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## Human Rights Council

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Agenda item 6

Universal periodic review

## Report of the Working Group on the Universal Periodic Review\*

### Kazakhstan

#### Addendum

**Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review**

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



1. Kazakhstan noted 35 recommendations because they contradict the letter, spirit or practical implementation of the laws currently in force.
2. Comments on the recommendations noted are grouped by topic.
3. Kazakhstan noted the following recommendations:

## **I. Recommendations Nos. 140.1–140.4, 140.14, 140.15 and 140.17 relating to international obligations**

### **Recommendations Nos. 140.1–140.4**

4. The legislation of and international treaties concluded by Kazakhstan provide for a sufficient level of protection of the rights of stateless persons and comply with international standards. On 30 November 2022, Kazakhstan adopted the Migration Policy Framework for the period until 2027.
5. Under the Framework, the visa regime and the procedures for issuing invitations and for the entry and registration of foreigners have been simplified and the migration visa portal has been updated.
6. Moreover, ratification of the Conventions in question carries certain financial and legal risks. To ratify them would make it necessary to provide foreign citizens and stateless persons with comprehensive medical and educational services.
7. Furthermore, the Conventions directly establish an obligation for the State to guarantee the electoral rights of foreign citizens and stateless persons, meaning their rights to vote, to be elected and to hold political office, which directly contradicts current Kazakh law.
8. Based on the foregoing, we believe that it would be premature to consider ratifying the above-mentioned Conventions at this time, as this issue requires more comprehensive examination at greater length with other State bodies and non-governmental organizations (NGOs).

### **Recommendation No. 140.17**

9. On 27 June 2023, ratification of the International Labour Organization (ILO) Violence and Harassment Convention, 2019 (No. 190), was considered at the 23rd meeting of the Interdepartmental Commission on International Humanitarian Law and International Human Rights Treaties.
10. The meeting resulted in a decision that ratification of the Convention would be premature.
11. However, it was proposed that amendments to existing laws should be drafted with a view to eliminating violence and harassment in the workplace.
12. Accordingly, the Ministry of Labour and Social Protection drafted amendments to the Labour Code and the Trade Union Act jointly with relevant State bodies and social partners.
13. The Ministry is currently working to enshrine the above-mentioned amendments in law.

### **Recommendations 140.14 and 140.15**

14. There are currently legal obstacles to the country's ratification of the Rome Statute of the International Criminal Court.<sup>1</sup>
15. For example, article 1 of the Rome Statute provides that the Court is to be a permanent institution, is to have the power to exercise its jurisdiction over persons for the most serious

crimes of international concern, as referred to in the Statute, and is to be complementary to national criminal jurisdictions.

16. Similarly, article 27 (1) provides that the Rome Statute is to apply equally to all persons without distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official is in no case to exempt a person from criminal responsibility under the Statute, nor is it, in and of itself, to constitute a ground for reduction of sentence.

17. The above provisions of the Rome Statute are incompatible with the Constitution, which provides for the immunity of the President,<sup>2</sup> Members of Parliament,<sup>3</sup> judges<sup>4</sup> and the Procurator General.<sup>5</sup>

18. It is thus not a question simply of legal obstacles, but of a divergence between the Rome Statute and the Constitution.

19. Ratification of the Rome Statute would not resolve this contradiction, since ratified international treaties may take precedence over other laws, but not over the Constitution,<sup>6</sup> which is adopted by national referendum.

20. In view of the foregoing, Kazakhstan has neither signed nor ratified the Rome Statute. Accordingly, the provisions of the Statute do not apply to Kazakhstan and the country has no obligations under this international treaty.

## **II. Recommendation No. 140.45 relating to the activities of Ombudsmen in Kazakhstan**

21. In accordance with Presidential Decrees No. 192 of 10 February 2016 establishing the office of Commissioner for Children's Rights and No. 154 of 28 March 2023 establishing the office of Commissioner for the Rights of Socially Vulnerable Categories of the Population under the President, those institutions carry out their activities on a voluntary basis, as a result of which it is not possible to allocate funding to them from the State budget.

## **III. Recommendation No. 140.48 relating to anti-discrimination legislation and amendments to article 145 of the Criminal Code**

22. Kazakh law already includes mechanisms for protecting individuals against discrimination. Efforts to refine anti-discrimination legislation are currently under way. In 2024, an interdepartmental working group on anti-discrimination legislation was set up under the Ministry of Culture and Information with a view to making further improvements in that area. The adoption of separate provisions for the protection of gender identity and sexual orientation could cause a public outcry, as such issues are controversial. Expanding article 145 of the Criminal Code to include gender identity and sexual orientation would require additional regulation and clarification of concepts and adaptation of law enforcement practice. This would place a strain on the judicial system and law enforcement agencies.

## **IV. Recommendation No. 140.66 relating to the fight against torture**

23. Owing to the limited number of NGOs with offices in all regions of the country, there is a risk of monopolization of the national preventive mechanism.

24. At the same time, it should be noted that current laws sufficiently regulate the activities of the national preventive mechanism and that the drafting and adoption of a separate law would cause unnecessary duplication.

## **V. Recommendation No. 140.71 relating to the fight against terrorism**

25. The list maintained by the authorities of organizations and individuals associated with the financing of terrorism and extremism is an effective tool for countering the spread of extremist ideology.

26. Organizations and individuals included on the list are subject to restrictions on their financial activities, including freezing of their bank accounts and restriction of their access to financial services, with the aim of containing criminal activity.

27. Persons who have been convicted of non-violent offences may be included on this list for the reasons set out below.

28. Removal of such persons from the list without good reason could result in the following:

- Resumption of extremist activities by persons previously convicted of offences of an extremist nature
- Lessening of the effectiveness of measures aimed at preventing the financing of extremist organizations
- Inconsistency in measures taken by Kazakhstan to counter extremist groups, resulting in criticism at the international level from organizations specialized in countering the financing of extremism

29. At the same time, it should be noted that a mechanism for removing persons from the list, where reliable information has been obtained that they have fully renounced criminal activity and extremist ideas, has been established in law and is applied in practice.

## **VI. Recommendations Nos. 140.87, 140.88, 140.98 and 140.106 relating to freedom of expression, peaceful assembly and media freedoms**

### **Recommendation No. 140.87**

30. The procedure for providing notification of peaceful assemblies is governed by the Act on Peaceful Assemblies, Rallies, Pickets, Marches and Demonstrations. The Act sets out the regulations that citizens must follow when organizing and holding peaceful assemblies and governs the procedure for notifying the authorities of planned events.

31. Notification is a mandatory process that event organizers must follow.

32. Notice must be given at least 10 working days prior to the date of the event. In the case of events that could result in mass violations of law and order or threats to public safety, notice must be given further in advance (for example, 15 working days prior to the date of the event).

33. Notifications must be submitted in writing or in electronic form.<sup>7</sup> They must include the following information:

- The purpose of the assembly
- The date, time and place of the event
- The anticipated number of participants
- The name of the organizer of the event and his or her contact details
- The route (for marches), if the event involves movement of people
- Safety measures

34. The notification procedure for holding peaceful assemblies plays an important role in ensuring law and order and security at public events. An important aspect of the procedure is the fact that, to lawfully hold rallies, pickets, marches and other public assemblies, organizers are obliged to submit notification in advance, comply with legal requirements and obtain confirmation from local authorities.

35. International practice shows that public safety is one of the main priorities in organizing and holding peaceful assemblies in many countries of the world.

36. In its actions, the State bears in mind that the interests of its citizens can diverge. The exercise by some citizens of their rights should not lead to violation of the rights of others, and in some cases certain limits are established for the safety of rights holders themselves.

### **Recommendation No. 140.88**

37. The Act on the Procedure for Organizing and Holding Peaceful Assemblies provides for a notification procedure for holding peaceful assemblies in the form of pickets, rallies and meetings with a view to enabling local authorities to take all necessary organizational measures to facilitate freedom of assembly, the protection of public order and the safety of citizens.

38. Under the notification procedure, while the right of citizens to assemble is recognized, a balance is struck between freedom of expression and ensuring public order.

39. Once a notification has been filed, no response from the local authorities is required; it is considered to have been tacitly approved.

40. However, taking into consideration international experience, local authorities may deny approval with a view to protecting the legal rights and security of citizens.

41. Kazakh legislation on the right to peaceful assembly is in line with international human rights norms and standards.

### **Recommendation No. 140.98**

42. In Kazakhstan, accreditation of journalists is subject to a clear regulatory framework and is governed by the Media Act of 19 June 2024. The accreditation procedure is defined in the standard rules for the accreditation of journalists and other media professionals, approved by Order No. 367-NQ of the Minister for Culture and Information of 20 August 2024.

43. The new rules for the accreditation of journalists were developed taking into consideration proposals made by the media themselves. Furthermore, they include a provision under which journalists and other media professionals can appeal against wrongful refusals of permanent accreditation in accordance with the procedure established by law.

44. Moreover, journalists are fully entitled to work for several publications at once, in which case each media outlet for which they work must submit an application for their accreditation, which is in itself a fairly simple procedure. This requirement does not apply to cases in which journalists use personal social media accounts to express their personal views and positions on events.

45. Accreditation of journalists is not intended to restrict freedom of expression or media freedom, nor does it deprive journalists of their right to operate independently.

### **Recommendation No. 140.106**

46. The concept of false information was introduced in response to public demand expressed during discussions with representatives of the media industry and bloggers. The concept itself is clear and is applied only when an offence has been committed.

47. The concept of false information is established in the Online Platforms and Online Advertising Act. In article 1 of the Act, “false information” is defined as information recorded

in any form that is inconsistent with reality or contains significant distortions of facts and thereby misrepresents persons, subjects, events, phenomena or processes.

48. This wording was developed in the course of working group discussions in the Majilis, the lower house of Parliament. In turn, both State bodies and Members of Parliament and representatives of the media industry and international NGOs took part in work on the bill. The Act and its provisions have undergone expert analysis at various State bodies and international organizations. The concept in question is consistent with legal practice.

## **VII. Recommendations Nos. 140.104 and 140.105 relating to the activities of non-governmental organizations**

49. In 2018, as part of efforts to implement the relevant recommendation of the Financial Action Task Force (FATF), amendments were made to the Code on Taxes and Other Obligatory Payments to the Budget (Tax Code)<sup>8</sup> to provide that money or other assets received from foreign States, foreign nationals or international or foreign organizations must be reported. Compliance with the FATF standards is mandatory for every United Nations Member State.

50. Information must be provided only if the recipient of the money and/or other assets carries out activities aimed at providing legal assistance or studying public opinion, including by conducting opinion polls, sociological surveys or similar research.

51. This mainly concerns voluntary associations – of which more than 22,000 are registered – that operate in this sphere.

52. In accordance with amendments made to article 29 of the Tax Code in 2022, the State Revenue Committee of the Ministry of Finance publishes on its website a register of entities that have received money or other assets from foreign sources.

53. The requirements to report on activities carried out and money received from foreign sources are in line with international practice.

54. For example, in the United States of America, the Foreign Agents Registration Act (FARA) provides for the maintenance of a register of persons acting under the direction or control and in the interests of a foreign principal. Similar provisions can be found in the laws of the United Kingdom of Great Britain and Northern Ireland, Israel and other countries.

55. In Kazakhstan, the procedure for publishing the corresponding register and for including in the database or removing from it entities that have received money or other assets from foreign sources is approved by order of the Minister of Finance; the register indicates the names and identification numbers of such entities.<sup>9</sup>

56. Pursuant to article 30 (1) (11) of the Tax Code, identification numbers and names do not constitute confidential tax information.

57. At the same time, it should be kept in mind that the State Revenue Committee does not have information on the amount of money and (or) other assets that NGOs have received from foreign sources and is therefore unable to conduct comprehensive monitoring.

## **VIII. Recommendation No. 140.141 relating to the activities of trade unions**

58. Efforts to simplify the registration process for trade unions have already been made. There are no plans to simplify the registration procedure in the future.

## **IX. Recommendations Nos. 168 and 169 relating to education**

59. These points are noted in connection with the content of the model school curriculum on moral and sex education, including reproductive health, hygiene and personal safety.

60. However, the Ministry of Education is of the view that acceptance of these recommendations would provoke a negative public response.

## **X. Recommendations Nos. 140.114 and 140.276 relating to international cooperation**

### **Recommendation No. 140.114**

61. Taking into account the significance of trade and transit ties between Kazakhstan and Afghanistan, the Government considers it advisable to confine itself to noting the recommendation.

### **Recommendation No. 140.276**

62. There are no manifestations of antisemitism or Holocaust distortion in Kazakhstan, as State policy has the goal of preserving inter-ethnic harmony and respect for historical memory in society.

## **XI. Recommendations Nos. 140.277–140.287 and 140.289 relating to gender identity**

### **Recommendation No. 140.277**

63. The petition entitled “We Are against Open and Hidden LGBT Propaganda in Kazakhstan” was duly considered, taking into account all views and positions in accordance with the Code of Administrative Procedure, following which it was decided, on 6 August 2024, to partially grant the petition and it was officially published on the website of the Ministry of Culture and Information.

64. Pursuant to the Constitution, the Government pursues a measured and balanced policy of non-discrimination, based on the objective of ensuring the sustainability of compliance with constitutional guarantees, tolerance and a non-conflict society.

65. Accordingly, the decision taken with respect to the petition does not entail any legal implications or any restrictions.

### **Recommendations Nos. 140.278–140.287 and 140.289**

66. Kazakh law already includes mechanisms for protecting individuals against discrimination.

67. Under article 14 of the Constitution, equality of all persons before the law is guaranteed and discrimination on grounds of origin, social status, profession, personal assets, sex, race, ethnicity, language, religion, opinions, place of residence or any other circumstances is prohibited.

68. Discrimination with respect to work is prohibited under article 6 of the Labour Code.

69. Discrimination on the basis of sex is prohibited under article 7 of the Children’s Rights Act.

70. Moreover, efforts to refine anti-discrimination legislation are currently under way. In 2024, an interdepartmental working group on anti-discrimination legislation was set up under the Ministry of Culture and Information with a view to making further improvements in that area.

71. However, cultural and social specificities need to be taken into account. Kazakhstan is a country with traditional values, where the majority of the population is inclined towards

conservative views. The adoption of separate provisions for the protection of gender identity and sexual orientation could cause a public outcry, as such issues are controversial.

72. Furthermore, expanding article 145 of the Criminal Code to include gender identity and sexual orientation would require additional regulation and clarification of concepts and adaptation of law enforcement practice. This would put a strain on the judicial system and law enforcement agencies.

73. In view of the foregoing, Kazakhstan proposes that these points should be deleted from the recommendations.

## **XII. Recommendation No. 140.294 related to combating statelessness**

74. In 2020, regulations governing the procedure for determining statelessness were adopted under which persons in an irregular situation are granted official status and issued with a document certifying that they are stateless.

75. Certification of statelessness forms the basis for the exercise of all rights, including the rights to move freely within the country, to choose one's place of residence and to travel abroad.

76. A total of 7,397 people in Kazakhstan currently have stateless person status. Stateless persons can apply for Kazakh citizenship, the terms and conditions of which are set out in the Citizenship Act. As many as 2,000 stateless persons receive Kazakh citizenship each year.<sup>10</sup> We would like to point out that no applications for Kazakh citizenship by stateless persons have been rejected.

77. Kazakh law is continually amended with a view to improving living conditions for such persons and the regulations on naturalization, taking into account the recommendations of the Office of the United Nations High Commissioner for Refugees (UNHCR) and international practice.

78. Between September 2020 and May 2022, the Ministry of Internal Affairs carried out a large-scale campaign, with the support of UNHCR and in collaboration with a number of NGOs, as a result of which 8,822 undocumented stateless persons were identified, of whom 5,618 proved their Kazakh citizenship and were issued with identity documents and 3,204 were recognized as stateless persons and issued with appropriate identity documents.

79. A similar campaign was carried out between July and December 2024. As a result, 504 undocumented persons were identified, of whom 251 proved their Kazakh citizenship and 28 were recognized as stateless persons. Steps to verify the legal status of the remaining 225 persons are still being taken.

80. Current Kazakh law therefore largely prevents increases in the number of stateless persons and thus does not need to be reviewed or amended.

### *Notes*

<sup>1</sup> далее – Статут МУС.

<sup>2</sup> пункт 1 статьи 46.

<sup>3</sup> пункт 4 статьи 52.

<sup>4</sup> пункт 2 статьи 79.

<sup>5</sup> статья 83.

<sup>6</sup> пункт 3 статьи 4 Конституции Республики Казахстан.

<sup>7</sup> электронный почты госорганов, через портал eOtinish.

<sup>8</sup> далее – Налоговый кодекс.

<sup>9</sup> Приказ от 20.02.2018г. №240.

<sup>10</sup> в 2021г.-1807 чел, 2022г.-1375, 2023г.-1542, 2024г.-678.