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 Belief

As a party to the International Covenant on Civil and Political Rights (ICCPR), Kazakhstan is required, under Article 18 to guarantee freedom of thought,
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.\textsuperscript{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 Christian\textsuperscript{295} The Sunni Hanafi school is the dominant form of Islam in Kazakhstan, while Russian Orthodoxy is the single most prevalent form of Christianity.\textsuperscript{296} In addition to Sunni Muslims, a number of other Muslim denominations exist in the country including Shafi’i Sunni, Shia, Sufi and Ahmadiyya.\textsuperscript{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-

\textsuperscript{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.


\textsuperscript{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

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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.\textsuperscript{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.

\textit{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-

igious 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:

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308 Ibid.

309 See above, note 296, Para 4.

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:

\begin{center}
\textit{Unfortunately, rapid development of electronic mass media and promotion of values alien to Kazakhstanis}
\end{center}


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.


\(^{315}\) Equal Rights Trust, Consultation meeting with civil society organisations, Almaty, 5 December 2013.

\(^{316}\) See above, note 297, p. 19.

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

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320 Ibid., Article 9(3).
321 Ibid., Article 5; Code on Administrative Offences, above, note 318, Article 490.
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.


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.\textsuperscript{328} Indeed, in practice, the only three religious associations registered at the national level are Sunni Islam Russian Orthodox Christianity and Catholicism.\textsuperscript{329} The Catholic Church was exempt from the re-registration requirements as the result of an agreement concluded between the Vatican and Kazakhstan.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\textsuperscript{328} Ibid., Articles 15 and 16.
\textsuperscript{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.
\textsuperscript{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.
In an “updating and systematisation of the country’s religious area”.\textsuperscript{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.\textsuperscript{334}

Forum 18 has noted that many small religious communities have been forced to close “voluntarily”.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{337} Mosques wishing to remain separate from the Hanafi school are routinely de-registered.\textsuperscript{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.\textsuperscript{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.\textsuperscript{340}

\textsuperscript{333} See above, note 297, p. 8.
\textsuperscript{334} Ibid.
\textsuperscript{336} Ibid.
\textsuperscript{337} Ibid., Para 23.
\textsuperscript{338} Ibid., Para 24.
\textsuperscript{339} Ibid.
\textsuperscript{340} Ibid., Para 25.
As noted above, Article 18(1) of the ICCPR provides for the right to freedom of thought, conscience, and religion. 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”, 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”. 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. 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. 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 justification and the adoption of the least restrictive measures where possible.

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

342 Ibid., Article 18(3).
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.\textsuperscript{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.\textsuperscript{349} One individual interviewed for this report stated that:

\textit{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}


\textsuperscript{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.\footnote{Kazakhstan International Bureau for Human Rights and Rule of Law, Interview with K., May 2015.}

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”.\footnote{See above, note 297, p. 12.} 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.”\footnote{Ibid.} 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”.\footnote{Ibid.}

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 a 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).\footnote{See above, note 343, Para 8.}

Moreover, even if the aim pursued by these measures were legitimate, the prohibition of all missionary activity except that expressly approved by the
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:

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\text{If 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-


356 See above, note 343, Para 8.

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

While 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.\footnote{358}{See above, note 296, Para 35.}

\textbf{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.\footnote{359}{Law of the Republic of Kazakhstan "On Religious Activity and Religious Associations", above, note 306, Article 9(3).}

The term “personal use” has been defined as up to three copies of a given item.\footnote{360}{See above, note 296, Para 38.} 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.\footnote{361}{Ibid., Para 38.}

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.”\footnote{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


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”. 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.”

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). In December 2014, these were replaced with the Rules for Conducting Religious Expertise (the Rules). 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-

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370 Ibid., Article 6.


mittee for Religious Affairs, has developed a non-binding manual. 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.’ The manual provides that:

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\text{[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.}\]

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. Similarly, it states that:

\[
\text{When analysing the attitude of a new religious association towards the society, its paradigms and values, an expert must expose the value and regulatory paradigms of the movement that regulate the social behaviour of its members.}\]

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

374 Ibid., p. 17.
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.”

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”. 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”. 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.

**Law on Counteraction of Extremism**

The Law on Counteraction of Extremism (Law No. 31-III of 18 February 2005), 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,*

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380 See above, note 355, p. 11.
381 See above, note 296, Paras 33.
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 extremism\(^ {385}\) 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 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.”\(^\text{389}\)

*Crime 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:

\[
\text{[D]eliberate actions aimed at inciting (...) religious en-}
\text{mity, insulting the national honour and dignity or reli-
\text{gious feelings of citizens, as well as propaganda of exclu-
\text{sivity, superiority or inferiority of citizens on the basis of
\text{their attitude to religion.}}}
\]

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-

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.\(^{392}\)

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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.

**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 Kundaykov 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

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395 Ibid.
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.

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. 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. 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.”

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,
in grade 9.\textsuperscript{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”.\textsuperscript{402}

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

\textit{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.}

\textit{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.}\textsuperscript{403}

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

\begin{flushleft}
\textsuperscript{401} See above, note 296, Para 54. \\
\textsuperscript{402} Ibid., Para 55. \\
\textsuperscript{403} Kazakhstan International Bureau for Human Rights and Rule of Law, Interview with D., November 2015.
\end{flushleft}
prevent students from becoming involved with “religious sects”.\textsuperscript{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”.\textsuperscript{405} One individual provided KIBHR with the following account:

\begin{quote}
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.”\textsuperscript{406}
\end{quote}

\textbf{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-

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\textsuperscript{404} NGO Association of practicing psychologists of Kazakhstan, \textit{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.

\textsuperscript{405} See above, note 296, Para 58.

\textsuperscript{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 Language

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. As noted in Part 1 above, ethnic Kazakhs constitute 63% of the population while a large ethnic Russian community constitutes 24% of the population. There are also many smaller ethnic minorities including Uzbeks (2.9%), Ukrainians (2.1%), Uighurs (1.4%), Tatars (1.3%) and Germans (1.1%).

Ethnic Kazakhs only became the largest ethnic group in the state in 1989. 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. 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. 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.

“Kazakhisation” Policy

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

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.
414 See above, note 411, p. 2.
of “Kazakhisation” which seeks to promote Kazakh identity.\textsuperscript{415} The policy is manifested in a variety of ways, such as changing street names from Russian, and erecting statues.\textsuperscript{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,\textsuperscript{417} with the history of Kazakhstan being essentially equated with the history of Kazakh nationality,\textsuperscript{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.\textsuperscript{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”.\textsuperscript{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

\begin{itemize}
\item \textsuperscript{416} Ó Beacháin, D., Kevlihan, R., “Threading a needle: Kazakhstan between civil and ethno-nationalist state-building”, \textit{Nations and Nationalism}, 2013, p. 6.
\item \textsuperscript{418} Center for Legal Aid to the Ethnic Minorities and others, \textit{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.
\item \textsuperscript{419} Ibid., Para 41.
\end{itemize}
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 race\(^{423}\) 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

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\(^{425}\) See above, note 390, Para 18.

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.\textsuperscript{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.\textsuperscript{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:

\textit{[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.}\textsuperscript{429}


\textsuperscript{428} See above, note 423, Articles 54(1)(f), 96, 103, 104, 107, 160, 164, 187, 275 and 337.

\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{434}

\textsuperscript{430} See above, note 410, Para 9.
\textsuperscript{432} \textit{Ibid.}
\textsuperscript{433} See above, note 293, p. 95.
\textsuperscript{434} \textit{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. 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.

**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-

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Article 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).\textsuperscript{437} Of these cases, only 12 were brought to court for substantive examination.\textsuperscript{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”.\textsuperscript{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.\textsuperscript{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

\textsuperscript{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.

\textsuperscript{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. (\textit{Ibid.}, Para 42).

\textsuperscript{439} \textit{Ibid.}, Para 42.

\textsuperscript{440} \textit{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. 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. 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.

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 Kazakhstan and appoints nine deputies of the Mazhilis. 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. The OSCE has criticised the Assembly noting:

\textit{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.}

\begin{itemize}
  \item[442] See above, note 408.
  \item[444] Assembly of the People of Kazakhstan website, available at: http://assembly.kz/kk/kyzmeti-0.
  \item[445] Constitution of the Republic of Kazakhstan, 30 August 1995, Article 51(1).
  \item[446] Law “On the Assembly of People of Kazakhstan”, No. 70-IV, 20 October 2008, Article 15; Constitution of the Republic of Kazakhstan, \textit{ibid.}, Article 44(19).
\end{itemize}
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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”.\textsuperscript{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

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\textsuperscript{449} Equal Rights Trust, Civil society consultation, Almaty, 5 December 2013.

\textsuperscript{450} See above, note 427, Para 3.

\textsuperscript{451} See above, note 294, Para 21.
and Belarussian. 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. However, Russian is understood by 94% of the population, while Kazakh is understood by 74% of the population. 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%).

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.

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.

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452 See above, note 421, p. 21.
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.


\(^{459}\) 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.\footnote{See above, note 293, p. 95.} In 2015, Minority Rights Group reported that requests for Russian translations of official communications, such as court proceedings, are refused.\footnote{See above, note 431.} O., who was interviewed as a part of this report told us:

\textit{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.}\footnote{Kazakhstan International Bureau for Human Rights and Rule of law, Interview with O., June 2015.}

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.\footnote{Equal Rights Trust, Civil society consultation, Almaty, 5 December 2013.}

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-
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.

**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%. This has largely been achieved through the imposition of a duty on authorities in each residential area to provide education if there are a minimum number of students resident in the area; 

This approach has ensured that regional and urban to rural disparities are relatively low, while the Organisation for Economic Co-operation and Development (OECD) has stated that “ensuring equal access for all chil-

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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.\footnote{OECD, \textit{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.}

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.\footnote{See above, note 390, Para 17.}

Some legal provision is made for instruction in languages other than Kazakh. Article 9(3) of the Law on Education 2007 provides that:

\begin{quote}
[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)\footnote{Law of the Republic of Kazakhstan, “On Education”, No. 319-III of 27 July 2007, Article 9(3).}
\end{quote}

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).\footnote{Law of the Republic of Kazakhstan, “On Education”, No. 389-I of 7 June 1999, Article 5(3).} This change in wording effectively removes the obligatory nature of the provision.\footnote{See above, note 418, Para 21–22.}

Since the country became independent, Kazakh has gradually replaced Russian as the predominant language of instruction in a growing number of schools.\footnote{See above, note 420, p. 28.} In 2010, civil society organisations reported that an increasing number of minority language schools were being closed, with no new ones...
opened since Kazakhstan's independence in 1991, while in contrast, new Kazakh language schools were consistently opened year on year. 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.

The number of Uzbek language schools has also declined significantly, with the government reporting a total of 58 schools in 2012, down from 80 in 2003. There are only 14 schools using Uighur and 2 using Tajik. 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-

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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.
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.\(^\text{481}\) 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;\(^\text{482}\) the model was due for implementation in 2015, but this has been postponed until 2018.\(^\text{483}\) 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”.\(^\text{484}\) 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.\(^\text{485}\)

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-

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481 See above, note 467, p. 18.
482 Ibid., p. 86.
483 Ibid., p. 120.
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.\textsuperscript{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.\textsuperscript{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”.\textsuperscript{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.\textsuperscript{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.\textsuperscript{490} Thus, the National Test regime presents

\begin{itemize}
\item \textsuperscript{487} Ibid., OECD.
\item \textsuperscript{488} See above, note 390, Para 17.
\item \textsuperscript{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.
\end{itemize}
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.\(^\text{491}\) 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.\(^\text{492}\) 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."\(^\text{493}\)

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-


\(^{492}\) 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. 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”.

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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.\footnote{495} In the 2015 Global Gender Index, Kazakhstan was ranked 47\textsuperscript{th} in the world for gender equality, with a total score of 0.719.\footnote{496} This represents a net decrease from 2014 where the country was ranked 43\textsuperscript{rd} in the world\footnote{497} and 2013 where the country was ranked 32\textsuperscript{nd}.\footnote{498} In 2012, the country was ranked 31\textsuperscript{st} in the world – 16 positions ahead of its current standing.\footnote{499}

\textit{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.”\footnote{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.\footnote{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:

\textit{Many respondents expressed the view that the primary role of women is that of caregiver and that women are}

\footnote{495} See above, note 421, p. 20.


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.\textsuperscript{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,\textsuperscript{503} the removal of discriminatory language in textbooks and media,\textsuperscript{504} improving standards of education,\textsuperscript{505} and tackling child marriage and polygamy.\textsuperscript{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.\textsuperscript{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”.\textsuperscript{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


\textsuperscript{503} Committee on Economic, Social, and Cultural Rights, *Concluding Observations: Kazakhstan*, UN Doc. E/C.12/KAZ/CO/1, 7 June 2010, Para 15.

\textsuperscript{504} Ibid.

\textsuperscript{505} See above, note 500, Para 9.

\textsuperscript{506} See above, note 501, Para 17.


\textsuperscript{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.”

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.

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. 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. 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.”

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. 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 violence.

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509 Constitution of the Republic of Kazakhstan, 30 August 1995 (as revised), Article 14 (2).
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.
violence. 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. 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. 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.

In addition, the Committee has also found a contravention of the Convention in an individual complaint ruling concerning similar provisions in Russian law. In this judgment CEDAW directly and unequivocally rejected the Rus-

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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.\footnote{\textit{Ibid.}, Para 4.3.} 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”.\footnote{\textit{Ibid.}, Para 11.3.}

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.

\textit{Gender-Based Violence}

The CEDAW Committee has noted that the prohibition on discrimination in the Convention includes a prohibition on gender-based violence\footnote{Committee on the Elimination of Discrimination against Women, \textit{General Recommendation No. 19: Violence against Women}, UN Doc. A/47/38, 1992, Para 6.} and that states are required by the Convention to prohibit and eliminate violence against women.\footnote{\textit{Ibid.}, Para 9.}

Gender-based violence is a serious problem in Kazakhstan, with the HRC, among other bodies, expressing concern over the “prevalence of violence against women”.\footnote{See above, note 500, Para 10.} 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”.\footnote{Human Rights Council, \textit{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; poor legal mechanisms, with proceedings “initiated only upon formal complaints”; low numbers of investigations into allegations of violence; lack of government-run domestic violence shelters; and the lack of legislation “criminalising all forms of violence against women”.

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.” 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”. In 2007, the Supreme Court issued a binding Decree on the meaning of Article 120. Although this Decree criminalised spousal rape, the Court confirmed the requirement of use of force. 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.

526 See above, note 503, Para 25.
527 Ibid.
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.
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 victim’s 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-

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536 See above, note 534, p. 37.
537 See above, note 501, Paras 18–19.
els of violence against women. 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. 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. Of the women surveyed, 2.3% reported being subject to physical and sexual violence, whilst 10.5% had been subject to physical violence only. 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.

In 2010, the Ministry of Internal Affairs of Kazakhstan 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.

In 2009, the state adopted the Law of the Republic of Kazakhstan On Prevention of Domestic Violence (the Domestic Violence Law). 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:

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538 In collaboration with the Kazakh Agency for statistics and the UN Population Fund.
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.
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.
[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.\footnote{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.}

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”.\footnote{547}{See above, note 500, Para 10.} 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.\footnote{548}{Ibid.} 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”.\footnote{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.}

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.\footnote{550}{See above, note 544, Para 40.} 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
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 rates\(^{556}\) 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.


\(^{556}\) 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.

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.*

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. 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”.

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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.
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 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.


564 See above, note 534, p. 40.

in line with Kazakhstan’s obligations under the Convention. In 2015, the Committee repeated this recommendation in its consideration of the case of *Belousova v. Kazakhstan.*

**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

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566 See above, note 501, Paras 18–19 and 28–29.

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.\textsuperscript{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”.\textsuperscript{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.\textsuperscript{570}

\textbf{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 CESCROCR expressed “deep concern that trafficking in women and children remains a serious problem despite efforts undertaken by the State party”.\textsuperscript{571} Similarly

\textsuperscript{568} Ibid., Para 10.12.

\textsuperscript{569} Ibid., Para 11(b)(i).


\textsuperscript{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:

\[
\text{[Cultural practices [such] as arranged marriage, child marriage or forced marriage, as well as other practices like temporary marriage, marriage by catalogue or mail-order brides, and other forms of sexual exploitation can}
\]

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.
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.\footnote{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.”\footnote{580} Further, the report notes that when investigating crimes, law enforcement agencies do not conduct “thorough and impartial” investigations, and victims face discrimination.\footnote{581} Similar findings have been made by the IOM, which found that “police often do not treat seriously complaints about and reports of TIP”.\footnote{582} These concerns were echoed by the HRC in its 2016 Concluding Observations.\footnote{583}

The legal framework on trafficking has been progressively strengthened, with amendments to the Criminal Code in both 2006\footnote{584} and 2013.\footnote{585} Following

\footnotesize
\begin{itemize}
\item \footnote{579}{Ibid., p. 50.}
\item \footnote{580}{See above, note 555, Para 54.}
\item \footnote{581}{Ibid., Para 52.}
\item \footnote{582}{See above, note 574, p. 65.}
\item \footnote{583}{Human Rights Committee, \textit{Concluding Observations on the second periodic report of Kazakhstan}, UN Doc. CCPR/C/KAZ/CO/2, 9 August 2016, Para 34.}
\item \footnote{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.}
\end{itemize}
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 unpunished”.\(^593\)

\(^{586}\) See above, note 423, Article 128(4).

\(^{587}\) *Ibid.*, Article 133(4).


\(^{590}\) See above, note 574, p. 25.

\(^{591}\) See above, note 501, Para 20.


\(^{593}\) 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%, a rate which is significantly lower than that recorded for men (77.9%).

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.

Women are disproportionately employed in a limited number of sectors thought to be traditionally “feminine”, such as healthcare, social services or education, where they represent over 70% of total employees. Other fields, such as construction, transport or industry, are male-dominated. 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.
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 Sector

<table>
<thead>
<tr>
<th>Female dominated sectors</th>
<th>Male employees (%)</th>
<th>Female Employees (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sector</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health and social work</td>
<td>24.2</td>
<td>75.8</td>
</tr>
<tr>
<td>Education</td>
<td>27.9</td>
<td>72.1</td>
</tr>
<tr>
<td>Hospitality/ food service</td>
<td>28.4</td>
<td>71.6</td>
</tr>
<tr>
<td>Financial/ insurance services</td>
<td>37.6</td>
<td>62.4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Male dominated sectors</th>
<th>Male employees (%)</th>
<th>Female Employees (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sector</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transport and storage</td>
<td>79.1</td>
<td>20.9</td>
</tr>
<tr>
<td>Mining</td>
<td>77.7</td>
<td>22.3</td>
</tr>
<tr>
<td>Construction</td>
<td>75.8</td>
<td>24.2</td>
</tr>
<tr>
<td>Electricity and gas supply</td>
<td>74.1</td>
<td>25.9</td>
</tr>
<tr>
<td>Industry</td>
<td>67.7</td>
<td>32.3</td>
</tr>
<tr>
<td>Water supply and sanitation</td>
<td>64.4</td>
<td>35.6</td>
</tr>
</tbody>
</table>

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.\(^{602}\)

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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.\footnote{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.\footnote{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%.\footnote{605}

Article 22(1)(15) of the Labour Code provides for the right to equal remuneration for men and women.\footnote{606} Yet recent estimates put the average wage for women at equivalent to only 66% of that for men.\footnote{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”.\footnote{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”.\footnote{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.\footnote{610} Thus,

\footnote{603 See above, note 502, p. 21.}
\footnote{606 See above, note 491, Article 22(1)(15).}
\footnote{607 See above, note 507, Para 353.}
\footnote{608 See above, note 503, Para 19.}
\footnote{609 See above, note 501, Para 29.}
\footnote{610 See above, note 502, p. 13.}
women are more likely to undertake informal or part-time employment and to work in the public sector where conditions are considered more favourable for balancing work and family responsibilities. 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.

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, paid adoption leave for a new born child, and unpaid parental leave. The length of maternity leave provided is a maximum of 126 days, with the amount to be paid calculated in relation to the mother’s average monthly income. Prior to 2003, maternity pay was paid directly by employers themselves, 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.


612 See above, note 502, p. 20.


616 Ibid., Article 100.

617 Ibid., Article 99.

618 Ibid., Article 99.


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.\footnote{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.\footnote{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.\footnote{623}

The Constitution of Kazakhstan guarantees the right to education for all citizens, and provides a general right to non-discrimination.\footnote{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.*\footnote{625}

\footnote{621} See above, note 491, Article 100.  
\footnote{622} Ibid., Articles 70 and 82.  
\footnote{623} See above, note 508, Article 10.  
\footnote{624} Constitution of Kazakhstan, Article 30 and Article 14.  
\footnote{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” 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”. 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. Similar statistics are presented in respect of secondary and higher education.

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. Similarly, a greater number of women received higher education through day learning, evening learning, and correspondence learning than men. Fewer women, however, received technical and vocational education than men.

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. Additionally, the Committee not-

627 Ibid., p. 15.
628 Ibid., p. 40.
629 Ibid.
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. 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."

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. According to its review “no students chose non-stereotyped subjects.” 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.

**Child Marriage**

Under the Marriage and Family Code of Kazakhstan, the minimum marriage age is 18, though this can be reduced to up to 2 years where “good reasons”

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634 Ibid., Para 26.
635 See above, note 626, p. 170.
636 Ibid.
637 Ibid.
638 Ibid.
are provided.\textsuperscript{640} Under the Criminal Code, kidnapping, including the kidnap-
ning of a minor, is a criminal offence, punishable by imprisonment for a term of seven to 12 years.\textsuperscript{641} Despite these legislative provisions, there is evidence that child marriages continue in Kazakhstan.

Government statistics on numbers of child marriages are unreliable, only con-
sidering \textit{de jure} marriages registered with authorities, rather than \textit{de facto} marriages, entered into before reaching the age of 18.\textsuperscript{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 Multi-
ple 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.\textsuperscript{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.\textsuperscript{644} As one respondent noted:

\begin{quote}
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.\textsuperscript{645}
\end{quote}

\begin{flushleft}
\textsuperscript{640} \textit{Ibid.}, Article 10(2).
\textsuperscript{641} See above, note 423, Article 125.
\textsuperscript{645} \textit{Ibid.}
\end{flushleft}
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.\textsuperscript{646} The Committee recommended that Kazakhstan adopt measures to combat child marriage.\textsuperscript{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.\textsuperscript{648}

\textbf{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.\textsuperscript{649} Moreover, under Article 14, State Parties are required to ensure adequate healthcare facilities, including counselling and services in family planning, to rural women.\textsuperscript{650}

Several laws and policies regulate access to healthcare and family planning for Kazakh women.\textsuperscript{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:

\textit{Women and girls in Kazakhstan enjoy equal access to health services at all levels of medical care and are eligi-}

\begin{itemize}
  \item \textsuperscript{646} See above, note 501, Para 26.
  \item \textsuperscript{647} Ibid.
  \item \textsuperscript{648} See above, note 642, p. 4.
  \item \textsuperscript{649} See above, note 508, Article 12.
  \item \textsuperscript{650} Ibid., Article 14(b).
  \item \textsuperscript{651} For a detailed overview, see Kazakhstan Association on Sexual and Reproductive Health and Sexual Rights Initiative, \textit{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.\textsuperscript{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”.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{656} According to the submission, poor implementation of state sanctioned programmes and policies affect access to reproductive and health services.\textsuperscript{657} There is limited access to contraceptives, with lower-income groups particu-


\textsuperscript{653} See above, note 514.


\textsuperscript{656} See above, note 651.

\textsuperscript{657} Ibid., p. 2.
larly affected. 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”.

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. 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. 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, and similar recommendations have been made by the Committee on the Rights of the Child (CRC Committee).

Political Life

Article 7 of the CEDAW provides that parties to the Convention should take appropriate measures to eliminate discrimination against women in political

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658 Ibid., p. 3.
659 Ibid.
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.
and public life.\textsuperscript{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.\textsuperscript{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”.\textsuperscript{666} In the 2015 Global Gender Gap Report, Kazakhstan received a score of 0.148 for political empowerment of women, ranking it 78\textsuperscript{th} out of 145 economies.\textsuperscript{667} In its initial report to the HRC in 2009, Kazakhstan acknowledged that:

\begin{quote}
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.\textsuperscript{668}
\end{quote}

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.\textsuperscript{669} Following the 2016 Parliamentary elections, women represent 27.10\% of the Mazhilis, a small increase from the 26.1\% in the previous election.\textsuperscript{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-

\textsuperscript{664} See above, note 508, Article 7.
\textsuperscript{665} Ibid.
\textsuperscript{666} See above, note 500.
\textsuperscript{667} This should be compared to educational attainment, where Kazakhstan received a score of 0.980: joint 1\textsuperscript{st} of 145 states. See above, note 604, p. 8.
\textsuperscript{668} Human Rights Committee, \textit{First Periodic Report: Kazakhstan}, UN Doc. CCPR/C/KAZ/1, 5 October 2009, Para 61.
\textsuperscript{669} See above, note 552, Para 50.
\textsuperscript{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; \textit{ibid.}, Para 50.
fines 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.” 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. 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 (...).

Despite proposals in the Gender Equality Strategy, there is currently no gender quota requiring a certain proportion of female members on parliamentary lists. Moreover, in the Parliamentary elections of March 2016, just 47 of 234 candidates (20%) were women. Although there are currently 29 women sitting in the Mazhilis (27.10%), this number still falls short of the government’s own 30% target.

In 2014, Kazakhstan drew praise from the CEDAW Committee after committing to achieving a 30% representation rate of women in decision-making positions. The Committee also noted that Kazakhstan had made some progress in this regard.

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672 Ibid.
673 Ibid., p. 11.
675 Ibid.
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/C0/2, 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, 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, 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.

**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.

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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”. Only one in three LGBT individuals interviewed for the report had shared their sexual orientation with a family member. 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.

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.

The reluctance of the Kazakhstani LGBT community to discuss their sexuality reflects high levels of social stigma, fuelled by the media, govern-

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684 See above, note 681, p. 10.
685 Ibid.
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”. In 2014, another Parliamentarian, Zhambyl Ahmetbekov, attributed an increase in the number of divorces to gay men. In other examples, ministers have expressed the view that gay men should not be allowed to join the army; compared advocacy of the right to freedom of expression concerning “non-traditional sexual orientation” to fascism, and, on occasion, advocated the criminalisation of homosexuality. 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._


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

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Discrimination on the Basis of Sexual Orientation and Gender Identity

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. 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. Similarly, under Article 123, “coercion of a person to engage in sexual intercourse, sodomy, [or] lesbianism” is made punishable. 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. Though recognition of same-sex marriage is not expressly required under the ICCPR, states have been urged to provide legal recognition of same-sex civil unions. 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.
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 conditions 706 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
Article 19 would be created within the Criminal Code which would criminalise advocacy of “non-traditional relationships”,\textsuperscript{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”.\textsuperscript{711}

Although the draft Laws were subsequently found unconstitutional by the Constitutional Council,\textsuperscript{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

\begin{quote}
[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.\textsuperscript{713}
\end{quote}

United Nations human rights treaty bodies and special procedures have noted their concern at the development of anti-gay propaganda legislation

\textsuperscript{710} Ibid.


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

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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).


⁷¹⁶ See above, note 712.

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).
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.”

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”.

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.*

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*

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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.  

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. 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. 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.

**Discriminatory Violence**

Due to social pressure, violence against LGBT persons are said to be under-reported. Nevertheless, there is evidence from both domestic and inter-

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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 117\(^{th}\) session of the UN Human Rights Committee in June 2016, LGBT rights activist Zhanar Sekerbaeva stated:

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731 See above, note 681, p. 64.
735 See Human Rights Watch, above, note 711.
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.\textsuperscript{738}

\textbf{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.\textsuperscript{739} Although 64.1\% of respondents stated that they had not been discriminated against at work,\textsuperscript{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.\textsuperscript{741} Mr Smagulov had worked as a senior operator at the Department of Internal Affairs in Almaty. After undergoing an opera-


\textsuperscript{739} See above, note 681, p. 10.

\textsuperscript{740} Ibid.

tion to change sex from female to male, he was forced to resign from the Department, following harassment by his employer.\textsuperscript{742}

\textbf{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.\textsuperscript{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.\textsuperscript{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:

\begin{quote}
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.\textsuperscript{745}
\end{quote}

\textbf{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

\begin{footnotes}
\item[\textsuperscript{742}]\textit{Ibid.}
\item[\textsuperscript{743}] See above, note 681, p. 11.
\item[\textsuperscript{744}] See Human Rights Watch, above, note 711, p. 13.
\item[\textsuperscript{745}] See above, note 696.
\end{footnotes}
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, and that limitation, restriction or denial of these rights on the basis of political opinion alone is a violation of the Covenant.

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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”. 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. 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. 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. On no occasion, the HRC emphasised, may imprisonment be considered an appropriate response to defamation.

However, Article 131 creates an offence of “insult” or “humiliation of honour and dignity” of another person which is “expressed in an unseemly manner”.

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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”.\(^\text{752}\) 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”.\(^\text{753}\)

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.\(^\text{754}\) 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.”\(^\text{755}\) 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.\(^\text{756}\)

Article 174 of the Criminal Code makes it an offence to engage in:

\begin{quote}
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-
\end{quote}

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\(^{752}\) See above, note 347, Para 11.

\(^{753}\) Human Rights Committee, \textit{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.

\(^{756}\) \textit{Ibid.}, Para 38.
ture or other information media, promoting social, national, tribal, racial, class or religious discord.\textsuperscript{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:

\textit{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”.\textsuperscript{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”.\textsuperscript{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.\textsuperscript{760}

\textsuperscript{757} See above, note 423, Article 174.
\textsuperscript{758} See above, note 389, Para 20.
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.\footnote{Law of the Republic of Kazakhstan, “On Communications”, Law No. No. 567-II of 5 July 2004, Article 41-1.} 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.”\footnote{Amnesty International, \textit{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.}

\section*{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.\footnote{Human Rights Watch, “Kazakhstan: Opposition Leader Jailed”, 9 October 2012, available at: https://www.hrw.org/news/2012/10/09/kazakhstan-opposition-leader-jailed.} 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.\footnote{Decision of the Mangistau Regional Court, No. 1-266/14-12 of 8 October 2012; Human Rights Council, \textit{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.} 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...
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”. Although he has since been granted early release, both Freedom House and PEN International have both criticised the original prosecution and conviction.

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”. 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.

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”. Disciplinary proceedings against lawyers working on politically sensitive cases are reportedly common, with the threat


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.*

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. 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. 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. In July 2014 she was once again forcibly detained in a psychiatric facility. She was released in December 2014, but reportedly remains at risk of further detainment in the psychiatric facility.

Reports from other non-governmental organisations indicate that journalists also face arrest and detention. In November 2016, Bigeldin Gabdullin, the

773 See above, note 769, Para 17.
President of the Kazakh PEN Club, was arrested and remains subject to a pre-trial detention order.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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”\textsuperscript{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.

\textit{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


\textsuperscript{777} \textit{Ibid.}


\textsuperscript{779} \textit{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. 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’”. 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. This resulted in the repeated suspension of the publication of the paper and its eventual closure in February 2014. 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.

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.


783 Ibid.

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, Sultanbek 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


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

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is subject to “heavy-handed regulation of peaceful dissent”. The HRC has articulated concerns about “undue restrictions on the exercise of freedom of peaceful assembly.”

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.

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. 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. Furthermore, she testified that the dissemination of negative information about members of Parliament lays the groundwork for “social enmity”. 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.

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796 See above, note 583, Para 51.
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).  

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. 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. 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. 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.

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


803 Ibid., Para 9.


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 Kazakhstan 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:

[...]particulary 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.
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;

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(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. The Law on Political Parties imposes “onerous obligations” 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, 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. The HRC has criticised these requirements as constituting an “undue restriction on the right to freedom of assembly and political participation”. Moreover, these requirements prevent

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812 Code on Administrative Offences, above, note 318, Article 489.
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. 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, 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!, 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. 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.”

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.
822 Ibid., Para 29.
members. Following the court decision, Toleubek Mahyzhanov, 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. 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.

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. 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. 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. There were also reports of voters being pressurised to vote for the President.

827 Ibid., p. 2.
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), 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”. 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.

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. However, the World Health Organization, however, estimates that approximately 15% of all people live with some form of disability, of whom 2–4%

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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. 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”.

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.

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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. This approach would be consistent with that taken by the CESCR when considering disability as a form of “other status” under the ICESCR. 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.

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,

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838 See above, note 294, Para 28.
defects resulting in a restricted life activity and a necessity for social protection of such a person.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{843} However, it should be noted that the Law makes numerous references to the term ‘invalid’,\textsuperscript{844} in contravention of the recommendations of the Committee on the Rights of Persons with Disabilities (the CRPD Committee).\textsuperscript{845} Since February 2015, in anticipation of the ratification of the CRPD, Kazakhstan has been considering amendments to the 2005 Law,\textsuperscript{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-


\textsuperscript{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”.

\textsuperscript{842} See above, note 830, Article 12.

\textsuperscript{843} See above, note 840, Article 14.

\textsuperscript{844} Ibid., Article 83. See also UNICEF, above, note 839, p. 16.

\textsuperscript{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).

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.\textsuperscript{847} The first phase of the Plan was implemented from 2012–2013,\textsuperscript{848} and the second phase from 2014–2015,\textsuperscript{849} the government approved a resolution approving the third phase in April 2016.\textsuperscript{850}

\textbf{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.\textsuperscript{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:

\begin{footnotesize}
\begin{enumerate}
\item See above, note 847.
\item Committee on the Rights of Persons with Disabilities, \textit{General Comment No. 1: Article 12: Equal recognition before the law}, UN Doc. CRPD/C/GC/1, 2014, Para 44.
\end{enumerate}
\end{footnotesize}
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.\textsuperscript{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.\textsuperscript{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:

\textit{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.}\textsuperscript{854}

\begin{itemize}
\item \textsuperscript{852} See above, note 555, Para 39.
\item \textsuperscript{853} \textit{Ibid.}
\item \textsuperscript{854} See above, note 525, para 34.
\end{itemize}
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.
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.\(^{861}\)

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859 See above, note 555, Para 38.
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.  

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%). 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.

**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 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

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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. As noted in Part 2.2.3 above the quota has been set as 1% for persons with a certain class of disabilities. 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.

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. 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. 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.

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”.

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.
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. 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. The under-representation of persons with disabilities in higher education further inhibits the ability of persons with disabilities to gain employment.

**Children with Disabilities**

The state estimates that 1.33% of Kazakhstanis under the age of 18 have a disability, 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.

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”. 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.

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-

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876 See above, note 834, pp. 7–8.

877 See above, note 875.

878 See UNICEF, above, note 839, p. 17.

879 *Ibid*.


tion centres and 160 social care units.\textsuperscript{882} Treatment is free and includes rehabilitation; with certain individuals given free medicine and allowed special food.\textsuperscript{883} Thirty-nine regional centres provide comprehensive rehabilitation;\textsuperscript{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.\textsuperscript{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.

\textit{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.

\textbf{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

\begin{flushleft}
\textsuperscript{882} See above, note 865, Para 401. \\
\textsuperscript{883} \textit{Ibid.}, Para 402. \\
\textsuperscript{884} \textit{Ibid.}, Para 403. \\
\textsuperscript{885} \textit{Ibid.}, Para 406.
\end{flushleft}
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.\(^\text{886}\) 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.\(^\text{887}\) 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.\(^\text{888}\) 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,\(^\text{889}\) and the cumulative number of HIV cases to be 22,109.\(^\text{890}\) Prevalence has increased in the past decade, rising from 0.1% in 2010\(^\text{891}\) to 0.2% in 2014,\(^\text{892}\) though this remains relatively low compared to the 0.6% prevalence rate in Central Asia and Eastern Europe.\(^\text{893}\) UN Women has de-

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\(^{886}\) See above, note 294, Para 33.


\(^{890}\) Ibid.


scribed the wider Central Asia region as experiencing “one of the youngest and fastest-growing HIV epidemics in the world”.

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. 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. Men are over-represented amongst those contracting HIV, with UN Women reporting that, 44.1% of new cases of HIV in 2015 involved women.

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. 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.*

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

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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. 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. Article 112 of the Code prohibits discrimination on the grounds of a persons’ HIV status in the grant of healthcare.

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.*

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

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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.

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.

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\text{In 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}
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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:

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\text{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}
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**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

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904 See above, note 898, p. 40.
905 Ibid., p. 39.
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

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908 Ibid.
909 Ibid.
910 See above, note 895, p. 6.
912 See above, note 898, p. 41.
(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 orientation\(^{915}\)

### 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

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\(^{916}\) See above, note 660, Article 105.

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.