4. RECOMMENDATIONS

In light of the foregoing analysis, a series of recommendations are offered to the government of Kazakhstan. These recommendations are offered in order to enable Kazakhstan to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality both by improving the legal and policy framework with respect to equality and through other means.

All recommendations are based on international law related to equality and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality. Recommendations are also based on the conclusions reached at the ends of Parts 2 and 3 of this report. The recommendations are presented below:

**Recommendation 1:**
**Strengthen International Commitments Related to Equality**

Kazakhstan should ratify the following United Nations human rights instruments which are relevant to the rights of equality and non-discrimination:

- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities;
- The International Convention for the Protection of All Persons from Enforced Disappearances;
- The Convention relating to the Status of Stateless Persons;
- The Convention on the Reduction of Statelessness;
- The UNESCO Convention Against Discrimination; and
- The Rome Statute on the International Criminal Court.

**Recommendation 2:**
**Reform of Discriminatory Legislation**

Kazakhstan should undertake a review of legislation in order to (i) assess its compatibility with the rights to equality and non-discrimination as defined un-
der the international instruments to which it is party, and (ii) amend, and where
necessary, repeal existing legislative provisions that conflict with the right to
equality either by being inherently discriminatory or by resulting in discrimi-
nation in their application. The following provisions in particular have been
highlighted in this report as being either discriminatory in and of themselves
or applied in a discriminatory manner, and so should be reviewed as a priority:

**Code of Administrative Offences**

- Article 83 which refers to persons with disabilities as “invalids”;
- Article 453 which unduly restricts the right to freedom of expression
  by prohibiting the manufacture, storage and distribution of materials
  which are considered to undermine state security, promote a violent
  change in the constitutional order or incite social, racial, national, re-
  ligious and class hatred;
- Article 489 which imposes a fine on religious organisations operating
  without a valid registration;
- Article 490 which imposes a fine for:
  - Carrying out “missionary activities” without registration and spread-
    ing the religious doctrine of unregistered religious associations;
  - Constructing religious buildings or converting buildings to reli-
    gious buildings without authorisation;
  - Violation of legislative requirements pertaining to the perfor-
    mance of religious rites, ceremonies or assemblies;
  - Carrying out activity not specified in the charter of a registered
    religious association;
  - Management of a religious association by a person appointed by
    a foreign religious centre without authorisation.

**Criminal Code**

- Article 120 which requires the use of force in the crime of rape and is
  limited to penetrative vaginal intercourse;
- Article 130 which criminalises slander or the “spreading of deliber-
  ately false information that denigrates the honour and dignity of an-
  other person”;
- Article 131 which creates the offence of “the denigration of the hon-
  our and dignity of another person, expressed in indecent form”;
• Articles 373, 375, 376, 378, 410 and 411 which create offences for insults to the First President, current President, parliamentarians, public officials, participants in court proceedings and members of the judiciary;
• Article 400 which imposes criminal sanctions for breaches of the procedures in the organisation and holding of rallies and demonstrations.

**Criminal Procedure Code**

• Article 32 which categorises rape and other violent crimes against women as being “private” or “public-private” crimes, meaning they can only be prosecuted following an official complaint from a victim;
• Article 68 which allows for criminal proceedings for crimes of a “public-private” nature, including violence against women and rape, to be terminated on “reconciliation of the parties”.

**Law on Broadcasting**

• Article 21(3) which allows the registration of foreign radio and television broadcasts to be refused on the basis of broad criteria, such as where materials are deemed to “violate the integrity of the Republic of Kazakhstan”.

**Law on Communication**

• Article 41-1 which allows the Prosecutor General to suspend networks in response to a wide variety of circumstances.

**Law on Education**

• Article 8(2) which excludes foreign nationals without permanent residence and stateless persons from the right to primary and secondary education.

**Special Services Law**

• Article 3 which denies stateless persons without permanent residence the right to welfare assistance.
Law on Social Insurance

- Article 8 which denies stateless persons without permanent residence the right to welfare assistance.

Family Code

- Article 11 which prohibits same-sex marriage;
- Article 91 which prohibits stateless persons, unmarried persons and LGBT persons from adopting children and which restricts the rights of unmarried men to adopt.

Labour Code

- Articles 16 and 26 which mandate the creation of a “list of jobs” involving “harmful and/or hazardous conditions” which women cannot perform;
- Article 69 which restricts the working week for persons with certain classes of disability to 36 hours;
- Article 76 which prohibits persons with disabilities, those who have children with disabilities and pregnant women from working night shifts without a doctor’s note;
- Article 77 which prohibits pregnant women and persons with disabilities from working overtime.

Health Law

- Article 105(2) which provides for the mandatory hospitalisation of persons with TB and the mandatory recording of treatment for TB on an individual’s employment history.

Law on Religious Activity and Religious Associations

- Article 8 which prohibits conducting “missionary activity” unless registered;
- Article 9 which limits the import and distribution of religious materials by non-registered religious organisations;
• Article 12 which mandates that a religious organisation may only register at the local level if it can gather a minimum of 50 signatures from Kazakhstani nationals;
• Articles 15 and 16 which set out the documents a religious organisation is required to produce to apply for registration;
• Article 24 according to which all religious organisations are required to undergo compulsory re-registration.

**Law on Counteraction of Extremism**

• Article 6(1) which permits the state to monitor all religious associations and missionaries.

**Recommendation 3: Introduce Comprehensive Equality Legislation**

Kazakhstan should adopt appropriate legislative measures for the implementation of the right to equality. Such measures should ensure comprehensive protection across all grounds of discrimination and in all areas of activity regulated by law.

The enactment of comprehensive equality legislation should give effect to the principles of equality under international law. Such equality legislation should aim to eliminate direct and indirect discrimination and harassment in all areas of life regulated by law; cover all prohibited grounds listed in Principle 5 of the Declaration of Principles on Equality; and attribute obligations to public and private actors, including in relation to the promotion of substantive equality and the collection of data relevant to equality.

Comprehensive equality legislation could either take the form of:

(a) A single equality law which offers consistent protection against discrimination across all grounds of discrimination and in all areas of life regulated by law; or

(b) A coherent system of laws which together address all grounds of discrimination in all areas of life regulated by law.
Members of groups who may be distinguished by one or more of the prohibited grounds should be given the opportunity to participate in the decision-making processes which lead to the adoption of such legislative measures.

Recommmendation 4:
Reform, Implementation and Enforcement of Existing Laws Aimed at Prohibiting Discrimination

The government of Kazakhstan should introduce reforms to improve existing legal provisions which aim to prohibit discrimination. For this purpose:

- The government of Kazakhstan should undertake a comprehensive review of all legislation which prohibits discrimination in order to harmonise the provisions of these instruments so that the relationship between the different protections offered is clear and complementary and to ensure that the guarantees provided are directly enforceable by individuals.
- The review should also ensure that all victims of discrimination are able to have effective access to justice, including, as necessary, by amending the Civil Code and Code of Administrative Responsibility to provide clarity to courts on how to apply and enforce the laws, and ensuring legal aid is available for those would not otherwise be able to bring their claim.

In addition, the process of reform should aim to bring existing legal provisions on non-discrimination into line with international standards. This should include, as a minimum, review and reform of the following provisions:

Constitution of the Republic of Kazakhstan

- Article 14 which guarantees the right of non-discrimination but does not expressly include the grounds of sexual orientation, gender identity, disability and health status.

Criminal Code

- Article 145 which criminalises the “direct or indirect restriction of the rights and freedoms of citizens” on the grounds of “origin, social, employment or material status, race, nationality, language, religion,
beliefs, place of residence, affiliation with public associations or any other circumstances.”

**Labour Code**

- Article 6 which prohibits discrimination but only on the basis of a closed list of grounds which does not include sexual orientation, gender identity or health status.

**Law on Gender Equality**

- Article 4 which defines discrimination but (i) does not explicitly incorporate indirect discrimination; (ii) does not incorporate intersectional discrimination or discrimination by association; (iii) restricts individuals to challenging “regulatory legal acts” rather than prohibiting discrimination in all areas of life regulated by law; (iv) does not define or address the need for positive action; and (v) does not create a direct cause of action for breaches of the Law.

**Law on Social Protection of Disabled Persons**

- Article 35, which provides for compensation for damage suffered by persons with disabilities, is (i) not directly enforceable and (ii) limited to the sphere of employment.

**Recommendation 5: Actions to Address Discrimination against Specific Groups**

Kazakhstan should take specific actions to address the discrimination and disadvantage faced by different groups in Kazakhstan, including all of those highlighted in Part 3 of this report. Such steps should be taken in addition to improving protection from discrimination in law by acting on Recommendations 2, 3 and 4. These steps should include, but not be limited to, the following:

**Religion**

- Review and amend the 2011 Law on Religious Activity and Religious Associations to ensure that its requirements do not discriminate against minority religious groups;
• Ensure that the application of Article 174 of the Criminal Code does not disproportionately interfere with the right to freedom of religion, including that of members of minority communities;
• Cease educational campaigns by government-funded “anti-sect” centres which present certain minority religions as extremist;
• Prohibit and effectively investigate all incidences of violence by both state and private actors against members of minority religions.

Ethnicity and Language

• Ensure that all incidents of inter-ethnic violence are effectively investigated;
• Adopt positive action measures to ensure equal representation of ethnic minorities in political life and decision making;
• Gather statistics on the economic and social situation of minorities disaggregated by ethnicity or race;
• Respect and fulfil the obligation under Article 7(2) of the Constitution, ensuring that the Russian language is used on a par with Kazakh in state institutions and bodies.

Gender

• Repeal the Order of the Minister of Health and Social Development on the approval of the list of jobs where persons under the age of 18 may not be employed, limits for carrying and handling weights by persons under the age of 18, the list of jobs where women may not be employed, and of limits and manual handling of weights by women, No. 944 of 8 December 2015;
• Take further measures to prevent and eliminate domestic and other gender-based violence and improve the provision of shelters and other forms of support for women affected by such violence;
• Effectively investigate and prosecute incidences of trafficking under Article 128 of the Criminal Code;
• Take practical policy measures to tackle gender segregation in education and employment;
• Adopt positive action measures to secure equality of representation in political life;
• Take action to eradicate the horizontal and vertical segregation of women in employment.
Recommendations

**Sexual Orientation and Gender Identity**

- Clarify that the term “other circumstances” in Article 14 of the Constitution which prohibits discrimination includes the grounds of sexual orientation and gender identity;
- Repeal laws requiring surgical correction to obtain legal recognition of a gender reassignment;
- Effectively investigate and prosecute all incidences of discriminatory violence against LGBT persons.

**Political Opinion**

- Review the cases of political and civil society activists, lawyers and journalists convicted for violation of Article 174 of the Criminal Code and other laws, and overturn their convictions where violations of the rights to freedom from arbitrary detention or non-discrimination are identified;
- Review the implementation of Articles 130, 131, 174, 179, 183, 373, 375, 376, 378, 404, 410 and 411 of the Criminal Code in order to ensure that their application does not result in the discriminatory denial of freedom of expression;
- Review the implementation of Article 400 of the Criminal Code in order to ensure that its application does not result in the discriminatory denial of freedom of assembly;
- Conduct a wide-ranging independent inquiry into the Zhanozen incident and implement the recommendations of that inquiry;
- Review the Law On the Activities of Non-Governmental Organisations in order to ensure that it does not result in the discriminatory denial of freedom of assembly;
- Review the Law On Political Parties in order to ensure that it does not result in discriminatory denial of the right to participate in public life.

**Disability**

- Remove references to “invalids” in legislation designed to protect the rights of persons with disabilities;
- Cease the practice of institutionalisation of persons with mental disabilities and investigate all allegations of torture or other ill-treatment in institutions;
• Take measures to ensure the accessibility of infrastructure, public transport and public buildings for persons with disabilities;
• Adopt positive action and reasonable accommodation measures to promote equality of participation in employment for persons with disabilities;
• Prioritise access to inclusive education for children with disabilities rather than the creation and maintenance of specialised institutions.

Health Status

• Collect statistics on the prevalence of HIV in Kazakhstan;
• Educate healthcare workers on HIV/AIDS and the proper treatment of persons living with HIV/AIDS;
• Take measures to combat the stigmatisation of persons living with HIV/AIDS.

Recommendation 6:
Ensuring the Independence of Legal Actors and the Effectiveness of Human Rights Institutions

Kazakhstan should take action to ensure the independence of the judiciary, advocates and human rights institutions. In doing so, the state should consider the following specific measures:

• Kazakhstan should take urgent action to end corruption within the judiciary, and the procedures for selection and the taking of disciplinary action against judges should be reviewed to ensure that they safeguard the independence of the judiciary.
• In order to further ensure the effective implementation and enforcement of these laws, the government should also ensure that the Ombudsperson is reformed to bring it in line with the Paris Principles, and that it has sufficient independence, financial and material support for it to fulfil its duty as a national human rights institution to combat discrimination. In particular, the Ombudsperson should be granted competence to consider complaints against the actions and decisions of the President, Parliament, government, Constitutional Council, Prosecutor General, Central Electoral Commission and the courts of the Republic of Kazakhstan.
• Individuals should be empowered to bring complaints to the Constitutional Council to vindicate their constitutional rights and freedoms.
Recommendation 7: Data Collection

During the research for this report, it has been established that there is a lack of information, including statistics, in relation to key indicators of equality in Kazakhstan. State bodies should collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality. Wherever statistics are collected in relation to key indicators of equality, they should be disaggregated in order to demonstrate the different experiences of disadvantaged groups within society in Kazakhstan. Kazakhstan should further ensure that such information is not used in a manner that violates human rights.

Recommendation 8: Education on Equality

Kazakhstan should take action to raise public awareness about equality and to ensure that all education establishments provide suitable education on equality as a fundamental right. Such action is particularly necessary in order to modify social and cultural patterns of conduct and to eliminate prejudices which are based on the idea of the superiority or inferiority of one group within society in relation to another.

Recommendation 9: Prohibition of Regressive Interpretation

In adopting and implementing laws and policies to promote equality, Kazakhstan should not allow any regression from the level of protection against discrimination that has already been achieved.