

Joint Submission to the  
Human Rights Council

# UNIVERSAL PERIODIC REVIEW

## KAZAKHSTAN

48th Session  
4th Cycle  
16 July, 2024

Main Submitting Organisation:

*Nationality For All (NFA)*

Co-submitting Organisation:

*Statelessness and Dignified Citizenship Coalition –  
Asia Pacific (SDCC-AP)  
Central Asian Network on Statelessness (CANS)*



**NATIONALITY FOR ALL**  
Advancing the right to a nationality in the Asia-Pacific region



The Central Asian Network On  
Statelessness



**STATELESSNESS AND  
DIGNIFIED CITIZENSHIP  
COALITION ASIA-PACIFIC**

**Joint Submission  
to the Human Rights Council  
at the 48th Session  
of the Universal Periodic Review.**

# KAZAKHSTAN

## Introduction

1. Nationality for All (NFA), the Statelessness and Dignified Citizenship Coalition - Asia Pacific (SDCC-AP), and the Central Asia Network on Statelessness (CANS) make this joint submission to the Universal Periodic Review (UPR), on the right to nationality and human rights challenges on statelessness in Kazakhstan.
2. This submission focuses on:
  - I. Lack of legal safeguards to prevent renunciation, loss, or deprivation of citizenship.
  - II. Childhood statelessness
  - III. Administrative barriers in accessing citizenship
3. Nationality For All (NFA) is a regional organization working to promote the right to nationality and address statelessness in the Asia Pacific region. NFA works closely with stateless persons, persons affected by statelessness, grassroots organizations, activists, and national NGOs. NFA aspires to increase the proximity to power of persons with lived experience of statelessness through their meaningful participation in the statelessness ecosystem.
4. The Central Asian Network on Statelessness (CANS) is a network of organisations in Central Asia engaging with governments, civil society, and international bodies towards the prevention and reduction of statelessness in the region. CANS contributes legal aid and expertise to resolve individual cases of statelessness, monitors statelessness situations in the region, and determines strategies to eliminate their root causes. Promoting education and research campaigns towards the eradication of statelessness, CANS encourages dialogue for information and experience exchanges.
5. Statelessness and Dignified Citizenship Coalition - Asia Pacific (SDCC - AP) is a newly formed regional coalition of civil society organizations and activists working together to address statelessness and ensure the right to nationality for all in the Asia Pacific region. SDCC's work includes advocacy, research, and capacity building.

## Previous UPR of Kazakhstan under the Third Cycle

6. Kazakhstan was previously reviewed during the 14th, 28th, and 43rd Sessions of

the UPR, in 2010, 2014, and 2019 respectively.

7. During the 43rd Session, Kazakhstan received a recommendation from Paraguay to “Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness”<sup>1</sup> and from Honduras to “ratify the Convention relating to the Status of Stateless Persons”<sup>2</sup>, both of which were noted by Kazakhstan.

## **Kazakhstan’s International obligations**

8. Kazakhstan has ratified core international human rights treaties, inclusive of 1951 Refugee Convention and its 1967 Protocol, the International Convention of Civil and Political Rights (ICCPR), International Convention on Economic, Social, and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Committee on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). There were no notable reservations from Kazakhstan on these ratifications.
9. Kazakhstan has international obligations to protect the right to a nationality without discrimination under multiple UN treaties. These include, among others, the ICCPR (see Articles 2, 24, 26), the CRC (see Articles 2, 3, 7 and 8), the CEDAW (see Article 9), the CRPD (see Article 18).<sup>3</sup> As outlined in Article 24 of the ICCPR, every child has the right to acquire a nationality. Article 2 and 26 of the ICCPR also ensure non-discrimination of ICCPR rights, including freedom of movement (Article 12) on the basis of nationality. Furthermore, the right to nationality is protected under Article 15 of the Universal Declaration on Human Rights (UDHR). The UDHR also provides each individual the “right to leave any country, including his own, and to return to his country” which is similarly reflected in Article 5 of the CERD, to which Kazakhstan is a signatory.<sup>4</sup> CERD also outlines in Article 1.1 that states should ensure non-discrimination based on nationality or legal status. Additionally, the State is party to the 1951 Refugee Convention, Article 33 of which creates an obligation of non-refoulement of refugees on state parties.<sup>5</sup>
10. Kazakhstan has not ratified the two Statelessness Conventions namely the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. The Law on Citizenship does not provide safeguards against statelessness in the processes for renunciation, loss, or

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<sup>1</sup> Paraguay (Rec. 139.24), A/HRC/43/10

<sup>2</sup> Honduras (Rec. 139.25), A/HRC/43/10

<sup>3</sup> ‘Multilateral Treaties Deposited with the Secretary-General’ (*UN Treaties Collection*) <[https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=\\_en](https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=_en)> accessed 16 July 2024.

<sup>4</sup> Article 5, Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined sixth and seventh periodic reports of Kazakhstan*, 14 March 2014, CERD/C/KAZ/CO/6-7, available at: <https://www.ohchr.org/en/documents/concluding-observations/cerdkazco6-7-concluding-observations-combined-sixth-and-seventh>

<sup>5</sup> Article 33, Convention and Protocol Relating to the Status of Refugees, <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>

deprivation of Kazakh citizenship, or against childhood statelessness at birth in cases where the children's foreign parents are not able to transmit their nationality to them.

11. Under CEDAW, Kazakhstan is required to ensure gender equality in nationality laws. In the 2019 concluding observations by the CEDAW Committee, it was identified that reacquisition of nationality after loss of nationality through marriage is not always possible and, therefore, legislation should be reviewed to ensure that women can re-acquire nationality in cases of dissolution or non-occurrence of marriage in Kazakhstan.<sup>6</sup> It was also recommended that Kazakhstan ensure the right to appeal to protect against arbitrary deprivation of nationality.
12. Recent concluding observations by the CERD Committee also included recommendations for Kazakhstan to improve data collection on the number of stateless persons in the territory.<sup>7</sup>
13. Kazakhstan has also already committed to ensuring that every child's birth is registered immediately as a result of ratifying the ICCPR and the CRC. However, the State has been non-compliant with its obligations under ICCPR, CRC, and its statelessness pledge of 2019 due to the lack of proper implementation of birth registration to children of undocumented parents<sup>8</sup>. This also relates to Kazakhstan's obligations under the CRC which requires that signatory states leave no child to statelessness.<sup>9</sup> The CRC Committee in 2015 recommended that Kazakhstan ensure stateless children access to free education and health care services.<sup>10</sup>
14. The Committee against Torture, in its Concluding Observations, encouraged Kazakhstan to accede to the two Statelessness Conventions and asked the State to "provide adequate safeguards against statelessness at birth, in cases of acquisition of Kazakh nationality, as well as in cases of renunciation, loss, or deprivation of Kazakh citizenship".<sup>11</sup>

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<sup>6</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations on the fifth periodic report of Kazakhstan*, 12 November 2019, CEDAW/C/KAZ/CO/5.

<sup>7</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined sixth and seventh periodic reports of Kazakhstan*, 14 March 2014, CERD/C/KAZ/CO/6-7, available at: <https://www.ohchr.org/en/documents/concluding-observations/cerdckazco6-7-concluding-observations-combined-sixth-and-seventh>

<sup>8</sup> 'Statelessness in Kazakhstan: Analysis of National Legislation' (UNHCR 2023) 3rd Edition <<https://www.unhcr.org/centralasia/wp-content/uploads/sites/75/2023/06/UNHCR-Kazakhstan-Statelessness-ENG-2023.pdf>>; UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>.

<sup>9</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>

<sup>10</sup> Committee on the Rights of the Child, *Concluding observations on the fourth periodic report of Kazakhstan*, 30 October 2015, CRC/C/KAZ/CO/4

<sup>11</sup> Committee Against Torture, *Concluding Observations on the Fourth Periodic Report of Kazakhstan*, 9 June 2023, CAT/C/KAZ/CO/4, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPpRiCAqhKb7yhsp2DytAl2p2q0VZmhsW8WRtxPf2pVOFaOoKN%2FwajVIDNjW7I802fbUOtquBgE%2FoiUiJwkcBrTQhi2Jxwr76V1QLazDw93BR71s1VTYaRwQnp>

## Statelessness in Kazakhstan

15. Statelessness in Kazakhstan is a resultant of the dissolution of the Soviet Union, where in 2009, the National Consensus stated 57,000 persons were without citizenship.<sup>12</sup> Since then, Kazakhstan has made considerable progress in reducing statelessness in the country, where it currently hosts around 8,000 stateless people.<sup>13</sup>
16. According to the Law on citizenship, to acquire citizenship of the Republic of Kazakhstan one shall meet the requirement of a period of permanent residence in the territory of the Republic of Kazakhstan for at least 5 years, or a period of marriage to a citizen of the country – at least 3 years.
17. Those who are at risk of statelessness in Kazakhstan generally comprise of children born to two foreign parents within Kazakhstan’s territory, children born to refugees, undocumented parents, or parents who are otherwise unable to confer nationality to their child, as well as children born to stateless parents who are not permanent residents of Kazakhstan.<sup>14</sup>

## Deprivation of Citizenship through National Law

18. Despite UNHCR's calls for decisive measures to reduce statelessness, the Republic of Kazakhstan has not only failed to accede the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, but has adopted legislative provisions that contribute to statelessness, as citizens of Kazakhstan deprived of citizenship will become stateless persons.
19. The citizenship law of Kazakhstan operates through both *jus soli* and *jus sanguinis* provisions, providing that a child is considered a citizen at birth if *both* of their parents are citizens of Kazakhstan, regardless of their place of birth.<sup>15</sup> Children born inside of the territory of Kazakhstan will have citizenship if they have at least one parent who is a Kazakh citizen.<sup>16</sup>
20. Currently, the law defines a stateless person as any person who is not a citizen of Kazakhstan and does not have proof of citizenship elsewhere, placing the burden of proof on the stateless person.<sup>17</sup> Kazakhstan could further improve its legislation by bringing its definition of a stateless person in line with the definition provided

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<sup>12</sup> ‘Statelessness in Kazakhstan: Analysis of National Legislation’ (n 8).

<sup>13</sup> ‘Kazakhstan: Lifting Shadows of Statelessness’ (*UN Sustainable Development Goals*, 19 December 2022) <<https://unsdg.un.org/latest/stories/kazakhstan-lifting-shadows-statelessness>, <https://unsdg.un.org/latest/stories/kazakhstan-lifting-shadows-statelessness>> accessed 17 October 2023.

<sup>14</sup> *Law of the Republic of Kazakhstan on Citizenship of the Republic of Kazakhstan* (1991) Chapter 2, Article 11(1).

<sup>15</sup> *Law of the Republic of Kazakhstan on Citizenship of the Republic of Kazakhstan* (1991) Chapter 2, Article 11.

<sup>16</sup> *Law of the Republic of Kazakhstan on Citizenship of the Republic of Kazakhstan* (1991) Chapter 2, Article 12.

<sup>17</sup> ‘Statelessness in Kazakhstan: Analysis of National Legislation’ (n 8).

by the 1954 Convention, which determines status of a potential stateless person by referring to national legislation on citizenship of the country the person has or had ties with.

21. Kazakhstan's legislation currently does not protect the right to an interview, access to free legal aid, and the ability to appeal negative decisions at the first instance. The right to due process is further violated due to the long drawn process of an appeal for an individual whose citizenship application has been rejected.<sup>18</sup>
22. Refugees, asylum-seekers, or stateless people may still face risks of being expelled from the state as punishment for criminal or administrative offences, as well as by decisions of civil courts. The principle of non-refoulement is observed in the context of extradition, where the Criminal Procedure Code of Kazakhstan explicitly prohibits the extradition of individuals who may face threats of torture in the requesting state (Article 590, Part 1, Clause 7). However, similar provisions prohibiting the expulsion of foreigners (stateless persons, asylum seekers and refugees) who violate Kazakhstan's legislation are absent in the Criminal Code, Administrative Offences Code, and Civil Procedure Code. The inconsistent application of the non-refoulement principle through various legislative acts remains a concern, leading to a lack of assurance in upholding this principle.

### **Lack of Legal Safeguards Against Childhood Statelessness**

23. In Kazakhstan, permanent residency is an additional requirement for obtaining citizenship, which limits legal protections against statelessness.<sup>19</sup> A child born outside Kazakhstan can acquire citizenship if both parents are citizens, or if one parent is a citizen and had permanent residency in Kazakhstan at the time of the child's birth.<sup>20</sup> The law also requires written consent from the parents to determine the citizenship of children born to at least one Kazakh citizen parent if both parents reside permanently outside of Kazakhstan, which creates risk for childhood statelessness if both parents do not provide such written consent.<sup>21</sup>
24. While universal access to birth registration is key to the prevention of statelessness, UNHCR notes that “children born to undocumented parents are not always issued medical birth certificates in full compliance with the provisions of Article 187 of the Code on Marriage and Family and/or these certificates lack a reference that the mother’s identity is recorded based on her statements.”<sup>22</sup>
25. Furthermore, the Code on Marriage and Family puts children born to undocumented parents at the risk of statelessness as it does not regulate the birth

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<sup>18</sup> ‘Statelessness in Kazakhstan: Analysis of National Legislation’ (n 8).

<sup>19</sup> *ibid.*

<sup>20</sup> *Law of the Republic of Kazakhstan on Citizenship of the Republic of Kazakhstan* (1991) Chapter 2, Article 12.

<sup>21</sup> *Law of the Republic of Kazakhstan on Citizenship of the Republic of Kazakhstan* (1991) Chapter 2, Article 12.

<sup>22</sup> *Statelessness in Kazakhstan: Analysis of National Legislation’* (n 8).

registration of such children outside a medical institution.<sup>23</sup>

## **Administrative Barriers in addressing Statelessness**

26. In 2020, Kazakhstan implemented a national statelessness determination procedure aimed at establishing the legal status of individuals residing in Kazakhstan who lack Kazakh citizenship or proof of citizenship from any other country. This procedure helps facilitate the legalization of stateless persons' residency in Kazakhstan.<sup>24</sup> While the national law as well as policy in Kazakhstan indicate the presence of a stateless determination procedure (SDP), there have been concerns cited with its implementation.<sup>25</sup> An individual is often not granted the status of being stateless, as their residence address cannot be confirmed.<sup>26</sup>
27. Further, the requirement of showing documentation of absence or termination of citizenship in another state to obtain stateless status through the SDP presents a major barrier as states often do not administer such documents.<sup>27</sup> If administered, state bodies of Kazakhstan also often do not accept many forms of such a document.<sup>28</sup>
28. This legislation leaves the burden of proof to stateless people, which can leave some in limbo as they are unable to acquire the required documents for the SDP. While the introduction of the SDP is a significant achievement for Kazakhstan, UNHCR has noted that gaps in safeguards in the SDP legislation remain. This also creates barriers to stateless persons accessing naturalization as the SDP is required before qualifying for permanent residency, a prerequisite for naturalization.<sup>29</sup>
29. Under current legislation, stateless individuals must provide certificates proving the absence or termination of citizenship from another country, as well as no criminal record certificates from the relevant authorities.<sup>30</sup> However, in practice, some countries either do not issue these certificates or provide documents with wording that Kazakhstan's authorities do not accept. This results in individuals being unable to resolve their status, forcing them to remain stateless or have an undetermined nationality.<sup>31</sup>
30. In terms of irregular migrants crossing borders, there exists no practical mechanism for the referral of asylum-seekers from the border authorities to the competent authorities within the territory of the country. Despite the National Law on Refugees stipulating that individuals who do not possess valid identity documents or cross the border in an irregular manner should be able to apply for asylum, there exists no formal referral procedure for handling such cases. In

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<sup>23</sup> 'Statelessness in Kazakhstan: Analysis of National Legislation' (n 8).

<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*

<sup>28</sup> *ibid.*

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*

practice, persons seeking asylum at border points, including international airports and transit zones, not only risk being denied entry into Kazakhstan but also face the risk of detention and being penalized for irregular border crossing. Moreover, they are at a risk of refoulement without any consideration of their asylum application, going against Kazakhstan's obligations on the Refugee Convention.

## **Recommendations**

31. Based on the above information, the co-submitting organizations urge reviewing States to make the following recommendations to Kazakhstan:

- I. Take all necessary steps to repeal national legislation promoting statelessness by ensuring the definition of a stateless person aligns with the 1954 Convention.
- II. Guarantee the right of every person to seek asylum in Kazakhstan and ensure that no person is expelled, extradited, removed, pushed back or in any other way returned to a country where they would be in danger of being persecuted;
- III. Establish an accessible asylum and referral procedure at all border points, international airports, transit zones, and detention centres.
- IV. Ensure that all persons whose applications for asylum have been rejected have the right to lodge an effective appeal with suspensive effect on expulsion/extradition;
- V. Ensure that refugees and asylum-seekers are not penalized for irregular entry and stay in the country in line with Article 31(1) of the 1951 Refugee Convention;
- VI. Ensure all children born in Kazakhstan, including those of stateless, undocumented migrants, or those with undetermined nationality, are registered and issued birth certificates.
- VII. Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
- VIII. Streamline the naturalization process for stateless individuals by implementing a simplified determination procedure, which can be achieved by lowering the requirements for documentation, reducing fees, and shortening the residency period needed for naturalization.
- IX. Provide adequate legal safeguards and equal access to the courts for stateless persons in Kazakhstan.
- X. Improve the collection of data and information on statelessness, civil registration and legal identity more generally in Kazakhstan.



- XI. Ensure procedural guarantees, including the right to appeal negative decisions, are clearly stated and accessible.
- XII. Guarantee stateless persons the right to lawful residence, employment, education, and healthcare on an equal basis with nationals.
- XIII. Immediately amend legislation to provide identity documents to those who cannot prove their permanent residency in the country.
- XIV. Take measures to ensure that children born in Kazakhstan who would otherwise be stateless, have the ability to acquire nationality and have access to identity documents as full citizens.
- XV. Allow civil society, non-governmental, voluntary organizations, and individuals the freedom, autonomy, and necessary safety to advocate for and address socio-economic discriminations, including statelessness.