



# **International Convention on the Elimination of All Forms of Racial Discrimination**

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## **Committee on the Elimination of Racial Discrimination**

### **Concluding observations on the combined sixth and seventh periodic reports of Kazakhstan**

#### **Addendum**

#### **Information received from Kazakhstan on follow-up to the concluding observations\***

[Date received: 22 June 2015]

### **Information on the implementation of paragraphs 8, 15 and 18 of the concluding observations concerning the combined sixth and seventh periodic reports of Kazakhstan on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination**

#### **Reply to the questions raised under paragraph 8 (CERD/C/KAZ/CO/6-7)**

##### **Information from the Ministry of Culture and Sport**

1. In Kazakhstan, under the current Constitution, all citizens are equal and have the right to participate in government affairs. Representatives of ethnic groups actively and on an equal footing with Kazakhs take part in building the State.
2. All ethnic groups in Kazakhstan have high civil and social status. Their representatives do not act on behalf of the ethnic minorities to which they belong, but are seen rather as citizens of the united people of Kazakhstan, possessing the full range of rights. In addition, under article 19 of the Constitution, citizens have the right to declare, or not to declare, their ethnic affiliation.
3. The country's citizens, regardless of ethnic background, have the right to take part in its political life, both through representative bodies and directly.
4. According to article 4 of the Constitutional Act on the Parliament and the Status of its Members:

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\* The present document is being issued without formal editing.



1. Parliament consists of two chambers: the Senate and the Majilis, which are in permanent session;
2. The membership of the Senate consists of two deputies representing each of the provinces, the city of national status and the country's capital, as set out by the Constitutional Act. Half of the elected members of the Senate are elected every three years;
3. Fifteen of the members of the Senate are appointed by the President of the Republic so as to ensure representation in the Senate of the ethnic, cultural and other significant interests of society;
4. The Majilis is composed of 107 deputies elected in accordance with the procedure set out by the Constitutional Act. Of these, 98 are elected at large from party lists presented by political parties for a single national constituency, in general, universal, equal and direct voting by secret ballot. Nine deputies of the Majilis are elected by the Assembly of the People of Kazakhstan.
5. The Assembly of the People of Kazakhstan is a unique achievement in the field of human rights; it serves as a gathering place for the ethnic groups of Kazakhstan. The status of the Assembly, including its right to send nine of its members to the Majilis (lower house) of Parliament, is set out in the Constitution. The nine deputies are selected by rotation to avoid competition among the ethnic groups.
6. Members of ethnic groups in Kazakhstan have formed various ethnic and cultural associations. There are currently over 800 such associations operating in the country.
7. To provide for the work of the Assembly, the Kogamdyk Kelisim, a national State institution, was set up under the Office of the President of the Republic. Analogous bodies have been established in the offices of the heads of the local authorities in Astana, Almaty and the provinces.
8. The election of the Assembly's membership is governed by the Act on the Assembly of the People of Kazakhstan. Under the Act, candidates for seats in the Assembly are put forward at sessions of the provincial assemblies, based on proposals from the ethnic and cultural associations and decisions of their highest bodies.
9. It is thus the members of the ethnic groups themselves who directly elect representatives to the Assembly.
10. The Assembly holds annual sessions with the participation of the President to consider a wide range of issues related to all the country's ethnic groups. As an outcome, the sessions formulate instructions for the Government, with a view to further introducing mechanisms for the protection of the rights and interests of all ethnic groups.
11. The State guarantees the right of citizens to receive an education in the languages of the ethnic groups. There are at present 74 schools operating with Uzbek, Uyghur and Tajik as the languages of instruction. Mother-tongue language courses are held for 20 ethnic groups at the Sunday schools of national ethnic and cultural associations. There are 77 mother-tongue classes in operation (with 1,210 participants), with instruction carried out in the languages of the diasporas, including the following languages: Azerbaijani, Assyrian, Dungan, Greek, Georgian, Ingush, Karachay-Balkar, Korean, Kurdish, Armenian, German, Polish, Russian, Tatar, Bashkir, Turkish, Uyghur, Ukrainian and Chechen.
12. Mother-tongue classes at Sunday schools are staffed by qualified educators with experience in language teaching and work with foreign-language students.

13. Ethnic language programmes are drawn up along with course schedules, and the study groups are organized according to the language levels of the participants. The participants are instructed in speaking and writing in their mother tongues with the use of teaching and visual aids, and they are taught intercultural communication skills and tolerance.

14. Over 1,000 participants learn the Kazakh language in 67 classes at the 17 national and regional ethnic and cultural associations.

15. The Sunday schools receive a great deal of assistance in the form of educational materials. This year, the following titles are slated to be published: *An ethnopolitical dictionary of the Assembly of People of Kazakhstan*, in Kazakh and Russian; bilingual, two-way dictionaries for the Kazakh-Korean and Kazakh-Dungan combinations; *Fairytales of the Turkic peoples* and *Korean national fairytales* in Kazakh, along with the publication of folk story books published in the languages of the ethnic groups of Kazakhstan under the titles *Russian folk stories*; *Ukrainian folk stories*; *Uzbek folk stories*; *Uyghur folk stories*; and *Tatar folk stories*.

16. These materials are distributed among the ethnic and cultural associations and to Sunday school teachers and other interested organizations.

### **Information from the Ministry of Justice**

#### *Education in ethnic minority languages at public schools*

17. Article 1, paragraph 8, of the Languages Act of 11 July 1997 establishes that it is the Ministry of Culture and Sport that is the leading national executive body responsible for intersectoral coordination in the field of language development.

18. Article 6 of the Act stipulates that all citizens of Kazakhstan have the right to use their mother tongue and to freely choose the languages used in communication, parenting, education and creative endeavours. Ensuring the conditions for the study and development of the country's languages is a concern of the State.

19. In accordance with article 25 of the Act, the Ministry of Culture and Sport ensures the implementation of a single State policy for the development of languages and monitors compliance with the country's language laws by the national and local bodies in the provinces, cities of national status and the capital.

20. Under article 16 of the Act, preschool services are provided in Kazakhstan in the State language, and in areas with concentrations of ethnic groups, in their languages as well.

21. The language used to educate and raise children at children's homes and similar institutions is determined by the local authorities, taking into consideration the ethnicity of the children in question.

22. Elementary, middle school, general secondary, technical and vocational, post-secondary, higher and graduate education is ensured in Kazakhstan in Kazakh, Russian and, when necessary and in line with capacities, in other languages. Kazakh and Russian are compulsory subjects and are among the subjects listed in the school certificate.

23. Paragraph 2 of the Regulations on the Ministry of Culture and Sport establishes that the Ministry has a committee for the development of languages and for social and policy-related work. The committee's tasks consist in implementing State policy and monitoring the development of languages, and also in coordinating the activities of State bodies aimed at ensuring social harmony and political stability within the country in so far as the use of the State symbols of Kazakhstan is concerned.

24. Article 7 of the Constitution establishes that the State language is Kazakh. At State organizations and local executive bodies, Russian is used as an official language on an equal footing with Kazakh. Ensuring the conditions for the study and development of the country's languages is a concern of the State.

25. Article 19, paragraph 2, of the Constitution stipulates that everyone has the right to use his or her mother tongue and invoke his or her native culture and to freely choose the languages used in communication, parenting, education and creative endeavours.

26. Article 9 of the Education Act of 27 July 2007 stipulates that the language policy at schools is to be implemented in accordance with the country's Constitution and language legislation. The right to receive an education in a mother tongue is ensured by the establishment, when the institutions in question have the necessary opportunities, of classes and groups and their operation in proper conditions. The priority is to set up the corresponding schools, classes and groups, with the State language as the language of instruction. Kazakh and Russian are compulsory subjects and are among the subjects listed for standardized national testing.

27. On the basis of the above, we maintain our position that there are no measures in the legislation of Kazakhstan aimed at introducing "artificial inequality" or unequal or separate rights for different ethnic groups. The Ministry of Justice does not concur with those observations.

#### **Information from the Office of the Procurator-General**

28. With the adoption of a law on 29 June 1998, Kazakhstan acceded to the International Convention on the Elimination of All Forms of Racial Discrimination, concluded in New York on 21 December 1965.

29. As a State party to the Convention, Kazakhstan has undertaken to prevent and eliminate racial discrimination in all its forms and to ensure the equality of all before the law, without distinction as to race, colour or national or ethnic origin.

30. The corresponding legal basis has been established in Kazakhstan, pursuant to the country's international obligations.

31. First, article 14 of the Constitution sets out that all are equal before the law and the courts. No one may be subjected to any form of discrimination, including on the basis of race, ethnicity or language.

32. In view of the fact that any action capable of upsetting inter-ethnic harmony is deemed unconstitutional under article 39 of the Constitution, any propaganda for or incitement of racial or ethnic superiority is prohibited by article 20 of the Constitution, and article 5 of the Constitution prohibits the establishment or activity of organizations whose purposes or actions are aimed at inciting racial or ethnic strife.

33. The guarantees established by the country's Constitution for the equality of all before the law and the prohibition of discrimination based on race or ethnicity and of incitement of racial or ethnic hatred and intolerance are reflected in corresponding standards in a number of laws:

- Article 4 of the Elections Act;
- Articles 91, 177 and 184 of the People's Health and Health System Code;
- Article 7 of the Labour Code;
- Articles 5 and 17 of the Citizenship Act;

- Article 7 of the Act on the Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations;
  - Article 28 of the Education Act;
  - Articles 48 and 49 of the Population Migration Act; and
  - Others.
34. The principle of equality of persons who commit crimes or administrative offences regardless of their racial or ethnic origin is enshrined in article 14 of the Criminal Code and article 11 of the Code of Administrative Offences, respectively.
35. In addition, under the criminal legislation, offences committed on the grounds of ethnic or racial hostility or hatred are considered to involve an aggravating circumstance that increases the perpetrator's responsibility and the applicable penalties (Criminal Code, art. 54; a similar provision is contained in article 62 of the Administrative Code).
36. The aggravating circumstance is applicable in qualifying the following acts:
- Homicide (Criminal Code, art. 96, para. 2 (k));
  - Deliberately inflicted serious bodily harm (art. 103, para. 2 (h));
  - Deliberately inflicted moderate bodily harm (art. 104, para. 2 (f));
  - Cruel treatment (art. 107, para. 2 (f));
  - Wilful destruction of or damage to property (art. 187, para. 2 (d));
  - Desecration of mortal remains or places of burial (art. 275, para 2 (b)).
37. In other words, the legislature has established more stringent penalties for these forms of racial or ethnic intolerance.
38. Furthermore, the Criminal Code categorizes the following as elements of a crime:
- Direct or indirect restriction of human rights and freedoms on racial or ethnic grounds (art. 141);
  - Genocide (art. 160);
  - Incitement to ethnic, racial or religious hatred (art. 164); and
  - Creation of associations proclaiming or practising racial or ethnic intolerance or exclusion (art. 337, para. 2).
39. From the above we may conclude that in Kazakhstan there is a legal basis establishing the equality of all citizens before the law, regardless of race or ethnic affiliation, and prohibiting discrimination on such grounds.
40. At the same time, the Assembly of the People of Kazakhstan is an important element in the country's political system that upholds the interests of all ethnic groups and ensures that the rights and freedoms of citizens are scrupulously observed, regardless of their ethnic affiliation.
41. The work of the Assembly is aimed at implementing the State's ethnicities policy, ensuring social and political stability and providing for more effective interaction between State and civil institutions in the area of inter-ethnic relations.
42. The Assembly is now a constitutional institution under the chairmanship of the country's President, the guarantor of the Constitution. Its legal status is set out by a specific law, the Assembly of the People of Kazakhstan Act.

43. One of the main specificities of the Assembly is that it has guaranteed representation in the country's highest legislative body, the Parliament, so that it can represent the interests of ethnic groups. The Assembly elects nine members of the Majilis. Those elected by the Assembly represent its interests and the interests of every ethnic group in the country.

44. The State policy in the field of inter-ethnic relations also touches on other fields of everyday life, including education.

45. The country currently has 88 schools where instruction is entirely carried out in Uzbek, Tajik, Uyghur or Ukrainian, and the languages of 22 of the country's ethnic groups are taught as separate subjects at 108 schools. In addition, 195 specialized language centres have opened, allowing not only children, but also adults, to study the languages of 30 ethnic groups.

46. In the field of Kazakhstan's ethnic and cultural relations, special attention has been paid to supporting the news and communication facilities of the relevant associations. There are over 35 ethnic newspapers and magazines in the country. The six largest ethnic newspapers of nationwide importance are published with State support. Newspapers and magazines are published in 11 languages, and radio and television programmes are broadcast in 8 and 7 languages, respectively.

## **Replies to questions raised under paragraph 15 (a)**

### **Information from the Ministry of Internal Affairs**

47. In light of the fact that a significant proportion of the foreigners in Kazakhstan are people who have come from Central Asia seeking employment, special attention has been paid to improving control of labour migration.

48. To address these questions and regularize the situation of foreigners illegally working in the country, the President has signed a bill amending several laws on labour migration, which includes a registration procedure for the issuance of permits.

49. The bill is aimed at regularizing the situation of specific categories of migrant workers and improving recruitment procedures for them, while at the same time improving the payment by immigrants of individual income taxes on work performed for physical persons.

50. During the reporting period of this year, 45,983 permits allowing work for physical persons were issued.

51. As the legal standards are new, work is now being conducted to enforce these provisions in practice.

52. In the future, if necessary, the advisability of introducing appropriate amendments may be reconsidered.

## **Reply to questions raised in paragraph 15 (b)**

### **Information from the Office of the Procurator-General**

53. Under article 43-2, paragraph 5, of the Population Migration Act Migrant workers from the States parties of the Commonwealth of Independent States have the right to perform work only in the homes of physical persons.

54. However, the legal regulations as they currently stand, along with the low wage levels of foreign workers and the lack of unskilled labourers in construction, have led to violations of the legislation governing migration.

55. At the same time, as is known, various countries, including the Russian Federation, allow the hiring of foreign workers in commercial and public construction ventures.

56. This innovation was introduced on 1 January 2015. As things currently stand, foreign citizens arriving without visas may be hired in the Russian Federation without a work permit. Potential employees must obtain a special licence.

57. In the light of recent developments, the Office of the Procurator-General is studying this matter. Taking into account all the advantages and disadvantages and also the results of verifications by migration police departments planned for the third quarter of the year, a decision will be taken about the feasibility of introducing such changes, thus also addressing the proposals put forward by the Committee.

## **Reply to questions raised in paragraph 18**

### **Information from the Ministry of Health and Social Development**

58. To remove restrictions on foreign sole traders, measures have been proposed to simplify the regularization of foreign employees and prevent discrimination of any kind against them, by means of a flexible procedure for the issuance of work permits and a quota system ensuring fair competition when they are hired. There are also proposals to consider amending the Population Migration Act and the corresponding regulations so that the requirements applicable to sole traders are not overly restrictive and do not discriminate on the grounds mentioned in article 1, paragraph 1, of the Convention and those prohibited by the legislation of the State party.

59. At the same time, the Ministry of Health and Social Development has drawn up the bill amending several laws on migration and employment, with the aim of improving the mechanisms for the hiring of skilled foreign workers.

60. The bill is currently before the Majilis, in the national Parliament.

**61. Improvement of the procedure for self-employment of foreign workers in Kazakhstan.** There are currently the following proposals in this field:

(a) Recruit independent foreign specialists without the application of quotas and without authorizations;

(b) Instead of authorizations, issue foreigners with certification that the levels of their qualifications are sufficiently high;

(c) Introduce a points system for the evaluation of foreign workers;

(d) For the self-employment of foreign workers, establish of a list of priority sectors (or types of economic activity) and of the occupations where workers are in demand.

**62. Improvement of procedures for recruitment of foreign workers by employers.** There are currently the following proposals in this field:

(a) Establish a quota for the recruitment of foreign workers corresponding to each type of activity (instead of the current practice, where the quota is established as a percentage of the economically active population at large);

(b) Introduce fees for authorizations.

63. Taking into consideration that authorizations will henceforth be issued on a paid basis, in the future the employer will not be required to:

- Seek alternative candidates on the domestic labour market;

- Meet special conditions;
- Attest to the education levels of recruited foreign employees; and
- Pre-position guarantees for fees for foreign employees second-level banks.

64. **Improvement of procedures for transfers of foreigners within a company.** In this field, the proposal is to bring this kind of hiring of foreign employees into line with the generally accepted international standards of the World Trade Organization.

65. Specifically, according to the plan, such transfers will take place:

- (a) Without the application of quotas; and
- (b) With authorizations issued with specially advantageous conditions.

66. The advantageous conditions mean that:

- (a) Authorizations will be issued free of charge;
- (b) The requirements for local supervisory staff will be reduced to 50 per cent for categories 2 and 3 (chiefs of structural units and specialists) and will be completely removed for category 1 (senior directors and their deputies). The current requirements for local personnel in supervisory positions are as follows: 70 per cent for categories 1 and 2 and 90 per cent for category 3;
- (c) The employer too will not have to meet requirements for:
  - Seeking out alternative candidates on the domestic labour market;
  - Meeting special conditions; and
  - Attesting to the education levels of recruited foreign employees.

#### **Recruitment in Kazakhstan of talented young persons from other countries**

67. Talented young persons from other countries will be able to receive higher education and attend graduate schools under a government quota.

68. Once their studies are completed, such young persons may be employed outside the quota system and without authorization.

69. Under article 34 of the Population Migration Act, immigrants who come to Kazakhstan to carry out work may come to the country as business immigrants.

70. The conditions of stay for business immigrants in Kazakhstan and their performance of work are governed by the national legislation in force.

71. Article 6 of the Legal Status of Foreigners Act stipulates that foreigners who are in the country temporarily may engage in private enterprise activities. They are not allowed to operate small- or medium-sized enterprises unless the companies are incorporated as legal entities.

72. Thus, the measures that have been adopted duly ensure the effective functioning of the labour market, combining economic effectiveness with the need to defend the labour and social rights of employers and employees, in accordance with the international principles and requirements under which foreign citizens have the right to freely market their skills, to choose their type of activity and occupation and use their assets for entrepreneurial activities.

#### **Information from the Ministry of Internal Affairs**

73. Kazakhstan officially acceded to the Convention relating to the Status of Refugees and its Protocol on 15 December 1998, thus committing itself before the international community to carry out certain obligations for refugees.

74. In connection with the obligations stemming from this ratification, Kazakhstan on 4 December 2009 adopted the Refugees Act, the main purpose of which is to ensure a system for granting asylum to foreigners and stateless persons and for them to acquire refugee status.

75. The Act entered into force on 1 January 2010. It defines the criteria and procedures for the acquisition of refugee status and provides for the protection of the rights of asylum seekers and refugees. It also sets out their basic rights and duties while they are in Kazakhstan.

76. The adoption of the Act was welcomed by the regional office of the Office of the United Nations High Commissioner for Refugees (UNHCR), which noted that the law in question met the international obligations under the 1951 Convention regarding the Status of Refugees and its 1967 Protocol.

77. In 2015, 640 refugees (in 138 families) were registered in Kazakhstan. Refugees were registered in four of the country's regions: 394 in the city of Almaty; 192 in South Kazakhstan; 49 in Almaty Province and 5 in Jambyl.

78. Refugees in Kazakhstan are not harassed by the State and are guaranteed a legal status while residing in the country.

79. The national legislation provides fully for the protection of refugees. Once refugees have obtained refugee status, they are entitled to medical services in accordance with the country's health legislation, to freedom of employment or entrepreneurial activity in accordance with the country's legislation and to judicial protection of their property and personal non-property benefits and rights.

#### **Information from the Border Service of the National Security Committee**

80. Paragraph 18 of the Committee's concluding observations makes the following recommendation: "ensure that standardized asylum procedures are implemented and establish a referral procedure for the Migration Police Departments and the Border Guard Service ...".

81. Under the legislation, the State body in charge of questions related to refugees is the Ministry of Internal Affairs.

82. The National Security Committee is willing to cooperate in such work within its field of competence.