



**International Center for Not-For-Profit Law  
Международный Центр Некоммерческого Права**

1126 16th Street, NW, Suite 400  
Washington, DC 20036 USA  
USA  
Tel: (202) 452-8600  
Fax: (202) 452-8555

ул. Жандосова, 36  
Алматы, 480057  
Казахстан  
Тел: (73272) 50-19-50  
Факс: (73272) 50-19-49

**Outline of Issues Relating to the Kazak Draft Laws  
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ICNL is an international organization that works globally to strengthen the legal framework for NGOs. With USAID support, ICNL has worked on NGO law reform issues in Kazakhstan since 1997.

At the invitation of a group of deputies, ICNL is currently working on a comprehensive analysis of two pending initiatives (together “Draft Laws”):

(1) The Draft Law “On the Activities of Branches and Representative Offices (Separate Subdivisions) of International or Foreign Non-commercial Organizations in the Republic of Kazakhstan,” and

(2) The Draft Law “On Introduction of Amendments and Additions into Certain Legislative Acts of the Republic of Kazakhstan on Matters Related to Non-commercial Organizations.”

The Draft Laws contradict international laws and international best practices. If enacted, these laws will result in the termination of the invaluable assistance to Kazakhstan provided by many foreign and international organizations, and undermine development of civil society. The Draft Laws would damage the international reputation of the Republic of Kazakhstan, placing it in line with countries such as Turkmenistan and Belarus with respect to NGO legislation.

Comprehensive comments will be prepared in the near future, but for the purposes of this meeting, ICNL presents a list illustrating the primary concerns:

**1. Two-step registration procedure for branches and representative offices for international and foreign organizations.**

The two-step registration procedure requires accreditation and registration for international and foreign non-commercial organizations. This procedure is more complicated than the one-stage registration procedure for Kazakh non-commercial organizations and foreign businesses. Such a provision unfairly and unnecessarily burdens international and foreign organizations.

**2. Re-registration for all international and foreign organizations operating in Kazakhstan.**

All branches and representative offices of international and foreign organizations, which already carry activities in Kazakhstan, are required to re-register within three months from the date of the enactment of the Draft Laws. Those organizations, which fail to re-register within the required time period, will be liquidated through a court decision based on appeals filed by the registration authorities. The new procedure of accreditation is proposed by the Draft Laws and a required part of both registration and re-registration procedure for branches and representative offices of international and foreign organizations. This procedure is incredibly complex and full of deficiencies. It provides an overly broad basis for rejection of an application for accreditation generally leaving it at the discretion of the government authorities. The authors of the Draft Laws do not provide any arguments justifying the need for such re-registration, as indeed there are none. The re-registration is a substantial waste of governmental and non-governmental resources, and merely serves as a potential tool to eliminate politically unfavorable organizations and a basis for corruption.

### **3. Prohibition on free expression of opinion, and the receipt and distribution of information by international and foreign organizations in Kazakhstan.**

The Draft Law contradicts international norms (such as Article 10 of the European Convention on Human Rights) by prohibiting the establishment of branches and representative offices of international and foreign organizations for the purposes of expressing the political will of citizens and of different social groups, as well as by providing a broad and vague list of prohibited activities. Prohibited activities include:

- The “disruption of the activities of state bodies and interference with their uninterrupted functioning,”
- “Decreasing the level of control in the country,” and
- “Causing other unwanted consequences for Kazakhstan.”

These restrictions vest unwarranted discretion in the government and violate human rights. It should be noted, for example, that Article 10 of the European Convention on Human Rights, states that: “Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

### **4. Creating barriers for delivery of foreign aid to Kazakhstan, including performance of social and humanitarian projects.**

The Draft Laws require branches and representative offices of foreign and international organizations to obtain approval from a local executive body for every donation or any other kind of assistance provided to a Kazakh non-commercial organization. The Draft Laws also require that Kazakh organizations obtain approval for receipt of any financial aid from foreign sources. According to international best practices, local and foreign sources of financial support for non-commercial organizations shall be treated in the same manner by legislation. This requirement is particularly worrisome as there is no established procedure or structure within the local executive bodies to perform such functions, allowing individuals to freely interpret and apply these provisions in any manner they see fit, creating a fertile soil for corruption and the possibility of such a

procedure being used against politically unfavorable organizations, in violation of one of the key democratic principles of pluralism.

The Draft Laws also prohibit the establishment of branches and representative offices on the part of foreign and international organizations for the purposes of “expressing political will” of citizens and of different social groups. As the Draft Laws do not provide a definition of the phrase “expressing political will,” any aid addressed to refugees or unemployed or to other social groups might result in an increase of their social and political activity, thereby resulting in the liquidation of the activities of the assistance provider.

#### **5. Excessive requirements placed on branches and representative offices of foreign international organizations and local non-commercial organizations, and impracticable responsibilities placed on local executive government bodies.**

The Draft Laws require Kazakh non-commercial organizations, as well as branches and representative offices of foreign and international organizations, to provide information about all events to be conducted by them at least ten days prior to holding such events. Failure to do so will result in a suspension of activities and liquidation of the local non-commercial organization or branch or representative office of a foreign or international organization. At the same time, these newly endowed responsibilities are impossible to implement for local executive bodies, as they are not accompanied by any additional budget funding with which to hire and train additional staff to process such requests and to perform the required supervision.

#### **6. Disproportional sanctions for failure to notify or providing late notification to local government authorities prior to events conducted by non-commercial organizations.**

Failing to provide notice or providing late notification about upcoming events would result in monetary penalties equivalent to \$1,500 US dollars and a possible prohibition of the activities of a non-commercial organization. This sanction is disproportional to the violation, and would be contradictory to international law, the European Convention on Human Rights and the European Covenant on Civil and Political Rights. The sanction is particularly dangerous, as the Kazakh law does not provide for a definition of what constitutes an “event” requiring notification. Therefore, any meeting of two and more persons might be considered an event, and could result in penalties or even termination of activities. Any organization might be subject to penalties and subsequent termination of activities under these provisions.

#### **7. Reporting requirements for branches and representative offices of foreign and international organizations.**

The Draft Law requires that branches and representative offices of foreign and international organizations publish information about their activities, including information about their founders, assets, sources of revenue and expenditures. This requirement has little to do with the desire to make organizations more transparent and

encourage self-regulation, as is the case with similar requirements in other countries. Rather, the information disclosed to the public will be subject to audit at the discretion of government authorities, and constitutes yet another burdensome reporting requirement and source for potential harassment of foreign and international organizations by the government authorities.

#### **8. Discrimination against foreign citizens and persons without citizenship.**

The Draft Laws require that only citizens of Kazakhstan shall be appointed as managers of branches and representative offices of foreign and international organizations, as well as of Kazakh non-commercial organizations. Such a requirement is blatantly discriminatory and without any purpose other than to infringe upon the rights of foreigners and persons without citizenship to engage in free expression within the Republic of Kazakhstan. It contradicts to Article 12 (4) of the Constitution of the Republic of Kazakhstan and to Article 26 of the International Covenant on Civil and Political Rights.

#### **9. Deficiencies in the procedure for accreditation of branches and representative offices of foreign and international organizations.**

Multiple provisions of the Draft Laws are confusing, mutually contradictory, and/or nonsensical. For example, the founder of a foreign organization is required to sign an application for accreditation of a branch of a foreign organization. For many organizations, this is completely impractical: the organization may have been founded years ago, and the founder may no longer be alive; the founder may no longer be associated with the organization; and/or the founder may have nothing to do with the current management of the organization.

Perhaps most importantly, the Draft Laws allows for an endless process of consideration of documents submitted for accreditation, as the Ministry of Justice (registration body) is permitted to request “additional” documents at its own discretion and therefore to unlimitedly extend the process of accreditation without allowing the applicant an opportunity to appeal the delay.