

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 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 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 Zhovtiy 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.*