**Committee on Economic, Social and Cultural Rights**

|  |  |  |
| --- | --- | --- |
|  |  | E/C.12/KAZ/CO/2 |
|  | **Advance Unedited Version** | Distr.: General8 March 2019Original: English  |

 Concluding observations on the second periodic report of Kazakhstan[[1]](#footnote-2)\*

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Kazakhstan (E/C.12/KAZ/2) at its 16th and 17th meetings (see E/C.12/2019/SR.16 and 17) held on 27 and 28 February 2019, and adopted the present concluding observations at its 30th meeting, held on 8 March 2019.

 A. Introduction

1. The Committee welcomes the timely submission of the second periodic report of the State party and the submission of its written replies to the list of issues (E/C.12/KAZ/Q/2/Add.1). The Committee appreciates the constructive dialogue that it had with the State party’s high-level intersectoral delegation.

 B. Positive aspects

1. The Committee welcomes the legislative, institutional and policy measures taken by the State party to enhance the level of protection of economic, social and cultural rights in the State party, as referred to in the present concluding observations. It notes, in particular, with appreciation the adoption of the Kazakhstan Family and Gender Policy Concept until 2030.

 C. Principal subjects of concern and recommendations

 Application of the Covenant

1. While welcoming information on some examples of case law invoking the Covenant, the Committee is concerned about the impact of the removal from Article 4 (3) of the Constitution of the principle establishing direct applicability of international treaties within the domestic legal order on the protective role of the Covenant.
2. **The Committee recommends that the State party ensure the full domestic applicability of the Covenant. To that end, the Committee encourages the State party to enhance training for judges, lawyers and public officials on the provisions of the Covenant and their justiciability, as well as to effectively disseminate the knowledge of the Covenant among various sectors of the society. It recommends that the State party provide, in its next periodic report, further examples of relevant case law. In this context, the Committee draws the attention of the State party to its general comment No. 9 (1998) on the domestic implementation of the Covenant.**

 National human rights institution

1. The Committee welcomes information on the work on the Commissioner for Human Rights (Ombudsman) regarding the realization of the economic, social and cultural rights. It regrets the absence of the requested information on the outcomes of communications on violations of the economic, social and cultural rights received by the Ombudsman, corrective actions taken, and remedies provided to victims. The Committee is concerned at the low level of financial and human resources made available to the Commissioner that does not allow for hiring a sufficient number of staff and for the establishment of the Office’s presence at the local level (art. 2).
2. **The Committee recommends that the State party provide information in its next periodic report on the effective remedies provided by the Commissioner to address violations of economic, social, and cultural rights. The State party should take further measures to bring the Commissioner institution into full compliance with the Paris Principles (General Assembly resolution 48/134, annex), including by further strengthening its independence and by providing it with adequate financial and human resources to effectively and independently carry out its mandate, including the promotion and protection of economic, social and cultural rights.**

 Civil society

1. The Committee is concerned at information that some non-governmental organizations in the State party, working for the protection and promotion of human rights, in particular on the rights of lesbian, gay, bisexual and transgender persons, have faced difficulty in registering.
2. **The Committee recommends that the State party guarantee an enabling environment for the non-governmental organizations engaged in the promotion and protection of economic, social and cultural rights, including a functional and accommodating registration procedure.**

 Non-discrimination

1. The Committee is concerned that neither the Constitution nor the domestic legislation of the State Party explicitly prohibits some of the existing grounds of discrimination, such as gender identity and sexual orientation, which contributes to the persistence of discrimination on those grounds in access to employment, health care and education. It is also concerned by the lack of tailored legal protection of lesbian, gay, bisexual and transgender persons against attacks and harassment. Finally, the Committee notes with concern the indirect discrimination faced by foreign and internal migrants as a consequence of the prolonged process of obtaining residence registration, which hinders their access to the formal labour market, and social benefits in areas such as health care, housing, and education (art. 2).
2. **The Committee recommends that the State party:**
3. **Adopt comprehensive anti-discrimination legislation that addresses direct and indirect discrimination and encompasses all the prohibited grounds of discrimination, including sexual orientation and gender identity, set out in article 2 (2) of the Covenant, taking also into account the Committee’s general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights;**
4. **Take necessary measures to combat discrimination against foreign and internal migrants. Take effective measures to ensure that residence registration does not limit access to economic, social and cultural rights of foreign and internal migrants, in particular as regards access to the formal labour market, and social benefits such as health care, housing and education;**
5. **Take all the necessary steps to prevent and combat discrimination against lesbian, gay, bisexual and transgender persons, and ensure their equal enjoyment of Covenant rights, as well as enact tailored legal protections of these persons against attacks and harassment.**
6. While welcoming the ratification by the State Party of the International Convention on the Rights of Persons with Disabilities in 2015, the Committee is concerned that persons with disabilities continue to face discrimination and inequality in many areas of life. The Committee is particularly concerned at the situation of children with disabilities who reportedly face social stigma, discrimination, and exclusion.
7. **While noting that a new action plan for persons with disabilities will be adopted in 2019, the Committee recommends that the State party enhance its efforts to ensure that persons with disabilities enjoy unhindered access to all social services, including education and employment, by providing reasonable accommodation in school and in the workplace and improving the accessibility of facilities and services provided and open to the public.**

 Equality between men and women

1. The Committee is concerned that, notwithstanding the State party’s efforts to promote equality of rights of men and women and the evident progress achieved, gender stereotypes continue to persist in society negatively impacting women’s status in the family and the public life, as well as their access to economic, social and cultural rights. The Committee is also concerned that despite important measures already taken, women continue to be underrepresented in senior and decision-making positions both in the public and private sectors. (art. 3).
2. **The Committee recommends that the State party revisit the issue of gender role stereotypes and their consequences for both the family and social life, in particular with a view to facilitating women’s participation in the economy, the labour market, and other areas of social and cultural life. The Committee recommends that the State party undertake further efforts aimed at enhancing women’s representation in senior and decision-making positions both in the public and private sectors, including by the adoption of special temporary measures. The State Party is encouraged to intensify efforts to promote training for women in non-traditional fields of employment and in areas that will provide them with equal career opportunities and take other necessary measures to guarantee the full access to, and enjoyment of economic, social and cultural rights by women. The Committee draws the attention of the State Party of its General Comment No 16 (2005) on the equal rights of men and women to the enjoyment of all economic, social and cultural rights.**

 Business and Human Rights

1. While noting the information provided by the State party that an action plan on business and human rights is under preparation, the Committee regrets the lack of comprehensive data and information on the regulatory framework established to ensure that business entities respect the Covenant rights and apply human rights due diligence. The Committee also regrets that information is not collected on claims of victims of violations of economic, social and cultural rights resulting from the business operations.
2. **The Committee recommends that the State party:**
3. **Finalize and adopt the National Action Plan on Business and Human Rights recommended by the Human Rights Council to support the implementation of the Guiding Principles on Business and Human Rights (Human Rights Council Res. 26/22);**
4. **Continue to further develop and implement the regulatory framework for companies operating in the State party and those domiciled under its jurisdiction and acting abroad, to ensure that their activities do not negatively affect the enjoyment of economic, social and cultural rights and contribute to their implementation;**
5. **Take all necessary measures to ensure the legal liability of companies based in, or managed from, the State party’s territory for violations of economic, social and cultural rights resulting from their activities and provide adequate remedies to victims;**
6. **Collect updated information on claims filed by victims of the violations of economic, social and cultural rights committed by business entities;**
7. **Carry out human rights and environmental impact assessments on a regular basis before entering into investment and trade agreements, or licencing investments, and evaluate the implementation of such agreements or licences;**
8. **The Committee draws the State party’s attention to its general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.**

 Maximum available resources

1. While noting the economic growth of the State party in recent years and welcoming its commitment declared during the dialogue to increase public social spending, the Committee is concerned at the overall low level of public expenditure on social services as a ratio of the gross domestic product (GDP), including in health care and education. The Committee is also concerned at the recent decrease in social security spending from 4 percent to 2 percent. The Committee is further concerned by the disparities between regions, in particular that South and East Kazakhstan seem to lag behind in the enjoyment of economic, social and cultural rights (art. 2 (1)).
2. **The Committee recommends that the State party ensure the progressive realization of economic, social and cultural rights through substantially increasing the levels of public social expenditures, especially in the areas of social security, health care and education, at both the national and local levels, with a view in particular to reducing regional disparities and eradicating existing poverty.**

 Combatting corruption

1. While noting progress achieved in the light of the Transparency International Corruption Perception Index and various steps taken by the State Party, the Committee remains concerned by the persisting high level of corruption and the high number of complaints concerning the impact of corruption on the enjoyment of economic, social and cultural rights.
2. **The Committee recommends that the State Party continue and further intensify its efforts to combat corruption by: systematically addressing its systemic sources; ensuring the effective protection of anticorruption activists, whistleblowers, and witnesses; and providing adequate compensation to victims. It also recommends that the State Party provide information in its next periodic report about the results of complaints proceedings concerning the impact of corruption on the enjoyment of economic, social and cultural rights, as well as about the implementation of its 10-year (2015-2025) anti-corruption strategy.**

 Women’s right to work

1. While noting that the list of prohibited jobs for women has decreased from 287 to 191, the Committee is concerned about the continued existence of the list, and about the lack of scientific or medical assessment of the real impact these professions may have on women’s reproductive health (art. 6).
2. **The Committee recommends that the State party review the list of prohibited jobs for women, and ensure that it covers only restrictions necessary for the protection of maternity and is based strictly on medical considerations (see general comment No. 23, paras. 17 and 47 (a)) and examine whether other forms of legal protection of women regarding occupational health and safety might not be more effective than preventing women from undertaking certain jobs.**

 Gender wage gap

1. While noting that in 2017, women’s wages increased slightly to 67.8 percent of men’s, the Committee remains concerned at the persistent wage gap between men and women (art. 7).
2. **The Committee recommends that the State party further reduce the persistent gender wage gap, including by combating gender role stereotypes and improving the vocational and professional skills of women and their access to equal employment opportunities, including in non-traditional fields.**

 Right to strike

1. The Committee is concerned that despite its previous recommendation (E/C.12/KAZ/CO/1, para. 22), restrictions continue on the right to strike for civil servants and law enforcement officers. The Committee is further concerned that the extensive interpretation of the Criminal Code Art. 402 Section 177 and of the Labour Code, making punishable action in favour of the continuation of strikes declared illegal, may lead to unjustifiable restrictions on the right to strike (art. 8).
2. **The Committee recommends that the State party amend its legislation, including Article 402 of the Criminal Code and Section 177 of the Labour Code, to ensure that workers can exercise their right to strike, without undue restrictions.**

 Just and favourable conditions of work

1. The Committee is concerned about the working conditions of migrant workers, who have limited options for legal employment, are subject to quota systems and reportedly fear reporting violations due to mistrust in authorities. Migrant workers often work without contracts, are subject to non-payment of salaries, confiscation of their passports, and long working hours. Furthermore, the Committee is concerned by reports of still existing forced and bonded labour of some migrant workers in the tobacco, cotton and construction industries as well as of some women domestic workers subject to domestic servitude. The Committee is also concerned by reports that a significant number of persons work in the informal sectors, especially migrants, women, and persons over 65 years of age (art. 7).
2. **The Committee urges the State party to:**
3. **Ensure access to legal employment for migrant workers and adopt necessary measures to ensure that all migrant workers enjoy the same conditions as other workers as regards contracts, remuneration, maintaining passports, and limitation of working hours;**
4. **Improve the complaint mechanisms and legal assistance provided to migrant workers;**
5. **Ensure an end to forced and bonded labour including through strengthening the legal framework and the effective enforcement of existing legislation protecting migrant workers from such abuse and exploitation;**
6. **Step up its measures to gradually regularize the status of workers engaged in the informal economy, and in the meantime ensure that they are covered by existing labour and social protection legislation;**
7. **Enable the labour inspectorate to cover the access to labour rights in cases of informal employment;**
8. **The Committee refers the State party to its general comment No. 23 (2016) on the Right to just and favorable conditions of work.**

 Trade union rights

1. The Committee is concerned that the 2018 efforts to amend the 2014 Trade Union Law with a view to inter alia simplifying the trade union registration procedures have not yet been submitted to the Parliament. The Committee is further concerned about incidents of arrests and convictions of trade union leaders in connection with their activities. It also expresses deep concern over reports of assaults, intimidation and harassment of trade union activists (art. 8).
2. **The Committee recommends that the State party ensure the effectiveness of collective bargaining and of the right to union representation, both in law and in practice, in conformity with article 8 of the Covenant and with the provisions of the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It also urges the State party to take all the necessary measures, including legislative ones, to prevent the criminal prosecution of workers who have participated in strikes. It further recommends that the State party take all measures to protect trade union activists from assaults, intimidation and harassment.**

 Right to social security

1. While noting that the social security benefits for disability have seen a substantial increase, the Committee is concerned that despite its previous recommendation (E/C.12/KAZ/CO/1, para. 23) the State party’s social security system does not cover all of the relevant population groups, in particular workers in the informal economy, self-employed workers, non-nationals, and irregular migrant workers (art. 9).
2. **The Committee recommends that the State party develop a universal social security system, with a view to covering all segments of its population. In that regard, the Committee recommends that the State party consider the establishment of a social protection floor as defined in the Social Protection Floors Recommendation, 2012 (No. 202) of the International Labour Organization. The Committee refers the State party to its general comment No. 19 (2007) on the right to social security and its statement, adopted in 2015, on “Social protection floors: an essential element of the right to social security and of the sustainable development goals”.**

 Domestic violence

1. The Committee is concerned by the persistence of domestic violence in the State party, and that cases of “light damage to health and beating” are punished under administrative and not criminal law.
2. **The Committee recommends that the State party criminalize all forms of domestic violence with a view to protecting all victims of domestic violence, bringing perpetrators to justice and preventing impunity. The Committee also recommends that the State party step up its efforts to combat domestic violence, including by (i) strengthening awareness-raising campaigns, (ii) providing support to victims, and (iii) training law enforcement officers to sensitize them to all forms of domestic violence.**

 Child labour

1. The Committee is concerned that despite its previous recommendation (E/C.12/KAZ/CO/1, para. 27), and State party’s efforts, child labour by migrant and Kazakh children continues to persist, including in tobacco, cotton, and agriculture farms (art. 10, para. 3).
2. **The Committee urges the State party to take effective measures to combat child labour and protect all children against all forms of exploitation. The Committee requests that the State party in its next periodic report include detailed information on implementation and impact of measures to eradicate child labour.**

 Children with disabilities

1. The Committee is concerned by the situation of children with disabilities in orphanages for children with physical and mental disabilities, which are reportedly overcrowded, unsanitary, and understaffed (art. 10).
2. **The Committee recommends that the State party ensure particular attention is given in the national action plan on persons with disabilities, which will be adopted in 2019, to improving the situation of children with disabilities, in particular those in orphanages. It further recommends that the State party ensure that a sufficient level of public funding is allocated to implementing the national action plan, and disability-related programmes and services.**

 Right to housing

1. While noting information on recent housing construction programmes, the Committee is concerned at the lack of detailed information on effective measures taken to provide social housing to disadvantaged and marginalized individuals and families, such as migrant workers and persons living in rural areas, and measures to prioritize these groups in the design and implementation of housing programmes (art. 11).
2. **The Committee recommends that the State party take all necessary measures to provide affordable social housing to disadvantaged and marginalized individuals and families, such as migrants workers and persons living in rural areas. The Committee requests that the State party include detailed information in this respect in its next periodic report. The Committee refers the State party to its general comment No. 4 (1991) on the right to adequate housing.**

 Informed consent for medical procedures

1. The Committee is concerned that under the Code on Public Health and the Health System (Article 94, part 2), doctors can carry out medical procedures on patients declared “incapable” without seeking their informed consent and using only the approval of their guardians. The Committee is also concerned that under the same code (Article 180, part 9, point 5), patients declared “incapable” can exceptionally be subject to “clinical tests of medical technologies and medicines, intended for treatment of mental disorders (diseases), for the patients with mental disorders (diseases)”. The Committee is further concerned that while forced placement in psychiatric institutions requires a court order, people who are declared “incapable” can be placed in a psychiatric institution against their will (art. 12).
2. **The Committee recommends that the State party:**
3. **Consider amendment of Article 94 (part 2) of the Code on Public Health and the Health System with a view to ensuring that treatments of patients declared incapable are provided on the basis of their free and informed consent, unless exceptional circumstances require otherwise, taking into account the World Health Organization’s 2003 surface guidance package on mental health, legislation and human rights;**
4. **Consider the removal of the exception established in Article 180 (part 9, point 5) of the Code on Public Health and the Health System to the ban on clinical tests of medical technologies and medicines on persons with mental disorders (diseases) who have been declared “incapable” by the court;**
5. **Guarantee full respect for the human rights of patients in psychiatric institutions, including through independent and effective monitoring of treatments and through the effective judicial review of orders for confinement to a psychiatric institution.**

 Drug use

1. The Committee is concerned at the high number of persons who are dependent on opioids and the increasing HIV prevalence among people who inject drugs. The Committee is also concerned that access to harm reduction programs, rehabilitation and treatments remains limited for people who need them, in particular the opioid substitution therapy. The Committee is also concerned that criminalization of drug use deters many users from accessing these programs. It is further concerned by reports about the incidences of the police and prosecutors accessing medical records of drug users who were receiving treatment in medical centers (art. 12).
2. **The Committee recommends that the State party intensify its efforts with regard to preventing drug abuse, including through education and awareness-raising programmes. The Committee also recommends that the State strengthen harm** reduction **programs and provide appropriate health care, psychological support services and rehabilitation including expansion of the provision of opioid substitution therapy, to drug users. The Committee recommends that the State party ensure the confidentiality of medical records of drug users and consider decriminalization of drug use. The Committee refers the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of health.**

 Right to education

1. While recognizing the efforts made by the State party to ensure universal access to education and improve its quality, the Committee remains concerned about reports that:
2. An important number of children do not have access to early education and that there are strong regional disparities in the access to and in the quality of education;
3. Corruption remains prevalent within the education system, in particular in obtaining enrollment and higher grades;
4. The quality of education remains low (according to PISA results) compared to the level of development due to shortcomings in infrastructure and insufficient number of qualified teachers;
5. Quality and access to inclusive education of persons with disabilities remains insufficient;
6. Many children of unregistered migrants cannot access education or schoolbooks because of problems with registration or missing legal identity documents;
7. Bullying, violence, and discrimination persist in schools, in particular against lesbian, gay, bisexual and transgender students;
8. Many students cannot access education in their own ethnic minority language (art. 13).
9. **The Committee recommends that the State party:**
10. **Strengthen public education, including by increasing the budget allocated to early primary and secondary education with a view to improving access to, and the quality of education at all levels for all; increase the enrolment rates at all levels of education, paying special attention to girls, children living in rural areas and children from low-income families;**
11. **Continue its efforts to put an end to incidences of corruption in educational institutions, through inter-alia establishing transparent enrollment systems, ensuring visible channels for reporting corruption, and conducting efficient investigations into alleged corruption;**
12. **Improve the quality of education and expand investment in infrastructure and teacher training;**
13. **Make all efforts to ensure inclusive education for all children with disabilities, including by allocating resources for the provision of reasonable accommodation and additional professional training for teachers;**
14. **Protect all children against bullying and violence in schools and expand efforts to prevent the occurrence of this phenomenon;**
15. **Ensure that students belonging to minorities have access to education in their own languages;**
16. **Consider the Committee’s general comment No. 13 (1999) on the right to education (art. 13).**

 Cultural rights

1. The Committee is concerned about the reported lack of transparency and of corruption in resource allocation for scientific research, and their impact on the right to participate in scientific activities. The Committee is also concerned that despite having a large youth population, there is a reported lack of State party policies involving youth in scientific and cultural activities (art. 15).
2. **The Committee recommends that the State party pursue its efforts, including through increased transparent budget allocation, to promote the development and dissemination of science and culture. It also recommends that the State party take the necessary measures to continue promoting the accessibility and affordability of cultural activities, and develop policies and programs involving youth in scientific and cultural activities.**

 D. Other recommendations

1. **The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**
2. **The Committee recommends that the State party take fully into account its obligations under the Covenant and ensure the full enjoyment of the rights enshrined therein in the implementation of the 2030 Agenda for Sustainable Development at the national level, with international assistance and cooperation when needed. Achievement of the Sustainable Development Goals would be significantly facilitated by the State party establishing independent mechanisms to monitor progress and treating beneficiaries of public programmes as rights holders who can claim entitlements. Implementing the Goals on the basis of the principles of participation, accountability and non-discrimination would ensure that no one is left behind.**
3. **The Committee recommends that the State party take steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights in order to facilitate the assessment of progress achieved by the State party in complying with its obligations under the Covenant for various segments of the population. In that context, the Committee refers the State party to, inter alia, the conceptual and methodological framework on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (see HRI/MC/2008/3).**
4. **The Committee requests that the State party disseminate the present concluding observations widely at all levels of society, including at the national, provincial and municipal levels, in particular among parliamentarians, public officials and judicial authorities, and that it inform the Committee in its next periodic report about the steps taken to implement them. The Committee encourages the State party to engage with the Commissioner for Human Rights (Ombudsman), non-governmental organizations and other members of civil society in the follow-up to the present concluding observations and in the process of consultation at the national level prior to the submission of its next periodic report.**
5. **In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide, within 24 months of the adoption of the present concluding observations, information on the implementation of the recommendations contained in paragraphs on non-discrimination (para. 11 a and b), maximum available resources (para. 20), and trade union rights (para. 33) above.**
6. **The Committee requests the State party to submit its third periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 March 2024.**

1. \* Adopted by the Committee at its sixty-fifth session (18 February–8 March 2019). [↑](#footnote-ref-2)