

IN THE NAME OF UNITY

**Addressing Discrimination
and Inequality in Kazakhstan**

Equal Rights Trust
in partnership with the Kazakhstan International
Bureau for Human Rights and the Rule of Law



EQUAL RIGHTS TRUST
IN PARTNERSHIP WITH
THE KAZAKHSTAN INTERNATIONAL BUREAU
FOR HUMAN RIGHTS AND RULE OF LAW

In the Name of Unity

Addressing Discrimination and Inequality in Kazakhstan

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The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

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Equal Rights Trust
314-320 Gray's Inn Road
London WC1X 8DP
United Kingdom
Tel: +44 (0) 207 610 2786

www.equalrightstrust.org

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Unity! Stability! Creativity!

Election slogan of Nur Otan, the ruling party of Kazakhstan

The source of success is unity.

Abai Kunanbaev, The Book of Words

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Yevgeniy Zhovtis at KIBHR, and Jim Fitzgerald and Joanna Whiteman at the Equal Rights Trust oversaw the production of the report. The first draft of the report was prepared in English by Yevgeniy Zhovtis of KIBHR, with assistance from Tayyiba Bajwa, Sam Barnes, Ben Smith, Hazel Blake and Dan Zwi from the Equal Rights Trust. Jim Fitzgerald and Joanna Whiteman revised, finalised and authorised the report for publication in English and translation into Russian. Yevgeniy Zhovtis and Diana Berezovskaya of KIBHR finalised and authorised the Russian-language version for publication.

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This report is an outcome of a partnership between the Equal Rights Trust and KIBHR in the context of a project designed to empower civil society to combat discrimination and inequality in Kazakhstan, funded by the European Union. Both the Equal Rights Trust and KIBHR are very grateful to the European Union for the financial support provided. However, the contents of this publication are the sole responsibility of the Equal Rights Trust and can in no way be taken to represent the views of the European Union. The European Union has not interfered in any way whatsoever with the research or contents of this report.

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ACRONYMS AND ABBREVIATIONS

CAT	Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
CAT-OP	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CIS	Commonwealth of Independent States
CPAP	Country Programme Action Plan between the Government of Republic of Kazakhstan and the United Nations Population Fund 2010-2015
CPPL	Communist People's Party of Kazakhstan
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CRPD-OP	Optional Protocol of the Convention on the Rights of Persons with Disabilities
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICESCR-OP	Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
IDU	Intravenous drug user
ILO	International Labour Organization
IOM	International Organization for Migration
KIBHR	Kazakhstan International Bureau for Human Rights and Rule of Law
LGBT	Lesbian, gay, bisexual and transgender
MSM	Men who have sex with men

NSDP	Nationwide Social Democratic Party
ODIHR-OSCE	Office for Democratic Institutions and Human Rights
OECD	Organization for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
RPA	Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence
SSR	Soviet Socialist Republic
TB	Tuberculosis
UN	United Nations
UNAIDS	Joint United Nations programme on HIV/AIDS
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Programme
UPR	Universal Periodic Review
USD	United States Dollar

EXECUTIVE SUMMARY

“Unity! Stability! Creativity!”. This is the slogan of Nur Otan, the political party of Nursultan Nazarbayev, the Republic of Kazakhstan’s first and only president.

Since 1991, Nazarbayev has sought to promote a sense of national unity. Yet this report, published shortly after the 25th anniversary of Kazakhstan’s independence, finds that this unity has not been built on the state’s multi-ethnic, multi-religious and multi-lingual past. Instead, we find that the unity which the state pursues excludes many groups, in particular those whose religion, ethnicity or political opinion challenges the vision promoted by Nazarbayev.

The 2011 Law on Religious Activity and Religious Associations explicitly emphasises the centrality of Hanafi Islam and Russian Orthodoxy to Kazakhstani culture and imposes onerous registration requirements, indirectly discriminating against minority religious groups. The unofficial policy of “Kazakhisation” – the promotion of the Kazakhstani national identity and the history, language and culture of ethnic Kazakhs as one and the same – and its application to language policy in particular creates barriers for ethnic minorities in accessing public services, public employment and public education. Through both legal and extra-legal means, the state has denied or limited the rights to freedom from arbitrary detention and the freedoms of expression, assembly and association in ways which discriminate on the basis of political opinion.

The notion of national unity promoted by the state also leaves out women, lesbian, gay, bisexual and transgender persons (LGBT), persons with disabilities and those living with Human Immunodeficiency Virus (HIV). Women experience discrimination in many areas of life: discriminatory labour and criminal laws remain in force, gender-based violence remains a significant problem and there is widespread gender inequality in then employment market. LGBT persons enjoy no explicit protection from discrimination, the state prohibits same sex marriage and adoption, and imposes unacceptable conditions on persons wishing to changer their legal gender identity. Both persons with disabilities and persons living with HIV are subject to paternalistic discriminatory laws, grounded in stereotypes, which limit their participation in public life.

Our assessment of the legal framework in place to combat discrimination and promote equality finds little evidence of unification. The constitutional non-discrimination provision explicitly lists only some of the grounds of discrimina-

tion recognised at international law. Instead of comprehensive anti-discrimination legislation, the state has specific laws on gender and disability and isolated provisions in other areas of law. Implementation and enforcement are weak.

Thus, this report finds that, far from being unified, Kazakhstan is a place in which members of certain groups are excluded and marginalised. In an alarming number of cases, these experiences have their root in state policies, underpinning which is the notion of a unified Kazakhstan which appears increasingly exclusive. As the state celebrates the 25th anniversary of its independence, it must be hoped that Kazakhstan begins to pursue a type of unity which is more inclusive and reflective of the state's diverse past.

Part 1: Introduction

Purpose and Structure

The purpose of this report is to highlight and analyse discrimination and inequality in the Republic of Kazakhstan (Kazakhstan) and to recommend steps aimed at combatting discrimination and promoting equality. The report explores long-recognised human rights issues, while also documenting less well-known patterns of discrimination. The report brings together – for the first time – evidence of the lived experience of discrimination and inequality in its various forms with an analysis of the laws, policies, practices and institutions established to address them.

The report comprises four parts. **Part 1** sets out the purpose and structure of the report, the conceptual framework which has guided the work, and the research methodology. It also provides basic information about Kazakhstan, its history and current political situation. **Part 2** contains an analysis of the legal framework as it relates to non-discrimination and equality; setting out Kazakhstan's international obligations before analysing state legislation for compliance with international law and best practice. This section goes on to consider the enforcement of legal guarantees; examining access to justice, the legal aid system, evidence and proof, and finally, remedies and sanctions. **Part 3** presents the principal patterns of inequality and discrimination affecting groups in Kazakhstan, focusing on the characteristics of religion or belief, ethnicity, language, gender, sexual orientation and gender identity, political opinion, disability and health status. **Part 4** of this report contains recommendations, drawn from an analysis of patterns of inequality and discrimina-

tion examined in Part 3 and the gaps, weaknesses and inconsistencies in the legal and policy framework identified in Part 2.

Conceptual Framework and Research Methodology

This report takes as its conceptual framework the unified human rights perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The unified framework brings together:

- a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;
- b) types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, provision of goods and services, among others; and
- c) status inequalities and socio-economic inequalities.

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, adopted in 2008, signed initially by 128, and subsequently by hundreds more, experts and activists on equality and human rights from all over the world.

This report is published by the Equal Rights Trust and the Kazakhstan International Bureau for Human Rights and the Rule of Law (KIBHR). Between 2013 and 2016 the two organisations worked in partnership on a project designed to empower civil society to combat discrimination and inequality in Kazakhstan, funded by the European Union through its European Instrument for Democracy and Human Rights.

The Equal Rights Trust defined the scope and structure of the report and set the framework for the research, while KIBHR was responsible for the research itself. Research on the legal framework was undertaken by volunteer lawyers and reviewed and approved by Yevgeniy Zhovtis of KIBHR. Research on patterns of discrimination for Part 3 of the report was planned and undertaken by KIBHR.

Country Context, History, Government and Politics

Kazakhstan is a large landlocked country, bordered to the north and west by Russia, to the southwest by the Caspian Sea, to the south by Uzbekistan and Kyrgyzstan and to the east by China. It is the ninth largest country in the world and is subdivided into 14 provinces, or oblasts, which are in turn subdivided into 175 districts.

The population of Kazakhstan is approximately 17.8 million people. Ethnic Kazkaks are the largest ethnic group, making up 63% of the population. There is a sizeable ethnic Russian minority (24%), and there are also many smaller ethnic minorities including Uzbeks (2.9%), Ukrainians (2.1%), Uighurs (1.4%), Tatars (1.3%) and Germans (1.1%). The remainder of the population includes small populations of Azerbaijanis, Bashkirs, Belarussians, Chechens, Dungans, Kyrgyz, Koreans, Kurds, Poles, Tajiks, Turks and Ukrainians.

According to the 2009 census, 70.2% of the population is Muslim while 23.9 is Orthodox Christian. There are a number of minority Islamic and Christian groups, in addition to other religious minorities.

The official state language is Kazakh, although Russian is given equal status in state organisations and other government bodies. In the 2009 Census, 93.5% of the total population indicated that their primary language corresponded with the primary language of their ethnic group. It is noteworthy that while 74% of the total population understand spoken Kazakh, 94.4% understand spoken Russian.

World Bank estimates of Kazakhstan's Gross Domestic Product (GDP) for 2015 stood at around \$184.4 billion (in current US\$); GDP per capita in the same year was \$10,508. In the 2015 United Nations Development Programme Human Development Index, Kazakhstan was given a rating of 0.788, placing it 56th out of 188 countries ranked with a "high human development" status.

The origins of modern day Kazakhstan can be traced back to the 13th century. Kazakhstan was subject to Soviet Rule for much of the 20th century, before declaring its independence in 1991. In December 1991 Nursultan Nazarbayev was elected President and has won every election since, remaining in office for 25 years.

The current Constitution was approved by referendum in 1995 and has been amended several times since its adoption in 1998, 2007 and 2011. Kazakhstan is a unitary state with a Presidential form of government. There is a bicameral Parliament, comprising the Mazhilis and the Senate. The President is head of state and Commander in Chief of the Armed Forces and is elected by a popular vote for a (renewable) five-year term. In March 2016 Parliamentary elections were held; the National Democratic Party “Nur Otan” which is headed by the President, won 82% of the vote and 84 of 98 directly elected seats in the Mazhilis.

Part 2: Legal and Policy Framework Related to Equality

This Part examines Kazakhstan’s international legal obligations and the domestic legal and policy framework which protects the rights to equality and non-discrimination. It also considers the extent to which there is adequate enforcement of the legal and policy framework and effective access to justice for victims of discrimination.

Section 2.1 of the report assesses Kazakhstan’s **participation in international instruments**. It finds that Kazakhstan has a good record of participation in the UN human rights treaty system. With the exception of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families it has ratified the core United Nations human rights treaties. Kazakhstan has a mixed record in relation to other international treaties which have a bearing on the enjoyment by all of the rights to equality and non-discrimination: it has acceded to the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees in 1999 but it has not signed or ratified either of the key statelessness conventions. The state has ratified all eight of the core International Labour Organization (ILO) Conventions.

Kazakhstan is a monist state, in which ratified international treaties automatically become part of national law. International treaty obligations take precedence over national law, although the Supreme Court has clarified that in the event of a conflict between international treaty obligations and the Constitution, the constitutional provisions prevail. In practice, the courts very rarely rely on or cite the provisions of international treaties.

Section 2.2 explores Kazakhstan’s domestic legal system, looking first at its **Constitution**. The right to equality and freedom from discrimination is established under Article 14 of the Constitution, 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 list of protected grounds in Article 14 of the Constitution is short and omits well-recognised grounds such as sexual orientation, gender identity, disability and health status. While the words “any other circumstances” mean that the provision is open-ended, there is no guidance either in the Constitution itself, nor in interpretations by the courts or the government of the scope of this provision. Given that the state does not have comprehensive anti-discrimination legislation, it is concerning that the Constitution does not explicitly prohibit both direct and indirect discrimination.

Section 2.2.2 addresses **specific equality and anti-discrimination legislation** in Kazakhstan. It notes that the most significant deficiency in Kazakhstan’s legal framework on equality is the lack of any comprehensive equality or anti-discrimination legislation. The state has enacted two specific pieces of non-discrimination legislation, namely the Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women and the Law on Social Protection of Disabled Persons in the Republic of Kazakhstan. However, neither law provides a comprehensive definition of discrimination which explicitly incorporates indirect discrimination, multiple discrimination or discrimination by association. Furthermore, certain provisions in these laws are in fact discriminatory. Most significantly, neither of the laws is directly enforceable and neither provides for specified remedies for breaches of the rights established therein.

Section 2.2.3 reviews a number of **non-discrimination provisions in other legal fields**, including civil, criminal, labour, administrative, education, and family law. It identifies several problems with the guarantees of equality and non-discrimination found in these Acts. In particular, the criminalisation of less serious forms of discrimination under the Criminal Code and the expansive ambit of the offence of inciting hatred are a cause for concern.

Finally, the **enforcement and implementation of laws and policies** related to equality is analysed in section 3.3. It finds that a weak legislative framework for protection of the right to non-discrimination is matched by poor enforcement. The national human rights institution, the Commissioner for

Human Rights, is under-resourced and there are concerns about the independence of the judiciary. Although there is broad entitlement to legal aid, this is not supported by sufficient funding and there are concerns about the quality of service offered under legal aid contracts.

This section concludes by noting that Kazakhstani law contains several deficiencies which need to be addressed in order to effectively guarantee the rights to equality and non-discrimination. It argues that the government should prioritise the adoption of comprehensive equality legislation and ensuring access to justice for victims of discrimination and inequality including by guaranteeing the independence of courts and lawyers and availability of legal aid.

Part 3: Patterns of Discrimination

This part of the report presents evidence of discrimination and inequality arising on the basis of: (i) religion or belief; (ii) ethnicity and language; (iii) gender; (iv) sexual orientation and gender identity; (v) political opinion; (vi) disability; and (vii) health status. The report does not provide an exhaustive account of all forms of discrimination which prevail in Kazakhstan, but instead aims to provide an insight into some of the most significant patterns of discrimination in the country. In respect of each ground covered, the report seeks to discuss the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws, the action of state actors carrying out public functions, exposure to discriminatory violence, and discrimination and inequality in areas such as employment, education and access to goods and services.

Section 3.1 of the report addresses the question of discrimination on the basis of **religion or belief**. It examines the impact of the 2011 Law on Religious Activity and Religious Associations which emphasises the centrality of Hanafi Islam and Russian Orthodoxy, the two dominant religions in Kazakhstan. It finds that the registration requirements under the 2011 Law are indirectly discriminatory, having the effect of severely limiting the activities of minority religious groups who are disproportionately impacted by the onerous registration requirements, which include an element of “theological review”. The section also identifies concerns that legislation designed to combat terrorism and hate speech is broad and vague, creating the scope for discriminatory application. It reviews evidence of discrimination against members of minority

religions by state agents in the enforcement of the 2011 Law and other laws, and presents evidence of discrimination in education.

Discrimination on the basis of **ethnicity and language** is considered in section 3.2. Kazakhstan is a country with considerable ethnic diversity, with census data listing more than 140 ethnic groups. Although the country has not experienced the widespread inter-ethnic violence seen in neighbouring Kyrgyzstan and Tajikistan, the section examines a number of incidents of inter-ethnic violence involving the Tajik and Uzbek communities. This section also discusses concerns about the enforcement of hate speech legislation, and the representation of ethnic minorities in public life. However, the section identifies that the most significant issue for members of ethnic minorities is **language**. The section argues that while language is a discrete ground of discrimination, in Kazakhstan, the question of language discrimination must be seen through the prism of race and ethnicity. There is a strong correlation between ethnicity and primary language, and while 94% of the population understand Russian, approximately 75% of the largest ethnic minority groups do not understand Kazakh. In this light, evidence that the state is not consistently respecting the Constitution – which establishes Kazakh as the official state language but provides that Russian shall be used on a par with Kazakh in state institutions – raises concerns regarding indirect discrimination on the basis of ethnicity. The section presents and analyses evidence of state agents in public services, public employment and education failing, and in some cases refusing, to communicate in Russian.

In section 3.3 of the report, we assess the position of **women** in Kazakhstani society and conclude that they experience discrimination and inequality in many areas of life. When compared with other grounds of discrimination, there is a relatively strong legal framework prohibiting discrimination on the basis of sex or gender: in addition to the guarantee of non-discrimination in the Constitution, the state has enacted Law ‘On State Guarantees of Equal Rights and Equal Opportunities for Men and Women’. However, patriarchal attitudes and stereotypes about the role of women persist. Such stereotypes are reflected in the continuation in force of discriminatory laws, such as provisions in the Labour Code which prohibit women from working in certain jobs. They are also reflected in the legal framework governing gender-based violence, which does not criminalise all forms of marital rape, and provides for “reconciliation” between parties. While women’s participation in both education and employment is strong, horizontal and verti-

cal segregation of the labour market persists and women earn substantially less than men.

Section 3.4 examines discrimination against **lesbian, gay, bisexual and transgender persons (LGBT)**. It finds that there is significant stigma against LGBT persons which inhibits the open expression of sexual orientation and gender identity. It notes that while Kazakhstan no longer criminalises consensual same-sex relations, the Criminal Code contains a number of discriminatory provisions, while the Code on Marriage (Matrimony) and Family specifically prohibits same-sex marriage. It also examines the attempts – in 2015 – to pass legislation which would prohibit the dissemination of information on “non-traditional” sexual orientation, expressing concern at the threat of such legislation. The section also reviews the legal framework governing gender reassignment, finding that while it is permitted by law, this appears to be predicated on the requirement of corrective surgery, contrary to international standards. This section also examines evidence of discrimination by state actors, including in particular the law enforcement agencies, and of homophobic and transphobic violence. Finally, it concludes that where LGBT persons are open about their sexual orientation and gender identity, they experience discrimination in fields such as employment and healthcare.

Discrimination on the basis of **political opinion** is considered in section 3.5. Political freedom is notoriously limited in Kazakhstan, reflected in the international organisation Freedom House’s evaluation of the country as “Not Free”. Reviewing a range of cases documented by non-governmental and intergovernmental organisations, this section finds a consistent pattern of discriminatory denial of civil and political rights on the basis of political opinion. It finds that the state has applied a range of restrictive laws in ways which limit or deny the rights to freedom from arbitrary detention, freedom of expression, assembly and association, and participation in public life for those who oppose – or are perceived to oppose – the government.

Section 3.6 discusses the discrimination and disadvantage experienced by **persons with disabilities**. It notes that there have been a number of positive developments in Kazakhstan, noting the adoption of the Law on Social Protection of Disabled Persons and the signing of the Convention on the Rights of Persons with Disabilities (CRPD). However, it expresses serious concern that Kazakhstan continues to institutionalise persons with mental disabilities in breach of its obligations under the CRPD, and that there are credible reports

of torture and ill-treatment of those in such institutions. It also finds that while Kazakhstan has adopted certain positive action measures to advance the rights of persons with disabilities in the field of employment, such persons remain underrepresented in the workforce. Finally, it concludes that the state must focus on the social inclusion of children with disabilities, through deinstitutionalisation and inclusive education.

Finally, in section 3.7, the report examines discrimination on the basis of **health status**, focusing on the position of persons living with HIV and TB respectively. We note that Kazakhstan has made efforts to target stigma and associated discrimination on the basis of HIV status, including, for example, through the Law on Public Health and the Health System which prohibits the dismissal of employees on the grounds of their HIV status. Nevertheless, it identifies examples of discrimination in both employment and healthcare. Persons with tuberculosis may be subject to forced medical treatment under the Law on People's Health and the Healthcare System; the section expresses concern that these provisions are too broad and do not provide the necessary safeguards.

Part 4 Recommendations

Part 4 of this report makes recommendations to the government of Kazakhstan. The purpose of these recommendations is to strengthen protection from discrimination and to enable Kazakhstan to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality. All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality. The report makes recommendations in nine areas:

- 1) Strengthening of International Commitments Related to Equality
- 2) Reform of Discriminatory Legislation
- 3) Introduction of Comprehensive Equality Legislation
- 4) Reform, Implementation and Enforcement of Existing laws Aimed at Prohibiting Discrimination
- 5) Actions to Address Discrimination against Specific Groups
- 6) Ensuring the Independence of Legal Actors and Human Rights Institutions
- 7) Data Collection
- 8) Education on Equality
- 9) Prohibition of Regressive Interpretation

1. INTRODUCTION

“Unity! Stability! Creativity!”. This is the slogan of Nur Otan, the political party of Nursultan Nazarbayev, the Republic of Kazakhstan’s first and only president.

Since 1991, Nazarbayev has sought to promote a sense of national unity. Yet this report, published shortly after the 25th anniversary of Kazakhstan’s independence, finds that this unity has not been built on the state’s multi-ethnic, multi-religious and multi-lingual past. Instead, we find that the unity which the state pursues excludes many groups, in particular those whose religion, ethnicity or political opinion challenges the vision promoted by Nazarbayev.

The 2011 Law on Religious Activity and Religious Associations explicitly emphasises the centrality of Hanafi Islam and Russian Orthodoxy to Kazakhstani culture and imposes onerous registration requirements, indirectly discriminating against minority religious groups. The unofficial policy of “Kazakhisation” – the promotion of the Kazakhstani national identity and the history, language and culture of ethnic Kazakhs as one and the same – and its application to language policy in particular creates barriers for ethnic minorities in accessing public services, public employment and public education. Through both legal and extra-legal means, the state has denied or limited the rights to freedom from arbitrary detention and the freedoms of expression, assembly and association in ways which discriminate on the basis of political opinion.

The notion of national unity promoted by the state also leaves out women, lesbian, gay, bisexual and transgender persons (LGBT), persons with disabilities and those living with Human Immunodeficiency Virus (HIV). Women experience discrimination in many areas of life: discriminatory labour and criminal laws remain in force, gender-based violence remains a significant problem and there is widespread gender inequality in their employment market. LGBT persons enjoy no explicit protection from discrimination, the state prohibits same sex marriage and adoption, and imposes unacceptable conditions on persons wishing to change their legal gender identity. Both persons with disabilities and persons living with HIV are subject to paternalistic discriminatory laws, grounded in stereotypes, which limit their participation in public life.

Our assessment of the legal framework in place to combat discrimination and promote equality finds little evidence of unification. The constitutional non-discrimination provision explicitly lists only some of the grounds of discrimination recognised at international law. Instead of comprehensive anti-discrimination legislation, the state has specific laws on gender and disability and isolated provisions in other areas of law. Implementation and enforcement are weak.

Thus, this report finds that, far from being unified, Kazakhstan is a place in which members of certain groups are excluded and marginalised. In an alarming number of cases, these experiences have their root in state policies, underpinning which is the notion of a unified Kazakhstan which appears increasingly exclusive. As the state celebrates the 25th anniversary of its independence, it must be hoped that Kazakhstan begins to pursue a type of unity which is more inclusive and reflective of the state's diverse past.

1.1 Purpose and Structure of This Report

The purpose of this report is to highlight and analyse discrimination and inequality in the Republic of Kazakhstan (Kazakhstan) and to recommend steps aimed at combating discrimination and promoting equality. The report explores long-recognised human rights issues, while also seeking to shed light on less well-known patterns of discrimination in the country. The report brings together – for the first time – evidence of the lived experience of discrimination and inequality in its various forms with an analysis of the laws, policies, practices and institutions established to address them.

The Equal Rights Trust and the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) have been working in partnership since 2013 on a project designed to empower civil society to combat discrimination and inequality in Kazakhstan. Throughout the project, KIBHR, with support from the Equal Rights Trust, has undertaken research on discrimination and inequality by gathering direct testimony during field missions, as well as reviewing the legal and policy framework governing discrimination and inequality in Kazakhstan. This report is an outcome of that work.

The report takes as its conceptual framework the unified human rights perspective on equality, which emphasises the integral role of equality in the en-

joyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The unified framework brings together:

- a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;
- b) types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, provision of goods and services, among others; and
- c) status-based inequalities and socio-economic inequalities.

The report comprises four parts. **Part 1** sets out the purpose and structure of the report, the conceptual framework, which has guided the work, and the research methodology. It also provides basic information about Kazakhstan, its history and current political and economic situation. **Part 2** contains an analysis of the legal and policy framework as it relates to non-discrimination and equality; setting out Kazakhstan's international obligations before analysing state legislation for compliance with international law and best practice. This section goes on to consider the enforcement of legal guarantees; examining access to justice, the legal aid system, evidence and proof, and finally, remedies and sanctions. **Part 3** presents the principal patterns of inequality and discrimination affecting groups in Kazakhstan, focusing on the characteristics of religion or belief, ethnicity, political opinion, gender, sexual orientation and disability and health status. It documents evidence of discriminatory laws, discrimination by state actors and discrimination in areas of civil, political, social, cultural and economic life. **Part 4** contains recommendations, drawn from an analysis of patterns of inequality and discrimination examined in Part 2 and the gaps, weaknesses and inconsistencies in the legal and policy framework identified in Part 3.

1.2 Conceptual Framework and Research Methodology

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, adopted in 2008, signed initially by 128 and

subsequently by thousands of experts and activists on equality and human rights from all over the world. The principles formulated and agreed by the experts are based on concepts and jurisprudence developed in international, regional and national legal contexts.

Since its adoption, the Declaration has been used as the basis for those developing anti-discrimination legislation in a number of countries and has received support at the international and regional levels. In 2008, the UN Committee on Economic, Social and Cultural Rights (CESCR) made use of a number of key concepts from the Declaration in its General Comment 20: Non-discrimination in economic, social and cultural rights. In 2011, the Parliamentary Assembly of the Council of Europe adopted a Recommendation calling on the 47 Council of Europe member states to take the Declaration into account when developing equality law and policy.

Principle 1 of the Declaration defines the right to equality:

The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.¹

Thus defined, the right to equality has a broad scope, and its content is richer than that of the right to non-discrimination. The right to equality has as its elements the equal enjoyment of all human rights, as well as the equal protection and benefit of the law. Most importantly, it encompasses equal participation in all areas of life in which human rights apply. This holistic approach to equality recognises the interconnectedness of disadvantages arising in different contexts, which makes it necessary to take a comprehensive approach to inequalities in all areas of life.

This report takes the right to equality, as expressed in the Declaration, as the baseline against which it assesses the presence or degrees of inequality. It goes beyond poorer notions of equality found in many legal systems,

1 *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 1.

by understanding equality not only as a right to be free from all forms of discrimination, but also as a right to substantive equality in practice. As discussed below, this motivates our analysis of disadvantages affecting different groups beyond those which arise as a result of discernible acts of discrimination. From this perspective, many societal inequalities relevant to human rights are seen as a consequence of historic disadvantage, while insisting that the right to equality requires states to address unfair inequalities, however “innocuous” their cause. Thus the unified framework makes *de facto* unfair inequalities, whether or not they result from discrimination, a relevant subject for this report.

Regarding the relationship between the rights to equality and non-discrimination, the Declaration construes the right to non-discrimination as subsumed in the right to equality.² Thus, when examining the situation of a particular group of persons, the report looks both at examples of discrimination and at inequality in participation in areas such as employment or public life, differential access to goods and services and socio-economic disadvantage.

The unified human rights framework on equality makes it desirable and possible to provide a general legal definition of discrimination covering all types of discrimination. Principle 5 of the Declaration offers such a definition:

Discrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.

Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human

2 *Ibid.*, Principle 4.

dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.

Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.

Discrimination may be direct or indirect.

Direct discrimination occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.

Indirect discrimination occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

Harassment constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

*An act of discrimination may be committed intentionally or unintentionally.*³

This definition takes a broad view regarding the list of **protected characteristics**. It contains both a list of explicitly prohibited grounds of discrimination and a “test” for the inclusion of further grounds, according to which “candidate grounds” should meet at least one of three listed conditions.⁴ Thus, the definition provides a foundation for tackling the full complexity of the problem to be addressed – a person’s lived experience of discrimination. It recognises that a single person may experience discrimination on a “combination” of subtly interacting grounds, or on grounds not previously recognised as “prohibited”, and that the cumulative impact of discrimination on different grounds can be bigger than the sum of its parts. The unified perspective acknowledges that the phenomenon of discrimination must be addressed holistically, if it is to be effectively challenged.

The Declaration defines three forms of **prohibited conduct** which constitute discrimination: direct discrimination, indirect discrimination and harassment. All three concepts reflect current expert opinion on the definitions of the different forms of discrimination in international human rights and equality law.⁵ They are used throughout Part 2 to explore the extent to which the national legal framework provides protection for these forms of prohibited conduct and in Part 3 to assess the patterns of discrimination identified by our research and to evaluate the state’s efficacy in meeting its obligation to respect, protect, and fulfil the right to non-discrimination.

The report also relies on a number of other important concepts and definitions contained in the Declaration of Principles on Equality. Thus, the report

3 *Ibid.*, Principle 5.

4 Petrova, D., “The Declaration of Principles on Equality: A Contribution to International Human Rights”, in *Declaration of Principles on Equality*, see above, note 1, p. 34: “The definition of discrimination in Principle 5 includes an extended list of ‘prohibited grounds’ of discrimination, omitting the expression ‘or other status’ which follows the list of characteristics in Article 2 of the Universal Declaration of Human Rights. While intending to avoid abuse of anti-discrimination law by claiming discrimination on any number of irrelevant or spurious grounds, the definition nonetheless contains the possibility of extending the list of ‘prohibited grounds’ and includes three criteria, each of which would be sufficient to recognise a further characteristic as a ‘prohibited ground.’”

5 See, for example, Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20, 2009, Para 10.

employs the definition of **reasonable accommodation** provided in Principle 13 of the Declaration:

To achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds.

Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.⁶

In line with international law in this area, the approach taken in the report is that a denial of reasonable accommodation constitutes discrimination.⁷ Reflecting an emerging international consensus on this issue, the concept of reasonable accommodation “is extrapolated to cover other forms of disadvantage beyond disability, as well as, more generally, differences which hamper the ability of individuals to participate in any area of economic, social, political, cultural or civil life”.⁸ Thus, in the context of this report, it is accepted that the duty of reasonable accommodation can arise in respect of grounds other than disability.

Similarly, the report employs the understanding of **positive action** provided in Principle 3 of the Declaration. As with other principles in the Declaration, this principle draws upon established approaches to the interpretation of international and regional human rights law, in this case with regard

6 See above, note 1, Principle 13.

7 See, for example, Convention on the Rights of Persons with Disabilities, 2515 U.N.T.S. 3, 2006, Article 2; Committee on Economic, Social and Cultural Rights, *General Comment No. 5: Persons with Disabilities*, UN Doc. E/1995/22, 1995, Para 15: “disability-based discrimination” includes the denial of “reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights”.

8 See above, note 4, p. 39.

to the concepts of special measures in the various instruments.⁹ Principle 3 states:

To be effective, the right to equality requires positive action.

Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.¹⁰

The notion of positive action plays an important role in the unified perspective on equality, and, therefore, in the approach of this report. Positive action is key to addressing those inequalities which are not attributable solely to discrimination. Part 2 of this report analyses the adequacy of positive action measures in Uzbekistani legislation, while Part 4 offers recommendations for change.

The review of laws and policies in Part 2 of this report is based on an assessment against those parts of the Declaration which set out the **obligations of the state** with regard to the rights to equality and non-discrimination, including in particular Principle 11. In this regard, the Declaration applies the understanding of state obligations in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as explained, *inter alia*, in General Comment No. 3 of the Committee on Economic, Social and Cultural Rights and General Comment No. 31 of the Human Rights Committee (HRC). As stated in the commentary on the Declaration:

By analogy with the interpretation of States' obligations set out in General Comment 3 of the UN Committee on Economic, Social and Cultural Rights, States are re-

9 See, for example, International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, 1965, Article 1(4); and the Convention on the Elimination of All Forms of Discrimination against Women, 1249 U.N.T.S. 13, 1979, Article 4(1).

10 See above, note 1, Principle 3.

quired to take all necessary steps, including legislation, to give effect to the right to equality in the domestic order and in their international cooperation programmes. The right to full and effective equality may be difficult to fulfil; however, the State does not have an excuse for failing to take concrete steps in this direction. The requirement to take such steps is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to cultural, economic, political, security, social or other factors.¹¹

Application of the Unified Human Rights Framework on Equality

Applying the unified human rights framework on equality has a number of implications for the content, structure and methodology of this report. The **first implication** is reflected in the subject and scope of the report – the presentation of discrimination and inequality on a number of different grounds in the same study. While it is clearly beyond the scope of the report to provide a detailed analysis of discrimination and inequality arising on every ground, the aim has been to present what appear to be the most significant patterns of discrimination and inequality found in the Kazakh context. In respect of certain grounds, it has not been possible to include every group which is vulnerable to discrimination and inequality on that ground: the examination of ethnic discrimination, for example, does not look at the position of all ethnic groups in Kazakhstan, but instead focuses on illustrating patterns of discrimination which affect ethnic minorities in general.

Presenting patterns of discrimination and inequality alongside each other requires a specific weighing of the sources of evidence. To some extent, Part 2 of the report relies on pre-existing research into inequalities affecting particular groups, and disaggregated data on the position of different groups in particular areas of life. The evidence obtained through field research and desk research has been weighed and contextualised, with a view to presenting patterns of discrimination and disadvantage in a way which is as representative of Kazakh reality as possible. In so doing, it is hoped that the report also illuminates the links between inequalities on different grounds, through

11 See above, note 4, p. 38.

identifying overarching issues, instances of multiple discrimination and common experiences.

The **second implication** of applying the unified human rights framework relates to the material scope of application of the right to equality, which encompasses all areas of life regulated by law. The report seeks to assess people's experience of discrimination across the full range of areas of life, including in respect of interactions with the state, personal safety, employment, education and healthcare. But in this respect, too, the evidence is uneven: there is little evidence of discrimination or inequality in particular areas of life for certain disadvantaged groups, either because persons within these groups do not experience disadvantage in a particular area, or because evidence of such disadvantage was not forthcoming in the course of the research. For example, the section of the report examining discrimination on the grounds of religion or belief focuses heavily on discriminatory laws and treatment by state agents, as these appeared, from the research, to be the most significant issues affecting members of minority religions.

The **third implication** of applying the unified framework is to require an analysis of both violations of the right to non-discrimination and the right to equality. The report takes the right to equality, as defined in the Declaration of Principles on Equality, as the standard against which it assesses the degree of inequality. Thus, the report investigates historically-generated patterns of substantive inequality, by looking at the element of "participation on an equal basis with others in economic, social, political, cultural or civil life",¹² thereby extending beyond experiences of discrimination. Thus, for example, the discussion of some of the disadvantages faced by women examines significant substantive inequalities in the area of employment, in addition to highlighting specific discriminatory practices.

The **fourth implication** of applying the unified framework is the definition of discrimination used, which, reflecting best practice in outlawing discrimination on grounds that have come to be regarded as unfair in modern society, provides the basis for our consideration of the range of identity-based groups included in the report. Thus, the report examines discrimination on grounds of race and ethnicity; gender; disability; sexual orientation; health status; citi-

¹² See above, note 1, Principle 1.

zenship; economic status; and religion or belief. Furthermore, analysis of certain types of discrimination, notably that suffered by children, is interwoven throughout the report, rather than considered separately. This is not because they are less important or widespread, but because they appear to be strongly defined by one or more of the major protected characteristics covered in the report, particularly gender and ethnicity.

The **final implication** of this approach is to present evidence of factual patterns of discrimination and inequality alongside an analysis of the legal and policy framework related to equality. The existence and enforcement of laws and policies prohibiting discrimination and promoting equality is a critical factor – though by no means the only one – in ensuring enjoyment of the rights to non-discrimination and equality. Protecting people from discrimination by enacting such laws is a key state obligation in respect of these rights. Thus, this report seeks to match an assessment of the lived experience of discrimination and inequality with a review of Kazakhstan’s legal and policy framework, in order to establish where the law discriminates, where gaps and inconsistencies in legal protection exist, and where laws are inadequately enforced.

The analysis of laws and policies designed to address discrimination and inequality in Kazakhstan in Part 2 of this report identifies gaps in the legal framework and in the application and enforcement of legal guarantees that inhibit the effective enjoyment of rights. It also assesses the adequacy of the legal and policy framework in the light of the Declaration’s principles relating to access to justice for discrimination victims, evidence and proof in discrimination proceedings, and other elements of the enforcement of equality rights.¹³ Part 3 expands upon those issues identified, highlighting the existence of discriminatory laws and the impact which inadequate or inadequately enforced laws have in resulting in or contributing towards the marginalised position of certain groups in Kazakhstani society. The necessity of effective protection and enforcement of the rights to non-discrimination and equality is illustrated by the findings of both Parts 2 and 3 of this report, and is discussed further in Part 4, which formulates recommendations about legal and policy reform, implementation and enforcement.

13 *Ibid.*, Principles 18–25.

Research Methodology

This report is published by the Equal Rights Trust and the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR). Between 2013 and 2016, the Equal Rights Trust and the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) worked in partnership on a project designed to empower civil society to combat discrimination and inequality in Kazakhstan, funded by the European Union. This report is an outcome of that partnership.

The Equal Rights Trust defined the scope and structure of the report and set the framework for the research process. KIBHR was responsible for the research. Research on the legal framework for Part 2 of the report was undertaken by volunteer lawyers and reviewed and approved by Yevgeniy Zhovtis of KIBHR. Research on patterns of discrimination for Part 3 of the report was planned and undertaken by KIBHR.

For Part 2 of the report, research on Kazakhstan's international legal obligations benefited from the United Nations Treaty Collection database¹⁴ and the website of the Office of the High Commissioner for Human Rights.¹⁵ Research on Kazakhstani laws, including the Constitution and national legislation, consisted of reviewing primary sources, accessed via the Legal Information System of Regulatory Legal Acts of the Republic of Kazakhstan.¹⁶ Research on the role, functions and operations of the Commissioner for Human Rights was undertaken by review of the relevant legislation, together with commentaries and reports produced by the Commission and by independent organisations. Few cases before the national courts are identified in Part 2. This is in part the result of a lack of full database of district and regional court decisions and the fact that in most criminal cases no full judgment is issued.

14 United Nations, *United Nations Treaty Series Online Collection*, available at: https://treaties.un.org/Pages/Content.aspx?path=DB/UNTS/pageIntro_en.xml.

15 Office of the High Commissioner for Human Rights, available at: <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>.

16 Republic Center of Legal Information of the Ministry of Justice, *Legal information system of Regulatory Legal Acts of the Republic of Kazakhstan*, available at: <http://adilet.zan.kz/eng>.

Research for Part 3 of this report began with desk-based research of existing sources, in order to identify the major patterns of discrimination in Kazakhstan. Following this review, KIBHR conducted research across Kazakhstan. Using a standard field research guide developed and provided by the Equal Rights Trust, KIBHR allocated sub-grants to researchers to conduct focus groups and interviews in each region, documenting patterns of discrimination and inequality, with a particular focus on discrimination on the basis of religion and ethnicity. Throughout the report, in presenting the first-hand testimony of victims of discrimination, certain names have been withheld, to ensure the personal safety of those interviewed, or respect their wishes for confidentiality. Information on the identities of all persons whose names have been withheld is kept on file by KIBHR. Alongside the field research, desk research involved a review of government policies and relevant literature on discrimination and inequality in Kazakhstan, including reports by both the government and NGOs to UN treaty bodies and the Universal Periodic Review process; government and intergovernmental data and reports; and research published by international and national NGOs, academics and media organisations.

Sections 3.1 and 3.2 of the report, on discrimination and inequality on the basis of religion or belief and ethnicity respectively, were authored by KIBHR, based on the report *Preliminary Report on Certain Aspects of Inequality and Discrimination in the Republic of Kazakhstan*, published by KIBHR in 2015,¹⁷ and reviewed by the Equal Rights Trust. Sections 3.1 and 3.2 seek to build upon the evidence presented in the 2015 study, corroborating and complementing its findings with additional material, and incorporating feedback on the report. The remaining sections of Part 3 were researched and developed in collaboration between the Equal Rights Trust and KIBHR.

Scope and Limitations of this Report

It is not possible for any report to provide an exhaustive account of discrimination and inequality in a given country, and this report is no exception. The reality of discrimination and inequality is such that experiences are as many and

17 Kazakhstan International Bureau for Human Rights and Rule of Law, *Preliminary Report on Certain Aspects of Inequality and Discrimination in the Republic of Kazakhstan*, 2015, available at: ihahr.org/sites/default/files/files/kazakhstan-diskriminaciya-2015-doklad.doc.

varied as the population of Kazakhstan itself. Each person will have their own experiences of discrimination and inequality, arising in different areas of life, in different circumstances, in interaction with different persons, institutions or organisations and as a result of any aspect of their identity, or any combination of these aspects. For these reasons, the aim of Part 3 of this report is to provide a broad overview of the principal patterns of discrimination and inequality felt to be most significant in Kazakhstan. Analysis of certain types of discrimination, notably those suffered by children and non-citizens, is interwoven in the report, rather than presented separately. The decision to not devote separate sections to these groups is motivated not by their lesser significance in the country context, but by our opinion that, from the point of view of equality and non-discrimination law, discrimination against these groups appears to be strongly defined by one or more of the major protected characteristics covered in the report, particularly gender. For example, the discrimination against underage girls is better understood through the prism of gender, rather than age.

The research for this report was constrained by a lack of disaggregated statistical data pertaining to the situation of certain groups, and certain areas of life. The absence of disaggregated data in relation to certain areas of life, such as housing, education, employment, criminal justice, etc., has limited the extent to which the authors have been able to discuss inequalities in all areas of life for every group we have covered in the report.

1.3 Country Context

The Republic of Kazakhstan (Kazakhstan) is a large, landlocked country, bordered to the north and west by Russia, to the southwest by the Caspian Sea, to the south by Uzbekistan and Kyrgyzstan and to the east by China. It is the ninth largest country in the world, with a total area of 2,724,900 km.¹⁸

The country is divided into 14 provinces, or oblasts, which are sub-divided into 175 districts.¹⁹ The capital city is Astana, with a population of around 759,000, although, until 1998, the capital was Almaty, a city which remains

18 United Nations Statistics Division, *Kazakhstan UN Data*, 2016, available at: <http://data.un.org/CountryProfile.aspx?crName=Kazakhstan>.

19 National Analytical Center, *Regional Development of the Republic of Kazakhstan*, available at: <http://www.nac.gov.kz/en/news/analytics/252>.

the major commercial and cultural centre of Kazakhstan, and has a population of just over 1.5 million.²⁰

The population of Kazakhstan is approximately 17.8 million people.²¹ The birth rate in 2014 was 23.13 births per 1,000 people;²² the death rate for the same year was 7.57.²³ Life expectancy at birth is 71.62 years,²⁴ although there is a sizeable gap between life expectancy for men (67.12 years)²⁵ and women (75.94 years).²⁶

Ethnic Kazakhs are the largest ethnic group, making up 63% of the population.²⁷ There is a sizeable ethnic Russian minority (24%), and there are also many smaller ethnic minorities including Uzbeks (2.9%), Ukrainians (2.1%), Uighurs (1.4%), Tatars (1.3%) and Germans (1.1%).²⁸ The remainder of the population includes small populations of Azerbaijanis, Bashkirs,

20 United Nations Statistics Division, *Kazakhstan UN Data*, 2016, available at: <http://data.un.org/CountryProfile.aspx?crName=Kazakhstan>; UN, *The World's Cities in 2016: Data Booklet*, p. 15, available at: http://www.un.org/en/development/desa/population/publications/pdf/urbanization/the_worlds_cities_in_2016_data_booklet.pdf.

21 Ministry of National Economy of the Republic of Kazakhstan, Committee on Statistics, *Latest Data: Main Socio-Economic Indicators*, 2016, available at: http://www.stat.gov.kz/faces/homePage?_afzLoop=35922767507044#%40%3F_afzLoop%3D35922767507044%26_adf.ctrl-state%3Dnhtd6dcdcu_4.

22 World Bank, *Birth rate, Crude: Kazakhstan*, 2016, available at: http://data.worldbank.org/indicator/SP.DYN.CBRT.IN?end=2014&locations=KZ&start=2014&view=bar&year_high_desc=true.

23 World Bank, *Death Rate, Crude: Kazakhstan*, 2016, available at: http://data.worldbank.org/indicator/SP.DYN.CDRT.IN?end=2014&locations=KZ&start=2014&view=bar&year_high_desc=true.

24 World Bank, *Life Expectancy at Birth: Kazakhstan*, 2016, available at: http://data.worldbank.org/indicator/SP.DYN.LE00.IN?end=2014&locations=KZ&start=2014&view=bar&year_high_desc=true.

25 World Bank, *Life Expectancy at Birth, Male: Kazakhstan*, 2016, available at: http://data.worldbank.org/indicator/SP.DYN.LE00.MA.IN?end=2014&locations=KZ&start=2014&view=bar&year_high_desc=true.

26 World Bank, *Life Expectancy at Birth, Female: Kazakhstan*, 2016, available at: http://data.worldbank.org/indicator/SP.DYN.LE00.FE.IN?end=2014&locations=KZ&start=2014&view=bar&year_high_desc=true.

27 UN, *Common Core Document Forming Part of the Reports of States Parties: Kazakhstan*, UN Doc. HRI/Core/Kaz/2012, 19 September 2012, Para 11.

28 Committee on the Elimination of Racial Discrimination, *Sixth and Seventh Periodic Reports: Kazakhstan*, UN Doc. CERD/C/KAZ/6-7, 5 August 2013, Para 11.

Belarussians, Chechens, Dungans, Kyrgyz, Koreans, Kurds, Poles, Tajiks, Turks and Ukrainians.²⁹

The distribution of minority ethnic groups across the country is asymmetrical. Ethnic Russians and Ukrainians are predominantly based in Kazakhstan's northern and eastern oblasts.³⁰ The majority of ethnic Uzbeks live in the South Kazakhstan oblast.³¹ The Uighur community is concentrated in the districts of Uighur, Panfilov, Enbekshikazakh and Talgar in the Almaty oblast, as well as in the city of Almaty itself.³² Tatars are mostly concentrated in the Petropavlovsk and Kokchetau oblasts.³³ Ethnic Germans originally settled in Akmola, Kostanai, and North Kazakhstan oblasts and are now also found in Karaganda oblast.³⁴

In recent years, Kazakhstan has become increasingly attractive for economic migrants, primarily from neighbouring Uzbekistan, Kyrgyzstan and Tajikistan.³⁵ Accurate figures on the numbers of economic migrants are not available as there is significant irregular migration which is not registered by official statistics.³⁶ Economic migrants are predominantly low-skilled workers, who tend to find employment in one of the following sectors: construction; household work; oil and gas construction; tobacco, cotton and vegetable plantation work.³⁷

29 Agency on Statistics of the Republic Of Kazakhstan, *Results Of The 2009 National Population Census Of The Republic Of Kazakhstan*, 2011, p. 20, available at: https://www.liportal.de/fileadmin/user_upload/oefentlich/Kasachstan/40_gesellschaft/Kaz2009_Analytical_report.pdf.

30 Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples: Kazakhstan – Russians, Ukrainians, Belarusians*, available at; <http://minorityrights.org/minorities/russians-ukrainians-belarusians>.

31 Atabaki, T., Mehendale, S., *Central Asia and the Caucasus: Transnationalism and Diaspora*, Routledge, 2005, p. 30.

32 *Ibid.*, p. 157.

33 Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples: Kazakhstan – Tatars*, available at: <http://minorityrights.org/minorities/tatars>.

34 Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples: Kazakhstan – Germans*, available at; <http://minorityrights.org/minorities/germans>.

35 Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Slavery, Including its Causes and Consequences, Gulnara Shahinian*, UN Doc. A/HRC/24/43/Add.1, 2013, p. 3.

36 International Labour Organization, *Employment of Migrant Workers in the Informal Economy of Kazakhstan*, 2009, p. 7, available at: https://www.auca.kg/uploads/Migration_Database/Employment%20of%20migrant%20workers%20in%20the%20informal%20economy%20in%20Kazakhstan.pdf.

37 *Ibid.*, p. 3.

The official state language is Kazakh, though national law gives Russian equal status in state organisations and other government bodies.³⁸ Further to this, national law empowers citizens to use their primary language and requires the state to safeguard this right.³⁹ In the 2009 Census, 93.5% of the total population indicated that their primary language corresponded with the primary language of their ethnic group.⁴⁰ However, it is noteworthy that while 74% of the total population understand spoken Kazakh, 94.4% understand spoken Russian.⁴¹

According to the results of the 2009 census, 70.2% of the population is Muslim, while 23.9% is Orthodox Christian.⁴² There is a strong correlation between ethnicity and religion. Ethnic Kazakhs, Uzbeks, Uyghurs and Tatars predominantly identify as Muslim, while ethnic Russians, Ukrainians and Belarussians largely identify as Orthodox Christian.⁴³ In addition, there are small numbers of Roman Catholics, Buddhists, Protestants, Jews and atheists.⁴⁴

World Bank estimates of Kazakhstan's GDP for 2015 stood at around \$184.4 billion (in current US\$); GDP per capita in the same year was \$10,508.4.⁴⁵ In the 2015 United Nations Development Programme (UNDP) Human Development Index, Kazakhstan was given a rating of 0.788, placing it 56th out of 188 countries ranked with a "high human development" status.⁴⁶

1.4 History

In the first two decades of the 1200s, the *Dasht-i Qipchaq* ('Plain of the Qipchaqs') – as the area which makes up the largest part of modern Kazakhstan

38 Law on Languages in the Republic of Kazakhstan, Law No. 151-I of 11 July 1997, Article 5.

39 *Ibid.*, Article 6.

40 See above, note 299, pp. 21–22.

41 *Ibid.*, pp. 22–23.

42 *Ibid.*, p. 24.

43 *Ibid.*

44 *Ibid.*

45 World Bank, *GDP Per Capita*, 2016, available at: <http://data.worldbank.org/indicator/NY.GDP.PCAPCD>.

46 United Nations Development Programme (UNDP), *Human Development Report 2015: Work for Human Development*, 2015, p. 208, available at: http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf.

was then known – was invaded by Genghis Khan and became part of the Mongol Empire. Following the Khan's death, the lands came under the control of the "Golden Horde", which held sway until the conquests of Timur (Tamerlane) in the mid-15th Century. In 1465, two Chingissids called Janibek and Giray proclaimed themselves Khans in their own right, and those who chose to follow them came to be known as 'Kazakhs' meaning masterless, or wandering.

Throughout the sixteenth and the first half of the seventeenth century, the Kazakh Khans, descended from Janibek, controlled most of the steppe. In the mid-seventeenth century, the Kazakhs divided into three smaller confederations, known as the Great jüz (based in Jeti-Su and the Syr-Darya Valley), the Middle jüz (the North-Eastern Steppe), and the Little jüz (the North-western steppe). As their nomadic advantage in warfare disappeared, the Khans were forced to enter into ever closer diplomatic relationships with neighbouring sedentary powers, notably Qing China and the Tsarist Russian Empire. By the 1790s, Russia claimed almost all Kazakhs as their subjects, though it was not until the 1820s that Russia attempted to administer the area more directly and to collect taxes.

Between the 1840s and the 1860s, the Russian Tsarist empire conquered the whole of the Kazakh steppe. In 1867, the Russian administration re-designated the area, dividing it into the Steppe Region (covering most of present-day Kazakhstan) and the Governor-Generalship of Turkestan (covering parts of southern present-day Kazakhstan). From the 1890s onwards, increasing numbers of settlers from European Russia migrated to the Northern Kazakh Steppe and to Jeti-Su in the south, increasing tensions with the indigenous population over access to grazing, arable land and water.

In 1916, there was a widespread revolt against the Russian colonial regime after it sought to conscript Muslims for army service during World War I. The uprising was at its fiercest in the Kazakh-populated regions of Jeti-Su and Turghai. It was brutally suppressed, with thousands of Kazakhs killed or forced to flee to neighbouring China and Mongolia.

The revolutionary and civil war years saw an attempt by a group of mainly Russian-educated intellectuals to set up a Kazakh government – the Alash Autonomy. Without any significant forces of its own, Alash was forced to

ally itself first with the White Army against the Bolsheviks who had taken power following the October Revolution in 1917. However, as the White Army began to lose ground, the Alash Autonomy began to negotiate with the Bolsheviks.

Many Alash Autonomy members would play an important role in the new nation-building and indigenisation policies initiated by the Soviet regime in the early 1920s. This saw the establishment of the 'Kirgiz Autonomous Soviet Socialist Republic' in 1924. In 1925, the name was changed to the Kazakh Autonomous Soviet Socialist Republic

The early history of the Kazak Autonomous Soviet Socialist Republic and the Kazakh Soviet Socialist Republic (Kazakh SSR) was bleak. A famine caused by excessive grain and meat extraction lasting from 1929 to 1933 resulted in the deaths of 1.3 million Kazakhs (almost 40% of the Kazakh population at the time) and 80% of their livestock.

Before and during World War II, Crimean Tatars, Germans, and Muslims from the North Caucasus region were deported to Kazakhstan as collective punishment for supposed disloyalty or collaboration with the Nazis. When the Soviet Union invaded Poland in 1939, almost a million Poles were deported to Kazakhstan. In the 1950s and 60s, as part of the Virgin Lands Campaign, large parts of northern Kazakhstan were transformed from pasture to arable land for the purpose of cultivating wheat and other cereal grains with migrants recruited to work there; in the 1960s and 70s, the government paid bonuses to workers who participated in programmes building the Soviets' industry in the coal, gas and oil deposits of Kazakhstan and other parts of Central Asia. By the end of the 1970s, ethnic Kazakhs were a minority in the Kazakh SSR, especially in the northern regions.

In 1986, the Soviet Politburo dismissed the long serving General Secretary of the Communist Party of Kazakhstan, Dinmukhamed Qunaev, the only Kazakh ever to become a full member of the Politburo. Despite the attempts of Qunaev's anointed successor, Nursultan Nazarbayev, to distance himself from his former patron, the leader of the Soviet Union, Mikhail Gorbachev, replaced him with Gennady Kolbin, a Russian from outside the Kazakh SSR. This led to four days of protests, known as the Jeltoqsan (December) events because they took place between the 16 and 19 December 1986. An unknown number were killed and injured when the protests were suppressed.

Three years later, Kolbin was replaced with Nursultan Nazarbayev, whom many suspect of having organised the protests, and who had certainly played a role in suppressing them.

In 1991, when the Soviet Union dissolved, the Kazakh SSR declared its independence, the last of the Soviet republics to do so, becoming the Republic of Kazakhstan. In the first elections held in December of that year, Nazarbayev was elected as President with 98% of the vote. Following independence, the government prioritised the repatriation of ethnic Kazakhs living outside Kazakhstan, exemplified with the passing of the “Resolution on the Procedures and Conditions of the Relocation to Kazakh SSR for Persons of Kazakh Ethnicity from Other Republics and Abroad Willing to Work in Rural Areas”.⁴⁷

While the period 1991–1994 saw some real political opposition emerging in Kazakhstan’s parliament, a new constitution in 1995 greatly strengthened Nazarbayev’s powers. He has remained the President since, winning elections in 1999, 2005 and 2011.

Kazakhstan joined the Commonwealth of Independent States in 1991, the United Nations in 1992, and was a founding member, alongside Russia and Belarus, of the Eurasian Economic Union which came into being in 2015.

1.5 Government and Politics

The Constitution of the Republic of Kazakhstan was approved by a referendum in August 1995, replacing an interim constitution which had been in place since 1993.⁴⁸ The Constitution has been amended several times since its adoption, in 1998, 2007 and again in 2011.⁴⁹

Kazakhstan is established as a unitary state with a presidential form of government⁵⁰ and bicameral Parliament, comprising the Mazhilis and the Sen-

47 UNDP, *Status of Oralman in Kazakhstan: Almaty*, 2006, p. 9, available at: http://web.archive.org/web/20120306224600/http://www.undp.kz/library_of_publications/files/6838-29587.pdf.

48 Constitute Project, *Timeline of Constitutions*, 2016, available at: <https://www.constituteproject.org/ontology/chronology?lang=en>.

49 *Ibid.*

50 Constitution of the Republic of Kazakhstan, 30 August 1995, Article 2(1).

ate.⁵¹ The President of Kazakhstan is the head of state and Commander in Chief of the Armed Forces;⁵² elected by popular vote for a renewable term of five years.⁵³ The President can issue decrees and orders which have the force of law,⁵⁴ and in certain circumstances has the power to dissolve Parliament.⁵⁵ The President appoints the Prime Minister, with the consent of the Mazhilis of Parliament.⁵⁶ The Prime Minister is responsible for organising and supervising the work of the Government.⁵⁷

In 2007, the Constitution was amended. Following these amendments, Article 42(5) provides that the first President of the Republic is excluded from a restriction on the same person being elected more than twice.⁵⁸ This amendment enabled the incumbent – Nursultan Nazarbayev – to continue in post, having first been elected to the position in 1991 after already serving two years as first secretary of the Communist Party before independence.⁵⁹ In 2010, a legislative amendment gave the President immunity from prosecution.⁶⁰ While some speculated that this change would pave the way for the President to step down,⁶¹ elections in April 2015 saw Nazarbayev re-elected once again, after securing 97.75% of the votes.⁶² These

51 *Ibid.*, Article 50(1).

52 *Ibid.*, Article 44(1)(12).

53 *Ibid.*, Article 41(1).

54 *Ibid.*, Article 45(1).

55 *Ibid.*, Article 63(1).

56 *Ibid.*, Article 44(1)(3).

57 *Ibid.*, Article 67(1).

58 *Ibid.*, Article 42(5).

59 BBC, "Kazakhstan Profile – Leaders", 11 September 2015, available at: <http://www.bbc.co.uk/news/world-asia-pacific-15479889>.

60 Constitutional Act On First President of the Republic of Kazakhstan – the Leader of the Nation, Law No. 83-II of 20 July 20, 2000, Article 3.

61 See Orange, R., "Kazakhstan president granted immunity as 'Leader of the Nation'", *Telegraph*, 12 May 2010, available at: <http://www.telegraph.co.uk/news/worldnews/asia/kazakhstan/7715719/Kazakhstan-president-granted-immunity-as-Leader-of-the-Nation.html>.

62 Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), *Republic of Kazakhstan Early Presidential Election: OSCE/ODIHR Election Observation Mission Final Report*, 2015, p. 26, available at: <http://www.osce.org/odihr/elections/kazakhstan/174811?download=true>.

elections were heavily criticised by international monitors who noted, *inter alia*, a lack of competitiveness and choice of political alternatives; pressure placed on voters; and restrictive language requirements for presidential nominees.⁶³

The lower house of Parliament, the Mazhilis, is made up of 107 deputies who are elected for a term of five years.⁶⁴ Of these, 98 are elected by proportional representation whilst 9 are elected by the Assembly of the People of Kazakhstan.⁶⁵ The Assembly of the People of Kazakhstan consists of 394 representatives of all ethnic groups in Kazakhstan,⁶⁶ appointed by the President on the recommendation of national, regional, ethnic and cultural associations or on the recommendation of the Assembly itself.⁶⁷ For the seats which are elected to the Mazhilis, parties must gain at least 7% of the total number of votes in order to win any seats, one of the highest thresholds in the region.⁶⁸

In January 2016, the Mazhilis voted to request that the President dissolve Parliament, bringing forward new elections.⁶⁹ Those elections were held on 20 March 2016, with the National Democratic Party “Nur Otan”, which is headed by the President, winning 6,183,757 votes (82%) and 84 of 98 directly elected seats;⁷⁰ one more than in 2012.⁷¹

63 *Ibid.*, p. 2.

64 Until 2007, the Mazhilis comprised 77 deputies with 67 elected in single seat constituencies and 10 by proportional representation.

65 See above, note 50, Article 51(1).

66 Assembly of the People of Kazakhstan, available at: <http://assembly.kz/kk/kyzmeti-0>.

67 Law “On the Assembly of People of Kazakhstan”, No. 70-IV, 20 October 2008, Article 15; see above, note 50,50 Article 44(19).

68 As noted by the OSCE. See OSCE ODIHR, *Republic of Kazakhstan: Early Parliamentary Elections, OSCE/ODIHR Election Observation Mission Final Report*, 2016, p. 5, available at: <http://www.osce.org/odihr/elections/kazakhstan/229101?download=true>.

69 *Ibid.*, p. 4.

70 Central Election Commission of the Republic of Kazakhstan, *On the Establishment and Publication of the Results of Early Elections of Deputies of Mazhilis of the Parliament of the Republic of Kazakhstan*, 2016, available at: <http://www.election.kz/rus/news/acts/index.php?ID=3293>.

71 See above, note 68, p. 4.

Table 1: March 2016 General Election Results⁷²

Party	Votes	%	Seats
National Democratic Party “Nur Otan” (“Light of the Fatherland”)	6,183,757	82.2%	84
Democratic Party of Kazakhstan Ak Zhol (“Bright Path”)	540,406	7.18	7
Communist People’s Party of Kazakhstan (CPPK)	537,123	7.14	7
Kazakhstani Social Democratic Party Auyl (“Village”)	151,285	2.01	0
Nationwide Social Democratic Party (NSDP)	88,813	1.18	0
Birlik	21,484	0.29	0
Total	7,522,868	100.00	98

The Senate, which is the upper house of Parliament, comprises 47 senators, each of whom serves a six-year term.⁷³ Representative bodies of the 14 districts of Kazakhstan together with the cities of Astana and Almaty, each elect two senators,⁷⁴ with an additional fifteen directly appointed by the President.⁷⁵

Parliament has the power, among other things, to adopt legislation, approve changes to the Constitution, approve the budget and ratify treaties.⁷⁶ Parliament also has a limited legislative initiative, vested exclusively in the Mazhilis, to issue laws on matters including: the legal capacity of individuals, civil rights and freedoms, property ownership, taxation, education, healthcare, and the judicial system.⁷⁷

Under Section VI of the Constitution, a Constitutional Council is established. It is headed by a Chairperson appointed by the President⁷⁸ and is made

72 Central Election Commission of the Republic of Kazakhstan, *On the Establishment and Publication of the Results of Early Elections of Deputies of Mazhilis of the Parliament of the Republic of Kazakhstan*, 2016, available at: <http://www.election.kz/rus/news/acts/index.php?ID=3293>.

73 See above, note 50, Article 50(5).

74 *Ibid.*, Article 50(2); see above, note 68, p. 3.

75 *Ibid.*, Article 50(2).

76 *Ibid.*, Articles 53, 54 and 62.

77 *Ibid.*, Article 61(3).

78 *Ibid.*, Article 71(2).

up of seven members, who serve for a period of six years.⁷⁹ In addition to the Chairperson, the President appoints two members, while two are appointed by the Chairperson of the Senate and two by the Chairperson of the Mazhilis.⁸⁰ Additionally, the Constitution provides that ex-Presidents of the Republic shall have the right to be life-long members of the Constitutional Council.⁸¹ The Constitutional Council has the power to review laws and international agreements for consistency with the Constitution, provide official interpretation of the Constitution and decide on the “correctness” of the presidential elections.⁸²

The judicial system is composed of regional, district and specialised courts.⁸³ The Supreme Court is the highest appellate body, possessing both civil and criminal jurisdiction.⁸⁴ However, the Supreme Court may not interpret the Constitution or declare any provision of law inconsistent with the Constitution. If the Supreme Court believes that a law infringes a constitutional right, it must make a reference to the Constitutional Council who will then interpret the law and declare it unconstitutional.⁸⁵ The Supreme Court is bound by the interpretation of the Constitutional Council.

In its 2016 review, Freedom House considered Kazakhstan “not free”, giving the country an overall freedom rating of 5.5 (with specific ratings of 5 for civil liberties and 6 for political rights)⁸⁶ and noting that the Constitution “grants the president considerable control over the legislature, the judiciary, and local governments”.⁸⁷

79 *Ibid.*, Article 71(1).

80 *Ibid.*, Article 71(3).

81 *Ibid.*, Article 71.

82 *Ibid.*, Article 72(1).

83 Constitutional Law of the Republic of Kazakhstan, No. 132 of 25 December 2000, On Judicial System and Status of Judges in the Republic of Kazakhstan, Article 3(1).

84 *Ibid.*, Article 17(1).

85 See above, note 5050, Article 78.

86 Freedom House, *Freedom in the World 2016: Kazakhstan*, 2016, available at: <https://freedomhouse.org/report/freedom-world/2016/kazakhstan>.

87 *Ibid.*

2. THE LEGAL FRAMEWORK RELATED TO EQUALITY

This chapter of the report examines the legal framework related to equality in Kazakhstan. It examines both Kazakhstan's international legal obligations and the domestic legal framework. In respect of domestic law, it examines the Constitution, specific anti-discrimination laws, and non-discrimination provisions in other areas of law. This chapter then assesses the enforcement and implementation of existing laws and policies aimed at ensuring equality. In order to assess the full picture of the Kazakhstan's legal framework as it relates to equality, this part should be read together with, and in the context of, the following part, which contains an appraisal of laws that discriminate overtly or are subject to discriminatory application.

Although Kazakhstan has ratified a number of the key international treaties relevant to equality, and international treaty law takes precedence over national law, the protection of the right to equality and non-discrimination in Kazakhstan does not meet international standards. There are a number of provisions directed at non-discrimination and equality across national legislation in Kazakhstan, however, at best these offer a patchwork of protection from discrimination. In addition, there is no definition of discrimination and no protection against indirect or multiple discrimination. The analysis below reveals the need for comprehensive anti-discrimination legislation in Kazakhstan.

The enforcement and implementation of the legal framework related to equality also requires strengthening. There are considerable concerns about the independence of the judiciary, with the President exercising considerable control over their appointment and tenure in service and several reports of individual judges being prosecuted on corruption charges. The Commissioner for Human Rights, which is the national human rights institution in Kazakhstan, suffers from a lack of independence, a lack of funding and limited competence. In addition, individuals do not have clear access to justice to enforce their right to equality and non-discrimination and, contrary to best practice, individuals bear the burden of proof in bringing a claim for discrimination. In short, the Kazakhstan's legal framework relating to equality suffers from some serious shortcomings.

2.1 International Law

This section provides an overview of Kazakhstan’s international obligations in relation to the rights to equality and non-discrimination. Kazakhstan has ratified or acceded to eight of the nine key United Nations human rights treaties and has thereby expressly agreed to protect, respect and fulfil the rights contained in these instruments and to be bound by the legal obligations contained therein. In addition, Kazakhstan is bound by customary international law which provides some important protection in respect of the right to non-discrimination on certain grounds.

2.1.1 Major United Nations Treaties Relevant to Equality

Kazakhstan has a good record of participation in international human rights and other legal instruments. With the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Kazakhstan has committed itself to the core United Nations human rights treaties.⁸⁸

Kazakhstan has a moderate record of allowing individual complaints to be made to the relevant Treaty Bodies, as it has ratified the first Optional Protocol to the International Covenant on Civil and Political Rights, made a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, and ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

Table 2: Ratification of international human rights treaties by Kazakhstan

Instrument Relevant to Equality	Signed	Ratified/Acceded/ Succeeded
International Covenant on Civil and Political Rights 1966 (ICCPR)	2 December 2003	Ratified 24 January 2006
Optional Protocol to the International Covenant on Civil and Political Rights (1976)	25 September 2007	Ratified 30 June 2009

⁸⁸ The nine core human rights treaties are shaded grey in Table 2 below.

Instrument Relevant to Equality	Signed	Ratified/Acceeded/ Succeeded
International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)	2 December 2003	Ratified 24 January 2006
Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights (2008) (ICESCR – OP)	23 September 2010	N/A
Convention on the Elimination of All Forms of Discrimination Against Women (1979) (CEDAW)	N/A	Acceeded 26 August 1998
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	6 September 2000	Ratified 24 August 2001
International Convention on the Elimination of All Forms of Racial Discrimination (1965) (ICERD)	N/A	Acceeded 26 August 1998
Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984) (CAT)	N/A	Acceeded 26 August 1998
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002)	25 September 2007	Ratified 22 October 2008
Convention on the Rights of the Child (1989) (CRC)	16 February 1994	Ratified 12 August 1994
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)	6 September 2000	Ratified 10 April 2003
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000)	6 September 2000	Ratified 24 August 2001
Convention on the Rights of Persons with Disabilities (2006) (CRPD)	11 December 2008	Ratified 21 April 2015
Optional Protocol of the Convention on the Rights of Persons with Disabilities (2006) (CRPD-OP)	11 December 2008	N/A
International Convention for the Protection of all Persons from Enforced Disappearance (2006)	N/A	Acceeded 27 February 2009
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) (ICRMW)	N/A	N/A

The failure to sign or ratify the ICRMW represents arguably the most notable gap in Kazakhstan’s international legal obligations related to equality. At the second Universal Periodic Review (UPR) of Kazakhstan by the UN

Human Rights Council in 2014, four states recommended that Kazakhstan either ratify or become a party to the ICRMW.⁸⁹ However, the government of Kazakhstan rejected these recommendations on the grounds that national law and other ratified international law provided a “sufficient level of protection of migrant workers”.⁹⁰

A further weakness is Kazakhstan’s failure to ratify the ICESCR-OP, despite having signed it in 2010. Kazakhstan has also failed to ratify the CRPD-OP which it signed in December 2008. Both Optional Protocols provide an individual complaint mechanism for those who allege that the state has violated their rights under ICESCR and CRPD respectively. At the UPR in 2014, three states recommended that Kazakhstan ratify ICESCR-OP and two states recommended ratification of CRPD-OP.⁹¹ The recommendation to ratify the ICESCR-OP was accepted by the government on the basis that this was already in the process of being implemented.⁹² Nevertheless, to date the Optional Protocol has not yet been ratified. The recommendation to ratify the CRPD-OP was not accepted by Kazakhstan;⁹³ however, now that Kazakhstan has ratified the CRPD it is likely to face strong encouragement from the Committee on the Rights of Persons with Disabilities to do so without delay. In relation to the treaties that it has ratified, Kazakhstan has largely done so without declaration or reservation. Although Kazakhstan made a declaration on its ratification of CAT-OP on 22 December 2008 to postpone the establishment of a national preventative mechanism of CAT-OP, it has since designated the Human Rights Commissioner as the national preventive mechanism.⁹⁴

Kazakhstan has a good record of compliance with its reporting obligations under the treaties it has ratified. While some reports have been submitted

89 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kazakhstan*, UN Doc. A/HRC/28/10, 10 December 2014, Paras 126.1 – 4.

90 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Kazakhstan: Addendum*, UN Doc A/HRC/28/10/Add.1, 13 March 2015, Para 11.

91 See above, note 89, Paras 125.9 and 126.8.

92 *Ibid.*, Para 125.9.

93 *Ibid.*, Para 126.

94 Committee Against Torture, *Third periodic report: Kazakhstan*, UN Doc. CAT/C/KAZ/3, 9 January 2014, Para 155.

late, many have been on time or early and, at the time of publication, only one report remains outstanding.⁹⁵

2.1.2 Other Treaties Related to Equality

Kazakhstan has a mixed record in relation to other international treaties relevant to the rights to equality and non-discrimination. Kazakhstan acceded to the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees in 1999 but it has not signed or ratified either of the key conventions on statelessness.

The state’s record on endorsing labour standards is much more positive, as Kazakhstan has ratified all eight of the fundamental International Labour Organization (ILO) Conventions including the Equal Remuneration Convention and the Discrimination (Employment and Occupation) Convention.

Table 3: Ratification of international human rights treaties by Kazakhstan

Instrument	Signed?	Ratified/Acceded/Succeeded
Convention relating to the Status of Refugees (1951)	N/A	Acceded 15 January 1999
Convention relating to the Status of Stateless Persons (1954)	No	No
Convention on the Reduction of Statelessness (1961)	No	No
Protocol relating to the Status of Refugees (1967)	N/A	Acceded 15 January 1999
UNESCO Convention Against Discrimination in Education (1960)	No	No
Rome Statute on the International Criminal Court (1960)	No	No
Freedom of Association and Protection of the Right to Organise Convention (ILO Convention No. 87) 1948	N/A	Ratified 13 December 2000
Equal Remuneration Convention (ILO Convention No. 100) 1951	N/A	Ratified 18 May 2001
Discrimination (Employment and Occupation) Convention (ILO Convention No. 111) 1958	N/A	Ratified 6 December 1999

⁹⁵ The second periodic report under ICESCR was due to be received by the CESCR on June 2015 but as of December 2016, it has not been submitted.

Instrument	Signed?	Ratified/Acceeded/ Succeeded
Worst Forms of Child Labour Convention (ILO Convention No. 182) 1999	N/A	Ratified 26 February 2003
Forced Labour Convention (ILO Convention No. 29) 1930	N/A	Ratified 18 May 2001
Right to Organise and Collective Bargaining Convention (ILO Convention No. 98) 1949	N/A	Ratified 18 May 2001
Abolition of Forced Labour Convention (ILO Convention No. 105) 1957	N/A	Ratified 18 May 2001
Minimum Age Convention (ILO Convention No. 138) 1973	N/A	Ratified 18 May 2001

2.1.3 Regional Instruments

Kazakhstan is a member of the Organization for Security and Co-operation in Europe (OSCE) and the Commonwealth of Independent States (CIS). In addition, Kazakhstan is eligible to become a member state of the Council of Europe and a party to the European Convention of Human Rights although currently it is neither.

Kazakhstan has a relatively poor record of ratifying regional instruments that have relevance to the rights to equality and non-discrimination. Kazakhstan is one of five countries in the CIS which have neither signed nor ratified the CIS Convention on Human Rights and Fundamental Freedoms.

The Parliamentary Assembly of the Council of Europe (PACE) in 2006 found that Kazakhstan was eligible to apply for special guest status with the Council of Europe (CoE).⁹⁶ Since then, the relationship between the CoE and Kazakhstan has grown. In December 2013, the CoE Committee of Ministers adopted the “Council of Europe Neighbourhood Co-operation Priorities for Kazakhstan 2014-2015: co-operation activities on Council of Europe’s conventions in criminal matters (NCP)” which creates a path for Kazakhstan to become party to several CoE instruments related to criminal justice. Despite these moves to integrate Kazakhstan with the CoE, as of December 2016, the formal status of Kazakhstan in rela-

⁹⁶ Parliamentary Assembly of the Council of Europe, *Situation in Kazakhstan and its relations with the Council of Europe*, Doc. 11007, 7 July 2006, Para 63, available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=9998&lang=EN>.

tion to the CoE remains unresolved and Kazakhstan is neither a member state of the CoE nor a party to the European Convention on Human Rights.

2.1.4 Treaties Not Ratified by Kazakhstan

While the few treaties which have not been ratified by Kazakhstan do not bind the state they, together with comments of their respective treaty bodies, do have an important interpretative function when determining the obligations of Kazakhstan. They should be used to elucidate: (i) Kazakhstan's obligations under the treaties to which it is a party, to the extent that the treaties to which it is not a party can explain concepts which are also found in those treaties to which it is a party; (ii) the content of the right to equality and non-discrimination for persons covered by the ratified treaties who are vulnerable to multiple discrimination on grounds which include those protected by other treaties or in areas of life covered by other treaties; and (iii) Kazakhstan's obligations under customary international law.

2.1.5 Customary International Law

Under international law, binding legal obligations on states derive from customary international law as well as from treaty law. Customary international law is deduced over time from the practice and behaviour of states.⁹⁷ Customary international laws are particularly significant when they reach a level – known as peremptory norms⁹⁸ – at which they are binding on all states and cannot be derogated from. It is largely accepted that the prohibition of racial discrimination is a peremptory norm of international customary law.⁹⁹ In ad-

97 Shaw, M., *International Law*, Fifth edition, Cambridge University Press, 2003, p. 69.

98 *Prosecutor v Anto Furundzija* (Judgment) ICTY- IT-95-17/1-T (10 December 1998), Para 153; Parker, K. and Neylon, L.B., "Jus Cogens: Compelling the Law of Human Rights", *Hastings International and Comparative Law Review*, Vol. 12, 1988–1989, p. 417. See also the Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 1969, Article 53.

99 De Schutter, O., *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010, pp. 64–68 and the materials referred to therein; Pellett, A., "Comments in Response to Christine Chinkin and in Defense of *Jus Cogens* as the Best Bastion against the Excesses of Fragmentation", *Finnish Yearbook of International Law*, Vol. 17, 2006, p. 85; cf Shaw, M., *International Law*, Sixth edition, Cambridge University Press, 2008, p. 287, who refers to it as part of customary international law, with no reference to it being a peremptory norm; Tanaka, J. (in dissent) *South-West Africa Cases (Ethiopia v South Africa; Liberia v South Africa)* [1966] ICJ Rep (International Court of Justice), pp. 293, 299–300.

dition, it can be said that the prohibition of discrimination on other grounds, such as gender and religion, may now be part of customary international law, although not yet reaching the status of a peremptory norm.¹⁰⁰ Some argue, and it has been stated by the Inter-American Court of Human Rights, that the broader principle of non-discrimination is a peremptory norm of customary international law¹⁰¹ but this is subject to debate.¹⁰²

2.1.6 Status of International Law in Domestic Law

Kazakhstan is a monist state and, as such, international treaties that are ratified by the state automatically become part of national law. Article 4(3) of the Constitution provides that:

International treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when the application of an international treaty shall require the promulgation of a law.

This, together with the provisions of the Law on Legal Acts discussed in Part 2.2 below suggests that international treaties, once ratified, take precedence over all national law, including the Constitution, and have direct effect unless the treaty itself requires specific implementing legislation. A resolution of the Kazakhstan's Constitutional Council – a non-judicial body responsible for, amongst other things, interpreting the Constitution, emphasises that ratified international treaties and the decisions of international organisations and other bodies formed under ratified international treaties have priority over na-

100 *Ibid.*, Shaw, p. 287; *Ibid.*, Pellett, p. 85; Cassel, D., "Equal Labour Rights for Undocumented Migrant Workers", in Bayefsky, A. (ed), *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick and Arthur Helton*, Martius Nijhoff Publishers, 2006, pp. 511–512.

101 Inter-American Court of Human Rights, Advisory Opinion OC-18/03 – Juridical Condition and Rights of Undocumented Migrants, Inter- Am. Ct. H.R. (Ser. A) No. 18 (2003), 17 September 2003, p. 23. See also, by way of example, Martin, F.F. et al., *International Human Rights and Humanitarian Law: Cases, Treaties and Analysis*, Cambridge University Press, 2006, pp. 34–35.

102 See Bianchi, A., "Human Rights and the Magic of Jus Cogens", *The European Journal of International Law*, Vol. 19, 2008, p. 506; see above, note 100, Cassel, D., "Equal Labour Rights for Undocumented Migrant workers", pp. 511–512; see above note 99, Pellett A., "Comments in Response to Christine Chinkin and in Defense of Jus Cogens as the Best Bastion against the Excesses of Fragmentation", p. 85.

tional law, are directly enforceable and prevail over conflicting national legislation.¹⁰³ The precedence of international treaty obligations in national law is also expressly stated in the Code of Administrative Offences and the Civil Code; both Codes have provisions stating that in the event of a conflict between Kazakhstan's national legislation in relation to the relevant Code and international treaty obligations, the international treaty obligations prevail.¹⁰⁴ However, contrary to the provisions of the Law on Legal Acts, the Supreme Court has issued a binding resolution stating that if the provisions of a ratified treaty conflict with the Constitution, then the constitutional provisions prevail.¹⁰⁵

Once a treaty has been ratified, Article 76 of the Constitution states that:

*[[Judicial power shall be exercised on behalf of the Republic of Kazakhstan and shall be intended to protect the rights, freedoms, and legal interests of the citizens and organisations for ensuring the observance of the Constitution, laws, other regulatory legal acts, and shall ensure international treaties of the Republic.]*¹⁰⁶

This further suggests that the rights contained in international treaties are directly effective.

The Constitutional Council, has the power to review international treaties for compliance with the Constitution before they are ratified; such a review is not a pre-requisite to ratification of a treaty and may take place following ratification. If an international treaty is reviewed prior to ratification

103 Normative Resolution of the Constitutional Council of the Republic of Kazakhstan, "On the official interpretation of the provisions of Article 4 of the Constitution of the Republic of Kazakhstan with regard to the order of execution of the decisions of international organizations and their organs", No. 6 of 5 November 2009; European Commission for Democracy Through Law, "Draft Amicus Curie Brief: On the interpretation of the Kazakh constitution concerning the participation in the customs union within the Euro-Asian Economic Community", Opinion No. 557/2009, 4 December 2009, Para 28, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2009\)176-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)176-e).

104 Code of Administrative Offences of the Republic of Kazakhstan, No. 155-II of 30 January 2001, Article 1.

105 Normative Resolution of the Supreme Court of the Republic of Kazakhstan of 10 July 2008 "On Application of International Treaties of the Republic of Kazakhstan".

106 Constitution of the Republic of Kazakhstan, 30 August 1995, Article 76(1).

and is found not to comply with the Constitution, it cannot be ratified.¹⁰⁷ If the Constitutional Council reviews a treaty following ratification and passes a Resolution that such treaty is not compliant with the Constitution, this Resolution is immediately binding and the treaty cannot have legal effect.¹⁰⁸ The Council does not choose to exercise this power in respect of all treaties and has not done so in respect of any of the core human rights treaties. Additionally, Article 72 of the Constitution provides for references to be made to the Constitutional Council by “the President of the Republic of Kazakhstan, the chairperson of the Senate, the Chairperson of Majilis [the lower house of Parliament], not less than one-fifth of the total number of deputies of Parliament, [or] the Prime Minister” to consider the compatibility of the international treaty with the Constitution.

Customary international law is accepted in Kazakhstan, and appears to be included as a source of law in both the Criminal Code and Administrative Offences Code which provide that they are based on the Constitution and “generally accepted principles and norms of international law”.¹⁰⁹

As the Kazakhstan’s legal framework is based on Romano-Germanic law, state bodies and courts typically rely on specific legislation; the provisions of ratified international treaties on human rights are very rarely cited or relied on by courts,¹¹⁰ and the research conducted for this report has not

107 *Ibid.*, Article 74(1), which provides that: “Laws and international treaties recognized not to be in compliance with the Constitution of the Republic of Kazakhstan, may not be signed or, accordingly, ratified and brought into effect”.

108 *Ibid.*, Article 74(1) and Article 74(3).

109 Criminal Code of the Republic of Kazakhstan, No. 226-V of 3 July 2014 (as amended up to Law of the Republic of Kazakhstan No. 501-V of April 9, 2016), Article 1; see above, note 104, Code of Administrative Offences of the Republic of Kazakhstan, Article 1.

110 Kazakhstan International Bureau for Human Rights and Rule of Law, Charter for Human Rights, Feminist League, Legal Policy Research Center, International Legal Initiative, Union of Crisis Centers in Kazakhstan, Media Net, Freedom of Speech Foundation “Adil Soz”, Children Fund of Kazakhstan, Confederation of Free Trade Unions of Kazakhstan, “Aman Saulyk” Foundation, *Submission to the Human Rights Committee*, August 2015, p. 4, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_ICO_KAZ_21507_E.pdf; Committee on Economic, Social and Cultural Rights, *Concluding Observations: Kazakhstan*, UN Doc E/C.12/KAZ/CO/1, 7 June 2010, Para 7; Committee on the Elimination of Discrimination Against Women, *Concluding observations on the third and fourth periodic reports of Kazakhstan*, UN Doc. CEDAW/C/KAZ/CO/3-4, 10 March 2014, Para 8; Committee on the Elimination of Racial Discrimination, *Concluding Observations: Kazakhstan*, UN Doc. CERD/C/KAZ/CO/6-7, 14 March 2014, Para 21.

identified any instances where a court has relied on provisions of customary international law.

Although Kazakhstan's law specifically provides for the primacy of international law over national law (albeit not the Constitution), in 2016 several judgments were issued by courts refusing to comply with specific recommendations in response to individual complaints before the UN Committee on Human Rights,¹¹¹ the UN Committee Against Torture,¹¹² and the UN Committee on the Elimination of Discrimination against Women.¹¹³

In response to two decisions finding violations of the ICCPR by the Human Rights Committee, the Kazakhstan's national courts have failed to take action. In the first case, Ms Toregozhina sought relief from the national courts following a determination of the Human Rights Committee that her rights to liberty and security of the person and freedom of expression had been violated.¹¹⁴ However, she was ultimately informed by the Prosecutor General's office that the implementation of the decision of the Human Rights Committee would only be possible once Kazakhstan had passed legislation regulating the implementation of UN treaty body decisions.¹¹⁵ This decision by the Prosecutor General is concerning given Kazakhstan's accession to the Optional Protocol of the ICCPR and the express recognition by the Constitutional Council that the decisions of international treaty bodies are binding under national law.¹¹⁶

111 *Toregozhina v. Kazakhstan*, Human Rights Committee, Communication No. 2137/2012, UN Doc. CCPR/C/112/D/2137/2012, 20 November 2014; *Esergepov v. Kazakhstan*, Human Rights Committee, Communication No. 2129/2012, UN Doc. CCPR/C/116/D/2129/2012, 4 May 2016.

112 *Bairamov v. Kazakhstan*, Committee Against Torture, Communication No. 497/2012, UN Doc. CAT/C/52/D/497/2012, 12 June 2014.

113 *Belousova v. Kazakhstan*, Committee on the Elimination of Discrimination Against Women, Communication No. 45/2012, UN Doc. CEDAW/C/61/D/45/2012, 25 August 2015.

114 See above, note 111, Human Rights Committee, *Toregozhina v. Kazakhstan*.

115 Independent Human Rights Law Consultant, *Submission to Human Rights Committee for the list of issues in relation to the second periodic report of Kazakhstan*, 17 August 2015, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCPR%2fCO%2fKAZ%2f21570&Lang=en.

116 See above, note 103, Normative Resolution of the Constitutional Council of the Republic of Kazakhstan of 5 November 2009.

Mr Ersegpov sought to re-open his case following the decision of the Human Rights Committee that his rights to a fair trial and freedom of expression had been violated,¹¹⁷ however, the Zhambyl Regional Court refused this claim without making reference to the Human Rights Committee decision and concluding that the initial investigation and trial had been satisfactory.¹¹⁸

In May 2014, the Committee against Torture ruled that the treatment of Rasim Bairamov while in police detention amounted to torture.¹¹⁹ Notwithstanding both this decision, and the judgment of the Kostanay Regional Court which ruled that the original 2015 decision to close the investigation into the allegations of torture was unlawful,¹²⁰ in July 2016 the Prosecutor General closed the investigation and refused to acknowledge Mr Bairamov's mother as a party in the case meaning there are no further avenues to appeal the decision to close the investigation.¹²¹

In the case of Anna Belousova which is considered in detail below in Part 3.3. Ms Belousova was dismissed when she refused the sexual advances of the Director at her school. Her initial complaints to the Department of Education were dismissed, the police refused to initiate criminal proceedings, and her initial claim for compensation was dismissed. She made an individual complaint to the Committee on the Elimination of Discrimination against Women, which found that Ms Belousova had been subject to sexual harassment in violation of the principle of equal treatment and that Kazakhstan had failed to investigate Ms Belousova's claims adequately and effectively in breach of its obligations under Article 2(e) and 5(a) of CEDAW.¹²² Following this decision from the Committee, Ms Belousova sought compensation from the Department of Education. In the civil proceedings, the prosecutor argued that the decision of the Committee was not legally binding and both the City Court and Oblast Court rejected Ms Belousova's claim ruling that her claim had already been considered (in the

117 See above, note 111, Human Rights Committee, *Esergepov v. Kazakhstan*.

118 Decision of Zhambyl Regional Court, 5 October 2016.

119 See above, note 112.

120 International Partnership for Human Rights, *Letter to Prosecutor General of Kazakhstan*, 20 May 2016, available at: <http://iphronline.org/wp-content/uploads/2016/05/IPHR-letter-Bayramov-May-2016.pdf>.

121 Organization for Security and Cooperation in Europe (OSCE) Human Dimension Implementation Meeting, *Torture and ill-treatment in Kazakhstan, Kyrgyzstan and Tajikistan*, 22 September 2016, p. 3, available at: <http://www.osce.org/odihr/266986?download=true>.

122 See above, note 113, Paras 10.8 and 10.10.

proceedings prior to bringing her claim to the Committee) and that the Department of Education was not the appropriate defendant.¹²³

2.2 The National Legal Framework on Equality and Non-Discrimination

The current legal system of Kazakhstan developed following the collapse of the Soviet Union. The Constitution, national legislation, international treaty obligations, regulatory resolutions of the Constitutional Council and the Supreme Court all form part of the law of Kazakhstan.¹²⁴ The hierarchy of law in Kazakhstan is set out in Articles 6 and 10 of the Law “On Legal Acts” as follows:

1. The Constitution
2. Ratified international agreements and treaties;
3. Laws enacting changes and amendments to the Constitution;
4. Laws of the Republic of Kazakhstan (as enacted by the Parliament and signed by the President) having the force of constitutional law and decrees of the President;
5. Codes of Kazakhstan;
6. Laws (as enacted by the Parliament and signed by the President) and decrees of the President, having the force of law;
7. Normative resolutions of the Parliament;
8. Normative acts of the President;
9. Normative resolutions of the Government;
10. Normative orders of the ministers of Kazakhstan, heads of other central executive bodies, the Central Electoral Commission, Audit Committee and National Bank;
11. Normative orders of the and heads of departments of central executive bodies; and
12. Regulatory decisions of the local (territorial) representative and executive bodies of Kazakhstan.¹²⁵

123 Kazakhstan International Bureau of Human Rights and the Rule of Law, “Выше ООН только казахстанский суд”, *KIBHR*, 29 September 2016, available at: http://www.bureau.kz/novosti/sobstvennaya_informaciya/vyshe_oon_tolko_kazakhstanskii_sud.

124 See above, note 106, Article 4(1).

125 Law of the Republic of Kazakhstan “On Legal Acts” № 480-V dated 6 April 2016; Constitutional Council Resolution No. 2 “On official interpretation of the subpoint 7 of Article 54 of the Constitution of Kazakhstan”, 18 May 2006 amended as on 24 September 2008.

Despite the direct applicability of international treaties in national law, the national framework currently falls far short of best practice standards for the advancement of equality and protection from discrimination.

2.2.1 The Constitution

The Constitution of Kazakhstan was adopted on 30 August 1995 by referendum. The current Constitution was preceded by a 1993 Constitution which had been adopted by the Supreme Council of Kazakhstan in 1993 and the 1978 Constitution of the Kazakh Soviet Socialist Republic. Since 1995 the Constitution has been amended three times in 1998, 2007, and 2011. The analysis which follows is of the Constitution as amended.

The preamble to the Constitution explicitly endorses a commitment to the ideals of freedom and equality.¹²⁶ The substantive text of the Constitution contains a number of provisions governing equality rights and non-discrimination. Article 1.1 provides that:

The Republic of Kazakhstan proclaims itself a democratic, secular, law-bound State whose supreme values are a human, his life, rights and freedom.

Section 2 of the Constitution provides a series of rights, freedoms, and duties, the majority of which are guaranteed to all persons, with only a small number guaranteed exclusively to Kazakhstani citizens. Article 14 of the Constitution sets out the right to equality and provides:

Everyone shall be equal before the law and court.

No one shall be subjected to discrimination on grounds of origin, social, property status occupation, sex, race and nationality, language, religion, convictions,¹²⁷ place of residence or any other circumstances.

¹²⁶ See above, note 106.

¹²⁷ This is broadly interpreted as including political and philosophical belief.

The Constitutional Court has interpreted this Article as guaranteeing equality of rights and responsibilities of a person, equal protection of these rights by the state and equal responsibility of everyone before the law.¹²⁸

Notwithstanding the open-ended nature of the constitutional guarantee of equality, this definition is not consistent with Principle 5 of the Declaration on Principles of Equality (the Declaration) which provides:

Discrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.

The failure to include in Article 14 of the Constitution grounds such as sexual orientation, gender identity, disability and health status in line with the Declaration is disappointing.¹²⁹ The Constitution does not provide any guidance on what “any other circumstances” may protect; Principle 5 of the Declaration recommends that discrimination should be prohibited where it:

(i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; (iii) adversely affects the equal enjoyment of a person’s rights and freedoms in a

128 Constitutional Council Resolution No. 7/2, “On the official interpretation of Article 13.2, Article 14.1, Article 76.2 of the Constitution of Kazakhstan”, 29 March 1999.

129 See, e.g. Petrova, D., “The Declaration of Principles on Equality: A Contribution to International Human Rights”, in Declaration of Principles on Equality, the Equal Rights Trust, London, 2008, p. 34: “Legal provisions relating to equality must combine legal certainty with openness to improvement in order to reflect the lived experiences of those disadvantaged by inequality. Grounds which historically have been related to the most egregious forms of discrimination and are significant factors in a society, including race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, association with national minority, belonging to an indigenous people, age, disability, sexual orientation or health status, should be explicitly referred to in legislation.”

serious manner that is comparable to discrimination on the prohibited grounds stated above.

There is some limited evidence that “any other circumstances” in Article 14 protects people from discrimination on grounds of disability and health status as shown by the Law on Social Protection of Disabled Persons and the Law on Public Health and the Health Care System.¹³⁰ In its reports to Treaty Bodies Kazakhstan has been silent on the question of whether Article 14 may be applied to protect sexual orientation and gender identity. Further, there is no national jurisprudence indicating the criteria for determining the application of Article 14 beyond the express grounds listed in the Constitution.¹³¹ In July 2016, the Human Rights Committee recommended that Kazakhstan ensure “adequate and effective protection against all forms of discrimination” and specifically recommended that the government include “sexual orientation and gender identity among the prohibited grounds for discrimination.”¹³²

Article 14 protects “convictions” as a ground of discrimination, this is a broad provision that incorporates all personal, political and philosophical views. Article 14 also protects persons on the grounds of their “social” status; there is no official interpretation of the definition of social, but it appears to mean belonging to a particular social group. As discussed below, there is evidence that the term social has been applied very broadly, particularly in relation to prosecutions under Article 174 of the Criminal Code for inciting hatred on the grounds of, *inter alia*, “social” status where the state authorities have been

130 Law of the Republic of Kazakhstan “On Social Protection of Disabled Persons in the Republic of Kazakhstan”, No. 39 of 13 April 2005, Article 5 states that one of the principles in state policy in the sphere of social protection of disabled people is non-discrimination and equality; Code of the Republic of Kazakhstan, “On Public Health and the Health Care System”, Law No. 193-IV of 18 September 2009, Article 112(4) states that the state shall guarantee the prevention of any form of discrimination due to the nature of HIV or AIDS.

131 Quoted in Human Rights Watch, “*That’s When I Realized I Was Nobody*”, *A Climate of Fear for LGBT People in Kazakhstan*, 2015, p. 12, available at: https://www.hrw.org/sites/default/files/report_pdf/kazakhstan07154_up.pdf; see also Part 3.5 on Sexual Orientation and Gender Identity, 3.6 on Disability; and 3.7 on Health Status.

132 Human Rights Committee, *Concluding observations on the second periodic report of Kazakhstan*, UN Doc. CCPR/C/KAZ/CO/2, 9 August 2016, Para 10.

considered as a discrete social group.¹³³ The extension of protection from discrimination to groups which do not meet the criteria outlined in Principle 5 of the Declaration of Principles on Equality, for example the police, is inconsistent with international best practice.

In the absence of any national comprehensive non-discrimination legislation, the failure to include a definition of discrimination in the Constitution that includes direct, indirect and multiple discrimination or discrimination by association is regrettable. In its most recent Concluding Observations, the Human Rights Committee has recommended that Kazakhstan ensure its legal framework: “provides adequate and effective protection against all forms of discrimination, including in the private sphere”; “prohibits direct, indirect and multiple discrimination in line with the [ICCPR] and other international human rights standards”; and “provides for access to effective and appropriate remedies to victims of discrimination”.¹³⁴

In response to a recent query from the Human Rights Committee on whether any steps had been taken to adopt comprehensive anti-discrimination legislation which would contain a comprehensive list of grounds and prohibit direct, indirect and multiple discrimination,¹³⁵ Kazakhstan responded by noting:

*Establishing an exhaustive list of prohibited grounds for discrimination, as the Committee has requested, seems impracticable, as the right of persons to bring proceedings before a court would be limited if they faced a form of discrimination not covered by such a list.*¹³⁶

It should be noted that the Committee did not require Kazakhstan to develop a comprehensive close-ended list of grounds of discrimination or forms of discrimination but rather to ensure that particular grounds and forms of dis-

133 See below Part 2.2.3. on the Criminal Code; Freedom House, *Kozlov Case File: Final Monitoring Report on the Trial of Vladimir Kozlov, Akzhanat Aminov, and Serik Sapargali*, December 2012, pp. 8–9, available at: <https://freedomhouse.org/sites/default/files/Final%20Monitoring%20Report%20-%20Kozlov%20Trial.pdf>.

134 See above, note 132, Para 10.

135 Human Rights Committee, *Reply to the List of Issues: Kazakhstan*, UN Doc. CCPR/C/KAZ/1/2/Add.1, 14 April 2016, Para 3.

136 *Ibid.*, Para 11.

crimination are expressly covered in the non-discrimination legal framework. At the time of publication, there is no evidence that the state is taking steps to implement these recommendations.

The Constitution also provides for a number of specific rights to be free from non-discrimination. Article 19 provides that:

Everyone shall have the right to determine and indicate or not to indicate his nationality, party and religious affiliation.

Everyone shall have the right to use his native language and culture, to freely choose the language of communication, education, instruction and creative activities.

Article 22 of the Constitution provides that:

Everyone shall have the right to freedom of conscience.

The right to freedom of conscience must not specify or limit universal human and civil rights and responsibilities before the state.

Each of Articles 14, 19 and 22 are absolute, meaning that they may not be subject to any restrictions or limitations.¹³⁷

Article 24.2 of the Constitution provides that:

Everyone shall have the right to safe and hygienic working conditions, to fair remuneration for labour without discrimination, as well as to social protection against unemployment.

The Constitution does not provide that positive action is to be taken by the state to overcome past disadvantage and accelerate progress towards equal-

137 See above, note 106, Article 39(3), which provides: "Any form of restrictions to the rights and freedoms of the citizens on political grounds shall not be permitted. Rights and freedoms stipulated by Articles 10–11; 13–15 paragraph 1 of article 16; article 17; article 19; article 22; paragraph 2 of article 26 of the Constitution shall not be restricted in any event."

ity of marginalised groups. This omission is repeated across the piecemeal equality and non-discrimination legislation discussed below.

The Constitution guarantees an individual the right to “judicial defence of his rights and freedoms”. This has been interpreted by the Constitutional Council as guaranteeing the right of any individual to apply to court to protect his or her rights and freedoms.¹³⁸ While guaranteeing the right to “judicial defence” of an individual’s Constitutional rights is a positive development, this provision is not supported by a constitutional cause of action or detail on the legal procedures to be followed in asserting a breach of constitutional rights. Research for this report indicates that claimants rarely allege a direct breach of their constitutional rights, preferring rather to rely on breaches of rights set out in specific laws such as the Criminal, Administrative or Civil Codes. This limits the effectiveness of the rights articulated in the Constitution as they are unsupported by recourse to effective remedies and sanctions.

2.2.2 Specific Equality and Anti-Discrimination Legislation

The most notable deficiency in Kazakhstan’s legal framework for equality is its lack of any comprehensive equality or anti-discrimination legislation. Instead, Kazakhstan has a variety of legislative provisions on non-discrimination across a range of laws, which offer, at best, patchwork protection from discrimination.

Law of the Republic of Kazakhstan “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”

The Law of the Republic of Kazakhstan “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women” (the “**Law on Gender Equality**”) was signed by the President of Kazakhstan on 8 December 2009, came into force on 15 December 2009 and was amended in 2011 and 2013. It prohibits any form of discrimination on the grounds of sex, provides for state guarantees of equal rights and equal opportunities for men and women and sets the fundamental principles and provisions related to the creation of conditions for gender equality.

138 *Ibid.*

The Law on Gender Equality sets the basic objective of state policy on gender equality as ensuring “equal rights and equal opportunities of men and women in all spheres of state and social life”¹³⁹ and applies to both private and public sectors.

The Law sets out specific guarantees of gender equality in the fields of employment, marriage and family life, health, education and culture.¹⁴⁰ These provisions are a mix of broad obligations on the state to realise policy objectives and specific prohibitions. For example, Article 10 states that equal rights and opportunities shall be guaranteed to men and women in recruitment, employment, promotion and training. Article 11 sets a similar policy objective requiring the state to ensure gender equality in family relations for example by realising “social policy directed to...improving the quality of family life”. Article 12 sets out a range of obligations on the state to guarantee gender equality in health, education and culture; in particular the state is required to adopt measures to ensure the reproductive health of men and women, to ensure equal access to training and to prohibit advertisements which violate the “generally accepted regulations of humanity and morals by the use of offensive words, comparisons or figures” in relation to gender.

Although the Law appears broad in scope, it makes no provision for gender equality in the fields of social protection, accessing goods or services, or social benefits.

In addition to the specific obligations in relation to employment, marriage and family life, health, education and culture, the Law sets out basic concepts, Article 4(1) of the Law on Gender Equality provides a right to challenge discriminatory legislation. It states that:

Regulatory legal acts, directed to the limitation or impairment of equal rights and equal opportunities of men and women, may be challenged in court according to the procedure provided by the civil procedure legislation of the Republic of Kazakhstan.

139 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, Article 3.

140 *Ibid.*, Articles 9, 10, 11 and 12.

This definition of discrimination in Article 4 has been criticised as being inconsistent with Kazakhstan's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women.¹⁴¹ Further, Article 4 offers a very limited protection against discrimination as it limits the ability of individuals to challenge instances of discrimination to "regulatory legal acts" which limit or impair equal rights or equal opportunities of men and women. The definition does not define or address the need for positive action or reasonable accommodation nor does it prohibit indirect discrimination, intersectional discrimination or discrimination by association.

Article 4 outlines certain situations, which do not constitute gender-based discrimination. In particular, differences, exceptions, preferences and limitations which are intrinsic to the requirements of a particular kind of labour or conditioned by a special care of the state after persons in need of enhanced social and legal protection are not considered discriminatory. Furthermore, measures adopted in the following areas do not constitute discrimination under the Law:

- a) the protection of maternity, childhood and paternity;
- b) the protection of women due to pregnancy and childbirth;
- c) increasing life expectancy for men;
- d) the protection of women in criminal law, criminal procedure and correctional legislation

Principle 5 of the Declaration of Principles on Equality envisages certain instances of discrimination which may be permissible by reference to defined criteria. The exclusions under Article 4 are broad and their exact scope is unclear leaving scope for discriminatory application; in fact, under Article 46 of the Criminal Code women may not be subject to life imprisonment and under Article 47 of the Criminal Code the death penalty may not be imposed on women.

141 International Fund of Protection of Freedom of Speech "Adil Soz", Almaty Helsinki Committee, Charter for Human Rights, Feminist League of Kazakhstan, Kazakhstan International Bureau for Human Rights and Rule of Law, International Center for Journalism "MediaNet" and Legal Policy Research Center, *Submission to the Human Rights Committee for Kazakhstan*, 2011, p. 7, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_NGO_KAZ_102_9346_E.pdf; International Commission of Jurists, *Women's Access to Justice in Kazakhstan: Identifying the Obstacles and Need for Change*, 2013, p. 26, available at: <http://www.refworld.org/pdfid/530f05554.pdf>.

Although Article 4 provides for the right to challenge legal acts which undermine equal rights and equal opportunities for men and women, this is not a direct cause of action and the Law on Gender Equality does not create a general direct cause of action for breach of its provisions nor does it provide for general remedies or sanctions beyond a vague statement that a violation of the Law shall entail “responsibility” under the national law.¹⁴² Individuals may only bring claims directly under two provisions of the law which also provide for specific remedies; a violation of the requirement under Article 9 to provide equal access to public service for men and women should result in repeal of the unlawful order or of the results of the competition to fill vacant positions. Article 10 provides that persons who have suffered discrimination in the field of labour, are granted a right to approach organisations which are involved in “ensuring equal rights and equal opportunities” for men and women. Furthermore, the broad policy-oriented nature of the obligations under the Law may make it difficult for individual claimants to establish breach of the specific provisions under the Law. Research for this report has not identified any cases specifically alleging breach of this Law.

An individual seeking redress for a violation of any of the other rights under the Law on Gender Equality has no specific remedies available. Furthermore, no individual is entitled to bring a claim directly under the Law; rather individuals are required to bring a claim under Article 145 of the Criminal Code. The failure to specify specific remedies and sanctions is inconsistent with Principle 22 of the Declaration which requires effective sanctions for breaches of equality and General Recommendation No. 28 from the Committee on the Elimination of Discrimination Against Women which requires states to provide “appropriate remedies for women who are subjected to discrimination contrary to [CEDAW]”.¹⁴³

The Law on Gender Equality directs that the following bodies are responsible for ensuring equal rights and equal opportunities for men and women: the President, the Government, central executive bodies, the local executive bodies of regions, cities of republican significance, the capital and such other bodies as are designated responsible by national law.¹⁴⁴

142 See above, note 139, Article 15.

143 Committee on the Elimination of Discrimination Against Women, *General Recommendation No.28*, UN Doc. CEDAW/C/2010/47/GC.2, Para 32.

144 See above, note 139, Article 5.

There is no government agency formally tasked with ensuring the implementation of the Law on Gender Equality. The National Commission on Family and Women's Affairs and Family-Demography Policy, was set up in 1998 in order to assist achieving the equality of economic opportunity between men and women. The Commission is predominantly focused on gender equality in the context of family life but it also seeks to increase entrepreneurship among women, increase women's competitiveness in the labour market, advance the rights of women and children in the fields of health, education and other economic, social, political and cultural rights.¹⁴⁵ Furthermore, it is an advisory body which can conduct inspections and investigations but cannot receive or consider complaints from individuals whose rights have been violated under the Law on Gender Equality.¹⁴⁶

The Law is supported by the Strategy for Gender Equality for 2006–2016, as discussed below in Part 3.3. Unlike the Law, the Strategy has very broad scope and aims to improve gender equality in a range of areas, such as the economy, public and political life, education, employment and health.

Law of the Republic of Kazakhstan “On Social Protection of Disabled Persons in the Republic of Kazakhstan”

Kazakhstan has a broad-ranging obligation under the CRPD “to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability” (Article 4(1)). In addition, it seems clear from international law and best practice that disability is a protected characteristic falling within the term “other status” in Article 2(2) of the ICESCR and Article 2(1) of the ICCPR. There is specific legislation to protect persons with disabilities in Kazakhstan in the form of the the Law of the Republic of Kazakhstan “On Social Protection and General Protection of Disabled Persons in the Republic of Kazakhstan”

145 Decree of the President of the Republic of Kazakhstan on the “National Commission on Family and Women's Affairs under the President of the Republic of Kazakhstan” dated 1 February 2006 No.56; Regulations on the National Commission on Family and Women's Affairs, available at: <http://www.akorda.kz/kz/o-nacionalnoi-komissii>.

146 See above, note 141, International Fund of Protection of Freedom of Speech “Adil Soz”, Almaty Helsinki Committee, Charter for Human Rights, Feminist League of Kazakhstan, Kazakhstan International Bureau for Human Rights and Rule of Law, International Center for Journalism “MediaNet” and Legal Policy Research Center, *Submission to the Human Rights Committee for Kazakhstan*, p. 7.

(the “**Law on Social Protection of Disabled Persons**”) which was signed by the President on 13 April 2005, came into force on 21 April 2005 and has been amended several times since, most recently in 2015. While the Law contains some provisions related to discrimination, it is not anti-discrimination legislation *per se*. Rather, it determines the legal, economic and organisational conditions of providing social protection for persons with disabilities, and seeks to create equal opportunities for integration into the society.

The Law on Social Protection of Disabled Persons prohibits discrimination against persons with disabilities in both the private and public sectors, it has a broad scope and targets education, employment, housing, accessibility, and the social and medical rehabilitation of persons with disabilities. However, the Law does not provide any definition of what constitutes discrimination leaving the scope of its application unclear. This is inconsistent with Kazakhstan’s obligations under Article 5 CRPD to provide persons with disabilities comprehensive and effective legal protection against discrimination.

Article 1 defines a “disabled person” as:

“[A] person having health impairment with a persistent disorder of body functions associated with diseases, injuries, their consequences, defects which result in limitation of life activity and necessity of their social protection.”

The Committee of Labour, Social Protection and Migration which is part of the Ministry of Health Protection and Social Development is charged with determining whether a person meets this definition;¹⁴⁷ the Committee applies both medical and social criteria in determining whether a person meets the criteria set out in Article 1.¹⁴⁸ The application of social criteria and focus on the limitation of persons with disabilities to integrate into and engage with all aspects of life is in line with the CRPD’s social model of disability and is to be welcomed. Several other provisions of the Law reinforce the social dimensions of disability, for example, Article 13 requires that the

147 The Decree of Minister of Health Protection and Social Development of Kazakhstan “On Approval of the Rules of Medical-Social Expertise” № 44 dated 30 January 2015, available at: <http://adilet.zan.kz/rus/docs/V1500010589#z20>.

148 See above, note 130, Law of the Republic of Kazakhstan “On Social Protection of Disabled Persons in the Republic of Kazakhstan”, 13 April 2005 No. 39, Article 13(2).

establishment of a disability in relation to employment and the ability to work is only following both a medical and social assessment which takes into account social and psychological data; Article 17 identifies the rehabilitation of persons with disabilities as a range of measures designed to eliminate or compensate for the restrictions on the ability of such persons to engage fully in “vital functions” and Article 21 provides for a range of measures to ensure the social rehabilitation of persons with disabilities. Although the definition in Article 1 appears to be closed, other provisions in the Law make it clear that disability includes intellectual, mental and sensory impairments.¹⁴⁹

The Law on Social Protection of Disabled Persons, guarantees persons with disabilities all socio-economic and individual rights under the Constitution and other national law, including the right to education employment and housing.¹⁵⁰ The Law focuses in particular on improving the rights of persons with disabilities in the fields of employment,¹⁵¹ education¹⁵² and social protection, e.g. housing.¹⁵³ Certain positive measures are specified to enhance equality for persons with disabilities, for example Article 30 sets out the right for persons with disabilities to vocational training and Article 31 requires local executive bodies to set an employment quota of between 2 and 4% for persons with disabilities. Kazakhstan is required under its international treaty obligations to implement positive action measures; it is also international best practice, with Principle 3 of the Declaration making clear that “[t]o be effective, the right to equality requires positive action” and that

Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.

149 *Ibid.*, Article 12.

150 *Ibid.*, Article 14.

151 *Ibid.*, Articles 14 and 32.

152 *Ibid.*, Article 29.

153 *Ibid.*, Articles 14 and 15.

Principle 3 mirrors the obligations under the international treaties to which Kazakhstan is party. The Human Rights Committee has stated, for example, that

[T]he principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.¹⁵⁴

Similarly, the Committee on Economic, Social and Cultural Rights has stated that:

In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved. Such positive measures may exceptionally, however, need to be of a permanent nature, such as interpretation services for linguistic minorities and reasonable accommodation of persons with sensory impairments in accessing healthcare facilities.¹⁵⁵

Article 5 of the CRPD goes on to note that “specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination”. Although, the 2–4% target is a specific measure, it is noteworthy both that it is significantly below the proportion of persons with disabilities in the general population¹⁵⁶ and that,

154 Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.1 at 26, 1989, Para 10.

155 United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 9.

156 The most recent statistics given by the World Bank and WHO puts prevalence of disability in Kazakhstan at 14.2% of the population. World Bank and World Health Organisation, *World Report on Disability*, 2011, available at: <http://documents.worldbank.org/curated/en/665131468331271288/pdf/627830WP0World00PUBLIC00BOX361491B0.pdf>.

even noting this, this quota has not proven an effective tool in combating discrimination suffered by persons with disabilities in the field of employment, as discussed below.¹⁵⁷

Additionally, positive measures need to be supported by a strong mechanism for implementation and sanctions for breach. Although the Law on Social Protection of Disabled Persons does not provide any mechanism for implementation of the positive measures, Article 83 of the Code of Administrative Offences imposes a fine on employers who do not comply with their obligations under the Law on Social Protection of Disabled Persons.

Certain aspects of the “protective” provisions are concerning as they may limit the ability of persons with disabilities to work on an equal basis with others. For example, Article 32 provides that persons with disabilities may not work longer than 36 hours per week and requires that persons with a certain level of disability are given fifteen additional days of annual leave. This is a mandatory provision and does not respond to the needs or wishes of the individual in question. Although, as indicated above, international best practice mandates the use of positive measures, the use of such measures should be scrutinised to ensure they are not being used to conceal discrimination. On closer analysis, the protective provisions under Article 32 are problematic. While persons with disabilities may have particular needs that may require adjustments in their work conditions, not all persons with disabilities will have the same needs and certain persons may have no such needs. Article 32 is therefore likely to constitute unjustifiable direct discrimination.

As with the Law on Gender Equality, the Law on Social Protection of Disabled Persons does not specify remedies or sanctions for breach of the provisions of the law; nor does the Law provide any detail on the legal process to be followed in asserting a breach. There is only one Article which addresses remedies: Article 35 provides that compensation for damage suffered by persons with disabilities in the course of employment shall be in accordance with national law. There is no provision for remedies or sanctions for specific breach of the Law. Further, an individual cannot bring a claim for

157 See Part 3.6 below; 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*, CRC/C/KAZ/4, 15 January 2014, Para 443.

breach of the Law on Social Protection of Disabled Persons directly, but may claim for breach of certain provisions of the Law on Social Protection under the Code of Administrative Offences and the Criminal Code. As noted above, Article 83 of the Code of Administrative Offences prohibits violations of the Law on Social Protection of Disabled Persons in relation to the requirement to provide access to transport, social and cultural events and the obligations of employers in relation to persons with disabilities. Persons with disabilities may also bring a claim under Article 145 of the Criminal Code which is a broad prohibition on the restriction of rights of individuals on the grounds of, *inter alia*, disability.¹⁵⁸

The Government of Kazakhstan has established a Coordination Council on Social Protection of Disabled Persons (the “Coordination Council”) which is an advisory body tasked with preparing recommendations for the improvement of laws and policies for the social protection of persons with disabilities as well as coordinating activities of local and central executive bodies, cooperating with international and non-governmental organisations on issues relating to the social protection of persons with disabilities.¹⁵⁹ The Government, Ministry of Healthcare and Social Development, the Ministry of Education and Science of the Republic of Kazakhstan are also responsible for ensuring the protection of persons with disabilities. The Ministry of Healthcare and Social Development inspects organisations and reviews their compliance with the laws and policies relating to the social protection of persons with disabilities, as well as reviews cases on administrative violations related to the social protection of persons with disabilities.¹⁶⁰

The implementation of the Law on Social Protection of Disabled Persons has been supported by the adoption of the Action Plan for Ensuring the Rights and Improving the Quality of Life of Persons with Disabilities. This policy, which is discussed in greater detail below at Part 3.6 aims to promote the rights and improve the quality of life of persons with disabilities.

158 See below, Part 2.2.3 on the Criminal Code.

159 Government Decree “On the creation of a Coordination Council in the field of social protection of the disabled”, No. 1266 dated 21 December 2005.

160 See, e.g. Ministry of Healthcare and Social Development, *Information monitoring the socio-economic situation in the country on October 1 2016*, available at: <https://www.mzsr.gov.kz/en/node/341554>.

The Action Plan has now entered its third phase and focuses on the following priority areas:

- improving national legislation;
- ensuring the availability of social and transport infrastructure for persons with disabilities;
- the adoption of measures for the prevention of disability;
- further development of inclusive education;
- improving the conditions for provision of social services;
- providing employment for persons with disabilities;
- ensuring the accessibility of cultural facilities, sporting facilities and facilities for persons with disabilities;
- the organisation of local, regional, national sports competitions among the disabled; preparation and participation of disabled athletes in international competitions; and
- fostering positive attitude within society towards persons with disabilities.

The government has pledged over 20 billion Kazakh Tenge (over 58 million USD) to support the implementation of this Action Plan. However, there is no information available monitoring the impact of the first and second stages of this Action Plan.

In summary, the Law provides certain protections to advance the rights of persons with disabilities in Kazakhstan, however, persons with disabilities continue to face discrimination in all spheres of life as set out below in Part 3.6 below.

2.2.3 Non-Discrimination Provisions in Other Pieces of Legislation

In addition to the Law on Gender Equality and Law on Social Protection of Disabled Persons, there are other pieces of legislation containing the equality and non-discrimination provisions. Although many of the laws discussed below contain provisions, which relate to the rights to equality and non-discrimination, none of the provisions addressed below contains a definition of discrimination, let alone definitions of direct and indirect discrimination. The level of protection offered falls far short of that which is required under Kazakhstan's international human rights obligations and confirms the need for comprehensive anti-discrimination legislation implementing the constitutional guarantee under Article 14.

Administrative Law

Administrative law is regulated by the current Administrative Offences Code (Law No. 235 of 5 July 2014) (Code of Administrative Offences) which was adopted in July 2014 and entered into force on 1 January 2015.

Code of Administrative Offences

The Code of Administrative Offences regulates forms of unlawful conduct from administrative agencies such as government bodies as well as provides less serious sanctions for certain forms of conduct by individuals. Individuals are entitled to bring claims for breach of the Code and the process for doing so is set out with the Code itself.

The Code has several provisions which address discrimination and inequality. For example, Article 75 offers some protection where discrimination on grounds of language takes place and provides that the restriction of the rights of individuals in choosing a language in official settings or discrimination owing to the language characteristics of an individual entails a fine of between 5 and 20 monthly calculation indices.¹⁶¹ The Trust interviewed a lawyer with considerable experience of bringing claims for human rights violations in Kazakhstan who indicated that in his experience this provision, and its predecessor (Article 82) have not been widely used to challenge discrimination on the basis of language.¹⁶²

As noted above, Article 83 prohibits violations of the Law on Social Protection of Disabled Persons and imposes fines which vary in scale depending on the size of the legal entity responsible for the violation. Although the imposition of liability for breach of this Law is a positive development, Article 83 refers to persons with disabilities as “invalids”; such language has been heavily criticised by UN Treaty bodies.¹⁶³

161 The monthly calculated index is an index used to calculate social benefits and other social payments as well as sanction and taxes and so on. In 2016, one monthly calculation index was about 6.5 USD.

162 Equal Rights Trust, Interview with Y. Zhovtis, Almaty, 17 November 2016.

163 See, for instance, the United Nations Committee on the Rights of Persons with Disabilities, *Concluding Observations on Ukraine*: “The Committee (...) is of the opinion that the use of terminology in Ukrainian that refers to persons with disabilities as “invalids” or “persons with limited abilities” is not consistent with the Convention (...) The Committee calls upon the State party to remove the reference to “invalids” or “persons with limited abilities” from all its legislative and policy documents”. Committee on the Rights of Persons with Disabilities, *Concluding Observations on Ukraine*, UN Doc. CRPD/C/UKR/CO/1, 2 October 2015, Paras 5–6.

Article 90 imposes fines on employers who fail to comply with the requirement of equal pay for equal work of up to one hundred monthly calculation indices.

Offences Inciting Hatred

Under Article 57(5) of the Code of Administrative Offences, “committing an administrative offence by reason of national, racial or religious hatred or enmity” is an aggravating factor in sentencing.

Article 453 prohibits the manufacture, storage, import and distribution of materials which are aimed at, *inter alia*, undermining state security, a violent change in the constitutional order, and inciting social, racial, national, religious and class hatred. Article 453 imposes liability on both natural and legal persons for breach and imposes a fine of up to 1,500 monthly calculation indices. The prohibition under this Article is very broad and has the potential to unduly restrict the right to freedom of expression. It is in line with international best practice to ban some types of incitement to hatred; Article 20 ICCPR requires States to prohibit advocacy of national, racial or religious hatred; Article 4(a) ICERD endorses this and requires states to declare the dissemination of ideas based on racial superiority or hatred or incitement to racial discrimination an offence. However, it is important that measures taken to eradicate discrimination do not overly restrict the enjoyment of other human rights. It is therefore important that the provisions are interpreted and applied narrowly so as not to unduly restrict the right to freedom of expression.

Civil Law

Civil law is regulated by the Civil Code dated 27 December 1994, No. 409-1¹⁶⁴ and the Civil Procedure Code dated 31 October 2015, No. 377-V. Neither the Civil Code nor the Civil Procedure Code contain provisions addressing equality and non-discrimination aside from a guarantee that all citizens have equal legal capacity under the law¹⁶⁵ and that civil procedure must respect

164 Civil Code of the Republic of Kazakhstan, 27 December 1994, No. 409-1, (as amended in July 2016).

165 *Ibid.*, Article 17.

this equality.¹⁶⁶ As there are no specific provisions within the Civil Code dealing with breach of the right to equality and non-discrimination, claims for discrimination will fall under the relevant provisions of the Criminal, Administrative or Labour Codes as addressed both above and below.

Criminal Law

The field of criminal law is regulated by the Criminal Code dated 3 July 2014 No. 226-V¹⁶⁷ and the Criminal Procedure Code of Kazakhstan (the “Criminal Procedure Code”) dated 4 July 2014 No. 231-V.¹⁶⁸

Criminal Code

The Criminal Code of Kazakhstan regulates and defines all forms of criminal conduct punishable by law and contains several provisions addressing equality and non-discrimination.

Article 145 of the Criminal Code prohibits the “direct or indirect restriction of the rights and freedoms of citizens” on the grounds of “origin, social, employment or material status, race, nationality, language, religion, beliefs, place of residence, affiliation with public associations or any other circumstances.” International best practice requires that, for the most part, discrimination be dealt with as a matter of civil rather than criminal law. However, to offer comprehensive protection from discrimination, certain severe manifestations of discrimination may be dealt with under criminal law:

Any act of violence or incitement to violence that is motivated wholly or in part by the victim having a characteristic or status associated with a prohibited ground constitutes a serious denial of the right to equality. Such motivation must be treated as an aggravating factor in the commission of offences of violence and incitement to

166 Civil Procedure Code of the Republic of Kazakhstan, 31 October 2015, No. 377-V, Article 13.

167 Criminal Code of the Republic of Kazakhstan, No. 226-V of 3 July 2014 (as amended up to Law of the Republic of Kazakhstan No. 501-V of April 9, 2016).

168 Criminal Procedure Code of the Republic of Kazakhstan, dated 10 July 2014, No. 231-V (as amended in 2015).

*violence, and States must take all appropriate action to penalise, prevent and deter such acts.*¹⁶⁹

The ambit of Article 145 is very wide as the definition of the offence is vague; “direct or indirect restriction of the rights and freedoms of citizens” could potentially catch many forms of discrimination. Article 145 is a standalone offence that criminalises broad discriminatory violence or incitement to violence against citizens. It is supplemented by Article 54 of the Criminal Code, as discussed below, which provides that “national, racial or religious” hatred is an aggravating factor in sentencing for criminal offences. However, Article 54 is engaged only when another criminal offence, as specified under the Code, has been committed. Article 145 offers freestanding protection, although foreigners and stateless persons are excluded from its protective ambit. In an interview with a lawyer with considerable experience of bringing claims for human rights violations, he indicated that Article 145 is rarely invoked.¹⁷⁰

Incitement to Hatred

The Criminal Code creates three offences prohibiting actions aimed at inciting national, racial, social and religious enmity. Article 174 of the Criminal Code, which carries a sentence of up to seven years imprisonment, prohibits

Intentional actions, directed to institution of social, national, tribal, racial, class or religious hatred, insult of the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on grounds of their relation to religion, class, national, tribal or racial assignment, if these actions are committed publicly or with the use of mass media or information and communication networks, as well as by production or distribution of literature or other information media, promoting social, national, tribal, racial, class or religious discord.

169 Declaration of Principles on Equality, Equal Rights Trust, London, 2008, Principle 7.

170 Equal Rights Trust, Interview with Y. Zhovtis, Almaty, 17 November 2016.

The criminal behaviour targeted by Article 174 is not defined with sufficient precision violating the principle of legality and creating the risk of discriminatory application. In particular, there is no legal definition of incitement and the use of vague terms such as “superiority” and “inferiority” increases the risk of inconsistent application and arbitrary restriction of other human rights including the rights to freedom of expression and freedom of assembly. As discussed in Part 3.4 below, there is evidence that this provision has been used against opposition politicians and human rights activists to stifle dissent.

Article 183 of the Criminal Code provides that the publication of materials directed to “fomentation of national, tribal, racial, social and religious enmity” is punishable by a fine or community service. In addition, under Article 404 it is a criminal offence to create a public association which proclaims or implements “racial, national, tribal, social, class or religious intolerance” punishable by a prison term of up to seven years. These provisions largely mirror Article 453 in the Administrative Code, however as the sanctions under Articles 183 and 404 are criminal in nature, prosecution under these provisions is reserved to more serious cases. Research for this report reveals that typically the authorities pursue prosecutions under Article 453 of the Administrative Code rather than Article 404 of the Criminal Code. Both of these provisions suffer from the same imprecision in definition as Article 174 creating a risk of discriminatory application. In addition, as with the penalty-enhancing provisions discussed below, the interpretation of the concept of “social” enmity does not protect groups such as the LGBT community but is rather used to protect the authorities from criticism as is discussed in greater detail in Part 3.4 below.

Articles 174 and 404 both appear to be an overly broad restriction on the rights to freedom of association and freedom of expression; Article 22 ICCPR provides that the right to freedom of association may not be restricted unless it is necessary “in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”¹⁷¹ Similarly, the right to freedom of expression preserves the right to criticise, provoke and offend, and may protect “deeply offensive speech”.¹⁷² While international law does provide for the right to free

171 International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1966, Article 22.

172 Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 12 September 2011, Para 11.

speech to be restricted, such restrictions should only be criminalised if they “are associated with violence or criminal activity”.¹⁷³ The imposition of criminal sanctions for a wide range of conduct of varying degrees of severity such as “religious intolerance” in Article 404 and “insult” to “religious feelings” in Article 174 is concerning and is not in line with Articles 19 and 22 ICCPR.

Furthermore, these provisions have been used to inhibit political dissent as evidenced by the prosecution of Vladimir Kozlov¹⁷⁴; the Human Rights Committee has urged Kazakhstan to “refrain from criminalizing public associations, including political parties, for their legitimate activities under criminal law provisions that are broadly defined and not compliant with the principle of legal certainty”.¹⁷⁵

Such provisions do not sit well with international best practice,¹⁷⁶ including the Rabat Plan of Action on the prohibition of advocacy of national, racial and religious hatred that constitutes incitement to discrimination, hostility or violence (RPA).¹⁷⁷ The RPA, while calling for states to prevent hate speech, imposes a high threshold for curtailing speech due to its inflammatory or dangerous content. Paragraph 18 of the Plan states that “as a matter of fundamental principle, limitation of speech must remain an exception” and goes on to explain that:

*[R]estrictions must be provided by law, be **narrowly defined** to serve a legitimate interest, and be necessary in a democratic society to protect that interest. This im-*

173 Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UN Doc. A/HRC/31/65, 22 February 2016, Para 38.

174 See below, Part 3.4 on Political Opinion.

175 See above, note 132, Para 54.

176 Human Rights Council, *Annual report of the United Nations High Commissioner for Human Rights, Addendum: Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred*, October 2012, UN Doc. A/HRC/22/17/Add.4, appendix.

177 Office of the United Nations High Commissioner for Human Rights, *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*, 5 October 2012, Para 18, available at: http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.

*plies, among other things, that restrictions: are clearly and narrowly defined and respond to a pressing social need; are the least intrusive measures available; are not overly broad, in that they do not restrict speech in a wide or untargeted way; and are proportionate in the sense that the benefit to the protected interest outweighs the harm to freedom of expression, including in respect of the sanctions they authorise.*¹⁷⁸

Moreover, as noted in comments by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) with respect to Kazakhstan draft national security laws, words used in these laws are sometimes so obscure as to criminalise almost any religious activity.¹⁷⁹

In principle as referred to in the Guidelines for Review of Legislation Pertaining to Religion or Belief:

*[W]hile State laws pertaining to national security and terrorism based on religion may well be appropriate, it is important that such laws not be used to target religious organisations that do not engage in objectively criminal or violent acts. The laws against terrorism should not be used as a pretext to limit legitimate religious activity.*¹⁸⁰

Offences Motivated by Hatred

Hate-motivated violence and some forms of incitement to hatred are the only forms of discrimination which are recognised by international best practice as requiring regulation under criminal law. Under Article 54 of the Criminal

178 *Ibid.*

179 OSCE, Office for Democratic Institutions and Human Rights (ODIHR), *Comments on the Draft Laws of the Republic of Kazakhstan "On counteractive measures against extremist activities" and "On amendments to several legislative acts with regard to counteractive measures against extremist activities"*, Opinion No. TERR-KAZ /019/2005 (DP/TK), 2005, available at: <http://www.osce.org/odihr/19178?download=true>.

180 See "Guidelines for Review of Legislation Pertaining to Religion or Belief", adopted by the Venice Commission at its 59th Plenary Session (Venice, 18–19 June 2004) and welcomed by the OSCE Parliamentary Assembly at its Annual Session (Edinburgh, 5–9 July 2004), available at: <http://www.osce.org/ru/odihr/13994>.

Code the commission of criminal offences on the grounds or “national, racial or religious hatred” is an aggravating factor in sentencing. Additionally, seven Articles contain penalty enhancing provisions:

- Murder (Article 99(2)(11))
- Intentional infliction of grievous harm (Article 106(2)(8))
- Intentional infliction of less severe harm (Article 107(2)(6))
- Infliction of physical or mental suffering (Article 110(2)(6))
- Intentional destruction or damage to another’s property (Article 202(2)(4))
- Intentional destruction or damage to items of special historical, scientific, artistic or cultural value (Article 203(2)(3))
- Desecration of the dead and/or graves (Article 314(2)(3))

Penalty enhancing provisions

Article	Offence	Regular Sentence	Aggravated sentence
99(2)(11)	Murder	8–15 years’ imprisonment	15–20 years or life imprisonment
106(2)(8)	Intentional infliction of grievous harm	3–7 years’ imprisonment	5–10 years’ imprisonment
107(2)(7)	Intentional infliction of less severe harm	Fine of up to 1,000 monthly calculation indices or correctional works or up to 2 years’ restriction of freedom or 2 years’ imprisonment	Fine of up to 2,000 monthly calculation indices or correctional works or up to 3 years’ restriction of freedom or up to 3 years’ imprisonment
110(2)(6)	Infliction of physical or mental suffering	Fine of up to 1,000 monthly calculation indices or correctional works or up to 2 years’ restriction of freedom or up to 2 years’ imprisonment	Up to 3–7 years’ restriction of freedom or up to 3–7 years’ imprisonment
202(2)(4)	Intentional destruction or damage to another’s property	Fine of up to 2,000 monthly calculation indices or correctional works or up to 2 years’ restriction of freedom or up to 2 years’ imprisonment	Fine of 3,000–7,000 monthly calculation indices or correctional works or up to 3–7 years’ restriction of freedom or up to 3–7 years’ imprisonment

Article	Offence	Regular Sentence	Aggravated sentence
203(2)(3)	Intentional destruction or damage to items of special historical, scientific, artistic or cultural value	3–7 years' imprisonment	5–10 years' imprisonment
314(2)(3)	Desecration of the dead and/or graves	Fine of up to 3,000 monthly calculation indices or correctional works or up to 3 years' restriction of freedom or up to 3 years' imprisonment	Fine of up to 5,000 monthly calculation indices or correctional works or up to 5 years' restriction of freedom or up to 5 years' imprisonment

Article 54 contains a limited, closed list of protected grounds, namely “national, racial or religious hatred or enmity”. This clearly excludes many characteristics such as sex, gender identity or sexual orientation, disability and health status. Certain of the other penalty enhancing provisions impose aggravated sentences for offences committed on the grounds of “social” enmity which may protect a wider range of characteristics, potentially including gender, sexual orientation, gender identity, health status or disability.¹⁸¹ However, we have not been able to identify any jurisprudence to confirm this.

While the list of grounds protected under Article 54 and the other penalty enhancing provisions is consistent with Article 20 ICCPR which prohibits advocacy of “national, racial or religious hatred”, Principle 7 of the Declaration on Principles of Equality provides:

Any act of violence or incitement to violence that is motivated wholly or in part by the victim having a characteristic or status associated with a prohibited ground constitutes a serious denial of the right to equality. Such

¹⁸¹ See above, note 109, Criminal Code, of the Republic of Kazakhstan, Articles 106, 107, 110, 202, 203.

motivation must be treated as an aggravating factor in the commission of offences of violence and incitement to violence, and States must take all appropriate action to penalise, prevent and deter such acts.

The Declaration clearly envisages that all prohibited grounds under the Principle 5 of the Declaration (see Part 2.2.1) should be protected under aggravated sentencing provisions. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted the need to combat incitement to hatred on all grounds of discrimination protected under international human rights law.¹⁸²

Criminal Procedure Code

The Criminal Procedure Code regulates criminal procedure in Kazakhstan; provisions of the Code regulate the conduct of criminal justice proceedings. Article 21 of the Criminal Procedure Code declares equality as a central principle of justice and requires that no one be discriminated against during criminal proceedings on the grounds of origin, social, employment and material status, sex, race, nationality, language; religious belief, believes, place of residence or any other circumstances. Similar provisions are contained in Article 13 of the Civil Procedure Code dated 31 October 2015 No. 377-V.

However, it should be noted that the Criminal Procedure Code raises some concerns in relation to discrimination on grounds of gender. Article 32 categorises violence against women (including rape) under “private” and “public-private” prosecution. Within these categories, investigations and prosecution will only be initiated following an official complaint from the victim. This is particularly problematic because the crimes of domestic violence, sexual violence and rape are still underreported. The Human Rights Committee has recommended that all acts of violence against women be re-classified as public prosecutions, which do not require the complaint of an individual.¹⁸³ The Committee on the Elimination of Discrimination Against Women has similarly noted with concern that

182 United Nations General Assembly, *Report of the Special Rapporteur on Freedom of Opinion and Expression on the Promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/67/357, 7 September 2012.

183 See above, note 132, Para 11.

prosecution may only be undertaken once a victim has lodged a complaint and recommended the *ex officio* prosecution of acts of violence against women.¹⁸⁴ International best practice indicates that the failure to follow allegations of domestic violence with a “timely and suitable investigation” may violate Article 2 of CEDAW.¹⁸⁵ To ensure a timely and suitable investigation and to effectively counter violence against women, Kazakhstan should also consider adopting the *ex officio* investigation of allegations of violence against women.

Of even greater concern is Article 68 which allows the termination of criminal proceedings upon “reconciliation of the parties”. Both the Human Rights Committee and the Committee on the Elimination of Discrimination Against Women have further recommended that these should be repealed.¹⁸⁶ Kazakhstan is under an obligation to adopt effective legal measures to protect women against all forms of violence and the existence of provisions in law which allow for reconciliation leaves women highly vulnerable to violence.

Nationality, Citizenship and Immigration Law

The legal framework for citizenship of Kazakhstan is set out in the Law of Kazakhstan “On Citizenship of the Republic of Kazakhstan” dated 20 December 1991 No. 1017-XII (the “**Law on Citizenship**”)¹⁸⁷ and the Law of Kazakhstan “On Migration of the People” (the “**Law on Migration**”) dated 22 July 2011 No. 477-IV.¹⁸⁸

The Law on Citizenship sets out certain broad principles and regulates the conditions and procedures for the acquisition and termination of citizenship. The Law on Migration sets out the rights and obligations of migrants, foreigners and stateless persons.

184 See above, note 110, Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Kazakhstan*, Para 19.

185 See for example, Committee on the Elimination of Discrimination against Women, *Jallow v Bulgaria*, Communication No. 23/2011, UN Doc. CEDAW/C/52/D/32/2011, 28 August 2012, Para 8.4.

186 See above, note 132, Para 12; see above, note 110, Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Kazakhstan*, Para 19.

187 The Law on Citizenship was amended in 1995, 2002, 2004, 2007, 2009, 2011, 2012, 2014, 2015, and 2016.

188 The Law on Migration was amended in 2012, 2013, 2014, 2015 and 2016.

Article 1 of the Law on Citizenship echoes the guarantee under Article 14 of the Constitution and prohibits discrimination on the basis of language. It also sets out the grounds on which permanent residence may be refused.

Article 5 of the Law on Citizenship provides that citizens of Kazakhstan are equal before the law regardless of origin, social and material status, race and nationality, sex, education, language, religious beliefs, political and other beliefs, type of occupation, place of residence and other circumstances. In principle, this excludes foreigners and stateless persons from the guarantee of equality before the law. However, Article 14 of the Constitution guarantees equality before the law to all persons, and this guarantee takes precedence over the Law of Citizenship in accordance with the legal hierarchy Kazakhstan, as set out in Part 2.2 above.

In general, as set out in Article 6 of the Law on Citizenship and Article 5(1) of the Law on Migration, “foreigners and stateless persons enjoy the same rights and freedoms as citizens unless otherwise provided by the Constitution, laws of Kazakhstan and international treaties”.¹⁸⁹ Rights reserved to citizens include the right to vote, organise political parties or own agricultural land. Foreigners and stateless persons may only lease land for a maximum of ten years. In April and May 2016 there were protests against the amendment to the Land Code which extended the maximum lease term of agricultural land for foreigners from ten years to 25 years.¹⁹⁰ In response to these protests the President issued a decree introducing a moratorium on the implementation of the extension from 10 to 25 years until 31 December 2021.¹⁹¹

In general, a state should guarantee the rights of all persons within its territory, rather than limiting rights to its citizens. This is in line with Article 2(1) ICCPR which provides that states parties must ensure the rights contained therein to “all individuals within its territory and subject to its juris-

189 Law of Kazakhstan “On Migration of the People”, dated 22 July 2011 No. 477-IV.

190 Land Code of the Republic of Kazakhstan dated 20 June 2003, No. 442, Article 24.1, available at: http://adilet.zan.kz/rus/docs/K030000442_; Human Rights Watch, “Kazakhstan: Crackdown on Peaceful Protest”, *hrw.org*, 23 May 2016, available at: <https://www.hrw.org/news/2016/05/23/kazakhstan-crackdown-peaceful-protest>.

191 The Decree of the President of RK “On Introducing the Moratorium on Implementation of Some Norms of the Land Legislation” of May 6, 2016 № 248, available at: <http://adilet.zan.kz/rus/docs/U1600000248#z0>.

diction” and guarantees the rights to equality and non-discrimination in Article 26 to “all persons”. The Human Rights Committee has also emphasised that the “general rule is that each one of the rights of Covenant must be guaranteed without discrimination between citizens and aliens”.¹⁹² In general, states are permitted to reserve political rights to citizens, e.g. the right to vote. For that reason, the restrictions on organising political parties and voting to citizens are permissible. In general, the path to permanent residence for stateless persons in Kazakhstan is challenging. They are required to produce a number of identification documents, which they are unlikely to have.¹⁹³ In addition, stateless persons are required to prove considerable financial solvency to obtain permanent residence; they are required to prove that they have 1,213,080 Tenge (3,619 USD) to support themselves for five years. They are also required to show that they have either acquired or have sufficient resources to acquire a property with 15 square meters of space per family member.¹⁹⁴ In light of the considerable hurdles to the acquisition of permanent residence, discrimination against stateless persons without permanent residence is particularly concerning.

Education Law

The field of education is regulated by the Law of Kazakhstan “On Education” (the “**Law on Education**”) dated 27 July 2007 No. 319-III.¹⁹⁵

The Law on Education guarantees equality in the field of education and training but does not contain express non-discrimination provisions. The Law on Education regulates social relations in the field of education. It sets out a right

192 Human Rights Committee, *General Comment No. 15: The position of aliens under the Covenant*, UN Doc. HRI/GEN/Rev.1 at 18, 1989, Para 2.

193 Order of the Minister of Internal Affairs of the Republic of Kazakhstan no.495 dated 30 May 2015. Registered with the Ministry of Justice under no.11632 on 10 June 2015 “On the approval of public service regulations “Registration and issuance of permanent residence permits to foreign citizens and stateless persons,” “Issuance of identity cards to stateless persons and permanent residence permits to foreign citizens residing in the Republic of Kazakhstan on a permanent basis,” “Registration of adoption and surrender of the citizenship of the Republic of Kazakhstan,” “Assigning and extending the status of a refugee in the Republic of Kazakhstan”.

194 2003 Regulation No 1185 ‘On Approval of the Rules for Confirming Financial Solvency during a Period of Residence in the Republic of Kazakhstan of Foreigners and Stateless Persons who are Applying for Permanent Residence in the Republic of Kazakhstan’.

195 The Law on Education was amended in 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016.

to education and imposes various obligations placed on educational establishments. Key principles of the Law on Education include:

1. Equality of rights of all to obtain a quality education;
2. Accessibility of education of all levels for population in recognition of mentality, psychophysiological and individual peculiarities of each person;
3. Secular, humanistic and developing nature of education, priority of civil and national values.¹⁹⁶

The obligations created by the Law on Education apply to the state, educational organisations and management bodies.¹⁹⁷ Under Article 5, the state body responsible for education is required to guarantee the constitutional rights and freedoms of citizens.¹⁹⁸ Both foreign nationals with permanent residence and citizens have rights under the law, including the right to primary and secondary education.¹⁹⁹ Regrettably, stateless persons and foreign nationals without permanent residence are not provided for. This is inconsistent with international best practice which requires that education be available and accessible to all.²⁰⁰

The Law on Education makes provision for certain vulnerable groups: Article 8(6) creates a legal obligation on the state to provide social assistance for disabled children at all levels of education.²⁰¹ This is a positive development as it takes into account the special needs of children with varying degrees of disability or learning difficulties. However, the Law does not set out specific means to implement such assistance.

Article 26 of the Law stipulates some conditions for admission to schools and institutions providing higher and further education.²⁰² For example, Article 26(8)

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

197 *Ibid.*, Article 10.

198 *Ibid.*, Article 5.

199 *Ibid.*, Article 8(2).

200 Convention on the Rights of the Child, G.A. Res. 44/25, 1989, Article 28.

201 See above, note 196, Article 8.

202 *Ibid.*, Article 26.

provides that there should be a quota for citizens with disability, those from rural youth and orphaned children. This Article is supported by a government resolution adopted in 2012 which sets specific quotas: (i) 1% for persons with a certain class of disabilities; (ii) 0.5% for participants of the Great Patriotic War;²⁰³ (iii) 30% for persons from rural areas; (iv) 2% for ethnic Kazakhs who are not citizens; (v) 1% for orphans or children without parental care; and (vi) 10% for youth from rural areas who have been resettled.²⁰⁴

There is no specific provision for sanction for breach of the Law on Education; Article 67 states that “[v]iolation of the legislation of the Republic of Kazakhstan in the field of education shall entail responsibility in accordance with the Laws of the Republic of Kazakhstan”.

Social Security Law

This field is regulated by the Law of Kazakhstan “On Special Social Services” (the “**Special Services Law**”) dated 29 December 2008 No. 114-IV,²⁰⁵ the Law of Kazakhstan “On Compulsory Social Insurance” (the “**Law on Social Insurance**”) dated 25 April 2003 No. 405-II,²⁰⁶ and the Law of Kazakhstan “On Pension Provision” (the “**Pension Law**”) dated 21 June 2013 No. 105-V.²⁰⁷

Although the Special Services Law,²⁰⁸ the Law on Social Insurance,²⁰⁹ and the Pension Law,²¹⁰ do not contain any express equality or non-discrimination

203 The Great Patriotic War was the Russian name for the eastern front of World War II. It is specifically the period in which the Nazi’s invaded Russia and Stalin declared a ‘Great Patriotic War’ against their invaders. Suny RG, *The Cambridge History of Russia*, Vol. 3, the twentieth century, Cambridge University Press, 2008, pp. 217–242.

204 Resolution of the Government of the Republic of Kazakhstan of 28 February 2012 no. 264 “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”.

205 The Special Services Law was amended in 2009, 2011, 2012, 2013, 2014 and 2015.

206 The Law on Social Insurance was amended in 2004, 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014, 2015 and 2016.

207 The Pension Law was amended in 2014 and 2015.

208 Law of the Republic of Kazakhstan “On Special Services Law”, 29 December 2008 No. 114-IV, Article 3.

209 Law of Kazakhstan “On Compulsory Social Insurance”, 25 April 2003 No. 405-II, Article 8.

210 Law of Kazakhstan “On Pension Provision”, 21 June 2013 No. 105-V.

provisions, under these three laws foreigners and stateless persons, with permanent residence, are eligible for social services, welfare assistance and pension protection on equal terms with citizens of Kazakhstan. The provision of social security guarantees to stateless persons and foreigners is a welcome development, however, stateless persons without permanent residence have no such entitlement. The failure to grant access to social security to stateless persons without permanent residence is particularly worrying in light of the significant financial hurdles which stateless persons have to overcome to obtain permanent residence.²¹¹ This financial hurdle means that stateless persons without permanent residence are the most likely to be in need of social assistance. This exclusion is inconsistent with international best practice; the Committee on Economic, Social and Cultural Rights has noted that refugees and stateless persons should “enjoy equal treatment in access to non-contributory social security schemes”.²¹²

Family Law

This field is regulated by the Code of Kazakhstan “On Marriage and Family” (the “**Family Code**”) dated 26 December 2011 No. 518-IV.²¹³ The Code contains a number of provisions directly addressing equality and non-discrimination. Article 2 provides that marriage and family legislation in Kazakhstan shall be based on the “equality of marriage and family rights in the family”,²¹⁴ Article 30 provides that “spouses shall have equal rights and incur equal obligations.”

The Family Code has a number of provisions emphasising equality between men and women in the context of the family, for example Article 30 provides that:

Issues of motherhood, paternity, nurturing, education of children, place of residence, place of temporary residence and other issues of family life shall be jointly solved by spouses.

211 See above, note 194.

212 Committee on Economic, Social and Cultural Rights, *General Comment No. 19: the right to social security*, UN Doc. E/C.12/GC/19, 2008, Para 38.

213 The Family Code was amended in 2012, 2013, 2014, 2015, 2016.

214 Code of the Republic of Kazakhstan “On Marriage and Family”, No. 518-IV of 26 December 2011, Article 2.

Article 33 makes express provision that spouses who remain at home maintain the right to common property in marriage. Article 38 provides that in dividing the common property of spouses under marriage each spouse shall have an equal share unless otherwise provided by a notarised, written agreement.

However, the Family Code actively discriminates against non-traditional forms of family; for example, Article 11 prohibits same-sex marriages and the Family Code only expressly acknowledges equality in the relationship between husband and wife in the family under Article 2 which clearly discriminates against same-sex couples.²¹⁵

Under Article 91 neither stateless persons, unmarried persons, nor persons with “different sexual orientation” are permitted to adopt children. Additionally, unmarried men are only entitled to adopt in very limited circumstances. Such provisions are clearly unjustifiable direct discrimination in violation of Kazakhstan’s obligations under international law.

Employment Law

Employment issues and labour relations are regulated by the Labour Code of Kazakhstan (the “**Labour Code**”) dated 23 November 2015 No. 414-V (as amended in 2016).

The Labour Code prohibits any discrimination at work and provides for equal pay for equal work and the freedom to choose freely occupation without any discrimination. It does not address the issue of sexual harassment which is addressed only in the Strategy on Gender Equality outlined above.

Article 6 of the Labour Code provides that discrimination is prohibited on the grounds of gender, age, disability, race, nationality, language, material, social and official status, place of residence, religion, political opinion, membership of a tribe or caste or voluntary organization.

The Labour Code provides that pregnancy, having children under age of three, being under the age of 18, and disability cannot be a limitation to signing an employment contract. There are several provisions targeting persons with

²¹⁵ *Ibid.*

disabilities. Article 28 provides that any employment contract with a person with disabilities must contain a description of the conditions in which the employee will be working, taking into account his or her specific individual circumstances. Article 69 of the Labour Code restricts the working week for persons with certain classes of disability to 36 hours and under Article 76 persons with disabilities may only work night shifts with a doctor's opinion. In addition, Article 76 provides that women with children under seven, employees with disabled children under 16, pregnant women, and minors may only work a night shift if they given written consent. Finally, Article 89 provides that persons with a certain class of disability are entitled to additional annual leave of at least 6 days per year.

These provisions go some way in meeting the requirements of Article 6 of ICESCR which guarantees the right to work, Article 27 CRPD which guarantees the "right of persons with disabilities to work, on an equal basis with others" and Article 11 CEDAW which guarantees the right to "the same employment opportunities" for men and women. However, in practice these provisions have the effect of stripping away individual autonomy and furthering the exclusion of women and persons with disabilities from employment. Such restrictions may also create a disincentive for employers to hire women and persons with disabilities. Finally, Article 76 of the Labour Code is directly discriminatory as it is restricted to women with children under seven with no equivalent protection for fathers; this provision reinforces gender stereotypes in relation to the role of women in society.

Health Law

The field of healthcare is regulated by the Code of Kazakhstan "On the Health of the Population and the Health Care System" (the "**Health Code**") dated 18 September 2009 No. 193-IV.²¹⁶

Under Article 91 of the Health Code all patients have the right to medical treatment without discrimination; further, such treatment should correspond with their cultural or personal values. The Health Code also expressly provides that persons suffering from tuberculosis and HIV are not to be dis-

²¹⁶ The Health Code was amended in 2010, 2011, 2012, 2013, 2014, 2015 and 2016. http://adilet.zan.kz/eng/docs/K090000193_.

criminated against under chapters 18 and 19 of the Code, respectively.²¹⁷ Furthermore, persons with HIV are guaranteed access to free medical care as well as psycho-social and legal assistance under Article 112.²¹⁸

The Health Code also provides a number of apparent protections for persons with tuberculosis (TB), for example it prohibits the dismissal of a person with TB while he or she is receiving treatment. However, the mandatory hospitalisation of persons with TB under Article 105(2) of the Health Code combined with the mandatory recording of treatment for TB on employment history means persons with TB continue to suffer discrimination in Kazakhstan. This is explored in greater detail in Part 3.7 below.

2.3 Enforcement and Implementation

The section above focused on the national legal framework protecting the rights to equality and non-discrimination in Kazakhstan. However, the effectiveness of such laws depends on how they are enforced and implemented in practice. As noted above, although a number of the laws discussed contain provisions protecting individuals from discrimination, there is very little provision for the implementation or enforcement of such guarantees. This section identifies that this failure to enforce and implement the right to equality and non-discrimination is endemic across the executive and legal structures of Kazakhstan. It identifies a number of areas in which Kazakhstan needs to strengthen its enforcement and implementation mechanisms.

As there are no institutional mechanisms which focus on protecting the rights to equality and non-discrimination, this section focuses on access to justice, legal aid and the remedies available for victims of discrimination.

2.3.1 Kazakhstan's Legal System

The structure of Kazakhstan's legal system is set out in the Constitution. As discussed in Part 1 above, the Constitutional Council is a non-judicial body,

217 See Code of the Republic of Kazakhstan, "On Public Health and the Health Care System", above, note 130.

218 *Ibid.*

which consists of seven members whose powers last for six years.²¹⁹ The duties of the Council include to “consider the laws adopted by Parliament with respect to their compliance with the Constitution of the Republic before they are signed by the President”²²⁰ and to “consider the international treaties of the Republic with respect to their compliance with the Constitution, before they are ratified”²²¹ The Council also is the official body for interpreting the standards of the Constitution.²²² Therefore, if a court finds that a law infringes on the rights of an individual, the court must make a reference to the Constitutional Council seeking a declaration that the relevant law is unconstitutional.²²³ Although the Council is a non-judicial body, its decisions are enforceable directly and may only be overturned by the Council itself or by an objection from the President.²²⁴

Pursuant to Article 3.1 of the Constitutional Law of the Republic of Kazakhstan “On the judicial system and status of the judges of the Republic of Kazakhstan” No. 132-II (the Law on the Status of Judges) dated 25 December 2000, the judicial system of Kazakhstan is composed of the Supreme Court, local courts and other courts (military, financial, economic, administrative, juvenile etc.).²²⁵ The Supreme Court is the highest judicial body for civil, criminal and other cases which are under the courts of general jurisdiction. However, as noted above, the Supreme Court does not have competence to decide whether national law is consistent with constitutional rights and freedoms; this competence is reserved to the Constitutional Council and the Supreme Court is bound by the interpretations of the Constitutional Council. The Supreme Court is tasked with exercising supervision of judicial procedures and providing interpretation on the “issues of judicial practice”.²²⁶ The local courts are established by each region and each court exercises jurisdiction over its

219 See above, note 106, Article 71(1).

220 *Ibid.*, Article 72.

221 *Ibid.*

222 *Ibid.*

223 *Ibid.*, Article 78.

224 Constitutional Law of the Republic of Kazakhstan “Of the Constitutional Council of the Republic of Kazakhstan” dated December, 29, 1995 No. 2737, Article 38.

225 Constitutional Law of the Republic of Kazakhstan, “On the judicial system and status of the judges of the Republic of Kazakhstan” dated 25 December 2000 No. 132-II.

226 See above, note 106, Article 81.

own geographical area. Article 75 of the Constitution prohibits “the establishment of special and extraordinary courts”.²²⁷ The Civil Procedure Code 1999 provides more information on the processes of each individual court.

The judicial system of Kazakhstan has been substantially criticised. In 2005, the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, noted that “judicial corruption remains a major source of concern and a real challenge that has to be addressed urgently and with resolve”.²²⁸ District and inter-district court judges are appointed by the President and Supreme Court judges are appointed by the Senate of the Parliament at the President’s proposal.²²⁹ That judges are appointed at the proposal of the President and confirmed by the Senate inhibits the neutrality of the judiciary and the ability of the judiciary to act as a check on the exercise of executive power, as it is very unlikely that individuals who challenge the administration would ever be appointed. This is very concerning in light of the increasing power of the President within Kazakhstan as discussed above in Part 1. The Special Rapporteur also noted that the provisions addressing the removal and sanction of judges are drafted ambiguously creating scope for the removal and sanction of politically independent judges.²³⁰ In 2012, six Supreme Court justices were dismissed on charges of suspected corruption.²³¹ Two of the six, A.Tashenova and S.Dzhakishev, were prosecuted and sentenced to 10 and 12 years imprisonment respectively.²³² According to data supplied by the Chairman of the Supreme Court, in 2013 criminal proceedings were initiated against eight judges, in 2014 against three judges and in 2015 against one judge.²³³

227 *Ibid.*, Article 75.

228 Economic and Social Council, *Report of the Special Rapporteur on the Independence of Judges and Lawyers: Mission to Kazakhstan*, UN Doc. E/CN.4/2005/60/Add.2, 7 January 2005, p. 2.

229 See above, note 225, Article 32.

230 See above, note 228, p. 11.

231 Radio Free Europe Radio Liberty, “Kazakh President Sacks Six Supreme Court Judges for Corruption”, 14 April 2011, available at: http://www.rferl.org/a/kazakhstan_supreme_court_judges_fired_corruption/3557709.html.

232 US Department of Justice, *Human Rights Report: Kazakhstan*, 2012, p. 8.

233 Mami, K. “We’re not going to cover the judges who violate the law and judicial ethnics”, i-News.kz, 27 November 2015, available at: https://i-news.kz/news/2015/11/27/8183721-kairat_mami_my_ne_sobiraemsa_prikryvat.html.

The concerns about the independence of the judiciary were echoed in the most recent Concluding Observations from the Human Rights Committee which identified the degree of executive power over the selection and disciplining of judges as a significant problem. The Committee was concerned that:

*(a) the procedures for the selection and disciplining of judges do not ensure sufficient guarantees against undue influence from the executive branch, owing to the President's involvement in the appointment of members of the Supreme Judicial Council; (b) the legal basis for disciplinary action against judges, namely the failure to fulfil the requirements of the Constitution, is vague and judges could be sanctioned for minor infractions or for a controversial interpretation of the law; (c) corruption in the judiciary exists.*²³⁴

The Committee recommended that Kazakhstan “take all measures necessary to safeguard...the independence of the judiciary and guarantee the competence, independence and tenure of judges.”²³⁵ In particular, the Committee noted the need to “eradicate all forms of undue interference with the judiciary by the executive branch” and to ensure the independence of the judicial disciplinary process.²³⁶

In December 2014, the President approved an Anti-corruption Strategy for 2015-2025 (the Anti-corruption Strategy). The Anti-corruption Strategy aims to, *inter alia*, prevent corruption in courts by strengthening the selection criteria for the appointment of judges, simplifying judicial proceedings and enhancing the transparency of the judicial system.²³⁷ A number of steps have been taken to implement this Strategy, including the creation of a specialist Agency on Public Service and Countering Corruption and a National Bureau on Countering Corruption. There is no publically available information on the effectiveness of the implementation of the Strategy and

234 See above, note 132, Para 37.

235 *Ibid.*, Para 38.

236 *Ibid.*

237 Decree of the President of the Republic of Kazakhstan “On Anticorruption Strategy of the Republic of Kazakhstan for 2015–2025” dated 26 December 2014 No. 986.

measures adopted under it. The most recent US Department of State Human Rights Report on Kazakhstan indicated that corruption among the judiciary persists indicating that the measures taken have not yet proven effective at combating the problem.²³⁸

Commissioner on Human Rights

The role of Commissioner for Human Rights (the Ombudsperson) was established in 2002 by a Presidential Decree.²³⁹ The Ombudsperson is appointed by the President and is responsible for supervising the observance of the rights and freedoms of individuals and is empowered to take certain steps to remedy violations of such rights.²⁴⁰

The Ombudsperson has a number of specific powers:

1. consider individual complaints against the actions and decisions of officials and organisations that violate rights and freedoms guaranteed by the Constitution, including the Article 14 guarantee of equality, and the national law of Kazakhstan to make non-binding recommendations;
2. to request the information required for proper consideration of complaints from officials and organisations;
3. to request meetings with leaders and other officials of state agencies and other organisations;
4. following the investigation and consideration of complaints received, the Ombudsperson can request parliamentary hearings on the issues raised in such complaints;
5. to participate in the activities of international human rights organisations and other human rights NGOs;
6. to hire expert consultants to prepare reports on violations of rights and freedoms under Kazakh law;
7. to protect the rights which have been violated;
8. to enter state agencies and organisations, including military units and prisons to conduct investigations;

238 See above, note 232, p. 1.

239 Decree of the President of the Republic of Kazakhstan, "On the Establishment of the Position of the Commissioner for Human Rights" dated 19 September 2002 No.947.

240 *Ibid.*, Article 1.

9. to approach the prosecutor's office to seek disciplinary, administrative, or criminal proceedings against officials for violations of rights and freedoms under Kazakh law and to seek compensation from such officials for material and moral damage; and
10. to publish official reports on the results of any inspections undertaken.²⁴¹

Although the Ombudsperson is empowered to receive complaints from individuals, he or she may not consider complaints against the actions and decisions of the President, Parliament or its members, Government, Constitutional Council, Prosecutor General, Central Electoral Commission and the courts of the Republic of Kazakhstan.²⁴² In addition, the Ombudsperson cannot make binding recommendations on individual complaints received, and cannot impose any sanctions for violations of rights under Kazakhstan's law. These factors severely inhibit the effectiveness of the Ombudsperson as a national human rights institution and leave scope for abuse of power at the highest levels.

The Ombudsperson has received a 'B' rating as the National Human Rights Institution for Kazakhstan.²⁴³ There are also serious concerns about the compliance of the Ombudsperson with the Paris Principles.²⁴⁴ The Human Rights Committee has noted that Kazakhstan needs to take further measures to strengthen the independence of the Ombudsperson's office to bring it into line with the Paris Principles.²⁴⁵ Under the Paris Principles a national human rights institution should be empowered to consider any violation of human rights and may submit a recommendation, proposal or reports to government, parliament or any competent body on these violations.²⁴⁶

241 *Ibid.*, Article 15.

242 *Ibid.*, Articles 17, 18.

243 Global Alliance of National Human Rights Institutions, *Chart of the Status of National Institutions*, August 2016, available at: http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf.

244 The Paris Principles are a set of Principles setting out best practice on the status and functioning of national human rights institutions adopted by the UN General Assembly in 1993. United Nations General Assembly, *Resolution on National Institutions for the Promotion and Protection of Human Rights*, G.A. Res 48/134, 20 December 1993.

245 See above, note 132, Para 8.

246 Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993.

The Principles also state that the national human rights institution shall hear any individual complaint or petitions of human rights violations and make recommendations to the competent authorities.²⁴⁷ The Ombudsperson's inability to consider complaints against a number of state authorities is clearly inconsistent with these obligations.

There are also serious concerns about the Ombudsperson's lack of independence; Amnesty International has noted that the President directly governs the Ombudsperson's activities.²⁴⁸ In addition, the President appoints the Ombudsperson, members of the National Centre for Human Rights and the Commission on Human Rights. The Paris Principles emphasise the importance of the independence and the need to ensure pluralism in its membership. The degree of executive control over the appointment and activities of the Ombudsperson, National Centre for Human Rights and Commission on Human Rights undermines the ability of the national human rights institutions to be independent and truly pluralist.

The Paris Principles emphasise the need for national human rights institutions to have adequate funding to ensure the smooth conduct of its activities.²⁴⁹ However, the Ombudsperson suffers from a lack of both financial and human resources, which limits the scope and effectiveness of its work.²⁵⁰

In the most recently available report, in 2014 the Ombudsperson considered 2320 individual complaints and although in 67% of the cases the Ombudsperson "took steps", in only 13% of cases were the rights in question restored.²⁵¹ Although the Ombudsperson reports do not provide statistics on the total numbers of cases involving elements of discrimination, it is apparent that the Ombudsperson receives a number of complaints which involve an element of discrimination on the grounds of ethnicity, health status, language

247 *Ibid.*

248 Amnesty International, *Kazakhstan: Submission to the United Nations Human Rights Committee 117th session*, May 2016, p. 11.

249 See above, note 246.

250 See above, note 132, Para 8.

251 Ombudsman, *Report on the activities of the Commissioner for Human Rights in the Republic of Kazakhstan*, 2013 год, 2014, available at: <http://www.ombudsman.kz/publish/docs/message/detail.php?ID=3112>.

and gender identity.²⁵² The reports also address religious freedom but have yet to consider a claim for the violation of the right to freedom of religion as a case of discrimination.

National Centre for Human Rights

The National Centre for Human Rights was established in 2002 by the Decree of the President. It acts as a secretariat to the Ombudsperson and provides informational, analytical, organisational and legal, and other support.²⁵³ The Head of the National Centre for Human Rights is appointed by the Ombudsman, creating an opportunity for indirect control from the executive given the degree of involvement of the executive in the selection and appointment of the Ombudsperson. The National Centre is an apparatus of the Ombudsperson and does not have powers beyond those of the Ombudsperson.

The main objectives of the National Centre for Human Rights are to:

1. assist the Commissioner for Human Rights in monitoring compliance with human rights and freedoms, including the rights to equality and non-discrimination as set out in international human treaties and in Article 14 of the Constitution, and develop proposals to address the causes of prevalent violations;
2. support the Commissioner's activities aimed at remedying violations of rights and freedoms, in particular by assisting the Commission in processing individual complaints;
3. assist the Commissioner for Human Rights in developing proposals to (i) improve national law in the field of human rights and freedoms, (ii) develop forms and methods of their protection, (iii) to enhance the compliance of national law with international law, and (iv) enhance international cooperation in the field of human rights; and
4. promote legal education of the wider population on human rights and freedoms.²⁵⁴

252 See, e.g. *ibid.*, p. 173.

253 Decree of the President of the Republic of Kazakhstan "On Establishment of the National Centre for Human Rights" dated 10 December 2002 No. 992.

254 *Ibid.*, Article 8.

Commission on Human Rights under the President of the Republic of Kazakhstan

The Commission on Human Rights under the President of the Republic of Kazakhstan (the Commission) was established by the Decree of President dated 12 February 1994.²⁵⁵ The main purpose of the Commission is to strengthen public and social mechanisms of human rights support and protection. The Statute of the Commission (the Statute) declares the Commission to be an advisory body tasked with assisting the President to safeguard the rights and freedoms as set out in the Constitution.²⁵⁶

The Commission consists of a chairman, secretary, and members of the Commission approved by the President upon the recommendation of the State Secretary of the Republic of Kazakhstan.²⁵⁷ The Chairman is a member of Parliament and other members include representatives of the civil society organisations, lawyers, and experts. At the time of publication the Chairman of the Commission was Mr. Kuanysh Sultanov, a senior figure within the ruling Nur Otan party.

The mandate of the Commission is to:

1. Assist the President in his role as the guarantor of constitutional rights and freedoms;
2. Improve mechanisms of safeguarding rights and freedoms;
3. Assist central and local government authorities in safeguarding rights and freedoms;
4. Participate in the development of policies regarding safeguarding rights and freedoms; and
5. Assist in strengthening international cooperation regarding safeguarding rights and freedoms.²⁵⁸

255 Decree of the President of the Republic of Kazakhstan, "On Commission on Human Rights under the President of the Republic of Kazakhstan" dated 22 April 1997 No.3470 (became invalid).

256 Decree of the President of the Republic of Kazakhstan, "On Commission on Human Rights under the President of the Republic of Kazakhstan" dated 19 March 2003 No.1042.

257 *Ibid.*, Article 10.

258 *Ibid.*, Article 3.

The Commission on Human Rights cooperates with government authorities, human rights NGOs, media, law enforcement agencies, and the Commissioner for Human Rights in the Republic of Kazakhstan.²⁵⁹ In addition to its broad mandate, the Commission has the following specific powers:

1. to review pleas addressed to the President or the Commission on Human Rights and submitted by citizens, foreign citizens, and the stateless, as well as organisations which contain information about acts of infringement of rights and freedoms of a human and citizens;
2. to draw up annual or special reports on observance of human rights in Kazakhstan addressed to the President. The reports may be published in print media;
3. to review proposals of government authorities, public associations, other organisations and citizens on issues falling under competence of the Commission on Human Rights;
4. to develop proposals on the improvement of mechanisms to safeguard rights and freedoms submit them for consideration to the President;
5. to analyse the consistency of Kazakh legislation with constitutional rights and freedoms and, following on from such analysis, to participate in the preparation of draft legislation;
6. to prepare analytical materials, expert and advisory opinions, and proposals regarding international human rights treaties; and
7. to cooperate with the work of international human rights organisations and other human rights NGOs.²⁶⁰

This body is chaired by a senior Member of Parliament and as such is not an independent body, and as an advisory body, it has very limited power to effect change in the enjoyment of the rights to equality and non-discrimination.

2.3.2 Enforcement

States do not meet their obligation to protect people from discrimination by simply prohibiting discrimination in the law. They must also ensure that the rights to equality and non-discrimination are effectively enforced in

259 *Ibid.*, Article 5.

260 *Ibid.*, Article 4.

practice. This means that, in addition to improving legal protection from discrimination, Kazakhstan must also put in place mechanisms which guarantee victims of discrimination effective access to justice and appropriate remedies. According to Principle 18 of the Declaration of Principles on Equality:

*Persons who have been subjected to discrimination have a right to seek legal redress and an effective remedy. They must have effective access to judicial and/or administrative procedures, and appropriate legal aid for this purpose. States must not create or permit undue obstacles, including financial obstacles or restrictions on the representation of victims, to the effective enforcement of the right to equality.*²⁶¹

This means that, besides improving the national regulatory framework in the field of non-discrimination and equality, Kazakhstan is obliged to provide effective remedies for violation of the rights to equality and non-discrimination.

Access to Justice

Access to justice is a tenet of international human rights law²⁶² and will only be realised where victims of discrimination are able to seek redress unhindered by undue procedural burdens or costs. Remedies must be “accessible and effective”²⁶³ and legal aid must be provided where necessary. Rules on standing which allow organisations to act on behalf, or in support, of victims of discrimination are particularly important in overcoming the disadvantages faced by individuals in the justice system. It is also important to allow groups of victims who have experienced similar discriminatory treatment to bring claims on behalf of a group, if the systemic nature of discrimination is to be effectively addressed. Access to justice in Kazakhstan is regulated by the Constitution and other legislation.

261 See above, note 169, Principle 18.

262 See above, note 171, International Covenant on Civil and Political Rights, Article 2.

263 Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add. 13, 2004, Para 15.

Access to Justice under the Constitution

The Constitution espouses broad principles and rights, and the operation and implementation of such rights is predominantly a matter for legislation. Nevertheless, the Constitution contains several provisions relevant to access to justice.

The right to judicial protection of rights and freedoms is set out in Article 13 of the Constitution:

Everyone shall have the right to be recognized as subject of the law and protect his rights and freedoms with all means not contradicting the law including self-defense.

Article 14 of the Constitution goes on to provide that “everyone shall be equal before the law and court”.

Although in principle an individual has a right to claim breach of his or her constitutional rights before national courts, in practice, courts will only consider claims for breach of rights of other national laws, for example those under the Administrative Code. The rights of individuals to vindicate their constitutional rights are further circumscribed, as individual citizens are not entitled to make applications to the Constitutional Council to allege breach of their constitutional rights.

Under Article 17(3) of the Constitution, the Constitutional Council has the mandate to officially interpret the Constitution; however, under Article 72 a request for such interpretation may only be brought by the President, Chairman of the Senate, at least one fifth of the total number of members of Parliament, or the Prime-Minister. The Constitution does not provide for an express right for individual citizens to seek such interpretation. Under Article 78 of the Constitution, courts are not entitled to enforce any laws or other normative legal acts which violate the rights and freedoms of an individual as set out in the Constitution. In the event that a court finds a violation of constitutional rights, that court is required to halt proceedings in that case and seek a ruling from the Constitutional Council recognising the relevant legal act as unconstitutional. Such decisions are legally binding from the date of adoption;²⁶⁴

264 See above, note 224, Article 38(1).

any legal act declared unconstitutional is no longer in force and is no longer subject to application by the courts.²⁶⁵ As noted above, the decisions of the Council are enforceable directly and may only be overturned by the Council itself or by an objection from the President.²⁶⁶

The limitation on constitutional interpretation and access to such interpretation severely limits the effective protection of the rights of individuals under Article 14 of the Constitution in breach of Principle 18 of the Declaration of Principles on Equality. Individuals in Kazakhstan have no power to request any interpretation of their rights under the Constitution and thus have very limited scope to effectively enforce the right to equality. This problem is particularly acute under the Kazakhstan's legal framework as in the absence of any comprehensive non-discrimination legislation, the primary source of the right to equality is the Constitution.

Access to Justice under Legislation

A claimant seeking to assert his or her rights to equality and non-discrimination may bring either civil, criminal, or administrative proceedings as set out in Part 2.2 above.

In civil actions, both natural and legal persons are able to file a claim directly with the court.²⁶⁷ Third parties may participate in proceedings, either by asserting their own separate claim or by choosing not to assert their own claim but rather to support either the claimant or defendant.²⁶⁸ Third parties asserting their own claims exercise the rights and bear the responsibilities of a claimant in civil law proceedings.²⁶⁹ Third parties who choose to support either the claimant or defendant must demonstrate that the court's ruling would affect their rights and obligations; such third parties have limited scope to change the nature of the claims before the court.²⁷⁰ Such provisions limit the ability of third parties to intervene on public interest grounds, which

265 *Ibid.*, Article 39(2).

266 *Ibid.*, Article 36.

267 Civil Procedure Code of the Republic of Kazakhstan, dated 13 July 1999, No. 411-I, Article 48.

268 *Ibid.*, Article 44.

269 *Ibid.*, Article 52.

270 *Ibid.*, Article 53.

disproportionately affects the ability of NGOs to intervene in ongoing court proceedings. Rules on standing which allow organisations to act on behalf, or in support, of victims of discrimination are particularly important in overcoming the disadvantages faced by individuals in the justice system. It is also important to allow groups of victims who have experienced similar discriminatory treatment to bring claims as a group, if the systemic nature of discrimination is to be effectively addressed. Principle 20 of the Declaration of Principles on Equality, states that:

States should ensure that associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage, either on behalf or in support of the persons seeking redress, with their approval, or on their own behalf, in any judicial and/or administrative procedure provided for the enforcement of the right to equality.

NGOs and other third parties can make valuable contributions to the discussion of issues before the court. This is particularly true in connection with the application and understanding of international human rights law norms, such as the right to equality. As discussed above, the courts in Kazakhstan infrequently invoke or discuss international human rights law obligations;²⁷¹ NGOs and other organisations seeking to make submissions in the public interest can help develop the capacity of national courts to understand and apply these norms enhancing Kazakhstan's compliance with its international treaty obligations.

Courts may hear prosecutions for criminal offences involving discrimination as set out in the Criminal Code. As discussed in Part 2.2 above, examples of such offences include:

- Intentional infliction of grievous harm based on discrimination (Article 106)
- Violation of the right to equality (Article 145)
- Inciting hatred (Article 174)

271 See above, Part 2.1.6.

Under Kazakhstan’s law there are three types of offences: crimes of “public accusation” which can be investigated and prosecuted by the State regardless of whether a victim makes a complaint and can be resolved through reconciliation of the parties; crimes of “public-private” prosecution which can only be initiated pursuant to a complaint by an individual but may be resolved through reconciliation of the parties in limited circumstances as prescribed by law; and “private prosecutions” which may only be initiated on receipt of a complaint from a victim.²⁷² Of the criminal offences involving discrimination, the broad offence of violating the right to equality under Article 145 is classified as a “private” crime of “accusation” and the offences under Articles 106 – intentional infliction of grievous harm based on discrimination – and 174 –inciting hatred – are crimes of public accusation. The limitation of the Article 145 offence to a “private” crime gives insufficient weight to discriminatory criminal offences and also means Kazakhstan is in breach of its obligation in accordance with Principle 18 of the Declaration of Principles on Equality to ensure that “persons who have been subjected to discrimination” be granted “an effective remedy”.²⁷³ Persons who suffer discrimination are often vulnerable and in addition to creating a mechanism for enforcing their rights, the State needs to make sure that the relevant mechanisms are adapted to cater for such vulnerability, for example by investigating and prosecuting crimes with a discriminatory element *ex officio*.²⁷⁴

Victims of criminal offences are entitled to participate in court hearings.²⁷⁵ Natural and legal persons can also participate in criminal proceedings as “civil claimants” if they are bringing a claim for property or moral damages suffered as a result of the criminal offence. In this situation, a civil claimant bears the same responsibilities as the victim and is required to comply with the investigative and judicial procedure.²⁷⁶

In accordance with the Code of Administrative Offences of the Republic of Kazakhstan,²⁷⁷ an individual may make an application that an administrative

²⁷² See above, note 168, Article 32.

²⁷³ See also above note 169, Principle 18.

²⁷⁴ See above, note 263, Para 15.

²⁷⁵ See above, note 168, Article 71.

²⁷⁶ *Ibid.*, Article 74.

²⁷⁷ Code of Administrative Offences of the Republic of Kazakhstan, dated 05 July 2014, No 235-V, Article 802.

offence has been committed against them. The administrative offences which relate to equality are Articles 75, 90, 83 and 453 of the Code of Administrative Offences. Based on the complaints, the relevant state authorities: courts (Articles 75, and 453) and state labour inspection (Articles 83, 90) consider the case and may apply administrative measures. Separately, an individual may also seek material and moral damages under civil law.

All claims are initially dealt with by the relevant court of first instance, at either the district or inter-district level. Should a party seek to appeal a judgment of the court, it may appeal to the Court of Appeal at the regional level. Decisions of the Court of Appeal may be appealed to the Supreme Court, whose verdict is final.

Legal Aid System

Article 13 of the Constitution provides the right to qualified legal assistance. In cases stipulated by law, legal assistance shall be provided free of charge. Legal aid in Kazakhstan is regulated by two legal acts: the Law “On Legal Aid Guaranteed by State” dated 3 July 2013 No. 122-V (the “**Law on Legal Aid**”) and the Law “On Advocacy” dated 5 December 1997, no.195 (the “**Law on Advocacy**”).

Article 1 of the Law on Legal Aid defines the legal aid guaranteed by the State as a “legal aid provided to natural persons and legal entities allowed to receive such in form of oral or written consultations, including issues of drawing up statements, complaints, requests, and other documents of legal nature”.²⁷⁸ The Law on Legal Aid provides for three forms of legal assistance at Article 6:

1. provision of legal information;
2. legal counselling;
3. protection and representation of interests of natural persons in courts, criminal authorities, other authorities, and non-governmental organisations.

Such legal assistance may be delivered by government authorities, lawyers, notaries, and private enforcement agents.²⁷⁹ According to the Law on Legal

278 Law of the Republic of Kazakhstan, “On Legal Aid Guaranteed by State”, dated 3 July 2013 No.122-V.

279 Private enforcement agents are defined as a “citizen of the Republic of Kazakhstan involved in a private practice of enforcement of law-enforcement documents without establishing a legal

Aid, provision of legal information is free of charge and all natural persons and legal entities have the right to it. According to Article 8 of the Law on Legal Aid legal counselling and representation in are provided to persons who have the right to it in accordance with the Criminal Procedure Code, Code of Administrative Offences and Civil Procedure Code.

Article 28 of the Criminal Procedure Code provides the right of everybody to “qualified legal assistance” in the “course of criminal procedures” and 28(2) provides that “legal assistance shall be rendered free of charge in cases provided for by law”. Article 71 of the same Code provides that the accused may petition for participation of a defence lawyer and where a person is accused of a crime which carries a sentence of 10+ years imprisonment, the state is required to provide a defence. Article 80 of the same Code goes on to provide for a right to an advocate for victims who have no funds to pay for such representation. Article 749 of the Code of Administrative Offences provides that any person who requests it, any person who does not speak the language in which proceedings are conducted, a minor and persons with disabilities, are entitled to a defence lawyer. Under Article 114 of the Civil Code, a judge may of his own initiative release a citizen from paying for legal assistance in full or in part in consideration of the citizen’s material status. Additionally, two further categories of persons may request to be exempt from paying for legal assistance:

1. plaintiffs in court cases for redress of damages in connection with the death injury or other health damage related to work of a primary earner; and
2. plaintiffs and defendants who participated in the Great Patriotic War and persons equated to them, army conscripts, persons with certain classes of disability, old-age pensioners if the dispute considered by court is not related to business matters.

In addition to the categories of persons covered under the Criminal Procedure Code, Civil Procedure Code and the Code of Administrative Offences, Article 6 of the Law on Advocacy provides that the persons in categories (1)

entity, based on a license giving such person a right to carry on the aforementioned activity, such license issued by a competent body”: Law of the Republic of Kazakhstan no.261-IV dated 2 April 2010 “On the Enforcement Process and the Status of Legal Enforcement Agents”.

and (2) under the Civil Procedure Code are to receive free legal advice and representation as are the following categories of persons: natural persons on matters regarding recovery of alimony, assignment of pensions and benefits, rehabilitation, gaining a refugee or oralman²⁸⁰ status, children without parental care in cases where drawing up legal documents is necessary.²⁸¹

The broad categories of persons entitled to legal aid is a welcome development, although there are concerns that the legal aid system is underfunded meaning the guarantees of the law may be illusory in practice.²⁸² Furthermore, although legal advice provided by lawyers under the Law on Legal Aid or the Law on Advocacy is funded by the state, the Equal Rights Trust has received information from one source that lawyers representing clients under legal aid contracts are required to have their bills approved by both the police investigator and the court undermining the ability to act as independent advocate.²⁸³ This has led to reports of two categories of legal defence lawyers; “red lawyers” who actively seek to represent their client’s interests and “black” lawyers who are rumoured to have inappropriately close relationships with prosecutors and police.²⁸⁴ Further, lawyers working under legal aid contracts receive very little reimbursement with the highest per hour rate being around 7 USD;²⁸⁵ a lawyer with considerable experience in bringing claims for human rights violations informed the Trust that this rate is considerably lower than the average private fee and the low level of reimbursement is likely to undermine the quality of service.²⁸⁶

280 An oralman, or returnee, is an ethnic Kazakh who lived outside of Kazakhstan but has chosen to return. As discussed in Part 1 above, since 1991 large numbers of ethnic Kazakhs have returned to the country in response to the state’s prioritisation of the repatriation of ethnic Kazakhs.

281 The Law of the Republic of Kazakhstan, “On Advocacy”, dated 5 December 1997 No.195-I.

282 UNDP, *Accessing Justice: Legal Aid in Central Asia and the South Caucasus*, 2013, p. 33, available at: http://www.eurasia.undp.org/content/dam/rbec/docs/LegalAid_SouthCaucasus&CentralAsia.pdf.

283 Kazakhstan International Bureau for Human Rights and Rule of Law, Interview with G. Baygazina, President of Almaty Bar Association, Almaty, November 2016.

284 See above, note 228, p. 14.

285 Resolution of the Government of the Republic of Kazakhstan, “On establishing the amount of payment for the legal assistance provided by a lawyer, and expenses related to the protection”, dated 29 December 2016 No. 1110, available at: <http://adilet.zan.kz/rus/docs/P1500001110#z0>.

286 Equal Rights Trust, Interview with Y. Zhovtis, Almaty, 2 December 2016.

International best practice requires “appropriate legal aid” to be provided in cases where an individual asserts their right to equality or non-discrimination,²⁸⁷ the lack of funding and questionable independence of defence lawyers acting under legal aid contracts is clearly inconsistent with the requirements of international law in relation to the right to a defence and a fair trial. It is noteworthy that a Concept of Legal Policy in the Republic of Kazakhstan for the Period 2010–2020 (the “**Concept of Legal Policy**”) is in force. The Concept of Legal Policy stresses the need for modernisation of the legal aid system. In particular, the policy aims to improve the provision of legal aid to people with low income and to ensure the even distribution of legal services between urban and rural areas.²⁸⁸ Unfortunately, the Concept is not binding state policy but rather a statement of intention; as such to be effective it needs to be accompanied by a formal Action Plan or legislative measures.

Evidence and Proof

International law recognises that it can be difficult for a person to prove that discrimination has occurred, and thus requires that legal rules on evidence and proof are adapted to ensure that victims can obtain redress. Principle 21 of the Declaration of Principles on Equality states that:

Legal rules related to evidence and proof must be adapted to ensure that victims of discrimination are not unduly inhibited in obtaining redress. In particular, the rules on proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination (prima facie case), it shall be for the respondent to prove that there has been no breach of the right to equality.

As this principle indicates, the “burden of proof” in cases of discrimination should be transferred to the respondent, once facts from which it may be pre-

287 See above, note 169, Principle 18.

288 Decree of the President of the Republic of Kazakhstan, “On Concept of Legal Policy in the Republic of Kazakhstan for the Period 2010-2020” dated 24 August 2009 No.858.

sumed discrimination has occurred have been established. The committee on Economic, Social and Cultural Rights has stated in its General Comment No. 20 that:

*Where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively.*²⁸⁹

Kazakhstan's law falls short of these standards as there are no specific rules of evidence which apply to cases of non-discrimination and equality. This means that the burden of proof remains with the claimant. In accordance with Article 65 of the Civil Procedure Code, each party to the case must prove the facts and evidences it presents to support its arguments. This means that an individual alleging discrimination is required to prove such discrimination. Similarly, under Article 121(2) of the Criminal Procedure Code, and Article 9 of the Code on Administrative Offences, the burden of proof lies with the accuser.

Remedies and Sanctions

Principle 22 of the Declaration of Principles on Equality sets out the importance of appropriate remedies and sanctions where the rights to equality and non-discrimination are violated:

Sanctions for breach of the right to equality must be effective, proportionate and dissuasive. Sanctions must provide for appropriate remedies for those whose right to equality has been breached including reparations for material and non-material damages; sanctions may also require the elimination of discriminatory practices and the implementation of structural, institutional, organisational, or policy change that is necessary for the realisation of the right to equality.

289 See above, note 155, Para 13.

At the international level, the HRC has stated that remedies must be “accessible and effective”²⁹⁰ while the Committee on Economic, Social and Cultural Rights has said that “effective” remedies include compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and public apologies.²⁹¹

As outlined above, the specific laws on anti-discrimination in Kazakhstan do not provide for specific remedies or sanctions for breach of their provisions; nor are there specific sanctions targeted at remedying breach of the rights to equality and non-discrimination. The Human Rights Committee has, in its most recent Concluding Observations, recommended that Kazakhstan provide for “access to effective and appropriate remedies to victims of discrimination”.²⁹²

The imposition of remedies and sanctions is left to the Civil, Criminal and Administrative Codes. In Part 2.2.3 above, this report examines the penalty-enhanced provisions, which apply where certain offences are committed with discriminatory intent. Beyond these specific provisions, the remedies available for breach of the rights to equality and non-discrimination are set out in the relevant provision of each Code. Under the Criminal Code, sanctions are penal in nature and are typically either fines, restrictions on liberty or custodial sentences. Sanctions for Administrative Offences are typically fines. In relation to the Civil Code, the remedies available are set out in Article 9 of the Civil Code and include:

1. recognition of the rights violated;
2. restoration of the situation prior to the violation of a right;
3. termination of actions which violate a right or create a threat of its violation;
4. enforcement of the fulfilment of obligation in kind;
5. recovery of damages, penalties;
6. recognition of transaction as invalid;
7. compensation for moral damages;
8. termination or modification of legal relationship;
9. recognition of an act of a state authority or a local representative or executive body as invalid or not enforceable; and

290 See above, note 263, Para 15.

291 See above, note 155, Para 40.

292 See above, note 132, Para 10.

10. recovery of a penalty from a state authority or an official for hindering the citizen or legal entity from acquisition or execution of a right.

A person whose rights were violated may seek damages unless otherwise stated in a legislative act or an agreement. Damages include actual losses as well as loss of profit.

2.4 Conclusions

The Kazakhstan's legal framework does not effectively ensure the right to equality and non-discrimination. Although Kazakhstan has a good record of ratification of the core international human rights treaties, and international law takes priority of all national law (excluding the Constitution) the above analysis demonstrates that national law is frequently inconsistent with Kazakhstan's obligations under these treaties. The national legal framework on equality is grounded in the guarantee of equality as set out in the Constitution; the Constitutional guarantee is complemented by a patchwork of equality and non-discrimination protections in laws directed at particular groups across national legislation, However, there is no comprehensive definition of discrimination. Similarly, none of the provisions discussed above combat indirect or multiple discrimination. A number of the national laws discussed above contain provisions which aim to prevent discrimination in many spheres of life. However, there are several provisions which create a risk of discrimination or discriminatory application. Of particular concern are the very broad provisions in the Criminal Code criminalising incitement to racial hatred and the provisions in the Criminal Procedure Code, which fail to meet international best practice on protecting women from gender-based violence. The weaknesses in the legislative framework are matched by poor enforcement of the right to equality and non-discrimination in Kazakhstan which is not in line with international best practice. There are numerous concerns about the independence of the judiciary with several reports of individual judges being prosecuted for corruption. The national human rights institution lacks independence and has limited competence to address violations of the rights to equality and non-discrimination, particularly in relation to violations by state authorities meaning their power to advance the rights to equality and non-discrimination is very limited. Although there is a broad entitlement to legal aid, in practice legal aid lawyers are underfunded and there are concerns about the quality of their services and their independence.

In summary, Kazakhstan's law has a number of weaknesses in its protection of the rights to equality and non-discrimination. To enhance its compliance with its obligations under international human rights law and international best practice, Kazakhstan should adopt a comprehensive anti-discrimination law. This law must be supported by strong, effective and independent enforcement mechanisms, which include the provision of adequate legal aid and effective remedies for victims.

3. PATTERNS OF DISCRIMINATION AND INEQUALITY

This part of the report discusses the principal patterns of discrimination and inequality in Kazakhstan. It seeks to identify the typical manifestations of discrimination and inequality as they are experienced by people in Kazakhstan. It is based largely on an analysis of research undertaken by authoritative sources in the last decade, complemented original direct testimony collected from a wide range of individuals in some cases. We have sought to corroborate all facts and provide accurate attribution of all statements.

This part of the report does not seek to provide an exhaustive picture of all the observed patterns of discrimination. Rather, it aims to provide an insight into what appear to be the most important issues pertaining to the most significant discrimination grounds in the country. In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws, the action of state actors carrying out public functions, exposure to discriminatory violence, and discrimination and inequality in areas such as employment, education and access to goods and services.

The research for this report found substantial evidence of discrimination and disadvantage arising on a range of different grounds. The main focus of this chapter is on discrimination and inequality arising on the basis of religion or belief and race and ethnicity. The report then goes on to examine discrimination on the basis of: (i) political opinion; (ii) sexual orientation and gender identity; (iii) gender, (iv) disability; and (v) health status.

3.1 Discrimination and Inequality on the Basis of Religion or Belief²⁹³

As a party to the International Covenant on Civil and Political Rights (ICCPR), Kazakhstan is required, under Article 18 to guarantee freedom of thought,

²⁹³ This section of the report was authored by Yevgeniy Zhovtis, Executive Director of the Kazakhstan International Bureau of Human Rights and Rule of Law. An earlier version of this section was published in 2015, based on the report *Preliminary Report on Certain Aspects of Inequality and Discrimination in the Republic of Kazakhstan*, published by KIBHR in 2015. (Kazakhstan International Bureau for Human Rights and Rule of Law, *Preliminary Report on Certain Aspects of Inequality and Discrimination in the Republic of Kazakhstan*, 2015, available at: https://bureau.kz/monitoring_2/alternativnye_doklady/doklad_o_neravenstve_i_diskriminacii_v_kazakhstane_2015.)

conscience and religion to those in its jurisdiction. Beyond the obligation to ensure universal enjoyment of the right to religious freedom, Kazakhstan is required to ensure the enjoyment of all rights guaranteed under the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) without discrimination of any kind on the basis of religion by virtue, respectively, of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. In addition, in accordance with Article 26 of the ICCPR, Kazakhstan must prohibit discrimination on grounds including religion in all areas of life regulated by law. Both the Committee on Economic, Social and Cultural Rights (CESCR) and the Human Rights Committee (HRC) have confirmed that the obligations of non-discrimination arising under the Covenants include a prohibition on both direct and indirect discrimination.²⁹⁴

The majority of Kazakhstan's population are practitioners of one of two religions: Sunni Islam and Russian Orthodox Christianity. Seventy per cent of those living in Kazakhstan identify as Muslim, while 26.3% identify as Christian²⁹⁵ The Sunni Hanafi school is the dominant form of Islam in Kazakhstan, while Russian Orthodoxy is the single most prevalent form of Christianity.²⁹⁶ In addition to Sunni Muslims, a number of other Muslim denominations exist in the country including Shafi'i Sunni, Shia, Sufi and Ahmadiyya.²⁹⁷ In addition to Russian Orthodox, Kazakhstan is home to a number of other Christian groups, including Presbyterians (92 religious associations registered with the authorities), Lutherans (14 religious associations), Pentecostals (193 religious associations), Jehovah's Witnesses (60 religious associations), Seventh-

294 United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20, 2009, Para 10; United Nations Human Rights Committee, *General Comment No. 18: Non-discrimination*, U.N. Doc. HRI/GEN/1/Rev.1 at 26, 1994, Para 7. While the terms "purpose" and "effect" used by the Human Rights Committee in General Comment No. 18 are not equivalent to direct and indirect discrimination respectively, the scope of prohibited behaviours covered by the definition referring to "purpose or effect" is coextensive with a prohibition of both direct and indirect discrimination.

295 The Agency on Statistics of the Republic of Kazakhstan, *Results of the 2009 National Population Census of the Republic of Kazakhstan*, 2011, p. 25, available at: https://www.liportal.de/fileadmin/user_upload/oefentlich/Kasachstan/40_gesellschaft/Kaz2009_Analytical_report.pdf.

296 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 3.

297 Committee for Religious Affairs of the Republic of Kazakhstan, *Report on the Situation with Religious Freedom in the Republic of Kazakhstan*, 2014, pp. 4–7. It should be noted that the Ahmadiyya Muslim minority were not registered under the Law on Religious Activity and Religious Associations and does not currently have legal status in Kazakhstan.

day Adventists (42 religious associations), Methodists (12 religious associations), and Mennonites (three associations).²⁹⁸ A number of Jewish (seven religious associations) and Buddhist (two religious associations) organisations also exist and there are small communities of Hare Krishna, Church of Scientology, Baha'i, Christian Scientist, Church of Jesus Christ of Latter-day Saints (Mormons) and Unification Church (a total of 18 associations).²⁹⁹

Religion and ethnicity overlap to a significant degree in Kazakhstan: 98% of ethnic Kazakhs identify as Sunni Hanafi Muslims while 92% of ethnic Russians identify as Christians.³⁰⁰ It has been observed that religion in Kazakhstan is often used as a proxy for ethnicity, in that identification with a particular religion does not necessarily involve active observance and may simply denote ethnic affiliation.³⁰¹

Political and Social Context

Kazakhstan is formally a secular country, with Article 1(1) of the Constitution providing that “[t]he Republic of Kazakhstan proclaims itself a democratic, secular, legal and social state whose highest values are the individual, his life, rights and freedoms”. A person does not require permission from the state in order to convert from one religion to another or to live as an atheist.³⁰² However, the UN Special Rapporteur on freedom of religion or belief has noted that the state has used its constitutional secularism as a pretext to monitor and restrict the activities of minority religions, under the guise of preventing such religions from “unduly influencing secular state institutions”.³⁰³ Thus, while the government is conscientious in its exclusion of religion from state institutions such as schools, it “goes quite far in monitoring religious organisations, in particular non-traditional communities.”³⁰⁴

298 *Ibid.*

299 *Ibid.* It should be noted that the Church of Scientology was not re-registered under the Law on Religious Activity and Religious Associations and does not currently have legal status in Kazakhstan.

300 See above, note 296, Para 5. See also note 295, above, p. 24.

301 *Ibid.*, Human Rights Council.

302 *Ibid.*, Para 6.

303 *Ibid.*, Para 11.

304 *Ibid.*

Leaders of the five religious groups that the Kazakhstani government considers “traditional” – namely Sunni Hanafi Muslim, Russian Orthodox Christianity, Roman Catholicism, Lutheranism and Judaism – have stated that they are generally accepted among the Kazakhstani population.³⁰⁵ However, research for this report has found that religious communities that do not fall within these groups face discrimination in a variety of areas of life.

Legal and Policy Framework

Aside from the guarantee of secularism in Article 1(1), various constitutional provisions deal with the right to freedom of religion. Article 5(4) stipulates that the activities of “religious parties (...) shall not be permitted in the Republic.” Article 19(1) of the Constitution provides that persons “shall have the right to determine and to indicate, or not indicate, [their] national, party and religious affiliation”. Discrimination on grounds of one’s “attitude towards religion” is prohibited under Article 14(2).

The right to freedom of religion and belief itself is enshrined in Article 22, which guarantees to everyone “the right to freedom of conscience”. Paragraph 2 of this Article qualifies the right, stating that freedom of conscience should not itself “specify or limit universal human and civil rights and responsibilities before the state”. Article 39(3) of the Constitution provides that the right under Article 22 “shall not be restricted in any event”. The guarantee under Article 22 is narrower than the right under Article 18 ICCPR as it does not explicitly protect freedom of religion. Research by the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) for this report has not been able to identify any jurisprudence interpreting to what extent Article 22 does in fact protect the right to freedom of religion.

The Committee for Religious Affairs (formerly, from 2011 to 2014, the Agency for Religious Affairs) is the body responsible for formulating and implementing government policy with regard to religion. The Committee is also charged with analysing the activities of religious groups or missionaries, to ensure compliance with legislation including the Law on Religious Activity and Reli-

305 US Department of State, *Kazakhstan 2014 International Religious Freedom Report*, 2014, p. 6, available at: <http://www.state.gov/documents/organization/238708.pdf>.

gious Associations (Law No. 483-IV of 11 October 2011), the content of which is discussed below.³⁰⁶

Attitudes Toward Minority Religions

Despite the Constitutional protection of the right to freedom of conscience, certain religious groups are marginalised in Kazakhstan. Significant antipathy exists towards minority religious communities: a 2013 survey revealed that 24.1% of respondents were of the view that minority religions should be subject to control and regulation and only 9.8% of respondents indicated that such religions should not be banned or restricted.³⁰⁷ Religions that were the object of particular hostility included Jehovah's Witnesses, Baptists, Hare Krishna and Ahmadiyya Muslims.³⁰⁸

Furthermore, there is evidence that fear of religious extremism has fostered prejudice against the followers of certain Islamic denominations.³⁰⁹ For example, the Agency for Religious Affairs stated in its 2014 Report on Religious Freedom in Kazakhstan that:

*Proselytism has become more active as a result of targeted missionary activities of a number of new religious groups. On the one hand, it causes tension in the society and among Kazakhstan's traditional religious associations. On the other hand, it sets conditions for radical developments.*³¹⁰

In 2012, the President of Kazakhstan, Nursultan Nazabayev, suggested that non-traditional religions should be suppressed, citing fears for the disruption of traditional social values:

306 Resolution of the Government of Kazakhstan, "On Questions of the Ministry of Culture and Sport of the Republic of Kazakhstan", Law No. 1003 of 23 September 2014, Article 2; Law of the Republic of Kazakhstan "On Religious Activity and Religious Associations", Law No. 483-IV of 11 October 2011, Article 4.

307 Youth Information Service of Kazakhstan, "Are Kazakhstanis Tolerant?", *Youth Information Service of Kazakhstan*, 16 November 2013, available in Russian at: <http://misk.org.kz/events/bf08bc30-5285-4b0d-bb78-ea691ffedc95>.

308 *Ibid.*

309 See above, note 296, Para 4.

310 Agency for Religious Affairs of the Republic of Kazakhstan, *Report on the situation with religious freedom in the Republic of Kazakhstan*, 2014, p. 31.

Today the pressing issue for Kazakhstan in the religious arena is religions that have not been traditionally practiced in our country. We have also seen an influx of people claiming to represent a non-recognized faith or belief. Some of the young people unconsciously accept these views due to a lack of immunity on the part of our society against pseudo-religious influence.

It is a fact that our Constitution guarantees freedom of faith. However (...) this is not unrestricted freedom, as this would produce chaos. Everything should be subject to the Constitution and our laws.

Everyone enjoys a freedom of choice. It is necessary to be very responsible in choosing religious preferences: lifestyle, households and often whole lives depend on this choice. The activity of non-traditional sects and dubious pseudo-religious teachings needs to be severely suppressed.³¹¹

The President's sentiments have been echoed by other prominent public figures. At the 2013 session of the Council for Relations with Religious Associations, F. Kuanganov, Deputy Akim (the deputy head of the local government) of North Kazakhstan Oblast in Petropavlovsk noted that "the region boasts a positive experience in preventive work aimed at counteracting the spread of pseudo-religions and extremist teachings but the religious situation needs to be kept in check".³¹² Similarly, at a 2013 roundtable on the "Role of Mass Media in Reinforcing International Relations in Kazakhstan" Zhasulan Tazhibayev, the head of the Administrative and Analytic Department for Handling Religious Affairs, stated:

Unfortunately, rapid development of electronic mass media and promotion of values alien to Kazakhstanis

311 Address by the President of Kazakhstan, "The Strategy of 'Kazakhstan 2050': new political course of the accomplished state", 14 December 2012, available at: <http://adilet.zan.kz/rus/docs/K1200002050>.

312 BNews, "In 2013 35 violations of the legislation on religious activities were found", BNews, 27 December 2013, available at: http://bnews.kz/ru/news/regioni/v_2013_godu_na_territorii_sko_viyavleno_35_narushenii_zakonodatelstva_o_religioznoi_deyatelnosti-2013_12_27-978769.

*have pushed out traditional culture to the edges of the public life. Young people are beginning to forget their spiritual roots and traditions of the ancestors. They do not know the history of the world religions, which opens up large opportunities for speculation on religious topics and (...) destructive teachings. The position of Kazakhstan's traditional religions – Islam and Orthodoxy – tends to weaken.*³¹³

In October 2014, the Deputy Prosecutor of East Kazakhstan oblast reportedly wrote in an internal letter that it is necessary “to prepare and introduce new counteractions against religious activity of non-traditional religious teachings based on coordinated efforts” referring specifically to certain smaller Christian religious groups including Baptists and Jehovah’s Witnesses.³¹⁴

The Equal Rights Trust has spoken to several persons alleging that a number of government organised non-governmental organisations have made it their mission to spread false information about religious “sects” and to stoke anti-minority sentiment.³¹⁵ For example, such groups have stated that religious “sects” incite young and unstable persons to commit suicide. Indeed, the Committee for Religious Affairs maintains 22 centres that provide “consultative and psychological assistance to individuals who suffered from destructive religious organisations and trends.”³¹⁶ These centres target the activities of minority religious communities such as Hare Krishna, Jehovah’s Witnesses, Evangelical Christian Baptists and the New Life Church.³¹⁷

313 See above, note 293, p. 80.

314 Forum 18, “Kazakhstan: new forms of countering religious activity by non-traditional religious movements”, *Forum 18*, 2014, available at: http://www.forum18.org/archive.php?article_id=2006.

315 Equal Rights Trust, Consultation meeting with civil society organisations, Almaty, 5 December 2013.

316 See above, note 297, p. 19.

317 Forum 18, “Great political efforts are made”, *Forum 18*, 6 May 2011, available at: http://www.forum18.org/archive.php?article_id=1568; Address by Aleksandr Klyushev, “Diskriminatsiya, kak sledstvie nereshennyh problem po razzhiganiyu neterpimosti i diskreditsii v otnoshenii hristian i predstaviteley drugih konfessiy v Kazahstane [Discrimination as a consequence of unresolved issues fomenting intolerance and defamation against Christians and members of other religions in Kazakhstan]”, 5 October 2009, available at: <http://www.osce.org/ru/odih/39333?download=true>.

Discriminatory Laws

Law on Religious Activity and Religious Associations

Enacted in 2011, the Law on Religious Activity and Religious Associations (Law No. 483-IV of 11 October 2011) (the 2011 Law) imposed significant constraints on the activity of minority religious groups. The Law establishes a complex system of registration and regulation for religious groups in Kazakhstan, involving:

- bans on unregistered religious activity;³¹⁸
- compulsory theological examinations before religious activity is licensed;³¹⁹
- limitations on the importation and distribution of religious materials;³²⁰ and
- prohibitions on building new places of worship without government approval.³²¹

As set out below, the 2011 Law has had the effect of deepening the divide between the large Sunni Islam and Orthodox Christian populations and smaller religious groups. Indeed, marginalisation of religious minorities is reflected in the Law’s preamble, which “recognises the historical role of the Islam Hanafi school and Orthodox Christianity in the development of the culture and spiritual life of the people [of Kazakhstan]”.

i) Registration Requirements

The 2011 Law stipulated that all religious associations already registered in Kazakhstan had to undergo compulsory re-registration with the Ministry of Justice by 25 October 2012.³²² The Code on Administrative Offences provides

318 Law of the Republic of Kazakhstan “On Religious Activity and Religious Associations”, above, note 306, Article 24; Code on Administrative Offences, Law No. 235 of 5 July 2014, Article 489.

319 *Ibid.*, Law of the Republic of Kazakhstan “On Religious Activity and Religious Associations”, Article 6.

320 *Ibid.*, Article 9(3).

321 *Ibid.*, Article 5; Code on Administrative Offences, above, note 318, Article 490.

322 *Ibid.*, Law of the Republic of Kazakhstan “On Religious Activity and Religious Associations”, Article 24.

that a religious association which operates without a valid registration is subject to administrative sanctions.³²³

Registration can be completed at the local, regional or national level. For a religious association to register at the local level, its application must include signatures from at least 50 Kazakhstani nationals resident in the oblast or city in which the registration is sought;³²⁴ at the regional and national levels, applications must include 500 and 5000 Kazakhstani signatories, respectively.³²⁵ At the regional level, groups must have members in at least two separate oblasts or cities; at the national level, the applicant must have at least 300 citizens in each region, city of republican significance and Astana and branches throughout the country.³²⁶

Even where a religious association has garnered the requisite number of signatures, the registration procedure requires the submission of a wide range of documents, and so remains difficult to satisfy. At the local level, a religious association must submit a number of documents in support of its application, including: its “charter” signed by the leader or head of the association; minutes of a constitutive meeting; list of the persons who founded the association; documents confirming the location of the association; printed materials setting out the history, fundamental beliefs and doctrine of the religion; documents confirming payment of charges for state registration; and documents relating to the election or appointment of the leader or head of the association.³²⁷ Article 16 of the Law sets out the requirements of a “charter”, which must include *inter alia*: the name subject-matter and goals of the association, the location within which the association will carry out its activity, the structure of the association, the rights and responsibilities of members, the fundamental principles of the religious doctrine and procedure for becoming a member of the association.

323 Under Article 489 of the Code on Administrative Offences, above, note 318, the management, participation and financing of the activities of unregistered religious organisations is punishable by a fine of 100 “monthly calculation indices” which as at the date of publication was a fine of up to around 600 US Dollars.

324 Law of the Republic of Kazakhstan “On Religious Activity and Religious Associations”, above, note 306, Article 12.

325 *Ibid.*

326 *Ibid.*

327 *Ibid.*, Article 15(3).

The requirements on associations registered regionally and nationally are even more extensive; for example, a regional religious association is required to submit a list of its members who support the formation of the religious association.³²⁸ Indeed, in practice, the only three religious associations registered at the national level are Sunni Islam Russian Orthodox Christianity and Catholicism.³²⁹ The Catholic Church was exempt from the re-registration requirements as the result of an agreement concluded between the Vatican and Kazakhstan.³³⁰

The Law's registration requirements have resulted in the discontinuation of hundreds of religious organisations since 2011. In Kostanai oblast alone, 25 religious communities were denied registration in 2012-2013, leading to the cessation of public religious activity for these groups.³³¹ According to the Agency for Religious Affairs, as of October 2012, the 2011 Law resulted in the closure of more than 1,400 religious associations, 32% of those which existed before the Law came into force.³³² In particular, the 50-person membership requirement for those seeking registration at the local level operates to exclude religions which have only a small number of practicing members in a particular geographical area; this constitutes indirect discrimination on the basis of religion, given the disproportionate negative impact on minority religious groups.

The Agency for Religious Affairs has justified the 50-signatory threshold on the basis that "religious organisations which carried out no activities for years, such as the Brothers in Christ (Christadelphians), the Church of the Last Testament (Vissarions)" and others would fail to re-register, resulting

328 *Ibid.*, Articles 15 and 16.

329 See above, note 296, Para 29. Both Sunni Islam and Russian Orthodox Christianity are registered nationally and in all the regions of the country. The Catholic Church has national status by virtue of an agreement concluded between the government of Kazakhstan and the Vatican which takes priority over the registration requirements in the 2011 Law.

330 Forum 18, *Kazakhstan: Muslim Board Islamic Monopoly, Catholic exemption, Forum 18*, 22 November 2012, available at: http://www.forum18.org/archive.php?article_id=1769.

331 ПАРАГРАФ Information Database, "25 religious associations were liquidated in the Kostanai region", 23 November 2012, available at: http://online.zakon.kz/Document/?doc_id=31298288#pos=1;-169.

332 The News, "The number of religious organisations in Kazakhstan decreased by 32%", *The News*, 25 October 2012, available at: <https://thenews.kz/2012/10/25/1241977.html>; see also note 310, above, p. 7.

in an “updating and systematisation of the country’s religious area”.³³³ It also states that where a religious association fails to secure re-registration, it can simply “merge and pass registration as a branch of a religious association”, citing as an example the fact that four churches of the Nazarene’s Mission which were previously registered as separate religious organisations, are now all simply registered as the Presbyterian Church.³³⁴

Forum 18 has noted that many small religious communities have been forced to close “voluntarily”.³³⁵ For example, the wife of a Pastor of a Methodist Church was fined for using her private home (which was also the Church’s legal address) for worship. The Church had not been registered because it could not establish that it had the threshold number of 50 members. The Church was forced to take out an advertisement in a local newspaper announcing that it was going into voluntary liquidation.³³⁶

There are also concerns that the registration requirements have, in practice, been applied in a directly discriminatory manner against minority denominations of the major religions, in particular non-Hanafi Muslim groups, a number of which have been de-registered. The state-mandated Kazakhstan Muslim Board reportedly said in 2012 that all Islamic communities “must be Hanafi Sunni Muslim” and that “[w]e don’t have other sorts of Muslims here.”³³⁷ Mosques wishing to remain separate from the Hanafi school are routinely de-registered.³³⁸ For example, the legal registration of the Din-Muhammad Tatar-Bashkir Mosque in Petropavlovsk was revoked after it expressed an intention to remain independent of the Hanafi school; its re-registration application was rejected and a court ordered that the mosque be liquidated in 2013.³³⁹ All Ahmadiyya Muslim mosques were closed in 2012, with the Agency for Religious Affairs’ then-Chair, Lama Sharif, stating that Ahmadiyya had received negative “expert opinions” from examiners.³⁴⁰

333 See above, note 297, p. 8.

334 *Ibid.*

335 Forum 18, *Kazakhstan religious freedom survey*, March 2014, Para 20, available at: <http://www.refworld.org/docid/55b7787c9.html>.

336 *Ibid.*

337 *Ibid.*, Para 23.

338 *Ibid.*, Para 24.

339 *Ibid.*

340 *Ibid.*, Para 25.

As noted above, Article 18(1) of the ICCPR provides for the right to freedom of thought, conscience, and religion.³⁴¹ Although this right can be subject to such limitations, established by law, as are necessary to protect “public safety, order, health, morals, or the fundamental rights and freedoms of others”,³⁴² in its General Comment No. 22 the HRC has emphasised that any limitation must be “directly related and proportionate to the specific need on which they are predicated”.³⁴³ The HRC has considered the relationship between registration requirements and the right to freedom of religion. In *Malakhovsky and Pikul v Belarus* a religious organisation was refused registration on the grounds that its legal address did not meet the health and safety requirements necessary for performing religious ceremonies.³⁴⁴ The Committee found that such requirements were a restriction on the rights under Article 18(1) ICCPR and that such health and safety requirements were not necessary as a registration requirement, as suitable premises for public ceremonies could be found subsequent to registration. Moreover, as the denial effectively prohibited the group from establishing educational institutions, state measures failed to meet the strict criteria of Article 18(3) of the ICCPR.³⁴⁵ Thus, it is clear from the HRC’s jurisprudence that any registration requirements for religious organisations must be both proportionate and strictly necessary to achieve their stated purpose if they are to be considered consistent with the right to freedom of religion. This requires a strong degree of justification³⁴⁶ and the adoption of the least restrictive measures where possible.³⁴⁷

On this basis, it appears that the registration requirements established under the 2011 Law violate Article 18 of the ICCPR. The registration procedure re-

341 International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, 1966, Article 18(1).

342 *Ibid.*, Article 18(3).

343 Human Rights Committee, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion*, UN Doc. CCPR/C/21/Rev.1/Add.4, 1993, Para 8.

344 *Malakhovsky and Pikul v Belarus*, Human Rights Committee, Communication No. 1207/2003, UN Doc. CCPR/C/84/D/1207/2003, 2005.

345 *Ibid.*, Para 7.6.

346 *Ibid.*

347 In its General Comment No. 34 on Freedoms of Opinion and Expression, the Human Rights Committee emphasised that restrictions on the right to freedom of expression “must not be overbroad”, requiring the adoption of the “least intrusive” measures. See, Human Rights Committee, *General Comment No. 34: Freedoms of Opinion and Expression*, UN Doc. CCPR/C/GC/34, 2011, Para 34.

quires religious organisations to produce an extensive list of documents and to have a minimum membership, requirements that do not meet the HRC's standard of strict necessity. The registration process is also clearly indirectly discriminatory, as the requirements impact disproportionately on smaller religious groups, who are both less able to meet the documentary requirements, due to their small size and relative lack of resources, and who face difficulties in identifying the requisite number of supporters in a given area. The sheer number of small religious groups which have been forced to close due to difficulties in registration underline the impact which the registration process has on the right to practice religion on an equal basis with others.

ii) Restrictions on "Missionary Activities"

In addition to the registration of religious associations, the 2011 Law stipulates that persons carrying out religious functions as "missionaries", whether Kazakhstani citizens or otherwise, must register annually with the administration in the local city where they conduct such activity.³⁴⁸ Article 1(5) of the Law defines missionary activity as conduct which is "done in the name of a religious organisation registered in the Republic of Kazakhstan with the purpose of dissemination of a religious teaching". To engage in missionary activities without registration is an administrative offence resulting in a fine of up to US \$600.³⁴⁹ One individual interviewed for this report stated that:

My brother and I were sentenced by the court to a fine in the amount of 100 times the monthly calculation index because we allegedly carried out illegal missionary activities. All the prosecution was based on the fact that during the month of Ramadan we invited passers-by to read the prayers in the mosque. Due to the fact that I wore long clothes I was named a member of Tablighi Jamaat [a Sunni Islamic Group which was outlawed in Kazakhstan in February 2013 for being extremist] although I am not affiliated with this organisation and I

348 Law of the Republic of Kazakhstan "On Religious Activity and Religious Associations", above, note 306, Articles 5 and 8(3).

349 Code on Administrative Offences, above, note 318, Article 490. The fine is calculated as at the date of publication.

*believe I have the right to freedom of religious belief. As a true Muslim, adhering to Hanafi and supporting official imams, I have invited citizens to the mosque, as it is not a sect, but the house of God. I believe that my right to a fair trial has been violated, the court has not even listened to my arguments, and I was not provided with a defence lawyer. Besides, my brother and I were summoned to the National Security Committee where they demanded that we named other followers of Tablighi Jamaat.*³⁵⁰

The Committee for Religious Affairs (formerly the Agency for Religious Affairs) has justified the need to register in order to perform missionary activities as necessary “to ensure national security [and] protection of citizens’ rights and freedoms”.³⁵¹ It goes on to state that the means employed to achieve these ends are appropriate, given that to secure registration, missionaries need only submit “legal constitutive documents and documents certifying their affiliation with a certain religious organisation.”³⁵² The Committee also noted in 2014 that while the 2011 Law regulates the mechanism for engaging in missionary activities, it “does not restrict religious organisations’ right to disseminate their religious teachings”.³⁵³

The restriction on missionary activities is a restriction of both of the rights to manifest one’s religion under Article 18 and freedom of expression under Article 19 of the ICCPR. As indicated above, any restriction of the rights under Article 18 (and similarly, Article 19) must be strictly “necessary” to “protect public safety, order, health, or morals or the fundamental rights and freedoms of others”. Kazakhstan has sought to justify its approach to missionary work as being necessary for the protection of “national security”, which the HRC has noted is not among the grounds for restriction specified in Article 18(3).³⁵⁴ Moreover, even if the aim pursued by these measures were legitimate, the prohibition of all missionary activity except that expressly approved by the

350 Kazakhstan International Bureau for Human Rights and Rule of Law, Interview with K., May 2015.

351 See above, note 297, p. 12.

352 *Ibid.*

353 *Ibid.*

354 See above, note 343, Para 8.

state is not the least restrictive means of protecting achieving that aim; in particular the broad term “missionary activity” may capture a large range of legitimate conduct. Furthermore, as discussed in greater detail below, the criteria for the “theological review” which forms part of the registration process are vague and allow experts a great deal of discretion.

The prohibition on unregistered missionary activities is also inconsistent with the Organization for Security and Co-operation in Europe (OSCE)’s Guidelines for Review of Legislation Pertaining to Religion or Belief. These Guidelines state that:

*[I]f legislation operates to constrain missionary work, the limitation can only be justified if it [the missionary work] involves coercion or conduct or the functional equivalent thereof in the form of fraud that would be recognized as such regardless of the religious beliefs involved.*³⁵⁵

In General Comment 22 the Human Rights Committee expressly notes that limitations “may not be imposed for discriminatory purposes or applied in a discriminatory manner”.³⁵⁶ However, the provision requiring registration for “missionary activity” is indirectly discriminatory against persons from minority religious groups. The 2011 Law provides that a person may only register as a missionary if he or she applies in respect of a religion that is itself already registered. However, as discussed above, many minority religious groups are either unregistered, or are registered only at the local level but not at the regional or national level. Under the 2011 Law, if a person is registered as a missionary in one area and moves to another area, their activities will be illegal unless they have re-registered.³⁵⁷

More broadly, there is evidence that the registration requirement has had an adverse effect on the discussion and practice of minority religious activ-

355 Organization for Security and Co-operation in Europe (OSCE), *Guidelines for Review of Legislation Pertaining to Religion or Belief*, 19 June 2004, p. 20, available at: <http://www.osce.org/odihr/13993?download=true>.

356 See above, note 343, Para 8.

357 Law of the Republic of Kazakhstan “On Religious Activity and Religious Associations”, above, note 306, Article 8; Decree of the Government of Kazakhstan “On Approval of the Standards of Providing State Services in the Sphere of Religious Activities”, Law No. 190 of 24 February 2014.

ity in public. The Special Rapporteur on freedom of religion or belief points out that:

[W]hile representatives of traditional religious communities in practice can largely carry out religious functions without specific missionary permits, members of smaller groups have actually been sanctioned for merely talking about their faith or answering questions in public.³⁵⁸

iii) Limitations on the Importation and Distribution of Religious Materials

Article 9(3) of the 2011 Law provides that:

Any religious informational materials, other than those intended for personal use, may be imported into the Republic of Kazakhstan only by registered religious associations if a positive opinion of a religious expertise has been obtained.³⁵⁹

The term “personal use” has been defined as up to three copies of a given item.³⁶⁰ The Kazakhstani government has stated that the requirement for approval before a person can import religious materials exists in order to prevent the dissemination of extremist and violent religious materials.³⁶¹

While in most cases approval for the importation of religious materials is granted, there have been cases in which religious communities have been denied permission. For example, in 2012–13, the Agency for Religious Affairs rejected an application from Jehovah’s Witnesses to import monthly magazines, claiming that such publications “discouraged secular education, encouraged family break-ups and contained positions that might outrage members of traditional Christian denominations”.³⁶²

358 See above, note 296, Para 35.

359 Law of the Republic of Kazakhstan “On Religious Activity and Religious Associations”, above, note 306, Article 9(3).

360 See above, note 296, Para 38.

361 *Ibid.*, Para 38.

362 *Ibid.*, Para 38.

As well as requiring permission to import religious materials, the Law stipulates that:

*Distribution of religious literature, other religious informational materials, religious items shall be allowed only in places of worship (religious buildings), spiritual (religious) educational establishments and also in fixed facilities specially determined by the local executive bodies of oblasts, cities of national status and the capital.*³⁶³

Accordingly, facilities that are not religious buildings or religious education facilities are required to hold a licence in order to sell religious literature. The criteria according to which facilities are granted permission to distribute religious materials are set out in a set of Instructions published by the Agency for Religious Affairs publication.³⁶⁴ According to Article 4 of these Instructions, in order to distribute religious literature, facilities must be “located inside of a freestanding building or shall constitute a freestanding building”.³⁶⁵ The Special Rapporteur on freedom of religion or belief has reported that in 2014, the Committee for Religious Affairs confirmed that more than 250 shops were permitted nationwide to sell religious materials.³⁶⁶

The right to freedom of religion incorporates the freedom “to prepare and distribute religious texts or publications”.³⁶⁷ As noted above, any limitation on the right to freedom of religion must be “necessary” to achieve a specified purpose.³⁶⁸ While preventing the spread of ideology which incites violence or hatred may be in the interest of public safety, the imposition of a blanket ban on distributing all materials unless formally approved is disproportionate and

363 Law of the Republic of Kazakhstan “On Religious Activity and Religious Associations”, above, note 306, Article 9(2).

364 Agency for Religious Affairs, *Order Approval the Instruction for Determining the Location of Special Fixed Facilities for Distribution of Religious Literature and Other Religious Informational Materials, Religious Items and Premises for Holding Religious Events Outside of Places of Worship (Religious Buildings)*, Order No. 34 of 23 July 2013, available at: <http://adilet.zan.kz/rus/docs/V1300008634#z8>.

365 *Ibid.*

366 See above, note 296, Para 39.

367 See above, note 343, Para 4.

368 *Ibid.*, Para 8.

goes beyond what is strictly necessary to protect the public safety. Moreover, the requirement that literature must be approved by an “expert” provides significant discretion in the application of the provision, thus increasing the risk that the prohibition is applied in a selective and discriminatory fashion.

iv) Theological Examinations

Article 6 of the 2011 Law requires that, to become registered under – whether as a religious association, a person wishing to carry out missionary activities, or a person or organisation wishing to import religious literature – an applicant must successfully pass a theological review conducted by a state-appointed “expert”.³⁶⁹ The assessment is based on the expert’s evaluation of the theological elements of the relevant religion, assessed through examination of the applicant’s “constituent documents as well as other religious documents, spiritual (religious) education programmes, religious information materials and religious items.”³⁷⁰

In 2012, the Agency for Religious Affairs issued guidelines regulating the theological examination procedure, entitled “Instructions for Choosing Experts for Conducting Religious Assessments” (the Instructions).³⁷¹ In December 2014, these were replaced with the Rules for Conducting Religious Expertise (the Rules).³⁷² According to Article 6 of the Rules, experts are tasked with assessing the content of the constituent documents, doctrine and ceremonies of the religious group in question, in order to identify conflicts with the Constitution or other national laws. Pursuant to Article 13 of the Rules, the expert may only make a recommendation, which public bodies can then decide whether or not to follow.

To guide the expert examiners, the government’s Research and Development and Analytical Centre for the Matters of Religions, which is part of the Com-

369 Law of the Republic of Kazakhstan “On Religious Activity and Religious Associations”, above, note 306, Article 6.

370 *Ibid.*, Article 6.

371 Agency for Religious Affairs, Approval of the Instruction for Choosing Experts for Conducting a Religious Expertise, No. 112 of 30 October 2012.

372 Government of the Republic of Kazakhstan, Decree of the Chairman of the Agency for Religious Affairs “About Approval of the Rules for Conducting Religious Expertise”, No. 162 of 30 December 2014.

mittee for Religious Affairs, has developed a non-binding manual.³⁷³ The manual notes that there are no official requirements for religious experts, but that they should have (i) higher education covering ‘religious relations’ and (ii) at least one year’s work experience in the area of ‘religious relations.’³⁷⁴ The manual provides that:

*[I]n the course of a religious assessment, it shall be necessary to determine the conformity of the value system of the examined religion to the important social values customary in society. It shall be necessary to determine whether or not the rules laid down as part of religious doctrine comply with provisions of legislation of the State.*³⁷⁵

The manual further states that experts should “evaluate specific beliefs (...) which are deemed socially undesirable though not prohibited by law, and to evaluate the probability of the negative impact of these beliefs” on society.³⁷⁶ Similarly, it states that:

*When analysing the attitude of a new religious association towards the society, its paradigms and values, an expert must expose the value and regulatory paradigms of the movement that regulate the social behaviour of its members.*³⁷⁷

A number of established religions have failed to obtain registration following expert assessment. For example, the Ahmaddiya Muslim Community’s application for registration was denied on the basis of an expert analysis written from the perspective of Sunni Islam.³⁷⁸ As a result, the Ahmaddiya Muslim Community has been forced to cease all community religious activ-

373 Research-and-Development Analytical Centre for the Matters of Religions, *Guidance Manual on the Matters of Conducting a Religious Expertise*, 2013, available at: www.din.gov.kz/details/download.php?fn=291&lang=rus.

374 *Ibid.*, p. 17.

375 *Ibid.*, p. 14.

376 *Ibid.*

377 *Ibid.*

378 See above, note 296, Para 34.

ity and its members “live in permanent fear of possible police raids and legal sanctions.”³⁷⁹

Theological review as a criterion for the existence of a religious association is inconsistent with international best practice and the rights guaranteed by Articles 18 of the ICCPR. The OSCE’s Advisory Panel of Experts on Freedom of Religion or Belief has stated that “registration requirements that call for substantive as opposed to formal review of the statute or charter of a religious organisation are impermissible”.³⁸⁰ As this statement indicates, it is deeply problematic for registration to be based on the examiner’s evaluation of the doctrinal elements of a given religion. This is particularly – though not exclusively – the case where the examiner belongs to a religion that espouses conflicting beliefs, and particularly when the consequences of non-registration are as serious and wide-ranging as they are in Kazakhstan. More broadly, the requirement of expert approval, as noted above in respect of religious literature, creates a significant area of discretion which lends itself to discrimination in application. The Special Rapporteur on freedom of religion or belief has noted that “it cannot be the business of the State to enforce particular theological interpretations by measures of administrative law”.³⁸¹ The impact of theological review requirements on the Ahmadiyya Muslim Community has been cited by the Special Rapporteur as evidence of the “clear need for overhaul” of such requirements.³⁸²

Law on Counteraction of Extremism

The Law on Counteraction of Extremism (Law No. 31-III of 18 February 2005),³⁸³ enacted on 18 February 2005, is aimed at countering various forms of extremism, including religious extremism, which is defined in Article 1(1) as including:

Incitement of religious hatred or discord, including in connection with violence or encouragement to violence,

379 *Ibid.*, Paras 32–34.

380 See above, note 355, p. 11.

381 See above, note 296, Paras 33.

382 *Ibid.*, Para 34.

383 Law of the Republic of Kazakhstan, “On Counteraction of Extremism”, Law No. 31-III of 18 February 2005, available at: <http://adilet.zan.kz/rus/docs/Z050000031>.

and also application of any religious practice threatening to life, health, moral or the rights and freedoms of citizens (religious extremism).

Pursuant to Article 8 of the Law, an organisation is considered extremist if “at least one of its structural subdivisions (branches or representative offices) carries out extremist activity with the knowledge of one of the management bodies of this organisation”.

The Law empowers the Committee for Religious Affairs, as well as local and district executive bodies, to monitor and take preventative measures against the activities of missionaries or religious associations considered to be extremist.³⁸⁴ Such measures include “monitoring of media products” relating to the promotion of extremism³⁸⁵ and implementing “measures on non-admission of entry of foreigners and persons without citizenship to the Republic of Kazakhstan, who by their actions create a threat or cause damage to the security of society and state”.³⁸⁶

There is evidence that the authorities’ approach to combating religious extremism disproportionately affects minority religious groups which do not have a demonstrable link to extremists or extremist activity. For example, in January 2013, the Department for the Struggle against Extremism raided an unregistered Baptist group, an act which the North Kazakhstan Regional Police described as “operational/prophylactic activity to counter manifestations of religious extremism and terrorism”.³⁸⁷

While it may be legitimate to monitor and even to curtail the actions of groups that are inciting violence or religious extremism,³⁸⁸ the Law on Counteraction of Extremism provides for monitoring of all religious associations and missionaries, as though in pursuit of a presumption that such groups are all religious extremists. Given the dominance of two particular religious ideologies in Kazakhstan and the onerous registration procedure for religious asso-

384 *Ibid.*, Article 6.

385 *Ibid.*, Article 6(2).

386 *Ibid.*, Article 6(4).

387 See above, note 335, Para 5.

388 See above, note 343, Para 7.

ciations, there is a significant risk – as demonstrated by the aforementioned case involving the Baptist community – that religious minorities are disproportionately targeted under this Law.

The government has recently proposed a Draft Law “On Changes and Amendments to Some Legal Acts of the Republic of Kazakhstan on Countering Extremism and Terrorism” (the Draft Law). The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has criticised the Draft Law as having the “potential to unduly restrict freedom of movement (...) and the right to freedom of expression [and] even [to] reinforce the existing restrictions on the right to freedom of religion.”³⁸⁹

Criminal Code

The current Criminal Code of the Republic of Kazakhstan (Law No. 266-V of 3 July 2014) (Criminal Code) was enacted in July 2014 and came into force on 1 January 2015. Certain provisions pertaining to religious hate speech are extremely broad, creating conditions which allow for discriminatory application. Article 174(1) of the Code makes it an offence to engage in:

[D]eliberate actions aimed at inciting (...) religious enmity, insulting the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion.

As discussed in more depth in Part 2.2.3, the lack of precision in the formulation of this offence is problematic. Article 174(1) makes it an offence to both incite religious enmity and to insult the religious feelings of citizens. It is unclear what constitutes incitement to enmity or, for example, what constitutes an insult to the religious feelings of others. Similarly, it is unclear what comes within the phrase “propaganda (...) of exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion”. This has been recognised by the Committee on the Elimination of Racial Discrimina-

389 OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Preliminary Opinion on the Draft Amendments to the Legal Framework “On Countering Extremism and Terrorism in the Republic of Kazakhstan”*, 2016, Para 10, available at: www.legislationonline.org/documents/id/20060.

tion (CERD) in its Concluding Observations to Kazakhstan's State report, stating that:

*The Committee expresses its concern at the overly broad provisions of article 164 [the predecessor of Article 174, which defined an offence in near identical terms] of the Criminal Code, such as on incitement to national, ethnic or racial enmity or discord, or insult to the national honour and dignity or religious feelings of citizens, which may lead to unnecessary or disproportionate interference with freedom of expression, including that of members of minority communities.*³⁹⁰

The Special Rapporteur on freedom of religion or belief has expressed concern that Article 174 has been used to imprison individuals.³⁹¹ For example:

*A 66-year-old Kharlamov adhered to a tight atheistic point of view. He was harassed due to his active involvement in human rights activities and criticism of the local executive authorities, including the heads of the police and prosecution in the town of Ridder. He was arrested on 17 March 2013. A criminal case was opened against him under Article [174] of the Criminal Code "agitation of religious enmity." The investigation found that the denial of any religion, that is atheism, and criticism of religious doctrines overall had a negative nature and could affect the citizens. The matter went far beyond the Republic of Kazakhstan and sparked outcry. In the autumn of 2013 he was released, the criminal case was suspended, but he remains formally accused of an offence.*³⁹²

390 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 13.

391 See above, note 296, Para 47.

392 Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR), *Monitoring Report 2012-2015: Enforcement of New Legislation of the Republic of Kazakhstan on Religious Associations and Religious Activity*, 2015, available at: www.bureau.kz.

Code of Administrative Offences

The Code of Administrative Offences (Law No. 235 of 5 July 2014) (Code of Administrative Offences) was adopted in July 2014 and entered into force on 1 January 2015. Paragraphs 9 to 11 of Article 489 impose administrative responsibility for managing or participating in the activity and financing of unregistered religious associations. Further, Article 490 of the Code of Administrative Offences imposes administrative liability for the following forms of conduct:

- violation of legislative requirements pertaining to the performance of religious rites, ceremonies or assemblies, religious charitable activities, or the import, production, publication or distribution of religious literature or items;
- constructing religious buildings (i.e. places of worship) without authorisation or converting buildings to religious buildings without authorisation;
- carrying out missionary activity without registration, or use by missionaries of religious literature, informational materials or other content that has not been the subject of a positive theological examination by experts;
- spreading religious doctrine of unregistered religious associations;
- carrying out activity not specified in the charter of a registered religious association;
- management of a religious association by a person appointed by a foreign religious centre, without authorisation; and
- failure by a leader of a religious association to take measures to prevent the involvement of a minor in the activities of a religious association, in circumstances where one of the minor's parents (or one of his or her legal representatives) object to the involvement.

As with the provisions of the Law on Religious Activity and Religious Associations which are examined above, these provisions allow the imposition of penalties for various forms of religious activity which are “unauthorised” or “unregistered”. Requiring individuals or groups to secure authorisation or registration before they can practice or manifest their religious belief is a restriction to the right to freedom of religion. As noted, Article 18(3) of the ICCPR provides that such restrictions can only be applied where “necessary

to protect public safety, order, health, or morals or the fundamental rights and freedoms of others". It is not at all clear how the restrictions cited above meet this test.

Discrimination by State Agents

The international non-governmental organisation Forum 18 has documented cases in which members of minority religious associations have been subject to harassment by state agents. In 2013, for example, members of the New Life Pentecostal Church, were subject to repeated intimidation by state agents. Forum 18 reported that after the Church had successfully re-registered as a religious association, the 52 people who had signed on its behalf were summoned to Arkalyk public authorities. Pastor Aleksi Fedoskin told Forum 18 that:

*Our church members were questioned as to why they joined the church, why they attend and why they signed the re-registration application. They were pressured to sign pre-prepared statements that they had not understood what they were signing.*³⁹³

On 30 January 2016, the police raided a New Life Pentecostal Church worship meeting in Aktau, near the Caspian Sea, reportedly because they believed that foreigners were present.³⁹⁴ Those present stated that the officials insulted and intimidated congregants, including children. Lieutenant Colonel Kuan-dikov told Forum 18 on 5 February 2016 that "we had to take statements from those present to find out that the foreigners were not leading the meeting. When we found out they had not, we left."³⁹⁵

The same report notes that in December 2015 two female Jehovah's Witnesses, Nadezhda Chesnokova and Olga Mishina, were unable to overturn

393 Forum 18. *Kazakhstan: Religious Freedom Survey, 20 March 2014*, 2014, p. 9, available at: http://www.forum18.org/archive.php?article_id=1939&pdf=Y.

394 Forum 18, "What were they afraid of? We didn't take anyone away", *Forum 18*, 8 February 2016, available at: http://www.forum18.org/archive.php?article_id=2147.

395 *Ibid.*

a fine imposed by police for talking to a pedestrian about their faith.³⁹⁶ The women reportedly discussed their faith with a passer-by on the pavement in Oskemen and showed him a booklet entitled “An Introduction to God’s Word”. The passer-by complained to the police that the women had conducted “illegal” missionary activity and the booklet was confiscated. The women were fined under Article 490(3) of the Administrative Offences Code, which imposes a penalty for “[c]arrying out missionary activity without state registration (or re-registration), as well as the use by missionaries of religious literature (...) without a positive assessment from a religious studies expert analysis, and spreading the teachings of a religious group which is not registered in Kazakhstan.” The women’s appeals to the East Kazakhstan Regional Court were dismissed.³⁹⁷

Further, as a result of the 2011 Law, private religious education facilities have in some instances been closed down on charges of illegality, including because such facilities are not able to use the term “school” in religious education of children.³⁹⁸ On 30 July 2015, around 20 police officers, Prosecutor’s Office officials and Education Department officials reportedly raided a church-run children’s summer camp near Almaty.³⁹⁹ The camp was run by the Kapshagai Baptist Church, an organisation registered in accordance with the 2011 Law. According to Lieutenant Colonel Shalkarov of Kapshagai Police, the church was raided because it “taught children religion in violation of the law.”⁴⁰⁰

As these cases demonstrate, law enforcement activities appear to affect minority religious groups disproportionately, raising concerns that state agents are discriminating in their actions.

Education

As Kazakhstan is formally secular, the school curriculum does not include extensive religious studies: religious studies is only taught for one year,

396 *Ibid.*

397 *Ibid.*

398 See above, note 296, Para 63.

399 Forum 18, “Kazakhstan: What right do authorities have to scare our children?”, *Forum 18*, 13 August 2015, available at: http://www.forum18.org/archive.php?article_id=2089.

400 *Ibid.*

in grade 9.⁴⁰¹ The Special Rapporteur on freedom of religion or belief has pointed out that the textbook used to teach children in religious studies is for the most part neutral, but has expressed concern that the chapter on “new religious movements (...) assumes a warning tone, with the obvious purpose of alerting students to the dangers of seduction or manipulation associated with this particular type of religious movement”.⁴⁰²

Moreover, research for this report revealed that children experience discrimination in schools, with one interviewee telling KIBHR:

On 9 November 2015, I applied to a school in Uralsk requesting to enrol my minor daughter, due to the change of residence. After enrolment, the school administration began to put moral pressure on my teenage daughter, a student of the 10th class, due to her religious beliefs and wearing high-necked clothes, which is different from the established form. In particular, they demanded that she did not wear a long dress and a headscarf. Then the director of the school gave verbal instructions not to admit her to classes.

At the same time my daughter and I were subjected to humiliation and harassment by the school administration only for the fact that our family is Muslim and observes the rites and customs prescribed by this religion. Moreover, due to the current situation, my daughter was forced to miss classes at school, although according to the Constitution of the Republic of Kazakhstan the State guarantees secondary education to a child.⁴⁰³

Moreover, research for this report identified “anti-sect centres” within schools, responsible for developing materials to help teachers identify and

401 See above, note 296, Para 54.

402 *Ibid.*, Para 55.

403 Kazakhstan International Bureau for Human Rights and Rule of Law, Interview with D., November 2015.

prevent students from becoming involved with “religious sects”.⁴⁰⁴ It has also been noted that “anti-sect centres” conduct educational campaigns outside the school environment, on the grounds that religious minorities “pose a threat to people’s health and well-being”.⁴⁰⁵ One individual provided KIBHR with the following account:

On 25 April 2016, a representative of the Centre for Addressing Religious Conflicts came to our kindergarten in Pavlodar and gave a speech and slide presentation on terrorism and extremism. In his speech the representative named the traditional religions in Kazakhstan – those are Islam, Christianity and Buddhism. And he placed our church “New Life” among sects (including the Church of “Jesus Christ” and “Jehovah’s Witnesses”). On one of the slides it was written: Destructive cults are those religious, neo-religious and other groups and organisations that have inflicted material, psychological or physical harm to society or its members or those that are suspected capable of inflicting such harm.”⁴⁰⁶

Conclusion

Kazakhstan is a country with two dominant religious majorities: Sunni Hanafi Islam and Russian Orthodox Christianity. The myriad minority religious groups which constituted the 5% of the country’s population which does not identify as either Sunni Muslim or Russian Orthodox are exposed to discrimination as a result of a number of discriminatory laws, impacting directly on their ability to manifest their beliefs. While the Constitution establishes Kyrgyzstan as a secular state and guarantees both the right to freedom of conscience and the right to non-discrimination on grounds of religion, the preamble to the 2011 Law on Religious Activity and Reli-

404 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://stop-sekta.kz/downloads/vihod_est_rus.pdf.

405 See above, note 296, Para 58.

406 Kazakhstan International Bureau for Human Rights and Rule of Law, Written information received from the Church “New Life”, April 2016.

gious Associations emphasises the centrality of Hanafi Islam and Russian Orthodoxy to Kazakhstani history and culture. This 2011 Law has had the effect of severely limiting the activities of minority religious groups, who are disproportionately disadvantaged by the onerous registration requirements which it imposes. The 2011 Law imposes conditions in relation to registration, missionary activity and the distribution of religious materials which are difficult for minority groups to meet. It also establishes a process of “expert” review which creates discretion and thus permits discriminatory application. Unregistered religious activity is subject to sanction. There are also concerns that measures to counteract religious extremism and religiously-motivated hate speech may be overbroad and subject to discriminatory application. Beyond the legal framework, there is evidence of discrimination by law enforcement agencies, and of discrimination against members of religious minorities in education.

3.2 Discrimination and Inequality on the Basis of Ethnicity and Language⁴⁰⁷

3.2.1 Discrimination and Inequality on the Basis of Ethnicity

Kazakhstan is required to prohibit discrimination on the basis of race, colour and national origin in the enjoyment of all civil, political, economic, social and cultural rights guaranteed under the ICCPR and the ICESCR by virtue, respectively, of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. In addition, Kazakhstan is required by Article 26 of the ICCPR to ensure that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”, including on the basis of race, colour and national origin. The CESCR has also stated that Article 2(2) of the ICESCR extends to a prohibition of discrimination on the basis of ethnic origin. In addition, as a state party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Kazakhstan is required to prohibit all forms of discrimination on the basis of race, colour, descent, national, and ethnic origin.

407 This section of the report was authored by Yevgeniy Zhovtis, Executive Director of the Kazakhstan International Bureau of Human Rights and Rule of Law. An earlier version of this section was published in 2015, based on the report *Preliminary Report on Certain Aspects of Inequality and Discrimination in the Republic of Kazakhstan*, published by KIBHR in 2015. (See above, note 293.)

Kazakhstan is an ethnically diverse state, with census data listing more than 140 ethnic groups.⁴⁰⁸ As noted in Part 1 above, ethnic Kazakhs constitute 63% of the population while a large ethnic Russian community constitutes 24% of the population.⁴⁰⁹ There are also many smaller ethnic minorities including Uzbeks (2.9%), Ukrainians (2.1%), Uighurs (1.4%), Tatars (1.3%) and Germans (1.1%).⁴¹⁰

Ethnic Kazakhs only became the largest ethnic group in the state in 1989.⁴¹¹ Under the Soviet Union, compulsory resettlement of Germans, Poles, Koreans, Chechens and Russians into Kazakhstan led to a situation in which ethnic Kazakhs became a minority.⁴¹² Following Kazakhstan's declaration of independence in 1991, the state embarked on a policy of encouraging the repatriation of ethnic Kazakhs living outside of Kazakhstan.⁴¹³ The size of the Kazakh population as a proportion of the whole has continued to increase as a result of the continued emigration of non-Kazakhs, particularly from "Slavic" or "European" nations, and higher birth rates among Kazakhs.⁴¹⁴

"Kazakhisation" Policy

There is evidence that following independence, in addition to encouraging the return of ethnic Kazakhs, the government has adopted an unofficial policy

408 UN Office of the High Commissioner for Human Rights, *Common Core Document Forming Part of the Reports of States Parties: Kazakhstan*, UN Doc. HRI/Core/Kaz/2012, 19 September 2012, Para 11.

409 *Ibid.*

410 Committee on the Elimination of Racial Discrimination, *Sixth and Seventh Periodic Reports: Kazakhstan*, UN Doc. CERD/C/KAZ/6-7, 5 August 2013, Para 11.

411 Dave, B., *Minorities and Participation in Public Life: Kazakhstan*, 2003, UN Doc. E/CN.4/Sub.2/AC.5/2003/WP.9, p. 5.

412 Kadyrshanow, R., *The ethnopolitical situation in multinational Kazakhstan*, Bundesinstitut für ostwissenschaftliche und internationale Studien, Köln, 1996, pp. 13–14.

413 In 1991, the state adopted a Resolution on the Procedures and Conditions of the Relocation to Kazakh SSR for Persons of Kazakh Ethnicity from Other Republics and Abroad Willing to Work in Rural Areas" (see: United Nations Development Programme (UNDP), *Status of Oralmans in Kazakhstan: Almaty*, 2006, p. 9, available at: http://web.archive.org/web/20120306224600/http://www.undp.kz/library_of_publications/files/6838-29587.pdf).

414 See above, note 411, p. 2.

of “Kazakhisation” which seeks to promote Kazakh identity.⁴¹⁵ The policy is manifested in a variety of ways, such as changing street names from Russian, and erecting statues.⁴¹⁶

There is also evidence that the curriculum implemented in schools promotes Kazakh identity. In junior and high schools, the history of the Kazakh people is greatly emphasised,⁴¹⁷ with the history of Kazakhstan being essentially equated with the history of Kazakh nationality,⁴¹⁸ while the contribution of ethnic minorities to the development of the country is downplayed. This is true of the curriculum in both Kazakh-language and minority language schools. For example, modules on the “History of Uighur People” have been removed from the Uighur schools’ curriculum, while any visual references to the Uighur language and culture (such as portraits of Uighur academic, writers and historical figures or quotes in the Uighur language) have been removed from schools and cultural institutions.⁴¹⁹

An integral element of the “Kazakhisation” policy is the promotion of the Kazakh language. Article 7(1) of the Constitution establishes Kazakh as the state language, despite the fact that Russian is often referred to as the “language of inter-ethnic communication”.⁴²⁰ Article 7(2) of the Constitution softens the impact of Article 7(1) by providing that Russian shall be used on par with Kazakh in state institutions and local administrative bodies. However, research

415 Burkhanov, A., Sharipova, D., “Kazakhstan’s Civic-National Identity: Ambiguous Policies and Points of Resistance”, in Omelicheva, M., (ed.), *Nationalism and Identity Construction in Central Asia: Dimensions, Dynamics, and Directions*, Lexington Books, 2015, p. 27.

416 Ó Beacháin, D., Kevlihan, R., “Threading a needle: Kazakhstan between civil and ethno-nationalist state-building”, *Nations and Nationalism*, 2013, p. 6.

417 Yakavets, N., “Educational reform in Kazakhstan: the first Decade of Independence”, in Bridges, D. (ed.) *Education Reform and Internationalisation: The Case of School Reform in Kazakhstan*, Cambridge University Press, 2014, p. 13.

418 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 26.

419 *Ibid.*, Para 41.

420 Organization for Economic Co-operation and Development (OECD), *Reviews of National Policies for Education: Secondary Education in Kazakhstan, Overview of the education system of Kazakhstan*, 2014, p. 27, available at: http://www.keepeek.com/Digital-Asset-Management/oecd/education/reviews-of-national-policies-for-education-secondary-education-in-kazakhstan/overview-of-the-education-system-of-kazakhstan_9789264205208-4-en#page5.

for this report – presented in section 3.2.2 below – found multiple examples of state agencies refusing to use Russian.

Language and ethnicity are intimately linked in Kazakhstan. In the 2009 Census, 93.5% of the total population indicated that their primary language corresponded with the primary language of their ethnic group.⁴²¹ Moreover, while only 74% of the population believed that they have a good command of the Kazakh language, 94% of the national population stated that they could understand Russian.⁴²² As such, the government’s policy of promoting the Kazakh language, spoken largely by ethnic Kazakhs – often to the exclusion of Russian, understood by almost all citizens, including ethnic minorities –has significant adverse impacts on ethnic minorities. These impacts are discussed in more detail in section 3.2.2.

Legal Framework

As noted above in section 2.2.1, Article 14 of the Constitution prohibits discrimination on the grounds of race and ethnicity. This is supported by provisions of the Criminal Code which prohibit any “restriction of the rights and freedoms of citizens” on the basis of race⁴²³ and the incitement of racial hatred.⁴²⁴

However, the CERD has expressed concern about the low number of complaints made under these provisions, and the lack of court cases concerning racial or ethnic discrimination, considering that this may be indicative of a lack of practical remedies available to victims.⁴²⁵ In its 2014 review, CERD invited the State to explore this issue and to examine the effectiveness of the legal and judicial systems in providing remedies to victims of racial discrimination.⁴²⁶ The lack

421 Agency on Statistics of the Republic of Kazakhstan, *Results of the 2009 National Population Census of the Republic Of Kazakhstan*, 2011, pp. 21–22, available at: https://www.liportal.de/fileadmin/user_upload/oeffentlich/Kasachstan/40_gesellschaft/Kaz2009_Analytical_report.pdf.

422 *Ibid.*, p. 22.

423 Criminal Code of the Republic of Kazakhstan, No. 226-V of 3 July 2014 (as amended up to Law of the Republic of Kazakhstan No. 501-V of April 9, 2016), Article 145.

424 *Ibid.*, Article 174.

425 See above, note 390, Para 18.

426 *Ibid.*, Para 18; 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 21.

of jurisprudence regarding discrimination has been attributed by civil society organisations to the absence of clear definitions of legal terms and concepts which prevent individuals from establishing that discrimination has occurred; they have argued that this results in the misapplication of law, with cases of discrimination often being decided on other grounds in practice.⁴²⁷

Discriminatory Violence and Hate Crime

As discussed above in Part 2.2.3, a number of provisions of the Criminal Code impose aggravated penalties for crimes and offences motivated by racial or national intolerance.⁴²⁸ Article 54 provides for the motivations of national, racial or religious hatred in the commission of a crime to be taken into consideration as an aggravating factor during sentencing. This is in keeping with the obligation under Article 4 of ICERD to declare as an offence punishable by law all acts of violence against individuals and groups belonging to another race or ethnic origin.

Kazakhstan has not experienced the widespread or large-scale ethnic violence seen in neighbouring Kyrgyzstan and Tajikistan, but isolated incidents have occurred at various points in the last decade. In 2010, Kazakhstani civil society organisations reported to the CERD that:

[B]etween 2004 and 2008 the inter-ethnic tension in Kazakhstan has exacerbated. The scale of ethnicity-related conflicts increased, spanning greater territories and leading to more serious consequences (...) Serious ethnic conflicts took place in Malybai, Shilik, Mayatas, Malovodnoe, Aktau and other towns. Some of these conflicts resulted in loss of lives. Several protestors were incarcerated. However, the state bodies failed to conduct proper investigation of the causes of these events and to find the culprits.⁴²⁹

427 Kazakhstan International Bureau for Human Rights and Rule of Law and others, *Submission to the Universal Periodic Review of Kazakhstan: Civil and Political Rights and Freedoms*, 2014, Para 2, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRKZStakeholder-InfoS20.aspx>.

428 See above, note 423, Articles 54(1)(f), 96, 103, 104, 107, 160, 164, 187, 275 and 337.

429 See above, note 418, 2010, Para 8.

The CERD subsequently criticised Kazakhstan for failing to properly investigate incidents of inter-ethnic violence and determine their causes, or to secure prosecutions of those responsible.⁴³⁰

There have been a number of incidents of inter-ethnic violence in recent years. In its 2015 report, the Minority Rights Group describes a violent incident that took place on 27 August 2014 between ethnic Kazakhs and ethnic Uzbeks in Qaramurat, a majority Uzbek village in the South.⁴³¹ The residents of Qaramurat were reportedly attacked by a group of Kazakhs from another village nearby resulting in two individuals being taken to hospital. The response of the government was to downplay the incident and deny the possibility that ethnicity played a role, a response which is called into question by the fact that at the time of the incident, the authorities blocked mobile communications indicating a fear of escalation.⁴³²

In February 2015, KIBHR received information about a spate of violence and criminal destruction of property between ethnic Kazakh and ethnic Tajik communities which erupted throughout villages in the Sary-Agash district in southern Kazakhstan, apparently prompted by the murder of an ethnic Kazakh by an ethnic Tajik.⁴³³ A group of Kazakhs from the same village as the victim descended upon the area in which the alleged perpetrator resided, resulting in outbreaks of physical violence, arson and the destruction of property, including homes and cars. The Ministry of Internal Affairs sought to downplay the incident, referring to it as an act of hooliganism, but KIBHR monitoring suggests that official reports of the extent of the damage were underestimated. Witnesses who spoke to KIBHR stated that related riots and skirmishes took place in at least three villages – Yntymak, Bostandyk and Enkes – where approximately one third of the residents are Tajik. Dozens of households, stores and cars belonging to Tajiks were set alight or otherwise damaged. The scale of the violence is said to have required military intervention.⁴³⁴

430 See above, note 410, Para 9.

431 Minority Rights Group, *State of the World's Minorities and Indigenous Peoples 2015*, 2015, p. 139.

432 *Ibid.*

433 See above, note 293, p. 95.

434 *Ibid.*

There have also been recent reports in the media of ethnic tensions. For example, in February 2016, there were protests by ethnic Kazakhs in the majority Meskhetian Turk village of Buryl in the southern region of Zhambyl, apparently in response to the killing of a five-year-old Kazakh boy by a Meskhetian Turk.⁴³⁵ In August 2016, it was reported that several Tajiks living in Seifullin, a village in the South Kazakhstan oblast, were attacked by a group of Kazakhs in retaliation for the alleged sexual harassment of a seven-year-old Kazakh girl; in response, the police detained more than 30 local residents to prevent escalation of violence.⁴³⁶

Hate Speech

As discussed above, Article 174 of the Criminal Code establishes a broad criminal offence prohibiting incitement to social, national, ethnic, racial or religious hatred. It prohibits:

Intentional actions, directed to institution of social, national, tribal, racial, class or religious hatred, insult of the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on grounds of their relation to religion, class, national, tribal or racial assignment, if these actions are committed publicly or with the use of mass media or information and communication networks, as well as by production or distribution of literature or other information media, promoting social, national, tribal, racial, class or religious discord.

As noted in section 2.2.3 above, this provision can be criticised as being too excessively broad and open to discriminatory application, yet there is also evidence that incidents of incitement to ethnic hatred may not have been adequately investigated. Kazakhstan's 2012 state report to the CERD indicates that between 2009 and 2012, there were only 20 recorded cases under Arti-

435 Radio Free Europe Liberty, "Boy's Killing Sparks Ethnic Tensions in Kazakh Village", 17 February 2016, available at: <http://www.rferl.org/a/kazakh-boy-killing-ethnic-tensions/27557790.html>.

436 Radio Free Europe Radio Liberty, "Ethnic Tensions High in Southern Kazakhstan", 2 August 2016, available at: <http://www.rferl.org/a/kazakh-boy-killing-ethnic-tensions/27557790.html>.

cle 164 of the Criminal Code (the Criminal Code 1997 was replaced in 2014, with Article 164 in the 1997 Code becoming Article 174 in the 2014 Code).⁴³⁷ Of these cases, only 12 were brought to court for substantive examination.⁴³⁸ Moreover, KIBHR's monitoring indicates that the majority of cases brought under Article 164 were political in nature, targeting opposition and civil society activists, rather than persons espousing racial or ethnic hatred.

The CERD has raised specific concerns over the efforts of the government to tackle hate speech, and called on it to: "[e]ffectively investigate (...) prosecute and punish acts of hate speech".⁴³⁹

Political Participation and Representation

In 2012, the CERD expressed its concern regarding:

*[T]he underrepresentation of minorities, in particular non-Kazakh ethnic groups, in political life and decision-making at the municipal, district, regional and national levels, taking into account the 2012 elections data and the last census. Noting the electoral reforms of 2007 and the representation of minorities in the Assembly of the People of Kazakhstan (the People's Assembly), the Committee is concerned about the continuing limited participation of minorities, in particular in both Houses of Parliament, the Mazhilis and the Senate.*⁴⁴⁰

However, while complete information about the ethnic composition of the Mazhilis is not currently, media reports indicate significant progress in political representation of ethnic minorities following the 2016 Parliamentary

437 See above, note 410, Para 41. The exact breakdown of incidents is as follows: 7 in 2009, 8 in 2010, 1 in 2011 and 4 in 2012. This total included 10 offences under article 164, paragraph 2 (incitement to hatred accompanied by the threat or use of violence); 3 in 2009, 4 in 2010 and 3 in 2012.

438 Of the remainder, two were suspended (2009), one was terminated (2010), one was brought to court for application of compulsory medical treatment (2010) and as of 2012, four are pending. (*Ibid.*, Para 42).

439 *Ibid.*, Para 42.

440 *Ibid.*, Para 9.

elections. A March 2016 report indicates that following the elections, more than ten different ethnic groups are represented in the Mazhilis, including Russians, Ukrainians, Koreans, Uighurs, Uzbeks, and Dungans and that ethnic Kazakhs make up just 66% of all deputies elected.⁴⁴¹ The fact that ethnic Kazakhs occupy only 66% of the seats in the Mazhilis is particularly noteworthy given that the group represents just 63% of the population.⁴⁴² The 2016 make up of the Mazhilis is a marked improvement: in 2007 ethnic Kazakhs represented 81% of directly elected representatives and 77% of the total number of deputies in the Mazhilis.⁴⁴³

The Assembly of the People of Kazakhstan is a body tasked with representing the various ethnic groups in Kazakhstan, but it has been criticised for the fact that ethnic minorities have limited influence over its membership. The Assembly consists of 394 representatives of the different ethnic groups in Kazakhstan⁴⁴⁴ and appoints nine deputies of the Mazhilis.⁴⁴⁵ The representatives of the Assembly are appointed by the President on the recommendation of national, regional, ethnic and cultural associations or on the recommendation of the Assembly itself.⁴⁴⁶ The OSCE has criticised the Assembly noting:

*While commendable in itself, the stated objective of boosting national minority representation could be achieved through other means. It also does not give national minority voters a say in who will represent their interests, resulting in nine deputy mandates whose representativeness are questionable.*⁴⁴⁷

441 Vlast.Kz, "Updated Mazhilis in figures and faces", 24 March 2016, available at: <https://vlast.kz/politika/16440-obnovlennyy-mazilis-v-cifrah-i-licah.html>.

442 See above, note 408.

443 Oka, N., *IDE Discussion Paper No. 194, Ethnicity and Elections under Authoritarianism: The Case of Kazakhstan*, Table 2, Institute of Developing Economies, March 2009, available at: <http://www.ide.go.jp/English/Publish/Download/Dp/pdf/194.pdf>.

444 Assembly of the People of Kazakhstan website, available at: <http://assembly.kz/kk/kyzmeti-0>.

445 Constitution of the Republic of Kazakhstan, 30 August 1995, Article 51(1).

446 Law "On the Assembly of People of Kazakhstan", No. 70-IV, 20 October 2008, Article 15; Constitution of the Republic of Kazakhstan, *ibid.*, Article 44(19).

447 OSCE ODIHR, *Republic Of Kazakhstan, Early Parliamentary Elections 15 January 2012: OSCE/ODIHR Election Observation Mission Final Report*, 2012, p. 21, available at: <http://www.osce.org/odihr/elections/89401?download=true>.

Furthermore, at the local level, even in regions where non-Kazakhs represent a significant proportion or indeed a majority of the population, they remain underrepresented in regional political positions. For example, in Almaty, Kazakhstan's largest city, non-Kazakhs make up approximately 48.94% of the population.⁴⁴⁸ Despite this, civil society activists interviewed by the Equal Rights Trust stated that representation of non-Kazakhs in political life in Almaty is low. Executive power in the city is vested in the mayor, his deputies and the heads of the sectoral departments. In total, of these 26 officials, only 2 (less than 8%) are not Kazakh. Of the seven administrative districts in Almaty, six are headed by Kazakhs, while only 2 out of 21 deputy heads of districts are non-Kazakh.⁴⁴⁹ The situation is reportedly similar in the North Kazakhstan oblast, where Kazakhs are a minority, making up approximately 33.30% of the population, but occupying 86.2% of key political positions.⁴⁵⁰

3.2.2 Discrimination and Inequality on the Basis of Language

Language is a long-recognised ground of discrimination, included as one of the eight explicitly listed characteristics in Articles 2 and 26 the ICCPR and Article 2 of the ICESCR. Moreover, Article 27 of the ICCPR provides that in states in which linguistic minorities exist, "persons belonging to such minorities shall not be denied the right, in community with the other members of their group (...) or to use their own language". In addition to its status as a ground of discrimination in itself, however, as the CESCR has noted: "[d]iscrimination on the basis of language or regional accent is often closely linked to unequal treatment on the basis of national or ethnic origin"⁴⁵¹

In Kazakhstan the issue of language discrimination must be seen through the prism of race and ethnicity. As noted above, Kazakhstan is an ethnically diverse country, and this diversity is reflected in linguistic diversity: the 2009 census indicates that there are speakers of Kazakh, Russian, Uighur, Uzbek, Ukrainian, Korean, German, Azerbaijani, Tatar, Armenian, Dungan

448 Central Communications Service, *Interactive Map: Almaty*, 2015, available at: <http://ortcom.kz/en/map/city/4>.

449 Equal Rights Trust, Civil society consultation, Almaty, 5 December 2013.

450 See above, note 427, Para 3.

451 See above, note 294, Para 21.

and Belarussian.⁴⁵² The census also recorded a direct relationship between language and ethnicity with 93.5% of the total population indicating that their primary language corresponded with the primary language of their ethnic group.⁴⁵³ However, Russian is understood by 94% of the population, while Kazakh is understood by 74% of the population.⁴⁵⁴ Of those who speak Kazakh as a primary language, 85% are ethnic Kazakhs, and the level of understanding of spoken Kazakh among ethnic minority groups is very low: ethnic Russian (25.3%), Germans (24.7%) and Ukrainians (21.5%).⁴⁵⁵

As noted above, Article 7 of the Constitution of Kazakhstan establishes Kazakh as the state language, but also provides that Russian shall be used on par with Kazakh in state institutions and local administrative bodies. Kazakh is established as the state language despite the fact that Russian is often referred to as the “language of inter-ethnic communication” and the fact that the language is more widely understood than Kazakh. As such, it has been argued that the designation of Kazakh as the state language forms part of the unofficial government policy of ‘Kazakhisation’ which seeks to promote Kazakh identity.⁴⁵⁶

The high proportion of Kazakhstani citizens of all ethnicities who understand Russian compared with the proportion who understand Kazakh indicates that – unlike in many other countries – there was a genuine choice to be made about which language should be the official state language. Moreover, the strong correlation between ethnic Kazakhs and Kazakh speakers raises the concern that the designation of Kazakh as the state language may have motivated by ethnic considerations. However, irrespective of whether the choice of Kazakh as the state language was intended to create an advantage for the Kazakh ethnic group, the adoption of Kazakh as the state language raises concerns about indirect discrimination against non-Kazakh ethnic groups. Indirect discrimination occurs where a facially neutral provision, rule or practice disproportionately disadvantages a particular group.⁴⁵⁷ The designation of

452 See above, note 421, p. 21.

453 *Ibid*, pp. 21–22.

454 *Ibid*, p. 22.

455 *Ibid*.

456 See above, note 415, p. 27.

457 See above, note 294, Para 10.

Kazakh as the state language applies equally to all individuals in Kazakhstan, but, as is discussed in greater detail below, it creates disproportionate disadvantage for ethnic minorities – ethnic Russians and others.

Principle 5 of the Declaration of Principles on Equality indicates that indirect discrimination may only be justified where it is in pursuit of a legitimate aim and “the means of achieving that aim are appropriate and necessary.”⁴⁵⁸ In principle, the designation of a single, official state language is clearly in pursuit of a legitimate aim; it is important for systems of government to be consistent and predictable and fixing the language of governmental communication advances this goal. In the case of Kazakhstan, there is a separate question of whether the determination of the official language as Kazakh despite the fact that a larger proportion of the populace understand Russian is legitimate. However, the fact that a higher proportion of the population speak Kazakh as a primary language is a strong argument in favour of its selection as the official language.

In principle, the provision in Article 7(2) of the Constitution, which provides for Russian to be on an equal footing to Kazakh in state institutions, operates to ensure that the designation in Article 7(1) does not go beyond what is necessary and thus does not disproportionately disadvantage Russian speakers. However, as is discussed below, in practice, Article 7(2) has not been implemented and there are cases where the imposition of the state language requirements appears to have gone beyond what is necessary, resulting in indirect discrimination.

Discrimination by State Agents

In noting that discrimination on the basis of language is closely linked to discrimination on the basis of ethnic and national origin, the CESCR has stated that: “information about public services and goods, for example, should also be available, as far as possible, in languages spoken by minorities.”⁴⁵⁹ This would appear to be a particularly pertinent requirement in a country such as Kazakhstan where a second language is widely spoken by the populace, and where this language has a special legal status.

⁴⁵⁸ *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 5, pp. 6–7.

⁴⁵⁹ See above, note 294, Para 21.

Nevertheless, a significant concern affecting ethnic minorities is that state agents fail to respect Article 7(2) of the Constitution, which provides for the use of the Russian language in state institutions and local administrative bodies.⁴⁶⁰ In 2015, Minority Rights Group reported that requests for Russian translations of official communications, such as court proceedings, are refused.⁴⁶¹ O., who was interviewed as a part of this report told us:

I am the guardian of three orphan children: born in 2002, 2003, 2005. I often have to go to local executive authorities to deal with various social issues and the issue of providing housing to orphans. All information and documents of the local executive bodies are issued only in the national language, which I do not know. When I asked the officials to give me documents in Russian, they responded to me that “the state language is Kazakh and the record keeping is carried out only in Kazakh language”. In such situations I always feel anger and irritation as I am constantly humiliated because of my language. I have the impression that I am a “second class” citizen. This situation is very difficult for me and affects the exercise of my other rights and the rights of the children under my guardianship.⁴⁶²

Participants in a focus group discussion convened by the Equal Rights Trust during the research for this report stated that in Pavlodar, where 40% of all inhabitants are Russian, all signage is only in Kazakh; this is also true in Petropavlovsk where the majority are ethnic Russians.⁴⁶³

There is also evidence of discrimination against Russian language publications. In August 2015, a court fined the journal ADAM US \$800 and suspended it from publication for three months for failing to comply with Article 11 of Law on Mass Media which it had interpreted as requiring that copies of the journal be published in both Kazakh and Russian, though the text of that Arti-

460 See above, note 293, p. 95.

461 See above, note 431.

462 Kazakhstan International Bureau for Human Rights and Rule of law, Interview with O., June 2015.

463 Equal Rights Trust, Civil society consultation, Almaty, 5 December 2013.

cle contains no such requirement.⁴⁶⁴ The journal had been published in Russian only, and its editor-in-chief alleged that dual-language publication was not in fact required by the law. The decision to suspend publication by the court came only hours after the journal's staff had been informed of the alleged violation of the law. The decision has been criticised as being a politically motivated attempt to stifle independent media, as the fine and suspension followed an article published in November 2014 about the conflict in Ukraine which was criticised by the mayor's office as being in breach of Article 20 of the Constitution which prohibits war propaganda.⁴⁶⁵

Education

Kazakhstan has made significant progress towards ensuring universal access to education from the primary to secondary levels, reflected in high enrolment rates at both the primary and secondary schooling stage: the gross enrolment ratio of primary school age children is over 100% and of the secondary school age children is 97.7%.⁴⁶⁶ This has largely been achieved through the imposition of a duty on authorities in each residential area have a duty to provide education if there are a minimum number of students resident in the area;⁴⁶⁷ This approach has ensured that regional and urban to rural disparities are relatively low,⁴⁶⁸ while the Organisation for Economic Co-operation and Development (OECD) has stated that “ensuring equal access for all chil-

464 Law of the Republic of Kazakhstan, “On Mass Media”, No. 451-1 of 23 July 1999; Human Rights Watch, “Dispatches: Hard Times for Kazakhstan’s Media”, *Human Rights Watch*, 1 September 2015, available at: <https://www.hrw.org/news/2015/09/01/dispatches-hard-times-kazakhstans-media>.

465 Human Rights Watch, “Kazakhstan: Journal Loses Shutdown Appeal”, *Human Rights Watch*, 27 February 2015, available at: <https://www.hrw.org/news/2015/02/27/kazakhstan-journal-loses-shutdown-appeal>.

466 UNDP, *Human Development Report 2015: Work for Human Development*, 2015, available at: http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf. Gross enrolment ratio is the total enrolment in a given level of education (pre-primary, primary, secondary or tertiary), regardless of age, expressed as a percentage of the official school-age population for the same level of education.

467 OECD, *OECD Reviews of School Resources: Kazakhstan 2015, School resource distribution in Kazakhstan*, 2015, p. 83, available at: <http://www.oecd.org/countries/kazakhstan/oecd-reviews-of-school-resources-kazakhstan-2015-9789264245891-en.htm>.

468 United States Agency for International Development, *Kazakhstan Core USAID Education Profile*, hosted by Education Policy and Data Center, 2012, available at: <http://www.epdc.org/country/kazakhstan>.

dren to quality education, irrespective of age, sex, ethnicity, religion or health” is a “priority objective” for Kazakhstan and has noted that access to education is more equitable on average than other OECD countries.⁴⁶⁹

However, use of Russian and other languages is a significant concern in respect of access to education for ethnic minorities. In 2014, the CERD expressed its concern over the accessibility of minority language schools, noting the low numbers of those who receive instruction in and study ethnic minority languages compared to the proportion of minorities in the overall population.⁴⁷⁰

Some legal provision is made for instruction in languages other than Kazakh. Article 9(3) of the Law on Education 2007 provides that:

*[T]he right to education in one’s native language is provided by setting up, **if circumstances permit**, the corresponding educational institutions, classes, groups and creating conditions for their operation. (emphasis added)⁴⁷¹*

This provision is noticeably weaker than its predecessor, Article 5(3) of the Law on Education 1999, which stipulated that “the State **shall** create conditions for national groups to learn their native language” (emphasis added).⁴⁷² This change in wording effectively removes the obligatory nature of the provision.⁴⁷³

Since the country became independent, Kazakh has gradually replaced Russian as the predominant language of instruction in a growing number of schools.⁴⁷⁴ In 2010, civil society organisations reported that an increasing number of minority language schools were being closed, with no new ones

469 OECD, *Reviews of National Policies for Education: Secondary Education in Kazakhstan, Equity and effectiveness of schooling in Kazakhstan*, 2014, p. 66, available at: http://www.oecd-ilibrary.org/education/reviews-of-national-policies-for-education-secondary-education-in-kazakhstan_9789264205208-en.

470 See above, note 390, Para 17.

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

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

473 See above, note 418, Para 21–22.

474 See above, note 420, p. 28.

opened since Kazakhstan's independence in 1991, while in contrast, new Kazakh language schools were consistently opened year on year.⁴⁷⁵ In 2014, the OECD reported that the number of Russian-language schools was falling rapidly with a drop of almost 5% between 2010 and 2011 alone, and almost two thirds of all students in the country studying in Kazakh.⁴⁷⁶

The number of Uzbek language schools has also declined significantly, with the government reporting a total of 58 schools in 2012,⁴⁷⁷ down from 80 in 2003.⁴⁷⁸ There are only 14 schools using Uighur and 2 using Tajik.⁴⁷⁹ One expert interviewed for this report told KIBHR interviewers the following:

Uighur schools are undergoing a deep crisis. At the moment, there are 15,200 students instead of 33,000, a reduction of 50%. Although there are meant to be 70 schools, there are only 62. In the Uighur district only 3800 of 7000 students study in their mother tongue; in Panfilov it is 3500 of 7500; in Enbekshikazakh district it is 2800 of 11000 pupils. There are about 10,000 students in Talgar district, but only 900 of them study in their native language. There are about 25,000 students in Almaty, only 3,000 of them study in their own language. More than 20 schools which offer teaching in Uighur are on the verge of closing. An examination of Uighur literature textbooks has shown serious problems in preparation and selection of the material, as it does not correspond to the national curriculum. Today the entrance tests to high schools in language and literature correspond to school programs with the Kazakh and Russian language of study, it creates significant difficulties to graduates from Uighur schools, it does not provide equal conditions for their entrance. In connection with the reduction in the number of pu-

475 See above, note 418, Para 25.

476 See above, note 420, p. 28 and p. 33.

477 See above, note 410, Para 191.

478 See above, note 418, Para 25.

479 See above, note 410, Para 191.

*pils, there has been a serious reduction in the number of teachers.*⁴⁸⁰

Moreover, while Kazakh and Russian language schools are spread throughout the country, schools using Uzbek, Uighur and Tajik as the language of instruction are situated in regions with a high concentration of these minorities. Given the geography of the country, these schools are not accessible to Uzbek, Uighur and Tajik students living outside of these areas.

Under the current system, *rayons* (districts) allocate funding on a discretionary basis.⁴⁸¹ By its nature, this system fails to provide adequate guarantees or protection for minority language schools. A new funding model has been developed, which combines a per student allocation, supplemented by incremental costs,⁴⁸² the model was due for implementation in 2015, but this has been postponed until 2018.⁴⁸³ While the new model should provide a measure of protection from discrimination for minority language groups, in many areas, minority language schools would still be at a disadvantage due to smaller student numbers.

In addition to the decline in the number of schools using minority languages as a language of instruction, the CERD has also expressed concerns over the quality of education provided in minority languages, noting “deficiencies in the number of schools, textbooks, lack of qualified staff and quality of education in and of minority languages”.⁴⁸⁴ A civil society report to the Committee highlighted shortages in resources and study materials and claimed that the State was ignoring requests made by minority language schools.⁴⁸⁵

It should be noted that the largest ethnic minority – Russians – have above average academic outcomes. In statistics produced by the OECD, Russian speaking students outperformed Kazakh speaking students in all three sub-

480 Kazakhstan International Bureau for Human Rights and Rule of Law, Expert interview with H., July 2016.

481 See above, note 467, p. 18.

482 *Ibid.*, p. 86.

483 *Ibid.*, p. 120.

484 See Committee on the Elimination of Racial Discrimination, above, note 426, Para 9.

485 See above, note 418, Para 29.

jects monitored (reading, mathematics, science), measured according to the OECD Programme for International Student Assessment (PISA). The results showed stark differences in student attainment; for example, whereas only 27% of Russian students were below Level Two in reading proficiency, this was true of 66% of Kazakh students.⁴⁸⁶ The OECD concluded that “much of the performance difference between Russian and Kazakh speakers can be attributed to differences other than language”, including higher pre-primary school attendance, higher socio-economic status, higher family income and more educational resources within the home amongst Russians.⁴⁸⁷

Higher Education

The CERD has also expressed concern about higher education participation for ethnic minority students, stating that it is “particularly concerned that minorities account for only 7.8 per cent of students in higher education institutions”.⁴⁸⁸ The low number of minority students progressing to higher education may also reflect the absence of a minority language version of the National Test. The National Test, introduced in 2004, is taken by high school graduates to determine admission to university. The tests are only available in Kazakh or Russian, limiting the ability of students from other ethnic groups to participate.⁴⁸⁹ Students from minority language schools are required to take a different “complex test” to obtain a place at university, but this test is also only available in Kazakh and Russian.⁴⁹⁰ Thus, the National Test regime presents

486 See above, note 469, p. 81. Similar trends are also evidenced in the United Nations Children’s Fund (UNICEF) country profile of Kazakhstan; see UNICEF, *Country Profile: Education in Kazakhstan*, visited December 2016, p. 3, available at: <http://www.unicef.org/ceecis/Kazakhstan.pdf>.

487 *Ibid.*, OECD.

488 See above, note 390, Para 17.

489 Order of the Minister of Education and Science, “On approval of the Rules of Unified National Testing and making changes in the Order of the Minister of Education and Science of the Republic of Kazakhstan”, № 125 of March 18, 2008 and Order of the Minister of Education and Science, “On approval of the Model Regulations for the ongoing monitoring of progress, interim and final assessment of students” No. 506 of 5 December 2011; National Testing Centre, “On the Carrying Out of the Unified National Test”, visited December 2016, available at: <http://www.testcenter.kz/ru/faq/ent>.

490 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.

an additional obstacle preventing minorities – already disadvantaged by the problems in receiving primary and secondary education in their respective primary language – from accessing higher education.

Employment

As noted above in section 2,2.3 of this report, Article 6 of the Labour Code prohibits discrimination in employment on grounds which include race, ethnicity and language.⁴⁹¹ Article 6(3) of the Code provides for exceptions to the prohibition of discrimination, permitting “differences, exceptions, preferences and restrictions determined by requirements inherent in the nature of the work or dictated by the state’s concern for people in need of increased social and legal protection”. This provision is broadly in line with international best practice in this area, which provides for exceptions where there is a “genuine occupational requirement” for a prospective employee to have certain particular protected characteristics which are inherent to a person’s ability to perform a certain role.⁴⁹² However, as the CESCR has noted, while recalling that discrimination on the basis of language is “often closely linked to unequal treatment on the basis of national or ethnic origin”, parties to the ICESCR “should ensure that any language requirements relating to employment (...) are based on reasonable and objective criteria.”⁴⁹³

As noted above, Kazakh is the official state language and as such, fluency in the Kazakh language is a requirement for holding any public sector job. The application of a language requirement to certain jobs where the ability to speak and write in the official state language is an inherent requirement. However, our research has found evidence that the Kazakh language is sometimes used as the principal, or often sole, language of communication where this is not inherent to the nature of the work. For example, in December 2013, KIBHR was approached by a professor employed at an educational institution in the Mangistau Oblast who stated that although his educational institution is a mixed one (providing educational instruction in languages other than Kazakh), all meetings are held and orders issued solely in Kazakh, and transla-

491 Labour Code of the Republic of Kazakhstan, No. 414-V of 23 November 2015, Article 6(2).

492 See, for example, European Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Article 4(1).

493 See above, note 294, Para 21.

tion has never been provided.⁴⁹⁴ This is the case despite the nature of the institution, and despite the fact that the Constitution provides for the equal status of the Russian language to the Kazakh language.

Conclusion

Kazakhstan is a multi-ethnic country, with a number of large ethnic minority groups. The government has pursued a policy of repatriation of ethnic Kazakhs and the promotion of the Kazakh identity in recent years which has had various impacts, ranging from street signs to school curricula. Of particular concern are the reports uncovered by the Kazakhstan International Bureau for Human Rights and the Rule of Law of violence against Tajik and Uzbek communities coupled with the low number of prosecutions for offences of incitement to ethnic or racial hatred. However, the most significant issue for members of ethnic minorities is in respect of language. Approximately 75% of the largest ethnic minority groups do not speak the official state language – Kazakh – and are thus severely disadvantaged by the increasing tendency for public services, public employment and education to be mediated in the Kazakh languages. This occurs despite the fact that Russian is spoken (albeit as a second language) almost universally, among both ethnic minorities and the majority ethnic Kazakhs. Thus, the report finds evidence of indirect ethnic discrimination arising as a result of current language policies.

3.3 Discrimination and Inequality Affecting Women

Kazakhstan is required to eliminate and prohibit all forms of discrimination against women through its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to which it acceded in 1998. Kazakhstan also has specific obligations under Article 3 of the ICCPR and Article 3 of the ICESCR to ensure the equal rights of both men and women to the enjoyment of rights set forth in the Covenants. Further, under Article 26 of the ICCPR, Kazakhstan is required to ensure that the law “shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as (...) sex”.

494 See above, note 293, p. 95.

At the beginning of 2016, the total population of Kazakhstan was 17.7 million, 9.1 million of whom (51.7%) were women.⁴⁹⁵ In the 2015 Global Gender Index, Kazakhstan was ranked 47th in the world for gender equality, with a total score of 0.719.⁴⁹⁶ This represents a net decrease from 2014 where the country was ranked 43rd in the world⁴⁹⁷ and 2013 where the country was ranked 32nd.⁴⁹⁸ In 2012, the country was ranked 31st in the world – 16 positions ahead of its current standing.⁴⁹⁹

Cultural Attitudes and the Position of Women in Society

Negative cultural attitudes toward women help to perpetuate discrimination in Kazakhstan. In 2011, the HRC noted with apprehension the “prevalent negative stereotypes regarding the roles of women in society”:⁵⁰⁰ More recently, the issue was raised by the Committee on the Elimination of Discrimination Against Women (the CEDAW Committee) which expressed concern over “deep-rooted” patriarchal values and stereotypes regarding the family and the position of women as caregivers, and the perpetuation of harmful practices such as child marriage and polygamy, all of which contribute to the “unequal status of women” in the country.⁵⁰¹

In 2013, the Asian Development Bank conducted a Country Gender Assessment of Kazakhstan. During consultations with civil society, respondents discussed the position of women in society:

Many respondents expressed the view that the primary role of women is that of caregiver and that women are

495 See above, note 421, p. 20.

496 World Economic Forum, *The Global Gender Gap Index Results*, 2015, available at: <http://reports.weforum.org/global-gender-gap-report-2015/the-global-gender-gap-index-results-in-2015>.

497 World Economic Forum, *The Global Gender Gap Index Results*, 2014, available at: <http://reports.weforum.org/global-gender-gap-report-2014/rankings>.

498 World Economic Forum, *The Global Gender Gap Report*, 2013, p. 8, available at: http://www3.weforum.org/docs/WEF_GenderGap_Report_2013.pdf.

499 World Economic Forum, *The Global Gender Gap Report*, 2012, p. 8, available at: http://www3.weforum.org/docs/WEF_GenderGap_Report_2012.pdf.

500 Human Rights Committee, *Concluding Observations: Kazakhstan*, UN Doc. CCPR/C/KAZ/CO/1, 19 August 2011, Para 9.

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

*the centre of family life even when they work outside of the home. Others noted that while women can become leaders, men are naturally better in a leadership role. Some women expressed the opinion that men have a higher status by virtue of their gender.*⁵⁰²

The CESCR, the CEDAW Committee and the HRC have variously urged the state to eliminate discriminatory stereotypes through the adoption of various measures, including awareness-raising programmes,⁵⁰³ the removal of discriminatory language in textbooks and media,⁵⁰⁴ improving standards of education,⁵⁰⁵ and tackling child marriage and polygamy.⁵⁰⁶ The government has gone some way to addressing some of these concerns, by setting up a working group to conduct a gender analysis of textbooks and teaching materials, for example.⁵⁰⁷

Legal and Policy Framework

As a State Party to the CEDAW, Kazakhstan is required to “embody the principle of the equality of men and women in [it’s] national constitution or other appropriate legislation”.⁵⁰⁸ Under Article 2(b) State Parties are obliged to adopt legislation prohibiting discrimination.

While Kazakhstan does prohibit discrimination against women in its laws, the legal and policy framework on gender equality is inadequate to meet its obligations under the CEDAW. Article 14(2) of the Constitution states that “[n]o one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards

502 Asian Development Bank, *Kazakhstan Country Gender Assessment*, 2013, Para 37, available at: <http://www.adb.org/documents/country-gender-assessment-kazakhstan>.

503 Committee on Economic, Social, and Cultural Rights, *Concluding Observations: Kazakhstan*, UN Doc. E/C.12/KAZ/CO/1, 7 June 2010, Para 15.

504 *Ibid.*

505 See above, note 500, Para 9.

506 See above, note 501, Para 17.

507 See Committee on the Elimination of Discrimination against Women, *Report submitted by Kazakhstan under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/KAZ/3-4, 22 March 2012, Paras 305–306.

508 Convention on the Elimination of all Forms of Discrimination against Women, 1249 U.N.T.S. 13, 1979, Article 2(a).

religion, convictions, place of residence or any other circumstances”.⁵⁰⁹ As noted in section 2.2.1 of this report, while this provision undoubtedly prohibits discrimination against women on the basis of their sex, Article 14(2) alone is insufficient to provide the level of protection required by the Convention.⁵¹⁰

The state has enacted legislation designed to combat discrimination against women: the Law of the Republic of Kazakhstan “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”. However, this Law suffers from a number of weaknesses, including, for example, the fact that it contains no definition of direct and indirect discrimination.⁵¹¹ The CEDAW Committee, in its most recent Concluding Observations on Kazakhstan, recommended the adoption of a “comprehensive legal definition of discrimination against women” covering both direct and indirect discrimination in the public and private spheres.⁵¹² However, in its 2012 report to the CEDAW Committee, Kazakhstan refused to accept any shortcomings in the Kazakh legislation, emphasising that, at the legislative level, “there is no discrimination against women, since it would be contrary to the Constitution and the Act on State guarantees of Equal Rights and Opportunities for Men and Women.”⁵¹³

In November 2005, the government adopted a Strategy for Gender Equality for 2006–2016 (the Gender Equality Strategy). The Strategy recognises that, due to existing stereotypes concerning male and female roles in society, women have “fewer rights and opportunities” than men.⁵¹⁴ The Strategy identifies a variety of gender equality problems in education, employment and public life and sets out specified actions to be taken and targets to be reached by the government, for example to simplify the procedure for bringing claims of domestic

509 Constitution of the Republic of Kazakhstan, 30 August 1995 (as revised), Article 14 (2).

510 See Section 2.2.1 of this report; see also Equal Rights Trust, *Submission to the Committee on the Elimination of Discrimination against Women on Kazakhstan*, 2014, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KAZ/INT_CEDAW_NGO_KAZ_16248_E.pdf.

511 See Section 2.2.2 of this report; see also *ibid.*, Equal Rights Trust.

512 See above, note 501, Para 11.

513 See above, note 507, Para 164.

514 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-Gender-Strategy-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.

violence.⁵¹⁵ However, it should be noted that the scope of the Strategy is limited, as it is targeted only at government bodies, and does not extend to private sector organisations. In addition, there is no available data on the extent to which the actions under the plan to combat gender equality have been implemented.

Discriminatory Laws

Under Article 2(f) of the CEDAW, Kazakhstan is obligated to take appropriate measures (including legislation) to “modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”. However, the state maintains a number of laws which discriminate against women, or which are subject to discriminatory application.

Articles 16 and 26 of the Labour Code 2015 mandate the creation of a “list of jobs” involving “harmful and/or hazardous conditions” which women cannot perform.⁵¹⁶ An Order issued by the Minister of Health and Social Development, pursuant to these provisions of the Labour Code, lists 287 jobs which women are prevented from undertaking, a large number of which are in the construction sector, involve manual labour or exposure to hazardous conditions.⁵¹⁷ While these measures may have been taken with the intention of affording women additional protections, intention is not a necessary component of discrimination. Regardless of intention, prohibiting women from undertaking any occupation on the basis of their gender is directly discriminatory. Kazakhstan’s maintenance of these prohibitions has been condemned by the CEDAW Committee in its periodic reviews.⁵¹⁸

In addition, the Committee has also found a contravention of the Convention in an individual complaint ruling concerning similar provisions in Russian law.⁵¹⁹ In this judgment CEDAW directly and unequivocally rejected the Rus-

515 *Ibid.*

516 See above, note 491, Articles 16 and 26.

517 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, available at: <http://adilet.zan.kz/rus/docs/V1500012597>.

518 See above, note 507, Para 28.

519 *Medvedeva v Russia*, Committee on the Elimination of Discrimination against Women, Communication No. 60/2013, UN Doc. CEDAW/C/63/D/60/2013, 8 March 2016.

sian government's rationale that the law was intended to protect the health of women, in particular their reproductive health.⁵²⁰ It held that, far from protecting women, provisions banning women from entering certain professions or employed roles "reflect persistent stereotypes concerning the roles and responsibilities of women and men in the family and in society".⁵²¹

Articles 76 and 77 of the Labour Code prohibit night work and overtime work for pregnant women respectively and Article 85 provides that pregnant women shall not be permitted to work on weekends and holidays. While Article 11(d) of the CEDAW requires state parties to "provide special protection to women during pregnancy in types of work proved to be harmful to them", these provisions go beyond what is strictly necessary to protect women during pregnancy, and as such constitute direct discrimination on the basis of pregnancy.

Gender-Based Violence

The CEDAW Committee has noted that the prohibition on discrimination in the Convention includes a prohibition on gender-based violence⁵²² and that states are required by the Convention to prohibit and eliminate violence against women.⁵²³

Gender-based violence is a serious problem in Kazakhstan, with the HRC, among other bodies, expressing concern over the "prevalence of violence against women".⁵²⁴ In 2009, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment noted that "[v]iolence against women, especially within the family, is said to be widespread" and that "[m]ost often it is experienced in silence".⁵²⁵

520 *Ibid.*, Para 4.3.

521 *Ibid.*, Para 11.3.

522 Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against Women*, UN Doc. A/47/38, 1992, Para 6.

523 *Ibid.*, Para 9.

524 See above, note 500, Para 10.

525 Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Kazakhstan*, UN Doc. A/HRC/13/39/Add.3, 2009, Para 37.

Since 2010, three UN bodies have commented on gender-based violence in Kazakhstan, highlighting a wide range of concerns, including: lack of protection and rehabilitation for victims;⁵²⁶ poor legal mechanisms, with proceedings “initiated only upon formal complaints”;⁵²⁷ low numbers of investigations into allegations of violence;⁵²⁸ lack of government-run domestic violence shelters;⁵²⁹ and the lack of legislation “criminalising all forms of violence against women”.⁵³⁰

Marital Rape

The CEDAW Committee, in its General Recommendation No. 19 has noted that states are required to ensure that “laws against (...) rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity”.⁵³¹ Under Article 120 of the Criminal Code of Kazakhstan, rape is defined as “sexual intercourse by force or threat of force against the victim or other persons”.⁵³² In 2007, the Supreme Court issued a binding Decree on the meaning of Article 120.⁵³³ Although this Decree criminalised spousal rape, the Court confirmed the requirement of use of force.⁵³⁴ Article 123 of the Code prohibits “coercion into sexual intercourse” but this offence carries a lesser sentence. The CEDAW Committee has noted that a legal definition of rape should reflect a lack of consent rather than use of force.⁵³⁵

526 See above, note 503, Para 25.

527 *Ibid.*

528 Committee against Torture, *Concluding Observations: Kazakhstan*, UN Doc. CAT/C/KAZ/CO/3, 12 December 2014, Para 20.

529 *Ibid.*

530 See above, note 501, Para 18.

531 Committee on the Elimination of Discrimination against Women, *General Comment 19: Violence against Women*, UN Doc. A/47/38 at 1, 1992, Para 24(b).

532 See above, note 423, Article 120.

533 Resolution of the Supreme Court of the Republic of Kazakhstan, “On Certain Questions Concerning the Definition of Rape-Related Offences and Other Violent Acts of a Sexual Nature”, No. 4 of 11 May 2007, available at (Russian only): http://adilet.zan.kz/rus/docs/P07000004S_; see also note 507, Para 240.

534 International Commission of Jurists, *Women’s Access to Justice in Kazakhstan: Identifying the Obstacles & Need for Change*, 2013, p. 36, available at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/11/ICJ-kazakhstan-Women-A2J.pdf>.

535 Committee on the Elimination of Discrimination against Women, *Concluding Observations: Czech Republic*, UN Doc. CEDAW/C/CZE/CO/5, 10 November 2010, Paras 22–23.

Following the Supreme Court Decree, Kazakh law falls below this standard:

*The Supreme Court Decree explains that ‘violence’ is an act meant to overcome the resistance of the victim, and gives examples such as striking, suffocating, holding down the victims arms, or ripping off clothes. Thus physical force or a threat thereof are elements of each crime that must be present in order for each crime to have occurred. As a result it appears that Articles 120 and 121 do not apply to situations in which sexual contact is non-consensual but is not accompanied by violence or a threat thereto.*⁵³⁶

Moreover, Article 120 only extends to acts of penetrative vaginal intercourse. Consequently, the CEDAW Committee has called for the adoption of a new legal definition, stating that it is:

*[C]oncerned that the definition of the crime of rape under article 120 of the Criminal Code and the Supreme Court Decree is limited to penetrative vaginal intercourse, and that violence or threat of violence is a necessary element of this crime (...) the Committee urges the state to (...) revise its legislation to ensure that the definition of the crime of rape is in accordance with the Convention and the Committee’s jurisprudence under the Optional Protocol.*⁵³⁷

Despite revising the Criminal Code in 2014, the amended Code has not addressed the Committee’s criticisms.

Domestic Violence

In 2010, a country-wide survey on the situation of women and children undertaken by the United Nations Children’s Fund (UNICEF) identified high lev-

536 See above, note 534, p. 37.

537 See above, note 501, Paras 18–19.

els of violence against women.⁵³⁸ Of 14,014 women surveyed, all of whom were aged between 15 and 49, 12.8% stated that they had been physically abused, with almost half of those incidents taking place in the 12 months preceding the survey.⁵³⁹ Over 60% reported that the violence was inflicted by a husband or partner, whilst, for 39.6%, violence was inflicted by a former husband or partner.⁵⁴⁰ Of the women surveyed, 2.3% reported being subject to physical and sexual violence, whilst 10.5% had been subject to physical violence only.⁵⁴¹ Of all women aged 15–49 who had experienced physical or sexual violence, 50.6% had not sought help, whilst 32.9% had never told anyone and 33.7% had only told family.⁵⁴²

In 2010, the Ministry of Internal Affairs of Kazakhstan⁵⁴³ conducted a survey into the leading causes of “violence in the home”. Of the more than 30,000 participants included in the survey, 24.7% believed the major cause of domestic violence was jealousy, whilst 23.7% percent blamed alcoholism, 7% disagreements, 33.8% property disputes and 10.3% interference in family life.⁵⁴⁴

In 2009, the state adopted the Law of the Republic of Kazakhstan On Prevention of Domestic Violence (the Domestic Violence Law).⁵⁴⁵ While the Domestic Violence Law was broadly welcomed by international bodies, several problems were identified. For example, assessing the Law in 2009, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, recommended that:

538 In collaboration with the Kazakh Agency for statistics and the UN Population Fund.

539 United Nations Children’s Fund (UNICEF), *Multiple Indicator Cluster Survey 2010/11, Kazakhstan: Monitoring the Situation of Children and Women*, 2012, p. 228, available at: http://www.childinfo.org/files/Kazakhstan_MICS4_Final_Report_Eng.pdf.

540 Other individuals responsible for the infliction of violence were: a mother or step-mother (5.8%); a father or step-father (5.7%); a sister or brother (3.2%); a daughter or son (0.1%); or other relative (2.6%). *Ibid.*, p. 230.

541 An additional 1% of women reported being subject to sexual violence only. *Ibid.*, p. 232.

542 *Ibid.*, p. 242.

543 Conducted by inspectors of the internal affairs units and the Scientific Research Institute of the Academy of the Ministry of Internal Affairs.

544 Human Rights Committee, *List of issues to be taken up with the consideration of the Initial Report of Kazakhstan, Addendum*, UN Doc. CCPR/C/Kaz/Q/1/Add.1, 4 November 2010, Para 44.

545 Law of the Republic of Kazakhstan, “On Prevention of Domestic Violence”, No. 214-IV of 4 December 2009.

*[T]he appropriate bodies adopt a law on domestic violence in full compliance with international standards. The law should not focus on prosecution, but also foresee preventive measures; provide for ex officio investigations of alleged acts of domestic violence and ensure adequate funding for the infrastructure to support victims of domestic violence and trafficking; and create a national database on violence against women.*⁵⁴⁶

In 2011, the HRC recommended the adoption of a “comprehensive approach to prevent and address violence, in particular domestic violence, against women in all its forms”.⁵⁴⁷ Specifically, the Committee called for a review of the Domestic Violence Law, to encourage more women to report instances of violence, and ensure that perpetrators were suitably prosecuted and punished.⁵⁴⁸ In 2014, Kazakhstan made amendments to the Domestic Violence Law. Through these amendments, the range of measures designed to prevent domestic violence were expanded, with an increase in the duration of restraining orders from 10 to 30 days and the creation of a requirement to adopt regulations “prohibiting a person who has perpetrated domestic violence from residing in the same lodging as the victim if it is determined that the person is able to find lodging elsewhere”.⁵⁴⁹

In reporting to the HRC in 2010, the government reported that there were 21 crisis centres operating in Kazakhstan, each responsible for protecting women from violence, and providing legal and psychological assistance.⁵⁵⁰ It also indicated that since the Domestic Violence Law entered into force in 2009, over 23,000 perpetrators of domestic violence had been issued with administrative sanctions, whilst 6,000 restraining orders had been issued against

546 Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, UN Doc. A/HRC/16/52/Add.2, 2011, Annex, Para 83.

547 See above, note 500, Para 10.

548 *Ibid.*

549 See above, note 545, Article 20, as amended by Law of the Republic of Kazakhstan, “Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Issue of Domestic Violence”, No. 175-V of 18 February 2014.

550 See above, note 544, Para 40.

individuals who had committed violence in the home.⁵⁵¹ In 2015, the state reported that between 2012 and 2013, the number of restraining orders issued increased substantially to 93,000, “in order to constructively influence the legal awareness and conduct of the perpetrators of domestic violence”.⁵⁵²

However, despite the increase in restraining orders, between 2005 and 2012 the number of prosecutions for domestic violence offences reportedly “dropped from 1,610 to 780”.⁵⁵³ Although this has been highlighted as a positive development by government, it seems inconsistent with the very large numbers of restraining orders issued in the second half of the period.

Reports by women’s organisations have highlighted deficiencies in government policy. There are currently on 28 domestic violence crisis centres in the country, of which only seven are government supported.⁵⁵⁴ The majority of crisis centres have been established by non-governmental organisations, without funding assistance from government.⁵⁵⁵ Moreover, non-governmental organisations have expressed concerns that a lack of guidelines on how to investigate claims result in low prosecution rates⁵⁵⁶ and that victims are not granted legal aid.⁵⁵⁷

Underreporting of domestic violence is a significant concern, and KIBHR has noted that as such, official statistics are unlikely to reveal the full scale of the

551 *Ibid.*, Para 42.

552 Human Rights Committee, *Second Periodic Report: Kazakhstan*, UN Doc. CCPR/C/KAZ/2, 12 February 2015, Para 61.

553 *Ibid.*, Para 59.

554 UN Women, “Kazakhstan’s domestic violence crisis centres save lives, need funds”, *UN Women*, 16 November 2016, available at: <http://www.unwomen.org/en/news/stories/2016/11/kazakhstan-domestic-violence-crisis-centres-save-lives-need-funds#notes>.

555 Kazakhstan Parliamentary Development Fund and others, *Joint Submission to the Universal Periodic Review on Kazakhstan (Joint Submission 8)*, 2014, Para 23, available at: <http://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1124&file=EnglishTranslation>.

556 Kazakhstan International Bureau for Human Rights and Rule of Law and others, *Kazakhstan NGO Comments on the Second Periodic Reports of the Kazakhstan Government under the International Covenant on Civil and Political Rights*, 2015, p. 5.

557 Kazakhstan International Bureau for Human Rights and Rule of Law and others, *Kazakhstan List of Issues: Analysis, Commentary and Recommendations*, 2015, p. 5, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_ICO_KAZ_21507_E.pdf.

problem.⁵⁵⁸ There are many reasons for individuals' unwillingness to come forward, though social stigma appears to be one central factor, as has been accepted by the government:

*A great deal is being done in Kazakhstan to combat domestic violence. However, because of persistent reluctance to "wash one's dirty linen in public", many statements and reports of incidents of violence in the family and the home do not lead to criminal proceedings, because women frequently conceal the fact that they have been the victims of domestic violence at the hands of their spouses or children. It is thus difficult to collect the material needed to bring criminal proceedings. It is acknowledged both in society and by law enforcement agencies that in fact there are many more acts of violence than are reflected in the official statistics. And often family disputes are resolved by reconciliation between the two sides, so that women do not report acts of violence.*⁵⁵⁹

More broadly, cultural perceptions of women's role in society serve to legitimise domestic violence and thus contribute to underreporting. In the aforementioned UNICEF survey, discussed above, 16.7% of men (aged 15–49) felt justified in beating their partner for one or more reasons, with 12.2% of women (aged 15–49) shared this view.⁵⁶⁰ In addition, economic considerations similarly play a role in the underreporting of domestic violence: civil society organisations have noted that women often withdraw their complaints of violence due to a "lack of economic protection".⁵⁶¹ As the Asian Development Bank has noted:

558 *Ibid.*

559 Committee on the Elimination of Discrimination against Women, *List of issues to be taken up with the consideration of the Third and Fourth Periodic Reports of Kazakhstan, Addendum*, UN Doc. CEDAW/C/KAZ/Q/3-4/Add.1, 27 November 2013.

560 See above, note 539, p. 167–168.

561 Women's Information Center and others, *Alternative Report to the CEDAW Committee*, 2014, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KAZ/INT_CEDAW_NGO_KAZ_16145_E.pdf.

Violence against women also has a serious impact on women's economic status and has implications for the larger community and the nation. Women's lower economic status and lack of financial independence are reasons why women remain in violent relationships, as living independently and supporting children alone does not appear to be a viable option. NGOs that provide assistance to domestic violence victims observe that women's lack of economic protection is one of the primary reasons that they withdraw complaints made to law enforcement agencies.⁵⁶²

Sexual Harassment

There is no legislation in Kazakhstan which explicitly prohibits sexual harassment,⁵⁶³ though certain provisions of the Criminal Code may be used to the same effect.⁵⁶⁴ The International Commission of Jurists has noted that:

As a result women and girls often do not have a clear legal foundation on which to seek remedies and pursue the accountability of the perpetrator when they face unwanted sexual behaviour that may not be categorized as or involve sexual assault. For example, this may include behaviour such as touching, requests for sexual favours, verbal or non-verbal conduct of a sexual nature, or display of sexual materials. The absence of enforceable legal consequences causes situations of sexual harassment to escalate and repeat themselves.⁵⁶⁵

In its 2014 Concluding observations, the CEDAW Committee recommended the enactment of specific legislation dealing with harassment and stalking,

562 See above, note 502, Para 88.

563 World Bank, *Women, Business and the Law: Getting to Equal*, 2016, p. 151, available at: http://wbl.worldbank.org/~/_/media/WBG/WBL/Documents/Reports/2016/Women-Business-and-the-Law-2016.pdf.

564 See above, note 534, p. 40.

565 International Commission of Jurists, *Joint Report submitted for the Universal Periodic Review: Kazakhstan*, 2014, Para 14.

in line with Kazakhstan's obligations under the Convention.⁵⁶⁶ In 2015, the Committee repeated this recommendation in its consideration of the case of *Belousova v. Kazakhstan*.⁵⁶⁷

Case Study: Anna Belousova

Anna Belousova was a technical staff member at a primary school in Pertsevka, Kazakhstan. In 2010, the school employed a new Director (A.), who began making unwanted sexual advances toward her. Ms. Belousova's contract was renewed annually, and had been for a number of years. However, following a discussion with A. in January 2011, it was obvious that in order to continue her employment the two would have to enter into a sexual relationship. After continued harassment and repeated threats of dismissal, Ms. Belousova's contract was not renewed. She subsequently complained to the Head of the Rudnyy City Department of Education.

A three-person committee was convened to question A., but no wrongdoing was found. The same decision was reached following an official investigation in June 2011. Ms. Belousova subsequently complained to the Investigation Section of the Department of Internal Affairs of Rudnyy under Articles 120 and 181 of the Criminal Code (covering rape and extortion respectively). After those complaints were dismissed, she complained to the prosecutor's office, but to no avail. Ms. Belousova was later sued by A. for damaging his reputation in an interview which was published between 8 and 15 June 2011. The Court found in A.'s favour, making an award of compensation. Finally, Ms. Belousova brought her complaint to the CEDAW Committee, alleging a violation of articles 2(e), 5(a), 11 and 14 of the Convention. Finding in favour of Ms. Belousova, the CEDAW Committee, emphasised that the prohibition of discrimination extends to acts of harassment:

[E]quality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace, which includes such unwelcome sexually determined behaviour as physical contact and

⁵⁶⁶ See above, note 501, Paras 18–19 and 28–29.

⁵⁶⁷ *Belousova v Kazakhstan*, Committee on the Elimination of Discrimination against Women, Communication No. 45/2012, UN Doc. CEDAW/C/61/D/45/2012, 2015.

*advances, direct or implied sexual remarks, and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.*⁵⁶⁸

Kazakhstan had, therefore, failed to meet its obligations under Articles 2(e), read in conjunction with articles 1, 5(a) and 11(1)(a) and (f), of the Convention. Attempts to induce Ms. Belousova into a sexual relationship (and subsequently to extort money from her) stemmed from the fact that she was a woman; violating the principle of equal treatment. The Committee made a number of recommendations including, inter alia, to adopt “comprehensive legislation (...) to combat sexual harassment in the workplace”.⁵⁶⁹ Kazakhstan has not given effect to this recommendation.

On 12 July 2016, the Rudny City Court rejected Ms Belousova’s claim for compensation, ruling that the Department of Education was not the appropriate defendant. This ruling was affirmed on appeal by the Kostanai Oblast Court on 29 September 2016.⁵⁷⁰

Trafficking in Women

Under Article 6 of the CEDAW, Kazakhstan is required to take “appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. A number of UN treaty bodies have expressed concern at the prevalence of trafficking in the country. In 2010, the CE-SCR expressed “deep concern that trafficking in women and children remains a serious problem despite efforts undertaken by the State party”.⁵⁷¹ Similarly

⁵⁶⁸ *Ibid.*, Para 10.12.

⁵⁶⁹ *Ibid.*, Para 11(b)(i).

⁵⁷⁰ Kazakhstan International Bureau of Human Rights and the Rule of Law, “Выше ООН только казахстанский суд”, *KIBHR*, 29 September 2016, available at: http://www.bureau.kz/novosti/sobstvennaya_informaciya/vyshe_oon_tolko_kazakhstanskii_sud.

⁵⁷¹ See above, note 503, Para 26.

in 2016, the Human Rights Committee expressed the need for Kazakhstan to ensure the “effective implementation of the existing relevant legal and policy frameworks aimed at combating trafficking in human beings”.⁵⁷²

According to the government, between 2011 and 2013, 900 criminal cases were brought to court related to trafficking, including 77 cases of trafficking in human beings, 47 cases on trafficking in minors, and 584 on organising or maintaining premises for prostitution and procurement.⁵⁷³ The International Organisation for Migration (IOM) reported that in the first 9 months of 2014, 134 individuals were convicted for offences relating to trafficking in persons; with the majority relating to the maintenance of brothels and trafficking in minors.⁵⁷⁴ According to the United States Trafficking in Persons Report for 2015, Kazakhstani women and girls are subjected to trafficking “in the Middle East, Europe, and United States”.⁵⁷⁵

Whilst human trafficking affects both men and women, in the majority of cases, victims are women and children.⁵⁷⁶ Trafficked women are also more likely to suffer sexual abuse.⁵⁷⁷ In interviews conducted by the IOM, five women victims of human trafficking reported being subject to sexual exploitation, while one stated that she was “forcibly held with the purpose of selling her virginity”.⁵⁷⁸ Cultural attitudes toward women can contribute both to levels of trafficking and subsequent reintegration:

[C]ultural practices [such] as arranged marriage, child marriage or forced marriage, as well as other practices like temporary marriage, marriage by catalogue or mail-order brides, and other forms of sexual exploitation can

572 Human Rights Committee, *Concluding Observations: Kazakhstan*, UN Doc. CCPR/C/KAZ/CO/2, 9 August 2016, Para 34.

573 See above, note 552, Para 91.

574 International Organisation for Migration (IOM), *Special Report on Current Issues Affecting Human Rights Protection in the Area of Combating Trafficking in Persons in the Republic of Kazakhstan*, 2015, p. 22, available at: <http://iom.kg/wp-content/uploads/2015/05/specdoklad.zip>.

575 United States Department of State, *Trafficking in Persons Report*, 2015, p. 202, available at: <http://www.state.gov/documents/organization/245365.pdf>.

576 *Ibid.*, p. 23.

577 *Ibid.*, p. 22.

578 *Ibid.*, p. 89.

all contribute to TIP [trafficking in persons]. Furthermore, cultural norms accepted in many communities impact on the attitudes towards women, which leads to gender discrimination becoming a factor contributing to the increased vulnerability of women to trafficking. Amongst other things, women from certain communities, having become victims of trafficking for prostitution, face more difficulties with reintegrating into their families and communities after they have been liberated from exploitation. Many female victims of human trafficking may also have become infected with HIV/AIDS or other sexually transmitted diseases, which in certain communities are considered embarrassing to disclose.⁵⁷⁹

Police corruption has been documented by civil society as a key factor in the continued trafficking of women. In a joint submission to the Universal Periodic Review in 2014, several NGOs expressed the view that the biggest problem in relation to trafficking in Kazakhstan “is corruption among law enforcement agencies.”⁵⁸⁰ Further, the report notes that when investigating crimes, law enforcement agencies do not conduct “thorough and impartial” investigations, and victims face discrimination.⁵⁸¹ Similar findings have been made by the IOM, which found that “police often do not treat seriously complaints about and reports of TIP”.⁵⁸² These concerns were echoed by the HRC in its 2016 Concluding Observations.⁵⁸³

The legal framework on trafficking has been progressively strengthened, with amendments to the Criminal Code in both 2006⁵⁸⁴ and 2013.⁵⁸⁵ Following

579 *Ibid.*, p. 50.

580 See above, note 555, Para 54.

581 *Ibid.*, Para 52.

582 See above, note 574, p. 65.

583 Human Rights Committee, *Concluding Observations on the second periodic report of Kazakhstan*, UN Doc. CCPR/C/KAZ/CO/2, 9 August 2016, Para 34.

584 Law of the Republic of Kazakhstan, “On Amendments and Additions to Some Laws of the Republic of Kazakhstan on Combating Trafficking in Human Beings”, No. 131 of 2 March 2006.

585 Law of the Republic of Kazakhstan, “On Introduction of Amendments and Addenda to Some Legislative Acts of the Republic of Kazakhstan on Issues Related to Combatting Trafficking in Human Beings”, No. 127-V of 4 July 2013.

these amendments, Articles 128 and 133 of the Criminal Code create specific prohibitions on human trafficking. Article 128 creates an offence prohibiting all “trade or other transactions involving a person” and extends to include “exploitation, recruitment, transportation, transfer, harbouring, receipt” as well as “other actions performed with the aim of exploitation”. The maximum penalty under Article 128 is fifteen years imprisonment.⁵⁸⁶ Article 133 creates a specific offence of trafficking in minors and also carries a maximum sentence of fifteen years’ imprisonment.⁵⁸⁷ This legislation has been supported by the adoption of an Action Plan to Prevent and Combat Offences Related to Trafficking in Persons (2012–2014)⁵⁸⁸ and its successor, the Action Plan to Combat and Prevent Offences involving Trafficking in Persons (2015–2017).⁵⁸⁹ Pursuant to the 2012–2014 action plan legislative measures were taken, including amendments to the Labour Code in 2012 to establish a register of juvenile workers; and the passage of a Supreme Court Resolution on the Application of Legislation Establishing Liability for Trafficking in Persons.⁵⁹⁰

Despite these developments, in 2014, the CEDAW Committee noted its concern at low reporting rates,⁵⁹¹ and called upon the state to *inter alia* “[i]ntensify efforts to address the root causes of trafficking” and “ensure the rehabilitation and social integration of victims”.⁵⁹² The HRC has also expressed its concern at the decrease in the number of prosecutions for trafficking-related crimes noting also that “a significant majority” of trafficking-related cases are investigated under alternative provisions of the Criminal Code, rather than under Article 128 on trafficking, “with the result that some perpetrators go unprosecuted”.⁵⁹³

586 See above, note 423, Article 128(4).

587 *Ibid.*, Article 133(4).

588 Resolution of the Government of Kazakhstan, “On the Action Plan to Prevent and Combat Offences Related to Trafficking in Persons for 2012–2014”, No. 1347 of 24 October 2012, available at: <http://adilet.zan.kz/kaz/docs/P1200001347>.

589 Resolution of the Government of Kazakhstan, “On the Action Plan to Combat and Prevent Offences involving Trafficking in Persons for 2015–2017”, No. 23 of 28 January 2015, available at: <http://adilet.zan.kz/kaz/docs/P1500000023>.

590 See above, note 574, p. 25.

591 See above, note 501, Para 20.

592 *Ibid.*, Article 21.

593 See above, note 572, Para 33.

Employment

Article 11 of CEDAW requires Kazakhstan to take “appropriate measures to eliminate discrimination against women in the field of employment”, including in respect of employment opportunities, free choice of profession, the right to promotion, benefits and training and the right to equal remuneration.

Women in Kazakhstan are less likely to be in employment than men. The latest Human Development Report, compiled by the United Nations Development Programme (UNDP), indicates that labour force participation for women in Kazakhstan stands at 67.7%,⁵⁹⁴ a rate which is significantly lower than that recorded for men (77.9%).⁵⁹⁵

In addition, women are subject to horizontal and vertical gender segregation in the labour market. When a group of Kazakhstani experts was asked in 2010 to identify the ways in which the principle of gender equality is most often violated, among the most common answers was that “the type of work [available to women] is non-prestigious, low skilled, and in low-paid sectors”, with 65.2% of respondents selecting this option.⁵⁹⁶

Women are disproportionately employed in a limited number of sectors thought to be traditionally “feminine”, such as healthcare, social services or education,⁵⁹⁷ where they represent over 70% of total employees.⁵⁹⁸ Other fields, such as construction, transport or industry, are male-dominated.⁵⁹⁹ Figures published by the government in 2013 demonstrate clearly the extent of this segregation:

594 Statistics as of 2013. See above, note 466, p. 224.

595 *Ibid.*

596 National Commission for Women Affairs, Family and Demographic Policy and the UNDP, *Results of Studies on the Development of an Action Plan to Improve Conditions for the Economic Empowerment of Women*, 2010, p. 38.

597 See above, note 507, Para 21.

598 See above, note 502, p. 20.

599 See above, note 507, Para 22.

Table 4: Gender Distribution by Sector⁶⁰⁰

Female dominated sectors		
Sector	Male employees (%)	Female Employees (%)
Health and social work	24.2	75.8
Education	27.9	72.1
Hospitality/ food service	28.4	71.6
Financial/ insurance services	37.6	62.4
Male dominated sectors		
Sector	Male employees (%)	Female Employees (%)
Transport and storage	79.1	20.9
Mining	77.7	22.3
Construction	75.8	24.2
Electricity and gas supply	74.1	25.9
Industry	67.7	32.3
Water supply and sanitation	64.4	35.6

Worryingly, a comparison with older statistics reveals that in some of the sectors listed above the gender gap has in fact widened.⁶⁰¹ The sectors in which the largest shifts were seen were hospitality and food service, where the gender gap widened by 5.2%, and electricity and gas supply which exhibited a 4.3% change.⁶⁰²

600 Information taken from Agency of Statistics of the Republic of Kazakhstan, *Women and Men in Kazakhstan 2008–2012*, 2013, pp. 82–83, available at: <http://www.stat.gov.kz/getImg?id=WC16200032253>.

601 Agency of Statistics of the Republic of Kazakhstan, *Women and Men in Kazakhstan 2006–2010*, 2011, pp. 77–79.

602 In the 2006–2010 period, female employment in the hospitality and food service sector was 66.4% as compared with 71.6% in the 2008–2012 statistics demonstrating a 5.2% increase. In the 2006–2010 period, female employment in the electricity and gas supply sector was 30.2% as compared with 25.9 in the 2008–2012 statistics demonstrating a decrease of 4.3%. *Ibid.*; see also note 600, above, pp. 82–83.

There is also evidence of vertical segregation within the labour market.⁶⁰³ The World Economic Forum ranks the ability of women to rise to positions of leadership in Kazakhstan as 5.0, where 1.0 is the worst score and 7.0 is the best score.⁶⁰⁴ While this is a moderate score, women are still underrepresented in management positions, particularly in larger businesses. The majority of firms with women in power are predominantly small enterprises with the percentage of women in senior roles decreasing as the size of the enterprise increases: according to the UN Development Programme, the percentage of women who head small firms is 33.3%, medium firms 21% and large firms only 9.8%.⁶⁰⁵

Article 22(1)(15) of the Labour Code provides for the right to equal remuneration for men and women.⁶⁰⁶ Yet recent estimates put the average wage for women at equivalent to only 66% of that for men.⁶⁰⁷ In its 2010 review, the CESCR “note[d] with concern that women are employed predominantly in sectors and employment which carry lower wages, such as in agriculture, health and education”.⁶⁰⁸ In 2014, the CEDAW Committee recommended that the government “adopt measures to narrow and close the pay gap between women and men by, among other things, consistently reviewing wages in sectors where women are concentrated of employment”.⁶⁰⁹

There is a social expectation that women will take responsibility for childcare and the home, and this influences both the extent to which women participate in the labour market and the form which that participation takes.⁶¹⁰ Thus,

603 See above, note 502, p. 21.

604 World Economic Forum, *Global Gender Gap Report 2015*, 2015, p. 217, available at: <http://www3.weforum.org/docs/GGGR2015/cover.pdf>.

605 UNDP, “Helen Clark at ‘Nurly Zhol – New Opportunities for Women’”, *UNDP Press Releases*, 21 May 2015, available at: <http://www.eurasia.undp.org/content/rbec/en/home/presscenter/speeches/2015/5/21/helen-clark-at-nurly-zhol--new-opportunities-for-women.html>.

606 See above, note 491, Article 22(1)(15).

607 See above, note 507, Para 353.

608 See above, note 503, Para 19.

609 See above, note 501, Para 29.

610 See above, note 502, p. 13.

women are more likely to undertake informal or part-time employment⁶¹¹ and to work in the public sector where conditions are considered more favourable for balancing work and family responsibilities.⁶¹² This also has a negative impact on women's opportunities for career advancement, as they are left with less time for education, training and entrepreneurial activities.⁶¹³

Yet significant improvements have been made to the system of maternity protections and childcare benefits over recent years, thereby increasing the support available to working mothers. The 2015 Labour Code provides for three types of maternity and parental leave: paid maternity leave,⁶¹⁴ paid adoption leave for a new born child,⁶¹⁵ and unpaid parental leave.⁶¹⁶ The length of maternity leave provided is a maximum of 126 days,⁶¹⁷ with the amount to be paid calculated in relation to the mother's average monthly income.⁶¹⁸ Prior to 2003, maternity pay was paid directly by employers themselves,⁶¹⁹ thus creating a significant disincentive for the employment of women. In order to rectify this, a new social security system related to maternity and childcare spreads responsibility for funding between several sources: the state budget, mandatory social security contributions made by employers to the Public Social Insurance Fund (PSIF), and additional employee contributions.⁶²⁰

611 United Nations Economic Commission for Europe (UNECE), *Mainstreaming Gender into Economic Policies to Reach the Millennium Development Goals in Central Asia*, 2008, p. 11, available at: http://www.unece.org/fileadmin/DAM/Gender/DA_Project/MainstreamingGender_MDG.pdf.

612 See above, note 502, p. 20.

613 *Ibid.*, p. 14.

614 See above, note 491, Article 99. To be eligible for paid maternity leave a woman must have been making social insurance contributions for 24 months. See International Labor Organization, *Maternity protection and the childcare systems in Central Asia: national studies in Kazakhstan and Tajikistan*, 2014, p. 10, available at: http://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-moscow/documents/publication/wcms_344656.pdf.

615 *Ibid.*, Labour Code of the Republic of Kazakhstan, Article 99.

616 *Ibid.*, Article 100.

617 *Ibid.*, Article 99.

618 *Ibid.*, Article 99.

619 See International Labor Organization, above, note 614, p. 7.

620 *Ibid.*, p. 9.

Moreover, while paid maternity leave may only be taken by mothers, unpaid parental leave is available to mothers, fathers or alternatively to anyone designated to care for the child, such as grandparents or other relatives.⁶²¹ This welcome change creates the opportunity for sharing childcare responsibilities between parents and amongst other family members, taking the onus away from the woman to be the sole carer. This is reinforced by provisions on part time leave and breaks for feeding children which apply equally to mothers and fathers.⁶²²

Education

Under Article 10 of the CEDAW, Kazakhstan is obligated to “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education”. This requirement extends to vocational guidance; access to the same curricula; the elimination of stereotyped conceptions of the male and female role; equal opportunities in scholarships; access to programmes of continuing education; the reduction of school drop-out rates; participation in sports; and access to specific educational information to ensure the health and well-being of families, including advice on family planning.⁶²³

The Constitution of Kazakhstan guarantees the right to education for all citizens, and provides a general right to non-discrimination,⁶²⁴ In its reports to UN human rights mechanisms, government has stated that:

*One of the main principles of State education policy is that of equal access to free secondary education for all Kazakh citizens, irrespective of sex. All curricula, textbooks and teaching materials for all pupils are identical in content. Girls and boys (young men and women) have the same right to study the same subjects.*⁶²⁵

621 See above, note 491, Article 100.

622 *Ibid.*, Articles 70 and 82.

623 See above, note 508, Article 10.

624 Constitution of Kazakhstan, Article 30 and Article 14.

625 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. See also note 544, above, Para 23.

Reports on gender balance in the education system have generally been positive. In a 2015 Review of School Resources, the OECD noted the “significant achievements”⁶²⁶ made in the primary and secondary education system within the State. According to the report, Kazakhstan has “managed to reach almost universal access to primary and secondary education and few differences are observed in enrolment by geographical location, socio-economic background and gender”.⁶²⁷ Differences in enrolment rates in primary education between boys and girls amount to “less than one percentage point”, with few differences noted in respect of location or socio-economic background.⁶²⁸ Similar statistics are presented in respect of secondary and higher education.⁶²⁹

There is an encouraging trend in respect of women’s participation in higher education. According to official government statistics from 2014, 301,076 women were enrolled in higher education institutions, compared to just 226,150 men, representing 57% of the total student population.⁶³⁰ Similarly, a greater number of women received higher education through day learning, evening learning, and correspondence learning than men.⁶³¹ Fewer women, however, received technical and vocational education than men.⁶³²

Although Kazakhstan has committed to equalising male and female participation in education, several problems persist in relation to gender grouping, subject choices based on gender stereotype. In 2014, the CEDAW Committee reiterated its concerns regarding the existence of discriminatory stereotypes in Kazakh society, including educational institutions, highlighting in particular the portrayal of women as caregivers.⁶³³ Additionally, the Committee not-

626 OECD, *OECD Reviews of School Resources: Kazakhstan*, 2015, p. 11, available at: <http://www.oecd.org/publications/oecd-reviews-of-school-resources-kazakhstan-2015-9789264245891-en.htm>.

627 *Ibid.*, p. 15.

628 *Ibid.*, p. 40.

629 *Ibid.*

630 Ministry of Education and Science of the Republic of Kazakhstan, *Statistics of Education System of the Republic of Kazakhstan*, 2014, p. 168, available at: <http://edu.gov.kz/en/analytics/statistics-education-system-republic-kazakhstan-national-collection>.

631 *Ibid.*, p. 169.

632 *Ibid.*, p. 140.

633 See above, note 501, Para 16.

ed its concerns regarding the “stereotypical” subject choices of Kazakh boys and girls, which are also reflected in employment, and urged Kazakhstan to encourage girls to choose non-traditional fields of education.⁶³⁴ In 2015, the OECD noted the difficulties presented by gender grouping of students:

Gender segregation for certain subjects results in inefficient use of subject classrooms. State school education standards require that, for selected subjects taught in fifth-eleventh grades (labour studies, crafting and technology), boys and girls are divided without regard to the size of the class. In schools with only one or two classes of each grade, this gender segregation results in very low student-teacher ratios for these classes. Moreover, it limits the opportunity for students of one gender to learn skills typically learned by the other gender group. The review team was told that girls could elect to take “boys” subjects and boys could elect to take “girls” subjects, but in practice this never happened.⁶³⁵

As a consequence of gender-segregation in schools, both male and female students may be more likely to pursue particular employment paths. As noted by the OECD, boys and girls frequently choose those classes traditionally associated with male (such as woodworking) and female (such as sewing) fields of social and economic activity.⁶³⁶ According to its review “no students chose non-stereotyped subjects.⁶³⁷ By failing to require that both boys and girls undertake certain classes usually associated with members of the opposite sex, stereotypes are entrenched, limiting women’s future career options and economic development.⁶³⁸

Child Marriage

Under the Marriage and Family Code of Kazakhstan, the minimum marriage age is 18,⁶³⁹ though this can be reduced to up to 2 years where “good reasons”

634 *Ibid.*, Para 26.

635 See above, note 626, p. 170.

636 *Ibid.*

637 *Ibid.*

638 *Ibid.*

639 Code of the Republic of Kazakhstan “On Marriage and Family”, No. 518-IV of 26 December 2011, Article 10(1).

are provided.⁶⁴⁰ Under the Criminal Code, kidnapping, including the kidnaping of a minor, is a criminal offence, punishable by imprisonment for a term of seven to 12 years.⁶⁴¹ Despite these legislative provisions, there is evidence that child marriages continue in Kazakhstan.

Government statistics on numbers of child marriages are unreliable, only considering *de jure* marriages registered with authorities, rather than *de facto* marriages, entered into before reaching the age of 18.⁶⁴² Moreover, available data is disaggregated in such a way as to make it impossible to establish what proportion of under-18 year olds are married. For example, the UNICEF Multiple Indicator Survey 2015 found that 6% of 15–19-year old women were married at the time of the survey, but did not provide a breakdown of how many of these women were under the age of 18.⁶⁴³

Despite the absence of statistical data, there is evidence that child marriage continues to be practiced in Kazakhstan. In a 2014 report, the UN Population Fund interviewed several children who had been forced into marriage at a young age.⁶⁴⁴ As one respondent noted:

*I was 15 years old when I was forced to marry: they marched me off, paid kalym (bride price) for me and my father gave me away, as he was having financial difficulties. I didn't know my husband. I wasn't ready for married life; I didn't even know what it was. But life was difficult: there was hardly enough money for food, and I had three younger brothers. My youngest brother had to go to school, he needed to study.*⁶⁴⁵

640 *Ibid.*, Article 10(2).

641 See above, note 423, Article 125.

642 United Nations Population Fund (UNFPA), *Child Marriage in Kazakhstan: Summary*, 2014, p. 2, available at: <http://eeca.unfpa.org/sites/default/files/pub-pdf/unfpa%20kazakhstan%20summary.pdf>.

643 United Nations Children's Fund (UNICEF), *Multiple Indicator Cluster Survey 2015, Kazakhstan: Key Findings*, 2016, p. 15, available at: <http://mics.unicef.org/surveys>.

644 United Nations Population Fund (UNFPA), *Child Marriage in Kazakhstan: Overview*, 2014, available at: <http://eeca.unfpa.org/sites/default/files/pub-pdf/unfpa%20kazakhstan%20overview.pdf>.

645 *Ibid.*

In 2014, the CEDAW Committee commented on the relationship between child marriage and access to education for women; expressing concern that Kazakhstani girls drop out of school as a consequence of child marriage.⁶⁴⁶ The Committee recommended that Kazakhstan adopt measures to combat child marriage.⁶⁴⁷ Likewise the UN Population Fund has issued several recommendations to the state, calling for the development of mechanisms to improve enforcement of existing legislative provisions; increasing awareness of the rights of girls; supporting communities to “overcome customs that harm the development and health of girls”; introducing educational materials and school programmes on adolescent health and facilitating access to educational services for pregnant girls and minor mothers; and carrying out periodic prevalence reports on child marriage.⁶⁴⁸

Healthcare

Under Article 12 of the CEDAW, Kazakhstan is committed to “take all appropriate measures to eliminate discrimination against women in the field of health care”. This includes family planning and access to appropriate services during pregnancy.⁶⁴⁹ Moreover, under Article 14, State Parties are required to ensure adequate healthcare facilities, including counselling and services in family planning, to rural women.⁶⁵⁰

Several laws and policies regulate access to healthcare and family planning for Kazakh women.⁶⁵¹ Article 29 of the Kazakh Constitution provides a general guarantee for the right to protection of health. Moreover, the State has committed to ensuring equality of access between women and men:

Women and girls in Kazakhstan enjoy equal access to health services at all levels of medical care and are eligi-

646 See above, note 501, Para 26.

647 *Ibid.*

648 See above, note 642, p. 4.

649 See above, note 508, Article 12.

650 *Ibid.*, Article 14(b).

651 For a detailed overview, see 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>.

*ble for the basic package of guaranteed medical services provided at health care organizations in Kazakhstan.*⁶⁵²

Chapter 4 of the aforementioned 2006-2016 Gender Strategy concerns the reproductive health of men and women; it recognises the need for the “preservation and improvement of the reproductive health of men, women and adolescents in order to ensure normal reproduction among the population and a rising quality of life”.⁶⁵³ In addition the Country Program Action between the government and the United Nations Population Fund for 2010–2015 (the CPAP) targeted reproductive rights, as does the proposed strategy for 2016–2020.⁶⁵⁴ Despite these measures, legal deficiencies and poor implementation challenge women’s reproductive rights, with potentially severe consequences.

According to UNDP data, life expectancy for women in Kazakhstan is 74.1 years, far exceeding that of males at 64.6.⁶⁵⁵ However, there remain significant problems in ensuring equal access to healthcare, particularly in rural areas. In Kazakhstan’s most recent Universal Periodic Review, a joint submission by the Kazakhstan Association on Sexual and Reproductive Health and the Sexual Rights Initiative highlighted several key failings of the State to ensure women and girls’ access to healthcare, including in particular in the area of reproductive health.⁶⁵⁶ According to the submission, poor implementation of state sanctioned programmes and policies affect access to reproductive and health services.⁶⁵⁷ There is limited access to contraceptives, with lower-income groups particu-

652 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.

653 See above, note 514.

654 Country Programme Action Plan between the Government of Republic of Kazakhstan and the United Nations Population Fund 2010-2015, approved by Resolution of the Government of Kazakhstan, “On the Implementation of the Government of the Republic of Kazakhstan and the United Nations Population Fund Country Programme Action Plan for 2010–2015”, No. 413 of 13 May 2010, available at: http://www.unfpa.org/sites/default/files/portal-document/Kazakhstan_CPAP%202010-2015.pdf; United Nations Population Fund, *Country programme document for Kazakhstan*, UN Doc. DP/FPA/CPD/KAZ/4, 30 June 2015, Paras. 9 and 21.

655 UNDP, *Briefing Note for Countries on the 2015 Human Development Report: Kazakhstan*, 2015, p. 5, available at: http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/KAZ.pdf.

656 See above, note 651.

657 *Ibid.*, p. 2.

larly affected.⁶⁵⁸ Moreover, there is no state-wide sex education programme, with many young people relying on information delivered through NGOs and youth health centres. This information, according to the report, “is provided in an unsystematic manner, differs from region to region, and is dependent upon regional administration annual plans and budgets”.⁶⁵⁹ Women are likely to be disproportionately disadvantaged by lack of access to proper sexual and reproductive education and healthcare, not least due to the possibility of pregnancy.

Abortion is legal in Kazakhstan, and is permitted up to 12 weeks of pregnancy, or up to 22 weeks within narrowly defined circumstances, including medical emergencies.⁶⁶⁰ However, whilst the legal age of consent for sex in Kazakhstan is 16, women beneath the age of 18 are required to gain parental consent in order to have an abortion.⁶⁶¹ By restricting women’s legal capacity in this area, reproductive rights are diminished – potentially impeding access to safe abortion services, as required by international law. The CEDAW Committee has called on states to remove such “third-party authorisation” in relation to abortion,⁶⁶² and similar recommendations have been made by the Committee on the Rights of the Child (CRC Committee).⁶⁶³

Political Life

Article 7 of the CEDAW provides that parties to the Convention should take appropriate measures to eliminate discrimination against women in political

658 *Ibid.*, p. 3.

659 *Ibid.*

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

661 *Ibid.*, Article 104(3).

662 Responding to amendments made to the Slovakian Healthcare Act in 2009, which required that girls between the ages of 16 and 18 receive parental consent, the Committee recommended that the State “remove third-party authorisation, in line with the recommendations of the World Health Organization”. Prior to the Act’s adoption, parents and guardians only needed to be notified of the decision. See Committee on the Elimination of all Forms of Discrimination against Women, *Concluding Observations: Slovakia*, UN Doc. CEDAW/C/SVK/CO/5-6, 25 November 2015, Para 31(c). See also, Citizen, Democracy and Accountability, *Submission to the Committee on the Rights of the Child on Slovakia*, 2016, p. 6, available at: http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/SVK/INT_CRC_NGO_SVK_23726_E.pdf.

663 Committee on the Rights of the Child, *Concluding Observations: Slovakia (Advanced, Unedited Version)*, UN Doc. CRC/C/SVK/CO/3-5, 3 June 2016, Para 41.

and public life.⁶⁶⁴ In particular, Kazakhstan should ensure, on an equal basis with men, the right to vote and the right to stand for election to all publicly elected bodies for women.⁶⁶⁵

Women's participation in political and public life is low "notwithstanding that women register better outcomes in the acquisition of higher education compared with their male counterparts".⁶⁶⁶ In the 2015 Global Gender Gap Report, Kazakhstan received a score of 0.148 for political empowerment of women, ranking it 78th out of 145 economies.⁶⁶⁷ In its initial report to the HRC in 2009, Kazakhstan acknowledged that:

*Women predominate in Kazakhstan, but they are not involved in taking important decisions. The typical gender pyramid of power exists, where women are present at the lower and middle levels, but few are found at the higher offices at the decision-making level.*⁶⁶⁸

In its 2015 report to the Committee, Kazakhstan provided information on the number of women in government indicating that women hold 55.7% of public service roles, hold 10% of policymaking positions and 15% of ministerial posts.⁶⁶⁹ Following the 2016 Parliamentary elections, women represent 27.10% of the Mazhilis, a small increase from the 26.1% in the previous election.⁶⁷⁰ These figures indicate that women are still underrepresented in political life and at the highest levels of public office.

Chapter 2 of the aforementioned Kazakhstan Gender Equality Strategy (2006–2016) concerns gender equality in political representation, and de-

664 See above, note 508, Article 7.

665 *Ibid.*

666 See above, note 500.

667 This should be compared to educational attainment, where Kazakhstan received a score of 0.980: joint 1st of 145 states. See above, note 604, p. 8.

668 Human Rights Committee, *First Periodic Report: Kazakhstan*, UN Doc. CCPR/C/KAZ/1, 5 October 2009, Para 61.

669 See above, note 552, Para 50.

670 Inter-Parliamentary Union, "Kazakhstan: General Information About the Parliamentary Chamber", visited December 2016, available at: <http://www.ipu.org/parline-e/reports/2165.htm>; *ibid.*, Para 50.

finest the ultimate goal of achieving “equal representation of men and women in the executive and legislative bodies and in management processes at the decision making level.”⁶⁷¹ The Strategy identifies a number of weaknesses in the Kazakh legal and political framework, which inhibit women’s participation in political and public life; including the existence of patriarchal societal values.⁶⁷² The strategy identifies potential opportunities for advancement, including the adoption of temporary special measures:

*The possibility of introducing quotas for women as a temporary measure to provide for their wider participation in the executive and legislative branches of power (...).*⁶⁷³

Despite proposals in the Gender Equality Strategy, there is currently no gender quota requiring a certain proportion of female members on parliamentary lists.⁶⁷⁴ Moreover, in the Parliamentary elections of March 2016, just 47 of 234 candidates (20%) were women.⁶⁷⁵ Although there are currently 29 women sitting in the Mazhilis (27.10%),⁶⁷⁶ this number still falls short of the government’s own 30% target.⁶⁷⁷

In 2014, Kazakhstan drew praise from the CEDAW Committee after committing to achieving a 30% representation rate of women in decision-making positions.⁶⁷⁸ The Committee also noted that Kazakhstan had made some progress in this regard.⁶⁷⁹

671 See Government of the Republic of Kazakhstan, above, note 514, p. 10.

672 *Ibid.*

673 *Ibid.*, p. 11.

674 OSCE Parliamentary Assembly, *International Election Observation Mission: Republic of Kazakhstan – Early Parliamentary Elections*, 20 March 2016, p. 2, available at: https://www.liportal.de/fileadmin/user_upload/oeffentlich/Kasachstan/20_geschichte-staat/229101.pdf.

675 *Ibid.*

676 Inter-Parliamentary Union, *Kazakhstan Mazhilis (House of Representatives)*, 2016, available at: <http://www.ipu.org/parline-e/reports/2165.htm>.

677 See Government of the Republic of Kazakhstan, above, note 514, p. 11.

678 See above, note 501, Para 14.

679 *Ibid.*, Para 14.

Conclusion

While Kazakhstan prohibits discrimination on the basis of sex under both its Constitution and the Law of the Republic of Kazakhstan “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”, there is extensive evidence of discrimination against women. Patriarchal attitudes and stereotypes about the role of women in society persist, despite some efforts by the state. Stereotypes are reflected in the legal framework: the Labour Code prohibits women from working in professions considered too dangerous, while the criminal law only prohibits marital rape where there is evidence of force, rather than simply an absence of consent. Gender-based violence remains prevalent and while the government has legislated, social stigma discourages individuals from reporting domestic abuse, and there is an urgent need to remove the provisions allowing for reconciliation of the parties. Although women in Kazakhstan have high representation in the workforce, there is significant horizontal and vertical segregation, and women earn substantially less than men. While women do not experience barriers to educational participation, gender segregation in subjects remains a problem. Women are also underrepresented in political and public life, though the state has made commitments to remedy this.

3.4 Discrimination and Inequality on the Basis of Sexual Orientation and Gender Identity

As the HRC and the CESCR have concluded, under Article 2(1) of the ICCPR and Article 2(2) of the ICESCR, Kazakhstan is required to ensure the enjoyment of all rights under these Covenants without discrimination on grounds which include sexual orientation and gender identity.⁶⁸⁰ In addition, Kazakhstan is

680 In respect of the ICESCR, the United Nations Committee on Economic, Social and Cultural Rights has stated that the term “other status” used in Article 2(2) includes both sexual orientation and gender identity (see above, note 294, Para 32). In respect of the ICCPR, the Human Rights Committee has interpreted the term “other status” used in Article 2(1) (and Article 26) to include sexual orientation (see, for example, *Young v Australia*, Human Rights Committee, Communication No. 941/2000, UN Doc. CCPR/C/78/D/941/2000, 18 September 2003). While the Human Rights Committee has never explicitly stated that gender identity is a characteristic protected under Articles 2(1) and 26 of the ICCPR, it has raised concerns regarding the situation of trans persons in a number of countries (see, for example: United Nations Human Rights Committee, *Concluding Observations: Kyrgyzstan*, UN Doc. CCPR/C/KGZ/CO/2, 23 April 2014, Para 9).

required, by virtue of Article 26 of the ICCPR, to ensure that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”, including the grounds of sexual orientation and gender identity.

Despite this, reports by non-government bodies have highlighted numerous examples of discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals in Kazakhstan.

Legal and Policy Framework

As discussed in Part 2 of this report, there is no explicit prohibition of discrimination on the basis of sexual orientation or gender identity under either the Constitution of Kazakhstan or any other law. Whilst it has been argued that the term “other circumstances” in Article 14 of the Constitution extends to sexual orientation and gender identity,⁶⁸¹ there are no examples of any court judgments finding discrimination against LGBT individuals. In its most recent engagement with the Universal Periodic Review, Kazakhstan rejected recommendations to “strengthen the legal protection” for LGBT individuals,⁶⁸² though at the same time, the state responded to recommendations to “enact specific legislation that prohibits discrimination (...) on the basis of sexual orientation” by stating that this had already been implemented.⁶⁸³

Cultural Attitudes and the Position of LGBT Persons in Society

There are no official figures on the number of LGBT people living in Kazakhstan. While homosexuality is not criminalised, there is evidence that cultural attitudes toward LGBT persons prevent individuals from openly discussing their sexuality, which may contribute to the limited visibility of this community in the country.

681 Soros Foundation, *Unacknowledged and Unprotected: Lesbian, Gay, Bisexual and Transgender People in Kazakhstan*, 2009, p. 23, available at: http://www.soros.kz/uploads/user_67/2013_09_04_04_43_19_269.pdf.

682 Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Kazakhstan*, UN Doc. A/HRC/28/10, 10 December 2014, Para 126.24.

683 *Ibid.*, Para 124.6.

In 2009, the Soros Foundation – Kazakhstan conducted a survey on attitudes towards LGBT persons in Kazakhstan. The vast majority (81%) of respondents reported that LGBT people were “treated disapprovingly and without respect by people in society”.⁶⁸⁴ Only one in three LGBT individuals interviewed for the report had shared their sexual orientation with a family member.⁶⁸⁵ In a separate survey of men who have sex with men (MSM) in the country just 21.8% of respondents had disclosed their sexuality to a non-MSM friend, a family member, or a health care professional.⁶⁸⁶

During the course of research for this report, one individual gave the following account of the personal impact of disclosure of their sexual orientation:

*My mother had left for a business trip and I invited my friend to our house. My mother returned home late at night and found us together. I was 17 at that time, and Tanya was 22. My mother started shouting and threw a semi-naked Tanya out of our house. She then telephoned my uncle, who worked with the police, to take Tanya to the police station. The police said they would charge her for corrupting a minor. I promised to complete school and as a result my mother did not press charges. Tanya was released and she left for Almaty immediately. The following morning my mother sent me to a psychiatric hospital where I spent almost two months. My doctor eventually persuaded my mother to stop calling me perverted or mentally ill, and to stop calling Tanya a prostitute. Now my mother and I try not to see one another; I live with my grandmother and am finishing school.*⁶⁸⁷

The reluctance of the Kazakhstani LGBT community to discuss their sexuality reflects high levels of social stigma, fuelled by the media, govern-

684 See above, note 681, p. 10.

685 *Ibid.*

686 Berry, M., and others, “Risk Factors for HIV and Unprotected Anal Intercourse among Men Who Have Sex with Men (MSM) in Almaty, Kazakhstan”, *PLoS One*, 24 August 2012, available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3427329>.

687 NGO “Amulet”, Interview with L., July 2014.

mental officials and respected members of Kazakhstani society. A number of Parliamentarians have spoken out against homosexuality. In 2013, for example, a deputy of the Mazhilis in the Kazakhstani Parliament reportedly stated that “homosexuals must not be” and that homosexuality is “a deformation of a human conscience”.⁶⁸⁸ In 2014, another Parliamentarian, Zhambyl Ahmetbekov, attributed an increase in the number of divorces to gay men.⁶⁸⁹ In other examples, ministers have expressed the view that gay men should not be allowed to join the army;⁶⁹⁰ compared advocacy of the right to freedom of expression concerning “non-traditional sexual orientation” to fascism,⁶⁹¹ and, on occasion, advocated the criminalisation of homosexuality.⁶⁹² In calling for the imposition of a ban on “homosexual propaganda” the leader of Bolashak, the Kazakhstan National Movement, Dauren Babamuratov stated:

*We have stooped so low that LGBTs no longer hide their orientation. One can see a lot of people in the city's malls and other public places – these are young people in coloured pants. This means they no longer hide their [sexual] orientation. I think it is very easy to identify a gay person by his or her DNA. A blood test can show the presence of degeneratism in a person.*⁶⁹³

688 Tenghri News, “Kazakhstan gays complain about an uneasy life”, *Tenghri News*, 13 March 2013, available at: <http://tengrinews.kz/show/kazahstanskie-gei-jaluyutsya-na-neprostayu-jizn-230029>.

689 Bnews.kz, “MP: Homosexuals are to blame for an increase in divorces in Kazakhstan”, *Караван Media Portal*, 26 November 2014, available at: <http://www.caravan.kz/articles/deputat-v-uvlichenii-razvodov-v-kazahstane-vinovaty-gomoseksualisty-375364>.

690 Leach, A., “Kazakhstan says no to gay men in the military”, *Gay Star News*, 14 June 2012, available at: <http://www.gaystarnews.com/article/kazakhstan-says-no-gay-men-military140612>.

691 Nur.kz, “Tasmagambetov uncovered a plot by “brainwashing””, *Nur.kz*, 13 June 2012, available at: <http://www.nur.kz/kk/327719.html>.

692 Lillis, J., “Kazakhstan's Parliament Hears Another Call for Anti-Gay Law”, *Eurasianet*, 2 October 2013, available at: <http://www.eurasianet.org/node/67576>.

693 Urazova, D. and Kuzmina, T., “Kazakhstan looks to ban gay ‘propaganda’ and identify gays by searching for degeneratism in their DNA”, *Tengri News*, 13 September 2014, available at: http://en.tengrinews.kz/laws_initiatives/Kazakhstan-looks-to-ban-gay-propaganda-and-identify-gays-by-256105.

Members of the media have openly expressed anti-LGBT rhetoric, decrying the demise of traditional family values. In 2014, for example the editor in chief of the Rabat newspaper wrote:

*Over the past 40 years homosexuals have made, well, stunning achievements in the protection of their rights and freedoms. Do you want examples? As they say in Odessa "I have them!" In 1993 the World Health Organisation revised its qualification of diseases by crossing homosexuality out of the pathologies listing. This is a real threat to the family institution.*⁶⁹⁴

In another case from 2014, the designers of a poster advertising a gay nightclub were forced to publicly apologise for the offense their advert had caused, following criticism in the media. The advertising agency responsible was found guilty of advertising "banned goods and services" and fined the equivalent of US \$1700. After losing an appeal, the company was fined a further US \$188,000, effectively putting them out of business.⁶⁹⁵

Religious leaders have also aggravated tensions between LGBT individuals and the general population. Following a hoax media report about a Gay Pride parade to be held in Almaty in 2008, a number of religious leaders publically denounced the event, with one referring to LGBT individuals as a "decomposing pseudo-subculture that is a threat to Kazakh society's spiritual traditions and morality".⁶⁹⁶

Discriminatory Laws

In addition to failing to provide clear protection from discrimination on the basis of sexual orientation and gender identity in its national law, Kazakhstan

694 Sharafutdinova, F., "Happy is he who is happy in his home", *Rabat Newspaper*, 14 September 2014, available at: <http://otyrar.kz/2014/09/schastliv-tot-kto-schastliv-v-svoem-dome>.

695 Day, A., "Kazakhstan: Ad company ordered to pay \$188,000 in 'damages' over gay kiss poster", *Pink News*, 28 October 2014, available at: <http://www.pinknews.co.uk/2014/10/28/kazakhstan-ad-company-ordered-to-pay-188000-in-damages-over-gay-kiss-poster>.

696 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>.

retains a number of discriminatory laws. Following the adoption of a new Criminal Code in 1999 (as amended in 2014), Kazakhstan no longer criminalises consensual same-sex sexual relations.⁶⁹⁷ However, the Code retains a number of discriminatory provisions. Under Article 121, “sodomy, lesbianism and other sexual acts involving the use of force or the threat of its use” are punishable by imprisonment for 3 to 5 years.⁶⁹⁸ Similarly, under Article 123, “coercion of a person to engage in sexual intercourse, sodomy, [or] lesbianism” is made punishable.⁶⁹⁹ Whereas the prohibition of violent sexual acts may be commended, the express inclusion of the words “sodomy” and “lesbianism” as distinct from other sexual acts is problematic. On the one hand, this language implies that same-sex relations are not equivalent to other forms of sexual behaviour, while on the other hand, this approach may create an impression that the public are in need of additional protection against gay men and women, or that such individuals may be more likely to commit violent sexual offences.

While Article 8 of the Code of the Republic of Kazakhstan on Marriage (Matrimony) and Family (the Family Code), prohibits “[a]ny forms of restriction of the rights of citizens during contracting marriage” on the basis of an open-ended list of grounds, Article 11 of the same Code explicitly prohibits same-sex marriage.⁷⁰⁰ Though recognition of same-sex marriage is not expressly required under the ICCPR,⁷⁰¹ states have been urged to provide legal recognition of same-sex civil unions.⁷⁰² No such recognition is provided for in Kazakhstan’s law.

In addition to the directly discriminatory nature of this provision, the prohibition on same-sex marriage also means that same-sex couples are not entitled to the same legal rights and benefits as opposite-sex married couples. Thus, individuals in same-sex relationships do not benefit from marital property rights (such as rights related to common joint property provided under Arti-

697 See above, note 423.

698 *Ibid.*, Article 121.

699 *Ibid.*, Article 123.

700 See above, note 639, Article 11.

701 *Joslin v New Zealand*, Human Rights Committee, Communication No. 902/1999, UN Doc. CCPR/C/75/D/902/1999, 2002, Para 8.3.

702 Committee on Economic, Social and Cultural Rights, *Concluding Observations: Bulgaria*, UN Doc. E/C.12/BGR/CO/4-5, 30 November 2012.

cles 32–38 of the Family Code). In addition, persons in same-sex relationships are unable to benefit from the provision in Article 16 of the Law on Citizenship, that citizenship “shall be granted” to persons who have been married to a Kazakhstani citizen for at least 3 years.⁷⁰³

In its 2006 report to the CRC Committee, Kazakhstan stated its intention to amend legislation to explicitly prohibit same-sex couples adopting children.⁷⁰⁴ The state later did so, through the inclusion of Article 91(8) in the Family Code, which prohibits the adoption of children by “persons, maintaining the different sexual orientation”.⁷⁰⁵ In addition, Article 91(6), prohibits adoption by persons with certain health conditions including mental health conditions⁷⁰⁶ as recognised under the International Classification of Diseases of the World Health Organisation,⁷⁰⁷ a list which includes so-called “gender identity disorders”.

Draft Laws on “Propaganda of ‘Non-traditional Relationships’”

On the 19 February 2015, following similar developments in a number of Commonwealth of Independent States countries,⁷⁰⁸ two draft Laws seeking to prohibit propaganda advocating for “non-traditional relationships”, were passed in the Kazakhstani Senate.⁷⁰⁹ Under both of the draft Laws, a new

703 Law of the Republic of Kazakhstan, “On Citizenship of the Republic of Kazakhstan”, Law No. 1017-XII of 20 December 1991, Article 6(1).

704 Committee on the Rights of the Child, *Second and Third Periodic Reports: Kazakhstan*, UN Doc. CRC/C/KAZ/3, 23 August 2006, Para 252.

705 See above, note 639, Article 91(8).

706 Order of the Minister of Health and Social Development of the Republic of Kazakhstan, No. 692 of 28 August 2015.

707 World Health Organization, *International Statistical Classification of Diseases and Related Health Problems*, 2016, Chapter V: Mental and Behavioural Disorders, F64: Gender Identity Disorders, available at: <http://apps.who.int/classifications/icd10/browse/2016/en>.

708 For an overview of the development of anti-propaganda laws in Eurasia, see: Childs Rights International Network, *Censorship: Laws Restricting Children’s Access to Information*, 2015, available at: <https://www.crin.org/en/library/publications/censorship-laws-restricting-childrens-access-information>.

709 Draft Law on Amendments and Additions to Several Legal Acts of the Republic of Kazakhstan Concerning the Protection of Children from Information Harmful to Their Health and Development, 2015, available at: http://online.zakon.kz/Document/?doc_id=31486605; and Draft Law on Protecting Children from Information Harmful to Their Health and Development, 2015, available at: http://online.zakon.kz/Document/?doc_id=31249501#sub_id=7.

Article 19 would be created within the Criminal Code which would criminalise advocacy of “non-traditional relationships”;⁷¹⁰ whilst broad measures would inhibit the dissemination of information concerning “non-traditional relationships” through a ban on “foreign television and radio material that contains information harmful to the health and development of children, and which propagandizes non-traditional sexual orientation”.⁷¹¹

Although the draft Laws were subsequently found unconstitutional by the Constitutional Council,⁷¹² the proposal of Laws which would target LGBT individuals is a cause for serious concern. As has been noted by the United Nations Office of the High Commissioner for Human Rights, laws such as those proposed

*[A]rbitrarily restrict the rights to freedom of expression and assembly. They also contribute to ongoing persecution of members of the LGBT community, including young persons who identify or are perceived as LGBT.*⁷¹³

United Nations human rights treaty bodies and special procedures have noted their concern at the development of anti-gay propaganda legislation

710 *Ibid.*

711 *Ibid.*, Draft Law on Amendments and Additions to Several Legal Acts of the Republic of Kazakhstan Concerning the Protection of Children from Information Harmful to Their Health and Development, as quoted in Human Rights Watch, “*That’s When I Realized I Was Nobody*”, *A Climate of Fear for LGBT People in Kazakhstan*, 2015, p. 24, available at: https://www.hrw.org/sites/default/files/report_pdf/kazakhstan07154_up.pdf.

712 Decision of the Constitutional Council of the Republic of Kazakhstan on the official interpretation of paragraph 1 of Article 27 of the Constitution of the Republic of Kazakhstan and on the audit for compliance with the Constitution of the Republic of Kazakhstan Law of the Republic of Kazakhstan “On protection of children from information harmful to their health and development” and the Law the Republic of Kazakhstan “on amendments and additions to some legislative acts of the Republic of Kazakhstan concerning the protection of children from information harmful to their health and development”, No. 3 of 18 May 2015, available at: http://online.zakon.kz/Document/?doc_id=37647015. As a consequence, under Article 74(1) of the Constitution, of the Constitutional Court Judgement, neither of the Acts could be signed and put into effect.

713 Human Rights Council, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/29/23, 4 May 2015, Para 48.

in Russia and other states.⁷¹⁴ In its Concluding Observations on Ukraine, the Human Rights Committee noted that such laws, if adopted, would “run counter to the State party’s obligations under the Covenant (arts. 2, 6, 7, 9, 17, 19, 21 and 26)”.⁷¹⁵

It should be noted that the basis for the Constitutional Council decision was a technical problem regarding the precision of the legislation; the Council did not give detailed consideration to the compatibility of the provision with fundamental human rights norms or Article 14 of the Constitution.⁷¹⁶ Consequently, there is a risk that the draft Laws may be reintroduced with more precise wording. Though at the time of publication, these proposals remain dormant.

Transgender Rights

Under Paragraph 1 of the state’s Rules for Medical Expertise and Gender Reassignment, “gender identity disorder” is defined as:

*[T]he feeling of belonging to the opposite sex, [and] desire to live and to be perceived as a person of the opposite sex, [which is] usually accompanied by a sense of inadequacy or discomfort of [one’s] own morphological sex and desire for hormonal, surgical treatment.*⁷¹⁷

714 The Committee on the Rights of the Child, for example, recommended the “repeal (...) laws prohibiting propaganda of homosexuality” in Russia (Committee on the Rights of the Child, *Concluding Observations: Russia*, UN Doc. CRC/C/RUS/CO/4-5, 25 February 2014, Para 25). The Special Rapporteur on the Situation of Human Rights Defenders opined that such laws: “could be used to unduly restrict the activities of those advocating for the rights of LGBT individuals and could further contribute to the already difficult environment in which these defenders operate, stigmatising their work and making them the target of acts of intimidation and violence” (Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Addendum*, UN Doc. A/HRC/25/55/Add.3, 2014, Para 365).

715 Human Rights Committee, *Concluding Observations: Ukraine*, UN Doc. CCPR/C/UKR/CO/7, 22 August 2013, Para 10. In *Fedotova v. Russian Federation*, the Human Rights Committee found that Russian anti-gay propaganda laws breached Articles 19 (freedom of expression) and 26 (non-discrimination) of the Convention (*Fedotova v Russia*, Human Rights Committee, Communication No. 1932/2010, UN Doc. CCPR/C/106/D/1932/2010, 2012).

716 See above, note 712.

717 Resolution of the Government of the Republic of Kazakhstan, “On Approval of the Rules for Medical Expertise and Gender Reassignment for Persons with Gender Identity Disorder” No. 1484 of 7 December 2011.

Legal recognition of gender identity is directly linked to medical surgery. Under Government Decree 1484, following diagnosis by a medical commission, gender reassignment is to be concluded through “hormonal therapy” and “surgical correction”.⁷¹⁸ Under Article 257 of the Family Code, changing one’s legal gender identity is dependent upon having had surgery. The Code permits a change in a person’s legal name where an individual wishes to have a first and last name “that are consistent with the chosen gender in [the] case of transsexual surgery”.⁷¹⁹

The requirement to undergo surgery in order to obtain legal gender recognition has long been criticised in international law. Principle 3 of the Yogyakarta principles has stated that no one “shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity”.⁷²⁰ The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has:

*[C]alled upon all States to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, “reparative therapies” or “conversion therapies”, when enforced or administered without the free and informed consent of the person concerned.*⁷²¹

It should be noted that, according to Human Rights Watch, prior to 2009 transgender individuals were still subject to “invasive and abusive processes”, but surgery was not a requirement to obtain legal gender recognition.⁷²²

718 *Ibid.* Article 2.3.

719 See above, note 639, Article 257 (13).

720 *Yogyakarta Principles – Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, International Commission of Jurists, 2007, Principle 3.

721 Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, UN. Doc A/HRC/22/53, 1 February 2013, Para 88. See also, Committee on the Elimination of Discrimination against Women, *Concluding Observations: Belgium*, UN Doc. CEDAW/C/BEL/CO/7, 14 November 2014, Paras 44–45.

722 See Human Rights Watch, above, note 711, p. 15.

Discrimination by State Agents

There is a significant number of reports of discrimination committed by state agents, including the police, against LGBT persons. In 2014, KIBHR published a report on the situation of LGBT persons in Kazakhstan, which included interviews with members of the LGBT community. When asked whether the state maintained a policy of discrimination against LGBT individuals, respondents gave a range of answers, though a number of individuals expressed a belief that the state actively pursued LGBT persons. One respondent stated “[t]here must be a State policy. Very often the rights of gays are abused I can see it myself”.⁷²³

These findings are corroborated by a report of the Soros Foundation – Kazakhstan from 2009 which provides many examples of discrimination by state officials. According to one respondent: “policemen (...) kept on saying that I should not only be raped, but killed”.⁷²⁴ Another person stated that:

*I was beaten up by the police when I was coming home from a café. They stopped to check my documents but when they realized who I was and what I was, they dragged me away from the streetlight and began to beat me shouting ‘you faggot’ (...) [afterwards, they said that if I reported the incident] they would f*ck me right there.*⁷²⁵

As these reports indicate, there is evidence of discrimination by the police in particular, ranging from violence by police officers to refusal or failure to deal with claims of hate-motivated violence and other crimes against LGBT persons. S., interviewed for this report, stated that:

I took a taxi to get home from a gay club. On the way, the taxi driver stopped and got out of the car, saying that he

723 Kazakhstan International Bureau for Human Rights and Rule of Law, *Monitoring Report on the LGBT People’ Rights Observance in Kazakhstan on the Basis of Non-Discrimination Principle*, 2014, p. 11, available (Russian only) at: <https://www.bureau.kz>.

724 See above, note 681, p. 51.

725 *Ibid.*, p. 67.

needed to buy cigarettes. He came back together with other three guys. They made me get out of the car, while insulting me took away my money and jacket. One of them pulled out a knife and jabbed me in my ribs. Then they got into a taxi and drove away. A couple passing by saved my life by calling an ambulance. When the police found out about my sexual identity, they ridiculed me and advised me not to write a complaint. Nevertheless, I wrote a complaint, the case dragged on, the attackers were not found and the law enforcement officers mockingly laughed at me for a long time, and said that I would never go to a gay club again.⁷²⁶

In 2015, Human Rights Watch reported that a number of individuals had reported facing discrimination at the hands of police, including: refusal to investigate a mugging; asking irrelevant personal and humiliating questions to a transgender victim of violence; and unlawfully extorting owners of gay clubs.⁷²⁷ A number of those interviewed distrusted the police and were left lacking “confidence in the authorities’ willingness to pursue their complaints”, while some feared reporting crimes due to their concerns over future police behaviour.⁷²⁸ As one individual interviewed in a 2015 Human Rights Watch report stated:

[I]f LGBT people go to the police, we risk getting insulted at best, and at worst attacked again. Most of the time it’s insulted and intimidated; they threaten to expose us to our families and communities.⁷²⁹

Discriminatory Violence

Due to social pressure, violence against LGBT persons are said to be under-reported.⁷³⁰ Nevertheless, there is evidence from both domestic and inter-

726 NGO “Amulet”, Interview with S., June 2014.

727 See Human Rights Watch, above, note 711, pp. 7–10.

728 *Ibid.*

729 *Ibid.*, p. 8.

730 *Ibid.*, p. 7.

national non-governmental organisations that discriminatory violence is a serious problem for LGBT persons. A 2009 survey of almost a thousand LGBT persons, conducted by the Soros Foundation, found that over 25% of respondents had experienced acts of violence, physical aggression or assault, including battery, hitting, kicking and pushing; sexual harassment; and sexual assaults, due to their sexual orientation or gender identity.⁷³¹ One in three of those individuals had experienced violence three or more times.⁷³² Almost 80% of violence suffered was at the hands of private individuals, but in an estimated 15% of cases, violence was committed by the police.⁷³³ As one person interviewed for the report stated, punishment and correction were among the primary justifications given for violence against LGBT individuals:

*The beatings follow the principle of "all against one," the underlying motive being my "deviation," my "abnormality." The violence is carried out as an act of tutoring, teaching and correcting me from the viewpoint of their "male power," which I failed to acknowledge. It's a way of presenting me with their idea of a "real man."*⁷³⁴

In 2014, Human Rights Watch documented a number of violent incidents against LGBT individuals.⁷³⁵ In one incident, a transgender woman was beaten unconscious by two men who had broken into her home.⁷³⁶ In a separate incident, where the girl was sexually abused by her uncle, the mother stated: "it would have been better if he had just raped you".⁷³⁷

The most severe example of punitive or corrective hate-motivated violence is the practice of corrective rape. Speaking to the media after participating at the 117th session of the UN Human Rights Committee in June 2016, LGBT rights activist Zhanar Sekerbaeva stated:

731 See above, note 681, p. 64.

732 *Ibid.*

733 *Ibid.*

734 *Ibid.*, p. 66.

735 See Human Rights Watch, above, note 711.

736 *Ibid.* p. 8.

737 *Ibid.* p. 9.

There is such a concept as a corrective rape. When the family learns that a girl is a lesbian, her parents find a relative and invite him to rape their daughter, so as to “fix” her fault and “instill” her love to the male body. Thus their ignorance does not allow them even to turn to doctors or specialists who can explain to them that their actions only compound the matter. Such cases have been officially registered in Kyrgyzstan. I would not be surprised if such situation happens somewhere in our country. Kazakhstan and Kyrgyzstan have a similar mentality. In many cases, corrective rape drives the girl to rejection of the man as such, and sometimes it results in suicide.⁷³⁸

Employment

There is evidence that LGBT individuals find it necessary to withhold their sexuality or gender identity in employment, and that those who are open face discrimination as a result. Just over half (53%) of the respondents to the aforementioned Soros Foundation survey stated that they would not reveal their sexual orientation in the workplace, for fear of negative consequences.⁷³⁹ Although 64.1% of respondents stated that they had not been discriminated against at work,⁷⁴⁰ this may be attributed to the fact that more than half of those surveyed withheld their sexual orientation or gender identity.

As the case of Arman Smagulov, reported in 2015, indicates, where LGBT person disclose their sexual orientation or gender identity, they can be exposed to discrimination as a result.⁷⁴¹ Mr Smagulov had worked as a senior operator at the Department of Internal Affairs in Almaty. After undergoing an opera-

738 Platonova, A. and Kanafin, Z., “Zhanar Sekerbaeva: “Gender equality is equality of other sexes along with men and women””, *Informburo*, 12 July 2016, available at: <https://informburo.kz/interview/zhanar-sekerbaeva-kazahstanskim-kvir-musulmanam-veruyushchim-geyam-lesbiyankam-i-interseks-lyudyam-ochen-tyazhelo-zhivyotsya.html>.

739 See above, note 681, p. 10.

740 *Ibid.*

741 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-nameren-prodolzhat-suditsya-s-dvd-almaty>.

tion to change sex from female to male, he was forced to resign from the Department, following harassment by his employer.⁷⁴²

Healthcare

As in the area of employment, the aforementioned Soros study found that 66.8% of respondents had hidden their sexual orientation from health care professionals.⁷⁴³ A number of reports indicate discrimination where a person's sexual orientation or gender identity is known. One man interviewed by Human Rights Watch in 2014 recalled visiting a hospital with a gay friend who was refused treatment by a doctor who stated "I don't help faggots"; the man later died in hospital.⁷⁴⁴ In a submission to Kazakhstan's first Universal Periodic Review, Kazakhstani civil society organisations stated that stereotypes and prejudice impede access to quality healthcare:

*Medical institutions in Kazakhstan are mostly funded by the state and those of them in large cities have qualified staff to address the concerns of families that bring their children to psychiatric hospital seeking to understand their sexual orientation or gender identity. However, there are a number of stereotypes expressed by medical professionals through means of media and during individual consultations that can and have been harmful to the lesbian, gay, bisexual and transgender people. Specifically, well-known sexologists repeatedly make remarks in the media about reasons why people can be LGBT that are scientifically unproven.*⁷⁴⁵

Conclusion

Discrimination on the grounds of sexual orientation and gender identity is common in Kazakhstan. Notwithstanding its open ended equality guarantee, the Constitution does not expressly prohibit discrimination on the grounds of

742 *Ibid.*

743 See above, note 681, p. 11.

744 See Human Rights Watch, above, note 711, p. 13.

745 See above, note 696.

sexual orientation and gender identity and there is no jurisprudence indicating that the Constitution does in fact prohibit such discrimination.

There is strong and consistent evidence of negative cultural attitudes towards lesbian, gay, bi and trans people which inhibits the open expression of sexual orientation. The media, governmental officials and respected members of Kazakhstan's society have each played a part in the condemnation and vilification of LGBT individuals. Of particular concern is the attempt in 2015 to pass propaganda laws that would prohibit the dissemination of information concerning "non-traditional" sexual orientation. Although this bill was deemed unconstitutional this was not on the grounds of discrimination but this finding was based on the technical drafting of the law. The Code on Marriage and Family expressly prohibits same-sex marriage and same-sex couples are not permitted to adopt children.

There is evidence of high levels of discrimination by state agents and discriminatory violence on the grounds of sexual orientation and gender identity. Such reports are rarely investigated or prosecuted.

3.5 Discrimination on the Basis of Political Opinion

In international law, protection against discrimination in the enjoyment of other human rights on the basis of "political or other opinion" is enshrined in both Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. Additionally, Article 26 of the ICCPR guarantees equal and effective protection against discrimination in all areas of life regulated by law, on the ground of political or other opinion. Article 2(1) of the ICCPR requires that all the rights in the Covenant be guaranteed for all persons without distinction. Thus, the obligation to ensure non-discrimination on the basis of political opinion extends to the enjoyment of *inter alia*, the rights to liberty and security of the person and to freedom of expression, assembly and association, protected by Articles 9, 19, 21 and 22 of the Covenant. It therefore follows that any limitations to these freedoms must respect the principle of non-discrimination,⁷⁴⁶ and that limitation, restriction or denial of these rights on the basis of political opinion alone is a violation of the Covenant.

746 See above, note 347347, Para 26.

Political freedom is limited in Kazakhstan, and discrimination based on political opinion by both private and state actors is extensive. In its 2016 review, Freedom House, which produces an annual evaluation of political freedom in the countries of the world, concluded that Kazakhstan was “Not Free”.⁷⁴⁷ Civil liberties and political rights were scored at 5 and 6, respectively, on a scale from 1 to 7, with 7 being the worst score possible.⁷⁴⁸ These findings reflect the climate in Kazakhstan as a place where direct and indirect pressures on freedom of expression and association are frequent and where those who speak out against the government, or attempt to, face severe consequences.

Discriminatory Laws

As discussed in Part 2.2.3 above, there are a number of provisions under Kazakh law which create conditions for discriminatory application against those who oppose – or are perceived to oppose – the government.

The Criminal Code contains several provisions which create the potential for discriminatory limitation or denial of political dissent.⁷⁴⁹ Articles 130 and 131 of the Criminal Code criminalise defamation. Article 130 creates a criminal offence of slander prohibiting the “dissemination of knowingly false details, discrediting the honour and dignity of another person or damaging his or her reputation”. This provision is broadly in line with defamation provisions in other jurisdictions, and is consistent with the exception to the right to freedom of expression, provided in Article 19(3) of the ICCPR, where “necessary (...) for respect of the (...) reputations of others”. Nevertheless, it should be noted that the HRC has called for the decriminalization of defamation.⁷⁵⁰ On no occasion, the HRC emphasised, may imprisonment be considered an appropriate response to defamation.⁷⁵¹

However, Article 131 creates an offence of “insult” or “humiliation of honour and dignity” of another person which is “expressed in an unseemly manner”.

747 Freedom House, *Freedom in the World 2016: Kazakhstan*, available at: <https://freedomhouse.org/report/freedom-world/2016/kazakhstan>.

748 *Ibid.*

749 See above, note 423.

750 See above, note 347, Para 47.

751 *Ibid.*

While the prohibition under Article 130 may be permissible, Article 131 cannot be justified in line with Article 19(3) of the ICCPR; as the HRC has noted, the right to freedom of expression includes “even expression that may be regarded as deeply offensive”.⁷⁵² However, in response to the HRC’s recommendation that Kazakhstan should decriminalise libel, defamation, and insult, the government stated that the criminalisation is required to protect the “right of citizens to defend their honour, dignity and good standing”.⁷⁵³

There are also specific criminal offences for insults to the First President, current President, parliamentarians, public officials, participants in court proceedings and members of the judiciary punishable by fines, restrictions on movement or up to five years imprisonment.⁷⁵⁴ These latter offences are particularly problematic and difficult to justify. In its General Comment No. 34, the HRC recommended that “[d]efamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression.”⁷⁵⁵ Furthermore, “laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned” including persons in positions of power.⁷⁵⁶

Article 174 of the Criminal Code makes it an offence to engage in:

Intentional actions, directed to institution of social, national, tribal, racial, class or religious hatred, insult of the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on grounds of their relation to religion, class, national, tribal or racial assignment, if these actions are committed publicly or with the use of mass media or information and communication networks, as well as by production or distribution of litera-

752 See above, note 347, Para 11.

753 Human Rights Committee, *Reply to the List of Issues: Kazakhstan*, UN Doc. CCPR/C/KAZ/Q/2/Add.1, 14 April 2016, Para 145.

754 See above, note 423, Articles 373, 375, 376, 378, 410 and 411.

755 See above, note 347, Para 47.

756 *Ibid.*, Para 38.

*ture or other information media, promoting social, national, tribal, racial, class or religious discord.*⁷⁵⁷

The provision is extremely broad, using phrases such as “national honour” and “religious feelings” which are open to interpretation and thus to discretion on the part of the decision-maker. Laws which permit a high degree of discretion in their interpretation create a risk of discrimination – whether conscious or unconscious – in their application. Indeed, as will be discussed further below, there is evidence that Article 174 has been applied in a discriminatory manner against opposition politicians and human rights activists, in order to stifle dissent. Article 179 of the Criminal Code prohibits:

Propaganda or public calls for forcible seizure of power or forcible retention of power in violation of Constitution of the Republic of Kazakhstan, subversion of security of the state or forcible change of the constitutional order of the Republic of Kazakhstan.

In a recent legal opinion, the OSCE ODIHR criticised the breadth of Article 179 as not being in line with international human rights standards noting: “some sub-categories of the criminal offence (...) do not necessarily imply incitement to violence and could therefore be abused to limit critical or offensive speech, including social protests”.⁷⁵⁸

In January 2012, Law No. 545-IV on Broadcasting received presidential assent. Under Article 21(3), the registration of a foreign television and radio channel may be refused where materials are deemed to contain “propaganda” or other vaguely worded criteria such as “agitation of violent change of the constitutional order” and “violation of the integrity of the Republic of Kazakhstan”.⁷⁵⁹ The requirement for foreign broadcast channels to register with government and the ill-defined parameters of Article 21(3) have been criticised by international organisations.⁷⁶⁰

757 See above, note 423, Article 174.

758 See above, note 389, Para 20.

759 Law of the Republic of Kazakhstan, “On Broadcasting”, Law No. 545-IV of 18 January 2012, Article 21(3).

760 Article 19, *Kazakhstan: The Law on Television and Radio Broadcasting*, 2015, pp. 13–14, available at: <https://www.article19.org/data/files/medialibrary/37976/KZ-analysis-14-May-2015-Final-for-Publication.pdf>.

In 2014, amendments were adopted to the Law on Communications which provided the Prosecutor General, without a court order, the power to “suspend operation of networks and (or) means of communication” where content is deemed a security threat.⁷⁶¹ According to Amnesty International’s 2016 human rights report, these powers have been used to “block access intermittently or permanently to Kazakhstan-based news outlets and to individual articles on international news sites.”⁷⁶²

Arrest and Detention of Opponents of the Regime

Article 9(1) of the ICCPR provides that: “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention”. Read in conjunction with Article 2 of the ICCPR, Kazakhstan has an obligation not to arrest or detain persons on the basis of their political opinion or indeed any other protected characteristic. Nevertheless, there is extensive evidence that critics of the government and establishment in Kazakhstan, including not only opposition politicians, but lawyers, civil society activists and journalists have been subjected to arbitrary arrest and detention at the hands of the state.

The most high profile prosecution of an opposition politician was the arrest and detention of Vladimir Kozlov, leader of the opposition party Alga!, on 23 January 2012.⁷⁶³ Mr Kozlov was convicted of inciting social hatred under Article 174 of the Criminal Code, following his support for striking oil workers in the city of Zhanaozen in December 2011, and was sentenced to seven and a half years’ imprisonment.⁷⁶⁴ The Court concluded that Kozlov’s involvement in the protests and his negative characterisation of the Kazakh authorities amounted to incitement of social hatred, relying on testimony

761 Law of the Republic of Kazakhstan, “On Communications”, Law No. No. 567-II of 5 July 2004, Article 41-1.

762 Amnesty International, *Annual Report: The State of the World’s Human Rights*, 2016, p. 213, available at: <https://www.amnesty.org/en/latest/research/2016/02/annual-report-201516>.

763 Human Rights Watch, “Kazakhstan: Opposition Leader Jailed”, 9 October 2012, available at: <https://www.hrw.org/news/2012/10/09/kazakhstan-opposition-leader-jailed>.

764 Decision of the Mangistau Regional Court, No. 1-266/14-12 of 8 October 2012; Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai: Addendum: Mission to Kazakhstan*, UN Doc. A/HRC/29/25/Add.2, 16 June 2015, Paras 26–27; Freedom House, “Kazakhstan: After Kozlov’s Release, Authorities Should Allow Political Parties to Organize”, 22 August 2016.

from experts belonging to the Centre of Forensic Experts (which is attached to the Ministry of Justice) to conclude that the Kazakh authorities constitute a “social group”.⁷⁶⁵ Although he has since been granted early release, both Freedom House and PEN International have both criticised the original prosecution and conviction.⁷⁶⁶

A significant number of civil society activists have been sentenced to imprisonment on charges which appear to be motivated by or connected to their efforts to raise awareness of the government’s human rights record. For example, the civil society activist and human rights defender Vadim Kuramshin continues to serve a 12-year sentence for extortion; Human Rights Watch has expressed concern “that his sentencing in December 2012 was retribution for public criticism of the government”.⁷⁶⁷ In November 2015, Human Rights Watch reported that Bolatbek Blyalov, the head of the Institute of Democracy and Human Rights, an NGO in Astana, was detained on suspicion of “inciting social discord” following comments made on social media about Russian nationalism in Ukraine and the use of Russian language in education in Kazakhstan; a court confirmed a two-month pre-trial detention order for him.⁷⁶⁸

According to the organisation Lawyers for Lawyers, lawyers working on politically sensitive cases in Kazakhstan are reportedly “regularly subjected to threats or physical attacks, intimidation and improper interference or attempts to put pressure on them by judges, public prosecutors and members of law enforcement agencies”.⁷⁶⁹ Disciplinary proceedings against lawyers working on politically sensitive cases are reportedly common, with the threat

765 Freedom House, *Kozlov Case File: Final Monitoring Report on the Trial of Vladimir Kozlov, Akzhanat Aminov, and Serik Sapargali*, December 2012, pp. 8–9, available at: <https://freedomhouse.org/sites/default/files/Final%20Monitoring%20Report%20-%20Kozlov%20Trial.pdf>.

766 See Freedom House, above, note 764; PEN International, “Kazakhstan: Journalist Vladimir Kozlov granted early release”, 5 August 2016, available at: <http://www.pen-international.org/newsitems/kazakhstan-journalist-vladimir-kozlov-granted-early-release>.

767 Human Rights Watch, *World Report 2015: Kazakhstan*, 2015, available at: <https://www.hrw.org/world-report/2015/country-chapters/kazakhstan>.

768 Human Rights Watch, “Kazakhstan: Activist Arrested”, 13 November 2015, available at: <https://www.hrw.org/news/2015/11/13/kazakhstan-activist-arrested>.

769 Lawyers for Lawyers Foundation, *Human Rights Committee Consideration of the Second Periodic Report of Kazakhstan: Submission on the List of Issues*, 2015, Para 16, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCO%2fKAZ%2f21463&Lang=en.

of disbarment hanging over many lawyers. In their shadow report to the HRC in 2015, Lawyers for Lawyers stated:

*In a number of cases the Court evaded the disciplinary procedure established by law, by issuing interim rulings on the basis of which the Ministry of Justice terminated the lawyers' license to practice law. In this way, consideration of the complaints against lawyers by the established disciplinary bodies at the Presidium of the Collegium of Lawyers is avoided.*⁷⁷⁰

Zinaida Mukhortova, a human rights lawyer, has been repeatedly placed in forced psychiatric detention since 2009, when she alleged that a member of parliament had interfered with a civil case she was involved with.⁷⁷¹ In response to this complaint, a criminal investigation was launched against her for the “deliberate false filing of a complaint” under Article 351(2) of the Criminal Code and she was arrested on 9 February 2010 and held in pre-trial detention.⁷⁷² Following a psychiatric examination she was forcibly detained in psychiatric facilities. She challenged the legality of her diagnosis and detention, but the Supreme Court held in 2014 that it was legal.⁷⁷³ In July 2014 she was once again forcibly detained in a psychiatric facility.⁷⁷⁴ She was released in December 2014, but reportedly remains at risk of further detainment in the psychiatric facility.⁷⁷⁵

Reports from other non-governmental organisations indicate that journalists also face arrest and detention. In November 2016, Bigeldin Gabdullin, the

770 *Ibid.*

771 Human Rights Watch, “Kazakhstan: Lawyer in Forced Psychiatric Detention”, 15 August 2013, available at: <https://www.hrw.org/news/2013/08/15/kazakhstan-lawyer-forced-psychiatric-detention>.

772 *Ibid.*

773 See above, note 769, Para 17.

774 *Ibid.*; International Commission of Jurists, “Kazakhstan: ICJ is concerned at new detention of lawyer Zinaida Mukhortova”, 2 July 2014, available at: <http://www.icj.org/kazakhstan-icj-is-concerned-at-new-detention-of-lawyer-zinaida-mukhortova>.

775 Lawyers for Lawyers Foundation, “Kazakhstan: Zinaida Mukhortova released from psychiatric confinement but still at risk”, 6 November 2013, available at: <http://www.advocatenvooradvocaten.nl/8521/kazakhstan-zinaida-mukhortova-released-from-psychiatric-confinement>.

President of the Kazakh PEN Club, was arrested and remains subject to a pre-trial detention order.⁷⁷⁶ PEN International has indicated that the arrest may be politically motivated, as it followed an article Mr Gabdullin wrote criticising the government's business dealings.⁷⁷⁷ Seytkazy Matayev, head of the Kazakh Journalists' Union and chair of the National Press Club of Kazakhstan, and his son, Aset Matayev who is the General Director of the Press Agency "KazTAG" were charged with tax fraud and embezzlement in February 2016.⁷⁷⁸ Mr Matayev has stated that the reasons behind the persecution were to "limit our professional activity, oppose the defense of the freedom of expression and civil activism of journalists in Kazakhstan".⁷⁷⁹

As these varied cases indicate, there is a pattern of arrest, detention and charge of politicians, civil society activists, lawyers and journalists who are – or are perceived to be – in opposition to the government. Where arrests and criminal charges are motivated by a person's political opinion or their advocacy of a particular position which is conflict with the government, these acts are discriminatory on the basis of political opinion.

Discriminatory Denial of Freedom of Expression

Kazakhstan is obligated, by Articles 19 and 2 of the ICCPR, to ensure the right to freedom of expression without discrimination on grounds including political opinion. Article 19(3) states that this right can only be limited by law, and only where necessary to protect the rights or reputations of others, or for the protection of national security, public order, public health or public morals.

In Kazakhstan's national legal framework, freedom of expression is protected by Article 20 of the Constitution. However, there is significant evidence that

776 PEN International, "Kazakhstan: Arrest of President of Kazakh PEN Club", 29 November 2016, available at: <http://www.pen-international.org/newsitems/kazakhstan-arrest-of-president-of-kazakh-pen-club-2>.

777 *Ibid.*

778 Committee to Protect Journalists, "Kazakh journalists face years in prison on retaliatory charges", 30 September 2016, available at: <https://cpj.org/2016/09/kazakh-journalists-face-years-in-prison-on-retalia.php>; International Foundation for Protection of Freedom of Speech (Adilsoz), *Monitoring Report: Violations of Freedom of Speech in Kazakhstan (August 2016)*, 2016, available at: <http://www.adilsoz.kz/monitoring/show/id/126>.

779 *Ibid.*, Committee to Protect Journalists.

the government has limited freedom of expression in ways which cannot be justified under the ICCPR, and which appear to be discriminatory on the basis of political opinion.

Closure of Independent Organisations and Media Outlets

In addition to the arrest and detention of individual journalists, it is also common for state to close media outlets.⁷⁸⁰ A 2015 report by The International Service for Human Rights highlighted the scale of the problem, revealing that more than 30 media outlets have been closed down between late 2013 and August 2015 on charges such as “‘war propaganda and agitation’, ‘inciting social discord’ or ‘minor infractions of publishing regulations’”.⁷⁸¹

By way of example, the Kazakhstani newspaper *Pravdivaya Gazeta*, which frequently criticised the government, was subject to a series of prosecutions under the Code of Administrative Offences for listing an incorrect press run in the paper and giving the incorrect date of issue.⁷⁸² This resulted in the repeated suspension of the publication of the paper and its eventual closure in February 2014.⁷⁸³ In May 2015, the international organisation Article 19 and the Media Law Centre in Astana, Kazakhstan jointly submitted a communication to the Human Rights Committee in relation to the closure of *Pravdivaya Gazeta*, alleging that the imposition of administrative fines, suspension and eventual closure represented an unjustifiable limitation of the right to freedom of expression under Article 19 ICCPR.⁷⁸⁴

780 Action by Christians for the Abolition of Torture (ACAT) and International Legal Initiative Public Foundation (ILI), *Shadow report submitted by ACAT and ILI to the Human Rights Committee on Civil and Political Rights in Kazakhstan*, 2016, p. 18, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_CSS_KAZ_24074_E.pdf; see above, note 762.

781 International Service for Human Rights, *Kazakhstan: Human Rights Committee Briefing Paper*, 2015, p. 2.

782 Article 19, “Kazakhstan: Forced closure of newspaper constitutes unacceptable censorship”, 25 June 2015, available at: <https://www.article19.org/resources.php/resource/38017/en/kazakhstan:-forced-closure-of-newspaper-constitutes-unacceptable-censorship>.

783 *Ibid.*

784 Article 19, *Communication to the Human Rights Committee*, 2015, available at: https://www.article19.org/data/files/medialibrary/38017/Complaint-to-the-UN-HRCommittee_20_05_2015.pdf.

Defamation

As noted above, defamation is a criminal offence under Kazakh law. According to a report to the HRC by KIBHR and a group of other independent Kazakhstani organisations, in the first five months of 2015, eight media outlets and citizens were charged with defamation “in the context of exercising their right to freedom of expression, receiving and disseminating information”.⁷⁸⁵ A report by the organisation Adil Soz in August 2016 found that between January 2016 and August 2016, 43 charges were brought under the defamation provisions.⁷⁸⁶

In addition to charges of defamation brought by members of the public, the international organisation Article 19 has criticised the fact that “[e]xcessive and groundless civil defamation lawsuits are also frequently filed by government officials and businesses against journalists and mass media outlets”.⁷⁸⁷ For example, in July 2016 the “Tribune” newspaper was ordered to pay damages of approximately 5 million Tenge (USD 14,876) following the publication of articles claiming that a former Almaty city official, Sultانبек Syzdykov, was corrupt.⁷⁸⁸ In October 2015, the journalist Amangeldy Batyrbekov was sentenced to a fine and one and a half years’ imprisonment for defamation under Article 130 of the Criminal Code after writing an article accusing a prosecutor of fabricating evidence in a case involving two young men.⁷⁸⁹

785 Kazakhstan International Bureau for Human Rights and Rule of Law and others, *Kazakhstan: List of Issues: Analysis, Commentary and Recommendations*, 2015, p. 13, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCO%2fKAZ%2f21507&Lang=en.

786 See International Foundation for Protection of Freedom of Speech ‘Adil Soz’, above, note 778.

787 Article 19, “Central Asia: Legalised harassment of journalists must stop”, 8 September 2015, available at: <https://www.article19.org/resources.php/resource/38096/en/central-asia-legalised-harassment-of-journalists-must-stop>.

788 Mose, A. et al, “Court Suspends Prison Sentence of Kazakh journalist”, *International Press Institute*, 15 July 2016, available at: <http://www.freemedia.at/court-suspends-prison-sentence-of-kazakh-journalist/>; Adilsoz, “The Court sought 5 million Tenge from the “Tribune”, 7 July 2016, available at: <http://www.adilsoz.kz/news/show/id/2068>.

789 Savchenko, I., “Kazakhstan: The oppression of journalists and bloggers”, *Open Dialog Foundation*, 22 January 2016, available at: <http://en.odfoundation.eu/a/7228,kazakhstan-the-oppression-of-journalists-and-bloggers1>.

Monitoring of Online Expression

Kazakhstan has introduced a range of measures which restrict the ability to communicate anonymously online.⁷⁹⁰ PEN International has indicated that: “such restrictions have a significant chilling effect on the enjoyment of the right to freedom of expression as well as constituting an unlawful interference with the right to privacy”.⁷⁹¹ Pursuant to this legislation, the state has monitored individuals, resulting in some cases in arrest and prosecution.⁷⁹²

There is evidence that these provisions have been applied in a discriminatory manner, to monitor the activity of persons who criticise the regime. For example, in October 2015, it was reported that two activists, Yermek Narymbaev and Serikzhan Mambetalin, who are prominent critics of the government on social media had been arrested on charges under Article 174 of the Criminal Code for “inciting national discord [and] insulting national honour and dignity” and placed in pre-trial detention for two months.⁷⁹³ Saken Baikenov was sentenced to two years of “restricted liberty” and Yermek Narymbaev was sentenced to a four year suspended sentence.⁷⁹⁴

Discriminatory Denial of Freedom of Assembly

Under Article 21 of the ICCPR, read in conjunction with Article 2(1), Kazakhstan is required to guarantee the right to freedom of assembly without discrimination on grounds including political opinion. Freedom of peaceful assembly is protected in Article 23 of the Constitution, but in practice, the right

790 See above, note 761, Article 15; Law of the Republic of Kazakhstan, “On Investigation of Activities”, No. 154-XIII of 15 September 1994; Law of the Republic of Kazakhstan, “On amendments and addenda into several legislative acts of the Republic of Kazakhstan regarding counteraction to terrorism”, No. 63-V of 8 January 2013.

791 Privacy International, *Suggestions for privacy-related questions to be included in the list of issues on Kazakhstan, Human Rights Committee, 115th session, October-November 2015*, 2015, p. 4, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_ICO_KAZ_21508_E.pdf.

792 See, for example: Adilsoz, “The trial of Ruslan Ginatullin: he wanted to condemn or to initiate social discord?”, 14 November 2016, available at: <http://www.adilsoz.kz/news/show/id/2166>.

793 Human Right Watch, “Kazakhstan: Two Activists Detained”, 16 October 2015, available at: <https://www.hrw.org/news/2015/10/16/kazakhstan-two-activists-detained>.

794 Amnesty International, *Kazakhstan: Submission to the United Nations Human Rights Committee*, 2016, p. 15, available at: <https://www.amnesty.org/en/documents/eur57/4122/2016/en>.

is subject to “heavy-handed regulation of peaceful dissent”.⁷⁹⁵ The HRC has articulated concerns about “undue restrictions on the exercise of freedom of peaceful assembly.”⁷⁹⁶

Article 400 of the Criminal Code prohibits any violation in the procedures of holding rallies or demonstrations. There is evidence that these provisions have been applied in ways which discriminate against those expressing political opinions which conflict with the government. For example, in April and May 2016, there were widespread protests in response to the government’s proposed amendments to the Land Code. The police responded aggressively, detaining hundreds of people, including journalists and human rights defenders seeking to monitor events.⁷⁹⁷

At least two land rights activists, Max Bokayev and Talgat Ayan, have since been formally charged with criminal offences under Articles 174 and 400 of the Criminal Code for their involvement in the peaceful protests.⁷⁹⁸ At the trial an expert from the Center of Forensic Expertise (which is attached to the Ministry of Justice) testified that the “authorities” and specifically, the police, prosecutors and judges constitute a defined social group for the purposes of Article 174.⁷⁹⁹ Furthermore, she testified that the dissemination of negative information about members of Parliament lays the groundwork for “social enmity”.⁸⁰⁰ On 28 November 2016, both Max Bokayev and Talgat Ayan were found guilty of breach of Articles 174, 274 and 400 of the Criminal Code

795 See Human Rights Council, above, note 764, Para 65.

796 See above, note 583, Para 51.

797 Human Rights Watch, “Kazakhstan: Crackdown on Peaceful Protest”, 23 May 2016, available at: <https://www.hrw.org/news/2016/05/23/kazakhstan-crackdown-peaceful-protest>; Article 19, “Kazakhstan: Crackdown on Peaceful Protest Continues”, 23 May 2016, available at: <https://www.article19.org/resources.php/resource/38386/en/kazakhstan:-crackdown-on-peaceful-protest-continues>; Amnesty International, *Kazakhstan: a dark day for freedom of expression and peaceful assembly*, 2016, p. 1, available at: <https://www.amnesty.org/en/documents/eur57/4141/2016/en>.

798 Human Rights Watch, “Kazakhstan: Land Rights Activists on Trial Criminal Prosecution for Peaceful Protest”, 10 October 2016, available at: <https://www.hrw.org/news/2016/10/10/kazakhstan-land-rights-activists-trial>.

799 Zhovtis, Y., “Наблюдения за уголовным процессом по “земельному делу” правозащитника Евгения Жовтиса: Кафке и Оруэллу не снилось”, *Ratel.kz*, 9 November 2016, available at: http://www.ratel.kz/outlook/disfunksija_vlasti.

800 *Ibid.*

and were sentenced to five years' imprisonment, banned from engaging in public activities for three years upon release and fined 530 250 Tenge (about 1,500 USD).⁸⁰¹

In 2014, the Human Rights Committee found a violation of Articles 19(2) and 21 of the ICCPR, following a complaint by Bakhytzhan Toregozhin, a woman convicted and fined for organising an unauthorised protest.⁸⁰² The Committee held that the state had an obligation to prevent similar violations in the future, and that it must review legislation, in particular the 1995 Law on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations in the Republic of Kazakhstan which allowed local administration to impose restrictions on the right to freedom of assembly.⁸⁰³ To date, the government has not reviewed or amended this legislation in line with the Committee's recommendations and in July 2015 the General Prosecutor's Office informed Ms. Toregozhin that it could not implement the Committee's decision until a procedure for its implementation had been created under Kazakh law.⁸⁰⁴ This is notwithstanding the primacy of international law in Kazakh law and the Constitutional Court Decision noting that the decisions of international treaty bodies are binding under national law.⁸⁰⁵

A particularly potent example of the discriminatory denial of freedom of assembly on the basis of political opinion is the government's response to a 2011 protest in the city of Zhanaozen, where oil workers had been involved in a strike for several months in protest of low wages and company interference

801 International Partnership for Human Rights, "Kazakhstan: Ruling against civil society activists sets dangerous precedent", 1 December 2016, available at: <http://iphronline.org/kazakhstan-ruling-cs-activists-20161201.html>.

802 *Bakhytzhan Toregozhina v Kazakhstan*, Human Rights Committee, Communication No. 2137/2012, UN Doc. CCPR/C/112/D/2137/2012, 2014.

803 *Ibid.*, Para 9.

804 Independent Human Rights Law Consultant, *Submission to Human Rights Committee for the list of issues in relation to the second periodic report of Kazakhstan*, 2015, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCO%2fKAZ%2f21570&Lang=en.

805 Normative Resolution of the Constitutional Council of the Republic of Kazakhstan, "On the official interpretation of the provisions of Article 4 of the Constitution of the Republic of Kazakhstan with regard to the order of execution of the decisions of international organizations and their organs", No. 6 of 5 November 2009.

with trade union activities. On 16 December 2011, tensions erupted between strikers, police, and those attending Independence Day festivities. In a report following his mission to Kazakhshtan in 2015, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, noted that the police fired live ammunition on the crowd “indiscriminately, hitting unarmed demonstrators in the back and fleeing the square”.⁸⁰⁶

The United Nations Committee on Torture discussed the crackdown on protestors in Zhanaozen in its 2014 Concluding Observations, noting that it was:

*[P]articularly concerned at reports that most of the 37 defendants prosecuted in March 2012 in connection with the violence retracted their confessions at the trials, as did at least 10 witnesses, claiming that their confessions had been obtained through torture and ill-treatment while they were held incommunicado by the police. Nevertheless, those complaints of torture did not result in any prosecutions.*⁸⁰⁷

Thus, there is substantial evidence that the government has used both legal and extra-legal means to limit the enjoyment of the right to freedom of assembly, in a way which disproportionately impacts upon those whose political opinion and activities conflict with the regime.

Discriminatory Denial of Freedom of Association

Under Articles 22 of the ICCPR, read in conjunction with Article 2(1), Kazakhstan is required to guarantee the right to freedom of association, without discrimination on grounds including political opinion. Freedom of association is protected under Article 32 of the Constitution. As with freedom of assembly, however, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has noted that there are serious limitations on equal enjoyment of the right.⁸⁰⁸

806 See Human Rights Council, above, note 764, Para 75.

807 See above, note 528, Para 11.

808 See Human Rights Council, above, note 764, Para 65.

In 2015 amendments to the Law on Non-Governmental Organisations were introduced, providing government a central role in the distribution of both public and private funds to non-governmental organisations. According to the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, the proposed amendments, threatened the existence of non-governmental organisations working in Kazakhstan:

The possibility for a centralized Government's operator to distribute all grants irrespective of sources, be it public or private funds, enables the authorities to arbitrarily limit resources and to control the entire not-for-profit sector (...) By controlling the sources of funds, the draft law would limit associations' functional autonomy and put their independence and existence at serious risk.⁸⁰⁹

Despite international condemnation amendments to the law were passed in December 2015.⁸¹⁰ Civil society has objected to the changes, highlighting several issues surrounding the drafting and substance of the law.⁸¹¹ The potential for the amended Law to be applied in a way which discriminates against those organisations which challenge the government is clear.

Discriminatory Denial of the Right to Participate in Public Affairs

Article 25 of the ICCPR guarantees the right of all citizens, without discrimination on grounds including political opinion to:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

809 Office of the High Commissioner for Human Rights, "New Draft Law Threatens the Independence and Existence of NGOs in Kazakhstan, Warns UN Rights Expert", 15 October 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16608&LangID=E>.

810 Law "On the Activities of Non-Governmental Organisations", dated 2 December 2015, No. 429-V; Lillis, J., "Kazakhstan: NGO Law Approved amid Civil Society Resistance", *Eurasia Net*, 2 December 2015, available at: <http://www.eurasianet.org/node/76366>.

811 Kazakhstan International Bureau for Human Rights and Rule of Law and International Partnership for Human Rights, *Spotlight: Fundamental Rights in Central Asia, Recent developments in Kazakhstan*, 2016, p. 10, available at: <http://iphronline.org/wp-content/uploads/2016/03/Fundamental-rights-in-Kazakhstan-March-2016.pdf>.

- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Although Article 5 of the Constitution provides that “Kazakhstan shall recognise ideological and political diversity”, political pluralism is limited by restrictions on the existence and operation of opposition political parties and interference in the electoral process by the incumbent President and his party. As a result of the limitation on political pluralism, the state is failing in its obligations, arising under Article 25 of the ICCPR, to ensure that “every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 [of the ICCPR]” to participate in public affairs, to vote and be elected, and to participate in public service.

Research by both non-governmental and intergovernmental organisations has revealed that the suppression of opposition political parties in Kazakhstan occurs at all stages of the political process, from tight control over registration as a political party to consistent state interference with the operation of political parties. Registration of political parties is mandatory and the management of and participation in unregistered political parties is punishable by a fine.⁸¹² The Law on Political Parties⁸¹³ imposes “onerous obligations”⁸¹⁴ on groups seeking to be registered as a political party. To be eligible to register as a political party, the Law requires the party to have at least 40,000 members,⁸¹⁵ including an initial group of no fewer than 1,000 founding members who must represent two-thirds of the country’s regions, as well as a city of national status and the capital.⁸¹⁶ The HRC has criticised these requirements as constituting an “undue restriction on the right to freedom of assembly and political participation”.⁸¹⁷ Moreover, these requirements prevent

812 Code on Administrative Offences , above, note 318, Article 489.

813 Law of the Republic of Kazakhstan, “On Political Parties”, No. 344 of 15 July 2002, available at: http://adilet.zan.kz/eng/docs/Z020000344_.

814 See Human Rights Council, above, note 764, Para 21.

815 See above, note 813, Article 10(6).

816 *Ibid.*, Article 6(1).

817 See above, note 583, Para 53.

small or minority parties from being formed, negatively impacting on the potential for political pluralism in Kazakhstan and constituting a discriminatory limitation on the right to participate in public affairs.

The jurisdiction to assess claims for registration is held by the executive, in the form of the Ministry of Justice, a potential conflict of interest which the UN Special Rapporteur on the rights to peaceful assembly and association raised in his report in 2015.⁸¹⁸ In addition, the jurisdiction to de-register sits with the Central Election Commission a body which, although independent in theory, is effectively controlled by the President, who appoints the Chair and two of its members. The Law on Political Parties also allows for an indefinite number of extensions to the time allowed for review of a claim to be registered,⁸¹⁹ in effect leaving prospective political parties in a regulatory limbo.

In addition to the obstacles which face a new political party from registering, there have been a number cases in which established opposition parties have been subject to banning orders and liquidations. For example, on December 21 2012, a court in Almaty ordered a ban on the organisation and activities of the unregistered political party, Alga!,⁸²⁰ a party formed by civil society activists which had been a prominent opponent of the regime. The basis of this ban appears to have been the conviction of its leader, Vladimir Kozlov, for “inciting discord” following his support for striking oil workers in the city of Zhanaozen.⁸²¹ The UN Special Rapporteur on the rights to freedom of assembly and association noted that the treatment of the Alga! party was “emblematic of a more general trend to marginalize political leaders voicing dissent”.⁸²²

Moreover, in August 2015, a court in Almaty ordered the liquidation of the Communist Party of Kazakhstan for failing to meet the threshold number of

818 See above, note 813, Article 10; see also Human Rights Council, above, note 764, Para 23.

819 *Ibid.*

820 Human Rights Watch, “Central Asia: Widespread Rights Abuse, Repression”, 31 January 2013, available at: <https://www.hrw.org/news/2013/01/31/central-asia-widespread-rights-abuse-repression>. See also Resolution of the European Parliament on the Human Rights Situation in Kazakhstan, 18 April 2013, 2013/2600(RSP), available at: <http://www.europarl.europa.eu/document/activities/cont/201304/20130429ATT65434/20130429ATT65434EN.pdf>.

821 See Human Rights Council, above, note 764, Paras 26–27.

822 *Ibid.*, Para 29.

members.⁸²³ Following the court decision, Toleubek Mahyghanov, the First Secretary of the Communist Party, argued that the party did have the requisite number of members, suggesting that the ban was a targeted attempt to silence political opposition.⁸²⁴ The Communist Party had routinely opposed the government and had faced repeated attempts by the state to limit its activities. In 2011, the party was suspended for six months following its work in partnership with the Alga! Party; this ban was then extended following an apparently minor breach of the terms of the suspension when a party official was quoted in a newspaper.⁸²⁵

One of consequences of the regulatory framework for registration of political parties, and the influence which the executive has in it, is the lack of pluralism among established political parties. This is demonstrated by the fact that in the 2016 general election to the Kazakh lower house (the Mazhilis), only one party – the All-Nation Social-Democratic Party of Kazakhstan – actively questioned the policies of the ruling party and expressed its concerns over the electoral process.⁸²⁶ As noted by the OSCE, the other five parties in the election refrained from challenging the ruling party and did not propose any political alternatives.⁸²⁷ Similarly, in relation to the 2015 Presidential elections the OSCE found that the current President and his party dominated politics, and that there was a lack of credible opposition, with many critics of the President being imprisoned or exiled.⁸²⁸ There were also reports of voters being pressurised to vote for the President.⁸²⁹

823 Human Rights Watch, “Kazakhstan: Events of 2015”, 2015, available at: <https://www.hrw.org/world-report/2016/country-chapters/kazakhstan>.

824 Radio Azattyq, “Opposition Communist Party to be Shut Down”, 17 August 2015, available at: <http://rus.azattyq.org/content/oppozitsionnaya-kompartiya-kazakhstana-zakrytie/27190500.html>.

825 Kilner, J, “Kazakhstan extends ban on Communist Party”, *The Telegraph*, 26 April 2012, available at: <http://www.telegraph.co.uk/news/worldnews/asia/kazakhstan/9227899/Kazakhstan-extends-ban-on-Communist-Party.html>.

826 OSCE ODIHR, *Republic of Kazakhstan: Early Parliamentary Elections, 20 March 2016, OSCE/ODIHR Election Observation Mission Final Report*, 2016, p. 12, available at: <http://www.osce.org/odihr/elections/kazakhstan/248781?download=true>.

827 *Ibid.*, p. 2.

828 OSCE ODIHR, *Republic of Kazakhstan: Early Presidential Elections 26 April 2015, OSCE/ODIHR Election Observation Mission Final Report*, 2015, p. 1, available at: <http://www.osce.org/odihr/elections/kazakhstan/174811?download=true>.

829 *Ibid.*, p. 2.

Conclusion

It is a well-rehearsed fact that the government of Kazakhstan maintains a tight grip on all forms of political activity in the country. Reports from a wide range of authoritative sources provide evidence of the arrest and detention of political and civil society activists, lawyers, journalists, denial or limitation of the rights to freedom of expression, assembly and association, and the denial of political pluralism. In all cases, there is evidence that already restrictive laws are applied in such a way as to discriminate on the basis of political opinion, targeting those who oppose – or are perceived to oppose – the regime.

3.6 Discrimination and Inequality Affecting Persons with Disabilities

As a party to the Convention on the Rights of Persons with Disabilities (CRPD),⁸³⁰ Kazakhstan is under an obligation to “ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability”.⁸³¹ In addition, as a party to the ICCPR and the ICESCR Kazakhstan is also required to prohibit discrimination on the basis of disability in the enjoyment of all civil, political, economic, social and cultural rights.⁸³²

While Kazakhstan adopted legislation providing rights for persons with disabilities in 2005, there is significant evidence that persons with disabilities continue to face discrimination and inequality in a range of areas of life.

The most recent estimates produced by the government indicate that approximately 3.5% of the population currently has some form of disability.⁸³³ However, the World Health Organization, however, estimates that approximately 15% of all people live with some form of disability, of whom 2–4%

830 Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, 2006.

831 *Ibid.*, Article 4.

832 The Committee on Economic, Social and Cultural Rights (CESCR) has stated that discrimination on the basis of disability in enjoyment of Covenant rights is prohibited by virtue of the term “other status” in the Article 2(2). (See above, note 294, Para 28).

833 KazInform, “Kazakhstan has more than 600,000 disabled people”, 21 November 2013, available at: http://www.inform.kz/kz/kazakhstan-has-more-than-600-000-disabled-people_a2607618.

experience significant difficulties in functioning.⁸³⁴ This disparity in figures demonstrates the divergent approach taken to assessing disability, indicating that the definition used in Kazakhstan is too narrow and restrictive.

Cultural Attitudes and the Position of Persons with Disabilities in Society

Civil society organisations have noted widespread stigma concerning disability in Kazakhstan, with a 2014 joint civil society report noting that public attitudes toward children with disabilities and their families “remain negative”.⁸³⁵

In its initial report to the CESCR, Kazakhstan acknowledged the adverse impact on persons with disabilities of the state’s shift from a socialised economy with high levels of social welfare provision by the state to a free market economy:

*Kazakhstan’s social problems are due to the fact that while previously the State had borne a considerable part of social spending (on education, health, social security, etc.) and, in general terms, the services in question were available to the whole population regardless of individual material situations, with the switch to a market system under which people have to pay for social services the problem of protecting social rights became more acute, for many of the services were beyond the means of the poorer members of the population. As is apparent from the applications made to the Human Rights Ombudsman, one serious obstacle to the resolution of complaints filed by persons with disabilities is the absence in practice of effective arrangements to protect their rights, together with the inertia and the unresponsive attitude of State organs.*⁸³⁶

834 World Health Organization, *World Report on Disability: Summary*, 2011, pp. 7–8.

835 International Catholic Child Bureau and Others, *Submission to the Universal Periodic Review: Kazakhstan*, 2014, p. 3, available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1245&file=EnglishTranslation>.

836 CESCR, *Initial reports submitted by States parties under articles 16 and 17 of the Covenant*, UN Doc. E/C.12/KAZ/1, 17 August 2009, Para 256.

Legal and Policy Framework

The Constitution of Kazakhstan does not expressly prohibit discrimination on the grounds of disability. However, the list of grounds articulated in the Constitution is non-exhaustive; as such, it is arguable that disability is encompassed as a form of “other circumstance” as defined in Article 14 of the Constitution.⁸³⁷ This approach would be consistent with that taken by the CESCRC when considering disability as a form of “other status” under the ICESCR.⁸³⁸ In addition, under Article 28 of the Constitution, individuals with disabilities are guaranteed a minimum wage, social security and pension. Beyond the Constitution, Kazakhstan has adopted a number of laws which provide persons with disabilities with protections in areas such as employment and social life.⁸³⁹

However, while any legislative developments which advance the position of persons with disabilities are welcome, the legal definition of disability which is employed in the Kazakhstani legal framework is a matter for concern. As noted above, official statistics on the numbers of persons with disabilities in Kazakhstan are inconsistent with World Health Organisation estimates, largely because of the more restrictive definition applied by Kazakhstan. Article 1 of the Law on Social Protection of Disabled Persons 2005 (as amended), defines a person with disability as:

A person who has a health defect with a persistent damage to the bodily functions caused by ailments, injuries (wounds, traumas, contusions) and their after-effects,

837 See Constitution of the Republic of Kazakhstan, above, note 445, Article 14 (2).

838 See above, note 294, Para 28.

839 A 2013 report by the United Nations Development Program gives an overview of the laws which have recently been implemented in respect to disability (United Nations Development Program Regional Centre for Europe and the CIS, *Promoting the Rights of Persons with Disabilities in Central Asia: Institutional Experiences and the Way Forward*, 2013, p. 15, available at: <http://hrbaportal.org/wp-content/files/Promoting-the-Rights-of-Persons-with-Disabilities-in-Central-Asia.pdf>). Additionally, a 2014 UNICEF Report gives an overview of the relevant legislation as regards children with disabilities (UNICEF, *Situation Analysis of Children with Disabilities: for the Development of an Inclusive Society in the Republic of Kazakhstan*, 2014, Box 4, p. 27, available at: <http://www.pressat.co.uk/media/uploads/b954526ae8e934dc5f5c08f6676df537.pdf>).

*defects resulting in a restricted life activity and a necessity for social protection of such a person.*⁸⁴⁰

As discussed in greater detail in section 2.2.2. this definition focuses on a person's ability to participate in all aspects of life, and as such is broadly reflective of the social model of disability used in the CRPD.⁸⁴¹ Moreover, while the definition in Article 1 appears to be closed, other provisions in the Law make it clear that disability includes intellectual, mental and sensory impairments.⁸⁴² As discussed in greater detail above, the Law guarantees persons with disabilities all socio-economic and individual rights under the Constitution and other national law, including the right to education employment and housing.⁸⁴³ However, it should be noted that the Law makes numerous references to the term 'invalid',⁸⁴⁴ in contravention of the recommendations of the Committee on the Rights of Persons with Disabilities (the CRPD Committee).⁸⁴⁵ Since February 2015, in anticipation of the ratification of the CRPD, Kazakhstan has been considering amendments to the 2005 Law,⁸⁴⁶ which it is hoped will address such problems.

In addition to legislation, Kazakhstan has adopted the Plan of Action for the Provision of Rights and Improvement of the Quality of Life of Disabled Per-

840 Law of the Republic of Kazakhstan, "On Social Protection of Disabled Persons in the Republic of Kazakhstan", No. 39 of 13 April 2005, Article 1.

841 Article 1 of the Convention on the Rights of Persons with Disabilities (above, note 830) defines disability as including "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".

842 See above, note 830, Article 12.

843 See above, note 840, Article 14.

844 *Ibid.*, Article 83. See also UNICEF, above, note 839, p. 16.

845 See, for example, the Concluding Observations of the Committee on the Rights of Persons with Disabilities on Ukraine: "The Committee (...) is of the opinion that the use of terminology in Ukrainian that refers to persons with disabilities as "invalids" or "persons with limited abilities" is not consistent with the Convention (...) The Committee calls upon the State party to remove the reference to "invalids" or "persons with limited abilities" from all its legislative and policy documents" (Committee on the Rights of Persons with Disabilities, *Concluding Observations in relation to the initial report of Ukraine*, UN Doc. CRPD/C/UKR/CO/1, 4 September 2015, Paras 5–6).

846 Disabled World, *On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Protection of the Rights of Persons with Disabilities*, 2015, available: <http://www.disabled-world.com/news/pressreleases/ratifies.php>.

sons in the Republic of Kazakhstan for 2012–2018 (the Plan). The Plan focuses on four key areas: the improvement of existing social protection legislation for persons with disabilities; the adoption of infrastructure to improve accessibility for persons with disabilities to all spheres of life; the prevention of disability; and the implementation of a public education programme to raise awareness about the need to protect the rights of persons with disabilities.⁸⁴⁷ The first phase of the Plan was implemented from 2012–2013,⁸⁴⁸ and the second phase from 2014–2015;⁸⁴⁹ the government approved a resolution approving the third phase in April 2016.⁸⁵⁰

Institutionalisation and Discriminatory Ill-treatment by State Actors

Article 19 of the CRPD recognises the right of all persons with disabilities, including persons with mental disabilities “to live in the community, with choices equal to others”. This is complemented by Article 14, which states that disability should in no case be the basis for deprivation of liberty. As the CRPD Committee has noted, the right to live independently and the ability to make one’s own choices are pre-requisites for the fulfilment of the right to legal capacity of disabled persons on an equal basis with others.⁸⁵¹

Kazakhstan continues to institutionalise persons with mental disabilities, in contravention of Articles 19 and 14 of the CRPD. In a 2014 report to the Universal Periodic Review, Kazakhstani civil society organisations noted that:

847 Resolution of the Government of the Republic of Kazakhstan, “On the approval of the first phase (2016–2018) of the Action Plan to protect the rights and improve the quality of life of persons with disabilities in the Republic of Kazakhstan for 2012–2018”, No. 213 of 14 April 2016, available at: <http://adilet.zan.kz/rus/docs/P1600000213>.

848 Resolution of the Government of the Republic of Kazakhstan, “On the approval of the first phase (2012–2013) of the Action Plan to protect the rights and improve the quality of life of persons with disabilities in the Republic of Kazakhstan for 2012–2018”, No. 64 of 16 January 2012, available at: <http://adilet.zan.kz/rus/docs/P1200000064>.

849 Resolution of the Government of the Republic of Kazakhstan, “On the approval of the second phase (2014–2015) of the Action Plan to protect the rights and improve the quality of life of persons with disabilities in the Republic of Kazakhstan for 2012–2018”, No. 254 of 26 March 2014, available at: <http://adilet.zan.kz/rus/docs/P1400000254>.

850 See above, note 847.

851 Committee on the Rights of Persons with Disabilities, *General Comment No. 1: Article 12: Equal recognition before the law*, UN Doc. CRPD/C/GC/1, 2014, Para 44.

*There is no mechanism of deinstitutionalization of special government facilities holding people with mental disabilities. Patients are held in large institutions for 200–800 places, although it is not recommended by medical reasons to keep such large number of patients in one place.*⁸⁵²

Children with disabilities are subject to particularly poor treatment, as orphanages for children with physical and mental disabilities have been reported as being overcrowded and unsanitary, with insufficient staff to care adequately for children's needs.⁸⁵³

Moreover, there are deeply concerning reports of discriminatory ill-treatment of persons held in such institutions, contrary to Article 15 of the CRPD, which provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. In 2009, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment reported abuse in a psycho-neurological boarding house in Talgar managed by the Department for Coordination of Occupation and Social Programmes of Almaty Oblast:

*The Special Rapporteur received some allegations of ill-treatment, but it was difficult to assess how widespread these practices were. He is concerned at complaints of extensive use of tranquilizers when patients do not comply with orders and at the reportedly high number of deaths in 2008 of patients transferred from other institutions. He also received allegations of cases of starvation in 2008. Other concerns were the procedure for placement in the boarding house as well as the manner in which such placement was reviewed, and the lack of any independent monitoring of the boarding house.*⁸⁵⁴

852 See above, note 555, Para 39.

853 *Ibid.*

854 See above, note 525, para 34.

The Special Rapporteur also documented individual cases of torture of persons with disabilities, providing the following account:

Male detainee, had been detained in the SIZO [investigation detention facility] in Almaty for six weeks. Upon arrest in the Zhetysuyskiy District he was taken to the district police station, where he was held in custody for two days. The interrogation was first carried out in an office, but as he did not “cooperate”, a gas mask was put over his head, and he was nearly suffocated and fainted as the air in-flow was stopped. Furthermore, they put a biro between his fore- and middle finger and pressed his fingers together, which caused strong pain. Targeting his disabled legs, and his inability to splay them more than 40 cm, they forced them further apart, which also resulted in serious pain and difficulties in walking. He confessed under this torture and was accused of having committed an organized crime.⁸⁵⁵

Other bodies have found evidence of discriminatory torture and other forms of ill-treatment against persons with disabilities by state actors. In a report to the Universal Periodic Review in 2014, a group of Kazakhstani non-governmental organisations alleged that a prisoner with a disability was beaten after filing a report against the police and that he was denied insulin, causing him to faint.⁸⁵⁶ In 2014, UNICEF interviewed staff working in educational institutions for children with disabilities and found that 56% of them had witnessed violence by other staff against the children in their care.⁸⁵⁷

Accessibility

Accessibility is a key principle of the CRPD.⁸⁵⁸ Specifically, under Article 9 of the Convention, states parties are required to ensure access on “an equal ba-

855 *Ibid*, Appendix, Para 41.

856 Kazakhstan NGOs Coalition against Torture and others, *Universal Periodic Review Second Cycle: Kazakhstan, Contributions for the Summary of Stakeholder’s information (Joint Submission 4)*, 2014, p. 10.

857 See UNICEF, above, note 839, p. 18.

858 See above, note 830, Article 3(f).

sis with others” to the physical environment, transportation, information and communications, and to other facilities and services open or provided to the public, in both urban and rural areas.

One particularly stark example of the state’s failure to meet its accessibility obligations under the Convention is in the area of access to justice, where a lack of reasonable accommodation measures mean that even something as critical as the legal system remains inaccessible to persons with disabilities. Civil society organisations have noted serious problems facing persons with disabilities in accessing justice, reporting in 2014 that:

*Despite positive developments, persons with disabilities continue to experience serious problems in practice. For instance, disabled persons have limited access to justice because: 1) courthouses are not adapted for access by persons with various disabilities; 2) rights of the disabled are not duly protected in court proceedings (lack of legal aid lawyers, sign language interpreters, etc).*⁸⁵⁹

A 2014 research study identified problems with physical accessibility to court buildings, the need for increased availability of sign language interpreters and materials accessible to persons with visual impairments.⁸⁶⁰

Employment

Under Article 27 of the CRPD, Kazakhstan has committed to ensure the right to work freely in a chosen labour market in an open, inclusive and accessible environment. As a result, the state is under a duty to prohibit discrimination in the employment process and ensure equality in conditions of work (including remuneration and equal opportunities); union rights; vocational training; opportunities for self-employment; promotion in the private sector (which may include affirmative action programmes and incentives); reasonable accommodation; and vocational and professional rehabilitation.⁸⁶¹

859 See above, note 555, Para 38.

860 Reimer, R., *Monitoring Study: Providing Access to Persons with Disabilities*, 2014.

861 See above, note 830, Article 27(1).

The Labour Code contains a number of provisions which seek to protect persons with disabilities in employment. Article 25 provides that persons with disabilities must have equal rights in concluding employment agreements, while Article 28 provides that any contract of employment with a person with disabilities must provide for the equipment necessary to meet an individual's needs.⁸⁶²

However, certain provisions of the Labour Code, while ostensibly designed to protect persons with disabilities, are discriminatory. For example, Article 69 mandates a shorter working week for persons with a certain class of disability,⁸⁶³ while Article 77 prohibits persons with disabilities from working overtime. As noted in section 2.2.2, these measures undermine freedom of choice in employment for persons with disabilities and create a disincentive for employers, who will perceive the employment of persons with disabilities as entailing restrictions on the flexibility of their workforce.

In addition to the protective measures provided in the Labour Code, the government has instituted a number of positive action programmes designed to promote access to employment for persons with disabilities. Article 31 of the Act on the Social Protection of Disabled Persons, local authorities must set a quota, equal to 3% of the total workforce for the provision of jobs for disabled persons.⁸⁶⁴

Despite these positive measures, persons with disabilities continue to experience discrimination and disadvantage in employment. In its 2014 report to the Committee on the Rights of the Child, Kazakhstan noted that:

[E]mployers decline to recruit disabled persons in the belief that they will not be able to carry out the work assigned to them. This type of attitude stems from misgivings and stereotypical ideas whereby greater significance is ascribed to a person's disability than to his or her capabilities. Work has therefore begun, taking ac-

862 See above, note 491, Articles 25 and 28.

863 This is also mandated by Article 32 of the Law on Social Protection of Disabled Persons (above, note 840).

864 See above, note 652, Para 36.

*count of the experience of developed countries, to investigate the problem with the involvement of disabled people themselves, and a long-term work plan is being developed in order to improve the quality of life of persons with special needs.*⁸⁶⁵

Nearly three quarters (71%) of persons with disabilities who participated in a 2015 study in Almaty stated that their disability was a barrier to obtaining employment; the next most significant barriers identified were lack of qualifications (50%); lack of preparation by employers (46%); and lack of adaptations to the workplace (33%).⁸⁶⁶ Employers participating in the same study indicated that the greatest incentive to employing persons with disabilities would be tax breaks for employing persons with disabilities and compensation for refitting the workplace.⁸⁶⁷

Education

Article 24(1) of the CRPD provides that parties to the Convention “recognise the right of persons with disabilities to education” and that they “shall ensure an inclusive education system at all levels”. In addition, Article 24(2) sets out specific obligations for state parties, including in particular that “[p]ersons with disabilities are not excluded from the general education system on the basis of disability” and that they “can access an inclusive, quality and free primary education and secondary education on an equal basis with others”.

Under Article 14 of the Law on Social Protection of Disabled Persons, persons with disabilities have the right to an education. Article 29 of the Law provides that persons with disabilities are guaranteed “free primary, basic secondary and general secondary education”. Both this article and is Law and Article 26 of the Law on Education provide for a quota for admissions for persons with

865 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.

866 *Ibid.*

867 Alaev, V., *Monitoring study – The specifics of employing persons with limited capabilities in the Republic of Kazakhstan, with Almaty and Almaty oblast as examples*, 2015.

disabilities secondary, higher and professional education.⁸⁶⁸ As noted in Part 2.2.3 above the quota has been set as 1% for persons with a certain class of disabilities.⁸⁶⁹ Under Article 8 of the Law On Education, children with “developmental disabilities” (a term which is not defined in the Law) are entitled to an education, treatment for such disorders and social rehabilitation for which the state will bear the cost.⁸⁷⁰

In its 2011 report to the Committee on the Rights of the Child, Kazakhstan indicated that there are a range of special education institutions in the country, including: 34 special kindergartens and 280 special groups in mainstream kindergartens attended by 9,676 children; and 101 special schools and 1,155 special classes in mainstream schools, attended by 26,000 children.⁸⁷¹ The state also provides special educational support in mainstream schools for 17,150 children, while an additional 9,391 children are taught at home in individual programs.⁸⁷² Under the Law ‘On Social, Medical and Educational Support for Children with Limited Capabilities’, new educational institutions have been created to provide an education to children unable to attend mainstream schools.⁸⁷³

While the Committee on the Rights of the Child praised Kazakhstan’s efforts in creating a “barrier free” environment for children with disabilities, it has also recommended that the state “prioritize inclusive education over the placement of children in specialized institutions”.⁸⁷⁴

Persons with disabilities are underrepresented in higher education, notwithstanding the quota specified in Article 29 of the Law on Social Protection of

868 See above, note 471, Article 26.

869 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.

870 See above, note 471, Article 26.8.

871 See above, note 865, Para 417.

872 *Ibid.*

873 Law of the Republic of Kazakhstan, “On Social, Medical and Educational Support for Children with Limited Capabilities”, No. 343-II of 11 July 2002, Article 9(3); *ibid.*, Para 418.

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

Disabled Persons and Article 26 of the Law on Education.⁸⁷⁵ It is notable that the quota is set at only 1%, and this does not correspond with the number of persons with disabilities in the population as estimated by the government, let alone the much higher WHO estimates discussed above.⁸⁷⁶ The under-representation of persons with disabilities in higher education further inhibits the ability of persons with disabilities to gain employment.⁸⁷⁷

Children with Disabilities

The state estimates that 1.33% of Kazakhstanis under the age of 18 have a disability,⁸⁷⁸ a figure which is significantly lower than the aforementioned WHO global estimates. As such, it appears that substantial numbers of children with disabilities are not identified as such and are thus not able to access to necessary social and other services. UNICEF has identified the frequent experiences of discrimination, social stigma and exclusion, as among the factors contributing to the non-identification of children with disabilities.⁸⁷⁹

In 2014, UNICEF made several criticisms of the current Kazakh system regarding social integration for children with disabilities. In particular, it noted that “disability is one of the main reasons why parents in Kazakhstan abandoned children in statutory establishments”.⁸⁸⁰ It went on to note that through a mixture of problems organising services; poor implementation of laws designed to protect disabled individuals; and a lack of resources (such as trained teachers and support staff); children with disabilities continue to experience disadvantages in a range of areas of life.⁸⁸¹

According to the state, over 30% of children with disabilities have access to social service institutions including 3 residential facilities for children with motor deficiencies; 17 residential psycho-neurological facilities; 6 rehabilita-

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

876 See above, note 834, pp. 7–8.

877 See above, note 875.

878 See UNICEF, above, note 839, p. 17.

879 *Ibid.*

880 *Ibid.* p. 18.

881 *Ibid.* p. 28.

tion centres and 160 social care units.⁸⁸² Treatment is free and includes rehabilitation; with certain individuals given free medicine and allowed special food.⁸⁸³ Thirty-nine regional centres provide comprehensive rehabilitation;⁸⁸⁴ whilst \$1.7 million dollars has been allocated for the “introduction of standards for the provision of special social services” to children with disabilities in residential homes.⁸⁸⁵

As noted above, Article 19 of the CRPD stresses the right of persons with disabilities to live independently. As such, the development of non-residential social care units and rehabilitation centres is welcome. Nevertheless, as the government’s own data reveals, significant further progress must be made in deinstitutionalisation, if the state is to comply with its obligations under the CRPD.

Conclusion

Kazakhstan has adopted a number of measures with the aim of protecting and promoting the rights of persons living with disabilities from discrimination, including notably the Law of the Republic of Kazakhstan “On Social Protection of Disabled Persons in the Republic of Kazakhstan” and the Plan of Action for the Provision of Rights and Improvement of the Quality of Life of Disabled Persons in the Republic of Kazakhstan for 2012 – 2018. Nevertheless, the evidence suggests that the state must do more if it is to meet the obligations which it will assume once it ratifies the CRPD. The maintenance of paternalistic, discriminatory legal provisions and the continued institutionalisation of persons with mental disabilities indicate that state policy does not reflect international standards. Accessibility is a clear concern, and persons with disabilities are underrepresented in both employment and education.

3.7 Discrimination and Inequality on the Basis of Health Status

Health status is a well-recognised ground of discrimination in international law. The CESCR has recognised that Kazakhstan and other states party to

882 See above, note 865, Para 401.

883 *Ibid.*, Para 402.

884 *Ibid.*, Para 403.

885 *Ibid.*, Para 406.

the ICESCR are required to guarantee all of the economic, social and cultural rights in the Covenant without discrimination on the basis of health status, including HIV status.⁸⁸⁶ This reflects a consensus position that the term “other status” in both the ICESCR and the ICCPR should be read as inclusive of health status as a protected characteristic.⁸⁸⁷ Consequently, Kazakhstan is required to guarantee all of the civil and political rights in the ICCPR without discrimination on the basis of health status, by virtue of Article 2(1) and, by virtue of Article 26 of the ICCPR, it is required to ensure that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination”, including on the grounds of health status.

3.7.1 Discrimination and Inequality on the Basis of HIV

The incidence of HIV in Kazakhstan is unclear, as data from different sources give varying figures. In 2014, the Joint United Nations programme on HIV/AIDS (UNAIDS) estimated the number of people living with HIV in Kazakhstan to be between 18,000 and 25,000.⁸⁸⁸ Kazakhstan’s report to UNAIDS in 2015, however, gave the number of people living with HIV at the end of December 2014 as 16,318,⁸⁸⁹ and the cumulative number of HIV cases to be 22,109.⁸⁹⁰ Prevalence has increased in the past decade, rising from 0.1% in 2010⁸⁹¹ to 0.2% in 2014,⁸⁹² though this remains relatively low compared to the 0.6% prevalence rate in Central Asia and Eastern Europe.⁸⁹³ UN Women has de-

886 See above, note 294, Para 33.

887 See, for example: United Nations Commission on Human Rights, *Report on the Fifty-First Session*, UN Doc. E/CN.4/1995/176, 30 January – 10 March 1995, p. 141, Para 1.

888 Joint United Nations programme on HIV/AIDS (UNAIDS), *HIV and AIDS Estimates Kazakhstan*, 2014, available at: <http://www.unaids.org/en/regionscountries/countries/kazakhstan>.

889 Ministry of Health and Social Development of the Republic of Kazakhstan, *National report on the progress in measures to respond to AIDS. Reporting period: 2014*, 2015, p. 8, available at: http://www.unaids.org/sites/default/files/country/documents/KAZ_narrative_report_2015.pdf.

890 *Ibid.*

891 World Economic Forum, *The Global Competitiveness Index 2011–2012: Country/Economy Profiles: Kazakhstan Key Indicators*, 2011, p. 223, available at: http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf.

892 World Economic Forum, *The Global Competitiveness Index 2015-2016: Country/Economy Profiles: Kazakhstan Key Indicators*, 2015, p. 219, available at: <http://www3.weforum.org/docs/gcr/2015-2016/KAZ.pdf>.

893 AVERT, *HIV and AIDS in Eastern Europe & Central Asia*, visited December 2016, available at: <http://www.avert.org/professionals/hiv-around-world/eastern-europe-central-asia>.

scribed the wider Central Asia region as experiencing “one of the youngest and fastest-growing HIV epidemics in the world”.⁸⁹⁴

Historically the most at risk groups in Kazakhstan have been intravenous drugs users (IDUs) and sex workers. In 2014, more than 58.3% of the cases of HIV registered with the authorities were attributed to intravenous drug use.⁸⁹⁵ However the demographics of the HIV epidemic are changing rapidly, and the most recent Kazakhstani action plan on HIV/AIDS targeted sex workers and men who have sex with men (MSM), as well as IDUs.⁸⁹⁶ Men are over-represented amongst those contracting HIV, with UN Women reporting that, 44.1% of new cases of HIV in 2015 involved women.⁸⁹⁷

Stigma and prejudice towards people living with HIV has been a significant problem in Kazakhstan. Testimony published by Human Rights Watch in 2003 offers a good indication of the extent of this stigma.⁸⁹⁸ For example, Alex Pasko, a 23 year-old living with HIV, described his sister’s attitude towards people with HIV as follows:

*My sister said to me, ‘If I had my way, I would gather all of you together and cremate you, or put you behind a barbed-wire fence.’ My own sister, whom I love so much and would be ready to give my life for, said this to me.*⁸⁹⁹

There is no explicit prohibition of discrimination on the basis of HIV or other health status in Kazakhstani law. Article 14(2) of the Constitution

894 UNAIDS, *AIDS by the numbers 2015*, 2015, p. 9, available at: http://www.unaids.org/sites/default/files/media_asset/AIDS_by_the_numbers_2015_en.pdf.

895 Ministry of Health of the Republic of Kazakhstan, *National Report on Progress Towards the Implementation of the Global Response to AIDS*, 2014, available at: http://www.unaids.org/sites/default/files/country/documents//KAZ_narrative_report_2014.pdf.

896 Resolution of the Government of the Republic of Kazakhstan, “On Approval of the Action Plan on HIV/AIDS for 2011–2015”, No. 41 of 29 January 2011.

897 UN Women, “Inspiring and advocating for women living with HIV in Kazakhstan”, 24 April 2015, available at: <http://www.unwomen.org/en/news/stories/2015/4/inspiring-and-advocating-for-women-living-with-hiv-in-kazakhstan#sthash.4AlHTvZO.dpuf>.

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

899 *Ibid.*, p. 37.

prohibits discrimination based on a non-exhaustive list of grounds, which omits health status. While it could be argued that health status is a form of “other circumstance” within the meaning of Article 14(2), there are no national court decisions which recognise health status as falling within this conditional protection.

Nevertheless, there have been limited attempts to address some of the harms faced by persons living with HIV through the law. Under the Labour Code, an employer has no right to require that a current or prospective employee disclose their HIV status.⁹⁰⁰ Article 113(2) of the Code on Public Health and the Health Care System (the “Health Code”), in force since 18 September 2009, prohibits the dismissal of employees because of their HIV status as well as refusal to hire someone because of their HIV status.⁹⁰¹ Article 112 of the Code prohibits discrimination on the grounds of a persons’ HIV status in the grant of healthcare.⁹⁰²

Despite these protections, there are reports of discrimination and disadvantage affecting people living with HIV. For example, Svetlana cited by journalist Tatyana Em in a report on HIV in Kazakhstan spoke of her experience of harassment and her fear of discrimination in employment:

*I work in the service sector, and I hide my HIV status as I have faced insults and physical abuse a number of times. (...) People immediately become crude and rude to me when they find out about my status.*⁹⁰³

Discrimination by doctors, nurses and other healthcare personnel against those living with HIV has been widely reported both in the past and in recent years, with lack of information and understanding about the disease compounding stigma. Human Rights Watch reported that in August 2002, a

900 See above, note 491: Article 32 states that a medical certificate may only be a condition of employment if health testing is mandatory under the Labour Code; Article 185 of the Labour Code provides that health testing is only mandatory for harmful or hazardous work; see also note 889, p. 23.

901 See above, note 660, Article 113(2).

902 *Ibid.*, Article 112.

903 Em, T., “Equality as a Fact, Not a Theory”, *Central Asian Bureau for Analytical Reporting*, 8 September 2015, available at: <http://cabar.asia/en/tatyana-em-equality-as-a-fact-not-a-theory>.

group of 250 doctors, nurses, and other medical personnel wrote to the Prime Minister to protest changes to testing requirements which removed mandatory testing for IDUs and prisoners.⁹⁰⁴ Individual reports of discrimination in accessing healthcare are common. One of the individuals interviewed by Human Rights Watch described the negative attitudes of healthcare professionals to patients with HIV.

*[I]n the hospital the attitude of the doctors and nurses towards [persons living with AIDS] that have been hospitalized from here, well, they're just horrible. They stop speaking [to the patient] as soon as they find out that they're HIV-position.*⁹⁰⁵

Such attitudes remain prevalent. A 2015 media report concluded that stigma and ignorance contributed to discriminatory denial of health services for people living with HIV:

*In community clinics, doctors are extremely reluctant in receiving HIV-infected patients once they learn about the patient's status. And it is much worse for hospitalization [of patient] with multiple infections such as tuberculosis and hepatitis. It takes months to obtain a quota for free treatment. And this can be deadly for a person with weak immune system.*⁹⁰⁶

Multiple Discrimination

There is evidence of multiple discrimination on the basis of gender and HIV status and sexual orientation and HIV status. Women and girls are at increased risk of rejection by their families if their HIV status becomes known, and women living with HIV face violence, stigma, and discrimination.⁹⁰⁷ This is particularly true of women living in rural areas, where “stereotypes

904 See above, note 898, p. 40.

905 *Ibid.*, p. 39.

906 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-hiv-people-are-dying-because-of-people>.

907 See above, note 903.

(...) strongly affect and increase the vulnerability of women in regards to HIV".⁹⁰⁸ One woman interviewed by the media described how she contracted HIV from her husband and then violence and stigma from her husband and his family as a result:

*At that time, [my husband] already knew he was infected with HIV; he would go to the hospital for tests but would not tell me about it. When I was diagnosed with HIV, his family beat me and forced me out of the house. I was left alone, without my children, with no money and no roof over my head.*⁹⁰⁹

Official statistics for 2013 put the incidence rate of HIV among MSM at 1.2%.⁹¹⁰ Widespread stigma and discrimination against LGBT persons means that MSM are frequently unwilling to tell state-sanctioned surveys and doctors that they have sex with men, leading to a distortion in statistics.⁹¹¹ As Human Rights Watch noted in 2003:

*Men who have sex with men in Kazakhstan experience such severe stigma and discrimination that outreach to them has been extremely limited, resulting in little reliable statistical or even anecdotal information about the impact of HIV/AIDS on them.*⁹¹²

In 2014, the Global Fund noted that "little attention and financing are given to combat the HIV/AIDS epidemic among MSM in Kazakhstan".⁹¹³ Research conducted by the Johns Hopkins Center for Public Health and Human Rights, the Global Health Research Center of Central Asia at Columbia University

908 *Ibid.*

909 *Ibid.*

910 See above, note 895, p. 6.

911 Forestier-Walker, R., "HIV infection rates rising in Kazakhstan", *Aljazeera*, 22 May 2013, available at: <http://www.aljazeera.com/video/middleeast/2013/05/201352234148861810.html>.

912 See above, note 898, p. 41.

913 Eurasian Coalition on Male Health, *The Global Fund New Funding Model and Country Dialogue: Involvement of MSM and Transgender People in Eastern Europe and Central Asia*, 2015, p. 15, available at: <http://www.globalfundadvocatesnetwork.org/wp-content/uploads/2015/03/ECOM.Country-Dialogue-Report.pdf>.

(GHRCCA), and the local civil society organisation Amulet, provides evidence of multiple discrimination affecting access to HIV-related health services for MSM.⁹¹⁴ A number of self-identified MSM were interviewed, with nearly 90% stating that they had trouble accessing free condoms, only 33% had ever had an HIV test, and more than 60% were afraid to tell their health care providers about their sexual orientation⁹¹⁵

3.7.2 Discrimination and Inequality on the Basis of Tuberculosis

The Health Code provides for the forced medical treatment of persons with tuberculosis under Article 105(2) which states that, “[p]atients with infectious tuberculosis shall be subject to mandatory hospitalization, treatment and rehabilitation”.⁹¹⁶ Although the CESCR has acknowledged that coercive medical treatment may be used in the “prevention and control of communicable diseases”, their use should be restricted to “exceptional” cases and subject to “specific and restrictive conditions”.⁹¹⁷ The imposition of a mandatory hospitalisation for all persons with tuberculosis cannot be considered “exceptional”; it also provides no opportunity for consideration of the specific conditions which the Committee has stated must be taken into account. The Health Code also fails to set out a method of reviewing or challenging the decision the decision to apply forcible treatment.

Conclusion

In the absence of comprehensive official statistics, it is difficult to determine the full extent of discrimination based on health status. Nevertheless, it seems clear from the evidence which is available that people living with HIV experience prejudice, stigma and discrimination. This evidence indicates that people living with HIV routinely experience discrimination in employment and in

914 Johns Hopkins Center for Public Health and Human Rights and others, *Sexual health, HIV/AIDS and human rights among gay, bisexual and other men who have sex with men (MSM) in Almaty, Kazakhstan*, 2011.

915 Doyle, H., “We Do Exist: Gay Men and HIV Risk in Kazakhstan”, *Open Society Foundations*, 17 August 2012, available at: <https://www.opensocietyfoundations.org/voices/we-do-exist-gay-men-and-hiv-risk-kazakhstan>.

916 See above, note 660, Article 105.

917 CESCR, *General Comment No. 14: The right to the highest attainable standard of health*, UN Doc. E/C.12/2000/4, 2000, Para 12.

healthcare. There is also evidence of multiple discrimination affecting women and LGBT persons with HIV. Finally, the law permits the forcible treatment of persons with TB, without clear safeguards to ensure that such measures are taken only in exceptional and justifiable circumstances,

3.8 Conclusions

Research for this report has found evidence of discrimination and disadvantage on the basis of religion; ethnicity and language; gender; sexual orientation and gender identity; political opinion; disability and health status.

Patterns of discrimination arising on these different grounds vary widely, from the experiences of religious minorities unable to comply with onerous registration conditions, to those of women whose employment prospects are curtailed by *de facto* segregation in the labour market. Nevertheless, this report does identify a common theme linking many of the patterns of discrimination which prevail in modern Kazakhstan. Since 1991, the country's first and only President, Nursultan Nazarbayev has sought to promote a sense of national unity, exemplified in his party's slogan "Unity! Stability! Creativity!". Yet rather than building this sense of unity on the state's multi-ethnic, multi-religious and multi-lingual past, the unity which the state pursues is increasingly narrow, excluding those who pursue alternative approaches, and exposing them to discrimination and other harms.

The regulation of **religion** under the 2011 Law on Religious Activity and Religious Associations is one clear example of the state's narrow approach to national unity. The Law explicitly emphasises the centrality of Hanafi Islam and Russian Orthodoxy to Kazakhstani culture. The established system of registration imposes onerous requirements, indirectly discriminating against minority religious groups. There is also evidence of direct discrimination in the registration process itself, affecting both religious minorities and minority denominations of the two major religions, in particular non-Hanafi Muslim groups. In the absence of government approval, members of minority religious groups are criminalised and unable to undertake religious activities, including engaging in missionary activity or importing literature.

The promotion of a particular version of national unity is most evident in respect of discrimination on the basis of **ethnicity and language**. This re-

port examines the unofficial policy of “Kazakhisation” – the promotion of the Kazakhstani national identity and the history, language and culture of ethnic Kazakhs as one and the same – looking in particular at its application in language policy. Article 7(1) of the Constitution designates Kazakh as the official state language, despite the fact that 26% of the population (and approximately 75% of the largest ethnic minorities) cannot understand the language. Although the Constitution also provides for the use of Russian in state institutions, there is evidence that state agents involved in the provision of public services, public employment and public education increasingly refuse to use it. Ethnic minorities are excluded by this refusal to use a language which has been called the “language of inter-ethnic communication” in Kazakhstan.

The notion of national unity which the state has promoted does not include **women** as equal partners. Notwithstanding the adoption of the Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women and a Gender Equality Strategy, gender discrimination persists in many areas of life, underpinned by traditional stereotypes and patriarchal attitudes. Labour law prohibits women from working in certain professions, while criminal law fails to criminalise all forms of marital rape. Gender-based violence remains a significant problem. Horizontal and vertical gender segregation in the labour market limits women’s economic choices, and women are significantly underrepresented in public life.

Unity in the understanding of the Kazakhstani state does not encompass **sexual and gender minorities**. The state prohibits same-sex marriage and adoption and imposes unacceptable conditions on persons wishing to change their legal gender identity. In 2015, it came close to passing a law prohibiting so-called “propaganda of ‘non-traditional relationships’” which would have criminalised various forms of public discussion of sexual orientation.

Beyond the experience of these groups, the state has limited political pluralism and repressed dissent in ways which discriminate against all those whose **political opinion** challenges its notion of unity. Through both legal and extra-legal means, the state has denied or limited the rights to freedom from arbitrary detention and freedoms of expression, assembly and association in ways which discriminate on the basis of political opinion. It has established a system of registration for political parties which facilitates discrimination on the basis of political opinion in application.

In respect of other groups, while the state has legislated to provide some protections for persons with disabilities and people living with HIV, members of these groups continue to experience discrimination and disadvantage. Both groups are subject to paternalistic discriminatory laws which are grounded in stereotypes. The government continues to institutionalise persons with mental disabilities. The persistence of negative stereotypes about persons with disabilities is also manifested in the underrepresentation of such persons in employment and higher education. People living with HIV face stigma and discrimination in cases where their status is known, particularly in healthcare.

Thus, this report finds that, far from being unified, Kazakhstan is a place in which members of certain groups are excluded and marginalised. In an alarming number of cases, these experiences have their root in state policies, underpinning which is the notion of a unified Kazakhstan which appears increasingly exclusive. As the state celebrates the 25th anniversary of its independence, it must be hoped that Kazakhstan begins to pursue a type of unity which is more inclusive and reflective of the state's diverse past.

4. RECOMMENDATIONS

In light of the foregoing analysis, a series of recommendations are offered to the government of Kazakhstan. These recommendations are offered in order to enable Kazakhstan to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality both by improving the legal and policy framework with respect to equality and through other means.

All recommendations are based on international law related to equality and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality. Recommendations are also based on the conclusions reached at the ends of Parts 2 and 3 of this report. The recommendations are presented below:

Recommendation 1: Strengthen International Commitments Related to Equality

Kazakhstan should ratify the following United Nations human rights instruments which are relevant to the rights of equality and non-discrimination:

- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities;
- The International Convention for the Protection of All Persons from Enforced Disappearances;
- The Convention relating to the Status of Stateless Persons;
- The Convention on the Reduction of Statelessness;
- The UNESCO Convention Against Discrimination; and
- The Rome Statute on the International Criminal Court.

Recommendation 2: Reform of Discriminatory Legislation

Kazakhstan should undertake a review of legislation in order to (i) assess its compatibility with the rights to equality and non-discrimination as defined un-

der the international instruments to which it is party, and (ii) amend, and where necessary, repeal existing legislative provisions that conflict with the right to equality either by being inherently discriminatory or by resulting in discrimination in their application. The following provisions in particular have been highlighted in this report as being either discriminatory in and of themselves or applied in a discriminatory manner, and so should be reviewed as a priority:

Code of Administrative Offences

- Article 83 which refers to persons with disabilities as “invalids”;
- Article 453 which unduly restricts the right to freedom of expression by prohibiting the manufacture, storage and distribution of materials which are considered to undermine state security, promote a violent change in the constitutional order or incite social, racial, national, religious and class hatred;
- Article 489 which imposes a fine on religious organisations operating without a valid registration;
- Article 490 which imposes a fine for:
 - Carrying out “missionary activities” without registration and spreading the religious doctrine of unregistered religious associations;
 - Constructing religious buildings or converting buildings to religious buildings without authorisation;
 - Violation of legislative requirements pertaining to the performance of religious rites, ceremonies or assemblies;
 - Carrying out activity not specified in the charter of a registered religious association;
 - Management of a religious association by a person appointed by a foreign religious centre without authorisation.

Criminal Code

- Article 120 which requires the use of force in the crime of rape and is limited to penetrative vaginal intercourse;
- Article 130 which criminalises slander or the “spreading of deliberately false information that denigrates the honour and dignity of another person”;
- Article 131 which creates the offence of “the denigration of the honour and dignity of another person, expressed in indecent form”;

- Articles 373, 375, 376, 378, 410 and 411 which create offences for insults to the First President, current President, parliamentarians, public officials, participants in court proceedings and members of the judiciary;
- Article 400 which imposes criminal sanctions for breaches of the procedures in the organisation and holding of rallies and demonstrations.

Criminal Procedure Code

- Article 32 which categorises rape and other violent crimes against women as being “private” or “public-private” crimes, meaning they can only be prosecuted following an official complaint from a victim;
- Article 68 which allows for criminal proceedings for crimes of a “public-private” nature, including violence against women and rape, to be terminated on “reconciliation of the parties”.

Law on Broadcasting

- Article 21(3) which allows the registration of foreign radio and television broadcasts to be refused on the basis of broad criteria, such as where materials are deemed to “violate the integrity of the Republic of Kazakhstan”.

Law on Communication

- Article 41-1 which allows the Prosecutor General to suspend networks in response to a wide variety of circumstances.

Law on Education

- Article 8(2) which excludes foreign nationals without permanent residence and stateless persons from the right to primary and secondary education.

Special Services Law

- Article 3 which denies stateless persons without permanent residence the right to welfare assistance.

Law on Social Insurance

- Article 8 which denies stateless persons without permanent residence the right to welfare assistance.

Family Code

- Article 11 which prohibits same-sex marriage;
- Article 91 which prohibits stateless persons, unmarried persons and LGBT persons from adopting children and which restricts the rights of unmarried men to adopt.

Labour Code

- Articles 16 and 26 which mandate the creation of a “list of jobs” involving “harmful and/or hazardous conditions” which women cannot perform;
- Article 69 which restricts the working week for persons with certain classes of disability to 36 hours;
- Article 76 which prohibits persons with disabilities, those who have children with disabilities and pregnant women from working night shifts without a doctor’s note;
- Article 77 which prohibits pregnant women and persons with disabilities from working overtime.

Health Law

- Article 105(2) which provides for the mandatory hospitalisation of persons with TB and the mandatory recording of treatment for TB on an individual’s employment history.

Law on Religious Activity and Religious Associations

- Article 8 which prohibits conducting “missionary activity” unless registered;
- Article 9 which limits the import and distribution of religious materials by non-registered religious organisations;

- Article 12 which mandates that a religious organisation may only register at the local level if it can gather a minimum of 50 signatures from Kazakhstani nationals;
- Articles 15 and 16 which set out the documents a religious organisation is required to produce to apply for registration;
- Article 24 according to which all religious organisations are required to undergo compulsory re-registration.

Law on Counteraction of Extremism

- Article 6(1) which permits the state to monitor all religious associations and missionaries.

Recommendation 3: Introduce Comprehensive Equality Legislation

Kazakhstan should adopt appropriate legislative measures for the implementation of the right to equality. Such measures should ensure comprehensive protection across all grounds of discrimination and in all areas of activity regulated by law.

The enactment of comprehensive equality legislation should give effect to the principles of equality under international law. Such equality legislation should aim to eliminate direct and indirect discrimination and harassment in all areas of life regulated by law; cover all prohibited grounds listed in Principle 5 of the Declaration of Principles on Equality; and attribute obligations to public and private actors, including in relation to the promotion of substantive equality and the collection of data relevant to equality.

Comprehensive equality legislation could either take the form of:

- (a) A single equality law which offers consistent protection against discrimination across all grounds of discrimination and in all areas of life regulated by law; or
- (b) A coherent system of laws which together address all grounds of discrimination in all areas of life regulated by law.

Members of groups who may be distinguished by one or more of the prohibited grounds should be given the opportunity to participate in the decision-making processes which lead to the adoption of such legislative measures.

**Recommendation 4:
Reform, Implementation and Enforcement of Existing Laws
Aimed at Prohibiting Discrimination**

The government of Kazakhstan should introduce reforms to improve existing legal provisions which aim to prohibit discrimination. For this purpose:

- The government of Kazakhstan should undertake a comprehensive review of all legislation which prohibits discrimination in order to harmonise the provisions of these instruments so that the relationship between the different protections offered is clear and complementary and to ensure that the guarantees provided are directly enforceable by individuals.
- The review should also ensure that all victims of discrimination are able to have effective access to justice, including, as necessary, by amending the Civil Code and Code of Administrative Responsibility to provide clarity to courts on how to apply and enforce the laws, and ensuring legal aid is available for those would not otherwise be able to bring their claim.

In addition, the process of reform should aim to bring existing legal provisions on non-discrimination into line with international standards. This should include, as a minimum, review and reform of the following provisions:

Constitution of the Republic of Kazakhstan

- Article 14 which guarantees the right of non-discrimination but does not expressly include the grounds of sexual orientation, gender identity, disability and health status.

Criminal Code

- Article 145 which criminalises the “direct or indirect restriction of the rights and freedoms of citizens” on the grounds of “origin, social, employment or material status, race, nationality, language, religion,

beliefs, place of residence, affiliation with public associations or any other circumstances.”

Labour Code

- Article 6 which prohibits discrimination but only on the basis of a closed list of grounds which does not include sexual orientation, gender identity or health status.

Law on Gender Equality

- Article 4 which defines discrimination but (i) does not explicitly incorporate indirect discrimination; (ii) does not incorporate intersectional discrimination or discrimination by association; (iii) restricts individuals to challenging “regulatory legal acts” rather than prohibiting discrimination in all areas of life regulated by law; (iv) does not define or address the need for positive action; and (v) does not create a direct cause of action for breaches of the Law.

Law on Social Protection of Disabled Persons

- Article 35, which provides for compensation for damage suffered by persons with disabilities, is (i) not directly enforceable and (ii) limited to the sphere of employment.

Recommendation 5: Actions to Address Discrimination against Specific Groups

Kazakhstan should take specific actions to address the discrimination and disadvantage faced by different groups in Kazakhstan, including all of those highlighted in Part 3 of this report. Such steps should be taken in addition to improving protection from discrimination in law by acting on Recommendations 2, 3 and 4. These steps should include, but not be limited to, the following:

Religion

- Review and amend the 2011 Law on Religious Activity and Religious Associations to ensure that its requirements do not discriminate against minority religious groups;

- Ensure that the application of Article 174 of the Criminal Code does not disproportionately interfere with the right to freedom of religion, including that of members of minority communities;
- Cease educational campaigns by government-funded “anti-sect” centres which present certain minority religions as extremist;
- Prohibit and effectively investigate all incidences of violence by both state and private actors against members of minority religions.

Ethnicity and Language

- Ensure that all incidents of inter-ethnic violence are effectively investigated;
- Adopt positive action measures to ensure equal representation of ethnic minorities in political life and decision making;
- Gather statistics on the economic and social situation of minorities disaggregated by ethnicity or race;
- Respect and fulfil the obligation under Article 7(2) of the Constitution, ensuring that the Russian language is used on a par with Kazakh in state institutions and bodies.

Gender

- Repeal the 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, 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;
- Take further measures to prevent and eliminate domestic and other gender-based violence and improve the provision of shelters and other forms of support for women affected by such violence;
- Effectively investigate and prosecute incidences of trafficking under Article 128 of the Criminal Code;
- Take practical policy measures to tackle gender segregation in education and employment;
- Adopt positive action measures to secure equality of representation in political life;
- Take action to eradicate the horizontal and vertical segregation of women in employment.

Sexual Orientation and Gender Identity

- Clarify that the term “other circumstances” in Article 14 of the Constitution which prohibits discrimination includes the grounds of sexual orientation and gender identity;
- Repeal laws requiring surgical correction to obtain legal recognition of a gender reassignment;
- Effectively investigate and prosecute all incidences of discriminatory violence against LGBT persons.

Political Opinion

- Review the cases of political and civil society activists, lawyers and journalists convicted for violation of Article 174 of the Criminal Code and other laws, and overturn their convictions where violations of the rights to freedom from arbitrary detention or non-discrimination are identified;
- Review the implementation of Articles 130, 131, 174, 179, 183, 373, 375, 376, 378, 404, 410 and 411 of the Criminal Code in order to ensure that their application does not result in the discriminatory denial of freedom of expression;
- Review the implementation of Article 400 of the Criminal Code in order to ensure that its application does not result in the discriminatory denial of freedom of assembly;
- Conduct a wide-ranging independent inquiry into the Zhanozen incident and implement the recommendations of that inquiry;
- Review the Law On the Activities of Non-Governmental Organisations in order to ensure that it does not result in the discriminatory denial of freedom of assembly;
- Review the Law On Political Parties in order to ensure that it does not result in discriminatory denial of the right to participate in public life.

Disability

- Remove references to “invalids” in legislation designed to protect the rights of persons with disabilities;
- Cease the practice of institutionalisation of persons with mental disabilities and investigate all allegations of torture or other ill-treatment in institutions;

- Take measures to ensure the accessibility of infrastructure, public transport and public buildings for persons with disabilities;
- Adopt positive action and reasonable accommodation measures to promote equality of participation in employment for persons with disabilities;
- Prioritise access to inclusive education for children with disabilities rather than the creation and maintenance of specialised institutions.

Health Status

- Collect statistics on the prevalence of HIV in Kazakhstan;
- Educate healthcare workers on HIV/AIDS and the proper treatment of persons living with HIV/AIDS;
- Take measures to combat the stigmatisation of persons living with HIV/AIDS.

Recommendation 6: Ensuring the Independence of Legal Actors and the Effectiveness of Human Rights Institutions

Kazakhstan should take action to ensure the independence of the judiciary, advocates and human rights institutions. In doing so, the state should consider the following specific measures:

- Kazakhstan should take urgent action to end corruption within the judiciary, and the procedures for selection and the taking of disciplinary action against judges should be reviewed to ensure that they safeguard the independence of the judiciary.
- In order to further ensure the effective implementation and enforcement of these laws, the government should also ensure that the Ombudsperson is reformed to bring it in line with the Paris Principles, and that it has sufficient independence, financial and material support for it to fulfil its duty as a national human rights institution to combat discrimination. In particular, the Ombudsperson should be granted competence to consider complaints against the actions and decisions of the President, Parliament, government, Constitutional Council, Prosecutor General, Central Electoral Commission and the courts of the Republic of Kazakhstan.
- Individuals should be empowered to bring complaints to the Constitutional Council to vindicate their constitutional rights and freedoms.

Recommendation 7: Data Collection

During the research for this report, it has been established that there is a lack of information, including statistics, in relation to key indicators of equality in Kazakhstan. State bodies should collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality. Wherever statistics are collected in relation to key indicators of equality, they should be disaggregated in order to demonstrate the different experiences of disadvantaged groups within society in Kazakhstan. Kazakhstan should further ensure that such information is not used in a manner that violates human rights.

Recommendation 8: Education on Equality

Kazakhstan should take action to raise public awareness about equality and to ensure that all education establishments provide suitable education on equality as a fundamental right. Such action is particularly necessary in order to modify social and cultural patterns of conduct and to eliminate prejudices which are based on the idea of the superiority or inferiority of one group within society in relation to another.

Recommendation 9: Prohibition of Regressive Interpretation

In adopting and implementing laws and policies to promote equality, Kazakhstan should not allow any regression from the level of protection against discrimination that has already been achieved.

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The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

The Kazakhstan International Bureau for Human Rights and Rule of Law is a non-governmental organisation which aims to protect political rights and civil freedoms and to develop democracy and rule of law in Kazakhstan and other countries.

“Unity! Stability! Creativity!” This is the slogan of Nur Otan, the political party of Nursultan Nazarbayev, the Republic of Kazakhstan’s first and only president.

This report, examining discrimination and inequality in Kazakhstan, finds that the unity promoted by Nazarbayev is narrow, excluding those whose religion, ethnicity or political opinion challenges his vision, and denying an equal role to women, persons with disabilities and other groups.

A 2011 law on religion imposes onerous registration requirements, indirectly discriminating against minority religious groups. The promotion of the Kazakh language – spoken by only 74% of the population – creates barriers for ethnic minorities in accessing public services, employment and education. The state discriminates on the basis of political opinion, detaining its critics and limiting freedom of expression, assembly and association.

The unified Kazakhstan promoted by the government also provides little space for other groups. Women are subject to discriminatory laws and are underrepresented in the workforce and public life. Lesbian, gay, bisexual and transgender persons are subject to discrimination by both state and non-state actors. Persons with disabilities and those living with Human Immunodeficiency Virus are subject to paternalistic laws which are grounded in stereotypes.

The legal framework on equality is far from unified. The constitutional non-discrimination provision omits key grounds and there is no comprehensive equality legislation. Implementation of the provisions which are in place is weak. Thus, this report finds that, if Kazakhstan aspires to genuine unity, inclusive of all, much remains to be done.



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