



EQUAL RIGHTS TRUST

The Equal Rights Trust

Suggestions for the list of issues to be adopted by the Committee on Economic, Social and Cultural Rights at its 62nd session (Pre-Sessional Working Group) in relation to the second periodic report submitted by:

Kazakhstan

24 January 2018

Statement of Interest

1. The Equal Rights Trust (the Trust) submits the following suggestions for the list of issues to be adopted by the Committee on Economic, Social and Cultural Rights (the Committee) based upon the second periodic report submitted to the Committee by Kazakhstan at the Committee's 62nd session (Pre-Sessional Working Group).
2. The Equal Rights Trust is an independent international organisation whose objective is to combat discrimination and advance equality as a fundamental human right and a basic principle of social justice. Established as an advocacy organisation, resource centre and think tank, the Trust focuses on the complex relationship between different types of discrimination and inequality and developing strategies for translating the principles of equality into practice.
3. We have been actively involved in efforts to combat discrimination in Kazakhstan since 2012. Under the project "Empowering human rights defenders in Central Asia to combat discrimination on the basis of ethnicity and religion", the Trust worked in partnership with the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) to increase the capacity of civil society to combat discrimination in Kazakhstan through documentation, litigation and advocacy.
4. In the course of this project, the Trust and KIBHR undertook research on patterns of discrimination and inequality in Kazakhstan, including discrimination in accessing the rights provided under the International Covenant on Economic, Social and Cultural Rights (the Covenant). This research culminated in the publication of the report: *In the Name of Unity: Addressing Discrimination and Inequality in Kazakhstan* in 2016.¹ *In the Name of Unity* provides, for the first time, a comprehensive assessment of the lived experience of those exposed to discrimination on the basis of various grounds, with an analysis of the national legal framework on equality and non-discrimination.
5. The methodology of *In the Name of Unity* is based on the Equal Rights Trust's unified human rights framework on equality, expressed in the *Declaration of Principles on Equality*, adopted in 2008 and signed by hundreds of experts and activists on equality and human rights

¹ Equal Rights Trust, *In the Name of Unity: Addressing Discrimination and Inequality in Kazakhstan*, 2016, available at: http://www.equalrightstrust.org/ertdocumentbank/Kazakhstan_EN_0.pdf.

worldwide.² This framework takes a holistic approach to the rights to equality and non-discrimination by not limiting the scope to a particular group or in a particular area of life, but looking at patterns of discrimination and inequalities amongst a wide range of groups and in different areas of life.

6. Our suggestions for the list of issues to be adopted by the Committee is based on the findings of *In the Name of Unity*, a copy of which is enclosed with this submission. Given the comprehensive nature of this report, the submission itself does not provide an exhaustive account of its findings, but focuses on providing the Committee with information on the impact of discrimination on the enjoyment of economic, social and cultural rights in Kazakhstan.
7. This submission is divided into two parts. The first reviews the legal framework on equality and non-discrimination in Kazakhstan, in light of the country's obligations under Article 2(2) of the Covenant. The second reviews evidence of the impact of discrimination on the enjoyment of a number of rights protected under the Covenant. Each part concludes with questions which we would urge the Committee to put to Kazakhstan in its list of issues.

Part 1: Article 2(2): The Legal Framework Related to Equality

8. Under Article 2(2) of the Covenant, state parties undertake to guarantee the rights in the Covenant "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". As the Committee has noted, compliance with this obligation necessitates *inter alia* the adoption of specific, comprehensive non-discrimination legislation.³ In order to fulfil states' obligations under the Covenant, such legislation should define and prohibit direct and indirect discrimination, harassment and failure to make reasonable accommodation, on an extensive and open-ended list of characteristics, in respect of all rights protected by the Covenant.⁴
9. The primary constitutional equality provision in Kazakhstan is found in Article 14 of the **Constitution of Kazakhstan**, which provides that:

Everyone shall be equal before the law and the court. No one shall be subjected to discrimination on grounds of origin, social, property status, occupation, sex, race and nationality, language, religion, convictions, place of residence or any other circumstances.

The scope of the protection provided by this provision is limited. Notably, the list of protected grounds is short and fails to explicitly recognise grounds well-established as protected under international law, including sexual orientation, gender identity, disability, age and health status. While the inclusion of the phrase "any other circumstances" means that the list of protected characteristics is illustrative and open-ended, no guidance is provided in the Constitution, by the courts or the government as to the interpretation of the phrase.

² Declaration of Principles on Equality, Equal Rights Trust, London, 2008, available at: <http://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perfect%20principles.pdf>.

³ Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (Article 2, Para 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 37.

⁴ *Ibid.*, Paras 7-12, 15.

Moreover, Article 14 provides no clarity as to whether all forms of discrimination – direct and indirect discrimination, harassment and failure to make reasonable accommodation – are prohibited, leaving open the possibility of restrictive interpretation.

10. As *In the Name of Unity* illustrates, the most significant deficiency in Kazakhstan’s legal framework is the lack of comprehensive anti-discrimination legislation. Such legislation – which the Committee has clarified is necessary to ensure compliance with obligations arising under Article 2 of the Covenant – would complement and address the deficiencies in the constitutional protection, ensuring that the state provides protection from discrimination which is in line with international standards. Comprehensive anti-discrimination legislation which is in line with international best practice standards would *inter alia* define and prohibit all forms of discrimination, on all grounds recognised at international law, and in all areas of life regulated by law. It would also provide all the necessary procedural guarantees to ensure that the rights to equality and non-discrimination can be exercised in practice, including for example provisions for the transfer of the burden of proof, to provide protection from victimisation and for the standing of interested parties. In the absence of such legislation, Kazakhstan is unable to provide protection from discrimination, and so unable to guarantee the enjoyment of Covenant rights without discrimination, as required under Article 2.

While Kazakhstan does not have a comprehensive anti-discrimination law, it does have two specific non-discrimination laws, providing some level of protection for particular groups: the “Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women” (the “**Law on Gender Equality**”)⁵ and the Law of the Republic of Kazakhstan “On Social Protection and General Protection of Disabled Persons in the Republic of Kazakhstan” (the “**Law on Social Protection of Disabled Persons**”).⁶ However, both of these laws have significant shortcomings.

11. The **Law on Gender Equality** does not clearly prohibit indirect discrimination; nor does it provide any protection from intersectional discrimination, or from discrimination by association. The Law’s material scope is also limited, in that it does not apply in the fields of social protection or access to goods and services. Further, the definition of discrimination under Article 4 limits the ability of individuals to bring claims to those which concern “regulatory legal acts”. The Law also fails to recognise and define positive action. Instances which are explicitly excluded as forms of discrimination under the Law are too broad and may be subject to abuse. No enforcement mechanisms or specific remedies exist for breach of provisions under the Law. Instead, individuals are required to bring claims under the Criminal Code. Furthermore, no state entity is mandated to ensure implementation of the Law through, for example, the receipt of complaints.
12. The **Law on Social Protection of Disabled Persons** prohibits discrimination against persons with disabilities in the public and private sectors. A significant shortcoming of this law is the failure to provide a definition of discrimination, resulting in lack of clarity as to the scope of its application. Furthermore, the Law does not provide any mechanism for implementation of the positive measures, such as quotas, which it sets out. Certain provisions which set out to “protect” persons with disabilities in fact limit their right to work on an equal basis with others. For example, Article 32 restricts the working hours of persons with disabilities to 36 hours per week.

⁵ Law of the Republic of Kazakhstan “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”, 8 December 2009 No.223 – IV.

⁶ Law of the Republic of Kazakhstan “On Social Protection of Disabled Persons in the Republic of Kazakhstan”, 13 April 2005 No. 39.

A significant shortcoming is also the lack of specific remedies or sanctions for breach of its provisions or a direct cause of action.

13. Aside from the legislation set out above, other laws contain isolated provisions which relate to equality and non-discrimination, including *inter alia*:
 - (a) Articles 83, 90, 57(5), 453 of the Code of Administrative Offences;⁷
 - (b) Articles 54, 145, 174, 183, 404 of the Criminal Code;⁸
 - (c) Article 21 of the Criminal Procedure Code;⁹
 - (d) Articles 1, 5, 6 of the Law on Citizenship;¹⁰
 - (e) Article 5(1) of the Law on Migration;¹¹
 - (f) Articles 3, 8(6), 26(8) of the Law on Education;¹²
 - (g) Articles 2, 30, 38 of the Family Code;¹³
 - (h) Article 6, of the Labour Code;¹⁴
 - (i) Articles 91, 112, Chapters 18-19 of the Health Code.¹⁵
14. Nevertheless, none of these provisions define discrimination, let alone provide definitions of direct, indirect and intersectional discrimination, as well as discrimination by association or perception, harassment and failure to provide reasonable accommodation. The level of protection offered under these provisions falls short of the state party's international obligations under the Covenant and confirms the need for a comprehensive anti-discrimination legislation. Furthermore, some of the laws listed above contain provisions which are themselves discriminatory. For example, Article 76 of the Labour Code restrict women with children under seven years of age from working night shifts without providing written consent, whereas no such equivalent provision exists for fathers.

Suggested Questions on Discrimination in Relation to the Legal Framework

- What plans, if any, does the state party have to adopt a comprehensive anti-discrimination law which prohibits discrimination in the enjoyment of all economic, social and cultural rights protected under the Covenant?
- Can the state party confirm that the words "*any other circumstances*" in Article 14 of the Constitution can be interpreted as prohibiting discrimination on the basis of sexual orientation, gender identity, age, disability and health status? What plans, if any, does the state party have to clarify this interpretation, and raise awareness of the protection provided as a result?
- What steps has the state party taken to review its legislation to (1) assess its compatibility with the rights to equality and non-discrimination as defined under international instruments, including the International Covenant on Economic, Social and Cultural Rights; and (2) amend, and where necessary, repeal existing legislative provisions which conflict with the right to equality?

⁷ Code of Administrative Offences of the Republic of Kazakhstan, dated 05 July 2014, No 235-V.

⁸ Criminal Code dated 3 July 2014 No. 226-V.

⁹ Criminal Procedure Code of Kazakhstan dated 4 July 2014 No. 231-V.

¹⁰ Law of Kazakhstan "On Citizenship of the Republic of Kazakhstan" dated 20 December 1991 No. 1017-XII.

¹¹ Law of Kazakhstan "On Migration of the People" dated 22 July 2011 No. 477-IV.

¹² Law of Kazakhstan "On Education" dated 27 July 2007 No. 319-III.

¹³ Code of Kazakhstan "On Marriage and Family" dated 26 December 2011 No. 518-IV.

¹⁴ Labour Code of Kazakhstan dated 23 November 2015 No. 414-V (as amended in 2016).

¹⁵ Code of Kazakhstan "On the Health of the Population and the Health Care System" dated 18 September 2009 No. 193-IV.2.

- What steps has the state party taken to ensure that the guarantees provided in the Law on Gender Equality and the Law on Social Protection of Disabled Persons are directly enforceable by individuals?

Part 2: Discrimination Affecting the Enjoyment of Other Covenant Rights

15. The Equal Rights Trust, *In the Name of Unity: Addressing Discrimination and Inequality in Kazakhstan*, presents evidence of discrimination and inequality on grounds of, *inter alia*, gender, disability, health status, language, sexual orientation and gender identity, ethnicity, religion or belief and political opinion. It finds that discrimination is a major factor in limiting the enjoyment of Covenant rights on an equal basis with others. This section of the submission examines some of those issues, highlighting the impact of discrimination on the enjoyment of the right to work (Article 6), the right to physical and mental health (Article 12) and the right to education (Article 13).

Article 6: The Right to Work

Access to employment for women

16. The Law on Gender Equality expressly prohibits discrimination on the basis of gender, including in the field of labour relations, where Article 10 specifies that employers shall ensure equal rights and opportunities of men and women. This is supported by Article 7 of the Labour Code which prohibits discrimination in the exercise of labour rights, including on the basis of sex. In addition, these laws have been complemented by gender equality strategies, such as the Gender Equality Strategy 2006-2016. Nevertheless, the Equal Rights Trust's review of available data for *In the Name of Unity* finds many inequalities in access to employment for women.
17. For example, according to the Human Development Report, compiled by the United Nations Development Programme (UNDP), labour force participation of women in Kazakhstan is significantly lower than that recorded for men.¹⁶ *In the Name of Unity* also finds a persistent gender pay gap, exacerbated by a segregated labour market where women continue to be primarily employed in the lowest paid sectors such as healthcare, education and agriculture.¹⁷ The vertical and horizontal segregation of the labour market also results in women facing obstacles in the equal enjoyment of the right to pursue work of one's own choosing, as guaranteed by Article 6 of the Covenant.¹⁸
18. A social expectation that women take responsibility for childcare and the home influences both the extent to which women participate in the labour market and the form which that participation takes. Such attitudes are also reflected in several Kazakh policy documents and laws which contain discriminatory provisions. Notably, Articles 16 and 26 of the 2016 Labour Code prohibit women from undertaking roles which are considered to involve work in "harmful and/or hazardous conditions".¹⁹ A 2015 Order issued pursuant to these provisions by the Minister of Health and Social Development sets out 287 jobs which women are

¹⁶ UNDP, Human Development Reports – Kazakhstan, available at: <http://hdr.undp.org/en/countries/profiles/KAZ>.

¹⁷ See above, note 1, p. 163.

¹⁸ *Ibid.*, p. 161.

¹⁹ See above, note 14, Articles 16, 26.

prevented from performing.²⁰ Another example of a “protective” provision in the Labour Code which directly discriminates on the basis of gender is Article 76 which prohibits women with children under seven years of age from working at night without written consent, but which does not contain an equivalent provision for fathers with children under seven years of age. The same provision also prohibits pregnant women from working night shifts without approval from a doctor.

Access to employment for persons with disabilities

19. The Law on Social Protection of Disabled Persons prohibits discrimination against persons with disabilities in the public and private sectors. More specifically, the Labour Code sets out a number of provisions which seek to protect the labour rights of persons with disabilities. For example, under the Code persons with disabilities must have equal rights when they conclude employment agreements and any agreement must meet the individual needs of a person with disability by providing necessary support.²¹ In addition, Kazakhstan has taken several positive action measures to promote access to employment for persons with disabilities. For example, under Article 31 of the Law on Social Protection of Disabled Persons, local authorities are required to employ persons with disabilities to the equivalent of 3% of their workforce.
20. Nevertheless, a number of provisions in the Labour Code are directly discriminatory on the basis of disability. This includes Articles 69 and 77, the former of which mandates a shorter working week and the latter which prevents persons with disabilities from working overtime. Such provisions directly discriminate against persons with disabilities and deny their freedom of choice in labour relations. They also discourage employers from employing persons with disabilities as it restricts the flexibility of their workforce.
21. Despite steps taken to promote access to employment for persons with disabilities, *In the Name of Unity* notes that negative attitudes of employers persist against persons with disabilities. In the 2014 state party report to the Committee on the Rights of the Child, the Kazakh Government stated that employers choose not to recruit persons with disabilities as they do not believe they can carry out their tasks, reflecting stereotypical ideas and attitudes which fail to recognise persons’ capabilities.²²

Access to employment for linguistic minorities

22. Discrimination on the basis of language is prohibited under both Article 14 of the Constitution and Article 6 of the Labour Code. The Labour Code provision sets out exceptions where these are required by “the nature of the work [...]”. This is broadly in line with the international best practice approach of excepting “genuine occupational requirements” – where the possession of a certain protected characteristic is inherently to the ability to perform a certain job.

²⁰ Order of the Minister of Health and Social Development, “On the approval of the list of jobs where persons under the age of 18 may not be employed, limits for carrying and handling weights by persons under the age of 18, and the list of jobs where women may not be employed, and of limits and manual handling of weights by women”, No. 944 of 8 December 2015.

²¹ See above, note 14, Articles 25, 28.

²² Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention; Fourth periodic reports of States parties due in 2011: Kazakhstan, UN Doc. CRC/C/KAZ/4, 15 January 2014, Para 443.

23. While such genuine occupational requirements may be permissible, they must be objective and reasonable. *In the Name of Unity* finds evidence that the Kazakh language is sometimes used as the main, and often only, language of communication in cases where this is not inherent to the nature of the work in question.²³ This can act to exclude the part of the population which speaks Russian as a primary or secondary language, but which does not speak Kazakh – 26% of the population aged 15 and above.²⁴ One example of this was the case of a teacher at an educational institution in the Mangistau Oblast which, although providing education in more languages than Kazakh, conducted all meetings and produced documents in Kazakh without providing translation.²⁵

Access to employment for lesbian, gay, bisexual, transgender and intersex (LGBTI) persons

24. Sexual orientation and gender identity are not prohibited grounds of discrimination under Kazakhstani law, despite the state party's obligation under the Covenant to protect against discrimination on these grounds as forms of "other status", as clarified by this Committee in General Comment 20.²⁶
25. With no legal protection, LGBTI individuals in Kazakhstan have no recourse to remedy for discrimination in any area of life. *In the Name of Unity* finds that many LGBTI individuals withhold their sexual orientation or gender identity in their places of work, as those who do disclose it face direct discrimination. A 2009 survey conducted by the Soros Foundation – Kazakhstan found that 53% of respondents noted that they would not disclose their sexual orientation at work because it might have negative consequences.²⁷
26. Discrimination against persons because of their sexual orientation or gender identity takes place in both the private and public sector. A transgender person who held a senior position within the Department of Internal Affairs in the city of Almaty resigned following a sex reassignment surgery due to harassment by the employer.²⁸

Suggested Questions on Discrimination in respect of the Right to Work

- What measures – beyond legislation – has the state party taken to ensure the equal enjoyment of the right to work, without discrimination of any kind?

²³ See above, note 1, p. 142.

²⁴ Agency on Statistics of the Republic Of Kazakhstan, Results Of The 2009 National Population Census Of The Republic Of Kazakhstan, 2011, p. 22, available at: https://www.liportal.de/fileadmin/user_upload/oeffentlich/Kasachstan/40_gesellschaft/Kaz2009_Analytica_l_report.pdf.

²⁵ *Ibid.*, pp. 142-143.

²⁶ Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (Article 2, Para 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Paras 27-35.

²⁷ Soros Foundation, *Unacknowledged and Unprotected: Lesbian, Gay, Bisexual and Transgender People in Kazakhstan*, 2009, available at: http://www.soros.kz/uploads/user_67/2013_09_04_04_43_19_269.pdf.

²⁸ Akhmetov, J., "Transgender Policeman reports how he was offended by the DIA", 365 Info, 23 June 2015, available at: <http://365info.kz/2015/06/policejskij-transgender-namerenprodolzhat-suditsya-s-dvd-almaty>.

- What measures is the state party taking to combat discrimination against women in employment? In particular, what steps are being taken to address horizontal and vertical segregation in the labour market?
- Does the state party have any plans to repeal Articles 16 and 26 of the Labour Code which restricts women from being employed in certain occupations?
- What steps does the state party intend to take in relation to quotas established under Law on Social Protection of Disabled Persons, including Article 31? In particular, does it intend to create a mechanism to monitor and enforce such quotas?
- What measures, if any, has the state party taken to ensure that the use of Kazakh as the primary or only language of communication in certain workplaces does not discriminate against speakers of Russian?
- What steps, if any, has the state party taken to ensure that LGBTI persons are protected from discrimination in the workplace? What avenues are available for these individuals to report discrimination and harassment in the workplace?

Article 12: The Right to Physical and Mental Health

Access to healthcare for women

27. Article 29 of the Constitution sets out the general right to health. As the Committee will be aware, the state party has committed to ensuring equal access to health services between men and women;²⁹ the state has also noted the need for improvement of reproductive health services.³⁰
28. Despite commitment on part of the state party to the equal access to healthcare for women, *In the Name of Unity* finds evidence of the poor implementation of such policies. A joint submission by NGOs to the 2014 Universal Periodic Review of Kazakhstan notes shortcomings in women's access to healthcare, particularly in respect of reproductive health – including limited access to contraceptives and complete lack of, or poor quality sexual education programme in schools.³¹
29. While abortion is legal in Kazakhstan up to 12 weeks of pregnancy (or 22 weeks in certain circumstances), the requirement of parental consent for abortion by girls below the age of 18,³² may lead to the denial of reproductive health rights.

Access to healthcare for persons living with HIV and tuberculosis

30. As mentioned above, health status is not a prohibited ground of discrimination under Article 14 of the Constitution. While some legal protection of the rights of persons living with HIV in

²⁹ See Committee on Economic, Social and Cultural Rights, List of issues to be taken up with the consideration of the Initial periodic report: Kazakhstan, Addendum, UN Doc. E/C.12/KAZ/Q/1/ Add.1, 5 January 2010, Para 101.

³⁰ See Government of the Republic of Kazakhstan, Strategy for Gender Equality in the Republic of Kazakhstan, 2005, p. 21, available at: <https://www.ndi.org/files/Kazakhstan-GenderStrategy-2006-2016.pdf>; Decree of the President of the Republic of Kazakhstan, “On Approval of the 2006–2016 Gender Equality Strategy”, No. 1677 of 29 November 2005.

³¹ Kazakhstan Association on Sexual and Reproductive Health and Sexual Rights Initiative, Submission to the Universal Periodic Review for Kazakhstan (Joint Submission 5), 2014, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKZStakeholdersInfoS20.aspx>.

³² Code of the Republic of Kazakhstan, “On Public Health and the Health Care System”, Law No. 193-IV of 18 September 2009, Articles 104(2)-(3).

the area of employment exists, there is significant evidence to stigmatisation and discrimination by health institutions and healthcare professionals in their provision of healthcare services to persons living with HIV and other health conditions, including tuberculosis.

31. For example, in interviews with researchers from Human Rights Watch, persons living with HIV noted that healthcare professionals stopped speaking to them when they revealed their health status.³³ Similarly, a 2015 report found that healthcare professionals are very reluctant to treat HIV positive individuals – and the treatment of persons with multiple health conditions, such as tuberculosis and hepatitis is of even poorer quality as it takes very long for such patients to obtain the permission to receive free treatment.³⁴
32. There are also serious grounds for concern regarding the forcible hospitalisation, treatment and rehabilitation of persons with tuberculosis.³⁵ As noted by the Committee in General Comment No. 14, state parties have an obligation to refrain “from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness or the prevention and control of communicable diseases”.³⁶ Thus, any decision to forcibly treat a person with tuberculosis should involve a careful balancing of their right to physical and mental health together with their right to non-discrimination and equality, against public health concerns. Under the legislation, treatment is not exceptional but applies to all persons with tuberculosis and does not allow for consideration of each case.

Access to healthcare for LGBTI persons

33. There is evidence that many LGBTI persons have been denied medical treatment when their sexual orientation or gender identity is disclosed. A civil society submission to the first cycle of the Universal Periodic Review of Kazakhstan noted that stereotypes and prejudice hinder access to healthcare for the LGBTI community.³⁷ Such attitudes are further promoted by healthcare personnel in the media.³⁸ In a 2014 interview conducted by the Human Rights Watch, a man recalled that his gay friend was denied treatment by a doctor who stated “I don’t help faggots”.³⁹

³³ Human Rights Watch, *Fanning the Flames: How Human Rights Abuses are Fuelling the Aids Epidemic in Kazakhstan*, 2003, Vol.15, No. 4 (D), p. 39.

³⁴ Em, T., “IWPR Kazakhstan: HIV: People are dying because of people”, Central Asian Bureau for Analytical Reporting, 13 March 2015, available at: <http://cabar.asia/en/iwpr-kazakhstan-hivpeople-are-dying-because-of-people>.

³⁵ Code of the Republic of Kazakhstan, “On Public Health and the Health Care System”, Law No. 193-IV of 18 September 2009, Article 113(2).

³⁶ Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4, 2000, Para 12.

³⁷ Labrys and the Sexual Rights Initiative, Joint Report submitted for the Universal Periodic Review: Kazakhstan, 2009, Para 14, available at: <http://sexualrightsinitiative.com/wp-content/uploads/Kazakhstan-UPR-7.pdf>.

³⁸ *Ibid.*

³⁹ Human Rights Watch, “That’s When I Realized I Was Nobody”, *A Climate of Fear for LGBT People in Kazakhstan*, 2015, p. 11, available at: https://www.hrw.org/sites/default/files/report_pdf/kazakhstan07154_up.pdf.

Suggested Questions on Discrimination in respect of the Right to Physical and Mental Health

- What measures – beyond legislation – has the state party taken to ensure the equal enjoyment of the right to physical and mental health, without discrimination of any kind?
- What plans, if any, has the state party taken to improve access to and quality of sexual and reproductive healthcare services?
- What measures has the state party taken to ensure that persons living with HIV receive adequate healthcare if their health status is disclosed to healthcare professionals?
- What steps does the state party intend to take to ensure that the forced hospitalisation and treatment of persons with tuberculosis does not violate the rights to non-discrimination in respect of the right to physical and mental health?
- What steps, if any, does the state party plan to take to ensure that LGBTI persons enjoy access to healthcare, including reproductive healthcare services?

Article 13: The Right to Education

Access to education and religious belief

34. The Law on Education sets out equality of rights of all to obtain a quality education.⁴⁰ Nevertheless, research for *In the Name of Unity* finds that children can experience discrimination in their enjoyment of the right to education due to their religious beliefs. For example, one interviewee for the report told KIBHR that her teenage daughter faced pressure from a school in the city of Uralsk to not wear religious dress at school, which included a long dress and a headscarf. This resulted in the daughter missing classes.⁴¹
35. *In the Name of Unity* also reveals that “anti-sect centres” exist within educational institutions to assist professors in preventing students from becoming drawn to “religious sects”.⁴² Such centres have also conducted campaigns against religious minorities which they see as a threat to the wellbeing of the country.⁴³ Activities by these centres link religion with terrorism and extremism. One of the Trust’s interviewees stated that a member of one of the anti-sect centres came to a kindergarten in the city of Pavlodar in 2016 and gave a presentation on terrorism and extremism with which he connected “non-traditional” religions – religions other than Islam, Christianity and Buddhism.⁴⁴

Access to education for women

36. In its report to the Committee on the Rights of the Child, the state party noted that one of the main principles of Kazakhstan’s education policy is that of equal access to free secondary education for all Kazakh citizens, irrespective of sex.⁴⁵

⁴⁰ Law of Kazakhstan “On Education” dated 27 July 2007 No. 319-III, Article 3.

⁴¹ See above, note 1, p. 122.

⁴² NGO Association of practicing psychologists of Kazakhstan, *There is a way! Advice for teachers on preventing youth involvement in religious sects*. 2013, available at: http://stopsekta.kz/downloads/vihod_est_rus.pdf.

⁴³ Human Rights Council, Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, 23 December 2014, UN Doc. A/HRC/28/66/Add.1, Para 58.

⁴⁴ See above, note 1, p. 123.

⁴⁵ Committee on the Rights of the Child, List of issues to be taken up with the consideration of the second and third periodic report: Kazakhstan, Addendum, UN Doc. CRC/C/KAZ/Q/3/Add.1, 17 April 2007, p. 15.

37. Nevertheless, while positive developments can be seen in respect of the increasing number of women and girls enrolled in education, there are a number of problems which persist and impede access to education on the basis of gender. *In the Name of Unity* notes, for example, the concerns raised by the Committee on the Elimination of all forms of Discrimination Against Women that stereotypes of women as caregivers are reflected in educational institutions, resulting in “stereotypical” choices of subjects (such as sewing).⁴⁶

Access to education for linguistic minorities

38. Article 9(3) of the Law on Education notes that everyone has the right to education in one’s native language and if circumstances allow, the establishment of a corresponding educational institution, class, group and creation of conditions for their operation.⁴⁷ This is a watered down provision from the 1999 Law on Education, Article 5(3) of which set out a requirement on part of the state party to create the conditions necessary for national groups to receive education in their native language.⁴⁸
39. In practice, *In the Name of Unity* notes research indicating that only a low number of students obtain instruction in ethnic minority languages.⁴⁹ A 2010 report by civil society organisations observed that minority language schools were being closed.⁵⁰ This includes schools teaching in Russian and Uzbek, the latter of which hundreds had been closed between 2003 and 2012.⁵¹ Even fewer schools exist to teach in other minority languages such as Tajik and Uighur. One of the Trust’s interviewees noted in 2016 that the students who receive education in the Uighur language has reduced by 50% and that more schools were closing.⁵²
40. Concerns have been raised regarding the poor quality of minority language education (including number of schools, teachers, textbooks and other materials).⁵³ Moreover, the entrance exams to higher education are only available in Kazakh and Russian, even for students who have received education in minority languages.⁵⁴ Students who obtained education in minority language schools are also forced to take a different test from other students, and which is also only available in Kazakh or Russian.⁵⁵ In 2014, only 7.8% of students in higher education institutions were minority language students, which may be a reflection of the barriers to access that such students face.⁵⁶

⁴⁶ Committee on the Elimination of Discrimination against Women, Concluding Observations: Kazakhstan, UN Doc. CEDAW/C/KAZ/CO/3-4, 10 March 2014, Para 16.

⁴⁷ Law of Kazakhstan “On Education” dated 27 July 2007 No. 319-III, Article 9(3).

⁴⁸ Law of the Republic of Kazakhstan, “On Education”, No. 389-I of 7 June 1999, Article 5(3).

⁴⁹ See Committee on the Elimination of Racial Discrimination, Concluding observations on the combined sixth and seventh periodic reports of Kazakhstan, UN Doc. CERD/C/KAZ/CO/6-7, 14 March 2014, Para 17.

⁵⁰ Center for Legal Aid to the Ethnic Minorities and others, Kazakhstan NGO Comments on the Fourth and Fifth Periodic Reports of the Kazakhstan Government on Implementation of the International Convention on the Elimination of all forms of Racial Discrimination, 2010, Para 25.

⁵¹ *Ibid.*

⁵² See above, note 1 pp. 139-140.

⁵³ Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination: Kazakhstan, 2010, UN Doc. CERD/C/KAZ/CO/4-5, Para 9.

⁵⁴ *Ibid.*

⁵⁵ Resolution of the Republic of Kazakhstan, “On approval of the Model Rules of Admission to educational organisations that implement education programs of higher education”, No.111 of 19 January 2012.

⁵⁶ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined sixth and seventh periodic reports of Kazakhstan, UN Doc. CERD/C/KAZ/CO/6-7, 14 March 2014, Para 17.

Access to education for persons with disabilities

41. The right to education for persons with disabilities is protected under Article 14 of the Law on Social Protection of Disabled Persons and Article 29 of the same guarantees free primary, basic and general secondary education.
42. This Law, and Article 26 of the Law on Education, provide quotas for admission for persons with disability into secondary, higher and professional education. Nevertheless, these quotas have been set very low, at 1% for persons with certain types of disabilities.⁵⁷ Persons with disabilities are still underrepresented in higher education which further affects the chances of persons with disabilities having access to employment.⁵⁸
43. With regard to inclusive education, *In the Name of Unity* notes that while the Committee on the Rights of the Child has commended the state party for steps taken to create more accessible education for children with disabilities, it recommended that inclusive education must be prioritised over institutionalisation.⁵⁹

Suggested Questions on Discrimination in respect of the Right to Education

- What measures – beyond legislation – has the state party taken to ensure the equal enjoyment of the right to education?
- What plans, if any, does the state party have to cease educational campaigns by government-funded “anti-sect” centres?
- What steps, if any, has the state party taken to ensure that children, particularly religious minority children, are able to enjoy their right to education without discrimination on the basis of religion?
- What has the state party done to counter stereotypes of women as “caregivers” in educational institutions, which can contribute to *de facto* segregation by subject on the basis of gender?
- What steps, if any, has the state party taken to ensure the enjoyment of the right to education for linguistic minorities at all levels, including higher education?
- What measures is the state party taking to ensure inclusive education of children with disabilities, and to end the practice of institutionalisation? In particular, what steps is the state party taking to ensure that mainstream schools are able to accommodate the needs of children with disabilities?

⁵⁷ Resolution of the Government of the Republic of Kazakhstan, “On the approval of the numbers of the quota for students enrolling with educational organisations providing educational programs in the field of technical and professional, post-secondary and higher education”, No. 264 of 28 February 2012.

⁵⁸ Yusupzhanov. P., Monitoring study: Realization of the right to a higher education for persons with disabilities in the Republic of Kazakhstan, 2015.

⁵⁹ Committee on the Rights of the Child, Concluding Observations: Kazakhstan, UN Doc. CRC/C/ KAZ/CO/4, 30 October 2015, Paras 40–41.