



EQUAL RIGHTS TRUST

The Equal Rights Trust

Shadow Report Submitted to the 65th Session of the Committee on Economic, Social and Cultural Rights in relation to the Second Periodic Report prepared by:

Kazakhstan

January 2019

Statement of Interest

1. The Equal Rights Trust submits this shadow report to the Committee on Economic, Social and Cultural Rights (the Committee) in respect of its review of Kazakhstan at the Committee's 65th Session.
2. The Equal Rights Trust (the Trust) is an independent international organisation whose mission is to eliminate discrimination and ensure that everyone can participate in society on an equal basis. We work in partnership with equality defenders around the world to secure the adoption and implementation of equality laws. We have been actively involved in efforts to combat discrimination in Kazakhstan since 2012, working in partnership with the Kazakhstan International Bureau on Human Rights and Rule of Law (KIBHR), to increase the capacity of civil society to combat discrimination through documentation, litigation and advocacy.
3. As part of our work, the Trust and KIBHR undertook research on the legal framework on equality and non-discrimination and on patterns of discrimination and inequality in the Kazakhstan, including discrimination in respect of the rights protected by the International Covenant on Economic, Social and Cultural Rights (the Covenant). This research culminated in the publication of [*In the Name of Unity: Addressing Discrimination and Inequality in Kazakhstan*](#) (the Report) at the end of 2016.¹ The report provides, for the first time, a comprehensive assessment of the lived experience of those exposed to discrimination on various grounds alongside an analysis of the national legal framework on equality and non-discrimination.
4. This shadow report follows the Trust's submission to the Committee for the List of Issues review of Kazakhstan in January 2018. In the interests of concision, in this shadow report, we do not seek to reproduce the evidence provided in that submission, but rather to focus on those issues which the Committee chose to question the State Party on; we comment on the response from the State Party to the list of issues posed by the Committee and present proposed recommendations for the Committee's consideration. It should be noted that as a result of this approach, this submission only highlights certain examples of the role of discrimination in preventing the equal enjoyment of Covenant rights in Kazakhstan. Our [previous submission to the Committee](#) provided a more comprehensive assessment of the

¹ The Report can be accessed here: Equal Rights Trust in partnership with the Kazakhstan International Bureau for Human Rights and the Rule of Law, *In the Name of Unity: Addressing Discrimination and Inequality in Kazakhstan*, 2016, available at: http://www.equalrightstrust.org/ertdocumentbank/Kazakhstan_EN_0.pdf.

role of discrimination in preventing the equal enjoyment of Covenant rights.² These issues are in turn explored in greater depth in [In the Name of Unity](#).

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

5. Under Article 2(2) of the Covenant, States 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 set out under Principle 15 of the Declaration of Principles on Equality, and as elaborated by the Committee in General Comment 20, compliance with this obligation necessitates, *inter alia*, the adoption and effective implementation of specific, comprehensive non-discrimination legislation.³ Indeed, this is reflected in the Committee’s routine recommendation that States Parties adopt comprehensive anti-discrimination law to protect against discrimination on all grounds in order to meet their obligations under Article 2(2).⁴
6. In order to be genuinely comprehensive, anti-discrimination legislation should reflect the principles set out in the *Declaration of Principles on Equality* developed and launched in 2008 by 128 prominent human rights and equality advocates and experts convened by the Equal Rights Trust.⁵ The Declaration is based upon existing international legal standards on the rights to equality and non-discrimination and seeks to provide principles for the proper interpretation of these rights, in particular with reference to the requirement to adopt and implement equality laws. It sets out the essential elements of a comprehensive and effective system of equality law. Comprehensive equality legislation, as understood in the Declaration, should *inter alia* provide protection from direct discrimination, indirect discrimination, harassment and failure to make reasonable accommodation, on the basis of all grounds recognised in international law and in all areas of life regulated by law.⁶ It should require positive action measures (that is, measures “to overcome past disadvantage and to accelerate

² 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, 2018, available at: https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/KAZ/INT_CESCR_ICO_KAZ_29945_E.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; *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 15.

⁴ See *inter alia*, UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Concluding Observations on the initial report of Bangladesh*, 18 April 2018, E/C.12/BGD/CO/1, Para 24; UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Concluding Observations on the initial report of the Central African Republic*, 4 May 2018, E/C.12/CAF/CO/1, Para 18; UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Concluding Observations on the initial report of Niger*, 4 June 2018, E/C.12/NER/CO/1, Para 21.

⁵ *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, available at: <http://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perfect%20principles.pdf>.

⁶ For a more detailed elaboration of the principles which should be reflected in comprehensive equality legislation, see: *Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008.

progress towards equality of particular groups”).⁷ It should also contain procedural guarantees – ranging from the establishment of legal aid systems to provisions for the transfer of the burden of proof – to ensure that the protections which it provides are effective in practice.⁸

7. As our report *In the Name of Unity* illustrates, the most significant deficiency in Kazakhstan’s legal framework is the lack of comprehensive anti-discrimination legislation. In the absence of such legislation, the legal framework on equality is characterised by gaps and inconsistencies, and is inadequate to meet the state’s obligations under Article 2 of the Covenant.
8. The scope of protection provided by the primary constitutional equality provision, Article 14 of the Constitution, is unclear. Notably, the list of protected grounds – while clearly open-ended as a result of the inclusion of the phrase “or any other circumstances” – 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. In our list of issues submission, we suggested that the State Party should clarify that the phrase “any other circumstances” should be interpreted as prohibiting discrimination on the basis of grounds not explicitly listed but recognised at international law, such as sexual orientation and gender identity. We note that the State Party has not provided this clarification, but that, in response to Committee’s request for information about prevention of discrimination and attacks against members of the LGBTI community, it acknowledged that “there is no specific law providing for their protection”.⁹ In addition to the unclear personal scope of the right to non-discrimination in the Constitution, 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. In the absence of comprehensive anti-discrimination law which would complement and elaborate on the constitutional provision, the lack of clarity as to the personal scope and prohibited conducts which are covered by Article 14 creates the potential for significant uncertainty among both rights-holders and duty-bearers.
9. While Kazakhstan does not have a comprehensive anti-discrimination law, the state does have two specific non-discrimination laws which provide 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”)¹⁰ 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”).¹¹ However, as set out in

⁷ *Ibid.*, Principle 3, p. 5.

⁸ *Ibid.*, Principles 18-25. pp. 12-14.

⁹ Committee on Economic, Social and Cultural Rights, *List of issues in relation to the second periodic report of Kazakhstan, Addendum: Replies of Kazakhstan to the list of issues*, 13 December 2018, E/C.12/KAZ/Q/2/Add.1, Para 63.

¹⁰ 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

¹¹ Law of the Republic of Kazakhstan “On Social Protection of Disabled Persons in the Republic of Kazakhstan”, 13 April 2005 No. 39

our submission at the List of Issues stage, both of these laws have significant shortcomings, ranging from the failure to clearly define and prohibit the different forms of discrimination through to the inadequate enforcement mechanisms and remedies. The Trust and the Committee noted the need for the State Party to elaborate on steps taken to ensure the effectiveness of specific non-discrimination law at the list of issues review.¹² While we note the initiatives taken by the State Party to implement these laws, it is clear that the substantive and procedural shortcomings of the laws which prevent their effective implementation have not been addressed through legislative amendment, statutory guidance or interpretation by the courts.

10. In our list of issues submission, we discussed a number of the isolated provisions related to equality which are found in legislation governing other areas of law in Kazakhstan. We note that the State Party referenced a number of these provisions in its reply to the Committee's list of issues, citing them as evidence of the protections provided under Kazakhstani law. For example, the State Party refers to the prohibition of discrimination under Article 6 of the Labour Code in response to the Committee's question on equal pay, stating that "Kazakhstan guarantees equal pay for work of equal value".
11. In light of the State Party's reliance on these provisions, we must reiterate our concern that none of these existing provisions provide effective protection against discrimination, as they fail *inter alia* to properly define and prohibit direct and indirect discrimination, as well as harassment and failure to make reasonable accommodation. These provisions also fail to include protection on all grounds recognised under international law. The level of protection offered under these provisions therefore falls short of the State Party's international obligations under the Covenant and confirms the need for comprehensive anti-discrimination legislation.
12. Furthermore, we reiterate our concern that numerous provisions in the legal framework which are themselves discriminatory have not been repealed. For example, we note that 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.

Recommendations in Relation to the Legal Framework

- We urge the Committee to recommend that the State Party adopt comprehensive anti-discrimination law which is consistent with international standards, as reflected in the *Declaration of Principles on Equality*. Such legislation should include explicit protection from discrimination on all grounds recognised under international law, including sexual orientation and gender identity, should define and prohibit direct discrimination, indirect discrimination, harassment and failure to make reasonable accommodation, in all areas of life regulated by law. Such legislation should establish the procedural framework necessary for

¹² The Committee specifically asked the State Party to "please explain how the respective legislative framework adopted in 2015 and the national action plan (2012-2018) have in reality enhanced the enjoyment of economic, social and cultural rights by persons with disabilities" Committee on Economic, Social and Cultural Rights, *List of issues in relation to the second periodic report of Kazakhstan*, 23 April 2018, E/C.12/KAZ/Q/2, Para 8.

the effective enforcement of the right to non-discrimination, and should mandate the adoption of positive action measures in cases of substantive inequalities.

- We urge the Committee to repeat its recommendation to the State Party to undertake a comprehensive review of its existing legislative framework to (i) 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 (ii) amend, and where necessary, repeal existing legislative provisions which conflict with the right to equality.

Part 2: Discrimination Affecting the Enjoyment of Other Covenant Rights

13. Our report *In the Name of Unity* presents evidence of discrimination and inequality on the basis 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 Part of the shadow report highlights some of the key patterns of discrimination in respect of economic and social rights which are discussed in *In the Name of Unity*, considering where relevant the State Party's response to the Committee's list of issues.

Article 2(2) with Articles 6 and 7: Discriminatory denial of the right to work and the right to just and favourable conditions of work

14. Article 2(2) of the Covenant, read in conjunction with Articles 6 and 7, requires the State Party to guarantee the right to work and the right to just and favourable conditions of work, without discrimination.

Access to employment for women

15. In our list of issues submission, we highlighted persistent patterns of discrimination against women in the field of employment, despite the prohibition on discrimination on the basis of sex in both the Labour Code and the Law on Gender Equality. One such issue underlined in our list of issues submission and raised by the Committee is the persistent gender pay gap, which is exacerbated by *de facto* segregation in the labour market, where women continue to be primarily employed in the lowest paid sectors, such as healthcare and education.¹³

It is a matter of serious concern that despite the prohibition on discrimination provided in the Labour Code, Articles 16 and 26 of the Code prohibit women from undertaking work considered to be "harmful or hazardous". Regardless of intention, any measure prohibiting women from undertaking any occupation on the basis of their gender is directly discriminatory. The maintenance of a system of prohibitions on women working in certain roles, professions or types of work is a discriminatory and unjustified interference with, and denial of, their freedom of choice in respect of employment, and contributes to horizontal and vertical segregation in the labour market.

¹³ See above, note 1, p. 163.

16. These provisions were raised by the Trust and the Committee at the list of issues stage. The Trust notes with concern the State Party's comment in the response to the List of Issues that Article 26 is in line with the Convention on the Elimination of All Forms of Discrimination Against Women.¹⁴ While the State Party notes a reduction in the number of occupations prohibited for women, the rationale for the reduction appears to be the invention of technology which no longer makes such occupations harmful for women,¹⁵ rather than a recognition that women are as capable as men of undertaking such occupations, with or without technology. Furthermore, it is notable that 191 occupations remain on the list and the State Party has not indicated any intention to cease the practice of preventing women from undertaking work which they freely choose.

Access to employment for persons with disabilities

17. Our list of issues submission also underlined widespread discrimination against persons with disabilities in the area of employment. The Committee called on the State Party to elaborate on steps taken to increase employment of persons with disabilities. As noted in our list of issues submission, while some positive steps have been taken, such as the introduction of quotas under Article 31 of the Law on Social Protection of Disabled Persons, a number of legislative provisions are discriminatory against persons with disabilities, such as Articles 69 and 77 of the Labour Code which mandates a shorter working week for persons with disabilities and prevent overtime. Our list of issues submission also highlighted the fact that negative attitudes of employers persist against persons with disabilities,¹⁶ and impede access to employment opportunities.

Access to employment for linguistic minorities

18. We underlined in our list of issues submission the findings from *In the Name of Unity* that the Kazakh language is sometimes used as the main, and often only, language in certain workplaces where it is not necessary as a genuine occupational requirement.¹⁷ We note the Committee's request for further information on steps taken to increase employment opportunities for marginalized groups, including non-ethnic Kazakh people from lower socioeconomic backgrounds, yet did not see any elaboration on measures taken in the State Party's response.

Recommendations in Relation to Article 2(2) with Articles 6 and 7

- We urge the Committee to recommend that the State Party take immediate steps to ensure the enjoyment of the rights to work and to just and favourable conditions of work without discrimination, arising under Articles 6 and 7 when taken in conjunction with Article 2(2) of the Covenant.

¹⁴ See above, note 11, Para 103.

¹⁵ *Ibid.*, Para 104.

¹⁶ 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.

¹⁷ See above, note 1, p. 142.

- We call on the Committee to recommend that the State Party take steps to address continued horizontal and vertical segregation in the labour market and to immediately cease the practice of prohibiting women from undertaking occupations considered harmful or hazardous.
- We call on the Committee to recommend that the State Party monitor the effectiveness of positive action measures, such as quotas under Article 31 of the Law on Social Protection of Disabled Persons, and repeal any discriminatory legislative provisions which prevent persons with disabilities from participating in employment on an equal basis, such as Articles 69 and 77 of the Labour Code.
- We urge the Committee to ask the State Party to take immediate steps to combat discrimination in the field of employment against linguistic minorities and against other marginalised groups, including in particular LGBTI persons.

Article 2(2) with Article 12: Discriminatory denial of the right to physical and mental health

19. Article 12 of the Covenant in conjunction with Article 2(2) obliges Kazakhstan to guarantee the enjoyment of the right to the highest attainable standard of physical and mental health, without discrimination of any kind. As elaborated by the Committee in General Comment 14, this includes ensuring non-discrimination in the availability, accessibility, acceptability and quality of healthcare.¹⁸

Access to healthcare for LGBTI persons

20. In our list of issues submission and the list of issues adopted by the Committee, the State Party was asked to provide further information about the steps taken to ensure access to healthcare for LGBTI persons without discrimination. The State Party in its reply to the Committee did not directly address the issue. This is despite the fact that discrimination against LGBTI persons in the field of healthcare – such as denial of treatment when sexual orientation or gender identity is disclosed – is well-documented.¹⁹

Access to health care for persons living with HIV and tuberculosis

21. As set out in our list of issues submission, our report identifies various examples of persons living with HIV and other health conditions, such as tuberculosis, facing discrimination and stigmatisation by healthcare personnel and institutions.²⁰ To take one particularly severe example, Article 113(2) of the Law “On Public Health and the Healthcare System” makes persons with tuberculosis subject to forced hospitalisation, treatment and rehabilitation contrary to the Covenant. While the State Party has set out some steps which it has taken to prevent and treat HIV, no information is provided as to how the State Party addresses discrimination on the basis of health status and no mention is made of other health conditions, such as tuberculosis.

¹⁸ Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, Para 12.

¹⁹ See above, note 1, p. 188.

²⁰ See above, note 1, section 3.7.

Recommendations in Relation to Article 2(2) with Article 12

- We urge the Committee to recommend that the State Party take immediate steps to ensure the enjoyment of right to the highest attainable standard of health without discrimination, as guaranteed by Article 12 read in conjunction with Article 2(2). This should include, *inter alia*, steps to combat discrimination on the basis of sexual orientation, gender identity and health status by medical personnel.
- We call on the Committee to urge the State Party to amend the Law “On Public Health and the Healthcare System” to abolish forced hospitalisation of persons with tuberculosis.

Article 2(2) with Article 13: Discriminatory denial of the right to education

22. Article 13 of the Covenant taken together with Article 2(2) requires the State Party to guarantee the enjoyment of the right to education, without discrimination of any kind. As set out in detail in the Trust’s report *Learning InEquality: Using equality law to tackle barriers to primary education for out-of-school children*, discrimination is a major factor inhibiting children’s access to and completion of primary education in many parts of the world.²¹ Our research on Kazakhstan identified a number of patterns of discrimination in education.

Access to education and religious belief

23. Our list of issues submission highlighted discrimination against children on the basis of religious belief, drawn from our report *In the Name of Unity*. 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.²² We note the lack of information from the State Party on measures taken to combat discrimination on the basis of religion in the field of education.

Access to education for women

24. While recognising that Kazakhstan has made progress in increasing gender parity in access to education, *In the Name of Unity* the concerns raised by the Committee on the Elimination of all forms of Discrimination Against Women and others that stereotypes of women as caregivers are reflected in educational institutions, resulting in “stereotypical” choices of subjects (such as sewing).²³ While we note a number of steps taken by the State Party to promote gender equality, we note that it did not respond to this particular serious concern, which impedes women’s participation in both education and employment.

Access to education for persons with disabilities

²¹ Equal Rights Trust: *Learning InEquality: Using equality law to tackle barriers to primary education for out-of-school children*, London, November 2017, available at: http://www.equalrightstrust.org/ertdocumentbank/Learning%20InEquality_e-version_2.pdf.

²² See above, note 1, p. 122.

²³ Committee on the Elimination of Discrimination against Women, Concluding Observations: Kazakhstan, UN Doc. CEDAW/C/KAZ/CO/3-4, 10 March 2014, Para 16.

25. While we note the State Party's response to the list of issues on steps taken to guarantee inclusive education for children with disabilities, we note with concern the reference in the State Party's report which contrasts children with disabilities with "their healthy peers".²⁴ The use of such terminology fails to embrace a rights-based approach to disability in line with international standards.

Recommendations in Relation to Article 2(2) with Article 13

- We recommend that the Committee encourages the State Party to take immediate steps to fulfil its obligations under Article 2(2) taken together with Article 13 to guarantee access and enjoyment of the right to education for all learners on an equal basis. This should include measures to combat discrimination on the basis of *inter alia* religion, gender and disability.
- We recommend that the Committee urges the State Party to ensure that it takes a rights-based approach to disability and refrain from terminology which view disability as a disease.

²⁴ Committee on Economic, Social and Cultural Rights, *Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, Second periodic reports of States parties due in 2015: Kazakhstan*, 13 September 2017, E/C.12/KAZ/2, Para 119.