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**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION  
TO THE UNIVERSAL PERIODIC REVIEW OF KAZAKHSTAN**

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P.O. Box, 91, Rue des Bains, 33, 1211 Geneva 8, Switzerland  
Tel: +41(0) 22 979 3800 – Fax: +41(0) 22 979 3801 – Website: <http://www.icj.org> - E-mail: [info@icj.org](mailto:info@icj.org)

## **ICJ SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF KAZAKHSTAN**

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of Kazakhstan. In this submission, the ICJ brings to the attention of the Human Rights Council's Working Group on the UPR (Working Group) and to the Human Rights Council (Council) issues concerning: (1) lack of access to independent and effective legal advice and representation, and its impact on the rights to liberty and to a fair hearing; (2) legal obstacles which impede women's access to justice, and undermine women's enjoyment of human rights on a basis of equality and without discrimination.

### **Access to independent and effective legal advice and representation**

2. The procedural rights of suspects and accused persons are poorly protected in the criminal justice system of Kazakhstan. Lack of judicial independence<sup>1</sup> means that judges are rarely free to acquit people who have been charged with criminal offences, and have reason to fear immediate disciplinary<sup>2</sup> or other more severe<sup>3</sup> repercussions should they do so. The widespread use of torture and other ill-treatment in the course of the investigation<sup>4</sup> is compounded by its use as evidence in court, supporting a conviction rate that is close to 100 percent.<sup>5</sup> Research by the ICJ and the Central Asian League of Lawyers carried out in 2013<sup>6</sup> found that improvements in legislation have failed ensure access for suspects and accused persons in detention to independent and effective legal advice, facilitating violations of the rights to freedom from torture or other ill-treatment, to liberty and to a fair trial.<sup>7</sup>

### **The right of access to a lawyer in detention**

3. Although national law guarantees that detained suspects have access to a lawyer,<sup>8</sup> lawyers reported to the ICJ that, in practice, access is often impeded, contrary to the internationally recognized right of detained persons to prompt access to a lawyer, which is a necessary safeguard for the protection of the rights to liberty, to fair trial, and freedom from ill-treatment.<sup>9</sup> It was reported that the official in charge of the investigation exercises discretion as to whether to grant a defence lawyer access to a detained client. Intentionally or otherwise, investigators are often unavailable to provide the documents needed by a lawyer to access clients, leading to significant delays. Even when the necessary approvals and documents have been obtained, it is reported that investigators impede meetings between lawyers and their clients, or restrict their duration.<sup>10</sup> The ICJ was also informed that defence lawyers in criminal cases have difficulty meeting with their detained clients confidentially, contrary to national criminal procedure and international standards.<sup>11</sup>

### **The right to challenge pre-trial detention**

4. Lawyers report that successful defence challenges to orders for pre-trial detention are rare. A serious obstacle to protecting the right to liberty of their clients is the lack of a clear and unambiguous requirement in criminal procedural law that the detainee be represented by a lawyer in habeas corpus hearings, in which the legality of the detention is challenged. This raises questions as to the effective protection of the right to challenge detention under Article 9(4) ICCPR. The right to liberty guaranteed under Article 9 ICCPR requires that detention pending trial should be the exception rather than the rule.<sup>12</sup> Without a lawyer present to represent the detained person at a habeas corpus hearing, the likelihood of compliance with this standard is reduced.

### **Independence of lawyers**

5. National law provides that if a suspect or an accused person has insufficient financial means, he or she has the right to be represented by a State-appointed lawyer.<sup>13</sup> Executive control of defence lawyers is common in criminal cases in which the defence lawyer is appointed by the investigating authorities or courts and paid for by the state. Such control violates the State's obligation to ensure the right to effective legal assistance.<sup>14</sup> It is well documented that investigators will, as a rule, seek to appoint those legal aid lawyers who they consider to be "compliant".<sup>15</sup> Such lawyers, sometimes known as "pocket lawyers", do not provide independent legal advice or protect the interests of their clients, leading to violations of the rights to freedom from torture and other ill-treatment, to liberty, and to a fair trial.

### **Harassment of lawyers**

6. Independent lawyers who seek to defend the interests of their clients risk harassment through the abusive application of the law, in violation of the right to a fair trial of their clients, and of the UN Basic Principles on the Role of Lawyers. Lawyers reported to the ICJ that, when they have raised questions about procedural irregularities in a case, judges have threatened to use their powers to make an "interim order" which can form the basis for initiating disciplinary action against the lawyer. Such orders have led to disbarment proceedings in a number of cases. Examples of disciplinary or other sanctions or investigatory steps against lawyers in violation of international law and standards include the following.

- A recommendation to disbar two lawyers, Raziya Nurmasheva and Iskander Alimbayev was made by the judge in a case in which they were defending a human rights defender, Vadim Kuramshin, on the grounds of their alleged "purposeful, groundless protraction of the judicial process" and "incorrect behaviour towards the court and other participants of the process". It appears that these "grounds" related to the lawyers' effective representation of their client. An order for disbarment was issued, confirmed by an appeal court and forwarded to the Ministry of Justice, though no action has as yet been taken to terminate their licences to practise law.<sup>16</sup>
- Disbarment proceedings were brought against lawyers Polina Zhukiova and Lyubov Agushevich, in connection with their successful conduct of the defence in criminal proceedings. Their alleged misconduct included statements that their clients were innocent, submitting motions to the court for the examination of witnesses, submitting requests for the recusal of the judge, and one lawyer "putting a question which she knew the answer to." These actions were interpreted by the presiding judge as violations of professional ethics.<sup>17</sup> The Supreme Court has now ruled that there are grounds to re-open and reconsider the lawfulness of the disbarment of Polina Zhukova.<sup>18</sup>
- The detention in a psychiatric facility for three months in 2013 of lawyer Zinaida Mukhortova on the authorisation of Balkhash City Court. It is of particular concern that the Court decision authorizing the lawyer's detention gave as one of the grounds for detention her "possibly querulant" and litigious" activity. This language raises serious concerns that Zinaida Mukhortova's psychiatric detention amounted to harassment or reprisal for her legitimate professional activities, and that her detention was therefore arbitrary, contrary to Article 9 ICCPR.<sup>19</sup> Although Zinaida Mukhortova was released after three months in detention,<sup>20</sup> the

lawfulness of her detention was subsequently confirmed by the Karaganda Regional Court.<sup>21</sup>

### **Women's access to justice in situations of sexual violence and other forms of gender discrimination**

7. Flaws and gaps in the law undermine women's ability to access legal protection and redress when they face gender-based violence and other forms of sex discrimination.<sup>22</sup> They are inconsistent with Kazakhstan's international human rights obligations, including under the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Civil and Political Rights.

### **Ineffective criminalization of rape and other forms of sexual violence**

8. Kazak criminal law does not appropriately and adequately define and prohibit all forms of sexual violence and provide for dissuasive sanctions and punishment commensurate with the gravity of the offence and fulfilling a deterrent function. This contravenes the obligation to exercise effective due diligence to prevent, investigate, prosecute, punish and ensure access to remedies in instances of sexual violence perpetrated by public and private actors.<sup>23</sup>

### **Narrow definition of rape**

9. Kazak criminal law continues to define the crime of rape only as vaginal intercourse perpetrated by a man against a woman.<sup>24</sup> As a result the definition of rape does not encompass penetration through anal or oral sex or through the use of objects. Nor does it acknowledge that men may be victims of rape or that women may perpetrate rape. This limited definition conveys the impression that vaginal rape by men is necessarily different in consequence or nature to other forms of sexual violence (such as anal or oral sexual assault, or sexual assault of men). It is also symbolic of an approach to sexual assault that is focused on the specific form the assault takes as opposed to the underlying violation of sexual autonomy that all incidents of sexual assault involve.<sup>25</sup>

### **Requiring proof of physical violence**

10. Kazak criminal law defines rape and the crime of "violent actions of a sexual character" with reference to a requirement that they be accompanied by violence or a threat thereof.<sup>26</sup> As a result, provisions criminalizing rape and violent actions of a sexual character do not apply to situations in which non-consensual sexual contact has not been accompanied by violence or a threat thereof. This means that acts of rape or sexual assault that do not involve an element of violence or threat thereof are not treated as serious crimes that the State is obliged to investigate, prosecute and punish.<sup>27</sup> Such requirements are based on problematic and inaccurate assumptions concerning the proper and natural reaction of victims to unwanted sexual contact. These include beliefs that if sex is truly non-consensual victims will physically defend themselves and perpetrators will need to use or threaten violence. They obscure the reality that fear and shock influence victims' behaviour in many different ways and that coercion may involve many forms of non-violent threats, intimidation and duress. Victims in many instances therefore may not physically resist sexual assault and perpetrators may not always need to rely on violence or threats thereof.<sup>28</sup>

### **Investigation and prosecution premised on the victim's complaint**

11. Kazak law specifies that in many situations of rape and sexual assault the onus is on the victim to make an official complaint and pursue accountability.<sup>29</sup> Only then can the State investigate and initiate prosecutions.<sup>30</sup> This differs from the procedure applicable to other serious crimes in which cases Kazak law provides that prosecution shall be carried out irrespective of the submission of a complaint by the victim.<sup>31</sup> In the case of some forms of sexual violence, even where the victim makes a formal complaint, there is no obligation under Kazak law on the State to initiate an official preliminary investigation.<sup>32</sup> This approach contrasts with other crimes where the onus is on State officials to immediately conduct a preliminary investigation into all incidents brought to its attention.

### **Reconciliation prevents prosecution**

12. Kazak criminal law provides that in many instances of rape and sexual assault a State prosecution must cease if, although initially having made an official complaint, the victim later 'reconciles' with the perpetrator.<sup>33</sup> Kazak criminal law provides that perpetrators will be relieved of criminal liability if they have 'reconciled' with the victim and 'made good for the harm caused to the victim'.<sup>34</sup>
13. These procedural rules undermine the ability of women in Kazakhstan who are victims of rape and other forms of sexual assault to seek justice and accountability. Because in many instances prosecutions cannot commence unless proactively initiated by the victim, family and social pressure on the victim, as well as threats, fear and stigma have a significant influence on whether accountability is pursued. Many interviewed by the ICJ explained often women do not file complaints in instances of sexual assault and may be particularly reticent to do so where the perpetrator is someone known to them and where the incident does not result in serious physical injuries. Moreover, even where women do file complaints, similar factors may subsequently intervene, leading them to 'reconcile' with the perpetrator and accept compensation, thereby precluding continuation of the prosecution. Indeed, the system places victims of sexual assault at considerable risk of re-victimization as perpetrators may often seek to "convince" the victim to accept compensation or not to make a complaint in the first place. To this end they may use various methods of intimidation.<sup>35</sup>

### **No legal prohibition of sexual harassment**

14. There is currently no legal prohibition of sexual harassment in place in Kazakhstan. Where sexual harassment encompasses acts of sexual assault, these may be dealt with by invoking relevant criminal law provisions dealing with those crimes. Beyond this, however, sexual harassment is not prohibited.<sup>36</sup> 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 behavior that may not be categorized as or involve sexual assault. For example, this may include behaviour such as touching, requests for sexual favours, verbal or non-verbal conduct of a sexual nature, or display of sexual materials. The absence of enforceable legal consequences causes situations of sexual harassment to escalate and repeat themselves. Those interviewed by the ICJ spoke of a generally permissive approach to many forms of sexual harassment in Kazakhstan's workplaces, universities and schools. They expressed the view that, as a result, for many women sexual harassment is simply a fact of life, without legal consequences, that must be endured.<sup>37</sup>

### **Ineffective prohibition of discrimination against women and access to remedies**

15. A number of critical omissions and inadequacies in Kazak legislation<sup>38</sup> concerning sex discrimination continue to deny women effective protection from discrimination and access to legal remedies when they face discrimination.

#### **Inadequate prohibition of discrimination**

16. International law and standards require Kazakhstan to prohibit both direct and indirect, *de jure* and *de facto* discrimination in all sectors of society, by both public and private actors.<sup>39</sup> Such prohibitions must be applicable and enforceable in respect of the conduct of public authorities, the judiciary, organizations, enterprises and private individuals.<sup>40</sup> The Kazak Law on Equal Opportunities does not meet these requirements: it only provides that *de jure* discrimination may be challenged before a court<sup>41</sup> and does not include an express prohibition of other forms of discrimination. As a result, the Law does not appear to prohibit discrimination in practice (*de facto*) or prohibit discrimination by private actors.<sup>42</sup>

#### **Absence of Complaint Procedures, Redress Mechanisms and Sanctions**

17. International standards require that domestic law dealing with discrimination against women must clearly outline an effective remedial procedure and must clearly define the forms of redress available.<sup>43</sup> Moreover prohibitions of discrimination against women must be accompanied by explicitly delineated sanctions in case of their breach.<sup>44</sup> However, Kazakhstan's Law on Equal Opportunities does not include provisions detailing penalties or sanctions to be imposed against those who engage in discriminatory conduct. Nor does it outline what remedial mechanisms individuals might use to enforce its provisions. It simply states that any violation of its provisions "shall be punishable under the laws of the Republic of Kazakhstan", without specifying what laws would be applicable.<sup>45</sup> Those interviewed by the ICJ stressed that the ambiguous nature of the relevant provisions leaves women, their lawyers, civil society representatives and even public authorities themselves without clarity as to if, and how, the legislation may be enforced effectively in practice as a basis for legal action seeking to redress inequality and discrimination.<sup>46</sup>

#### **Recommendations**

18. The ICJ calls upon the Working Group and the Council to recommend to the Government of Kazakhstan to:

*Concerning the rights to liberty, to a fair trial, and access to independent and effective legal advice*

- i) Take measures to ensure that the right of access to a lawyer for detained suspects and accused persons is effective in practice, and that meetings between lawyers and their clients in custody take place in confidence;
- ii) Amend the criminal procedure code to establish a clear legal requirement that detained persons must be represented by a lawyer at habeas corpus hearings;
- iii) Take measures to ensure that legal assistance provided to detained suspects or accused persons free of charge is independent, serves the interests of the client, and provides an effective safeguard for his or her human rights;
- iv) End the abusive application of disciplinary and other sanctions against lawyers for the discharge of their professional duties.

*Concerning women's access to justice in situations of sexual violence and gender discrimination*

- i) Reform Criminal Code and Criminal Procedure Code provisions dealing with rape and sexual assault to ensure that laws: (a) effectively and comprehensively prohibit all forms of sexual assault, *against women and men*, (b) *do not require that* sexual assault crimes be accompanied by violence or threats thereof, (c) classify all sexual assault crimes as crimes of public accusation, (d) remove the provisions which require prosecutions to end or relieve individuals of responsibility for rape or any other form of sexual assault on grounds of reconciliation.
- ii) Adopt legislation comprehensively prohibiting sexual harassment and providing for the application of dissuasive and proportionate sanctions and punishment.
- iii) Reform *The Law on the State Guarantees of Equal Rights and Equal Opportunities of Women and Men* so as to include a comprehensive prohibition of both *de jure* and *de facto* discrimination which is accompanied by an accessible procedure through which women can make complaints of discrimination and obtain effective redress.

ENDNOTES:

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- <sup>1</sup> UN HRC, Concluding Observations, Kazakhstan, CCPR/C/KAZ/CO/1, 19 August 2011, paras. 21- 22.
- <sup>2</sup> See, e.g., ICJ: Kazakhstan: Disciplinary action against judge Zhumasheva is an attack on judicial independence, <http://www.icj.org/kazakhstan-disciplinary-action-against-judge-zhumasheva-is-an-attack-on-judicial-independence/>.
- <sup>3</sup> Kazakhstan International News Agency, judge delivering a soft verdict has been arrested, <http://newskaz.ru/incidents/20130906/5518843.html>.
- <sup>4</sup> UN HRC, Concluding Observations, Kazakhstan, op cit para.14.
- <sup>5</sup> Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Mission to Kazakhstan, E/CN.4/2005/60/Add. 2, 11 January 2005, para. 34.
- <sup>6</sup> See, International Commission of Jurists, *The Independence of the Legal Profession in Central Asia*, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf>.
- <sup>7</sup> These rights are respectively guaranteed under Article 7 ICCPR and Articles 2 and 6 of CAT; Article 9 ICCPR; Article 14 ICCPR.
- <sup>8</sup> Law of the Republic of Kazakhstan on Lawyers' Activities, article 14 (3) and Criminal Procedure Code of the Republic of Kazakhstan, article 74.
- <sup>9</sup> ICCPR Articles 9, 14 and 7; UN HRC, General Comment on the Right to Equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, paras. 34 and 10; UN Basic Principles on the Role of Lawyers, U.N. Doc. A/CONF.144/28/Rev.1 (1990) Principle 7; Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, A/RES/43/173 (1988), Principles 17 and 18.
- <sup>10</sup> See further, Report of human-rights NGOs of Kazakhstan on compliance of the Republic of Kazakhstan with the International Covenant on Civil and Political Rights, Almaty, 2011, <http://www.bureau.kz/news/download/168.pdf>.
- <sup>11</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 18 (3); UN HRC, General Comment 32 on the right to equality before the courts and tribunals and to a fair trial, para.34; UN Basic Principles on the Role of Lawyers Principles 8, 22.
- <sup>12</sup> ICCPR, article 9 (3); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principles 36 (2) and 39; UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), Adopted by General Assembly resolution 45/110 of 14 December 1990, Rule 6 (1); Human Rights Committee, General Comment No 8, Right to Liberty and Security of Persons (article 9) 30 June 1982, U.N. Doc. HRI/GEN/1/Rev.1 at 8 (1994), para 3; Human Rights Committee, *Michael and Brian Hill v Spain*, Communication No 526/1993, U.N. Doc. CCPR/C/59/D/526/1993, para 12.3.
- <sup>13</sup> Criminal Procedure Code of the Republic of Kazakhstan, article 72.
- <sup>14</sup> UN Basic Principles on the Role of Lawyers, Principle 6; UN HRC General Comment 32, op cit, para.38.
- <sup>15</sup> Report of human-rights NGOs of Kazakhstan on compliance of the Republic of Kazakhstan with the International Covenant on Civil and Political Rights, Almaty, 2011, <http://www.bureau.kz/news/download/168.pdf>.
- <sup>16</sup> ICJ Legal Opinion, Disciplinary hearings against lawyers in Kazakhstan, [http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/02/Expert-legal-opinion\\_Nurmasheva\\_ENG.pdf](http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/02/Expert-legal-opinion_Nurmasheva_ENG.pdf).
- <sup>17</sup> ICJ Press Release, 6 December 2014, Kazakhstan: ICJ welcomes the Supreme Court decision to grant appeal of a disbarred lawyer, <http://www.icj.org/kazakhstan-icj-welcomes-the-supreme-court-decision-to-grant-an-appeal-of-a-disbarred-lawyer/>.
- <sup>18</sup> Kazakhstan: ICJ welcomes the Supreme Court decision to grant an appeal of a disbarred lawyer, Kazakhstan: ICJ welcomes the Supreme Court decision to grant an appeal of a disbarred lawyer; As of 13 March 2014, The proceedings were on-going.
- <sup>19</sup> ICJ Press Release, 3 September 2013, Kazakhstan, Psychiatric detention of lawyer must be ended, <http://www.icj.org/kazakhstan-psychiatric-detention-of-lawyer-must-be-ended/>.
- <sup>20</sup> ICJ Press Release, 5 November 2013, Kazakhstan: ICJ welcomes release of lawyer from psychiatric detention, <http://www.icj.org/kazakhstan-icj-welcomes-release-of-a-lawyer-from-psychiatric-detention/>.
- <sup>21</sup> ICJ Press Release, 3 December 2013, ICJ observes appeal against psychiatric detention of a lawyer, <http://www.icj.org/kazakhstan-icj-observes-appeal-against-psychiatric-detention-of-a-lawyer/>.

<sup>22</sup> International Commission of Jurists, Report, Women's Access to Justice in Kazakhstan: Identifying the Obstacles and Need for Change, 2013: <http://www.icj.org/kazakh-government-must-step-up-efforts-to-advance-womens-access-to-justice/>.

<sup>23</sup> CEDAW, *General Recommendation 19*, Violence Against Women, U.N. Doc. CEDAW/C/1992/L.1/Add.15, (hereinafter CEDAW General Recommendation 19), Para. 9; Article 4(c), *UN Declaration on the Elimination of Violence Against Women*, 20 December 1993, General Assembly, Resolution A/RES/48/104; *Fatma Yildirim v. Austria*, CEDAW Communication No. 6/2005, Views of 6 August 2007, UN Doc. CEDAW/C/39/D/6/2005, Paras. 12.1.2. and 12.1.5. See also, Report of the UN Special Rapporteur on Violence Against Women, its Causes and Consequences, Yakin Ertürk, *Violence Against Women: The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, U.N. Doc. E/CN.4/2006/61, 20 January 2006, Para. 29.

<sup>24</sup> Article 120 Kazak Criminal Code; "On some issues of definition of crimes of rape and other violent acts of a sexual nature," Supreme Court Decree, 2007; See CEDAW Concluding Observations on the Combined Third and Fourth Periodic Reports of Kazakhstan, CEDAW/C/KAZ/CO/3-4 (2014) , 28 February 2014, Paras 18 and 19.

<sup>25</sup> See CEDAW Concluding Observations on the Combined Third and Fourth Periodic Reports of Kazakhstan, CEDAW/C/KAZ/CO/3-4 (2014) , 28 February 2014, Paras 18 and 19.

<sup>26</sup> Article 120, 121 Kazak Criminal Code; "On some issues of definition of crimes of rape and other violent acts of a sexual nature," Supreme Court Decree, 2007; See CEDAW Concluding Observations on the Combined Third and Fourth Periodic Reports of Kazakhstan, CEDAW/C/KAZ/CO/3-4 (2014) , 28 February 2014, Paras 18 and 19.

<sup>27</sup> Although Article 123 of the Kazak Criminal Code outlines a lesser offence of "coercion into sexual intercourse", which does not include the element of physical violence, a conviction for this crime would attract a sentence of not more than two years' imprisonment which will often not be commensurate with the gravity of the conduct involved. Meanwhile the offence under Article 123 is classified by the Criminal Procedure Code as a crime of private accusation. Where a crime is classified as a matter of private accusation, the State is not obliged to initiate an official preliminary investigation, even if a complaint is filed. Articles 32-33, 37, 191(1), Criminal Procedure Code of the Republic of Kazakhstan; Article 67, Criminal Code of the Republic of Kazakhstan.

<sup>28</sup> See CEDAW Concluding Observations on the Combined Third and Fourth Periodic Reports of Kazakhstan, CEDAW/C/KAZ/CO/3-4 (2014) , 28 February 2014, Paras 18 and 19; *Vertido v. The Philippines*, CEDAW Communication No. 18/2008, Views of 16 July 2010, UN Doc. CEDAW/C/46/D/18/2008, see in general.

<sup>29</sup> See ICJ Report Women's Access to Justice in Kazakhstan: Identifying the Obstacles and Need for Change, 2013: <http://www.icj.org/kazakh-government-must-step-up-efforts-to-advance-womens-access-to-justice/>, pg.36-40

<sup>30</sup> Articles 32 to 34 of the Criminal Procedure Code outline that prosecution procedures will vary depending on whether a crime is classified as a 'private', 'private-public' or 'public' matter. In the case of private and private-public crimes, State prosecutions may only commence following an official complaint by the victim. Currently the Criminal Procedure Code designates that the crimes of "rape" and "violent actions of a sexual nature", as currently defined in domestic law, are to be treated as private-public matters, unless the aggravating circumstances specified in Articles 120(2)-(3) and Articles 121(2)-(3) are present. This means that where incidents of "rape" and "sexual violence", as currently defined in domestic law, did not occur in a gang rape context, or did not involve elements such as threats of death, "severe impacts to the victim's health" or "infection with a disease", the onus is on the victim to make an official complaint and pursue accountability. Only then can the State investigate and initiate prosecutions. This differs from the procedure applicable to public crimes, which include aggravated forms of rape and sexual violence. In the case of public crimes, "prosecution shall be carried out irrespective of the submission of a complaint by the victim". See CEDAW Concluding Observations on the Combined Third and Fourth Periodic Reports of Kazakhstan, CEDAW/C/KAZ/CO/3-4 (2014) , 28 February 2014, Paras 18 and 19.

<sup>31</sup> Article 32(4), Criminal Procedure Code of the Republic of Kazakhstan

<sup>32</sup> Where a crime is classified as a matter of private accusation, the State is not obliged to initiate an official preliminary investigation, even if a complaint is filed. This classification includes the crime of sexual coercion defined in Article 123 and which is the only sexual assault crime not requiring proof of violence or threat thereof. This approach contrasts with other crimes where the onus is on State officials to immediately conduct a preliminary investigation into all incidents brought to its attention. Articles 33 & 191(1), Criminal Procedure Code of the Republic of Kazakhstan.

<sup>33</sup> Articles 32-34, Criminal Procedure Code of the Republic of Kazakhstan; See also Articles 67 & 10(3) of the Criminal Code of the Republic of Kazakhstan. See CEDAW Concluding Observations on

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the Combined Third and Fourth Periodic Reports of Kazakhstan, CEDAW/C/KAZ/CO/3-4 (2014) , 28 February 2014, Paras 18 and 19.

<sup>34</sup> *Ibid.*

<sup>35</sup> See CEDAW Concluding Observations on the Combined Third and Fourth Periodic Reports of Kazakhstan, CEDAW/C/KAZ/CO/3-4 (2014) , 28 February 2014, Paras 18 and 19; See ICJ Report Women's Access to Justice in Kazakhstan: Identifying the Obstacles and Need for Change, 2013: <http://www.icj.org/kazakh-government-must-step-up-efforts-to-advance-womens-access-to-justice/>, pg.36-40.

<sup>36</sup> See CEDAW Concluding Observations on the Combined Third and Fourth Periodic Reports of Kazakhstan, CEDAW/C/KAZ/CO/3-4 (2014) , 28 February 2014, Paras 28 and 29.

<sup>37</sup> See ICJ Report Women's Access to Justice in Kazakhstan: Identifying the Obstacles and Need for Change, 2013: <http://www.icj.org/kazakh-government-must-step-up-efforts-to-advance-womens-access-to-justice/>, pg.40.

<sup>38</sup> The Law on the State Guarantees of Equal Rights and Equal Opportunities of Women and Men, 2009.

<sup>39</sup> CEDAW General Recommendation 28, Paras. 13, 17, 31, 32. CESCR General Comment 16, Paras.19 & 41. See also HRC, General Comment 28 Paras.4 & 31.

<sup>40</sup> *Ibid.*

<sup>41</sup> Article 4 (1), Law Equal Opportunities.

<sup>42</sup> See ICJ Report Women's Access to Justice in Kazakhstan: Identifying the Obstacles and Need for Change, 2013: <http://www.icj.org/kazakh-government-must-step-up-efforts-to-advance-womens-access-to-justice/>, pg.23-34. See CEDAW Concluding Observations on the Combined Third and Fourth Periodic Reports of Kazakhstan, CEDAW/C/KAZ/CO/3-4 (2014) , 28 February 2014, Paras 10 and 11.

<sup>43</sup> Article 2(c) CEDAW; Article 2(3) ICCPR; CEDAW General Recommendation 28, Paras. 17, 32, 34, 36. CESCR General Comment 16, Paras. 21 & 48; CESCR General Comment 20, Para.40; HRC General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 26 May 2004, Paras.15-20. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by GA resolution 60/147 of 16 December 2005.

<sup>44</sup> Article 2(b) CEDAW; CEDAW General Recommendation 28, Paras. 17 & 37(b); CEDAW General Recommendation 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, U.N. Doc. HRI/GEN/1/Rev.7 at 282 (2004), Para.7.

<sup>45</sup> Article 15, Law on Equal Opportunities.

<sup>46</sup> See ICJ Report Women's Access to Justice in Kazakhstan: Identifying the Obstacles and Need for Change, 2013: <http://www.icj.org/kazakh-government-must-step-up-efforts-to-advance-womens-access-to-justice/>, pg. 23-34. See CEDAW Concluding Observations on the Combined Third and Fourth Periodic Reports of Kazakhstan, CEDAW/C/KAZ/CO/3-4 (2014) , 28 February 2014, Paras 11, 12, 13.