

Universal Periodic Review of Kazakhstan

34th Session

November 2019



The Legal Center for Women's Initiatives "Sana Sezim"

19 Perova St., Shymkent, Kazakhstan, 160013

www.sanasezim.org, www.migrant-help.org

The Legal Center for Women's Initiatives "Sana Sezim" is officially registered as a non-governmental and non-profit organization as of May 2001 and is registered with the Institution of Public Associations in January 2004. Mission of the Center "Sana Sezim" - building civil society and democracy through the promotion of women and children in society, the formation of non-violent relationships in society, and the development of the movement to protect the rights of women and children. Priority directions of our organization are: Access of women to justice; Stop Trafficking Women and Children! Labor Migration. The NGO "Sana Sezim" is a member of the ASTRA Network. NGO "Sana Sezim" partners are: EU, OSCE US Embassy, UNHCR, IOM, NED, FOSI.

Key Words: sexual exploitation, human trafficking, migration

Executive Summary

1. This report is submitted by Legal Center for Women's Initiatives "Sana Sezim" (NGO "Sana Sezim"). The report examines existing initiatives in Kazakhstan in addressing and preventing trafficking in persons for the purposes of sexual exploitation.
2. The Republic of Kazakhstan provides trafficked persons with rights and "special social services" that are stipulated in the legislation. However, only citizens of the RK, foreign citizens with a permanent residence permit and officially recognized stateless persons have a right to receive "special social services" such as shelter and medical, psychological, legal and social consultation and services. Trafficked persons that fall outside these categories don't receive these services, and are subject to repatriation. They don't receive governmental support but get assistance from international organizations.

Sexual Exploitation

Recommendations from previous UPR of Kazakhstan

3. During the 1st cycle and 7th session and the 2nd cycle and 20th session of the Universal Periodic Review (UPR), Kazakhstan received and accepted three recommendations relating to trafficking in persons, in particular of women and girls:
 - i) To further strengthen law enforcement and the judicial system in the effort to address impunity and prevent trafficking and domestic violence, as well as the sexual abuse of women and girls. (Malaysia) – **partially implemented**
 - ii) Adopt legislative measures to criminalize torture, violence against women and trafficking in persons in line with international standards. (Mexico) – **partially implemented**
 - iii) Maintain its efforts in the area of combating trafficking in persons, especially women and children, based on the relevant National Action Plan endorsed in 2012". (Egypt) – **partially implemented**

National Legal Framework

4. In Kazakhstan, trafficked persons are mostly young women and girls – from Kazakhstan and other countries – for the purposes of sexual exploitation and other forms of forced labour. Practical experience of the NGO "Sana Sezim" shows that one of the main causes of human trafficking is poverty and gender inequality. Kazakhstan is a country of origin, transit and destination for trafficked persons. The reason for this is the openness of borders with CIS countries, increased migration flows, both between states and within the republic, a prosperous position in the economy and relatively high earnings in Kazakhstan.
5. To combat human trafficking and to effectively protect the rights of trafficked persons, the RK ratified a number of major international instruments, including: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, the Slavery Convention of 1926, the 1956 Supplementary Convention on the Abolition of Slavery, the slave trade and institutions and practices similar to slavery, the 1949 Convention for the Suppression of the Traffic in Persons and

the Exploitation of the Prostitution of Others, UN Convention against Transnational Organized capacity from 2000, the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organized Crime (Law of the Republic of Kazakhstan, 2008).

6. According to paragraph 1 of Art. 1 of the Constitution of the Republic of Kazakhstan, a person's life, rights and freedoms are the highest value. This article is closely related to the provision of paragraph 1 of Art. 12, in which persons are granted and guaranteed the right to protection of their rights and freedoms by the state. The protection of rights and freedoms by the state is understood as the direction of all branches of government towards this goal - legislative, executive, judicial. Each branch should make every effort to create the conditions under which persons can freely exercise their constitutional rights and freedoms. In accordance with paragraph 2 of article 11 of the Constitution, the state ensures the realization of rights and freedoms not only in the territory of the Republic of Kazakhstan, but also guarantees its citizens protection and patronage beyond its borders, which is very important in addressing the issue of human rights violations in trafficking in persons and exploitation. Thus, the state takes over the responsibility to guarantee the fundamental rights and freedoms of a person and citizen, both in the territory of the RK and abroad at a constitutional level. Since practically all vital human rights are violated in the course of human trafficking and exploitation, it can be argued that the state bears responsibility for this and must take effective measures to prevent and eradicate this problem. The state is responsible for protecting the rights and freedoms of trafficked and exploited persons not only in accordance with constitutional norms, but also international treaties ratified by the RK (see paragraph 7 of this report). Under the responsibility of the state, we understand the obligations of the RK to respect and guarantee human rights, in accordance with international and national regulatory legal acts.
7. When taking measures to combat human trafficking, Kazakhstan uses prevention, protection and prosecution. Kazakhstan has shown progress in the work of law enforcement agencies in the fight against human trafficking. Art. 128, 135, 125 (3b), 126 (3b), 308, and 134-1 of the Criminal Code prohibits all forms of labor and sexual exploitation and provides penalties up to 15 years in prison, which is sufficiently harsh.

When initiating a criminal case under Article 128 "Trafficking in Persons" of the Criminal Code of the RK¹, the trafficked person is assigned a status based on an evaluation criterion. Trafficked persons are not deported from the country until the criminal case is concluded. In the current criminal code of the RK, the responsibility for engaging in prostitution is provided for in Art. 308, in accordance with the norms of which "Involvement in the engagement of prostitution through the use of violence or the threat of its use, use of a dependent position, blackmail, destruction or damage to property or by deception is punishable by a fine of up to three thousand monthly calculation indices¹ or correctional work of the same extent, or restriction of liberty for up to three years, or imprisonment for the same period, with confiscation of property."

Progress and gaps

8. One of the significant measures taken by Kazakhstan was the signing of the Law of the RK (Republic of Kazakhstan) "On introducing amendments and addenda to some legislative acts of the RK on issues of countering human trafficking" in July 2013. It introduced responsibility for forcing a person to engage in begging and non-commercial sexual exploitation and for violating labor laws in relation to minors. In particular, it establishes the administrative responsibility of employers for violation of labor laws in relation to minors, health care providers for violation of the obligation to inform the internal affairs bodies about persons with fresh injuries, wounds and other health

¹ Monthly calculation index is a notional unit that is used by the government to set the amount of fines, pensions, etc. The value of one monthly calculation index changes each year. Currently, one monthly calculation index equals 2525 KZT.

care providers who offer abortions illegally and individuals and legal entities providing premises that are known to engage in prostitution or procuring. Restrictions on the conclusion of an employment contract with persons previously convicted of crimes against minors related to trafficking in persons have been introduced. Sanctions for human trafficking, involvement of a minor in prostitution, trafficking in minors, involvement in prostitution, organization or maintenance of brothels and pandering are tightened. In the new editions of the Criminal Code, the Criminal Procedure Code and the Code of Administrative Offenses, these norms have been retained in full, with certain changes in the versions. Article 449 «Harassment in public places» is introduced in the Code of Administrative Offenses. In the Criminal Code of the RK, there are tightened sanctions in Part 2 and 3 of the existing Art. 113 «Coercion to seize or unlawfully seize human organs and tissues». Sanctions are moderated in part 1 of the existing Art. 270 (engaging in prostitution) and in Part 2 of Art. 271 of the Criminal Code (the organization or maintenance of dens for prostitution and pandering), etc.

9. The amendments to the Criminal Procedure Code, which entered into force in January 2015, give trafficked persons the right to compensation from the state fund. The fund was created, payments from it will be possible only in 2020.
10. In Kazakhstan, a significant step has been taken towards cooperation between civil society, law enforcement agencies, justice and the office of the public prosecutor.
11. The Coordinating Council of the RK on Rule of Law, Law Enforcement and Crime Control continues its work. A joint order was approved in 2003 (prosecutor's office, NSC, Department of Internal Affairs, JFEP) on the formation of an interdepartmental working group on combating trafficking in persons and implementing the fight against the specified category of crimes.
12. Under the Government of the RK, there is an Interdepartmental Commission to combat the illegal export, import and trafficking in persons. This commission is a consultative and advisory body.
13. The Commission is a dialogue platform of state structures, international and non-governmental organizations, which considers issues relating to the situation in the field of combating trafficking in persons, including children, and providing assistance to victims. The purpose of the commission is also to develop proposals and recommendations for informing the public about the situation of human trafficking, improving the legislation of the RK in accordance with the adopted international legal documents in the field of combating human trafficking and applying a rights based approach to services and programs designed for trafficked persons.
14. In 2016, the Law of the RK of December 29, 2008 “On Special Social Services” was amended and standards for the provision of special social services to trafficked persons were approved. These standards specify the scope and requirements for the terms and procedure for provision of social services in organizations that are providing special social services of state and non-state forms of ownership intended for day care, temporary day and night or an extended stay of victims of human trafficking. According to the standards, the requirements for trafficked persons, including minors, to receive special social services are: Kazakhstani citizenship, if of foreign citizenship a permanent residence permit in Kazakhstan or a document identifying them as stateless persons. Shelters accommodate up to ten persons at the same time.
15. From 2016 to 2018, based on the developed standards, the NGO “Sana Sezim” opened a shelter in the city of Shymkent and provided assistance in the reintegration of 44 trafficked persons of Kazakhstani citizenship and 138 trafficked persons who were not citizens of Kazakhstan. The latter group of persons did not meet the requirements

mentioned above, and did not fall into the category eligible for special social services, although they were officially recognized as victims of human trafficking.

16. According to Article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime of November 15, 2000, "... each State Party considers the possibility of implementing measures to ensure physical, psychological and the social rehabilitation of trafficked persons while such victims are on its territory."

Recommendation:

32. Amend the order of the Ministry of Health and Social Development of the Republic of Kazakhstan "On Approval of the Standard of Special Social Services to Victims of Trafficking in Persons" to include foreign nationals to the recipients of special social services.
33. To continue to implement the recommendations received during the second cycle universal periodic review of Kazakhstan relating to trafficking of persons, involving civil society organisations in the planning, implementation and monitoring and evaluation of such.

¹ https://online.zakon.kz/Document/?doc_id=31575252