

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Unofficial translation

Addendum

Mission to Kazakhstan* **

Summary

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, undertook an official visit to Kazakhstan from 6 to 13 September 2010. The purpose of the mission was to gather first-hand information on the status of the realization of the right to adequate housing and other related human rights in Kazakhstan. In particular, the Special Rapporteur focused on the adverse impact of the global economic and financial crises on the enjoyment of the right to adequate housing and on the large-scale evictions or displacement of individuals and communities living in or around the cities of Astana and Almaty. During her visit to Astana and Almaty, the Special Rapporteur met with a wide range of Government representatives and non-State actors, and received testimonies from several people alleging violations of their right to adequate housing.

The Special Rapporteur welcomes the significant progress that the State has made in the implementation of the right to adequate housing at the national level. Such measures include the inclusion of specific provisions on adequate housing in the Constitution, the adoption of a number of legislative and policy measures, such as the Housing Relations Act of 1997 and the State housing construction programme for the period 2008-2010, and the elaboration of a number of incentives, such as a system of housing loans, rental subsidies and land allotments for the construction of residential houses, to facilitate access to affordable housing for individuals and households belonging to low-income and disadvantaged groups.

Despite the progress made, a number of key concerns remain. The legal and policy framework in the field of housing, and in particular the national legislation on forced eviction, do not comply fully with existing international human rights standards, such as the general comments of the Committee on Economic, Social and Cultural Rights and the basic principles on development-based evictions and displacement. National courts do not, in practice, apply norms of international treaties, nor do they refer to international human rights standards. There is a high rate of demolition of informal settlements and forced evictions without prior notification, any form of judicial control or review, or any provision of adequate compensation or alternative accommodation. Many individuals and households have been seriously affected by the financial and mortgage crisis. A large number of shareholders have

been deceived by private construction companies who left the country with their savings without completing the construction of the buildings, while others have been evicted, or have been threatened with eviction, as a result of their inability to repay credits and mortgage loans . Despite the emergency measures taken by the Government to mitigate the negative repercussions of the financial crisis, 42,000 shareholders are still waiting to receive their apartments .

The Special Rapporteur concludes with a series of recommendations aimed to assist the Government in its efforts to strengthen the effective enjoyment of the right to adequate housing.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and in Russian only .

** Late submission.

Annex

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Kazakhstan (6-13 September 2010)

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Introduction

1. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, undertook an official visit to Kazakhstan from 6 to 13 September 2010.

2. The purpose of the visit was to gather first-hand information on the status of the realization of the right to adequate housing and other related human rights in Kazakhstan. In particular, the Special Rapporteur decided to focus on:

a) Large-scale evictions or displacement of individuals and communities living in or around the cities of Astana and Almaty without the provision of appropriate protection and compensation, and the measures taken by the Government to ensure the protection of affected individuals and communities against development-based evictions related to urban renewal programmes;

b) The impact of the global economic and financial crises on the enjoyment of the right to adequate housing, and the measures taken by the Government to protect the most vulnerable individuals, households and communities within its jurisdiction from the adverse consequences of the crises.

3. During her visit, the Special Rapporteur met with several high-ranking officials of the Ministry of Foreign Affairs; the State Agency for Construction, Housing and Utilities; the Ministry of Labour and Social Protection; the local executive bodies (akimat) of Astana and Almaty; the Department of Interior Affairs of Astana and Almaty; the Supreme Court; the Commissioner for Human Rights (Ombudsman); the Human Rights Commission under the President of Kazakhstan; and the National Commission for Family Affairs and Gender Policy under the President. She also received testimonies from people affected by alleged violations of their right to adequate housing and met with a large number of representatives of civil society, including social movements and non-governmental organizations, in and around Astana and Almaty.

4. The Special Rapporteur would like to express her gratitude to the Government of Kazakhstan for its invitation and for the support provided to her throughout the visit. The standing invitation addressed to all special procedures mandate holders in July 2009 and the openness shown by the Government before and during the mission demonstrate its commitment to the promotion and protection of the right to adequate housing and its willingness to cooperate with the international community in the solution of the outstanding

problems faced by the country in this field. The Special Rapporteur also wishes to thank the Regional Office of the United Nations High Commissioner for Human Rights (OHCHR) in Bishkek and the United Nations Development Programme in Kazakhstan for their valuable cooperation and assistance in arranging the agenda for the mission.

II. Housing situation

5. In recent years, Kazakhstan has become a major economic power in Central Asia, thanks to its significant reserves of oil and natural gas. Economic growth has also supported the development of other sectors, in particular construction and banking.

6. In 1995, the Government decided to shift the capital of the newly-independent State from Almaty to Astana. This decision was accompanied by the investment of a significant amount of the State budget for the creation of a modern, world-class capital city. In turn, the large-scale urban renewal and city beautification programmes attracted a large number of internal migrants, who moved to the new capital from other parts of the country in search of employment opportunities in the construction sector and a higher standard of living. According to the census conducted in 2009, the population of Astana grew from 328,341 to 613,006 in the period from 1999 to 2009. Almaty, with a population of 1,365,632, remains the largest city in Kazakhstan. Like Astana, Almaty has also attracted a significant number of migrant workers, who moved to the main economic hub of the country after the economic crisis that followed the collapse of the Soviet Union. According to official estimates, the internal migration from rural to urban areas affects more than 300,000 people a year.

7. Owing to its economic performance, Kazakhstan has also become a major destination for migrant workers from other central Asian countries and from China. According to official estimates, Kazakhstan hosts between 500,000 and 1 million foreign workers, but other sources consider that the figure of two to three million migrants is more plausible. A considerable percentage of these migrant are employed in the construction sector.

8. This mass migration has put significant pressure on the availability of housing and urbanized land in the two main economic hubs in the country, leading to the construction of a number of informal settlements of dwellings on the outskirts of both cities. Owing to their informal nature, there are no reliable statistical data on the number of people living in these informal settlements. Such residential constructions are sometimes built in environmentally protected areas or in areas prone to floods or earthquakes.

9. Most of the above-mentioned informal dwellings lack basic amenities, such as kitchens, toilet facilities, electricity and running water, and occupants are constantly exposed to the threat of forced eviction by public authorities. The lack of a legal address de facto prevents informal settlers from obtaining registration at their place of residence, which is an essential legal requirement for access to a number of social services provided by the State, including

10. Since independence, the Government of Kazakhstan has dramatically changed its housing policies, moving from a State-driven housing policy to a new approach in which the State aims to facilitate access to home ownership by creating an enabling financial environment to attract foreign investments as well as banks and financial institutions. In order to stimulate housing construction, the State has made significant planning efforts to provide well-located urban land to private entrepreneurs and to promote access to mortgage-based credit, to allow citizens to build their own homes and apartments or purchase property in housing complexes built by private investors.

11. The total housing stock has increased from 252.7 million m² in 2004 to 267.8 million m² in 2008. In 2008, the urban housing stock amounted to 153.4 million m² (57 per cent of the total). The bulk of new construction has been undertaken by private constructors. The State-owned housing stock decreased from 7.8 million m² in 2004 to 6.4 million m² in 2008. In rural areas, only one per cent of rural housing stock (1.2 million m² in 2008) belongs to the State.¹ The available data on the composition of the country's housing stock is not in itself sufficient to assess the housing deficit, i.e., the number of individuals and households who do not have a dwelling or live in a dwelling that does not meet minimum health and safety requirements.

12. The average total housing space available per capita has increased steadily over the past decade, passing from 16.6 m² per person in 2002 to 18.1 m² per person in 2008. However, the rate of growth in rural areas is 16 per cent lower than in urban areas (16.4 m² and 19.7 m² per person, respectively).

13. The percentage of households connected to water mains rose from 52.4 per cent in 2002 to 58.9 per cent in 2008. Over the same period, the percentage of households with access to centralized sewage and treatment facilities rose from 43.1 to 47.4 per cent. However, disaggregated statistical data show significant inequalities between urban and rural areas, where standards of living are much lower than those of the urban population.

14. As at October 2010, 10,958 persons belonging to low-income and socially protected groups had access to social housing units constructed by the local administration or purchased from private developers pursuant to the State housing construction programme for the period 2005-2007. During the same period, 36,656 households belonging to the category of priority citizens have received housing units built with the support of the State housing credit system.

15. The State allocated 49.7 billion tenge (approximately 331.3 million United States dollars) in the period between 2005 and 2010 for the construction of social housing units. During the same period, 150.1 billion tenge (approximately \$ 1 billion) have been allocated from the State budget to the construction of mortgage-based housing for priority target groups.

16. Like many other countries, Kazakhstan was seriously affected by the international financial crisis. Owing to the radical deregulation undertaken by the State, which allowed

access to mortgage-based credits for high-risk households, the financial crisis led to a collapse of the entire banking system. According to the World Bank, the annual growth rate of almost 10 per cent that Kazakhstan enjoyed between 2000 and 2007 was reduced to 3.3 per cent in 2008 and 1.2 per cent in 2009.

17. The construction sector was one of the first to experience the adverse effects of the global economic downturn. Many construction firms were forced to close, leaving 450 construction projects unfinished. According to the Government, more than 62,000 shareholders have been adversely affected by the financial crisis. Some 16,000 shareholders have been deceived by private construction companies that left the country with their savings without completing construction, while others have been evicted, or threatened with eviction, because of their inability to repay credits and mortgage loans. As a result of the large number of businesses that went bankrupt, the real estate crisis turned into a crisis affecting the whole economy.

18. The Government invested a total of 433,441 billion tenge (approximately \$2.8 billion) to help the victims of the financial crisis and facilitate the finalization of housing projects. In particular, it created a real estate fund, SamrukKazyna, to provide money to construction companies in order to terminate projects that had been slowed down or halted as a result of the financial crisis. Overall, \$1.1 billion were allocated from the national fund, including \$937 million to Astana and \$500 million to Almaty.

19. As at October 2010, the construction of 37 housing projects was finalised thanks to the funds allocated by the Government for that purpose, and 8,265 shareholders managed to have access to their apartments/houses. As at November 2010, however, 87 buildings still remained to be completed, including 42 housing projects in Astana, 26 in Almaty and the remaining 17 in other regions. As a result, almost 20,000 shareholders are still waiting to receive their apartments. The Government plans to finalize the construction of 51 housing complexes (9,932 shareholders), including 35 projects in Astana and 7 in Almaty, by the end of 2010.

¹ State Agency for Statistics, “Kazakhstan in 2008”, Astana, 2009.

III. Legal and institutional framework

A. International obligations

20. Kazakhstan is a party to seven core international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights. Pursuant to the treaties, the State has undertaken an obligation to adopt appropriate legislative, administrative, judicial and other measures, to the maximum of its available resources, with a view to achieving

progressively the full realization of the right to adequate housing. Such measures include the adoption of legislative and other measures to prevent and, if appropriate, punish, forced evictions carried out by State agents or private actors without appropriate safeguards, adequate compensation or alternative accommodation.

21. Kazakhstan has signed, though is still to ratify, the Convention on the Rights of Persons with Disabilities, which includes provisions on the right of persons with disabilities to an adequate standard of living for themselves and their families, including housing, and on the identification and elimination of obstacles and barriers to accessibility, including in the field of housing.

22. Kazakhstan is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which recognizes, inter alia, the right of migrant workers to have access to housing, including social housing schemes, on an equal basis with nationals of the State of employment. Kazakhstan has affirmed that it does not intend to ratify the Convention in the near future in view of the far-reaching financial implications that would arise from its implementation.²

23. In accordance with article 4 (3) of the Constitution, international treaties ratified by Kazakhstan have precedence over national legislation, and can be directly applied in the domestic legal order except in cases where their application requires the promulgation of a law. On 10 July 2008, the Supreme Court adopted a regulatory decision on the direct applicability of international treaties in national courts and tribunals, which requires judges to be guided by the norms of international treaties to which Kazakhstan is a party.³

² A/HRC/14/10/Add.1, para. 1.

³ A/HRC/WG.67/KAZ/1, para. 22.

B. Legislative and policy framework

24. The Constitution, adopted by national referendum on 30 August 1995, has supreme legal force and direct effect in the entire territory of the Republic. Articles 25 and 26 of the Constitution contain provisions relating to housing. According to these provisions, housing is inviolable, and citizens can only be deprived of their homes on the basis of a court order. In order to satisfy the housing needs of citizens, the Constitution states that citizens in need of housing should be provided with housing at an affordable price from State housing funds in accordance with relevant legislation.

25. The national human rights plan of action for the period 2009-2012 aims to strengthen the national system of promotion and protection of human rights and the education of the general public regarding human rights and the mechanisms for their protection. The plan identifies a set of concrete measures to eliminate gaps in national legislation and practice and

to improve the coordination of governmental and non- governmental institutions working in the field of human rights protection.

26. Kazakhstan has enacted a number of legislative and regulatory acts on housing issues. The Housing Relations Act (Law No. 94 of 16 April 1997) is the main statutory instrument in the field of housing. Other relevant laws include:

a) The Housing Construction (Equity Participation) Act (Law No. 180 of 7 July 2006), which aims to safeguard the rights of shareholders by increasing the responsibilities of private developers in the area of equity participation in housing construction;

b) The Private Housing Construction Act (Law No. 213 of 3 November 1994), which aims to encourage the construction of residential dwellings by providing land plots to individual developers and to enhance engineering-communication infrastructure in the districts of housing development;

c) The Housing Construction (Savings in the Republic of Kazakhstan) Act (Law No. 110 of 7 December 2000), which establishes a system of mortgage-based housing at preferential rates to facilitate access to affordable housing for individuals and households belonging to priority categories of citizens (for example, young families with children).

27. Only nationals may purchase housing or have access to social housing or housing benefits. According to article 67 of the Housing Relations Act, public housing or privately owned housing leased by the local authorities are to be provided to the following categories of households in need of housing:

a) Persons with disabilities and participants in the Great Patriotic War (war veterans);

b) Persons belonging to low-income and socially protected groups of the population, such as retired persons, orphans or children left without parental care, and large or single-parent families;

c) Some categories of public officials, such as Government employees and military personnel.

28. Persons belonging to the above categories are eligible for public housing if:

a) They do not own a house in the territory of the Republic;

b) They have not already obtained a house through the State Housing Fund;

c) They live in a dilapidated dwelling that does not meet sanitary and technical requirements;

d) They share a dwelling with two or more families;

e) They share the living space with a person suffering from a chronic disease.

29. According to State legislation, low-income households are those families whose aggregate monthly income per each family member is lower than the minimal cost of living, fixed at 14,952 tenge (approximately \$99) per family member.

30. Eligible persons may only apply for social housing in the municipality where they reside. Municipalities keep separate lists for the following categories of eligible households: persons with disabilities and war veterans; low-income and socially protected households;

certain categories of public officials; and persons living in dilapidated dwellings. Social housing units are allocated on the basis of the date of registration in the lists; however, persons with disabilities and war veterans have precedence over other categories of eligible households. Social housing units are to have a surface of between 15 and 18 m² per person, and comprise at least one bedroom.

31. In cases where house-related expenditure exceeds 10 to 15 per cent of the total family income, local authorities also provide housing allowances from the local budget to help low-income households to pay for rent or expenses for housing maintenance and utility services.

32. The State programme for housing construction for 2008-2010 aims to facilitate the expansion of the public housing stock for low-income and socially protected groups by creating enabling conditions, including tax incentives, to attract private investments in housing construction and to promote public-private partnerships. The programme provides that each region, including Astana and Almaty, should commission no fewer than 100 apartments every year for low-income and socially protected groups.⁴ Such dwellings will then be allocated to eligible households in accordance with the Housing Relations Act.

33. The above-mentioned programme also aims at facilitating the implementation of the Housing Construction (Savings in the Republic of Kazakhstan) Act by establishing a system of housing credits to enable local authorities to build social housing units funded from the national budget. The housing credit system aims at facilitating access to adequate housing for medium-income people, who can buy housing at the market price. Under this system, eligible households have access to housing loans that are granted on a long-term basis at a rate not exceeding 4 per cent. In order to ensure that the procedures are transparent and that the housing units are distributed fairly, the law establishes the criteria for the selection of applicants and sets income thresholds.

34. The programme identifies the priority target groups below:

- a) Young families with children, in which both spouses have not reached the age of 29 years;
- b) Single-parent families, in which the divorced or widowed parent raising the children is under the age of 29 years;
- c) Civil servants;
- d) Certain categories of State employees who do not fall within the category of civil servants (e.g., employees of State enterprises).

35. Kazakhstan has also taken measures to provide rental accommodation at affordable price for low-income households. On the basis of the Development of the Rental Sector (Amendments and Additions to Legislation) Act of 7 July 2006, local authorities may rent accommodation from the private housing stock and make it available to low-income households in need of housing. The Act also provides specific tax incentives to builders and

owners of rental buildings in order to reduce the cost of such leases.

36. Other incentives adopted by Kazakhstan to facilitate access to adequate housing include land allotments for the construction of residential houses and a system of housing construction savings to facilitate access to mortgage loans for the purchase of housing. The akimat also carries out programmes to relocate informal settlers or regularize their settlements by providing legal titles and access to social services.

37. In 1995, President Nazarbaev launched a programme to encourage oralman (foreign citizens or stateless persons of Kazakh ethnicity who permanently reside outside Kazakhstan) to return to their homeland. The Migration Act of 1997 sets out the legal framework of this policy, which provides for fixed quotas. Returnees enjoy a number of benefits, including access to land, assistance in finding an employment, access to education and the right to a pension, social insurance and social allowances, although those returning outside the quota system have more limited access to resettlement assistance.

4 Presidential Decree No. 383 of 20 August 2007.

C. Institutional framework

38. Kazakhstan is a unitary state with a presidential form of government. Administratively, it consists of 14 provinces (oblasts) and two cities of republican status (Astana, the capital, and Almaty).

39. The President is the head of State. He determines the main directions of the domestic and foreign policy of the State, and represents Kazakhstan within the country and in international relations. He is the guarantor of the unity of the people, of the inviolability of the Constitution and of civil and individual rights and freedoms.

40. The Parliament is the supreme representative body of the Republic, with legislative functions. It consists of two chambers: the Senate (Upper House) and the Majilis (Lower House).

41. The Government exercises executive power, heads the system of executive bodies and oversees their work. It is a collegial body, directly accountable to the President and, in cases stipulated by the Constitution, to Parliament.

42. The judiciary consists of local- and oblast- (regional) level courts, and a Supreme Court at the national level. The Supreme Court is the highest judicial organ in Kazakhstan. All judges, except for the members of the Supreme Court, are appointed by the President.

43. The Constitutional Council reviews laws and regulations to ensure their compatibility with the Constitution. It also issues official interpretations of the provisions of the Constitution. The Senate and the Majilis each appoint one member of the Council, and the remaining two members and the Chairman are appointed by the President.

44. The akimat is responsible for implementing State policies in its area. It elaborates

economic and social development plans and local budgets, manages community property and exercises other powers set out in the Constitution and in legislation. The governor (akim) of the oblasts, cities of national significance and the capital are appointed by the President with the approval of the local representative body (maslikhat).

45. The State Agency for Construction, Housing and Utilities is the central executive body responsible for the planning and implementation of legislation and policies in the field of architecture, town-planning, construction, housing and utilities. It also oversees the development of a draft master plan on the organization of the territory of the Republic, and provides town-planning expertise for the elaboration and the implementation of the draft master plans of the capital, the cities of republican significance and the cities of regional significance with a population of over 100,000.

46. The akimat elaborates and implements the general plans for city development. In the implementation of the plans, the akimat identifies the parcels of land to be expropriated for State needs and make arrangements for the act of expropriation. The akimat also receives requests relating to social housing. It oversees the construction of public housing and privately owned buildings to be leased to low-income households in need of housing, and keeps and regularly reviews the lists of eligible citizens. The akimat also fosters access to adequate housing by promoting the regularization of informal settlements and the allocation of land for the construction of private housing.

47. Human rights and freedoms are defended by the legislature, the executive and the judiciary. The independence of the judiciary is proclaimed in article 77 of the Constitution. In addition to court protection, everyone has the right to file a complaint with two national institutions: the Human Rights Commissioner of the Republic of Kazakhstan (Ombudsman) and the Human Rights Commission under the President. Neither of these institutions was established in conformity with the Paris Principles relating to the status of national institutions.⁵

48. The main task of the office of the Ombudsman, established in 2002, is to consider applications from individuals within the State's jurisdiction concerning alleged human rights violations perpetrated by public officials and State institutions, and to recommend the adoption of appropriate measures to eliminate the consequences of such violations.⁶ Concerned public officials or State institutions are required to duly consider the Ombudsman's recommendations and report on, within a month, the measures taken to address them. In the period 2003-2009, the Ombudsman received a total of 11,879 written and oral complaints.

49. In 2009, the Ombudsman received 88 communications (5.3 per cent of the total) concerning alleged violations of the right to adequate housing. In the first part of 2010, the office considered 47 housing-related communications. Most complaints concerned alleged violations relating to participatory constructions and forced evictions for State needs.

50. The Human Rights Commission under the President is a consultative body established

in 1994 to assist the Head of State in the exercise of his constitutional mandate to safeguard human rights and fundamental freedoms. In carrying out this function, the Commission can consider individual petitions addressed to the President concerning alleged human rights violations and may issue recommendations for State officials and public institutions on the measures to be taken to redress such violations. In 2009, the Commission consider 1,137 complaints. As in the case of the Ombudsman, most housing-related complaints were collective complaints from individuals who received mortgages and housing loans for the construction of buildings that have not been completed as a result of the financial crisis.

⁵ General Assembly resolution 48/134, annex.

⁶ Presidential Decree No. 947 of 19 September 2002.

IV. Positive developments

51. The Special Rapporteur notes with appreciation that Kazakhstan has ratified or acceded to a number of international human rights treaties enshrining the right to adequate housing. She also welcomes the fact that, pursuant to the Constitution, such treaties have precedence over conflicting national legislation and can be directly invoked in national courts and tribunals.

52. The Special Rapporteur welcomes the legislative and policy measures taken by the State to strengthen the implementation of the right to adequate housing at the national level, including:

- a) The State housing construction programme for 2008-2010;
- b) The national human rights plan of action for 2009-2012, which contains a number of recommendations to improve the protection of the housing rights of individuals belonging to vulnerable groups, such as persons with disabilities and returnees;
- c) The amendments to the Housing Relations Act, which recognize, in compliance with the recommendation of the Committee on the Rights of the Child,⁷ the right of children without parental care to have access to social housing;
- d) The system of housing loans, which aims at access to home ownership for middle-income young families with children and certain categories of civil servants;
- e) The elaboration of a draft programme of loans for housing construction, aimed at facilitating access to affordable housing for persons not belonging to the priority target groups identified by the existing legislation on housing loans;
- f) Measures to provide rental accommodation at affordable price to low-income households in need of housing;
- g) Measures aimed at facilitating access to land and adequate housing for returnees.

53. The Special Rapporteur also welcomes the work carried out by the Ombudsman and the Human Rights Commission under the President for the protection of individuals who

claim to have been victims of violations of the right to adequate housing perpetrated by the action (or inaction) of public officials or State institutions. With regard to the Ombudsman, the Special Rapporteur is pleased to note that a draft law aiming to bring the status of the office of the Ombudsman into conformity with the Paris Principles has been added to the plan of legislative work of the Government for the last quarter of 2011.

54. The Special Rapporteur cannot but note with appreciation the willingness demonstrated by the Government and the efforts it has made to mitigate the repercussions of the financial crisis on the effective enjoyment of the right to adequate housing of aggrieved individuals and households. Such efforts include the adoption of a priority plan of action to ensure the stability of the mortgage market, the allocation of funds to refinance existing mortgage loans and the creation of a national fund to facilitate the completion of building projects.

55. The Special Rapporteur also notes with satisfaction the establishment of a unified coordination council as a consultative/advisory body to the Government. The mandate of the council is to solve the most problematic issues relating to equity construction, improve legislation in the area of equity construction and the protection of shareholders, and facilitate the compensation of shareholders who have been defrauded by unscrupulous developers.

56. The Special Rapporteur is pleased to note that several households have managed to receive their apartments as a result of Government intervention. She also notes with satisfaction the legislative measures taken by Kazakhstan to ensure better protection of shareholders and to avoid possible abuse by unscrupulous construction companies, including the Act of 11 July 2010 on making amendments and addenda to certain legislative acts of Kazakhstan on issues of participatory construction, as well as statutory regulations implementing the Act.

57. Lastly, the Special Rapporteur would like to express her appreciation for the work of civil society, including social movements and non-governmental organizations, in the field of housing, particularly for its reliance on international human rights instruments as standards to hold Governments at all levels to account.

⁷ CRC/C/KAZ/CO/3, para. 56.

V Concerns relating to the right to adequate housing

A. Housing legislation and policies

58. The Special Rapporteur shares the concerns expressed by the Committee on Economic, Social and Cultural Rights that the legal framework in the field of housing does not protect the right to adequate housing in line with international human rights standards.⁸ In particular,

she believes that, according to the Constitution and domestic legislation, the right to housing continues to be interpreted in a narrow or restrictive sense, as the right to have a roof over one's head, while housing continues to be regarded as a commodity rather than as a human right.⁹

59. The Special Rapporteur is aware that the right to adequate housing as set out in article 11 (1) of the International Covenant on Economic, Social and Cultural Rights is directly applicable in Kazakhstan and takes precedence over conflicting national legislation, pursuant to article 4 (3) of the Constitution. Nevertheless, she notes with concern that, in practice, national courts do not apply norms of international treaties nor do they refer to international human rights standards, such as the general comments adopted by the Committee on Economic, Social and Cultural Rights.

60. The Special Rapporteur is of the view that, despite the measures taken by Kazakhstan to realize the right to adequate housing, the State has failed to demonstrate that, in aggregate, the measures are actually sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.¹⁰ Such a failure is demonstrated, in the Special Rapporteur's opinion, by the large number of individuals and households who are homeless or inadequately housed, the decrease in the State-owned housing stock and the long period of time eligible households have to wait before receiving a house at an affordable price from the State Housing Fund.

61. The Special Rapporteur regrets the fact that the current national human rights plan of action does not contain any detailed analysis on the status of implementation of the right to adequate housing in the country, nor does it not identify concrete steps to strengthen its protection.

⁸ E/C.12/KAZ/CO/1, para. 29.

⁹ See Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 7.

¹⁰ Op.cit., para. 14.

B. Institutional framework

62. The Special Rapporteur is concerned about the low degree of awareness on the right to adequate housing, and more in general on economic, social and cultural rights, existing in the country. She also notes that the limited human, financial and technical resources available to the office of the Ombudsman and the Human Rights Commission under the President de facto hamper the efforts taken by these institutions to protect and promote the human rights of persons living within the jurisdiction of the State, including their right to adequate housing.

63. The Special Rapporteur notes with concern that, despite the efforts taken by

Kazakhstan to curb corruption, this phenomenon continues to be widespread in the country, including in the judiciary.

C. Forced eviction

64. According to article 26 (3) of the Constitution, no one can be deprived of his or her property unless otherwise stipulated by a court decision. Forcible alienation of property for State needs is only permissible in exceptional cases and in accordance with the procedures established by law, and only on condition of adequate compensation.

65. The exceptional cases in which forcible alienation of property for State needs is permissible are listed in article 84 of the Land Code, and include:

- a) International obligations;
- b) Supply land for the need of defence, the creation of natural reserves, resorts or recreational, historical and cultural areas, or the establishment and operation of special economic zones;
- c) Exploitation of deposits of natural resources;
- d) Construction of roads, electrical power lines, lines of communication, pipelines, engineering networks for public use in populated areas and other facilities of State significance;
- e) The demolition of derelict houses at risk of collapsing;
- f) The implementation of general plans of development with regard to the construction of facilities falling under the category of exceptional cases established by the present article, and the construction of facilities provided for by national and regional programmes and investment projects necessary to achieve State needs and accomplish public objectives.

66. Article 84 does not provide a precise definition of the national and regional programmes and investment projects that serve State interests and aim to achieve public objectives. In accordance with a regulatory resolution adopted by the Constitutional Council in 28 May 2007, the exact nature of the exceptional cases referred to in this provision should be identified in the light of fundamental constitutional principles, especially those enshrined in article 26 (3) of the Constitution.

67. The Special Rapporteur is of the view that national legislation on forced eviction does not comply with existing international human rights standards, such as general comment No. 7 on forced eviction, adopted by the Committee on Economic, Social and Cultural Rights in 1997, and the basic principles and guidelines on development-based evictions and displacement elaborated by the former Special Rapporteur on adequate housing.¹¹ She notes in particular that the ambiguity of national legislation with regard to the definition of “exceptional circumstances” and “State needs” makes room for arbitrary and broad interpretations of such concepts, thereby resulting in a great number of illegal forced evictions

68. The power to make decisions on forcible alienation is deferred to the akimat, which is responsible for the implementation of general plans of development. The resolution of the akimat is carried out by means of a buyout (article 85 of the Land Code). The price of the land, the time frame and other terms of the buyout are determined by an agreement between the owner or land user and the akimat. The owner or land user has the right to choose between monetary compensation at market value and alternative accommodation. In cases where the owner or land user does not agree with the decision on a buyout, the compensation offered or other conditions of the purchase, the local executive body may file a suit with the competent court.

69. As a result of legalization programmes carried out by the local executive bodies of Astana and Almaty, a number of informal settlers have managed to obtain security of tenure, which constitutes an essential precondition for the effective enjoyment of the right to adequate housing. However, a large number of people have not managed to have their dwellings legalized, and therefore remain vulnerable to forced eviction. On some occasions, households whose dwellings have been demolished for reasons of non-compliance with housing legislation have seen newcomers building houses on the same plot on the basis of titles allegedly provided by State authorities.

70. The law enforcement practice in the field of forced eviction is not consistent with human rights law. The Special Rapporteur emphasizes the fact that the implementation of general plans of development cannot constitute a sufficient legal justification for forced eviction in the absence of one of the exceptional circumstances provided for by national legislation. She also notes that national courts tend to interpret the concepts of “State needs” and “investment projects” in a very broad manner, so as to include investment projects carried out by private construction companies and financed by private investments.

71. The Special Rapporteur regrets not having been able to obtain updated statistical data on the number of forced evictions carried out in recent years in Almaty and Astana, on the number of affected households and the percentage of individuals who remained homeless as a result of the demolition of their dwellings.

72. The Special Rapporteur has been informed that, in most cases, the monetary compensation provided to the owner or land user is not sufficient to allow evicted households to purchase an adequate house at market price in the same area. This is due to the fact that, after the buyout of plots for State needs, the akimat may change the zoning from agricultural to urban uses to allow private developers to implement investment projects included in the general plan of development. Furthermore, evicted families are, apparently, rarely offered alternative accommodation.

73. According to State legislation, unauthorized constructions on vacant parcels are subject to demolition by the persons responsible for erecting them or at their expense; no compensation or alternative housing is due for the demolition of informal settlements. After eviction, settlers often become homeless. In 2006, in Bakay, on the outskirts of Almaty,

authorities destroyed hundred of houses, claiming that they had been built illegally. Court orders were presented for only 29 of the 350 to 400 houses demolished and residents were given little notice of the planned eviction. In July 2006, in Shanyrak district, a similar attempt to destroy houses was violently resisted.¹²

74. The Special Rapporteur is extremely concerned about the high rate of demolition of informal settlements and forced evictions carried out without prior notification, any form of judicial control or review, or the provision of adequate compensation or alternative accommodation. During the mission, she received reports and saw documentary evidence of demolitions conducted by public officials using force, in some cases during winter when the temperature was well below zero. She was dismayed to hear that a great number of vulnerable individuals, including pregnant women, children and persons with disabilities, had been made homeless as a result of such demolitions.

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¹² See “Kazakhstan/Kyrgyzstan: Exploitation of migrant workers, protection denied to asylum seekers and refugees”, International Federation for Human Rights, press release, October 2009.

D. Financial and mortgage crisis

75. The Special Rapporteur notes with concern that, despite the emergency measures taken by the Government to mitigate the impact of the financial crisis on the effective enjoyment of the right to adequate housing of aggrieved individuals and households and to ensure the completion of construction projects slowed or halted as a result of the crisis, 20,000 shareholders are still waiting to receive their apartments.

76. One of the most controversial measures taken by the Government is the decision to provide shareholders with no more than one apartment within the housing complex, regardless of the number of apartments purchased, in order to ensure that all those who invested in shared construction receive at least one dwelling for themselves and their families.

¹³ The legality of this measure, which has the aim of guaranteeing the stability of the mortgage market and protecting the rights of shareholders in housing constructions, was upheld by the Esilskiy District Court of Astana (decision No. 2-947/10 of 5 May 2010). However, most shareholders invested in more than one apartment in order to provide adequate accommodation to other family members (elderly parents, children getting married and relatives from the countryside). The Special Rapporteur heard many testimonies from people who had been adversely affected by this decision.

77. The Special Rapporteur is also gravely concerned about reported cases of forced eviction as a result of the inability of low-income households to repay their credits and

mortgage loans. As a result of the extrajudicial sale of their property by banks or other financial institutions, a number of individuals and households have become homeless or been forced to move in to poor-quality housing.¹⁴

¹³ Government Decree No. 277 of 1 April 2010.

¹⁴ See the report on the activities of the Commissioner for Human Rights in the Republic of Kazakhstan, 2009 (available from the website of the Commissioner for Human Rights at <http://ombudsman.kz/en>), pp. 41-42.

E. Disparities between urban and rural areas

78. The Special Rapporteur is concerned about the significant disparities between urban and rural areas with regard to the availability and quality of housing. She notes with concern that high unemployment rates, deteriorating standards in the quality of education and health care and limited access to essential services, such as safe drinking water and sanitation, in rural areas continue to force a large number of individuals and households to leave their villages to find employment opportunities and a better standard of living elsewhere, particularly in Astana and Almaty.

79. According to information provided to the Special Rapporteur, a high percentage of dwellings in rural areas are in a dilapidated condition. Wide disparities also exist with regard to access to essential social services, such as drinking water and improved sanitation. In 2008, 82.5 per cent of urban households were connected to the water supply system, whereas only 24.2 per cent of the rural population had access to water sources. The disparities are even greater in the field of sanitation: 73.5 per cent of people living in urban areas were connected to the central sewage system, compared to 8.9 per cent in rural areas.

80. Addressing the above-mentioned challenges is particularly difficult in rural areas. In spite of a number of programmes implemented by the Government to improve villages and develop the agricultural sector, the living standards of rural population continue to be much lower than those of the urban population. There are reasons for this, including the left-over funding applied to the rural social sector (especially true in times of economic downturn), underdeveloped infrastructure, primarily in transport and telecommunications networks

F. Social housing

81. The Special Rapporteur notes with great concern that, under the Housing Relations Act, persons belonging to low-income or socially protected groups of the population are not given priority access to social housing. Certain vulnerable and disadvantaged groups, such as people living in disaster-prone areas, are not included in the list of eligible households contained in article 68 of the Act. It is not clear from the text of the Act whether homeless

people who do not belong to any of the socially protected groups are eligible for social housing.

82. The Special Rapporteur also notes with concern that the categories of State employees identified in article 67 (2) of the Housing Relations Act have the right to obtain social housing on an equal basis with low-income or socially protected groups of the population, without any need to demonstrate their inability to provide for their own housing needs.

83. Long waiting periods for social housing continue to be a serious problem in Kazakhstan, as already noted in 2010 by the Committee on Economic, Social and Cultural Rights in its concluding observations on Kazakhstan.¹⁵ In July 2010, 140,043 citizens were registered as eligible households in need of housing from the State Housing Fund, including 1,432 persons with disabilities and war veterans and 79,536 persons belonging to low-income and socially protected groups. In July 2010, 17,461 citizens in Astana and 8,439 in Almaty were on the waiting lists for public housing. According to information received, eligible households have to wait for up to 10 years to receive an apartment from the public housing stock. The State acknowledges that the average wait is between six and eight years.

¹⁵ E/C.12/KAZ/CO/1, para. 30.

G. Vulnerable groups

1. Migrant workers

84. The current registration system, which is intended to allow the State to monitor and control the movement of internal and international migrants within the country, requires migrants to register at their place of residence within five days of their arrival. Registration at one's place of residence implies the existence of a valid address to register. Therefore, persons living in informal settlements without any legal address or occupying dwellings that do not meet existing health and safety standards are de facto prevented from obtaining registration, a prerequisite for access to a number of social services, including social housing.

2. Returnees

85. From 1991 to 2009, more than 188,000 returnee families, or approximately 740,000 people, returned to Kazakhstan. Every year, Kazakhstan receives between 10,000 and 15,000 families of ethnic Kazakhs. Most returnees come from Uzbekistan (almost 60 per cent of the total), Mongolia and China. Most returnees come under the quota system.

86. According to the Land Code, returnees are allocated land for individual housing construction in the villages where they live, which becomes their property after they acquire Kazakh citizenship. The Nurly Kosh ("bright resettlement") programme for the period 2009-

2011 aims to facilitate access to adequate housing through a preferential credit mechanism.¹⁶ The programme is designed to assist the demographic and socio-economic development of various regions of the country, and is also based on a quota system. In 2009, 674 families were allocated housing units under the programme.

87. The Special Rapporteur received several reports according to which abandoned houses granted by the akimat to returnees within the framework of the resettlement programme were subsequently taken away when the former owners, who had abandoned their homes owing to the recession of the early 1990s, returned to claim their ownership in courts.

¹⁶ A/HRC/WG.6/7/KAZ/1, para. 131.

3. Refugees and asylum-seekers

88. As at July 2010, 597 people had been granted refugee status in Kazakhstan. The vast majority of refugees (588) came from Afghanistan. Asylum-seekers from Uzbekistan, the Russian Federation (Chechens) and China (Uighurs from the Xinjiang Uyghur Autonomous Region) are regularly denied refugee status by the State. The Government maintains that citizens from the Commonwealth of Independent States (CIS) by definition do not need refugee status because they enjoy freedom of movement under the CIS visa-free regime. They therefore have to apply to the national office of the United Nations High Commissioner for Refugees (UNHCR) and, if their application is successful, wait for resettlement in a third country ready to accept them. As a result, they find themselves in a state of legal limbo, which makes them vulnerable to police harassment and forcible return. They also endure poor living conditions and economic hardship, and have few employment opportunities.

89. No statistical data are available on the housing situation of refugees and asylum-seekers. According to information provided by UNHCR, most reside in rented houses or apartments, and have access to basic utilities (water, electricity and gas); however, the quality of their housing varies considerably from one family to another. Generally speaking, families who have been residing in Kazakhstan for a long time and have obtained refugee status reside in housing of a higher standard than those who have recently arrived. Those forced to live in less favourable economic conditions share their premises with individuals of the same national or ethnic group. Apparently, no refugees or asylum-seekers reside in State-owned apartments.

4. The homeless

90. The Special Rapporteur was unable to obtain reliable information concerning the extent of homelessness in Kazakhstan. The Ministry of Labour and Social Protection, the Government agency responsible for providing assistance and support to homeless people,

does not have any statistical data concerning the number of people who, for whatever reason, do not have a registered address in the territory of the State. According to civil society organizations, the lack of appropriate information is due to the fact that no definition of homeless person exists in Kazakh law.

91. There are 21 social centres in the country for persons who do not have a fixed residence. The centres, which are financed by the budget of the akimat, provide assistance and support to homeless people. Depending on the specific situation of the individual, centres provide short-term accommodation, medical care and psychological support, assistance in finding employment or obtaining social security benefits. According to the data provided by the Ministry of Labour and Social Protection, in the first half of 2010, these centres hosted almost 4,000 people. On average, people stay in the centres for less than six months before returning to their families, or being redirected to other institutions (for example, nursing homes or centres for persons with disabilities).

92. Homeless persons are de facto prevented from having access to a number of social services provided by the State, which are only available to those who have registered their place of residence.

VI. Conclusions and recommendations

A. Housing legislation and policies

93. The Special Rapporteur recommends that Kazakhstan review and streamline its legislation and policies on housing in order to ensure their consistency with international human rights norms and standards on adequate housing. Kazakhstan should also review its approach centred solely on the market and mortgage-based home-ownership (a factor contributing to the real-estate crisis), and develop a comprehensive national housing policy. Such a policy should envisage different measures, inter alia, rental schemes and the upgrade of informal settlements to address the needs of different strata of society, including the most vulnerable groups, such as low-income households, large families, single mothers with young children, persons with disabilities, the elderly, internal migrant workers, returnees (oralman), refugees and asylum-seekers.

94. All relevant stakeholders should be actively involved in the design and implementation of legislation, policies and strategies affecting them; to this end, the Government should engage in a constructive manner with civil society and advocacy groups. In particular, the Special Rapporteur calls on the Government to take all appropriate measures to ensure that individuals and households affected by the mortgage crisis participate actively in the development of solutions designed to counter the crisis.

95. Kazakhstan should take all appropriate measures to ensure the effective applicability of international treaties, and in particular of the International Covenant on Economic, Social and Cultural Rights, in national courts.

B. Institutional framework

96. Human rights education, particularly on economic, social and cultural rights, should be improved. The Special Rapporteur recommends that Kazakhstan organize, with the assistance of the OHCHR Regional Office in Bishkek, training opportunities and awareness-raising activities for judges, lawyers and public officials to familiarize them with economic, social and cultural rights. In the development and implementation of such human rights education programmes, appropriate attention should be paid to the content and implications of the right to adequate housing, as well as to the work carried out in the field of housing by the Special Rapporteur and the Committee on Economic, Social and Cultural Rights.

97. The Special Rapporteur encourages the Government to finalize adoption of the draft law designed to strengthen the independence of the office of the Commissioner for Human Rights and bring its status into conformity with the Paris Principles. Adequate human, financial and technical resources should be allocated to the office to allow it to carry out its functions.

98. The Special Rapporteur reiterates the recommendation of the Committee on Economic, Social and Cultural Rights,¹⁷ that Kazakhstan intensify its efforts to combat corruption. In this regard, it encourages the State to organize, with the assistance of relevant United Nations specialized agencies and programmes and the support of the donor community, awareness-raising programmes and capacity-building for public officials, including law enforcement officers, prosecutors and judges, on the application of anti-corruption legislation.

¹⁷ E/C.12/KAZ/CO/1, para. 11.

C. Forced evictions

99. A comprehensive approach needs to be adopted to address the issues of forced evictions, security of tenure, the legalization of informal settlements and slum upgrading, and to ensure open, participatory and meaningful consultation with affected residents and communities prior to implementing development and urban renewal projects. In particular, the Special Rapporteur urges Kazakhstan to adopt a specific law on eviction, which should be developed in accordance with existing human rights standards, such as general comment No. 7 of the Committee on Economic, Social and Cultural Rights and the guidelines on development-based evictions, and implemented in accordance with relevant principles and

procedures of international human rights law.

100. The new law should ensure that forced evictions are carried out only in the exceptional circumstances provided for by national legislation, and only for the purpose of promoting general welfare. The circumstances under which an eviction can be justified should be defined, and interpreted by national courts, in a restrictive manner. Protection against forced eviction should apply to all vulnerable individuals and groups, irrespective of whether they hold title to a home and or property under domestic law. The implementation of general plans of city development should in no way be used as a justification for forced evictions. While the new law is developed, a total moratorium on forced evictions should be implemented.

101. All persons evicted from their properties should be provided with adequate compensation and/or offered appropriate alternative housing. Affected individuals should also be granted the possibility of opting for alternative housing, when applicable, within the same neighbourhood. Relocation sites should be provided with basic services, including drinking water, electricity, washing facilities and sanitation, as well as adequate facilities including schools, health-care centres and transportation at the time of resettlement.

102. Decisions on eviction should be delivered to affected households in written form, and should provide a detailed explanation of the exceptional circumstances justifying the forcible alienation of land for State needs. Decision by local executive bodies should also clearly indicate the personal data of affected individuals as well as the parcels subject to forced eviction.

103. The issue of informal settlements built on the outskirts of Astana and Almaty is a complex one, and requires a comprehensive approach covering education, health care, social benefits, employment and other issues. In this regard, the Special Rapporteur wishes to reaffirm that forced eviction can only be justified in the most exceptional circumstances, and always in accordance with relevant principles and procedures established by international human rights law. In particular, the Special Rapporteur wishes to reiterate that the State has the obligation to take all appropriate measures to ensure that no one is rendered homeless or vulnerable to the violation of other human rights as a result of an eviction, whether legal or not.

D. Mortgage crisis

104. The Special Rapporteur is of the view that the lessons learned by the Government in its efforts to mitigate the adverse effects of the financial crisis on the effective enjoyment of the right to adequate housing should be used as the basis for an overall reconsideration of its housing strategies, policies and programmes. The financial crisis has shown that the creation of an enabling environment to attract foreign investment and support financial activities is not in itself sufficient to ensure access to adequate and affordable housing for all, and that

effective regulation and close monitoring by the State of private sector activities, including financial and construction companies, is required.

105. The State should review its legislation and policies with regard to access to mortgage-based credit for low-income households in order to ensure that commercial banks and financial institutions take into account the limited repayment capacity of these households . Financial services for low-income groups must be developed in consultation with these groups, as they are best able to assess their repayment capacity and ensure the development of systems that meet their effective needs.

106. The Special Rapporteur encourages the State to continue its efforts to mitigate the impact of foreclosures and to facilitate the completion of housing projects that have been halted as a result of the crisis.

107. The Special Rapporteur urges the State to amend its legislation to make the extrajudicial sale of a debtor's only house illegal.

E. Disparities between urban and rural areas

108. The Special Rapporteur recommends that the State party increase its efforts to address disparities between urban and rural areas and among regions with regard to the availability and quality of housing. She also calls on the Government to develop and implement, in close consultation with affected local communities, comprehensive programmes and strategies aimed at improving socio-economic conditions in rural areas, with a view to reducing migration from rural to urban areas and easing housing problems in Astana and Almaty. Priority actions should include the creation of new employment opportunities and the improvement of access to education, health care and essential services, such as safe drinking water and sanitation.

F. Social housing

109. The Special Rapporteur urges the State to consider reviewing the Housing Relations Act in such a way as to ensure that persons belonging to vulnerable and disadvantaged groups receive priority consideration in the allocation of social housing units. She also recommends that the list contained in article 68 be reviewed, and that all groups in society that are vulnerable and disadvantaged with regard to housing be included in this list.

110. The Special Rapporteur reminds the State that, in its general comment No. 4, the Committee on Economic, Social and Cultural Rights declared that policies and legislation should not be designed to benefit already advantaged social groups at the expense of others (para. 11). Accordingly, she recommends that Kazakhstan consider amending its legislation on social housing in such a way as to ensure that access to social housing is granted only to individuals and households who are unable to provide for their own housing needs.

111. The Special Rapporteur recommends that State reconsider its housing strategy and

policies with a view to improving access to adequate and affordable housing for individuals and households belonging to low-income and socially vulnerable groups. She recommends that the State increase the budget allocated for the construction of new social housing units, and that a combination of public and private sector measures be developed and implemented simultaneously in order to fulfil the right to adequate housing of vulnerable individuals and groups.

G. Vulnerable groups

112. The Special Rapporteur recommends that State consider reviewing the current registration system with a view to facilitating the registration of persons staying legally in its territory but who cannot complete the registration process owing to the lack of a legal address
t o r e g i s t e r .

113. The Special Rapporteur also recommends that the State take all appropriate measures to ensure that persons belonging to vulnerable groups, such as non- nationals, internal migrants, refugees and asylum-seekers, have access to adequate housing on an equal basis with its citizens.