UNHCR
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Universal Periodic Review: *Fourth Cycle, 48th Session*

REPUBLIC OF KAZAKHSTAN

I. BACKGROUND INFORMATION

The Republic of Kazakhstan ("Kazakhstan") acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* in December 1998 (hereinafter jointly referred to as the 1951 Convention). Kazakhstan has not acceded to 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 *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). In early 2022, responsibility for refugees and asylum-seekers was transferred from the Ministry of Internal Affairs to the Ministry of Labour and Social Protection of Population. As part of this shift, responsibility for receiving asylum applications and issuing RSD decisions was decentralised to the Offices of Coordination of Employment under each city and regional administrations. Related by-laws entered into force in April-May 2022. Due to the shift, many meetings of the State Refugee Status Determination Commission were postponed in 2022.

As of 1 January 2024, Kazakhstan hosts 480 asylum-seekers (224 female and 256 male) and 273 refugees (145 female and 128 male). Of these, 111 asylum-seekers (58 girls and 53 boys) and 63 refugees (34 girls and 29 boys) are children. Out of total number of refugees, 182 refugees originate from Afghanistan, 68 from Ukraine, 12 from the Syrian Arab Republic, and 11 from other countries. Most asylum-seekers are from Afghanistan (209), Ukraine (207) and the Russian Federation (16), while 48 from other countries. Key concerns include access to territory and non-refoulement, exacerbated by the absence of a well-established formal referral mechanism between the border service and the competent authorities, which may potentially lead to forcible returns. Refugees receive only a one-year temporary residency, subject to annual renewal. Asylum Seekers' certificates are not accepted as valid documents for employment contracts. As a result, many are forced to resort to informal employment, putting them at risk of exploitation. Refugees and asylum-seekers are 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 minimal standards of medical care. This right is further restricted for asylum-seekers who are entitled to receive a guaranteed amount of free medical care only for diseases that pose a danger to others. 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. 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 integration into the country, for example, by marriage or birth.

According to national law refugees are eligible to apply for permanent residency, however, if granted permanent residency they are required to forfeit their refugee status, which jeopardises their protection against possible refoulement. Additionally, in order to apply for

permanent residency, refugees are required to provide a valid national passport, which many would not be able to arrange for, being unable to avail themselves of protection of their country of origin and the risks which may result from approaching their respective embassy.

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,* along with the relevant bylaws.

As of 1 January 2024, Kazakhstan hosts 7,892 stateless people officially registered by the Government who enjoy a wide range of rights on an equal basis with nationals. UNHCR and its partners recorded 551 persons with undetermined nationality who are in the process of documentation as of 1 January 2024. However, the real number of persons with undetermined nationality or at risk of statelessness remains unknown. These persons are precluded from the enjoyment of basic rights, including the right to employment, education, healthcare, registration of civil acts, due to lack of legal status and identity documents.

Statelessness in Kazakhstan is largely a result of the dissolution of the Union of the Soviet Socialist Republics in 1991. While many were able to confirm or acquire the nationality of Kazakhstan since then, some others have been unable to do so partly due to gaps in the nationality laws and practices. The current legal and policy framework on nationality still contains provisions that do not prevent all cases of statelessness from arising or allow all current cases to be resolved. *The Law on Citizenship* prohibits citizens from holding dual nationality and requires foreigners to renounce their nationality without having acquired or having received assurances that they will acquire the nationality of Kazakhstan, which increases the likelihood of statelessness.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 3rd cycle UPR recommendations no. 139.245 "Ensure full compliance with the principle of *non-refoulement* (Czechia)" **and no 139.170** "Intensify efforts to promote and safeguard the right to education for all (Sudan)"

UNHCR commends the Government of Kazakhstan for its announcement of five pledges at the Global Refugee Forum in December 2023, namely to establish effective border referral procedures to ensure unhindered access to territory and asylum procedures, and to provide access for refugees to medical care, employment, education, and social assistance on par with citizens and permanently residing foreigners by 2024-2025.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

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

Linked to 3rd cycle UPR recommendation no. 139.245 "Ensure full compliance with the principle of *non-refoulement* (Czechia)" **and no. 139.28** "Legally establish the primacy of international human rights legislation over internal regulations (Spain)"

Access to territory and *non-refoulement* remain key concerns, with the absence of a well-established formal referral mechanism between the Border Services and the competent authorities potentially leading to forcible returns. Despite Kazakhstan's international obligations to uphold the principle of *non-refoulement*, national legislation does not provide sufficient protection from *refoulement* – the return to a country where a person may face torture or other forms of cruel, inhuman, or degrading treatment or punishment for violating

migration laws.

UNHCR notes with concern that the absence of a practical mechanism for the referral of asylum-seekers from the border authorities to the competent authorities within the territory of the country may lead to instances of *refoulement*. Even though 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, there exists no formal referral procedure for handling such cases. In practice, persons seeking asylum at border points, including international airports and transit zones, not only risk being denied entry into Kazakhstan but also face the risk of detention and being penalized for irregular border crossing. Moreover, they are at risk of *refoulement* without any consideration of their asylum application.

Refugees, asylum-seekers, or stateless people may still face risks of being expelled from the state as punishment for criminal or administrative offenses, as well as by decisions of civil courts. The principle of *non-refoulement* is observed in the context of extradition, where the *Criminal Procedure Code* explicitly prohibits the extradition of individuals who may face threats of torture in the requesting state (Article 590, Part 1, Clause 7); however, similar provisions prohibiting the expulsion of foreigners (stateless persons, asylum seekers and refugees) who violate Kazakhstan's legislation are absent in the criminal code, administrative offenses code, and civil procedure code. The inconsistent application of the *non-refoulement* principle through various legislative acts remains a concern, leading to a lack of assurance in upholding this principle. UNHCR is particularly concerned about instances of forcible return of asylum-seekers whose asylum cases were still pending a final decision. In 2022, Kazakhstani authorities detained two asylum-seekers, one from Afghanistan and the other from the Russian Federation, for irregularly crossing the State border and refouled them back to their countries of origin without consideration of their asylum claims or other *non-refoulement* safeguards enshrined in national and international law. Another concerning issue is when asylum authorities refuse to duly receive and register some asylum applications, potentially leading to risks of *refoulement*. In 2023, there were several cases involving asylum-seekers who were denied the registration of their asylum applications upon entering Kazakhstan.

Refugee status in Kazakhstan is granted for one year and is reconsidered every year. Refugees are facing increasing difficulties in extending their temporary residence status – as required annually under national legislation, contrary to international standards. Instances where authorities pursued cessation of refugee status were also observed in early 2024, notably concerning refugees in protracted situations who had been displaced from Afghanistan and Syria.

The *Law on Refugees* includes clauses (article 10.3-10.4) enabling individuals detained for irregular entry or stay on the territory to declare their intention to seek asylum; however, it remains silent on the issue of non-penalization for irregular entry. The article 392 of the Criminal Code imposes criminal penalties on asylum-seekers on account of their irregular entry into the territory of Kazakhstan without any exception for individuals in need of international protection. This discrepancy is not in line with Article 31(1) of the *1951 Convention*, to which Kazakhstan acceded without any reservations.

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*. 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* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The primacy of such obligations derives from Article 103, in conjunction with Articles 55(c) and 56, of the *Charter of the United Nations*. Article 103 of the *Charter of the United Nations* establishes that Charter obligations take precedence over those stemming from other international agreements.

The Committee against Torture in its Concluding Observations on the Fourth Periodic report of Kazakhstan (9 June 2023, CAT/C/KAZ/CO/4), recommended Kazakhstan to *"ensure that no one may be expelled, returned, or extradited to another State where there are substantial grounds for believing that he or she would run a personal and foreseeable risk of being subjected to torture. In particular, the State party should take legislative steps to amend the relevant legal provisions regulating expulsion and deportation for illegal crossing or violation of migration laws, in accordance with the principle of non-refoulement. In this connection, it should not expel asylum-seekers or refugees from its territory until there is a final decision, including on appeal. The State party should further establish an accessible asylum and referral procedure at all border points".*

Recommendations:
UNHCR recommends that the Government of Kazakhstan:

(a) Guarantee the right of every person to seek asylum in Kazakhstan and ensure that no person is expelled, extradited, removed, pushed back or in any other way returned to a country where they would be in danger of being persecuted;
(b) Establish an accessible asylum and referral procedure at all border points, international airports, transit zones, and detention centres.
(c) Ensure that all persons whose applications for asylum have been rejected have the right to lodge an effective appeal with suspensive effect on expulsion/extradition;
(d) Adhere to and ensure the appropriate implementation of the principle of *non-refoulement* when implementing existing bilateral and multilateral agreements related to extradition, ensuring obligations arising from international refugee law and human rights law take precedence over obligations arising from other international and regional agreements.
(e) Ensure that refugees and asylum-seekers are not penalized for irregular entry and stay in the country in line with Article 31(1) of the *1951 Refugee Convention*;
(f) Amend the *Law on the Legal Status of Foreigners* to qualify refugees as permanently residing foreigners and/or allow refugees to retain refugee status when applying for a residence permit in Kazakhstan so that refugees can maintain thei protection from *refoulement*; and,
(g) Amend the relevant laws to enable recognized refugees to apply for naturalization in Kazakhstan, in line with Article 34 of the *1951 Convention relating to the Status of Refugees*, allowing refugees to apply for citizenship, ensuring their long-term protection and integration into society.

Issue 2: Ensuring access to rights for refugees and asylum-seekers, including those with disabilities

Linked to 3rd cycle UPR recommendation no. 139.235 "Continue aligning the national legislation in accordance with its obligations under the Convention on the Rights of Persons with Disabilities (Oman)"

UNHCR notes with concern that gaps remain in the national legislation with regard to access to social protection for asylum-seekers and refugees with disabilities. The *Social Code* guarantees social protection to citizens, foreigners, and stateless people with disabilities who have a permanent resident status in Kazakhstan. However, asylum-seekers and refugees with disabilities are not protected under this law due to their lack of permanent resident

status. Hence, refugees and asylum-seekers do not have access to the specialized medical procedures to establish the disability and to determine the level of disability; they do not receive specialized medical care and cannot apply for disability allowances and/or other benefits, including disability equipment and mobility aids.

In accordance with national legislation, refugees and asylum-seekers are not entitled to State-provided social care allowances, including disability allowances and benefits; they cannot contribute to pension fund and do not receive retirement pensions. Thus, asylum-seekers and refugees with disabilities who are not able to work remain dependent on the assistance provided by UNHCR and its partners.

Amendments introduced to the *Code on Population Health and the Healthcare System* and the *Law on Compulsory Social Health Insurance* stipulate that foreigners and stateless people permanently residing in the territory of Kazakhstan, as well as Kandasses (ethnic Kazakh repatriates), enjoy the rights and bear responsibilities in the system of compulsory health insurance on an equal basis with citizens. Asylum-seekers and refugees residing in Kazakhstan do not fall within the scope of these laws due to temporary nature of their refugee and resident status (as classified by the *Law on the Refugees* of Kazakhstan, the refugees' certificate validity is for one year and asylum certificate is valid for 3 months with possibility of extension – as per the *Rules for registration and consideration of asylum application*) and do not have access to the health insurance system. Refugees can receive only a "minimal" volume of medical care. This right is further decreased for asylum-seekers who are entitled to receive a guaranteed amount of free medical care only for diseases that pose a danger to others. Asylum-seekers can only access medical care for acute diseases that pose a danger to others and emergency healthcare.

In accordance with the provisions of the *Law on Compulsory Social Health Insurance*, refugee and asylum-seeking children cannot receive the guaranteed volume of free healthcare on the same basis as citizens and permanently residing foreigners. Likewise, refugee and asylum-seeking children with disabilities, as well as children living with HIV, including those with AIDS, will not have the right to receive free medical care and specialized pedagogical support in educational and healthcare organizations.

In this regard, we wish to recall that the Committee on the Elimination of Discrimination against Women in its Concluding Observations (12 November 2019, CEDAW/C/KAZ/CO/5) recommended that Kazakhstan *(i) Provide asylum-seeking women, refugee women, stateless women, and women with undetermined nationality, including those temporarily residing in the State party, with health insurance and basic health services, including prenatal and postnatal care, and ensure that they have access to employment, education and the registration of civil acts.*

Recommendations:
UNHCR recommends that the Government of Kazakhstan:

(a) Amend 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 Convention relating to the Status of Refugees*;
(b) Amend 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 in accordance with Articles 23-24 of the *1951 Convention relating to the Status of Refugees*; and,
(c) Amend national legislation to ensure that the compulsory health insurance system covers every person in Kazakhstan, including refugees and asylum-seekers, in accordance with Article 23 of the *1951 Convention relating to the Status of Refugees*.

Additional protection challenges

Issue 3: 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 who cannot be returned to their country of origin because they may face torture or violations of their right to life, or due to ongoing armed conflict, circumstances of generalized violence, or serious disturbances of public order. Establishing such formal protection mechanisms is essential to ensure effective international protection of 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) Amend national legislation to introduce complementary forms of protection to ensure that all persons who cannot be returned to their country of origin can obtain a legal residence status and enjoy economic, social, and cultural rights without discrimination.

Issue 4: Accession to the two Statelessness Conventions

Linked to 3rd cycle UPR recommendation no. 139.1 "Continue its efforts to ratify international instruments (Morocco)"

Kazakhstan has not acceded to the *1954 Convention Relating to the Status of Stateless Persons* nor the *1961 Convention on the Reduction of Statelessness*. The *Law on Citizenship* does not provide safeguards against statelessness in the processes for renunciation, loss, or deprivation of Kazakh citizenship, or against childhood statelessness at birth in cases where the children's foreign parents are not able to transmit their nationality to them.

Accession to both the *1954 Convention* and the *1961 Convention* would strengthen the legal framework for the protection of stateless people 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 stating 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 people without discrimination.

In this regard, the Committee against Torture, in its Concluding Observations on the Fourth Periodic Report of Kazakhstan (9 June 2023, CAT/C/KAZ/CO/4), encouraged Kazakhstan "*to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness".*

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; and,

(b) Ensure that the *Law on Citizenship* provides adequate safeguards against statelessness at birth, in cases of acquisition of Kazakh nationality, as well as in cases of renunciation, loss, or deprivation of Kazakh citizenship.

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