**The Equal Rights Trust**

Alternative report submitted to the 84th session of the Committee on the Elimination of Racial Discrimination in relation to the combined sixth and seventh periodic reports submitted by:

**Kazakhstan**

*January 2014*

**Statement of Interest**

1. The Equal Rights Trust (ERT) submits this alternative report to the Committee on the Elimination of Racial Discrimination (the Committee) commenting on the combined sixth and seventh periodic reports by Kazakhstan.
2. ERT is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. Established as an advocacy organisation, resource centre and think tank, it focuses on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice.
3. ERT has been actively involved in the promotion of improved protection from discrimination in Kazakhstan since 2012, working in partnership with Kazakhstan International Bureau for Human Rights and the Rule of Law (KIBHR). In the course of this work, ERT has been undertaking research on patterns of discrimination and inequality in Kazakhstan and on the legal and policy framework in place to prevent discrimination and promote equality.
4. In December 2013, ERT travelled to Kazakhstan and together with KIBHR met with a number of representatives of civil society organisations, as well as victims of racial and religious discrimination, and collected testimony on their experience, some of which is included below.
5. This submission focuses on the extent to which Kazakhstan has met its obligations to respect, protect and fulfil the right of all persons to non-discrimination on grounds of race.
6. The submission also relies upon the Declaration of Principles on Equality (the Declaration),[[1]](#footnote-1) a document of international best practice on equality. The Declaration was drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts, and has been described as “the current international understanding of Principles on Equality”.[[2]](#footnote-2) It has also been endorsed by the Parliamentary Assembly of the Council of Europe.[[3]](#footnote-3)

**Comprehensive Anti-Discrimination Legislation (Articles 1(1) and 4(a) and (b))**

1. ERT notes that in its last review of Kazakhstan, the Committee has recommended that the state party “continue its efforts by adopting a comprehensive anti-discrimination law that includes a definition of direct and indirect discrimination, as stipulated in article 1, paragraph 1, of the Convention”.[[4]](#footnote-4) ERT also notes the “List of themes in relation to the combined sixth and seventh periodic reports of Kazakhstan” which includes, at paragraph 1(1), “Definition of racial discrimination, in accordance with article 1 of the Convention”.[[5]](#footnote-5)
2. As part of its work in Kazakhstan, ERT, with its partner KIBHR, has undertaken research on the legal and policy framework in place to prevent discrimination and promote equality. This research has shown that Kazakhstan still has no comprehensive anti-discrimination legislation which includes a definition of direct and indirect discrimination. Instead, Kazakhstan has a patchwork of provisions spread across various pieces of legislation which provide limited protection from racial discrimination and which can be summarised as follows.
3. The **Constitution of Kazakhstan** contains a prohibition of racial discrimination in Article 14. Article 14(1) provides that “All are equal before the law and courts”. Article 14(2) provides that “No one may be subjected to any discrimination for reasons of **origin**, social status, occupation, property status, gender, **race**, **ethnic affiliation**, **language**, religious affiliation, opinions, place of residence or for any other circumstance.” (emphasis added)
4. The **Administrative Offences Code** offers some degree of protection where discrimination on grounds of languages takes place, providing, at Article 82 (restriction of the rights of individuals in choosing language) that “restriction of the rights of individuals in choosing the language, discrimination owing to the language characteristics entails a fine (...)”.[[6]](#footnote-6) The **Criminal Procedure Code** provides, at Article 21(2) (administration of justice on the principles of equality before law and court) that “[d]uring criminal proceedings no one may be subjected to any discrimination due to his **origin**, social, occupational and property status, sex, **race**, **nationality**, **language**, religious attitude, beliefs, place of residence or due to any other circumstances” (emphasis added).[[7]](#footnote-7) Similarly, Article 13(2) of the **Civil Procedure Code** (equality of everyone before law and court) provides that “[i]n the course of civil proceedings none of (...) the citizens may be given preference and none of them may be discriminated on the basis of their **origin**, official capacity, property status, sex, **race**, **nationality**, **language**, religion, beliefs, place of residence or on any other circumstances (...)” (emphasis added).[[8]](#footnote-8)
5. Article 4(3) of the **Labour Code** lists the “prohibition of discrimination” as a principle of labour legislation and Article 6 states that “[e]veryone shall have the right freely to choose labour or agree to work without any discrimination or compulsion to do so, the right to apply labour abilities, choose a profession and type of activity”.[[9]](#footnote-9) Article 7 of the Code provides for the right to non-discrimination in greater detail. Article 7(1) states that “[e]veryone shall have equal opportunities to exercise their rights and freedoms in the sphere of labour”. Article 7(2) provides that “[n]o-one may be subjected to any discrimination in exercising their labour rights depending on sex, age, physical disabilities, **race**, **nationality**, **language**, material, social or official position, place of residence, attitude to religion, political convictions, **tribe or social stratum** or membership of public associations” (emphasis added). Article 7(3) provides for an exception to the right to non-discrimination, namely that discrimination does not include “differences, exceptions, preferences and restrictions determined by requirements inherent in the nature of the work or dictated by the state’s concern for people in need of increased social and legal protection”. In practice, this provision can be read as excluding genuine occupational requirements and positive action measures from the scope of Article 7. Persons subject to discrimination are able to enter a lawsuit under Article 7(4). Article 22 of the Labour Code sets out the rights of employees and includes, at Article 22(1)(5), “equal payment for equal labour without any discrimination”. Article 145 sets out the state’s guarantee of a job, specifically providing at Article 145(1) “protection against any forms of discrimination and provision of equal opportunities to gain a profession and a job”.
6. Generic non-discrimination provisions are also found in other pieces of legislation such as the **Code on Peoples’ Health and Healthcare System**[[10]](#footnote-10) (Article 91(1)(2)) and the **Law on the Rights of the Child**[[11]](#footnote-11) (Article 6(1)(1)).
7. None of these provisions contains a definition of discrimination, let alone definitions of direct and indirect discrimination. The scope of the prohibition of racial discrimination is severely limited, with only employment legislation and the criminal and civil procedure codes containing any notable prohibition of discrimination.
8. ERT’s view is that the level of protection falls far short of that which is required under Article 2(d) of the Convention, namely the prohibition of racial discrimination which, under Article 1(1), includes “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

ERT urges the Committee to recommend that Kazakhstan adopts comprehensive equality legislation which prohibits all forms of discrimination, including direct and indirect discrimination, in all areas of public life, with provisions that ensure effective access to justice and appropriate remedies.

**Representation in Political Life (Articles 1(4), 2(2) and 5(c))**

1. ERT notes that at its last review of Kazakhstan, the Committee expressed its concern at “the limited participation of minorities in political life and decision-making at both national and regional levels” and its recommendation that the country “take further measures, including special measures, aimed at ensuring a fair and adequate participation of all members of minority groups in political life”.[[12]](#footnote-12)
2. ERT is therefore concerned by recent electoral data which indicate that non-Kazakh ethnic groups, despite representing a significant proportion of the population of Kazakhstan, remain under-represented in political life.

**Almaty**: According to the 2009 census, Kazakhs make up approximately 51.06% of the population of Kazakhstan’s largest city, Almaty, and non-Kazakhs approximately 48.94%. Despite this, representation of non-Kazaks in political life in Almaty is very low. Executive power in the city is vested in the mayor, his deputies and the heads of the sectoral departments. In total, of these 26 officials, only 2 (less than 8%) have non-Kazakh names. Of the seven administrative districts in Almaty, six are headed by Kazakhs. Of the 21 deputy heads of districts, only 2 are non-Kazakh.

**North Kazakhstan**: The situation is similar in North Kazakhstan province, where Kazakhs are in fact a minority, making up approximately 33.30% of the population. The majority ethnic group are Russians who make up 50.43% of the population, with the remaining 16.27% made up of other ethnic groups. However, the mayor of the province as well as three out of the four deputies in the region are Kazakh, as are 12 out of the 14 mayors of the districts and city of Petropavlovsk, and 35 out of the 40 deputies in the district and city. In half of the districts, the mayor and the deputies are all Kazakh with no other ethnic groups represented. In total, despite making up only 33.30% of the population, Kazakhs occupy 86.2% of key political positions.

**National**: At the national level, Kazakhstan introduced electoral reforms in 2007 which increased the size of the lower house of Parliament (the *Majilis*) from 77 to 107 members, made up of 98 members elected directly by the people and 9 representatives of the Assembly of the People of Kazakhstan. The Assembly of the People of Kazakhstan itself comprises representatives of the Regional Assemblies and is tasked with representing the various ethnic groups in Kazakhstan. Information on the ethnic make-up of the deputies of the *Majilis* following the 2012 legislative election is not available, but the results of the 2007 legislative election demonstrate the disproportionality between the deputies and the population as a whole.[[13]](#footnote-13)

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|  | **Directly elected** | **Representatives of the Assembly of the People of Kazakhstan** | **Total** | **Population as a whole[[14]](#footnote-14)** |
| Kazakhs | 81 (83%) | 1 (11%) | 82 (77%) | 63.1% |
| Russians | 16 (16%) | 1 (11%) | 17 (16%) | 23.6% |
| Others | 1 (1%) | 7 (78%) | 8 (7%) | 13.3% |
| **Total** | **98** | **9** | **107** | **100%** |

ERT urges the Committee to recommend that Kazakhstan takes urgent steps to ensure that racial and ethnic minorities are represented fairly and adequately in political life, if necessary, through the adoption of specific positive action measures.

**Situation of Minority Communities (Articles 2, 5, 6 and 7)**

1. In its “List of themes in relation to the combined sixth and seventh periodic reports of Kazakhstan”, the Committee asked for an update of progress on improved participation of members of minorities in the government and in the houses of Parliament, as well as in the conduct of decision-making at the regional level and with regard to equal access to public services.[[15]](#footnote-15)
2. In addition to the statistics contained within paragraph 16 above, ERT research has revealed a high degree of dissatisfaction among ethnic minorities with regards to their political representation and most respondents’ perception was that representation has worsened over the last five years. They described the individual appointments of some non-Kazakhs as tokenism. Furthermore, ERT considers the requirement of **fluency in Kazakh language** in order to hold any public sector job, including public office, as amounting to indirect ethnic discrimination. One respondent described the circumstances in which his nephew was forced out of the police as he was an ethnic Russian.
3. The Committee asked for an update on the registration procedures for religious organisations.[[16]](#footnote-16) The Law on Religious Activity and Religious Associations gives preference in the preamble to the Hanafiyah school of Islam and orthodox Christianity.[[17]](#footnote-17) ERT has documented the case of refusal to re-register the Ahmaddiya Muslim community in Almaty on the basis of an expert analysis by a special governmental body of the content of their religion. ERT has also been made aware of cases of ethno-religious discrimination against Tataro-Bashkyr, Azerbaijani and Uigur Muslims. Smaller religious communities have complained that they were unable to register as a religious association due to the requirement in Article 12(2) that at least fifty Kazakh nationals be members of the community within a particular city or oblast.

1. ERT has encountered allegations by some of its respondents that a number of government organised non-governmental organisations (GONGOs) with support from the authorities have made it their mission to spread false information about religious “sects” and inflame public opinion against their activities. For example, there have been slanderous statements that religious “sects” incite young and unstable persons to committing suicide.
2. The Committee also asked for information on the impact of the measures to ensure the use of minority languages, in particular in regions with compact minority communities, including bilingual geographic designations and public signs.[[18]](#footnote-18) Respondents stated that in Pavlodar, where 40% of all inhabitants are Russian, all signage is only in Kazakh; this is also true in Petropavlovsk where the majority are ethnic Russians.

ERT urges the Committee to recommend that Kazakhstan takes urgent steps to ensure that all racial and ethnic minorities are able to particulate fairly in political life, decision-making and in access to public services. In particular, ERT urges the Committee to recommend that Kazakhstan:

* review the occupational requirements for public sector jobs and ensure that fluency in Kazakh language is only required where it is an essential and genuine occupational requirement.
* review the Law on Religious Activity and Religious Associations to ensure that smaller religious communities – including those of ethnic minorities -- are able to register their religious association;
* review use of Article 164 of the Criminal Code to ensure that it is not used in a discriminative manner against particular religious individuals or for ulterior purposes; and
* take the necessary steps to ensure that signage and other publicised information is provided in languages other than Kazakh where there are significant non-Kazakh groups.

**Access to Justice, Discrimination against Non-Citizens, including Migrants, Refugees and Asylum Seekers (Articles 5, 6 and 7)**

**Effective Remedy for Victims of Racial Discrimination**

1. The Committee highlighted the low number of complaints and absence of civil and administrative proceedings and judgments in relation to acts of racial discrimination.[[19]](#footnote-19) This raises serious concerns as to whether racial and ethnic groups have effective access to justice. Indeed, ERT’s research has not identified any cases in which victims of racial discrimination have brought lawsuits. ERT believes that this reflects a lack of awareness of the possible avenues for bringing complaints of racial discrimination amongst racial and ethnic minorities, and lawyers, a lack of clarity in existing legislation as to how to bring complaints, and weaknesses in legislation in its ability to provide appropriate and effective remedies for individuals who have suffered racial discrimination.
2. This amounts to a failure on behalf of Kazakhstan to comply with its obligation under Article 6 to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

**Non-citizens**

1. In this section, ERT bears in mind the Committee’s statement in its General Recommendation No. 30 that while states are permitted to distinguish between citizens and non-citizens in some specific circumstances, this is to be seen as an exception to the principle of equality and, consequently, “must be construed so as to avoid undermining the basic prohibition of discrimination”.[[20]](#footnote-20)
2. With regards to migrant workers, respondents told ERT that while there are no statistics on irregular migrants, they number in the hundreds of thousands; they are mostly from Uzbekistan and Tajikistan; their children are often denied schooling and they can get only emergency medical treatment.
3. The Committee asked for information about the restrictions to the rights of non-citizens legally present in the country.[[21]](#footnote-21)
4. Representatives of the Afghan community interviewed by ERT complained of a number of discriminatory practices. According to the leaders of the community, there are approximately 2,300 Afghans in Kazakhstan, including 615 recognised refugees, 615 students, 120 Kazakh citizens, 150 stateless persons, 350 Afghanistan citizens with residence permits in Kazakhstan, and 200 irregular (undocumented) migrants. The stateless individuals arrived as refugees, but have become stateless as a result of renouncing their Afghanistan citizenship in the hope to obtain Kazakh citizenship; Kazakhstan does not permit dual nationality. There are particular protections under international law for persons who renounce their nationality in order to ensure that they are not rendered stateless contained within the Convention on the Reduction of Statelessness (1961). These build upon Article 5(d)(iii) of the Convention which guarantees “the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of (...) the right to nationality”. Kazakhstan has neither signed nor ratified the Convention on the Reduction of Statelessness and therefore these particular protections are not provided to stateless persons in Kazakhstan either through international or national law.
5. According to Afghan sources, the waiting time to obtain a residence permit is about five years. In order to transfer from refugee status to resident status, the authorities require a number of documents, including a clean criminal record, a letter from Afghanistan that it does not object to the applicant receiving a residence in Kazakhstan, $13,000 in a bank account, a medical record, an autobiography, a letter from an employer, etc. Stateless persons are issued with a special ID, which is valid for travel inside Kazakhstan and recognised by some states as a document for international travel. The irregular immigrants are recent arrivals and their status is explained by the fact that in recent years, Kazakhstan no longer recognises Afghans as refugees, as the situation in Afghanistan has allegedly improved.
6. The Committee has highlighted the issue of access of members of ethnic minorities and migrants to work and the system of quotas for recruiting foreign workers under the Population Migration Act of 2011.[[22]](#footnote-22)
7. In 2012 an amendment to the law created an additional barrier to access to work: only citizens of Kazakhstan (and according to some sources, of some other countries –Kyrgyzstan and Russia) are allegedly allowed to register as a sole trader. Many immigrants, notably Afghans, work as sole traders on the markets and were severely affected. They are permitted to register a limited liability company, but for this they need a registered office (where the average rent is approximately $500 per month), and an accountant, among other requirements. ERT was told that such requirements are extremely difficult for the predominantly poor immigrants. Sometimes, they were able to register LLC in the name of a Kazakh citizen, for a certain (informal) payment. Further, ERT was told that in order to still sell in the market without sole trader status, some immigrants have been forced to give bribes to the police.
8. The Committee also asked for information on the steps taken to ensure access, without any discrimination, to asylum application procedures and evaluation of the obstacles to the integration policy under the Refugees Act of 2009.[[23]](#footnote-23)
9. ERT has received complaints about the requirement in the Refugees Act of 2009 (which entered into force in 2010) that a refugee obtain a travel document in order to be able to move to other localities within Kazakhstan and stay in another locality for three or more days. This raises serious concerns about the right to move freely within the borders of the State, particularly since, as of December 2013, the authorities had still not yet started issuing such travel documents, and have replied to enquiries that they were still working on the new scheme.
10. The above amounts to a failure on behalf of Kazakhstan to comply with its obligation under Article 5(d)(i) to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to freedom of movement and residence within the border of the State.
11. The Committee also asked for information on administrative detention of asylum seekers and irregular immigrants, including length and conditions of detention and access to legal safeguards.[[24]](#footnote-24)
12. According to persons interviewed by ERT, immigration detention is widely used. Physical conditions are very poor: detainees are left to sleep on a concrete floor; there is poor hygiene; detainees are not permitted to walk outside. It has been alleged also that there is a particular and much harsher internal procedure for immigration detention of ethnic Chechens.
13. In July 2012, ERT published “Guidelines to Protect Stateless Persons from Arbitrary Detention”.[[25]](#footnote-25) Drawing on an analysis of international standards, the Guidelines state that detention would be arbitrary unless it is: (i) provided for by national law; (ii) carried out in pursuit of a legitimate objective; (iii) non-discriminatory; (iv) necessary; (v) proportionate and reasonable; and (vi) carried out in accordance with the procedural and substantive safeguards of international law.

ERT urges the Committee to recommend that Kazakhstan:

* ratifies the Convention on the Reduction of Statelessness (1961) as a matter of priority;
* reviews the requirements in order to move from refugee status to resident status to ensure that they are not unduly prohibitive, particularly in terms of the costs involved;
* in addition to comprehensive equality legislation as outlined above, raise awareness of legal protections for ethnic and racial groups amongst those groups as well as lawyers and the judiciary;
* review the Population Migration Act of 2011 to ensure that the requirements to become a sole trader are not unduly prohibitive and do not discriminate on the basis of race;
* take urgent steps to ensure that irregular migrants enjoy equal access to essential public services such as education and healthcare;
* review the Refugees Act of 2009 and, in particular, the requirement that refugees obtain travel documents in order to move to other parts of Kazakhstan for more than three days, to ensure that it does not restrict the rights of refugees to move freely within the borders of Kazakhstan;
* review the administrative detention of asylum seekers and irregular immigrants and, in particular, ensure that the system of detention complies with international law as expressed in ERT’s Guidelines to Protect Stateless Persons from Arbitrary Detention.

**Education (Article 5(e)(v))**

1. Respondents in ERT interviews stated that non-Kazakhs are not able to study abroad on an equal basis with Kazakhs with only the latter receiving stipends from the government in order to be able to do so.

ERT urges the Committee to recommend that Kazakhstan ensures that all students, regardless of race or ethnicity, are able to enjoy the right to education on an equal basis including in access to government stipends and other forms of financial support.

1. *Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008. [↑](#footnote-ref-1)
2. *Naz Foundation v. Government of NCT of Delhi and Others* WP(C) No.7455/2001, Para 93. [↑](#footnote-ref-2)
3. Parliamentary Assembly of the Council of Europe, *Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: http://assembly.coe.int/ASP/Doc/ATListingDetails\_E.asp?ATID=11380. [↑](#footnote-ref-3)
4. Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the convention, Concluding observations of the Committee on the Elimination of Racial Discrimination: Kazakhstan*, UN Doc. CERD/C/KAZ/CO/4-5, 6 April 2010, Para 10. [↑](#footnote-ref-4)
5. Committee on the Elimination of Racial Discrimination, *List of themes in relation to the combined sixth and seventh periodic reports of Kazakhstan (CERD/C/KAZ/6-7)*, UN Doc. CERD/C/KAZ/Q/6-7, 16 December 2013. [↑](#footnote-ref-5)
6. Code on Administrative Offences of the Republic of Kazakhstan of 30 January 2001. Code No. 155. [↑](#footnote-ref-6)
7. Code of Criminal Procedure of the Republic of Kazakhstan, 13 December 1997. Code No. 206. [↑](#footnote-ref-7)
8. Code of Civil Procedure of the Republic of Kazakhstan, 13 July 1999. Code No. 411. [↑](#footnote-ref-8)
9. Labour Code of the Republic of Kazakhstan, 15 May 2007. Code No. 251. [↑](#footnote-ref-9)
10. Code on People's Health and the Health Care System, approved by President's Decree No. 193-IV ZRK of 18 September 2009. [↑](#footnote-ref-10)
11. Law of the Republic of Kazakhstan about the rights of the child in the Republic of Kazakhstan, Law No. No. 345-II of 8 August 2009. [↑](#footnote-ref-11)
12. See above, note 4, Para 8. [↑](#footnote-ref-12)
13. Oka, N., *IDE Discussion Paper No. 194, Ethnicity and Elections under Authoritarianism: The Case of Kazakhstan, Table 2*, Institute of Developing Economies, March 2009, available at: http://www.ide.go.jp/English/Publish/Download/Dp/pdf/194.pdf. The figures in brackets represent the proportion of the particular status of deputy i.e. directly elected or representing the Assembly of the People of Kazakhstan. [↑](#footnote-ref-13)
14. Figures taken from the 2009 census. [↑](#footnote-ref-14)
15. See above, note 5, Para 2(a). [↑](#footnote-ref-15)
16. *Ibid*., Para 2(d). [↑](#footnote-ref-16)
17. Law On Religious Activity and Religious Associations, Law No. 483-IV of 11 October 2011. [↑](#footnote-ref-17)
18. See above, note 5, Para 2(f). [↑](#footnote-ref-18)
19. *Ibid*., Para 3(b). [↑](#footnote-ref-19)
20. Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination Against Non Citizens*, UN Doc. HRI/GEN/1/Rev.7/Add.1 2005, Para 2. [↑](#footnote-ref-20)
21. See above, note 5, Para 3(a). [↑](#footnote-ref-21)
22. *Ibid*., Para 3(c). [↑](#footnote-ref-22)
23. *Ibid*., Para 3(d). [↑](#footnote-ref-23)
24. *Ibid*., Para 3(e). [↑](#footnote-ref-24)
25. The Equal Rights Trust, Guidelines to Protect Stateless Persons from Arbitrary Detention, 2012, available at: http://www.equalrightstrust.org/ertdocumentbank/guidelines%20complete.pdf. [↑](#footnote-ref-25)