

## I. Equality and non-discrimination

1. In Kazakhstani legislation, there is no comprehensive solution to the issues regarding discrimination. The legal framework is fragmental which does not provide an effective protection against discrimination in various fields. In addition, there is no clear system of legal regulations and prohibitions that would promote equality and non-discrimination.

2. The main laws contain only a general prohibition of discrimination, including a ban on violation of equality of citizens (Article 141 Criminal Code). In general, while proclaiming the principle of equality of rights and freedoms, Kazakhstan's legislation employs the term "discrimination" to a limited extent only, without giving it a proper definition<sup>1</sup> and using it in different contexts inconsistently, and lacks definitions pertaining to the matters of (non-)discrimination.

3. There is no special anti-discrimination law, which along with a mechanism of protection of the right would also contain a definition of the term "discrimination," including the concepts of direct and indirect discrimination in line with Article 1 of the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD) which Kazakhstan ratified in 1998. The measures that were undertaken so far are insufficient because the country has not brought its legal framework into compliance with international norms. The legislation does not have sufficient procedural guarantees against discrimination. There are no provisions that establish liability for state servants for discriminative treatment. The existing remedies in the form of a right to apply to a court of law to protect one's rights in an administrative, civil or criminal process are not effective and cannot be applied given the current state of affairs in the legislation.

4. Legislative deficiencies make it harder to provide the citizens with judicial protection when it comes to discrimination. The country effectively lacks a judicial practice of handling cases of discrimination on whatever basis, including that regarding the provisions of the ICERD, because the citizens never turn to judicial bodies with complaints. A situation has arisen in the law enforcement practice where facts of discrimination are given a different legal assessment. Imperfections of the national legislation, lack of clarity in defining legal features, forms and methods of discrimination, lack of criteria which would enable them to determine whether discrimination was present or not in any given case; all this makes it impossible for the victims to prove the facts of discrimination.

5. Studies carried out in 2015-2016<sup>2</sup> revealed cases of discrimination and unfavourable treatment on the basis of religion, gender, sexual orientation and gender identity, political views, limited legal capacity, and state of health.

6. Moreover, the HR Committee reviewed Kazakhstan in 2016 and adopted several recommendations on equality and non-discrimination, that have not been implemented until today: include sexual orientation and gender identity as a prohibited ground for discrimination, provide effective protection against all forms of discrimination, prohibit direct, indirect and multiple discrimination and provide access to remedies for victims. Also, review the procedures for gender-reassignment surgery and sex change to ensure their compatibility with the ICCPR.<sup>3</sup>

### **Recommendations:**

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<sup>1</sup> Except the Law of the Republic of Kazakhstan "On State Guarantees of Equal Rights and Possibilities for Men and Women" dated 08 December 2009 No. 223-IV, as amended on 03 July 2013, which contains a definition of discrimination on the basis of gender.

<sup>2</sup> See "For the sake of unity. Solving the problems of discrimination and inequality in Kazakhstan," a joint report of Equal Rights Trust and the Kazakhstan International Bureau for Human Rights and the Rule of Law, 2016.

<sup>3</sup> Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §9-10.

1) Develop and adopt a set of legislative, administrative and organisational measures to adopt anti-discrimination legislation, as well as effective anti-discrimination institutions, mechanisms and procedures. Provide adequate and effective protection against all forms of discrimination, including in the private sphere; prohibit direct, indirect and multiple discrimination, in line with the ICCPR and other international human rights standards; and provide for access to effective and appropriate remedies to victims of discrimination.

2) Introduce a definition of the term “discrimination” into the legislation, in line with Article 1 ICERD and ensure effective access to justice for victims of discriminatory treatment.

3) Take measures to ensure equal and fair representation of national minorities in state bodies.

4) Offer a more precise definition of the term “other circumstances” in Article 14 of the Constitution in order to prohibit discrimination on the basis of sexual orientation and gender identity. Repeal laws that require a surgery for a sex change to be legally recognized. Carefully investigate and prevent all cases of discriminatory violence against members of the LGBTI community. Explicitly list sexual orientation and gender identity among the prohibited grounds for discrimination; ensure that no form of discrimination or violence against persons based on their sexual orientation or gender identity is tolerated and that such cases are properly investigated and sanctioned. Review the procedures for gender-reassignment surgery and sex change with a view to ensuring their compatibility with the ICCPR.

5) Fully implement the recommendations of the ICERD<sup>4</sup>.

## II. Women’s Rights

1. The recommendations of the first and second cycles of the UPR concerning the protection of the rights of women in Kazakhstan are only implemented fragmentarily. Women continue to be under-represented at all levels of decision-making. There are no plans to develop effective mechanisms and temporary measures to increase the representation of women at the decision-making levels, measures to form party lists have not been effective. The gender equality strategy contains visibly insufficient measures to increase political representation of women. The matter of quotas is still at the exploratory stage.

Moreover, the recommendations of the HR Committee regarding violence against women were also not implemented.<sup>5</sup> Even worse, the state took measures going against them, by decriminalizing domestic violence.

2. The Law “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women” was adopted in December 2009. Almost ten years have passed since this law was adopted, and it should be stated it has some serious flaws, among those: an incomplete definition of discrimination (no criteria have been developed for defining a violation of a right from the point of view of discrimination); no liability has been defined for violating the law; the representatives of the Ministry of Justice and the Supreme Court do not perform any explanatory work to ensure the provisions of this law are understood correctly; sectorial legislation is under-developed; the provisions on discrimination have only been introduced in certain legislative acts, including the Labour Code and the Criminal Code; no special body responsible for compliance with the country’s legislation on state guarantees of equal rights and equal opportunities for men and women has been created.

3. The statutory list of state bodies that monitor the compliance with this law is poorly coordinated. Despite numerous recommendations from members of the HRC, HR Committee, CERD, CEDAW, the CRC, apart from the provisions of the Constitution, certain provisions in the Labour Code, procedural legislation and the rather-declarative Law on State Guarantees of Equal Rights and Equal

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<sup>4</sup> References to the ICERD Cobs.

<sup>5</sup>Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §11-12.

Opportunities for Men and Women, there is no comprehensive anti-discrimination legislation, anti-discrimination institutions, or anti-discrimination procedures.

4. The principle of equality in employment, guaranteed by the Constitution, is practically not observed. A credit for the increase in the representation of women in the Majilis of the Parliament goes to some women, it is not the result of “a consistent policy of implementing the gender strategy”. The national plan for the implementation of the gender policy has not practically been implemented. The inefficiency of the National Commission for Women and Family and Demographic Policy is obvious.

5. The representation of women at the decision-making level as the heads of departments and agencies of ministries is insignificant. In 2017, according to the UN Development Program's Gender Equality Index, Kazakhstan already ranks 59th, however the share of women among representatives of legal entities is more than 50%, and among individual entrepreneurs is about 6%. The areas with the largest share of women include hotels and restaurants, trade, utilities, social and personal services and agriculture. Of the 2.7 million self-employed people in the country, about 60% are women.

6. In the criminal legislation, there is no provision stipulating liability of the offender for discrimination against women. There are almost no lawsuits for discrimination considered by courts.

7. The resolution of the CEDAW Committee in the case “A.Belousova vs. Kazakhstan” has not been implemented.<sup>6</sup>

8. In 2009, the Law “On the Prevention of Domestic Violence” was adopted in which an attempt was made to regulate the activities of all government bodies in the prevention of domestic violence. In July 2017, a law was enacted according to which Articles 108 and 109 of the Criminal Code (“Intentional infliction of light injury to health” and “Beating”) were moved from criminal to administrative legislation, thereby essentially decriminalizing domestic violence, which now is treated as an administrative offense rather than as a crime, and the perpetrator is only brought to administrative responsibility instead of criminal. As a result, the offender is now subject to a fine of less than \$100, or an administrative arrest of up to 72 hours.

9. According to Article 5.4 of the Law “On the Prevention of Domestic Violence” dated 03 July 2013, the standards of provision of special social services, the procedure for their provision, the rights and responsibilities of a person (family) who find themselves in a difficult life situation, are defined by a legislation on special social services which is not always aligned with the situation of women who have suffered from domestic violence.

10. There is no notion of “sexual harassment” in the legislation. The laws on domestic violence and equality also do not establish a liability for sexual harassment.

**Recommendations:**

*1) Introduce the position of an Ombudsman on gender issues.*

*2) Revise the list of prohibited types of work for women and consider the possibility of improvement of the labour conditions in the fields that are considered hazardous for women, so as to help the women working in those professions. Introduce into the legislation measures to eliminate structural inequality and professional segregation, both horizontal and vertical, so as to reduce and eliminate the pay-gap between the sexes.*

*3) Introduce into the legislation special measures such as 30-percent share of women in the decision-making process in elected and appointed bodies, in other fields in which the women are under-*

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<sup>6</sup> Resolution of the CEDAW Committee in the case “A.Belousova vs. the Republic of Kazakhstan <http://juris.ohchr.org/Search/Details/2053>

represented, so as to expedite the achievement of actual equality between men and women. Create a mechanism of promoting women in political parties and up to the level of decision-making in government structures, which would be transparent for civil society.

4) Revise the structure of the system of social security and labour legislation so as to ease the effects of the factors that complicate the situation of women on the labour market. Develop and implement special programs of professional training and re-training for various groups of unemployed women taking into account their share in the unemployed population, their skillsets and education.

5) Introduce changes to article 789 “Timeframes for administrative detention” in the Code of Administrative Offenses and increase the timeframe for administrative detention of perpetrators from 3 to 24 or 48 hours, so that the abuser would have enough time to sober up, so as to avoid committing crimes with respect to his/her relatives and close ones.

6) Introduce changes to the Code of Criminal Procedure to re-categorise Articles 108, 109 and 110 of the Criminal Code from the category of private prosecution to the category of private-public prosecution, which will remove the burden of proof from the victims of domestic violence in courts. Classifying acts of violence against women, including domestic violence, as public prosecution cases subject to ex officio investigation and prosecution, and repealing provisions allowing termination of criminal proceedings upon reconciliation of the parties.

7) To enable the provision of high-quality and effective help to the victims of domestic violence and free-of-charge legal and psychological assistance, social support, and temporary housing, develop and adopt the standards of special social services. Provide financing from the national or local budgets. Provide regular three-year financing for the crisis centres for women who have suffered from domestic violence.

Ensuring that all cases of violence against women are promptly and thoroughly investigated, that perpetrators are brought to justice, and that victims have access to remedies and means of protection, including sufficient, safe and adequately funded shelters/crisis centres and suitable support services throughout the country.

Encouraging reporting of such cases, inter alia, by systematically informing women of their rights and of the existing legal avenues through which they can receive protection.

8) Provide those who have become victim of rape with access to legal remedies, provide for free-of-charge defence in courts, create a sufficient number of crisis centres using the money from budgets, where the victims could turn to for help, including legal and psychological help. Study the scale of spread, causes and consequences of rapes in Kazakhstan, and based on the findings develop a plan of comprehensive and focused measures. Amend the legislation— eliminate the practice of extra-judicial settlements of rapes when the alleged rapist reaches an amicable agreement with the victim by vowing to “compensate the damage caused”, and other crimes.

Strengthen the human and financial capacity of special divisions working on violence against women and ensuring that law enforcement, the judiciary, social workers and medical staff receive appropriate training on how to detect and deal properly with cases of violence against women.

9) Develop and adopt legislation in the field of labour relations to combat workplace sexual harassment in line with international norms and standards, provide for effective procedures of filing and reviewing complaints, legal remedies and sanctions. Ensure that when the provisions of Article 123 of the Criminal Code are triggered, the victims do not have to sign any petition/application if it may actually become an obstacle in realizing their right to access justice.

10) Take measures and hold events to raise awareness among the general public, including in villages, of workplace sexual harassment as a criminally-punishable offense, and promote a policy of combatting such harassment, both within government and private circles.

Strengthening preventive measures, including raising awareness of the unacceptability and adverse impact of violence against women.

### **III. Children’s rights**

1. In February 2016, the institution of the Commissioner for the Rights of the Child (CerRC) was established by the Decree of the President, such institution carries out its activities on a voluntary basis. The activities of the CerRC lack sufficient funding, technical and human resources and the determination of the state structure - the Committee for the Protection of Children's Rights of the Ministry of Education and Science as the coordinating authority does not comply with the recommendations of the Committee on the Rights of the Child (CRC) to take immediate measures to establish the institution of the CerRC in full compliance with the Paris Principles, without which systematic monitoring, a simplified complaints procedure for children and their legal representatives and their protection are impossible.

2. Until now, the National Strategy for the Protection of Children's Rights had not been adopted. An action plan, which envisages the creation of effective mechanisms for its implementation, provided with sufficient human, technical and financial resources has not been drawn up. A clear accurate "children's" budget has not developed yet. Despite the active work of the Committee for the Protection of the Children's Rights, its departmental affiliation to the Ministry of Education and Science considerably narrows the potential possibilities of the Committee, restricting its powers primarily to the sphere of education. In 2014, in accordance with the Resolution of the Government, the territorial departments for the protection of children's rights under the Committee for the Protection of Children's Rights were transformed into departments handed over to the local Akimat Education Department, which significantly increased their dependence on local executive bodies. Such a reorganisation resulted in the loss of trained professional personnel working for the benefit of children.

3. Despite the fact that Kazakhstan has acceded to the ILO Conventions No. 138 on the Minimum Age for Admission to Employment and No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, the Government has developed a list of types of work that children are not allowed to perform, including agricultural work, and despite the fact that criminal liability for the use of child labour has been made more stringent, child labour still persists, mainly in the agricultural sector--in cotton harvesting and vegetable production. The HR Committee shared our concern in 2016.<sup>7</sup>

4. The problems of providing housing to children from low-income families, orphans and children who have been left without parental care, are still very urgent.

5. In the state system of protection of the rights of the child, law enforcement practices that would be aimed against discrimination are practically non-existent. When it comes to providing access to education and healthcare, discrimination persists against children with disabilities, children in rural areas, children living in areas of ecological disasters, children who are not citizens of Kazakhstan, and children from low-income families.

6. The NGO working group on the rights of the child has revealed violations of the rights of children from four categories: refugees and migrants, children with special needs, children with deviant behaviour and children from low-income families are discriminated when it comes to having access to quality education, healthcare, remedial and rehabilitation programs.

7. The Kazakh legislation prohibits marriages with minors and forced marriages. According to Article 10.1 of the Code "On Marriage and Family", the age of marriage is defined as the minimum age necessary for marriage and is set at 18, coinciding with the age when a citizen can be brought to a civil liability to the full extent. Article 10.2 of the Code provides for the possibility to reduce the

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<sup>7</sup>Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §35-36.

marriageable age for a period not exceeding two years, if there exist such valid reasons as pregnancy and the birth of a child.

8. The Criminal Code, that became effective from 1 January 2015, does not provide for a criminal liability for forced and early forced marriages. In practice, the type of settlement is encouraged when the girls are pressured into confirming that the “relations were voluntary.”

9. A study of the situation shows that the increase in the number of early and forced marriages, especially in rural areas, takes the form of a systematic violation of rights and freedoms, especially of girls and women. According to the Ministry of Justice, annually an average of 3,000 marriages with minors is registered in Kazakhstan. As a rule, compulsion to marriage, kidnapping for the purpose of compulsion to marriage is latent (hidden). Victims do not apply to law enforcement agencies for various reasons: due to the prevailing stereotypes that kidnapping and compulsion to marriage is not a crime, but an established tradition; due to the age and, accordingly, a lack of understanding of what is happening; due to material or other dependence; because of pressure from relatives (community) and fear of condemnation; and also because of disbelief in the help of law enforcement agencies. Often, victims who are locked up and deprived of their liberty do not have a physical ability to seek help from relatives or law enforcement agencies.

10. The Third Optional Protocol to the UN Convention on the Rights of the Child is not ratified.

**Recommendations:**

1) Ratify the Third Optional Protocol to the UN Convention on the Rights of the Child.

2) Introduce changes to the definitions of the Law “On the Rights of the Child” by replacing the definition of an “invalid child” which creates a negative stereotype with the definition of a “child (children) with disabilities”.

3) Introduce changes and amendments to the Law on the National Preventive Mechanism to include in the list of institutions and organisations covered by the NPM mandate medical and social institutions for the disabled and disabled children with neuropsychiatric pathologies, disabled children with disorders of the musculoskeletal system, orphanages, special boarding organisations and other 24/7 special-purpose social organisations.

4) Introduce amendments to the Law of 30 March 1999 “On the Procedure and Conditions of Detention of Persons in Special Institutions that Provide Temporary Isolation from Society” which would provide for compulsory secondary education for minors in investigative detention centres, on the basis that under Article 541 of the Code of Criminal Procedure the period of detention may be extended to six months, which is a long time to interrupt the educational process.

5) Amend the Criminal Code to introduce liability for forcing minors to marry or for marrying a minor. Introduce administrative or criminal liability for religious figures for conducting marriage ceremonies involving minors. Introduce into the Code of Administrative Offenses a provision on liability for parents who force their children to marry before they reach the age of consent.

6) Bring the institute of the Children’s Ombudsman in full compliance with the Paris Principles, including by further strengthening its independence and by providing it with adequate financial and personnel resources.

7) Develop and implement a list of guaranteed services for children with autistic spectrum disorders (disability pension, home-schooling or home services, rehabilitation and social adaptation measures within special-purpose educational establishments, etc.)

8) Develop mechanisms of monitoring of child labour. Redouble efforts to address child labour, particularly in the cotton sector.

9) Create specialized long-term placement crisis centres for children with well-developed systems of psychotherapeutic help for children who have suffered from domestic, sexual and physical abuse.

#### **IV. Rights of persons with disabilities**

1. Recommendations with respect to the rights of persons with disabilities (approximately 700 000 in Kazakhstan) have been implemented only partially.

2. On 20 February 2015, the President of Kazakhstan signed the law “On the Ratification of the Convention on the Rights of Persons with Disabilities (CRPD).” Kazakhstan officially ratified the Convention on 21 April 2015. However, Kazakhstan has not ratified the Optional Protocol to the CRPD.

3. In connection with the ratification of the CRPD, a number of programs have been developed:

- An action plan to improve the quality of life of persons with disabilities for 2012-2018;
- A state program of healthcare development “Densaulyk” for 2016-2019;
- A state program of development of education and science for 2016-2019.

4. However, generally the legislation has some common deficiencies: it contains discriminatory norms; there is no public monitoring; no mechanism of participation; no “reasonable accommodation”; no account for the interests of disabled persons from different categories in the relevant field; the principles of universal design are not being followed.

5. The state program of healthcare development, “Densaulyk,” does not contain any concrete measures with respect to persons with disabilities. It only has a general provision: “In accordance with international standards inter-sectorial cooperation of various state and public institutions must be aimed at reducing the risk factors of infectious and non-infectious diseases and must provide for comprehensive measures aimed at providing the persons with disabilities with equal access to healthcare services.”

6. Persons with disabilities continue to have limited access to justice: (a) physically – court buildings are not adapted for access and use by disabled persons; (b) the interests of disabled persons are not protected during various stages of justice (sign language interpreters are not provided, individual assistants are not provided, etc.)

7. No mechanisms for deinstitutionalization of special-purpose state establishments where large numbers of persons with disabilities are placed (boarding schools for psychochronics, persons with disorders of musculoskeletal system, and others) have been developed. Patients with mental health problems continue to be placed in the so-called “psychochronic” homes for 200-800 beds, although such mass placement of patients is unpractical for medical reasons.

8. The system of special social services for persons with disabilities, which would make it possible to provide an independent and autonomous life to people with disabilities and to allow people with disabilities to support themselves, is poorly developed. Inclusive education is not developed altogether. Children with disabilities of various categories still have to study in separate correctional educational institutions. The mechanism for calculating the minimal consumer basket that would serve as the basis for calculation of disability allowance does not meet international standards.

9. In all regions, the maslikhats (local representative bodies of state power) have adopted resolutions on determining the size and procedure for reimbursing home-based tuition for disabled children according to an individual curriculum and on recovering costs of home-based education for disabled children according to an individual training plan. At the same time, boarding schools for children with intellectual disabilities are poorly equipped with new textbooks, educational and methodical literature and visual aids developed on the basis of innovative technologies of teaching, education and corrective measures for children’s disorders. The staff schedules of the special educational

organisations have no separate payroll slots for the positions of a speech therapist and a dialectologist. Some of the problems which, if solved, would greatly contribute to the further development of inclusive education include creation of a barrier-free educational environment at educational institutions, development of mechanisms for material, technical, social, psychological-pedagogical, educational, personnel and rehabilitation support.

**Recommendations:**

- 1) *Ratify the Optional Protocol to the CRPD.*
- 2) *Continue to reform the legislation to bring it in full compliance with the CRPD, from the point of view of promoting the principle of non-discrimination and taking into account the necessity of ensuring reasonable accommodation to achieve equality, and introduce liability for discriminating on the basis of disability.*
- 3) *Develop and adopt a terminology for designating persons with disabilities in all current and new laws (terms such as: “discrimination on the basis of disability,” “universal design,” “reasonable accommodation,” “tactile communication,” “readers,” “inclusion,” “habilitation,” “assistive technologies,” etc.).*
- 4) *Ensure accessibility of the physical environment, transport, technologies, information and communications, facilities and services provided to the public, including access to justice; ensure physical access for persons with disabilities of various categories to all facilities where the justice services are located (courts, prosecutor’s office, Ministry of Internal Affairs, advocate offices); taken into account the specific features of persons with disabilities during pre-trial and trial proceedings, provide a sign language interpreter to persons with hearing impairments, and an assistant to persons with movement impairment; develop mechanisms of informing persons with disabilities in the field of justice; provide persons with disabilities with additional services (and reasonable accommodations) which would allow them to participate in all stages of a judicial process, including the stage of investigation and other stages of pre-trial process.*
- 5) *Ensure equal access to inclusive education at places of residence of persons with disabilities.*
- 6) *Provide employment support to those persons with disabilities who can work by creating additional jobs through private entrepreneurship, small and medium-size business, professional training and re-training. Introduce the norms of government stimulation of enterprises and organisations that support persons with disabilities, including by employing them, including the mechanisms which ensure the businesses are economically motivated to establish social partnerships with the state in the implementation of the policies to support persons with disabilities.*
- 7) *Increase the representation of persons with disabilities in the Parliament deputies’ corps, as well as among public servants, at ministries, akimats (mayor’s offices) and their branches.*

**V. Human Rights Defenders (HRDs)**

1. The state has failed to implement the resolution of the HR Committee rendered on the cases of HRDs R.Yesergepov, B.Toregozhina, A.Sviridov, B.Zhagiparov.
2. The number of threats made against civil society activists and HRDs has been increasing year after year compared to 2014 (255). In 2018, from among those that were covered in the mass media, there have been 555 cases of threats against 295 activists and HRDs, and 57 organisations. From them, the majority are: (a) civil society activists, journalists and trade union figures; (b) were registered in Almaty, Nursultan (Astana), Karaganda, Mangistau oblast, and Western Kazakhstan oblast.
3. Isolating inconvenient HRDs and civil society activists has been a growing trend. For instance, based on indictments the following individuals were imprisoned: in 2016, HRDs M.Bokayev and T.Ayan; in 2017, trade union leaders N.Kushakbayev and A.Yeleusinov. In

this process, through the use of a mechanism called “a guilty plea,” the activists had to repent in exchange for a reduced punishment (e.g., B.Blyalov). Depriving the right to engage in public activity has also been used as a form of punishment (e.g. M.Bokayev, T.Ayan, Zh.Yesentayev).

4. An analysis of a poll involving civil society activists and HRDs, which was conducted by Kadir-Kasiet Public Association in 2015, showed that 61 percent were threatened due to their work as HRDs, and 17 percent saw those threats actually realized against them.

5. Most of the threats came from the courts, police and prosecutor’s office. Consequently, the existing legal remedies are either ineffective or not available.

6. The state inhibits the activity of HRDs and civil society activists<sup>8</sup>; it does not encourage and does not protect them as stipulated by the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (84.5%, 169 persons), instead engaging mostly in the control over the human rights activity.

7. The state is not capable of investigating threats. For example, in 2011-2017, 70 civil society activists and HRDs were assaulted (two assaults resulted in deaths); however only four cases made it to trial.

## **VI. Human trafficking**

1. Recently, Kazakhstan has taken a number of measures with respect to human trafficking. The law created a regulatory and legal framework for the protection of victims of human trafficking and members of their families by relocating them to a new place of residence; replacing their documents; changing appearances; personal protection, protection of housing and property; providing special means of individual protection, communication and warning of danger; ensuring confidentiality of information about the protected person; changing the place of work or study; temporarily placing them in a safe place. Protection is also offered to victims and their families.

2. Despite this, the state has not fully implemented the recommendations of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, namely: the current legislation on slavery should be revised and brought in line with international standards by including therein a full and clear list of all forms of slavery, including forced and bonded labour as well as the worst forms of child labour and forced labour of household servants. The HR Committee had the same concerns and recommended all forms of slavery and slavery-like practices, including domestic servitude, forced and bonded labour and forced marriage, be specifically defined and criminalized under the State party’s legislation.<sup>9</sup>

3. There is no systematic effective work and relevant institutions to identify, prosecute, punish and simultaneously provide assistance to victims of human trafficking, including obtaining compensation for the harm done. The main work on the provision of direct assistance to victims of trafficking is carried out by NGOs. Even worse, the HR Committee was concerned in 2016 that the number of criminal cases, prosecutions and convictions for trafficking-related crimes has decreased significantly.<sup>10</sup>

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<sup>8</sup> 69% (138 persons) of polled civil society activists and human rights defenders.

<sup>9</sup>Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §35-36.

<sup>10</sup>Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §33-34.

4. When investigating crimes involving human trafficking, law enforcement agencies fail to comply with the standards of thorough and impartial proceedings. In the course of investigation and judicial consideration of crimes involving human trafficking for the purpose of sexual exploitation, the attitude towards victims is often negative. And such attitude sometimes results in the “exploiters” appearing to be in more comfortable position than their victims, who are deprived of any support by the state. Untimely security measures respecting victims and witnesses results in refusal of testimony given earlier and makes the further investigation of a criminal case impossible. Moreover, the victims of human trafficking cannot often obtain social assistance from the state because of the absence of official residential registration or citizenship. Next to that, the HR Committee was also concerned about corruption and complicity among police officers and those involved in facilitating trafficking.<sup>11</sup>

5. In the country, there only created the opportunity for victims to receive medical care, assistance of psychologists and social rehabilitation within the framework of the system of provision special social services. There are no task-oriented legal and social rehabilitation programs for protection of victims of human trafficking. Unfortunately, there are no programs for timely identification of victims of human trafficking and providing access to free legal assistance. Moreover, the HR Committee was concerned about the fact that trafficking victims who have been brought illegally into Kazakhstan are expelled from the country, and that shelters and other support services for victims are insufficient.<sup>12</sup> A law “On the Fight against Human Trafficking” has not been developed and adopted.

6. Recommendations for fighting human trafficking are included in the Government's Action Plan for the implementation of the recommendations of the UN member States in the framework of the UPR for 2015-2020, however, their implementation is not systematic and ineffective.

**Recommendations:**

- 1) *Introduce changes to the Constitution and legislate freedom from slavery in accordance with Article 8 ICCPR*
- 2) *Ensure that all forms of slavery and slavery-like practices, including domestic servitude, forced and bonded labour and forced marriage, are specifically defined and criminalized under the State party's legislation.*
- 3) *Create in every oblast centre crisis centres and shelters for victims of human trafficking. Provide long-term financing of such centres.*
- 4) *Ensure the availability of adequate services for victims of forced labour, including legal, financial and social support, and shelters.*
- 5) *Introduce an institute of the national Rapporteur on human trafficking in Kazakhstan.*
- 6) *Conduct a study to quantify the number of victims of human trafficking.*
- 7) *Carry out a mass legalization of persons without documents (children and adults), registration and place of permanent residence due to the fact that it is this group that carries the highest risk of getting into situations of human trafficking.*
- 8) *Introduce a new responsibility for police officers, especially those working at special-purpose establishments and district policemen, as well as the migration police officers, to inquire using special forms to identify victims of human trafficking.*
- 9) *Ensure effective investigation and prosecution of trafficking cases under the relevant articles of the Criminal Code, refrain from unnecessarily classifying such crimes under provisions that provide for lesser penalties, and secure convictions for perpetrators. Strengthen existing victim identification mechanisms.*
- 10) *Address corruption in law enforcement activities related to trafficking.*

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<sup>11</sup>Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §33-34.

<sup>12</sup>Concluding Observations adopted by the HR Committee, 9 August 2016, CCPR/C/KAZ/CO/2, §33-34.

*11) Introduce amendments to Article 128 of the Criminal Code legislating a provision to the effect that, when qualifying human trafficking crimes, the victim's consent to be exploited should be dismissed and not taken into consideration.*