

## 1. INTRODUCTION

The Human Rights Committee (the “Committee”) has included “**Counter-terrorism measures and respect of Covenant guarantees**” in its “List of issues to be taken up in connection with the consideration of the Initial Report of Kazakhstan.”<sup>1</sup> Specifically, the Committee requested Kazakhstan to “indicate the legislative measures that have been adopted to combat terrorism, and to what extent they may affect the rights guaranteed under the Covenant.”<sup>2</sup>

In its “Replies to the list of issues,” Kazakhstan provided information on the definition of terrorism under its domestic law, while noting a number of international treaties related to counter-terrorism to which Kazakhstan is party.<sup>3</sup>

Notably absent from Kazakhstan’s reply, however, is any reference to **Kazakhstan’s obligations as a member state of the Shanghai Cooperation Organization (SCO)**. The SCO is a **regional organization focusing on security cooperation** – particularly **counter-terrorism** – as a top priority. Kazakhstan’s activities within the SCO context therefore merit examination by the Committee, in order to obtain additional information in response to the Committee’s concerns regarding measures adopted to combat terrorism, and to fully assess Kazakhstan’s compliance with the *International Covenant on Civil and Political Rights* (the “Covenant”) while countering terrorism.

Human Rights in China (HRIC) respectfully submits the following analysis focused on the impact of Kazakhstan’s participation in the SCO on rights protected under the Covenant.<sup>4</sup> In addition, attached to this submission are the following supplements, referenced throughout, containing additional information that may be relevant to the Committee’s examination:

- Attachment A: SCO and Counter-Terrorism Fact Sheet
- Attachment B: Relevant Provisions of Normative Documents of the SCO
- Attachment C: Human Rights Records of SCO Member States – Concluding Observations of UN Human Rights Treaty Bodies
- Attachment D: Highlighted Cases of Extraditions and Forcible Returns from Kazakhstan to China

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<sup>1</sup> U.N. Human Rights Committee, “List of issues to be taken up in connection with the consideration of the Initial Report of Kazakhstan,” U.N. Doc. CCPR/C/KAZ/Q/1, para. 4, <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.KAZ.Q.1.doc>.

<sup>2</sup> Ibid.

<sup>3</sup> U.N. Human Rights Committee, “Replies to the list of issues to be taken up in connection with the consideration of the initial periodic report of the Republic of Kazakhstan,” CCPR/C/KAZ/Q/1/Add.1, paras. 10-14, <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.KAZ.Q.1.Add.1.doc>.

<sup>4</sup> For a detailed analysis of the Shanghai Cooperation Organization’s (hereafter, SCO) impact on human rights and counter-terrorism – domestically, regionally, and internationally – see Human Rights in China, *Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization* (New York: Human Rights in China, 2011), <http://www.hrichina.org/research-and-publications/reports/sco>.

## 2. KAZAKHSTAN AND THE SHANGHAI COOPERATION ORGANIZATION

Kazakhstan – together with China, the Russian Federation, Kyrgyzstan, Tajikistan, and Uzbekistan – is a founding member of the SCO, a regional intergovernmental mechanism intended to enhance mutual security and cooperation, with a primary aim of combating the so-named “**Three Evils**” of “**terrorism, separatism, and extremism.**”<sup>5</sup>

Kazakhstan plays a substantial and influential role in the SCO – it currently holds the rotating SCO presidency and will host the tenth annual SCO summit and jubilee festivities, beginning June 15, 2011 in Astana. And like each of its fellow SCO member states, Kazakhstan has committed to honoring **mutual legal obligations to effectuate SCO objectives**, as set forth under a sophisticated framework of multilateral agreements, instruments, and cooperative entities. However, while the SCO framework appears comprehensive and robust, details of implementation remain shrouded in secrecy, with little publicly available information on how SCO obligations are executed through domestic legal frameworks.

Based on assessment of known SCO normative agreements, policies, and practices undertaken in the first ten years of the SCO’s existence, **Kazakhstan’s obligations under the multilateral SCO framework could significantly undermine its progress in implementing the Covenant.** The following sections identify specific obligations to which Kazakhstan has committed under the SCO framework – including their source and substance – and highlights relevant Covenant protections implicated by these obligations. To aid in the Committee’s assessment of Kazakhstan’s progress on implementation of the Covenant in light of its SCO obligations, each section includes **suggested questions and requests for information to Kazakhstan**, as well as **specific recommendations to the Committee.**

## 3. IMPACT OF KAZAKHSTAN’S SHANGHAI COOPERATION ORGANIZATION OBLIGATIONS ON IMPLEMENTATION OF THE COVENANT

HRIC has identified five primary areas of concern regarding Kazakhstan’s ability to implement its obligations under the Covenant while fulfilling its obligations as an SCO member:

- Overbroad concept and definition of “terrorism” under SCO agreements
- Extraditions and forcible returns to SCO member states
- Denials of asylum to individuals from SCO member states
- Use of SCO blacklists and mutual recognition of criminality between SCO member states
- Intelligence and law enforcement cooperation through the SCO Regional Anti-Terrorist Structure

A summary of each of these areas follows, identifying the specific SCO normative obligations at issue, suggested questions, and HRIC’s recommendations regarding possible follow-up with Kazakhstan.<sup>6</sup>

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<sup>5</sup> See *Charter of the Shanghai Cooperation Organization* (hereafter, *SCO Charter*), June 15, 2001, Arts. 1, 3, <http://www.sectsc.org/EN/show.asp?id=69>. For a summary of background information regarding the SCO, see key facts compiled by Human Rights in China included as *Attachment A: SCO and Counter-Terrorism Fact Sheet*.

<sup>6</sup> The full text of every SCO normative provision cited in this submission – including provisions of treaties, joint declarations, and other documents – is provided in *Attachment B: Relevant Provisions of Normative Documents of the SCO*. Additionally, the complete texts of a number of SCO normative documents, translated into English, are provided in Appendix A of Human Rights in China, *Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization* (New York: Human Rights in China, 2011), <http://www.hrichina.org/research-and-publications/reports/sco>.

## A) OVERBROAD CONCEPT AND DEFINITION OF “TERRORISM” UNDER SCO AGREEMENTS

As an SCO member state, Kazakhstan is bound to take measures to prevent, identify, and suppress not only acts of “**terrorism**,” but also acts of “**separatism**” and “**extremism**.”<sup>7</sup> Under the SCO framework, the definitions of these so-called “**Three Evils**” are **overbroad, imprecise, and subject to abuse**; moreover, by linking the three concepts, the SCO member states have effectively applied counter-terrorism measures to acts not genuinely constituting terrorism. Such a normative framework raises serious concerns over Kazakhstan’s compliance with the principle of legality under the Covenant. As the SCO’s “**Three Evils**” approach forms the normative basis for all SCO security cooperation, Kazakhstan’s Covenant obligations are at risk in each and every security-related activity Kazakhstan undertakes as an SCO member state.

### *Key SCO Normative Provisions*

- The “**Three Evils**” of “**terrorism**,” “**separatism**,” and “**extremism**” are defined in the 2001 *Shanghai Convention on Countering Terrorism, Separatism, and Extremism* (“*Shanghai Convention*”).<sup>8</sup> In addition to an overarching concern regarding **politicized application** of these terms by Kazakhstan and its fellow SCO member states, the definitions raise the following specific concerns:
  - The definition of “**terrorism**” reaches beyond the international community’s emphasis on crimes against civilian populations, around which there is consensus, to also include acts that could constitute crimes against the state.<sup>9</sup> Additionally, the 2009 *Convention on Counter-Terrorism of the SCO* (“*SCO Counter-Terrorism Convention*”) further defines “**terrorism**” as “an ideology of violence,” including threatened or committed acts “aimed at causing injury to private individuals, society or the state.”<sup>10</sup>
  - “**Separatism**” is defined to include acts intended to “violate territorial integrity” of an SCO member state, “committed in a violent manner.”<sup>11</sup>

<sup>7</sup> See *Shanghai Convention on Combating Terrorism, Separatism and Extremism* (hereafter, *Shanghai Convention*), June 15, 2001, art. 1-2, [http://www.ecrats.com/en/normative\\_documents/2005](http://www.ecrats.com/en/normative_documents/2005).

<sup>8</sup> *Ibid.*, art. 1(1).

<sup>9</sup> *Ibid.*, art. 1(1)(1)(b). See the working formulation of terrorism drawn from Resolution 1566 of the UN Security Council and advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereafter, Special Rapporteur on counter-terrorism), with a view towards ensuring that “the term ‘terrorism’ is confined in its use to conduct that is of a genuinely terrorist nature.” See U.N. Commission on Human Rights, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,” U.N. Doc. E/CN.4/2006/98 (2005) (Special Rapporteur, Martin Scheinin), para. 42, <http://www.un.org/Docs/journal/asp/ws.asp?m=E/CN.4/2006/98>. While not offering a definition of terrorism, this formulation focuses on three cumulative characteristics of terrorist acts – intent, purpose, and a threshold “trigger offense” – that together serve to establish terrorism.

<sup>10</sup> КОНВЕНЦИЯ Шанхайской организации сотрудничества против терроризма {*Convention on Counter-Terrorism of the Shanghai Cooperation Organization*} (hereafter, *SCO Counter-Terrorism Convention*), June 16, 2009, art. 2.1.2., [http://asozd2.duma.gov.ru/main.nsf/\(ViewDoc\)?OpenAgent&work/dz.nsf/ByID&1CB3AD654A8490D2C3257752002C8E0B](http://asozd2.duma.gov.ru/main.nsf/(ViewDoc)?OpenAgent&work/dz.nsf/ByID&1CB3AD654A8490D2C3257752002C8E0B) (emphasis added) (unofficial translation from the original Russian by Human Rights in China and International Federation for Human Rights). Kazakhstan ratified the *SCO Counter-Terrorism Convention* in 2010. “Senate Ratifies SCO Convention against Terrorism,” Kazinform, December 23, 2010, <http://engNews.gazeta.kz/art.asp?aid=330023>.

<sup>11</sup> *Shanghai Convention*, art. 1(1)(2).

- **“Extremism”** is defined to include acts “aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime” of an SCO member state.<sup>12</sup>
- The *Shanghai Convention* requires SCO member states to cooperate “in the field of their **domestic legislation**” to combat “terrorism,” “separatism,” and “extremism.”<sup>13</sup> More specifically, under the 2005 *Concept of Cooperation between SCO Member States in Combating Terrorism, Separatism, and Extremism*, key SCO cooperation objectives include “**developing and harmonizing the legislation** of SCO member states in the realm of combating terrorism, separatism, and extremism,” with the aim of achieving “**reciprocal recognition** of a terrorist, separatist, or extremist act regardless of whether the legislation of SCO member states includes a corresponding act in the same category of crimes or whether the act is described using the very same terms.”<sup>14</sup>

### ***Impact on Implementation of the Covenant***

- Kazakhstan’s commitment to “reciprocal recognition” of criminal liability under the SCO framework implicates the **non-derogable principle of legality** under the Covenant (art. 15). Specifically, Kazakhstan’s obligations to criminally punish, or assist other SCO member states to punish, individuals labeled as “terrorist,” “separatist,” or “extremist” by any SCO member state – regardless of the basis for the original charges, and of whether and how such acts are recognized or addressed under its own domestic criminal law – conflict with Covenant protections limiting imposition of criminal liability to **clear and precise provisions of law**.<sup>15</sup> Implementation of the principle of legality may further be hindered by the SCO’s politically malleable definition of “terrorism” as an “ideology of violence.”<sup>16</sup>
- Moreover, in the absence of a clear definition of terrorism under international law, the SCO’s “Three Evils” framework threatens to take advantage of this gray area through use of **politicized, custom-tailored, and regionally harmonized definitions of “terrorism,” “separatism,” and “extremism,”** intended to fit the needs of powerful regimes within the SCO – including China. This may result in application of counter-terrorism measures to acts not genuinely constituting terrorism, while undermining developments towards global consistency in addressing terrorism.<sup>17</sup>

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<sup>12</sup> Ibid., art. 1(1)(3).

<sup>13</sup> Ibid., art. 3.

<sup>14</sup> Концепция сотрудничества государств – членов ШОС в борьбе с терроризмом, сепаратизмом и экстремизмом {*The Concept of Cooperation Between SCO Member States on Combating Terrorism, Separatism and Extremism*} (hereafter, *Concept of Cooperation*), July 5, 2005, arts. II.2, II.3, [http://www.ecrats.com/ru/normative\\_documents/1558](http://www.ecrats.com/ru/normative_documents/1558) (emphasis added) (unofficial translation from the original Russian by International Federation for Human Rights).

<sup>15</sup> For further analysis on the definition of terrorism and the non-derogable principle of legality under international law, see Human Rights in China, *Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization*, supra n. 4, at 40-48.

<sup>16</sup> *SCO Counter-Terrorism Convention*, supra n. 10, at art. 2.1.2. For further analysis on the problems raised by inclusion of “ideology of violence” as a criterion for terrorism, see Human Rights in China, *Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization*, supra n. 4, at 46-48.

<sup>17</sup> As stated by the Special Rapporteur on counter-terrorism, pursuant to the principle of legality, “it is essential that offences created under counter-terrorist legislation, along with any associated powers of investigation or prosecution, be limited to countering terrorism. *Crimes not having the quality of terrorism, regardless of how serious, should not be the subject of counter-terrorist legislation. Nor should conduct that does not bear the quality of terrorism be the subject of counter-terrorist measures, even if undertaken by a person also suspected of terrorist crimes.*” U.N. Commission on Human Rights, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,” supra n. 9, at para. 47 (emphasis added). Neither “separatism” nor “extremism” as defined by the SCO includes the elements necessary to qualify as terrorist activity under international law. Yet, these offenses – each offense having equal weight under the

- Kazakhstan's obligation to enforce the definition of "terrorism" as an "**ideology of violence**" also implicates implementation of the right to freedom of thought, conscience, and religion, including the freedom to have, adopt, or manifest beliefs (art. 15).

### ***Suggested Questions and Requests for Information***

- HRIC urges the Committee to request specific information on how Kazakhstan ensures **compliance with the principle of legality** in carrying out its SCO obligations to cooperate against "terrorism," "separatism," and "extremism," including:
  - Has Kazakhstan adopted or implemented any **definitions of "terrorism," "separatism," or "extremism"** as set forth under the SCO framework or adopted by other SCO member states? What are Kazakhstan's plans for further "**harmonizing**" its **domestic legal framework** with the normative framework of the SCO?
  - Concerning domestic implementation of its SCO obligations, how does Kazakhstan reconcile the **SCO's different definitions of "terrorism"** under the 2001 *Shanghai Convention* and the 2009 *SCO Counter-Terrorism Convention*? What is the function of these definitions under Kazakhstan law?
- HRIC urges the Committee to request further information on how Kazakhstan ensures compliance with **developing international norms and commitments** concerning the protection of human rights while countering terrorism, including the development of "measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism" under the **UN Global Counter-Terrorism Strategy**.<sup>18</sup>

### ***Recommendations***

- In order to ensure that counter-terrorism policies are free from politicization and pressure by powerful regimes within the SCO framework, HRIC urges the Committee to recommend that Kazakhstan adopt a **definition of "terrorism"** that more closely tracks accepted **international consensus-based criteria**, rather than broadening the definition to include crimes against the state or a focus on specific ideology.
- HRIC also urges the Committee to recommend that Kazakhstan **limit its security cooperation** within the SCO to addressing **acts genuinely constituting terrorism**, rather than broadening cooperation to target separatism and extremism.

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*Shanghai Convention* – trigger the same apparatus and cooperative activities that SCO member states use to combat terrorism, creating significant potential for abuse.

<sup>18</sup> The UN Global Counter-Terrorism Strategy includes as its fourth pillar "Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism." United Nations Global Counter-Terrorism Strategy, G.A. Res. 60/288, U.N. Doc. A/RES/60/288 (2006), <http://www.unodc.org/pdf/terrorism/Index/60-288en.pdf>.

## B) EXTRADITIONS AND FORCIBLE RETURNS TO SCO MEMBER STATES

Kazakhstan is obligated to cooperate in the facilitation and carrying out of **extraditions** at the request of other SCO member states. Kazakhstan's domestic legal framework does not afford adequate safeguards to protect individuals at **risk of extradition to SCO member states** where their **Covenant rights may be violated**. This is particularly troubling given the pattern of extradition of **ethnic Uyghur asylum-seekers** from Kazakhstan to **China**.<sup>19</sup>

### *Key SCO Normative Provisions*

- SCO member states are obligated to consider acts of “**terrorism,**” “**separatism,**” and “**extremism**” as “**extraditable offences**” under Article 2 of the *Shanghai Convention*. Meanwhile, Article 11 of the *SCO Counter-Terrorism Convention* indicates that “offenses covered by this Convention [terrorism-related offences enumerated in Article 9] shall be deemed by the parties to be extraditable offenses, subject to the transfer of sentenced persons and provision of legal assistance.”
- SCO agreements do not set forth any required **procedural safeguards** for the conduct of extradition cooperation. Requirements to satisfy an extradition request appear minimal – they need only contain basic case background details and identification of relevant parties and agencies.<sup>20</sup>
- Kazakhstan appears bound to accept, **without independent assessment**, a requesting SCO member state's allegations of “terrorism,” “separatism,” or “extremism” against an individual for the purposes of carrying out extradition requests under the SCO framework.<sup>21</sup>

### *Impact on Implementation of the Covenant*

- Kazakhstan's SCO extradition obligations implicate the **principle of non-refoulement**, which prohibits extradition to states where substantial grounds exist to believe that returned individuals may suffer violations of fundamental rights.<sup>22</sup> These include the right to life and prohibitions against the arbitrary deprivation thereof (art. 6); prohibitions against torture and other ill-treatment (art. 7); the right to liberty and security of the person (art. 9 and 10); and the rights to equality before

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<sup>19</sup> For further information on patterns of extradition and forcible return between SCO member states, see Human Rights in China, *Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization*, supra n. 4, Appendix D: Reported or Suspected Extraditions or Forcible Returns of Individuals between Member States of the SCO. In addition, an excerpt from that resource specifically highlighting Kazakhstan's pattern of extraditing Uyghur asylum-seekers from China can be found in *Attachment D: Highlighted Cases of Extraditions and Forcible Returns from Kazakhstan to China*.

<sup>20</sup> See *Shanghai Convention*, supra n. 7, at art. 8(3), and *SCO Counter-Terrorism Convention*, supra n. 10, art. 14, respectively.

<sup>21</sup> See, e.g., *Concept of Cooperation*, supra n. 14, at art. II.3 (“SCO member states are guided by the following principles . . . reciprocal recognition of a terrorist, separatist, or extremist act regardless of whether the legislation of SCO member states includes a corresponding act in the same category of crimes or whether the act is described using the very same terms”); *SCO Counter-Terrorism Convention*, supra n. 10, at art. 11(5) (“In cases where the principle of dual criminality must be observed with respect to extradition or legal assistance, this principle shall be deemed observed regardless of whether the laws of the requested Party place the relevant act in the same category of offenses or describes it in the same terms as the requesting Party, if the act in question is deemed to be criminally punishable in accordance with the laws of the Parties”).

<sup>22</sup> Kazakhstan's non-refoulement obligations originate from principles of binding customary international law, as well as from legal instruments to which Kazakhstan is party, including the 1951 *UN Convention Relating to the Status of Refugees* and its 1967 Protocol, and the *Convention against Torture*. Moreover, there appears to be growing consensus that the principle of non-refoulement has, over time, attained the status of a peremptory norm of international law, or *jus cogens*, making it non-derogable as a matter of law.

tribunals, presumption of innocence, a fair trial, minimum due process and notice guarantees, and opportunity for challenge and review by a higher tribunal (art. 14).

- Independent monitors have consistently highlighted credible and well-documented risks of these types of violations in **China, the Russian Federation, Kyrgyzstan, Tajikistan, and Uzbekistan** – Kazakhstan’s fellow SCO member states.<sup>23</sup>
- Particularly disturbing is the **pattern of extradition of ethnic Uyghurs from Kazakhstan to China**. HRIC has highlighted the cases of **11 Uyghurs** who fled from China to Kazakhstan, where most sought asylum status, and were then reported or suspected to have been extradited to China, or are at imminent risk of extradition to China.<sup>24</sup> (This figure, based on limited publicly available reports, is neither comprehensive nor exhaustive.)
- One highlighted case is that of **Ershidin Israil**, recognized as a refugee in March 2010 by the United Nations High Commissioner for Refugees (UNHCR) in Almaty and set for resettlement in Sweden, which agreed to accept him.<sup>25</sup> However, Kazakh authorities halted Mr. Israil’s resettlement, and in May 2011, a court denied his request for asylum in Kazakhstan. On May 30, 2011, Mr. Israil was reportedly led away from a detention center in Almaty by Kazakh security officials and two Chinese police officers, and handed over to Chinese custody.<sup>26</sup> Kazakhstan officials said Mr. Israil would be “repatriated” to China, where he is wanted for “terrorism” after allegedly communicating details of the torture and death of a Uyghur detained by Chinese authorities to foreign media.<sup>27</sup> It has been reported that Mr. Israil’s extradition to China has already taken place.<sup>28</sup>

### ***Suggested Questions and Requests for Information***

- HRIC recommends that the Committee seek information on what safeguards have been implemented under Kazakhstan’s domestic legal framework to ensure **compliance with the principle of non-refoulement** and the **due process guarantees** of the Covenant, including:

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<sup>23</sup> For a summary of concluding observations and recommendations issued by independent treaty bodies reviewing the human rights implementation progress of the various SCO member states, see Human Rights in China, *Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization*, supra n. 4, Appendix B.2: Human Rights Records of SCO Member States: Concluding Observations of UN Human Rights Treaty Bodies, <http://www.hrichina.org/content/5232>. A copy of this resource is enclosed as *Attachment C: Human Rights Records of SCO Member States – Concluding Observations of UN Human Rights Treaty Bodies*.

<sup>24</sup> See *Attachment D: Highlighted Cases of Extraditions and Forcible Returns from Kazakhstan to China*.

<sup>25</sup> For more information on the case of Ershidin Israil, see Human Rights in China, “SCO Member State Kazakhstan’s Return of Uyghur Refugee to China Demonstrates Disregard of International Human Rights Obligations,” June 1, 2011, <http://hrichina.org/content/5358>; Shohret Hoshur, “Uyghur in Chinese Custody?,” Radio Free Asia, May 31, 2011, <http://www.rfa.org/english/news/uyghur/deportation-05312011162319.html>; Shohret Hoshur, “Uyghur Repatriation Imminent,” Radio Free Asia, May 27, 2011, <http://www.rfa.org/english/news/uyghur/repatriation-05262011192244.html>; Shohret Hoshur, “Uyghur Held in Leak Case,” Radio Free Asia, June 11, 2010, <http://www.uyghurnews.com/american/Read.asp?UighurNews=uyghur-held-in-leak-case&ItemID=UR-6282010219445547610657>. See also U.N. Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,” U.N. Doc. A/HRC/16/51/Add.1 (2010), (Special Rapporteur, Martin Scheinin), paras. 85-90, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/16/51/Add.1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/16/51/Add.1).

<sup>26</sup> Hoshur, “Uyghur in Chinese Custody?,” supra n. 25.

<sup>27</sup> Ibid.

<sup>28</sup> Shohret Hoshur, “Kazakhstan Deports Uyghur Teacher,” Radio Free Asia, June 2, 2011, <http://www.rfa.org/english/news/uyghur/deportation-06022011174917.html>.

- What procedures exist to determine whether there are grounds to believe that an individual may suffer violation of Covenant rights if extradited to an SCO member state? Which specific authorities are tasked with this inquiry? What considerations and criteria are taken into account, and how do findings of such inquiries impact Kazakhstan’s response to the extradition request?
  - What procedures exist to protect the **fundamental due process rights** of individuals subject to extradition requests, including rights to equality before tribunals and an opportunity for challenge and review by a higher tribunal?
  - What procedures exist to seek and receive information concerning the fates of individuals extradited to SCO member states, including whether they received adequate protection against violations of Covenant rights?
- Given the lack of publicly available information on extraditions to SCO member states, HRIC urges the Committee to seek information on the **status of extradited individuals**, as well as **statistical information, disaggregated by state origin of extradition request and place of extradition**, including:
- Number of extradition requests made to Kazakhstan from SCO member states pursuant to SCO agreements, including number of requests granted and denied; and
  - Number of extradition requests from SCO member states concerning individuals who have sought asylum or refugee status while in Kazakhstan, including number of requests granted and denied.
- Regarding the **11 identified cases of Uyghur individuals** reportedly extradited or facing imminent extradition to China, HRIC urges the Committee to request information concerning the circumstances of those extraditions, including:
- Whether those requests were made and granted **pursuant to Kazakhstan’s SCO obligations**? If not, as a matter of legal precision, pursuant to what agreement were those requests made and granted?
  - What steps, if any, were taken to determine whether grounds existed to believe that the individual would suffer violation of Covenant rights if extradited, and how Kazakhstan ensured compliance with the **principle of non-refoulement** in these cases?
  - What steps, if any, were taken to comply with **Article 3.3 of the Extradition Treaty between China and Kazakhstan**, pursuant to which extradition “shall not be granted” when Kazakhstan “has sufficient grounds for believing that [China] is aimed at criminally prosecuting or carrying out a sentence against the requested party for reasons of ethnicity, creed, citizenship, or political views; or because the requested party’s status may be compromised for the above reasons during the judicial procedure”?<sup>29</sup>
- In light of Kazakhstan’s statement that “over 500 aliens from [SCO member states] **Tajikistan and Uzbekistan** were detained for violation of immigration rules while trying to pass through Kazakhstan to Russia and farther in Europe,”<sup>30</sup> HRIC urges the Committee to request information on:

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<sup>29</sup> See *Extradition Treaty between the People’s Republic of China and Kazakhstan* [中华人民共和国和哈萨克斯坦共和国引渡条约], drafted by the Governments of the People’s Republic of China and the Republic of Kazakhstan in Chinese, Kazakh, and Russian on July 5, 1996, effective February 10, 1998, Art. 3, <http://www.mfa.gov.cn/chn/pds/ziliao/tytj/t422917.htm>.

<sup>30</sup> U.N. Human Rights Committee, “Initial Report of Kazakhstan,” U.N. Doc. CCPR/C/KAZ/1, July 27, 2009, para. 111, [http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.KAZ.1\\_en.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.KAZ.1_en.pdf).

- Whether and to what extent these detentions were executed pursuant to Kazakhstan's obligations as an SCO member.
- Whether accusations of "terrorism," "separatism," or "extremism" were levied against any of these detained individuals.
- Whether any of these detained individuals were ultimately extradited or returned to their country of origin.
- The existence and application of safeguards under the *Minsk Convention on Legal Assistance for Persons from the Commonwealth of Independent States*, if any, to protect individuals from extradition to states where their fundamental rights are at risk.<sup>31</sup>

### **Recommendations**

- HRIC recommends that the Committee urge Kazakhstan to **immediately halt extraditions to other SCO member states** where there exists a substantial risk that an individual may be subject to serious violations of Covenant guarantees upon his or her return, including prohibitions against arbitrary deprivation of life or the practice of torture and other ill-treatment to extract confessions, as well as lack of fundamental due process guarantees such as equality before tribunals, presumption of innocence, and a fair trial. The Committee should also urge Kazakhstan to take all possible steps to **ensure that Ershidin Israil's Covenant rights are protected** now that he has been returned to China.
- HRIC urges the Committee to recommend implementation of **specific safeguards** under Kazakhstan's domestic legal framework to ensure compliance with the **principle of non-refoulement**, including procedures to determine whether there are grounds to believe that an individual may suffer violation of Covenant rights if extradited to an SCO member state, as well as procedures to obtain information concerning the **fates of individuals extradited** to SCO member states, including whether they received adequate protection against violations of Covenant rights.
- HRIC also urges the Committee to recommend implementation of safeguards to protect **fundamental due process rights** of individuals subject to extradition requests in Kazakhstan, including rights to equality before tribunals and an opportunity for challenge and review by a higher tribunal.
- HRIC also urges the Committee to recommend that Kazakhstan implement safeguards to ensure compliance with provisions of its **bilateral extradition treaty with China** prohibiting extradition when there are "sufficient grounds for believing that [China] is aimed at criminally prosecuting or carrying out a sentence against the requested party for reasons of ethnicity, creed, citizenship, or political views; or because the requested party's status may be compromised for the above reasons during the judicial procedure."<sup>32</sup>

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<sup>31</sup> See U.N. Human Rights Committee, "List of issues to be taken up in connection with the consideration of the Initial Report of Kazakhstan," supra n. 1, at para. 13.

<sup>32</sup> *Extradition Treaty between the People's Republic of China and Kazakhstan*, supra n. 29, at art. 3.3.

### C) DENIALS OF ASYLUM TO INDIVIDUALS FROM SCO MEMBER STATES

In addition to extradition cooperation, Kazakhstan is obligated to **deny asylum to individuals accused or suspected of any of the “Three Evils”** by other SCO member states. This raises concerns related not only to the principle of non-refoulement, but also with respect to the situation of **ethnic Uyghur asylum-seekers from China in Kazakhstan**, who have become **“virtual refugees,”** outside of the protection of international or domestic law as a result of pressure from China on the government of Kazakhstan.

#### *Key SCO Normative Provisions*

- SCO member states have openly pledged to “not provide asylum for individuals, accused or suspected of conducting terrorist, separatist and extremist activity.”<sup>33</sup>
- According to official documentation on SCO information gathering and sharing, a key mutual objective of the SCO member states is “to establish a legal framework to ensure that a subject identified as a terrorist in one country will be regarded as such in other countries, thus becoming ineligible for political asylum.”<sup>34</sup>
- Moreover, under Article 23 of the *SCO Counter-Terrorism Convention*, SCO member states “shall take the necessary measures to prevent the granting of refugee status and corresponding documents to persons complicit in offenses” enumerated under the agreement.

#### *Impact on Implementation of the Covenant*

- Kazakhstan’s obligation to coordinate denial of asylum with fellow SCO member states raises concerns over the **principle of non-refoulement**. As discussed above, this implicates rights guaranteed under art. 6, 7, 9, 10, and 14 of the Covenant, and the credible, well-documented risks that asylum-seekers will face violation of these rights if returned to China, the Russian Federation, Kyrgyzstan, Tajikistan, or Uzbekistan.
- There is particular concern for **ethnic Uyghurs** fleeing China to seek asylum or refugee status in Kazakhstan, where independent monitors have observed strict enforcement of an **unwritten, de facto policy against granting asylum or refugee status to any individuals arriving from China** – especially ethnic Uyghurs – as a result of apparent pressure from the Chinese government.<sup>35</sup> Under these conditions, Uyghurs become **“virtual refugees”** – unable to apply for asylum, forced into hiding, living outside the protections of any domestic legal and social assistance frameworks, and

<sup>33</sup> Declaration of Heads of Member States of the Shanghai Cooperation Organization, July 5, 2005, art. III, available at [http://www1.chinadaily.com.cn/china/2006-06/12/content\\_6020345.htm](http://www1.chinadaily.com.cn/china/2006-06/12/content_6020345.htm). This is echoed in the *Concept of Cooperation*, issued the same day, under which SCO member states “shall not provide asylum to individuals accused or suspected of committing ... acts [of ‘terrorism,’ ‘separatism,’ and ‘extremism’].” *Concept of Cooperation*, supra n. 14, preamble.

<sup>34</sup> SCO Regional Anti-Terrorist Structure (hereafter, RATS), “О проблемах работы и состоянии создания Единого перечня террористических организаций” {“On the Progress and the Obstacles in the Development of a Single Register of Terrorist Organizations”}, May 19, 2006, [http://www.ecrats.com/ru/terrorist\\_organizations/1677](http://www.ecrats.com/ru/terrorist_organizations/1677) (unofficial translation from the original Russian by Human Rights in China).

<sup>35</sup> For further analysis of the “virtual refugee” status of Uyghurs in Kazakhstan, see International Federation for Human Rights (hereafter, FIDH), *Kazakhstan/ Kyrgyzstan: Exploitation of Migrant Workers, Protection Denied to Asylum Seekers and Refugees* (FIDH: 2009), <http://www.fidh.org/IMG/pdf/Kazakhstan530a.pdf>.

subject to systemic, widespread anti-Uyghur discrimination, implicating the right to equal protection and freedom from discrimination under Covenant art. 26.

- These concerns are illustrated starkly by the case of **Ershidin Israil** (described above), who was reported to have been extradited to China following Kazakhstan's denial of asylum, despite the refugee status initially accorded to him by the UNHCR and the substantial risk that he will suffer serious rights violations upon his return to China.

### ***Suggested Questions and Requests for Information***

- Regarding coordinated denials of asylum pursuant to SCO obligations and their impact on Kazakhstan's Covenant obligations, HRIC refers the Committee to its suggestions above concerning information on what safeguards have been implemented under Kazakhstan's domestic legal framework to ensure compliance with the **principle of non-refoulement**.
- HRIC also urges the Committee to inquire about the extent to which **Article 23** of the **SCO Counter-Terrorism Convention**, calling for "measures to prevent the granting of refugee status and corresponding documents," requires Kazakhstan to disregard the decisions or obstruct the work of the UNHCR. HRIC further recommends that the Committee request an explanation on how Kazakhstan's implementation of Article 23 of the *SCO Counter-Terrorism Convention* impacts its obligation to respect the principle of non-refoulement, particularly when, as in the case of Ershidin Israil, a determination of refugee status and an agreement for resettlement in a third-party state have already been concluded.
- Given the lack of publicly available information on denials of asylum or refugee status in Kazakhstan, HRIC recommends that the Committee seek statistical information concerning **requests for asylum or refugee status** made by individuals fleeing SCO member states, including number of requests granted and denied, disaggregated by state of origin of the refugee or asylum-seeker, with particular attention to data concerning refugees and asylum-seekers from China.

### ***Recommendations***

- HRIC refers the Committee to its recommendations above, following discussion of extraditions and forcible returns, to urge Kazakhstan to take all possible steps to ensure that **Ershidin Israil's** Covenant rights are protected now that he has been returned to China.
- HRIC refers the Committee to its recommendations above, following discussion of extraditions and forcible returns, concerning implementation of safeguards to ensure compliance with the **principle of non-refoulement**, including procedures to determine whether there are grounds to believe that an individual may suffer violation of Covenant rights if extradited to an SCO member state.
- HRIC also urges the Committee to recommend implementation of safeguards to protect **fundamental due process rights** of individuals seeking refugee or asylum status in Kazakhstan, including rights to equality before tribunals and an opportunity for challenge and review by a higher tribunal.

## D) USE OF SCO BLACKLISTS AND MUTUAL RECOGNITION OF CRIMINALITY BETWEEN SCO MEMBER STATES

A critical tool of SCO cooperation against the “Three Evils” is the creation and enforcement of **blacklists** identifying individuals and organizations associated with “terrorism,” “extremism,” and “separatism.” Very little is publicly known about the SCO blacklisting process, including what specific safeguards, if any, exist under Kazakhstan’s domestic legal framework to protect individuals from blacklisting in violation of Covenant rights. Moreover, Kazakhstan’s obligations in this regard to **cede jurisdiction and critical decision-making** to other SCO member states raise concerns over its capacity to independently implement its Covenant obligations.

### *Key SCO Normative Provisions*

- SCO member states have jointly declared their commitment to “creation of a **unified list** of [‘terrorist,’ ‘separatist,’ and ‘extremist’] organizations” and “creating and maintaining a single search registry of individuals” suspected of crimes of a terrorist nature.<sup>36</sup> Kazakhstan in particular has relied on “rosters of persons sought by the special services and law enforcement agencies of [SCO member states] ... [who] have committed or are suspected of committing crimes of a terrorist and extremist nature” as a **border control** tool.<sup>37</sup>
- Additionally, the *SCO Counter-Terrorism Convention* permits an SCO member state to establish **jurisdiction** over wanted individuals in a range of circumstances, including when it determines that an “offense was aimed at or resulted in the commission of a terrorist act for the purpose of compelling [that SCO member state] to do or abstain from doing any act.”<sup>38</sup> This broad basis for acquiring jurisdiction appears to apply regardless of the nationality or residence of the alleged perpetrators or the actual location of any alleged acts.

### *Impact on Implementation of the Covenant*

- It is unclear whether Kazakhstan’s domestic legal framework includes sufficient **safeguards to protect blacklisted individuals** from violation of their rights to equality before tribunals, presumption of innocence, a fair trial, minimum due process and notice guarantees, and opportunity for challenge and review by a higher tribunal (art. 14); freedom from arbitrary or unlawful interference with privacy (art. 17); freedom of association (art. 22); and equal protection of the law and prohibitions against discrimination on improper grounds, including race, language, religion, political opinion, and national or social origin, among others (art. 26).
- Kazakhstan’s obligations under the *SCO Counter-Terrorism Convention* to cede jurisdiction to other SCO member states (including in cases that may involve citizens or residents of Kazakhstan and/or acts alleged to have occurred on Kazakh territory), raise concerns over its capacity to independently

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<sup>36</sup> *Concept of Cooperation*, supra n. 14, at art. III.2, III.5. In April 2010, RATS Director Dzhenisbek Dzhumanbekov noted that RATS maintains within its database a list of over 1100 persons “sought internationally in connection with acts of terrorist, separatist, or extremist nature.” RATS, “ПАТС ШОС: сообща против терроризма” {“SCO RATS: United Against Terrorism”}, April 29, 2010, <http://infoshos.ru/ru/?idn=5810> (unofficial translation from the original Russian by Human Rights in China.)

<sup>37</sup> See U.N. Security Council, “National Report of the Republic of Kazakhstan on the implementation of Security Council resolution 1624 (2005),” U.N. Doc. S/2008/337 (2008), 4-5, <http://www.un.org/Docs/journal/asp/ws.asp?m=S/2008/337>.

<sup>38</sup> *SCO Counter-Terrorism Convention*, supra n. 10, at art. 5.2.3.

implement its Covenant obligations. In particular, Kazakhstan appears obligated to accept – without question or critical assessment – **unilateral conclusions of other SCO member states** concerning punishable “terrorist” acts and intentions, even when those conclusions might constitute or facilitate violation of Covenant rights.

- These concerns further implicate **restrictions on movement**. For instance, in May 2011, **Kahriman Ghojamberdi**, a Kazakhstan passport-holder and Vice President of the World Uyghur Congress (WUC), was prevented from leaving Kazakhstan to attend a Uyghur rights conference in the U.S.<sup>39</sup> This appears to have been coordinated with similar actions by Kyrgyzstan authorities to prevent Uyghurs in that country from attending the same conference. It is suspected that Kazakhstan and Kyrgyzstan yielded to pressure from China – their fellow SCO member state – implicating Kazakhstan’s Covenant obligation to protect the right to liberty of movement and freedom to leave any country (art. 12), as recognized by Kazakhstan in its report to the Committee.<sup>40</sup>

### ***Suggested Questions and Requests for Information***

HRIC urges the Committee to request information concerning:

- The **specific role played by Kazakhstan** in the creation and enforcement of **SCO blacklists**, the contents of such blacklists, and whether, in carrying out SCO-related activities, Kazakhstan incorporates unilateral conclusions of other SCO member states concerning individuals or organizations targeted as “terrorist,” “separatist,” or “extremist” into its own domestic legal framework.
- Specific information on what **safeguards** exist under Kazakhstan’s domestic legal framework to ensure that **individuals targeted** for such listing are protected against violation of rights guaranteed under the Covenant, including rights to equality before tribunals, presumption of innocence, a fair trial, minimum due process and notice guarantees, and opportunity for challenge and review by a higher tribunal (art. 14); freedom from arbitrary or unlawful interference with privacy (art. 17); freedom of association (art. 22); and equal protection of the law and prohibitions against discrimination on improper grounds, including race, language, religion, political opinion, and national or social origin, among others (art. 26).
- Information on whether and how Kazakhstan’s SCO obligations – including those related to blacklisting and border control – impacted its refusal to permit **Kahriman Ghojamberdi** to freely leave Kazakhstan.

### ***Recommendations***

- HRIC urges the Committee to recommend that Kazakhstan adopt and implement **safeguards** to ensure that **individuals targeted for blacklisting** under the SCO framework are protected against violation of rights guaranteed under the Covenant, including:

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<sup>39</sup> Human Rights in China, “SCO Member States Kazakhstan and Kyrgyzstan Prevent Uyghur Activists from Attending Conference in United States,” May 4, 2011, <http://www.hrichina.org/content/5323>.

<sup>40</sup> U.N. Human Rights Committee, “Initial Report of Kazakhstan,” U.N. Doc. CCPR/C/KAZ/1, para. 106, [http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.KAZ.1\\_en.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.KAZ.1_en.pdf) (“Everyone has the right to leave Kazakhstan.”).

- Safeguards specifically proposed by the Special Rapporteur on counter-terrorism to ensure compliance with the principles of **legality, proportionality, and necessity**, as well as **fundamental due process features** to ensure the right to be informed of grounds for blacklist inclusion and delisting procedures, the right to judicial review of blacklist decisions, the right to a remedy for wrongful inclusion, and humanitarian exemptions.<sup>41</sup>
- Safeguards against the use of **racial or ethnic profiling** in the compilation or application of blacklists, or any other practice constituting unlawful discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### **E) INTELLIGENCE AND LAW ENFORCEMENT COOPERATION THROUGH THE SCO REGIONAL ANTI-TERRORIST STRUCTURE**

Kazakhstan is obligated under the SCO framework to gather and share data and information related to “terrorism,” “separatism,” and “extremism.” In particular, Kazakhstan’s commitments to cooperate through the **SCO’s Regional Anti-Terrorist Structure (RATS)** – including through the **RATS database** – raise concerns that Kazakhstan has not implemented sufficient safeguards to prevent violation of fundamental Covenant rights.

##### ***Key SCO Normative Provisions***

- RATS, established through the *Shanghai Convention*<sup>42</sup> and the *SCO Charter*<sup>43</sup> with a vaguely defined mandate, is described by the SCO as “a framework for coordination, information and analytical support for the competent agencies in the SCO member countries with relevant material on combating terrorism, extremism, and separatism.”<sup>44</sup> A key purpose of the RATS database is to “**identify[] and neutraliz[e] individuals** intent on perpetrating grievous crimes, sooner rather than later.”<sup>45</sup>
- Under the 2002 *Agreement between the Member States of the SCO on the Regional Anti-Terrorist Structure*, RATS is tasked with, among other things, “**collection and analysis of information** received ... from the [SCO member states] regarding issues of combating terrorism, separatism, and extremism,” the “formation of the **RATS database**” to compile information on individuals and groups associated with “terrorism,” “separatism,” and “extremism,” the dissemination of such information to SCO member states at their request, and “assistance in conducting **international**

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<sup>41</sup> See U.N. General Assembly, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,” U.N. Doc. A/61/267 (2006) (Special Rapporteur, Martin Scheinin), paras. 38-41, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/61/267>.

<sup>42</sup> *Shanghai Convention*, supra n. 7, at art. 10.

<sup>43</sup> *SCO Charter*, supra n. 5, at art. 4, 10.

<sup>44</sup> 2009 SCO Summit in Yekaterinburg, “Yekaterinburg will host 2009 session of Shanghai Cooperation Organization leaders council,” <http://www.shos2009welcome.ru/eng>. See also *Shanghai Convention*, supra n. 7, at art. 10 (calling for SCO member states “to establish and provide for functioning of a Parties’ Regional Counter-Terrorist Structure”).

<sup>45</sup> RATS, “ПАТС ШОС: сообща против терроризма” {“SCO RATS: United Against Terrorism”}, April 29, 2010, <http://infoshos.ru/ru/?idn=5810> (unofficial translation from the original Russian by Human Rights in China).

**searches for individuals** alleged to have committed [acts of ‘terrorism,’ ‘separatism,’ and ‘extremism’] in order to criminally prosecute them.”<sup>46</sup>

- With respect to international search operations, the *SCO Counter-Terrorism Convention* also permits SCO member state law enforcement agencies to “**dispatch [their] agents** to the territory of [another SCO member state] to assist in search efforts or investigation” when “conducting a criminal investigation of persons suspected of or charged in connection with [enumerated] offenses.”<sup>47</sup>
- Under the *2004 Agreement on the Database of RATS*, the **database** is designed to include, among other things, information on “international terrorist, separatist, and extremist organizations, their structures, forms, and methods of action, their leaders, members, and other individuals affiliated with these organizations, as well as on [their] funding sources and channels.”<sup>48</sup>

### ***Impact on Implementation of the Covenant***

- The gathering and sharing of intelligence on individuals allegedly associated with “terrorism,” “separatism,” and “extremism” for the purpose of justifying **preventive measures** raises a number of concerns. It is unknown whether RATS employs safeguards to ensure that intelligence is appropriately converted to concrete evidence, with sufficient time and opportunity for **affected individuals to challenge** preventive measures supported by such evidence. Data mining and sharing through RATS implicates rights to equality before tribunals, presumption of innocence, minimum due process and notice guarantees, and opportunity for challenge and review by a higher tribunal (art. 14). These rights are also implicated by unique aspects of **multilateral intelligence databases** such as the RATS database – an opaque mechanism that houses information from a variety of sources with varying reliability. These aspects of the database hinder the ability of individuals to identify the source of information used against them, challenge its veracity, or contest conclusions drawn by different SCO member states.<sup>49</sup>
- RATS intelligence gathering also implicates prohibitions against interference with **privacy** (art. 17). It is unclear what laws or standards, if any, protect information on individuals compiled in the RATS database, and whether privacy infringements imposed by RATS are **necessary, proportionate, and legitimate**. Nor is it known whether targeted individuals are protected against **racial or ethnic profiling**, implicating the right to equal protection of the law and prohibitions against discrimination on the basis of race, language, religion, political opinion, and national or social origin, among other grounds (art. 26).

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<sup>46</sup> Соглашение между государствами – членами ШОС о Региональной антитеррористической структуре {*Agreement Between the Member States of the Shanghai Cooperation Organization on the Regional Anti-Terrorist Structure*} (hereafter, 2002 RATS Agreement), June 7, 2002, art. 6, [http://www.ecrats.com/ru/normative\\_documents/1557](http://www.ecrats.com/ru/normative_documents/1557) (unofficial translation from the original Russian by International Federation for Human Rights).

<sup>47</sup> *SCO Counter-Terrorism Convention*, supra n. 10, at art. 18(1).

<sup>48</sup> Соглашение между государствами – членами ШОС о Региональной антитеррористической структуре {*Agreement on the Database of the Regional Anti-Terrorist Structure of the Shanghai Cooperation Organization*}, June 7, 2002, art. 3, [http://www.ecrats.com/ru/normative\\_documents/1557](http://www.ecrats.com/ru/normative_documents/1557) (unofficial translation from the original Russian by International Federation for Human Rights).

<sup>49</sup> For further analysis on the unique human rights challenges presented by the creation and application of multilateral intelligence databases such as the RATS database, including insights from the Special Rapporteur on counter-terrorism, see Human Rights in China, *Counter-Terrorism and Human Rights: The Impact of the Shanghai Cooperation Organization*, supra n. 4, 89-90.

- As with SCO blacklists, RATS intelligence sharing may also implicate SCO member state obligations to accept – without question or critical assessment – **unilateral conclusions of other member states** concerning individuals and their alleged connections to “terrorism,” “separatism,” and “extremism,” even if those conclusions constitute or facilitate violation of Covenant rights. The ability of SCO member states to deploy law enforcement personnel to the territory of another SCO member state in pursuit of a suspect on the basis of such shared intelligence further highlights the potentially grave consequences of such cooperation.

### ***Suggested Questions and Requests for Information***

- In light of the **lack of publicly available information** concerning the operation of RATS under the SCO framework, HRIC urges the Committee to request specific, concrete information on **Kazakhstan’s role**, as an SCO member, in the **function and operation of RATS**, and whether Covenant rights are protected in this context under Kazakhstan’s domestic legal system, including:
  - What are Kazakhstan’s **specific obligations**, as an SCO member, in contributing to the operation of RATS? What **specific documents or legal mechanisms** enumerate these obligations?
  - Which **specific domestic entities** are responsible for interaction with RATS? What cooperation is undertaken between these domestic entities and RATS?
  - What **safeguards** exist to ensure that these domestic entities implement Covenant obligations when carrying out RATS-related work?
  - What is Kazakhstan’s role in maintenance and enforcement of the **RATS database**?
  - How is the RATS database used in Kazakhstan’s **domestic security efforts** and what are its plans for use of the mechanism going forward?
  - What are the **contents and functions** of the RATS database?
  - What **safeguards** exist to ensure that government application of the database, and use of the information extracted from it, is in compliance with obligations under the Covenant?

### ***Recommendations***

- HRIC requests that the Committee urge Kazakhstan to adopt and implement the recommendations made by the **Special Rapporteur on counter-terrorism** concerning **best practices for intelligence cooperation**,<sup>50</sup> including:
  - Ensuring that intelligence sharing within the SCO framework has **clear basis in Kazakhstan’s national law**, which should indicate the parameters for intelligence exchange and be further enumerated by written agreements between the parties on use of data and human rights compliance (Practice 31)<sup>51</sup>;
  - Ensuring that Kazakhstan’s national law outlines the process for **authorization** of intelligence sharing, with **executive approval** of sharing with foreign entities, including SCO mechanisms (Practice 32)<sup>52</sup>;

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<sup>50</sup> See U.N. Human Rights Council, “Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism,” U.N. Doc. A/HRC/14/46 (2010) (Special Rapporteur, Martin Scheinin), <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.46.pdf>.

<sup>51</sup> Ibid. at para. 45.

<sup>52</sup> Ibid. at para. 46.

- Ensuring that any intelligence sharing within the SCO be **necessary**, and preceded by assessment of the counterpart's human rights and data protection record, and the **legal safeguards/controls** to which it is subject, as "intelligence received from a foreign entity may have been obtained in violation of international human rights law" (Practice 33)<sup>53</sup>; and
- Assessment of the impact on individuals of the sharing of data should also be undertaken – sharing should be explicitly **prohibited** when it could lead to **violation of the individual's rights**. All outgoing data should be screened for **accuracy and relevance** to avoid dissemination of flawed information, and exchanged pursuant to written agreement (Practice 33).<sup>54</sup>

#### 4. CONCLUSION

The foregoing analysis, focused on the impact of Kazakhstan's SCO participation on its obligations to implement the Covenant, bears directly on the issue of "Counter-terrorism measures and respect of Covenant guarantees," and the specific inquiry into "the legislative measures that have been adopted to combat terrorism, and to what extent they may affect the rights guaranteed under the Covenant."<sup>55</sup> The government of Kazakhstan has thus far avoided accounting for its implementation of obligations under the SCO framework, due in part to the lack of transparency surrounding the SCO. HRIC urges the Committee to raise the impact of the SCO on Kazakhstan's international human rights obligations during this review, particularly regarding the area of promotion and protection of human rights while countering terrorism.

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<sup>53</sup> Ibid. at paras. 47-48.

<sup>54</sup> Ibid.

<sup>55</sup> U.N. Human Rights Committee, "List of issues to be taken up in connection with the consideration of the Initial Report of Kazakhstan," U.N. Doc. CCPR/C/KAZ/Q/1, para. 4, <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.KAZ.Q.1.doc>.