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Committee on Economic, Social and Cultural Rights

Information received from Kazakhstan on follow-up to the concluding observations on its second periodic report*

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* The present document is being issued without formal editing.



1. In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide, within 24 months of the adoption of the present concluding observations, information on the implementation of the recommendations contained in the paragraphs on non-discrimination (para. 11 (a) and (b)), maximum available resources (para. 20) and trade union rights (para. 33) above.

Follow-up information relating to paragraph 11 (a) and (b) of the concluding observations (E/C.12/KAZ/CO/2)

2. The establishment of separate anti-discrimination legislation is currently being analysed and global best practices are being studied with a view to their incorporation into national legislation.

3. Moreover, article 14 of the Constitution provides that no one may be subjected to any kind of discrimination and that everyone is equal before the law.

4. The equivalent to the term “discrimination” in national legislation is the term “violation of the equal rights of citizens” (Criminal Code of 3 July 2014, art. 145). This term means the direct or indirect restriction of human or civil rights or freedoms based on origin, social, official or property status, sex, race, ethnicity, language, attitude to religion, beliefs or place of residence, or on any other grounds.

5. In addition, international treaties prohibit discrimination against citizens, specifying all its intrinsic characteristics.

6. Kazakhstan has now ratified the core international treaties in which the non-discrimination standards are enshrined, including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention relating to the Status of Refugees, the International Labour Organization (ILO) Equal Remuneration Convention, 1951 (No. 100), the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the ILO Workers with Family Responsibilities Convention, 1981 (No. 156).

7. For example, article 2 of the Convention on the Rights of the Child provides that States parties must respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

8. Moreover, since Kazakhstan acceded to the Convention on the Elimination of All Forms of Discrimination against Women in 1998, the concept of “discrimination” set out in article 1 of the Convention has been applied in legal practice and has been widely used in the texts of the Constitution and enacted laws and regulations.

9. In 2009, the Act on State Guarantees of Equal Rights and Opportunities for Men and Women was adopted. In article 1 (3) of the Act, “sex-based discrimination” is defined as “any restriction or infringement of human rights and freedoms or diminishment of dignity based on sex”.

10. This definition of sex-based discrimination is comprehensive in nature and is premised on equal rights and opportunities of both men and women.

11. In addition, in accordance with article 2 of the Convention, the State adopts appropriate legislative and other measures, including sanctions where appropriate.

12. A prohibition on any discrimination in criminal proceedings is laid down in the Code of Criminal Procedure.

13. Moreover, article 145 of the Criminal Code prohibits the direct or indirect restriction of rights or freedoms (based on origin, social, official or property status, sex, race, ethnicity, language, attitude to religion, beliefs or place of residence, or on any other grounds).

14. Equivalent standards are contained in laws such as the Constitutional Act on Elections in the Republic of Kazakhstan, the Marriage and Family Act and the Education Act, thus enabling effective and appropriate action against discrimination in any areas of public life.

15. Moreover, the Majilis, the lower house of Parliament, is currently considering a bill to amend several laws related to family and gender policy, initiated by members of the Parliament.

16. The bill provides for:

- Equal access for men and women to enter public service based on the requirements set out in the legislation on public service employment
- Guarantees of equal rights and opportunities for men and women in the area of labour relations and of equality of treatment in the evaluation of the quality of work and in working conditions
- State guarantees of equal rights and opportunities for men and women in science and equal access to sport
- State guarantees in the economic sphere: equal access to all types of resources necessary for entrepreneurial activity, accessibility of public services and support, equal rights and opportunities to receive loans and other financial services, facilitation of economic competition on an equal footing and the prevention of unfair competition

17. In accordance with article 21 of the Constitution, all persons who are legally present in Kazakhstan have the right to move freely within its territory and to choose their place of residence freely, except in cases specified by law. All persons have the right to leave the country. Citizens have the right to return to Kazakhstan without hindrance.

18. Article 21 of the Constitution does not apply to persons present illegally in the country. It also establishes that the law may provide for cases in which the right to freedom of movement and the free choice of place of residence may be restricted.

19. In the national law, such restrictions may be based on:

- National security interests or the need to protect State secrets
- Maintenance of public order, prevention or punishment of criminal offences, including in a state of emergency or the conduct of police work and investigations
- Public health considerations
- Prevention of accidents and natural disaster and emergency mitigation and management
- Illegal behaviour by citizens and the use of coercive legal measures against them
- The nature of a type of work or service
- Other reasons

20. The main national instruments for the regulation of migration processes are currently the Migration Policy Framework for 2017–2021 and the plan of action for its implementation, which are aimed at the improvement of existing mechanisms and the development of new ones to manage migration in Kazakhstan.

21. The main instruments defining public policy on migration are the Act on the Legal Status of Aliens, the Citizenship Act and the Population Migration Act.

22. Moreover, as an active member of the international community, Kazakhstan took part in the drafting of the Global Compact for Safe, Orderly and Regular Migration and signed on to it on 10–11 December 2018, by a decision of the specialized Working Group of Experts on Migration and Refugees.

23. One of the main objectives of the instrument is to ensure the provision of social benefits and the right to earn entitlements.

24. The Global Compact contains a total of 23 objectives, including to save the lives of migrants, to ensure accessible paths to regular migration, to combat smuggling, to facilitate inclusion and to eliminate discrimination.

25. Moreover, the Ministry of Labour and Social Protection works on a continuous basis to improve the procedures for the recruitment of foreign workers.

26. In 2020, a number of measures were taken to improve migration monitoring.

27. For example, the requirement for foreign nationals to register at internal affairs agencies was repealed. Now, the main way in which their stay is monitored is through a mechanism whereby citizens and organizations hosting foreign nationals notify the internal affairs agencies. This mechanism is automated and operates through the migration visa portal.

28. Work has been completed to organize the issuance of permits to migrant workers through Citizen Service Centres.

29. Direct work with foreign nationals (collection of documents and issuance of permits) is carried out by a State-owned entity, Government for Citizens. The government services related to the issuance of permits to recruit foreign labour have also been automated and are delivered through the e-government portal.

30. Border crossings by citizens of Kazakhstan and foreign nationals, including for transit, are currently restricted owing to the extension of quarantine restrictions in the country.

31. The Interdepartmental Commission on the Prevention of the Outbreak and Spread of the Coronavirus Disease in Kazakhstan decided to approve a border-crossing procedure valid from 11 May 2020 for the period of the quarantine measures and the following related measures were taken.

32. Administrative penalties have been waived for foreign nationals and stateless persons leaving the country whose transit documents, residence permits, visas and temporary residence permits expire before 5 June 2021.

33. These measures allow foreign nationals to voluntarily leave the country without facing any penalties.

34. In addition, the stay (visas and temporary residence permits) of the following categories of foreign nationals has been extended until 5 June 2021:

(1) Persons with work permits or certificates of qualification for self-employment issued by the local authorities. These foreign nationals and stateless persons are issued with visas and temporary residence permits without consideration of the requirements related to the declared purpose of the visit;

(2) Persons present in Kazakhstan for the purpose of family reunification who are unable to provide documents from their country of citizenship. These foreign nationals and stateless persons are issued with visas without consideration of the requirements related to the declared purpose of the visit;

(3) Migrant workers applying for issuance, extension or reissuance of a permit. The permits are issued without consideration of the requirements of article 43-1 (2) of the Population Migration Act (according to which the maximum duration of continuous temporary residence in Kazakhstan by a migrant worker may not exceed 12 months).

35. In accordance with article 9 of the Housing Act, foreign legal entities and foreign nationals enjoy the same rights and have the same obligations with respect to housing as legal entities and citizens of Kazakhstan, unless otherwise provided by national law.

36. Stateless persons with permanent residence in Kazakhstan enjoy the same rights and have the same obligations with respect to housing as citizens of Kazakhstan.

37. The Housing Act was amended by an Act of 13 May 2020 on the amendment of various laws related to the regulation of migration processes in order to replace the term “*oralman*”, or ethnic Kazakh repatriate, with “*kandas*”.

38. Moreover, foreign nationals and stateless persons with permanent residence in Kazakhstan are entitled to a guaranteed level of free health care on an equal footing with citizens of Kazakhstan (Code on Public Health and the Health-Care System, art. 83).

39. Ministry of Health Order No. MZ RK-121/2020 of 9 October 2020 sets out a list of diseases posing a danger to others for which asylum seekers and foreign nationals and stateless persons with temporary residence in Kazakhstan are entitled to a guaranteed level of free health care, and it specifies the level of health care.

40. In accordance with the list, when foreign nationals and migrant workers are registered as having the coronavirus disease (COVID-19), they receive free health care as part of the guaranteed level of free health care.

Follow-up information relating to paragraph 20 of the concluding observations

41. Total public expenditure on the development of social services is increasing year on year.

42. In 2020, the amount of public funding for development of the health and education system, social welfare and security, culture, sport, tourism and information stood at 9,375,573 million tenge.

43. In comparison with the figures for 2010, or over the past 10 years, total public expenditure on the development of social services has increased by 3.8 times (from 2,486,186 million tenge to 9,375,573 million tenge).

44. Social expenditure accounts for no less than 50 per cent of public spending. In 2020, the figure was 53.7 per cent.

45. With respect to the budget of the national Government, expenditure on the development of social services is also increasing year on year.

46. This is shown by the increase in spending as a share of the national budget compared to total spending and to gross domestic product (GDP). While, in 2010, 1,622,044 million tenge were allocated to social expenditure, in 2020 the total amount of funding stood at 6,606,733 million tenge.

47. The national budget for 2021–2023 provides for social expenditure amounting to a total of 23,467,652 million tenge, or 7,093,861 million tenge in 2021, 7,802,954 million tenge in 2022 and 8,570,837 million tenge in 2023.

48. As a result of annual increases, social expenditure has increased as a proportion of the total national budget from 35 per cent to 46 per cent in 2020.

49. The proportion of the total national budget allocated to social expenditure will be 50.5 per cent in 2021, 56.2 per cent in 2022 and 61.7 per cent in 2023.

50. Over the past 10 years, the national budget has increased as a share of GDP from 8.4 per cent to 9.5 per cent. That level will be maintained from 2021 to 2023.

51. In other words, social funding from the national budget has increased both in absolute terms and as a proportion of total expenditure and GDP.

52. The main reasons for the increased expenditure are:

- Annual increases in the number and level of social payments (pensions and benefits) and targeted social assistance
- Gradual salary increases for teachers, doctors, other public servants and military personnel
- Transition to compulsory health insurance
- Social infrastructure provision in the regions
- Provision of employment under State, sectoral and other programmes

53. As regards regional disparities, targeted transfers from the national budget are allocated in accordance with the requirements of the regions, defined on the basis of population and need.

Follow-up information relating to paragraph 33 of the concluding observations

54. In accordance with national legislation, all trade unions are established without previous authorization, either from the State or the employer, as required by the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

55. In 2016, ILO, international human rights organizations and trade union associations criticized Kazakhstan for its non-compliance with the provisions of ILO Convention No. 87.

56. For example, ILO and the International Trade Union Confederation expressed serious concerns about the fact that the Trade Union Act required the mandatory affiliation of trade unions to higher-level trade union associations.

57. In May 2018, a high-level mission from ILO visited Kazakhstan. Following joint efforts, a road map was adopted for the implementation of the recommendations of the ILO Committee of Experts on the Application of Conventions and Recommendations.

58. As a result of the work carried out to implement the road map, a bill was drafted on the amendment of various laws on labour issues, pursuant to which a number of legislative amendments were made with a view to strengthening the role of trade unions.

59. The amendments were discussed and agreed with the trade unions of Kazakhstan. Their content was approved at meetings of high-level delegations of Kazakhstan with ILO representatives in April, June, October and November 2019.

60. In May 2020, in order to implement the provisions of the ILO Convention, the law on the amendment of various laws on labour issues was adopted, pursuant to which the Trade Union Act was amended to provide for:

- Repeal of the mandatory membership for trade unions of higher-level trade union associations (Trade Union Act, arts. 12–14), allowing trade unions to have an unrestricted right to freedom of association
- Introduction of provisions on international cooperation by trade unions and the organization of joint events with foreign partners
- Simplification of the conditions for approving the status of trade unions as national, sectoral or regional associations of trade unions upon official registration (elimination of the requirement for sectoral trade unions to cover at least half the workforce of the sector and related sectors)
- Simplification of the registration conditions for trade unions (to fulfil the requirements on the minimum number of member organizations in a particular area, subdivisions (branches and offices) of a given trade union may be considered in addition to member organizations)
- Extension of the deadline for validation of the status of trade union associations through registration with the justice authorities, from six months to one year
- Introduction of the possibility to suspend the activities of a trade union for between three and six months (if the requirements for the approval of trade union status are not met, the trade union can be suspended, with the possibility of resuming activities, instead of facing dissolution)

61. Moreover, article 402 of the Criminal Code has been amended to reduce the penalties for calling for participation in an illegal strike. Acts falling under paragraph 1 were downgraded from a criminal offence to a misdemeanour and those falling under paragraph 2 were downgraded from an ordinary offence to a minor offence.

62. In addition, for the full realization of the right to freedom of expression, strikes at hazardous industrial facilities have been authorized, on condition that continuous operation of the essential equipment and mechanisms is ensured.

63. Plans are now being made with the social partners for the signature of a general agreement for 2021–2023 between the Government, national workers' associations and national employers' associations. The agreement sets out the obligations on the parties to prevent illegal interference in each other's activities and to prevent the obstruction or restriction of the establishment, operation and activities of trade unions, trade union associations and employers' associations or unions.
