

**ALTERNATIVE REPORT OF NON-GOVERNMENTAL ORGANIZATIONS
OF KAZAKHSTAN
WITH COMMENTARIES TO THE INITIAL REPORT OF THE
GOVERNMENT OF KAZAKHSTAN ON IMPLEMENTATION OF THE
CONVENTION ON THE RIGHTS OF THE CHILD RATIFIED BY
KAZAKHSTAN IN 1994**

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FOREWORD

This report has been prepared as an alternative to the Initial Report of the Commission for Human Rights under the President of the Republic of Kazakhstan on Implementation of the Convention on the Rights of the Child, ratified by Kazakhstan in 1994. The present report contains additional information and comments the report of the government¹.

Appendixes to the alternative report contain supplementary materials, presented by several non-governmental organizations.

This alternative report has been prepared by the working group set up by a number of non-governmental organizations working on protection and promotion of rights and legal interests of the child. In course of its work the working group has used the data obtained from the state bodies of statistics, informational and analytical materials prepared by the governmental and non-governmental organizations.

The NGOs working group has been set up in February 2000 and held regular meetings with a purpose of informational exchange and preparation of separate sections of the report.

The following organizations directly participated in drafting the alternative report: *Children's Fund of Kazakhstan, Kazakhstan International Bureau for Human Rights and Rule of Law, Center for Conflict Resolution, Crisis Center for Women and Children and the Feminist League.*

The following organizations participated in the discussion and provided analytical information and other materials for the report: *"Zhan" Asian Society for the Rights of Disabled Persons, Association of Young Leaders, Association for Protection of Rights of Children, Children's Fund of Kazakhstan, Informational Center for Adoption, Kazakhstan International Bureau for Human Rights and Rule of Law, Center for Conflict Resolution, Crisis Center for Women and Children, League of Women of Creative Initiative and the Feminist League.*

The present report is planned to be published in mass-media, and if there will be such a possibility – it will be published as a separate volume together with the Initial Report of the Government of Kazakhstan.

¹ Translation into English has been sponsored by the Institute of the Constitutional and Legal Policy (Open Society Institute).

A. GENERAL INFORMATION ON THE REPUBLIC OF KAZAKHSTAN
(Country and population)

Commentary to the point 11.

Lower rates of child mortality, to a certain degree, could be explained by the reduction of number of children in the structure of population in Kazakhstan. (from 6.3 million in 1990 to 5.3 million in 2000).

B. GENERAL MEASURES ON IMPLEMENTATION
(Articles 4, 42 and Point 6 of the Article 44)

General evaluation. Government of Kazakhstan did not adopt a National Strategy on Implementing the Convention on the Rights of the Child (CRC), or any reliable legislative and institutional mechanisms that could guarantee implementation of the Convention.

One can establish a fact of absence of proper norms and legal documents on refugee children and oralman children (Kazakh repatriates). This, to our view, creates a vacuum in the legal field when it comes to protection of rights and legal interests of these categories of children. The only exception here is to be found in the application of the Convention relating to the Status of Refugees, that Kazakhstan is a party to. Point 1 of the Article 22 of this Convention states that the Contracting States shall accord to refugees the same legal status as is accorded to nationals with respect to elementary education.

Commentary to the point 20.

There are no direct mechanisms on implementation and observance of principles of the Convention on the Rights of the Child. This view is supported by the fact that Ministry on Affairs of Youth, Tourism and Sport has been abolished on 4 of March 1997 and the functions of this Ministry were transferred to the Ministry of Education and Culture. However, not this Ministry but the Commission for Human Rights – a body that has but consultative status under the President of Kazakhstan, has been charged with drafting the government's report.

Commentary to the points 21-22 and points 24-25.

The general review of Kazakhstani legislation on human rights² demonstrates that implementation of Convention on the Rights of the Child is impeded by both institutional and legislative problems.

² The review has been prepared in accordance with the Special Service Agreement #SSA/KAZA/2000/00000532 signed by UNICEF and Kazakhstan International Bureau for Human Rights (KIBHR) on 15 of November 2000. According to this agreement, KIBHR obliged to assist UNICEF in conducting a review of the current legislation of the Republic of Kazakhstan from the point of its conformity with the international human rights agreements, ratified by Kazakhstan, particularly with the provisions of the 1989 Convention on the Rights of the Child concerning legislative regulation of status of children deprived of parental care. The full text of the review is given in the Appendix I of the present alternative report.

Kazakhstan joined the Convention on the Rights of the Child on 8th of June, 1994. The Convention on the Rights of the Child has been ratified in June 1994, Optional Protocols to the Convention were signed in July 1994. This way Kazakhstan had taken a number of international obligations including those stipulated for by the Article 44 of the Convention - to submit to the Committee on the Rights of the Child, established in accordance with this Convention, through the Secretary-General of the United Nations, reports on the measures the state has adopted which give effect to the rights recognized by the Convention and on the progress made on the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

Despite the fact that Kazakhstan joined the Convention in 1994, it plans to submit its first report to the Committee on the Rights of the Child only in the year 2002.

However, the very fact that such report is in progress should be recognized as positive, although the provisions of the Article 44 have not been fully met with respect to deadlines and terms of submitting of such report.

Moreover, according to the point 6 of the Article 44, States Parties are obliged to make their reports widely available to the public in their own countries. At this point Kazakhstan has yet to meet this requirement.

We can only hope that the Government will make the report and the future recommendations of the UN Committee on the Rights of the Child widely accessible and available to public, and the process of its consideration will create basis for constructive discussion concerning enjoyment and promotion of the rights of the child in Kazakhstan.

Majority of people in Kazakhstan, including children, still does not know that the Convention exists or that Kazakhstan has signed it. As one of the Kokshetau NGO activists states, Kazakhstani people know a lot about American actors, but have no idea about the Convention on the Rights of the Child.

The situation is further aggravated by the fact that many staff-members of city akimats (administrations), of inspections on juveniles and departments of interior, particularly in the rural areas, that are responsible for application of Convention, are not informed about this document. In particular, the staff-member of the Akmolinsk regional branch of the Kazakhstan International Bureau for Human Rights and Rule of Law stated that the seminars for personnel of inspections on juveniles held in North Kazakhstan demonstrated that many of those that attended the seminar did not know that such a Convention existed. "Officials should be the primary target group for distributing the information on the convention", she said.

Point 3 of the Article 4 of the Constitution of the Republic of Kazakhstan states: "International treaties ratified by the Republic have a priority over domestic laws and are applied directly, except in cases when in conformity with the international treaty, its implementation requires the adoption of a separate law".

According to this Article, the Convention on the Rights of the Child de jure constitutes a part of the Kazakhstani legislative framework, although it is still unclear if we can apply the norms of this international treaty directly and if court will recognize such legal reference as a valid argument.

Constitution of Kazakhstan does not define which state body has a right to interpret laws. The Constitutional Court, established by the Section IV of the Constitution has a right to draw conclusions on whether the adopted legislation and concluded international treaties comply with the Constitution. It also has a right to interpret the Constitution. However, neither Constitutional Court, nor Supreme Court or Parliament have a legal right to interpret laws.

This fact makes it unclear which body is responsible for defining the conformity of the current domestic legislation with the Convention on the Rights of the Child that Kazakhstan is party to. It is also unclear whether provisions of the Convention are used as a basis when domestic laws or normative acts are applied.

In Kazakhstan there is no judicial practice of direct application of provisions of ratified international treaties, including the Convention on the Rights of the Child. We do not know of any cases when the provisions of international human rights instruments have been directly applied by courts. On the contrary, we know of the facts when law-enforcement and judicial bodies refused to apply directly provisions of Convention Relating to the Status of Refugees and Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, even though Kazakhstan has signed both of these documents.

Actually, from the point of law application, the issue of direct implementation of international treaties ratified by the Republic of Kazakhstan and application of the Constitution itself, is open to discussion. This significantly weakens the possibilities of promotion and protection of constitutional and civil rights and freedoms, including rights of the child, in Kazakhstan.

The Kazakhstan legislation on rights of the child is represented both by laws and subordinate acts adopted prior to ratification of the Convention on the Rights of the Child or in development of the expired Soviet legislation, and by new legal and subordinate acts adopted with a purpose of meeting the international standards and observing the provisions of international treaties.

Despite the fact that Kazakhstan joined the Convention on the Rights of the Child in 1994, its domestic legislation up to this moment has not been put in conformity with this international treaty.

Kazakhstani Constitution and the current legislation in the area of legislative regulation of rights of the child consists of more than 30 laws and other normative acts and recognizes the priority of international treaties over the national legislation.

However, the only document, containing a reference to the Convention on the Rights of the Child and to the number of its provisions, is the Law of the Republic of Kazakhstan of 15 of December 2000 "On family type children's villages and Homes of youth". The provisions of the Law N 321-1 of the Republic of Kazakhstan of 17 of

December 1998 “On Marriage and Family” also comply with some provisions of the Convention on the Rights of the Child.

The rest of the existing laws and legislative acts only mention a possibility of application of the norms of international treaty and the priority of such norms over the provisions of national legislation. However, the norms of the Convention on the Rights of the Child were not made part of the current legislation.

Commentary to the points 23, 48-54

Unfortunately, at present time Kazakhstan authorities do not view civil society structures as equal partners, or as representatives of the society when discussing reforms of legislation, public structures and practice of law application.

Numerous proposals on simplification of registration procedure and reduction of registration fee for children and youth NGOs were ignored by the state.

Current legislation provides for administrative and criminal responsibility for participating in the activity of unregistered non-governmental organizations. No distinction is made between children and adult organizations.

Legislation on public associations enables authorities (justice agencies that register public associations) to control activities undertaken under the charter of public organizations. For example, they can make a decision on whether the activity of the organization complies with its goals, they can request that members, governing bodies give them detailed explanations concerning activities of the organization. They also can attend any meetings of public associations, etc.

This way the state is more inclined to control the process of formation of non-governmental public organization and to monitor their activity rather than work in equal partnership with them.

Draft laws, including those concerning human rights, in majority of cases are prepared by executive authorities and are rarely published. In many cases, government refuses NGOs that wish to receive texts of draft laws. The first time NGOs can have access to the draft law is when it reaches Parliament. All of this severely limits NGOs ability to influence the concept and content of draft laws dealing with human rights, including rights of the child.

Commentary to the point 27.

Kazakhstan does not have the specialized governmental body responsible for protection of child’s rights. There are several state structures that deal with different problems, concerning all groups of children, including children deprived of family environment. These bodies include the Ministry of Education and Science of the Republic of Kazakhstan, Ministry of Health, Education and Sport of the Republic of Kazakhstan, subdivisions within the Ministry of Internal Affairs of the Republic of Kazakhstan, local executive authorities (akimats) and departments under akims.

Legislation hardly provides for co-ordination of activities of these bodies and authorities.

In 1998 the government of Kazakhstan has formed a National Commission on Family and Women Affairs and adopted a National Plan of Action on improving the status of women in Kazakhstan. This came as an attempt to implement the article 2 of the Convention on Elimination of All Forms of Discrimination Against Women, that obliges all States Parties to establish a public institution for implementation of the Convention's provisions. These measures allowed for an important advancement in meeting the Convention's requirements.

Probably authorities contemplated that National Commission will draft proposals on legislative regulation and protection of rights of children, thus, ensuring practical implementation of the Convention on the Rights of the Child and coordinating the activity of public institutions on protection and realization of rights and legal interests of the child in Kazakhstan. The Section on Problems of the Family had been created within the Commission.

It is obvious, however, that the Commission either does not have enough authority to undertake this complex responsibility or simply fails to combine two tasks.

The Commission is not able to exercise effective control over the observance of the rights of the child for several reasons. Its staff is too small and it holds only 1 meeting every three months (both for the general meetings of the Commission and for section meetings). National Commission does not have a budget of its own and has no possibility to implement its own decisions without financial assistance and sponsorship.

The Council on Youth Affairs set up in July 2000 is just a consultative and advisory body under the Government of Kazakhstan.

“Such archaic governmental bodies as Commissions on Juvenile Offenders (CJO) were first created in 1967. Their legal status puts them in the category of the social and legal institutions. At present time activity of these Commissions is regulated by the 1967 Regulations with amendments and changes last made in the 1987. This already demonstrates how obsolete these regulations are. No new legislation on CJO has been drafted. Juvenile commissions are formed under jurisdiction of heads of regional and city administrations. Members of the Commission have no legal training and usually include staff of the offices of local administration, members of staff of departments of education, school principals and teachers, etc. As no new legislation on CJO has been adopted, they continue to conduct their activities just the way they did it for many years. They still rely on the legal space that does not exist anymore and therefore do not really function.

According to the Regulations, activities of these Commissions should be aimed at elimination of negligent treatment of children, prevention of juvenile offences, provision of alternative care to juveniles, protection of their rights; consideration of cases of juvenile offences. Also CJO concentrates some coordination and control functions in this area. This way responsibilities of CJO fall in two categories: prevention of juvenile crime, consideration of cases of such crime and adoption of enactments.

Despite its coordinating function CJO has no direct authority to combat juvenile crime. In fact, it would not have been able to use such an authority due to shortage of funds and qualified staff.

Statistics on CJO work during the Soviet period shows that around 30% of cases of juvenile offences came under the Commission's consideration. The Commissions did not consider administrative offences committed by minors below 16 years of age. When court decided to apply coercive measures of disciplinary character then the materials of the case could have been submitted to CJO. Moreover, the Commission itself has a right to consider cases of some offences committed by minors as well as cases of evasion of studies.

At present time CJO are facing a lot of difficulties, particularly when addressing the issue of employment of teens, protection of their labour rights. This is mostly due to the fact that authorities that Commissions on Juvenile Offenders have under the Regulation do not correspond to the newly adopted legislation of Kazakhstan (particularly, the legislation on education, employment, privatization). In addition, the previously existing network of interaction between Commissions, schools and organizations that employ teens have been broken.

For example, in the Uralsk city in Western Kazakhstan the local Commission helped to find employment to 349 teens in the year 1992, while the following year this number was lower – 276, in 1994 – 139, in 1998 – only 7, in 1999 – 2. During the first half of the year 2000 Commission did not find employment for any of the teens, even though local authorities had established a quota for employment of young people below 20 years of age. Similar situation exists in other cities as well”³.

Commentary to the Point 31.

From the 20th of March 1994 up to the 1.01.2003 action of laws “Of Social Protection of Citizens – Victims of the Ecological Catastrophe in the Priaralye” of 30th of June 1992 and “? f Social Protection of Citizens - Victims of Nuclear Testing at the Semipalatinsk Nuclear Testing Site” ?f 18.12 1992 was suspended for all persons, including children. During this period, many benefits were officially abolished. In fact, all of the activities mentioned in the official report were funded by the international community.

Commentary to the point47.

Starting from April 1999, in accordance with the Law «Of Special State Aid in the Republic of Kazakhstan» disabled children below 16 years of age are entitled to a monthly financial assistance that equals 0.9 of the average monthly index.

At present, this aid amounts to approximately 4.5 USD. This is a price of 1 kilo of an average-quality ham, or of 8 bottles of Coke, of a monthly bus ticket, or of two lunches in the cheap cafeteria.

³ From the project “Study of the status of children, that violated the law”, carried out by scientific supervisor Sarsenbaev and researchers Mureeva, Kazrasyuk, Zhetpisaev, Skakov and Daurenkhanova.

Commentary to the point 50.

Non-governmental organizations that participated in the September 2000 round-table on the draft-law “Of the Rights of the Child” had recommended a number of amendments and changes to this draft law. Majority of these recommendations was taken into consideration. However, after the state bodies discussed the draft-law, it was changed in such a way that some of its provisions contradicted the CRC. At present, the draft law is being discussed in Parliament.

Commentary to the point 52.

Women’s movement has been active in Kazakhstan approximately since 1995, despite never being supported by the state. Since 1991 women and children NGOs hardly ever get any attention from the government. Conferences and seminars financed by the international organizations and private humanitarian foundations are almost the only way to promote a dialogue between such NGOs and the government.

Commentary to the point 54.

In fact, all of the local NGOs are active only with support from foreign funds or own funds of the NGO staff. The Constitution and the legislation prohibit any financial assistance to the non-governmental organizations from the government (including local self-government bodies). Lately there surfaced an idea of placing public social orders with NGOs that implement socially beneficial projects.

At this period in Kazakhstan youth and children NGOs are the most weak among the NGOs of the country. The reason for that are many deficiencies that impede successful work of the youth and children’s organizations in general – the lack of experience and of connections, difficulties in raising funds. Then, one has to realize that in Kazakhstan the attitude to these organizations is largely indifferent and they enjoy little public support due to several factors. Firstly, older generations have a very skeptical view of the potential of youth. Secondly, almost 99% of Kazakhstan’s population born before 1975 had experienced pressure of the Komsomol organization patronized by the Communist party. Thus, they have a hard time accepting any youth organization as such. Thirdly, modern youth is also very skeptical and disillusioned as they have lived through a period of constant changes of values, witnessed inability of adults to take control of situation, and they do not believe that it would change for better.

**D. DEFINITION OF A CHILD
(Article 1)**

Commentary to the point 65.

To the sub-paragraph 8). We have been informed that in West Kazakhstan the director of an orphanage had requested a psychiatric treatment of children, because, to her opinion, they did not behave themselves.

To the sub-paragraph 9). There is no mechanism that would allow to monitor the observance of these rights of the child.

To the sub-paragraph 31). In conditions of the present social and economic situation the requirement setting the minimal age limit for purchasing alcohol and tobacco products is not being observed.

E. GENERAL PRINCIPLES

Non-discrimination (Article 2)

Commentary to the point 66.

Legislation of the Republic of Kazakhstan does not define the notion of “discrimination”, though this notion is used in the Constitution and other laws. There is virtually no practice of applying laws to stop the discrimination. There are also no mechanisms, procedures or institutions. No judicial practice on handling the discrimination cases has been formed.

However, in practice we can state discrimination of such groups as a) disabled children, b) children of single parents, c) children that live in rural areas, d) children that live in the ecologically hazardous areas, e) children that were born at home (point 214).

Commentary to the point 88.

According to the 1998 statistics out of persons working within the education system 75,1 percent were women. However, among the directors of regional and city departments of education women constituted only 44 percent. Out of 51 rectors of Public Universities, there are only 2 women.

Commentary to the point 90.

According to the feminist organizations, inability to pursue certain vocational training and career is discriminatory to women and unconstitutional.

There are more females than males at all of the levels of education, with number of females with respect to males substantially increasing at the higher levels of education.

In the current educational system, at the classes of vocational training in the grades from 5th to 8th boys and girls are trained separately. Girls are traditionally taught to do housework, boys are trained in joinery, etc.

There are no special programs aimed at preserving and promoting women’s training and access to such fields as mathematics, technical sciences, IT, etc. Moreover, there are less females attending natural and technical sciences courses at the higher education institutions comparing to the number of female students at the vocational schools and two-year colleges.

Commentary to the point 92.

Schools do not have adequate facilities for an annual medical examination of children. Usually one of the classes is used for such examinations, which violates the sanitary standards. Offices of school doctors are about 6 to 9 square meters big, which also is sub-standard. School doctors and nurses are paid a miserably small salary and usually take several shifts in several schools. Parents give money for medicines. Medical equipment in majority of schools is outdated and has not been renovated since the Soviet times.

Commentary to the point 93.

In the orphanages the personnel uses such punishments as forbidding entertaining activities (TV and dances), sending the child to bed early, putting him in the corner, making him wash the restrooms (sometimes restrooms are located outside the building). Child can be humiliated in front of other children. Sometimes children are slapped; made to squat for a long time, beaten (schools N 81, 46, 18, 39 in Almaty). There were cases when child was left without lunch, dinner or supper (information from the NGO monitoring report «Equal to equal» based on research in Karaganda region). According to the results of the research conducted by the Center for Conflict Resolution in the Kokpekty orphanage in East Kazakhstan from 20 to 30 children run away almost every month.

Commentary to the point 94.

Student self-government exists only in form. In some schools, there are self-government organizations such as «Respublika», but mostly they are purely declarative and do not have any real power. Children do not participate in process of making decisions concerning school life (high schools N 117,64,106,18, 3, 120 in Almaty).

Commentary to the point 95.

Child labour is used in Kazakhstan. Under the law, children can work when they turn 14. However, at the Almaty market located at the Stankevich street, according to its manager, children instead of going to school are trading goods and perform manual labour. Everyday from early morning till late at night children well below 14 sell newspapers, deliver food, etc.

The best interests of the child (Article 3)

Commentary to the point 101.

Public in Kazakhstan is not informed about how many children are under guardianship of the state.

Commentary to the point 112

Legislation on financial aid to the needy citizens is a vivid indicator of state and development of the social legislation. As of January 2000 financial aid that was previously paid to single mothers, compensations to children whose parents evaded paying alimts, to mothers with many children, to unemployed parents has been abolished. The financial aid to children infected with HIV/AIDS was abolished in November 1999.

Other types of aid though not abolished, still were not paid in during the years 1999 and 2000. Current legislation provides for the following types of financial aid and compensation: single aid for underage children, aid for children of military conscripts, aid to unemployed women that have 4 or more children under 7 years of age, compensation to the children infected with HIV/AIDS, housing aid.

Starting from 1999 this aid should be paid by local administrations, however, the legislation does not clarify the amount or the procedure and obligations pertaining to payment of the aid. It is up to local administrative bodies to decide on those issues.

Due to failure of the state to provide for child aid, the situation remains difficult. For example, in Baidibek region in South Kazakhstan mothers that have many children did not receive any type of aid for nine years (from 1992 until 2001). In 2001, they started active manifestation and protests. Women of the region majority of them from rural areas, went on hunger strike, handcuffed themselves to the lighting poles, marched to the capital Astana, addressed the Members of Parliament. However, the problem still has been resolved only partially.

The right to life, survival and development (Article 6)

Commentary to the point 125

The legislative provision states that at the period of up to 12 weeks of pregnancy a woman can choose to have an abortion and address a medical institution, with the abortion being legal after 12 weeks of pregnancy only when health of the woman is in danger. However, the illegal abortions are widespread, mainly due to such factors as the high price of quality medical abortion services and the mentality of Kazakh society that censures pregnancy of an unmarried woman, particularly, of a young girl. As a result in some cases mothers leave their children at the doors of the hospital, near the apartment buildings and even in the trash collectors.

Respect for the views of the child (Article 12)

Commentary to the point 129

The Article 12 of the Convention (the right of the child to express his or her views) has a much wider meaning and interpretation of this right, then the existing Laws on Marriage and Family or on Education do. These Laws by their very purpose do not cover all of the aspects of promotion and protection of this right. However, only these current acts of legislation touch upon the right of the child to express his or her views.

F. CIVIL RIGHTS AND FREEDOMS

Name and nationality (Article 7)

Commentary to the point 140

The legislation relating to nationality states that citizenship is granted to all children that were born in Kazakhstan. In reality, some categories of children, particularly, children of ethnic Kazakh repatriates (oralmans) encounter certain difficulties when applying for citizen status. Kazakhstan does not recognize double citizenship and many oralman are citizens of other states. Thus, the procedure of granting citizenship to them is complicated and poorly regulated. Citizenship status of many repatriates from Mongolia is still not defined due to a highly complicated procedure of changing the citizenship. Only approximately 2,000 out of 70,000 of repatriates from this country were granted Kazakh citizenship. Thus, children born in families of oralman that have no Kazakh citizenship also do not receive the citizenship status.

Right of the child to preserve his or her identity (Article 8)

Commentary to the point 141

The Convention provides for a right to preserve family relations. Marriage and family legislation contains provisions relating to a right of the child to preserve relations with

the parent living separately in the case of separation or divorce of parents. However, there are no efficient mechanisms that would allow to realize this provision in practice. It is very difficult to enforce court's decisions relating to the right of parents and relatives that live separately from the child to preserve relations with the child,

Freedom of expression (Article 13)

Commentary to the point 142

Basing on the opinions and information provided by the staff of media outlets for children, one could state that the right of the child to express his or her views freely is not fully recognized by the society.

Freedom of thought, conscience and religion (Article 14)

Commentary to the points 143-146

The Constitution provides for freedom of religion, however, authorities pressured some of the so-called nontraditional groups.

The Government established close contacts with leaders of two largest religions, Islam and Russian Orthodoxy, and frequently invited them to participate jointly in state events.

Religious organizations, including churches, must register with the Ministry of Justice in order to receive legal status. Without registration, religious organizations cannot buy or rent real estate, hire employees, obtain visas for foreign missionaries, or engage in any other legal transactions. Registration requires an application submitted by at least 10 adult persons.

Some religious groups have encountered difficulties registering in certain jurisdictions. These groups include Jehovah's Witnesses and some Protestant groups, as well as Muslim groups independent of the Mufti. At the end of the 2001, three Protestant groups in different cities had experienced delays of up to 10 months in obtaining approval of their registration applications. Church of Jehovah's Witnesses in Petropavlovsk has attempted to register five times. They received four rejections and by year's end had not received a decision on their September 2000 application.

In such cases, Government typically claims that religious groups' charters do not meet the requirements of the law. For example, the law does not allow religious groups to engage in educating children without approval from the Ministry of Education, and many religions include education in their charters.

Local officials in some cases required to suspend activities of religious groups until they were registered and impose administrative and even criminal responsibility on leaders of the groups that violate this rule.

Freedom of association and peaceful assembly (Article 15)

Commentary to the points 147-148.

Legislation does not permit children's organizations created without the participation of adults. There is a number of impediments, including legislation that in reality

prevents children from registering an organization; a high registration fee and liability for participation in the activity of the unregistered organization.

Protection of privacy (Article 16)

Commentary to the points 151-152.

Privacy of children placed in boarding institutions has no adequate protection. Teachers and staff of these schools do not have any child's rights training and frequently interfere with child's privacy, correspondence, or violate the right to be protected from unlawful attacks on his or her honor and reputation.

The survey among the graduates of Almaty orphanages conducted at the House of Youth in Almaty revealed cases of such interference. Teachers read letters and personal diaries of children and used those writings against them. Many children reported that such cases are widespread and they themselves were victims.

Access to information (Article 17)

Commentary to the point 153

For the last decade, both quality and quantity of printed information available to children had decreased. There are no efficient mechanisms that would protect children from the damaging media content. "Druzhnye Rebyata" and "Ulan" are the two professional and quality oriented printed media outlets for children. The circulation of the former fell from 230 thousands in 1990 to 9 thousand copies in 2002. The Kazakh-language children's newspaper "Ulan" suffered through the similar downfall. The teen newspaper "Hey!" that had a circulation of 150000 copies in 1991 closed down after unsuccessful attempts to receive state support. Majority of private newspapers and magazines for children that opened in the wake of 1991 also did not last long. Major part of children outlets is more oriented towards boys. The only newspaper for girls "Malvina" that had a circulation of 15000 copies through 1992-1997 closed down due to a shortage of funds.

Number of children's book published annually in Kazakhstan went down from 112 in 1991 to 16 in 1997. There is almost no data available for the later period.

In the course of the survey, the vast majority of graduates of boarding schools for orphans indicated that they did not get an education that would allow them to succeed in their future life and to integrate in the society. Without having necessary skills they face many difficulties when trying to continue their education or to find a job. Many of this young people are bound to be unemployed or to take low-paying jobs with no secure future.

Possibilities of self-education for such children are also limited. Boarding schools for orphans usually have inadequate libraries. Many of the students in such schools had no opportunity to visit public libraries, to read periodical press. Due to lack of funds orphanages are not equipped with modern IT.

The right to be free from torture or other cruel, inhuman or degrading treatment or punishment (Article 37 a)

Commentary to the point 159 (also see Commentary to the points 232-234 and point 399)

Tortures and cruel treatment are officially prohibited in Kazakhstan. Nevertheless, in practice torture, as defined by the international law, is widely applied by towards both children and adults.

According to victims, police officers sometimes beat juveniles up in order to obtain confession trying to make the child to take a blame for a crime he did not commit. Torturers try to hit the victim in such a way that no traces will remain – head and kidney area.

Family and education law does not contain such notions as “corporal punishment”. There is no statistics. However, Kazakhstan International Bureau for Human Rights and Rule of Law has received information about the cases of physical abuse of children as a measure of punishment.

Cases of cruel on negligent treatment by the members of family of the child are numerous. Usually they become known only when serious damage is done. Only when disclosure occurs do the authorities intervene and the standard action is to deprive parents of parental rights and give custody of a child to his or her relatives or to place the child into an orphanage.

Commentary to the point 160 (see also Commentary to the points 232-234)

Violence against children continues to be a serious problem. According to the Ministry of Interior, about 2,000 cases of rape and attempted rape of girls are registered annually. Kazakhstani legislation provides for criminal responsibility for violent actions against children, including girls.

Unfortunately, the procedure of handling the rape cases itself traumatizes the victim almost the same way as the rape itself does. This is why, according to some experts, only about 10% of rape cases reach court.

Commentary to the point 161

Public crisis centers receive no public funding from the budget. The international organizations and foreign foundations are their main sources of financing.

Commentary to the point 162

Kazakhstani legislation provides for severe punishment for sexual crimes against minors.

However, according to the interpretation of the Supreme Court, the accused will be held responsible for the rape of the minor only in the case when the accused was aware of the victim’s age before committing a crime or assumed that the victim could be underage.

Such judicial practice allows using more grounds to lessen the degree of responsibility of the offender.

F. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Parental guidance (Article 5)

Commentary to the point 165

Duty of the parents to provide for basic high-school education for their children is not supported by the adequate social guarantees. Children skip classes or drop out of school because the largest part of population is very poor and the vulnerable categories of citizens are living in appalling conditions.

Commentary to the point 166

As it was mentioned before, in practice the right of the child to preserve relations with his or her parents in the wake of separation or divorce is rarely observed due to a lack of adequate enforcing measures and the widespread ignorance of legal issues.

Responsibilities of parents (points 1-2 of the Article 18)

Commentary to the points 170-172

The Law «Of Changes to the Labor Code of the Kazakh SSR» of the 5 of April 1999 severely limited the period of maternity leave for a woman that previously allowed her to take care of the child for up to three years while keeping her workplace. Maternity leave has been limited to a year and a half. Before the 1 of January 2000 other members of family also had a right to a leave to take care of the child. Now only women have such a right. Considering the statistics of maternal mortality in Kazakhstan (137 cases in 1997 and 122 cases in 1998) there is an evident necessity to grant such a leave to fathers as well.

Before this Law was enforced, a woman was entitled to a childcare allowance paid until the child turned 18 months. Such an allowance could be paid to any mother that wished to receive such an aid or to one of the parents that adopted a child from the orphanage. The procedure and amount of such payments were never specified. This allowance was last paid in 1992, however, the legislative provision was never abolished or changed. Thus, the provision has not been enforced for 9 years in a row.

The provisions of the new Labor Law limit the rights of women with children. All the benefits for women with small children and children below 8 years of age were abolished. Maternity leave and pregnancy leave was limited to a year and a half. Law does specify the amount of social guarantees, such as compensation relating to a temporary inability to work, allowance for pregnancy and childbirth. According to the new Labor Law, from the 1 of January 2000 women are no longer entitled to breaks for feeding the child below 18 months of age. There are no more guarantees of employment and protection against dismissal of pregnant women and women that have children below 3 years of age.

The tax system prompts employers to limit labor of women, especially of pregnant women and women with small children.

Separation from parents (Article 9)

Commentary to the points 175-187

According to the Commission on Juveniles, for the first 9 months of the year 2001 in Almaty authorities had applied extreme measure of revocation of parental rights in 85 cases. Number of street-children increases. Their separation from parents is the main reason for the growth of number of neglected children. More and more children have to take care of themselves and of their family. An increasing number of children do not have any housing through the fault of their parents.

There are no social services that would identify the vulnerable (violent-prone) families, provide them with social and crisis support in order to strengthen the family ties and prevent negligent treatment of the child. There are no procedures and mechanisms providing for the best interests of the child separated from his or her parents. Not all of the resources that could prevent placement of the child into the boarding institution such as an orphanage are used.

Family reunification (Article 10)

Commentary to the points 188-192

When separating children from their parents the principle of justice is not fully observed. When the child is placed in a public institution, parents and the child seldom preserve contacts. Sometimes, children are not informed of the whereabouts of parents and the reason for separation (for example, exile or imprisonment).

No activities on reintegrating children back into their families are conducted, though biological parents are entitled to reunification with the child if the family situation has improved and when the placement of the child into an orphanage resulted from the application filed by the parent.

Illicit transfer and non-return of the child (Article 11)

Commentary to the points 193-194

Minors that are left without proper care and are located at the territory of one of the CIS states outside of their place of residence shall be placed in the specialized reception center (in Kazakhstan such facilities are called Centers for Temporary Isolation, Adaptation and Rehabilitation of Minors). Activity of these Centers is not regulated by any legal norm, they are subordinated to the Ministry of Interior and their name points at “temporary isolation” goal of such center.

Recovery of maintenance for the child (point 4 of the Article 27).

Commentary to the points 195-196

Allowances paid to single parents were abolished as of 1 of January 1997, although the number of children born outside the marriage had increased manifold. Single mothers for some time received the general allowance equal to the one paid to families that have children.

Commentary to the Point 198

Allowances for children whose parents were evading alimony were abolished as of 1 of January 1997. There are many cases when father goes in hiding to avoid paying the alimony and the mother is unemployed (70% of unemployed parents have children, among single parents there are 17% of unemployed, 20% among divorced parents, and 14% of widows with children are also unemployed).

Children deprived of family environment (Article 20)

Commentary to the points 200-213

According to the official 2001 statistics quoted by UNICEF, there were 80,000 abandoned children in Kazakhstan. 64,000 of these children live in the orphanages and child's homes. Every year thousands of children graduate orphanages and boarding schools. They are thrown into the adult life without the adequate preparation. Many of them might become unemployed, have no house, commit an offence. Vulnerability leads to crimes, prostitution, and suicide – those are common among graduates of these institutions.

The state pays 1800 tenge (\$12) for maintenance of one child in the orphanage. Graduates of orphanages, orphaned children are paid upon graduation in single installment an allowance of around 3000 tenge (\$20).

The situation is further aggravated by the fact that these children are almost isolated from the outside life and their contacts with the children from outside are limited. Usually the only way they can meet someone from outside is during the charity or sponsored activities. They have no opportunity to participate in the youth organizations and associations as their access to the outside world is limited by the tough schedule imposed by the administration of the boarding institution. Citing the words of these children, "half of their life they are locked away".

Graduates of orphanages and boarding institutions have a low training level and lack the skills necessary for successful job-hunting. It is much harder for them to get their life going, to continue their studies. The poll conducted among such graduates in Almaty in 2001-2002 demonstrated that only 35% of them managed to get into the University, only 20% found a job, 8% got married, just 30% had a place to live, 30% of girls already were single mothers.

The quality of children's life and education in such institution has not been studied. There is no information that would adequately reflect their own opinion on their life and the institution. Administration of child's homes limits research, surveys of children and contacts with them.

Institutes of alternative placement of orphaned children are poorly developed. Patronage is virtually absent, children are rarely placed under guardianship. Only one family-type children's home is active in Almaty. Adoption is handled mainly by commercial organizations and commercial foundations for foreign adoption («Frank», charity foundation «Hearth», «Gulder»).

At present time, NGOs and non-commercial foundations are only aimed at improving maintenance of children placed in the boarding institutions and orphanages. However, no study of psychological problems of such children or research into their rights is being conducted. Activities of NGOs promoting interests of the children deprived of family environment is often impeded by counteraction of bodies of guardianship and of administration of child's homes.

Another serious problem is the issue of street-children. "At present time Kazakhstan has no structure that could deal with street-children and the only body that attempts to take certain steps is the police on minors that works within the Ministry of Interior structure. In the year 2000, 5,063 minors that committed an offence or were left without proper care were taken to the departments of interior. Only 612 of these minors were placed in the Center for Temporary Isolation. Nobody could tell us what happened to the rest of them"⁴.

Commentary to the point 203

Different types of public institutions for children have different conditions of placement of children. However, NGOs do not have clear information about the selection criteria and norms of placements in the various institutions. Moreover, there is a separate legislation regulating activities of some of them. All of these creates a possibility for discrimination of some groups of children.

Commentary to the point 205

At this time in Kazakhstan there are 40 foster families, where parents are taking care of from 5 to 10 orphaned children. Often these children suffer from various chronic illnesses and require additional care and financial maintenance. At this time, these children are in unfavorable conditions comparing to children placed in the two Children's Villages created on the basis of examples set by «Kinderdorf-SOS» and of Houses of Youth, where the conditions of life is much better, than in average children's homes.

The Regulations on Family Type Children's Homes of 1992 and the 783 Enactment of the Government of the Republic of Kazakhstan of 17.06.2000 state that the monthly allowance for each child in such family should be equal to maintenance of orphaned children placed in the public orphanages.

For example, family type children's homes in Almaty regions from January of 1999 are financed by the state. The monthly allowance for each child is 6,600 tenge a month, which is twice lower than the standards set in the regulations. Often the parent-educator is not paid any salary.

Adoption (Article 21)

(General) commentary to the points 214-229

⁴ From the project "Study of the status of children, that violated the law", carried out by scientific supervisor Sarsenbaev and researchers Mureeva, Kazrasyuk, Zhetpispayev, Skakov and Daurenkhanova.

Adoption is a best form of alternative placement of the child deprived of parental care. The primary goal of adoption is to ensure that the child has a family and a home of his own, and not like many people think - to give a child to a childless family.

For the last few years, nationals of the country adopt less and less children in Kazakhstan. Absence of state and public support, complexity of this issue; lack of comprehensive and adequate information on adoption, existence of numerous stereotypes (such as that adopted children have undesirable heredity, are more likely to become alcoholics, drug addicts, prostitutes, or to develop various mental problems) set a lot of psychological impediments for the adoptive parents

Information on the adoption in Kazakhstan is not available, in conformity with the law on secret of adoption and in connection with fear that disclosure of such information might result in humiliation and insults directed at the adoptive family and the child. There are documented cases when after the adoption family moved to another city or even state, changed the name of the child or the information about when and where the child was born.

Information on procedure and practice of adoption, dealing with exercise of parental duties and rights is also difficult to obtain. Bodies of guardianship provide future adoptive parents only with a list of the certificates and documents they have to collect in order to adopt a child. However, it is generally known that at this time it is very easy and quite inexpensive to get any kind of certificate.

There is no special training systems aimed at training qualified staff that would work with adoptive parents and children. Adoption is not promoted by the state or supported by the society.

Cooperation between adoption workers is no efficient. In Almaty in the department of education where is only one senior specialist that not only is in charge of all adoption-related issues (both for domestic and inter-country adoption), but also is responsible for placement of children into the children's institutions, for organization of work

The information on the adopted child and his adoptive parents goes to the bodies of guardianship, to court and the departments of registration of civil status. As soon as the child has been placed with the family nobody, not even bodies of guardianship monitor what happens to this child next. When explaining the reason for that, authorities cite the rule of nondisclosure of the secret of adoption.

As the adoptive families are never monitored, public bodies and citizens learn about the facts of abuse and violence against adopted children when it is too late to prevent it. For example, in 1998 a 4 year old girl was murdered by her adoptive parents.

Adoptive parents that live in Kazakhstan never inform bodies of guardianship about the life or development of the child. There is no opportunity to monitor what happens to the child, to take adequate measures in cases of violence or exploitation. Children under 6 due to their age can not exercise their rights fully. Children over 7, at least have a possibility to tell somebody what is happening (for example, to the neighbors or at school).

Recently, some adoptive parents created a precedent of abolishing the adoption through court. It usually happens when after the divorce the adoptive father does not want to pay aliments to the mother of the child. Consequently, such adoptive parents relieve themselves of the duty to support this child. Sometimes adoptive parents of teenagers are also applying for revocation of adoption (due to domestic disagreements, difficulties that parents face when the child is in early teens). According to the Department of Education in Almaty about 0,5% -1% of adoptions are abolished.

Commentary to the point 214.

Sometimes children are discriminated in the process of adoption. For instance, the Law of the Republic of Kazakhstan «Of introducing amendments to the Labor Code of the Kazakh SSR» of 5 of April 1999 defines that the adoptive parents that adopted newborns in the maternity wards or hospital wards are entitled to benefits that have to be paid to them during all off the period of care of the child for up to 56 days from the day of child' birth. These benefits are calculated based on the average salary in order defined by the Government of Kazakhstan.

This provision, however, does not apply in the case when a newborn was adopted after a child was born at home. It should be noted also that while birth decreased (for example in 1997 (comparing to the 1995) in decreased 16%), the number of places in maternity ward for the same period was cut down to 70% of the initial number, and in some regions to less than 60%.

Commentary to the point 215.

No information on the rest 3,3% of children.

Commentary to the point 223.

There is a difference between the number of adopted children cited in the point. 215 and point 223 of the government's report.

Periodic review of the treatment provided to the child (Article 25)

Commentary to the points 230-231

The supervision and review conducted by the bodies of guardianship is inadequate due to such an objective reason as a shortage of staff.

Protection from abuse and neglect (Article 19), including physical and psychological recovery and social reintegration (Article 39)

Commentary to the points 232-234.

According to sociological research⁵ “vast majority of experts believe that the level of violence against children had reached a critically high level. From 60 to 80% of children fall victims of violent actions of parents, adults, police officers and the stronger children of the same age. Violence is so wide-spread that it is totally out of control.

⁵ Violence against children in the Republic of Kazakhstan (February-March 2002). Sociological survey, conducted by the Association of Sociologists and Political Scientists (ASIP) for the regional UNICEF office in Central Asia

In the year 2001, the Kokshetau inspection on juveniles had registered 118 violent crimes against children. Comparing to the previous year a number of registered crimes in this city had increased threefold. According to the local experts, these numbers do not reflect the real situation”.

Last year in the same city 2,000 teenagers were taken to hospital diagnosed with various conditions. 600 out of this number were diagnosed with knife and cold weapons wounds. There is an increasing number of children that lead a daily life full of begging and stealing.

Majority of these children comes from the poor families, families in crisis situations or families with no father. According to a number of experts, in the families where parents drink heavily, children are often required to earn from 100 to 200 tenge a day to pay for the drinks. If the child fails to give this amount to parents, he is either beaten or left without dinner. Children from these families frequently runaway and end-up in orphanages or children’s homes».

«According to the Taraz human rights activist, 5 students out of 20 in local schools were victims of violence. Among teenagers, every child at least once has been a victim or initiator of violence.

Recently doctors started using a term of “syndrome of cruel treatment”. What is meant by this term – is the trauma that the child received when being punished by parents. According to the pediatrician from Almaty, in the hospital where he works every year from 20 to 30 children are hospitalized with a diagnosis of cruel treatment, beaten up by their parents or stepparents, often by partners of their mothers. Out of 25,000 hospitalizations with various injuries, 60% were injured on the street. About 700-800 children were injured as a result of car incidents.

Violent actions against children become crueler. Doctors say that more children are hospitalized with knife wounds, multiple injuries, concussions, malnutrition and with nervous breakdowns.

Absence of statistical information on the scale of violence against children is also a big problem. Out of 220 experts, that were surveyed in the different regions of Kazakhstan, only 5.4% has access to the official statistics on violence against children. The rest 94.6% have no access and only use the information based on personal observation, research and media articles»⁶.

«There are several types of violence against children. Domestic violence, street and child violence is the most widespread. Lately increasing number of children also become victims of arbitrary actions of police. Police officers use the most malicious methods: from blackmail and threats to planting the drugs on children, rape and murder.

⁶ Violence against children in the Republic of Kazakhstan (February-March 2002). Sociological survey, conducted by the Association of Sociologists and Political Scientists (ASIP) for the regional UNICEF office in Central Asia

Violent actions become more cruel: intimidation, insult, extortion, robbery, beatings, torture, rape and murder».⁷

«Degradation of living conditions and of quality of life lead to spread of domestic violence. Experts estimate that from 20-30% to 95% of families on Kazakhstan practice cruel treatment of children. 90 cases out of 100 never come to light.

Experts believe that children from families in crisis situations are likely to become victims of domestic violence. These children are repeatedly subjected to beatings, insults, humiliation and even torture. Often this leads to serious damage of health of the child. Doctors say that the increasing number of children is being diagnosed with the injuries resulting from domestic violence. Many of these children experience chronic pains, are depressed and need psychiatric treatment. There are cases of children mortality.

It is very rare that the child seeks medical assistance or comes on his own to the reception center. Majority of abused children runs away, lives in basements, sewer system facilities, at the railway stations. These children are much more likely to start using drugs and alcohol, to become victims of trafficking for sexual or labour purposes»⁸.

«Street present main danger to the life and health of children. Street violence typically includes intimidation, extortion, robbery, beatings, hooliganism, usage of cold steel and fire arms, rape and murder.

Street violence has no face. For the last few years, street violence became organized and controlled by groups, particularly in the southern (Taraz, Ksyt-Orda) and northern regions of the country (Kokshetau and Karaganda).

The survey revealed that the following groups of children are most likely to become victims of violence: children from poor families in crisis situations – 49.5%; families from low-income families where parents have a higher education – 28.7%; children from middle-income families – 9.9%; children of single parents – 9.9%; children from families with many children – 1%; independently of income or of social status – 1%. As a rule, these children are physically weak (50%); deprived of parental care (37.5%) and mentally retarded children (12.5%). According to experts, children of all ages from 0 to 18 years are at equally high risk to become a victim of violence.»⁹.

Results of sociological survey demonstrate that¹⁰: «33 children out of 100 report that they were victims of cruel treatment. According to survey's results, at least 3.3% of surveyed children are abused regularly; 16.3% - frequently; 66.6% - sometimes; 13.8% - never.

⁷ ibid.

⁸ Violence against children in the Republic of Kazakhstan (February-March 2002). Sociological survey, conducted by the Association of Sociologists and Political Scientists (ASIP) for the regional UNICEF office in Central Asia

⁹ ibid.

¹⁰ ibid.

100% of homeless children are victims of violence. 70% of them are abused regularly, 30% - sometimes. 14% of children that live with their parents reported regular abuses, 70.3% - occasional cruel treatment. 26.7% of children that live with their relatives also reported regular abuse, 66.7% - occasional. 11.7% of children from the boarding-schools are regularly subjected to cruel treatment, 70.6% - sometimes. 28% of children in the children's home are regularly subjected to violence, 63.2% - sometimes. 27.8% of children in CTIARJ were regularly abused, 52.8% - sometimes.

When speaking of perpetrators of violence, children indicate:

1. Older and stronger children – 44.5%
2. Parents and relatives – 23.9%
3. Police officers – 9.6%
4. Teachers and educators – 9.6%
5. Youth gangs – 8.2%
6. Hooligans and criminals – 4.2%

It is alarming, that children speak about parents, relatives, police officers and teachers being perpetrators much more than they speak of criminals.

Perpetrators	At home	At the house of relatives	Boarding school	Children's home	CTIARJ	Specialized schools	Other place
Older and stronger children	38,5	48,1	41,7	55,3	42,9	33,3	40
Parents and relatives	25,2	29,1	13,9	14,9	40,5	9,5	13,3
Police officers	9,9	9,1	11,1	8,5	9,5	23,8	26,7
Teachers and educators	9,9	7,3	19,4	12,8	2,4	9,5	0
Youth gangs	11,5	5,5	8,3	6,4	2,4	9,5	0
Hooligans and criminals	5	0	5,6	2,1	2,4	14,3	20

Older and stronger children are a dominating source of violence for all of the groups of children. children that live at home or with their relatives, children from orphanages and CTIARJ name parents and relatives as the second real threat. For homeless children, and for students of specialized schools police officers present an additional threat, while children from boarding schools indicate teachers and educators to be perpetrators of violence.».

There are no cases when a parent would be held responsible under the Article 137 of the Criminal Code for “Failure to exercise duty of upbringing the child”. This Article stipulates a penalty equal to 50-100 average monthly index, or correctional works for up to 2 years, and even imprisonment for the same term. The Article 138 of the Criminal Code prohibits cruel treatment of children and stipulates punishment. Nevertheless, these articles do not work as victims choose not to address police. Threatened and intimidated children are afraid of speaking out. Even in schools where children are taught about the Convention on the Rights of the Child, ratified by Kazakhstan, the CRC is understood as something unreal, from another world.

Teachers and neighbors have a right to sign a complaint on behalf of the child. However, people often choose not to interfere, being afraid of aggressive perpetrators. Therefore, child is left to deal with his problems on his own. At home. At school. On the street. Often the child seeks for a way out according to his own understanding.¹¹

Hazing, violence and humiliation of younger children are a part of daily life in the children's institutions. Arbitrariness of the administration and the staff of such schools results in punishments without a reason, rude behavior, humiliation, beatings, forcing children to do strenuous work, sexual harassment. One of the respondents that participated in the poll told about the case when the teacher in children's home sexually abused a girl for 6 years (from when she was 8 till she reached 14 years of age). The victim also said, that after she filed a complaint with the administration of the children's home «no measures were taken to punish the teacher».

Children believe that they fully depend on the will of the administration of the institution. It is common that orphans placed in the children's homes are later diagnosed with "delay of mental development". This form of retardation in majority of cases is a result of the inadequate and insufficient pedagogical care. Director of one of the Almaty children's homes when making a speech at any public event likes to repeat that «this children in our children's homes will never become great businessmen or politicians, and this is why at the very least we are going to make great janitors out of them».

It is only after they graduate and go to live at the House of Youth, it turns out that many of them were never taught how to take basic care of themselves. They are not used to observing personal hygiene, to cleaning after themselves, to cooking. The sanitary rules prohibit children in the children's homes to participate in washing or cooking. They are ignorant when it comes to family lifestyle and budget planning, and as a result they often waste their scholarships and salaries.

Commentary to the point 232.

Various forms of punishment are widely used in Kazakhstani schools. They include corporal and other types of degrading punishment. Humiliation, verbal abuse of the student in front of the class is widespread.

For example, in one of the Almaty schools a teacher read a personal letter of a girl in front of the whole class. Consequently, the girl suffered nervous breakdown.

H. Basic health and welfare

Children with special needs (Article 23)

Commentary to the point 235.

In accordance with the Kazakhstani laws, a disabled child is defined as a person below 16 years of age (after 16 children are placed in separate groups according to the

¹¹ Based on the articles of N. Kazorina. "Southern Kazakhstan" newspaper. N 41 of 05.04.2002

category of the disability) that due to a limited capability arising from physical or mental deficiencies needs a social care and protection. The scale of social care and protection depends on the age group of the child. Rights and entitlements of the child below 16 are different from the entitlements of the child from 16 to 18 years. However, independently of child's age his or her family is recognized as a family of disabled child.

The following factors are contributing to disability of children: biological – the high level of chronic, inborn and genetic diseases of parents, pathological prenatal developments; medical failures – late identification of the disease, long period of identification of disability and beginning of treatment; social and environmental factors, difficult circumstances of the families.

Social welfare that disabled children are entitled to is cut every year. Presidential Decree of 23 of January 1996 “Of measures on social public guarantees ” of 1 of January 1996 states that families of disabled children, if their income is below the official minimal subsistence level, are entitled to 50% reduction of their utility bills.

From April 1999 the social aid for disabled children under 16 previously paid in accordance with the Law “On special state aid in Kazakhstan” has been replaced with the special aid in amount of 0.9 of the average monthly amount (about 4.5 USD a month).

The existing monetary compensation is inadequate (from 3 to 7 USD depending on the category of disability) and can not replace the previously existing benefits. Especially if we consider that the average amount one person living in the one-bedroom apartment pays for utilities is about 10.5 USD a month.

The Law of the Republic of Kazakhstan of 5 of April 1999 «Of the Special State Aid in the Republic of Kazakhstan» provides for a special aid to the disabled persons. For persons with disability of the I and II category the monthly aid is equal to 1.4 of monthly index amount, for the persons with the disability of the III category – 0.6 of the monthly index amount. The 1 monthly index amount is equal to 5 USD.

Commentary to the point 236.

According to the official statistics there are 49,8 thousands of disabled children below sixteen.

The state guarantees disabled children the right to health. Children with mental or physical disabilities have a right to receive free social and medical care provided by the specialized children's institutions. Disabled children have a right to be provided by the prosthetic appliances.

After a number of privileges, including the free medical care privileges, were abolished in April 1999, the situation with free medical aid and provision of free prosthetic appliances became more difficult. With the Kazakh Law of 7 of April 1999 «Of introducing changes and additional provisions to some legislative acts of the Republic of Kazakhstan on benefits to certain groups of citizens» the right to free medical aid has been substituted with a right to qualified medical assistance.

The Government promised to provide monetary compensation instead of «natural» benefits. Still there is no legislative act that would provide for monetary compensation for buying the prosthetic appliances. Government prepared a draft law «Of paying aid to disabled person that need prosthetic appliances, appliances for blind and deaf children, wheelchairs». At this point it has not been yet considered by the Parliament.

Health and healthcare services (Article 24).

Commentary to the point 254.

Number of children that suffer from chronic illnesses is increasing. Infant mortality rates are still high. Up to 80% of children, particularly in rural areas, suffer from anaemia, hypotrophy, rachitis, various forms of nervous, mental and physical retardation.

There is no industry for producing food products for infants in Kazakhstan. The needs for import of such products are not met.

Official statistics does not reflect the real situation of children living in the environmentally hazardous zones. The situation is particularly difficult for rural population in environmentally hazardous regions that occupy the total area of approximately 80 million hectares. Many of these zones were never officially declared environmentally hazardous. The situation is further aggravated by the fact that at 70% of the territory of Kazakhstan deserts are moving in at the alarming pace. Conditions of life for people in such areas that are slowly turning into deserts are very difficult, particularly due to frequent droughts.

In the environmentally hazardous region of Priaralye rates of many diseases are much higher than the average indexes for children's illnesses in the country. For example, the Kyzyl-Orda region has the highest children mortality and diseases rates.

Commentary to the point 255.

For the five years, from 1994 to 1998, the number of doctors per 10,000 of people fell down from 38.9 to 34.3, number of nurses and assistant doctors came down from 108.2 to 77.7, number of hospital beds – from 123.8 to 79.6. The total number of medical institutions offering outpatient and polyclinic care had decreases from 3,527 to 3,034, number of antenatal clinics - 835 to 753.

The year 2000 witnessed the transformation of medical care, including primary health care, that is now directed not at providing the population (including women and girls) with the quality health care, but at finding the way to provide the low-cost services.

Tenders for health services for the population in certain regions are held in accordance with the Law “On Public Procurement”. This act does not take into account the special needs within the healthcare system. For example, there are cases when a medical institution that offered a lower-cost health services (even when the low costs are due to absence of some equipment and high-skilled professionals) wins a tender and acquires a right to provide medical services in certain residential region, even though there are other medical institutions that are located much closer to that region. The succession in providing healthcare is not observed, medical staff does not feel

responsible for the health of patients in the long-term perspective. Major part of the population prefers to use the services of the institution they are used to, but in accordance with the law, that institution now provides paid services. The poor have to spend significant amount of money for transport to get to the polyclinic where they can get free services.

Commentary to the point 256.

Access to health services is restricted for children in rural areas. The reason for that is that the number of primary health care institutions had decreased.

In the year 2000 one of the Almaty prosecutors reported a case when a village child who suffered from high fever almost died, because due to the absence of transport and phone his parents could not take him to the hospital in time.

Commentary to the point 258.

For the 8 years that passed since the Convention has been signed (from 1993 to 2000) the number of hospital beds for children has decreased threefold– from 45,985 to 14,876.

Commentary to the point 270.

Rural areas are now experiencing shortage of primary healthcare facilities. About 1,200 villages are left without medical and obstetric posts that provided primary care to the pregnant women and breast-feeding mothers. (In accordance with the Government's Enactment of 26 of April 1999 51 medical-obstetric posts (MOP) were restored, 43 MOPs were reopened, 6 family medical out-patient facilities, 3 rural hospitals). For the last 3 years a number of obstetric-gynecologic beds has decreased 1.5 times. In some regions, gynecological services became paid (unofficially).

For example, in Talgarskiy region there are only 33 medical institutions that provide healthcare services to people from 62 settlements. The total number of hospital beds is 200. Women from rural areas can not afford paid treatment and expensive drugs. Half of the residents of this region have no access to medical-obstetric posts that in the past provided services mainly to pregnant women, breast-feeding mothers and infants.

For the 6 years, from 1993 to 1998, the number of hospital beds for pregnant women and women giving birth has reduced from 18,582 to 10,615.

Commentary to the point 275.

There is a significant number of teenage girls that become pregnant and give birth at the age below 18.

Commentary to the point 276.

70% of women in Kazakhstan suffer from anaemia. In South Kazakhstan 76% of pregnant women are diagnosed with anaemia, in Almaty - 63%.

According to the Scientific Center of Pediatrics and Children's Surgery for the last ten years the number of children suffering from anaemia or from illnesses affecting kidneys and endocrine system has increased 2 times.

Studies conducted by the Republican Scientific-Research Center for Protection of the Health of Mother and Child demonstrate, that more than 60% of 17-year old girls experience certain health problems, while one third of them suffer from chronic illnesses.

Only 2/3 of pregnant women visit antenatal clinics at the early stages of pregnancy. Attendance of these institutions has decreased 1.5 times. For the last ten years number of pregnant women diagnosed with anaemia has increased twofold, number of women diagnosed with kidney or heart diseases is 1.7 times higher. The low level of health index leads to high percentage of complications during pregnancy and childbirth. In 60% of cases, labour is complicated, and out of every thousand of newborns, 288 are born ill.

Commentary to the point 277.

The number of cases of mother mortality is constantly decreasing, partly due to decrease of population and of number of births. The average coefficient of the mother mortality for the last ten years is equal to 55 cases for every 100,000 births, with no more than 5% deviation from this number. However, the numbers cited by the National Agency on Statistics and the data of the Ministry of Health usually differ. For example, according to the Ministry of Health in the year 1995 the coefficient of the mother mortality was 77 cases for every 100,000 births.

With the country's index of mother mortality being equal to 77.5 cases for 100,000 cases of births, 60% of women that died in labour came from rural regions. (44% of the population of Kazakhstan live in rural area).

Commentary to the point 280.

Among illnesses that have a negative social effect, sexually transmitted diseases are spreading at a high pace.

Commentary to the points 282-283.

Abortions have a highly negative impact at the health of women. As a result of implementation of programs on promoting modern contraception and family planning methods, the quantity of abortions has reduced two times. However in the year 1998 only 27% of women in need of contraception (approximately 1.5 millions) were provided with contraception. Out of 150,000 registered abortions, in 10% of cases those were teenage girls that opted for abortion.

Less than 40% of women between 15 and 24 years use the modern family-planning methods. Women from this age group are accountable for the more than half of all abortions.

Commentary to the point 288.

Kazakhstan did not join international conventions for protection of motherhood.

Commentary to the point 290.

According to the statistics issued in March 2002, there are almost 3,500 of AIDS patients in Kazakhstan. Out of these number 15 are children.

The data of distribution of HIV-infected according to age groups as of August 2000 is given below.

Distribution of HIV-infected patients according to their age groups

Age groups	As of 1 of August 2000	Proportion (%)
0-1 year	1	0,1
2-5 years	1	0,1
6-10 years	1	0,1
11-14 years	9	0,8
15-19 years	143	12,3
20-29 years	648	55,9
30-39 years	238	20,5
40-49 years	84	7,2
50-59 years	14	1,2
60-69 years	3	0,3
Over 69 years	-	-
Unidentified	17	1,5
Total	1159	

As of 1 of August 2000, two children below 14 years of age have died from AIDS.

Commentary to the point 292.

The Kazakh Law «Of introducing amendments to certain legislative acts of the Republic of Kazakhstan on social protection of the population» abolished the financial compensation (equal to 80% of the minimal monthly salary) for AIDS/HIV-infected children below 16 established by the Law «Of prophylactics of AIDS». The said Law has been in force since the end of November 1999. However, in reality government stopped paying this compensation starting from the 1 of January 1999 – 11 months before the provision has been abolished officially. Despite the existence of the specific provision guaranteeing the payment of this compensation, in 1999 it has not been paid.

It should be noted that there are few AIDS-infected children in Kazakhstan. The annual compensation for all of these children does not exceed the annual health allowance for the low-rank civil servant.

Commentary to the point 303.

The questionnaires filled by the students of schools demonstrate the insufficient level of health education, the lack of knowledge of healthy lifestyle.

47% of school children do not do sports or physical exercise regularly. Up to 60% smoke, 30% drink from time to time, 6% have tried at least once drugs or toxic substances. Up to 30% of children and teenagers have sex.

As of the end of the year 2000, 37,879 persons were registered as drug addicts. 1,845 out of them were minors. 25% of persons registered by the Almaty drug center are minors from 15 to 18 years of age. In the recent years, the rates of mortality due to

sepsis and overdosing have increased 8-10 times, with children mortality growing 30-35 times.

I. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

Commentary to the point 305.

Within the secondary education system parents of schoolchildren are frequently forced to give money for needs of the school through so-called “parent’s foundations» (from 1 to 10 USD, considering that the minimal monthly wage in Kazakhstan is 4,000 tenge (25 USD)).

Majority of Kazakhstani families have 1 or 2 children. There is a number of public secondary schools where parents are required to pay unofficial entrance fees that are rather high. Thus, only children from the families with high-income are able to attend these schools. For example, Almaty school N 15 has an unofficial entrance fee of 200 USD. Public schools with such fees are considered schools for elite (schools N 54, 105, 60, 90, 21, 15, 10 in Almaty). Refugees also are required to contribute to parent’s foundations (school N 18 in Almaty).

The official statistics on state’s budget policy on education is not available.

The government conducts a consistent policy of reducing budget means allocated for free education needs. In 1995, the number of places for students in public higher education institutions has been reduced 5%, in 1996 the number of places in higher education institutions was 20% less than the previous year, in professional two-year colleges – 30% less, in professional-technical schools – 25%.

Reduction of a number of secondary public schools continues. Children from remote villages with no schools experience a lot of problems with access to education establishments. In 544 settlements with total of 14,000 children of school age there are no schools at all. In Almaty region 11 elementary schools and 18 secondary schools for children from several villages were closed.

From 1995, 119 professional-technical schools were closed. At vocational schools number of students was reduced more than two times (66.9 thousands students less). These schools are poorly equipped, they use outdated textbooks published in 1970-80, and have no textbooks on technical and vocational courses, no books in Kazakh.

Commentary to the points 308-309.

In Kazakhstan, there are only 8 schools for children with impaired vision, where 1,240 disabled children study. There are 19 schools for children with impaired hearing with the capacity to hold 2,706 students. Such capacity is not enough to satisfy the needs of 14 regional centers and 2 major cities. These schools are also insufficiently equipped and need specially equipped classes.

Despite the provisions of Articles 20, 23 of the Kazakh SSR Law of 21 of July 1991 «Of social protection of disabled persons in Kazakhstan» disabled children are not fully provided with home-schooling and care. From the beginning of 2000, financing the home school for disabled children has come under the responsibility of the local administration, which resulted in failure to provide all of the children in need.

Interdepartmental Psychological-medical-pedagogical Advisory Commission under the Departments of Education decides on whether it is necessary to home-school the child. However, this Commission lacks a developed system of standards and the procedure to evaluate the degree of ability to learn that could be applied to these children. A number of children are diagnosed with inability to learn and, as a result, some disabled children are denied access to education. According to the December 2001, statistics of the Zhambyl Department of Education 115 children in Taraz city are diagnosed with inability to learn and thus do not attend home school. The total number of such children in Zhambyl region is – 593, including 417 children from rural areas.

A small part of disabled children attend general schools. These children either have a borderline mental retardation or a minor physical disability. Majority of disabled children goes to specialized boarding schools or studies at home. These children are isolated and the constant confinement to their home leads to further segregation. The only pre-school facility with inclusive education in the Koktem microdistrict has been closed in 2002 by the decision of the administration of the Bostandykskiy region of Almaty. The building of the school was given to a private company.

The boarding school for children with hearing impairments in Uralsk does not have enough space to fit in all of the students. The construction of the new study facility began back in 1989 is still not finished.

Many factors impede the introduction of the integrated education. Some of them are:

- the current Kazakhstani legislation does not provide for equality of rights of children with special needs and other children. 74,8% of officials, that participated in the survey, believe that the integrated education is not possible due to such objective reasons as the shortage of funds and limited capabilities of the state. They believe that opening more specialized schools for disabled children will be more expedient (61,7%);
- negative social and cultural stereotypes of disabled. The results of the sociological research aimed at determining the readiness of the society and the state to accept and introduce the inclusive education (AsiP, SATR, 2000) showed that 50% of the participants of the survey support the idea of segregation of children. Many schoolchildren do not want to study together with the disabled children (35%), teachers of the specialized boarding schools do not believe in inclusive education (63.2%), other teachers are not ready to teach children with special needs (41.5%).

There is a need for urgent action in order to provide for access of the disabled children to the quality education. Overcoming the existing social stereotypes is a top priority. Public organizations for the rights of the disabled, the media, school teachers should play an important role in achieving this goal. It is also crucial to provide for the sufficient legislative framework for introducing inclusive education. This is going to take a long time, but it is necessary to start this process now.

Commentary to the point 309.

The planned provision of schools with computers on the basis of index 12+1 (12 computers for children + 1 computer for teachers) has been reduced to 5+1 or 2+1 for some schools. For the last 8-10 years, schools have not been allocated money from the

state budget for buying new equipment. Some schools used parent's money to buy computers (school N 40 in Almaty had equipped 2 computer classes). In North Kazakhstan in rural schools, students often do not have possibility to use computers due to power cuts. The state budget finances only one article of school's expenses – salaries.

Commentary to the point 310.

According to the National Report «Education for all» (2000) financing of the education has been reduced sharply (with GDP per person falling from 5,105 USD in 1990 to 1,530 USD in 1997).

According to the Law on Education, the working load of teachers in the junior-high and high schools has been increased from 14 to 18 hours a week, of elementary school teachers– from 16 to 20 hours a week.

Since 1995, 15,400 teachers left school and have not been replaced. Only 65% of teachers in rural school have higher education, 12% - have just graduated from college. Last year in South Kazakhstan there were revealed facts of teachers working with false diplomas of higher education. Schools in rural areas experience shortage of teachers (2,700 posts). Due to lack of staff in 340 schools throughout the country students do not study foreign languages. 6,662 teachers do not have professional pedagogical training, 3,500 only have a high-school diploma.

Teachers do not have time to work and improve their professional qualities. Schools and teachers are responsible before a number of agencies. The amount of extra-curricular activities connected to fulfilling the tasks of various state agencies had increased 70%. Twice a year a teacher has to visit all of the houses and apartments of the administrative unit with a purpose of compiling statistical reports. Children and teachers are required to attend some concerts and sport events instead of going to classes. Several times a year students and teachers have to clean up the garbage at the city streets and parks. This often leads to spread of diseases such as hepatitis and scab. Such cleaning activities are always held at the expense of lessons.

Commentary to the point 311.

About 50% of rural schools have no classes equipped for physics, chemistry and biology lessons. 45% of rural schools have no gyms, 1/3 – no libraries, over 19% - no workshops. From 1992, rural schools do not receive any new visual aids, technical equipment. No new school facilities are being built. In South Kazakhstan, Aktubinsk, Karaganda and Kyzyl-Orda regions, over 60% of schools are located in buildings that initially were not planned to be used as schools. Buildings of 157 schools in the country require urgent maintenance works.

Due to lack of space and buildings, majority of students has to study in second or third shift. The proportion of students that have to study in second shift increases constantly from 30 % in 1995 to 33,7 % in 1999/2000 academic year (this numbers were not published in the initial report).

Shymkent School N 38, Almaty school-gymnasium N 46 and many other schools throughout the country work in three shifts. Many schools opt for leasing study facilities to commercial and religious organizations (schools N18, 40, 13, 68, 60, 90,

94, 120, music school N 10 in Almaty and etc). 90% of schools in Almaty are overcrowded, there are 38-40 in every class. There are schools that are located in buildings that are maladjusted to study process (school N 41, school N 156 in Almaty).

213 of 516 schools in West Kazakhstan are located in the typical buildings. In rural areas, schools were usually designed to hold 1,176 students with classes of 49 chairs. However, only half of this number of students attends school. There is a shortage of 24,307 student places in the region. At the same time schools built on typical design are not filled to their capacity and have extra 14,292 places. In small rural schools, (8,000) teachers usually opt for joint classes for different grades. For example in 730 schools students of the grades 1-4 study together in one class, in 76 schools – students of grades 5 through 8, in 16 schools – grades 5 through 9, in 58 schools – grades 10 through 11. 1,105 rural schools throughout the country need urgent major repairs. 128 rural schools work in emergency conditions. Rural schools have no hot water, no bathrooms (villages Malovodnoe, Kragaly, Uzun-Agach of the Almaty region and other regions of Kazakhstan). In some schools in Almaty, bathrooms are closed for children during the day (music school N 10, gymnasium in the school N 105).

Commentary to the points 313-314.

Official statistics on the quantity of pre-school institutions and on number of children provided by the Agency on Statistics substantially differs from the data of the Ministry of Education and Sciences.

Commentary to the point 315.

Comparing to the 1991, a network of pre-school facilities has been reduced to 82% from the initial number. Some of the pre-school institutions were closed, others established high prices for their services. Consequently, only 11 out of 100 children attend pre-school establishments. Two years ago only 12,3% of children from the age of 1 to 7 years attended pre-school programs. Today the level of pre-school preparation is back to the level of 1992. Services of pre-school establishments are paid (from 30 to 100 USD depending on the prestige of the school).

In 1991 45% of children attended pre-school, in 1993 this number fell to 36%, 22% in 1995 and 11% in 1997.

The comparative data for the years 1991 and 1998 show that in North-Kazakhstan only 51 out of 973 pre-school institutions continue to work. In Kostanay region – 67 out of 975, in Akmola region – 54 out of 695. In Fedorovskiy district of the Kostanay region, all 76 of pre-school institutions that worked in 1991 were closed down. Economic and cultural center of Kazakhstan Almaty lost 189 children's preschool institutions out of 380.

Commentary to the point 327.

The foundation for universal education does not receive the full amount of money aimed at assisting the children from low-income families. Almaty was the only city where the full amount has been received in 1999. In Astana 99.7% of the money were received, in Kyzyl-Orda region –97.6%. In Aktubinsk, Atyrau, South Kazakhstan, Kostanay and Mangistau regions the governmental provision on allocating funds to

the universal education foundations is enforced only partially. In Almaty region no money were allocated.

Commentary to the point 328.

Only 92.6% of children receive the general education (5-9 grades) and the numbers are decreasing. At the level of secondary school education (10-11(12) grades) 79.1% go to school. According to the official statistics in the 1998-1999 academic year about 14% of population of the country were uneducated.

In 2000, the 2 operations of the Ministry of the Interior registered 7,600 children that did not attend school. As of 15 of March 2002 there were 3,193 children that did not attend school were registered in the country (statistics from the department of the secondary, general and elementary education). A number of homeless children in major cities increases, particularly in southern regions as here children have more opportunities for earning some money, and can live on the street without a shelter for a longer period of time.

In Ust-Kamenogorsk in 2000, authorities identified 38 children that did not attend school. The issue of attendance is pressing for administration of schools N 6, 13, 14, 18, 22.

Commentary to the points 333-334.

Network of children's libraries is also reducing: out of 800 libraries that worked in 1990 only 200 are still operating in the 2001. For the last 8-10 years, school libraries hardly received any new books.

In the grades from 6 to 11, only children from low-income families receive textbooks for free. Other children have to buy them. Prices for textbooks are high (from 1.5 to 5 USD) and out of limits for children. New textbooks often come under criticism of parents and teachers.

Children of the grades from 1 to 5 are not allowed to use alternative textbooks from Russia. Teachers of history of Russia (grades 7 to 10) and history of new period (9-10 grades) still use outdated textbooks published during the Soviet period.

Textbooks translated into other languages (for example, Uzbek) often contain many mistakes. Due to absence of textbooks in national languages, education is much more difficult for children of ethnic minorities.

The course requirements do not meet the reasonable standards of learning. For example, the planned history course requires a ninth-grader to learn the study material of 5 textbooks with 250 pages in each book.

Aims of education (Article 29)

Commentary to the point 336.

As there is no national concept of human rights education, child's rights and human rights are not a part of education course at all levels of the education. The Ministry of Education and Science has declined the concept proposed by the interdepartmental

group in July 2001. The government still did not determine which body will be responsible for drafting the national concept. In 1999, Ministry of Education has approved the secondary school program on preventing abuse of drugs and hazardous substances. However, this program has not been yet implemented in schools despite the fact that 8,000 schools already received teacher's guides for such lessons.

The Presidential program on universal education is implemented only formally at the level of training teachers and informing the parents. Teachers in rural areas were not yet made part of the program.

Children learn about the Convention on the Rights of the Child during one-hour lesson in the 2 grade. Older students have one-hour lesson on CRC either in 9th or 11th grade. The CRC is not available in ethnic minorities' languages (e.g. Tartar, Uighur). Teachers that have no special training teach courses of civil education. Ministry of Education did not approve the teacher's guides on human rights published by NGOs.

Leisure, recreation and cultural activities (Article 31)

Commentary to the point 339.

For example, in Talgarskiy region there are no conditions for enjoyment of the cultural rights. Libraries, gyms and swimming pools were closed. Sport schools became paid and, thus, majority of women and children are unable to attend them.

J. SPECIAL PROTECTION MEASURES

Refugee children (Article 22)

Commentary to the point 346.

There are displaced children in Kazakhstan that do not fit neither the refugee, nor the migrant definition.

Commentary to the point 348.

The Law on Refugees has not been adopted yet.

The regulations on persons that have applied for refugee status and on the procedure of consideration of asylum claims allow refusing the refugee status. Moreover, they make it possible to deny the registration of the asylum claim itself in violation of international obligations and domestic legislation of Kazakhstan.

During the "Migrant" operation in Almaty the armed migration police staff wearing masks broke into houses of refugees and detained adult men without a proper warrant. Children looked at all of this in horror.

Commentary to the point 349.

Only non-CIS and Baltic States citizens can receive a de-jure refugee status in Kazakhstan. Out of 20,500 de-facto refugees, only 900 were granted refugee status. The UNHCR estimated that there were approximately 5,000 refugees from Tajikistan, 10,000 Chechens from Russia, 2,500 from Afghanistan, and 500 from other countries.

Statistics on refugee Chechen and Tajik children is not available. National report also does not mention the problems faced by the Uighur refugees from China.

Protection of Uighur refugees from China is one of the most complicated issues dealt with by UNHCR. In Kazakhstan Uighur refugees are often viewed as having close ties with Taliban and Islamic Movement of Uzbekistan. Kazakhstan and China agreed in December 1999 not to tolerate the presence of ethnic separatists from one country on the territory of the other.

Asylum claims from Uighurs from China are not processed, and there is no official statistics on how many Uighurs from China are present in Kazakhstan. Uighurs without the registration that are afraid of persecutions of Chinese or Kazakh authorities, apply for the refugee status with the local UNHCR office in accordance with the UNHCR mandate. Those that are granted the refugee status and can not stay in Kazakhstan because Chinese authorities might request their extradition are transferred to third countries ready to host them. In 1999, Norway hosted 7 persons, Australia –2. In 2000, USA hosted an Uighur family with children, Sweden hosted one refugee. In 2001, another refugee woman with two children was resettled in Norway, 1 person in US.

Commentary to the point 350.

There is no formal discrimination of refugee children within the education system. However, problems remain. Children from low-income families have limited access to education. As a rule, the source of income for many of such families comes from the daily earnings from trading at the market. This is hardly enough to make a living for traditionally big families with 4-6 children.

Children of school age require additional expenses which include not only warm clothes, but also school uniform and regular contributions to the school budget. The 2002 research conducted in Almaty by the independent researchers demonstrated that out of 155 Afghan children that participated in the poll, 15 do not go to school. There cases when refugee children were not allowed to attend school because they were not registered by the local authorities (had no “propiska”). For example in Aktau (Mangistau region) children without the registration certificate were not allowed to attend school.

In some cases, school’s administration abused its powers. For example, in Almaty during the academic year refugee children were expelled from school for the period from 1 to 2 months. Among these children there were mainly Afghan and Chechen children that do not have a permanent place of residence and have no opportunity to register officially. In Atbasar city (Akmola region) some Chechen children were refused admission due to overcrowding of classes.

Sometimes refugee children do not attend school due to language barrier. The Center on Conflict Resolution conducted a research in 5 regions of the country and found that 4% of children-participants of the research did not attend school because they did not speak the language that classes were taught in.

Majority of Tajik refugee children has no access to education, due to number of reasons. The exact number of Tajik children, including refugee children, in the

country is not known. The Embassy of Tajikistan also does not have this data. Tajiks as Chechens being the citizens of CIS country can not apply for the asylum and are registered by the local bodies of migration police. For the period from 1999 to September 2001 1,451 Tajik refugees were repatriated. Some of them are coming back to Kazakhstan illegally bringing their families (5-7 children) with them.

Due to constant moving from one place to another, because of necessity to make a living by trading and to take care of younger children, Tajik children do not go to school. A lot of them ask for money at the market places, near the railway stations, at the bus stops. Children of older age are not able to attend school because they are behind on learning. There was a case when a testing of 15-year old Tajik boy showed that his knowledge was at the level of a third-grader.

13 children from 15 Tajik families that applied for aid to the Children's Fund in the 2001 did not go to school.

Some parents of refugee children do not believe that education is necessary for their children (particularly for girls). In these families, older children, more often girls, have other duties – to take care of the younger siblings, or to help parents at the market.

For all of the refugee children that graduated high school the access to higher education is problematic. They are not admitted at the public institutions where students do not pay tuition, and their families can not afford paying for their education.

Commentary to the points 351-352.

Refugee children receive assistance only from the non-governmental organizations that receive grants from foreign organizations.

Commentary to the point 353.

Refugee children receive no benefits. However, there is a great need for benefits for children, benefits for pregnant women and for disabled children.

Article 24 of the CRC guaranteeing the rights of refugee children is often infringed. Children are not only deprived of their right to highest attainable standard of health, but sometimes they have no access to a primary healthcare because they are not registered.

Access to medical services is also limited due to shortage of funds. Often refugees and internally displaced persons are required to pay significant amounts of money for health services. There are cases of surrogate services provided to mothers with children at the Almaty maternity wards.

Commentary to the point 354.

Under the law children of oralmans (Kazakh repatriates) are not refugees.

In North Kazakhstan there is a limited number of schools where oralmans from Uzbekistan can study in Kazakh. There also is a problem of providing them with warm clothes, as they are not ready for climate of North Kazakhstan.

Despite the supervision of education departments and administrations of schools, not all of the children of oralmen in South Kazakhstan attend schools. They help their parents by trading at the market, do small works and do not go to school because their parents believe that education is not necessary.

For example, a 15-year old oralman girl living in Atyrau had finished 2 grades of elementary school and is not planning to continue her education.

Commentary to the point 355.

Often it takes a lot of time for a court to take a decision. During this period, the refugee and his family are going through the difficult state of uncertainty and fear for the future of his family and his children.

Refugee children trading at the market (in big cities) face many problems when they come across police officers. They are forced to give bribes and their rights are frequently violated.

Recently there were two cases when the child did not fit neither refugee nor internal migrant definition. For example, a girl from Sri-Lanka for almost two years is kept at the Center for Temporary Isolation and Adaptation of Minors.

CHILDREN AND JUVENILE JUSTICE ADMINISTRATION SYSTEM

Administration of juvenile justice (Article 40)

Study of the domestic legislation and of law-application practice with respect to juvenile offenders demonstrates that Kazakhstan has no specialized juvenile justice system, no juvenile courts or family courts, although the new law on courts and status of judges provides for an opportunity to set up such courts.

Juvenile justice is administered at the same courts of the general jurisdiction by the same judges that try the adults. There are almost no lawyers that would specifically work on juvenile cases. Prosecution, defense and the whole process of administration of juvenile justice use the same set of general rules and procedures established by the current administrative, criminal, criminal-procedural and criminal-executive legislation for adult offenders.

The existing provision requiring the immediate notification of parents, legal representatives or in case of their absence of close relatives of the detained or arrested juvenile is violated throughout the country. This causes particular concern, because police often uses arrest as a measure of restriction for juveniles. For the six months of 2000, 722 juveniles were arrested.

The current legislation stipulates that the criminal responsibility comes from the age of 14. Minors from 14 to 16 years can be held responsible only for a number of crimes explicitly listed in the Criminal Code. Despite this rather explicit formula that excludes the possibility of any additional interpretation, the existing practice with respect to juveniles allows for administration of measures that we consider to be illegal and in many cases extrajudicial.

The commentary to the Article 15 of the Criminal Code of Kazakhstan first states that criminal liability of the child that has not attained 14 years of age is explicitly excluded. However, in the following pages the Commentary reads, “with respect to juveniles from 11 to 14 years of age, on representation of the body of internal affairs and in presence of the decision of the specialized state body, the court can determine the necessity to apply the coercive measure of correctional education in the form of placement in the special educational institution with special conditions of upbringing”.

Evidently placement of the child in such institution, first of all, is a coercive measure executed by the state authority, and, secondly, it is applied with a purpose of “education” for the committed crime or offence. Imposed by the government, the coercive restriction of freedom of movement of the child offender that did not reach the age of criminal liability turns into a punishment. The essence of the punishment will not change independently of the word used. The “special educational institution” (special school or special professional-technical school) is nothing, but a correctional institution.

Thus, the Commentary to the Criminal Code provides for the punishment that is being imposed in practice without being stipulated for by the criminal law. Neither criminal, nor administrative code do not mention the special school among the correctional institutions. Moreover, the current procedural legislation of Kazakhstan also does not contain the definition of the procedure of placement of the child in the special educational institution. Concerning this, it is not clear what exactly provisions of the law the court applies when issuing a decision on placement of a child into the special educational institution.

The existing procedure applied to juvenile offenders is not defined by any separate procedural laws, but is based on subordinate legislation (regulations, rules, instructions) and on practical experience. At first children are taken to police departments on juveniles (PDJ). According to the departmental rules, the groups of children taken to juvenile police stations are as follows: 1) children below the age of criminal liability that committed acts injurious to the public in general, containing signs of a criminal act; 2) children that committed administrative violations; 3) children that left without proper authorization the special educational institutions for children, Centers of temporary isolation, adaptation and rehabilitation for juveniles (CTIARJ); 4) juveniles below 16 years of age that left their family without proper authorization, and unidentified adolescents from 16 to 18 years of age that need supervision and help to be taken to CTIARJ with a purpose of subsequent return to parents or placement in the health and education institutions; 5) children that were lost or abandoned are taken to PDJ with a purpose of return to their parents or others that have the care of the child, or to be placed in CTIARJ, orphanage or healthcare institutions. The adoption of such decision on placement of the child is not defined by any procedure of the procedural code and legislation.

Activity of is regulated by the regulations CTIARJ. For some children these Centers are places of custody. According to these regulations, CTIARJ shall admit children from 3 to 18 years of age that committed actions injurious to public in general before attaining the age of criminal responsibility, children that committed administrative

violations and children placed in the special educational institutions for minors that need special conditions of education and upbringing.

The child can be placed in the Center on a basis of enactment signed by any person of the following position: head of the juvenile department of internal affairs; head of the administrative police department (head of the service, directorate or of a section); head of the subdivisions of criminal police and juvenile investigation; judge that issued a decision (judicial definition) or even simply by the head of CTIARJ in cases when minors came to the center by themselves or accompanied by private citizens. Juveniles can be kept in CTIARJ for up to 45 days. Moreover, this term can be extended by the order of the head of the administrative police department (service) for a period of no more than 15 days with due notification of the prosecutor.

It is important to emphasize that the document does not concern the custody of juveniles that committed criminal offences and are liable to criminal responsibility. On the contrary, the Rules provide for placement in CTIARJ of children that have not yet reached the age of criminal liability.

Moreover, the same document provides for actual custody of juveniles that committed administrative offences. The maximum penalty for such offences for adults is an administrative arrest for no longer than 15 days. Even if we suppose that in practice minors that committed administrative offences are not kept in CTIARJ for a total possible term, still there is a theoretical possibility that juveniles can spend there up to two months.

Finally, juveniles that anticipate placement to the special educational institutions also are subject to temporary placement to CTIARJ. Such placement is determined by the legal judgement issued on representation of the body of internal affairs in the presence of the decision of the juvenile commission. It should be emphasized again, that all of these children are placed in CTIARJ in absence of legal grounds and procedure established by law.

Provisions of the Enactment of the Cabinet of Ministers of the Republic of Kazakhstan constitute a legal basis for the activity and establishment of such Centers. Laws passed through Parliament, however, including criminal and administrative law do not contain any clear regulation of the activity of these institutions.

Thus, special educational institutions are nothing but the reorganized correctional colonies, and juveniles are placed in these institutions by coercion in absence of procedure established by the law. Juveniles are placed in the special educational institutions “for the term established by court, and this term should not exceed three years”. “The court can suspend this measure for one year of probation”.

Commentary to the points 365-384.

The Constitution of the Republic of Kazakhstan (Section VII “Courts and Justice”) and the current criminal-procedural legislation of Kazakhstan (Criminal-Procedural Code of the Republic of Kazakhstan) contains norms that ensure the rights of suspects and accused, including protection of principles of presumption of innocence, of interpreting doubt in favor of the suspect, rule of leaving the responsibility for proof of evidence to the criminal prosecution, safeguard the right to the qualified legal aid

and etc. However, despite the presence of these positive developments, there is virtually no difference between administration of justice for juvenile and adult offenders.

Kazakhstan is among countries with the highest level of imprisonment of juvenile offenders. At present time, in the country with total population of approximately 15 million people, the number of imprisoned juveniles exceeds one thousand.

Statistical data available for Almaty courts shows that in 2000, Almaty district and city courts had convicted 272 juveniles – 3.4% of the total number of convicts. In 2001, 244 juveniles were convicted which constituted 3.6% of total number. 90% of the convicted juveniles were from 16 to 18 years of age, the rest 10% - from 14 to 15 years. More than a half of convicted juveniles (58.6%) come from families with two parents, 36.9% come from families with single parents, 4.5% - from orphanages and boarding schools. Girls account for 12.3% of a total number of convicts (30 persons); 67 (27.5%) are students; 24 persons (9.8%) are drug addicts.

More than a half of all crimes were committed in group (57.4%). One in four juveniles committed a crime together with an adult – 26.2 % of cases.

The information on types of punishment applied by the court is given below¹².

Year	Total number of convicted juveniles	Proportion of the punishment	Imprisonment		Correctional works		Conditional sentence		Suspended sentence		Penalty	
			Abs.	%	Abs.	%	Abs.	%	Abs.	%	Abs.	%
1994	8102	9,0	2414	29,8	247	3,0	632	7,8	4646	57,3		
1995	7286	7,8	2552	35,0	200	2,7	799	10,9	3605	49,5		
1996	5667	6,7	1980	34,9	101	1,8	629	11,0	2276	48,9		
1997	5669	6,5	1783	33,5	99	1,7	738	13,0	2785	40,1		
1999	4542		1382	30,4	9	0,2	2754	60,6	19	0,4	8	0,2
1 half of 2000	2498	1,3	788	31,5	5	0,2	1595	63,9	8	0,3	9	0,4

Change in numbers is due to the application of the new criminal and criminal-procedural legislation that entered in force on 1 of January 1998.

The crimes committed more frequently by the juveniles are as follows: car theft, robbery, theft, illegal acquisition and storage of drugs for personal usage. Repeated offenders most frequently commit thefts and illegal acquisition and storage of drugs for personal usage. According to the Almaty city court judges, the high percentage of imprisonment for juvenile offenders – 71.3% is justified by the fact that the convicts committed serious and grave crimes.

¹² From the studies conducted for the project «Monitoring the situation with juvenile offenders».

The total numbers of convicted juveniles for the last 5 years are as follows: 1997 – 5669; 1998 – 6554; 1999 – 4542; 2000 – 5393; 2001 – 5726.

In 2001 courts have convicted 414 girls (in 2000 – 390).

Last year out of total number of convicted juveniles 1,601 were sentenced to imprisonment (1,668 in 2000). 158 juveniles were sentenced to less than one year of imprisonment (210 in 2000), 321 – for a term from a year to two years (316 in 2000), 840 – for a term from 2 to 5 years (871 in 2000).

Last year 15 juveniles were sentenced to paying fines and penalties (19 in 2000). Correctional works were not used at all in 2001 (7 persons were sentenced to correctional works in 2000). 3,322 received a conditional sentence (3540 in 2000). 14 juveniles were issued a suspended sentence in 2001 (27 in 2000). Coercive measures of education and correction (placement into the special education institution) were applied to 19 persons (25 in 2000)¹³.

Dynamics of juvenile crime according to the type of crime (1996-2000 ?.)¹⁴

	1996?.	1997?.	1998?.	1999?.	6 ??? 2000?.
Premeditated murder	124	146	145	136	61
Premeditated severe bodily injuries	140	134	106	128	55
Rape	149	110	85	113	47
Hooliganism	476	397	531	722	404
Connected to drugs and other toxic substances	546	425	435	491	270
Car theft and hijacking	112	78	131	161	39

Arrest as a measure of restriction was applied in 47.1% of cases (115 of juvenile suspects), written undertaking not to leave the city – 50.8% of cases (124 juveniles) and bail– 2% (5 juveniles). The proportion of repeated offenders was 11.9% of all cases.

Dynamics of juvenile crime in accordance with social aspects¹⁵

	1996 ?.	1997 ?.	1998 ?.	1999 ?.	6 ??? 2000 ?.
Unemployed students	4393	3875	3641	3882	1639
Students	2765	2087	2290	2992	1571

¹³ Statistics of the Kazakhstan Prosecutor General's Office

¹⁴ From the studies conducted for the project «Monitoring the situation with juvenile offenders».

¹⁵ From the studies conducted for the project «Monitoring the situation with juvenile offenders».

Employed	687	366	-	-	-
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According to the statistics provided by the Prosecutor General's Office, 1,154 juveniles were convicted in 2001 for crimes committed in drunk condition (1099 in 2000). Out of all the juveniles convicted in 2001, 3,259 come from the family with two parents (3,098 in 2000), 2,283 are children of single parents (2,100 in 2000), 184 come from orphanages or boarding school (197 in 2000), repeated offenders – 751 (670 in 2000), drug-addicts – 12 (11 in 2000).

1,147 of juvenile convicts before committing a crime were already registered by the juvenile inspection of Ministry of Interior. (1169 in 2000).

755 juvenile convicts were amnestied or released on other grounds in 2001 (132 in 2000).

We believe, that courts when sentencing a juvenile offender sometimes fail to observe the Article 80 of the Criminal Code, disregarding personal circumstances, level of mental development and other personal characteristics of the juvenile.

The absolute majority of juvenile offenders was unemployed and had no regular source of income. This prevented courts from imposing penalties or correction works.

The criminal-executive legislation provides for a possibility to administer community service as an alternative punishment. However, it is also not used because there are no facilities where juveniles could serve this sentence. Another punishment in form of restriction of freedom is also poorly regulated. Courts not only do not want to use alternative sanctions, but they are limited by the absence of necessary condition for execution of such sanctions.

However, if the Parliament will amend the Criminal, Criminal-Procedural and Criminal-Executive Codes with a purpose of further humanization and liberalization of punishment, it will change the terms of punishment stipulated by the Articles of the Criminal Code that administer punishment for the most common crimes and for crimes that do not present danger for the society. This as well as creating real conditions for execution of alternative measures such as community service and restriction of freedom will lead to the changes in court's practice in Almaty and throughout the country.

Imprisoned children (including any form of detention, imprisonment or correction custody). (Article 37 b -d)

Commentary to the points 385-397.

There are 47 correctional colonies of conventional, high-security and maximum-security regimes in Kazakhstan. There are also 23 settlement-colonies, 3 educational colonies for minors, 1 prison and 22 preliminary investigation isolators (CISO). As of 1 of January 2001 prison population in Kazakhstan was 83,000 of convicted persons, including 1.1% (or 913) of juveniles (the numbers given after the recent amnesty). More than 18,000 suspects and accused were held in CISO. Over 36,000 of convicts sentenced to punishment other than imprisonment are under the supervision of 183 criminal-executive inspections.

Majority of juveniles in custody and juveniles sentenced to imprisonment is placed into the four correctional juvenile colonies in Almaty, Aktobe, Petropavlovsk and Ust-Kamenogorsk (the latter was opened in December 2001). Petropavlovsk colony also has a local facility for juveniles sentenced to imprisonment in high-security conditions. Juvenile girls serve their sentence in the local facility at the women's colony in Zhagaushty village in Almaty region. According to the acting criminal-executive legislation, prisoners have a right to serve their sentence at the territory of the region where they lived prior to being arrested or convicted. However, as there are only four juvenile colonies in the country, juveniles are admitted to colonies disregarding where they lived prior to conviction.

As of 30 of December 2001, there were 1,107 juveniles in the educational (juvenile) colonies (1,004 as of 30 of December 2000). At the end of the last year there were 109 teenagers over 18 in the juvenile colonies (156 in december of the previous year). In the course of the last year 580 prisoners were transferred from juvenile to the adult colonies (490 in the previous year)¹⁶ .

As of the end of the 2001, Centers for the Temporary Isolation and Rehabilitation of Juveniles held 102 juveniles (73 in 2000).

As of 1 of January this year 553 juveniles were in custody in CISO (579 at the same period of 2000, 651 in 2001)

Inadmissibility of torture or other cruel, inhuman or degrading treatment or punishment, and prohibition of capital punishment and life imprisonment (Article 37 ?)

Commentary to the point 399.

According to the international documents a child has a right to be protected from torture or other cruel, inhuman or degrading treatment or punishment.

The Parliament of Kazakhstan ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment on 29 of June 1998.

Officially torture and other cruel, inhuman or degrading treatment and punishment are prohibited. In practice torture is widely used.

Police and Ministry of Interior staff frequently violate the provisions of Criminal-Procedural Code of Kazakhstan conducting the interrogation of juveniles in absence of lawyer or legal representatives, but in presence of the inspector from the juvenile inspections. The presence of these inspectors wearing military uniform usually results in intimidation of the child.

For example, in Karaganda region a juvenile was detained and taken around in police car for several hours. Then he was taken to CTIARJ and registered as a homeless person. The juvenile inspector was presented as his only legal representative.

¹⁶ Statistics of the Prosecutor General's Office

The practical experience of Kazakhstan International Bureau for Human Rights and Rule of Law shows that juvenile suspects are often interrogated in absence of legal representatives, without a psychologist, school representative. Sometimes interrogations are conducted at night-time. Actions of investigators are more than simply incorrect.

Gross violations of child rights in Karaganda and Aktubinsk regions made the Karaganda branch of the Kazakhstan International Bureau for Human Rights (KIBHR) to issue the official statement.

According to this statement parents of the juvenile suspect addressed the Karaganda branch of KIBHR with the following complaint: «The body of G. Belyakov was found on 4 of July of 2000 in garage complex in Temirtau. The same day at 9PM juvenile Ruslan Derevyanko was detained on suspicion. Ten days later he was charged based on Part I of the Article 96 part 1 of the Criminal Code.

The day after his detention at 2AM police searched his house but did not find any evidence (belongings of the victim, blood stains and etc.) of guilt of Ruslan. Investigators choose not to interrogate witnesses that could testify the alibi of the suspect. Ruslan Derevyanko denied his guilt and refused to sign the confession statement. However, the Temirtau prosecutor chose arrest as a measure of restriction. From the very start of the investigation police repeatedly violated Criminal-Procedural Code despite the numerous complaints filed by the lawyer, defender and the legal representative of the accused juvenile.

This is an excerpt from the complaint filed by the defender and by the legal representative of Ruslan Derevyanko: «Ruslan was taken to a cell in front of the room of the officer on duty. After about an hour G. took him to the interrogator's office. There G. and S. made handcuffed Ruslan sit down on the chair and with S. standing on Ruslan's knees, G. started lifting suspect's hands, handcuffed behind his back. Then they started beating him again. Then Ruslan was taken to the toilet, handcuffs were hitched to the hook at the ceiling and the torturers beat him with the felt boot trying to hit kidneys. He was left hanging for about an hour. Then he was taken again to the office of Ish-v. Is-v was there together with several others. He tried to persuade Ruslan to confess, saying that later they will "change" the charges to self-defense. Ruslan was taken back to his cell and they told him that he has time to think until morning. An hour later he was taken back to Ish-v's office. The owner of the office together with two men once again demanded that Ruslan would confess, and when he refused they hit him on the head with a book and punched him on the chest...»

From the complaint received at the Aktobe branch of the KIBHR: «2 of April 2001, Yelena Reikhart and her 11-year old daughter Alina were murdered in their house.

2 days later police arrested Dima - the son of the murdered woman. The investigation relied on his confession that they extorted him to write the night following his detention. The juvenile suspect was interrogated at night-time. No legal representative of the interests of the child and no psychologist were present during the interrogation. Dima did not suffer any bodily harm, because due to psychological pressure he wrote a confession statement hardly understanding what he was doing. The boy that just

faced the death of his mother and sister was told that “his father was looking for him in order to kill him...”

«On 24 of February 2000, 13-year old Roman Moskvitin did not come home in time. Looking for her son, his mother telephoned all of the hospitals and police stations of the city. Late at night she learned that Roman was taken to one of the police stations. Her son told his parents that police officers put him in police car and drove around the city for a long time. Then Roman was taken to a police station where he was beaten on the head and threatened with rape. The following night Roman was sick and delirious. He was taken to the hospital and diagnosed with concussion and head injuries. He spent nine days at the hospital. When his parents tried to instigate criminal proceedings against the police, they were told that «the facts were not confirmed».

The existing procedure of investigation of torture complaints is ineffective and does not provide for the protection of the rights of the child – victim of torture or other cruel treatment or punishment.

The investigators are often insisting on their first version and hesitate to admit any mistakes as it leads to a very negative evaluation of their work and negative consequences. Prosecutor’s offices and courts responsible for supervision of rule of law are often negligent. Often these agencies give standard reply such as “the facts have not been confirmed” or “trying to avoid responsibility the suspect slanders the investigator” without even trying to investigate the case.

For combating the use of torture, it is not enough simply to punish the guilty. Torture will stop only when the prosecutor’s offices and courts will no longer admit the illegally obtained or doubtful evidence.

Child victim of any form exploitation and physical and psychological recovery and social reintegration of a child (Article 39)

History of independent Kazakhstan does not have any armed conflicts, no atrocious punishments, tortures or inhuman treatment. As a result, the national legislation does not contain a definition of the child – victim of such actions.

However, Kazakhstan shelters children from the zones of armed conflicts – from Chechnya, Afghanistan, Tajikistan, Osh region of Kyrgyz Republic and from Kyrgyz-Uzbek border regions where minefields were laid by the Uzbek side. These children need to be officially recognized as victims of armed conflicts.

There is a number of officially registered cases when parents or legal guardians treat the child cruelly. When judicial proceedings of deprivation of parental rights are instigated these persons are deprived of parental or guardian’s rights.

However, there is a hidden practice of cruel treatment. Child is beaten at home, starved, left in cold house for several days without supervision and help. Sometimes Some of the practices include forcing a child to make living through prostitution, begging. Sometimes children are exploited at the crop plantations. Children themselves sometimes are accountable for ?ruel treatment, insults, humiliation and

abuse of other children. There are cases of cruel treatment of children that were detained by police without sufficient legal grounds.

Child victim of such actions: 1) does not have a status of victim and because of this: 2) there are no procedures allowing to define the degree of physical or psychological damage, no mechanisms of judicial expertise based on psychological testing of the child with results that would be recognized in court (at this point court considers only the results of the medical and physiological expertise, i.e. presence of wounds, injuries and etc.), 3) there are no institutions (services, programs) for reintegration of the child, 4) there is no clear procedure that the child could use to seek help through the bodies of guardianship, the Inspection on minors or at school, 5) there is also no procedure of providing such services to a child that is not able to seek help on his own.

Not one child of 2,000 that participated in the poll in Almaty ever heard about the Article 59 of the Law «On Marriage and Family» and of child's right to seek protection of his rights and legal interests in the bodies of guardianship and after he turns 14 directly in court. In fact, none of the children in Kazakhstan are informed about this right.

Children's hospitals and policlinics do not provide psychological, psychotherapeutic and social-medical help to the children victims of armed conflict and cruel treatment. Child psychotherapists practice only at the child departments of the city and regional psychoneurologic hospitals.

Schools do not have rehabilitation programs or psychological posts.

There are no specialized rehabilitation centers or specialised programs for children within the existing rehabilitation centers. Centers for Temporary Isolation and Rehabilitation of Juveniles are under the Ministry of Interior and their main function is to isolate juveniles rather than provide psychological assistance.

Crisis centers in Kazakhstan are aimed primarily at assisting women victims of domestic violence. There is only one Crisis center in Almaty that has rehabilitation and reintegration programs both for women and children.

There are no child hospitals, crisis centers or school psychologists in the rural areas. The farther the village is located from the city, less resources it has.

Economic exploitation of children, including child's labour (article 32)

Commentary to the point 411.

The experts of the Kazakhstani Ministry of Economy and Trade say that the hidden production and shadow economy account for 25-27% of GDP. In 1999 the GDP in Kazakhstan was equal to 15.8 billion USD, which means that the share of the shadow turnover is equal to about 4 billion USD.

Authorities do not exercise adequate control over small business and entrepreneurs to ensure that they do not use child labour. Children often work at the small markets, at the inexpensive food places, at the small street points of sale, etc.

In the rural areas children often work in the field, or at the pastures.

Children are frequently required to heavy loads of housework, to work in the gardens, to nurse younger children. Child labour is not subject to working-hour limits, not paid. There are cases when children are exploited to harvest crops of plants that are later used to make drugs (South Kazakhstan and Almaty regions).

There is a widespread practice of exploiting the creativity of children. They are required to perform virtually for free while the earned money are taken by the “foundation of the creative group”, by the school fund and etc.

The practice of constant rehearsals and performances affects education and health of children. Sometimes at Christmas time or during religious and other holidays children give two or three concerts a week at the expense of attending school

The schools for creative development of the child do not observe the regime of school breaks and week-ends. For example, for the period from the October 2001 to April 2002 one of the Almaty music schools made students to rehearse two Sundays a month. For 7 months 14 out of 28 Sundays were used for rehearsals. During the winter and spring breaks children rehearse almost every other day.

Adults begging at the streets of the city often carry or take children with them, asking for money for food or medical drugs for the child. Often they are not parents of this child, but “borrow” from his or her parents.

Absence of necessary mechanisms of control and monitoring demonstrate that the state does not pay enough attention to the needs of the child, that the domestic policy is not aimed at satisfying them.

Sexual exploitation and sexual abuse (article 34)

Commentary to the points 422-426.

Indifference of society towards the issue of the child prostitution made it easier to use sex services of young girls both for sex traders and adult clients. The society is rather tolerant to an adult man that pays about 50 tenge (0.3 USD) for sexual services of a minor girl. His actions are viewed as a standard.

There are cases when parents force their children to earn money by prostitution. In bog cities, such as Almaty, child prostitution presents a big problem. Police takes money from prostitutes and their souteneurs in exchange for non-interference with their “business”.

Cases of incest and sexual abuse of boys and girls by parents or relatives also become more common. There are cases when father sexually abuses his children and mother does not do anything about it saying that the father is the only source of income for the family. If he would leave the family or would go to jail, the family will loose its income.

Majority of children (90%) do not protest domestic violence, accepting physical abuse as a method of upbringing. Children are afraid of their parents and do not know where to seek help in case of abuse.

The provision of the Criminal Code, reading «persons that to prior knowledge did not reach 14 years of age» allows the criminal to escape justice if the victim looked older than 14 years.

There is also a problem of presenting evidence. Court usually recognizes only the results of biological or medical expertise, without taking into consideration the in the cases of sexual harassment psychological expertise is by no means less important.

Sale of, traffic and abduction of children (article 35)

Commentary to the point 428.

There was no comprehensive research to study the problem of trafficking of children from and to Kazakhstan or through the territory of the country. Kazakhstan is a country of origin for trafficking of teenage girls to the UAE. For the period from 1998 to 2002 the city departments of interior and the military prosecutor's office had twice reported of interception of attempts to traffic 15-yearold girls. Traffickers were detained on several occasions at the border control points. A group of children from Kyrgyzstan were detained on transit through Kazakhstan.

The Criminal Code does not define neither the adult nor the child traffic victim.

The Government does not ran any programs on providing legal or any other types of aid to traffic victims.

The legislation does not contain applicable procedure, standards or precedents that would allow to identify such a victim.

The Government does not publish any statistics on repatriation of child victims of traffic to Kazakhstan, or returning them to their countries of origin.

Even when child-victims of traffic attempts are detained prior to leaving the country, no rehabilitation or reintegration attempts are made, even though it is obvious that such children need a lot of help, including employment opportunities.

No data is available on non-criminalization of victims.

Law-enforcement agencies presented a well-known case of traffic of 15-yearold girls to UAE in 1998 as the individual crime of the border police officer and did not investigate his possible complicity with the trafficking ring.

Law-enforcement departments have no experts on combating sex-trade, on investigating sex-crimes and revealing organizations that work as a cover for traffickers.

Corrupt officials are trading children when arranging foreign adoption of children from Kazakhstan. Procedure of monitoring the conditions of children that were

adopted by the parents from abroad is inadequate, as both officials and children's home administration often have a personal interest in adoption process.

Abduction of children presents a problem. Sometimes child is abducted by one of the parents after the divorce, particularly if domestic violence was cited as a reason for divorce. In such cases, bodies of guardianship, police and bailiffs prefer to stay out of "the domestic disputes". There is no procedure of monitoring and providing for safety of the child taken by the parent. The right of the child to live with his or her mother is violated and the safety of the child is questionable. The father prevents the meetings of the mother with the child and slanders his ex-wife telling the child that his mother has left him or her.

RECOMMENDATIONS OF NGOS

? . Legislation reform

1. We recommend to revise the current legislation of the Republic of Kazakhstan, concerning regulation of status of children, including children deprived of family environment. This revision shall ensure that the legislative framework in this area is brought in conformity with the Convention on the Rights of the Child. There are two possible solutions. One of them is to introduce and add the provisions of the Convention on the Rights of the Child to the current national legislation of the Republic of Kazakhstan in the form of separate norms of applicable laws and other acts. The second is to adopt the separate Law on the Rights of the Child that would secure the realization of all of the provisions of the Convention. The second scenario seems to be more preferable, considering that it ensures that all of the legislation, dealing with regulation of status of children in the Republic of Kazakhstan, is brought in conformity with the future law.

2. Government's draft law on the rights of the child that has been sent to Parliament can be used as a basis for the future law on the rights of the child. However, the Government should change the draft in such a way that apart from listing the general duties of the state it would contain specific norms safeguarding the rights and interests of the child. This law should contain all of the basic provisions of the Convention on the Rights of the Child and define the applicable legislation that should be brought in conformity with the new law.

3. The Constitution does provide for equality of rights of all citizens, however, neither the Constitution nor other domestic laws contain a definition of the discrimination, including the discrimination on basis of age, prohibited by the Article 2 of the Convention among other forms of discrimination. The legislation should contain a clear definition of discrimination, particularly of discrimination on the basis of age.

? . Institutional reform.

4. There is a need to create a specialized governmental agency on child and youth affairs, with an aim of co-ordination of efforts on reforming the national legislation and

legal practice in order to secure better protection and respect of rights and legal interests of the child.

5. The process of drafting legislation on Juvenile Commissions should be accelerated. This legislation should correspond to the country's social, economic and political conditions. It should also take into consideration the experience of other countries.

6. Government and civil society should discuss a possibility to create a post of juvenile ombudsman that would provide for respect of the status, rights and interests of the child and monitor the treatment of juveniles by the law-enforcement agencies and other official structures. In other case, the specialized department should be set up under the general ombudsman that is being created in Kazakhstan

? Reforming the practice, approaches and procedures.

?.1. General measures of implementation.

7. The formal approach to care of the child should be changed and replaced by the respect and realization of rights of the child. Children should be encouraged to express their individuality and their abilities, to become independent and responsible citizens in the future. The attitude to children as to the objects of social welfare should be complemented by the recognition of children as of righteous participants of legal processes that have the whole spectre of inalienable human rights and freedoms.

8. Public education and information campaigns should change the public mentality diverting it from the existing agism based on discriminative stereotypes and traditions and orienting it at the recognition of the rights of the child and gender equality. Media campaigns and education problems should be aimed at removing these stereotypes.

9. Crisis services should be available for families in difficult situations, including counselling for alcohol and drug addicts, unemployed parents. These services should be aimed at prevention of situations when parents refuse from their children. Government should set up programs for rehabilitation of the broken families, paying close attention at the status of women and female children in such families.

10. The Government should open the dialogue with NGOs by conducting seminars, round-tables and conferences aimed at discussing the issue of homeless children, ways to prevent the exploitation of children, establishing the dialogue between public schools and the community.

11. To eliminate discrimination of girls the Government should introduce education programs aimed at stimulating career aspirations of girls. The Government should pay special attention to promoting interest of women in seeking the employment and career-building. There is a need to review the outdated standards of professional training for girls and women. Government should invest in IT education for women.

?.2. Civil rights and freedoms

?.2.1. Right to be free from torture or other cruel, inhuman or degrading treatment or punishment.

12. Violence against children remains a problem that has to be addressed effectively. This is especially true of widespread domestic violence. Safeguards offered by the legal system of the state are clearly insufficient, and the assistance provided by governmental bodies is inadequate. Thus, we urge the Government to adopt a law on domestic violence that would contain provisions protecting children from domestic violence. This law should be drafted with active participation of experts and non-governmental organizations. We believe that the law on domestic violence should provide for efficient general civil and legal means of protection, including preventive measures. The court or other governmental body shall be able to provide such protection to the child that faces a threat of violence or abuse. Such means of protection should complement the more permanent measures, such as exclusion orders for children or non-molestation orders, that have to be accompanied by other measures such as conversational meetings with the offender.

?.3. Family environment and alternative care

?.3.1. Children deprived of family environment

13. For successfully tackling the issue of homelessness of children a separate public program is needed. For this, the Government has to study the information on children attending school and on dropouts throughout the country. A modern system of monitoring the attendance should be elaborated and introduced in pilote schools.

?.3.2. Adoption

14. Government should adopt new ethical rules and principles of adoption in accordance with the international practice and standards. The provision on secrecy of adoption should be abolished in order to have adequate supervision of adoptive parents in order to protect the rights and interests of the child as required by the Articles 7 and 8 of the Convention.

15. In connection with the numerous facts of sale of children under the disguise of adoption, the bodies of guardianship responsible for making decision on adoption should follow a clear procedure of making sure that the living conditions, employment, income and personal qualities of adoptive parents are adequate. The mechanism of supervision of safety of the child in the first years of his or her life in the adoptive family should also be drafted.

16. Some adoptive parents returned the child back to orphanage because they were not ready to face their parental duties. In several cases after such return children committed suicide. These facts demonstrate the necessity for special training of future adoptive parents. The preliminary stage of adoption should also be prolonged, so that adoptive parents would have more time to think about their steps, receive necessary advice and acquire needed skills.

17. A network of social workers should be developed. These workers would contact the adoptive parents, help them to avoid crisis situations, help the children and the family to adapt to each other.

18. Government should increase the scale of co-operation with NGOs and use their experience and potential both when conducting research in this area and assisting and training the adoptive parents, social workers, organising the advisory and counselling services at the children's institutions and etc.

?3.3. Protection from abuse and negligent treatment, and physical and psychological recovery and social reintegration of a child.

19. The child-victim of abuse should be given a legal status. There is a need to develop mechanisms that would allow to determine the degree of physical or psychological damage to the health of the abused child, to introduce new judicial expertise based on psychological testing of the child with results that would carry weight in court.

20. There is a need to develop institutions (services, programs) for providing assistance and reintegrating the child.

21. It is necessary to develop a clear procedure that the child could use to seek help through the bodies of guardianship, the Inspection on Juveniles or at school. If the child is not able to seek help on his own there should be a provision requiring the above-mentioned institutions to provide obligatory protection.

22. Targeted campaigns should change the mentality of the society that views maltreatment of children as a necessary element of up-bringing or as a usual thing.

23. Non-governmental child services and programs aimed at rehabilitation and reintegration of child-victims should receive state support.

24. The Government in co-operation with NGOs should develop an efficient system of assessment and monitoring of the status of child victims. Based on the assessment system the exact information on such children should be gathered and updated regularly.

?4. Primary healthcare and welfare

?4.1. Children with special needs

25. It is necessary to change the existing social stereotypes of disabled children and their abilities through development of educational programs and media campaigns.

26. Inclusive education for disabled children should be secured by the law and developed in practice. Segregation of children with special needs should be eliminated.

27. Rights of mentally disabled children should be protected by legal guarantees. Their status should be regulated legislatively at least in the separate section of the law on the rights of the child.

?4.2. Education, recreation and cultural activity

28. Governmental agencies (Ministry of Education and Science, Ministry of Interior, Agency on Statistics and Agency on Demography and Migration) should coordinate their efforts on general identification of the children of school age and their return to school.

30. The system of secondary school education should include the Concept of the legal education. NGO experience of legal education of children should be used on the regular basis as a part of a mandatory school program. Children should be allowed to use alternative textbooks and study-guides for the period of transition while the new Kazakhstani textbooks are being published.

31. Children should be involved and participate in the decisions on education issues.

32. Psychological services should be provided in children's homes, CTIARJ and in secondary schools.

33. Local authorities – akimats (local administration) and maslikhats (local councils) – should participate in the development of alternative and informal education for disabled children, for refugee children, at special schools for children with deviant behaviour, at the boarding schools and CTIARJ.

34. The system of alternative education of children and training of teachers should be extended in order to improve access to education, develop creative approaches to teaching in order to involve children into the study process.

35. When addressing the issue of low level of psychological adaptation of children or low level of attendance of school, government should develop cooperation with non-governmental, independent research and education organizations.

36. International, non-governmental organisations and state agencies should work together to elaborate the supplementary/alternative manuals and guides both for teachers and for children. These guides should be based on the interactive innovative leading methods aimed at changing the approaches to teaching (relations between the teacher and the student) in order to stimulate the interest of children.

37. The National Report on Education of Children in Kazakhstan should be based on the analysis of the main directions for the change aimed at universal education of children in the country.

2.5. Special measures of protection

2.5.1. Refugee children

38. There is a clear necessity to adopt a separate law on refugees (the project of such law, according to our sources, has been drafted by the Government of the Republic of Kazakhstan). It is very important that such law would provide for and contain the provisions of the Convention on the Rights of the Child relating to protection of a refugee-child, whose parents or other members of the family can not be found. The child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason.

39. The Article 30 of the Constitution of Kazakhstan dealing with the right of the child to education should be officially interpreted and should include refugee and repatriate children as well as other non-citizen children residing at the territory of the country. There is a need to develop and introduce alternative forms of education for repatriate and refugee children.

40. Oralman children should be accorded the special adaptation procedure to help them to enter the Kazakhstani schools.

41. Conducting media campaigns will allow attract the attention of the wide public to the existing problems of providing children, particularly refugee and homeless children, with education.

2.5.2 Children in the system of juvenile justice administration

42. A part of the legacy of the totalitarian regime – the criminal policy should be thoroughly changed. It is necessary to improve the current Criminal and Criminal-Procedural Codes. The Criminal Code should contain a minimal amount of articles and sanctions that include imprisonment as a measure of punishment. Alternative sanctions (fines, correctional works) should be made use of. The institute of additional investigation that leads to frequent violations of human rights should be removed from the Criminal-Procedural Code.

43. Kazakhstan needs a system of juvenile justice that would include an independent juvenile court, juvenile prosecution, juvenile lawyers, interrogation and investigation of juvenile cases.

44. Criminal legislation on administration of justice should reflect the specifics of the juvenile cases. Criminal liability should take into account the age specifics.

45. The Law “On Juvenile Courts” should be adopted. The key provisions of this law would regulate: tasks and competence of juvenile courts, measures of protection of rights and interests of juveniles; actions of persons participating in proceedings on juvenile cases; grounds and conditions of juvenile cases; order of review of juvenile cases. Juvenile court shall take all the cases with disputes arising from labour, study or civil relations where one of the participating sides is a juvenile or his legal representative.

46. In all of the criminal cases a psychological testing of the juvenile shall be conducted in order to determine the level of psychological development of the child.

47. Staff of every district (city) prosecutor’s office should include a juvenile prosecutor. All of the juvenile cases at the first instance should be tried only by the collegial court. The sentence of the juvenile court should be invariably reviewed in order of cassation by the court of the second instance.

48. Employers should be obliged to create workplaces for juveniles sentenced to conditional term. It would expedient to set up an employment center for juveniles. Rehabilitation center for juveniles that served their sentences should be created with

participation of legal experts, psychologists and doctors. The right of convicted juvenile to his housing should be preserved throughout the period of him serving his sentence.

?5.3. Children deprived of their liberty, including any form of arrest, detention, imprisonment or placement in the correctional institution.

49. At present time Kazakhstan is reforming its criminal policy and the system of law-enforcement agencies. The penitentiary system has been transferred from the Ministry of Interior to the Ministry of Justice. International experience shows that this development invariably leads to positive results. However, the preliminary investigation prisons (CISO) are still under the control of the Ministry of Interior. The very next necessary step is to transfer them under the jurisdiction of the Ministry of Justice.

50. Administration of punishment with respect to juveniles should be as humane as possible. The psychological and physiological characteristics of children require an attentive and careful attitude. Legislation should secure that the conviction of the underage person would not be recognized and reflected in his or her personal file, so that there will be no stigma attached.

51. There is a number of subordinate norms and departmental regulations and instructions that allow restriction of freedom of juveniles without fully complying with the provisions of the criminal, criminal-procedural and criminal-executive legislation. These documents should be put in conformity with the Constitution and laws of Kazakhstan.

52. The specialized educational-correctional institutions should either be eliminated or their activity should be regulated by the separate law and by new amendments to the criminal, criminal-procedural and criminal-executive codes.

53. CTIARJ should be transformed into the center of assistance and temporary placement of lost, abandoned and homeless children. This institution should be taken out of jurisdiction of the Ministry of Interior, demilitarized and transformed in the efficient establishments aimed at psychological rehabilitation and social adaptation of minors.

54. Juvenile police departments aimed at prevention of juvenile crime should be taken from under the jurisdiction of the Ministry of Interior. Or without changing the juvenile police status government should create new demilitarized agency for social adaptation of children offenders that are not liable to criminal or administrative responsibility.

? . 5 . 4 . Inadmissibility of torture or other cruel, inhuman or degrading treatment or punishment, and prohibition of capital punishment and life imprisonment

55. Kazakhstan joined the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment on 29 of June 1998. However, the current national legislation does not contain a definition of torture and does not directly and explicitly prohibit of torture or other cruel, inhuman or degrading treatment or

punishment. Kazakhstani criminal legislation should be changed in conformity with the CAT and the applicable provisions of the Convention on the Rights of the Child. National legislation should contain the notion of torture and sufficient measures of protection.

?.5.5. Economic exploitation of children, including child labour.

56. Staff of police departments, bodies of guardianship, departments of labour and social protection, departments on youth affairs, commissions on women and children, teachers, parents – members of the school councils, prosecutors and tax officers should be undergo training on methods of counteracting economic exploitation of children. The well-developed monitoring and assessment programs should indicate the progress in identifying and combating exploitation. The complaints of children and information coming form the members of community should be also used as an index of developments in this area.

57. Using school-children to clean the streets should be prohibited.

58. The system of supervision and control of employment of children by private businesses and entrepreneurs should be developed.

?.5.6. Sexual exploitation and sexual abuse.

59. In order to protect children from sexual harassment and sexual exploitation government should support the public awareness and education campaigns including education at schools. Public should understand the problem and the importance of responsibility. The media together with NGO can conduct an education campaign on forming healthy relationships removing the possibility of sexual exploitation of children. Child organizations experience difficulties in conducting public awareness campaigns due to shortage of funds. We call on UNICEF to support the large-scale campaigns against the sexual harassment and sexual abuse of children.

60. Basic legal education for children supported by the improvement of the national child legislation is needed.

61. There is a need to set up specialized crisis centers that could host children for a long periods of time and could provide qualified psychotherapeutic services to child victims of domestic and sexual violence. The draft law on the rights of the child should mention the procedure of providing assistance to the child victims of sexual and physical violence. This procedure should include crisis centers and regulate the annual financing of rehabilitation and assistance programs and centers. At present time the working group ignores these proposals.

?.5.7. Sale of, traffic and abduction of children.

62. Unlike the information Kazakhstan being the country of origin for trafficking in women, there is no reliable data on mass trafficking in children. However, the provisions of criminal and civil legislation are inadequate. There is a need to promote pointed research of the child traffic.

63. The status of traffic victim should be legislatively defined. Procedure for identification of victim should be regulated by the legislation. Standards and precedents should be developed and supported by legal provisions.

64. In cooperation with NGO the government should develop national standards on providing legal and any other types of aid to the victims of traffic, particularly children. At its current state the law-enforcement and judicial system is not ready to tackle these types of crimes effectively. Government should train experts on combating sex-trade, on investigating sex-crimes and revealing organizations that work as a cover for traffickers. NGOs could help with training these specialists on working with victims of traffic.

65. Evidently, the current criminal legislation and the separate law on the rights of the child should contain prohibitive and restorative measures for protection of rights of the child victim of traffic or abduction.

66. The NGO experience of hotlines might be useful when government will set up specialized hotlines for illegal migrants and traffic victims.