of all representatives of society and each citizen of the country.

**With the objective of securing the rights of the disabled, we recommend that the Government of the Republic of Kazakhstan, the Ministry of Labor and Social Protection, the Ministry of Health, the Ministry of Education and**

**Science, and the Akimats of the Regions and the cities of Astana and Almaty implement the following measures during the years 2009 – 2012:**

1. Continue work on the improvement of national legislation and law-enforcement practices in the field of protection of the disabled (handicapped) with due consideration to generally acknowledged international standards;
2. We recommend that the Government of the Republic of Kazakhstan and the Ministry of Labor and Social Protection jointly with interested state authorities develop an Action Plan on securing the rights and improvement of quality of life of the disabled, the implementation of which will ensure the conditions necessary for ratification of the Convention on the Rights of Persons with Disabilities.
3. Jointly study the needs of the regions for health care institutions of a rehabilitational nature for the chronically ill and disabled.
4. With a view toward the enhancement of health care of the population and securing the constitutional right of citizens to health protection, we recommend that the Government of the Republic of Kazakhstan and the Ministry of Health of the Republic of Kazakhstan take necessary measures to protect maternity and childhood so as to reduce the rate of child disability.
5. With the objectives of the improvement of the rehabilitation system, the intensification of social support, and the improvement of the quality of life of the disabled, we recommend that the Ministry of Labor and Social Protection of the Republic of Kazakhstan develop and adopt “The Plan of Measures for the Improvement of the Rehabilitation System for the Disabled During 2009-2011.”
6. With the aim of support for the disabled (handicapped) and the fulfillment of international responsibilities, we recommend that the Government of the Republic of Kazakhstan, the Ministry of Labor and Social Protection, the Ministry of Education and Science, the Akimats of the Regions and the cities of Astana and Almaty ensure the increase of state educational grants for the training of social employees in corresponding specialties and qualifications in higher and secondary vocational educational institutions.
7. We recommend that the Ministry of Labor and Social Protection of the Republic of Kazakhstan and the Akimats of all Regions develop cooperation with international and non-governmental organizations involved in issues of the disabled.
8. With a view toward the improvement of the cultural level of citizens with disabilities (handicapped), we recommend that the Ministry of Culture and Information of the Republic of Kazakhstan jointly with the Ministry of Labor and Social Protection prepare and publish short informational materials and disseminate them in mass media.

**Rights of the Oralman**

Repatriation of Kazakhs to their historical homeland is one of the main priorities of the country’s migration policy. At the governmental level, measures

are taken to establish mechanisms of repatriation of ethnic Kazakhs including their organized immigration and the creation of conditions for their life and activity at the place of their settlement.

Beginning in the year 1991, the Republic of Kazakhstan has accepted more than 706,000 ethnic Kazakhs.

From the first years of independence, the regulation of migration policy has been one of the main directions of governmental policy.

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

The legal basis for this Program is the Constitution of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan of December 13, 1997 “On Migration of the Population,” Decrees of the President of the Republic of Kazakhstan of August 28, 2007 No. 399 “On the Concept of Migration Policy of the Republic of Kazakhstan During 2007 – 2015,” of August 28, 2006 No. 167 “On the Strategy of Territorial Development of the Republic of Kazakhstan until 2015” (further – the Strategy of territorial development of the Republic of Kazakhstan until 2015) and of July 10, 2003 No. 1149 “On the State Program for the Development of Rural Localities During 2004 – 2010.”

In the framework of the current legislative base, the government renders to the Oralman necessary social assistance and support. At present, taking into account the lump sum allowance, funds for the purchase of housing, and compensation for the expense of moving and transporting belongings, each family, on average consisting of 5 people, is given 833,000 tenge.

In the country there are 14 centers for the temporary residence of the Oralman (further referred to as “centers”). Since 2008, centers of adaptation and integration of the Oralman have been launched in Karaganda, Shymkent and in the village Aksukent in the Southern Kazakhstan region. The construction of a standard adaptation center has begun in Aktau.

The adaptation programs implemented in the centers ensure legal consultations, learning of the state language and optionally the Russian language, vocational training or retraining, and professional development.

All the Oralman are provided with access to medical assistance, education, and social security, and they belong to one of the target groups that are helped with employment. More than 66% of the Oralman of employable age are employed in various spheres of manufacturing, and every fourth is employed in the agricultural sector.

With the purpose of assisting the Oralman, the Councils of Oralman were established under the regional Akimats, which study and solve the problems of the Oralman in their new living conditions.

An information database, “Oralman,” has been created and is being improved, which, in the future, will be integrated into the united social information system and will allow the provision of ethnic immigrants with the entire range of social services.

At present, housing projects for ethnic immigrants are being implemented in the Republic. Thus, in the city of Shymkent in the Southern Kazakhstan region, a project for the immigration of nearly 2,000 families of ethnic immigrants from the Republic of Uzbekistan is being realized. Two thousand cottages, a space-saving settlement, are being constructed by the immigrants themselves with the use of local construction materials. In Almaty, the project “Baibesik” for the construction of 185 houses is under way, and in the Saryarkin region of the city of Astana a project for the construction of the micro region “Nurbesik” is being developed.

During the course of immigration and integration of ethnic migrants into new public conditions, some problems arise.

The settlement of the Oralman is uneven and secondary migration occurs. At present, nearly sixty percent of immigrants live in regions with a problematic labor market – in the Southern Kazakhstan, Mangistau, Almaty, and Zhambyl regions. This situation does not conform to the state policy of labor resource distribution.

The level of employment and housing security of the Oralman is low.

In this regard, the Head of State has commissioned the development of the Program “Nurly Kosh” (Enactment of the Government of December 2, 2008 No. 1126).

The goal of the Program is the reasonable settlement on a voluntary basis and the provision of assistance in employment and routine life to ethnic Kazakhs, former citizens of the country who wished to come back to Kazakhstan, and internal migrants for the sake of demographical, social, and economic development of the regions and realization of participants’ potential.

The implementation of the Program will ensure the control of the processes of ethnic, internal and external migration and will subject them to the interests of social and economic development of the regions. It will stimulate the return to the country of citizens of various nationalities who emigrated from Kazakhstan for one reason or another.

Unfortunately, in practice, there are instances when the rights of the Oralman that are guaranteed by current legislation of Kazakhstan have been violated.

*A review of appeals by the Oralman* to the Human Rights Commission under the President of RK as well as of documentation of inspections performed by prosecuting authorities reveals that some territorial agencies of authorized state migration institutions frequently violate the provisions of the Law of RK “On the Procedure for Investigation of Appeals of Physical and Legal Personalities” as well as the Guidelines for determination of the status of the Oralman and their inclusion in the immigration quota for the Oralman. In addition, some of the Oralman drew the attention of the Human Rights Commission to instances of violation of their right to the receipt of pension payments until their obtainment of citizenship in the Republic of Kazakhstan.

A review of current legislation of the Republic of Kazakhstan with regard to issues of housing assistance, pension payments and allowances to the Oralman disclosed that, in conformity with Article 2 of the Law of RK “On Pension

Security in the Republic of Kazakhstan,” foreigners and individuals without citizenship continually residing on the territory of the Republic of Kazakhstan have the right to pension security equally with citizens of the Republic of Kazakhstan, if not otherwise stipulated by the law and international agreements.

Paragraph 1 of the Rules of Documentation and Registration of the Population of the Republic of Kazakhstan approved by the Enactment of the Government of the Republic of Kazakhstan of July 12, 2000 No. 1063 (further referred to as “Rules”) stipulates that citizens of the Republic of Kazakhstan regardless of their place of residence, foreign citizens, and individuals without citizenship continually residing in the Republic of Kazakhstan should have one of the following identity documents: 1) a passport of a citizen of RK; 2) an identity card; 3) a residence permit for a foreigner in the RK; or 4) an identity card for an individual without citizenship.

There is no provision for the use of other documents not stipulated by the Rules.

Under these circumstances, the Oralman who have not yet obtained citizenship in the Republic of Kazakhstan and who have not documented their continual residence in the Republic of Kazakhstan (residence permit) are not provided with pension payments and allowances from the Center (on the basis of the Oralman identity card).

According to Article 14 of the Migration Law, individuals recognized as Oralman are given standard identity cards. Oralman identity cards are documents liable to strict accountability and serve as a basis for the obtainment of benefits and compensations provided for by the Law.

Under the requirement of Paragraph 18 “Certain Issues of Legal Regulation of Residence of Foreign Citizens in the Republic of Kazakhstan” approved by the Enactment of the Government of January 28, 2000 No. 136, individuals permanently residing in the Republic of Kazakhstan are considered as foreign nationals who have obtained relevant authorization as well as residence permits issued by agencies of the interior.

The joint order of the Ministry of the Interior of RK of April 9, 2004 No. 215, the Ministry of Foreign Affairs of RK of April 14, 2004 No.08-1/93 and the Chairman of the Agency of Migration and Demography of the Republic of Kazakhstan of April 14, 2004 No. 35-p ratifies the Guideline “On the Procedure for Application of Rules of Entry and Residence of Foreign Citizens in the Republic of Kazakhstan and Their Departure From the Republic of Kazakhstan and Organization of Activity of Authorities of the Interior on Prevention and Suppression of Illegal Migration of Foreign Citizens on the Territory of the Republic of Kazakhstan.”

In harmony with Paragraph 68 of the mentioned Guidelines, applications for permanent residence permits in the Republic of Kazakhstan by foreign citizens who entered the Republic in accordance with the immigration quota, should be submitted directly to the territorial departments of the Migration Committee of the Ministry of Labor and Social Protection of RK. In case of simultaneous

application by the Oralman for citizenship of the Republic of Kazakhstan, covered by the Decree of the President of the Republic of Kazakhstan “On Procedure for Investigation of Issues Related to Citizenship of the Republic of Kazakhstan,” permanent residence documents may not be issued.

Thus, the lack of provisions in the Rules and Procedures ensuring the issue of identity cards to the Oralman, which serve as a basis for the obtainment of appropriate benefits and compensations (housing and other benefits and pensions), to a great extent infringes on the rights of the Oralman.

In addition, it is necessary to introduce amendments and additions to Paragraph 2 of the above-mentioned Rules with the inclusion of the Oralman’s identity document.

One measure which stimulates the repatriation by Kazakhs of their historical homeland is the free provision of land to them for the individual construction of residences.

However, there are frequent violations of the requirements of Articles 405, 502 and 506 of the Tax Code of the Republic of Kazakhstan, according to which the Oralman are exempted from state taxes if they have registered their right of real estate and related transactions and have obtained citizenship in the Republic of Kazakhstan.

In the city of Almaty and the Almaty, Akmola, Aktyube, Western Kazakhstan, Eastern Kazakhstan, Mangistau and Kostanay regions, instances of the illegal imposing of the state tax on the Oralman have been discovered.

It is necessary to legislatively regulate the allocation of finances from the budget for the Oralman who have relocated to their historical homeland under the migration quota; however, it is also necessary to stipulate the compulsory rate of reimbursement back to the state in case of their voluntary return to their original country.

The Human Rights Commission under the President of the Republic of Kazakhstan shares the opinion of the government and strives to promote the process of repatriation of Kazakhs to their historical homeland. In this regard, they are launching a range of ideas aimed at the improvement of governmental policy in the field of migration of the Oralman. The Commission speaks in support of a differentiated approach that takes into consideration the complicity of the problem itself and the need for the coordination of various approaches and positions in this respect. They think that it is necessary to set priorities with regard to the Oralman and give preference to the return of those who went to live abroad unwillingly. Regarding Kazakhs residing in the territories of Russia and Uzbekistan, it is necessary to remember that most of them have been living there for many centuries, although, admittedly, there are many who came to live there during times of revolution and collectivization which resulted in a genuine genocide of the Kazakh nation. According to results of a survey executed by co-workers of the Secretary of the Human Rights Commission under the President of the Republic of Kazakhstan, in the city of Saint Petersburg, the Saratovsk and Omsk regions, and

the city of Omsk, the majority of ethnic Kazakhs residing there prefer to work and live in Russia.

With the goal of protection of the rights of the Oralman during their return to their historical homeland under the immigration quota or outside of it, and to guarantee their social and economic rights, the Human Rights Commission under the Head of State recommends that the Government develop and ratify a separate legislative act that would exempt the Oralman from customs duty during their crossing of the national border, regardless of the quantity of their possessions. In addition, it recommends making related additions to the Migration Law.

It is necessary to make adjustments to the government housing program and to implement a balanced approach with due consideration to the interests of the Oralman as well as other citizens of Kazakhstan. The solution can be found only in the framework of the social partnership of society and the authorities. Caring for the Oralman should not infringe on the interests of other citizens or violate their rights. This situation requires responsibility not only on the part of government, but also agencies of civil society, NGOs, and trade unions. Issues regarding the Oralman are the common problems of society and the government, and their resolution requires the interaction of society and the government. For instance, the issue of adaptation of the Oralman can be settled by means of the establishment of modern integration centers which are to assist people in problems of obtainment of citizenship, employment, and professional education.

**With the objective of securing the rights of the Oralman, we recommend that the Government of the Republic of Kazakhstan implement the following measures during the years 2009-2011:**

1. With the goal of securing the rights of the Oralman who have not obtained citizenship and have not yet documented their permanent residence in Kazakhstan to receive pensions and other social allowances, make amendments and additions to legislative documents regulating the procedure for payment of pensions, benefits and other social payments, in particular, to the Guidelines on the procedure for the establishment and payment of pensions, state social allowances and state especial allowances from the Center. The list of acceptable documents should include the Oralman's certificate, which would be the basis for the establishment of pension and benefit payments.

2. Legislatively establish the minimal pension payment to the Oralman of pension age from those countries with which Kazakhstan has no bilateral agreement regarding pension issues.

3. Make an addition to Paragraph 2 of the Rules of Documentation and Registration of the Population of the Republic of Kazakhstan approved by the Enactment of the Government of the Republic of Kazakhstan of July 12, 2000 No. 1063 which includes the Oralman's certificate as an acceptable identity document.

4. In an effort to protect the rights of the Oralman upon return to their historical homeland under the immigration quota or outside of it, and to secure their social and economic rights, it is necessary to elaborate and ratify an individual legislative act exempting them from customs duties during their

crossing of the national border, regardless of quantity of their belongings. In addition, it is necessary to make corresponding additions to the Law of RK “On Migration of the Population.”

5. Continuously monitor the implementation of the government program “Nurly Kosh.”

6. For the purpose of securing the right of the Oralman to housing, develop and implement a mechanism for the provision of affordable housing to the Oralman within the framework of the Government Housing Program.

7. With the purpose of securing the right of the Oralman to obtainment of citizenship in the Republic of Kazakhstan by means of a simplified procedure, as well as the elimination of all possible conditions for corruption crimes by employees of the Migration Police and governmental authorities, exclude the address certificate from the list of documents required for obtainment of citizenship by the Oralman, which certificate obliges them to regularly register at their place of residence immediately after their move to their historical homeland despite the fact that they have no permanent residence with the right of ownership.

8. In order to eliminate double citizenship of the Oralman, it is necessary to conclude bilateral intergovernmental agreements with the countries of the original residence of the Oralman, which would ensure that the Ministry of the Interior of the Republic of Kazakhstan informs corresponding authorized governmental agencies of the foreign countries upon a certain Oralman becoming a citizen of Kazakhstan.

### **Rights of the Child**

In the area of protection of the rights of the child and childhood, work is being carried out in the Republic of Kazakhstan in order to secure the social and legal guarantees of children’s quality of life, in harmony with international standards.

An important step in the implementation of international standards for the quality of life of children was the ratification of the UN Convention “On the Rights of the Child” by Kazakhstan in 1994.

The general principles of the Convention On the Rights of the Child were implemented in many laws of Kazakhstan, including: “On the Rights of the Child in the Republic of Kazakhstan,” “On Marriage and Family,” “On Children’s Villages of Family Style and Youth Homes,” “On Health Protection of the Citizens of the Republic of Kazakhstan,” “On Social, Medical, Pedagogical, and Correctional Support for Children with Disabilities,” “On Juvenile Crime Prevention and Prevention of Child Neglect and Homelessness,” and others.

Since the time of ratification of the Convention On the Rights of the Child, Kazakhstan has already twice reported to the UN Committee on the Rights of the Child regarding the fulfillment of its provisions. The joint second and third report

prepared by the Government of the Republic of Kazakhstan was discussed at the 45<sup>th</sup> session of the UN Committee on the Rights of the Child in May 2007.

It should be noted that the UN Committee on the Rights of the Child has positively acknowledged the measures implemented by Kazakhstan in the field of protection of the rights of children. In the course of discussion on the report, one of the positive achievements was recognized to be the development and improvement of new legislation as well as the cooperation of governmental authorities with international organizations and various UN agencies on childhood issues.

The UN Committee on the Rights of the Child also positively evaluated the experience of the Republic of Kazakhstan in the field of alternative care for children left without the support of parents: the establishment of “hope homes,” youth homes, and family style children’s villages. An initiative on the development of new forms of family type upbringing such as guardianship, tutorship, patronage, and adoptive families was approved.

The UN Committee on the Rights of the Child has approved the adoption of various plans and strategies in the field of education, health care, and support for youth. However, although their evaluation of the activity of the Government of the Republic of Kazakhstan in the field of protection of children’s rights was positive, the UN Committee on the Rights of the Child has noticed existing problems in this regard and has given recommendations for the further improvement of the situation regarding the rights of children in Kazakhstan.

One of the Committee’s recommendations was to establish an independent authorized agency for the implementation of the provisions of the UN Convention on the Rights of the Child, including effective coordination of activities between central and local executive agencies in cooperation with NGOs. In harmony with the given recommendations, the Committee for Protection of Children’s Rights under the Ministry of Education of the Republic of Kazakhstan was established in January 2006 by the Enactment of the Government of the Republic of Kazakhstan, and in August 2007, departments for the protection of children’s rights in all regions of the Republic were founded. These measures allowed the creation in the Republic of a new governmental rights protection system in the interests of the child, the main component of which is moral and spiritual human development.

The UN Committee on the Rights of the Child has also recommended developing the related National Action Plan. In this regard, in 2007, the program “Children of Kazakhstan” for the years 2007-2011 was ratified by the Enactment of the Government of the Republic of Kazakhstan of December 21, 2007 No. 1245. The program includes a set of measures for the improvement of the quality of life of children, prevention of social orphanhood, and the provision of conditions similar to family conditions for orphans and children left without the support of parents. During the course of implementation of the program, it is planned to open five special correctional educational organizations, three rehabilitation centers for minors left without the support of parents, six family style children’s villages, and also an increase in the number of specialists in guardian and tutorial agencies.

With the purpose of implementation of these recommendations, the Ministry of Education and Science together with the interested ministries, departments, and local executive authorities has prepared the Plan of Measures for Implementation of the Concluding Remarks of the UN Committee for the Rights of the Child, which was considered and ratified at a meeting of the Interdepartmental Commission on International Humanitarian Law and International Agreements on Human Rights. At present, the implementation of this Plan in the Republic is in progress.

With the aim of implementation of Article 20 of the Convention on the Rights of the Child as well as fulfillment of Paragraphs 8 and 45 of the recommendations of the 33rd session of the UN Committee on the Rights of the Child, the draft law of the Republic of Kazakhstan “On the Accedence and Ratification by the Republic of Kazakhstan of the Convention on Protection of the Rights of Children and Cooperation with Regard to Foreign Adoption (adopted by the Hague on May 29, 1993)” was developed. Currently, the given document is being considered by the Majilis of Parliament of the Republic of Kazakhstan. The ratification of this document will ensure the protection of rights of children after their adoption.

In accordance with the Plan of legislative development for 2009, the draft Law of the Republic of Kazakhstan “On Amendments and Additions to the Law of the Republic of Kazakhstan “On Children’s Villages of Family Style and Youth Homes” is being developed. Taking into account the experience of foreign countries, the draft law suggests the alteration of the requirements for educators; in particular, it proposes to omit the age requirement (30 years of age) and to add the provision to employ married couples as educators in the children’s villages. In addition, the expansion of the number of graduates of educational organizations for orphans and children left without the support of parents is suggested, who could then undergo social adaptation in youth homes.

Measures are being taken to develop effective mechanisms for resolving issues regarding social orphanhood, and early detection of dysfunctional families. Various events are being held with the participation of international and domestic experts, representatives of agencies of internal affairs, NGOs, parents’ associations, psychologists, social pedagogues, and directors of schools – training sessions, conferences, seminars, consultations, and many others.

Various studies and monitoring activities are being held jointly with governmental and non-governmental organizations in order to study the situation of the children in the Republic. Thus, in harmony with the Agreement between the Government of the Republic of Kazakhstan and the UN Children’s Fund UNICEF, two sociological studies have been conducted jointly with non-governmental public associations: “The Situation of Orphan Children and Children Left without the Support of Parents in the System of Children’s Boarding Institutions” and “Evaluation of Needs and Requirements of Vulnerable Children and Families for Social Services.” The given studies were conducted in an effort to study the

situation of orphans, children left without the support of parents, and children from vulnerable classes of the population.

Special attention is paid to the prevention of the worst forms of child labor, which can also affect the quality of life of children. Although legislation of the Republic of Kazakhstan has established restrictions on child labor and stipulated criminal and administrative liability for compulsion of children to the worst forms of child labor, there have been instances when children were forced to do work which could damage their physical development and hinder their receiving a good quality education. For example, there were instances of the illegal involvement of children in tobacco harvesting in the Almaty region and cotton harvesting in the Southern Kazakhstan region. Unfortunately, at present, the mechanism for gathering statistical reports regarding the use of child labor in branches of national agriculture has not yet been developed. The issue of use of child labor at home and on farms requires additional study, and standards of labor legislation regulating the procedure and conclusion of labor contracts with minors and some aspects of their labor activity including concurrent studies and work need to be revised. In the context of these and other issues in the sphere of underage employment, the interested ministries and departments and the Confederation of Employers of the Republic have signed the Cooperative Plan of Work in the Framework of the Regional Project of the International Labor Organization (ILO) on Eradication of the Worst Forms of Child Labor. In harmony with this document, in an effort to increase the public awareness of the worst forms of child labor, a collection of international and Kazakhstan's legislation in the field of protection of children's rights, namely in the field of combat against the worst forms of child labor was published, and research of the child labor situation in the regions of the Republic has been conducted.

However, despite the measures taken, there are still certain problems and unresolved issues with regard to the protection of children's rights and interests.

The issue of social orphanhood remains urgent. Over 12,000 families are dysfunctional; in only the year of 2008, 854 parents were deprived of their parental rights. At present, out of 16,008 children growing up in institutions of education, health protection, and social security, 84.2% are social orphans.

Housing for the graduates of institutions for orphans is a complicated issue. Only about 10% of children raised in children's homes and boarding schools have a lodging in their name. In the last three years, only 80 apartments were allocated for children of this category.

There are serious difficulties with regard to the receipt of competitive vocational education of graduates of institutions for orphans. Today, only 82.4% of these graduates work by their professions.

Every year, 10,000 neglected and homeless children are found. Even with close relatives available, 25% of these children are sent to governmental institutions for orphans and children left without the support of parents, where they are completely provided for by the government.

Currently, the issue of legislative determination of the establishment and payment of benefits for a child (children) to guardians and tutors remains urgent. This provision will ensure the development of legislation that would stipulate the amount and procedure for payment of this benefit.

The purpose of adoption of such legislation is the necessity to resolve issues of material support of nearly 30,000 children who are currently under guardianship and tutorship in families, and to further reduce the number of children growing in boarding institutions. Over 3 billion tenge a year (10 monthly calculation indicators for the support of one child per month) are required for these purposes.

Violence against children, various forms of children exploitation, neglect, and homelessness are among the unresolved problems. In only the current year, nearly 6,000 neglected and homeless children were found.

Not everywhere are found the necessary conditions for receiving a secondary public education. The number of populated localities without schools is increasing. In comparison with the year 2007, their number increased by 65 and amounts to 1,434 in the year 2008. There are 32,500 children of school age living in these localities; 13,300 of these children are transported to school, 3,600 live in boarding schools, and 15,000 children live in apartments or travel to school independently. Transportation of children to schools in the Southern Kazakhstan, Almaty and Atyrau regions is poorly organized.

At the same time, local authorities are slow to resolve issues with regard to the renovation and replenishment of their school bus fleet. While there is a demand for 466 new busses in the Republic, only 96 busses were purchased in the year 2008.

Still, the most urgent social problem is violence against children and various forms of children exploitation. According to the ILO, 16 children of every 100 are involved in child labor (including children of 5 years of age) and 12 out of every 100 in the worst forms of child labor (slavery, servitude, prostitution). In the Republic there is almost no reliable information about the nature and extent of child labor, neglect and homelessness.

The issue of use of child labor at home and at farms requires additional study. Many families (parents) do not know the rights of children as stipulated by the labor legislation of the Republic of Kazakhstan.

There is a need to train professional personnel to work with families and children; the content of the training programs for professional development of children's rights specialists, social pedagogues, psychologists, and educators working for educational organizations for orphans and children left without the support of parents requires improvement.

## **1. Child Criminality and Issues Regarding Prevention of Child Criminality**

One of the main links in the system of prevention of neglect and homelessness as well as socialization of minors left without care and tutorship are

the Centers of Temporary Isolation, Adaptation, and Rehabilitation of Minors (CTIARM), which currently function under the agencies of the interior.

Moreover, in harmony with legislation, the main functions of CTIARMs are the protection of children's rights, the ensuring of their social security, and the rendering of everyday, medical, pedagogical, psychological, and legal services and material assistance. The social rehabilitation of children in its entirety comes under the responsibility of the Ministry of Education and Science.

The responsibilities of agencies of the interior cover only the arrest, delivery to, and upkeep of minors in these specialized children's institutions. However, the reason for a teenager to be placed in a CTIARM is the decision of the guardian and tutorship agencies of the educational system, which also make decisions on the further life of the minor.

In whole, the Centers of Temporary Isolation, Adaptation and Rehabilitation of Minors fulfill the same tasks as the Centers for Temporary Residence of Children Deprived of Parental Care (orphanages), which are under the authority of the Ministry of Education and Science.

The Human Rights Commission under the President of the Republic of Kazakhstan and the Prosecutor General's Office have recommended that the Government find opportunities for the further introduction of a position of district police inspectors for the affairs of minors (these inspectors [school policemen] would serve in educational organizations) at the expense of local budgets, and to resolve the issue of the transfer of Centers of Temporary Isolation, Adaptation and Rehabilitation for Minors, which currently function under the agencies of the interior, to the jurisdiction of the Ministry of Education and Science.

During the course of inspections, agencies of the Prosecutor General revealed violations of the constitutional children's rights to personal liberty guaranteed by Article 16 of the Constitution of the Republic of Kazakhstan and by the Convention on the Rights of the Child. These violations took place due to illegal legislation, incorrect procedures for its application by agencies of the interior, and the negligence of educational institutions.

However, it should be admitted that one of the main reasons for such violations are discrepancies in the current legislation.

Thus, according to Articles 81 and 82 of the Criminal Code of the Republic of Kazakhstan (further referred to as "CC RK") and Articles 494, 495 of the Code of Criminal Procedure of the Republic of Kazakhstan (further referred to as "CCP RK"), placement of a minor in a special educational or medical-educational institution is one of the compulsory measures of an educational character that may be imposed by the court.

In harmony with the above-mentioned standards, this compulsory measure can be decided by the court under the following conditions:

- The case may be settled only during the course of a legal investigation of a criminal act by the court of original jurisdiction, in making a decision concerning the minor with regard to holding him criminally responsible or freeing him from

criminal responsibility (Articles 78, 80-83 of the CC RK, and Articles 494 and 495 of the CCP RK);

- This type of compulsory measure of an educational nature may be imposed exclusively upon a juvenile who committed a deliberate crime of medium gravity (Paragraph 5 of Article 83 of the CC RK).

However, Article 14 of the Law stipulates the possibility of a court decision on the advisability of sending minors to educational institutions for special custody upon the submission of the case both to the Commission for Minors and Protection of their Rights and to the agencies of the Interior.

At the same time, according to Sub Paragraph 2 of Paragraph 2 of Article 59 of the CCP RK, the imposition of compulsory educational measures upon a person is the exclusive right of the court.

The Resolution of the Supreme Court of the Republic of Kazakhstan of April 11, 2002 No. 6 (with amendments of December 25, 2006 “On Judicial Practices Regarding Matters of Juvenile Crime and Their Involvement in Criminal and Antisocial Behavior” (further referred to as “the Resolution”) explains the procedure for application of such measures.

According to Paragraph 15 of the Resolution, the decision on the imposition of compulsory educational measures can only be made by the court and only in the case when a “guilty” verdict is declared in the main trial.

Therefore, the imposition of such compulsory educational measures by the courts without a principal legal investigation is illegal, and Paragraph 2 and Paragraph 7 of Article 14 of the Law contradict the above-mentioned standards of the Criminal Code and the Code of Criminal Procedure.

The requirements of Articles 57 and 58 of the Code of Administrative Offences of RK (further referred to as “the Code”) contradict the standards of Sub Paragraphs 1 and 2 of Article 13 of the Law concerning the reasons and procedure for decision-making regarding the imposition of compulsory medical measures upon alcoholics and drug abusers.

In addition, the list regulated by Article 57 of the Code is exhaustive and does not stipulate the possibility of transferring the minor to a special educational institution as an administrative and legal measure.

The imposition of administrative and legal measures other than for the reasons and in the order determined by the Code is prohibited.

Therefore, it is also necessary to revise the reasons for placement of a minor in a special educational institution for the persistent evasion of primary, principal secondary, or comprehensive secondary education, the regular unauthorized withdrawal from the family or from children’s educational institutions, as well as the commitment of other antisocial actions.

Currently, the above-mentioned contradictions in legislation result in violation of the rights of minors, hindering the actions of the public prosecutor for the protection of children’s rights and interests, since the legislation does not stipulate the procedure for appeal (protest) or its revision.

In this regard, it is suggested to consider the issue of setting in order the legal regulations of the procedure for the placement of children in special institutions.

## **2. Current Issues on Protection of the Rights and Interests of Children Deprived of Parental Care**

The extent of the protection of children is the main characteristic of any civilized society and the social orientation of governmental policy.

Family crises, the difficult financial situation of the majority of families, the failure of traditional family relationships, and the increase of divorces have become serious reasons for the deterioration of the conditions of children.

Transformations during the last years have greatly intensified problems of childhood and have indicated the need for extreme measures.

During the last years in Kazakhstan, the number of children deprived of parental care has been increasing. Every year, their number keeps on growing; however, only a small number of these children have lost the care of their parents due to their death. The rest come under the phenomenon of so-called “social orphanhood,” i.e. they are orphans with living parents. Presently, according to statistics from the Ministry of Education and Science, more than 18,000 children live in 204 institutions for orphans and children left without the care of their parents.

The main reasons for the increase in the number of orphan children having the living parents are the loss of social family prestige, material and housing problems, the increase of illegitimate birth, and the high rate of parents leading an antisocial way of life. In this regard, the protection of the rights and interests of children deprived of parental care has become more important, and one of the methods of such protection is the creation of adequate legislation.

However, it should be noted that there are significant gaps in legislation, there is a lack of mechanisms for the implementation of current legislation, and there is no adequately authorized governmental agency. In our opinion, the establishment of the special Committee for Protection of the Rights of Children under the Ministry of Education and Science of RK has not solved the main issues of protection of the rights and interests of children, including children deprived of parental care.

**A possible resolution of this problem in our circumstances will be the creation of the Institute of the National Ombudsman for the Rights of the Child with due consideration to the requirements of well known international standards.**

The status and function of guardianship and tutorship institutions are subject to radical change. Presently, these agencies which are the main governmental structure for the protection of the rights and interests of children often consist of only one inspector working under the district educational department who does not have even an elementary legal knowledge.

At the same time, the established Departments for the protection of the rights of children are not fulfilling their direct functions, in most cases doubling the functions of other governmental and non-governmental organizations, for instance departments of education and commissions for the affairs of minors.

Lack of coordination of the roles of the Committee for Protection of the Rights of Children and its departments is a result of gaps in current legislation.

In an effort to settle the situation, we think it is necessary to:

- Remove the concept from applicable legislation of guardianship and tutorship as state structures, as they are non-existent in the state mechanism;
- Determine the circle of governmental agencies fulfilling guardian and trusteeship functions with regard to both minors and adults needing such by virtue of specific reasons;
- Entrust the coordination of matters related to the protection of the rights and interests of children to the Committee for Protection of the Rights of Children as the authorized agency in this field;
- Entrust the determination of guardian and tutorial functions to the Government of the Republic of Kazakhstan;
- In administrative and territorial districts where there are no structural departments of the Committee, entrust guardian and tutorial functions to other agencies – agencies of education, health care, and social security – without changing the number of personnel or amount and source of financing.

*Considering the above-mentioned, and taking into account the need for conceptual alteration of approaches to the protection of the rights and legal interests of children, we propose the resolution of these issues in the draft Law of RK “On Marriage (Matrimony) and Family” which is under consideration.*

The departmental dissociation of specialized children’s institutions is a persistent problem.

A sampling review of certain legal documents testifies that there are gaps in the implementation of some standards.

Thus, Paragraph 1 of Article 76 of the Code of the Republic of Kazakhstan “On Administrative Offences” determines that restriction of entertainment and imposition of special requirements for one’s behavior can be applied to a minor as an educational measure.

Since the above-mentioned Code does not stipulate which agencies can assign such measures, in essence, today these measures can be assigned by any agency investigating the case of the administrative offence, except for the court. This contradicts the requirements of Articles 16 and 21 of the Constitution of RK.

The same discrepancy is found in the standard of Article 11 of the Decree “On Agencies of the Interior of the Republic of Kazakhstan” and of Article 30 of the Law of RK “On the Rights of the Child in the Republic of Kazakhstan” in compliance with which children can be placed in Centers of Rehabilitation and Adaptation without their consent and without a legal decision.

In this connection, with a view toward the protection of the constitutional rights of children, the work group recommends that the Government of RK review the entire legislation and supplement it with standards regarding the fact that any

restriction of the freedom of a minor or restriction of his right to freedom of movement can be imposed only by a court decision.

Current legislation does not stipulate any restrictions regarding the attendance of minors at entertainment facilities (computer clubs etc.). Also, it does not mention the responsibility of the owners of such entertainment facilities for rendering services to children in the night hours.

Thus, in reality, this sphere of public relationships is outside of legal control, and numerous problems of children point out to the need for the fastest legal regulation of all issues in the field of these common relationships.

Law-enforcement practices of governmental agencies also revealed a number of gaps in the current marriage and family legislation regulating issues of protection of the rights and interests of children deprived of parental care.

According to some facts, the applied form of patronage care of children deprived of parental care is not always for the sake of the child, but is aimed at the solution of material problems of some individuals.

There are also known instances when children were passed to the guardianship and tutorship of relatives who were interested only in obtainment of social benefit payments due to the child.

In our opinion, the rights and interests of children deprived of parental care should be protected with a view of their upbringing to the greatest extent possible in conditions similar to a family and with a view of their right to be brought up in a family. The problem of orphans has to be resolved on the principle of “a family for each child” and not “a child for each family.” In this regard, the preferred form of care for children deprived of parental care is the adoption.

Adoption is understood as a legal action, as a result of which adoptive parents and relatives and the adopted child obtain the same rights and duties as blood parents and their children.

Adoption is permitted only with regard to minors, only for the sake of their interests; however, the adoption of fleshly brothers and sisters by different people is not allowed.

In case of adoption, preference is given to citizens of the Republic of Kazakhstan and children’s relatives, regardless of their citizenship and place of residence.

The Law of RK “On Marriage and Family” upon determination of adoptive individuals does not include stateless persons, which is an infringement of their constitutional rights (Part 2 of Article 76 of the Law).

Adoption by foreigners should be viewed as an alternative method of care for a child when it is impossible to provide any adequate method of care in the country of origin.

The opportunity for the adoption of children “by relatives regardless of their citizenship and place of residence” is stipulated in the current Law of RK “On Marriage and Family.” However, due to the fact that in practice, adoptable children usually have no such relatives, during the course of investigation of adoption matters courts rarely apply this standard.

A review of judicial practices and actual facts shows that in every case of international adoption, the foreign adoptive parents are helped by international or foreign non-governmental organizations (agencies) for adoption.

At the same time, Article 100 of the current Law does not permit such activity of any organizations for adoption, except for guardian and tutorial institutions.

With due consideration to the fact that agencies involved in adoption are licensed by foreign states and are under their governmental control, as well as to the international adoption practice realized in conformity with the Hague Convention of 1993 “On Protection of Children and Co-operation in Respect of Intercountry Adoption,” it would be necessary to permit these agencies to participate in adoption provided that they are accredited and controlled by the government.

With the objective of resolving the issue of international adoption, presently, the opportunity of the accedence of the Republic of Kazakhstan to the 1993 Hague Convention on international adoption is being considered in the framework of the draft law, which is currently in the Parliament.

The employment of socially vulnerable children, single mothers, and graduates of family-style children’s homes and youth homes is another problem. Therefore, we do not agree with the legislator’s provision that stipulated the availability of only “mother” in children’s villages and a governess in children’s family-style homes (Article 14 of the Law “On Children’s Villages of Family Style and Youth Homes.”

In our opinion, the absence of a “father” in the home certainly distorts the child’s perception of the surrounding world and his future independent life.

A special topic is the homelessness and neglect of children, the situation of children with disabilities, and provision of housing for children. Thus, Article 14 of the Law of RK “On the Rights of the Child in the Republic of Kazakhstan” secures the right of the child to housing and determines that the orphan child or the child left without the support of parents and living in educational, health care, or other institutions has the right to ownership of living quarters or the right to use the living quarters, and in case of absence thereof has the right to obtainment of living quarters in accordance with the housing legislation of Kazakhstan. Children deprived of parental care including orphan children cannot be moved from their housing without the provision of other housing.

Many violations were discovered in the activities of guardian and tutorial institutions, expressed in inadequate work with regard to the detection and registration of children that are in difficult situations in life, and with regard to the protection of their valuable interests.

Thus, due to the negligence of local executive authorities and heads of children’s institutions, the right to housing of orphan children and children deprived of parental care is not secured (as provided for in Article 14 of the Law of RK “On the Rights of the Child in the Republic of Kazakhstan”).

During the years 2007 and 2008 only, in the Republic 3,741 children have graduated from children's homes and 2,109, or 56% needed housing.

According to the Law of RK "On Housing Relations" (further referred to as "the Law"), only 58 people, or 2.7% of the above-mentioned number received housing.

After two years, these children upon their reaching the age of twenty years will lose the right to the obtainment of housing, since the Law determines establishes this age limit.

Moreover, out of all the graduates who need housing, only orphan children have the right to obtain housing from state housing facilities, since under Article 68 of the Law of RK "On Housing Relations" this category comes under the list of socially protected classes of the population.

This group does not include children deprived of parental care (the parents of these children have been deprived of parents' rights, have refused them, or their location is unknown).

After graduation from children's institutions, children of this category in most cases do not have housing rights in the territory of the Republic of Kazakhstan or a permanent income, and do not receive social security benefit payments for loss of breadwinner.

Article 68 of the Law does not stipulate the obtainment of housing by children deprived of parental care.

However, Article 14 of the Law of RK "On the Rights of the Child in the Republic of Kazakhstan" secures this right for orphan children as well as for children left without the support of parents.

In this regard, with the objective of securing the rights of children left without the support of parents, we believe it is necessary to make related additions to the Law of RK "On Housing Relations."

The lack of specialists working in guardian and tutorial institutions is one of the main reasons for the violation of the rights of minors. Local executive authorities have not implemented Paragraph 31 of the Plan of Activities of the Program "Children of Kazakhstan during 2007-2011" concerning the increase of the number of specialists in protection of children's rights and legitimate interests in district and city departments, administrations, and regional departments of education.

In accord with this Plan, solely in 2009, the sum of 217 million tenge was provided for these purposes to 10 regions of the country.

However, not in one region was the number of personnel increased, since this sum of money was not foreseen when local budgets were fixed.

The reason for this was the failure to take action on the alteration of the personnel limits established by the Enactment of the Government of the Republic of Kazakhstan of December 15, 2004 No. 1324 "On Some Issues of Approval of Personnel Limits of Local Executive Authorities."

At the beginning of 2008, the number of the population in the Republic less than 18 years of age amounted to 5,021,456; however, the number of guardian and tutorial institutions is only 185.

On average, in the Republic there are 25,782 children per one specialist protecting their rights.

At the same time, in world practice the number of specialists on protection of the rights of children is determined on the basis of “one specialist per 5,000 children.”

In this connection, with the goal of implementation of the Plan of Activities of the Program “Children of Kazakhstan during 2007-2011” and elimination of the conditions promoting breaches of law and infringement of children’s rights, we suggest the consideration of needed changes to the number of personnel approved by the Enactment of the Government of RK of December 15, 2004 No.1324 “On Some Issues of Approval of Personnel Limits of Local Executive Authorities.”

In a similar way, the issue of provision of governmental assistance to children left without the support of living parents, so-called “social orphans,” is not resolved.

Up to the present, a procedure for the assignment and payment of social security benefit payments for the child left without the support of parents to guardians and tutors is still not determined, and this hinders the transfer of the children from children’s homes to guardians’ families.

Thus, the existing problems and legislative gaps regarding issues of protection of the rights and interests of children left without the support of parents, once again prove the need to continue the laborious work of improvement of the mechanisms for the protection of children’s rights.

**With the goal of effective protection of the rights of the child, we recommend that the Government of the Republic of Kazakhstan, the Parliament of the Republic of Kazakhstan, and other authorized governmental authorities and Akimats of all levels implement the following activities during the years 2009-2012:**

1. Accelerate the adoption of the Law of the Republic of Kazakhstan “On Marriage (Matrimony) and Family.”

2. In 2010, ratify the Convention “On Protection of Children and Co-operation in Respect of Intercountry Adoption” (Hague, May 29, 1993) with the purpose of the complete protection of children’s interests, security of his principle rights and freedoms, as well as for balanced development of his personality in a family surrounding, and control of the adoption of children by foreign citizens.

**3. In 2010, ratify the Convention for the Suppression of the Circulation of and Traffic in Obscene Materials, September 12, 1923 (Geneva, with amendments of November 12, 1947).**

**4. In 2011, ratify the Convention on the Civil Aspects of Child Abduction (Hague, October 25, 1980).**

5. In 2011, introduce the post of the National Ombudsman for the rights of the child with the view of effective protection of children's rights.

6. Make Amendments to the law “On Children’s Villages of Family Style and Youth Homes” ensuring the involvement of a “father” as an educator along with the “mother” in the operation of children’s villages.

7. Make related additions to the Law of RK “On Housing Relations” to secure the rights of children left without the support of parents.

8. Legislatively transfer the functions of the commissions for problems of minors to local executive authorities as well as the functions of guardian and tutorial institutions to the Committee for Protection of the Rights of Children of the Ministry of Education and Science of the Republic of Kazakhstan and to its local territorial agencies.

9. Establish specialized juvenile courts that would investigate criminal, civil, and administrative cases related to children’s rights in all the regions of Kazakhstan.

10. Relocate the administration of Centers of Temporary Isolation, Adaptation and Rehabilitation for Minors (CTIARUC) from the Ministry of the Interior to the Ministry of Education and Science.

11. Establish the position of district police inspectors for problems of minors (school policemen who would serve educational institutions) at the expense of local budgets.

12. Legislatively restrict attendance by minors of entertainment facilities without accompanying adults and to impose the absolute prohibition of such attendance in the night hours.

13. Organize compulsory and regular television programs in the State and district mass media dedicated to the problems of families and children and traditions of family education.

### **Recommendations in the Sphere of Labor Legislation and Social Security Legislation of the Republic of Kazakhstan:**

1. It is advisable to elaborate the governmental program for the employment of minors on terms of temporary employment during school holidays and spare time as well as to make amendments and additions to legislation regarding the employment of minors.

2. Include a section on labor protection of youths (including minors) in legislation regarding collective agreements.

3. It is necessary to resolve a number of unresolved problems in the sphere of elimination of the worst forms of child labor. In particular, it is necessary to develop and legislatively ratify mechanisms and procedures of detection of children involved in the worst forms of child labor, becoming victims of various kinds of violence. Develop a governmental program for eradication of the worst forms of child labor.

### **In the Field of Legislation regarding Health Protection of Minors:**

1. Take actions to increase the number of children's sports organizations and institutions for the improvement of health for children's summer vacations.
2. Revise the current system of disability ascertainment, recognizing disabled children as those not able to work up to the age of 18 years (instead of 16).

### **In the Field of Educational Legislation:**

1. In 2012, ratify the Convention against Discrimination in Education.
2. Implement into legislation the principle of equal opportunity of realization of the right to education guaranteed by Article 28 of the Convention on the Rights of the Child.
3. In harmony with Article 29 of the Convention on the Rights of the Child, introduce human rights training into educational curricula.
4. Develop and ratify the Law "On the Governmental Standard of General Secondary Education" and on the initiation of standard financing of educational institutions that are implementing the educational standard.
5. Enhance the social status of teachers and their material security and improve the prestige of teachers in society. Change over to a system of labor remuneration depending on one's professional skills, additional commitments, etc.

### **Rights of Women**

A priority of the Republic of Kazakhstan in the field of foreign policy is integration into the world community.

In the UN Millennium Declaration, which was signed in the year 2000 by the majority of countries of the world, encouragement of the equality of men and women and expansion of rights and opportunities for women are among the principal goals of human development in the third millennium.

During the 17 years of its independence, Kazakhstan has made certain advancements in the sphere of protection of the rights and legitimate interests of women and men.

In 1998, Kazakhstan ratified the UN Convention on the Elimination of All Forms of Discrimination against Women. In addition, the UN Conventions on the Political Rights of Women and on the Nationality of Married Women have been ratified. In all, Kazakhstan has ratified more than 60 multilateral international universal agreements on human rights.

It should be noted that in general, the experts of the UN Committee on the Elimination of All Forms of Discrimination against Women have given the situation with regard to the protection of women's rights in Kazakhstan a positive assessment.

The enactment of the President of Kazakhstan of November 29, 2005 No. 1677 has approved the Strategy of Gender Equality in the Republic of Kazakhstan for the years 2006-2016 (further referred to as "the Strategy").

The Strategy is an important document directed at the implementation of the gender policy of the government and is an instrument of its implementation and monitoring on the part of the government and civil society, an important factor of the development of democracy. The implementation of the Strategy will promote conditions for equal realization of the rights of women and men and ensures the resolution of the problems of achievement of equality of the rights and opportunities of men and women during the period of 2006 through 2016.

### **1. The Right to Security of Gender Equality in the Field of Labor, Employment, and Pension Security**

It should be noted that TUFRR fulfils necessary work with the goal of protecting and acting on behalf of employees – members of trade unions including working women. Some work on security of the rights and guarantees of working women is being done by the trade union branches of education and science; health care; culture; governmental institutions; communication, mining, metallurgical, and atomic industry; railway workers; and others; and by the regional trade unions of the Aktyube, Akmola, Eastern Kazakhstan, Kostanay, Karaganda, Pavlodar, and other regions.

The main task of the trade unions included in the TUFRR is the promotion of the development of a socially oriented market economy and an actual democracy, the security of the economic and social welfare of hired employees, both men and women.

The Trade Union Federation and its member organizations have given much attention to issues of agreement and to solving the problems of working women in the conclusion of contracts at all levels of social partnership.

To ensure the social security of this large category of the population, at the request of the Trade Union Federation, in the General Agreement for the years 2007-2008, there was a special chapter on the rights and guarantees of working women and youth. This promoted the role of trade unions in the improvement of women's situation and strengthened their positions in the production sphere.

The requirement of the Trade Union Federation has been met regarding the compulsory inclusion of special chapters determining social guarantees in branch (tariff) and regional agreements and collective contracts for working women, and regarding issues of employment, labor and health protection, vocational training, vacation, treatment, health improvement of women, and enhancement of their material situation in the process of labor relations.

An analysis revealed that the conclusion of branch (tariff) and regional agreements and collective contracts in organizations provide for higher quality and more realistic mutual obligations of both parties to the provision of additional social guarantees for working women, and in most cases these contracts have been implemented.

During the last years, the Trade Union Federation and its member organizations required the Government to implement practical plans on the

improvement of women's situation, to eliminate all forms of discrimination, to promote economic independence of women, and their equal access to economic resources. On the initiative of the Trade Union Federation of Kazakhstan and the Human Rights Commission under the President of the Republic of Kazakhstan, the Congress of Working Women has been held.

The participants of the Congress passed the Resolution "Worthy Labor Rights and Social Security for Women is a Characteristic of the State's Welfare" and suggested the exemption of employers from the obligation to pay benefits for maternity and birth.

Since January 1, 2008, the benefit payments for pregnancy and birth are paid from the state social insurance fund, and pension for working women will continue to be accumulated during their maternity and child care leave for one year.

The draft Law "On Equal Rights and Equal Opportunities of Women and Men" provides Articles obliging employers to implement special programs for the elimination of the discrepancy in the labor remuneration of men and women by balancing their professional development and eliminating jobs with low qualifications and poorly paid jobs. In addition, employers are obliged to create labor conditions allowing the combination of work with family duties (introduction of a flexible work schedule, part-time work, exemption from over-time work, advanced training during work time). The employer bears administrative responsibility for non-observance or inadequate observance of the legislation on equal rights and equal opportunities.

Current legislation of the Republic of Kazakhstan prohibits the use of women's labor for heavy physical work and work in hazardous (especially hazardous) or dangerous (especially dangerous) labor conditions. The list of productions, professions that require heavy physical work, and work in hazardous (especially hazardous) or dangerous (especially dangerous) labor conditions, in which women and children under 18 years of age are prohibited to work has been confirmed.

Women can be employed for work in hazardous and dangerous labor conditions only after a preliminary medical examination and ascertainment that they have no contraindications for health and are in compliance with the requirements established by the legislative documents of the authorized health care agency.

Pregnant women having a medical certificate are transferred to another job, excluding jobs with unfavorable factors; however, their average monthly salary remains the same.

Young women who have been forced to discontinue their studies on account of pregnancy and child care are provided with an academic leave, after which they can continue their studies.

In compliance with the Law "On Pension Security in the Republic of Kazakhstan," women retire five years earlier (at 58 years of age) than men (at 63 years of age). Women who gave birth to 5 or more children and raised them until

the age of 8 are granted the right to retire at 53 years of age. Earlier, this right was granted only to women living in rural areas.

With due consideration to the international obligations of the Republic of Kazakhstan in the sphere of human rights, and to the demand of the domestic labor market, as well as in an effort to exclude gender discrimination against women who will be retiring, we believe it is necessary to legislatively secure the implementation of equal rights for retiring men and women and to give women the right of choice to retire either at 58 years of age or at 63 years of age.

## **2. The Right to Freedom from Domestic Violence**

The international community views the security of protection against family violence as one of the most important tasks of the socially oriented state. The UN has developed Model Legislation against family violence as a recommendation.

The Model Legislation recommended by the UN stipulates the extensive intervention in family life, securing the protection of its members against violence, regardless of the presence or absence of claims of suffering individuals to the police or social services.

As is well known, the Republic of Kazakhstan has assumed accountability to the world community to prevent and to eradicate violence against women, children, the elderly, and the disabled. These categories of people are the most vulnerable and susceptible to family violence.

Presently, there is an urgent need for a Law ensuring the establishment of agencies involved in the protection against family violence and having the right and opportunity to work in our specific conditions, in which family violence is concealed from the social surroundings and the police try to avoid family crisis situations. It is necessary to accelerate the consideration and adoption of the Law of the Republic of Kazakhstan “On Domestic Violence.”

## **3. Rights of Women in the Management of State Affairs**

Presently, the number of women in the Parliament of the Republic of Kazakhstan is 13% of the total number of deputies, and in the Maslikhats – 17.1%. In developed countries of the European Union, the number of women in representative authorities amounts to 30-33% of the total number of deputies.

In harmony with Article 12 of the Law of the Republic of Kazakhstan “On Government Service,” no gender restrictions are permitted in the employment of government service.

The number of women in governmental executive agencies has increased and currently is 58%. The posts of political government employees, i.e. at the level of decision-making, are held by only 7% women.

In harmony with the recommendations of the UN Committee for the Elimination of All Forms of Discrimination against Women, we believe it is necessary to legislatively establish a quota for women involved in the

representative authorities at the amount of 30% of the total number of deputies. In addition, it is necessary to increase the representation of women at the decision-making level in governmental executive authorities.

#### **4. Prevention of Trafficking in Women and Children**

The Office of the Prosecutor General of the Republic of Kazakhstan jointly with the National Security Committee and the Ministry of the Interior have reviewed the results of criminal investigations related to human trafficking during 2008.

The review shows that during recent years, this type of crime tends to grow rapidly. According to evaluations of the experts of the United Nations Organization and the International Organization for Migration, the number of victims of human trafficking all over the world amounts to hundreds of thousands and even millions (according statistics of American experts, it amounts to not less than 700,000 every year, and by other expert estimates it reaches 2 million people). Young women are exported to Europe, America, Canada, and countries of Africa, Asia and the Middle East. The recipients of profit are transnational organizations of dealers and homosexuals. Not only are women affected by the criminal business of human trafficking, but also a large part of this sector of criminal economy is made up of child slavery.

According to information from the UN High Commissioner for Human Rights, more than 500,000 women have been sold from CIS countries. Human trafficking, especially in women and children, became such a serious problem in Kazakhstan and a number of other countries that it threatened both their security and their national gene pool. Organized networks of criminals, regardless of their nationality and citizenship, support human trafficking.

It should be noted that there are many features that indicate that the problem has quite explainable fundamental causes. First of all, there is the openness of the boundaries of the Republic of Kazakhstan with CIS countries; second, the intensification of migration both between the countries and inside Kazakhstan; third, the favorable economic situation and high salaries in Kazakhstan in comparison with other former Soviet countries; and fourth, the globalization of organized crime and expansion of its opportunities with regard to the establishment of stable delivery channels of “living goods,” which view our country not only as a supplier but also as a buyer and as a transit corridor.

Given the conditions of the increasing human traffic in our country, current legislation has been supplemented with special legal provisions specifying criminal liability for the above-mentioned types of unlawful activity.

Thus, on March 2, 2006, all articles of the Criminal Code of RK stipulating criminal liability for crimes related to human trafficking were amended and supplemented (Articles 113, 125, 128, and 133 CC RK). The adopted Law to a large extent expanded the characteristics of corpus delicti of this category, and the penalties for these crimes were toughened.

Moreover, for the first time, the Criminal Code stipulates liability for the illegal removal of organs and tissues from human corpses. (Article 275-1)

In harmony with the recommendation of the Human Rights Commission, in 2008 the following Conventions were ratified: the UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, the 1926 Convention to Suppress the Slave Trade and Slavery and its Protocol of 1953, and the 1956 Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery. In addition, based on the recommendation of the Human Rights Commission, in 2008 the following documents were also ratified: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the International Convention for the Protection of all Persons from Enforced Disappearance.

An important role in combat against the criminal business based on human trafficking is undoubtedly played by the Law “On Governmental Protection of Individuals Involved in Criminal Procedure” of May 5, 2000, which stipulates a range of measures implemented in an effort to ensure the security of protected individuals who, in accordance with the provision of Article 1 of the Law, can be claimants, eye-witnesses, or victims of the crime.

The Law provides the legal basis for the protection of victims of human trafficking and members of their families by means of their move to a new place of residence, replacement of documents, change of appearance, individual bodyguards, protection of housing and property, provision of special means of individual protection, communication and notification of danger, the ensuring of confidentiality of information regarding the protected individual, change of place of work or study, and temporary placement in a safe location (Article 7 of the Law). This protection is provided to both victims and their families.

A specialized department has been established in the MININT of RK for the purpose of the systematic prevention, detection, disclosure, and investigation of crimes in the field of illegal migration, human trafficking, and use of slave labor.

Procedural recommendations on the investigation of human traffic were developed. The procedure indicates the criminal law qualifications, methods and procedures for the disclosure and investigation of human trafficking, issues of interaction, tactical features of certain initial investigative actions, and the subsequent and final stages of investigation.

Statistical information on crimes in the field of human trafficking is as follows: in 2008, agencies of the interior filed 20 criminal suits for instances of human trafficking crimes including 5 for the traffic of minors and 10 criminal suits for prostitution.

A review shows that these crimes are divided into two forms – sexual or labor exploitation. The victims of the first group are mostly women of age 16-25.

The victims of the second group are men aged 20-35, mostly citizens of the Central Asian countries of the CIS.

In addition, the coordination of combat against human trafficking is based on the orientation of the law-enforcement and other agencies of the country toward detection of the causes and conditions leading to the crimes.

The Interdepartmental Commission under the Government of the Republic of Kazakhstan for Combat against Illegal Export, Import and Human Trafficking (Enactment of the Government of September 26, 2003 No. 983) is functioning.

Taking into account the transborder nature of human traffic, the Prosecutor General of RK is working on the expansion of international treaties with foreign countries.

**For the purpose of the complete security of women's rights on the level of generally acknowledged international standards, we recommend that the Government of the Republic of Kazakhstan during the years 2009-2012 implement the following measures:**

1. Accelerate the adoption of the Law of the Republic of Kazakhstan "On Domestic Violence."

2. In 2011, adopt the Law of the Republic of Kazakhstan "On Equal Rights and Equal Opportunities of Women and Men."

3. Legislatively secure the realization of equal rights of retiring men and women of age 58 or 63, with due consideration to the international obligations of the Republic of Kazakhstan in the sphere of human rights and the demand of the domestic labor market.

4. Legislatively establish a quota for women working in representative governmental agencies of the amount of 30% of the total number of deputies. Increase the representation of women at the decision-making level in governmental executive agencies.

5. Practically implement the recommendations of the UN Convention on The Elimination of All Forms of Discrimination against Women, given after the consideration of reports by the Republic of Kazakhstan regarding the fulfillment of the provisions of the Convention on The Elimination of All Forms of Discrimination against Women.

6. In 2012, ratify the Convention "On Maternity Protection" of June 28, 1952.

7. In 2012, ratify the Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value of June 29, 1951.

8. Implement regular preventive activities aimed at the prevention and suppression of crimes related to human trafficking, sexual, labor and other exploitation.

9. Establish shelters for women suffering from domestic violence, human trafficking, and other kinds of discrimination.

10. Implement in practice the recommendations of the OSCE Action Plan on Combating Trafficking in Human Beings, which was ratified at the meeting of the Council of Ministers in 2003 in Maastricht.

11. Consider the possibility of establishing in Kazakhstan an Institute of National Reporter on Human Traffic.

## **Rights of National Minorities**

Presently, many countries of the world community face a new challenge. The economic crisis all over the world has resulted in exacerbation of social, economic, political, ethnical, and inter-religious relations.

Complicated geopolitical relations are developing between the principal world strategic participants of Eurasia, and Central Asia and Kazakhstan are granted important roles owing to their resources and strategic position in the region between the East and the West.

An open secret is that the rules of this political game become tougher, which is proved by events in the Caucasus and the Middle East and by the spread of extremism and terrorism in the world. The economic crisis looks more and more political and its impact in different countries increasingly results in growth of intolerance and the tendency to take extreme measures.

The Head of State, Nursultan Nazarbayev, pointed out that **the unity of the people of Kazakhstan** is the main condition for overcoming the crisis. In this respect, today as never before, interethnic peace and harmony have become more meaningful for Kazakhstan, and have become a provision for social security and its development.

Under crisis conditions, even the greatest world powers realize that the unity of the people is the main factor for the development of any country and for overcoming the threats and challenges of the modern world. We were eyewitnesses that the day before the inauguration of President Barack Obama, the USA held the “We the United People Walk.”

Another important task in the achievement of the unity of the people is the cultivating of patriotism in Kazakhstan. In this regard, it is difficult to overestimate the role of the Assembly of Nations of Kazakhstan.

The next vital task with regard to the preservation of the unity of the nation is the cultivation of tolerance.

Even now, tolerance is characteristic of the people of Kazakhstan, and it is necessary to fully protect Kazakhstan’s society against any attempts to destroy it.

Governmental policy in the sphere of interethnic relations in Kazakhstan is based on five crucial principles:

- Ethnic, religious, cultural, and language variety is an invaluable treasure;
- The Government creates all the conditions necessary for the development of culture and languages;
- The most important values of the nation have become tolerance and responsibility;
- The consolidating role of the prevailing ethnic group;
- The unity of the people.

These principles are proven in practice, are tailored to every individual situation, and can be applied in any country.

Kazakhstan's policy in the field of interethnic relations is also being built in strict compliance with international human rights standards. In particular, the Republic of Kazakhstan has acceded to many multilateral universal international agreements in the field of human rights.

In this respect, Russian experts (*N. Haritonova, A. Vlasov, R. Nazarov and others – The Informational and Analytical Center of the Moscow State University*) point out that the legislation of Kazakhstan completely meets the requirements of the principal agreements in the field of security of the ethnic rights of citizens, such as the document of the 1992 Copenhagen Conference on the Human Dimension, the Hague Recommendations Regarding the Education Rights of National Minorities (1996), the Oslo Recommendations Regarding the Linguistic Rights of National Minorities (1998), the Lund Recommendations on Effective Participation of National Minorities in Public Life (1999), and the OSCE Guidelines on the use of Minority Languages in the Broadcast Media (2003).

In whole, the trend and nature of ethnic policy in Kazakhstan is increasingly affected by commonly acknowledged standards of international law establishing the basic criteria of human rights.

Like the majority of OSCE countries, Kazakhstan adopted the special legal documents for implementation of ethnic policy, since the legislative security of ethnic rights is the most effective way of their protection.

Thus, the Law "On Languages in the Republic of Kazakhstan" meets the recommendation of the OSCE High Commissioner on National Minorities made to countries in the course of establishing ethnic policy. The Government pays much attention to teaching the languages of ethnic groups and arranging studies in these languages. In Kazakhstan, there are 88 schools where studies are completely held in the Uzbek, Tajik, Uighur and Ukrainian languages. In 108 schools, the languages of 22 ethnic groups of Kazakhstan are taught as a self-standing discipline. 195 special ethnological linguistic centers are functioning where all who apply can learn the languages of 30 ethnic groups. More than 7,000 people are currently studying in these centers. In the opinion of specialists, one of the most developed educational systems for ethnic languages has been created in Kazakhstan.

In accordance with the Government Program for functioning and development of languages for the years 2001- 2010, the government supports the teaching of native languages to representatives of ethnic groups. Funds allocated for the financing of Sunday schools keep increasing. To improve the knowledge of the Kazakh language, students of the Sunday schools annually arrange Summer Camps for the Kazakh language.

35 newspapers and magazines in 11 languages of Kazakhstan's ethnic groups are published in Kazakhstan with a printing of over 80,000, not counting Kazakh and Russian mass media, and radio programs are being conducted in 8 languages and television programs in 7 languages.

In addition to Kazakh and Russian theaters, in Kazakhstan there are four other national theaters – Uzbek, Uighur, Korean and German. Moreover, three of them are unique in the territory of the CIS and the Baltic countries.

Legal safeguards and the respectful attitude toward all languages in full measure protect the inherent right of ethnic groups to develop their languages and culture. Based on the study of the language policy in Kazakhstan during 2005-2006 done by OSCE agencies, on December 12, 2006 the OSCE Office of High Commissioner on National Minorities declared that the language policy in Kazakhstan was the most loyal of all former Soviet countries.

Small ethnic groups in the territory of Kazakhstan such as Assyrians, Iranians, Nogai, and Dungans also have all possible opportunities to develop their language and culture. This is especially exemplary given the fact that, according to the latest information of the UNESCO language atlas, out of 7,000 existing languages in the world, 2,511 are under threat of disappearance.

In whole, ethnic and language problems in Kazakhstan are being resolved in line with the civilized standards applied by the OSCE member countries.

Ethnic aspects prevail in all economic, social, political, and spiritual developments of modern Kazakhstan, and fill an important place in the activity of the Head of State and agencies of governmental authority and management.

In answer to the question posed by KISI research, “On which individual of public society do you rest your hopes regarding the resolution of interethnic relations in the Republic?” the absolute majority of experts named the President (94%). Obviously, this is explained by the fact that, in the opinion of the experts and the majority of the population, the President of Kazakhstan, Nursultan Nazarbayev, is a real guarantor of interethnic and social stability and personifies and defines the policy of the state including the policy in the field of interethnic relations.

*For comparison, the following are the results of the sociological study done by the Association of Sociologists of Kazakhstan with regard to the evaluation of institutions ensuring human rights: 84.4% of respondents positively evaluated the work of the President of Kazakhstan in the field of human rights, the courts (72.4%), the Prosecutor General’s Office (65.7%), the police (59.2%), and NGOs (52.9%). These facts prove that the President of the Republic of Kazakhstan is the guarantor of the rights and freedoms of humans and citizens, and that he ensures the coordinated functioning of all branches of governmental authority and responsibilities of governmental agencies to the people.*

In the course of preparation for Kazakhstan’s chairmanship of the OSCE, in the second half of February 2009, in Brussels, a “round table” was held on the subject: “The Way to Europe: Preparation of Kazakhstan for the Chairmanship of the OSCE in 2010” arranged jointly with the Center for European Policy and the Institute for Strategic Studies in Brussels.

This activity showed that the European countries placed high expectations on the chairmanship of Kazakhstan. In particular, the special representative of the European Union for Central Asian countries, Pierre Morel, emphasized that the

role of Kazakhstan as a future chairman of the OSCE was very important since Kazakhstan should be worthy of its choice, which will affect the entire Central Asian region. He pointed out that Kazakhstan as a chairman faces serious challenges – the fight against drug traffic from Afghanistan, the increase of public awareness on this problem, the regulation of water resources in Central Asia, and others.

Within the framework of the 17<sup>th</sup> annual session of the Parliament Assembly (PA) of the OSCE in Astana, the High Commissioner of the Parliament Assembly of the OSCE, Knut Vollebek, stated, “as a chairman of the OSCE in 2010, Kazakhstan could play great role in the solution of interethnic problems.” However, he noted that today, OSCE countries face challenges related to the variety of ethnic groups, globalization, and relations between various religions.

Upon the adoption of the Law “On the Assembly of Nations of Kazakhstan,” the Assembly became one of the unique key components of the political system of Kazakhstan and acquired constitutional status and representation in the highest legislative body of Kazakhstan. Decisions of the Assembly’s sessions are subject to compulsory consideration by governmental agencies and officials.

The UN Under-Secretary-General for Communications and Public Information, Kiyotaka Akasaka, confirmed that the experience of the Assembly of Nations of Kazakhstan with the objective of international and inter-religious harmony was very important and relevant to the whole world community. *(Before the positive evaluation of the interethnic situation in Kazakhstan was given by the UN ex-Secretary General Kofi Annan, ex-Prime Minister of Great Britain, Margaret Thatcher, the President of France Jacques Chirac, the President of the Swiss Confederation Pascal Couchepin and others).*

Welcoming the efforts of Kazakhstan to increase the representation of national minorities in the Majilis of the Parliament of the Republic of Kazakhstan, the OSCE High Commissioner K. Vollebek expressed his concern that 9 members of the Assembly of Nations of Kazakhstan (ANK) were elected by the members of ANK and not by the nation-wide voting, and that this situation did not fully comply with international standards; in particular, with the provisions of the OSCE Copenhagen document.

In this regard, Mr. K. Vollebek has suggested rendering expert assistance for further improvement of the system of ANK representation in the Parliament of RK. For this purpose, the parties agreed to discuss this issue at a “round table” with the experts of ODIHR/OSCE with participation of representatives of ANK, Parliament, and lawyers.

It should be noted that Kazakhstan, on principle, evaded the quota of representation along ethnic lines. The Deputies of Parliament elected from the Assembly represent the interest of all of Kazakhstan’s ethnic groups and not just one of them. This allows pursuing a united ethnic policy on a national scale.

The fact that the Chairman of the Assembly is the President of the Republic of Kazakhstan himself – guarantor of the Constitution and human rights – proves that the ethnic groups of Kazakhstan possess all necessary instruments for the

realization of their interests, and that in the country there are all necessary prerequisites for the balanced development of ethnic relations.

Experienced gained by Kazakhstan in the framework of this model was used in Russia, which pursues a similar ethnic policy.

Kazakhstan's chairmanship of the OSCE falls in a period of complicated dialogue between the East and the West, and misunderstandings are worsened with the global economic crisis.

At the same time, problematic developments continue on the European territory of the OSCE related to the migration from countries of Africa, the Near and Middle East, Central and South-Eastern Asia, and China, to the expansion of Islam in Europe, and to the adaptation of migrants.

In this regard, Kazakhstan is ready, not only to keep on playing the role of initiator of continuous dialogue between civilizations, cultures, and religions, but also to act as its champion.

Kazakhstan has already made the first steps: in Astana, the international forum took place entitled "Common World: Progress Through Diversity" with the participation of the Ministers of Foreign Affairs of Muslim and Western countries. Presently, cooperation with the group "The Alliance of Civilizations" is being intensified, relationships are developing in the framework of the Congress of World Religions, and new outlooks for inter-parliament cooperation, possibly within the framework of "The Group of the Wise," are presenting themselves.

Issues of ethnic policy and interethnic relations are of special importance for the Republic of Kazakhstan owing to the variety of ethnic groups living there. Representatives of 130 nationalities live on its territory. According to information from the latest population census in Kazakhstan (February 2009), 67% of the population is ethnic Kazakh.

All the historical wealth and uniqueness of cultures and languages of nations of the Republic of Kazakhstan make up the common property of Central Asia, the CIS, and all of mankind. Interethnic relations in the Republic of Kazakhstan in whole are characterized by stability and sustainability, which is explained on one hand by reasons of objectiveness and historicity, and, on the other hand, by subjective and political reasons. As a result of the centuries-old interaction of Turkic, Slavic, and other nations on the territory of the Republic, settled traditions of mutual respect and tolerance have been formed. However, interethnic peace and harmony is continuously sustained by the reasonable national policy of the governmental authorities of the Republic of Kazakhstan.

It should be noted that there are situations when some representatives of ethnic groups turn the crimes and administrative offences committed by individuals of other nations into the category of interethnic collision, and exaggerate such facts by means of mass media, concealing the essence of the crimes themselves.

The Government does not try to assimilate all nations into some kind of uniform nation, and refuses any kind of artificial separation of the non-native population. Kazakhstan advocates that every nation should live a full life, revive

its traditions, culture, and language, and that all the people of Kazakhstan have equal rights and opportunities regardless of their nationality, language, or religion, and feel that they are citizens of independent Kazakhstan and are proud of this. Today, the positive experience of our Republic in the preservation of interethnic harmony is supported and studied by a number of CIS countries, the Baltic countries, Eastern Europe, and other foreign countries.

*According to the results of the sociological studies conducted by the Association of Sociologists of Kazakhstan within the framework of this National Human Rights Action Plan, 56.8% of respondents positively evaluated the protection of the rights of national minorities in Kazakhstan and 14.8% of respondents think that the rights of national minorities in Kazakhstan are poorly protected. 28.5% of respondents found it difficult to evaluate the situation in the field of protection of the rights of national minorities.*

In harmony with the Constitution and the Law of the Republic of Kazakhstan “On Governmental Service” (further referred to as “the Law”), the citizens of the Republic including representatives of all national minorities have the right to equal access to governmental service. Requirements for candidates of governmental servants depend only on the nature of job responsibilities and are stipulated by the Law.

In accord with Paragraph 1 of Article 12 of the Law of the Republic of Kazakhstan “On Governmental Service,” the right to hold administrative governmental office belongs to citizens of the Republic of Kazakhstan. The administrative governmental office is competitive.

However, equal access to governmental positions is granted on the basis of competitions, which include a series of consecutive phases: the publication of the announcement of the competition in the Kazakh and the Russian languages, an examination with regard to knowledge of the legislation of the Republic of Kazakhstan in either the Russian or in the Kazakh languages, and an individual interview.

In conformity with the provision of Article 12 of the Law On Governmental Service, no restrictions are permitted for employment in governmental service with regard to gender, race, nationality, language, social origin, property status, place of residence, attitude to religion, beliefs, membership in public unions, or any other circumstances.

The main condition for employment and realization of governmental service by citizens of the Republic of Kazakhstan is their compliance to the Standard Qualifying Requirements for offices approved by the order of the Chairman of Agency of the Republic of Kazakhstan for governmental service.

It should be noted that on August 20, 2004, during the 65<sup>th</sup> session of the UN Committee on the Elimination of All Forms of Racial Discrimination, a report by the Republic of Kazakhstan on implementation of the International Convention on the Elimination of All Forms of Racial Discrimination was discussed with the participation of a Kazakhstan delegation. In whole, the UN Committee positively evaluated Kazakhstan’s report. Experts of the UN Committee emphasized that

necessary conditions for the peaceful co-existence of various ethnic groups and religious have been created in Kazakhstan.

The joint fourth and fifth regular reports on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination by the Republic of Kazakhstan were approved by the Enactment of the Government of RK of July 17, 2008 No. 701 and through the Ministry of the Interior were sent for consideration by the UN Committee on the Elimination of All Forms of Racial Discrimination.

Thus, in the Republic, all necessary conditions have been created to satisfy the needs of representatives of all national minorities and to balance interethnic relations. Measures for the protection of civil, political, economic, social and cultural rights of the national minorities of Kazakhstan comply with the standards of the UN Declaration on the Rights of Persons Belonging to National, Ethnic, Religious, or Linguistic Minorities, and the CIS Convention concerning the Rights of Persons Belonging to National Minorities.

**With the purpose of securing the rights of national minorities guaranteed by the Constitution of the Republic of Kazakhstan and international legislation, we recommend that the Government of the Republic of Kazakhstan implement the following activities into practice during the years 2010-2012:**

1. In an effort to implement the requirements of Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, adopt the special Law of RK “On Counteraction of Racial (National) Discrimination,” or legislatively determine the administrative and criminal liability of individuals promoting racial (national) or ethnic superiority or displaying racial discrimination against other individuals.

2. In 2012, ratify the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

3. Consider the possibility of including the history and culture of national minorities in the list of compulsory disciplines in the curriculum of secondary public schools.

4. Ratify the CIS Convention concerning the Rights of Persons Belonging to National Minorities of October 21, 1994.

### **Legal Education of the Population**

The effectiveness of governmental rights protection mechanisms directly depends on the level of public legal awareness and legal education of the population of the country.

The objective of legal education is to educate a free personality who is conscious of his/her legal interests and is able to require the firm political and legal guarantee of their realization. Only in this case is it possible to achieve a sustainable receptiveness of the law-enforcement system of the country to public

needs, the responsiveness and rationality of all its levels. The active position of the individual is manifested not so much during periods of election campaigns as in everyday life when in various situations an individual faces a choice of behavior and methods of solution of problems that have arisen.

In conditions of a low legal awareness, a favorable environment for corruption violations and crimes is created.

Activity in the sphere of formation of higher legal awareness should take place in two directions, oriented toward the improvement of the quality of education of professional lawyers and the legal education of employees of governmental agencies, and the legal education of the population.

It is necessary to admit that the general increase of the number of institutions and faculties of law, which often do not have adequate teaching staff and relevant training of logistics specialists, has resulted in the oversaturation of the market of legal services with unqualified specialists and a general worsening of quality of legal service of the population.

An important form of implementation of legal policy in the field of human rights is the organization of the education of lawyers who will staff new formations for the protection of human rights and freedoms of citizens. This course is promising, since it aims at the personal capacity of legal policy in the aspect of its formation.

The given course for the improvement of the effectiveness of judicial and law-enforcement activities is the basis of a Concept of Reformation of Higher Legal Education in the country, which should be approved by a Decree of the President of RK.

Governmental expenditures in the sphere of legal education should be sufficient and reasonable from the point of view of the government's interests and for the formation of civil society and the protection of the rights and freedoms of individuals. In other words, the structure for the education of lawyers should be scientifically based, justifiable, and predictable.

Special attention should be given to the quality of education of lawyers in institutes of higher education and colleges, and to the problems of licensing and certification of educational institutions, the establishment of courses for professional development, and the probation of young lawyers. It is advisable to introduce a compulsory probation of individuals who have obtained an advocacy license.

Today, many problems of the government and society in the legal sphere to a large extent can be explained by the lack of purposeful training of lawyers for the resolution of real-life problems.

It is extremely important to motivate institutions of higher education to train lawyers in particular specialties. Along with the objective of employment in law-enforcement agencies, it is also necessary to emphasize the education of legal specialists for advocacy, legal offices of governmental and commercial structures, banks, etc.

For instance, while there is general growth the number of lawyers being educated, there is no specialized training of military lawyers or prosecutors. For such legal specializations, there are no opportunities for continuous education, i.e. initial training, retraining, and professional development.

In an effort to raise the level of legal awareness, to improve the forms and methods of legal explanatory work, and to enhance the efficiency of legal education, “The Program for Legal Explanatory Work, Increase of Legal Awareness, Legal Education, and Training of Citizens for the years 2009-2011” was developed and approved by the Enactment of the Government of the Republic of Kazakhstan of November 29, 2008, No. 1116.

This program provides for the development of suggestions regarding amendments and additions to legislation regulating issues of legal explanatory work of governmental agencies and officials, development and implementation of rules for the procedure for legal education of the population, development and implementation of compulsory minimal legal education of certain categories of people, and other activities aimed at the cultivation of respect for human rights.

With the purpose of explanation of the legislation of the Republic of Kazakhstan, on November 27, 2008, the Cooperative Order of the Prosecutor General and the Ministry of Justice concerning interaction for the explanation of the legislation of the Republic of Kazakhstan was adopted.

In addition, briefings of mass media for explanation of current legislation and by-laws of the Republic of Kazakhstan are held. Thus, in 2008, briefings for explanation of the Law “On Amendments and Additions to Some Legislative Documents Concerning the State Registration of Legal Entities and Accounting Registration of Branches and Representative Offices” were held.

*A survey conducted by experts of the Association of Sociologists of Kazakhstan in the framework of the project “Human Rights in Kazakhstan: The General Opinion” revealed that 52.6% of respondents out of 1,500 believed that in Kazakhstan there is no information on human rights and opportunities to protect them. Only one third of respondents (30.7%) are satisfied with the information content on human rights and opportunities of their protection, while 16.7% of respondents found it difficult to answer. The results obtained allow the conclusion that there is a need for legal education of the population and creation of affordable centers of legal information. The Digital Library for human rights may become one such affordable information center for human rights.*

**On September 27, 2006, in Astana, the Digital Library of the Human Rights Commission under the President of the Republic of Kazakhstan was launched, which ensures free access to legal information for the population of Kazakhstan.** Support of the Digital library on the territory of the country is entrusted to the National Academic Library of the Republic of Kazakhstan (NAL RK). The documents of the library are accessible through <http://hrc.nabr.kz> in the Kazakh, Russian, French, and English languages.

The creation of the Digital Library is a part of the preparation of the National Human Rights Action Plan. It was created jointly with the UNDP in

Kazakhstan, the UNESCO Cluster Office in Almaty, and the Human Rights Commission under the President of the Republic of Kazakhstan.

**It should be noted that the digital library of the Human Rights Commission is an innovative step by the Baltic countries, Eastern Europe, the CIS, and Central Asia towards the improvement of access to legal information and education in the field of human rights for everybody by means of open public services.**

Important characteristics of the digital library are: many languages, usability, and volume (more than 1000 documents chosen on the basis of complaints of the population to the Human Rights Commission Secretariat with regard to violations of human rights).

The foremost target group is rural communities and the most vulnerable sections of the population – the disabled, pensioners, women, children, the poor, and those groups of the population that do not have the access to legal information. For this purpose, there is a “How to” section of the library which includes over 70 conceptual categories systematizing human rights knowledge. Each of the categories includes frequently asked questions.

The Digital Library can greatly increase the human rights awareness of the population and become an effective educational tool.

The open-source software Greenstone, developed by the University of Waikato, New Zealand, was provided to UNESCO <http://www.greenstone.org>.

There are two possible modes of access to the digital library:

- On the Internet – online,
- Offline – at a local computer or through a local computer network.

The Digital Library does not require professional skills in the field of information technologies and has built-in open-source mapping and development tools.

On a vast territory with a small population, information and communication technologies are the most effective way of dissemination of information.

The digital library is distributed in district, regional, and village libraries by means of the library network of the Ministry of Culture and Information by the National Academic Library of the Republic of Kazakhstan. It is also a center for free access to legal information, ensuring the updating and support of the digital library on its server.

By now, the Human Rights Digital Library of the Akimat and Maslikhat of Almaty has been successfully launched with the support of the Human Rights Commission, the UNDP, and the UNESCO Cluster Office in Almaty.

**With the purpose of increasing the awareness of the population of their rights and duties as well as the level of legal awareness and education of the population, we recommend that the Government of the Republic of Kazakhstan and the Akimats of districts and the city of Astana to implement the following activities during the years 2009-2012:**

1. Develop and adopt the Concept of Reformation and Improvement of Higher Legal Education in Kazakhstan.

2. Develop the schoolbook “Human Rights in Kazakhstan” in the state and Russian languages for secondary public schools, colleges, and institutes of higher education.

3. Regularly highlight in mass media the essential issues concerning the protection of human rights, and publish booklets on human rights in case of detention, arrest, conclusion of agreements, entrance to institutes of higher education, employment, dismissal, etc.

4. Regularly hold “round tables” with authorized governmental authorities and courses on the subject “Legal Education as an Obstacle to Corruption,” highlighted in mass media.

5. Regularly hold seminars and training in the field of human rights for criminal prosecution employees as well as for other governmental agencies.

6. Amend the Program “The Program for Expository Work, Increase of Legal Awareness, Legal Education and Training of Citizens for the year 2009-2011,” approved by the enactment of the Government of RK of November 29, 2008 No. 1116, to include measures aimed at the information and technical support of the function of the Digital Library of the Human Rights Commission.

7. We recommend that the Ministry of Culture and Information assist in the establishment of data receiving centers of the Digital Library in all cities, regions, and rural localities by means of the library network of the country.

8. We recommend that the Ministry of Justice jointly with the National Academic Library ensure the continuous updating of the Digital Library database, located on the web-site of the National Academic Library RK: <http://hrc.nabrk.kz> with legislation by thematical division or title, in the state and Russian languages.

9. We recommend that the Ministry of Culture and Information jointly with the Human Rights Commission under the President of the Republic of Kazakhstan continue the work on dissemination of the Digital Library of the Human Rights Commission under the President RK in all regions of the country.

10. We recommend that the Akimats of districts and the city of Astana take necessary actions on creation and launching of a regional Digital Library in the following order:

No.	Action	Deadline	Executors
1.	To create and launch the Digital Library on Human Rights of the Akimat and Maslikhat of the Southern Kazakhstan and Eastern Kazakhstan regions and the city of Astana	2 <sup>nd</sup> – 4 <sup>th</sup> quarter of 2009	Akimats of SKA, EKA, Astana city, MCI RK, Human Rights Commission, UNDP, UNESCO Cluster Office in Almaty (per agreement).
2.	To create and launch the Digital Library on Human Rights of the Akimat and Maslikhat of the Almaty, Zhambyl, Karaganda, and Pavlodar regions	2010	Akimats of Almaty, Zhambyl, Karaganda, and Pavlodar regions, MCI RK, Human Rights Commission, UNDP,

			UNESCO Cluster Office in Almaty (per agreement).
3	To create and launch the Digital Library on Human Rights in the Northern Kazakhstan, Kyzylorda, Aktyube, Akmola, and Kostanay regions	2011	Akimats of Northern Kazakhstan, Kyzylorda, Aktyube, Akmola, and Kostanay regions, MCI RK, Human Rights Commission, UNDP, UNESCO Cluster Office in Almaty (per agreement).
4	To create and launch the Digital Library on Human Rights in the Atyrau, Western Kazakhstan, and Mangistau regions	2012	Akimats of Atyrau, Western Kazakhstan, and Mangistau regions, MCI RK, Human Rights Commission, UNDP, UNESCO Cluster Office in Almaty (per agreement).

### **Rights of Individuals in Socially Protected Sections of the Population to the Receipt of Free Qualified Legal Assistance**

When discussing the problem of the ineffectiveness of the judiciary system, the mass media and the public usually name such reasons as corruption, insufficient financing of courts, imperfection of legislation, and others. At the same time, they forget that one of the aspects of this problem is the fact that not all citizens have the possibility to protect their rights in the court or to go to court. Rarely do pensioners win legal trials on housing disputes and claims of incorrect computation of pensions. These are the most complicated disputes, which require a qualified lawyer during the course of filing of a statement of claim and during the process itself. However, such lawyers are not affordable for the majority of the population, and there is no the system for the provision of free legal assistance in civil cases as stipulated by Paragraph 3 of Article 13 of the Constitution of the Republic of Kazakhstan; and although there are legislation and institutes for the securing of the human right to qualified legal assistance, there is no mechanism for its implementation.

To implement this constitutional provision, it is necessary to adopt an individual Law “On Provision of Free Qualified Legal Assistance” which would establish certain standards with regard to the allocation of budgetary funds to the advocates, since currently, legal assistance is not reimbursed on time due to the imperfection of the legislation.

It is necessary to give attention to the provision of free qualified legal assistance to needy citizens, and first of all in rural localities. This was stated by the President of the Republic of Kazakhstan at the 4<sup>th</sup> Congress of Judges. In this

regard, it is necessary to support the idea of the creation of Centers for Legal Consultations (CLC) in all regions and the cities of Astana and Almaty. This will not require the adoption of a special law. Its implementation is possible with an enactment of the Government of the Republic of Kazakhstan. Resolution of this problem is the responsibility of the Committee of Registration Service and Legal Assistance to the Population of the Ministry of Justice of the Republic of Kazakhstan, since according to the Provision it is in charge of implementation and supervision in the field of the organization and provision of legal assistance to the population. So, it is possible to indicate in the Provision that the main function of the Center is the provision of qualified legal assistance to the population by advocates working for legal consulting offices of the region (city) or district, and to stipulate that the government, per agreement, should pay for free legal assistance, transferring the sum from the government budget to the legal consulting offices which would account for the allocated money.

*In addition, based upon the experience of Lithuania in the provision of the legal assistance to needy citizens, we recommend that the Government of the Republic of Kazakhstan establish special departments for free legal assistance in the departments of justice of the districts and cities of Astana and Almaty, which would conclude agreements with the advocates for the provision of free legal assistance to socially vulnerable sections of the population. It is necessary to stipulate the budget financing of free qualified legal assistance, the procedure for the provision of legal assistance to socially vulnerable sections of the population, and the monitoring of the provided assistance in the Law “On Provision of Free Qualified Legal Assistance.”*

### **The Improvement of the Status of Lawyers**

Bringing legislation regarding the practice of law into harmony with international standards requires that everyone is in agreement that the activity of lawyers is considered as qualified legal assistance provided on a professional basis by individuals having received the status of lawyer according to the procedure established by law, provided to physical and legal entities with the purpose of protection of their rights, freedoms, and interests as well as the provision of access to justice. The bar is a professional community of lawyers, and as an institution of civil society does not belong to the system of governmental authorities and management. It operates on the principles of legality, independence, self-government, corporatism, and equal rights.

Unfortunately, the legal status of lawyers has almost not changed at all since the time of the former Soviet Union. Until now, lawyers are not able to collect evidence in criminal cases, and their petitions and complains are often ignored by agencies of investigation and prosecution and by the courts. The general accusatory trend prevailing in the activity of the court in most cases turns the efforts of lawyers to protect the rights of their clients and principals into a senseless waste of time.

In this regard, it is necessary to raise the legal status of lawyers by taking the following measures:

Legislatively prohibit the criminal, civil and administrative prosecution of lawyers for actions taken by them during the course of their professional work on certain cases.

Legislatively prohibit investigation with regard to lawyers concerning their fulfillment of professional duties as well as the confidential cooperation of lawyers with agencies involved in investigation.

Impose a ban on the violation of the inviolability of correspondence, documentation, telephone conversations, offices, and homes of lawyers.

Legislatively cancel the ban on the participation of lawyers not having so-called "special permits" from agencies of national security in cases related to government secrets, as this restricts the constitutional right of citizens to protection.

Establish a special procedure for the filing of a criminal case against lawyers providing additional guarantees against pressure and illegal prosecution.

Provide lawyers with free access to the facilities of law-enforcement agencies and courts, during the course of their professional work, and revoke bureaucratic restrictions.

With the objective of improvement of legal assistance at the expense of the government budget, organize the direct financing of such assistance by means of a single authorized agency, the the Ministry of Justice, and revoke the transfer of money to lawyers by agencies of criminal prosecution and the courts.

It should be noted that presently, there are not lawyers to ensure legal assistance in court. In order to increase the number of lawyers and improve their status, it is necessary to revoke the licensing of lawyers by a governmental agency and to entrust the issue of qualification of lawyers to a board of experts of the bar association, which would comply with international norms and standards.

**In an effort to secure the rights of individuals in socially protected sections of the population to the receipt of free qualified legal assistance, we recommend the Government of RK implement the following measures during the years 2009-2012:**

1. Secure the right of each individual to the receipt of free qualified legal assistance regardless of the nationality of the individual that needs such assistance.

2. Based on the principles of humanism, competitiveness of parties, and presumption of innocence, legal assistance in criminal and administrative cases should be provided freely to any individual who petitioned for it. We believe that in civil cases, it is necessary to provide free legal assistance of a certain extent to definite categories of people such as the disabled, needy, pensioners, mothers of many children, and single mothers, and also to determine the types of civil cases for which it would be possible to provide legal assistance at the expense of the budget, for instance, disputes with governmental agencies, labor disputes, etc.

3. Develop and adopt the Law of RK “On Provision of Free Qualified Legal Assistance” before October 1, 2011; the developer of the draft law should be the Ministry of Justice of the Republic of Kazakhstan.

### **Human Rights in the Stage of Preliminary Investigation and Inquest**

A review of supervisory activities and law-enforcement practices including issues regarding complaints of illegal actions by employees of law-enforcement agencies shows that until now, violations of the constitutional rights of citizens are widespread, such as: illegal detention, unwarrantable entry and search of homes, and unlawful methods of investigation such as the use of violence and other degrading treatments.

As was mentioned earlier, the existing violations are the result of a poor system for the assessment of the activities of law-enforcement agencies.

Other important factors are the issue of selection and placement of personnel and the insufficient logistical support of criminal prosecution agencies.

Experience shows that often, violation of the constitutional rights of citizens is permitted due to the inadequate fulfillment of job responsibilities, a low level of professional training of officers of criminal investigation, and sometimes their lack of elementary knowledge of criminal procedural legislation and international legislation ratified by Kazakhstan.

These disadvantages lead to so-called “procedural oversimplification”: collection of evidence for criminal cases is not handled properly and investigation is surrounded by red tape, which results in illegal procedural decisions and as a result, violation of the rights of citizens involved in a criminal case.

It is necessary to develop and implement an effective system of professional development of law-enforcement employees, the priorities of which will be professionalism, compliance with law, and a feeling of obligation and responsibility to citizens and the government.

The supervision of the public prosecutor over the observance of the constitutional rights of an individual begins at the moment when a citizen and agencies of criminal prosecution enter into a relationship, i.e. from the moment when these agencies receive information regarding crime that is intended, is being committed, or has been committed, or the moment when a charge by an individual has been filed.

Experience shows that violations of citizens’ rights in the sphere of criminal investigation are mainly related to the infringement of constitutionally provided guaranties such as the inviolability of private life, privacy of correspondence, telephone conversations, telegraphic communications, and post, as well as the right to inviolability of the home.

In this regard, prosecution agencies act as the only authority, which, in accordance with Article 83 of the Constitution, ensures the supervision of the

observance of the rights and freedoms of citizens by law-enforcement agencies during the course of criminal investigation.

Due to the uniqueness of criminal investigation activity, existing methods for monitoring the observance of human and civil rights are not always applicable, and governmental control is limited by departmental control. The issue of protection of citizens' rights is also problematic due to the lack of opportunities and the right to access to the records of investigation departments.

An effective way to suppress and prevent violations of the right to personal freedom is regular inspections carried out by public prosecutors and the Human Rights Commission of the legitimacy of detention of individuals and their stay in temporary jails or official buildings. Such inspections are carried out unexpectedly, including during the night, on holidays, and on weekends.

As a result, in recent years, instances of the illegal detention of citizens on the basis of Article 132 of CCP RK have been reduced in the country. On the other hand, more instances have been uncovered of the illegal arrest of individuals and their detainment in official buildings, including offices, basements, and gymnasiums.

In 2008, public prosecutors have released 850 individuals who were illegally arrested and detained in official buildings of the criminal investigation authorities. 44 criminal cases were filed with regard to instances of violation of the constitutional rights of citizens, and 24 of them were brought to suit.

As a result of 39,255 inspections done during the last period, 1,317 individuals were released from temporary jails due to the absence of reasons for application of such restraint, 31 were released due to the unconfirmed suspicion of committing a crime, and 17 were released due to the violation of provisions of the Code of Criminal Procedure during the course of arrest.

The statistics regarding crime detection (detection of the crimes stipulated by Article 347-1 of the criminal Code of RK) prove that there is an urgent need to implement the recommendations of the UN Committee against Torture in legislation and law-enforcement practice.

Presently, the majority of the recommendations of the Committee are not yet implemented:

- There is no efficient mechanism for the swift, impartial, and complete investigation of claims or complaints of torture and cruel treatment;
- In practice, the complete observance of the principle of inadmissibility of evidence obtained by application of torture and cruel treatment is not guaranteed;
- There is no independent inspection of places of preliminary imprisonment and no judicial control of the duration and conditions of preliminary imprisonment;
- Recommendations of the UN Committee against Torture are not publicized.

In whole, the review of the situation in the field of preliminary investigation and inquest reveals that there is a need for further improvement of legislation and law-enforcement practices with the objective of the enhancement of security of the

rights and freedoms of an individual and citizen who came to be involved in criminal legal proceedings.

It is necessary to specify in detail the actions of investigators and operating officers during the course of the detention of individuals suspected of a crime, their delivery to the agencies of internal affairs (National Security Committee, financial police, etc.), imprisonment in a temporary jail, and initial questioning. It is necessary to establish stricter requirements and intensify the responsibility of individuals carrying on a criminal lawsuit regarding timely explanation to the suspected (accused) of his procedural rights including the right to the receipt of qualified legal assistance and the information of relatives of the fact of detention (arrest).

In order to prevent abuse and exceeding the bounds of authority during the course of preliminary investigation and inquest, it is necessary to legislatively establish the right of the arrested, suspected, or accused individual to an independent medical examination.

It is necessary to take all required procedural actions for the effective protection of the rights of victims and witnesses of crimes.

*The survey conducted by experts from the Association of Sociologists of Kazakhstan revealed that 38.4% of respondents negatively evaluated the governmental mechanism for the protection of the rights of crime victims and 18.0% of respondents found it difficult to answer the question: "How do you evaluate the situation in the sphere of protection of the rights of crime victims?." The given results of the sociological survey allow the conclusion that there is a need for improvement of the mechanism for protection not only of crime victims, but also of witnesses.*

It is necessary to elaborate a governmental program for the implementation of the Law of RK "On the Governmental Protection of Individuals Involved in Criminal Procedure" which would stipulate financial and organizational provisions and effective mechanisms for their implementation.

It is necessary to intensify the liability of officials for illegal detention of individuals outside temporary jails, in offices and other inadequate facilities. Temporary jails should be handed over to the jurisdiction of the Ministry of Justice of RK.

**In an effort to secure the human rights guaranteed by the Constitution of the Republic of Kazakhstan and international legislation, we recommend that the Government of the Republic of Kazakhstan implement the following measures during the period of 2009-2012:**

1. It is necessary to clearly define in criminal procedure legislation the concepts of "arrest of suspect" and "the moment of actual arrest," because the three-hour period of arrest stipulated by Article 134 of CCP RK starts from the moment of actual arrest, during which period the protocol must be filed that indicates the reasons and motives for arrest, place and time of arrest (indicating exact hour and minute), results of personal search, and the time of the drawing up of the protocol.

2. Criminal procedure legislation of the country should be supplemented with provisions obliging the employee of a law-enforcement agency who made the actual arrest of the individual to inform him/her without delay, at the minimum, regarding the following:

- Reason for arrest;
- Classification of the crime of which he /she is suspected or accused;
- The right to a lawyer (defense) of choice including the right to free legal assistance and a confidential meeting with the lawyer before the first questioning;
- The right to keep silence (the right not to testify against oneself);
- The right to judicial appeal of arrest;
- The right to the immediate information of relatives about the arrest.

It is necessary to specify in criminal procedure legislation that failure to inform the individual of the above-mentioned rights is a violation of the procedural rights of the suspected or accused individual that can afterwards lead to the termination of prosecution of the individual.

3. We recommend that the authorities carrying on criminal lawsuits guarantee the observance of the principle of presumption of innocence.

4. Hand over temporary jails, which are currently under the authority of the Ministry of the Interior, to the jurisdiction of the Ministry of Justice, and to empower public watch commissions to inspect these jails without prior warning.

5. Oblige the management of investigative jails to release the accused upon the expiration of the established time in the absence of judicial notification regarding the prolongation of arrest. In case such a notification has been received, a copy of it must be immediately given to the suspected or accused individual.

6. There is urgent need for the Ministry of the Interior and other authorities involved in inquest, investigation, and arrest to adopt a Code of Conduct of their employees that would be a code of rules for their professional ethics. In Europe, there exists such a Code of Conduct of policemen, adopted in 1976.

### **The Right to Freedom from Torture and Other Cruel or Degrading Treatment or Punishment**

Since the date of its independence, the Republic of Kazakhstan has taken a number of systematic measures in the field of combat against torture and other cruel treatment and punishment.

These measures were implemented both in legislation and the institutional and practical fields.

Thus, in the sphere of **legislative reform**, it should be noted that on June 29, 1998, the Republic of Kazakhstan ratified the UN Convention against Torture and other Cruel, Inhuman, or Degrading forms of Treatment or Punishment (further referred to as “the Convention against Torture”).

On March 30, 1999, the Law of the Republic of Kazakhstan “On the Procedure for and Conditions of Custody of Individuals Suspected and Accused of Crimes” was adopted, which stipulated a number of guarantees of the rights of the arrested individual, including the right to protection against torture.

On December 21, 2002, some amendments and additions were made to the Criminal Code, the Code of Criminal Procedure, and the Criminal Executive Code of the Republic of Kazakhstan. Thus, to the Criminal Code of RK was added Article 347-1 stipulating criminal liability for application of torture. Criminal procedure legislation was supplemented with a provision stipulating the inadmissibility of evidence obtained by the application of torture.

On November 21, 2005, the International Covenant on Civil and Political Rights was ratified.

In 2008, the Optional Protocol to the Convention against Torture was ratified and statements were made as to Articles 21 and 22 of the Convention against Torture.

On July 10, 2008, the Supreme Court of RK made a statutory decision on the application of the provisions of international treaties in judicial practice.

On February 11, 2009 Kazakhstan ratified the Optional Protocol to the International Covenant on Civil and Political Rights, which allows citizens to lodge individual complaints with the UN Human Rights Commission.

**In the field of institutional reforms:**

On September 19, 2002, the position of the Human Rights Commissioner (Ombudsman) of RK was instituted by the Decree of the President of RK.

In the years 2001-2002, it was decided to transfer the penal system and the system of preliminary imprisonment (investigative jail) from the jurisdiction of the Ministry of the Interior to the jurisdiction of the Ministry of Justice, and the implementation of this decision began on January 1, 2003. However, this reform has not been completed, since the temporary jails remain under the jurisdiction of the Ministry of the Interior, and the investigative jails of the National Security Committee still have not been transferred to the jurisdiction of the Ministry of Justice.

On January 16, 2006, jury legislation was adopted, which became an important step towards the improvement of the justice system.

In addition, positive steps include:

- Creation of the system of public watch commissions in the years 2004-2005 which would inspect places of custody.

On December 29, 2004, the Law of the Republic of Kazakhstan “On Amendments and Additions to Some Legislative Documents of the Republic of Kazakhstan with Regard to Agencies of Justice” (further referred to as “the Law”) was signed, which stipulates the arrangement for public control of the observance of the rights, freedoms and legitimate interests of individuals retained in institutions and agencies for criminal penalty.

Public control is realized by public associations in an effort to assist individuals in correctional institutions and investigative jails regarding exercising

their rights and legitimate interests as to the conditions of their custody, medical and sanitary provisions, labor organization, spare time, and training as stipulated by the legislation of the Republic of Kazakhstan.

The Enactment of the Government of the Republic of Kazakhstan of September 16, 2005 ratified the Rules of establishment of district (cities of state importance) public watch commissions for public control.

In addition, in pursuance of Paragraph 11 of the Development Program of the Criminal Executive System (CES), the Committee of the Criminal Executive System of the Ministry of Justice of the Republic of Kazakhstan has developed and sent to all public watch commissions the Recommendations on Control of Observance of the Rights and Legitimate Interests of Suspected, Accused, and Convicted Individuals.

Public watch commissions (PWC) were established in almost all regions of the country and include representatives of law-enforcement organizations.

However, the status and activity of these commissions are not stipulated in the law, and they have no right to the unexpected access to institutions of confinement.

- Creation of the work group for prevention of torture under the Human Rights Commissioner of RK (Ombudsman) with the participation of representatives of law-enforcement organizations. The functions of this group include visits to places custody and the preparation of recommendations on the model and procedure of establishment of national preventive mechanisms. In October 2008, the work group made the first visit to custody institutions;

- Creation of the public council under the Ministry of the Interior and implementation of the pilot project in Almaty in 2008 for the establishment of a monitoring group of representatives of human rights NGOs for monitoring of observance of the rights of arrested individuals. This group has the right to unexpected visits of police stations and temporary jails that are under the jurisdiction of the Ministry of the Interior. The project is being implemented upon the initiative of the Ministry of the Interior and will be expanded to other regions of Kazakhstan.

Despite these positive steps, the situation in whole causes serious concerns due to the scope of illegal methods of inquest and investigation including torture and other cruel treatment, and due to the inefficiency of the fight against them.

So, in 2001, Kazakhstan presented its initial report on the fulfillment of the Convention against Torture. At the same time, the human rights non-governmental organizations of Kazakhstan presented an alternative report on the fulfillment of this Convention. On the basis of the results of the consideration of the official report of the Government of Kazakhstan and considering the provisions and recommendations of the alternative report, the UN Committee against Torture made 16 recommendations. According to information from the non-governmental organizations of Kazakhstan, by 2008, the Government has implemented only 5 of the recommendations.

The existing problems can be divided into two groups.

### **1. Legislative problems.**

Despite the inclusion of Article 347-1 into the Criminal Code of RK in 2002, which defines such crimes as “torture,” the definition given in this article does not fully comply with the definition contained in Article 1 of the Convention against Torture. There is no provision in this article according to which the role of officials in torture can be, not only active actions, but also instigation, tacit consent, or deliberate inaction. In addition, this article is not applied in practice, since during all the years since its consummation only few criminal suits were brought to court on the basis of this article.

No other legislative actions for combat against torture have been taken except for this article, the provision in the criminal procedure legislation regarding the fact that evidence obtained by means of torture is inadmissible, and the poorly defined statutory decision of the Supreme Court of RK on the application of the standards of international covenants. No other legislative provisions have come into force with regard to independent agencies for investigation of torture reports, no procedural provisions related to the effective investigation of reports of torture, etc.

Moreover, important documents such as the Rules of Custody of Individuals in Investigative Jails of National Security have the stamp on them “for service use,” i.e. it is closed for publicity. This is violation of the Constitution of RK, which prohibits the application of unpublished legislation related to human rights and freedoms.

### **2. Institutional problems.**

Despite the recommendations of the UN Committee against Torture, no significant institutional improvements have been made.

No independent agencies for the effective investigation of reports of torture have been established. The creation of the Office for Proper Security under the Ministry of the Interior, intended for the investigation of reports of torture did not change the situation, for the obvious reason of interdepartmental privacy.

Moreover, despite the transfer of the system of investigative jails of the Ministry of the Interior to the jurisdiction of the Ministry of Justice, the investigative jails of the national security have remained under the jurisdiction of the National Security Committee of RK.

The position of the Human Rights Commissioner (Ombudsman) instituted in 2002 does not comply with the Paris Principles related to the status of national human rights institutions, since it was established by means of by-law and not by Law, and is restricted in competence and powers.

According to the international standards determined by the UN and the recommendations of the OSCE, the activity of the Ombudsman should comply with the Paris Principles, which establish general criteria of independence and efficiency of function of the national human rights institution. National institutions

established in nonconformity with the Paris Principles are considered dependent and do not enjoy the confidence of the international community.

In this regard, the institution of Ombudsman should be established in compliance with the Constitution or individual **Law**, i.e. it should be independent, with clearly determined jurisdiction and powers. However, the assignment of Ombudsman should be realized according to the Law with the participation of the Parliament of the country. The current legislation of Kazakhstan ensures the equal participation of the President and the Parliament in the assignment of the Human Rights Commissioner without alteration of the Constitution and allows the adoption of a Law on the Ombudsman. For instance, the candidacy of the Human Rights Commissioner (Ombudsman) could be proposed by the President of the country and be approved by the Majilis of the Parliament or the Parliament as a whole, which would comply with the commonly acknowledged UN Paris Principles and OSCE recommendations.

The necessity to adopt the Law of RK “On the Human Rights Commissioner in the Republic of Kazakhstan” has been repeatedly emphasized in the final documents of the international conferences on human rights held by the Human Rights Commission under the President of the Republic of Kazakhstan jointly with international organizations and brought to the attention of the authorized governmental agencies.

Presently, in view of the forthcoming chairmanship of the Republic of Kazakhstan of the OSCE in 2010, there is an urgent need for the development and adoption of the Law of RK “On the Human Rights Commissioner in the Republic of Kazakhstan.”

Adoption of such a Law would allow the improvement of the status of Kazakhstan’s Ombudsman in harmony with international standards, and he, as an “advocate of the people” would protect the violated rights of certain individuals who believe they are victims of the unfair actions of governmental authorities and their officials or other organizations. It would also prevent the criticism of Kazakhstan’ Ombudsman institution by international and human rights organizations.

Offices for Proper Security, which investigate reports of torture, working under agencies of the Interior, and prosecution offices, which sanction the investigation and prosecute in court, are interrelated agencies in regard to privacy and their functions, which structure does not allow independent and effective investigation of reports of torture. In addition, there are no independent medical services for the independent examination of victims of torture, and medical and sanitary stations at institutions of confinement and preliminary custody belong to the penal system and agencies of the Interior.

In November 2008, the UN Committee against Torture considered the second report of the Republic of Kazakhstan on fulfillment of the UN Convention against Torture. The non-governmental human rights organizations of Kazakhstan submitted their alternative report.

The Final Remarks of the UN Committee against Torture on the results of consideration of the second report of the Republic of Kazakhstan with due account to the alternative report contain more than 20 recommendations related to the legislative, institutional, and procedural aspects of prevention and effective combat of torture:

- Openly and explicitly denounce torture in all its forms by addressing such denunciations first of all to the employees of police and prisons, and clearly warn that any individual committing such actions or otherwise participating in torture will be held personally liable for such actions and will be punished in criminal procedure in proportion to the weight of the crime;

- Bring the definition of torture into full conformity with Article 1 of the Convention against Torture, so that all officials would be subject to criminal prosecution on the basis of Article 347-1 of the Criminal Code, and differentiate between torture carried out by the official, by his instigation, with his knowledge or tacit consent, or by any other person acting as an official;

- Make an amendment in the first part of Article 347-1 of the Criminal Code so that all punishment for acts of torture would be in proportion to the weight of crime in line with the requirements of the Convention. Individuals suspected of torture should without fail be dismissed or transferred to other position until the end of the investigation and individuals given disciplinary punishment should not be allowed to remain in their positions;

- Ensure the prosecution of all acts of torture on the basis of the corresponding article of the Criminal Code and avoid the classification of such as crimes of small or medium weight. Ensure appropriate sentences and compulsory continual training of all judges, prosecutors, and lawyers for the sake of observance of new laws and amendments;

- Take actions to practically ensure the timely, impartial, and effective investigation of all statements with regard to torture and maltreatment, and the criminal prosecution and punishment of guilty individuals, including employees of law-enforcement agencies and other individuals; however, such investigations should be done by an absolutely independent agency;

- Take timely effective actions so that an individual would not be arrested privately and so that all arrested suspected individuals would be provided with all principal legal guarantees during the entire time of their custody. Such actions in particular include: starting from the actual moment of custodial restraint – the right to access to a lawyer, the right to an independent medical examination, the right to inform relatives, and the right to be informed of one's rights at the moment of arrest including information with regard to the accusations as well as the right to appear before the court in a timely manner. All arrested individuals should be guaranteed the right to effectively and quickly dispute the lawfulness of their arrest on the basis of *Habeas Corpus*;

- Make an amendment to the Code of Criminal Procedure of RK to ensure that no exceptional circumstances could be used to deny an arrested individual the right to inform his relatives of his location;

- Ensure the publication of all rules and guidelines related to the custody, arrest, and questioning of individuals undergoing any kind of arrest or detention, and from the moment of arrest, ensure that every arrested individual is able to exercise his right to access to a lawyer, to an independent doctor, to relatives, and to other legal guarantees in order to provide effective protection against torture;

- Ensure the training of employees of law-enforcement agencies with a view toward their professional development for work with teenagers. Ensure that custodial restraint including detention until court proceedings will be as short as possible, and develop and use alternative measures to custodial restraint;

- Change the system of interrogation of investigators to remove any incentive to the receipt of recognition and take additional measures to familiarize employees of police with human rights;

- Adopt legislation regulating the procedure for deportation, return, and extradition that would fulfill the obligations stipulated in Article 3 of the Convention against Torture. Ensure that the provisions of the Convention would have priority over any other less comprehensive bilateral or multilateral covenants on extradition and guarantee the opportunity of individuals who were refused refuge to appeal. Ensure complete fulfillment the obligations in Article 3 of the Convention in all cases of deportation, return, and extradition, ensure that no one will be deported, returned, or extradited if there are sound reasons to believe that he/she may be threatened with torture, and ensure that individuals whose petitions for refuge were refused will be able to lodge an appeal for suspension of the decision made;

- Approve a program for further development of the criminal and correctional system similar to the one that was being implemented during the years 2004-2006 in order to bring it into full conformity with the UN Standard Minimal Rules for the Treatment of Prisoners;

- Continue to train specialists of the penal system and ensure that all individuals having contact with prisoners are familiar with international standards in the field of human rights protection and treatment of prisoners;

- Reduce the number of prisoners at places of custody, including by means of construction of new penal institutions and the application of legal alternatives to imprisonment;

- Restrict the use of isolation as an extreme measure to the shortest possible period under strict supervision and with an opportunity to review the decision in a procedure for judicial review;

- Determine the causes impelling prisoners to commit such acts of despair as mutilation and secure proper measures of protection;

- Establish a health protection service that would be independent from the Ministry of the Interior and the Ministry of Justice for the medical examination of individuals at the moment of arrest and release, both regularly and by their request, and ensure that judges take into consideration evidence of application of torture and cruel treatment of prisoners and that they prescribe independent medical examination or send back cases for additional investigation;

- Ensure the timely, independent, and comprehensive investigation of all cases of death during custody and ensure the criminal prosecution of individuals who were found guilty in any such death as a result of torture, maltreatment, or willful negligence;

- Provide public watch commissions the unrestricted right to make inspections of all places of custody in the country without warning and ensure that arrested individuals who contact members of the commission will not be exposed to any forms of repression;

- As soon as possible, create or determine a national preventive mechanism in order to prevent torture, and take all necessary actions to ensure its independence in line with the provisions of the Optional Protocol of the Convention;

- Transform the position of the Human Rights Commission into a competent national law-enforcement institution that would act on the basis of the law adopted by the Parliament, having at its disposal adequate human, financial, and other resources in line with the Paris Principles.

In compliance with the above-stated recommendations given by the UN Committee against Torture, as well as due to the fact that the Republic of Kazakhstan must report on the fulfillment of the recommendations before the end of 2012 and submit a comprehensive report on implementation of the Convention against Torture in 2012, the National Human Rights Action Plan contains the following number of measures aimed at the improvement of legislation and law-enforcement practice in the sphere of protection against torture and other cruel treatment and punishment:

No.	Action	Deadline	Executors
1.	Prepare and adopt the enactment of the Government of RK on realization of the recommendations of the UN Committee against Torture	2 <sup>nd</sup> quarter of 2009	The Ministry of Justice
2.	Conduction of an international conference for discussion of the recommendations of the UN Committee against Torture on the basis of the results of consideration of the report of RK on the fulfillment of the Convention against Torture and of possible models of national torture preventive mechanisms, the creation of which during the year is stipulated by the Optional Protocol to the Convention	3 <sup>rd</sup> quarter of 2009	Human Rights Commission under the President of the Republic of Kazakhstan, Human Rights Commissioner in the Republic of Kazakhstan, The Ministry of Foreign Affairs of RK, with participation of human rights NGOs

	against Torture		
3.	Develop legislative suggestions on amendments and additions to the criminal legislation and legislation of criminal procedure of the Republic of Kazakhstan, including the adjustment of the definition “torture” to that of Article 1 of the Convention against Torture, the security of all rights of arrested individuals from the moment of detention, and the provision of effective means of legal protection of individuals who are threatened with deportation, expulsion, or extradition	2 <sup>nd</sup> quarter of 2010	The Ministry of Justice with the assistance of the Supreme Court and the Prosecutor General of RK
4.	Development of draft Law on establishment of a national mechanism for the prevention of torture	4 <sup>th</sup> quarter of 2009	The Ministry of Justice with the assistance of the Prosecutor General of RK, the Human Rights Commission and Human Rights Commissioner
5	Develop draft Law on the adjustment of the position of the Human Rights Commissioner (Ombudsman) to the Paris Principles with regard to national human rights institutions	4 <sup>th</sup> quarter of 2009	The Ministry of Justice
6.	Development of directive and procedural material for employees of law-enforcement agencies, employees of the penal system, and public monitors with regard to the activity of national mechanisms for the prevention of torture	4 <sup>th</sup> quarter of 2009	The Ministry of Justice with the assistance of the Ministry of the Interior of RK, the Prosecutor General of RK, the Agency of RK for Combat Against Economic and Corruption Crimes (financial police)
7.	Discussion of draft laws on establishment of a national mechanism for prevention of torture and adjustment of the position of the Human Rights	1 <sup>st</sup> quarter of 2009	The Ministry of Justice, The Ministry of Foreign Affairs, Human Rights Commission under the President of the

	Commissioner (Ombudsman) to the Paris Principles with regard to the national human rights institutions along with the conduction of round tables (conference)		Republic of Kazakhstan
8.	Establishment of national mechanism for prevention of torture in line with the obligations of the Republic of Kazakhstan in relation to the Optional Protocol of the Convention against Torture	2010	The Ministry of Justice
9.	Comprehensive training of employees of law-enforcement agencies, the penal system, office of public prosecutor, judicial agencies, and public monitors regarding international standards and torture protection procedures in the framework of the national mechanism for the prevention of torture	2009-2011	The Ministry of Justice, Human Rights Commission with the assistance of the MFA RK, UN Development Program in Kazakhstan (per agreement), the Center of OSCE in Astana (per agreement), the Office of UN Human Rights High Commissioner in Central Asia (per agreement).
10.	Conduction of a popular informational campaign for explanation of the procedure for establishment and principles of activity of the national mechanism for the prevention of torture	2009-2011	The Ministry of Justice, Human Rights Commission, Human Rights Commissioner with assistance of human rights NGOs

### **The Right to a Fair Trial**

The right to a fair trial is a combination of other individual rights, the security of which during the course of administration of justice makes it possible to determine whether the trial was fair or not. The right to a fair trial can be divided into three elements grouped by the rights consisted in it: 1) pretrial rights, 2) rights during the trial, 3) post-trial rights.

The right to a fair criminal trial arises from the moment of involvement of a given individual in a criminal procedure. Depending on the circumstances of the legal case, this moment may coincide with the moment of detention, arrest or arraignment. In this way, guarantees of a fair trial should be secured in the process of commencement of the criminal case, preliminary investigation and inquest, as

well as during the course of trial itself, including judicial actions with regard to possible appeal.

As is well known, **the right to a fair trial** is a fundamental human right. It is one of the common principles, which are cornerstones of the international rights protection system. Since the year 1948, the right to a fair trial, acknowledged by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), became a legal obligation of all countries as a part of common international law.

The right to a fair trial was acknowledged and specially stipulated by other numerous international and regional treaties and norms adopted by the UN and regional intergovernmental agencies. These standards for the protection of rights were developed so as to be applicable to all legal systems of the world with due consideration to the great variety of legal procedures: they contain the minimum guarantees which should be granted by all systems.

For instance, OSCE documents stipulate necessary conditions, which member countries should create in order to secure the right to a fair trial. Among them are: *independence of judges and impartial functioning of the governmental judicial service; judicial authorization of arrest or detention due to a charge of crime; fair and open investigation by a competent, independent, and impartial court established on the basis of the law; opportunity of the unimpeded receipt of qualified legal assistance including free assistance in case of insolvency of the prosecuted individual; presumption of innocence; supremacy of law and independence of the judicial system.*

In conformity with the Constitution of the Republic of Kazakhstan, only the court may exercise justice. The judicial system is comprised of the Supreme Court and local (district and regional) courts.

The judicial system is the central governmental mechanism for the protection of rights, the main governmental institution for restoration and protection of human rights that have been violated, and is independent from the legislative and executive branches of governmental authority.

Kazakhstan consistently takes measures to develop the judicial system, to enhance the efficiency and impartiality of the legal procedure, to ensure the maximum openness and transparency of judicial procedures, and to implement its goals with regard to the human rights, freedoms, and legitimate interests of its citizens.

In particular, the Constitutional Law of RK of November 17, 2008 “On Amendments and Additions to the Constitutional Law of RK ‘On the Judicial System and Status of Judges of the Republic of Kazakhstan’” significantly reformed the judicial system. Appeal authority is established at district courts and their equivalents. The highest judicial agency of the government, the Supreme Court of RK, will have only supervision authority. Specialized courts will act as military, financial, economic, administrative, juvenile, etc.

A draft law, intended for the amendment of provisions of the Code of Criminal Procedure and the Civil Code, is under consideration by the Majilis of

the Parliament of RK. These amendments are the result of reformation of the judicial system and a need to determine the jurisdiction of criminal and civil cases.

Social and economic conditions are changing, financial and industrial legislation is changing, and law-enforcement practice tests the efficiency of procedural legislation and reveals its defects, inefficiency, and gaps. The Republic is actively integrating into the world community, becoming a member of multilateral and bilateral international legal agreements.

**Moreover, positive trends in the development of the judicial system of the country are still far from perfection.**

An accusatory tendency continues to prevail in criminal investigation. Indirect proof of this is the extreme rarity of “not guilty” verdicts, and the cautious attitude of judicial employees to these instances.

There are cases of corruption and the violation of statutory requirements and the Code of Judicial Ethics in the judicial system.

The most important criterion used to assess fairness of a judicial hearing is the observance of the principle of equality of authority of the defense and the prosecution. The equality of authority during the course of the entire trial suggests the equal application of procedural actions toward the parties. It is impossible to list in detail all the violations of this principle. These violations may include failure to provide sufficient time to the accused individual and/or his lawyer for the preparation of his defense, or attempts to prevent the access of the accused individual and/or his lawyers to the appeal judicial hearing of the case in the presence of the prosecutor.

The legislation and law-enforcement practices of the Republic of Kazakhstan reveal that the equality of authority of the defense and the prosecution is not yet achieved.

Paragraph 1 of Article 14 of ICCPR also guarantees the right to require a public judicial hearing as the most important component of the concept of a fair trial. The principle of the publicity of a judicial trial suggests openness of both the judicial hearing (but in no way does it suggest the openness of any other judicial or investigative action) and the judgment on the given legal case. This right is enjoyed by both parties involved in the lawsuit and by the general public in a democratic society. The right to require a public judicial hearing means that the trial is carried out face-to-face and publicly without any preliminary applications submitted by the parties. The court must in a reasonable time inform the interested parties of the time and place of the judicial hearing and provide required facilities for the general public wishing to be present during the trial. However, it is necessary to mention that the press and the public may be excluded from a trial in harmony with the statutory requirements contained in Paragraph 1 of Article 14 of ICCPR; however, such actions should be based on a court decision delivered in compliance with the current procedural provisions.

The public may be excluded from a trial “*for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires.*” Besides, the public can be excluded from

all or part of a trial “*to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*” When considering criminal cases related to sexual offences, “reasons of morals,” as a rule, are sound reasons for the exclusion of the public from the trial. The term “public order” in this context is understood as the maintenance of proper order in the courtroom. Reasons of national security are used when it comes to the confidentiality of military and governmental secrets. However, in both cases, restriction of the access of the public to a trial should be in harmony with the legal principles of democratic society, which are the foundation for efforts for the non-admission of arbitrariness when making judicial decisions. “The interests of the private life” (including the interests of family members and relatives) of parties may also be sound reason to restrict the access to a trial. An example of such a situation is the hearing of a custody case when openness of the trial can only damage one of the parties. And finally, the access of the public to a trial can be restricted for the sake of justice, which is done only in exceptional cases and is thoroughly justified by a corresponding court decision.

Although the list of circumstances requiring a closed hearing is quite extensive, as a rule, they do not cover the stage of reading of the judicial decision. According to Paragraph 1 of Article 14 of ICCPR, judgment rendered in a criminal case “shall be made public” except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. In this way, exceptions to the rule of a public judicial hearing can be determined in detail. The judicial decision is public if it was read in the courtroom or published in press, or made public by both methods at the same time. In either case, the determining factor of openness is the accessibility of the judicial decision to all interested parties.

Basically, the legislation of Kazakhstan regarding observation of the principle of publicity conforms to the above-mentioned international standards.

However, it would be advisable to legislatively establish the openness of trials to representatives of the press, public, etc. in order to prevent the free interpretation of these principles of fair trial by judges.

As a rule, the mechanism for securing the right to a fair trial for any criminal case is the hearing by a competent, independent and impartial judge, acting in harmony with established legislation (Paragraph 1 of Article 14 of ICCPR). The goal of this provision is to avoid arbitrariness or subjectivism during the course of consideration of criminal cases by political or administrative agencies of authority. The court must be competent and act within the limits of the law. Both of these requirements are inseparably linked. Although issues regarding the competency of the court are usually linked to issues of court jurisdiction, any court must function within the limits of established legislation. The main goal of this provision is to create a legal environment in which criminal cases would be considered by legislatively established courts regardless of the nature of the lawsuit or offence.

Independence implies the division of authority and the protection of judicial agencies from illegal interference in their affairs by agencies of executive

authorities and to a lesser extent by the agencies of legislative governmental authorities.

Speaking of impartiality of the court, it should be noted that prejudice (or its absence) is considered the main criteria of impartiality of a judge. The impartiality of a judge immediately comes under doubt if he has already participated in the given trial in one capacity or another, if he belongs to any political party, or if he has a personal interest in the trial.

Theoretically, all these principles in a declarative sense are implemented in the legislation of the Republic of Kazakhstan.

According to Paragraph 2 of Article 14 of ICCPR, *“everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”* Being the main component of the right to a fair trial, the presumption of innocence means that the burden of proof in the course of criminal trial is first of all the responsibility of the accuser the accused person is presumed innocent. In addition, the presumption of innocence should be applied not only to the accused during the course of the trial, but also to the suspected or accused during the course of pre-trial investigation. Responsible officials of law-enforcement agencies and representatives of authorities are obligated to do everything possible to comply with the presumption of innocence by *“abstention from pronouncing any preliminary judgments on the trial under consideration.”*

Despite the fact that the principle of presumption of innocence is a provision of the Constitution of RK and criminal procedure legislation, it is often neglected in practice. It suffices to state that the judge hearing a criminal case familiarizes himself with the criminal records submitted by the prosecution before the trial. Despite the fact that criminal procedure legislation obliges the agency that carries out the preliminary investigation to search for both accusatory and excusing evidences with regard to the suspected or accused person, this is disregarded. In practice, agencies of inquest and investigation collect evidence of guilt, believing that the evidence of innocence or any other evidence in favor of the accused person will be collected by the defense. Thus, in the majority of cases, judicial records represent thoroughly collected evidence supporting the opinion of the prosecution and a guilty verdict. These records are submitted to the judge who, during the course of familiarization with them, is inevitably inclined to the opinion of prosecution. As a result, usually the defense cannot advance their opinion and defend it, but can only call into doubt some of the evidences provided by the prosecution. This procedure requires cardinal changes in order to secure the principle of the presumption of innocence in practice.

Introduction a jury trial had a positive impact; however, it is impossible to rely on it for the complete resolution of this problem, due in part to the limitation of the categories of criminal cases that can be judged with the participation of a jury.

Paragraph 3 (b) of Article 14 of ICCPR states that in case if a person is charged with a criminal offence, he has the right “to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his

own choosing.” The right to require the adequate time and facilities for the preparation of his defense covers both the accused person and his counsel. The given legal provision must be complied with at all stages of the trial. The idea of “adequate time” depends on the character of the trial and circumstances of the case. In this case, factors are considered such as the complexity of the lawsuit, access of the accused person to testimonial evidence, the due date of certain judicial actions in compliance with the domestic legislation, etc. The term “facilities” in addition implies the access of the accused person or his counsel to appropriate information, files, and documents needed for preparation of his defense and the provision of the required technical means to the accused person for confidential communication with his counsel. The right of the accused person to communicate with counsel of his own choosing is the most important component of the right to adequate conditions for preparation of the defense.

As a whole, the provisions of Kazakhstan’s criminal procedure legislation contain these guarantees. However, it is necessary to exclude the dependence of the lawyer on the investigator with regard to the opportunity to meet with the accused person under arrest at his discretion.

The right to the assistance of a lawyer at the pre-trial stage in the course of the criminal investigation is directly connected with the right to protection during the course of the trial as stipulated by Paragraph 3 (d) of Article 14 of ICCPR. This provision states that each person 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 person who does not have sufficient finances is exempted from the liability to pay for legal assistance. This legislative provision assumes the following rights:

- The right to be tried in one’s presence. This provision has many interpretations. A literal interpretation of this provision excludes the remote trial. This interpretation is shared by the majority of international non-governmental human rights organizations as well as by the International Criminal Court. However, in the opinion of the experts of the UN Human Rights Committee, a remote trial is acceptable only in the case when the state makes *“sufficient efforts in order to inform the accused person about the forthcoming trial and in such way allows him to get prepared for his defense in advance;”*

- The right to defend oneself in person;
- The right to defend oneself through legal assistance of his own choosing;
- The right to be informed, if he does not have legal assistance, of this right;
- The right to the receipt of free legal assistance.

According to the prevailing interpretation of the basic provisions of ICCPR, the right to the receipt of legal assistance covers all stages of the trial including the

preliminary investigation and pre-trial custody. The assignment of a lawyer by the court contradicts the principle of a fair trial in case the accused person has the opportunity to use the help of a lawyer of his own choosing. The assigned lawyer should be able to effectively defend the interests of the accused person using to this effect all his experience and professional skills.

Basically, these rights of the accused are guaranteed by Kazakhstan's legislation. Nevertheless, in practice it is necessary to secure the right to a lawyer of one's own choosing. In addition, it is necessary to significantly improve the system of qualified legal assistance at the expense of the state budget.

“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) of ICCPR]. This right is aimed at the provision of at least a two-level trial where the second level is represented by a higher court. A review of any judicial case is substantial in itself, which in addition means that the higher court considers not only the question raised in the appeal but a wider range of questions. Appeal procedures should be timely. A direct consequence of the right to appeal is the fact that the court has to suspend the execution of any judicial decisions made by the primary court until the end of the review of the case by the court of appeal. This principle ceases to apply only if the convicted person voluntarily accepts the decision made by the primary court. The right to appeal is enjoyed by all persons convicted of crimes regardless of the weight of this crime and the decision made by the primary court. The guarantee of a fair trial should be observed without fail at all stages of the appeal procedure.

The right to the appeal is stipulated by the current legislation of the Republic of Kazakhstan.

However, it is necessary to improve legislation directed at the complete security of the rights of convicted individuals with regard to the court verdict taking effect. Quite often, the human right to be heard in a court and the right to the receipt of qualified legal assistance are violated at this stage.

“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) ICCPR]. However, it should be noted that compensation for miscarriage of justice is possible only in the case when the court made the final decision on the case. A judicial decision can be appealed regardless of the weight of the crime committed. To secure this right, the following three conditions have to be observed: 1) the miscarriage of justice should be officially recognized and confirmed by the revocation of the judicial decision or by a pardon; 2) the delayed discovery of relevant facts should not be attributable to the convicted person; 3) with regard to the convicted person, the final decision should have been made as a result of miscarriage of justice. The phrase “according to law” means that the

government must compensate for the damage in harmony with the procedure established by current legislation.

The right to compensation for miscarriage of justice is stipulated by the current legislation of the Republic of Kazakhstan.

As stated above, legislation of the Republic of Kazakhstan regarding the security of the right to a fair trial contains a series of fundamental guarantees that correspond to international standards. Almost the entire list of human rights and freedoms during the course of a criminal trial are in one way or another established in the criminal procedural and criminal executive legislation of the Republic of Kazakhstan.

However, a comparative analysis of the provisions of current legislation and law-enforcement practices shows that there is a need to strengthen the current guarantees of personal freedom and safety as well as of other pre-trial, trial, and post-trial human rights.

In parallel, a necessary condition for securing human rights in the field of justice is the availability of truly independent judicial branches of authority and a qualified and highly professional association of judges who treasure their honor and social status.

**In an effort to secure the rights of citizens to a fair trial, we recommend 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 authorized governmental agencies implement the following measures during the years 2010-2012:**

1. Apply measures for the openness and transparency of judicial procedures and activities of agencies of judicial authority.

The achievement of these goals will be possible, first of all, by the implementation of objective methods of recording judicial procedures such as compulsory audio or video recording of the trial. At present, the only means of more or less reliably recording the proceedings is the court record.

Legislation on administrative offences does not stipulate compulsory record keeping at all, and the right of the party to use audio and video recording may be realized only with the consent of the presiding judge. Therefore, to avoid possible disturbance of the trial, it is necessary to make appropriate amendments to the procedural laws.

This suggested innovation will make the trial transparent, will result in practical implementation of the principle of publicity and openness of the trial, and will contribute to decisions made only on the basis of evidence investigated and recorded in the protocol and audio and video records, which will facilitate an objective trial and improve the quality of judicial decisions.

It is necessary to consider the issue of wider use of electronic communication technology. For instance, at the initial stage it is possible to implement videoconference communication for remote trials, in particular, for the reconsideration of existing judicial decisions.

2. The achievement of a high level of publicity and transparency will also be possible due to the regulation of relationships of the court with other governmental agencies, the press, and the public.

Information with regard to the progress of the case should be made transparent and judicial records should be made accessible. Citizens and organizations should freely receive information on the activities of the courts, on selection of candidates for judges, etc. This would allow the full implementation of the principle of publicity and transparency of justice in the Republic of Kazakhstan and will promote successful reformation of the judicial system.

3. The quality of justice depends first of all on the professionalism and competence of judges. Problems with the quality of the judicial force are evident. To a great extent, this is the result of poor and biased selection of candidates for judges. Therefore, there is need for a more transparent procedure for the appointment of judges. With a view toward resolving this problem, it is necessary to publish in advance, in the press or on the Internet, lists of individuals submitted by the Chairman of the Supreme Court for the appointment of judges and heads of courts and tribunals of all levels so as to make it public.

During dialogue regarding candidacy for the appointment of judges, it is necessary to consult with civil society including professional associations related to the activity of the courts.

4. Consider the issue of governmental support for trainee-candidates for judges, and of introduction of the position of judges' assistants.

5. Take measures to improve the specialization of courts and judges – develop juvenile courts in the regions of Kazakhstan and study the relevance of the establishment of tax, labor, and other courts.

6. Issues regarding the disciplinary liability of judges require regulation. The Constitutional Law “On the Judicial System and Status of Judges of the Republic of Kazakhstan” stipulates the basis for disciplinary liability of judges, one of which is the violation of the law during consideration of a trial.

However, Paragraph 3 of Article 39 of the above-mentioned Constitutional Law states that the cancellation or alteration of a judicial record in itself does not entail the liability of the judge, provided that there were no gross violations of law, as recorded in the judicial records of the higher tribunal.

Thus, the legislator in fact made the liability of judges dependent on the will of the higher tribunal.

In practice, judges of the higher tribunal, when discovering gross violations of law made by a judge during the course of a trial, do not mention this in their records, which prevents the possibility of holding the judge to disciplinary account.

It would be proper to legislatively specify for which violations of law the judge may be brought to disciplinary responsibility. It is advisable to examine the possibility of appealing a decision of the Republican Disciplinary Board of Experts and of the Jury Court by interested individuals to the Supreme Judicial Council.

7. It is necessary to improve the provisions related to time limits for consideration of civil cases, and the establishment of a mechanism for compensation for damage made during the course of the trial and execution of the

decision. In particular, it is necessary to regulate all issues related to the consideration of cases in excess of the time limit established by law and the provision of the right to compensation for damage incurred in connection with the courts' violation of the established term for consideration of cases.

The provisions of the Code of Civil Procedure of the Republic of Kazakhstan (CCP RK) do not at all provide for a mechanism for the procedural regulation of compensation for damage incurred by employees of the court in harmony with Article 923 of the Civil Code of RK. The only article of CCP, which concerns the filing of a claim with the court, does not ensure the interested individual the opportunity to achieve his objective, and practice reveals that such claims are widespread and are not being addressed.

In this regard, it would be advisable to consider the issue of expanding the list of participants of Constitutional proceedings and to include citizens in it by giving them the opportunity to appeal to the Constitutional Council for the protection of violated constitutional rights.

8. During an extended period of time, giving consideration to the particularities of social and economic relationships, more attention was given to the development of the civil and criminal branches of law in practice, on paper, and in the creation of legislation. Meanwhile, administrative relationships are one of the most dynamic. Any social, economic, and political change in the government is reflected in the content of the provisions of this branch of law.

Law-enforcement practice in the field of administrative relationships shows that the administrative courts established in 2004 significantly reduced social tension when resolving administrative cases, improved the protection of the interests of citizens against mistakes and abuse by authorized individuals, and provided certain guaranties of a fair consideration of administrative cases.

Moreover, current legislation of the Republic of Kazakhstan does not stipulate the judicial consideration of administrative cases as an individual form of trial. The Code of Administrative Offenses of RK replaces the term "administrative trial" with the evasive term "procedure for cases of administrative offences" inasmuch as cases of administrative offences are also investigated by authorized governmental agencies.

The poor development of the administrative process and the absence of the branch of administrative procedure law in the legal system have resulted in the fact that it currently is a combination of individual elements of judicial procedure and administrative procedure.

A natural step in the development of the administrative judicial procedure should be the **adoption of the Code of Administrative Procedure of the Republic of Kazakhstan**. Currently, the provisions of administrative procedural legislation that regulate the procedure for consideration and settlement of public disputes with the participation of citizens and organizations are fragmentary, which complicates the everyday law-enforcement activity of the executive authorities and the activities for the protection of rights of governmental and judicial agencies. It is necessary to codify these provisions.

9. It is necessary to legislatively improve the status and procedural opportunities of lawyers, with the objective of the achievement of procedural equality with the prosecution.

10. It is necessary to exclude the practice of criminal investigation with regard to employees of the same department. The conditions for the objective investigation of such criminal matters should be the exclusion of the investigative jurisdiction of law-enforcement agencies with regard to their own employees.

11. In an effort to strengthen the independence of judges, it is necessary to legislatively establish the election of chairmen of panels of judges by the judges of corresponding courts.

12. Introduce the position of Justice of Peace (Biev) by legislatively establishing the election of these judges by the population of the country.

13. Revise the current procedure of preliminary consideration of administrative appeals, which significantly restricts the rights of the participants of the lawsuit and makes their position unequal to the prosecution, whose notice of appeal does not require preliminary investigation.

Administrative appeals of lawyers, convicted individuals, victims, and other participants in the trial submitted to the reviewing court should be handled in the same manner as appeals by the prosecution – immediately, by the supervisory board, for the adoption of procedural decisions.

14. Abolish the preliminary consideration of administrative appeals by three judges, since this is an infringement on the rights of citizens to the objective consideration of their appeals. Presently, the reviewing tribunal consists of two levels: the preliminary consideration of the case by three judges whose decisions may not be appealed; and the final consideration by 5 judges who consider the case only if the suit was commenced at the stage of preliminary investigation. This mechanism causes justifiable discontent of citizens and legal entities. One court cannot have two tribunals (appeal and supervisory) since the chairman of the appeal tribunal is directly subordinate to the chairman of the supervisory tribunal; and this causes distrust of citizens and legal entities of the objectivity of the trial. Legal and physical persons who do not agree with the decisions of the primary tribunal will be able to appeal only once to the district court. With the view of their full trust, their appeal petitions should be considered by a panel of judges. In the case of their disagreement with the decision, the appeal may be lodged with the Supreme Court, in which there should also be no preliminary consideration. With due consideration for the opinion of the European Court with regard to non-recognition of the supervisory court as a tribunal and the Rome Convention regarding legal definitiveness, the Supreme Court of RK should become a supervisory court which would conduct the final consideration of an appeal. In this way, the entire judicial system would consist only of three tribunals, which would facilitate the access of citizens and legal entities to justice and conform to international standards of openness (transparency) of the judicial system.

15. Legislatively regulate the issue of the right of lawyers to obtain upon demand documents constituting governmental, commercial and other legally

protected secrets. The law should stipulate the conditions under which the documents demanded may not be provide to him.

16. It is necessary to legislatively establish issues related to the procedure for conducting interrogations and recording of information obtained as a result of an interrogation and the procedure for the evaluation and acceptability of such evidence. Establish a legal basis for the expansion of the right of lawyers to collect evidence, documents and other information, i.e. to legislatively settle the issue concerning the presentation of evidence by the lawyer during the course of a trial from the standpoint of its admissibility.

17. Abolish the death penalty as a form of criminal sanction and ratify the second Optional Protocol to the International Covenant on Civil and Political Rights.

### **Human Rights in the Execution of Judicial Decisions**

The execution of judicial decisions is the stage of the legal procedure in which actual realization and restoration of the violated rights of the citizens take place.

Assurance of the timely fulfillment of executive orders is the responsibility of the Committee for Judicial Administration under the Supreme Court of the Republic of Kazakhstan (further referred to as “the Committee”).

In 2006, in an effort to improve the legislative basis for the execution of judicial decisions, the Law “On the Introduction of Amendments to Some Legislative Acts on Issues regarding Executive Procedure” was adopted. The norms of the law are aimed at the implementation of the provisions of the Concept of Legal Policy of the Republic of Kazakhstan that concern the unification of the activities of judicial executors and officers of justice in a single system, and the expansion of application of procedural judicial control of the execution of judicial decisions.

This Law also contains provisions that improve the executive procedure of judicial decisions. For instance, it contains the provision for access for judicial executors to secret tax information, which is should significantly simplify the procedure of the establishment of the material situation of a debtor.

In addition, with the purpose of quick obtainment of more complete information about debtors, amendments have been made to the laws of the Republic of Kazakhstan “On the Equity Market,” “On Credit Partnerships,” “On Microcredit Organizations” and “On Notary Institutions.”

The Code of Civil Procedure was added to with articles such as “Appeal of the Action (Inaction) of Judicial Executor,” and “Protection of the Rights of Other Individuals in the Execution of Decisions.” In addition, the Law “On the Executive Procedure and Status of Judicial Executors” was supplemented with

articles that stipulate the procedure for representation and succession in executive procedures, and the procedure for the discharge of a judicial executor.

The mechanism for the partial withdrawal of money from accounts of debtors on the basis of collection orders from agencies of executive procedure was improved.

Nevertheless, the adopted Law does not contain principal provisions allowing radical changes to the mode of execution of judicial acts.

An analysis reveals that low figures of actual execution prevail in certain categories of executive documents, the execution of which is a long-term (periodical) nature or is difficult due to its basic reasons.

For instance, the collection of alimony is of long-term character – alimonies are collected periodically, as a rule, until the child attains legal age. The figures of actual execution for this category are very low, amounting to nearly 40%. This does not mean that court decisions are not being executed. Out of documents remaining in residuo in 2006, 46,276 documents on the collection of alimony are being executed on a periodical basis.

A very low figure of actual execution is observed with regard to executive documents concerning the collection of money per court sentences. As a rule, in these cases, the amount for damage caused by the crime is collected. The debtors are mainly convicts with a poor material and social situation. In addition, they are not employed in institutions of confinement, so it is impossible to withdraw the debt from their salary. The low level of execution for these categories of executive documents to a great extent reduces the figures of actual execution as a whole.

An analysis of information received shows that judicial executors allow the violation of the rights of both the individuals to whom the money is due and the debtors.

*The survey held by experts from the Association of Sociologists of Kazakhstan within the framework of the project “Human Rights in Kazakhstan: the General Opinion” among 1500 respondents revealed that only 12.0% of respondents believe that the decisions of the court of the Republic of Kazakhstan are executed in full measure. 51.1% of respondents believe that judicial decisions are executed partially, and 33.3% of respondents found it difficult to respond.*

*46,8% of respondents think that the reason for non-execution of judicial decisions is the corruption of judicial executors, 16.6% of respondents named the low qualification of judicial executors as a reason for non-execution of judicial decisions, and 7.9% of respondents associate the non-execution of judicial decisions with the insufficient authority of judicial executors. The results obtained prove that there are serious problems related to the violation of the rights of citizens to the proper and timely execution of judicial decisions.*

*The low quality of execution, failure to execute judicial decisions within the established time, and corruption crimes and offences are the direct result of the low legal and social status of judicial executors, lack of qualified and experienced specialists, as well as the absence of a valid mechanism for the execution of judicial decisions.*

Until now, the number of judicial executors does not meet established levels, which entails an excessive load on them and the fluctuation of personnel levels. The low salary and the absence of social security also affect the appeal of this profession.

The implementation of a mechanism for an incentive system for judicial executors would facilitate the solution of this problem, and this is proved by successful international experience.

In the governmental execution system of France, Poland, Slovakia, the Baltic countries, Germany, Azerbaijan, Armenia, Byelorussia, and Moldova, judicial executors in addition to a fixed salary receive a bonus depending on the collected sums at the expense of the debtor for each execution.

This pattern of remuneration in Germany allowed the achievement of almost one hundred percent of execution of the judicial decisions. In addition, none of the judicial executors incurred criminal liability.

Implementation of a similar mechanism in Kazakhstan will allow the improvement of the quality of judicial execution personnel, the increase of revenue to the republican budget, and the reduction of governmental expenses for the maintenance of judicial executors, and will solve the problem of corruption in executive procedure agencies.

It should be noted that the implementation of this mechanism will improve the quality of execution and will eliminate the need to assign judicial execution personnel.

Unfortunately, the mechanism for the criminal and other accountability of debtors for evasion of execution of judicial acts still remains ineffective.

It is necessary to further reform the executive procedure agencies. The efficiency of protection of the rights and freedoms of participants of executive procedure directly depends on the clear definition of the legal status of the executive procedure agencies and the control mechanism for the execution of judicial decisions.

On September 28, 2006, within the framework of the expanded meeting of the Human Rights Commission under the President of the Republic of Kazakhstan, issues regarding the improvement of the executive procedure were considered. Therefore, it was admitted that it would be advisable to transfer the executive procedure agencies to the jurisdiction of the Ministry of Justice and to incorporate them into the structure of the Committee of the Criminal and Executive System, and to name the latter the Committee for the Execution of Judicial Acts.

The baseline report on the human rights situation which was prepared in 2007 by a group of independent experts under the coordination of the Human Rights Commission suggested the supplementation of Article 236 of the Code of Civil Procedure with Paragraph 6, which would oblige the judicial executor to inform the court upon the execution of the executive order or the expiration of the period to submit a written note regarding the reasons for non-execution of the order. It was suggested to make a provision in that same article for the right of the

court to demand a necessary explanation from the judicial executor with regard to reasons for failure to provide such information.

We believe that the implementation of the above-mentioned measures will allow the improvement of the efficiency of the execution of judicial decisions, will strengthen the power of the judicial authorities, and will enhance the confidence of the population in the court, since the failure to execute judicial orders, negligence, and inactivity of the executive procedure agencies seriously damage the reputation of the judicial authorities and of the government as a whole.

It is necessary to investigate the possibility to elaborate and adopt the Code of Execution of Judicial Orders, which would regulate the procedure for execution of all categories of orders.

It is worth noting that foreign experience in the field of application of indirect coercive measures to the debtor so that he would fulfill his obligations, and in the field of implementation of the concept of astrente (continuously increasing fines) will result in good discipline of the debtors. In addition, it is possible to investigate the opportunity to legislatively stipulate the obligation of the debtor to declare his assets upon request of the judicial executor and to grant the judicial executor the right to judicial recourse with regard to the invalidation of real estate transactions of the debtor made in an effort to conceal his property.

**With a view to the improvement of efficiency of the executive procedure and more complete security of human rights in this regard, we recommend that the Government of the Republic of Kazakhstan jointly with governmental agencies implement the following measures during the period of 2009-2012:**

1. Develop and implement a mechanism for the payment of social governmental benefits to claimants, especially to single mothers, during the period of insolvency of men paying alimony and convicted individuals who have not reimbursed the damage incurred by their crime. Moreover, establish the legal claim for regressive compensation for expenses incurred by the government from the debtor;

2. Transfer the inquest of crimes related to the non-execution of judicial orders from the Ministry of the Interior to executive procedure agencies.

3. Based on study of advanced international experience, develop and implement a mechanism for the material incentive of judicial executors.

4. Consider the possibility of including executive procedure agencies in the structure of the Committee of the Criminal and Executive System of the Ministry of Justice and to re-name the latter the Committee for the Execution of Judicial Acts.

5. Supplement Article 236 of the Code of Civil Procedure with Paragraph 6, which would oblige the judicial executor to inform the court upon the execution of the executive order or the expiration of the period for submission of a written note regarding the reasons for non-execution of the order. In the same article, grant the court the right to demand the necessary explanation from the judicial executor with regard to the reasons for failure to provide such information.

6. Change the procedure for execution of judicial orders by governmental agencies and institutions financed by the republican and local budgets. For this purpose, it is necessary to establish in the budgetary legislation a provision that would oblige governmental agencies, when planning their budgets for the impending financial year, to budget finances for the repayment of their debts related to judicial orders.

7. Legislatively determine the liability of the higher managers of governmental agencies for non-execution of judicial orders.

8. Taking into account the efficiency of the practices of foreign countries in the field of coercive execution, it is necessary to stipulate in the legislation on executive procedure of the Republic of Kazakhstan the use of indirect coercive actions to force the debtor to fulfill his obligations; these actions are absolutely different from direct coercive actions and allow the expansion of the scope of executive procedure. For this it is necessary to introduce the concept of astrente (continuously increasing fines), which will contribute to strengthening the effectiveness of justice and the protection of the rights of the individuals involved in executive procedure.

9. Legislatively establish measures for the social security of judicial executors. Take necessary actions to sustain the activity of judicial executors including the provision of service vehicles.

### **Rights of the Convicted**

Correctional institutions of the Republic are under the jurisdiction of the Committee of the Criminal and Executive System of the Ministry of Justice of the Republic of Kazakhstan (CCES MJ RK).

Current criminal and executive legislation of the Republic of Kazakhstan corresponds to the majority of international standards protecting the rights of individuals taken into custody and imprisoned by decision of the court.

The legal status of individuals on whom the penalty of confinement was imposed is the most restricted in comparison with other categories of convicted individuals. This situation corresponds to the Constitution of the Republic of Kazakhstan and to the criminal and executive legislation. Human rights may be restricted only by law and only to the extent that is necessary with the view of protection of the constitutional order. For instance, in accordance with Article 33 of the Constitution of the Republic of Kazakhstan, convicted individuals have no right to vote, to be elected, or to participate in the republican referendum. In addition, they are restricted with regard to their rights to freedom of movement, choice of residence, etc. However, the convicted, being the citizens of the Republic of Kazakhstan, retain their natural rights possessed by every person; such as: the right to life, protection of health, education, freedom of conscience and religion, respect for human dignity, use of native language, etc.

According to statistics from January 1, 2009, in the criminal and executive system there are 73 correctional institutions and 20 investigative jails.

During previous years, within the framework of the implementation of legal reform, considerable improvements of the criminal and executive system have been made in the Republic of Kazakhstan.

The transfer of correctional institutions and investigative jails which formerly belonged to the Ministry of the Interior to the jurisdiction of the Ministry of Justice, and activities regarding humanization of criminal and criminal-executive policy have made Kazakhstan an absolute leader in the reformation of the penal system in Central Asia.

In the context of improvement of the criminal-executive system, on August 6, 2007 the Government of the Republic of Kazakhstan adopted the Program of Further Development of the Criminal and Executive System of the Republic of Kazakhstan during 2007-2009 No. 673 (further referred to as “the Program”).

The Program is aimed at the improvement of the management of the Criminal and Executive System (further referred to as “the CES”), the improvement of conditions of confinement of individuals in institutions of the CES, the increase of the efficiency of execution of criminal sanctions, and security of employment for the convicted.

With the view of public control of the security of the rights of the convicted, beginning in the year 2005, public watch commissions (PWC) started to function in all regions of the Republic. These commissions were established on the initiative of public unions and associations.

The convicted are provided with the opportunity to render worship in specially designed facilities in compliance with religious traditions. They are allowed to have and to use religious literature and religious items of personal use. To provide spiritual assistance, the invitation of religious ministers is permitted.

Presently, in all the correctional institutions of the Criminal and Executive System there are 36 mosques and churches and 168 meeting houses of various religions. The number of believers amounts to 9,508.

Comprehensive studies arranged in the institutions of confinement ensure a link with the educational system in the country, which allows the convicted to receive further education after their liberation.

In the institutions of the Criminal and Executive System there are 52 comprehensive schools in which are studying 6,252 convicts who do not have a secondary education.

One of the most important activities in the organization of the educational work with the convicted, and in the re-socialization of the convicted and their return to the civil society is the development of psychological services. Positions of psychologists are instituted in all facilities of the CES. The total number of psychologists amounts to 224.

Nevertheless, despite the work already accomplished, there are serious problems in the penal system with regard to human rights that need to be resolved.

On the basis of statistical information on the prison population of the Republic of Kazakhstan provided by the CCES MJ RK on January 1, 2009, the International Center for Prison Studies under the London University (ICPS) has updated the information in the worldwide sheet of prison system development trends. According to ICPS estimates, in January 2009, the Republic of Kazakhstan, with a prison index of 382 prisoners per 100,000 population, ranked 17<sup>th</sup> place (for comparison: in 2008 – 18<sup>th</sup> place, in 2007 – 23<sup>rd</sup> place, in 2006 – 25<sup>th</sup> place), i.e. during the last 3 years there is a stable trend of the increase of the number of convicted. On January 1, 2009, 50,394 convicted were serving their sentence in the penal system of Kazakhstan (in 2005 – 44,076).

There have been *instances of the illegal placement of the convicted into penal jails and cell-type facilities* and the imposition upon the convicted of unwarranted disciplinary penalties. The administration of the institutions have allowed the illegal impedance of the right to the grant of parole, transfer to a prison colony, or the application of an order of amnesty.

The nature of appeals of the convicted testifies to the low level of knowledge of the procedure and conditions for the granting of parole, including due to sickness, the procedure and time limit for appeal of denial of parole, and also the right to the appeal of penalties imposed by the administration of institutions.

There are cases of violation of the rights of the convicted to the access to the court in the course of investigation of the grant of parole.

To the question: “What do you think, has the situation of the convicted in correctional institutions been improved after the transfer of the functions of the MI to the Ministry of Justice RK?” which was asked of 1,500 respondents by experts of the Association of Sociologists of Kazakhstan, **21.4%** of respondents confirmed the improvement of the situation of the convicted, **58.4%** found it difficult to respond, and **20.2%** of respondents believe that the situation was not improved. The results of sociological studies prove that there are serious problems with regard to the security of the rights of the convicted guaranteed by the Constitution, the CEC RK, and Kazakhstan’s international obligations in the sphere of human rights.

The right of citizens serving a sentence in an institution of confinement to the protection of health is not secured in full measure. Opportunities for medical consultations and examinations by medical specialists of civil health care institutions are limited in penal institutions. The securing of medical assistance is adversely affected by the lack of medical personnel and the low level of their salaries, due to which the majority of them is poorly motivated to properly fulfill their duties.

For instance, currently, the death rate among the convicted is a serious problem.

According to data from January 1, 2009, there are 4,347 tuberculosis patients in correctional institutions (according to data from January 1, 2008 – 3,460). *The death rate among the convicted has increased from 268 (during 2007) to 328 (according to data from January 1, 2009).*

The growth of the death rate is caused not only by the fact that in the regions mentioned there are tuberculosis treatment institutions, but also by the fact that medical commissions do not certify the presence of seriously sick people in a timely manner, and management does not submit records to the court for early liberation due to sickness in a timely fashion.

Inspections have revealed numerous *violations of law by institutions with special regimes*. Thus, the overcrowding of such institutions and reduction of financing for sustenance of the convicted have become the main reasons for violation of the rights of the convicted guaranteed by criminal and executive legislation and by the Standard Minimum Rules for the Treatment of Prisoners, adopted at the first UN Congress in 1955. Moreover, the convicted were forced to stay in unfavorable conditions, which contradict sanitary and hygiene standards.

It should be noted that the condition of the majority of buildings and facilities does not meet the International Rules, which clearly determine that the convicted should be provided with sufficient space, air supply and illumination in order to preserve their health. The majority of correctional institutions are located in buildings constructed during the 30s – 60s of the twentieth century.

As a rule, the convicted live in barrack-type hostel buildings (100-150 people), which significantly impedes the reformation of the convicted and the insurance of their safety.

Overcrowding of places of confinement leads to the deterioration of sanitary and hygiene conditions, deprives the convicted of an opportunity to be alone, causes a great overload of services systems, in particular, medical care, to a great extent hinders the realization of program activities, and inevitably results in tension of relationships between the convicted themselves and between the convicted and personnel, which increases the risk of violence.

In closed institutions, the risk of cruel treatment of the convicted increases.

In April 2007, there were instances of the torture of the convicted serving their sentence in the institution LA-155/8 of the Administration of the Committee of the Criminal and Executive System (further referred to as “the ACCES”) of the Almaty region, and in Prison No. 1 of the city of Arkalyk of the ACCES of the Kostanay region. In a protest against illegal actions of the employees of these institutions, more than 30 convicts organized a mass mutilation. Owing to the efforts of the Prosecutor General’s Office, an objective investigation of the commencement of criminal prosecution of the convicts who organized the mass mutilation as a sign of protest was carried out. On the basis of the Enactment of the Constitutional Council of the Republic of Kazakhstan of February 27, 2008, the first and the fourth parts (with regard to determination of the qualifying features of the first part) of Article 361 of the Criminal Code were admitted as unconstitutional.

On the basis of the Enactment of the Constitutional Council of February 27, 2008, the court of the city of Kapshagay of the Almaty region halted the criminal procedure with regard to the convicts who participated in the mass mutilation in the institution LA-155/8.

The convicted find it problematic to receive qualified legal assistance guaranteed by Article 13 of Part 3 of the Constitution and by Article 10 of the Criminal Executive Code. Legal services for the convicted is not included in the list of free legal assistance; and when an accusatory conviction comes into legal force, the convicted, if he has no money to pay for the services of the a lawyer, is deprived of the right to the receipt of qualified legal assistance.

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A special concern of the Human Rights Commission is the protection of the rights of minors in correctional institutions.

In the territory of the Republic, there are 5 correctional institutions that contain convicted minors.

Violations of the right of the children to the receipt of survivors' benefits and other social benefit payments were discovered in all correctional institutions. According to the Law of the Republic of Kazakhstan "On Marriage and Family" children left without the support of parents and staying in educational, medical, or other institutions have the right to the alimonies, pensions, allowances and other social benefit payments due to them.

According to information from the Prosecutor General's Office, out of 437 convicted minors living in correctional institutions, there are 122 orphans and children left without the support of parents.

However, the administration of the correctional institutions did not take action to secure their rights to the receipt of state social survivors' benefits, which is a violation of Article 108 of the Law of RK "On Marriage and Family."

Thus, the right of 122 convicted minors to the receipt of survivors' benefits and other social allowances guaranteed by Article 28 of the Constitution of the Republic of Kazakhstan was violated.

**In an effort to secure the rights of the convicted guaranteed by the Constitution, the CEC RK, and international documents in the field of human rights, we recommend the Government of the Republic of Kazakhstan jointly with the authorized governmental agencies implement the following measures during the period of 2009-2012:**

1. Provide the institutions of the Criminal and Executive System with competent and qualified personnel.

2. Create the organizational and legal conditions for the expansion of application of kinds of criminal penalty alternatives to imprisonment.

It is necessary to establish probation services and renew the fixed assets and production facilities of criminal and executive institutions, which would contribute to wider application of all kinds of criminal penalty alternatives to imprisonment, the more complete employment level of the prison population, and the successful re-socialization of liberated citizens.

3. Provide safe and adequate conditions of life for the convicted in institutions of confinement.

Continue the construction of the necessary number of institutions, which would conform to the Standard Minimum Rules for the Treatment of Prisoners.

4. We recommend that the Ministry of Justice jointly with the Committee of Criminal and Executive System and the Republican State Enterprise “Yenbek” take the required actions to increase the employment of the convicted, which would contribute to the timely repayment of suits and the realization of their right to grant of parole.

5. Develop a governmental program aimed at the increase of awareness and legal competence of the convicted and employees of correctional institutions with regard to issues of early liberation.

6. Develop clear criteria for the assessment of reformation of the convicted; for instance, starting to reform, is clearly on the path of reform, and has proven to be reformed.

7. Legislatively establish a procedure for the provision of qualified legal assistance to the convicted.

8. Correctional institutions and investigative jails should be open to the maximum possible extent for control by agencies of civil society. The activity of correctional institutions and investigative jails must be made public. The closing of these institutions to the public creates ideal conditions for torture and violence.

In 2012, adopt the individual Law “On Public Control of the Observance of Human Rights in Institutions of Confinement” which would regulate the procedures for independent public, medical and other control, and the forms and methods of interaction between the administration of correctional institutions, investigative jails, and psychoneurological health care centers with NGOs and the mass media.

9. Before the adoption of the individual Law “On Public Control of the Observance of Human Rights in Institutions of Confinement,” legislatively grant public watch commissions the right to the unexpected visit of correctional institutions, investigative jails, and jails for temporary custody in order to monitor the observance of human rights.

10. We recommend that the Human Rights Commission under the President of the Republic of Kazakhstan and the Ministry of Justice take necessary actions to give the members of public watch commissions an opportunity to freely visit correctional institutions and investigative jails.

11. Establish Adaptation Centers for individuals who served their sentence in institutions of confinement, since the current conditions of their confinement in criminal and executive institutions of Kazakhstan cripple their physical and psychological health, so that they typically are not capable of joining normal society life for an extended period.

12. We recommend that the Ministry of Justice of the Republic of Kazakhstan take measures to exclude violations of the property and social rights of the minors living in the correctional institutions of the Committee of the Criminal and Executive System.

## Conclusion

Despite the evident progress in the sphere of human rights protection, law-enforcement mechanisms of the Republic of Kazakhstan need significant adjustment.

Human rights have not yet become the absolute priority of governmental policy and the activity of governmental authorities. So far, in the country there is no adequate understanding and coordination of the activities of all branches of authority with regard to the security and protection of human rights and freedoms. The recommendations and measures suggested in the National Plan are aimed at the improvement of legislative, institutional, and control mechanisms in the sphere of human rights. It is necessary to use more fully the law-enforcement potential of institutions of civil society, to give detailed attention to the role of legal education and the formation of a socially active individual able to protect his rights and to require of other participants of legal relationships (first of all of governmental authorities and their officials) the adequate attitude toward his rights and obligations.

Implementation of the measures of the National Plan will contribute to the cultivation of a developed human rights culture in society and to the development of effective methods of interaction between governmental authorities, NGOs, and other participants during the course of implementation of the approved recommendations.

During the course of improvement of the national legislation of the country it is necessary to create all necessary conditions for the full involvement of representatives of civil society in the discussion of draft laws and other legislation related to human rights and freedoms.

The practicality and magnitude of the work done on the National Plan includes the fact that it may become not only the necessary starting line from which begins the development of the goals and objectives of the new Concept of Legal Development of Kazakhstan, but also a criteria for the success of subsequent measures for the improvement of the mechanisms of security and protection of human rights and freedoms.

In the course of preparation of the National Plan, the experts sought to consider international experience to the fullest extent possible, in particular the experience of the development of a National Plan in Lithuania, Sweden, Australia, Spain, Azerbaijan, Moldova, Indonesia, Singapore, and the Philippines.

The work group under the coordinating role of the Human Rights Commission under the President of RK had an opportunity to discuss the intermediate results of their work in the round table format. It is necessary to note the constructive viewpoints of all participants of the project which, in the framework of intensive dialogue, allowed the overall assessment of the situation and the elaboration of recommendations on improvement of law-enforcement practices aimed at the practical implementation of the constitutional postulate of the highest value of the human and his life, rights and freedoms.

One of the results of the implementation of the National Plan may be the development of optimal methods of interaction between legislative, executive, judicial and non-judicial, supervisory, and public agencies in the uniform rhythm of governmental and legal life. It may possibly become the primary achievement of the National Plan.

The National Plan will allow uniting of the efforts of governmental authorities and non-governmental and international organizations in the realization of a uniform strategy and the development of general approaches and methods to legally regulating of relationships between the authorities and the opposition.

In addition, implementation of the National Plan should be oriented at the achievement of the following results:

- Implementation of international standards for human rights in the national legislation and law-enforcement practices;
- Improvement of governmental and public mechanisms for the protection of human rights;
- Consolidation of non-judicial human rights institutions including the institution of Ombudsman;
- Development of institutions of civil society and their interaction with the governmental authorities;
- Provision of effective protection of civil, political, economic, social and cultural rights of the human and citizen;
- Implementation of a special program for security of the rights of socially vulnerable sections of the population;
- Ensuring of the transparency of the activities of governmental authorities and institutions of civil society;
- Achievement of a high level of public awareness of commonly acknowledged human rights standards and of their value for each individual and society as a whole (human rights education);
- Enhancement of the legal culture of the population;
- Reduction of the risks of social tension and potential social conflicts.

Eventually, the implementation of the National Human Rights Action Plan will make it possible for Kazakhstan to achieve further success in the formation of a legal government, the strengthening of governmental and public mechanisms for human rights protection, and the establishment of a developed civil society at the level of commonly acknowledged international standards.

The work group for the National Human Rights Action Plan expresses gratitude to the UN Development Program in Kazakhstan, to the office of the UN Development Program in Bratislava, the OSCE ODIHR, governmental authorities and non-governmental organizations of the Republic of Kazakhstan, the Association of Sociologists of Kazakhstan, other institutes of civil society of Kazakhstan, international organizations accredited in Kazakhstan (the OSCE Center in Astana, the UNESCO Cluster Office in Almaty, the Office of the UN High Commissioner for Refugees, the International Organization for Migration, the UN Children's Fund in Kazakhstan (UNICEF), the Representative Office of

the European Commission in Kazakhstan, the Kyrgyz Republic and the Tajik Republic, the Representative Office of the UN High Commissioner for Human Rights in Central Asia, Embassies of Great Britain, United States of America, the Netherlands, Canada, Russia, Germany, Lithuanian Republic, Czech Republic, and Slovak Republic in Kazakhstan as well as to the Ministries of Foreign Affairs and Justice of Lithuania, the Development of International Cooperation, Integration and Gender Equality of Sweden, and the faculty of law of Saint-Petersburg State University for materials provided which were used in the preparation of this National Plan.