

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 34th Session

KAZAKHSTAN

I. BACKGROUND INFORMATION

The Republic of Kazakhstan (“Kazakhstan”) ratified the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* in 1999 (hereinafter jointly referred to as the *1951 Convention*). The *Law of the Republic of Kazakhstan on Refugees* (the *National Refugee Law*) was adopted in December 2009 and entered into force in January 2010. Since 2010, the Government of Kazakhstan has assumed full responsibility for refugee status determination (RSD). Kazakhstan has not ratified the *1954 Convention relating to the Status of Stateless persons* nor the *1961 Convention on the Reduction of Statelessness* (the *1954 Convention* and the *1961 Convention* respectively). The legislative acts containing provisions related to nationality and statelessness are the *Law on Citizenship*, the *Law on Legal Status of Foreigners* and the *Law on Migration of Population* and other relevant bylaws.

Kazakhstan hosts 195 asylum-seekers (80 female and 115 male) and 574 refugees (269 female and 305 male) as of 1 January 2019. Of these, 67 asylum-seekers were children (33 girls and 34 boys) and 190 refugees were children (87 girls and 103 boys) under age 18. Out of all refugees, 538 originate from Afghanistan, 15 from the Syrian Arab Republic, and 21 from other countries.

As of 1 January 2019, Kazakhstan hosted 7,156 officially recognized stateless persons who enjoy a wide range of rights on an equal basis with nationals. However, there is also an unknown number of persons with undetermined nationality, *de facto* stateless persons or persons at heightened risk of statelessness who are precluded from the enjoyment of basic rights, including the right to employment, education, healthcare, and registration of civil acts, due to lack of legal status and identity documents. There are varying figures on the number of persons with undetermined nationality provided by different State authorities, ranging from 21,000 to 57,000, while no official statistics are collected by the authorities. Since the launch of the identification campaign in 2014 and until the end of 2018, UNHCR partners identified 4,954 persons with undetermined nationality.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

UNHCR commends Kazakhstan for taking active steps to facilitate refugees’ local integration through easing the requirements and procedures for acquisition of a permanent resident status. The *Order of the Minister of the Internal Affairs on Approval of the Rules for Issuing Permits to Foreigners and Stateless persons for Temporary and Permanent Residence* amended in 2017 and practical arrangements adopted in 2018 have simplified procedures for acquisition of the permanent resident status by refugees. The amendments allow a greater number of refugees to apply for permanent residency. After five years of permanent residence, foreigners can apply for naturalization.

UNHCR commends Kazakhstan for supporting the adoption of the Global Compact on Refugees. UNHCR hopes that the Global Compact on Refugees, which was endorsed by the international community in December 2018, will be operationalized in Kazakhstan.

UNHCR also commends Kazakhstan for its efforts to eradicate statelessness. Since the launch of the Information Campaign on statelessness and documentation in partnership with UNHCR and civil society in 2014, the Government resolved 8,224 cases of statelessness.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Access to territory and *non-refoulement*

Linked to 2nd cycle UPR recommendation no. 124.33: “Comply without exception with the principle of non-refoulement when people are in danger of being tortured or ill-treated (Uruguay)” and no. 124.34: “Uphold the principle of non-refoulement and ensure that all asylum seekers are given prompt access to accessible, fair and individualized refugee status determination (Brazil).”

UNHCR notes with concern that the absence of a practical mechanism for the referral of asylum-seekers from the border authorities to the competent State agency within the territory of the country may lead to instances of *refoulement*. Despite the fact that the *National Refugee Law* stipulates that individuals who do not possess valid identity documents or cross the border in an irregular manner should be able to apply for asylum, in practice however asylum-seekers without valid travel documents and visa (if required) are not allowed entry to Kazakhstan. The *National Refugee Law* and bylaws are interpreted rigidly contrary to international standards, to the effect that it is not sufficient for asylum-seekers to verbally express their wish to seek asylum or that their life/freedom is in danger, but it is required that they submit an asylum request in writing. Acknowledging that the availability of interpreters is scarce, asylum-seekers may have little chances to explain their situation if they do not speak local languages or English.

UNHCR is particularly concerned about instances of forcible return of asylum-seekers before they submit a formal asylum application or before a final decision on their asylum application is issued. In 2018, three asylum-seekers were not allowed access to territory; two of them were forcibly returned to their country of origin and one was sent to a third country, which is not signatory to the *1951 Convention* and does not have asylum procedures. In 2019, one asylum-seeker without a valid identity document was denied entry to the country and was sent to a third country not signatory to the *1951 Convention* and without asylum procedures.

In this regard, the Human Rights Committee in its Concluding Observations, (9 August, 2016, CCPR/C/KAZ/CO/2) recommended that Kazakhstan “*should guarantee effective access to procedures for determining refugee status at all border points, including at international airports and transit zones, ensure proper referral procedures and provide appropriate training to Border Guard Service and other responsible State officials to better equip them to make accurate determinations. It should also ensure that forcible returns do not occur while asylum claims are still being adjudicated on appeal. Finally, the State party should strictly enforce the absolute prohibition of refoulement.*”

Recommendations:

UNHCR recommends that the Government of Kazakhstan:

- (a) Establish an accessible asylum and referral procedure at all border points, international airports, and transit zones, and guarantee the individual right of every person to seek asylum in Kazakhstan and uphold the principle of *non-refoulement* in accordance with article 33 of the *1951 Convention*;

- (b) Ensure that no person is expelled, extradited or in any other way returned to a country where he/she would be in danger of being persecuted and that all persons whose applications for asylum have been rejected have the right to lodge an effective appeal with suspensive effect on expulsion/extradition; and
- (c) Ensure that refugees and asylum-seekers are not penalized for illegal entry and stay in the country.

Additional protection challenges

Issue 2: Protection mechanisms for persons fleeing situations of armed conflict, generalized violence or serious disturbances of public order

The *National Refugee Law* does not contain provisions for complementary protection for applicants whose asylum applications were denied and who cannot return to their country of origin due to ongoing armed conflict, circumstances of generalized violence or serious disturbances of public order. If they are unable to return, asylum-seekers or failed applicants for refugee status cannot obtain a legal residence permit and will therefore be unable to enjoy a number of basic human rights, including access to healthcare, employment and social protection. Establishing such formal protection mechanisms is essential to ensure effective international protection for individuals who may not fall under the scope of the *1951 Convention* refugee definition but whose expulsion could result in violation of their right to life, freedom from torture and security of person.

In this regard, we wish to recall that the Committee on the Rights of the Child in its Concluding Observations (30 October, 2015, CRC/C/KAZ/CO/4) recommended that Kazakhstan “*introduce a special protection status (the non-refoulement principle) for children who are not formally recognized as refugees, but are nonetheless unable to return to a country where there are substantial grounds to believe that there is a real risk of irreparable harm to the child*”.

Recommendations:

UNHCR recommends that the Government of Kazakhstan:

- (a) Adopt legislation and take practical measures to ensure that failed asylum-seekers and all persons who are not formally recognized as refugees, but nonetheless are unable to return to their country of origin due to other compelling reasons, such as ongoing armed conflict, circumstances of generalized violence or serious disturbance to public order are allowed to stay in the country until it is safe for them to return, and allow them to obtain legal residential status to guarantee their exercise and enjoyment of economic, social and cultural rights without discrimination.

Issue 3: Statelessness

Kazakhstan has not ratified the *1954 Convention* nor the *1961 Convention*. The main legislative acts containing provisions related to nationality and statelessness are the *Law on Citizenship*, the *Law on Legal Status of Foreigners* and the *Law on Migration of Population*. The *Law on Citizenship* contains some provisions that may lead to or proliferate statelessness. This instrument prohibits citizens from holding dual nationality and requires foreigners to renounce their nationality without having acquired or received assurances that they will acquire the nationality of Kazakhstan. The *Law on Citizenship* does not provide safeguards against childhood statelessness at birth, in cases where the children’s foreign parents are not able to transmit their nationality upon them.

Certain gaps also exist in regard to determining statelessness, ensuring that stateless persons can enjoy their rights, and in regard to the registration of persons with undetermined nationality. While Kazakhstan has a citizenship determination procedure through which a

person's nationality, or lack thereof, can be established, there is no dedicated statelessness determination procedure enacted through legislative acts in line with international standards.

UNHCR and its NGO partners continue to identify persons with undetermined nationality who face difficulties in gaining access to education, health care and other services owing to the lack of identification documents and proof of residence in Kazakhstan. Stateless persons and persons with undetermined nationality face difficulties in fulfilling certain requirements for naturalization. In accordance with the *Rules of Admission, Execution and Consideration by Internal Affairs Bodies of Applications for Citizenship of the Republic of Kazakhstan*, in order to acquire the citizenship of Kazakhstan, stateless persons and persons with undetermined nationality have to submit a confirmation that they are not citizens of any other country, i.e. country of birth, previous residence, country of a foreign spouse, etc., which may be very difficult to obtain. In order to apply for a permanent resident status and subsequently for naturalization, stateless persons have to prove their economic self-sufficiency by having an account in a local bank with an amount equivalent to almost USD 9,000, which many stateless persons are unable to achieve.

Accession to both the *1954 Convention* and the *1961 Convention* would strengthen the legal framework for the protection of stateless persons and for the prevention of statelessness in Kazakhstan. The *1961 Convention* establishes a range of standards to prevent statelessness at birth and later in life, in particular that States shall grant their nationality to children who would otherwise be stateless and have ties with them through either birth on the territory or descent. Accession to the *1954 Convention* establishes a framework to protect stateless persons without discrimination.

Recommendations:

UNHCR recommends that the Government of Kazakhstan:

- (a) Accede to the *1954 Convention Relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*;
- (b) Ensure that the *Law on Citizenship* provides adequate safeguards against statelessness at birth and during the citizenship acquisition/renunciation;
- (c) Introduce a formal Statelessness Determination Procedure, which can lead to the granting of a status of a stateless person, the issuance of a residence permit and enjoyment of the rights;
- (d) Simplify administrative procedures for stateless persons to establish their lack of a nationality; and
- (e) Enact facilitated naturalization procedures for recognized stateless persons.

Issue 4: Birth registration

UNHCR is concerned that births may not be registered in Kazakhstan, if parents cannot provide identity documents. According to the *Code on Marriage and Family* and the *Regulations of Registration and Issuance of Birth Certificates*, children born to undocumented parents cannot be registered and do not receive birth certificates. Lack of access to birth registration certificates increases the risks of statelessness and creates barriers for undocumented children in accessing education, free medical services, including mandatory vaccinations, and other social benefits.

Recommendations:

UNHCR recommends that the Government of Kazakhstan:

- (a) Establish a legal mechanism by which all children born on the territory will have access to birth registration and birth certificate free of charge, irrespective of the legal documentation or civil status of their parents.

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

KAZAKHSTAN

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to KAZAKHSTAN.

I. Universal Periodic Review (Second Cycle – 2014)

Recommendation ¹	Recommending State/s	Position ²
Refugees, asylum seekers, stateless and internally displaced persons		
124.32 Ensure equal access to education for all children, including migrant and refugee children, by abolishing legal and administrative preconditions such as the <i>propiska</i> ;	Hungary	Supported
124.33 Comply without exception with the principle of non- <i>refoulement</i> when people are in danger of being tortured or ill-treated;	Uruguay	Supported
124.34 Uphold the principle of non- <i>refoulement</i> and ensure that all asylum seekers are given prompt access to accessible, fair and individualized refugee status determination;	Brazil	Supported
Prevention of torture and ill-treatment		
124.1 Adopt legislative measures to criminalize torture, violence against women and trafficking in persons in line with international standards;	Mexico	Supported
124.15 Intensify the efforts to not allow, in practice, the use as evidence confessions obtained under the use of torture or by other illegal methods;	Uruguay	Supported
124.17 Establish an independent investigation mechanism to effectively prevent torture and ill-treatment in detention, train personnel and guarantee effective legal representation and remedies for detainees;	Germany	Supported
124.45 Ensure that allegations of torture and ill-treatment are promptly and impartially investigated, and that perpetrators are held accountable;	Austria	Supported
125.72 Increase efforts to ensure independent investigation of any allegation of torture and other ill-treatment in prisons, and prosecute those who have committed such crimes;	Italy	Supported
125.73 Investigate promptly and impartially all allegations of torture and ill-treatment and hold the perpetrators accountable;	Lichtenstein	Supported
Equality and non-discrimination		
125.37 Continue its policy of respect and tolerance of all religions without discrimination;	India	Supported
125.38 Continue to take the necessary measures to combat all forms of gender inequality;	Pakistan	Supported

¹ All recommendations made to Kazakhstan during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Kazakhstan" (10 December 2014), A/HRC/28/10, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/KZIndex.aspx>.

² Kazakhstan's views and replies, in English, can be found in: *Addendum* (13 March 2015), A/HRC/18/10/Add.1, available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/KZIndex.aspx>.

125.39 Continue its positive efforts in implementing the Gender Equality Strategy 2006-2016 and take measures to increase women's participation in public and political life;	Malaysia	Supported
Violence against women and children		
125.40 Strengthen efforts to improve the situation of women and combat against discrimination and violence against women and children;	Sri Lanka	Supported
125.52 Enact legislation criminalizing all forms of violence against women and girls;	Portugal	Supported
124.8 Strengthen the legislative framework through the criminalization of all forms of violence against women and children, including within the family, and foresee infrastructures to shelter victims;	Belgium	Supported
Trafficking and exploitation		
124.37 Further revise the current legislation on combating trafficking in persons for a better prosecution of these crimes;	Iran	Supported
125.62 Maintain its efforts in the area of combating trafficking in persons, especially women and children, based on the relevant National Action Plan endorsed in 2012;	Egypt	Supported
125.66 Continue measures for combating human trafficking, including by broadening international, regional and bilateral cooperation;	Uzbekistan	Supported
126.25 Take steps to align domestic legislation with international standards, particularly with regard to the definition of trafficking in persons, and the application of the principle of equal remuneration of pay for men and women in its labour laws;	Philippines	Noted
Freedom of expression		
124.29 Enhance its efforts with respect to the freedom of the press, freedom of expression and freedom of assembly and association;	Japan	Supported
124.30 Take all necessary measures to guarantee, in all circumstances, the full respect of the rights to freedom of expression and of media as essential elements to an active and flourishing civil society;	France	Supported
124.39 Counter the trend of repressing free speech, including restrictions on media outlets, and take concrete steps to meet its obligation to create an environment that fosters freedom of expression;	Norway	Supported
126.35 Decriminalize defamation and revise the provisions of articles 400 and 403 of the newly adopted Criminal Code which could be abused to limit the rights to freedom of expression, assembly and association;	Czech Republic	Noted
Migrants' rights		
126.49 Improve the legal-regulatory framework to ensure the social rights of migrants, facilitate their integration in the labour market and their access to education, as well as ensure adequate attitude towards them in society by using the media;	Tajikstan	Noted
126.50 Ensure that migrants and their families enjoy equal access to education and health care;	Bangladesh	Noted
Racism and xenophobia		
124.5 Clearly define criminal offences provided for under article 164 of the Criminal Code, such as the incitement to hatred or discord on ethnic or racial grounds, or affronts to national honour and to religious dignity and beliefs, so that they are in line with international norms on freedom of expression;	Chile	Supported

II. Treaty Bodies

Human Rights Committee

Refugees and asylum seekers

43. The Committee is concerned about reports that: (a) access to procedures for determining refugee status at all border points remains problematic and ineffective; (b) individuals have been improperly extradited under bilateral or multilateral extradition agreements, in violation of the principle of non-*refoulement*; (c) asylum applications by nationals of the Syrian Arab Republic and Ukraine are routinely rejected; (d) asylum seekers from China and Uzbekistan may be particularly vulnerable to expulsion, return and extradition; and (e) there have been instances of forcible return of asylum seekers before the decisions on their asylum claims have been completed. The Committee is also concerned that the use of diplomatic assurances in the context of removals of foreign individuals is not accompanied by sufficient safeguards against a real risk of exposing such individuals to treatment contrary to articles 6 and 7 of the Covenant (arts. 2, 6, 7 and 13).

44. The State party should guarantee effective access to procedures for determining refugee status at all border points, including at international airports and transit zones, ensure proper referral procedures and provide appropriate training to Border Guard Service and other responsible State officials to better equip them to make accurate determinations. It should also ensure that forcible returns do not occur while asylum claims are still being adjudicated on appeal. Finally, the State party should strictly enforce the absolute prohibition of *refoulement* under articles 6 and 7 of the Covenant and: (a) exercise utmost care in evaluating diplomatic assurances; (b) ensure that appropriate, effective and independent post-transfer monitoring of individuals who are transferred pursuant to diplomatic assurances is in place; (c) refrain from relying on such assurances when the State party is not in a position to effectively monitor the treatment of such persons after their extradition, expulsion, transfer or return to other countries; and (d) take appropriate remedial action when assurances are not fulfilled.

Committee on Enforced Disappearances

Concluding Observations, (26 May, 2016), [CED/C/KAZ/CO/1](#)

Non-*refoulement*

17. The Committee takes note of the information provided by the State party on the legislative and other measures taken in the fields of extradition and asylum to ensure respect for the principle of non-*refoulement*. However, it is concerned at allegations of instances in which: (a) asylum seekers without valid travel documents or visas were not allowed to enter the State party and apply for asylum despite the fact that the Refugee Law stipulates otherwise; and (b) asylum seekers were forcibly returned to their countries of origin before final decisions on their asylum claims were reached. The Committee takes note of the assertion by the State party that diplomatic assurances from States requesting extradition are not accepted as the only guarantee if there is a possible risk of the person being subjected to enforced disappearance (art. 16).

18. The Committee recommends that the State party ensure that the principle of non-*refoulement* enshrined in article 16 (1) of the Convention is strictly respected in all circumstances. In particular, the Committee recommends that the State party adopt the measures necessary to ensure in practice that:

- (a) All asylum seekers, including those without valid travel documents or visas, have unhindered access to effective refugee status determination procedures that comply fully with the obligations arising under article 16 of the Convention;**
- (b) Before it proceeds to an expulsion, return or extradition, all relevant procedures have been exhausted and a thorough individual examination has been carried out to determine whether there are substantial grounds for believing that**

the person concerned would be in danger of being subjected to enforced disappearance and that, if there are such grounds, the person concerned is not expelled, extradited or returned;

(c) Diplomatic assurances are evaluated with the utmost care and that they are not accepted in any case where there are substantial grounds for believing that a person would be in danger of being subjected to enforced disappearance.

Committee on the Rights of the Child

Concluding Observations, (30 October, 2015), [CRC/C/KAZ/CO/4](#)

Asylum-seeking and refugee children

54. While welcoming the adoption of the Refugee Act, the Committee is concerned that:

- (a) Several by-laws and regulations by the State party contain inconsistencies with the Refugee Act of 2009 and international standards established in the 1951 Convention on the Status of Refugees;
- (b) The special needs and rights of children are not reflected in the State party's asylum procedures and there is no law or regulation addressing the treatment of unaccompanied and separated children;
- (c) The State party's legislation lacks special protection measures (the non *refoulement* principle) for children who cannot return to their countries of origin owing to armed conflict or generalized violence;
- (d) Despite some positive efforts by the State party, repatriate, refugee, asylum seeking and stateless children still face barriers in enjoying the full range of rights, including free health care and education.

55. In the light of its general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, the Committee recommends that the State party take all measures necessary to:

- (a) Address inconsistencies in all of its national legislation, including by-laws and regulations, in order to comply with international standards under the 1951 Convention on the Status of Refugees;
- (b) Ensure that refugee status determination is conducted in a child sensitive manner with regard to both procedural and substantive aspects and that the best interests of the child are taken into account as a primary consideration in all its decisions;
- (c) Introduce a special protection status (the non-*refoulement* principle) for children who are not formally recognized as refugees, but are nonetheless unable to return to a country where there are substantial grounds to believe that there is a real risk of irreparable harm to the child;
- (d) Amend its legislation to allow all children irrespective of the status of their parents to have access to free education and medical services, among other services.

Committee against Torture

Concluding Observations, (12 December, 2014), [CAT/C/KAZ/CO/3](#)

Non-*refoulement*

16. While noting the adoption of the Refugee Law, the Committee is concerned that current procedures and practices on expulsion, *refoulement* and extradition, including the acceptance of diplomatic assurances, may not be in conformity with the State party's obligations under article 3 of the Convention. The Committee is concerned that asylum applications by Syrian and Ukrainian nationals are routinely rejected and that individuals continue to be extradited under bilateral or multilateral extradition agreements and international and regional instruments such as the Convention on Legal Assistance and

Legal Relations in Civil, Family and Criminal Matters and the Shanghai Convention on Combating Terrorism, Separatism and Extremism. It is also concerned that asylum seekers and refugees from Uzbekistan and China are particularly vulnerable to expulsion, return and extradition. The Committee notes reports that it has received concerning instances in which asylum seekers registered with the Migration Police Department were forcibly returned to their countries of origin before the decisions on their asylum claims and before decisions on appeals of rejected asylum claims had been issued. The Committee is also concerned at the State party's admission that it solicits and relies on diplomatic assurances from Governments that individuals returned to their custody will not be subjected to torture or ill-treatment, as in the case of the 28 asylum seekers returned by the State party to Uzbekistan in 2012 pursuant to diplomatic assurances, and whom the Committee decided should be returned to Kazakhstan and provided with redress (art. 3).

The State party should:

- (a) Take all the necessary measures to ensure the effective implementation of the principle of non-*refoulement*, inter alia by bringing its legislation, procedures and practices into line with article 3 of the Convention;**
- (b) Ensure the equal treatment of all asylum seekers and refugees without discrimination and introduce complementary protection status for persons who are not formally recognized as refugees;**
- (c) Ensure that adequate judicial mechanisms exist for the review of decisions and provide sufficient legal defence and guarantees for persons subject to extradition or return, establish administrative and judicial guidelines and criteria for determining the risk of torture and allow such persons to lodge an effective appeal with suspensive effect on the extradition or return;**
- (d) Ensure that no person is expelled, extradited or returned to a country where there are substantial grounds to believe that he/she would be in danger of being persecuted or subjected to torture and other ill-treatment;**
- (e) Ensure effective post-return monitoring arrangements concerning persons who have been expelled, extradited or returned from the State party;**
- (f) Refrain from the use of and reliance on diplomatic assurances, which should not be used to alter the absolute prohibition of non-*refoulement*;**
- (g) Implement the decision of the Committee in cases in which it has found the State party to be in violation of its obligations under article 3 of the Convention, including case No. 444/2010 (Toirjon Abdussamatov et al. v. Kazakhstan) by securing the return of the complainants to Kazakhstan and providing redress, including adequate compensation, for torture or ill-treatment resulting from their return to Uzbekistan.**

III. Special Procedures Mandate Holders

Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, on her mission to Kazakhstan

Addendum: Mission to Kazakhstan (26 August 2014) [A/HRC/27/53/Add.2](#)

Conclusions and recommendations

55. With regard to the protection and rehabilitation of trafficked persons, the Government should invest in support services and protection mechanisms, and provide financial support to help victims to recover from the experience of trafficking and to rebuild their lives. The enforcement of anti-slavery legislation should take a victim-centred approach, focusing not only on the investigation and prosecution of traffickers but also support for victims.