

UNITED NATIONS COUNTRY TEAM SUBMISSION FOR THE 2nd UNIVERSAL PERIODIC REVIEW: KAZAKHSTAN

Introduction

Since the 1st cycle of the Universal Periodic Review (UPR) in 2010 a number of events have one way or another affected the human rights situation in Kazakhstan. This submission from the United Nations Country Team (UNCT) in Kazakhstan will mention only a few from the UNCT point of view. The current 2010-2015 United Nations Development Framework (UNDAF) reflects the commitment of the UN to support the efforts of Kazakhstan to promote, protect and fulfill human rights. Two UNDAF outcomes are of particular relevance: (1) by 2015 the population of Kazakhstan and vulnerable groups in particular, will enjoy improved social, economic and health status; and (2) by 2015 state actors at all levels and civil society are more capable and accountable of ensuring the rights and needs of the population, particularly vulnerable groups. A new UNDAF for the period 2016-2020 is currently under development and the UNCT pledges to ensure a human rights based approach in its formulation.

Over the reporting period, Kazakhstan has continued to make efforts to incorporate international human rights standards in its legislation, policy and practice and to engage with UN human rights mechanisms.

Following the 1st UPR cycle, during which the Government accepted 121 recommendations, the Government adopted on 13 October 2011 the Plan of Action for 2011-2014 on the Implementation of the Recommendations of the UN Member States given during the Universal Periodic Review¹. Funds were also allocated for the implementation of the plan with support from UNDP Kazakhstan. Before endorsement it was brought to public discussion; however most suggestions made by civil society were not reflected. Criticism by civil society groups also charge that the Government plan focused only on its selected recommendations. In line with recommendations of the UN High Commissioner for Human Rights, the UNCT encourages Kazakhstan to review its action plan based on the new UPR recommendations and incorporating also the recommendations made by other UN human rights mechanisms.

To implement the country's obligations under the Optional Protocol to the Convention against Torture Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), Kazakhstan's voluntary pledge for its bid for the Human Rights Council membership² and related recommendations made during the 1st UPR³ and by the Special Rapporteur on Torture⁴ in June 2013 the Parliament adopted the law On Introducing Amendments and Addenda on Several Legislative Acts of the Republic of Kazakhstan on the Issues of Creation of the National Preventive Mechanism (NPM) to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Government of Kazakhstan must be commended for the wide consultations including with civil society which

¹ Decree of the Government of Kazakhstan #1165 of 13 October 2011

² Letter dated 6 June 2012 from the Permanent Representative of Kazakhstan to the United Nations addressed to the President of the General Assembly, A/67/122

³ Report of the Working Group on the Universal Periodic Review, A/HRC/14/10

⁴ Report of the Special Rapporteur on the issue of torture and other cruel, inhuman or degrading treatment or punishment Manfred Nowak, A/HRC/13/39/Add.3

accompanied the drafting and adoption process. Significant funds were also allocated for the functioning of the NPM and the mechanism was being established at the time of the submission. The law establishes a two-level NPM model. A Coordinating Council under the auspices of the Ombudsman is in charge of the overall functioning of the NPM. The NPM consists of the Ombudsman and other members selected by the Coordinating Council representing public monitoring commissions, human rights NGOs, social workers and doctors. The law does not use a single, overarching definition of ‘deprivation of liberty’; rather the mandate of the NPM to visit concrete places of deprivation of liberty is scattered across a variety of laws, which regulate access to prisons, military detention places, *SIZOs* (investigation isolators), juvenile institutions and a variety of health care institutions such as psychiatric institutions and centres for treatment of drug addiction. In a positive step, the list of places of deprivation of liberty subject to NPM visits was extended to cover more places compared to the earlier drafts. It is also worth noting that the draft Penitentiary Code discussed at the time of submission by the *Mazhilis* (the Lower Chamber of the Parliament) will keep the provisions on public monitoring commissions. Thus the NPM will not replace other forms of civil control.

The celebration of the 20th anniversary of Kazakhstan’s independence was shadowed by the tragic events on 16 December 2011 in Zhanaozen, Mangistau region. A long-running peaceful strike of *OzenMunaiGas* oil enterprise workers who demanded better wages and the right to form independent trade unions turned violent. As a result of unrest and disproportionate use of force by the police 14 persons died and 64 persons sustained gunshot wounds. A second incident in the village of Shetpe resulted in one death. The Government introduced immediate restoration measures including allocation of an emergency budget to repair damaged buildings and to compensate the bereaved families and injured victims as well as longer-term measures such as a development plan for Zhanaozen till 2015. The latter foresees diversification of industry to decrease dependence on one industry for employment. Similarly, the Government formulated a development programme for one industry towns for 2012-2020.

Five police officers were convicted for abuse of power with use of weapons or special equipment. Authorities brought criminal charges against 37 people. 34 of the 37 defendants were convicted, 13 of whom will serve prison time. There were several allegations of ill-treatment and torture by people who witnessed or were subjected to physical abuse by police in custody between 16 and 19 December including oil workers who alleged they had been ill-treated and tortured in custody to coerce testimony against themselves or others. In addition, Bazarbai Kenzhebaev, 50, died from injuries apparently sustained in custody after he was detained on 16 December. The head of the detention facility was sentenced to 5 years in prison in relation to his death, but no police officers were held accountable for the torture that led to his death. No criminal investigation was opened into the convicted workers’ allegations of ill-treatment in their trial. The trial of workers was marred with other procedural violations affecting the defendants’ right to fair trial. During her official visit to Kazakhstan in July 2012 the High Commissioner for Human Rights noted that there were still too many unanswered questions and that it was extremely damaging to Kazakhstan’s reputation to have so much uncertainty hanging over such a serious episode resulting in substantial loss of life. The High Commissioner recommended to the Government that the only way to answer credibly these questions once and for all,

and draw a line under these tragic events, is to authorize an independent international investigation into the events, their causes and aftermath.

Following Kazakhstan's election to the UN Human Rights Council in November 2012, and consistent with a much more prominent domestic human rights dialogue, the Ministry of Foreign Affairs (MFA) established a consultative body, the Human Dimension Dialogue Platform, consisting of Government, NGO and international organizations' representatives. The work of the group in 2013 was organized around such thematic areas as democracy, rule of law, and specific rights and freedoms such as right to life, freedom from torture, freedom of religion, expression, etc. As summarized by the MFA, 157 recommendations were made during 2013 by members of the body representing both Government and non-governmental organisations. The list includes all recommendations made put forth. 32 were reported by the MFA as endorsed by state bodies whereas 61 were referred to the Parliament for consideration when discussing relevant laws. 24 recommendations are pending Government approval, whereas 35 were said to be unadvisable to be implemented at the moment. Although establishing such a dialogue platform was certainly a positive development that fostered dialogue between governmental and civil society personnel, the impact of this body remains to be seen and the final test will be to see how the recommendations endorsed by state bodies are implemented. The discussions on some issues have showed a gulf between interests or perspectives, and the platform as such does not have an executive function.

Several recommendations⁵ accepted by Kazakhstan during the 1st UPR cycle in 2010 concerned the implementation of the National Human Rights Action Plan for 2009-2012. The plan was approved by the Presidential decree and was formulated by a group representing equally Government bodies and NGOs. The plan set out a list of steps to be taken to improve accountability of duty-bearers through improving the country's legislation and law-enforcement practice and to raise the awareness of right-holders. Although the plan was well formulated and in many ways reflected Kazakhstan's human rights obligations, it has not resulted in significant change in the legislation and practice and the overall human rights situation mainly due to the fact that many of its key recommendations have not been implemented. It was treated as a framework document rather than a binding document for state bodies to implement.

During the period under consideration the Office of the Ombudsman undertook steps to be accredited with the International Co-ordinating Committee of National Human Rights Institutions (NHRIs) for the Protection and Promotion of Human Rights (ICC) through its Sub-Committee on Accreditation (SCA). In April 2012 the SCA recommended the Office of the Ombudsman be accredited B status meaning further work needs to be done to comply fully with the Paris Principles. The SCA made several recommendations including those on establishment – constitutional or legal text to establish the Office of the Ombudsman, not an act of the executive; mandate – the Office of the Ombudsman to have the power to consider human rights violations where these are not currently the subject of review by a more appropriate independent body. One of the challenges for the Office of the Ombudsman derives from the fact that it has no decentralized presence, which severely limits access to the protection the Ombudsman can extend by people outside the capital.

⁵ Recommendations 15, 16, 17, 18, 19, 20, Report of the Working Group on the Universal Periodic Review, A/HRC/14/10

Right to adequate housing

No recommendations on the right to adequate housing were made to Kazakhstan during the 1st UPR cycle. However, the UNCT sees violations of the right to adequate housing as one of the critical challenges that the country is facing and is including this topic in its submission to the UPR, also as a reminder that all human rights – civil, cultural, economic, political and social – are indivisible, interdependent and interrelated.

In recent years, Kazakhstan has taken some significant steps to strengthen implementation of the right to adequate housing. In 2010, the Committee on Economic, Social and Cultural Rights reviewed the report on the implementation by Kazakhstan of the International Covenant on Economic, Social and Cultural Rights. In the same year, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context visited Kazakhstan upon invitation of the Government. Both mechanisms issued recommendations for the advancement of economic, social and cultural rights, including the right to adequate housing. In particular, the visit of the Special Rapporteur to the country and her interaction with State authorities and members of civil society helped raise awareness on the right to adequate housing.

In 2011, the Government introduced an Action Plan to implement the recommendations of the Special Rapporteur until 2015. In 2012, the Government adopted the housing construction programme “Affordable Housing - 2020” with a view to promote the construction of affordable housing units targeting middle class and young families.

Effective realization of the right to adequate housing does not only depend upon the availability of resources and the size of the housing production, although these are important factors. It requires compliance with a number of other indicators, in particular the guarantee of equal and non-discriminatory access of everyone to adequate housing; protection against forced evictions, arbitrary demolition and seizure of one’s home and property; access to remedies in cases related to the violation of the right to adequate housing; and participation in decision-making at the national and community levels.

The current Constitution of the Republic of Kazakhstan recognizes the right of everyone to housing and requires the State to provide housing to the citizens in need from the State housing fund as prescribed by the law. In accordance with article 26 (3) of the Constitution, no one can be deprived of one’s property unless otherwise stipulated by a court decision. Furthermore, forcible alienation of property for State and public needs is permitted only in exceptional cases, must be in accordance with the procedures established by law, and only on condition of adequate compensation. However, there is a significant gap in the implementation of these constitutional rights and guarantees, and standards guaranteed by international law that apply to Kazakhstan.

Forced evictions are an important issue, with numbers increasing as a result of the inability of individuals to pay mortgage loans. This situation has put many individuals

and families at risk of becoming homeless. Those affected particularly belong mainly to low-income families and poor households.

The incidents of forced evictions as a result of inability of the shareholders to pay the mortgage loan and credit also led to incidents of public protest and the detention and arrest of protesters and organisers. These developments are viewed as the tip of the iceberg and may trigger social unrest if not addressed with priority.

As noted by the Special Rapporteur, significant disparities exist between urban and rural areas with regard to the availability and quality of housing and despite the significant economic development this situation continues. According to the UN Human Development Report in 2013, inequality remains a significant challenge in Kazakhstan, and even in rural areas not far from the capital city Astana, there is no regular supply of drinking water in winter.

In July 2011 the Government amended the Law on Housing Relations (1997), one of the key framework laws governing housing relations, by expanding the category of vulnerable groups entitled to housing from the State Housing Fund. However, the long waiting periods for social housing, as noted in 2010 by the Committee on Economic, Social and Cultural Rights and the Special Rapporteur on adequate housing, continue to remain a reality that needs to be addressed.

No official data regarding the number of homeless people is currently available in Kazakhstan primarily due to the fact that national laws do not contain a definition of homelessness.

The national courts, while adjudicating housing cases, often fail to consider and apply relevant international human rights norms and standards regarding the right to adequate housing the interdependency of these rights with other human rights. The limited human and technical resources available to the office of Ombudsman and Human Rights Commission under the President have hampered the efforts taken by these institutions to promote and protect human rights, including economic, social and cultural rights and in particular the right to adequate housing.

Of particular concern is the limited space for civil society and other stakeholders to participate and contribute to the development and implementation of housing related policies and programmes. This has weakened past efforts as well as the effectiveness of the current programmes. Thus, the recommendation by the Special Rapporteur for Kazakhstan to open up democratic space for all relevant stakeholders to be actively involved in the design and implementation of legislation, policies and strategies affecting them remains valid.

As recommended by the Special Rapporteur, Kazakhstan needs to adopt a comprehensive approach to address the issues of forced evictions, legal security of tenure and legalization of informal settlements. It is also recommended that the national social housing policy is improved by developing a commonly agreed definition of social housing. The concept of social housing should be integrated in the existing legislation as well as relevant policies and programmes. The UNCT encourages Kazakhstan to expand upon existing efforts to increase the share of social housing units through allocation of sufficient financial resources, introduction of

specific programs and schemes to promote social housing, and increase of the municipal housing stock for lease to people in need.

The UNCT recalls the principle of progressive realization stipulated in Article 2 of the Covenant on Economic, Social and Cultural Rights (which requires state parties to “take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”) and makes these recommendations bearing in mind that Kazakhstan is a country with resources.

Right to health

Kazakhstan needs to do more to guarantee access to antenatal services for marginalized, undocumented women, including irregular migrants. Conditions surrounding modern migration often fuel health inequities and may expose migrants to increased health risks and negative health outcomes. In this context, migration has become a key social determinant of the health of migrants. Kazakhstan and the rest of the Central Asian countries face a serious epidemic of TB drug resistance and have some of the highest rates of MDR-TB in the world. Resurgence of TB in the Central Asian countries clearly illustrates the role of social, economic and political factors in the spread of TB. Migration, breakdown of health care systems, shortages of medical professionals and budget cuts are leading to an increase in TB mortality and drug resistance. Studies on TB among Tajik and Uzbek migrant workers in Kazakhstan document the link between labour exploitation and increased risk of TB. Seasonal migration patterns in CA countries cause treatment interruption and increase the chances of drug resistant TB. Diagnostic delays may lead to more serious illnesses for the patient and to increased infectivity within the community. Returned migrant workers to the community with undiagnosed pulmonary tuberculosis pose the greatest source of transmission and in settings where TB is endemic, may result in more than 20 secondary infections.

The increased levels of female migration in the region coupled with low awareness on reproductive health, family planning, sexually transmitted infections (STIs), HIV and lack of access for migrants to preventive programmes and health care services in host countries, is a cause of prevalence of sexually transmitted infections, and cases of unwanted pregnancy among female migrants. Inadequate migration legislation and policy in host countries make difficult access of children of migrant workers to free immunization programmes recommended by WHO and UNICEF.

Administration of justice

Kazakhstan ratified four of the human rights instruments or made relevant declarations under relevant instruments that offer the possibility for individuals to submit individual communications (Human Rights Committee, Committee on the Elimination of Racial Discrimination, Committee against Torture and Committee on the Elimination of Discrimination against Women). In a remarkable development, on 18 November 2013, the city court in Kostanai issued a ruling to pay 2 million tenge (approx. \$11 000) to an individual as compensation for his torture by police, based on the views adopted by the UN Committee against Torture in May 2012. The decision was upheld in January 2014 by a higher instance court. Encouraged by this development, the UNCT would like to suggest Kazakhstan to institutionalize the

implementation of views adopted by UN Treaty Bodies on individual communications.

During the 1st UPR the recommendation was made to take measures to limit the powers of public prosecutors⁶ and to strengthen the roles of judges and defence lawyers in the criminal procedure⁷. The Special Rapporteur on the independence of judges and lawyers made similar recommendations following his official visit to Kazakhstan in 2004⁸. However, inequality of arms remains a key characteristic of the criminal process. The *Procuracy* (prosecution) performs the predominant role throughout the judicial process: the Prosecutor General can appellate a court decision even when the decision has entered into legal force⁹; it can temporarily suspend the execution of a court decision or sentence¹⁰; a prosecutor can decide on exclusion of participation of defence lawyer in pre-trial investigation¹¹, authorize investigation actions limiting constitutional rights (search, seizure¹², wire-tapping¹³, eavesdropping¹⁴). Public prosecutors exercise the highest supervision over exact and uniform application of law, legality of preliminary investigation, represent interest of the State in court as well as criminal prosecution in cases using procedures and within the limits, stipulated by law¹⁵.

During the 1st UPR it was also recommended to strengthen the roles of judges and defence lawyers in the criminal procedure, and to guarantee full access for defendants to the legal counsel of their choice¹⁵. On their side, lawyers continue to have limited powers to collect evidence, which hampers their capacity to counterbalance the powers of the prosecutor and impact on the judicial process. The law prevents defendants from choosing freely their defense counsel if the cases against them involve state secrets; only lawyers who have received special clearance can work on such cases. The draft Criminal Procedure Code introduced to the *Mazhilis* on 31 October 2013 does not address the misbalance.

Commendably, the draft Criminal Procedure Code introduces a new figure of investigative judge. Enhancing the judicial control of the criminal process is a positive development; however, the powers of the investigative judge do not differ significantly from those the judges have according to the current Criminal Procedure Code. More importantly, the draft Code does not propose to extend the powers of the investigative judge to authorize investigation actions affecting individual's rights and freedoms guaranteed by the Constitution of the Republic of Kazakhstan and the International Covenant on Civil and Political Rights (ICCPR) such as silent surveillance, eavesdropping, wire-tapping, and silent entry.

In another positive development, the draft Criminal Procedure Code suggests the police advise a detainee of the following: 1) what crime an individual is suspected of; 2) right to a legal defender; 3) right to remain silent; 4) anything the suspect says can

⁶ Recommendation 56, Report of the Working Group on the Universal Periodic Review, A/HRC/14/10

⁷ Recommendation 54, Report of the Working Group on the Universal Periodic Review, A/HRC/14/10

⁸ Report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/2005/60/Add.2

⁹ Art. 460 of the Criminal Procedure Code

¹⁰ Art. 466 of the Criminal Procedure Code

¹¹ Art. 97 of the Criminal Procedure Code of Kazakhstan

¹² Art. 232 of the Criminal Procedure Code of Kazakhstan

¹³ Art. 237 of the Criminal Procedure Code of Kazakhstan

¹⁴ Art. 236 of the Criminal Procedure Code of Kazakhstan

¹⁵ Recommendation 54, Report of the Working Group on the Universal Periodic Review, A/HRC/14/10

and may be used against him. Article 9 (2) of the ICCPR stipulates that “anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.” There is, however, no clause stating that failure to inform the person of the above listed rights is considered a grave violation of procedural rights of a suspect, which may lead to cessation of criminal prosecution of such person.

During the 1st UPR it was recommended to take measures to strengthen the independence of the judiciary¹⁶. However, the period since the 1st UPR cycle has been marked with developments which raise serious concerns over the independence of the judiciary, such as the dismissal of judges in 2010 as a result of optimization of the number of staff financed by the state budget¹⁷ in contradiction to the Constitutional Law “On the judiciary and the status of judges in the Republic of Kazakhstan”, which did not foresee this reason. On 15 April 2011 six Supreme Court judges were abruptly dismissed on corruption charges made by the State Agency for Combating Economic Crimes and Corruption (financial police). Two judges were later found guilty of corruption crimes and sentenced to ten years and twelve of imprisonment. There was no crime in the actions of four other judges, according to the financial police, but they were never reinstated in their jobs.

On 29 August 2013 a draft law on amendments to the Constitution Law on the Judicial System and Status of Judges of Kazakhstan was introduced to the Parliament. The draft law suggests the establishment of Public Councils by regional courts with the task of “assessing the moral qualities of candidates for judicial posts” and issuing conclusions of an advisory nature¹⁸. Enhancing the role of society in judicial appointments, and, more generally, ensuring high moral standards in the judiciary corps are legitimate goals; however, in the absence of clear criteria and procedures prescribed by law, the “moral” assessment might introduce an element of uncertainty and arbitrariness, and, in the worst case, open the door to corruption, in the process of judicial selection and appointments¹⁹. The Draft Law also suggests introducing new requirements for judges including one that “a judge shall refrain from expressing his or her opinion on state policy issues, if such opinion does not correspond to the main trends of the state policy”. This provision would go beyond the limitations permissible under Article 19 of the ICCPR and contradict Principle 8 of the UN Basic Principles on the Independence of the Judiciary. The UN Human Rights Council stated that restrictions should not be applied to discussion of government policies and political debate, or to reporting on human rights, government activities and corruption in government²⁰. The proposed restriction may further empower the authorities to silence and persecute judges who might express opinions critical of the authorities²¹.

In 2011 the Parliament of Kazakhstan adopted the law on mediation. The UNCT supported the formulation process and welcomed its adoption as the institution of mediation decreased the court workload of judges saving both cost and time for the general population seeking justice. The UNCT encourages the judiciary to promote

¹⁶ Recommendation 54, 57, 59, Report of the Working Group on the Universal Periodic Review, A/HRC/14/10

¹⁷ Decree of the President of Kazakhstan No. 1089 of 1 November 2010

¹⁸ Para 1, Article 1 of the Draft Law on Amendments to the Constitution Law on the Judicial System and Status of Judges of Kazakhstan <http://adilet.zan.kz/rus/docs/P1300000902>

¹⁹ *Ibidem*.

²⁰ A/HRC/RES/12/16, 12 October 2009

²¹ Para 21, OSCE/ODIHR Comments on the Draft Law on Amendments and Addenda to the Law on the Judicial System and Status of Judges of Kazakhstan, JUD -KAZ/240/2013 [LH] , Warsaw, 16 December 2013, www.legislationonline.org

the use of mediation, which will lead to easier access to justice for all and to improving the quality of justice.

In July 2013 the Law on State-guaranteed Legal Aid was passed. The law aimed at ensuring implementation of the right to qualified legal assistance stipulated by the Article 13 of the Constitution. At the same time the law foresees the creation of a State Bar. The concept of a State Bar contradicts directly international standards, in particular the principle of the independence of the provider of legal aid and the right to defense through legal assistance of the defendant's own choosing²².

In the area of counter-trafficking, Kazakhstan has signed and ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. However, Kazakhstan has not signed several key conventions on the rights of migrant workers, including the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), and ILO Migrant Workers Convention No. 143 (supplementary provisions). National laws and implementation mechanisms are not coordinated and not in accordance with international obligations. In the area of labour migration, there is limited capacity and the legislative framework needs significant improvement. In the area of migration management there is a need to improve the effectiveness and increase transparency of law-enforcement agency activities; strengthen the judiciary in order to bolster public trust in the criminal justice system; intensify the fight against corruption, terrorism and organized crime, including money laundering, trafficking in human beings and trafficking in drugs; enhance the legal and social framework to protect migrants, particularly their human rights, in order to prevent abuse and exploitation;

Kazakhstan has committed to implement its Law on Special Social Services to provide vulnerable people with state-funded social services, and allocated state budgets. Still, victims of trafficking are being denied services to which they are entitled as vulnerable people. Underdevelopment of the regulatory framework aggravated by low capacity and weak coordination among implementing parties pose a significant challenge for full and equal inclusion of trafficking victims into the government's interpretation of "vulnerable groups" and eventually granting them access to the necessary services.

In recent years there have also been cases in which lawyers have been subjected to threats or the initiation of disciplinary action, including action leading to disbarment for conduct they see as the legitimate exercise of their profession. Such threats or actions against lawyers risk weakening the essential role of lawyers in ensuring the right to fair trial.

It is likely that the new Criminal Procedure Code will have been adopted by the time Kazakhstan is considered by the 2nd UPR cycle; however, the UNCT deems necessary that Kazakhstan continue to make efforts to reform its laws to ensure that the exercise of administration of justice complies with international standards to which the country, as a member of the international community, has subscribed. The UNCT recommends in particular that further legislative reforms are adopted to extend the judge's powers in a criminal process to authorize all investigation actions limiting constitutional rights along with extending lawyers' powers to collect evidence.

²² Recommendation 54, Report of the Working Group on the Universal Periodic Review, A/HRC/14/10

Legislative efforts should be followed by adequate measures to ensure that the right to fair trial is respected both in law and in practice.

Freedom of expression

Despite some changes introduced to the legislation since the 1st UPR cycle, recommendations accepted by Kazakhstan on de-criminalization of defamation have yet to be fully implemented. Kazakhstan's Criminal Code includes several problematic provisions concerning defamation and insult. Articles 129 and 130 of the Criminal Code provide for fines, community service, correctional labour, restriction of liberty or imprisonment for the crimes of libel and insult. In separate provisions, the Criminal Code incriminates defamation and insult of public officials²³ and sets out higher penalties than for ordinary citizens thus violating the principle of equality before the law.

Libel was partially decriminalized with the adoption, on 18 January 2011, of some amendments to the Criminal Code. The amendment law introduced two changes to the legal regime of defamation. The major change is the establishment of administrative responsibility for defamation and insult and the setting up of a hierarchy in the regimes of criminal and administrative responsibilities for these acts (*administrative praejudicium*). Criminal responsibility for defamation and insult can be sought only after an administrative penalty has been imposed for the same offence²⁴. Another change relates to the system of sanctions for defamation and insult. While fines, correctional labour and imprisonment remain, arrest for libel and insult is removed²⁵. With respect to the special form of defamation - insult of public officials - arrest is replaced with restriction on liberty²⁶ or deprivation of liberty²⁷. These penalties continue to be higher than those foreseen for ordinary citizens thus violating the principle of equality before the law.

A positive development introduced by the law "On changes and amendments to acts of the Republic of Kazakhstan to reform civil legislation" in April 2011, is that business entities can no longer claim moral damages from journalists in lawsuits involving defense of their business reputation.

In line with international standards, it is recommended that libel is addressed by civil legislation and that the law sets limits to moral damages to be awarded under civil claims of protection of non-property rights (honour and dignity). Currently, amounts granted by courts as moral damage compensation can reach enormous sizes, disproportionate to the violation²⁸.

²³ Art. 317-1, 318, 319, 320, 343 of the Criminal Code of the Republic of Kazakhstan.

²⁴ Item 1, para 1 of the Art. 1 of the Law on amendments and addenda to several legislative acts of the Republic of Kazakhstan relating to further humanization of criminal legislation and enhancement of rule of law guarantees in criminal process, 18 January 2011, № 393-IV.

²⁵ Paragraph 40 of the Law on amendments and addenda to several legislative acts of the Republic of Kazakhstan relating to further humanization of criminal legislation and enhancement of rule of law guarantees in criminal process, 18 January 2011, № 393-IV.

²⁶ Restriction on liberty consists in imposition on the person convicted by the court of certain duties which restrict his freedom and is carried out in the place of one's residence under the supervision of the specialised body without isolation from the society for a period from one year up to seven years, Art. 45 of the Criminal Code of the Republic of Kazakhstan.

²⁷ Paragraphs 156, 157, 158, 159 of the Law on amendments and addenda to several legislative acts of the Republic of Kazakhstan relating to further humanization of criminal legislation and enhancement of rule of law guarantees in criminal process, 18 January 2011, № 393-IV.

²⁸ Civil suit against journalist of "Uralskaya nedelya" newspaper Lukpan Akhmedyarov totaling KZT5 000 000 by the head of the department of internal policy of West Kazakhstan Governor's Office.

It is also recommended that Article 164 of the Criminal Code of the Republic of Kazakhstan (instigating social, ethnic, tribal, racial or religious enmity) gives a clear formulation of the social enmity, as the provision poses a threat to the legitimate exercise of freedom of expression, assembly and association, to the activities of human rights defenders, and trade unions mainly due to the broad and vaguely formulated “social enmity” definition in the article.

The UNCT notes as a positive step the development of the draft law on access to information. The Government of Kazakhstan must be commended for the wide consultations including those with the civil society which accompanied the drafting process. UNCT Kazakhstan encourages Kazakhstan to accelerate adoption of the law.

The UNCT considers that these legislative reforms are necessary for an environment conducive to the right of freedom of expression, and in line with Kazakhstan’s obligations. Especially as Kazakhstan aspires to a more prominent international role freedom of expression founded on diverse viewpoints and the free debate of ideas will serve its democratization well.

Freedom of expression is closely related to freedom of association and to standards of equality and non-discrimination. These are interwoven in the current public debate about freedom of religion in Kazakhstan, and all must be handled carefully and in accordance with international law and best practices.

It is recommended to consider bringing into national legislation the standards set in the Framework Convention for the Protection of National Minorities as a measure to ensure better protection of national minority rights; to consider the possibility of amending the law “On Broadcasting” and other legislative acts for the purpose of introduction of special measures, including tax benefits or other state preferences in supporting broadcasting in minority languages; to eliminate the legal requirement for quotas of broadcasting in the state language for private broadcasters; to expand a list of definitions in the law “On Media” by providing definitions to the terms such as “hatred”, “incitement” and “discrimination”; and to consider the possibility of allocating quotas for minority students to study journalism at state universities and introduce a university course on ethnic issues and minority rights.

Kazakhstan – as a multi-ethnic country - has taken steps to strengthen the legal framework for national minorities in accordance with international standards for better recognition of minority identities and the provision of support for their cultural expression. However, the national legislation does not specify positive measures to promote broadcasting in national minority languages or to establish minority media. It provides for prohibition of incitement to racial, ethnic and religious hatred; however it gives no definition to the terms “incitement”, “hatred” and “discrimination”. There are no special measures to encourage minorities to study at journalism faculties, and there is no specific university course in the curriculum on covering ethnic issues. These issues were brought to light in 2013 research by the Regional Office of OHCHR conducted on the media environment and interests and rights of national minorities.