

# **REFUGEES IN KAZAKHSTAN: AN ANALYSIS OF NATIONAL LEGISLATION AND PRACTICE**



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## Executive Summary

Situated at the crossroads of continents, Kazakhstan has experienced frequent migration flows and demographic changes. During its 30 years of independence, the Republic of Kazakhstan has generously sheltered thousands of people fleeing war, persecution, conflicts, or human rights violations, including refugees from Afghanistan, Tajikistan and the Caucasus.

Since opening a Representation in Kazakhstan in 1995, UNHCR, the UN Refugee Agency, has assisted the country in protecting over ten thousand refugees, most of whom returned home, were resettled to third countries, or naturalized in the Republic of Kazakhstan. Out of 4,700 asylum applications submitted since 2000, over 1,700 were recognized as refugees.

Today, Kazakhstan still hosts 371 refugees and 252 asylum-seekers, mainly in Almaty and Shymkent. Most refugees have been residing in the country for at least five years, and some for over two decades. They speak local languages, live, study, or work peacefully together with nationals of Kazakhstan, and are culturally well integrated.

In 1999, Kazakhstan joined 146 other United Nations Member States by acceding to the 1951 *Convention relating to the Status of Refugees* and its 1967 *Protocol* – both included at the end of this publication. By joining these human rights treaties, States exercise responsibility-sharing and solidarity among each other, committing not to return (refouler) refugees to danger, but to grant them access to their territory, quality asylum procedures and protection, and basic human and socio-economic rights. When refugees cannot return home but desire to fully integrate into their host communities, they can apply to be granted citizenship of the state party, which as per article 34 of the 1951 Convention commits to “... *as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.*”

In 2009 Kazakhstan adopted a national Law “On Refugees” to regulate implementation of its Convention obligations and introduce national asylum procedures to determine who should be granted convention refugee status in Kazakhstan.

For 70 years already, the principles of cooperation between States, which underpin the 1951 Convention, have saved the lives of millions of refugees, and contributed to the sustainable development of their generous host communities all around the globe. In 2018, United Nations Member States came together to further strengthen international solidarity with refugees by unanimously adopting a *Global Compact on Refugees*. This Compact links forced displacement also to the 2030 Agenda goal of ‘leaving no one behind’ in pursuing sustainable development. The protection of refugees is thus fully incorporated into the United Nations Sustainable Development Cooperation Framework for the Republic of Kazakhstan.

At the Global Refugee Forum of 2019, the Republic of Kazakhstan, reaffirming its commitments to the 1951 Convention, pledged to support the Global Compact by issuing ICAO standard Machine-Readable Convention Travel Documents (MRCTDs) to refugees (as per Articles 27 and 28 of the 1951 Convention). As of early 2022, authorities plan to offer such passports to refugees currently hosted in the Republic of Kazakhstan – a good practice already successfully implemented to protect a larger number of recognised stateless people.

The High Commissioner for Refugees and UNHCR are entrusted by the United Nations General Assembly to monitor states’ protection of refugees and to assist them in finding durable solutions to refugees’ plight. To mark the 70<sup>th</sup> anniversary of the 1951 Convention, we thus prepared the following legal analyses, which celebrate progress and good models in Kazakhstan’s protection of refugees, identify gaps, and recommend further alignment of national legislation and practices with Convention and Compact standards.

International refugee and human rights law, as well as good practices and experiences in sustainable development, all promote the inclusion of refugees in host communities and require that states grant refugees access to a broad array of social, economic, and civil rights on a par with those enjoyed by nationals of the state. However, actual exercise of most of these rights is impeded by Kazakhstan granting refugees only one-year temporary residency. As also the following analyses show, the temporary nature of refugee status under the Law “On the Legal Status of Foreigners” prevents refugees from accessing the full range of rights guaranteed to them under the 1951 Convention and other international human rights instruments.

As a result, most refugees in Kazakhstan can find a job only in the informal sector as employers are reluctant to hire them formally due to their lack of longer-term status. Refugees and asylum-seekers are moreover ineligible for public allowances, such as disability and survivors’ benefits, childbirth benefits, care allowances, benefits for raising a disabled child, and other benefits, which in respective national legislation are all reserved only for nationals or “permanently residing foreigners”. For the same reason, refugees cannot contribute to pension funds and do not receive social benefits that are accorded to citizens and permanently residing foreigners and they can receive only a “minimal” volume of medical care. All other public healthcare services provided within the framework of the health insurance scheme are only accessible on a paid basis which most refugees and asylum-seekers cannot afford.

While refugee children have access to primary and secondary education on a par with nationals, they cannot qualify for higher education scholarships. Many refugee children can, therefore, not afford higher education, which limits their chances to find formal and stable employment in future to be able to fully contribute to our economy and society.

Contrary to Article 34 of the Convention, refugees are also ineligible to apply for citizenship no matter how long they have lived peacefully in Kazakhstan and irrespective of their strong links to the country, for example by marriage or birth.

At the same time most refugees are excluded from applying for permanent residency under national law as this would jeopardise their protection against refoulement, would require them to hold and extend passports of the country they fled, as well as significant financial assets – all factors which are inimical to the exact definition and nature of being a refugee.

UNHCR research has shown that the Republic of Kazakhstan is unique amongst Contracting States of the 1951 Convention and its 1967 Protocol in granting refugees only one-year temporary residency, while other Contracting States grant longer term residency immediately upon a refugee's recognition.

Dear Reader,

I hope that you will join UNHCR, the UN Refugee Agency, and other stakeholders in recommending to urgently improve national legislation to equate refugee status with the status of a permanent resident from the moment of recognition as a refugee and to thus grant refugees due access to all the right and services they should enjoy under the 1951 Convention and other international human rights law. Practically speaking, authorities should extend to the small number of refugees in Kazakhstan their excellent practices in the protection of a much bigger number of stateless persons, who once recognised receive MRCTDs with a validity of five years, which render them permanent residents with access to all associated rights and services.

While most provisions of the 1951 Convention oblige states to provide refugees with access to basic rights and services, a few of the treaty's key provisions, including those defining a refugee (Article 1) or prohibiting their refoulement (Article 33), inform national asylum procedures. However, as these procedures evolved in Kazakhstan, refugee recognition rates declined drastically: from close to 70% in 2013 to below 6% in 2020. UNHCR stands ready to support asylum authorities' better implementation of the letter and spirit of the 1951 Convention by duly disregarding asylum-seekers' means of entry into Kazakhstan (Article 31) and by assessing their well-founded fear of (future) persecution (Article 1) instead of survival of past persecution. International law and good practices also advise asylum authorities to preserve asylum-seekers' family unity and to duly account for developments of the situation in their countries of origin. To improve the quality of asylum decisions and assist the Republic of Kazakhstan in preventing violations of the non-refoulement prohibitions of the Refugee and Torture Conventions, UNHCR stands ready to also support capacitating courts to reject mistaken first-instance decisions on formal as well as substantive grounds.



Refugees can play a powerful role of ambassadors of peace and tolerance in their host society. More than half of them have been residing in Kazakhstan for over five years already, many have been born here or arrived as children. Unable to return to their countries of origin, they see Kazakhstan as their new motherland, they wish to become Kazakh citizens and contribute to society. Access to basic economic and social rights is essential to facilitate self-reliance and security to refugee families, to allow them to restore their human dignity and life. It also benefits whole of society by allowing refugees to fully contribute to its economic and cultural life through employment, taxation, resilience, and creativity.

Please allow me to thank all colleagues in parliament, government, and authorities who provided most valuable comments to previous drafts of this publication. I would also like to thank all experts for their contributions, and translators and proof-readers who made it possible to publish this collection in Kazakh, Russian and English languages.

This year we celebrate Kazakhstan's anniversary of independence. For the last 30 years, Kazakhstan has promoted international peace and stability, facilitated Syrian Peace Talks, and ratified and implemented a growing number of human rights treaties. Recently we greeted Kazakhstan's election to the United Nations Human Rights Council. UNHCR, together with the rest of the UN family, welcomes and supports President Tokayev's commitment to the universal human rights agenda.

Safeguarding human rights – including refugee rights – impacts the positive economic development of nations. UNHCR stands ready to continue supporting the Government, Parliament, and authorities in their implementation, accelerating achievement of Sustainable Development Goals under Agenda 2030: Leaving No One Behind.

**Hans Friedrich Schodder**

Representative of the United Nations  
High Commissioner for Refugees

November 2021, Nur-Sultan

# UNHCR COMMENTS AND RECOMMENDATIONS ON THE NATIONAL LEGISLATION REGARDING THE LEGAL STATUS OF REFUGEES

## INTRODUCTION

The Office of the United Nations High Commissioner for Refugees (UNHCR) welcomes the opportunity to provide these comments on the legal status of refugees in Kazakhstan, and their access to basic rights and services, and to present recommendations for improvement of national legislation and practices in line with Kazakhstan’s obligations under international human rights instruments.

UNHCR offers these comments as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions for them.<sup>1</sup> As set forth in the Statute of the Office of the United Nations High Commissioner for Refugees, UNHCR fulfils its international protection mandate by, inter alia, “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto.”<sup>2</sup> UNHCR’s supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Convention relating to the Status of Refugees,<sup>3</sup> according to which State Parties undertake to “co-operate with the Office of the United Nations High Commissioner for

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<sup>1</sup> See *Statute of the Office of the United Nations High Commissioner for Refugees, United Nations General Assembly (UNGA) Resolution 428(V), Annex, UN Doc. A/1775, para. 1, available at <http://www.unhcr.org/refworld/docid/3ae6b3628.html> (“Statute”).*

<sup>2</sup> *Ibid.*, para. 8(a).

<sup>3</sup> *UNGA, Convention relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137 (“1951 Convention”).*

Refugees [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.” The same commitment is included in Article II of the 1967 Protocol relating to the Status of Refugees (1967 Protocol).<sup>4</sup>

UNHCR submits these comments with the hope that provisions of the national legislation, which may be at variance with the Republic of Kazakhstan’s obligations under the 1951 Convention and other relevant international treaties to which the country is a party, may be amended.

## **BACKGROUND INFORMATION**

Kazakhstan ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol in 1999<sup>5</sup> (hereinafter jointly referred to as the 1951 Convention). The Law of the Republic of Kazakhstan “On Refugees” (Law “On Refugees”) was adopted in December 2009 and entered into force in January 2010. Kazakhstan ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 24 Jan 2006.<sup>6</sup>

The Law “On Refugees” and the Law “On the Legal Status of Foreigners” are the main legislative acts governing the legal status of refugees in the Republic of Kazakhstan. In accordance the Law “On the Legal Status of Foreigners”, refugees in the Republic of Kazakhstan receive the status of temporarily residing foreigners. In line with the Law “On Refugees”, refugee status is issued for one year and is subject to review on a yearly basis. Thus, refugees are considered temporarily residing foreigners, regardless of the duration of their residence in Kazakhstan unless they obtain a permanent residence or other alternative status.

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<sup>4</sup> UNGA, *Protocol relating to the Status of Refugees*, 31 January 1967, United Nations, *Treaty Series*, vol. 606, p. 267, <https://www.refworld.org/docid/3be01b964.html>

<sup>5</sup> *The Law of the Republic of Kazakhstan on accession to the 1951 Convention was adopted on 15 December 1998. On 15 January 1999, the ratification of the 1951 Convention by the Republic of Kazakhstan was registered by the UN Treaty Bodies: <https://bit.ly/3rcjV38>*

<sup>6</sup> *International Covenant on Economic, Social and Cultural Rights, <https://bit.ly/3nUhEaF>*

As of 1 Sep 2021, there were 371 refugees residing in Kazakhstan. Of the total number of refugees, 341 are nationals of Afghanistan most of whom have lived in Kazakhstan for more than five years, 14 are nationals of Syria, 16 are nationals of other countries. The refugees are mainly registered and reside in Almaty city, Shymkent city, the Turkestan region and the Almaty region. They are generally fluent in local languages, attend schools in Kazakhstan, work in Kazakhstan and are well integrated in society.

# COMMENTS

## GENERAL STANDARD OF TREATMENT

Article 7(1) of the 1951 Convention stipulates that “(e)xcept where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.” The purpose of this Article is to ensure that refugees receive the benefit of all laws and policies which the host country normally apply to other foreigners. Accordingly, almost all of the substantive Convention rights – self-employment, housing and secondary and higher education – are phrased to require “treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally”.

The treatment prescribed by the 1951 Convention is complemented by international human rights law in understanding generally the rights of non-nationals (or foreigners). The Preamble of the 1951 Convention specifically referring to the Universal Declaration of Human Rights<sup>7</sup> recalls the necessity of assuring refugees “the widest possible exercise of these fundamental rights and freedoms”.<sup>8</sup> Further, it follows from Article 5 of the 1951 Convention that in situations where a State is party to several treaties providing rights to refugees, the most generous among these should be applied to refugees.<sup>9</sup>

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<sup>7</sup> UNGA, *Universal Declaration of Human Rights, 10 December 1948, 217 A (III)*, <https://www.refworld.org/docid/3ae6b3712c.html>

<sup>8</sup> 1951 Convention, note 3 above, preambular paras 1 and 2.

<sup>9</sup> Article 5 of the 1951 Convention provides that “[n]othing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention”.

Refugees are entitled to a secure status, which should not be subject to regular review. Anything else would be detrimental to their sense of security, which international protection is intended to provide.<sup>10</sup> UNHCR's Executive Committee called on States to support refugees' ability to integrate locally through the timely grant of a secure legal status and residency rights.<sup>11</sup> Short-term residence permits and frequent reviews thereof would be counterproductive to integration.<sup>12</sup> Regular and systematic status reviews risk undermining legal certainty, and they may create an unnecessary burden on asylum authorities when cessation grounds are not likely applicable. Further, regular reviews are unlikely to end protection entitlements in many cases, as the protection needs of persons seeking international protection are not typically of a short duration and non-refoulement obligations may prohibit removal. In addition, an obligatory extension of the temporary protection status on an annual basis, requiring a refugee's physical attendance, creates unnecessary administrative expenses, including a risk of arbitrary cessation of refugee status on the grounds other than those exhaustively defined in Article 1(C) of the 1951 Convention, which warrants thorough and careful decision-making.

International refugee law encourages the inclusion of refugees in their host communities and requires that they be granted access to a broad array of social, economic and civil rights on par with the nationals of the State.<sup>13</sup> In Kazakhstan, the temporary nature of the refugee status under the Law "On the Legal Status of Foreigners" is hindering refugees from accessing the full range of rights guaranteed to them by the 1951 Convention and other international human rights instruments.

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<sup>10</sup> UNHCR Handbook, para. 135. See also EXCOM Conclusion No. 69 (XLIII) 1992, where in the context of applying the cessation clauses EXCOM stated that it is important that refugees have the assurance that their status will not be subject to unnecessary review in the light of temporary changes, not of a fundamental character, in the situation prevailing in the country of origin. See also, UNHCR, Note on the Integration of Refugees in the European Union, May 2007, [www.unhcr.org/463b462c4.pdf](http://www.unhcr.org/463b462c4.pdf), para. 18, and UNHCR, UNHCR Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466, February 2018, page 3, <https://www.refworld.org/docid/5a7835f24.html>

<sup>11</sup> UNHCR, ExCom Conclusion No. 104, Conclusion on Local Integration No. 104 (LVI) – 2005, para. (j), [www.unhcr.org/excom/exconc/4357a91b2/conclusion-local-integration.html](http://www.unhcr.org/excom/exconc/4357a91b2/conclusion-local-integration.html)

<sup>12</sup> UNHCR, UNHCR Comments on the European Commission Proposal for a Qualification Regulation – COM (2016) 466, February 2018, [www.refworld.org/docid/5a7835f24.html](http://www.refworld.org/docid/5a7835f24.html), p. 25.

<sup>13</sup> Chapters II – V of the 1951 Convention sets out a range of rights and standards of treatment for refugees.

## DECENT WORK

The possibility to access the labour market of the host country is fundamental for refugees' self-reliance and resilience. The economic inclusion of refugees empowers them to meet their needs in a safe, sustainable and dignified manner, and helps them to avoid aid-dependency and from having to resort to negative coping mechanisms. The economic inclusion of refugees also contributes to the host economies and enhances prospects for durable solutions for refugees.<sup>14</sup>

When accessing the labour market, refugees, as others, needs to have access to decent work. Decent work involves opportunities for work that is productive and delivers a fair income, as well as security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, to organize and to participate in the decisions that affect their lives and equality of opportunity and treatment for all persons regardless of gender.<sup>15</sup>

## THE RIGHT TO WORK AND RIGHTS AT WORK

The right to work, meaning the opportunity to gain a living by work freely chosen and accepted, is a fundamental human right enshrined in several international human rights treaties, including Article 23 of the Universal Declaration of Human Rights<sup>16</sup> and Article 6 of the ICESCR,<sup>17</sup> as well as in several other international instruments.<sup>18</sup> Decent work is one of the essential principles included in the United Nations 2030 Agenda for Sustainable Development, where Goal number

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<sup>14</sup> UNHCR, *Refugee Livelihoods and Economic Inclusion - 2019-2023 Global Strategy Concept Note*, <http://bit.ly/2FDoeLv>

<sup>15</sup> See International Labour Organization (ILO) definition of decent work, <https://bit.ly/3cO2GN0>

<sup>16</sup> Note 7 above.

<sup>17</sup> ICESCR (16 December 1966) 993 UNTS 3, <http://www.refworld.org/docid/3ae6b36c0.html>

<sup>18</sup> The right to work is for example protected in the International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195 (CERD), Article 5(e)(i), <https://www.refworld.org/docid/3ae6b3940.html>, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249 UNTS 13 (CEDAW), Article 11(1)(a), <https://www.refworld.org/docid/3ae6b3970.html>, Convention on the Rights of Persons with Disabilities (24 January 2007) 2515 UNTS 3 (CRPD), Article 27(1), <https://www.refworld.org/docid/45f973632.html>

8 calls on States to take action to promote “sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”.<sup>19</sup>

The right to work also applies to refugees, and is expressly provided for in Articles 17, 18 and 19 of the 1951 Convention. The 1951 Convention distinguishes between wage-earning employment, self-employment and engagement in liberal professions, and prescribes a level of treatment for refugees that is relative, i.e. depending on their legal status in the country, and connected to treatment that is provided to others, namely to non-nationals generally, most favourably treated non-nationals or nationals. As such, refugees must progressively be provided access to the labour market of their host State, with due regard to the country’s human rights obligations and general welfare of society. Recognizing that providing the opportunity to engage in productive employment is an essential part of a comprehensive refugee response framework and to the mutual benefit of both refugees and their host communities, the New York Declaration for Refugees and Migrants<sup>20</sup> and the Global Compact on Refugees<sup>21</sup> both call upon States to promote access to the labour market for refugees.

When working, refugees, like others, are entitled to just and favourable conditions of work, or rights at work, as regulated in Article 7 of the ICESCR.<sup>22</sup> Article 24(1)(a) of the 1951 Convention provides that when conditions of work are regulated by law or regulations, or where such conditions are under the control of administrative authorities, refugees lawfully staying in the host country shall be treated the same as nationals. When people have an opportunity to work, including when working in the informal economy, they must be able to work safely, with respect for human rights and free from exploitation, violence and

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<sup>19</sup> UNGA, *Transforming our World: the 2030 Agenda for Sustainable Development* (21 October 2015) A/RES/70/1 (Sustainable Development Agenda), Goal No. 8, <http://www.refworld.org/docid/57b6e3e44.html>; See further: <https://bit.ly/3HXuNHM>

<sup>20</sup> UNGA, *New York Declaration for Refugees and Migrants*, 3 October 2016, A/RES/71/1 (New York Declaration), <http://www.refworld.org/docid/57ceb74a4.html>

<sup>21</sup> UNGA, *Report of the United Nations High Commissioner for Refugees, Part II: Global compact on refugees*, A/73/12 (Part II), 17 December 2018, as part of its resolution on the Office of the High Commissioner for Refugees, A/RES/73/151, paras. 64, 67 and 70, <https://bit.ly/3yIHPeO>

<sup>22</sup> Note above, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

harassment.<sup>23</sup> Rights at work are also extensively regulated by international labour standards as defined by the ILO.<sup>24</sup>

In the Republic of Kazakhstan, the *Labour Code* and relevant by-laws provide for the right to employment for refugees registered with the Government. However, to UNHCR's knowledge, the temporary nature of the status provided to refugees precludes refugees from finding steady employment, as employers are reluctant to hire refugees due to lack of certainty about the extension of their refugee status. Largely because of their relatively short validity of legal status, the majority of refugees in the Republic of Kazakhstan can find a job in the informal labour sector only.

On the other hand, in accordance with the *Law "On the Legal Status of Foreigners"* (Article 6), foreigners permanently residing in the Republic of Kazakhstan have the same rights and bear the same duties in employment relations as citizens of the Republic of Kazakhstan. Refugees do not have the right to unemployment benefits.

## SOCIAL PROTECTION

Social protection refers to social security benefits and public relief. Article 9 of the ICCPR, to which the Republic of Kazakhstan is a party, provides that everyone has the right to social security, including social insurance.<sup>25</sup> Article 24(1)(b) of the 1951 Convention provides refugees lawfully staying in the host country shall be treated the same as nationals regarding all social security matters, while Article 23 of the 1951 Convention provides that refugees lawfully staying in the host country shall be accorded the same treatment as nationals with respect to public relief and assistance. Public relief and assistance should be interpreted broadly, and cover food, housing, medical care and emergency relief.

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<sup>23</sup> *United Nations Committee on Economic, Social and Cultural Rights, (CESCR), General Comment No. 23, on the Right to Just and Favourable Conditions of Work (Article 7 of the ICESCR) (20 January 2015) E/C.12/54/R.2 (CESCR General Comment No. 23), paras. 6, 48 and 49, <http://www.refworld.org/docid/5550a0b14.html>*

<sup>24</sup> *International labour standards are a comprehensive system of conventions and treaties, binding on those States that have ratified the instruments. See further at <https://bit.ly/3xtozee>. Kazakhstan has ratified 24 ILO conventions, including the eight conventions considered to be fundamental conventions, see <https://bit.ly/3xrjEdq>*

<sup>25</sup> *CESCR, General Comment No. 19: The right to social security (Article 9 of the Covenant), 4 February 2008, E/C.12/GC/19, <https://www.refworld.org/docid/47b17b5b39c.html>*



The critical importance of social protection for the reduction of poverty and prevention of vulnerability underpins its inclusion in the Sustainable Development Goals (SDGs), where Goal number 1.3 calls on States to implement nationally appropriate social protection systems and measures for all, including social protection floors.<sup>26</sup>

Although Articles 23 and 24 of the 1951 Convention only assures refugees lawfully staying in the host country, normally meaning recognized refugees, the same rights to social protection as nationals, the Committee on Economic, Social and Cultural Rights has made clear that asylum-seekers should also enjoy equal treatment in this regard.<sup>27</sup> It follows from Article 5 of the 1951 Convention that should rights be granted in other treaties or instruments that are more generous, these should have precedence over the 1951 Convention. Further, it is not permissible to make any differentiation between refugees with permanent residence permits, and refugees with temporary residence permits, as regards to access to social protection.<sup>28</sup> In general, social protection needs to be available and accessible to everyone, including to people working in the informal economy and to those who are unable to contribute through their labour.<sup>29</sup>

Refugees and asylum-seekers in Kazakhstan are not entitled to State-provided allowances in accordance with the national legislation. They cannot contribute to pension fund and do not receive social benefits that are accorded to citizens and permanently residing foreigners:

- a) In accordance with the Law “On the legal status of foreigners”, foreigners permanently residing in the Republic of Kazakhstan have the same rights and bear the same obligations as citizens of the Republic of Kazakhstan in matters of social and pension security (Article 8).

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<sup>26</sup> SDGs, above note, <https://sdgs.un.org/goals>

<sup>27</sup> CESCR General Comment No. 19, above note, para. 38, <https://www.refworld.org/docid/47b17b5b39c.html>

<sup>28</sup> See case from the Court of Justice of the European Union, where the Court held that such differentiation was not justified, Case 713/17, Ahmad Shah Ayubi v Bezirkshauptmannschaft Linz-Land (request for preliminary ruling) [2018] ECLI:EU:C:2018:929, [www.refworld.org/cases\\_ECJ\\_5bf82e4d4.html](http://www.refworld.org/cases_ECJ_5bf82e4d4.html)

<sup>29</sup> CESCR General Comment No. 19, above note, para. 34, <https://www.refworld.org/docid/47b17b5b39c.html>

- b) In accordance with the Law “On pension provision in the Republic of Kazakhstan”, foreigners and stateless persons permanently residing in the territory of the Republic of Kazakhstan enjoy the right to pension provision on an equal basis with citizens of the Republic of Kazakhstan, unless otherwise provided by laws and international treaties (Article 2).
- c) In accordance with the Law “On state social benefits for disability and loss of breadwinner in the Republic of Kazakhstan”, foreigners and stateless persons permanently residing in the Republic of Kazakhstan enjoy the right to state social benefits on an equal basis with citizens of the Republic of Kazakhstan (Article 1).
- d) In accordance with the Law “On State Benefits to Families with Children”, when assigning an allowance to a mother with many children, foreigners and stateless persons permanently residing in the Republic of Kazakhstan enjoy the right to the allowance on an equal basis with citizens of the Republic of Kazakhstan (Article 2).
- e) The Law of the Republic of Kazakhstan on Social Protection of Persons with Disabilities in the Republic of Kazakhstan guarantees social protection to citizens, foreigners and stateless persons with disabilities who have permanent resident status in Kazakhstan. Asylum-seekers and refugees with disabilities are excluded from this law due to lack of permanent resident status. Hence, refugees and asylum-seekers do not have access to the medical services necessary to establish their disability and to determine the level of disability. They also do not receive required medical care and cannot apply for disability allowances and/or other benefits, including disability equipment and mobility aid (Article 3).
- f) In accordance with the Law “On Housing Relations”, foreigners and stateless persons permanently residing in the Republic of Kazakhstan have the same rights and bear the same obligations on housing relations as citizens of the Republic of Kazakhstan, unless otherwise provided by the laws of the Republic of Kazakhstan” (Article 9). In addition, Article 76 of the Law stipulates that “Citizens with disabilities have the right for State-provided accommodation”. This right is inaccessible for refugees and asylum-seekers with disabilities.

# HEALTH CARE

According to Article 12 of the ICESCR, all persons, including refugees and asylum-seekers, should have non-discriminatory and equal access, on the same level as nationals, to preventive, curative and palliative health care.<sup>30</sup> While all persons, irrespective of legal status, should have access to primary and emergency medical care and to non-contributory social protection schemes, including those providing for health care, it is permissible to impose a qualification period that is proportionate and reasonable for access to contributory social protection schemes that provide for health care.<sup>31</sup>

The importance of universal health care is emphasized in the Sustainable Development Goal 3.8, which calls on States to provide access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all.<sup>32</sup>

The amendments introduced in 2021 to the *Code on Population Health and Healthcare System* and the Law “On Compulsory Social Health Insurance” stipulate that foreigners and stateless persons permanently residing in the territory of the Republic of Kazakhstan, enjoy the rights and bear responsibilities in the system of compulsory social health insurance on an equal basis with Kazakh citizens. Asylum-seekers and refugees residing in the Republic of Kazakhstan do not fall within the scope of these laws due to the temporary nature of their residency status and are excluded from the health insurance system.

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<sup>30</sup> See also CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, <https://www.refworld.org/docid/4538838d0.html>

<sup>31</sup> CESCR *General Comment No. 19*, above note, para. 37, <https://www.refworld.org/docid/47b17b5b39c.html>

<sup>32</sup> SDGs, above note, <https://sdgs.un.org/goals>

In accordance with legislative amendments introduced, 'henceforth', medical assistance in Kazakhstan is provided in the following volumes (Article 195 of the Code):

- 7) **minimum:** a guaranteed volume of free medical care, provided according to Article 96 of the Code;
- 8) **basic:** medical care within the scheme of a compulsory social health insurance, provided according to the Law of the Republic of Kazakhstan "On Compulsory Social Health Insurance" (CSHI);
- 9) **additional:** medical care within the framework of voluntary medical insurance, provided at the expense of voluntary contributions from individuals and legal entities.

Following the entry into force of the Law on CSHI, the right to receive medical care in the State compulsory health insurance system ("basic") is only available for participants of an insurance plan (Article 14 of Law on CSHI). Refugees and asylum-seekers, as temporarily residing foreigners, are excluded from participating in the health insurance system. Hence, they have the right to receive only a "minimum" volume of medical care (which mainly includes ambulance, primary health care, chronic diseases, among others). This right was further decreased for asylum-seekers, who have the right to receive a guaranteed volume of free medical care only for diseases that pose a danger to others (Article 83 of the Code). All other medical services, including medical consultations and diagnostics, provided by the State within the framework of the health insurance scheme, are only accessible on a paid basis for non-participants, which refugees and asylum-seekers are not able to afford.

Prior to the adoption of the new Code on Population Health and Healthcare System and the Law "On compulsory social health insurance", refugees and asylum-seekers in Kazakhstan had access to the State health-care system on an equal basis with Kazakh citizens, in accordance with the Order of Ministry of Health "Rules and scope of provision of the preventive, diagnostic and medical treatment services to refugees and asylum-seekers", issued in 2015 (null and void as of October 2020).

# EDUCATION

Article 13 of the ICESCR provides that States Parties to the Covenant recognize the right of everyone to education. As per Article 3 of the Convention on Combating Discrimination in Education,<sup>33</sup> which Kazakhstan ratified in 2016, the States Parties shall accord foreigners residing in their territory the same access to education as that given to their own citizens.

Article 22(2) of the 1951 Convention provides that the Contracting States are to accord to refugees treatment as favourable as possible and, in any event, not less favourable than treatment accorded to aliens generally in the same circumstances with regard to education other than elementary education.<sup>34</sup> This includes vocational education and vocational training.<sup>35</sup> Article 22(2) applies to treatment covering all aspects of education other than elementary education – particularly treatment with respect to accessing studies; recognizing foreign school certificates, diplomas and degrees; the remission of fees and charges; and the award of scholarships.

In the Republic of Kazakhstan, refugees have access to primary and secondary education on the same basis as citizens as per the *Order of the Minister of Education and Science of the Republic of Kazakhstan “On approval of the Rules for obtaining pre-primary, primary, secondary and general secondary education by foreigners and stateless persons permanently residing in the Republic of Kazakhstan”*. All refugee-children of school-age are enrolled in schools. However, refugees do not have access to higher education unless they are able to pay tuition. Many refugees cannot afford studying on a paid basis, which limits their chances to find formal and stable employment in the future. As per the Law of the Republic of Kazakhstan on Education, only citizens of Kazakhstan are eligible for State-provided scholarships for higher education. Refugees are also excluded from State-provided vocational and technical training.

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<sup>33</sup> *United Nations Educational, Scientific and Cultural Organization (UNESCO), Convention Against Discrimination in Education, 14 December 1960, <https://www.refworld.org/docid/3ae6b3880.html>*

<sup>34</sup> *Article 22(1) of the 1951 Convention provides that refugees shall be treated as nationals with regard to primary or elementary education.*

<sup>35</sup> *UNHCR, Rights of Refugees in the Context of Integration, please note that with regard to primary or elementary education refugees shall, in accordance with Article 22(1) of the 1951 Convention be accorded the same treatment as is accorded to nationals.*

Access to higher education and vocational training provide refugees with opportunities to strengthen their skills and qualifications, improving their chances of finding decent work and self-sufficiency.<sup>36</sup> States are encouraged to take measures to ensure access for refugees to various forms of education and vocational training, including primary, secondary and higher education; vocational and technical education; language courses and literacy trainings.<sup>37</sup> Article 6 (2) of the ICESCR also underlines the necessity of making vocational education available to refugees to facilitate access to employment.<sup>38</sup>

## NATURALIZATION

Article 34 of the 1951 Convention stipulates that “*the Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees*”. It means that State parties are encouraged to dispense with as many formalities in their naturalization process as possible so that refugees are positioned to acquire citizenship with minimum of difficulty. In Kazakhstan, however, due to the temporary nature of resident status, refugees are ineligible to apply for citizenship no matter how long they live in the country continuously and irrespective of strong links to Kazakhstan, e.g. married to a Kazakh citizen, unless they are eligible for a permanent residence, which is a necessary first step towards naturalization.

In accordance with the Rules of Issuance to Foreigners and Stateless Persons of the Permission for Temporary and Permanent Residence in the Republic of Kazakhstan, foreigners who wish to apply for permanent residence have to have an amount of around US\$9,000 (₸ 3,850,000) in a local bank to prove their financial capacity. Having fled from persecution and civil war in their home country with few possessions, most of the refugees are unable to provide such an amount of money. Further, the Rules require refugees to possess a valid national passport. In general, refugees are unable to approach their embassy or consulate for fear of

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<sup>36</sup> ExCom Conclusion No. 104 (LVI), <https://bit.ly/3p33eV1>

<sup>37</sup> ExCom Conclusion No. 64 (XLI) concerning skills training for women specifically. ExCom Conclusion No. 100 (LV). ExCom Conclusion No. 105. ExCom Conclusion No. 100 (LV). On ‘parents’, see ExCom Conclusion No. 107 (LVIII). <https://www.unhcr.org/en-us/578371524.pdf>, New York Declaration para 82, <https://bit.ly/3l78pBZ>

<sup>38</sup> ICESCR, *The Right to Work*. General Comment No. 18, <https://www.refworld.org/docid/4415453b4.html>

possible repercussions on them or their family members in the country of origin. Besides the well-founded fear, refugees also face almost insurmountable hurdles to obtain a national passport if there is no diplomatic representation of their country of origin present in a host country. The current legislation does not take the specific circumstances of refugees into account in terms of exempting them from these requirements, which refugees cannot normally fulfil but are required in order to successfully apply for permanent residence.

As a required step before eligibility for citizenship, permanent resident status is a key towards local integration and naturalization of refugees in the host country. After five years of residence, the holder of a permanent resident permit, if willing so, can apply for citizenship of Kazakhstan. This term is reduced to three years for those permanent residence holders who have Kazakh spouses.

Permanent residents can access employment, social assistance and all levels of education and naturalization in the country. With this status, refugees will be able to plan for their (and their children's) future which will help alleviate their anxiety. It will also help them become productive members of the society, contributing to the development of the country as taxpayers.

# RECOMMENDATIONS

To address the existing gaps in the national legislation, UNHCR would like to make the following recommendations to the Government of the Republic of Kazakhstan, as a State party to the 1951 Convention and other international human rights instruments.

UNHCR recommends that the Government considers:

**1.** \_\_\_\_\_

Amending the Law on the Legal Status of Foreigners and the Law on Refugees, to equate refugee status with the status of a permanent resident from the moment of recognition as a refugee, thereby according refugees the same rights as permanent residents, in addition to the rights enshrined in the 1951 Refugee Convention.

The status of a permanent resident allows an immediate access to employment, social assistance, integration and naturalization in the country after five years.

This amendment will help Kazakhstan to better fulfil its obligations under **Article 34 of the 1951 Convention**.

**2.** \_\_\_\_\_

Amending relevant labour, taxation and refugee legislation to facilitate the full realization of the right of refugees and asylum-seekers to employment, including technical and vocational courses and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental economic freedoms for the individual.

This amendment will help Kazakhstan to better fulfil its obligations envisaged under **Article 17 of the 1951 Convention, Articles 2, 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)**, and to achieve **Sustainable Development Goal 8 (8.5 and 8.8)**.



### 3. \_\_\_\_\_

Amending national legislation to ensure that refugees and asylum-seekers have access to the State's social security programs, including child benefits, sickness and health-care benefits, maternity benefits, disability benefits, old-age benefits, unemployment benefits and employment guarantees, and any other social benefits.

This amendment will help Kazakhstan to better fulfil its obligations under **Articles 23-24 of the 1951 Convention, Articles 2, 9 and 12 of the ICESCR**, and to achieve **Sustainable Development Goal 1 (1.3)**.

### 4. \_\_\_\_\_

Amending national legislation to ensure that the compulsory health insurance system covers every person in Kazakhstan, including refugees and asylum-seekers.

This amendment will help Kazakhstan to better fulfil its obligations under **Article 23 of the 1951 Convention, Articles 2 and 12 of the ICESCR** and to achieve **Sustainable Development Goal 3 (3.8)**.

### 5. \_\_\_\_\_

Amending national legislation to ensure refugees' access to higher education on a competitive basis on par with citizens.

This amendment will help Kazakhstan to better fulfil its obligations under **Article 13 of the ICESCR, Article 4 of the Convention against Discrimination in Education**, and to achieve **Sustainable Development Goal 4 (4.3)**.

UNHCR stands ready to discuss the foregoing with the relevant Government authorities of the Republic of Kazakhstan, including the provision of its expert support.

# UNHCR ANALYSIS OF THE COMPLIANCE OF THE NATIONAL LEGISLATION WITH INTERNATIONAL STANDARDS

## ACCESS TO THE TERRITORY AND TO THE ASYLUM PROCEDURE

### INTERNATIONAL STANDARD

#### **1. The refugee definition corresponds to the definition provided for by the Convention**

*(1951 Convention Relating to the Status of Refugees UNHCR, Executive Committee, Conclusion No.15 (XXX), 1979 Refugees without an asylum country)*

### NATIONAL LEGISLATION

#### **Law of the Republic of Kazakhstan “On Refugees”**

#### **Article 1. Principle definitions of the present Law**

The present law applies the following main definitions: 1) Refugee – a foreigner who owing to a well-founded fear of being persecuted for reasons of race, ethnicity, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, unwilling to avail himself of the protection of that country; or a stateless person, who is outside the country of his former habitual residence and is unable or unwilling to return to it owing to such fear.

#### ANALYSIS OF THE NATIONAL LEGISLATION

The refugee definition, cited in the Law of the Republic of Kazakhstan “On Refugees”, generally corresponds to the definition provided for by the Convention, taking into account the following aspects:

- The law broadens the refugee definition, since “ethnicity” has been added as a ground of persecution.
- In the Law of the Republic of Kazakhstan “On Refugees”, the term used – “a stateless person” – may exclude persons with undetermined nationality by implying that a person must have ‘de jure’ status. The refugee definition in the 1951 Convention on the Status of Refugees includes “not having a nationality”.

In accordance with the conclusions and recommendations of UNHCR and its Executive Committee, when applying for asylum there should be no restrictions that may ultimately lead to the refusal to consider such an application.

#### GOOD LEGISLATIVE PRACTICES

The refugee definition cited in the Law of the Republic of Kazakhstan “On Refugees” in general corresponds to the definition provided for by the Convention. Moreover, the Law of the Republic of Kazakhstan “On Refugees” broadens this definition by adding “ethnicity” as a ground of persecution. The 1951 Convention relating to the Status of Refugees offers a minimum standard, and a country is not limited from broadening a particular definition.

#### RECOMMENDATIONS

There are no recommendations.

#### INTERNATIONAL STANDARD

### **2. An asylum procedure is available to persons without appropriate documents**

(1951 Convention Relating to the Status of Refugees)

## **Law of the Republic of Kazakhstan “On Refugees”**

### **Article 10. Procedures for filing and registering an application for refugee status**

An asylum-seeker may submit written application for granting refugee status in person or through an authorized representative to the local authorized body within five calendar days upon arrival to the territory of the Republic of Kazakhstan, or from the moment an asylum-seeker has learnt about circumstances giving rise to fear of becoming a victim of persecution, based on race, ethnicity, religion, nationality, membership of a particular social group or political opinion.

If an asylum-seeker has not yet arrived in the territory of the Republic of Kazakhstan, he/she may submit written application for granting refugee status in person or through an authorized representative to the diplomatic representation or consular agency of the Republic of Kazakhstan.

The diplomatic representation or consular agency of the Republic of Kazakhstan remits the application for granting refugee status to the authorized body through diplomatic channels.

On crossing the state border a person shall submit written application for granting refugee status to the migration checkpoint; or, in the event that a checkpoint is absent, to the unit of the Border Guard Service of the National Security Committee of the Republic of Kazakhstan.

In the absence of a checkpoint at the state border of the Republic of Kazakhstan, the asylum-seeker shall apply to the authorized agency within one day in the event of forced illegal crossing of the border.

In cases when individuals detained for illegal entry or stay in the Republic of Kazakhstan declare their intention to apply for asylum, the competent authorities shall inform the authorized agency within one day from the start of detention.

The authorized agency shall clarify the circumstances of their stay in the territory of the Republic of Kazakhstan and register the application for granting refugee status within the period of two days.

Order of the Minister of Internal Affairs of the Republic of Kazakhstan of 29 November 2010, No. 496 “On Approval of the Rules for Registration and Consideration of the Application for Granting Refugee Status”

## **Chapter 2. Procedure for registration of an application for granting refugee status**

If a person has declared that he/she has no identity documents, information about him/her shall be recorded from his/her words and he/she shall be interviewed within one working day.

The application shall be received by the Migration Service Unit of the Department of Internal Affairs at the place of residence of the asylum-seeker in the territory of the Republic of Kazakhstan on the day of the filing of the application. If it is impossible to provide an interpreter on the day of the filing of the appeal for the individual and his accompanying family members, or if there is a lack of documentation, the date and time for receiving the application for recognition as a refugee shall be agreed with the person, including by telephone.

### **Criminal Code of the Republic of Kazakhstan. Article 392. Intentional illegal crossing of the State Border of the Republic of Kazakhstan**

The intentional illegal crossing of the State Border of the Republic of Kazakhstan in areas without checkpoints on the State Border, as well as the intentional illegal crossing the State Border of the Republic of Kazakhstan at stipulated checkpoints, committed with false documents or with fraudulent use of valid documents of third parties, or in violation of the established procedure, shall be punished by a fine in the amount of up to 1,000 monthly calculation indices, or imprisonment for a period of one year, with expulsion of the foreigner or stateless persons from the Republic of Kazakhstan for a period of up to five years.

### **Code of the Republic of Kazakhstan on Administrative Offences Article 513. Violation of a regime at crossing points through the State border of the Republic of Kazakhstan**

Violations at crossing points through the State Border of the Republic of Kazakhstan by a citizen of the Republic of Kazakhstan having failed to observe

the established procedure for entering crossing points, stay, movement and departure of persons, vehicles, the import, location, movement and export of goods and commodities, and the performance of economic and other activities – shall entail a fine in amount of five monthly calculation indices.

The same actions committed by a foreign person or stateless person, shall be subject to a fine at a rate of 10 monthly calculation indices or administrative expulsion from the Republic of Kazakhstan. Article 517.

### **Violation of the legislation of the Republic of Kazakhstan in the field of migration of population by a foreign person or stateless person**

Violation by a foreign person or a stateless person of the legislation of the Republic of Kazakhstan in the field of migration of population, expressed in a stay in the Republic of Kazakhstan without registration in the internal affairs bodies for up to three days after the expiration of the period established by the legislation of the Republic of Kazakhstan for registration – entails a notification.

Violation by a foreign person or a stateless person of the legislation of the Republic of Kazakhstan in the field of migration of population, expressed in a stay in the Republic of Kazakhstan without registration in the internal affairs bodies over the period provided for by the part one of this Article, or in residence at a different address from the address mentioned upon registration, and equally in failure to observe the rules governing transit through the territory of the Republic of Kazakhstan, -- shall be subject to a fine in the amount of 15 monthly calculation indices or administrative expulsion from the Republic of Kazakhstan.

Violation by a foreign person or a stateless person of the legislation of the Republic of Kazakhstan in the field of migration of population, expressed in failing to leave from the Republic of Kazakhstan within three days after expiration of the period stated in a visa or in a migration card upon registration, shall – entail a notification.

Violation by a foreign person or a stateless person of the legislation of the Republic of Kazakhstan in the field of migration of population, expressed in failing to depart during the period exceeding three days after the expiration of the period specified in the visa or in a migration card upon registration –subject to fine in the amount

of 15 monthly calculation indices or administrative expulsion out of borders of the Republic of Kazakhstan.

#### ANALYSIS OF THE NATIONAL LEGISLATION

In accordance with the legislation of the Republic of Kazakhstan, persons forced to illegally cross the border, or illegally residing in the territory of the Republic of Kazakhstan, have the right to apply for asylum to the competent authorities, which is a good legislative practice. However, the legislation of the Republic of Kazakhstan does not provide for exemptions for asylum-seekers and refugees regarding the application of penalties for violation of migration laws, which does not comply with the provisions of the 1951 Convention relating to the Status of Refugees and international best practice.

At the same time, applying for refugee status on the basis of paragraph 1 of Article 10 of the Law of the Republic of Kazakhstan “On Refugees” must be carried out at the place of their stay, which is contrary to the 1951 Convention on the Status of Refugees, where there are no restrictions on applying for the assignment of refugee status.

Further, in Article 10 of the Law of the Republic of Kazakhstan “On Refugees”, there is no precise indication as to how long (one, two days etc.) an application for granting refugee status should be registered if the asylum-seeker independently submits an application to the Authorized Body, which can entail a delay in registration for reasons beyond the asylum-seeker’s control. In such a case, without registration, the applicant would be particularly vulnerable, including a possible risk of refoulement.

It should also be noted that the Law of the Republic of Kazakhstan “On Refugees” does not provide for the refusal to accept applications, but very often in practice the employees of the migration service refuse to accept and register applications for granting refugee status to asylum-seekers in violation of local legislation.

According to Article 31(1) of the 1951 Convention relating to the Status of Refugees, “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in

their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

In accordance with UNHCR’s Introductory Note to the 1951 Convention relating to the Status of Refugees, “The Convention further stipulates that, subject to specific exceptions, refugees should not be penalized for their illegal entry or stay. This recognizes that the seeking of asylum can require refugees to breach immigration rules. Prohibited penalties might include being charged with immigration or criminal offences relating to the seeking of asylum, or being arbitrarily detained purely on the basis of seeking asylum. Importantly, the Convention contains various safeguards against the expulsion of refugees.”

In accordance with the UNHCR Executive Committee Conclusion on Protection Safeguards in Interception Measures No. 97 (LIV) 2003, VI) “nor should any intercepted person incur any penalty for illegal entry or presence in a State in cases where the terms of Article 31 of the 1951 Convention are met”.

As a rule, a refugee leaves his/her place of residence in a hurry and, as a consequence, he/she has no time to collect the necessary documents. There are also cases where a refugee is compelled to leave his/her country of origin with forged documents for the sake of rescue. Consequently, for such persons there should be no barriers due to the lack of proper documents or the presence of forged documents, and they should be admitted to the asylum procedure.

#### GOOD LEGISLATIVE PRACTICES

The legislation of the Republic of Kazakhstan contains provisions that allow a person without identity documents to apply for asylum, and the absence of such documents is not an obstacle to registering an application.

#### RECOMMENDATIONS

It is recommended to make appropriate changes to the legislation of the Republic of Kazakhstan so that asylum-seekers and refugees are exempted from administrative and criminal liability in case of illegal crossing of the state border, in case of using forged documents and in case of illegal stay in the territory of the Republic of Kazakhstan.



It is recommended to amend the Law of the Republic of Kazakhstan “On Refugees” to make it possible to apply for refugee status to any territorial department of the authorized body in cities of republican significance or regional centres of the Republic of Kazakhstan.

It is recommended to amend Article 10 of the Law of the Republic of Kazakhstan “On Refugees”, having established that application for granting refugee status must be registered immediately and setting the exact number of days after the submission of the application during which the application for granting refugee status must be registered, and the asylum-seeker will be issued a relevant certificate. It is necessary to supplement Article 10 of the Law of the Republic of Kazakhstan “On Refugees” with the following content: “Refusal to accept an application for granting refugee status is prohibited.”

#### INTERNATIONAL STANDARD

### **3. The principle of non-refoulement is specified in the national legislation, and the relevant guarantees are provided for in the criminal and migration legislation of the country**

*(1951 Convention Relating to the Status of Refugees, Article 33; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3; UN Committee on Economic, Social and Cultural Rights, Paragraph 12, General Comment N° 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev. 1/Add. 13, 26 May 2004; Vienna Convention on the Law of Treaties, Article 27)*

#### NATIONAL LEGISLATION

### **Law of the Republic of Kazakhstan “On Refugees”**

#### **Article 4. The basic principles of the state policy on refugees**

The basic principles of the state policy on refugees are: 6) non-refoulement of asylum-seekers and refugees in the event there are grounds envisaged under part 2 of paragraph 2 of Article 18 of the present Law.

#### **Article 18. Return and expulsion**

The return and expulsion of asylum-seekers and refugees to the frontiers of a State, where their life or freedom would be threatened on account of their race,

religious beliefs, ethnicity, citizenship, membership of a particular social group, or political opinion shall be prohibited.

### **Criminal Code of the Republic of Kazakhstan**

#### **Article 9. Extradition of persons who have committed a crime**

3. No one shall be subjected to extradition to a foreign State where there are serious grounds to believe that a person would be at risk of torture, violence or other cruel or degrading treatment or punishment, as well as in the case of a risk of the death penalty, unless otherwise provided for by international treaties of the Republic of Kazakhstan.

### **Criminal Procedure Code of the Republic of Kazakhstan**

#### **Article 590. Refusal to extradite a person (extradition)**

1. The extradition of a person (extradition) shall not be permitted if: 4) a person, in respect of whom an extradition request has been received, was granted asylum by the Republic of Kazakhstan; 7) there is a reason to believe that the person in respect of whom a request for extradition (extradition) is received, may be at risk of torture by the requesting party, or that his (her) health, life or freedom would be threatened on grounds of race, religion, nationality, citizenship (nationality), affiliation to a particular social group or political beliefs, except for the cases provided for by an international treaty of the Republic of Kazakhstan.

#### **ANALYSIS OF THE NATIONAL LEGISLATION**

The Republic of Kazakhstan is a party to the 1951 Convention relating to the Status of Refugees, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights. In addition, the Republic of Kazakhstan has adopted national legislation that prohibits refoulement, since the Law of the Republic of Kazakhstan “On Refugees” prohibits refoulement of asylum-seekers and refugees if their life or freedom is threatened on the grounds listed in the 1951 Convention relating to the Status of Refugees. The Criminal Code of the Republic of Kazakhstan prohibits expulsion of a person who may be at risk of torture, inhuman or degrading treatment. However, other legislative acts regulating expulsion and deportation matters do not contain provisions to prevent refoulement and can be used without

taking into account the provisions of the Law “On Refugees”, as well as lead to refoulement of refugees and asylum-seekers.

It should be specially noted that by the Law of the Republic of Kazakhstan, dated 28 December 2017 No. 127-VI ZRK, the Code of the Republic of Kazakhstan on Administrative Offences was supplemented with Chapter 44-1 “CONSIDERATION OF CASES ON ADMINISTRATIVE OFFENCES BY COURTS, APPEAL, CHALLENGE BEFORE THE COURT AGAINST DECISIONS ON ADMINISTRATIVE OFFENCES, REGULATIONS ON THE NECESSITY OF PAYING THE PENALTY, RESOLUTIONS OF THE SUPERIOR AUTHORITY (OFFICER) ON COMPLAINT, PROTEST “

According to Part 4 of Article 517 of the Code of the Republic of Kazakhstan on Administrative Offences, violation of the legislation of the Republic of Kazakhstan in the field of population migration by a foreigner or stateless person in failing to depart for a period exceeding 10 days after expiration of the period established by law, entails a fine in the amount of 25 monthly calculation indices or administrative expulsion from the Republic of Kazakhstan.

In accordance with Part 2 of Article 829-14 of the Code of Administrative Offences of the Republic of Kazakhstan, a court order on the expulsion of a foreigner or stateless person from the Republic of Kazakhstan comes into force from the date of its issuance, and serves as the basis for the expulsion of a foreigner or stateless person from the Republic of Kazakhstan. It also indicates the period during which a foreigner or stateless person must leave the territory of the Republic of Kazakhstan.

At the same time, the entry into force of the Resolution in the case of an administrative offence is also indicated in Part 4 of Article 883 of the Code of Administrative Offences of the Republic of Kazakhstan - a resolution regarding an administrative offence, the order on the need to pay a fine comes into force after the announcement of the order on the expulsion of a foreigner or stateless person from the Republic of Kazakhstan.

The period during which a foreigner will have to leave the territory of Kazakhstan is assigned to the court’s jurisdiction, and is not specified in the Code of Administrative Offences of the Republic of Kazakhstan. Consequently, the court can set a period of one day or more, which makes it practically impossible to appeal this decision to a higher court.

At the same time, appeals of and challenges to decisions that have entered into legal force are carried out in the cassation procedure provided for in Chapter 46 of the Code of Administrative Offences of the Republic of Kazakhstan.

Based on Part 1 of Article 448 of the Code of Administrative Offences of the Republic of Kazakhstan, an administrative offence case may be requested from the relevant court for cassation verification by the Chairman, the chairman of the specialized judicial collegium of the Supreme Court of the Republic of Kazakhstan, as well as by the Prosecutor General of the Republic of Kazakhstan, his deputies, regional prosecutors and equivalent prosecutors.

As indicated in Part 5 of the same article, decisions on cases of administrative offences that have entered into legal force can be revised upon the proposal of the Chairman, the chairman of the specialized judicial collegium of the Supreme Court of the Republic of Kazakhstan, as well as on the objection of the Prosecutor General of the Republic of Kazakhstan or his deputy, if there are available grounds provided for by part five of Article 851 of this Code.

Further, according to Part 5 of Article 851 of the Code of Administrative Offences of the Republic of Kazakhstan, the grounds for cassation revision of decisions in cases of administrative offences are cases when:

- 1) Execution of the adopted decision may lead to serious irreversible consequences for the life, health of people or for the economy and security of the Republic of Kazakhstan;
- 2) The adopted decision violates the rights and legitimate interests of an indeterminate number of persons or other public interests;
- 3) The adopted decision violates the uniformity in interpretation and application by courts, authorized bodies (officials) of the provisions of law.

This list is exhaustive and it is highly doubtful that a foreigner or stateless person will have the indicated grounds for changing or cancelling the expulsion order. Based on this, it can be concluded that when the court issues a decision on the expulsion of a foreigner from the Republic of Kazakhstan, he will be limited by the time period for drawing up and filing a petition for submission to the Supreme

Court of the Republic of Kazakhstan, or a petition to bring a protest to the prosecutor's office.

If, nevertheless, a foreigner submits a petition to the Supreme Court of the Republic of Kazakhstan, or to the prosecutor's office, this does not suspend the execution of the expulsion order, and he/she, in pursuance of the order, will have to leave the territory of Kazakhstan without waiting for the decision either of the court or of the prosecutor's office.

Since the Note on Article 669 of the Code of Administrative Offences of the Republic of Kazakhstan states that a person who has not complied with the court decision on administrative expulsion and has not left the territory of the Republic of Kazakhstan within the time period specified in the decision shall not be subject to administrative liability under this article, in case he/she is identified in checkpoints across the State Border of the Republic of Kazakhstan within 30 days from the expiration of the period specified in the court decision for the controlled independent departure of the expelled person from the Republic of Kazakhstan.

This directly violates the principle of non-refoulement set forth in the 1951 Convention on the Status of Refugees, since when making decisions, the administrative courts do not take into account the provisions of the 1951 Convention on the Status of Refugees and the Law of the Republic of Kazakhstan "On Refugees" and expel asylum-seekers who have at least once exceeded the time limit on their temporary registration.

The Republic of Kazakhstan is also a party to bilateral, multilateral and regional agreements, such as the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters and the Shanghai Convention on Combating Terrorism, Separatism and Extremism. These Conventions do not provide guarantees for the protection of persons against returning to territories where there is a threat to life and freedom on the grounds of race, religion, ethnicity, nationality (citizenship), membership of a particular social group or political opinion and may lead to refoulement. The law enforcement practice should be brought in line with the 1951 Convention relating to the Status of Refugees and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## GOOD LEGISLATIVE PRACTICES

The provisions of the 1951 Convention relating to the Status of Refugees, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, prohibiting refoulement of asylum-seekers and refugees, are reflected in the national legislation of the Republic of Kazakhstan. However, in practice, extradition may be carried out in accordance with bilateral or multilateral extradition agreements and international and regional treaties, such as the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters and the Shanghai Convention on Combating Terrorism, Separatism and Extremism that do not provide guarantees for the protection of persons against expulsion to a country where there is a threat to their life and freedom.

## RECOMMENDATIONS

It is recommended for the Republic of Kazakhstan to adhere to and ensure the appropriate implementation of the principle of non-refoulement when implementing existing bilateral and multilateral agreements related to extradition. It should be noted that obligations arising from international refugee law and human rights law take precedence over obligations arising from other international and regional agreements. The fulfilment of the obligation of non-refoulement is fundamental, especially considering that the Republic of Kazakhstan is a State party to the 1951 Convention relating to the Status of Refugees and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, in accordance with the Article 4 of the Constitution of the Republic of Kazakhstan, international treaties ratified by the Republic take precedence over its laws.

It is recommended to exclude from Part 2 of Article 829-14 and paragraph 4 of Article 883 of the Code of Administrative Offences of the Republic of Kazakhstan, the procedure for entering into force of a court decision on the expulsion of a foreigner or stateless person from the Republic of Kazakhstan from the date of its issuance. Thus, allowing foreigners (who may be asylum-seekers) to appeal the court ruling.

It is also recommended to legislatively prohibit the courts to apply the expulsion of asylum-seekers from the Republic of Kazakhstan until the end of the entire procedure for granting refugee status, as well as the complaint procedure - from filing a complaint with the Committee of Migration Services and ending with the Supreme Court of the Republic of Kazakhstan.

## INTERNATIONAL STANDARD

### **4. Access to the asylum procedure for persons in detention**

*(UNHCR ExCom Standing Committee Conference Room Paper, Detention of Asylum-Seekers and Refugees: The Framework, the Problem and Recommended Practice, June 1999, EC/49/SC/CRP.13; UNHCR, Executive Committee, Conclusion No. 44 (XXXVII): Detention of Refugees and Asylum-Seekers; UNHCR, Executive Committee, Conclusion No. 82 (XLVIII) - 1997: Safeguarding Asylum)*

## NATIONAL LEGISLATION

### **Law of the Republic of Kazakhstan “On Refugees”**

#### **Article 10. Procedures for filing and registering an application for refugee status**

4. In cases when individuals detained for illegal entry or stay in the Republic of Kazakhstan declare their intention to apply for asylum, the competent authorities shall inform the authorized body within one day since the detention.

The authorized body shall clarify the circumstances of their stay in the territory of the Republic of Kazakhstan and register the application for granting refugee status within the period of two days.

## ANALYSIS OF THE NATIONAL LEGISLATION

The Law of the Republic of Kazakhstan “On Refugees” states that asylum-seekers detained for illegal entry or stay in the territory of the Republic of Kazakhstan have access to the asylum procedure, however it does not list asylum-seekers who were detained on other grounds. In practice, this is not an obstacle to registering applications from asylum-seekers who are detained on any grounds, including on the basis of extradition requests.

## GOOD LEGISLATIVE PRACTICES

In accordance with the Law of the Republic of Kazakhstan “On Refugees”, asylum-seekers detained for illegal entry or stay in the territory of the Republic of Kazakhstan have access to the asylum procedure.

## RECOMMENDATIONS

In order to bring the national legislation in full compliance with the international standard, it is recommended that the legislation of the Republic of Kazakhstan be amended stating that all asylum-seekers in detention, including those detained on the ground of the extradition requests, can apply for asylum.

## INTERNATIONAL STANDARD

**5. Identification and referral systems at the border are clearly defined in the legislation (i.e. responsibility and procedure for border officials are defined)**  
*(1951 Convention Relating to the Status of Refugees; UNHCR, Executive Committee Conclusion No. 93 (LIII), 2002. Reception of Asylum-Seekers; UNHCR, Executive Committee Conclusion No. 82, On Safeguarding Asylum)*

## NATIONAL LEGISLATION

### **Law of the Republic of Kazakhstan “On Refugees”**

#### **Article 10. Procedures for filing and registering an application for refugee status**

3. On crossing the state border of the Republic of Kazakhstan a person shall submit application for granting refugee status in writing to the migration checkpoint; or, in the event that a checkpoint is absent, to the unit of the Border Guard Service of the National Security Committee of the Republic of Kazakhstan.

In the absence of a checkpoint at the state border of the Republic of Kazakhstan, a person shall apply to the authorized body within one day in the event of a forced illegal crossing of the state border of the Republic of Kazakhstan.

4. In cases when individuals detained for illegal entry or stay in the Republic of Kazakhstan declare their intention to apply for asylum, the competent authorities shall inform the authorized body within one day of detention.

The authorized body shall clarify the circumstances of their stay in the territory of the Republic of Kazakhstan and register the application for granting refugee status within a period of two days.

8. On crossing the state border of the Republic of Kazakhstan, a person shall submit application for granting refugee status in writing to the migration checkpoint; or, in



the event that a checkpoint is absent, to the unit of the Border Guard Service of the National Security Committee of the Republic of Kazakhstan.

**Order of the Minister of Internal Affairs of the Republic of Kazakhstan of 29 November 2010, No. 496 “On Approval of the Rules for Registration and Consideration of the Application for Granting Refugee Status”**

**Chapter 2. Procedure for registration and consideration of an application for granting refugee status**

8. In the absence of a checkpoint at the State Border of the Republic of Kazakhstan, a person must apply within 24 hours to the Migration Service Office of the Department of Internal Affairs in the event of a forced illegal crossing of the State Border of the Republic of Kazakhstan.

The application that has been received by the Migration Service Office of the Department of Internal Affairs from the Border Guard Service of the National Security Committee of the Republic of Kazakhstan shall be registered by the Migration Service Unit of the Department of Internal Affairs in the Register of Asylum-Seekers within one working day following the day of receipt of the application, and shall be transferred to the authorized officer of the Migration Service Unit of the Department of Internal Affairs on the same day.

**ANALYSIS OF THE NATIONAL LEGISLATION**

The legislation of the Republic of Kazakhstan provides for the possibility of applying for asylum at the border. The legislation also defines the procedure for the interaction between the border services and the competent authorities dealing with asylum matters, and the consideration of such applications. The legislation of the Republic of Kazakhstan does not contain detailed instructions on referral of asylum-seekers between border and migration authorities, and there is no procedure for treatment of cases when people do not have valid identity documents. There are no referral procedures for asylum-seekers with special needs, such as unaccompanied children, separated children, the unaccompanied elderly, people with disabilities, etc.

## GOOD LEGISLATIVE PRACTICES

The provision in the legislation of the Republic of Kazakhstan providing for the possibility of applying for asylum at the border is a good legislative practice, as well as the procedure for referral of applications between the border and migration authorities and the time periods for their consideration.

## RECOMMENDATIONS

It is recommended to develop a detailed mechanism for identification and referral of asylum-seekers at the border, containing comprehensive instructions on the coordination and interaction of border and migration authorities, with a view to effectively protect asylum-seekers at the border taking into account their special needs.

## INTERNATIONAL STANDARD

### **6. Basic humanitarian assistance for asylum-seekers and refugees with special needs is provided for by the legislation**

*(1951 Convention Relating to the Status of Refugees, Article 12; UNHCR, Executive Committee Conclusion No. 47 (XXXVIII) 1987: Refugee Children; UNHCR, Executive Committee Conclusion No. 64 (XLI) 1990: Refugee Women and International Protection; UNHCR, Executive Committee Conclusion No. 105 (LVII) 2006: Women and Girls at Risk; UNHCR, Executive Committee Conclusion No. 110 (LXI) 2010: Refugees with disabilities and other persons with disabilities protected and assisted by UNHCR)*

## NATIONAL LEGISLATION

### **Code on Public Health and the Health-care System as of 07.07.2020, Article 196**

1. The guaranteed volume of free medical care is provided to citizens of the Republic of Kazakhstan, kandas, refugees, foreigners and stateless persons permanently residing in the territory of the Republic of Kazakhstan, at the expense of budgetary funds, and includes preventive, diagnostic and therapeutic medical services with the greatest proven effectiveness, as well as medication provision.

The list of the guaranteed volume of free medical care is approved by the Government of the Republic of Kazakhstan. Foreigners and stateless persons temporarily staying in the Republic of Kazakhstan, as well as asylum-seekers,

have the right to receive a guaranteed volume of free medical care for diseases that pose a danger to others, according to the list and in the amount determined by the authorized body, unless otherwise provided by the laws of the Republic of Kazakhstan, or international treaties ratified by the Republic of Kazakhstan.

In accordance with the Law of the Republic of Kazakhstan “On compulsory social health insurance”, only foreigners and stateless persons permanently residing in the territory of the Republic of Kazakhstan, as well as kandases have obligations in the system of compulsory social health insurance on an equal basis with citizens of the Republic of Kazakhstan, unless otherwise provided by this Law.

**Law of the Republic of Kazakhstan of 17 July 2001, No. 246-II “On State Targeted Social Assistance”, Article 2**

1. Citizens of the Republic of Kazakhstan, kandases, refugees, foreigners and stateless persons permanently residing in the Republic of Kazakhstan with an average per capita income not exceeding the poverty line, have the right to targeted social assistance.

**Law of the Republic of Kazakhstan of 28 June 2005 No. 63-III “On State benefits to families with children”, Article 2**

1. Foreigners and stateless persons permanently residing in the Republic of Kazakhstan have the same right to benefits as Kazakh citizens when granting benefits to mothers with many children.

**Law of the Republic of Kazakhstan of 16 June 1997 No. 126 “On State Social Benefits for Disability and Loss of Breadwinner in the Republic of Kazakhstan”, Article 1**

2. Foreigners and stateless persons residing permanently in the Republic of Kazakhstan enjoy the same right to state social benefits as Kazakh citizens.

**Law of the Republic of Kazakhstan of 5 April 1999 No. 365-I “On Special State Benefit in the Republic of Kazakhstan”, Article 3**

2. Foreigners and stateless persons residing permanently in the Republic of Kazakhstan enjoy the same right to the benefits as Kazakh citizens.

**Law of the Republic of Kazakhstan of 13 April 2005 No. 39-III “On Social Protection of Persons with Disabilities in the Republic of Kazakhstan”, Article 3**

This Law applies to citizens of the Republic of Kazakhstan, foreigners and stateless persons permanently residing in the territory of the Republic of Kazakhstan.

**Law of the Republic of Kazakhstan of 29 December 2008 No. 114-IV “On Special Social Services”, Article 3**

This Law applies to Kazakh citizens, kandases, and foreigners and stateless persons residing permanently in the Republic of Kazakhstan.

**Law of the Republic of Kazakhstan of 21 June 2013 No. 105-V “On Pension Insurance in the Republic of Kazakhstan”**

2. Foreigners and stateless persons residing permanently on the territory of the Republic of Kazakhstan enjoy the right to a pension on an equal basis with Kazakh citizens, unless otherwise provided by the laws and international treaties.

**Law of the Republic of Kazakhstan of 26 December 2019 No.286-VI “On Compulsory Social Insurance”, Article 5**

Foreigners and stateless persons residing permanently in Kazakhstan and kandas enjoy the right to receive social benefits on an equal basis with Kazakh citizens, unless otherwise provided by the Constitution, laws and international treaties, ratified by the Republic of Kazakhstan.

**Law of the Republic of Kazakhstan of 8 August 2002, No. 345-II “On the Rights of the Child in the Republic of Kazakhstan”, Article 2. The Law application**

1. This Law shall apply to citizens of the Republic of Kazakhstan. A child who is not a citizen of the Republic of Kazakhstan shall enjoy the rights and freedoms in the Republic, as well as incur obligations established for citizens, unless otherwise provided by the Constitution of the Republic of Kazakhstan, the laws of the Republic of Kazakhstan and international treaties ratified by the Republic of Kazakhstan.

#### **Article 14. Right of a child to a dwelling place**

2. An orphan child, a child left without parental care, staying in educational, medical and other organizations, including those ensuring temporary isolation from society, being under trusteeship or guardianship, under foster care, shall reserve the right of ownership to a dwelling place, or right of using a dwelling place, and in its absence, the child shall have the right to receive a dwelling place, in accordance with housing legislation of the Republic of Kazakhstan.

#### **ANALYSIS OF THE NATIONAL LEGISLATION**

The legislation of the Republic of Kazakhstan partially complies with the international standard, since medical assistance to refugees and asylum-seekers is carried out free of charge, in accordance with the list of guaranteed free medical care provided to citizens of the Republic of Kazakhstan.

The amendments made to the Code on Public Health and the Health-care System and the Law on Compulsory Social Health Insurance provide that foreigners and stateless persons, permanently residing in the territory of the Republic of Kazakhstan, enjoy the rights and obligations in the compulsory social health insurance system on an equal basis with citizens of the Republic of Kazakhstan. Asylum-seekers and refugees residing in the Republic of Kazakhstan are not subject to these laws due to the temporary nature of their resident status and are excluded from the health insurance system.

In accordance with the amendments made to the legislation, asylum-seekers medical care in Kazakhstan is provided as follows (Article 195 of the Code):

- 4) **minimal**, which is a guaranteed volume of free medical care provided in accordance with Article 196 of this Code;

- 5) **basic**, which is medical care in the system of compulsory social health insurance, provided in accordance with the Law of the Republic of Kazakhstan “On Compulsory Social Health Insurance”;
- 6) **additional volume** of medical care, including medical care within the framework of voluntary medical insurance, is provided at the expense of voluntary contributions from individuals and legal entities.

The right to receive medical care in the system of state compulsory health insurance (“basic”) is available only to participants in the insurance plan (Article 14 of the Law on Compulsory Social Health Insurance). Refugees and asylum-seekers, as temporary residing foreigners, are excluded from the health insurance system. Consequently, they are only entitled to a “minimal” amount of health care (which mainly includes ambulance, primary health care, chronic illness, etc.). This right has been further restricted for asylum-seekers, who are entitled to a guaranteed volume of free medical care only for diseases that pose a danger to others (Article 83 of the Code). All other health-care services, including medical advice and diagnostics, provided by the government under the health insurance system, are available only on a paid basis to the persons not participating in the programme, that refugees and asylum-seekers cannot afford.

Articles 23–24 of the 1951 Convention relating to the Status of Refugees call on Contracting States to accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals, including social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security system). In the Republic of Kazakhstan, refugees and asylum-seekers are not entitled to receive pensions and benefits.

#### GOOD LEGISLATIVE PRACTICES

Medical assistance to refugees and asylum-seekers is carried out free of charge, in accordance with the list of guaranteed free medical care provided to citizens of the Republic of Kazakhstan. It is also a good practice to take care of children left without parental care, and to provide foreign children with access to rights on an equal basis with children-citizens. Refugee children and asylum-seeking children

enjoy rights on an equal basis with children-citizens. According to the Law on Citizenship of the Republic of Kazakhstan, children whose parents are unknown are considered as Kazakh citizens. In addition, with the support of NGO-based government funding, there are shelters for victims of trafficking, exploitation and violence. Foreigners, including refugees and asylum-seekers who have experienced violence, may be accommodated in shelters.

#### RECOMMENDATIONS

In accordance with the 1951 Convention relating to the Status of Refugees, it is recommended to amend the national legislation (*Code on Public Health and the Health-care System and Law on Compulsory Social Health Insurance*) in order to provide refugees legally residing in the Republic of Kazakhstan the same treatment as citizens regarding access to healthcare services in line with Compulsory Social Health Insurance scheme and social protection, which includes pensions and state benefits. It is suggested to consider a possibility for the refugees to make contributions to the pension fund on an equal basis with citizens.

#### INTERNATIONAL STANDARD

### **7. Free legal aid available to asylum-seekers and persons in need of international protection**

*(1951 Convention Relating to the Status of Refugees; International Covenant on Civil and Political Rights; General Comment No. 31 [80], para. 15)*

*UN Human Rights Committee, General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, Paragraph 15)*

#### NATIONAL LEGISLATION

### **Law of the Republic of Kazakhstan “On Advocacy Activity and Legal Assistance” Article 26. Persons entitled to receive legal assistance guaranteed by the state**

1. The right to receive free legal assistance guaranteed by the state in the form of provision of legal information shall be available to all individuals and legal entities.
2. Legal assistance guaranteed by the state in the form of legal advice, as well as protection and representation of the interests of individuals in courts, criminal

prosecutorial bodies, other State bodies and NGOs shall be provided in the manner prescribed by this Law and the legislation of the Republic of Kazakhstan:

- 1) to a person accused of administrative offences, in accordance with the legislation of the Republic of Kazakhstan on administrative offences;
- 2) to the plaintiff, in accordance with the civil procedural legislation of the Republic of Kazakhstan;
- 3) to the suspect, the accused, the defendant, the convicted offender, the exculpated person, the complainant (victim), in accordance with the criminal procedure legislation of the Republic of Kazakhstan;
- 4) to individuals for the recovery of alimony, granting of pensions and benefits, rehabilitation, obtaining refugee or kandas status, to minors left without parental care. If necessary, lawyers shall draw up written documents of a legal nature.

3. The persons specified in paragraphs 1 and 2 of this article shall have the right to receive legal assistance guaranteed by the state on the territory of the Republic of Kazakhstan, regardless of their place of residence and location.

4. In the interests of a person in need of legal assistance guaranteed by the state, his/her representative may apply for such assistance in the manner prescribed by law.

**Code of the Republic of Kazakhstan on Administrative Offences, Article 24.  
Judicial protection of rights, freedoms and legal interests of a person**

1. Everyone shall have the right to judicial protection of his/her own rights and freedoms. An interested person shall have the right to appear in court for protection of violated or contested rights, freedoms or interests protected by the Law.

**Article 750. Engagement, assignment, substitution of defence attorney,  
payment for his/her labour**



2. Upon request of the person in respect of whom the administrative infraction proceeding is conducted, the participation of a defence attorney shall be ensured by a judge, body (civil servant) authorized to consider cases on administrative infractions.

5. Payment for the services of a defence attorney shall be made, in accordance with the legislation of the Republic of Kazakhstan. The judge, authority (official) authorized to consider the cases on administrative infractions shall be obliged to release the person, in respect of whom the administrative offence proceeding is conducted, from paying for legal assistance. In this case the payment for services are paid from budgetary funds.

**Criminal Procedure Code of the Republic of Kazakhstan,  
Article 12. Judicial protection of human and civil rights and freedoms**

1. Everyone has the right to judicial protection of his/her rights and freedoms.

3. The State shall ensure everyone's access to justice and compensation for damages in the cases and manner prescribed by law.

**ANALYSIS OF THE NATIONAL LEGISLATION**

The legislation of the Republic of Kazakhstan guarantees the provision of free legal assistance to asylum-seekers and refugees.

**GOOD LEGISLATIVE PRACTICES**

The legislation of the Republic of Kazakhstan provides for the provision of free legal assistance to asylum-seekers and refugees.

**RECOMMENDATIONS**

There are no recommendations.

**INTERNATIONAL STANDARD**

**8. Availability of an appropriate legal framework in the event of a mass arrival of refugees on the territory of the country**

*(UNHCR, Executive Committee, General Conclusion on International Protection No. 82 (XLVIII), 1997. On Safeguarding Asylum; UNHCR, Executive Committee, General Conclusion on International Protection No. 22 (XXXII), 1981. Protection of*

*Asylum-Seekers in Situations of Mass Influx; UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status, para. 44)*

#### NATIONAL LEGISLATION

### **Law of the Republic of Kazakhstan “On Refugees”**

#### **Article 5. Competence of the Government of the Republic of Kazakhstan**

The Government of the Republic of Kazakhstan: 4) defines the areas for temporary settlement in the event of a mass influx of asylum-seekers and takes relevant decisions.

#### ANALYSIS OF THE NATIONAL LEGISLATION

In accordance with the UNHCR Executive Committee Conclusion on Protection of Asylum-Seekers in Situations of Large-Scale Influx No. 22 (XXXII) – 1981, “In situations of large-scale influx, asylum-seekers should be admitted to the State in which they first seek refuge and if that State is unable to admit them on a durable basis, it should always admit them at least on a temporary basis and provide them with protection, according to the principles set out below. They should be admitted without any discrimination as to race, religion, political opinion, nationality, country of origin or physical incapacity.”

In accordance with the UNHCR Executive Committee Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations No. 100 (LV) – 2004, “... persons who arrive as part of a mass influx seeking international refugee protection should always receive it, at least on a temporary basis”.

Likewise, the UNHCR Executive Committee on Refugees Without an Asylum Country No. 15 (XXX) – 1979, “In cases of a large-scale influx, persons seeking asylum should always receive at least temporary refuge.” In this regard, along with the individual refugee status determination procedure, it is necessary to provide for a refugee status determination procedure on a group basis (*prima facie*) with respect for the principle of non-refoulement.

The legislation of the Republic of Kazakhstan does not contain detailed procedures for the reception of asylum-seekers in cases of mass influx. The Law of the Republic of Kazakhstan “On Refugees” defines the competence of the

state body to address matters related to the accommodation of asylum-seekers in cases of mass influx.

#### GOOD LEGISLATIVE PRACTICES

Although the legislation of the Republic of Kazakhstan does not fully comply with the international standard, the provision on the placement of asylum-seekers in temporary settlements in the event of a mass influx should be considered as a good legislative practice.

#### RECOMMENDATIONS

Along with the individual refugee status determination procedure, it is recommended to introduce in the Law of the Republic of Kazakhstan “On Refugees” a group refugee status determination procedure (*prima facie*). At the same time, it is recommended that this procedure envisages admission to the territory of the country of a group of people and compliance with the principle of non-refoulement. Also the procedure should provide for the identification and referral of persons with special needs. In addition, it is necessary to envisage ensuring a timely and adequate response and coordination in the event of a mass arrival of refugees.

# ASYLUM PROCEDURE

## INTERNATIONAL STANDARD

**9. Communication with the authorities of the country of origin is prohibited**  
(1951 Convention Relating to the Status of Refugees; International law; Universal Declaration of Human Rights, Article 12; International Covenant on Civil and Political Rights, Article 17; UN Human Rights Committee, General Comment No. 16, Article 17, 1988, paras. 2 and 10)

## NATIONAL LEGISLATION

**Law of the Republic of Kazakhstan “On Refugees”,  
Article 4. The basic principles of the state policy on refugees**

3) confidentiality of information on the private life of asylum-seekers and refugees.

**Order of the Minister of Internal Affairs of the Republic of Kazakhstan of 29 November 2010, No. 496 “On Approval of the Rules for Registration and Consideration of the Application for Granting Refugee Status”, Chapter 3. Procedure for consideration of the application for granting refugee status**

19. Before the start of the interview, an officer of the Migration Police Unit of the Department of Internal Affairs shall introduce himself/herself, shall explain to the applicant his/her rights and obligations, including the obligation to reside at the declared address; the procedure for recognizing him/her as a refugee; and also shall ascertain whether he/she trusts the interpreter.

The applicant shall be informed that the information obtained as a result of the interview is not subject to disclosure, and will not be transmitted to the authorities of the state of citizenship, or former residence, of the applicant or to unauthorized persons without his/her consent.

## ANALYSIS OF THE NATIONAL LEGISLATION

The confidentiality of an asylum application must be strictly observed. In exceptional cases, contacts with the country of origin may be justified by considerations of national security, but even in this case the fact of applying for asylum should not be disclosed. The communication of information about the asylum-seeker can cause significant harm to the rights and interests of both the

person concerned and members of his/her family or other close people. The provisions on confidentiality in the legislation of the Republic of Kazakhstan on asylum comply with the international standard.

#### GOOD LEGISLATIVE PRACTICES

The principle of confidentiality is enshrined in the legislation of the Republic of Kazakhstan on asylum.

#### RECOMMENDATIONS

It is recommended to ensure compliance with the principle of confidentiality in practice.

#### INTERNATIONAL STANDARD

### **10. The gender aspect is included in the refugee status determination procedures**

*(1951 Convention Relating to the Status of Refugees, Article 3; International Covenant on Civil and Political Rights, Article 3; UN Committee on Human Rights, General Comment No. 16. Article 3: The equal right of men and women to the enjoyment of all economic, social and cultural rights; UNHCR, Executive Committee Conclusion No. 93 (LIII), 2002: Conclusion on reception of asylum-seekers in the context of individual asylum systems)*

#### NATIONAL LEGISLATION

### **Constitution of the Republic of Kazakhstan, Article 14**

1. Everyone shall be equal before the law and court.
2. No one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances.

**Order of the Minister of Internal Affairs of the Republic of Kazakhstan of 29 November 2010, No. 496 “On Approval of the Rules for Registration and Consideration of the Application for Granting Refugee Status”. Chapter 3. Procedure for consideration of the application for granting refugee status**

18. An interview with persons, whose fear of being persecuted is associated with the threat or facts of sexual violence, torture, the gender factor, or other motives requiring the creation of an environment of confidential communication, shall be conducted whenever possible by persons of the same sex as the applicant.

#### ANALYSIS OF THE NATIONAL LEGISLATION

International law and international refugee law prohibit any form discrimination and requires inclusion of gender considerations in the refugee status determination procedures.

In accordance with international refugee law, the procedure for granting refugee status should provide procedural guarantees for the protection of persons persecuted on the grounds of gender.

The wording given in paragraph 18 of Chapter 3 of the Rules for Registration and Consideration of the Application for Granting Refugee Status partially complies with the international standard, since it provides for creating an environment of trust in dealing with gender-related matters, as well as the possibility of the participation of the same sex person in the interview process. It is also recommended to provide additional procedural guarantees, including the participation of a translator of the same sex as the applicant in the interview process (if any), as well as to ensure non-discrimination.

#### GOOD LEGISLATIVE PRACTICES

Although the legislation of the Republic of Kazakhstan partially complies with the international standard, provisions on the need to create an environment of trust in handling cases on gender-related matters are a good legislative practice, as are the provisions on the possibility of participation of a person of the same sex with the applicant in the interview process.

#### RECOMMENDATIONS

In the refugee status determination procedures it is recommended to consider gender and age aspects, the special needs of victims of sexual violence and exploitation, stressful situations and torture, as well as needs of other vulnerable groups. It is recommended to develop a mechanism for referral of asylum-seekers and refugees with special needs to the competent state and non-state bodies in order to receive the necessary assistance and rehabilitation.

## INTERNATIONAL STANDARD

### **11. Consideration of the best interests of the child in the refugee status determination**

*(International Covenant on Civil and Political Rights, Article 24; OHCHR Committee on the Rights of the Child, General Comment No. 6 (2005, the 39th Session): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, Article 3; UNHCR, Executive Committee Conclusion No. 93 (LIII), 2002. Conclusion on the reception of asylum-seekers in the context of individual asylum systems; UNHCR, Executive Committee Conclusion No.47 (XXXVIII), 1987: Refugee Children)*

## NATIONAL LEGISLATION

### **Law of the Republic of Kazakhstan “On Refugees”,**

#### **Article 4. The basic principles of the state policy on refugees**

The basic principles of the state policy on refugees are:

5) protection of the rights of refugee children in Kazakhstan, in accordance with legislation of the Republic of Kazakhstan on the rights of a child.

#### **Article 11. Granting refugee status**

3. Refugee status determination with regards to a person under 18 years of age, who has arrived in Kazakhstan without parents or legal representatives, shall be carried out with due consideration of the best interests of this person, in accordance with this Law, after receipt of information on the parents or legal representatives.

#### **Article 16. Protection of refugee and asylum seeking children**

1. Asylum seeking and refugee children, both those who have arrived without parents or other legal representatives, or those whose parents or other family members cannot be found, shall enjoy the same level of protection in the Republic of Kazakhstan as other children left without parental care, in accordance with the legislation of the Republic of Kazakhstan on the rights of the child.

2. Refugee children staying in the territory of the Republic of Kazakhstan without parents or legal representatives shall be issued a refugee certificate.

**Order of the Minister of Internal Affairs of the Republic of Kazakhstan of 29 November 2010, No. 496 “On Approval of the Rules for Registration and Consideration of the Application for Granting Refugee Status.” Chapter 3. Procedure for consideration of the application for granting refugee status**

18. An interview with a minor shall be carried out in the presence of their legal guardian.

35. Application of a minor foreigner shall be considered by the Migration Service Unit of the Department of Internal Affairs as a matter of priority.

Consideration of petitions from victims of trafficking, sexual and gender-based violence, survivors of torture, as well as unaccompanied minors, is carried out as a priority and as soon as possible.

**Resolution of the Government of the Republic of Kazakhstan of 9 March 2010, No. 183 “On the Approval of the Rules for Granting, Extension, Cancellation and Termination of Refugee Status”. 2. The procedure of granting and of extension of refugee status**

6. Information about family members of the person recognized as a refugee under 18 years of age shall be entered into the refugee certificate of one of the parents, and in the event the parents are missing, into a refugee certificate of his legal representative, or of one of the family members who has reached the age of 18 years and has voluntarily taken responsibility for the conduct, upbringing and maintenance of family members under the age of 18 years. Subsequently, the territorial office of the competent authority shall issue the specified persons a refugee certificate upon reaching the age of 18 years based on their written application in any format.

A person recognized as a refugee, who has not reached the age of 18 and arrived in the territory of the Republic of Kazakhstan without parents or legal representatives, should also be given a refugee certificate.



**Procedure for appointing guardians for children left without parental care is set out in the Resolution of the Government of the Republic of Kazakhstan of 30 March 2012, No. 382 “On Approval of the Rules for the Implementation of State Functions on Trusteeship and Guardianship”**

9. Protection of the rights and interests of orphan children and children left without parental care shall be carried out by the authority in the manner established by the legislation of the Republic of Kazakhstan by placing them in a family (adoption, trusteeship or guardianship, foster care, adoptive family), and in the absence of such an opportunity, in organizations of all types for orphan children and children left without parental care.

To this end, the body:

1) Ensures temporary placement of orphan children and children left without parental care until the resolution of the issue of their placement in an adoptive family through trusteeship (guardianship), adoption, foster care, or in an organization for this category of children.

**Law of the Republic of Kazakhstan of 8 August 2002, No. 345-II “On the Rights of the Child in the Republic of Kazakhstan”. Article 2. Provisions of the present Law**

1. This Law shall apply to citizens of the Republic of Kazakhstan. A child who is not a citizen of the Republic of Kazakhstan shall enjoy the rights and freedoms in the Republic, as well as incur obligations established for citizens, unless otherwise provided by the Constitution of the Republic of Kazakhstan, the laws of the Republic of Kazakhstan and international treaties ratified by the Republic of Kazakhstan.

**Article 14. Right of a child to a dwelling place**

2. An orphan child, a child left without parental care, staying in educational, medical and other organizations, including those ensuring temporary isolation from society, being under trusteeship or guardianship, under foster care remains entitled to housing or entitled to use housing, and in its absence, shall have the

right to receive housing, in accordance with housing legislation of the Republic of Kazakhstan.

**“Housing Relations Act” of the Republic of Kazakhstan, dated 16 April 1997.**

**Article 67. Conditions for the provision of state housing**

1. Housing from the communal housing stock or dwellings rented by the local executive body in the private housing stock shall be provided for use by the citizens of the Republic of Kazakhstan in need of housing, permanently residing in this settlement. For registration of citizens of the Republic of Kazakhstan in cities of republican significance, the capital requires permanent residence of at least three years.

Housing from the communal housing stock or dwellings rented by the local executive body in the private housing stock are provided for use by citizens of the Republic of Kazakhstan in need of housing and registered with: 1-1) for orphans and children left without parental care.

**Law of the Republic of Kazakhstan “On Citizenship of the Republic of Kazakhstan”. Article 13. Citizenship of a child, whose parents are unknown**

A child, located in the territory of the Republic of Kazakhstan and whose both parents are unknown, shall be a citizen of the Republic of Kazakhstan.

**ANALYSIS OF THE NATIONAL LEGISLATION**

The legislation of the Republic of Kazakhstan complies with the international standard in the matter of taking into account the best interests of the child, since it determines the procedure for treatment of minors seeking asylum. In accordance with the legislation of the Republic, foreign children, including children left without parental care, have equal rights with children-citizens. The state assumes responsibility for the protection of such children and provides them with all the necessities, and also determines the procedure for provision of guardianship.

However, the legislation of the Republic of Kazakhstan provides for the provision of housing from the state housing stock only for citizens of the Republic of Kazakhstan.

#### GOOD LEGISLATIVE PRACTICES

Refugee status is granted to a child, regardless of age and the presence of a legal representative, and a refugee certificate is issued to such a minor. The presence of a legal representative during an interview with a minor is also an example of a good practice. In addition, children left without parental care are provided with housing.

#### RECOMMENDATIONS

In the legislation on asylum it is recommended to include a procedure for interviewing asylum-seekers who are minors, as well as a procedure for treatment of children with special needs, referral mechanisms and their rehabilitation or placement in specialized institutions.

It is necessary to amend the Law of the Republic of Kazakhstan “On Housing Relations” to provide refugee orphans and children left without parental care an opportunity to receive housing from the state housing stock.

#### INTERNATIONAL STANDARD

### **12. The possibility of participation of NGOs in the refugee status determination procedure**

*(UNHCR, Executive Committee Conclusion No. 105 (LVII), 2006;*

*UNHCR, Executive Committee Conclusion No. 93 (LIII), 2002)*

#### NATIONAL LEGISLATION

The legislation of the Republic of Kazakhstan does not provide for participation of NGOs in the refugee status determination procedure.

#### ANALYSIS OF THE NATIONAL LEGISLATION

Although the 1951 Convention relating to the Status of Refugees does not explicitly call for the participation of NGOs in asylum procedures, the UNHCR Executive Committee (in its recommendations) and UNHCR as a whole, recognize the need for the participation of local NGOs in this process. In addition, general comments of the Committee on Economic, Social and Cultural Rights contain calls for cooperation with the non-governmental and civil sectors.

The non-governmental sector, in general, plays a decisive role, as it is a provider of a specific service for persons in need of protection. In the course of this activity,

they identify shortcomings / gaps in the legislation or individual procedures, as well as the existing good practices. The process of transposing international standards into national legislation is associated with increased awareness and accessibility of information, since it is necessary that asylum-seekers are familiar with the rights granted to them by the national legislation of the country. The role of NGOs is also important in this case, since they have direct contact with asylum-seekers.

In addition, the inclusion of NGOs in asylum procedures will contribute to greater protection of asylum-seekers, increase the transparency of the procedure and encourage cooperation between the state and the non-governmental sector.

Given the above, the legislation of the Republic of Kazakhstan on asylum does not comply with the international standard.

#### GOOD LEGISLATIVE PRACTICES

The legislation of the Republic of Kazakhstan does not contain a good legislative practice in terms of ensuring access of NGOs to the refugee status determination procedure.

#### RECOMMENDATIONS

In order to ensure transparency of the refugee status determination procedure and better protection of asylum-seekers, it is recommended that NGOs with relevant experience participate in this procedure. This will also contribute to improvement of communication and to the deepening of cooperation between the government and non-government sectors.

#### INTERNATIONAL STANDARD

### **13. The right to free interpretation services during the asylum procedure**

*(UNHCR, Executive Committee Conclusion No. 8 (XXVIII), 1977: Determination of Refugee Status; iv) The applicant should be given the necessary assistance, including the services of a competent interpreter, for submitting his case to the authorities concerned.)*

**Law of the Republic of Kazakhstan “On Refugees”.**

**Article 8. Rights and duties of asylum-seekers**

1. Asylum-seekers shall have the right to:

1) Receive free interpretation services and information on the procedures of granting refugee status, on their rights and duties.

**Order of the Minister of Internal Affairs of the Republic of Kazakhstan of 29 November 2010, No. 496 “On Approval of the Rules for Registration and Consideration of the Application for Granting Refugee Status”. Chapter 2. Procedure for registration of an application for granting refugee status.**

8. The application shall be filled out in the state or Russian languages and shall be signed by the person and the interpreter (in case an interpreter participates). If the person cannot fill out the application in the state or Russian language or is illiterate, the application shall be filled out with the participation of an interpreter and an employee of the Migration Service Unit of the Department of Internal Affairs.

If it is impossible to provide an interpreter on the day of the appeal of the individual and family members who arrived with him, or if they do not have identity documents, the date and time of receiving the application for recognition as a refugee shall be agreed with the person, including by phone.

**Chapter 3. Procedure for consideration of the application for granting refugee status**

18. The interview shall be conducted in an isolated room without the admission of unauthorized persons. If the applicant does not speak the state or Russian language, and the employee conducting the interview does not speak the language of the applicant, an interpreter shall be invited.

19. Before the start of the interview, an officer of the Migration Police Unit of the Department of Internal Affairs shall introduce himself/herself, shall explain to the applicant his/her rights and obligations, including the obligation to reside at the

declared address, the procedure for recognizing him/her as a refugee, and also shall ascertain whether he/she trusts the interpreter.

#### ANALYSIS OF THE NATIONAL LEGISLATION

The legislation of the Republic of Kazakhstan provides asylum-seekers with the right to free interpretation services.

#### GOOD LEGISLATIVE PRACTICES

A good legislative practice is to provide the right to free interpretation services. In addition, the law defines the responsibility of the interviewer for creating conditions conducive to establishing the applicant's confidence in the interpreter.

#### RECOMMENDATIONS

When conducting a refugee status determination procedure, if possible, it is recommended to provide an interpreter of the sex requested by the applicant. In the case when the interpreter and the applicant do not fully understand each other and the interpretation is inaccurate, the interpreter should be replaced.

#### INTERNATIONAL STANDARD

**14. The right to appeal to an authority other than the one that has considered the case** (*1951 Convention Relating to the Status of Refugees, Article 16*)

#### NATIONAL LEGISLATION

**Law of the Republic of Kazakhstan “On Refugees”**

**Article 8. Rights and duties of asylum-seekers**

1. Asylum-seekers shall have the right to:

4) appeal the decision of the competent authority on the refusal of refugee status.

**Article 11. Granting refugee status**

6. In the event of a negative decision on an asylum application, a copy of the decision stating the reasons for denial and explanation of the process of appealing the decision shall be handed personally, or sent to the claimant within five working days after the decision has been rendered.

However, there is no procedure for issuing a new decision on the refusal to grant refugee status in case of its loss. If an asylum-seeker loses the decision on refusing to grant refugee status, earlier issued to him, then he is deprived of the opportunity to appeal it in court, to which he is obliged to provide the original of the decision on refusing to grant refugee status.

### **Article 15. Appeal of a decision of the competent authority**

A decision of the competent authority on the refusal to grant, extend or cancel refugee status may be appealed to the higher-level competent authority and/or to a court, in accordance with the procedures established under the laws of the Republic of Kazakhstan.

### **Order of the Minister of Internal Affairs of the Republic of Kazakhstan of 29 November 2010, No. 496 “On Approval of the Rules for Registration and Consideration of the Application for Granting Refugee Status”**

47. In case of refusal to extend refugee status, the territorial department of the authorized body, within three calendar days from the date of the decision on refusal, hands or sends to the applicant at the place of registration a copy of the decision indicating the reasons for refusal, the procedure for appealing the decision, as well as with an explanation of his rights and responsibilities, at the same time informing the Division of the Migration Service of the Internal Affairs bodies and providing them with a copy of the decision.

### **Resolution of the Government of the Republic of Kazakhstan of 9 March 2010, No. 183 “On the Approval of the Rules for Granting, Extension, Cancellation and Termination of Refugee Status”**

10. If an asylum-seeker located outside the territory of the Republic of Kazakhstan has been refused refugee status, the territorial division of the authorized body shall refer the decision to the authorized body within five working days from the date of the decision. Subsequently, this decision shall be referred within two working days through the Ministry of Foreign Affairs of the Republic of Kazakhstan to the diplomatic mission or consular office of the Republic of Kazakhstan at the place of filing of the application.

Within five working days from the date of receipt of the decision, the diplomatic mission or consular office of the Republic of Kazakhstan shall hand over or send to this person a copy of the decision indicating the reasons for the refusal and the procedure for appealing the decision.

If an asylum-seeker located in the territory of the Republic of Kazakhstan has been refused refugee status, the territorial division of the authorized body shall hand over or send to this person a copy of the decision indicating the reasons for the refusal and the procedure for appealing the decision at the place of his/her stay within five working days from the date of the decision, and shall inform the unit of the migration police of the internal affairs bodies and provide them with a copy of the decision.

11. When appealing a decision on refusal to grant refugee status to a court and (or) to an authorized body, the territorial division of the authorized body shall extend the validity period of the asylum-seeker certificate for the period of consideration of the complaint. If the asylum-seeker receives a court decision refusing to satisfy the complaint, the asylum-seeker certificate must be surrendered to the territorial division of the authorized body.

#### ANALYSIS OF THE NATIONAL LEGISLATION

In accordance with the 1951 Convention relating to the Status of Refugees, a refugee should be able to appeal relevant decisions to the court. At the same time, he/she should be exempted from paying duties.

The legislation of the Republic of Kazakhstan complies with the international standard, since it provides for the possibility of appealing in court a negative decision on granting, extending or cancelling a refugee status.

#### GOOD LEGISLATIVE PRACTICES

The legislation of the Republic of Kazakhstan allows decisions on refusal to grant refugee status, or cancellation of refugee status, to be appealed both administratively and judicially.

#### RECOMMENDATIONS

It is recommended that an addition be made to Part 6 of Article 11 of the Law of the Republic of Kazakhstan “On Refugees” regarding reissuance of a decision on refusal to grant refugee status in case of loss of the decision, at the request of an asylum-seeker.



## INTERNATIONAL STANDARD

### **15. Complementary forms of protection enshrined in the legislation** *(UNHCR, Executive Committee Conclusion No. 103 (LVI), 2005*

## NATIONAL LEGISLATION

### **The legislation of the Republic of Kazakhstan does not provide for complementary forms of protection.**

## ANALYSIS OF THE NATIONAL LEGISLATION

The legislation of the Republic of Kazakhstan does not comply with the international standard, since it does not contain provisions for providing protection to persons who are not officially recognized by the state as refugees, but who, nevertheless, cannot return to their countries of origin due to other compelling reasons, such as ongoing armed conflict, the consequences of general aggression, or serious disturbances of public order.

In accordance with international standards and comparative analysis of State practices, States grant complementary protection to persons who do not meet the refugee criteria, as defined in Article 1 of the 1951 Convention relating to the Status of Refugees, but nevertheless are outside the country of origin and are in need of international protection, or due to humanitarian reasons cannot return to the country of origin, such as a serious threat to their life, freedom or health; persecution or armed conflict; serious violation of public order; or a massive violation of human rights.

UNHCR Executive Committee General Conclusion on International Protection No. 87 (L) – 1999, “Reaffirms that the 1951 Convention relating to the Status of Refugees and the 1967 Protocol remain the foundation of the international refugee regime; recognizes, however, that there may be a need to develop complementary forms of protection, and, in this context, encourages UNHCR to engage in consultations with States and relevant actors to examine all aspects of this issue;”. In accordance with the UNHCR Executive Committee Conclusion on International Protection No. 89 (LI) – 2000, “Reaffirming that the 1951 Convention relating to the Status of Refugees and the 1967 Protocol remain the foundation of the international refugee regime; noting that complementary forms of protection adopted by some States are a pragmatic response to ensure that persons in need

of such protection receive it; and recognizing in this context the importance of the full application of the 1951 Convention and the 1967 Protocol by States Parties”.

In accordance with the UNHCR Executive Committee Conclusion on the Provision on International Protection Including Through Complementary Forms of Protection No. 103 (LVI) – 2005, “[a]cknowledging that in many countries a number of administrative or legislative mechanisms are in place for regularizing, on a variety of grounds, the stay of persons, including those who may not be eligible for refugee protection but who may be in need of international protection,” and “[e]ncourages the use of complementary forms of protection for individuals in need of international protection who do not meet the refugee definition under the 1951 Convention or the 1967 Protocol”.

Complementary protection is usually granted for a period of one year. In cases where the grounds for granting complementary protection continue to exist in the country of origin, or of former habitual residence, the period of such protection may be extended.

#### GOOD LEGISLATIVE PRACTICES

The legislation of the Republic of Kazakhstan does not provide for the provision of complementary forms of protection to persons who are not recognized as refugees, but who need international protection for other valid reasons. Consequently, the legislation of the Republic of Kazakhstan does not contain a good legislative practice

#### RECOMMENDATIONS

It is recommended to amend the legislation of the Republic of Kazakhstan in order to include complementary forms of protection for persons who cannot return to their country of origin due to the existence of a serious threat to their lives, freedom or health, due to armed conflict, serious violations of public order or massive violations of human rights.

#### INTERNATIONAL STANDARD

### **16. UNHCR’s participation in the asylum procedure**

*(1951 Convention Relating to the Status of Refugees, Article 35  
UNHCR, Executive Committee Conclusion No. 8 (XXVIII), 1977.  
Determination of Refugee Status)*

*UNHCR, Executive Committee, General Conclusion on International Protection No. 22 (XXXII), 1981. Protection of Asylum-Seekers in Situations of Mass Influx)*

#### NATIONAL LEGISLATION

According to Article 3, Paragraph 4 of the Cooperation Agreement between the Government of the Republic of Kazakhstan and UNHCR, “the Government provides UNHCR at any time unimpeded access to refugees and other persons of concern to UNHCR, as well as to places of implementation of UNHCR projects to monitor all stages of their implementation”.

#### ANALYSIS OF THE NATIONAL LEGISLATION

The 1951 Convention relating to the Status of Refugees requires States to cooperate with UNHCR on asylum-related matters. This provision also covers access of the organization to cases of asylum-seekers. UNHCR has access to the State refugee status determination procedure on the basis of the Agreement between the Government and UNHCR.

#### GOOD LEGISLATIVE PRACTICES

Providing UNHCR with access to the refugee status determination procedure is a good legislative practice.

#### RECOMMENDATIONS

There are no recommendations.

#### INTERNATIONAL STANDARD

### **17. The safe third country procedure contains a detailed assessment of the accessibility of protection**

*(UNHCR, Executive Committee Conclusion No. 85 (XLIX), 1998.*

*On the International Protection of Refugees*

*UNHCR, Executive Committee Conclusion No. 87 (L) 1999.*

*General Conclusion on International Protection)*

#### NATIONAL LEGISLATION

### **Law of the Republic of Kazakhstan “On Refugees”**

#### **Article 1. Principle definitions of the present Law**

The following principle definitions are used in this Law:

4) safe third country - a country where an asylum-seeker had been staying temporarily before arriving to the Republic of Kazakhstan, and where s/he may be or has been granted access to effective protection and refugee status determination mechanisms.

## **Article 12. Grounds for refusal to persons seeking asylum, in granting a refugee status**

4) if a person has arrived directly from the territory of a safe third country.

### **ANALYSIS OF THE NATIONAL LEGISLATION**

According to the Considerations on the “Safe Third Country” Concept, “Governments should apply the “safe third country” notion only if they have received, on a bilateral basis, the explicit or implicit consent of the third State to take back the asylum-seeker and to grant him/her access to a fair asylum procedure, so as to ensure that the application will be examined on its merits”. The considerations further suggest that in considering whether to send asylum-seekers back to the countries they came from, when applying the provision of a safe third country, States “should not only take into account the possibility of access to a fair asylum procedure, but also facilities for reception and longer-term integration in these countries”. States “should, furthermore, give due regard to any links which the applicant has with them as compared with a third country where s/he has no such links. Special regard should be given to family, cultural and other relevant links. Furthermore, the applicant should not be returned to a country where they have been in mere transit.”

The application of the concept of a safe third country is subject to the establishment in national legislation of rules guiding the competent authorities in order to determine with confidence that it can be applied to a specific country or a particular applicant. UNHCR notes that the processing of asylum applications is the primary responsibility of the States where the application was submitted. The provision on a safe third country should be applied with caution and only when all the above conditions have been met.

The legislation of the Republic of Kazakhstan does not comply with the international standard, since it does not define a procedure for assessing the safety of a third country, in particular, an obligation to treat an asylum-seeker in accordance

with established international standards, to provide effective protection against refoulement and to provide the opportunity to the asylum-seeker to use asylum.

#### GOOD LEGISLATIVE PRACTICES

In the matter of using the concept of a third safe country, the legislation of the Republic of Kazakhstan does not contain a good legislative practice.

#### RECOMMENDATIONS

It is recommended to amend the national legislation in order to establish a criteria and methodology for defining a country as a safe country for the return of asylum-seekers, a mechanism for the return of asylum-seekers to a third safe country and a procedure for assessing the links of an asylum-seeker with a safe third country. Thus, the decision to refuse to grant refugee status due to the arrival of a person from the territory of a safe third country should be based on a thorough assessment of the security of the country of potential return, the possibility of admission to the asylum procedure and the links of the asylum-seeker with the country, and not just the subjective opinion on the situation in a third country of staff dealing with the refugee status determination.

#### INTERNATIONAL STANDARD

### **18. The time period for a decision on asylum application does not exceed 3-6 months**

*(UNHCR Executive Committee Conclusion No. 93 (LIII), 2002 Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union, Brussels, 13/7/2016 COM (2016) 467)*

#### NATIONAL LEGISLATION

### **Law of the Republic of Kazakhstan “On Refugees”**

#### **Article 11. Granting refugee status**

1. A decision on granting refugee status shall be made by the competent authority within three months after registration of an application for refugee status. In case a decision requires additional examination, the date of rendering a final decision shall be postponed for the period of up to one year.

**Resolution of the Government of the Republic of Kazakhstan of 9 March 2010, No. 183 “On the Approval of the Rules for Granting, Extension, Cancellation and Termination of Refugee Status”**

3. The decision on granting refugee status shall be made by the territorial division of the authorized body on the recommendation of the commission for the implementation of the procedure for granting, extending, cancelling and terminating refugee status within three months from the day of registration of the application for granting refugee status, subject to the person’s being registered with dactyloscopy method in accordance with the legislation of the Republic of Kazakhstan.

In cases where additional verification is required for making a decision, the final decision shall be postponed for a period not exceeding one year; the asylum-seeker shall be informed about this within two working days from the date of the relevant decision.

**ANALYSIS OF THE NATIONAL LEGISLATION**

The main purpose of the consideration of the case within a reasonable time frame is to provide prompt and effective protection to those in need. To date, UNHCR considers it fair to consider the application and make a decision within six months.

Taking into account the above, the legislation of the Republic of Kazakhstan complies with the international standard, since the general term for consideration of an application is three months.

Non-compliance with the standard was identified in Part 1 of Article 11 of the Law of the Republic of Kazakhstan “On Refugees” according to which, in case a decision requires additional examination, the date of rendering a final decision shall be postponed for a period of up to one year.

**GOOD LEGISLATIVE PRACTICES**

The general term for consideration of an application is three months.

**RECOMMENDATIONS**

There are no recommendations.

# SPECIAL PROCEDURES FOR PERSONS WITH SPECIFIC NEEDS

## INTERNATIONAL STANDARD

**19. The refugee status determination procedures provide for special procedures in respect of persons with specific needs (unaccompanied and separated children, sexual and gender-based violence victims, victims of human trafficking, among others).**

*(UNHCR, Executive Committee Conclusion No. 93 (LIII), 2002. Conclusion on reception of asylum-seekers in the context of individual asylum systems UNHCR, Executive Committee Conclusion No. 105 (LVII), 2006. Women and girls at risk).*

## NATIONAL LEGISLATION

**Order of the Minister of Internal Affairs of the Republic of Kazakhstan of 29 November 2010, No. 496 “On Approval of the Rules for Registration and Consideration of the Application for Granting Refugee Status”**

18. An interview with persons, whose fear of being persecuted is associated with the threat or facts of sexual violence, torture, the gender factor, or other motives requiring the creation of an environment of confidential communication, shall be conducted whenever possible by persons of the same sex as the applicant.

35. Application from the victims of human trafficking, sexual and gender violence, survivors of torture, and also unaccompanied minors foreigner shall be considered as a matter of priority as soon as possible.

30. In the event of the birth of children of a person applying for refugee status, or the death of one of the family members during the procedure for recognition as a refugee, the person immediately informs the Migration Service Unit about this in order to amend and supplement the application.

31. In the event that a child is born to a person recognized as a refugee, the person submits to the Migration Service Unit, in which he is registered, an application for recognizing the child as a refugee. The child’s birth certificate is attached to the application. The Migration Service Unit makes a decision on such an application as a matter of priority.

## **Law of the Republic of Kazakhstan “On Refugees”**

### **Article 11. Granting refugee status**

3. Refugee status determination with regards to a person under 18 years of age, who has arrived in the territory of the Republic of Kazakhstan without parents or legal representatives, shall be carried out with due consideration of the best interests of this person, in accordance with this Law, after receipt of information on the parents or legal representatives.

### **Article 16. Protection of refugee and asylum-seeking children**

1. Asylum-seeking and refugee children, both those who have arrived without parents or other legal representatives, or whose parents or other family members cannot be found, shall enjoy the same level of protection in the Republic of Kazakhstan as other children left without parental care, in accordance with the legislation of the Republic of Kazakhstan on the rights of the child.

2. Refugee children staying in the territory of the Republic of Kazakhstan without parents or legal representatives shall be issued a refugee certificate.

#### **ANALYSIS OF THE NATIONAL LEGISLATION**

In accordance with the UNHCR Executive Committee Conclusion on reception of asylum-seekers in the context of individual asylum systems No. 93 (LIII) – 2002, “Gender and age-sensitivity should be reflected in reception arrangements...They should also take into account the specific needs of victims of sexual abuse and exploitation, of trauma and torture, as well as of other vulnerable groups;”.

In accordance with the UNHCR Executive Committee Conclusion on Protection Safeguards in Interception Measures No. 97 (LIV) – 2003, “The special needs of women and children and those who are otherwise vulnerable should be considered as a matter of priority;”.

In accordance with the legislation of the Republic of Kazakhstan, an interview with persons whose fears of becoming victims of persecution are related to the threat or facts of sexual violence, torture, the gender factor, or other motives requiring the creation of an environment of confidential communication, shall be conducted



whenever possible by persons of the same sex with the applicant. The legislation also provides for accelerated processing of asylum applications from minors.

#### GOOD LEGISLATIVE PRACTICES

A good legislative practice is provided by the provisions that interviewing persons whose fears of becoming victims of persecution are related to the threat or facts of sexual violence, torture, the gender factor, or other motives requiring the creation of an environment of confidential communication, shall be conducted whenever possible by persons of the same sex with the applicant. Another good practice is the possibility to consider the applications of minors as a matter of priority

#### RECOMMENDATIONS

It is recommended to develop procedures for identifying and protecting persons with special needs, including: 1) Unaccompanied minors and separated children; 2) Victims of torture and traumatized persons; 3) Women and girls with special needs; 4) The elderly; 5) Persons with disabilities; and 6) Persons in need of medical care. At the same time, it is desirable to indicate that during the consideration, cases of this category will be given priority status.

# LAWFUL STAY

## INTERNATIONAL STANDARD

**20. Renewal of the identification document / refugee certificate is not subject to additional / repeated assessment of the material elements of the refugee claim**  
*(1951 Convention Relating to the Status of Refugees, Article 27)*

## NATIONAL LEGISLATION

**Law of the Republic of Kazakhstan “On Refugees”**

**Article 11. Granting refugee status**

5. Refugee status shall be granted for a period of one year. The competent state authority shall issue a refugee certificate to an applicant, who has been granted refugee status, within five working days as from the date of the decision. If the circumstances underlying the refugee status determination remain the same in the country of origin, the refugee status is prolonged for one year and every subsequent year by the competent authority on the basis of an application submitted by the refugee one month prior to the expiration of the status.

**Rules for the Registration and Consideration of an Application or Refugee Status Approved by the decree of the Republic of Kazakhstan, dated 9 March 2010, No. 183.**

12. Refugee status shall be granted for a period of one year. If the circumstances specified in sub-paragraph 1 of Article 1 of the Law “On Refugees” remain the same in the country of origin, the refugee status shall be prolonged for one year and every subsequent year by the territorial division of the competent authority on the basis of an application submitted by the refugee one month prior to the expiration of the status. In the course of prolongation of the status the territorial division of the competent authority shall check if the person has a refugee certificate, a residence permit (if available) and travel document; clarifies information about the changes in family status, composition of the applicant’s family, address of the residence; and the competent authority makes these changes in the personal file of the refugee.

**Law of the Republic of Kazakhstan “On the Personal Identification Documents”**  
**Article 14. Refugee certificate**

1. A refugee certificate shall be issued to foreign citizens and stateless persons granted refugee status, in accordance with the procedures established by the Law of the Republic of Kazakhstan “On Refugees”.
2. A refugee certificate shall be issued for a period of one year, and shall be renewed every year by the competent state authority for a period until the circumstances serving as the ground for granting refugee status remain valid in the country of the refugee’s origin.

**ANALYSIS OF THE NATIONAL LEGISLATION**

In order to comply with the 1951 Convention relating to the Status of Refugees, the UNHCR Executive Committee Conclusions and current international practice, the annual renewal of the refugee status should not be related to the reassessment of material elements of the refugee claim.

The provisions of the Law of the Republic of Kazakhstan “On Refugees” comply with the requirements of the 1951 Convention relating to the Status of Refugees and the standards of UNHCR, since there is no requirement to reconsider the material elements of the refugee claim when renewing the status on an annual basis.

**GOOD LEGISLATIVE PRACTICES**

Provided that the legislation of the Republic of Kazakhstan provides for the extension of the validity of a refugee certificate without a reassessment of the material elements of the case, it contains a good legislative practice.

**RECOMMENDATIONS**

There are no recommendations.

## INTERNATIONAL STANDARD

**21. Refugee status provides permanent residency on the territory of the country** (UNHCR, Executive Committee Conclusion No. 104 (LVII), 2004. Local integration)

## NATIONAL LEGISLATION

**Law of the Republic of Kazakhstan “On the Legal Status of Foreign Citizens”**

**Article 4. Foreign citizens permanently residing and temporarily staying in the Republic of Kazakhstan**

Permanently residing foreigners in the Republic of Kazakhstan are foreigners who received the permission and document on the right of permanent residence in the manner determined by the Government of the Republic of Kazakhstan. Foreigners residing in the Republic of Kazakhstan on other legal grounds, as well as those recognized as victims, witnesses, suspects or accused in the context of criminal cases, shall be considered as temporary residents in the Republic of Kazakhstan until the entry into force of the court sentence or other decisions of the competent authorities.

Refugees in the Republic of Kazakhstan receive the status of foreigners staying on a temporary basis.

## ANALYSIS OF THE NATIONAL LEGISLATION

Obtaining permanent resident status in the Republic of Kazakhstan is an important step for the integration and naturalization of refugees in the country of asylum. Thus, after the end of the five-year term, the holder of a residence permit, if desired, may apply for citizenship of the Republic of Kazakhstan.

Foreign citizens permanently residing in the country have practical access to employment, social assistance, state benefits and compensation, all levels of education, integration and naturalization in the country. The status of a foreigner permanently residing in the country contributes to the integration of refugees and will assist them to make a significant contribution to national development.

The rules for issuing permits for temporary and permanent residence in the Republic of Kazakhstan to foreigners and stateless persons require foreigners to have a local bank account with an amount of about US\$ 9,000 (₸ 3,174,600) in order to confirm their solvency. Many refugees do not have such an amount. The

current legislation does not provide for any exemptions for refugees regarding the proof of solvency.

#### RECOMMENDATIONS

It is recommended to consider the possibility of amending the Law “On the Legal Status of Foreigners” and the Law “On Refugees” in order to equalize refugee status with that of a resident status from the moment of recognition as a refugee, which will give refugees the same rights as permanent residents, in addition to those rights enshrined in the 1951 Refugee Convention.

This amendment will contribute to better fulfilment by Kazakhstan of its obligations under Article 34 of the 1951 Convention relating to the Status of Refugees.

#### INTERNATIONAL STANDARD

### **22. The availability of alternative ways to stay in the country when the spouse or child is a citizen of the country of asylum**

*(UNHCR, Executive Committee Conclusion No. 104 (LVI), 2004. Local integration)*

#### NATIONAL LEGISLATION

### **Order of the Minister of Internal Affairs of the Republic of Kazakhstan of 4 December 2015, No. 992 “On Approval of the Rules for Issuing to Foreigners and Stateless Persons of Permission for Temporary and Permanent Residence in the Republic of Kazakhstan”**

8. Foreigners and stateless persons residing outside the Republic of Kazakhstan shall apply (in an arbitrary form) for permission for permanent residence in the Republic of Kazakhstan to foreign institutions of the Republic of Kazakhstan.

9. Foreigners and stateless persons temporarily staying in the Republic of Kazakhstan with a visa for permanent residence or arriving from states that have concluded visa-free entry and stay agreements with the Republic of Kazakhstan, as well as ethnic Kazakhs, regardless of the category of visa issued to them, shall apply to the internal affairs bodies to obtain a permission for permanent residence in the Republic of Kazakhstan.

11. To receive public services, foreigners or stateless persons (hereinafter referred to as the service recipient) who are temporarily staying in the Republic of Kazakhstan with a permanent residence visa or who have arrived from states that have entered into agreements with the Republic of Kazakhstan on visa-free entry and stay, or who have refugee status in the Republic Kazakhstan, as well as ethnic Kazakhs, regardless of the category of the visa issued to them, they apply for a permit for permanent residence in the Republic of Kazakhstan (hereinafter referred to as the permit) with the attachment of a package of documents, in accordance with the list of State services, as per Annex 3 to this Regulation, to the territorial police bodies (hereinafter - the service provider), or through the non-profit joint-stock company “State Corporation” Government for Citizens “(hereinafter - the State Corporation).

**Law of the Republic of Kazakhstan “On the Citizenship of the Republic of Kazakhstan”, Article 16. The terms of admission to the citizenship of the Republic of Kazakhstan**

The citizenship of the Republic of Kazakhstan may be granted to:

1) Persons permanently residing in the territory of the Republic of Kazakhstan on lawful grounds for at least five years, or who are married to nationals of the Republic of Kazakhstan for at least three years.

According to the “Regulations for issuing invitations, approving invitations for the entry of foreigners and stateless persons to the Republic of Kazakhstan, issuing, cancelling, restoring visas to the Republic of Kazakhstan, as well as extending and reducing their validity period” (hereinafter referred to as the Rules), approved by the joint order of the Ministry of Foreign Affairs, dated 24 November 2016, No. 11-1-2 / 555 and of the Ministry of Internal Affairs of the Republic of Kazakhstan, dated 28 November 2016, No. 1100 -- a category C2 visa for family reunification shall be issued by the agencies of the Republic Kazakhstan abroad (without coordination with the Ministry of Internal Affairs of the Republic of Kazakhstan) to family members of citizens of the Republic of Kazakhstan permanently residing in the Republic of Kazakhstan; to ethnic Kazakhs and to former compatriots; to those who have received permission for temporary residence in the Republic of

Kazakhstan (for at least two years); to foreigners; to stateless persons permanently residing in the Republic of Kazakhstan; and to business immigrants.

#### ANALYSIS OF THE NATIONAL LEGISLATION

In accordance with the UNHCR Executive Committee Conclusion, a long-term solution for refugees (local integration) is possible when a person, inter alia, has strong family ties in the country. Creating strong family ties with a person having refugee status, in accordance with the law, should be a guarantee that the person will remain in the country for a long period (permanently).

The legislation of the Republic of Kazakhstan allows its citizens to invite their spouses / children to the Republic of Kazakhstan for family reunification. In such cases, a family reunification visa is issued. Without such a visa and residence permit, asylum-seekers cannot remain in the country. Refugees may receive a residence permit, according to the standard procedure (see comments to International Standard 21, page 78).

#### GOOD LEGISLATIVE PRACTICES

Given that the legislation of the Republic of Kazakhstan provides alternative possibilities for asylum-seekers and refugees to reside in the country, it contains a good practice.

#### RECOMMENDATIONS

It is recommended to simplify the procedure for refugees to obtain permanent residence permits in the Republic of Kazakhstan. (See recommendations to International Standard 21, page 78).

#### INTERNATIONAL STANDARD

### **23. Facilitated naturalization procedures (including the absence of a requirement to renounce previous citizenship)**

*(1951 Convention Relating to the Status of Refugees, Article 34*

*UNHCR, Executive Committee Conclusion No. 104 (LVI), 2004. Local integration)*

**Law of the Republic of Kazakhstan “On Refugees”**

**Article 17. Acquisition of citizenship of the Republic of Kazakhstan**

Refugees shall acquire citizenship of the Republic of Kazakhstan in accordance with the legislation of the Republic of Kazakhstan on citizenship.

**Law of the Republic of Kazakhstan “On the Citizenship of the Republic of Kazakhstan”, Article 6. Legal status of foreigners and stateless persons**

Foreign citizens and stateless persons in the Republic of Kazakhstan shall enjoy the rights and freedoms, as well as bear duties established for the nationals, unless otherwise provided by the Constitution, laws and international treaties.

**Article 15. Admission to the citizenship of the Republic of Kazakhstan**

Foreign citizens and stateless persons may, upon their application, be granted the citizenship of the Republic of Kazakhstan, in accordance with this Law. The decision on the application for conferment of the citizenship of the Republic of Kazakhstan shall be made by the President of the Republic of Kazakhstan.

**Article 38. Calculation of the period of residence in the territory of the Republic**

The period of residence in the territory of the Republic of Kazakhstan shall not include the time of serving criminal penalties, imposed by the judicial authorities of other States, as well as the period of stay in the territory of the Republic for a business trip, medical treatment and other cases of temporary residence.

**The procedures of admission to the citizenship of the Republic of Kazakhstan**

16. The citizenship of the Republic of Kazakhstan may be granted to:

1) Persons permanently residing in the territory of the Republic of Kazakhstan on lawful grounds for at least five years, or persons who are married to nationals of the Republic of Kazakhstan for at least three years. At the time of submission of the claim (application) for naturalization in the Republic of Kazakhstan the period of residence or stay in the marriage shall be uninterrupted. The availability of the



procedure provided for in part one of this subparagraph shall not be required for admission to the citizenship of the Republic of Kazakhstan of minors, the disabled, persons who have rendered meritorious service for the Republic of Kazakhstan or have a profession and meet the requirements, according to the list established by the President of the Republic of Kazakhstan, and members of their families;

6) A certificate of absence or termination of citizenship of another State, issued by the competent authority of the relevant State (except those referred to in the second part of subparagraph 1) of paragraph 15 of the present Regulation, for those who applied to the internal affairs authorities in writing for admission to citizenship of the Republic of Kazakhstan and simultaneously to an officer of the State of arrival who makes decisions on citizenship issues, together with a notarized written renunciation of foreign citizenship. A copy of the application on the renunciation of the former citizenship shall be attached to the materials for admission to citizenship.”

#### ANALYSIS OF THE NATIONAL LEGISLATION

According to the 1951 Convention relating to the Status of Refugees, Contracting States will, to the extent possible, facilitate the assimilation and naturalization of refugees. In particular, they will do everything in their power to speed up the naturalization process and possibly reduce the fees and expenses associated with it.

States Parties must fulfil their obligations under the 1951 Convention relating to the Status of Refugees and its Protocol fully and effectively by facilitating, where appropriate, the integration of refugees, including, to the extent possible, by facilitating their naturalization.

Simplification of the naturalization process for refugees is one of the most important levers to facilitate their local integration.

The legislation of the Republic of Kazakhstan does not meet international standards, since due to the temporary nature of refugee status, refugees are not eligible for citizenship regardless of the length of their stay in the country.

## GOOD LEGISLATIVE PRACTICES

The Republic of Kazakhstan does not have a good practice on naturalization matters.

## RECOMMENDATIONS

It is recommended to bring the legislation of the Republic of Kazakhstan in line with the 1951 Convention relating to the Status of Refugees, according to which simplified procedures should exist to facilitate the naturalization of refugees.

## INTERNATIONAL STANDARD

### **24. Guarantees of the protection of the rights of asylum-seekers and refugees in the framework of extradition and readmission procedures in the relevant legislation**

*(1951 Convention Relating to the Status of Refugees, Article 33*

*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3)*

## NATIONAL LEGISLATION

### **Law of the Republic of Kazakhstan “On Refugees”**

#### **Article 6. Competence of the authorized agency**

The authorized agency, 13-3) on the recommendation request of the national security authorities, restricts or prohibits the access of asylum-seekers and refugees to certain parts of the territory or facilities located in the border zone (strip) following natural and man-made emergencies; during a frontier search of border trespassers; the repelling of a military invasion; or the mass influx of nationals of a neighbouring state to the territory of the Republic of Kazakhstan.

#### **Article 8. Rights and duties of asylum-seekers**

1. Asylum-seekers shall have the right to:

5) Stay in the Republic of Kazakhstan until the final decision is taken on his/her refugee status application, including the appeal period.

## **Article 18. Return and expulsion**

The return and expulsion of asylum-seekers and refugees to the frontiers of a State, where their life or freedom would be threatened on account of their race, religious beliefs, ethnicity, citizenship, membership of a particular social group, or political opinion, shall be prohibited.

## **Criminal Code of the Republic of Kazakhstan**

### **Article 9. Extradition of persons who have committed a crime**

3. No one shall be subjected to extradition to a foreign State where there are serious grounds to believe that a person would be at risk of torture, violence or other cruel or degrading treatment or punishment, as well as in the case of a risk of the death penalty, unless otherwise provided for by international treaties of the Republic of Kazakhstan.

## **Criminal Procedure Code of the Republic of Kazakhstan**

### **Article 590. Refusal to extradite a person (extradition)**

1. The extradition of a person (extradition) shall not be permitted if:

4) a person, in respect of whom an extradition request has been lodged, was granted asylum by the Republic of Kazakhstan.

## **Declaration by the Heads of the Member States of the Shanghai Cooperation Organization, 2005**

“The SCO Member States will prevent any attempts in their territories to prepare and commit acts of terrorism, including those aimed against the interests of other states, neither will they grant asylum to persons accused or suspected of conducting terrorist, separatist and extremist activities, and will extradite such persons if so requested by another SCO state, in strict compliance with the current legislation of the member States.”

### **ANALYSIS OF THE NATIONAL LEGISLATION**

The principle of non-refoulement is a rule of customary international law, imposed on any state, regardless of whether it is a party to the 1951 Convention relating to the Status of Refugees or not.

The principle of non-refoulement of refugees and persons who, if returned to their country of origin, may be subjected to torture, violence, other cruel or degrading treatment or punishment, is guaranteed by a number of legal acts of the Republic of Kazakhstan. The concern is the possibility of extraditing persons, in accordance with bilateral or multilateral extradition agreements and international and regional treaties to which the Republic of Kazakhstan is a party, such as the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters and the Shanghai Convention on Combating Terrorism, Separatism and Extremism. These Conventions do not provide guarantees for the protection of persons against returning to territories where there is a threat to life and freedom on the grounds of race, religion, ethnicity, nationality (citizenship), membership of a particular social group or political opinion and may lead to refoulement. It should be noted that obligations arising from international refugee law and human rights law take precedence over obligations arising from other international and regional agreements.

#### GOOD LEGISLATIVE PRACTICES

The Law of the Republic of Kazakhstan “On Refugees” and criminal legislation contain provisions restricting the extradition / expulsion of an asylum-seeker and refugee.

#### RECOMMENDATIONS

It is recommended for the Republic of Kazakhstan to ensure the appropriate implementation of the principle of non-refoulement in the implementation of existing bilateral and multilateral agreements related to extradition. The fulfilment of the obligation of non-refoulement is fundamental, especially given that the Republic of Kazakhstan is a state party to the 1951 Convention relating to the Status of Refugees and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

#### INTERNATIONAL STANDARD

### **25. Travel documents are available to refugees**

*(1951 Convention Relating to the Status of Refugees, Article 28*

*UNHCR, Executive Committee, General Conclusion on International Protection No. 13 (XXIX), 1978. Travel documents)*

#### NATIONAL LEGISLATION

### **Order of the Minister of Internal Affairs No. 391 of 24 April 2015, “On the approval of the rules of issuance a refugee travel document”**

3. A travel document shall be registered and issued to a refugee, as well as to those who arrived with him among his family members and persons under his guardianship, within two months from the date of submission of the application.

#### ANALYSIS OF THE NATIONAL LEGISLATION

The existence of provisions for issuing a travel document is a requirement of the 1951 Convention relating to the Status of Refugees and their existence is the fulfilment of obligations undertaken in accordance with this international agreement.

Refugees lawfully residing in the country must be issued a refugee travel document, which will allow them to travel outside the country.

Taking into account the above, the legislation of the Republic of Kazakhstan complies with international standards, since it guarantees issuance of travel documents to refugees.

#### GOOD LEGISLATIVE PRACTICES

The legislation of the Republic of Kazakhstan provides for the issuance of travel documents to refugees.

International Civil Aviation Organization (ICAO)-compliant refugee travel documents are expected to be issued in 2022, in line with the country's pledge made at the Global Refugee Forum.

#### RECOMMENDATIONS

It is recommended to bring the practice of issuing travel documents to refugees in line with the Law of the Republic of Kazakhstan “On Refugees” and the 1951 Convention relating to the Status of Refugees. It is recommended to ensure that the refugee travel document complies with the standards of the ICAO.

# SELF-RELIANCE OF REFUGEES

## INTERNATIONAL STANDARD

### **26. Access of refugees and asylum-seekers to compulsory education on an equal basis with citizens**

*(1951 Convention relating to the Status of Refugees, Article 22. Public education Convention on the Rights of the Child, Articles 28, 29*

*UNHCR, Executive Committee Conclusion No. 47 (XXXVIII), 1987.*

*Refugee children*

*UNHCR, Executive Committee Conclusion No. 64 (XLI), 1990.*

*Refugee women and international protection)*

## NATIONAL LEGISLATION

### **Order of the Minister of Education and Science of the Republic of Kazakhstan of 28 September 2010 No. 468 “On Approval of the Rules for Receiving Preschool, Primary, Basic Secondary and General Secondary Education by Foreigners and Stateless Persons Permanently Residing in the Republic of Kazakhstan”**

1. These rules for receiving preschool, primary, basic secondary and general secondary education by foreigners and stateless persons permanently residing in the Republic of Kazakhstan are developed in accordance with the Constitution of the Republic of Kazakhstan, the laws of the Republic of Kazakhstan “On Education”, “On the Legal Status of Foreigners”, “On Refugees”, “On migration of the Population”, as well as international treaties ratified by the Republic of Kazakhstan, and shall regulate the procedure for receiving preschool, primary, basic secondary and general secondary education in educational institutions by foreigners and stateless persons permanently residing in the Republic of Kazakhstan.

2. Children of foreigners and stateless persons permanently residing in the Republic of Kazakhstan, as well as persons temporarily residing in the Republic of Kazakhstan (refugees, asylum-seekers, consular officials, employees of diplomatic institutions, labour migrants working in the Republic of Kazakhstan in accordance with the migration legislation) shall be accepted in educational organizations for preschool, primary, basic secondary and general secondary education and shall enjoy the same rights as citizens of Kazakhstan.

4. Parent or other legal representatives of a person under 16 years of age, foreigners and stateless persons, when placing their child in an educational institution, shall submit a document indicating the right of permanent residence in the Republic of Kazakhstan with a stamped notation of registration at the place of residence:

**a foreigner** - residence permit of a foreigner in the Republic of Kazakhstan;

**a stateless person** - certificate of a stateless person;

**refugee** - refugee certificate;

**asylum-seeker** - certificate of asylum-seeker;

**kandas** - kandas certificate or certificate from the migration authorities.

This requirement shall not apply to employees of embassies and consulates, in accordance with the Vienna Convention on Consular Relations and the Vienna Convention on Diplomatic Relations.

Persons temporarily residing in the Republic of Kazakhstan shall submit a copy of the passport and a copy of the migration card.

## **Law of the Republic of Kazakhstan of 8 August 2002, No. 345-II “On the Rights of the Child in the Republic of Kazakhstan”**

### **Article 2. The Law application**

1. This Law shall apply to citizens of the Republic of Kazakhstan. A child who is not a citizen of the Republic of Kazakhstan shall enjoy the rights and freedoms in the Republic, as well as incur obligations, established for citizens, unless otherwise provided by the Constitution of the Republic of Kazakhstan, the laws of the Republic of Kazakhstan and international treaties ratified by the Republic of Kazakhstan.

#### **ANALYSIS OF THE NATIONAL LEGISLATION**

The legislation of the Republic of Kazakhstan complies with the international standard, since it ensures the right of all children, including children of refugees and asylum-seekers, to all levels of school education.

#### GOOD LEGISLATIVE PRACTICES

The Republic of Kazakhstan ensures the right of all children, including children of refugees and asylum-seekers, to all levels of school education.

#### RECOMMENDATIONS

There are no recommendations.

#### INTERNATIONAL STANDARD

### **27. Right of asylum-seekers to work**

*(International Covenant on Economic, Social and Cultural Rights, Article 6)*

#### NATIONAL LEGISLATION

### **Law of the Republic of Kazakhstan “On Refugees”**

#### **Article 8. Rights and duties of asylum-seekers**

1. Asylum-seekers shall have the right to:

8) Freedom of labour or entrepreneurial activities, in accordance with the legislation of the Republic of Kazakhstan.

### **Law of the Republic of Kazakhstan “On the Legal Status of Foreign Citizens”**

#### **Article 6. Labour activities and leisure**

Foreigners permanently residing in the Republic of Kazakhstan shall have equal rights and bear equal duties in labour relations as nationals of the Republic of Kazakhstan. Foreigners temporarily staying in the Republic of Kazakhstan can be subjects of private entrepreneurship. Engaging in entrepreneurial activity as the subject of small and medium entrepreneurship without forming a legal entity is not allowed.

### **Labor Code of the Republic of Kazakhstan**

#### **Article 31. Documents required for conclusion of an employment contract**

1. For the conclusion of an employment contract the following documents are required:



2) A residence permit or a certificate of a stateless person (for foreigners and stateless persons permanently residing in the territory of the Republic of Kazakhstan), or a refugee certificate;

**Resolution of the Government of the Republic of Kazakhstan of 15 December 2016, No. 802 “On Approval of the Rules for Establishing a Quota for the Recruitment of Foreign Labour to the Republic of Kazakhstan”**

The list of persons who do not need to obtain permits from local executive bodies in order to be hired.

Foreigners and stateless persons:

- 1) Kandases;
- 2) Business immigrants arriving for business activities;
- 3) **Persons who have obtained refugee status or asylum-seekers.**

**ANALYSIS OF THE NATIONAL LEGISLATION**

In the Republic of Kazakhstan, asylum-seekers have the right to freedom of work and entrepreneurial activity. In accordance with the national legislation, asylum-seekers, unlike other foreigners, are not required to obtain a work permit. Due to the fact that the status of an asylum-seeker is temporary, employers are reluctant to enter into employment agreements with asylum-seekers, which is a real obstacle to legal employment.

**GOOD LEGISLATIVE PRACTICES**

The Republic of Kazakhstan grants asylum-seekers the right to work and entrepreneurial activity, and also exempts asylum-seekers from the need to obtain a work permit.

**RECOMMENDATIONS**

There are no recommendations.

## INTERNATIONAL STANDARD

### **28. Right of refugees to work**

*(Convention relating to the Status of Refugees, Articles 17, 18, 19, 24 International Covenant on Economic, Social and Cultural Rights, Article 6 UNHCR, Executive Committee Conclusion No. 104 (LVI), 2004. Local integration.*

## NATIONAL LEGISLATION

### **Law of the Republic of Kazakhstan “On Refugees”**

#### **Article 9. Rights and duties of refugees**

1. Refugees have a right to:

6) Freedom of labour or entrepreneurial activities, in accordance with the legislation of the Republic of Kazakhstan.

### **Law of the Republic of Kazakhstan “On the Legal Status of Foreign Citizens”**

#### **Article 6. Labour activities and leisure**

Foreigners permanently residing in the Republic of Kazakhstan shall have equal rights and bear equal duties in labour relations as nationals of the Republic of Kazakhstan. Foreigners temporarily staying in the Republic of Kazakhstan can be subjects of private entrepreneurship. Engaging in entrepreneurial activity as the subject of small and medium entrepreneurship without forming a legal entity is not allowed.

### **Labour Code of the Republic of Kazakhstan**

#### **Article 32. Documents required for signing an employment contract**

1. For signing an employment contract the following documents are required:

2) Residence permit or a certificate of a stateless person (for foreigners and stateless persons permanently residing in the territory of the Republic of Kazakhstan), or a refugee certificate.

### **Resolution of the Government of the Republic of Kazakhstan of 15 December 2016, No. 802 “On Approval of the Rules for Establishing Quota for Foreign Labour Engagement in the Republic of Kazakhstan”**

The list of persons whose work activities do not require permission from local executive bodies to engage foreign labour

Foreigners and stateless persons:

- 1) Kandases;
- 2) Business immigrants arriving for business activities;
- 3) Persons who have obtained refugee status or asylum-seekers.

#### ANALYSIS OF THE NATIONAL LEGISLATION

In the Republic of Kazakhstan, refugees have the right to freedom of work and entrepreneurial activity. In accordance with national legislation, refugees, unlike other foreigners, are not required to obtain a work permit. However, due to the temporary nature of refugee status, employers are reluctant to enter into labour agreements with them, which is a real obstacle to legal employment.

According to Articles 17-19 of the 1951 Convention relating to the Status of Refugees, the Contracting States shall accord to refugees the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards their right to work and self-employment. Article 24 provides that Contracting States accord to refugees the same treatment as is accorded to nationals in respect of labour relations.

The Labour Code and the relevant by-laws provide for the right to work for refugees registered by the state. However, the temporary nature of the refugee certificate does not allow refugees to find a permanent job, as employers are not sure that refugee status will be renewed, which causes difficulties in finding employment for refugees. Refugees also do not have access to vocational training provided by the state and are not eligible for unemployment benefits.

By providing refugees with the right to work, a country benefits from the potential that refugees bring. These are new skills, entrepreneurship, professional experience, products and services; eliminating labour shortages or skills in local labour markets; increase in tax revenue, among other benefits. Commercial activities of refugees can create jobs for local residents, as well as for other refugees. In addition, official work allows more interaction between refugees and host communities and contributes to building trust and peaceful coexistence.

Employment also prepares refugees for long-term solutions to their situation, ensuring that refugees have work experience and thereby strengthening their job search prospects, whether they return to their countries of origin, move to third countries or are integrated locally.

#### GOOD LEGISLATIVE PRACTICES

In the Republic of Kazakhstan refugees are provided with the right to work and to undertake entrepreneurial activities, and they are also exempted from the requirement to obtain a work permit.

#### RECOMMENDATIONS

It is recommended to amend the labour, taxation and refugee legislation in order to promote the full realization of the right to work of refugees, including technical and vocational and training programs. It is recommended to provide refugees with the right to make contributions to the unified state pension fund. It is recommended to consider the possibility of amending the legislation so that refugees have access to government social protection programs, including pensions, unemployment benefits, disability allowance and allowance for the loss of the breadwinner, among other benefits.

#### INTERNATIONAL STANDARD

### **29. The right to freedom of movement in the host country and the right to choose the place of residence in the country**

*(1951 Convention Relating to the Status of Refugees, Article 26*

*UNHCR, Executive Committee Conclusion No. 108 (LIX) – 2008: General Conclusion on International Protection)*

#### NATIONAL LEGISLATION

### **Law of the Republic of Kazakhstan “On Refugees”**

#### **Article 9. Rights and obligations of refugees**

2. Refugees have the following obligations:

2) To inform the authorized body on his/her intention to leave the territory of the Republic of Kazakhstan;

3. Refugees enjoy other rights and freedoms and fulfil other obligations established by the Constitution, laws and international treaties of the Republic of Kazakhstan for foreigners and stateless persons.

**Law of the Republic of Kazakhstan “On the Legal Status of Foreign Citizens”**

**Article 16. Movement within the territory of the Republic of Kazakhstan and choice of the place of residence**

Foreign citizens may move within the territory of the Republic of Kazakhstan that is open for visiting by foreigners, and to choose a place of residence, in accordance with the procedures established under the legislation of the Republic of Kazakhstan.

Restrictions in regard to freedom of movement and the choice of place of residence shall be established through the acts of the authorized state bodies of the Republic of Kazakhstan when it is necessary to ensure state security, protect public order, health and the morals of the population, protect the rights and legitimate interests of nationals of the Republic Kazakhstan and other persons.

**ANALYSIS OF THE NATIONAL LEGISLATION**

The 1951 Convention relating to the Status of Refugees calls upon each Contracting State “to accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances”.

The legislation of the Republic of Kazakhstan guarantees the right to freedom of movement for refugees and asylum-seekers on the territory of the country and outside the Republic of Kazakhstan, which is consistent with international standards. Entry into certain areas, including border areas, is allowed only by special permission, which does not contradict international practice.

**GOOD LEGISLATIVE PRACTICES**

Although the legislation of the Republic of Kazakhstan provides for certain restrictions on entry to the border areas for foreigners, ensuring free movement and choice of place of residence for asylum-seekers and refugees throughout the territory of the country open to the public is considered a good legislative practice.

## RECOMMENDATIONS

There are no recommendations.

## INTERNATIONAL STANDARD

### **30. The right to family reunification**

*(International Covenant on Civil and Political Rights*

*UNHCR, Executive Committee Conclusion No. 24 (XXXII), 1981.*

*Family reunification)*

## NATIONAL LEGISLATION

### **Law of the Republic of Kazakhstan “On Refugees”**

#### **Article 4. The basic principles of the state policy on refugees**

4) Facilitating the reunification of separated families of asylum-seekers and refugees

#### **Article 11. Refugee status determination**

2. Refugee status determination is carried out for each family member over 18 years of age on the basis of the circumstances stipulated in Article 1 subparagraph 1 herein.

In the absence of circumstances stipulated in Article 1 subparagraph 1 herein, the family member is granted refugee status for the purpose of family reunification upon his/her consent.

The spouse of the recognized refugee or the asylum-seeker in the Republic of Kazakhstan for the purpose of family reunification is subject to the same requirements hereof, as well as to Articles 10, 12, 13 and 14 of this Law.

The spouse and children under 18 of the recognized refugee or the asylum-seeker, who arrive later in the Republic of Kazakhstan than a recognized refugee in the Republic of Kazakhstan or asylum-seeker, shall submit the proof of family link to the authorized body upon submission of a claim for the purpose of family reunification.

In case the family unity is broken due to divorce or death of the refugee, the refugee status of the family members is maintained till the expiry date of the refugee status.

#### ANALYSIS OF THE NATIONAL LEGISLATION

The legislation of the Republic of Kazakhstan complies with international standards, since it contributes to the unity of the family (the Law of the Republic of Kazakhstan “On Refugees”, article 4), and provides refugee status to members of one family (article 11).

#### GOOD LEGISLATIVE PRACTICES

The legislation of the Republic of Kazakhstan contains a good legislative practice, since it contributes to the unity of the family; and in case of divorce or death of a refugee, the refugee status of his/her family members is maintained for the duration of the decision to grant him/her refugee status.

#### RECOMMENDATIONS

There are no recommendations.

#### INTERNATIONAL STANDARD

### **31. The availability of housing of the same standard as for foreign nationals in the same circumstances**

*(UNHCR, Executive Committee Conclusion No. 24 (XXXII), 1981.*

*Family reunification*

*UNHCR Policy on Refugee Protection and Solutions in Urban Areas, September 2009)*

#### NATIONAL LEGISLATION

### **Constitution of the Republic of Kazakhstan, Article 26**

1. Citizens of the Republic of Kazakhstan shall privately own any legally acquired property.

### **Law of the Republic of Kazakhstan “On the Legal Status of Foreign Citizens”**

### **Article 9. The right to housing, other property and personal non-property rights**

Foreigners permanently residing in the Republic of Kazakhstan shall have equal rights and bear equal duties in housing relations as nationals of the Republic of Kazakhstan. Foreigners in the Republic of Kazakhstan shall be entitled to own housing (with the exception of foreigners temporarily residing in Kazakhstan) and other assets.

Foreigners permanently residing in the Republic of Kazakhstan avail of their property and personal non-property rights on a par with citizens of the Republic of Kazakhstan.

Foreigners temporarily staying in the Republic of Kazakhstan have the right to use property and personal non-property rights on the grounds and in the manner established by the legislation and international treaties of the Republic of Kazakhstan.

#### ANALYSIS OF THE NATIONAL LEGISLATION

The national legislation of the country should provide the possibility of access to housing not less than for a foreign citizen. Access to housing of the same standard as for foreign nationals contributes to and facilitates the integration of refugees in the country.

In accordance with the legislation of the Republic of Kazakhstan, asylum-seekers and refugees are not eligible to purchase housing, as they are temporarily staying foreigners. Refugees and asylum-seekers can rent housing.

This legislation does not comply with international standards.

#### GOOD LEGISLATIVE PRACTICES

The legislation of the Republic of Kazakhstan does not contain a good legislative practice.

#### RECOMMENDATIONS

It is recommended to amend the legislation so that refugees have the right to purchase housing on a par with citizens.



## INTERNATIONAL STANDARD

### **32. Access to courts and the equal treatment as for citizens**

*(1951 Convention relating to the Status of Refugees, Article 16, Access to courts  
International Covenant on Civil and Political Rights*

*UNHCR, Executive Committee Conclusion No. 22 (XXXII) - 1981:  
Protection of Asylum-Seekers in Situations of Large-Scale Influx)*

## NATIONAL LEGISLATION

### **Constitution of the Republic of Kazakhstan**

#### **Article 13**

1. Everyone has the right to recognition of his/her legal personality and the right to protect his/her rights and freedoms by all means not contradicting the law, including the necessary defence.
2. Everyone shall have the right to legal defence of his rights and freedoms.

### **Law of the Republic of Kazakhstan “On Refugees”**

#### **Article 8. Rights and obligations of asylum-seekers**

1. Asylum-seekers have the right to the following:
  - 1) Access to free interpretation/translation services and information about the refugee status determination procedure and asylum-seeker rights and responsibilities;
  - 9) Judicial protection of property and personal non-property benefits and rights.

#### **Article 9. Rights and obligations of refugees**

1. Refugees have the right to the following:
  - 7) Judicial protection of property and personal non-property benefits and rights.

### **Law of the Republic of Kazakhstan “On the Legal Status of Foreigners”**

#### **Article 18. Protection of the rights of foreigners**

Foreigners in the Republic of Kazakhstan shall have the right to appeal to the court and other governmental bodies for the protection of their property and personal non-property rights.

Foreigners shall enjoy procedural rights in court on a par with citizens of the Republic of Kazakhstan, except in cases provided for in the international treaties of the Republic of Kazakhstan.

#### ANALYSIS OF THE NATIONAL LEGISLATION

The legislation of the Republic of Kazakhstan complies with international standards, since, at the legislative level, asylum-seekers and refugees are guaranteed access to the courts, along with citizens of the country.

#### GOOD LEGISLATIVE PRACTICES

The legislation of the Republic of Kazakhstan guarantees access to the courts for asylum-seekers and refugees, along with citizens of the country.

#### RECOMMENDATIONS

There are no recommendations.

# CONVENTION RELATING TO THE STATUS OF REFUGEES

## (GENEVA, 28 JULY 1951)

### PREAMBLE

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

Have agreed as follows:

# Chapter I

## GENERAL PROVISIONS

### Article 1. - Definition of the term “refugee”

A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

- (1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

- (2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

- B. (1) For the purposes of this Convention, the words “events occurring before 1 January 1951” in article 1, section A, shall be understood to mean either ( a ) “events occurring in Europe before 1 January 1951”; or ( b ) “events occurring in Europe or elsewhere before 1 January 1951”; and each Contracting State

shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative ( a ) may at any time extend its obligations by adopting alternative ( b ) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of

previous persecution for refusing to return to the country of his former habitual residence.

- D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

- E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

- F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

## Article 2. - General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

### Article 3. - Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

### Article 4. - Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

### Article 5. - Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

### Article 6. - The term “in the same circumstances”

For the purposes of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

### Article 7. - Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.
4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.
5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

## Article 8. - Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

## Article 9. - Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.



## Article 10. - Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.
2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

## Article 11. - Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

## **Chapter II**

### **JURIDICAL STATUS**

#### **Article 12. - Personal status**

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.
2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

#### **Article 13. - Movable and immovable property**

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

#### **Article 14. - Artistic rights and industrial property**

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting States, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

## Article 15. - Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

## Article 16. - Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

## **Chapter III** **GAINFUL EMPLOYMENT**

### Article 17. - Wage-earning employment

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of

this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

- a) He has completed three years' residence in the country;
- b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;
- c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

## Article 18. - Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

## Article 19. - Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.
2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in

the territories, other than the metropolitan territory, for whose international relations they are responsible.

## **Chapter IV**

### **WELFARE**

#### **Article 20. - Rationing**

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

#### **Article 21. - Housing**

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

#### **Article 22. - Public education**

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

## Article 23. - Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

## Article 24. - Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters;
  - a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;
  - b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
    - i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
    - ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.
3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.
4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

## **Chapter V**

### **ADMINISTRATIVE MEASURES**

#### **Article 25. - Administrative assistance**

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.
2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.
3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.
5. The provisions of this article shall be without prejudice to articles 27 and 28.

## Article 26. - Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

## Article 27. - Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

## Article 28. - Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.
2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.



## Article 29. - Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.
2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

## Article 30. - Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.
2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

## Article 31. - Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

## Article 32. - Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

## Article 33. - Prohibition of expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

## Article 34. - Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

## **Chapter VI**

### **EXECUTORY AND TRANSITORY PROVISIONS**

#### **Article 35. - Co-operation of the national authorities with the United Nations**

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:
  - a) The condition of refugees,
  - b) The implementation of this Convention, and
  - c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

#### **Article 36. - Information on national legislation**

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

#### **Article 37. - Relation to previous conventions**

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between Parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

## **Chapter VII**

### **FINAL CLAUSES**

#### **Article 38. - Settlement of disputes**

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

#### **Article 39. - Signature, ratification and accession**

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.
2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### **Article 40. - Territorial application clause**

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

## Article 41. - Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

- a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States;
- b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
- c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

## Article 42. - Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36-46 inclusive.
2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

## Article 43. - Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

## Article 44. - Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.
3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

## Article 45. - Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

## Article 46. - Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and nonmember States referred to in article 39:

- a) Of declarations and notifications in accordance with section B of article 1;
- b) Of signatures, ratifications and accessions in accordance with article 39;
- c) Of declarations and notifications in accordance with article 40;
- d) Of reservations and withdrawals in accordance with article 42;
- e) Of the date on which this Convention will come into force in accordance with article 43;
- f) Of denunciations and notifications in accordance with article 44;
- g) Of requests for revision in accordance with article 45.

In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

Done at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

# PROTOCOL RELATING TO THE STATUS OF REFUGEES

The Protocol was taken note of with approval by the Economic and Social Council in resolution 1186 (XLI) of 18 November 1966 and was taken note of by the General Assembly in resolution 2198 (XXI) of 16 December 1966. In the same resolution the General Assembly requested the Secretary-General to transmit the text of the Protocol to the States mentioned in article V thereof, with a view to enabling them to accede to the Protocol

Entry into force 4 October 1967, in accordance with article VIII

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:



## Article 1 - General provision

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.
2. For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article I of the Convention as if the words “As a result of events occurring before 1 January 1951 and...” and the words “...as a result of such events”, in article 1 A (2) were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article I B (1) (a) of the Convention, shall, unless extended under article I B (2) thereof, apply also under the present Protocol.

## Article 2 - Co-operation of the national authorities with the United Nations

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:
  - a) The condition of refugees;
  - b) The implementation of the present Protocol;
  - c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

### Article 3 - Information on national legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

### Article 4 - Settlement of disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

### Article 5 - Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

### Article 6 - Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

- a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;
- b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come

within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

- c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

## Article 7 - Reservations and declarations

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16(1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.
2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.
3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.
4. Declarations made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and

3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

## Article 8 - Entry into Protocol

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.
2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

## Article 9 - Denunciation

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

## Article 10 - Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

## Article 11. Deposit in the archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article 5 above.







**UNHCR**  
The UN Refugee Agency