



International Covenant on Civil and Political Rights

Distr.: General
4 December 2015

Original: English
English, French, Russian and
Spanish only

Human Rights Committee

List of issues in relation to the second periodic report of Kazakhstan*

Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. Please provide examples of cases in which the provisions of the Covenant have been referred to by national courts. Please indicate what procedures are in place for the implementation of the Committee's Views under the Optional Protocol to the Covenant, and provide information on measures taken to ensure full compliance with the Committee's Views adopted in relation to the State party in communications No. 2009/2010 (*Ilyasov v. Kazakhstan*), No. 2024/2011 (*Israil v. Kazakhstan*), No. 2104/2011 (*Valetov v. Kazakhstan*) and No. 2137/2012 (*Toregozhina v. Kazakhstan*).
2. Please report on measures taken to ensure the full independence of the Human Rights Commissioner (Ombudsman), in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), in particular by addressing the issues relating to its establishment, limited mandate, selection and appointment and by providing its Office with adequate financial and human resources. Please explain whether steps have been taken to establish offices of the Ombudsman in all regions of the country.

Non-discrimination and prohibition of advocacy of national, racial or religious hatred (arts. 2, 3, 20 and 26)

3. Please indicate whether steps have been or are being taken to adopt comprehensive anti-discrimination legislation that addresses discrimination, including in the private sphere; prohibits direct, indirect and multiple discrimination; contains a comprehensive list of prohibited grounds for discrimination, including sexual orientation and gender identity; and provides for effective remedies in judicial and administrative proceedings.
4. Please provide information on measures taken: (a) to address discrimination against, and social exclusion of, persons with disabilities, including limited access to inclusive education, delays and interruptions in the provision of social assistance and institutionalization of persons with mental disabilities; (b) to combat discrimination against persons based on their sexual orientation and gender identity; and (c) to combat social stigmatization of HIV-positive women.

* Adopted by the Committee at its 115th session (19 October-6 November 2015).



5. Please provide further information on measures taken and related progress with regard to: (a) increasing the representation of women in legislative and executive bodies, including regional administrations, and in the diplomatic service, especially in decision-making positions; and (b) reducing the wage gap between men and women.

Violence against women, including domestic violence (arts. 3, 6 and 7)

6. Please report on measures taken to prevent and combat all forms of violence against women, including domestic violence, sexual violence and rape, inter alia with respect to: (a) ensuring effective investigation, prosecution and sanctioning of perpetrators and adequate remedies to victims (please provide relevant statistics); and (b) providing sufficient, safe and adequately funded shelters and suitable support services. Please indicate whether steps are being taken: (a) to adopt specific legislation criminalizing domestic violence; and (b) to expand the definition of rape; and to reclassify rape and other coercive actions of a sexual nature, and criminal acts related to domestic violence, to make them public prosecution cases and remove provisions related to any form of mediation or reconciliation with the perpetrator.

Counter-terrorism measures (arts. 2, 7, 9-10 and 14)

7. Please report on measures taken to clarify the broad definition of “extremism” in the 2013 counter-terrorism legislation, inter alia as “inciting social or class hatred”. Please respond to reports that counter-terrorism activities continue to particularly target members or presumed members of banned or unregistered Islamic groups and Islamist parties, members of religious minorities, and asylum seekers, and that prisoners serve their sentences for terrorism-related offences in Shymkent and Arkalyk high security prisons under cruel, inhuman and degrading conditions.

Right to life and excessive use of force (arts. 2, 6 and 21)

8. Please report on the progress made towards the abolition of the death penalty and clarify how the maintenance of the death penalty for 17 types of crime in the new Criminal Code enacted on 1 January 2015 is consistent with the policy of gradual reduction of the grounds for the imposition of the death penalty, as set out in the 2010-2020 legal policy concept paper. Please indicate whether steps have been taken to become a party to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.

9. Please report on measures taken to ensure an independent, impartial, thorough and effective investigation of human rights violations committed in connection with the events in Zhanaozen on 16 and 17 December 2011, such as disproportionate and indiscriminate use of force by law enforcement resulting in deaths and serious injuries, mass detention, torture and ill-treatment of demonstrators and of defendants (R. Tuletayeva, M. Dosmagambetov, S. Aspentayev, T. Kalieyev and others) and witnesses (A. Bozhenko) in the trial of oil workers, and to bring those responsible to justice and provide adequate remedies to victims or their families.

10. Please provide information on measures taken: (a) to address the high rate of self-inflicted death (suicides), providing relevant statistics; (b) to prevent cases of death, including suicides, in closed institutions, including in police custody, as well as pretrial, penitentiary and medical facilities; and (c) to investigate, prosecute and bring to justice those responsible for such deaths (please include relevant data on the number of such cases since 2011, with an indication of the cause of death, as well as on investigations, prosecutions and sanctions imposed and on remedies granted to victims’ families).

Prohibition of torture and other cruel, inhuman and degrading punishment (arts. 2 and 7)

11. Please indicate whether steps have been or are being taken (a) to amend the definition of torture contained in article 416 of the Criminal Code with a view to ensuring that it cover acts of torture committed by any “other person acting in an official capacity” and to removing the defence of physical and mental suffering caused as a result of “legitimate acts” of officials; (b) to ensure that sanctions for the crime of torture are commensurate with the gravity of the crime; and (c) to provide, in law and in practice, reparation to victims of torture, such as adequate compensation and rehabilitation, and civil remedies, independently of criminal proceedings. Please explain the reasons for the transfer of jurisdiction over all detention and investigation facilities, temporary detention facilities, pretrial detention facilities and prisons back to the Ministry of Internal Affairs.

12. Please respond to reports that: (a) torture and ill-treatment, including sexual abuse and rape or threat thereof, is regularly perpetrated in prisons, as well as in temporary detention facilities and pretrial detention facilities, including for the purpose of eliciting information or “voluntary” confessions that are in practice used as evidence in court; (b) allegations of torture and ill-treatment are routinely referred for investigation to the authorities that are accused of perpetrating such acts rather than to independent prosecutors, and no independent investigation mechanism has been set up. Please also provide updated information, on an annual basis, on the number of reported cases of torture and ill-treatment, the investigations and prosecutions initiated, the number of actual criminal convictions, and the sentences imposed.

Liberty and security of person and treatment of persons deprived of their liberty (arts. 7, 9 and 10)

13. Please respond to reports that, in practice, persons deprived of their liberty (a) are not duly informed of their rights upon arrest and detention, including their rights to provide notification of their detention to relatives, have prompt access to a lawyer of their choice and a doctor, and to know the reasons for arrest and the charges against them, and (b) are often denied access to counsel, and are not ensured confidentiality in their meetings with counsel. Please indicate the measures taken to ensure that an arrested or detained person is informed promptly of his or her rights, and clarify whether, under the current criminal procedure legislation, the failure to provide such information is considered a violation of procedural rights.

14. Please indicate whether the State party has taken measures to ensure that persons detained are brought before a judge within 48 hours, and within 24 hours in the case of juveniles, and respond to reports that, in practice, inaccurate recording of the time of arrest and the detention of individuals in unregistered facilities is used to circumvent the existing 72-hour period. Please report on steps taken to ensure that judicial control of detention satisfies the standards required under article 9 (3) of the Covenant, and provide information, including statistics, on the use of non-custodial alternative measures to pretrial detention in practice. Please clarify: (a) the average duration of pretrial detention, providing statistics on the number of cases in which it exceeds one year, and the maximum period of pretrial and pre-sentence detention of juveniles, according to the law; and (b) whether legal assistance in proceedings on judicial review of the legality of detention (habeas corpus) is required by law.

15. Please explain how the practice of administrative arrest and detention of persons, with the approval of the prosecutor, for up to 30 days in temporary administrative detention centres on grounds of lack of permanent place of residence or documents verifying their identity is compatible with the State party’s obligations under article 9 of the Covenant. Please comment on reports of forced psychiatric detention of human rights defenders, in

particular on the case of lawyer Zinaida Mukhortova, who has been repeatedly subjected to involuntary psychiatric detention since 2009, and on the use of “preventive detention” against participants in planned protests.

Conditions of detention (art. 10)

16. Please indicate what measures have been or are being taken to ensure that the penitentiary system is conducive to the rehabilitation of offenders and to their reintegration into society. Please report on measures taken to address: (a) the high number of persons in detention facilities; (b) violence among prisoners and self-mutilation by prisoners; (c) the poor conditions of detention, including poor food quality and quantity and inadequate medical care; (d) the lack of appropriate facilities for persons with disabilities; (e) the use of prolonged solitary confinement in prisons, including as punishment, and the denial of health care; and (f) the use of detention regimes that restrict prisoners’ contact with the outside world. Please also report on the use of internal troops for security operations in prisons and respond to corresponding allegations of widespread violence against prisoners by such troops in the penitentiary facilities AP-162/3 (Pavlodar region) and OV-156/18 (East Kazakhstan region). Please indicate what measures are taken to ensure that public monitoring commissions and the national preventive mechanism function effectively; that the mandate of the national preventive mechanism extends to all places of deprivation of liberty, including police stations and closed institutions, such as orphanages, nursing homes and military barracks; and that the mechanism can undertake urgent and unannounced inspections without prior authorization and make its findings public.

Elimination of slavery and servitude (art. 8)

17. Please report on measures taken: (a) to improve efforts related to the identification of victims of trafficking, as well as investigation and prosecution; (b) to provide sufficient State-funded shelters and longer-term rehabilitation to victims of trafficking; and (c) to ensure that legal alternatives are available to foreign victims who may face hardship or retribution upon removal.

18. Please indicate the steps taken: (a) to address the issue of domestic servitude, forced and bonded labour, in particular of migrant workers, in the tobacco, cotton and construction industries, forced labour in penitentiary institutions, and child labour, particularly on tobacco and cotton plantations; (b) to ensure that victims of forced and bonded labour are identified and recognized as such and are provided with shelter, as well as legal, financial and social support; (c) to clearly designate slavery and slavery-like practices, including domestic servitude, and forced and bonded labour, as crimes in the Criminal Code; (d) to address abuses against migrant workers in the cotton sector, such as poor and hazardous working conditions, delayed payment and confiscation of identity documents; and (e) to monitor the working conditions of migrant workers and to ensure that they are able to report on rights violations without fear of reprisal, and have access to effective judicial redress and compensation.

Right to a fair trial and independence of the judiciary (art. 14)

19. Please provide information on the procedures and criteria for the selection, appointment, disciplining, suspension and dismissal of judges. Please report on measures taken: (a) to ensure, in law and in practice, the impartiality of judges and their full independence from the executive branch, including their security of tenure, and their freedom from any form of interference; (b) to address corruption in the judiciary; (c) to review the broad powers of the prosecution in the judicial process; (d) to ensure the full compliance of judicial proceedings with article 14 of the Covenant; (e) to ensure that State-appointed lawyers are impartial and provide legal advice in the best interest of their

clients; and (f) to address prosecutorial bias in criminal cases and the low rate of acquittal. Please comment on reports that: (a) torture-tainted evidence is in practice admitted in court to convict defendants; and (b) lawyers are subjected to threats or physical attacks, intimidation, interference in their work, including by judges and public prosecutors, and arbitrary disciplinary actions and disbarment.

Freedom of movement; treatment of aliens, including refugees and asylum seekers (arts. 6, 7, 12 and 13)

20. With reference to the Committee's previous recommendations (see CCPR/C/KAZ/CO/1, para. 18), please report on measures taken to bring the compulsory residence registration system (*propiska*) into line with article 12 of the Covenant.

21. Please report on measures taken: (a) to guarantee accessible and effective procedures for determining refugee status at all border points, including at international airports and transit zones, and to establish an efficient referral procedure at all border points; (b) to end the practice of forcible return of asylum seekers before a decision on their asylum claims has been taken; (c) to ensure, in practice, the exercise of the right to an effective appeal, with suspensive effect, of expulsion/extradition by persons whose asylum applications have been rejected; (d) to ensure strict compliance with the principle of non-refoulement in practice, including while extraditing individuals on the basis of bilateral or multilateral extradition agreements or regional instruments, and to revisit the policy of reliance on diplomatic assurances to justify the return of foreign nationals to countries where they may face a real risk of torture or other form of ill-treatment.

Right to privacy and family life (art. 17)

22. Please provide information about the legal safeguards in place against arbitrary interference with the privacy, home and correspondence of individuals, including with regard to the protection of personal data, and their observance in practice. Please report on measures taken to ensure that: (a) interception of private communications, retention of communications data (metadata) and other surveillance activities require prior judicial authorization and conform with the State party's obligations under the Covenant; and (b) such surveillance activities are subject to independent oversight mechanisms. Please respond to reports that anonymity and privacy online are restricted and that the monitoring of online activities has an adverse impact on the right to privacy and freedom of expression.

Freedom of conscience and religious belief (arts. 2, 18, 19, 21 and 22)

23. Please provide updated information on the implementation of the Committee's previous recommendations on the recognition of the right to conscientious objection to military service (see CCPR/C/KAZ/CO/1, para. 23). Please explain how the restrictions imposed on the exercise of freedom of religion, notably by the 2011 Law on Religious Activity and Religious Associations — such as the mandatory registration (re-registration) of religious organizations and of missionary activities, the ban on unregistered religious activities, the restrictions on the importation and distribution of religious materials, and the penalties for violations of the legislation in question — are compatible with the State party's obligations under article 18 of the Covenant. Please comment on reports of derogatory remarks against Jehovah's Witnesses in the mass media, police raids and disruptions of their religious meetings, censorship and banning of their religious literature and arrests and convictions for missionary activities. Please explain how article 22 of the Constitution complies with article 18 of the Covenant. Furthermore, please report on the steps taken to amend the overly broad and vague definitions of offences contained in the 2014 Criminal Code, notably in articles 174 (or article 164 in the 1997 Criminal Code) and

404 (or article 337-1 in the 1997 Criminal Code), in the Code on Administrative Offences and in the 2005 Law on Countering Extremism, which are reportedly used extensively to curtail freedom of religion and belief and freedom of expression and association.

24. Please respond to allegations of harassment, intimidation, threats and arbitrary detention of human rights defenders. Please indicate how the following legal provisions and practices are compatible with the State party's obligations under article 19:

(a) The criminalization of, and harsh penalties incurred for, defamation (art. 130 of the Criminal Code) and insult (art. 131), public insult or other encroachment on the honour and dignity of the President of Kazakhstan (arts. 373 and 375), public insult of a State official by the mass media or information communication networks (art. 378) and dissemination of knowingly "false information" (art. 274), and their extensive use against individuals exercising their right to freedom of expression;

(b) Law No. 200-V of 23 April 2014, which allows the Prosecutor General or his deputies to instruct an authorized body to shut down or suspend a network or means of communication, the provision of communication services and access to Internet resources without a court order;

(c) The blocking of social media, blogs and other Internet-based resources, allegedly for their extremist or otherwise illegal content;

(d) Interference with professional journalistic activity and the shutting down of independent newspapers and magazines (e.g. *Respublika*, *Golos Respubliki*, *Assandi Times*, *Pravdivaya Gazeta* and *ADAM bol*), television channels (e.g. K+) and news websites for minor irregularities or on extremism-related charges.

25. Please provide information on the implementation of the Committee's previous recommendations concerning article 21 of the Covenant (see CCPR/C/KAZ/CO/1, para. 26). Please explain how restrictions, both in law and in practice, on the exercise of freedom of peaceful assembly, such as those set out in the 1995 Law on the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations, including the following, are compatible with the State party's obligations under the Covenant: (a) the requirement of prior authorization to hold public events; (b) the broad powers of local representatives and local executive authorities to designate specific sites where authorized assemblies can be held and to decide on the time of such events; (c) the restriction of assemblies to certain permissible locations (usually remote sites); and (d) arrests, detentions and imposition of penalties, including criminal sanctions such as imprisonment, for the exercise of the right to peaceful assembly.

26. Please provide information on measures taken to guarantee, both in law and in practice, the free exercise of freedom of association, and explain how restrictions such as those set out below are compatible with the State party's obligations under the Covenant: (a) the mandatory registration of public associations and the wide discretion to deny them registration or close them down; (b) the criminalization and penalization of the legitimate activities of associations, including political parties, particularly under article 174 of the Criminal Code; and (c) the mandatory affiliation of trade unions to regional or sectorial federations under the 2014 Act on Trade Unions. Please also provide information on: (a) reasons for the introduction of "leader of the public association" in the 2014 Criminal Code as a separate category of offenders that incur stiffer penalties for a number of offences; (b) steps taken to clarify the vague and broadly worded key terms in article 403 of the Criminal Code, such as "interference in the activities of State bodies" and "illegal" interference; and (c) the status of the draft law regulating the allocation of grants to public associations, and its impact on the ability of non-governmental organizations to exercise their freedom of association.

27. With regard to the Committee's previous recommendations (see CCPR/C/KAZ/CO/1, para. 27), please report on measures taken to revise the undue requirements for registration of political parties and clarify the broad grounds for the suspension or dissolution of political parties. Please provide information about the dissolution of the Democratic Choice of Kazakhstan political party on charges of political extremism, inciting social tension and threatening national security, by court order in January 2015.
