

Submission of the International Legal Initiative on Universal Periodic Review of the Republic of Kazakhstan

The International Legal Initiative (ILI) Public Foundation is an independent human rights organization dedicated to the protection and promotion of human rights, established in 2010.

§1. Legal and institutional framework for the promotion and protection of human rights

In accordance with paragraph 2 of Article 2 of the International Covenant on Civil and Political Rights of the United Nations (hereinafter referred to as the “ICCPR”), the Republic of Kazakhstan undertakes to:

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

The Republic of Kazakhstan does not implement the decisions (opinions) of the UN treaty bodies within the framework of the signed human rights treaties that have binding legal force.

At the time of writing this report, according to the UN OHCHR website, from 2011 to the present, there have been 61 decisions made by the UN Committees against Torture, on Human Rights and on the Elimination of Discrimination against Women (CAT, CEDAW, CCPR), none of which have been fully implemented. Also, Kazakhstan does not take general measures aimed at recognizing at the legislative level the mechanisms for implementing the decisions of the UN treaty bodies.

Recommendation:

Ensure, at the legislative and practical level, the creation and functioning of a mechanism for the mandatory implementation of decisions of UN human rights treaty bodies in Kazakhstan.

§2. Right to life. Respect for the right to life during the January 2022 events in Kazakhstan.

In the first days of January 2022, mass protests against the current authorities took place in Kazakhstan, demanding the resignation of the country's top officials.

In January 2022, mass protests took place in Kazakhstan: they began due to a jump in prices for liquefied gas, but then escalated into political rallies, and in several cities - into riots, which were harshly suppressed by Kazakh security forces and the CSTO military. More than 238 people died during the January events. The authorities accused most of the people killed by security forces of "terrorism". But among them there are also many accidental victims, whose existence the authorities initially tried to deny¹.

¹ <https://www.currenttime.tv/a/kazakhstan-protests-execution/32225471.html>

On January 5, 2022, the Kazakh authorities imposed a total internet shutdown. The internet shutdown lasted until January 10, 2022 and led not only to a complete lack of independent information about the events taking place, but also to numerous casualties among the population. Various media outlets reported people coming under fire and killed, including children ².

On December 12, 2023, ILI held a briefing for journalists, civil society and diplomats on the results of its work on cases related to violations of the right to life in January 2022, where presented its preliminary conclusions and recommendations.

ILI made following *preliminary conclusions* based on collected data, including information from criminal cases and testimony of victims and eyewitnesses:

1. The version of the Kazakh authorities about an attack by 20 thousand terrorists as part of a conspiracy to seize power has not been confirmed, which calls into question the honesty and impartiality of the state investigation into the January 2022;
2. The actions of the special services of Kazakhstan during the January events of 2022 were not aimed at protecting the peaceful assembly and peaceful demonstrators, but consisted of suppressing protests by organizing provocations;
3. The law enforcements used terrorist methods by involving criminal structures and provocateurs in the form of kidnappings, murders, and indiscriminate use of lethal military-style weapons;
4. Mortuaries could release a large number of dead bodies to relatives without an autopsy procedure or identifying the causes of death, which casts doubt on the officially recognized number of deaths;
5. Medical organizations under pressure from the special services discharged the wounded from hospitals, despite the danger to the health and lives of patients. Subsequently, the wounded were subjected to severe torture, and some were killed in pre-trial detention centers and facilities;
6. The CSTO troops did not submit samples of bullets to the bullet collection database, and therefore they could commit any crimes and not be held accountable;
7. The State has failed to provide an independent, impartial, prompt, thorough, effective, credible and transparent investigation into the deaths associated with the January 2022, as required by international human rights documents ratified by Kazakhstan;
8. In many cases, legal assistance to detainees was not effective and violated the right to defense;
9. Courts violate the principles of an independent, fair, public and impartial judicial process. Classification (closing for public) of criminal cases violates the principle of publicity of the judicial process.

Recommendations:

1. *Declassify all cases related to the January 2022, especially those related to the work of the police and intelligence services.*
2. *De-anonymize KNB agents and members of criminal groups who participated in organizing the unrest and conduct an investigation into their actions during the January events.*
3. *Conduct an investigation into the use of weapons by CSTO troops.*

² <https://www.hrw.org/news/2022/01/26/kazakhstan-killings-excessive-use-force-almaty>

4. *Amend the agreements signed by Kazakhstan within the framework of the CSTO in order to prohibit the import of lethal weapons into Kazakhstan without submitting samples to bullet points, both within the framework of peacekeeping operations and in other cases.*
5. *Conduct an investigation and identify the real number of bodies of the dead released from morgues without conducting forensic medical examinations (without exhuming the bodies of already buried people).*
6. *Conduct an independent international investigation into the actions of members of the Security Council of Kazakhstan during the January 2022.*
7. *Conduct an investigation into the effectiveness of providing legal assistance in cases related to the January 2022.*
8. *Review all court sentences taking into account compliance with international human rights standards, as well as critically taking into account the role of law enforcements in organizing mass unrest.*
9. *Resume all criminal cases on the illegal use of weapons by law enforcement officers during the January 2022.*
10. *Publish all video recordings from surveillance cameras in the cities of Kazakhstan where weapons were used against demonstrators, for independent public analysis.*

§3. Freedom of Association.

The Constitution of Kazakhstan and the legislation do not recognize the right of citizens to unite in so-called informal organizations, that is, organizations that do not require state registration as a legal entity.

From the law enforcement practice of justice and prosecutor's offices, it follows that in some cases an NGO created by a group of citizens who do not claim the status of a public association and have not acquired the status of a legal entity is considered an unregistered public association and its organizers are subject to administrative liability. Similar problems arise with unregistered religious associations.

Freedom of association includes the right to create both formal and informal associations. When creating formal (registered) organizations, many problems arise related to unjustified refusals by justice authorities. At the same time, there are no obstacles to the creation of commercial organizations.

The state still does not recognize the possibility of creating and operating informal organizations. Article 498 of the Code of Administrative Offenses of the Republic of Kazakhstan establishes disproportionate liability for "managing the activities of an unregistered association" in the amount of 100 MCI (monthly calculation index)! And for participation in the activities of 50 MCI!

Despite the reduction in the required number of members to create a political party, the right to create political parties in general remains unrealizable in Kazakhstan.

Despite some improvements in the Law of the Republic of Kazakhstan dated June 27, 2014 No. 211-V "On Trade Unions", a number of problems with the implementation of the right

to establish and operate trade unions remain. Including the persecution of trade union leaders. Arbitrary refusals to register trade unions by justice authorities also continue.

On September 20, 2023, the State Revenue Committee under the Ministry of Finance of the Republic of Kazakhstan published the Register of individuals and legal entities receiving money and (or) other property from foreign states, international and foreign organizations (hereinafter referred to as the Register). The Register was published after amendments were made to the tax legislation of the Republic of Kazakhstan, which provided for the publication of the register of persons receiving funding from foreign states, international and foreign organizations, foreigners, stateless persons for the provision of legal assistance, including legal information, protection and representation of the interests of citizens and organizations, as well as their consultation, study and conduct of public opinion polls, sociological surveys and the collection, analysis and dissemination of information. The government stated that the measure is aimed at "increasing the level of trust of citizens."

International Legal Initiative (ILI) was also included in the Register under No. 68. Despite the government's statement that these measures are aimed at "increasing the level of trust of citizens," ILI considers its inclusion in the Register as an unfriendly gesture and a measure aimed at stigmatizing the individuals listed in the Register. Firstly, despite the fact that the government does not use the wording "foreign agent," the Register performs the same function as the list of "foreign agents." It is implied that individuals and legal entities included in the Register work in the interests of foreign states, international organizations and foreign citizens, which is not true. Labeling journalists, activists, human rights defenders and associations as "foreign agents" may further hinder and stigmatize the legitimate work of human rights defenders, activists and civil society organizations, which seriously harms the right to freedom of association in the Republic of Kazakhstan.

The publication of the Register has already led to the labeling of "foreign agents" and hindered the work of, for example, the Echo NGO, whose bank accounts were blocked for some time. On December 19, 2023, ILI filed a complaint to the Minister of Finance of the Republic of Kazakhstan. The response dated January 18, 2024 denied the complaint. Astana city courts rejected the claims of human rights organizations to recognize the publication of NGO data in the Register of Foreign Agents as discriminatory.

Recommendations:

- 1. The registration procedure for associations should be simplified and replaced with a notification system.*
- 2. Further simplification of the procedure for creating political parties is required.*
- 3. Stop to publish the Register of individuals and legal entities receiving money and (or) other property from foreign states, international and foreign organizations*

§4. Rights of refugees and asylum seekers

According to paragraph 1 of Article 10 of the Law on Refugees of the Republic of Kazakhstan, an asylum seeker must apply for asylum within five days from the moment they crossed the Kazakh state border, without specifying whether the crossing was legal or illegal. However, Clause 3 of the same article establishes a separate deadline for filing a petition for those who were forced to illegally cross the border: "In the absence of a checkpoint across the State Border of the Republic of Kazakhstan, a person in case of forced illegal crossing of the State Border of the Republic of Kazakhstan must apply to the authorized body within 24 hours." In our opinion, a conflict arises between these two norms when Clause 3 restricts the effect of Clause 1

of Article 10 and shortens the application period for refugees forced to illegally cross the border to escape persecution.³

A significant number of people (the exact number is not known), fleeing persecution and torture in Xinjiang, illegally crossed the border, but did not officially apply for asylum. As a result, in the opinion of officials and the Border Service of the National Security Committee of the Republic of Kazakhstan, they are criminals who have violated Article 392 of the Criminal Code of the Republic of Kazakhstan (illegal border crossing), while Paragraph 1 of Article 31 of the 1951 Convention relating to the Status of Refugees says that: “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.”

Refugees who illegally cross the Kazakh border from China do not have information about the time it takes to file an application for refugee status. They turn to the authorities after a while, which serves as a formal basis for the authorities of Kazakhstan not to apply the provisions of Article 31 of the Convention and criminalize illegal border crossing. At the same time, the charge and punishment for illegal border crossing is not automatically lifted in the case that refugee status is granted in Kazakhstan and this further interferes with obtaining Kazakhstan citizenship. So, the consequence of such a criminal record may be a refusal to grant citizenship or stateless person status, since according to Article 17, Clause 9 of the Law on Citizenship of the Republic of Kazakhstan, any application for Kazakh citizenship is rejected if the person “has an unspent or outstanding conviction for committing an intentional crime on the territory of the Republic of Kazakhstan or outside it, recognized as such by the legislation of the Republic of Kazakhstan.”⁴

Kazakhstan and China signed on 17th May 2023 an intergovernmental agreement on the exchange of information regarding citizens of both states. The most dangerous thing is that this agreement allows providing the data of asylum seekers and refugees from China to Kazakhstan, since there is no exception in the agreement for this category. Providing information about refugees and asylum seekers from PRC is a threat to the security of those who have applied for asylum in Kazakhstan.

In accordance with the Article 7, paragraph 2-2 of the Law of the Republic of Kazakhstan “On Refugees”, the competence of the relevant body, namely the Migration Service of the Ministry of Internal Affairs, includes issuing travel documents to refugees officially recognized in the Republic of Kazakhstan. This document was planned to be issued from January 1, 2022, but the form of the travel document has not yet been approved by the Parliament of Kazakhstan. The right to obtain a travel document for refugees exists on paper, but does not exist in practice. This situation has lasted since the entry into force of the Refugee Law in 2010, that is, for 13 years.

Recommendations:

1. *Kazakh authorities must bring domestic legislation in line with international legislation – specifically the Convention relating to the Status of Refugees and not criminalize the illegal crossing the border by refugees.*
2. *Exclude asylum seekers and refugees from China from the exchanging personal information between China and Kazakhstan.*

³ Law of the Republic of Kazakhstan «On Refugees» dated December 4, 2009
http://adilet.zan.kz/rus/docs/Z090000216_

⁴ Law of the Republic of Kazakhstan “About citizenship of the Republic of Kazakhstan” dated December 20, 1991
https://online.zakon.kz/document/?doc_id=1000816&doc_id2=1000816#activate_doc=2&pos=37;-152&pos2=185;-86

3. *Urgently pass a bill approving the integrated circuit of the travel document for refugees, so that they can use it in practice.*

§5. Freedom of Torture

On cases related to torture in January 2022, law enforcements evade responsibility for those who beat and tortured to death those detained during the January 2022 events. In our opinion, such cases should be investigated as murders, and not just torture. One of such example is the case of Zhasulan Anafiyayev, who was killed during abuse and brutal beatings in an Almaty pre-trial detention facility in January 2022.

In January 2022 about 100 migrants from Central Asian countries and citizens of Kazakhstan became the victims of mass torture in Almaty region. They were targeted as terrorists. ILI is protecting the rights of 23 victims of torture from Uzbekistan, tortured at the same time in the same place. Authorities of Kazakhstan didn't conduct properly and in time the investigation of this mass torture case. The investigation lasted for 2,5 years and only 6 ex-police officers were recognized as suspects in this case, despite dozens national security, special units and police officers participated in mass torture. On the last day of investigation 4 previously arrested police officers were released under recognizance not to leave. In addition, the charges against six suspects were reduced. For the victims, this is a signal that those responsible for mass torture will not be identified and punished.

According to the Human Rights Measurement Initiative, significant number of people are not safe from arbitrary arrest, torture and ill-treatment, forced disappearance.⁵

Recommendations:

1. *To use article 99 of Criminal Code (Murder) in cases of beating to death by law enforcements instead of the para 3 of article 146 (Torture) of Criminal Code.*
2. *Ensure fair punishment for those responsible for mass torture of migrants in January 2022*

⁵HRMI Rights Tracker [Kazakhstan \(rightstracker.org\)](https://rightstracker.org)