

(Translated from Russian)

Questionnaire of the Special Rapporteur, Ms. Margaret Sekaggya, on national human rights institutions and human rights defenders

Kazakhstan

•	<p>(a) The post of Commissioner for Human Rights (Ombudsman) in Kazakhstan was created on 19 September 2002 by Presidential Decree No. 947. The Decree also approved the Regulations on the Commissioner for Human Rights.</p> <p>Presidential Decree No. 992 of 10 December 2002 approved the Regulations on the National Human Rights Centre, the office of the Commissioner for Human Rights. These decrees establish the powers, main aims and functions and activities of the Centre.</p> <p>(b) The Ombudsman's activities and decisions are advisory in nature, as is the case with counterpart structures in other States.</p> <p>The role of the Commissioner for Human Rights fully complies with a number of the Paris Principles:</p> <ul style="list-style-type: none">• The Commissioner is approved by the President in agreement with the chambers of Parliament. The Regulations include an exhaustive list of grounds for removing the Commissioner from his or her post• The Commissioner is authorized to ask officials for any information regarding human rights and freedoms, perform inspections of institutions, including closed ones, and, in circumstances of great social significance, apply to the President, Parliament or Government• The Centre may receive and consider communications sent from any of the country's territorial entities, including through its website. Consideration is currently being given to establishing regional representations of the Commissioner• The Commissioner sends recommendations to Government agencies. In addition, an annual performance report containing all the communications and recommendations which have been made by the Commissioner is sent to the President so that their implementation may be monitored• The Commissioner works actively with both civil society institutions and international organizations on a wide range of issues <p>As a whole, the National Human Rights Centre endeavours to bring its operations fully in line with the Paris Principles.</p>
•	<p>(a) The Commissioner, following prescribed legal procedures, has the right to:</p> <ul style="list-style-type: none">• Request any officials and organizations, except those listed in paragraph 18 of Presidential Decree No. 947, to supply information necessary for complaints to be considered• Be received without delay by directors and other officials of Government bodies and other organizations

	<ul style="list-style-type: none"> • Propose that the chambers of Parliament hold hearings on the outcome of the consideration of complaints made by Kazakh citizens, foreign nationals and stateless persons, and also on information received by other means relating to violations of such persons' rights and freedoms • Take part in the work of international human rights organizations and other NGOs involved in the protection of human rights • Contract organizations and professionals to carry out specialist work and consultancies to draw up reports clarifying circumstances related to violations of human and civil rights • Take measures to defend violated human and civil rights and freedoms • On the presentation of official authorization, enter and stay on the territory and in the premises of State agencies and organizations, including military quarters and compounds, visit detention facilities and meet and interview detainees • Apply to the competent State agencies or officials requesting that disciplinary, administrative or criminal proceedings be instituted against officials who have violated human and civil rights and freedoms • Publish official reports in the media on the findings of investigations <p>(b) The post of Commissioner for Human Rights was created to improve the system for protecting citizens' constitutional rights and freedoms. The Commissioner has a mandate to consider claims by Kazakh citizens, foreign nationals and stateless persons against actions and decisions of officials or organizations which violate the rights and freedoms they are guaranteed under the Constitution, legislation or the international treaties to which Kazakhstan is party.</p> <p>(c) The Commissioner does not examine complaints concerning the actions or decisions of the President, the Parliament and its members, the Government, the Constitutional Council, the Procurator-General, the Central Electoral Commission or the courts.</p> <p>Explanation:</p> <p>Under article 47, paragraph 2, of the Constitution, the President of Kazakhstan "shall be held liable for actions carried out during the performance of his or her duties only in the event of treason, for which he or she may be removed from power by Parliament". In this regard, on the grounds of constitutional immunity it is prohibited for complaints against the activities of the President to be considered.</p> <p>Pursuant to article 52, paragraph 4, of the Constitution, during their term in office, members of Parliament may not be arrested, summoned before the authorities, subjected to administrative penalties imposed through the courts, or prosecuted in criminal proceedings without the agreement of the relevant chamber of Parliament, except if they are detained at the scene of a crime or have committed serious offences.</p> <p>The provisions prohibiting the consideration of complaints against the Government hold true against the Government as a collegiate body, but the Commissioner for Human Rights may consider complaints against executive bodies within the Government.</p>
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	<p>Also, despite the fact that the Commissioner does not consider complaints against the Government, paragraph 19 of Presidential Decree No. 947 empowers the Commissioner to help to “improve Kazakh legislation on human rights and freedoms and the forms and methods for protecting these rights and freedoms, harmonize legislation with the universally accepted principles and standards of international law and foster international cooperation in the area of human rights by submitting proposals to Government bodies”, including in respect of laws and regulations issued by the Government.</p> <p>The prohibition on considering complaints against the Procurator-General applies exclusively to the incumbent of this position and does not prevent the Commissioner from examining complaints against persons working in bodies attached to the Office of the Procurator-General.</p> <p>While the Commissioner is not authorized to consider complaints related to the activities of the Central Electoral Commission, he or she does have the right to consider complaints against local electoral commissions. For example, during the last Majilis parliamentary elections of 15 January 2012, the Commissioner did initiate proceedings in respect of all complaints about the activities of local electoral commissions.</p> <p>(d) The Commissioner and National Human Rights Centre staff carry out inspection visits of closed and semi-closed State penitentiary facilities and social welfare institutions. Citizens’ applications are considered on a daily basis and citizens are invited to discuss individual issues. The Ombudsman works actively with civil society on a broad variety of issues. International cooperation is one of the Commissioner’s most vital areas of activities and includes presentation, awareness-raising, education and the exchange of experiences.</p> <p>The Commissioner promotes legal education in the area of human rights and freedoms and is involved in developing educational programmes and raising public awareness of national legislation and the most important international human rights instruments.</p>
<ul style="list-style-type: none"> • 	<p>(a) The National Human Rights Centre protects human rights defenders in accordance with its standard procedure.</p> <p>(b) The Centre has no additional mechanisms for protecting human rights defenders.</p>
<ul style="list-style-type: none"> • 	<p>(a) There have been no cases of threats against or harassment of the Centre’s staff as a result of actions carried out on its behalf.</p> <p>(b) The Centre has no additional mechanisms for protecting its staff.</p>
<ul style="list-style-type: none"> • 	<p>(a) In accordance with article 36 of the Regulations on the Commissioner for Human Rights, the Centre’s activities are funded by the State budget. Budgeting procedures are as follows: the Centre’s accountant draws up a budget request for the relevant financial year, which is sent to the Ministry of Finance. The Ministry submits its decision on the budget request to the Government’s National Budget Commission. Once the Ministry has received the Commission’s approval, it includes the Centre’s budget request in the bill on the State budget for the given financial year and Parliament then approves the bill. Representatives of the Ombudsman’s office (accounts and management) have the right to participate at any stage of the procedure to defend their case.</p> <p>(b) There are no financial obstacles to the Centre’s activities.</p>

•	<p>(a) (b) The Commissioner is appointed by the President following consultations with parliamentary committees on the basis of a shortlist of candidates drawn up by the President. The individual appointed to the post of Commissioner for Human Rights must have Kazakh citizenship and an advanced level of education in law or the humanities and have at least three years' experience in a legal specialization or the area of human and civil rights and freedoms.</p> <p>The Commissioner's term of office is five years from the date of his or her appointment.</p> <p>The Commissioner appoints and may dismiss the director of the National Human Rights Centre from his or her post.</p> <p>The staff of the Centre are civil servants. They are recruited and assigned to vacant posts on a competitive basis in accordance with the requirements of the Civil Service Act of 23 July 1999 (No. 453).</p> <p>Information on the Centre's vacancies is published in the media with an announcement of a competitive examination for places. Any Kazakh citizen with an advanced level of education in law or the humanities has the right to take the examination.</p> <p>Paragraph 14 of the Regulations on the Commissioner for Human Rights contains the following list of grounds for the early removal of an Ombudsman from his or her post:</p> <ul style="list-style-type: none"> • Resignation of the Commissioner's own volition • Poor health, with a medical report confirming that he or she is prevented from exercising his or her professional duties • Entry into legal force of a court decision recognizing the Commissioner as having limited or no dispositive capacity or the application of compulsory medical measures against him or her • Entry into legal force of a guilty verdict • Loss of Kazakh citizenship • Death of the Commissioner or the entry into force of a court decision declaring that the Commissioner is dead • Appointment or election of the Commissioner to another post or his or her transfer to a new job • Non-compliance with the obligations or restrictions specified in the Regulations • Gross abuse of official powers or conduct incompatible with his or her official position which undermines the authority of the State • Departure from Kazakhstan for permanent residency abroad
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