



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination
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Summary record of the 1662nd meeting

Held at the Palais des Nations, Geneva, on Friday, 13 August 2004, at 3 p.m.

Chairperson: Mr. Yutzis

later: Mr. Pillai

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Initial report and second and third periodic reports of Kazakhstan

The meeting was called to order at 3.05 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Initial report and second and third periodic reports of Kazakhstan (CERD/C/439/Add.2)

1. *At the invitation of the Chairperson, the members of the delegation of Kazakhstan took places at the Committee table.*
2. **The Chairperson** gave a warm welcome to the delegation and said that following the presentation of its report, the delegation would have the opportunity to respond to the questions submitted to it earlier.
3. **Mr. Abdildin** (Kazakhstan) said that with the collapse of the Soviet Union and Kazakhstan's accession to independence in 1991, the country was facing choices that would have important consequences. First, having chosen a model of democratic development, Kazakhstan had pledged to make the individual's fundamental rights and freedoms the core of its policy. Second, the wide diversity of peoples and nations living in its territory and an awareness of the problems such diversity might entail had convinced Kazakhstan that the only possible path to development was to preserve inter-ethnic harmony by fostering the values of tolerance, compromise and equity. Two fundamental rights had been enshrined in the Constitution: the right of every Kazakh citizen to freely choose his or her place of residence and the right of every citizen of the former Soviet Union living in Kazakhstan to become a Kazakh citizen.
4. Following independence, a linguistic problem had arisen when Russian, the official State language during the Soviet era, had been replaced by Kazakh, which had caused some discomfort in Kazakhstan's Russian community. To address the problem, under the Constitution, Russian and Kazakh would both have the status of official language in State bodies and local executive bodies.
5. Following independence, the problem of immigration had also emerged. The passage from one enormous unified state to several independent states had given rise to significant migratory flows at the start of the 1990s when many peoples living in Kazakhstan had decided to return to the republic of their origin (Ukraine, Uzbekistan and others). That trend had reversed itself in 2000 owing to Kazakhstan's relatively prosperous economy and political stability, and the peaceful coexistence among its peoples, protected by the Constitution, the Civil Code and other legal texts in which it had been clearly established that violation of the rights of any citizen for reasons of language, race or nationality was prohibited.
6. A concern for preserving inter-ethnic harmony had led to the creation of the Assembly of the Peoples of Kazakhstan which brought together some 340 members of associations representing the various cultural groups living in Kazakhstan whose interests they defended. Yet, the difficulties inherent in inter-ethnic relations were never fully resolved and required constant monitoring, and in that regard the vast experience of the Committee would be most welcome.
7. **Mr. Ryabchenko** (Kazakhstan) reminded the Committee that Kazakhstan, which straddled Europe and Asia, covered an area of 2,724,900 square kilometres and had some 130 nationalities. The delegation, in which four nationalities were represented, reflected that diversity.
8. In response to questions submitted earlier by the Committee, he presented some new demographic data. As of 1 July 2004, the population had reached 15 million, a figure higher

than that in the report; the population breakdown remained practically the same (Kazakhs: 54 per cent; Russians: 30 per cent; Ukrainians: approximately 4 per cent; other nationalities: at least 3 per cent). Ethnic diversity shaped the country's policies and had led to the ratification of many international treaties, in particular the International Convention on the Elimination of All Forms of Racial Discrimination.

9. The expression "racial discrimination" was not defined under Kazakh law but was widely used in legal practice and was found in the Constitution and other normative acts by virtue of which it was formally prohibited (para. 31). The concepts of ethnic group, nationality and language, as used in the report, were not defined by law although practical definitions had been developed. An ethnic community was a community which had been in existence for a long period of time and which had a large number of members unified by ancient traditions and culture. An ethnic group was composed of individuals who were culturally linked to one another. Nationality meant belonging to a community marked by a common culture, traditions, language and mentality. Language, a means of communication and expression of ideas, was one of the principal characteristics of nationality.

10. In respect of article 2 of the Convention, he quoted at length from various paragraphs in his country's report (CERD/C/439/Add.2), including paragraphs 32 (equal rights), 33 (protection of linguistic equality), 34 (prohibition on restricting citizens' rights on the grounds of race or nationality), 36 (illegality of laws or regulations containing discriminatory provisions), 37 (criminal liability in cases of incitement to social, national, racial or religious enmity) and 38 (ethnic, racial or religious hatred or enmity counted as aggravating circumstances in the case of administrative offences). State policies aimed at taking into account the interests of all the peoples and nations of Kazakhstan, were based on citizenship rather than ethnic origin (para. 39), in accordance with the spirit of the Constitution, the first words of which were: "We are the people of Kazakhstan."

11. With regard to the preservation of linguistic equality and diversity, under the Constitution, every Kazakh citizen had the right to learn and cultivate his or her maternal language and culture and any discrimination based on language was prohibited. In that connection, he cited the information in paragraphs 33 and 41 of the report relating to the provisions on language in the Code of Administrative Offences. In the field of the media, the right to freely receive and disseminate information in any one of the languages of Kazakhstan was guaranteed, including under the Mass Media Act (para. 51) and the legislation on language (para. 33). According to data available on 1 July 2004, there were more than 2,000 media sources in Kazakhstan, 77 per cent of which were independent of the State, including 1,298 newspapers, 561 magazines, 170 electronic media and 11 information agencies. Three hundred fifty-seven newspapers and magazines were published in Kazakh, 689 in Russian, 581 in Russian and Kazakh, and 232 in Kazakh, Russian and other languages. The State financed publications in the national languages (Korean, Uighur, German, Ukrainian) and the Assembly of the Peoples of Kazakhstan helped to support the publication of 26 regional newspapers in 11 languages. Programmes in eleven languages were broadcast on state-owned television and radio. Seven private radio studios broadcast programmes in seven languages. Television programmes in Polish were also broadcast in regions with large Polish communities.

12. Concerning article 3 of the Convention, apartheid did not exist in Kazakhstan and article 160 of the Criminal Code expressly condemned any act calculated to destroy, in whole or in part, national, ethnic, racial or religious groups (para. 43).

13. In respect of article 4 of the Convention, he cited the information contained in paragraphs 44 to 55 of the report. With regard to the role of the media in preserving intercommunity harmony, Kazakhstan had a journalistic ethics code under which journalists and editors agreed, in adhering to the code, to respect certain principles, including respect for the fundamental rights and freedoms of the person independent of any consideration of

national origin, and a pledge not to participate in any propaganda inciting to intercommunity hatred, hostility or discrimination. The code's effectiveness had been demonstrated by an incident in which a newspaper had been challenged for spotlighting the national origin of two parliamentary deputies. Since such commentary could constitute a violation of the code of ethics, the Ministry of Information had issued a warning to the bureau of the editor, which had apologized.

14. With regard to article 5 of the Convention, he quoted at length from the report, in particular, paragraphs 56 (constitutional right of all citizens to protection by the courts of their rights and freedoms), 57 (equality of all before the law), 65 (right to vote), 66 and 67 (right of access to the State service).

15. In its supplementary questions, the Committee had asked for a breakdown of representation of the country's different nationalities in the State service. As of 1 April 2004, the largest among the 65 nationalities had the following shares: Kazakhs: 79 per cent, Russians: 14.5 per cent, Ukrainians: 2 per cent, Tatars: 0.9 per cent, Koreans: 0.5 per cent and Uighurs: 0.5 per cent. In addition, public officials appointed by the President and the Parliament represented 26 different nationalities, including 2,377 Kazakhs, 294 Russians, 81 Ukrainians, 31 Germans, 18 Tatars, 13 Uigurs, 10 Byelorussians, 10 Uzbeks and 9 Poles.

16. Kazakhstan's policy regarding religion was based on recognition of the right to freedom of thought, conscience and religion. However, a breakdown of the ethnic composition of religious minorities could not be provided since the Freedom of Beliefs and Religious Associations Act (para. 30) prohibited the collection of that type of data. It was known, however, that more than 40 denominations were active in the country: the dominant religion was Islam, and the Russian Orthodox religion ranked second in terms of number of followers. Kazakhstan had more than 3,200 religious associations, as compared to 670 in 1990.

17. In terms of respect for economic, social and cultural rights, the labour law guaranteed social protection and unemployment benefits to Kazakh nationals, foreigners and stateless persons who had been granted the status of permanent resident. The Culture Act provided that all persons, regardless of their nationality, had the right to participate in the development of their national culture and that all citizens must respect the language, customs and traditions of the Kazakh people and the other peoples of Kazakhstan. A general education programme on national cultures had been launched recently with a view to combating prejudice and fostering understanding between races. In addition, the Kazakh Government cooperated closely with non-governmental organizations (NGOs), which played an important role in the development of the non-state social sector.

18. **Mr. Valencia Rodríguez** (Rapporteur for Kazakhstan) welcomed the fact that the delegation had responded to the written questions submitted to it prior to the meeting.

19. He noted that 130 nationalities lived in the country but would appreciate knowing the legal definition for the concepts of ethnic group, nationality and language. In respect of language, at the time of the 1989 census, 98 per cent of the population claimed Russian as their mother tongue and Russian apparently remained the language of inter-ethnic communication. The comments of the delegation on that subject would be welcome.

20. The poverty rate was apparently as high as 57 per cent in certain population groups and the country was experiencing an upsurge in tuberculosis. How was that situation affecting national minorities and what were the main causes of mortality among them?

21. In respect of immigrants, it would be useful to know the reasons for the large migratory movements in Kazakhstan and the basis on which the quotas governing the return of Kazakhs to the country been established. Clarification with regard to the massive arrest

on 20 September 2001 of some 400 immigrants of Uzbek and Tajik origin, and the reasons for it, would be welcome.

22. The State party was to be commended for having adhered in December 1998 to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. According to the data available, 16,000 refugees were living in Kazakhstan, 220,000 of whom were Uighurs.¹ It would be useful to have more information about the expulsions of Chechen and Uighur refugees and to know which ethnic group accounted for the largest number of refugees.

23. With regard to the independence of the courts and the judiciary, more specific information would be welcome on the powers of the President of the Republic in terms of appointment of judges and organization of work of the courts. As stated in paragraph 24 of the report, one of the activities carried out by the Commission on Human Rights, established in 1994, was to adopt effectively applicable legislation incorporating international human rights standards and principles. Information on the status of those initiatives would be welcome. The Commission on Human Rights, reporting to the Office of the President, was certainly a particularly useful body, but it would be interesting to know whether minority groups were represented on the Commission and whether it planned to prescribe norms to combat racial discrimination and to continue adopting measures to harmonize national law with the international treaties and other legal instruments adopted by the country.

24. Noting that the Kazakh Constitution had a provision on the elimination of racial discrimination, he wished to know whether the Convention could be invoked directly before the national courts.

25. With regard to article 1 of the Convention, Kazakhstan should adopt a specific law on the combat against racial discrimination that defined the offence in the same terms as the Convention.

26. In respect of article 4 of the Convention, the report stated (para. 27) that the international human rights treaties ratified by the State party formed an integral part of domestic law and were directly applicable, except in certain cases where the promulgation of a law establishing criminal sanctions was necessary. As that appeared to be the case with regard to paragraphs *a* and *b* of article 4, he suggested that a general law criminalizing the offences mentioned in those paragraphs should be incorporated into national legislation.

27. The Sub-Commission on the Promotion and Protection of Human Rights had pointed out that the national parliament had a majority of Kazakhs, who held 58 seats out of 77. More information concerning access of members of minorities to public service posts would be welcome.

28. Kazakhstan's labour law, which had entered into force on 1 January 2000, prohibited discrimination in the area of employment, and the assumption was that it applied equally to resident aliens. Yet, he was not certain that members of minority groups enjoyed the same rights as citizens with regard to unemployment benefits and participation in union activities.

29. He wished to know how Kazakhstan, a secular state, reconciled the principle of religious freedom with promotion of respect for freedom of thought, conscience and religion without racial or ethnic discrimination, given that the country's religions were each associated with a different ethnic group. More information would be welcome on the

¹ Translator's note: These are the figures from the French original of the summary record.

amendment to article 374 of the Administrative Code, which criminalized failure to register a religious association, while there seemed to be no legal obligation to register.

30. Even though there were many provisions that contributed to the implementation of article 6 of the Convention, the State party should nevertheless adopt specific legislation to ensure its application.

31. With regard to article 7, the Kazakh authorities should make an effort to encourage the establishment of ethnocultural associations for other minority groups than those mentioned in paragraph 137 of the report under consideration.

32. He wished to know whether Kazakhstan intended to make the declaration under article 14 of the Convention and recommended that it accept the revision of article 8 of the Convention, approved by the fourteenth meeting of the States parties.

33. **Mr. Avtonomov** pointed out that, unlike its neighbours, Kazakhstan had not experienced civil war between ethnic or national groups. Kazakhstan, which was one of the world's most mixed countries in terms of nationalities, had obviously made considerable efforts in recent years to maintain harmonious relations between the many ethnic groups living there.

34. Given that the migratory balance of the population was negative, what were the reasons that had motivated the population — Kazakhs as well as non-Kazakhs — to leave the country? Furthermore, while the Roma minority was clearly present in Kazakhstan, as in all the republics of the former Soviet Union, the report provided no information on that subject. That information should be supplied, either orally, or in the next periodic report.

35. More information would be welcome with regard to the “new” religious movements mentioned in the report (para. 30), which claimed that the Mennonites had been in Kazakhstan for many years, having been invited by Catherine II to settle there in order to develop the country's agriculture. More information on the Baha'is who, in his view, did not form a religious movement properly speaking, would also be welcome. In respect of articles 4 and 5 of the Convention, he wished to know whether there was data on complaints brought and cases examined, whether the Commission on Human Rights was the only body to hear complaints concerning racial discrimination, and how it was possible that no complaints in that regard had been brought before the courts.

36. *Mr. Pillai took the Chair.*

37. **Mr. Kjaerum**, noting with satisfaction that it was the members of the Kazakh delegation who would be responsible for implementing the Committee's recommendations later on, requested that the next periodic report provide information on measures taken by the State to combat trafficking in human beings, especially women and children.

38. According to the information available to him, those working to defend human rights faced serious difficulties in Kazakhstan. Some of them had had their telephones tapped, and had been followed and harassed by the police. In addition, several non-governmental organization offices had been searched for the purpose of “tax audits”, and then closed down. In the light of resolution 2000/61 of the Commission on Human Rights concerning human rights defenders, it would be helpful to know how the Government of Kazakhstan guaranteed the freedom and security of such individuals. He asked the delegation whether the report had been drafted in cooperation with NGOs and civil society, and encouraged it to transmit the Committee's concluding observations to them upon its return to Kazakhstan.

39. According to other information, citizens of Kazakh origin were given preferential treatment in recruitment for high level posts in both the civil service and private enterprises.

If that were the case, he wished to know what measures were planned in order to ensure equal representation of all population groups in the public and private sectors.

40. Noting with concern that the Commission on Human Rights no longer had the authority to hear complaints from individuals and that the mediator was not authorized to examine some of them, he asked whether consideration could be given to the establishment of a genuinely independent national examining body.

41. *Mr. Yutzis resumed the Chair.*

42. **Mr. Herndl**, recalling that pursuant to paragraph 1 of article 4 of the Convention, States parties must adopt legislation criminalizing incitement to racial hatred, wished to know whether provisions other than those described in paragraphs 44 and 45 of the report existed under Kazakh law. To what extent were judges independent and, given that they were appointed by the President of the Republic, who was responsible for proposing potential candidates to the President?

43. The report had not provided information on the legal status of minority languages, but it would be useful to know to what extent those languages could be used and taught in the schools. According to the report, the number of schools providing instruction in languages other than Kazakh was not proportional to the population share of the different minorities — for example, there were no schools for the German-speaking minority, which represented 2.4 per cent of the population. The delegation's views on that matter would be welcome. Furthermore, it was to be hoped that Kazakhstan would make the declaration under article 14 of the Convention and accept the revision of article 8 as rapidly as possible.

44. **Mr. Amir** noted with satisfaction that, according to paragraph 30 of the report, in particular the disaggregated data on religious associations, secularism and coexisting religions were a reality in the State party.

45. It was, however, surprising that the unemployment rate had jumped from 13.5 per cent in 1999 to 216 per cent in 2001 (table 23);² he would welcome the delegation's views on that specular increase, which contrasted with the data showing that Kazakhstan had abundant mining resources (para. 2). Did the State party plan to incorporate into its legislation a definition of racial discrimination based on article 1 of the Convention?

46. **Mr. Tang** asked whether, in addition to the Constitution, the Criminal Code established a penalty for incitement to racial hatred and, if so, whether the delegation could provide the Committee with examples of how the relevant articles had been applied.

47. With regard to the entry of immigrants without valid papers, he wished to know whether mechanisms existed to sort out refugees from delinquents on the run. Furthermore, since it was difficult to determine refugee status solely on the basis of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, to which Kazakhstan was party, it would be helpful to know whether the country had specific laws that enabled applicants whose requests had been rejected to make an appeal. Did immigrants without valid papers have access to housing and health services? How were immigrants in conflict with the law treated?

48. **Mr. de Gouttes** asked whether the State party planned to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which it had signed, and to make the declaration under article 14 of the Convention. The application of article 4 of the Convention was far from perfect, in

² Translator's note: the figure 216 is not a percentage; it represents the number of persons registered with employment services at year-end in 2001 (see table 23, document CERD/C/439/Add.2).

particular in the field of criminal law, and it was vital to incorporate laws that met the requirements of the Convention into national legislation. The absence of complaints in that area was not necessarily a positive sign and could arise from victims' lack of familiarity with their rights or lack of confidence in judicial authorities.

49. He wished to know whether it was the case that refugee status was refused to certain groups, such as the Chechens or Uighurs, and that minorities were not adequately represented in the Government and the administration, composed mainly of Kazakhs. Additional information was needed on the independence of the judiciary as well as on sexual exploitation and under-age prostitutes, who were particularly vulnerable to HIV/AIDS and to sexually transmitted diseases.

50. He drew the delegation's attention to the Committee's 2002 declaration on the need for States to respect the principles of racial and ethnic non-discrimination in the combat against terrorism, and would appreciate information on the contents of the presidential decree promulgated in 2000 by the State party with a view to combating terrorism, extremism and separatism.

51. **Mr. Pillai** commended the State party for submitting its initial report together with an additional report drafted by a group of NGOs, which represented a first. He nevertheless shared Mr. Kjaerum's concern with regard to the claims that civil society organizations were not always able to conduct their activities freely.

52. He appreciated the inclusion in the report of various tables presenting health and education indicators, but regretted that the data were not disaggregated by ethnic origin or nationality.

53. It was unfortunate that the paragraphs in the report on the application of articles 2 to 7 of the Convention were limited to an enumeration of the laws in force that had been promulgated in the different areas mentioned in those articles, without any indication of how those laws were applied.

54. With regard to article 6 of the Convention, he hoped that the case described in paragraph 132 of the report would encourage members of the various ethnic communities to lodge complaints with the Commission on Human Rights whenever it was appropriate, and that the Commission would become a key mechanism in the field of discrimination. To what extent were ethnic and linguistic minorities aware of the Commission's mandate and scope?

55. In respect of paragraph 150 of the report concerning the country's linguistic policy, the delegation might wish to clarify what was meant by "an optimum language space in the country" and whether that space took into account all the country's languages, in particular those of minorities. According to paragraphs 152 and 176 of the report, the President of the Republic had approved in 1996 a policy outline for ethno-cultural education in Kazakhstan. How was that outline being, or how had it been, applied?

56. **Mr. Cali Tzay** welcomed Kazakhstan's interest in the question of the national and ethnic origin of the population groups living on its territory, and the linguistic and cultural difficulties arising from it. Paragraph 149 of the report described the educational, cultural and linguistic environment created in Kazakhstan for all its ethnic minorities and stated, surprisingly, that "the focus of this environment is not so much the fostering of the culture and traditions of any given ethnic group as the search for ways of integrating such groups in the culture of Kazakhstan as a whole". Could the delegation clarify the meaning of that statement? He was concerned that the creation of an "optimal linguistic space" would end up reinforcing the position of the dominant language — or of other "strong" languages — to the detriment of languages spoken by the minorities.

57. **Mr. Thornberry** wished to know the extent to which the country's various groups were involved in making decisions that concerned them and, in particular, who had determined the major thrusts of the ethnocultural education policy. Likewise, he wished to know whether the population was consulted during the process of drawing up academic programmes or whether that was the exclusive responsibility of the central government.

58. In connection with paragraph 159 of the report, it was legitimate for States to promote their national language but, generally speaking, the preferred method was to stimulate people's desire to learn it rather than to denigrate the other languages spoken within the country.

59. According to paragraph 30 of the report, in Kazakhstan religious affiliation corresponded to ethnic origin. Given the close ties between culture and religion, the Committee was justified in studying those questions as part of its examination of the State party's initial report.

60. **Mr. Abdildin** (Kazakhstan) said that the fact that ethnic origin was not governed by law in Kazakhstan did not mean that the Government did not accord great importance to fostering coexistence among the country's different groups and nationalities, each of which had very different values and its own particular language.

61. In terms of linguistics, it was obvious that of all the national groups that had made up the former Soviet Union, the Russians, and their language, were the most well known and consequently continued to hold a dominant place within society. The Government had been endeavouring since independence to strengthen Kazakh as a national language without prejudice to the country's other languages. In terms of education, the Russian and Kazakh languages were employed with equal frequency, and minorities had access to instruction in their mother tongue.

62. Under Stalin, one third of the Kazakh population had fled repression, persecution and famine, which explained why there were so many Kazakhs living abroad, mainly in China, Turkey and Russia, where most of them had refugee status. They had always wanted to return to their country, an opportunity that was now being offered to them by the Government of Kazakhstan.

63. **The Chairperson** thanked the Kazakh delegation and said that it would have the opportunity to respond to the Committee's questions and observations at the next meeting.

The meeting rose at 6.05 p.m.