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 the 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 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 Kazkahs 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