



Equal Rights Trust

Alternative report submitted to the 117th session of the
Human Rights Committee in relation to the second periodic report submitted by:

Kazakhstan

May 2016

Statement of Interest

1. The Equal Rights Trust (the Trust) submits this alternative report to the United Nations Human Rights Committee (the Committee) commenting on the second periodic report of Kazakhstan submitted under Article 40 of the International Covenant on Civil and Political Rights (the Covenant).
2. The Trust is an independent international organisation combating discrimination and advancing equality worldwide. The Trust promotes a unified human rights framework on equality, focusing on the complex relationships between different types of disadvantage and developing strategies for translating the principles of equality into practice.
3. The Trust has been actively involved in the promotion of improved protection from discrimination in Kazakhstan since 2013. Over this time, the Trust has worked in partnership with a number of partner organisations on projects designed to strengthen the protection from discrimination and related human rights abuses.
4. In the course of its work in Kazakhstan, the Trust has undertaken extensive research on equality and non-discrimination in the country. The Trust has coordinated and conducted field research with victims of discrimination on various grounds and undertaken interviews with academics, lawyers, journalists and human rights defenders. In 2015, the Trust coordinated field research in ten regions in Kazakhstan: South Kazakhstan: Almaty, Shymkent and Taraz; Central Kazakhstan: Astana, Karaganda, Kostanai; West Kazakhstan: Aktope, Aktau and Uralsk; East Kazakhstan: Oskemen, Ridder; North Kazakhstan: Pavlodar, Petropavlovsk. The Trust also conducted independent secondary desk-based research on patterns of discrimination and inequality in Kazakhstan and on the legal and policy framework in place to prevent discrimination and promote equality. In addition, the Trust has conducted a detailed analysis of Kazakhstan's laws and policies on equality and non-discrimination, in order to assess the extent to which Kazakhstan has a legal and policy framework in place which is adequate to meet its obligations under international law.

Introduction

5. The research which we have undertaken on discrimination and inequality in Kazakhstan informs this submission to the Committee. Our research focuses on the extent to which Kazakhstan has met its obligations to respect, protect and fulfil the rights to non-discrimination and equality. Thus, this submission is primarily concerned with Kazakhstan's performance under two Articles of the Covenant: first, Article 2(1) of the Covenant which requires that states parties respect and ensure the enjoyment of the rights

provided in the Covenant without distinction; and second, Article 26 of the Covenant which, as the Committee has stated, provides an “autonomous right”¹ to non-discrimination.

6. In assessing Kazakhstan’s adherence to its obligations under Articles 2(1) and 26, the submission relies, in part, on the interpretation of these provisions which has been provided by the Committee in its General Comment No. 18.² The submission also relies upon the Declaration of Principles on Equality (the Declaration),³ a document of international best practice. The Declaration was drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts, and has been described as “the current international understanding of Principles on Equality”.⁴ It has also been endorsed by the Parliamentary Assembly of the Council of Europe.⁵
7. The Trust’s research sheds new light on well-publicised human rights abuses in Kazakhstan and exposes little-known patterns of discrimination. Given the comprehensive nature of our research, this submission does not provide an exhaustive account of its findings. Instead, it focuses on providing the Committee with new information on the enjoyment of the right to non-discrimination in Kazakhstan, with a particular emphasis on providing evidence on the shortcomings of the legal and policy framework in place to protect the right to non-discrimination.
8. The Trust’s research has identified patterns of discriminatory violation of other rights protected by the Covenant, including the right to be free from torture and other forms of ill-treatment and the rights to freedom of expression and freedom of conscience. In addition, it has identified patterns of discrimination in areas of life which are not the subject of protection under other Covenant rights, but which nevertheless enjoy protection under Article 26. Finally, the Trust’s research and analysis has found shortcomings in the legal and policy framework in place to prevent discrimination. Thus, this submission is structured in three sections: (1) Evidence of violations of Article 2(1) in connection with other Covenant Articles; (2) Evidence of patterns and incidences of discrimination in violation of Article 26; (3) Evidence of gaps, inconsistencies and other shortcomings in the legal and policy framework, such that it fails to meet the requirements of Article 26.

Part 1: Evidence of Violations of Article 2(1) in connection with other Covenant Articles

9. The Trust’s research in Kazakhstan has identified discrimination on various grounds, including race and ethnicity, political opinion, gender and sexual orientation, in respect of rights protected by the Covenant. This section examines evidence of discriminatory violations of: Article 18 (the right to freedom of thought, conscience and religion); Article 19 (the right to freedom of expression); Article 21 (the right to freedom of assembly); and Article 22 (the right to freedom of association).

¹ Human Rights Committee, *General Comment No. 18: Non-discrimination*, 1989, Para 12.

² *Ibid.*

³ *Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008.

⁴ *Naz Foundation v Government of NCT of Delhi and Others* WP(C) No.7455/2001, Para 93.

⁵ Parliamentary Assembly of the Council of Europe, Resolution and Recommendation: *The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11380.

Article 2(1) and Article 18: Religious discrimination and denial of the right to freedom of thought, conscience and religion

10. Kazakhstan is a country of some religious diversity; the majority of the population identify as Sunni Muslim (70%), Russian Orthodox Christians make up approximately 25% of the population.⁶ There are numerous other small religious groups including Catholics, Jehovah's Witnesses, Mormons, Shia Muslims, Baha'is, Scientologists and Hare Krishna.⁷ The Special Rapporteur on Freedom of Religion or Belief has noted that the "relationship between the various religious communities is generally a positive one."⁸
11. Notwithstanding the religious diversity of the country, there are concerns that the domestic legal framework does not adequately protect the rights to equality and freedom of religion. Although the Constitution guarantees both freedom of conscience and freedom from discrimination on the basis of religion,⁹ the Special Rapporteur has criticised the level of protection offered by these provisions as being inconsistent with Article 18 of the Covenant.¹⁰
12. In 2011, Kazakhstan introduced a new Law on Religious Activity and Religious Associations which required all religious organisations to re-register with the state. This has had an indirectly discriminatory impact on the ability of certain smaller religious groups to exercise their right to freedom of religion. The Equal Rights Trust has documented the case of refusal to re-register the Ahmaddiya Muslim community in Almaty on the basis of an expert analysis by a special governmental body of the content of their religion. We have also been made aware of cases of ethno-religious discrimination against Tataro-Bashkyr, Azerbaijani and Uigur Muslims. Cases such as these, in which minority religious communities are denied registration, would constitute direct infringement of the right to religious freedom and direct discrimination on the basis of religion or belief.
13. Smaller religious communities have complained that they are unable to register as a religious association due to the requirement, in Article 12(2) of the Law on Religious Activity and Religious Associations, that at least fifty Kazakh nationals be members of the community within a particular city or oblast. Any religious activities carried out by religious organisations that are not registered are illegal and can incur administrative sanctions, including substantial fines.¹¹ This means that religious organisations that are not registered are not permitted to conduct any religious activities.¹² Two Protestants in Atyrau were prosecuted for "violating the procedure for conducting religious meetings" by drinking tea with other church members after a Sunday service.¹³

⁶ United Nations Special Rapporteur, *Report on freedom of religion or belief: Kazakhstan*, UN Doc. A/HRC/28/66/Add.1, 23 December 2014, Para. 3.

⁷ *Ibid.*, Para 5.

⁸ *Ibid.*

⁹ Constitution of Kazakhstan, Articles 14 and 22.

¹⁰ United Nations Special Rapporteur, *Report on freedom of religion or belief: Kazakhstan*, UN Doc. A/HRC/28/66/Add.1, 23 December 2014, Para. 13.

¹¹ Administrative Code of Kazakhstan, Articles 374-1 and 375.

¹² See above, note 10, Para. 28.

¹³ Forum 18, *Kazakhstan: Punished for worship meetings; UN appeals*, 13 May 2016, available at: <http://www.refworld.org/docid/573add1f4.html>.

14. The effect of the requirement to register is to mainstream Russian Orthodox Christianity and Sunni Islam and to sideline other smaller religious organisations. As a result of the 2011 Law, Sunni Islam and the Russian Orthodox Church are the only religious organisations operating throughout the territory of Kazakhstan. Other smaller religious groups are confined to particular territories and incur administrative sanctions should their activities take place outside their designated territorial boundaries.¹⁴
15. Laws or regulations which require religious communities to produce evidence of support from a particular number of citizens – or, as in this case, a particular number within a given geographical area – constitute an infringement of rights arising under Article 18, and also indirect discrimination in the enjoyment of this right. Indirect discrimination occurs where a law, provision or practice, which applies equally, would “put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons”, unless it can be duly justified.¹⁵ The Covenant does not refer to “indirect discrimination” *per se*. However, in its General Comment 18, the Committee has stressed that “discrimination” within the meaning of the Covenant includes “any distinction, exclusion, restriction or preference (...) which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”.¹⁶
16. Both the Special Rapporteur and the Committee have raised concerns that the broad definition of “extremism” in 2013 counter terrorism legislation has been used to target members of non-registered “non-traditional” religious communities.¹⁷ We note that Kazakhstan did not respond to this concern in its Reply to the List of Issues.¹⁸

Article 2(1) and Articles 19, 21 and 22: Denial of the rights to freedom of expression, freedom of assembly and freedom of association on the basis of political opinion

17. Following his visit to Kazakhstan in January 2015, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association commented that

[T]here is very limited space for the expression of dissenting views. There is a general fear of engaging in oppositional political activity (...) Although authorities repeatedly make reference to the 'rule of law', the practice in Kazakhstan reflects strong adherence to 'rule by law'.¹⁹

18. Although the Constitution guarantees freedom of speech, there is evidence that other legislative provisions, such as Article 174 of the Criminal Code, which criminalises “incitement of discord”, have been applied in ways which limit this freedom. For example,

¹⁴ *Ibid.* Para 29.

¹⁵ See above, note 3, Principle 5.

¹⁶ See above, note 1, Para 12.

¹⁷ See above, note 13, Para. 19; United Nations Human Rights Committee, *Reply to List of Issues*, UN Doc. CCPR/C/KAZ/Q/2/Add.1, 14 April 2016, Para. 7.

¹⁸ United Nations Human Rights Committee, *Reply to List of Issues*, UN Doc. CCPR/C/KAZ/Q/2/Add.1, 14 April 2016, Paras. 34 – 38.

¹⁹ Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai: Addendum: Mission to Kazakhstan*, UN Doc A/HRC/29/25/Add.2, 16 June 2015,

the leader of the People's Party Alga!, Vladimir Kozlov, is serving a jail term of seven and a half years for "inciting discord" following his public expression of support for striking oil workers in Zhanaozen in December 2011 and denouncement of the subsequent human rights violations on the part of the authorities. The judgment against Vladimir Kozlov was then used to ban Alga! on the grounds that it was "extremist". The UN Special Rapporteur has expressed concern that the treatment of Vladimir Kozlov's activities as inciting social hatred is "emblematic of a more general trend to marginalize political leaders voicing dissent".²⁰

19. Article 174 was also relied upon to imprison Natalia Sokolova, a trade union lawyer who defended the interests of the strikers in Zhanaozen after calling for a change to the system for calculating their salaries. The UN Special Rapporteur described himself as "baffled" that she could be found guilty of such an offence when her very job is to represent workers and speak out about their working conditions.²¹
20. More recently, in October 2015, it was reported that two activists who are prominent critics of the government on social media had been arrested under Article 174 on charges of "inciting national discord [and] insulting national honor and dignity" and placed in pre-trial detention for two months.²² In November 2015, Bolatbek Blyalov was detained on suspicion of "inciting social discord" following comments made on social media and a court confirmed a two-month pre-trial detention order. Mr Blyalov is head of the Institute of Democracy and Human Rights, a non-governmental group which works to protect the housing rights of residents in Kazakhstan's capital city, Astana.²³
21. Media outlets expressing political dissent are also at risk. Under the Code of Administrative offences media outlets may be closed down for minor technical mistakes, such as giving the incorrect figure for a print run.²⁴ This provision has been used by the authorities to silence opposition to the government. For example, the well-known newspaper *ADAM bol*, was closed down by the courts in December 2014 following a claim that an article it had published violated Article 20 of the Constitution which prohibits war propaganda.²⁵ The article was deemed to constitute war propaganda because it featured an interview with a Kazakhstani opposition figure who called for support for the Ukrainian authorities in their struggle against separatist forces.²⁶ Between late 2013 and August 2015, more than 30

²⁰ *Ibid.*, Paras. 26-27.

²¹ *Ibid.*, Para.37.

²² Human Rights Watch, "Kazakhstan: Two Activists Detained", *Human Rights Watch*, 16 October 2015, (available at: <https://www.hrw.org/news/2015/10/16/kazakhstan-two-activists-detained>).

²³ Human Rights Watch, "Kazakhstan: Activist Arrested", *Human Rights Watch*, 13 November 2015, (available at: <https://www.hrw.org/news/2015/11/13/kazakhstan-activist-arrested>).

²⁴ Article 19, *Kazakhstan: Comment on the provisions concerning the right to freedom of expression in the Draft Code of Administrative Offences*, 20 May 2010, (available at: <https://www.article19.org/resources.php/resource/1537/en/kazakhstan:-comment-on-the-provisions-concerning-the-right-to-freedom-of-expression-in-the-draft-code-of-administrative-offences>).

²⁵ Human Rights Watch, "Kazakhstan: Journal Loses Shutdown Appeal", *Human Rights Watch*, 27 February 2015, (available at: <https://www.hrw.org/news/2015/02/27/kazakhstan-journal-loses-shutdown-appeal>).

²⁶ Kazakhstan International Bureau for Human Rights and Rule of Law, Nota Bene, Turkmen Initiative for Human Rights and International Partnership for Human Rights, *Curtailed Rights in the Name of Stability: Current trends in Kazakhstan*, May 2015, p. 1 (available at: http://iphronline.org/wp-content/uploads/2015/09/kazakhstan_central_asia_briefing_paper_may_2015.pdf).

media outlets have been closed down on charges including “war propaganda” and “minor infractions of publishing regulations”.²⁷

22. In its list of issues, the Committee asked for information on the “overly broad and vague definitions of offences” in both the Criminal Code (Article 174) and the Code of Administrative Offences.²⁸ In its response to the Committee, the government of Kazakhstan stated that “[t]here has been no evidence of any restrictions on freedom of (...) expression or association as a result of “overly broad and vague definitions””,²⁹ despite the existence of cases such as those cited above.
23. Article 174 imposes restrictions on the enjoyment of freedom of expression which cannot be justified under the Covenant. While Article 20 of the Covenant states that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”,³⁰ Article 174 prohibits a far broader area of expression – “incitement of discord”. Moreover, as the cases above indicate, Article 174 has been applied in such a way as to deny or limit freedom of expression on a discriminatory basis, restricting the expression of those expressing a political opinion which is not aligned with the position of the authorities.
24. The right to freedom of peaceful assembly is enshrined in Article 32 of the Constitution; however, as recognised by the Kazakhstani government itself,³¹ it is limited by various laws which restrict the extent to which such freedom can be relied upon in practice. For example, protests and demonstrations cannot be held unless an application is submitted at least ten days prior to the scheduled date of the event. The event must then be authorised by the relevant local authority, which may delay the event or restrict its location in the interests of public safety, ensuring that transport and infrastructure can function normally and preserving trees, plants and small monuments.³² The UN Special Rapporteur reports that “authorities frequently cited traffic issues and concerns about assemblies being disruptive” as means of rationalising these restrictions.³³ In addition to these concerns, the Equal Rights Trust is concerned that this framework creates a risk of discrimination by permitting extensive discretion on the holding of public events and other assemblies.
25. Furthermore, the law imposes a deterrent against organising such events, by placing responsibility on those who organise protests, marches or demonstrations for upholding public order.³⁴ In the view of the Equal Rights Trust, responsibility for upholding public order should not be placed on individual citizens and the duty to maintain public order should lie exclusively with the authorities.

²⁷ International Service for Human Rights, *Kazakhstan: Human Rights Committee Briefing Paper*, August 2015, p. 2.

²⁸ United Nations Human Rights Committee, *List of issues in relation to the second periodic report of Kazakhstan*, 4 December 2015, UN Doc. CCPR/C/KAZ/Q/2, Para. 23.

²⁹ United Nations Human Rights Committee, *Replies to List of issues in relation to the second periodic report of Kazakhstan*, 14 April 2016, UN Doc. CCPR/C/KAZ/Q/2/Add.1, Para. 143.

³⁰ International Covenant on Civil and Political Rights, Article 20.

³¹ United Nations Human Rights Committee, *Second Periodic Report of States parties due in 2014: Kazakhstan*, UN Doc CCPR/C/KAZ/2, 12 February 2015, Para. 145.

³² *Ibid.*, Paras. 146-147.

³³ See above, note 19.

³⁴ See above, note 31, Para. 148.

26. The restrictive legal framework, coupled with the authorities' reluctance to encourage public assembly have resulted in considerable force being used to suppress even the smallest political gatherings. For example, on 2 February 2015, an individual attempting to submit a petition in support of newspaper *ADAM Bol* (referred to at paragraph 21 above) was arrested, reportedly for breaching the laws on assemblies. On 5 March 2014 force was used against young children and their parents peacefully demonstrating against forced evictions in Astana.
27. Article 32 of the Constitution protects the freedom of association, as well as the freedom of assembly, but once again, in practice the right is severely constrained. In particular, the Trust is concerned by the laws regulating the establishment of political parties which impose onerous obligations, even prior to registration. For example, Article 6 of the Political Parties Act provides that a political party cannot be set up unless it is an initiative of a group of citizens comprising no fewer than 1,000 people who call a constituent congress or conference and who also represent two thirds of the population of a province, regional capital or the national capital. Those citizens must then participate in person in the constituent congress or conference and representation by proxy is not allowed.³⁵
28. Provisions such as these are likely to constitute indirect discrimination in the enjoyment of the right to freedom of assembly. As noted above, indirect discrimination occurs when – as in this case – a provision, criterion or practice, which imposes a condition equally on all, has or would have a particular negative impact on a group of people who share a protected characteristic. In this case, it is likely that the requirements to secure support from 1,000 persons, constituting two thirds of the population of a given province, will create insurmountable challenges for those wishing to express minority political or other views.
29. Once a political party has managed to establish itself, it must be registered; a process which, according to the UN Special Rapporteur "lacks transparency and, disturbingly, the law allows for perpetual extensions of time for the government to review the party's application".³⁶ There is evidence that the registration process, which is essential to the legal running of an organisation, is used to block the registration of politically controversial organisations. For example, *Amanat Aktau* and *Aktau Voice*, which aimed to support the families of the Zhanaozen crisis, have been denied registration owing to supposed discrepancies in the documents which they submitted.³⁷ Cases such as these would constitute direct discrimination in the enjoyment of the right to freedom of association.
30. Opposition figures are regularly prosecuted and imprisoned by the state, which has a significant chilling effect on political pluralism in Kazakhstan. Between July 2002 and January 2003 the co-founders of the *Democratic Choice of Kazakhstan* party, Mukhtar Abliazov and Galymzhan Zhakianov, as well as Sergei Duvanov, a journalist with ties to the *Republican People's Party of Kazakhstan*, were all arrested and convicted of crimes.³⁸ All three were convicted following "deeply flawed trials that international trial observers concluded were politically motivated".³⁹

³⁵ See above, note 31, Para. 271.

³⁶ See above, note 19.

³⁷ *Ibid.*, Paras. 39-40.

³⁸ Human Rights Watch, *Political Freedoms in Kazakhstan*, Vol. 16, No. 3(D), April 2004, p. 27.

³⁹ *Ibid.*

Part 2: Evidence of patterns and incidences of discrimination, in violation of Article 26

31. As the Committee has noted, Article 26 of the Covenant provides an autonomous right to non discrimination which “prohibits discrimination in law or in fact in any field regulated and protected by public authorities” and which “is not limited to those rights which are provided for in the Covenant”.⁴⁰
32. In addition to the examples of discriminatory denial or limitation of other Covenant rights which are cited above, the Trust’s research on discrimination and inequality in Kazakhstan has identified significant patterns discrimination and inequality, arising on the basis of gender, sexual orientation, religion or belief, disability, and race. This research indicates a systematic failure on the part of Kazakhstan to effectively respect, protect and fulfil the right to non-discrimination as provided by Article 26.
33. This part of the submission highlights only the most severe examples of discrimination in areas of life which are not the subject of protection by other Covenant rights. Its purpose is not to provide a comprehensive picture of discrimination and inequality, but rather to illustrate and exemplify the range of challenges which the Kazakhstani government must respond to if it is to meet its obligations under Article 26.

Discrimination against women

34. A 2010 country-wide survey on the situation of women and children in Kazakhstan revealed high levels of gender-based violence (GBV) against women. Of all those women surveyed (aged between 15 and 49) 12.8% had been physically abused.⁴¹ This is in part a consequence of a weak legislative framework coupled with poor implementation and enforcement mechanisms. For example, the use of force or threat of force is a constituent element of the criminal definition of rape.⁴² This is contrary to the increasing international consensus that rape be defined as a lack of consent⁴³ and to the Committee’s request in its List of Issues that the state expand the definition of rape.⁴⁴
35. The requirement of “force” in rape cases reinforces sexual stereotypes, prohibited under international law.⁴⁵ By reinforcing sexual stereotypes, women face additional barriers

⁴⁰ See above, note 1, Para 12.

⁴¹ MICS, *Multiple Indicator Cluster Survey 2010/11, Kazakhstan: Monitoring the Situation of Children and Women*, 2012, p. 228, available at: http://www.childinfo.org/files/Kazakhstan_MICS4_Final_Report_Eng.pdf.

⁴² Criminal Code of the republic of Kazakhstan of July 2014, Law No. 226-V, Article 120; Regulatory Decision on certain questions concerning the definition of rape-related offences and other violent acts of a sexual nature. See United Nations Committee on the Elimination of Discrimination against Women, *Third and Fourth Periodic Reports: Kazakhstan*, UN Doc. CEDAW/C/KAZ/3-4, 22 March 2012, Para 240.

⁴³ United Nations Committee on the Elimination of Discrimination against Women, *Concluding Observations: Czech Republic*, UN Doc. CEDAW/C/CZE/CO/5, 10 November 2010, Paras 22-23.

⁴⁴ United Nations Human Rights Committee, *List of issues in relation to the second periodic report of Kazakhstan*, 4 December 2015, UN Doc. CCPR/C/KAZ/Q/2, Para. 6.

⁴⁵ Convention on the Elimination of All Forms of Discrimination against Women, Article 5. See also, *Karen Tayag Vertido v. The Philippines*, Committee on the Elimination of Discrimination against Women, Communication No.18/2008, UN Doc. CEDAW/C/46/D/18/2008, 2010.

bringing legal proceedings to seek justice and redress for acts of gender based violence.⁴⁶ Many participants interviewed as part of a survey conducted by the International Commission of Jurists in 2013, expressed the view that the current law promotes gender-inequality and endangers victims:

*[Participants] expressed considerable concern regarding the inaccurate stereotypes that underlie the inclusion of violence or threat thereof as an element of the crimes of rape and other violent acts of a sexual nature. Such requirements are based on problematic and inaccurate assumptions concerning the proper and natural reaction of victims to unwanted sexual contact. These include assumptions that if sex is truly non-consensual victims will physically defend themselves and perpetrators will need to use or threaten violence.*⁴⁷

36. As noted in the Committee's List of Issues, there are concerns about the lack of shelters for women.⁴⁸ In its response, Kazakhstan stated that the "internal affairs agencies are actively engaged with NGOs, including in the social rehabilitation of victims of violence. There are 28 crisis centres."⁴⁹ However, the majority of crisis centres are established by NGOs without funding assistance from the government⁵⁰ and official government statistics on the number of shelters are disputed by civil society.⁵¹
37. Access to justice for victims of gender-based violence is also impeded by the absence of a specific prohibition on sexual harassment.⁵² In 2015, the Committee on the Elimination of Discrimination against Women recommended the adoption of "comprehensive legislation (...) to combat sexual harassment in the workplace".⁵³ Kazakhstan has not given effect to this recommendation. There are also a number of deficiencies in current State policy implementing laws on gender-based violence, leading to low prosecution rates. Between 2005 and 2012, the number of successful prosecutions for acts of domestic violence drastically reduced from 1,610 to 780.⁵⁴ There are several factors that contribute to low prosecution rates that include the denial of legal aid to victims,⁵⁵ the lack of guidelines on

⁴⁶ United Nations Committee on the Elimination of Discrimination against Women, *Concluding Observations: Kazakhstan*, UN Doc. CEDAW/C/KAZ/CO/3-4, 10 March 2014, Para 12.

⁴⁷ International Commission of Jurists, *Women's Access to Justice in Kazakhstan: Identifying the Obstacles & Need for Change*, 2013, p. 38, available at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/11/ICJ-kazakhstan-Women-A2J.pdf>.

⁴⁸ United Nations Human Rights Committee, *List of issues in relation to the second periodic report of Kazakhstan*, 4 December 2015, UN Doc. CCPR/C/KAZ/Q/2, Para. 6.

⁴⁹ *Ibid.*, Para. 31.

⁵⁰ JS8 (Various), *Joint Report submitted for the Universal Periodic Review: Kazakhstan*, 2014, Para 23.

⁵¹ Asian Development Bank, *Kazakhstan Country Gender Assessment*, 2013, Para 87, available at: <http://www.adb.org/documents/country-gender-assessment-kazakhstan>.

⁵² International Commission of Jurists, *Joint Report submitted for the Universal Periodic Review: Kazakhstan*, 2014, Para 14.

⁵³ *Belousova v Kazakhstan*, Committee on the Elimination of Discrimination against Women, Communication No. 45/2012, UN Doc. CEDAW/C/61/D/45/2012, 2015, Para 11(b)(i).

⁵⁴ United Nations Human Rights Committee, *Second Periodic Report: Kazakhstan*, UN Doc. CCPR/C/KAZ/2, 12 February 2015, Para 59.

⁵⁵ Kazakhstan International Bureau for Human Rights and Rule of Law and others, *Kazakhstan List of Issues: Analysis, Commentary and Recommendations*, 2015, p. 5, available at:

how to investigate GBV⁵⁶ and low levels of reporting. The government has accepted that social stigma may discourage individuals from coming forward to report domestic abuse:

*[B]ecause of persistent reluctance to “wash one’s dirty linen in public”, many statements and reports of incidents of violence in the family and the home do not lead to criminal proceedings, because women frequently conceal the fact that they have been the victims of domestic violence at the hands of their spouses or children. It is thus difficult to collect the material needed to bring criminal proceedings. It is acknowledged both in society and by law enforcement agencies that in fact there are many more acts of violence than are reflected in the official statistics.*⁵⁷

Discrimination on the basis of sexual orientation and gender identity

38. LGBT individuals are not explicitly protected from discrimination by the Constitution nor any legislative provision. While the non-discrimination provision in the Constitution is open-ended, there is no jurisprudence expressly extending the right of non-discrimination to cover the grounds of sexual orientation and gender identity. In its most recent engagement with the Universal Periodic Review, recommendations to “strengthen the legal protection” of LGBT individuals,⁵⁸ were rejected by the state. At the same time, recommendations to “enact specific legislation that prohibits discrimination (...) on the basis of sexual orientation” were viewed as “already implemented”.⁵⁹ Kazakhstan did not respond to the Committee’s request in its list of issues for further information on the measures taken to combat discrimination against persons based on their sexual orientation and gender identity.
39. In addition to the absence of explicit protection from discrimination, LGBT persons are exposed to discriminatory legislation. Under Article 11 of the Code of the Republic of Kazakhstan on Marriage (Matrimony) and Family, same-sex marriage is expressly prohibited. Whilst recognition of same-sex marriage is not expressly required under the Covenant,⁶⁰ states have been urged to provide legal recognition of same-sex civil unions.⁶¹ No such recognition is provided for in Kazakh law. This gap in the law ensures that same-sex couples are not entitled to the same legal rights and benefits as opposite-sex married couples.

http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_ICO_KAZ_21507_E.pdf.

⁵⁶ *Ibid.*, p. 5.

⁵⁷ United Nations Committee on the Elimination of Discrimination against Women, *List of issues to be taken up with the consideration of the Third and Fourth Periodic Reports of Kazakhstan, Addendum*, UN Doc. CEDAW/C/KAZ/Q/3-4/Add.1, 27 November 2013.

⁵⁸ United Nations Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Kazakhstan*, UN Doc. A/HRC/28/10, 10 December 2014, Para 126.24.

⁵⁹ *Ibid.*, Para 124.6.

⁶⁰ *Joslin v New Zealand*, Human Rights Committee, Communication No. 902/1999, UN Doc. CCPR/C/75/D/902/1999, 2002, Para 8.3.

⁶¹ Committee on Economic, Social and Cultural Rights, Concluding Observations: Bulgaria, UN Doc. E/C.12/BGR/CO/4-5, 30 November 2012.

40. LGBT persons appear to suffer high levels of discrimination committed by state agents. Individuals interviewed by Equal Rights Trust researchers have expressed a belief that the state actively pursues LGBT persons:

*There must be a State policy. Very often the rights of gays are abused. I see on the television why I do not want to come back (...) the society does not have an understanding yet. I mean a prejudiced attitude, very prejudiced.*⁶²

41. The Trust's research has revealed that negative cultural attitudes towards LGBT persons persist in Kazakhstan. The media, governmental officials and respected members of Kazakh society have all played a role in the vilification of LGBT persons. For example, in 2013 a deputy of the Mazhilis in the Kazakhstani Parliament stated that: "homosexuals must not be. This must be acknowledged as a deformation of a human conscience."⁶³ In other examples, ministers have refused the rights of LGBT individuals to join the army,⁶⁴ compared advocacy of the right to freedom of speech concerning "non-traditional sexual orientation" to fascism,⁶⁵ and, on occasion, advocated the re-criminalisation of homosexuality.⁶⁶ Another Parliamentarian, Zhambyl Ahmetbekov, recently attributed an increase in the number of nationwide divorces to gay men.⁶⁷ In calling for a ban on gay propaganda, the leader of the Kazakhstan National Movement, Bolashak, explained how being gay can be detected through blood tests:

*We have stooped so low that LGBTs no longer hide their orientation. One can see a lot of people in the city's malls and other public places. These are young people in coloured pants. This means they no longer hide their [sexual] orientation. I think it is very easy to identify a gay person by his or her DNA. A blood test can show the presence of degeneratism in a person".*⁶⁸

Discrimination on the basis of disability

42. While persons with disabilities are not expressly protected by the constitutional guarantee of equality, Kazakhstan has taken measures to promote the social inclusion of persons with disabilities. For example, Article 6 of the Labour Code provides the rights of individuals to

⁶² Equal Rights Trust and Kazakhstan International Bureau for Human Rights and Rule of Law interview, with X.

⁶³ Tengri News, *Kazakhstan gays complain about an uneasy life*, 13 March 2013, available: <http://tengrinews.kz/show/kazahstanskije-gei-jaluyutsya-na-neprostaty-jizn-230029>.

⁶⁴ Gay Star News, *Kazakhstan says no to gay men in the military*, 14 June 2012, available: <http://www.gaystarnews.com/article/kazakhstan-says-no-gay-men-military140612/>.

⁶⁵ Asker KZ, *Tasmagambetov uncovered a plot by "brainwashing"*, 13 June 2012, available: <http://www.nur.kz/kk/327719.html>.

⁶⁶ Eurasianet, *Kazakhstan's Parliament Hears Another Call for Anti-Gay Law*, 2 October 2013, available: <http://www.eurasianet.org/node/67576>.

⁶⁷ Gazeta KZ, *Deputies: Homosexuals are to blame for an increase in divorces in Kazakhstan*, 26 November 2014, available at: <http://articles.gazeta.kz/articles/deputat-v-uvlichenii-razvodov-v-kazakhstane-vinovaty-gomoseksualisty-articleID406604.html>.

⁶⁸ Tengri News, *Kazakhstan looks to ban gay 'propaganda' and identify gays by searching for degeneratism in their DNA*, 13 September 2014, available: http://en.tengrinews.kz/laws_initiatives/Kazakhstan-looks-to-ban-gay-propaganda-and-identify-gays-by-256105/.

choose their work without discrimination on the basis of disability. Further, under Article 31 of the Act on the Social Protection of Disabled Persons, local authorities must set quotas (equalling 3% of the total workforce) for the provision of jobs for disabled persons.⁶⁹

43. However, disabled persons continue to face discrimination in employment as a result of negative attitudes from employers.⁷⁰ Furthermore, children with disabilities suffer particular difficulties in integrating fully into society.⁷¹

Discrimination on the basis of race and ethnicity

44. The Trust has found evidence of discrimination against ethnic minorities in Kazakhstan; the lack of fair and equal representation of ethnic minorities in political life is concerning. For example, in Almaty, ethnic Kazakhs constitute 51.06% of the population, and non-Kazakhs 48.94%; however of the seven administrative districts, six are headed by ethnic Kazakhs and only two out of 21 Deputy Heads of District are non-ethnic Kazakh.
45. Further, the Committee on the Elimination of Discrimination has noted that ethnic minorities are not adequately represented by the Assembly of the People of Kazakhstan.⁷² This is supported by the Trust's research which revealed a high degree of dissatisfaction among ethnic minorities with regards to their political representation. Most respondents' perception was that representation for ethnic minorities has worsened over the last five years. They described the individual appointments of some non-Kazakhs to official positions as tokenism rather than a genuine effort to increase meaningful participation.

Part 3: Evidence of gaps, inconsistencies and other problems with the legal framework, such that it fails to meet the requirements of Article 26

46. The Constitution of Kazakhstan contains a general prohibition on discrimination in Article 14. Article 14(1) provides that "All are equal before the law and courts". Article 14(2) provides that "No one may be subjected to any discrimination for reasons of origin, social status, occupation, property status, gender, race, ethnic affiliation, language, religious affiliation, opinions, place of residence or for any other circumstance."
47. Beyond the Constitution, there is a patchwork of other laws providing for the right to non-discrimination. For example, Article 4(3) of the Labour Code lists the "prohibition of discrimination" as a principle of labour legislation while Article 6 states that "[e]veryone shall have the right freely to choose labour or agree to work without any discrimination or compulsion to do so".⁷³ Article 7(1) states that "[e]veryone shall have equal opportunities

⁶⁹ Committee on Economic, Social and Cultural Rights, *Replies by the Government of Kazakhstan to the list of issues (E/C.12/KAZ/Q/1) to be taken up in connection with the consideration of the initial report of Kazakhstan (E/C.12/KAZ/1)*, E/C.12/KAZ/Q/1/Add.1, 5 January 2010, para 36.

⁷⁰ Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention; Fourth periodic reports of States parties due in 2011: Kazakhstan*, CRC/C/KAZ/4, 15 January 2014, para 443.

⁷¹ United Nations Children's Fund, *Situation Analysis of Children with Disabilities: for the Development of an Inclusive Society in the Republic of Kazakhstan*, 2014, p. 17, available at: <http://www.pressat.co.uk/media/uploads/b954526ae8e934dc5f5c08f6676df537.pdf>.

⁷² Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined sixth and seventh periodic reports of Kazakhstan*, 2014, UN Doc. CERD/C/KAZ/CO/6-7, Para.9.

⁷³ Labour Code of the Republic of Kazakhstan, 15 May 2007. Code No. 251.

to exercise their rights and freedoms in the sphere of labour". Article 7(2) provides that "[n]o-one may be subjected to any discrimination in exercising their labour rights depending on sex, age, physical disabilities, race, nationality, language, material, social or official position, place of residence, attitude to religion, political convictions, tribe or social stratum or membership of public associations".

48. The Criminal Procedure Code provides at Article 21(2) that "[d]uring criminal proceedings no one may be subjected to any discrimination due to his origin, social, occupational and property status, sex, race, nationality, language, religious attitude, beliefs, place of residence or due to any other circumstances".⁷⁴
49. Generic non-discrimination provisions are also found in other pieces of legislation such as the Code on Peoples' Health and Healthcare System⁷⁵ (Article 91(1)(2)) and the Law on the Rights of the Child⁷⁶ (Article 6(1)(1)).
50. Particular grounds of discrimination are protected under specific anti-discrimination laws, for example women are protected by the Law on Gender Equality which guarantees equal rights and equal opportunities for men and women and sets out the fundamental principles and provisions related to the creation of conditions for gender equality in all fields of public life.
51. Taken together, this patchwork of Constitutional and legislative provisions falls far short of the standards required by international law and best practice, including in respect of Article 26 of the Covenant. The Equal Rights Trust is of the view that compliance with the obligation, imposed by Article 26, to ensure "that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds"⁷⁷ requires the enactment of comprehensive anti-discrimination legislation, either in the form of a single equality act, or a framework of individual laws providing protection on different grounds or in different areas of life. In the absence of comprehensive anti-discrimination law, states are ill-equipped to provide full and effective protection from all forms of discrimination, arising on all grounds, in all areas of life. Moreover, in the absence of specific and detailed legislation, states are unable to address issues such as the need to provide for the transfer of the burden of proof in discrimination cases,⁷⁸ or to provide for protection from multiple discrimination.⁷⁹
52. In the case of Kazakhstan, in addition to the problems arising from the absence of detailed, specific and comprehensive anti-discrimination legislation, there are a number of key weaknesses with the legal framework which mean that the state is manifestly failing to meet its obligations under Article 26. In particular, the Trust would draw the Committee's attention to three fundamental weaknesses

⁷⁴ Code of Criminal Procedure of the Republic of Kazakhstan, 13 December 1997. Code No. 206.

⁷⁵ Code on People's Health and the Health Care System, approved by President's Decree No. 193-IV ZRK of 18 September 2009.

⁷⁶ Law of the Republic of Kazakhstan about the rights of the child in the Republic of Kazakhstan, Law No. 345-II of 8 August 2009.

⁷⁷ See above, note 1, Para 12.

⁷⁸ See above, note 3, Principle 21.

⁷⁹ See above, note 3, Principle 12.

53. **The list of prohibited grounds of discrimination which is explicitly protected is limited.** As noted, Article 14(2) contains an open-ended list of protected grounds in Article 1(2), by virtue of the words “or for any other circumstance” at its end. In addition to this, the following grounds receiving explicit protection: origin, social status, occupation, property status, gender, race, ethnic affiliation, language, religious affiliation, opinions and place of residence. While the use of an open-ended list of protected grounds is to be welcomed, the explicitly listed grounds of protection are limited, omitting a number of grounds which are well-recognised at international law. In its Principle 5, the Declaration of Principles on Equality provides an extensive but closed list of grounds,⁸⁰ complemented by a test to establish whether additional grounds should be admitted for protection.⁸¹ These grounds currently enjoy protection from discrimination under international human rights law, as indicated either by their inclusion in the Covenant or other international instruments, or by the consistent practice of the Human Rights Committee or the Committee on Economic, Social and Cultural Rights in interpreting the “other status” provision in the Covenants as including these grounds. Thus, the open-ended list of protected grounds in Article 14(2) must be read as including protection from discrimination on these grounds, if it is to be consistent with international law. Nevertheless, ERT regrets that many of these grounds are not included explicitly in Article 14(2) of the Constitution. It is concerning that without explicit recognition, victims of discrimination on those grounds may be required to undertake legal proceedings so as to establish that these grounds are recognised under Article 1(2), rather than being able to rely on the protection immediately. In addition, ERT has reason to be concerned that the Ukrainian courts may fail to recognise some or all of these grounds – including in particular sexual orientation and gender identity – when interpreting Article 14(2).
54. In the absence of comprehensive anti-discrimination law, the Kazakhstani legal framework **does not effectively prohibit discrimination committed by both public and private actors in all areas of life.** “The Committee has interpreted Article 26 as “prohibit[ing] discrimination in law or in fact in any field regulated and protected by public authorities”.⁸² Drawing inspiration from this and other definitions of the scope of the rights to equality and non-discrimination in international human rights law, Principle 8 of the Declaration of Principles on Equality provides that “[t]he right to equality applies in all areas of activity regulated by law”.⁸³ Both definitions – that of the Human Rights Committee and that in the Declaration – require that discrimination is prohibited in all areas of life which are subject to the regulation of the state. In Kazakhstan, in the absence of comprehensive anti-discrimination legislation, beyond a broadly worded provision in the Constitution, it is unclear what protection from discrimination exists in important areas of life, such as education or housing.

⁸⁰ Principle 5 states that “[d]iscrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.”

⁸¹ Principle 5 states that “Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.”

⁸² See above, note 1, Para 12.

⁸³ See above, note 3, Principle 8, p. 8.

55. It is unclear which **forms of discrimination constitute prohibited conduct in Kazakhstan**. In addition to the concerns expressed above regarding the personal and material scope of the right to non-discrimination as provided in the Constitution, we are concerned that the Kazakhstani does not define and prohibit the forms of discrimination which are considered part of a modern equality guarantee. In particular, there is no explicit recognition of “direct discrimination” and “indirect discrimination” as distinct forms of discrimination which should be defined and prohibited. As discussed at paragraph 15 of this submission, while the Covenant does not use the terms “direct discrimination” and “indirect discrimination”, these two forms of discrimination are now well-recognised at international law.⁸⁴ Moreover, the Committee has recognised that the Covenant imposes an obligation on states to eliminate any “distinction, exclusion, restriction or preference” which has the purpose or effect of limiting the enjoyment of rights by persons with a particular characteristic.⁸⁵ While the terms “purpose” and “effect” are not equivalent to direct and indirect discrimination respectively, they cover the same range of prohibited conducts.

Recommendations

With respect to Articles 18, 19, 21 and 22 of the Covenant:

1. The Equal Rights Trust urges the Committee to call on Kazakhstan to:
 - a. Investigate all reports of denial of freedom of religion, freedom of expression, freedom of assembly and freedom of association, take appropriate action against those responsible and provide appropriate remedy to the victims;
 - b. Take immediate steps to prevent future violations of Articles 18, 19, 21, and 22, including but not limited to their discriminatory restriction or limitation;
 - c. Take positive steps to encourage a culture of religious and political plurality and open political discussion;
 - d. Repeal laws which have the effect of limiting the enjoyment of the rights, either for particular groups or for the population as a whole.

With respect to Articles 2(1) and 26 of the Covenant:

2. The Equal Rights Trust urges the Committee to call on Kazakhstan to:
 - a. Review of all legislation and policy in order to
 - i. assess compatibility with the rights to equality and non-discrimination, as defined under the Covenant; and
 - ii. amend, and, where necessary, abolish existing laws, regulations and policies that conflict with the right to non-discrimination. This process should

⁸⁴ See, for example, Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 10.

⁸⁵ See above, note 1, Para. 7.

include, but not be limited to, review of those laws and provisions cited in this submission;

b. Amend the Constitution as follows:

- i. Expand the list of grounds of discrimination in Article 31 so as to include all grounds recognised in international law and enumerated in Principle 5 of the Declaration of Principles on Equality, thus adding to the currently listed grounds: descent, pregnancy, maternity, civil, family or carer status, birth, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, and genetic or other predisposition toward illness;
- ii. Introducing criteria for the inclusion of additional grounds of discrimination, such that such grounds could be incorporated as necessary over time without requiring constitutional amendment;
- iii. prohibit all forms of discrimination, in all areas of public life, with provisions that ensure effective access to justice and appropriate remedies;
- iv. provide a clear definition of the behaviours and conducts which are prohibited as discrimination, and thus ensuring both direct and indirect discrimination are prohibited;
- v. provide a right to equality which includes participation on an equal basis, in economic, social, political, civil and cultural life.
- vi. ensure that the right to non-discrimination applies in all areas of life regulated by law, in both the public and private sectors.

c. Strengthen any constitutional protections of the rights to equality and non-discrimination through the enactment of comprehensive equality legislation, giving effect to the principles of equality under international law and ensuring the expanded constitutional protection against discrimination and the promotion of the right to equality. Such legislation should:

- i. Define and prohibit direct discrimination, indirect discrimination, harassment and failure to make reasonable accommodation, in line with the definitions provided in the Declaration of Principles on Equality;
- ii. Explicitly prohibit discrimination on all grounds recognised in international law, together with a test for the incorporation of new grounds of discrimination and protection from discrimination by association, discrimination on the basis of perception and multiple discrimination;
- iii. Prohibit discrimination in all areas of life governed by law, including but not limited to: education, employment, social security (including pensions and housing), provision of goods and services (including public services), clubs and associations;
- iv. Attribute obligations to public and private actors, including in relation to the promotion of substantive equality, raising awareness of equality and the collection of data relevant to equality.

- d. Review its procedural law relating to equality, to ensure that:
- i. Persons who have been subjected to discrimination have a right to seek legal redress and obtain an effective remedy, have access to judicial and administrative procedures and to appropriate legal aid for this purpose.
 - ii. Individuals are protected from victimisation.
 - iii. Associations, organisations or other legal entities, which have a legitimate interest in the realisation of the right to equality, may engage in any judicial and / or administrative procedure provided for the enforcement of the right to equality.
 - iv. Legal rules related to evidence and proof are adapted in order to ensure that victims of discrimination are not unduly inhibited from obtaining redress. In particular, rules on evidence and proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination, it shall be for the respondent to prove that there has been no breach of the right of equality.
 - v. Sanctions for breach of the right to equality are effective, proportionate and dissuasive. Appropriate remedies should include reparations for material and nonmaterial damages. Sanctions should also include the elimination of discriminatory practices and the implementation of structural, institutional, organisational or policy changes that are necessary for the realisation of the right to equality.
- e. Review its current positive action measures and consider taking further positive action, which includes a range of legislative, administrative and policy measures, in order to overcome past disadvantage and to accelerate progress towards equality of particular groups, including under-represented ethnic and religious groups, women, LGBT persons and persons with disability.