

Written evidence from Amnesty International (ECA0027)

Supplement to oral evidence given to the Foreign Affairs Committee by Maisy Weicherding on UK's Engagement in Central Asia

12 July 2023, Heather McGill, Europe and Central Asia Programme, Amnesty International

Discrimination against people with psycho-social and intellectual disabilities in Central Asia

Introduction

1. I am a researcher with Amnesty International with more than 30 years of experience and I have researched and written reports on human rights in the former Soviet Union including on the treatment of people with psycho-social and intellectual disabilities in Kazakhstan, [Kazakhstan: "We are like dead souls" : Life without legal capacity in Kazakhstan - Amnesty International](#).
2. The adoption of the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2008 marked an important shift in the way states regarded persons with disabilities. They can no longer be regarded as recipients of aid, or medical treatment, but must be regarded as rights holders.
3. Article 5 of the CRPD requires states parties to recognize that all people are "equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law." Article 12 of the CRPD requires that persons with disabilities should be recognized as legal personalities who have the right to own or inherit property, to control their own financial affairs, to marry and to take part in the social and political life of their communities.

Recommendations for UK foreign policy

4. I make the following recommendations to the UK government:
 - a) This is an opportunity for "soft diplomacy". The UK has started to introduce supported decision-making in place of guardianship, and it has expertise that it can share. The Mental Capacity Act 2005 introduced the role of the Independent Mental Capacity Advocate to assist persons with psychosocial and intellectual disabilities to make decisions about their lives and their care, and there is also the possibility to set up a 'Circle of Support' – a network of people with whom to consult.
 - b) Use appropriate fora to encourage the Kazakhstan and other Central Asian states to explore alternatives to plenary guardianship for adults and devise a timeline for the establishment of an alternative system based on best practice, in accordance with the CRPD, by closely consulting with and actively involving persons with disabilities, in particular persons with psychosocial and intellectual disabilities, including children with disabilities, through their representative organizations, and experts and practitioners both within Kazakhstan and from other countries such as the UK.
 - c) Use opportunities to encourage progress on disability rights through multilateral diplomacy – both Kazakhstan and Kyrgyzstan will be examined as part of the Human Rights Council's Universal Periodic Review process in late 2024 and 2025 respectively.
 - c) Encourage Kazakhstan to take interim measures to ensure that people with psychosocial and intellectual disabilities are not discriminated against such as:
 - to make the necessary changes to legislation to ensure that individuals who have been declared "incapable" have the right to apply to courts to defend their rights,
 - to ensure that persons with psychosocial and intellectual disabilities can marry by amending Article 11 of the Code on Marriage and the Family which forbids marriage for individuals declared "incapable",
 - to amend Article 57 of the Labour Code which prevents individuals declared "incapable" from being employed;
 - to amend, Article 33 of the Constitution which prevents individuals declared "incapable" from voting and standing for election.

d) Encourage Tajikistan to accede to the CRPD.

CRPD Ratification and compliance in Central Asia

5. Turkmenistan, Kazakhstan, Kyrgyzstan, and Uzbekistan ratified the CRPD in 2008, 2015, 2019 and 2021 respectively. Tajikistan signed in 2018 but has not yet acceded.
6. Amnesty International has researched the situation of people with psychosocial and intellectual disabilities in Kyrgyzstan and Kazakhstan and found that existing legislation allows for people with psychosocial and intellectual disabilities to be deprived of legal capacity and for a guardian to be appointed to make all decisions for them. This prevents them from exercising their human rights and isolates them from society. It is a relic of a system that condemned persons with disabilities to a life in closed institutions. The UN Committee on the Rights of Persons with Disabilities has explicitly stated in General Comment No.1 to the CRPD that guardianship regimes or substituted decision-making are not compatible with the CRPD and must be abolished.¹

Deprivation of Legal Capacity in Kazakhstan

7. In 2018 at least 16,000 people in Kazakhstan were deprived of their legal capacity. This was carried out on the application of their relatives, or institutions, and they were placed under guardianship permanently with very little prospect of regaining their legal capacity. Other less radical legal measures are almost never applied. People who have thus been deprived of their legal capacity are described as “nedeeposobny” or “incapable of action”.² The impact of being deprived of legal capacity is grave and means that persons with disabilities are no longer able to make decisions about their lives ranging from where they want to live to whether they want medical treatment or not. They cannot apply to a court to defend their rights and in effect, they lose the ability to exercise their rights.
8. According to Article 26 of the Civil Procedural Code a “citizen who cannot understand the meaning of his actions or cannot control them because of mental illness or weak-mindedness” may be declared “incapable” by a court. An application to declare an individual “incapable” can be made by relatives, Guardianship and Custody Departments of municipalities, or by municipal psychiatric hospitals (mental health centres). The Supreme Court clarifies in its commentary on the Civil Procedural Code that an application can also be made by a psychiatric institution “in order to protect the rights and interests of mentally ill people.”²⁹ Article 324 of the Law requires that an application to declare an individual “incapable” should contain “evidence of the presence of a mental illness or mental disability, weak mindedness or other mental illness as a result of which the person cannot understand the actual nature and meaning of their actions or control them.” If this requirement is satisfied the court will call for a forensic psychiatric examination to be carried out. The examination is carried out by a forensic psychiatric commission convened by the Ministry of Justice.³
9. Once a person is declared “incapable” by a court they are deprived of the right to make any decisions about their lives – for instance, to control their finances, to marry, to study or to work. Doctors no longer need their free and informed consent for medical treatment and can treat and hospitalize them with the consent of their guardian. While the ostensible aim of the guardianship regime is to “protect” persons with psychosocial and intellectual disabilities, in practice it often exposes them to exploitation at the hands of self-seeking or inadequate guardians who fail to act in their best interest or seek to take advantage of their property.

Lack of safeguards

¹ Committee on the Rights of Persons with Disabilities, General comment No. 1, Article 12: Equal recognition before the law, UN Doc. CRPD/C/GC/1, 19 May 2014, Eleventh session 31 March–11 April 2014, paras 7 and 13, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGC%2f1&Lang=en

² The Russian term ‘nedeeposobny’ translates as ‘incapable of action’.

³ Despite numerous enquiries Amnesty International was unable to clarify the criteria for these examinations, and those undergoing examination for the restoration of their legal capacity reported being tested on general knowledge and basic educational skills.

10. Article 12 (4) of the CRPD requires governments to “ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests.”
11. The law does not allow for any flexibility in the imposition of substitute decision making. There are legal provisions for partial guardianship, but that option is only available for drug users and those dependent on alcohol. There are further provisions for custody (Article 127 of the Code on Marriage and Family), which would allow the person to hand over responsibility for certain decisions to a custodian on the basis of a contract. Custody can be ended at the request of the person under custody and does not entail the loss of legal capacity in all other matters. These provisions are not available to persons with psychosocial and intellectual disabilities. In cases of psychosocial and intellectual disabilities, the only option is to deprive a person of legal capacity in all spheres of life indefinitely.
12. There is no automatic periodic review of the appointment of a guardian or of the need for a guardian at all. Unless a third party, or the actual guardian or the Prosecutor General’s office, applies to a court on behalf of the person under guardianship they are likely to remain under guardianship for life.