



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 2279th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 12 February 2014, at 3 p.m.

Chairperson: Mr. Calí Tzay

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The meeting was called to order at 3.10 p.m.

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

Sixth and seventh periodic reports of Kazakhstan (CERD/C/KAZ/6-7; CERD/C/KAZ/Q/6-7; HRI/CORE/KAZ/2012)

1. *At the invitation of the Chairperson, the delegation of Kazakhstan took places at the Committee table.*
2. **Mr. Omarov** (Kazakhstan) said that his country had adopted numerous measures to refine legislation and create decent living conditions for all, regardless of ethnic origin. The concluding observations adopted by the Committee in 2010 (CERD/C/KAZ/CO/4-5) were not a true reflection of the prevailing situation in Kazakhstan, particularly regarding the rights of ethnic minorities. All the legal grounds required for harmony between religious and ethnic groups had been established and, because article 4 of the Constitution provided that international instruments ratified by Kazakhstan, including the Convention, took precedence over domestic legislation and could be applied directly by domestic courts, Kazakhstan had judged it redundant to pass a specific law prohibiting racial discrimination, or adding a definition of that offence to its legislative arsenal. Additionally, article 141 of the Criminal Code contained a definition of a concept similar to discrimination, namely the “violation of citizens’ equal rights”, which was understood as any direct or indirect restriction of rights or freedoms on the grounds of origin, sex, race, ethnicity, language or any other circumstance. Current legislation therefore effectively guaranteed the protection of the rights of all ethnic groups living in the country.
3. Kazakhstan also challenged the assertion that the low number of complaints relating to racial discrimination was due to the fact that victims were not aware of their rights, to fear of reprisals or to a mistrust of police and judicial authorities (CERD/C/KAZ/CO/4-5, para. 18). Kazakh criminal legislation expressly punished crimes and offences motivated by racial and national intolerance and, since the 2011 revision of the Criminal Code, the commission of an offence motivated by hatred or national enmity had constituted an aggravating circumstance. An effective mechanism for lodging complaints had been established for citizens to help them defend their rights and interests. Additionally, the Ombudsman and the Presidential Human Rights Commission were human rights bodies that were expressly responsible for ensuring respect for those rights. Kazakhstan also challenged the Committee’s view that the authorities practised discrimination when registering asylum applications lodged by the citizens of certain countries. The new law on refugees, adopted in 2009, enshrined the basic principles applicable to the rights of refugees and asylum seekers, namely non-expulsion from the country, transparency of proceedings, support for all refugees without discrimination and protection of the rights of refugee children. All asylum seekers had the right to remain in Kazakhstan while their application was being considered, including during appeal proceedings, and asylum seekers and refugees could not be expelled or returned to a country where their life or freedom would be at risk because of their race, religion, national origin or nationality.
4. Similarly, the country did not accept the Committee’s allegations that migrant workers’ rights were violated because they did not have permanent residence permits (CERD/C/KAZ/CO/4-5, para. 16). Kazakhstan, which was home to 32,000 migrants from 35 countries, had put in place all the necessary conditions for the equitable participation of foreigners in the public and political life of the country; ethnocultural associations and the National Centre for Human Rights attached to the Office of the President of the Republic of Kazakhstan were regularly and systematically consulted on the matter. Representatives of ethnic groups were active in the national construction process and sat in the Assembly of the People of Kazakhstan, a consultative body responsible for ensuring harmony between

ethnic groups. The country had 820 ethnocultural associations and more than 30 journals and newspapers published in 13 ethnic languages. With regard to the quality of education provided in minority languages, the Government guaranteed the right of minorities to be taught in their mother tongue, and there were 74 schools teaching 13,000 students in Uighur and Uzbek.

5. **Mr. Huang Yong'an** (Country Rapporteur) said that he noted the exhaustive report submitted by the State party and the information provided in response to the observations and recommendations made by the Committee in 2010. Since that date, the country had made progress regarding the promotion and protection of human rights; a law on refugees had been adopted in 2009, and another on migration in 2011, while the Criminal Code had been amended in the same year. However, the Committee had recommended that the State party adopt general anti-discrimination legislation containing a definition of direct and indirect discrimination. Nevertheless, while some provisions in force covered the concept of non-discrimination, none of them contained a definition of discrimination, much less direct or indirect discrimination. He noted that the State party believed that since the notion of the "violation of citizens' equal rights" was similar to the definition of discrimination contained in the Convention, specific anti-discrimination legislation was deemed redundant. While the State party was naturally free to decide what should be done in that area, it should recognize that the notion referred to departed somewhat from the definition in article 1 of the Convention.

6. While he commended the fact that Kazakhstan refrained from creating artificial inequalities between members of different ethnic groups, he thought that inequality did exist in practice between them, if only on purely objective grounds, such as, for example, their unequal socioeconomic development conditions and their different educational standards. The State party should therefore take specific steps to guarantee equal rights for all ethnic groups, especially vulnerable groups, and to ensure the representation of ethnic minorities in legislative and governmental bodies in order to allow them to participate equitably in political and civic life. While the country's desire to protect its labour market through a system of quotas for foreign workers was understandable, the law on migration, which restricted foreigners' participation in the labour market, did not appear to conform to the Kazakh Labour Code, which prohibited discrimination against those exercising their right to work for reasons of language, race or nationality. Furthermore, because it imposed economic and commercial restrictions on foreigners, the law created obstacles for both foreign workers and foreign businesspeople, who were constantly trying to circumvent the law by offering bribes to local officials in exchange for the right to register their businesses. The law had therefore failed to protect the local market and had instead encouraged the bribing of State representatives. The State party would be well advised to review its legislation with that problem in mind.

7. He invited the delegation to indicate whether the National Human Rights Action Plan, which had expired in 2012, would be extended. To ensure the implementation of standard asylum procedures, the State party should establish a coordination mechanism between the competent authorities and introduce a procedure for dialogue between all services dealing with asylum. It should also cooperate closely with the Office of the United Nations High Commissioner for Refugees and request its technical assistance in that area. Appropriate measures should also be adopted to accommodate ethnic Kazakhs repatriated from the Middle East and Europe. Lastly, it would be useful to have information on cases brought before the courts concerning incitement to hatred aimed at ethnic groups.

8. **Mr. Avtonomov** asked whether the ethnic minorities living on the Aral Sea coast had access to assistance for groups in the region or whether there were disparities in the allocation of assistance. He invited the delegation to provide statistics on the educational standards achieved by the Roma, indicating in particular how many Roma held higher-level

qualifications, as well as on the representation of national or ethnic minorities in Parliament. He wished to know what factors explained the low representation of those persons on local administrative bodies. Regarding the incident mentioned in paragraph 43 of the report, he asked in which language the message calling on Kazakhs to beat up Russians had been written. Lastly, he wished to know whether anything was being done to promote Kazakh outside the country, particularly among Kazakh migrants in the Russian Federation and China.

9. **Mr. Diaconu**, noting that the State party deemed it redundant to include the definition contained in article 1 of the Convention in domestic legislation on the ground that the Convention took precedence over domestic law, invited the delegation to give examples of cases in which the article had been directly applied by the courts and to explain why the number of complaints of racial discrimination mentioned in paragraph 49 of the report was so low. Noting that teaching in Uzbek, Uigur and Tajik was provided only in primary and secondary schools, he wished to know why higher education establishments, particularly teacher-training institutes, did not offer degree courses in those 3 languages and why Uzbek was not on the list of the 19 languages taught as separate subjects. Lastly, additional information on the Roma's access to employment and education would be useful.

10. **Mr. Murillo Martínez** asked for information on how landownership was accessed and how land was distributed between the different communities. He wished to know whether the State party had taken legislative measures to criminalize human trafficking, whether the death penalty was still in force in Kazakhstan and whether it was still applied. Disaggregated data on the prison population would be welcome.

11. **Mr. Vázquez** asked what the "artificial inequality" between members of different ethnic groups mentioned in paragraph 31 of the report encompassed and asked the delegation to indicate whether the State party believed that "natural" inequalities existed. He wished to know whether, owing to the "ethnic division of labour" (para. 308), persons belonging to an ethnic minority who had chosen to work in the business and services sectors rather than in the civil service were better off than Kazakhs. Was that choice not prompted by the preference given to Kazakh candidates for civil service recruitment? He invited the delegation to give examples of cases where article 164 of the Criminal Code had been invoked in order to prosecute and try persons belonging to a national or ethnic minority, particularly the Uigurs. He also invited the delegation to supplement the information provided in the report on the subject of asylum by commenting on the 2012 decision of the Committee against Torture in the *Abdussamatov et. al. v. Kazakhstan* case (CAT/C/48/D/444/2010), in which the Committee had considered that the State party had violated the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by returning the authors to Uzbekistan without considering the risk of torture they faced there.

12. **Mr. Lindgren Alves** asked the delegation to confirm his impression on reading the report that the policy of the State party was to integrate minorities. Noting that there were 31 Uzbeks and 80 Khazars among the refugees listed in Kazakhstan, he invited the delegation to indicate why those Uzbeks had fled their country and what the characteristics of the Khazars were. Lastly, he wished to know how children of mixed marriages were referred to and whether they were required to opt for one of the two groups to which they belonged to establish an identity.

13. **Mr. Yeung Sik Yuen**, noting that paragraph 42 of the report stated that a "compulsory medical treatment" had been applied in a case of incitement of national discord, asked what that sanction had consisted of and on what grounds it had been imposed. He asked whether action had been taken against the television channel that had broadcast the message calling on Kazakhs to beat up Russians. He requested clarification on the procedure for appointing judges and on the duration of their mandate. Lastly, he

invited the delegation to indicate whether, in cases of marriages between nationals and foreigners, foreign spouses automatically obtained a residence permit, whether they had the right to retain their nationality and whether treatment in that area differed according to the gender of the foreign spouse. What nationality did the children of such marriages hold?

14. **Ms. Crickley** asked whether the State party envisaged involving NGOs in the follow-up to the implementation of the concluding observations that the Committee would issue after considering the country's sixth and seventh periodic reports, as well as in the drafting of its next report, and whether it intended to ratify International Labour Organization Domestic Workers Convention, 2011 (No. 189). Additional information on the trafficking of women from minority groups would be appreciated.

15. **Mr. Avtonomov** asked whether the State party envisaged ratifying the amendments to article 8, paragraph 6, of the Convention.

16. **Mr. Abishev** (Kazakhstan) said that the Presidential Human Rights Commission, which had a consultative role and made recommendations on all aspects affecting human rights in the country, had been set up in 1994 as a platform for exchange between civil society organizations, public bodies and the Office of the President regarding human rights. In 2002, Kazakhstan had appointed a Human Rights Commissioner responsible for considering citizens' complaints. The work of those two institutions, which conformed to the Paris Principles, was complementary. All the 8,000 or so stateless persons residing in Kazakhstan since the collapse of the USSR had been issued with a document attesting to their status. In line with the recommendations contained in a mission report from the Office of the United Nations High Commissioner for Refugees on the situation of stateless persons and refugees in Kazakhstan, the Government had set up a working group to draft a bill ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, which would shortly be presented to the lower chamber of Parliament (*Majillis*).

17. **Mr. Saiynov** (Kazakhstan) said that, as a party to the 1951 Convention relating to the Status of Refugees, Kazakhstan respected the duty of non-refoulement enshrined in that Convention and allowed persons wishing to obtain refugee status to complete the requisite steps at Kazakh embassies abroad or submit an application at border crossings on arrival in the country, or within 48 hours. It was true that Kazakhstan had set quotas for foreign workers in order to protect its domestic labour market, but the law amending immigration legislation that had been signed at the end of 2012 would make the process easier, in particular by reducing the number of documents that foreigners had to provide to obtain a work permit. Applicants had to pay a modest amount equivalent to US\$ 15 to obtain said permit for the period of one year, after which time it could be renewed. Furthermore, those registering a corporation, including in order to open a business, were sometimes able to do so within 48 hours.

18. **Mr. Kassymov** (Kazakhstan) said that criminal legislation provided for capital punishment, but the new Criminal Code that would come into force in January 2015 had considerably reduced the number of capital offences. The death sentence had last been pronounced in 2006 and the President had declared a moratorium on executions. The possibility of abolishing capital punishment was not ruled out. The procedure for appointing judges was transparent. Vacancies were announced in the press and only those with the required qualifications could apply. The High Council of the Magistrature considered applications and then made a recommendation, which it submitted to the Parliament with a view to appointing the successful candidate. Finally, the appointment was confirmed by Presidential Decree. A definition of discrimination conforming to article 1 of the Convention was not necessary in Kazakh legislation because international instruments took precedence over domestic law and could therefore be invoked before the courts in both civil and administrative proceedings.

19. **Mr. Timoschenko** (Kazakhstan) said that, by law, national minorities must be represented in the Parliament and the Assembly of the People of Kazakhstan. He presented statistics demonstrating that some 19 per cent of deputy posts were held by members of minority groups.

20. **Ms. Sadvakassova** (Kazakhstan) said that since 2009 a special law had provided for equal access to civil service careers, regardless of ethnicity. Civil servants currently came from 59 different ethnic groups. The fact that higher education was taught in both Russian and Kazakh allowed members of all minority groups, who often came from the former USSR, to access university, and thence employment in the civil service or skilled employment. No special measures had been adopted in their favour; all employees were subject to labour law.

21. **Mr. Nurbekov** (Kazakhstan) said that all extradited persons had been able to lodge applications for asylum prior to their extradition in accordance with the provisions of the 1951 Convention relating to the Status of Refugees, but the applications had been rejected. They had been detained for carrying out terrorist activities or committing serious offences, such as murder, and the competent judicial authorities had concluded that they presented a threat to the country's domestic security and that there were no grounds justifying their remaining in the country. The Procurator-General had obtained diplomatic guarantees that they would not be subjected to torture in the States to which they would be returned.

The meeting rose at 6.05 p.m.