



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Concluding observations on the second periodic report of Kazakhstan\*

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Kazakhstan (E/C.12/KAZ/2) at its 16th and 17th meetings (see E/C.12/2019/SR.16 and 17), held on 27 and 28 February 2019, and adopted the present concluding observations at its 30th meeting, held on 8 March 2019.

#### A. Introduction

2. The Committee welcomes the timely submission of the second periodic report of the State party and the submission of its written replies to the list of issues (E/C.12/KAZ/Q/2/Add.1). The Committee appreciates the constructive dialogue that it had with the State party's high-level intersectoral delegation.

#### B. Positive aspects

3. The Committee welcomes the legislative, institutional and policy measures taken by the State party to enhance the level of protection of economic, social and cultural rights in the State party, as referred to in the present concluding observations. It notes with appreciation, in particular, the adoption of the Kazakhstan Family and Gender Policy Concept until 2030.

#### C. Principal subjects of concern and recommendations

##### Application of the Covenant

4. While welcoming information on some examples of case law invoking the Covenant, the Committee is concerned about the impact of the removal from article 4 (3) of the Constitution of the principle establishing direct applicability of international treaties within the domestic legal order on the protective role of the Covenant.

5. **The Committee recommends that the State party ensure the full domestic applicability of the Covenant. To that end, it encourages the State party to enhance training for judges, lawyers and public officials on the provisions of the Covenant and their justiciability, and to effectively disseminate the knowledge of the Covenant among all social groups. It recommends that the State party provide, in its next periodic report, further examples of relevant case law. In this context, the Committee draws the attention of the State party to its general comment No. 9 (1998) on the domestic application of the Covenant.**

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\* Adopted by the Committee at its sixty-fifth session (18 February–8 March 2019).



### **National human rights institution**

6. The Committee welcomes information on the work of the Commissioner for Human Rights (ombudsperson) regarding the realization of economic, social and cultural rights. It regrets the absence of the information requested on the outcomes of communications on violations of economic, social and cultural rights received by the Ombudsman, corrective actions taken and remedies provided to victims. The Committee is concerned at the low level of financial and human resources made available to the Commissioner, which does not allow a sufficient number of staff to be hired or for the establishment of the Office's presence at the local level (art. 2).

**7. The Committee recommends that the State party provide information in its next periodic report on the effective remedies provided by the Commissioner to address violations of economic, social and cultural rights. The State party should take further measures to bring the institution of the ombudsperson into full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including by further strengthening its independence and by providing it with adequate financial and human resources to effectively and independently carry out its mandate, including the promotion and protection of economic, social and cultural rights.**

### **Civil society**

8. The Committee is concerned at information that some non-governmental organizations in the State party working for the protection and promotion of human rights, in particular the rights of lesbian, gay, bisexual and transgender persons, have faced difficulty in registering.

**9. The Committee recommends that the State party guarantee an enabling environment for non-governmental organizations engaged in the promotion and protection of economic, social and cultural rights, including a functional and accommodating registration procedure.**

### **Non-discrimination**

10. The Committee is concerned that neither the Constitution nor the domestic legislation of the State party explicitly prohibits some of the existing grounds of discrimination, such as gender identity and sexual orientation, which contributes to the persistence of discrimination on those grounds in access to employment, health care and education. It is also concerned by the lack of tailored legal protection of lesbian, gay, bisexual and transgender persons against attacks and harassment. Lastly, the Committee notes with concern the indirect discrimination faced by foreign and internal migrants as a consequence of the prolonged process of obtaining residence registration, which hinders their access to the formal labour market and to social benefits in such areas as health care, housing and education (art. 2).

**11. The Committee recommends that the State party:**

**(a) Adopt comprehensive anti-discrimination legislation that addresses direct and indirect discrimination and encompasses all the prohibited grounds of discrimination, including sexual orientation and gender identity, as set out in article 2 (2) of the Covenant, taking also into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights;**

**(b) Take the measures necessary to combat discrimination against foreign and internal migrants, and to ensure that residence registration does not limit access to economic, social and cultural rights of foreign and internal migrants, in particular with regard to access to the formal labour market and to such social benefits as health care, housing and education;**

**(c) Take all steps necessary to prevent and combat discrimination against lesbian, gay, bisexual and transgender persons, and ensure their equal enjoyment of the rights under the Covenant, and enact tailored legal protections of these persons against attacks and harassment.**

12. While welcoming the ratification by the State party of the Convention on the Rights of Persons with Disabilities in 2015, the Committee is concerned that persons with disabilities continue to face discrimination and inequality in many areas of life. The Committee is particularly concerned at the situation of children with disabilities, who reportedly face social stigma, discrimination and exclusion.

**13. While noting that a new action plan for persons with disabilities will be adopted in 2019, the Committee recommends that the State party strengthen its efforts to ensure that persons with disabilities enjoy unhindered access to all social services, including education and employment, by providing reasonable accommodation in school and in the workplace and improving the accessibility of facilities and services provided and open to the public.**

#### **Equality between men and women**

14. The Committee is concerned that, notwithstanding the State party's efforts to promote the equality of rights of men and women and the evident progress achieved, gender stereotypes persist in society, with a negative impact on women's status in the family and public life, as well as on their access to economic, social and cultural rights. The Committee is also concerned that, despite the important measures already taken, women continue to be underrepresented in senior and decision-making positions in both the public and private sectors (art. 3).

**15. The Committee recommends that the State party review the issue of gender role stereotypes and their consequences for both family and social life, in particular with a view to facilitating women's participation in the economy, the labour market and other areas of social and cultural life. The Committee recommends that the State party make further efforts to improve women's representation in senior and decision-making positions in both the public and private sectors, including by the adoption of special temporary measures. It encourages the State party to intensify efforts to promote training for women in non-traditional fields of employment and in areas that will provide them with equal career opportunities, and to take other measures necessary to guarantee full access to and the enjoyment of economic, social and cultural rights by women. The Committee draws the attention of the State party to its general comment No. 16 (2005) on the equal rights of men and women to the enjoyment of all economic, social and cultural rights.**

#### **Business and human rights**

16. While noting the information provided by the State party that an action plan on business and human rights is under preparation, the Committee regrets the lack of comprehensive data and information on the regulatory framework established to ensure that business entities respect rights under the Covenant and apply human rights due diligence. The Committee also regrets that information is not collected on the claims of victims of violations of economic, social and cultural rights resulting from business operations.

**17. The Committee recommends that the State party:**

**(a) Finalize and adopt the national action plan on business and human rights recommended by the Human Rights Council in its resolution 26/22 to support the implementation of the Guiding Principles on Business and Human Rights;**

**(b) Continue to further develop and implement the regulatory framework for companies operating in the State party and those domiciled under its jurisdiction and acting abroad, to ensure that their activities do not negatively affect the enjoyment of economic, social and cultural rights and contribute to their implementation;**

**(c) Take all measures necessary to ensure the legal liability of companies based in or managed from the State party's territory for violations of economic, social and cultural rights resulting from their activities, and to provide adequate remedies to victims;**

(d) **Collect updated information on the claims filed by victims of violations of economic, social and cultural rights committed by business entities;**

(e) **Carry out human rights and environmental impact assessments on a regular basis before entering into investment and trade agreements or licencing investments, and evaluate the implementation of such agreements or licences.**

18. **The Committee draws the State party's attention to its general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.**

#### **Maximum available resources**

19. While noting the economic growth of the State party in recent years and welcoming its commitment, declared during the dialogue, to increase public social spending, the Committee is concerned at the overall low level of public expenditure on social services as a ratio of the gross domestic product, including in health care and education. The Committee is also concerned at the recent decrease in social security spending, from 4 per cent to 2 per cent. The Committee is further concerned by the disparities between regions, in particular that south and east Kazakhstan seem to lag behind in the enjoyment of economic, social and cultural rights (art. 2 (1)).

20. **The Committee recommends that the State party ensure the progressive realization of economic, social and cultural rights by substantially increasing the level of public social expenditure, especially in the areas of social security, health care and education, at both the national and local levels, with a view to reducing regional disparities and eradicating existing poverty.**

#### **Combating corruption**

21. While noting the progress made in the light of the Transparency International Corruption Perceptions Index and the various steps taken by the State party, the Committee remains concerned by the persisting high level of corruption and the large number of complaints concerning the impact of corruption on the enjoyment of economic, social and cultural rights.

22. **The Committee recommends that the State party continue and further intensify its efforts to combat corruption by systematically addressing its systemic sources, ensuring the effective protection of anti-corruption activists, whistle-blowers and witnesses, and providing adequate compensation to victims. It also recommends that the State party provide information in its next periodic report about the results of complaints proceedings concerning the impact of corruption on the enjoyment of economic, social and cultural rights, as well as about the implementation of its 10-year (2015–2025) anti-corruption strategy.**

#### **Women's right to work**

23. While noting that the list of prohibited jobs for women has decreased from 287 to 191, the Committee is concerned about the continued existence of the list and the lack of scientific or medical assessment of the real impact that these professions may have on women's reproductive health (art. 6).

24. **The Committee recommends that the State party review the list of prohibited jobs for women, and ensure that it covers only restrictions necessary for the protection of maternity and is based strictly on medical considerations (see general comment No. 23 (2016), paras. 17 and 47 (a)), and examine whether other forms of legal protection of women regarding occupational health and safety might not be more effective than preventing women from undertaking certain jobs.**

#### **Gender wage gap**

25. While noting that, in 2017, women's wages increased slightly, to 67.8 per cent of men's, the Committee remains concerned at the persistent wage gap between men and women (art. 7).

26. **The Committee recommends that the State party further reduce the persistent gender wage gap, including by combating gender role stereotypes and improving the vocational and professional skills of women and their access to equal employment opportunities, including in non-traditional fields.**

#### **Right to strike**

27. The Committee is concerned that, despite its previous recommendation (E/C.12/KAZ/CO/1, para. 22), restrictions on the right to strike of civil servants and law enforcement officers continue. The Committee is also concerned that the extensive interpretation of article 402 of the Criminal Code and of section 177 of the Labour Code, making punishable action in favour of the continuation of strikes declared illegal, may lead to unjustifiable restrictions on the right to strike (art. 8).

28. **The Committee recommends that the State party amend its legislation, including article 402 of the Criminal Code and section 177 of the Labour Code, to ensure that workers can exercise their right to strike, without undue restrictions.**

#### **Just and favourable conditions of work**

29. The Committee is concerned about the working conditions of migrant workers, who have limited options for legal employment, are subject to quota systems and reportedly fear reporting violations due to mistrust in authorities. Migrant workers often work without contracts, are subject to non-payment of salaries, confiscation of their passports, and long working hours. Furthermore, the Committee is concerned by reports of forced and bonded labour of some migrant workers in the tobacco, cotton and construction industries, as well as of some women domestic workers subject to domestic servitude. The Committee is also concerned by reports that a significant number of persons work in the informal sectors, especially migrants, women and persons over 65 years of age (art. 7).

30. **The Committee urges the State party:**

(a) **To ensure access to legal employment for migrant workers and adopt the measures necessary to ensure that all migrant workers enjoy the same conditions as other workers with regard to contracts, remuneration, maintaining passports and limitation of working hours;**

(b) **To improve the complaint mechanisms and legal assistance provided to migrant workers;**

(c) **To ensure an end to forced and bonded labour, including by strengthening the legal framework and the effective enforcement of existing legislation protecting migrant workers from such abuse and exploitation;**

(d) **To step up its measures to gradually regularize the status of workers engaged in the informal economy, and in the meantime ensure that they are covered by existing labour and social protection legislation;**

(e) **To enable the labour inspectorate to cover access to labour rights in cases of informal employment.**

31. **The Committee refers the State party to its general comment No. 23 (2016) on the right to just and favourable conditions of work.**

#### **Trade union rights**

32. The Committee is concerned that the results of the efforts made in 2018 to amend the trade union law 2014 with a view to, inter alia, simplifying trade union registration procedures have not yet been submitted to the Parliament. The Committee is also concerned about the incidence of arrests and conviction of trade union leaders in connection with their activities. It also expresses deep concern over reports of assaults, intimidation and harassment of trade union activists (art. 8).

33. **The Committee recommends that the State party ensure the effectiveness of collective bargaining and of the right to union representation, both in law and in**

practice, in conformity with article 8 of the Covenant and with the provisions of the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It also urges the State party to take all the measures necessary, including legislative measures, to prevent the criminal prosecution of workers who have participated in strikes. It also recommends that the State party take all measures to protect trade union activists from assaults, intimidation and harassment.

#### **Right to social security**

34. While noting that the social security benefits for disability have seen a substantial increase, the Committee is concerned that, despite its previous recommendation (E/C.12/KAZ/CO/1, para. 23), the State party's social security system does not cover all relevant population groups, in particular workers in the informal economy, self-employed workers, non-nationals and irregular migrant workers (art. 9).

35. **The Committee recommends that the State party develop a universal social security system with a view to covering all segments of the population. In that regard, the Committee recommends that the State party consider the establishment of a social protection floor as defined in ILO Social Protection Floors Recommendation, 2012 (No. 202). The Committee refers the State party to its general comment No. 19 (2007) on the right to social security and its statement, adopted in 2015, entitled "Social protection floors: an essential element of the right to social security and of the Sustainable Development Goals" (E/C.12/2015/1).**

#### **Domestic violence**

36. The Committee is concerned by the persistence of domestic violence in the State party, and that cases of "light damage to health and beating" are punished under administrative rather than criminal law.

37. **The Committee recommends that the State party criminalize all forms of domestic violence with a view to protecting all victims of domestic violence, bringing perpetrators to justice and preventing impunity. The Committee also recommends that the State party step up its efforts to combat domestic violence, including by strengthening awareness-raising campaigns, providing support to victims, and training law enforcement officers to sensitize them to all forms of domestic violence.**

#### **Child labour**

38. The Committee is concerned that, despite its previous recommendation (E/C.12/KAZ/CO/1, para. 27) and the efforts made by the State party, child labour by migrant and Kazakh children persists, including in tobacco, cotton and agriculture farms (art. 10, para. 3).

39. **The Committee urges the State party to take effective measures to combat child labour and to protect all children against all forms of exploitation. The Committee requests the State party to include in its next periodic report detailed information on the implementation and impact of measures to eradicate child labour.**

#### **Children with disabilities**

40. The Committee is concerned by the situation of children with disabilities in orphanages for children with physical and mental disabilities, which are reportedly overcrowded, unsanitary and understaffed (art. 10).

41. **The Committee recommends that the State party ensure that particular attention is given in the national action plan on persons with disabilities, to be adopted in 2019, to improving the situation of children with disabilities, in particular those in orphanages. It also recommends that the State party ensure that a sufficient level of public funding is allocated to implementing the national action plan, and disability-related programmes and services.**

### Right to housing

42. While taking note of the information on recent housing construction programmes, the Committee is concerned at the lack of detailed information on effective measures taken to provide social housing to disadvantaged and marginalized individuals and families, such as migrant workers and persons living in rural areas, and measures to prioritize these groups in the design and implementation of housing programmes (art. 11).

43. **The Committee recommends that the State party take all measures necessary to provide affordable social housing to disadvantaged and marginalized individuals and families, such as migrant workers and persons living in rural areas. The Committee requests the State party to include detailed information in this respect in its next periodic report. The Committee refers the State party to its general comment No. 4 (1991) on the right to adequate housing.**

### Informed consent for medical procedures

44. The Committee is concerned that, under article 94, part 2 of the Code on Public Health and the Health System, doctors may carry out medical procedures on patients declared “incapable” without first seeking their informed consent and using only the approval of their guardians. The Committee is also concerned that, under article 180, part 9, point 5 of the same code, patients declared incapable may exceptionally be subject to “clinical tests of medical technologies and medicines, intended for treatment of mental disorders (diseases), for patients with mental disorders (diseases)”. The Committee is further concerned that, while forced placement in psychiatric institutions requires a court order, persons who are declared incapable may be placed in a psychiatric institution against their will (art. 12).

45. **The Committee recommends that the State party:**

(a) **Consider amending article 94, part 2 of the Code on Public Health and the Health System with a view to ensuring that the treatment of patients declared incapable is provided on the basis of their free and informed consent, unless exceptional circumstances require otherwise, taking into account the service guidance package on mental health, legislation and human rights issued by the World Health Organization in 2003;**

(b) **Consider the removal of the exception established in article 180, part 9, point 5 of the Code on Public Health and the Health System to the ban on clinical tests of medical technologies and medicines on persons with mental disorders (diseases) who have been declared incapable by the court;**

(c) **Guarantee full respect for the human rights of patients in psychiatric institutions, including by means of independent and effective monitoring of treatment and effective judicial review of orders for confinement to a psychiatric institution.**

### Drug use

46. The Committee is concerned about the large number of persons who are dependent on opioids and the increasing HIV prevalence among persons who inject drugs. It is also concerned that access to harm reduction programmes, rehabilitation and treatment, in particular opioid substitution therapy, remains limited for persons who need them. The Committee is further concerned that the criminalization of drug use prevents many users from having access to these programmes, and by reports of incidents of the police and prosecutors gaining access to the medical records of drug users receiving treatment in medical centres (art. 12).

47. **The Committee recommends that the State party intensify its efforts to prevent drug abuse, including through education and awareness-raising programmes. It also recommends that the State party strengthen harm reduction programmes and provide appropriate health care, psychological support services and rehabilitation, including opioid substitution therapy, to drug users. The Committee further recommends that the State party ensure the confidentiality of medical records of drug users and**

**consider the decriminalization of drug use. It refers the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of health.**

### **Right to education**

48. While recognizing the efforts made by the State party to ensure universal access to education and to improve its quality, the Committee remains concerned about reports that:

(a) A significant number of children do not have access to early education and that there are large regional disparities in access to and the quality of education;

(b) Corruption remains prevalent in the education system, in particular in cases involving persons seeking to obtain enrolment or higher grades;

(c) The quality of education remains low (according to results obtained by the Programme for International Student Assessment) in relation to the level of development owing to shortcomings in infrastructure and an insufficient number of qualified teachers;

(d) Quality of and access to inclusive education of persons with disabilities remains inadequate;

(e) Many children of unregistered migrants do not have access to education or schoolbooks because of problems during registration or because legal identity documents are missing;

(f) Bullying, violence and discrimination persist in schools, in particular against lesbian, gay, bisexual and transgender students;

(g) Many students do not have access to education in their own ethnic minority language (art. 13).

49. **The Committee recommends that the State party:**

(a) **Strengthen public education, including by increasing the budget allocated to early primary and secondary education with a view to improving access to and the quality of education at all levels for all; and increase enrolment rates at all levels of education, paying special attention to girls, children living in rural areas and children from low-income families;**

(b) **Continue its efforts to put an end to corruption in educational institutions by, inter alia, establishing transparent enrolment systems, ensuring visible channels for reporting corruption and conducting efficient investigations into cases of alleged corruption;**

(c) **Improve the quality of education, and expand investment in infrastructure and teacher training;**

(d) **Make every effort to ensure inclusive education for all children with disabilities, including by allocating resources for the provision of reasonable accommodation and additional professional training for teachers;**

(e) **Protect all children against bullying and violence in schools, and expand efforts to prevent their occurrence;**

(f) **Ensure that students belonging to minorities have access to education in their own languages;**

(g) **Consider the Committee's general comment No. 13 (1999) on the right to education (art. 13).**

### **Cultural rights**

50. The Committee is concerned about the reported corruption and lack of transparency in resource allocation for scientific research, and their impact on the right to participate in scientific activities. The Committee is also concerned that, despite the large youth population, the State party reportedly lacks policies involving young people in scientific and cultural activities (art. 15).

51. The Committee recommends that the State party pursue its efforts, including through increased transparent budget allocation, to promote the development and dissemination of science and culture. It also recommends that the State party take the measures necessary to continue the promotion of the accessibility and affordability of cultural activities, and develop policies and programmes involving young people in scientific and cultural activities.

**D. Other recommendations**

52. The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

53. The Committee recommends that the State party take fully into account its obligations under the Covenant and ensure the full enjoyment of the rights enshrined therein in the implementation of the 2030 Agenda for Sustainable Development at the national level, with international assistance and cooperation when needed. Achievement of the Sustainable Development Goals would be significantly facilitated by the State party establishing independent mechanisms to monitor progress and treating beneficiaries of public programmes as rights holders who can claim entitlements. Implementing the Goals on the basis of the principles of participation, accountability and non-discrimination would ensure that no one is left behind.

54. The Committee recommends that the State party take steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights in order to facilitate the assessment of progress achieved by the State party in complying with its obligations under the Covenant for various segments of the population. In that context, the Committee refers the State party to, inter alia, the conceptual and methodological framework on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (see HRI/MC/2008/3).

55. The Committee requests that the State party disseminate the present concluding observations widely at all levels of society, including at the national, provincial and municipal levels, in particular among parliamentarians, public officials and judicial authorities, and that it inform the Committee in its next periodic report about the steps taken to implement them. The Committee encourages the State party to engage with the Commissioner for Human Rights (ombudsperson), non-governmental organizations and other members of civil society in the follow-up to the present concluding observations and in the process of consultation at the national level prior to the submission of its next periodic report.

56. 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 paragraphs on non-discrimination (para. 11 (a) and (b)), maximum available resources (para. 20) and trade union rights (para. 33) above.

57. The Committee requests the State party to submit its third periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 March 2024.