

Consideration of reports submitted by States parties under article 40 of the Covenant (International Covenant on Civil and Political Rights)

Unofficial translation

Concluding observations of the Human Rights Committee on 19 August 2011

Kazakhstan

1. The Committee considered the initial report submitted by Kazakhstan (CCPR/C/KAZ/1) at its 2810th, 2811th and 2812th meetings (CCPR/C/SR.2810, 2811 and 2812), held on 14 and 15 July 2011, and adopted at its 2826th (CCPR/C/SR.2826), held on 26 July 2011, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of Kazakhstan, albeit somewhat late, and the information presented therein. It expresses appreciation for the opportunity to engage in constructive dialogue with the State party's high level delegation on the measures that the State party has taken to implement the provisions of the Covenant since the ratification of the Covenant in 2006. The Committee appreciates the written replies (CCPR/C/KAZ/Q/1/Add.1) to the list of issues, which were supplemented by the oral responses provided by the delegation, and the additional information that was provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party :

- (a) The establishment of the National Commission on Women's Affairs and Family and Demographic Policy ;
- (b) The enactment of the Act on State Guarantees of Equal Rights and Opportunities for Men and Women , in 2009 .

4. The Committee welcomes the ratification by the State party of the following international instruments :

- (a) The International Convention for the Protection of All Persons from Enforced Disappearance, on 27 February 2009 ;
- (b) The Optional Protocol to the International Covenant on Civil and Political Rights, on 30 June 2009 ;
- (c) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment, on 22 October 2008;

(d) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 31 July 2008.

C. Principal matters of concern and recommendations

5. The Committee expresses concern at the lack of adequate information in the State party's report on the constitutional framework and political system under which the rights under the Covenant are guaranteed. The Committee is also concerned that the State party has not yet submitted a core document (art. 2 of the Covenant)

The Committee urges the State party to provide comprehensive information on the constitutional framework within which the rights under the Covenant are guaranteed. In this regard, the Committee invites the State party to submit a core document in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.6, chap. I) which were adopted by the inter-committee meeting of the human rights treaty bodies.

6. While taking note of the provision contained in article 4(3) of the State party's Constitution which states that international treaties shall have precedence over the State party's laws and shall be directly applicable, the Committee is concerned at the lack of clarity on the status of the Covenant in the domestic legal order following the decisions of the Constitutional Council, which has established supremacy of the Constitution over international treaty law and declared unenforceable any treaty provision that is in conflict with the Constitution. In this regard, the Committee is further concerned at the impact that the exercise of the presidential power of veto may have on the implementation of the Covenant. The Committee is also concerned that the provisions of the Covenant are rarely invoked before national courts (art. 2).

The State party should take all necessary measures to ensure legal clarity on the status and applicability of the Covenant and other international human rights treaties ratified by the State party. The State party should also take appropriate measures to raise awareness of the Covenant among judges, lawyers and prosecutors to ensure that its provisions are taken into account before national courts.

7. While noting the State party's intentions to confer on the Commissioner for Human Rights (CHR) the additional mandate to act as a National Preventive Mechanism on torture under its Ombudsman Plus project, the Committee is concerned that the CHR was established by a presidential decree and has not applied for accreditation to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The Committee is also concerned at the CHR's lack of independence and inadequate budgetary and human resources to undertake its current mandate (art. 2).

The State party should strengthen its efforts to ensure that the Commissioner for Human Rights enjoys full independence. In this regard, the State party should also provide it with adequate financial and human resources in line with the Paris Principles (General Assembly resolution 48/134, annex). The Committee further recommends that the Commissioner for Human Rights apply for accreditation to the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. Finally, when establishing the National Preventive Mechanism as provided for under the Optional Protocol to the Convention against Torture, the State party should ensure that it does not compromise, but rather improves the execution of its core functions as a National Human Rights Institution in line with the Paris Principles.

8. While the Committee appreciates the State party's need to adopt measures to combat acts of terrorism, including the formulation of appropriate legislation to punish such acts, it regrets reports that law enforcement officials target vulnerable groups such as asylum-seekers and members of Islamic groups in their activities to combat terrorism (arts. 2 and 26).

The State party should adopt measures to ensure that the activities of its law enforcement officials in the fight against terrorism do not target individuals solely on the basis of their status or religious belief and manifestation. Furthermore, the State party should ensure that any measures to combat terrorism are compatible with the Covenant and international human rights law. In this regard, the State party should compile comprehensive data, to be included in its next periodic report, on the implementation of anti-terrorism legislation and how it affects the enjoyment of rights under the Covenant.

9. The Committee expresses concern that women remain underrepresented in both the public and private sectors, particularly in decision-making positions, notwithstanding that women register better outcomes in the acquisition of higher education compared with their male counterparts. The Committee is also concerned at the prevalent negative stereotypes regarding the roles of women in society. The Committee, however, notes the State party's efforts to improve gender equality, such as the adoption of the Gender Equality Strategy, which sets a 30 per cent goal for female representation in all spheres of life (arts. 2, 3 and 26).

The State party should strengthen its efforts to increase the participation of women in the public and private sectors, and if necessary, through appropriate temporary special measures to give effect to the provisions of the Covenant. The State party should take the necessary measures to eliminate the prevailing negative stereotypes against women and also ensure that female representation in both sectors reflects the progress made in improving their levels of e d u c a t i o n .

10. The Committee expresses concern at the prevalence of violence against women, and that the Domestic Violence Act does not encourage women to report incidents of violence against them. The Committee also expresses concern at the increased number of children who die as a result of domestic violence. However, the Committee notes the enactment of the Domestic Violence Act of 2009 (arts. 3 and 7).

The State party should adopt a comprehensive approach to prevent and address violence, in particular domestic violence, against women in all its forms and manifestations including through awareness-raising on its harmful effects. In this regard, the State party should review the Domestic Violence Act to ensure that it encourages female victims of violence to report any incidents to law enforcement authorities. The State party should ensure that cases of violence against women are thoroughly investigated, that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims are provided adequate r e p a r a t i o n s .

11. The Committee expresses concern at the prevalence of teenage pregnancies and clandestine abortions that lead to deaths. The Committee regrets the lack of specific programmes designed to prevent teenage pregnancy and the issues arising from recourse to illegal abortions (arts. 6 and 7).

The State party should adopt measures to help girls avoid unwanted pregnancies and recourse to illegal abortions that could put their lives at risk. The State party should take appropriate measures to raise awareness and ensure that reproductive health services and facilities are readily available and accessible in the State party.

12. The Committee is concerned at the inconsistencies regarding the types of crimes subject to the death penalty as provided in the Constitution and the Criminal Code. In particular it notes that whereas the Constitution prescribes that the death penalty can be established by law only for terrorist crimes entailing loss of life and grave crimes in times of war, the Criminal Code provides for an expanded list of crimes that are subject to the death penalty. The Committee also notes that the State party has only signed, but not yet ratified, the Second Optional Protocol to the Covenant. The Committee notes the moratorium on the death penalty with respect to certain crimes (art. 6).

The Committee encourages the State party to abolish the death penalty and to accede to the Second Optional Protocol to the Covenant.

13. While noting the delegation's acknowledgement that diplomatic assurances made under the Shanghai Cooperation Organisation do not release the State party from monitoring the conduct of the requesting State after the return of an individual, the Committee notes with concern that the State party may be willing to rely on such diplomatic assurances to return foreign nationals to countries where torture and serious human rights violations might occur. The Committee is also concerned at reports that individuals, particularly Uzbek and Chinese nationals, who might have valid claims for asylum or refugee status have no protection under the principle of non-refoulement due to the State party's obligations under the Minsk Convention on Legal Assistance for Persons from the Commonwealth of Independent States (arts. 7 and 13).

The State party should exercise utmost care in relying on diplomatic assurances when considering the return of foreign nationals to countries where they are likely to be subjected to torture or serious human rights violations. The State party is encouraged to continue to

monitor the treatment of such persons after their return and take appropriate action when the assurances are not fulfilled. Furthermore, the State party should fully comply with the principle of non-refoulement and ensure that all persons in need of international protection receive appropriate and fair treatment at all stages, in compliance with the Covenant.

14. While noting the adoption of an action plan for 2010-2012 on the implementation of recommendations of the Committee against Torture, the Committee expresses concern at increased reports of torture and the low rate of investigation of allegations of torture by the Special Procurators. The Committee is also concerned that the maximum penalty (10 years imprisonment) for torture resulting in death under article 347-1 of the Criminal Code is too low (art. 7).

The State party should take appropriate measures to put an end to torture by, inter alia, strengthening the mandate of the Special Procurators to carry out independent investigations of alleged misconduct by law enforcement officials. In this connection, the State party should ensure that law enforcement personnel continue to receive training on the prevention of torture and ill-treatment by integrating the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) of 1999 in all training programmes for law enforcement officials. The State party should thus ensure that allegations of torture and ill-treatment are effectively investigated, that perpetrators are prosecuted and punished with appropriate sanctions, and that the victims receive adequate reparation. In this regard, the State party is encouraged to review its Criminal Code to ensure that penalties on torture are commensurate with the nature and gravity of such crimes.

15. While taking note of the existence of the Child Rights Law of 2002 and the prohibition of corporal punishment in schools and the penal system, the Committee expresses concern at the permissibility of corporal punishment in the home and foster care establishments where it continues to be accepted and practised as a form of discipline by parents and guardians (arts. 7 and 24).

The State party should take practical steps to put an end to corporal punishment in schools and institutions. It should also encourage non-violent forms of discipline as alternatives to corporal punishment in family settings and conduct public information campaigns to raise awareness about its harmful effects.

16. The Committee regrets the increase in the number of reported crimes related to trafficking in human beings. The Committee also regrets the increase in the number of children employed in cotton and tobacco fields. The Committee notes the State party's efforts to combat trafficking in human beings, such as the establishment of the Interdepartmental Commission against human trafficking (art. 8).

The State party should strengthen its efforts to combat trafficking in human beings by ensuring that efforts are directed towards establishing and dealing with the root causes of trafficking. Furthermore, the State party should ensure that children are protected from the

harmful effects of child labour, particularly those employed in cotton and tobacco fields. In this regard, the State party should ensure that all cases of human trafficking and use of child labour are effectively investigated, that perpetrators are prosecuted and punished with appropriate sanctions, and that the victims are adequately compensated.

17. The Committee is concerned that overcrowding in detention centres and prisons continues to be a problem. The Committee is also concerned at the increased number of reported cases of inter-prisoner violence, self-mutilation and deaths in prisons. The Committee notes the State party's efforts to construct new prison facilities in order to improve prison conditions (arts. 6 and 10).

The State party should take urgent measures to address overcrowding in detention centres and prisons, including through increased resort to alternative forms of punishment, such as electronic monitoring, parole and community service. The State party should end the practice of tolerating inter-prisoner violence and should take measures to address the underlying causes of self-mutilation by prisoners. In this regard, the State party should ensure that all cases of inter-prisoner violence and deaths are thoroughly investigated and that the perpetrators are prosecuted and punished with appropriate sanctions. Furthermore, public oversight commissions should be granted the ability to conduct unannounced inspections of all prisons and detention facilities.

18. The Committee is concerned at the need for individuals to obtain an exit visa in order to be able to travel abroad, a process that is allegedly onerous and bureaucratic. It is also concerned that the State party maintains the compulsory address registration system of individuals in their places of residence, which may interfere with their enjoyment of rights under article 12 of the Covenant (art. 12).

The State party should abolish the exit visa requirement and ensure that the requirement that individuals register their place of residence is in full compliance with the provisions of article 12 of the Covenant.

19. The Committee expresses concern that despite the enactment of a National Refugee Law of 2010, its application does not guarantee the rights protected under Covenant. The Committee also expresses concern at the lack of cooperation with the United Nations High Commissioner for Refugees (UNHCR) in its mandate to conduct refugee status determination, which in effect excludes the protection provided by UNHCR in matters of non-refoulement (arts. 7 and 13).

The State party should review its legislation on refugees to ensure that it complies with the Covenant and international standards on refugee and asylum law. The State party should also ensure that it provides the necessary cooperation to UNHCR in order to allow it to execute its mandate and functions as provided for under UNHCR Statutes, the 1951 Convention and other international treaties ratified by the State party in order to guarantee the rights provided under the Covenant.

20. The Committee is concerned at reports of undue restrictions on access to lawyers by

individuals, especially in cases involving State secrets where lawyers are, inter alia, required to seek State clearance before representing their clients. The Committee is also concerned at the lack of legal obligation on the part of police officers to inform accused persons of their right to legal assistance (art. 14).

The State party should ensure that any measures taken to protect State secrets should not involve undue restrictions on an individual's right to access lawyers of their choice. Furthermore, the State party should ensure that in all cases of arrest, the arresting officers execute the obligation, at the time of arrest, of informing accused persons of their right to a lawyer.

21. The Committee expresses concern at reports that corruption is widespread in the judiciary. The Committee also expresses concern at the lack of an independent judiciary in the State party and at the conditions for appointing and dismissing judges, which do not guarantee the proper separation of powers between the executive and the judiciary. The Committee also expresses concern regarding the State party's response about the President's role as "coordinator" of all three branches of government. The Committee is particularly concerned at reports that the Office of the Procurator General has a dominating role in the judicial system, such that it has the power to stay the execution of judgements handed down by courts (arts. 2 and 14)

The State party should take steps to safeguard, in law and practice, the independence of the judiciary and its role as the sole administrator of justice, and guarantee the competence, independence and tenure of judges. The State party should, in particular, take measures to eradicate all forms of interference with the judiciary and ensure prompt, thorough, independent and impartial investigations into all allegations of interference, including by way of corruption, and prosecute and punish perpetrators, including judges who may be complicit. The State party should review the powers of the Office of the Procurator General to ensure that the office does not interfere with the independence of the judiciary.

22. The Committee expresses concern at reports that the prosecution has undue influence on the judiciary, thereby affecting the outcome of judicial decisions, such that acquittals in criminal cases are as low as 1 per cent. The Committee is also concerned at increased reports that judges admit as evidence testimony obtained under torture (arts. 2 and 14).

The State party should conduct a study to establish the causes of the low acquittals in criminal cases in order to ensure that the rights of accused persons under the Covenant are guaranteed and protected throughout the trial process. Furthermore, the State party should ensure that measures are put in place to guarantee the exclusion by the judiciary of evidence obtained under torture.

23. While noting that the Military Duty and Military Service Act provides for citizens to be excused from military service if they have taken a holy order or are permanently employed in a registered religious association, the Committee regrets that the Act does not expressly recognize a person's right to exercise conscientious objection to military service and does not

provide for alternative military service (art. 18).

The Committee encourages the State party to take necessary measures to review its legislation with a view to providing for alternative military service. The State party should also ensure that the law clearly stipulates that individuals have the right to conscientious objection to military service, which they should be able to exercise before the commencement of military service and at any stage during military service.

24. The Committee is concerned that the Freedom of Religion and Religious Associations Act and the State Registration of Legal Entities and Registration of Branches and Representative Offices Act provide for the compulsory registration of religious associations and groups. The Committee is also concerned that the practice of a religion and the conduct of any religious activities without registration is subject to administrative penalties (art. 18).

The State party should ensure that its law relating to the registration of religious organizations respects the rights of persons to freely practise and manifest their religious beliefs as provided for under the Covenant.

25. The Committee expresses concern at reports that the State party does not respect the right to freedom of expression. The Committee, in particular, expresses concern at reports that threats, assaults, harassment and intimidation of journalists and human rights defenders have severely reduced the exercise of freedom of expression. The Committee also expresses concern at the existence of provisions under the Criminal Code on defamation of public officials, and recently the enactment of the Law on the Leader of the Nation, which introduces a new article 317-1 to the Criminal Code prohibiting and punishing insults and other offences against the honour of the President (arts. 19).

The State party should ensure that journalists, human rights defenders and individuals are able to freely exercise the right to freedom of expression in accordance with the Covenant. In this regard, the State party should review its legislation on defamation and insults to ensure that it fully complies with the provisions of the Covenant. Furthermore, the State party should desist from using its law on defamation solely for purposes of harassing or intimidating individuals, journalists and human rights defenders. In this regard, any restrictions on the exercise of freedom of expression should comply with the strict requirements of article 19, paragraph 3, of the Covenant.

26. The Committee expresses concern at reports that the right to freedom of assembly is not respected in the State party. The Committee is particularly concerned at reports of undue restrictions on the right to freedom of assembly, such as the designation of areas for holding assemblies, which are routinely located in the outskirts of city centres in order to attract low public attention. The Committee is also concerned at reports that applications for permission to hold assemblies are often declined on the grounds of public order and national security, but that people continue to stage unauthorized assemblies, which put them at risk of being arrested and charged for breaching a number of administrative regulations, thereby severely restricting their right to freedom of assembly (art. 21).

The State party should re-examine its regulations, policy and practice, and ensure that all individuals under its jurisdiction fully enjoy their rights under article 21 of the Covenant. It should ensure that the exercise of this right is subjected to restrictions which comply with the strict requirements of article 21 of the Covenant.

27. The Committee expresses concern at the application of the law on the registration of political parties, which imposes undue restrictions on the registration of political parties and public associations, resulting in major practical obstacles and delays in the registration of opposition parties and groups (arts. 22 and 25).

The State party should bring its law, regulations and practice governing the registration of political parties in line with the Covenant. It should in particular ensure that the process of registration complies with articles 22, paragraph 2, and 25 of the Covenant. The State party should not use the process of registration to victimize groups that are considered as holding contrary political views to the ruling party.

28. While noting that minority groups, including ethnic minorities, are represented in the People's Assembly, the Committee is concerned at their limited participation in other decision-making bodies particularly in the houses of parliament, namely, the Majilis and Senate (arts. 26 and 27).

The State party should strengthen its efforts to promote the participation of minority groups in political life and decision-making bodies by, inter alia, adopting temporary special measures. The State party is requested in its second periodic report to provide data disaggregated by ethnic groups on the representation of minority groups in political bodies and decision-making positions.

29. The State party should widely disseminate the Covenant, the Optional Protocols to the Covenant, the text of the initial report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The report and the concluding observations should be translated into the other official language of the State party.

30. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 7, 21, 25 and 26 above.

31. The Committee requests the State party to provide, in its next periodic report due for submission on 29 July 2014, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its next periodic report, to broadly consult civil society and non-governmental organizations operating in the country.

