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تعزيز وحماية حقوق الإنسان المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير المقرر الخاص المعني بالتعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة، السيد مانفريد نوفاك

إضافة

بعثة إلى كازاخستان**

(٦-١٦ تموز/يوليه ٢٠٠٩)

موجز

تعدّ كازاخستان نحو ١٣٠ من الجماعات الإثنية المختلفة، يعيش عدد كبير منها على أراضي كازاخستان لأجيال عديدة. وما من شك أن المبادرات التي اتخذتها الحكومة فيما يتعلق بقضايا الأقليات قد ساعدت في تحقيق الاستقرار وفي احترام التنوع وحقوق الأقليات. ومن بين هذه المبادرات، عدد من السياسات الهامة التي وضعتها الحكومة من أجل المساعدة على الحفاظ على لغات الأقليات، وإنشاء وتمويل جمعيات ثقافية تعنى بالحفاظ على ثقافات الجماعات الإثنية وتقاليدها، وإنشاء هيئات استشارية، أبرزها جمعية شعب كازاخستان.

* تأخر تقديم هذه الوثيقة.

** يعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه الوارد في مرفق هذا الموجز، فيعمم كما ورد باللغة التي قدم بها، وباللغة الروسية فقط.

وتشكل جمعية شعب كازاخستان، التي تؤدي دوراً استشارياً لدى رئيس الجمهورية، رمزاً وطنياً ذا شأن في مجال الاعتراف بالأقليات، والتزاماً من جانب الدولة بالحفاظ على الموروث الثقافي للأقليات. ويجدر بالإشارة في هذا الصدد إلى أن تسعة مقاعد في مجلس الشعب مخصصة لأفراد يُختارون من بين أعضاء هذه الجمعية. غير أن الجمعية لا تحظى بمركز الهيئة التمثيلية الشرعية. فالأسس التي تقوم عليها العضوية في هذه الجمعية لا تستوفي جميع الشروط الديمقراطية، ولذلك فإن أعضاءها غير مسؤولين تماماً أمام جماعات الأقليات التي ينتمون إليها. وإن كازاخستان لم تستكمل مرحلة الانتقال إلى المؤسسات الديمقراطية. فالهياكل الديمقراطية، ولا سيما على المستوى المحلي، تتسم بأهمية حاسمة لإبلاغ حقّ أفراد الأقليات وشواغلهم وقضاياهم، ولإيجاد حلول مجدية. فقد أعرب سكان ينتمون إلى أقليات عن شعورهم بالإحباط إزاء انعدام المشاركة النشطة في الحياة السياسية وفي عملية صنع القرار بشأن قضاياهمهم. وأشار بعضهم إلى أن أفراد الأقليات نادراً ما يُعيّنون لشغل مناصب عليا في السلطة حتى في البلدات حيث يمثلون نسبة عالية من السكان. وعندما يُعيّن ممثلون عن الأقليات في مثل هذه المناصب العليا، فإن أعمالهم تكون مقتصرة على تنفيذ السياسات التي تقرها السلطة المركزية في العاصمة.

وينص الدستور على أن الكازاخية هي اللغة الرسمية للدولة، وأن اللغة الروسية تستخدم في هيئات الدولة على قدم المساواة مع اللغة الكازاخية. واللغة الروسية هي وسيلة هامة من وسائل الاتصال بين الجماعات الإثنية في كازاخستان. وتنتهج الحكومة سياسة تهدف إلى تعزيز اللغة الكازاخية كلغة رسمية للدولة. ومع ذلك، ينبغي استخدام الحنكة السياسية حتى لا يؤثر الوضع القائم دون موجب في الحقوق والفرص المتاحة لأولئك الأفراد الذين قد يحتاجون إلى مساعدة إضافية وإلى متسع من الوقت ومزيد من الموارد من أجل الإلمام باللغة الكازاخية. وخلال الفترة الانتقالية نحو استخدام اللغة الكازاخية كلغة أساسية في الإدارة، ينبغي تجنب التمييز أو أية قيود لا لزوم لها، لا سيما فيما يتعلق بتعيين الموظفين وبحقوق المواطنين في تقديم الالتماسات إلى الحكومة أو طلب الحصول على الخدمات العامة.

وفي مجال التعليم، قامت الحكومة بتنفيذ تدابير إيجابية لدعم مدارس الأقليات وتشجيع التعليم بلغات الأقليات بوسائل منها تقديم الدعم اللازم إلى الجمعيات الإثنية - الثقافية. ومع ذلك، أُبدت شواغل فيما يتعلق بالمسائل التالية: تحقيق أعلى معايير الجودة في مدارس الأقليات ومدارس التعليم بلغة أخرى غير الروسية، بما في ذلك مدارس التعليم باللغة الكازاخية؛ ضمان التمويل والموارد الكافيين، ولا سيما للمدارس التي تقدم تعليماً بلغات الجماعات الإثنية الصغيرة؛ توفير ما يلزم من كتب مدرسية بلغات الأقليات؛ التحقق من أن جميع الكتب المدرسية تراعي على النحو الواجب ثقافة الأقليات وتقاليدها وتاريخها ومساهماتها في المجتمع الكازاخية؛ ضمان المساواة في نيل التعليم الجامعي للطلاب المنتمين إلى مختلف الجماعات الإثنية. والأهم من ذلك أن تُعد المدارس جميع الفئات إعداداً تاماً للمشاركة في جميع مناحي حياة المجتمع الكازاخية مشاركة كاملة.

وقد أشار بعض أفراد جماعات الأقليات إلى أن المناخ السائد يتسم بالمساواة وعدم التمييز في التوظيف في القطاع الخاص والوصول إلى الخدمات وفي مختلف مجالات التفاعل المجتمعي. ويجدر بالإشارة إلى أن الدستور وعددًا من النصوص التشريعية يتضمنان أحكاماً تحظر التمييز. ومع ذلك، ينبغي لكازاخستان أن تعتمد قانوناً محدداً وشاملاً من أجل التصدي للتمييز العرقي بغية تعزيز أعمال حقوق الأفراد المنتمين إلى شتى المجتمعات المحلية في التماس سبل الانتصاف من أعمال التمييز التي يتعرضون لها والتمتع بتلك السبل.

وقد تمكنت كازاخستان من تحقيق الوئام بين الأديان وإعمال الحق في الحرية الدينية للديانات المعترف بها كديانات تقليدية أو أرثوذكسية. غير أن الأفراد الذين يعتنقون معتقدات تعتبر "غير تقليدية" (ومنهم شهود يهوه وأتباع الكنيسة المعمدانية، والكنيسة الإنجيلية، وأتباع السيانتولوجيا وبعض أشكال الإسلام غير المعترف بها وغيرها) يشعرون أنهم لم يعطوا نفس الحريات. وإن قواعد التسجيل المفروضة على بعض الجماعات الدينية، وكذلك البيانات والتصريحات الصادرة عن الحكومة لتحذير السكان من التبعات التي قد تترتب على اعتناقهم معتقدات دينية محددة، ومصادرة الممتلكات، وفرض الغرامات، والاعتقالات، وحملات الطرد وغيرها من الإجراءات التي ينفذها أفراد الشرطة وقوات الأمن القومي والبيروقراطيون، كلها عوامل تخلف شعوراً بالقمع في نفوس أفراد تلك الجماعات الدينية. وتحت الخبيرة المستقلة على توسيع نطاق الحقوق والحريات التي تتمتع بها الجماعات الدينية التقليدية لتشمل شتى الجماعات الدينية وتوصي بإقامة حوار واسع النطاق مع الجماعات الدينية "غير التقليدية".

وأثنت الخبيرة المستقلة على الحكومة ومختلف أفراد شعب كازاخستان لما يسود المجتمع عموماً من تسامح بين الجماعات الإثنية. إلا أنها أشارت إلى ما جدّ من أحداث عندما تحولت التوترات الإثنية إلى اعتداءات بالعنف على أقليات محددة. وأسفرت أعمال العنف، في بعض الحالات، إلى مقتل أشخاص وفرار آخرين من بيوتهم. ورغم أن هذه الأحداث تظل نادرة ومتفرقة، ولا تُنبئ بخطر استمرار العنف بين الجماعات الإثنية، فإنه يجب عدم تجاهل الأبعاد الإثنية لتلك الأحداث. وربما هناك قضايا غاية في الأهمية يجب تناولها في إطار حوار صريح وشفاف بغية ضمان تجسيد الوئام بين الجماعات الإثنية على أرض الواقع.

Annex

Report of the independent expert on minority issues

Mission to Kazakhstan

(6 to 15 July 2009)

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I. Introduction

1. The independent expert on minority issues conducted an official visit to Kazakhstan from 6 to 15 July 2009 at the invitation of the Government. She visited Astana and Almaty, and held consultations with senior Government representatives with responsibilities in the fields of minority rights, culture and language, anti-discrimination and equality. She held meetings with ethnic and cultural associations, non-governmental organizations, members of minority communities and journalists, and hosted a forum for minority women.

2. The independent expert thanks the Government for its cooperation throughout the preparation and conduct of her mission. She also thanks the United Nations Country Team for its cooperation and assistance and numerous non-governmental organizations, civil society groups and community representatives that met with her and provided valuable information.

3. Kazakh is the official language of Kazakhstan although Russian is used officially on a par with Kazakh in Government institutions and is spoken by most citizens. Ethnic Kazakhs currently account for 58.6 per cent of the population, while ethnic Russians make up 26.1 per cent. Other ethnic groups account for 15.3 per cent of the population and include Ukrainians (2.9), Uzbeks (2.8), Uighurs, Tatars and Germans (1.5 per cent each), and other groups 4.3 per cent. More than 100 other smaller ethnic groups live in Kazakhstan. The Government uses the term “nationalities” in preference to the term “minorities” to describe its ethnic groups, reflecting the relationship of many with a kin State or historical homeland.

4. The Constitution of Kazakhstan contains articles guaranteeing fundamental human rights in accordance with principles of international law and human rights treaties ratified by Kazakhstan. Article 4 (3) states that international treaties ratified by Kazakhstan shall have priority over its laws and be directly implemented except when the application of an international treaty requires the promulgation of a law.

5. Kazakhstan has ratified human rights treaties most relevant to minorities including the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Two domestic institutions oversee human rights issues: the Presidential Commission on Human Rights and the National Ombudsman.

6. Kazakhstan will take over the Chairmanship of the Organization for Security and Co-operation in Europe (OSCE) in 2010. The Government has made pledges with regard to democratization and improving its human rights policies and practices to conform to OSCE standards.

Methodology

7. The independent expert’s evaluation of minority issues in Kazakhstan is based on the 1992 United Nations Declaration on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and other relevant international standards, from which she has identified four broad areas of concern relating to minorities globally: (a) the protection of a minority’s survival by combating violence against them and preventing genocide; (b) the protection and promotion of the cultural identity of minority groups and the right of national, ethnic, religious or linguistic groups to enjoy their collective identity and to reject forced assimilation; (c) the guarantee of the rights to non-discrimination and equality, including ending structural or systemic discrimination and the promotion of

affirmative action when required; and (d) the guarantee of their right to effective participation of members of minorities in public life, especially with regard to decisions that affect them. The independent expert applies a gender perspective in all areas of her work.

8. Each section below contains a summary of legislation, views expressed by senior governmental sources and the views of civil society actors, community members and others.

II. Historical context

9. A brief history of Kazakhstan and the forces that have shaped its demographic composition is vital to understanding the contemporary situation of minorities and legislation, policies and practice. The following is drawn from public historical and governmental sources.

10. For most of its history the territory of modern-day Kazakhstan was inhabited by nomadic tribes. The Kazakhs emerged as a distinct group in the sixteenth century, divided into three unions of tribes or clans claiming common ancestry and shared territory. Russia began advancing into the Kazakh steppe in the eighteenth century; by the mid-nineteenth century the territory was subsumed into the Russian Empire. The Kazakh Soviet Socialist Republic became part of the USSR in 1936.

11. Major demographic changes and the influx of a variety of different ethnic groups through both forced and voluntary migration marked the subsequent period. Under Soviet collectivization policies, intensive agricultural production entailed forced settlement of nomads and led to the death of most of their cattle - their only source of livelihood. Subsequent famine is estimated to have caused the deaths of 25 to 40 per cent of ethnic Kazakhs.

12. Between 1937 and 1949, Kazakhstan became the destination for huge deported populations whose loyalty to the Soviet Union was questioned. These included over 95,000 ethnic Koreans, 444,000 Volga Germans and nearly 480,000 Chechens and Ingush, as well as smaller numbers of numerous other nationalities. The “Virgin Lands” campaign of 1954-1956 opened up vast tracts of agricultural land and led to the further arrival of some 640,000 settlers from Slavic and Baltic republics¹.

13. By 1959, the census revealed that ethnic Kazakhs made up only 29 per cent of the population, while the Slavic and European nationalities represented nearly 60 per cent. The influx of Russian speakers, Russian culture and Soviet values, as well as of Stalin era purges of Kazakh intelligentsia, all served to turn Kazakhs into the most linguistically and culturally Russified of all Central Asian ethnic groups. Census statistics from 1989 revealed that 64 per cent of Kazakhs claimed fluency in Russian; in contrast, only one per cent of Russians and Slavs had proficiency in Kazakh. In urban Russophone settings, scholars described a dramatic loss of their native language among ethnic Kazakhs, with some 40 per cent unable to speak Kazakh.

14. Kazakhstan declared independence on 16 December 1991, the last Soviet republic to do so. It was the only newly independent State in which the titular ethnic group, the Kazakhs, did not constitute a majority. Independence brought radical demographic changes, including the mass emigration of Russians, Slavs and Germans. Overall, nearly 2 million

¹ Dave, Bhavna, “Minorities and participation in public life: Kazakhstan. Paper submitted to the Working Group on Minorities at its ninth session.

Russian speakers left Kazakhstan in the decade to 2004. In addition, high birth rates among Kazakhs and the return of large numbers of the Kazakh diaspora (*Oralmans*) contributed significantly to demographic changes. The 1999 census confirmed that Kazakhs constituted a majority with 53.4 per cent, whereas the Russian proportion had fallen from 37.4 to 29.9 per cent².

15. A post independence policy of Kazakhization, including the promotion of Kazakh as the State language, some consider generated anxiety among minority ethnic Russians, Germans and Russian-speaking communities over their future prospects, and motivated mass emigration. The Government considers that emigration was a consequence of independence and relocation to historic kin-States, often assisted by those States, as well as economic considerations.

III. Political participation of minorities

16. Kazakhstan has a presidential form of government and a bicameral parliamentary system that consists of the Senate (Upper House) and the *Majilis* (Lower House). There are currently 10 officially recognized political parties. To register, a party must have at least 40,000 members nationally and 600 members in each region. Political parties are prohibited from being based on racial, national, ethnic or religious affiliation. To obtain seats in the *Majilis*, parties must ordinarily poll at least 7 per cent of the vote. Only the party of President Nazabayev, the *Nur Otan* (Bright Fatherland) party, reached this threshold in the 2007 elections, however subsequent Constitutional amendments guarantee that at least two parties gain seats in the future.

17. In the 2007 elections, 98 of 107 seats in the *Majilis* were distributed on the basis of party lists to the political parties under the system of proportional representation. The Nur Otan party officially achieved 88.41 per cent of the vote in the elections, winning every seat in parliament³. Nine deputies of the *Majilis* are appointed from the Assembly of the People of Kazakhstan. The Senate is constituted on the basis of two members from each oblast, Astana and Almaty; 15 senators are directly appointed by the President.

18. The Assembly of the People (formerly “Peoples”) is a consultative body, established by the President in 1995 and charged with representing the communal interests of ethnic minorities. In its report for 2004 submitted to the Committee on the Elimination of Racial Discrimination, the Government explained that the Assembly’s objectives were twofold: to elaborate practical recommendations for consolidating society; and to assist the President in his activities as guarantor of respect for the rights and freedoms of the citizens of Kazakhstan, irrespective of their racial, ethnic or social origin, religion or beliefs⁴.

19. The Assembly has over 430 members, representing 40 of the largest ethnic groups, and has a Council of 56 members. The Government states that it performs a variety of cultural, inspirational, communicative and advisory functions. It revives and promotes ethnic cultures, languages and traditions; fosters national and ethnic patriotism; strengthens inter-ethnic unity and harmony through the monitoring of ethnic relations; and makes recommendations for State policy to develop friendly relations between the nationalities

² Preliminary results of the 2009 census suggest that this trend continues, with ethnic Kazakhs representing 67 per cent of the population and ethnic Russians 21 per cent.

³ The All National Social Democratic Party party officially achieved 4.54 per cent of the vote, while five additional parties officially polled between 0.37 and 3.09 per cent.

⁴ CERD/C/439/Add.2.

living in Kazakhstan⁵. The Government notes that the Assembly ensures effective interaction between government and civil society in the field of interethnic relations and assists government in combating extremism.

20. In May 2007, Parliament amended the Constitution to give the Assembly Constitutional status. It adopted the Law on the Assembly of the People of Kazakhstan in October 2008 which established that nine deputies in the *Majilis* would be appointed from the Assembly, in addition to the normally elected representatives.⁶ This system is intended to provide a more equitable ethnic distribution in Parliament and to empower ethnic minorities that may otherwise not have the ability to elect or nominate members of their ethnic group. Still, both houses remain predominantly Kazakh; only 10 of 47 senators are non-Kazakh, while only 24 of the 107 member of the *Majilis* are non-Kazakh⁷.

21. The Government promotes the Assembly as a unique body with the authority to consider issues related to minorities. It is an umbrella structure that unites under its aegis 23 national and more than 470 regional ethnic-cultural organizations from almost every region. The Assembly meets only once a year but has a permanent secretariat. Some civil society sources dispute the representative nature and scope of powers provided to the Assembly. The Government takes great pride in the Assembly of the people as a unique institution at the centre of Kazakhstan's democracy, "with inter-ethnic consent remaining a pillar of democratic constitutionalism, rule of law, respect for human rights and freedom"⁸.

22. A State Commission on Democracy was established in 2006 to provide a forum for dialogue comprising representatives of Parliament, political parties, non-governmental organizations and the media. In 2007, it produced recommendations on enhancing the role of Parliament, political parties, civil society, local governance and media, and for fulfilling the potential of the Constitution. A working group made recommendations on amending the Constitution, resulting in reforms that include the reduction of future presidential terms from seven to five years as of 2012. President Nazarbayev, who has been in power since 1989, however, is allowed to run for unlimited terms and to retain control of key institutions, effectively giving him lifetime powers and privileges. In response to international concerns, the Constitution was also amended to guarantee representation of at least two parties in Parliament. In the event that only one party passes the seven per cent threshold, the party gaining the next largest percentage of votes will be given mandates in proportion to the votes received. The National Human Rights Action Plan recommends that the election law be further amended to lower the electoral threshold for seats in parliament from seven to five per cent of the vote⁹.

23. Kazakhstan continued its cooperation with OSCE Office for Democratic Institutions and Human Rights regarding electoral reform, notably in the context of its chairmanship of OSCE in 2010. The undertakings made by the Government include reforming the law on elections and liberalizing the registration requirements for political parties. The "Road to Europe" programme is also highlighted as demonstrating its commitment to

⁵ Ibid., para. 140.

⁶ According to the Law, the election of the 9 deputies to the Mazhilis is based on a secret ballot and is the exclusive right of the Assembly

⁷ United States Department of State, *Country Report on Human Rights Practices: Kazakhstan*, March 11, 2008, <http://kazakhstan.usembassy.gov/hrr2007.html> (last visited March 13, 2009).

⁸ "The Assembly of the People of Kazakhstan" memorandum by the Government of Kazakhstan, annex to letter of 5 June, 2009 to the OSCE High Commissioner on National Minorities.

⁹ See <http://kazakhstan.usembassy.gov/st-05-12-09.html>.

democratization and political modernization, to accelerate the transition to Western democratic standards and values¹⁰.

24. Civil society actors raised concerns relating to minority political participation. Some political parties have complained that they are unable to meet the registration criteria to participate in elections. Widespread allegations of electoral fraud made by opposition parties and international monitors, such as the OSCE, have consistently charged that elections fall short of international standards¹¹. Despite Government claims of high voter turn-out at elections and freedom for political opposition, others strongly dispute those claims. The President appoints the chairman and two members of the Central Electoral Commission.

25. Some minority and civil society representatives expressed frustration regarding their prospects of achieving meaningful political participation and over Government claims of political reform. Serious democratic deficits reportedly persist in the country's political environment and institutions. A highly centralized government structure is dominated by a single political party, and almost unlimited powers are vested in the President by Parliament¹². At the regional level, governors of the country's 14 provinces (*oblasts*), Mayors and Deputy Mayors are appointed by the President. In effect, he also appoints and may dismiss all judges¹³, giving rise to allegations that the judicial system does not meet international standards of independence.

26. Critics claim that the membership of the Assembly of the People is largely appointed by the President and therefore that it lacks the character of a legitimately representative body based on an electoral process. The Government disputes this claim noting that the President approves candidates following a legitimate nomination and selection process taking into account the views of ethnic groups and ethno-cultural associations. Concerns over Presidential appointments extend to the appointment of nine Assembly members to seats in the Lower House. Critics portray the Assembly as a largely inactive, symbolic institution, not consisting of legitimate minority leaders and, as such, not an institution that provides for genuinely including minorities in representative government.

27. The Assembly's potential is equally hampered by restrictions on its activities to advising but not deciding on matters relating to the preservation of culture, traditions and the arts, celebrations and the functioning of ethno-cultural associations. Some consider it "non-political" and actively discouraged from discussion of issues considered politically sensitive. Critics state that it is not empowered to consider, advise and provide recommendations on many substantive minority issues, including meaningful political participation of minorities and issues related to ethnic tensions, potential conflict or religious matters.

28. Members of smaller minority communities consider their opportunities for political participation to be extremely limited. Uighur community members noted that, even in regions in which they form the majority, they are rarely appointed to hold significant local government positions and are generally underrepresented in the public sector, especially in law-enforcement bodies. It is commonly the case that ethnic Kazakhs and Russians fill

¹⁰ See the website of the Embassy of Kazakhstan at www.kazakhembus.com/index.php?page=modern-democratization.

¹¹ See OSCE press release "Kazakh elections: progress and problems" at www.osce.org/item/25959.html.

¹² See CERD/C/KAZ/4-5.

¹³ All regular court judges are appointed by the President upon recommendation of the Higher Judicial Council, which is a consultative body largely controlled by the president himself. He additionally proposes candidates for the President and judges of the Supreme Court, which are approved by the Senate.

senior posts. The Government asserts that discrimination on the grounds of national origin is banned under the constitution (art. 14), and laws including the State Service Law. The Government notes that in densely populated Uighur areas of Almaty region, Uighurs occupy numerous posts including Governor and Deputy Governor.

29. Women are underrepresented in the Government of Kazakhstan in general. Minority women stressed that this is particularly the case for women from smaller ethnic groups. In 2007, approximately 10 to 12 per cent of members of Parliament and 19 per cent of local governments and city councils were women according to a recent statement by a Government adviser¹⁴. In Parliament, only two of the 47 senators are female, while 17 of the 107 *Majilis* members are women. A presidential directive proposes to increase the number of women in executive level positions to 30 per cent by 2016.

IV. Non-discrimination and equality

30. Article 14 of the Constitution of Kazakhstan includes a guarantee of equality and a ban on discrimination stating that (1) everyone shall be equal before the law and court; and (2) no one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances. The Criminal Procedures Code (art. 21), the Civil Procedures Code (art. 13), the Labour Code (arts. 4, 7, 22 and 145), the Law on Employment (art. 5), the Law on Migration (art. 3) and the State Service Act (art. 12, para 4) all refer to the prohibition of discrimination. There is no comprehensive anti-discrimination legislation.

31. The Government considers that existing constitutional and legal provisions, and the status of international treaties to which it is a party, provide adequate legal protection against discrimination.

32. Two institutions in government oversee human rights issues and have responsibilities in the area of discrimination: (a) the Presidential Commission on Human Rights¹⁵; and (b) the Human Rights Ombudsman¹⁶. The Commission, established as a consultative/advisory body attached to the office of the President currently has 22 members representing various elements of Kazakh society. The same presidential decree creating the Ombudsman also limits its powers; the Ombudsman is unable to review appeals and complaints relating to the actions and decisions of the President, Parliament and its members, the Constitutional Council, the Prosecutor General, the Central Electoral Commission and the Courts. The reports of these institutions include only brief reference to cases of discrimination and commonly find no proof.

33. Government representatives emphasized that no cases of discrimination on the grounds of ethnicity or nationality have ever come before the courts. There are no policies of affirmative action, such as employment quotas for minorities in the public sector. The Government notes that all are equal before the law and that such policies would constitute unfair bias or give unfair privileges to some. Disaggregated data along national or ethnic lines are collected in census surveys and by the statistics agency in various areas, including with regard to the number of different nationality groups employed in State service.

¹⁴ Radio Free Europe, "Presidential adviser touts progress on women's issues" - See www.rferl.org/content/article/1074070.html. See also www.silkroadstudies.org/new/docs/Silkroadpapers/0804Bowyer.pdf.

¹⁵ Established by decree No. 1042 of 19 March 2003.

¹⁶ Created in accordance with presidential decree No. 947 of 19 September 2002.

34. Non-governmental sources commented that the absence of court cases regarding racial discrimination reflects not an absence of discrimination, but rather an inadequate legislative framework, a lack of independent and effective mechanisms for individuals to make complaints and a lack of public confidence in the process. Courts are reluctant to classify or deal with violations as cases of discrimination. Mechanisms for ethnic minorities to submit complaints of discrimination are not widely used or understood by the public and are not considered politically independent. For these reasons they are ineffective at ensuring the rights of minorities. The Government asserts that the courts maintain high and improving standards and quality of justice and that confidence in the judicial system is high as indicated by social surveys in 2008. The Supreme Court has implemented measures for institutional strengthening and improving the functioning of the courts, including with regard to the quality and independence of judges.

35. Civil society groups call for an effective and independent human rights institution based upon strengthening the legal status, powers and functions of the Ombudsman and ensuring that it is an elected office. The Ombudsman should have the right to initiate administrative and criminal cases, recommend legislative amendments and address the Constitutional Council on human rights issues. Its independence should be legally protected.

36. There is a widely held perception of pro-Kazakh bias in Government and the actions of State officials, and that discrimination exists in favour of ethnic Kazakhs, particularly in government employment. This, minority sources argue, leaves ethnic minorities at a distinct disadvantage in many areas of public life. Underrepresentation of minorities in Government posts is attributable, at least in part, to recent requirements that government workers speak Kazakh. This has reportedly created barriers to the employment, continuation of employment and promotion of non-Kazakh speakers. According to the Government, the State Service Act (art. 12, para 4) bans any form of discrimination in relation to employment in public services.

37. Civil society groups consider the Law on Languages of 1997 to have set into motion policies which, while legitimately promoting the use of Kazakh, effectively discriminate against members of minorities and breach their minority rights with respect to language use. Russian, Uighur and other minorities are reportedly excluded from various economic, political, and employment opportunities owing to lack of proficiency in Kazakh. Members of the ethnic Russian minority historically occupied many government positions, a situation that has changed since independence. The mass emigration of Russians and other Russian-speaking groups following independence is linked to pro-Kazakh policies and pessimism about their place in the country's future.

38. Minority representatives whom the Independent Expert consulted stated that, in private sector employment and daily interactions, discrimination was not a major problem. However, according to a public poll taken in 2008, 23.7 per cent of self-reported minorities experienced ethnic prejudice and hostility; 14.4 per cent reported incidents of insults, humiliation, or other offences; and 11.8 per cent were discriminated against in employment or cases of dismissal¹⁷. Members of ethnic minority communities allegedly remain reluctant to seek legal redress because they believe the system is biased. Some minority representatives expressed concern that economic crisis and growing unemployment may have a greater impact on minorities in both public and private sectors.

39. Commentators described the growing prominence of ethnicity and nationality as important individual and group markers in society. The national project of "Kazakhization"

¹⁷ United States Department of State, country report on human rights practices: Kazakhstan, 25 February 2009, <http://kazakhstan.usembassy.gov/hrr-2008.html> (last accessed 28 October 2009).

has allegedly inspired growth in Kazakh nationalism. A rise in the use of nationalist slogans is reported, including “Kazakhstan for the Kazakhs”. Sentiments expressed in the media that minorities are “guests” who should be grateful for their place in Kazakh society were also reported.

40. Some groups are particularly vulnerable to discrimination and negative stereotyping. The Chechen community includes both citizens and a smaller group of war refugees who arrived in the past decade. Between 30,000 to 49,000 Chechens are thought to live in Kazakhstan, many illegally. Negative stereotyping, particularly during the Soviet era, of Chechens as “enemy people” or involved in criminal or terrorist activity has allegedly made it difficult for them to integrate according to some commentators. Chechens and Georgians are allegedly subject to non-formal immigration procedures and disproportionate scrutiny by police, who often practice racial profiling. The Government claims that all are treated equally under the law and immigration procedures.

41. The independent expert sought information about small minorities on the extreme margins of society. The Roma and *Luli* (or *Lyuli*) are generally described as nomadic and with livelihoods relying on informal trading, music, scavenging and begging. They may be de-facto stateless persons and are not represented in the Assembly of the People or other State institutions. Little information is available regarding their access to health care, education, housing and the effects of poverty. Members of these minorities often lack identification documents required to secure services; women and children may be particularly vulnerable. According to the Government, in January 2008, there were 5,153 Roma in Kazakhstan, and measures were being introduced to prevent acts of discrimination against them, while no complaints or representations from the Roma had been recorded. Roma representatives registered the collective association *Tsygan* (gypsy), which works to promote the culture and traditions of Roma people.

V. Identity, language, culture and religion

A. Identity, language and culture

42. Article 7 paragraph 3 of the Constitution guarantees every person the right to speak and learn their language declaring: the state shall promote conditions for the study and development of the languages of the people of Kazakhstan. Under Article 19, paragraph 2 everyone has the right to use their native language and culture and to choose freely their language of communication, education, instruction and creative activities. The Law on Language of 1997 replicates and reinforces these constitutional provisions. In its report submitted to the Committee on the Elimination of Racial Discrimination¹³ the Government points out that the State programme on the use and development of languages for the period 2001-2010, confirmed by Presidential Decree No. 550 of 7 February 2001, was designed to secure not only the revival and extension of the use of the Kazakh language but also the preservation of the general culture and use of the Russian language and the development of the languages of ethnic groups.

43. Article 9, paragraph 3 of the Law on Education also establishes the right to education in one’s native language. The Government highlights general secondary education in pupil’s native languages or teaching native languages as subjects; however, it also acknowledges difficulties in the organization of multicultural education arising from the complicated mosaic of ethnic cultures. A total of 65 schools have Uzbek as the language of instruction and 75 schools have mixed languages of instruction allowing 79,426 to be enrolled in Uzbek language education. There are 14 Uighur and 50 mixed

language schools in the Almaty region, enabling 14, 955 students to be enrolled in Uighur language education. Two Tajik schools and 10 mixed language schools teach 3503 students in Tajik in the South Kazakhstan region. 15 native languages are studied as separate subjects in 126 general education schools; 76 general education schools provide optional language subjects or “study circles” in languages including German, Korean, Tartar, Polish and Ukrainian¹³.

44. The Government points out that the right to study native languages is realized by involving cultural associations in the implementation of the State’s language policy. A total of 79 Sunday schools established by national and cultural unions for children and adults receive support from the Ministry of Education and regional budgets for the teaching of native languages, including German, Korean, Hebrew, Tartar and Polish. Three “national revival” schools have also been established. There are plans for Sunday schools to provide courses in Kazakh. Members of over 80 nationalities are enrolled in institutes of higher education. At the Abaya National Teacher Training University, courses are taught in Uighur, Turkish, Azerbaijani, Korea, Chinese and German.

45. Every ethnic group residing in Kazakhstan has a right to establish national and cultural centres to promote the development of their language, culture and traditions. Cultural centres, supported by the Government, have been established in all regions to promote the ethnic identity of different nationalities. Members of the Assembly of People are commonly chosen on the basis of their participation in ethnic cultural centres. In addition, there are Uighur, German and Korean theaters, the only examples in the former Soviet States. The independent expert visited Cossacks, Russians, Ukrainians and Uighur cultural centres. Members demonstrated their activities, including in the preservation of music, culture and arts, and expressed their satisfaction with Government support.

46. Issues relating to language emerged as a considerable priority for minorities in their consultations with the independent expert. They stated that the number of minority language schools and schools with a mixed minority and Kazakh or Russian language education is reportedly decreasing as the number of Kazakh schools increases. They suggest a worrying negative trend away from the provision of education in minority languages that is concurrent with amendments to national legislation and a policy to promote the learning of Kazakh, Russian and English.

47. Civil society representatives note that previous legislation on education enacted in 1999, such as the Law on Education article 5, paragraph 3, included an explicit requirement that the State shall create conditions for national groups to learn their native language and may set up institutions or departments in the places inhabited by significant minority groups to meet their education needs. However, provisions in the new Law on Education (art. 9, para 3) adopted in July 2007 are weaker, requiring only that the right to education in one’s native language is provided by setting up, if circumstances permit, the corresponding educational institutions.

48. Spokespersons of minority communities expressed concern that greater attention and resources should be given to developing and maintaining the system of minority schools. A decline in teaching standards, even with respect to the teaching of Kazakh and Russian languages in minority schools, and a shortage of adequately qualified teaching staff are increasingly problematic. Parents often regard minority schools as inferior educational alternatives that impede their children’s competitiveness for university entrance and employment. This has resulted in a marked decline in students attending minority schools.

49. School teaching materials in mainstream and minority language schools do not adequately reflect the history, cultures and contributions of minorities or the multi-ethnic nature of Kazakh society. According to one commentator “We have brought up a whole generation since independence who know nothing about minorities, just about Kazakhs and

Russians”. There is frustration that the State has not produced a new generation of text-books to address this issue. The supply of text-books is also a pressing concern, owing to a serious shortfall for some minority schools. A lack of resources, corruption and printing presses that do not profit from small print runs for minority schools were blamed.

50. A meeting for minority women revealed their desire for equality of access to education and education outcomes to be improved for girls from minority communities. They noted that, especially in traditional rural communities, greater priority was given to the education of boys. Traditional gender roles were more likely to be preserved, thus restricting the opportunities for girls to pursue education. The Government notes that in December 2009 the Law on Equal Rights and Equal Opportunities for Women and Men was adopted with the aim of preventing discrimination on the grounds of sex.

51. Inequality of access to university for minority students was a common concern. University education is provided in Kazakh and Russian only¹⁸ and the national testing system for high school students – the university entrance examination - is not available in minority languages. Consequently, minority students must first pass a graduation exam and then sit additional university entrance exams in Russian or Kazakh, which some struggle to pass owing to their poor language proficiency. Although an alternative “dissertation channel” exists for university entrance, minority representatives stated their desire for a long-term solution that ensures that language issues and difficulties faced by minority students are more thoroughly taken into account in the mainstream testing process.

52. The renaming of place or street names in the Kazakh language has reportedly become a politically charged issue causing growing resentment among minorities, including Uighurs and ethnic Russians. Some media have reportedly called for the renaming of the Uighur district of Almaty region following violent incidents between Kazakhs and Uighurs in late 2006. Uighur schools in this region have reportedly already had Uighur language signs and information reflecting Uighur history and commemorating Uighur public figures removed. Even in areas in which Uighurs make up a high proportion of the total population, restrictions exist on the use of Uighur as a means of official and administrative communication.

53. According to the government, more than 80 per cent of the media is privately owned and it supports 19 regional national newspapers and numerous radio and television programmes in minority languages. The Russian minority has the greatest presence in the media, and Russian language newspapers are common. Korean, Uighur, Ukrainian, Kurdish and German newspapers are also published. The Government states that there are 324 ethnic languages media outlets and that it provides financial support for newspapers, magazines, television and radio programmes in ethnic languages. Since 2002, all television and radio outlets, including minority media, are required to broadcast at least 50 per cent of their programming in Kazakh. Reports suggest that broadcasting in minority languages has significantly declined. In 1998, Kazakh State television reportedly broadcast Uighur language programmes for three hours a week; today this time has been reduced to 15 minutes.

54. Civil society representatives claimed that a significantly higher proportion of the media was under de facto Government control and that the media operates in a climate of suspicion, Government monitoring and sensitivity over certain issues, including coverage of ethnic or religious strife, which limit the right to freedom of expression. Liberal use of criminal libel charges, fines, threats and harassment are reportedly common, leading to self-censorship over such issues as ethnic relations. A law on Internet regulation, adopted by Parliament on 24 June 2009, classifies websites, blogs and chatrooms as media outlets and

¹⁸ The government notes that 68 percent of the students in Kazakhstan’s higher education institutions are taught in Russian.

reportedly subjects them to strict regulation regarding reporting of elections, rallies, strikes and inter-ethnic relations. The Government asserts that in accordance with the Constitution (art. 20) freedom of speech is guaranteed and censorship is prohibited.

B. Religious freedoms

55. The Government Committee on Religious Affairs reported that, in 2008, there were representatives of over 40 religious confessions organized into 4,001 religious associations and groups. The Government highlights a considerable increase in the number of places of worship since independence.¹³ The majority of the population are of Sunni Muslim and Russian Christian Orthodox religions. The government makes a conceptual distinction between “traditional” faiths and others that have emerged since independence, which it refers to as “non-traditional” faiths. It recognizes 50 organizations representing “non-traditional” religions. Government representatives noted a high degree of religious tolerance, dialogue and strong inter-faith relations in a secular Kazakh State. Kazakhstan hosted the third Congress of Leaders of World and Traditional Religions in Astana in July 2009.

56. Article 22 of the Constitution states that everyone has the right to freedom of conscience. Article 149 of the Criminal Code establishes criminal liability for obstructing exercise of the right to freedom of conscience and religious belief. The Law on Freedom of Religion and Religious Association was passed in 1992. Amendments to that law were blocked by the Constitutional Council in 2002, on the grounds that they violated the Constitution by proposing to (a) ban religious groups not registered with the State; (b) require registration of all missionaries; and (c) deny registration to certain unrecognized Muslim organizations. However, on 8 July 2005, President Nursultan Nazarbaev added amendments to the national security legislation¹⁹ that achieved the same restrictions on religious freedoms. Government officials informed the independent expert that they were engaged in fighting extremist groups and “sects” that promoted intolerance and disruption. As a result, all religious communities, missionary activities and religious literature must be registered.

57. Another amendment, proposed in 2008²⁰, sought once again to amend the 1992 Law on Religion to increase restrictions further. It was found to be unconstitutional by the Constitutional Council on 11 February 2009. The Council found that the 2008 proposed amendments held “non-traditional” religions to a different standard for registration purposes. The draft law proposed the establishment of a legal distinction between religious groups, having fewer than 50 members in any given locality, and religious associations, the former having no status as a legal person. Under the proposals, religious groups would not be permitted to engage in missionary work or maintain premises widely accessible for the purpose of worship. The Government highlights that the Constitution (art. 39) allows rights and freedoms of citizens to be limited by laws necessary for the protection of the constitutional system, defence of public order, human rights and freedoms and the health and morality of the population. Article 39 (2) states that any action capable of upsetting interethnic accord shall be deemed unconstitutional.

58. The independent expert met with representatives of religious minorities, including Baptists, the Unification Church, Scientologists, the Baha’I, the Lutheran Church, the New Life Pentacost Church, the Agape Church, the Grace Church, the Ahmadi faith, the

¹⁹ Law on additions and amendments to laws of the Republic of Kazakhstan relating to national security.

²⁰ Law on Amendments and Additions to Several Legislative Acts on Questions of Freedom of Conscience and Religious Associations.

Association of Religious Communities of Kazakhstan and others defined by the Government as “non-traditional” religions or “sects”. Representatives expressed serious concern regarding restrictions imposed on them under the national security legislation of 2005 and their feeling that an even more oppressive draft law would eventually be passed, despite the ruling of the Constitutional Council of February 2009.

59. Representatives described an environment of increasing oppression of “non-traditional” religions, while noting that they strongly rejected this Government terminology. Their applications to join the Congress of Leaders of Religions were not accepted. They also described increasingly hostile and negative coverage in the media.

60. The representatives of Protestant Churches, Jehovah’s Witnesses and branches of the Scientologists reported that bureaucratic delays and administrative regulations were regularly employed to create difficulties for them. In some regions, some churches have reportedly been trying to register for several years²¹. Meanwhile, there were reportedly official proceedings to remove some churches from the official register. Excessively long delays in responding to registration applications were explained by the Government as caused by incomplete details on registration documents, insufficient specialist assessment staff and failure to provide tax records (even when documents had been confiscated)²².

61. Religious representatives described “harassment and intimidation” by law enforcement and national security officers. Representatives of the Grace Church, the Unification Church, Scientologists and the Ahmadis stated that places of worship had been raided by “authorities” who confiscated computers, documents and religious materials. Some described national security members infiltrating religious meetings and videotaping proceedings. Reportedly, some later acted as witnesses in judicial proceedings against Churches together with allegedly bogus witnesses, who testified against the Church’s negative influence on them or discredited the beliefs in question and their legitimacy as religious beliefs. One representative stated “Now it is very difficult to do anything together. People are afraid that the KGB have infiltrated the church”.

62. Charges brought against Churches include conducting illegal commercial or educational activities. Scientologists report charges that characterize their religious practices as illegal medical activities. Grace Church members reported allegations of drug use, espionage and inciting inter-religious enmity, in addition to tax fraud.

63. Some representatives stated that their beliefs required them to reach out to the wider society and to spread their religious beliefs. Under the legislative amendments of 2005, all those engaged in missionary activity must register with the Ministry of Justice. They must provide information on their religious affiliation and the territories and time periods during which they will conduct missionary work. All literature and materials must be registered and approved. Instances were reported in which authorities raided Churches during services, photographed participants and arrested pastors. Individuals have been charged, fined or deported for offences including undertaking illegal missionary activities beyond the territories under which they are registered.

64. Civil society and some religious groups complain that the Government has, without cause, attempted to justify its restrictive policies and the activities of national security

²¹ The Jehovah’s Witness community in Atyrau province had reportedly been attempting to register for over seven years.

²² Scientologists noted that a church in Karaganda was forced to close because taxes had not been paid, despite documents proving payment having been confiscated by police. Ahmadi representatives also described having tax documents confiscated and subsequently being required to pay large tax bills.

agencies on the grounds of “the fight against separatism, extremism and terrorism”. Because of historic associations, some minorities, including Uighurs, Koreans, Russian and Germans are particularly linked with certain non-traditional faiths. Some commentators expressed concern that, consequently, discrimination against religious groups also has an ethnic dimension.

65. In 2006, a Government decree encouraged people to avoid associating with “non-traditional” and “extremist” groups²³. Leaflets prepared by the Ministry of Justice entitled “How to avoid the influence of religious sects” (a copy of which was given to the Independent Expert) warn against the risks of involvement with non-traditional religions and provide recommendations. The leaflets describe the activities of certain groups in terms of “treason against the Motherland” and “making havoc and spreading discord”, and should therefore be avoided if harmony and security is to be assured. Among the groups specifically referred to are Jehovah’s Witnesses, Baptists and Ahmadis.

VI. Protection against violence

66. Government representatives acknowledge some incidents of violence involving Kazakhs and members of different ethnic groups. It downplayed their significance by noting that they are usually resolved locally, are not ethnic in nature and are motivated by socio-economic factors, criminality and “hooliganism”. The Government notes that the criminal legislation, including the Law on Counteracting Extremism, provides for liability for inciting national, racial or religious hatred and violence, and propaganda of superiority or inferiority of citizens on the grounds of their religion, ethnicity, tribal or racial origin. Although cases of incitement to ethnic or religious hatred in the press and published material were also acknowledged, the Government claimed that they were dealt with swiftly by the courts. National authorities stressed the extremely good inter-ethnic and inter-faith relations and tolerance in all regions.

67. Civil society sources described several incidents considered examples of aggressive manifestations of nationalism, ethnically based tensions and violent responses targeted against minority communities.

68. In October 2007, in the village of Mayatas, the rape of a four-year-old Kazakh boy was blamed on a Kurdish man. The suspect was detained by police, however, a group of Kazakhs reportedly attacked the home of his family and the neighbouring Kurdish community. A series of riots, attacks against Kurdish individuals and families and widespread damage to Kurdish property in the region, including with firebombs, reportedly led many Kurds to flee the village. Some have described growing anti-Kurdish attitudes, particularly in the media.

69. In March 2007, attacks were targeted at Chechen communities following a fight between a Kazakh and a Chechen in Malovodnoe. A large crowd reportedly gathered and attacked the property of the Chechen Mahmahanov family. Three members of the family and two members of the crowd were killed in the ensuing violence. Media sources reported that Chechen houses were plundered, property and cars burned and small trading kiosks destroyed. Over 500 Kazakhs subsequently gathered and marched towards areas with large

²³ Decree no. 228 of the President establishing a State Programme for Patriotic Education of Citizens of the Republic of Kazakhstan for the period 2006-2008. http://www.ayalyalakansko.kz/ru/infobaza/prog_patriot.shtml

Chechen populations before being contained by police. Authorities reportedly blamed “hooligans”, underlying social conditions and poverty.

70. Kazakhstan is home to an estimated 300,000 ethnic Uighurs, representing the largest Uighur community outside China. Representatives highlighted generally good relations with other ethnic groups and the State. However, some sources drew attention to a growing perception and stereotyping of Uighurs as extremists and separatist. A violent clash between Kazakhs and Uighurs in the village of Shelek in the Almaty region in November 2006 left several wounded. Numerous anti-Uighur articles subsequently appeared in the Kazakh media. The country’s economic and political relations with China lead some to believe that this has influenced the Government’s restrictive response to individuals, Uighur associations or bodies considered politically aligned with Chinese Uighurs. The Government asserted that regional and local government authorities conduct preventative measures to avoid possible confrontation between ethnic Kazakhs and Uighurs.

71. The Government has reportedly placed restrictions on media coverage of ethnic clashes. Civil society representatives suggest a State policy of downplaying ethnic tensions by the Government in order not to damage a carefully cultivated perception of inter-ethnic harmony. They note that disregard of the root causes and consequences of tensions has resulted in a lack of necessary attention to conflict-prevention measures, including well developed mediation instruments and policing responses. The Government notes that an Action Plan for strengthening cooperation in inter-ethnic relations was initiated in 2008-2009. Activities include information sharing, monitoring of relations between ethnic groups and the identification of potential “hot-spots”. In Astana and Almaty regions, permanent headquarters have reportedly been established for the early detection and prevention of inter-ethnic conflicts.

VII. Conclusions and recommendations

72. The Government and diverse people of Kazakhstan must be commended for the inter-ethnic tolerance that is generally evident in the society. As a relatively newly independent State, Kazakhstan faces the challenge of promoting its independence and reasserting its State language and Kazakh culture while fostering an inclusive sense of national identity, which encompasses all national and ethnic groups. Many groups have strong historical, ethnic, cultural and religious identities that they wish to maintain and express, while also seeking to build their futures as equal citizens of Kazakhstan.

73. In recognition of the complex social dynamics in Kazakhstan, the Government has taken positive initiatives in the field of minority rights that have undoubtedly helped to ensure stability and respect for diversity and minority rights. These initiatives include important policies to help preserve minority languages, the establishment and funding of ethno-cultural associations for the preservation of ethnic cultures and traditions, minority language media and the establishment of the Assembly of the People of Kazakhstan.

74. In general, however, Kazakhstan has not fully completed its transition to democratic institutions. Democratic deficits, centralized governing structures and a lack of transparency, generally have a greater negative impact on minority communities and their ability to achieve meaningful political representation and participation. Persons belonging to some minority communities expressed frustration at their lack of meaningful participation in political life and in decision-making bodies and the lack of democratic local governance. Full access to democratic structures, particularly at the local level, is critical for minorities to voice their concerns and to

achieve meaningful solutions to their issues. Efforts towards further democratization in all governing structures should be intensified, with effective political participation of minorities as a priority.

75. The Assembly of the People of Kazakhstan, which plays an advisory role to the President, is a valuable national symbol of the recognition of minorities and the commitment of the State to the preservation of the cultural heritage of minorities. Assembly members are drawn from many minority national and ethnic groups active in the cultural associations from all regions. There are also Assemblies at the regional level. Nine members of the Assembly are chosen for appointment to the *Majilis*, the lower house of Parliament. The Assembly nonetheless lacks the character of a legitimately representative body. Membership is based on a selection process from members of ethnic, cultural and other public associations who meet with the approval of the President²⁴, rather than a process which recognizes an equal franchise to every person within a minority group or all minority groups. Mechanisms should be devised to ensure that members of the Assembly are truly representatives of a minority electorate and accountable to them. Such a system would better guarantee that the true interests of minority communities will be represented at all levels.

76. The potential and legitimacy of the Assembly would be greatly enhanced if members were elected by each minority group directly and without reference to cultural associations, which are themselves not based on a principle of representativeness.

77. The Assembly's work currently has an emphasis on the preservation of culture and traditions, the arts and supporting cultural associations. For the Assembly to fulfil its potential, its capacity as a consultative and advisory body to the President and Parliament should be strengthened in line with its constitutional status. It should be empowered to function as a standing body with frequent and regular sessions, and consider a wider range of issues of particular relevance to minorities, relating to meaningful political participation, religious matters, substantive issues of minority education and languages, and measures to address practically and prevent ethnic tensions.

78. Representation of minorities within the Assembly at the regional and national levels is not a substitute for full and effective participation of minorities in mainstream processes to elect, on a democratic basis, members of the national Parliament and local government. Measures should be taken to build confidence among minorities in political processes, to democratize and enhance the powers of local governments and to develop concrete mechanisms for effective political participation of members of minority communities.

79. In this respect the Independent Expert draws the attention of the government to the recommendations of the 2nd Forum on Minority Issues on the subject of Minorities and Effective Political Participation and urges it to consider implementation of these recommendations²⁵.

80. Since independence, the introduction of policies to promote the Kazakh language and Kazakh ethnic identity has proved successful and generally been implemented in a measured and gradual manner. However, it has undoubtedly contributed to an emergent Kazakh nationalist movement. Equally, among some minority communities, which may have been historically powerful and numerically

²⁴ Art. 15, Law of Republic of Kazakhstan

²⁵ See <http://www2.ohchr.org/english/bodies/hrcouncil/minority/forum.htm>

dominant, such as ethnic Russians during the Soviet era, pro-Kazakh policies have sometimes been viewed as constituting discriminatory measures, causing anxiety and leading many to emigrate to their kin States. For many non-Kazakhs, including both Slavic and non-Slavic groups, the preservation of the constitutional guarantee of the use of the Russian language on a par with the state language in the public sector is viewed as a key factor ensuring the development of Kazakhstan as a multiethnic State. The Russian language is an important medium of communication for ethnic groups in Kazakhstan.

81. Evidence exists that nationality and ethnicity are increasingly important individual and group markers within Kazakh society. This may have a negative impact on the extent to which a shared sense of national identity emerges, based on integration and unity in diversity. Confidence-building measures should include strengthening legislation in the field of anti-discrimination and judicial remedies available to those who believe they have suffered discrimination on the grounds of national or ethnic origin.

82. Members of minority communities described an environment of relative equality and non-discrimination in private-sector employment, access to services and general societal interactions. Non-discrimination provisions exist in both the Constitution and individual pieces of legislation. However, no cases challenging discriminatory actions on the grounds of ethnicity have ever come before the courts. Some Government officials interpret this to mean that there is no discrimination in society. On the contrary, the absence of cases may be evidence of an inadequate legislative framework, a lack of independent and effective mechanisms for individuals to make complaints and a lack of public confidence in the process.

83. The independent expert endorses the recommendation of the Committee on the Elimination of Racial Discrimination following its consideration of Kazakhstan in 2004. Specific legislation regarding racial discrimination should be adopted to implement the provisions of the International Convention on the Elimination of all forms of Racial Discrimination, and include a legal definition of racial discrimination that complies with the Convention. Legislation should create civil penalties for racial discrimination and authorize the establishment of a statutory monitoring and enforcement body with effective powers. The office of the Ombudsman should be restructured into an independent national institution that complies with internationally recognized rules of independence (the Paris Principles). Such legislation would considerably enhance enforcement of the rights of individuals to seek and receive remedies for acts of discrimination against them.

84. The historical and geopolitical circumstances that created modern Kazakhstan also produced a social and demographic dynamic in which many citizens, including many ethnic Kazakhs, do not speak the Kazakh language. The Government is moving forward with its policy to strengthen Kazakh as the State language. However, sensitivity must continue to be exercised to ensure that the policy does not have undue impact on the rights and opportunities of those communities that might require additional assistance, time and resources to gain proficiency in the Kazakh language. Long-term expansion of teaching and education in Kazakh alongside minority languages, will allow a gradual process of learning of Kazakh by minority communities.

85. In the period of transition towards the use of Kazakh as the primary language of State administration, proficiency in Kazakh should in no way be used as a basis to confer or deny rights, freedoms and privileges belonging to all citizens. National and regional authorities must ensure that no discrimination or undue restrictions are experienced, particularly with regard to the recruitment, continuation of employment

and promotion of civil servants. In addition, the rights of citizens to petition Government or engage Government services should not be impaired.

86. Minority languages should be accorded a status which allows for their use alongside Kazakh and Russian, particularly in regions with large, compact minority communities. Changing place names or public signs into only Kazakh in areas with high minority populations may cause animosity. The Government is urged to use a dual language approach (Kazakh/Russian or Kazakh/minority language) when renaming towns and villages, in the use of public signs and when issuing public information documents.

87. While welcoming the provision and support of minority language schools, the independent expert requests the Government to take action to ensure the highest quality in non-Russian language schools, including minority language schools and the Kazakh schools; guarantee adequate funding and resources, particularly for schools using languages of smaller ethnic groups; ensure sufficient provision of minority language text-books; ensure that all text-books include appropriate consideration of the cultures, traditions and history of minorities and their contributions to Kazakh society; and ensure equality of access to university education for students from all groups. The Government is commended for supporting the provision of informal structures, such as Sunday schools, where circumstances do not allow for the provision of permanent, full-time minority schools. Most important is that all schools prepare all groups for full inclusion in every aspect of the society. Particular measures should be taken to ensure that minority girls do not face barriers to equality in access to education and equal education outcomes.

88. Kazakhstan has exhibited inter-faith harmony and religious freedom for those religions recognized as “traditional” or orthodox. However, faiths considered to be “non-traditional”, such as Jehovah’s Witnesses, Baptists, evangelicals, Scientologists, non-recognized forms of Islam and others, feel that they have not been accorded the same freedoms. Rules for the registration of religious groups that may violate both the Constitution and international norms, public statements and publications by the Government warning the population against certain religious faiths, unjustified confiscation of property, imposition of fines, arrests, deportations and other abuses of power by police, national security agents and bureaucrats appear to constitute repression of religious groups.

89. The freedoms accorded to traditional religious groups must be extended to all religious groups. No judgement should be made by the Government as to which belief systems constitute legitimate beliefs and which do not. The Government would breach its obligations to guarantee freedom of religion, freedom of thought and freedom of association if it denied registration to an organization as a way to deny the legitimacy of its religious doctrine. Furthermore, the Government must not determine that someone’s belief system or activities constitute a threat to national stability or individual security that is punishable without the commission of a criminal act.

90. The Government is urged to engage in a wide-ranging dialogue with “non-traditional” religious groups about ways to guarantee their full rights and freedoms. Existing laws on religious organizations and activities should be brought into compliance with the Constitution and international legal standards, and not restrict the legitimate activities of individuals or religious groups. Repressive measures against religious groups and their members must stop immediately.

91. A number of recent incidents suggest that ethnic tensions exist and have occasionally flared into violent attacks on minority groups. In some cases, deaths have occurred and community members have fled their homes. While the events have been

sporadic and do not signal a high risk of sustained inter-ethnic violence, the ethnic dimensions of such incidents must not be ignored. There may be critical issues simmering beneath the surface that must be addressed in an open and transparent manner in order to guarantee that inter-ethnic harmony is maintained. Aggressive manifestations of nationalism and incitement to racial or religious hatred in the media and elsewhere must be met with appropriate responses. Positive models of inter-community dialogue, mediation and conflict prevention exist in other countries and may be useful in this context. Appropriate mechanisms for policing and ensuring the rule of law in multi-ethnic societies are crucial to prevent violent incidents.

92. Groups, including Roma and Luli (or Lyuli), were generally described as nomadic or itinerant and with livelihoods solely in the informal sector. Such groups are not represented in the Assembly of the People or other State institutions. They often lack identification documents required to secure services and may be vulnerable with regard to access to health care, education, housing and the effects of extreme poverty. Women and children belonging to these groups may be particularly at risk. The Government is urged to constructively engage with such communities in order to assess their needs and address discrimination against them. Sustainable solutions should be developed to improve access to their rights.

93. The independent expert is concerned by reports received directly from human rights defenders in Kazakhstan and independent sources that the legitimate and lawful activities of some non-governmental organizations and individuals are hampered by interference, intimidation, surveillance and harassment by Government security bodies and unknown actors. Organizations reported experiencing difficulties in carrying out activities or producing reports, including in the field of minority rights and ethnic relations and in defence of non-traditional religious minorities. Reports were received of alleged irregularities in the trial of one prominent human rights defender in September 2009. Non-governmental organizations must be allowed to be established and registered freely, to obtain funding and to conduct their legitimate activities in the field of human rights in an environment of openness, transparency, security and full legal protection.
