



**Suggestions for the list of issues to be adopted by the Committee on the Elimination of Discrimination Against Women at its 74<sup>th</sup> Session (Pre-Sessional Working Group) in relation to the fifth periodic report prepared by:**

**Kazakhstan**

28 January 2019

**Statement of Interest**

1. The authors jointly submit the following suggestions for the list of issues to be adopted by the Committee on the Elimination of Discrimination Against Women (the Committee) at its 74<sup>th</sup> Session (Pre-Sessional Working Group) based upon the fifth periodic report submitted to the Committee by Kazakhstan on its implementation of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention).
2. The Equal Rights Trust (the Trust) is an independent international organisation which works in partnership with equality defenders around the world to secure the adoption and implementation of equality laws. The Trust has been actively involved in efforts to combat discrimination in Kazakhstan since 2012, in partnership with Kazakhstan-based organisations including the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR).
3. Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) is a non-governmental republican public association focused on the protection of human rights and civil freedoms in Kazakhstan. Its mission is to promote protection of civil and political rights and freedoms in Kazakhstan and other countries, democratic development, promotion of the rule of law and civil society building through education, monitoring (data collection, analysis and information dissemination), engaging in advocacy, legislation analysis and its compliance with international standards.
4. Kazakhstan Feminist Initiative “Feminita” (“Feminita”) is a grass-roots initiative working on monitoring and documentation of discrimination and hate crime cases on the basis of sexual orientation and gender identity (SOGI) and advocacy of the rights of lesbian, bisexual and queer (LBQ) women in Kazakhstan.
5. Anti-Discrimination Centre “Memorial” (ADC “Memorial”) is a Brussels-based NGO which focuses on the defence of the rights of minorities and vulnerable groups, opposition to racism, sexism, homophobia and all other forms of xenophobia. ADC “Memorial” also performs expert work on strategic litigation and analysis of discrimination and violations of the rights of migrants, the list of occupations prohibited to women and the right to education for persons with disabilities.
6. Union of Crisis Centres (Union) is a professional network uniting 16 organisations from 11 regions in Kazakhstan with experience of working in the area of preventing gender-based violence and developing a culture of non-violence. The Union is a member of the Interdepartmental Commission on

the Child's Rights under the Government of the Republic of Kazakhstan, the Coordination Council under the Human Rights Ombudsman, the Interdepartmental Commission under the Government of the Republic of Kazakhstan on Combating Illegal Export, Import and Trafficking in Human Beings.

7. Between 2013 and 2016, the Trust and KIBHR undertook research on patterns of discrimination and inequality in Kazakhstan, including discrimination against women as prohibited by the Convention. This research culminated in the publication of [\*In the Name of Unity: Addressing Discrimination and Inequality in Kazakhstan\*](#) (the Report) at the end of 2016.<sup>1</sup> The report provides, for the first time, a comprehensive assessment of the lived experience of those exposed to discrimination on various grounds alongside an analysis of the national legal framework on equality and non-discrimination. The conceptual framework for the report is that of the unified human rights framework on equality, as elaborated in the *Declaration of Principles on Equality*, a document of international best practice which was drafted and adopted by more than 100 experts from 40 different countries in 2008.<sup>2</sup>
8. The suggestions for the Committee's list of issues which are made in this submission are based in part on the findings of *In the Name of Unity*, complemented with information gathered by Feminita, ADC Memorial, KIBHR and the Union since the publication of the Report. The submission is divided into two parts. Part 1 reviews the legal framework on gender equality, in light of the country's obligations under Article 2 of the Convention. Part 2 reviews evidence of the impact of gender-based discrimination on the enjoyment of a number of rights protected under the Convention. Each section concludes with questions which we would urge the Committee to put to Kazakhstan in its list of issues.

#### **Part 1: Obligations under Article 2 of the Convention**

9. Under Article 2 of the Convention, States Parties agree to pursue a "policy of eliminating discrimination against women" using all appropriate means. To this end, they undertake (*inter alia*) to: (i) prohibit discrimination against women through legislation and other means; (ii) modify or abolish laws, regulations, customs and practices which discriminate against women; (iii) embody the principle of equality between men and women in law and ensure its practical realisation; (iv) refrain from discriminating against women through public bodies; and (v) guarantee effective protection of the rights of women through national tribunals. The Committee, in its General Recommendation No. 28 made clear that "Article 2 is crucial to the full implementation of the Convention" and that the obligations under Article 2 are "inextricably linked with all other substantive provisions of the Convention".<sup>3</sup>
10. An effective legal framework requires, as set out under Article 2(c) of the Convention, effective enforcement. In its General Recommendation No. 33 on Women's Access to Justice, the Committee has noted that there are six interrelated and essential components necessary to ensure access to justice: "justiciability, availability, accessibility, good quality, provision of remedies for victims and accountability of justice systems."<sup>4</sup>

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<sup>1</sup> Equal Rights Trust in partnership with the Kazakhstan International Bureau for Human Rights and the Rule of Law, *In the Name of Unity: Addressing Discrimination and Inequality in Kazakhstan*, 2016, available at: [http://www.equalrightstrust.org/ertdocumentbank/Kazakhstan\\_EN\\_0.pdf](http://www.equalrightstrust.org/ertdocumentbank/Kazakhstan_EN_0.pdf).

<sup>2</sup> *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, available at: <http://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perfect%20principle.pdf>.

<sup>3</sup> United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 28 on the core obligations of States parties under article 2*, UN Doc. CEDAW/C/GC/28, 2010, Para 6.

<sup>4</sup> United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 33 on women's access to justice*, UN Doc. CEDAW/C/GC/33, 2015, Para 14.

11. The primary constitutional equality provision in Kazakhstan is found in Article 14 of the **Constitution of Kazakhstan**, which provides that:

1. *Everyone shall be equal before the law and the court.*
2. *No one shall be subjected to discrimination on grounds of origin, social, property status, occupation, sex, race and nationality, language, religion, convictions, place of residence or any other circumstances.*

This provision is flawed in a number of respects. Notably, the list of explicitly protected grounds is short, and the provision fails to explicitly recognise grounds well-established as protected under international law, including (for example) sexual orientation, gender identity, disability, age and health status. While the inclusion of the phrase “any other circumstances” means that the list of protected characteristics is illustrative and open-ended, no guidance is provided in the Constitution, by the courts or the government as to the interpretation of the phrase “any other status”. Moreover, Article 14 provides no clarity as to whether all forms of discrimination – direct and indirect discrimination, harassment and failure to make reasonable accommodation – are prohibited, leaving open the possibility of restrictive interpretation.

12. Kazakhstan does not have comprehensive anti-discrimination legislation, something which *In the Name of Unity* notes is the most significant deficiency in the country’s legal framework. Such legislation – which would *inter alia* define and prohibit all forms of discrimination, on all grounds recognised in international law, and in all areas of life regulated by law – would complement and address the deficiencies in the constitutional protection, providing clarity to rights-holders and duty-bearers.
13. While the state has no comprehensive anti-discrimination legislation, it does have a specific gender equality law, the “Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women” (the “**Law on Gender Equality**”).<sup>5</sup> The Law prohibits discrimination on the grounds of sex, provides for state guarantees of equal rights and equal opportunities for men and women and sets the fundamental principles and provisions related to the creation of conditions for gender equality.
14. The Law sets out specific guarantees of gender equality in the fields of employment, marriage and family life, health, education and culture.<sup>6</sup> These provisions are a mix of broad obligations on the state to realise policy objectives and specific prohibitions. For example, Article 10 states that equal rights and opportunities shall be guaranteed to men and women in recruitment, employment, promotion and training. Article 11 sets a similar policy objective requiring the state to ensure gender equality in family relations. Article 12 sets out a range of obligations on the state to guarantee gender equality in health, education and culture; in particular, the state is required to adopt measures to ensure the reproductive health of men and women, to ensure equal access to training and to prohibit advertisements which violate the “generally accepted regulations of humanity and morals by the use of offensive words, comparisons or figures” in relation to gender. Although the Law appears broad in scope, it makes no provision for gender equality in the fields of social protection, access to goods and services or social benefits, significantly limiting the material scope of the law.
15. Moreover, while the Law establishes guarantees in respect of certain areas, it fails to provide effective protection for the right to non-discrimination. Under Article 1(3), the definition of discrimination on the basis of sex is limited to “any limitation or impairment of a right and freedom of person, as well as disparagement of his (her) dignity on the grounds of sex”. Article 4(1) of the Law contains a slightly different definition of discrimination covering “regulatory legal acts, directed to the limitation or impairment of equal rights and equal opportunities of men and women”. These definitions have been

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<sup>5</sup> Law of the Republic of Kazakhstan “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”, 8 December 2009 No.223 – IV (as amended in 2011 and 2013).

<sup>6</sup> *Ibid.*, Articles 9, 10, 11 and 12.

- rightly criticised by Kazakhstani NGOs as inconsistent with the Convention.<sup>7</sup>
16. Articles 1(3) and 4(1) are limited in a number of important respects. First, neither Article defines or prohibits the four forms of discrimination recognised in international law (direct and indirect discrimination, harassment and failure to make reasonable accommodation). Indeed, the use of the phrases “on the grounds of” and “directed to” in the Articles appears to limit the protection provided by these Articles to direct discrimination alone. Second, rather than prohibiting discrimination in all areas of life regulated by law, as required by the Convention, the material scope of these Articles is narrow: Article 1(3) defines discrimination as a limitation or impairment of another human right, or the disparagement of dignity, while Article 4(1) prohibits discrimination only in respect of regulation or legislation. Thirdly, despite the Committee’s recognition, in its General Comment 28, that “states must legally recognize (...) intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them”,<sup>8</sup> these Articles prohibit discrimination only on the basis of sex.
  17. A further significant concern is the limitations on the right to non-discrimination provided in Article 4. The Article excludes differential treatment where required for forms of employment or where undertaken in pursuit of the state’s special care for persons in need of enhanced social and legal protection from the prohibition on discrimination. The second of these exceptions is broad and open to discriminatory application, on the basis of paternalistic and patriarchal notions of women’s needs. Indeed, as set out in Part 2 below, the State Party maintains an extensive list of occupations which are not accessible for women as they are considered “harmful or hazardous”.
  18. The Law on Gender Equality does not establish a direct cause of action despite Article 4(1) purporting to provide the ability to “challenge regulatory legal acts, which undermine equal rights and opportunities”. Further, no general cause of action for violation of the provisions of the Law exists and remedies are limited to a general statement in the Law that violations incur “responsibility” under national law.<sup>9</sup> However, under Article 9 individuals may bring claims relating to equal access to public service which may result in repeal of an unlawful order or recruitment. Article 10 contains the possibility to bring a claim relating to discrimination in the field of employment through which a claimant may receive the right to approach the organisations involved in upholding equal rights and opportunities. The nature of many of the provisions in the Law makes it difficult to assess when provisions are breached, and the Trust found no information through its research of any cases where a claimant alleged a breach of the Law. Given the lack of a direct cause of action under the Law, individuals are required to bring a claim under Article 145 of the Criminal Code. The lack of remedy for victims of discrimination is also concerning and runs contrary to a clear requirement under the Convention for the States Parties to provide “appropriate remedies to women who are subjected to discrimination”.<sup>10</sup>
  19. Additionally, while the Law on Gender Equality specifies which State bodies are responsible for ensuring equal rights and opportunities for men and women,<sup>11</sup> there is no government agency which is formally tasked with ensuring implementation of the Law on Gender Equality. The National

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<sup>7</sup> International Fund of Protection of Freedom of Speech “Adil Soz”, Almaty Helsinki Committee, Charter for Human Rights, Feminist League of Kazakhstan, Kazakhstan International Bureau for Human Rights and Rule of Law, International Center for Journalism “MediaNet” and Legal Policy Research Center, *Submission to the Human Rights Committee for Kazakhstan*, 2011, p. 7, available at: [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT\\_CCPR\\_NGO\\_KAZ\\_102\\_9346\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_NGO_KAZ_102_9346_E.pdf); International Commission of Jurists, *Women’s Access to Justice in Kazakhstan: Identifying the Obstacles and Need for Change*, 2013, p. 26, available at: <http://www.refworld.org/pdfid/530f05554.pdf>.

<sup>8</sup> See above, note 3, Para 18.

<sup>9</sup> See above, note 5, Article 15.

<sup>10</sup> See above, note 3, Para 32. See also above, note 2, Principle 22.

<sup>11</sup> See above, note 5, Article 5.

Commission on Family and Women's Affairs and Family-Demography Policy is largely focused on gender equality in the area of family life, economic empowerment of women, and women's rights in areas of health, education and other economic, social, cultural and political rights.<sup>12</sup> The body is advisory in nature and cannot receive individual complaints from women who have faced discrimination or had other rights violated under the Law on Gender Equality.<sup>13</sup> We welcome the recognition by the State Party on the need to expand the number of State bodies working in the field of gender equality to improve implementation of existing laws and policies.<sup>14</sup>

20. Aside from the Law on Gender Equality, other laws contain isolated provisions related to the rights to equality and non-discrimination, including *inter alia*:
- (a) Articles 9, 57(5), 83 and 90 of the Code of Administrative Offences;<sup>15</sup>
  - (b) Articles 145, 174, 183 and 404 of the Criminal Code;<sup>16</sup>
  - (c) Article 21 of the Criminal Procedure Code;<sup>17</sup>
  - (d) Articles 5 and 6 of the Law on Citizenship;<sup>18</sup>
  - (e) Article 5(1) of the Law on Migration;<sup>19</sup>
  - (f) Articles 3 and 26(8) of the Law on Education;<sup>20</sup>
  - (g) Articles 2, 30 and 38 of the Law on Marriage and Family;<sup>21</sup>
  - (h) Article 6 of the Labour Code;<sup>22</sup>
  - (i) Articles 91 and 112 of the Health Code.<sup>23</sup>
21. Nevertheless, none of these provisions define discrimination, let alone provide definitions of direct, indirect and intersectional discrimination, discrimination by association or perception, harassment and failure to make reasonable accommodation.
22. Thus, it is clear that, despite enacting the Law on Gender Equality, Kazakhstan has failed to discharge its obligations, arising under Article 2(b) of the Convention, to "adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women", in line with the Committee's interpretation of this obligation in its General Recommendation 28, and other relevant international standards. The Law on Gender Equality provides an inadequate definition of discrimination, which is narrow in respect of its prohibited conduct, material scope and personal

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<sup>12</sup> Decree of the President of the Republic of Kazakhstan on the "National Commission on Family and Women's Affairs under the President of the Republic of Kazakhstan" dated 1 February 2006 No.56; Regulations on the National Commission on Family and Women's Affairs, available at: <http://www.akorda.kz/kz/o-nacionalnoi-komissii>.

<sup>13</sup> See above, note 7, p.7.

<sup>14</sup> United Nations Committee on the Elimination of Discrimination against Women (CEDAW), *Fifth periodic report submitted by Kazakhstan under article 18 of the Convention, due in 2018*, 11 July 2018, CEDAW/C/KAZ/5, Para 64.

<sup>15</sup> Code of Administrative Offences of the Republic of Kazakhstan, dated 05 July 2014, No 235-V.

<sup>16</sup> Criminal Code of the Republic of Kazakhstan dated 3 July 2014 No. 226-V.

<sup>17</sup> Criminal Procedure Code of the Republic of Kazakhstan dated 4 July 2014 No. 231-V.

<sup>18</sup> Law of Kazakhstan "On Citizenship of the Republic of Kazakhstan" dated 20 December 1991 No. 1017-XII.

<sup>19</sup> Law of Kazakhstan "On Migration of the People" dated 22 July 2011 No. 477-IV.

<sup>20</sup> Law of Kazakhstan "On Education" dated 27 July 2007 No. 319-III.

<sup>21</sup> Code of Kazakhstan "On Marriage and Family" dated 26 December 2011 No. 518-IV.

<sup>22</sup> Labour Code of the Republic of Kazakhstan dated 23 November 2015 No. 414-V (as amended in 2016).

<sup>23</sup> Code of Kazakhstan "On the Health of the Population and the Health Care System" dated 18 September 2009 No. 193-IV.2.

scope; the Law does not establish a clear cause of action for women experiencing discrimination, and does not provide for remedies in cases of discrimination. Non-discrimination provisions in other areas of law – whether in the Constitution or in legislation in other areas of life – do not compensate for these deficiencies. Thus, in the absence of comprehensive anti-discrimination, the State Party is unable to meet its obligations under Article 2(a), (b) and (c).

23. Furthermore, research by the Trust and KIBHR for *In the Name of Unity* identified a number of laws which are themselves discriminatory against women, contrary to the obligation under Article 2(f) of the Convention. For example, Article 76 of the Labour Code restrict women with children under seven years of age from working night shifts without providing written consent, whereas no such equivalent provision exists for fathers, and – as discussed in more detail below – under Article 26 of the Law, the state prohibits women from working in particular occupations.

#### **Suggested Questions on the Legal Framework**

- What plans, if any, does the State Party have to adopt a comprehensive anti-discrimination law which prohibits all forms of discrimination on all grounds recognised in international law, to ensure that all women can participate in society on an equal basis?
- Will the State Party confirm that the words “*any other circumstances*” in Article 14 of the Constitution can be interpreted as prohibiting discrimination on the basis of sexual orientation, gender identity, gender, age, disability and health status? What plans, if any, does the State Party have to clarify this interpretation, and raise awareness of the protection provided as a result?
- Can the State Party clarify which specific legislative acts and provisions are being considered for amendments by the special working group mentioned in paragraph 64 of the State Party’s fifth periodic report, and the detailed content of such amendments?
- Can the State Party clarify in more detail the process of the special working group referred to above in its review of the existing legislative framework to assess its compatibility with the rights under the Convention?

#### **Part 2: Patterns of discrimination against women**

24. Part 2 of this submission examines four key patterns of discrimination against women identified in *In the Name of Unity* and through the research and consultation of the authors since its publication. It examines gender-based violence (Article 1); discrimination in the field of political and public life (Article 7); discrimination in education (Article 10); and discrimination in employment (Article 11).

#### **Article 1: Gender-based violence**

25. The Committee has noted that the prohibition on discrimination in the Convention includes a prohibition on gender-based violence and that States Parties are required by the Convention to prohibit and eliminate violence against women.<sup>24</sup>
26. Gender-based violence is a serious problem in Kazakhstan, with the Human Rights Committee, among other Treaty Bodies, expressing concern over the “prevalence of violence against women”.<sup>25</sup> Domestic

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<sup>24</sup> United Nations Committee on the Elimination of Discrimination against Women (CEDAW), *General Recommendation No. 19: Violence against Women*, UN Doc. A/47/38, 1992, Paras 6 and 9.

<sup>25</sup> United Nations Human Rights Committee, *Concluding Observations: Kazakhstan*, UN Doc. CCPR/C/KAZ/CO/1, 19 August 2011, Para 10.

violence is a common form of gender-based violence in Kazakhstan.<sup>26</sup> In 2009, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment noted that “[v]iolence against women, especially within the family, is said to be widespread” and that “[m]ost often it is experienced in silence”.<sup>27</sup>

27. Since 2010, numerous of the Committee’s sister bodies have commented on gender-based violence in Kazakhstan, underlining a wide range of concerns, including the lack of protection and rehabilitation for victims;<sup>28</sup> poor legal mechanisms, with proceedings “initiated only upon formal complaints”;<sup>29</sup> low numbers of investigations into allegations of violence;<sup>30</sup> lack of government-run domestic violence shelters;<sup>31</sup> and the lack of legislation “criminalising all forms of violence against women”.<sup>32</sup>
28. The Committee, in its General Recommendation No. 19 has noted that states are required to ensure that “laws against (...) rape, sexual assault and other gender-based violence give adequate protection to all women and respect their integrity and dignity”.<sup>33</sup> Under Article 120 of the Criminal Code of Kazakhstan, rape is defined as “sexual intercourse by force or threat of force against the victim or other persons”.<sup>34</sup> In 2007, the Supreme Court issued a binding Decree on the meaning of Article 120.<sup>35</sup> Although this Decree criminalised spousal rape, the Court confirmed the requirement of the use of force.<sup>36</sup> The Committee has underlined that a legal definition of rape should reflect a lack of freely given consent.<sup>37</sup> The definition under Article 120 of the Criminal Code is also limited to acts of penetrative vaginal intercourse,<sup>38</sup> and as such is too narrow to prohibit all forms of rape.

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<sup>26</sup> See, *inter alia*, United Nations Children's Fund (UNICEF), *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](http://www.childinfo.org/files/Kazakhstan_MICS4_Final_Report_Eng.pdf).

<sup>27</sup> United Nations Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Kazakhstan*, UN Doc. A/HRC/13/39/Add.3, 2009, Para 37.

<sup>28</sup> United Nations Committee on Economic, Social, and Cultural Rights, *Concluding Observations: Kazakhstan*, UN Doc. E/C.12/KAZ/CO/1, 7 June 2010, Para 25.

<sup>29</sup> *Ibid.*

<sup>30</sup> United Nations Committee against Torture, *Concluding Observations: Kazakhstan*, UN Doc. CAT/C/KAZ/CO/3, 12 December 2014, Para 20.

<sup>31</sup> *Ibid.*

<sup>32</sup> 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 18.

<sup>33</sup> See above, note 24, Para 24(b).

<sup>34</sup> See above, note 16, Article 120.

<sup>35</sup> Resolution of the Supreme Court of the Republic of Kazakhstan, “On Certain Questions Concerning the Definition of Rape-Related Offences and Other Violent Acts of a Sexual Nature”, No. 4 of 11 May 2007, available at (Russian only): [http://adilet.zan.kz/rus/docs/P07000004S\\_](http://adilet.zan.kz/rus/docs/P07000004S_). See also United Nations Committee on the Elimination of Discrimination against Women (CEDAW), *Report submitted by Kazakhstan under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/KAZ/3-4, 22 March 2012, Para 240.

<sup>36</sup> International Commission of Jurists, *Women’s Access to Justice in Kazakhstan: Identifying the Obstacles & Need for Change*, 2013, p. 36, available at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/11/ICJ-kazakhstan-Women-A2J.pdf>.

<sup>37</sup> United Nations Committee on the Elimination of Discrimination against Women (CEDAW), *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35, 14 July 2017, Para 33.

<sup>38</sup> See above, note 32, Paras 18-19.

29. While the State Party adopted the Law On Prevention of Domestic Violence (the **Domestic Violence Law**) in 2009, a number of problems were identified.<sup>39</sup> The Human Rights Committee called for a review of the Domestic Violence Law in 2011, to encourage more women to report instances of violence, and ensure that perpetrators were suitably prosecuted and punished.<sup>40</sup> Despite amendments to the Law which expanded measures to prevent domestic violence, such as length of restraining orders,<sup>41</sup> the number of prosecutions for domestic violence reportedly decreased, raising concerns of underreporting.<sup>42</sup>
30. The Union of Crisis Centres has found little data available in relation to gender-based violence, including domestic violence and trafficking in women and girls, and no information in respect of cases of psychological and sexual violence between spouses. Similarly, the Union notes that adults who enter into early marriages with children, often young girls who have been raped or are pregnant, are not prosecuted for sex with children. Cultural perception and stigma contribute to underreporting which serves to legitimise gender-based violence.<sup>43</sup> Economic considerations further contribute to underreporting and civil society has noted instances where women withdraw complaints of gender-based violence due to a lack of financial independence.<sup>44</sup>

#### **Suggested Questions on Gender-based Violence**

- What plans does the State Party have to ensure that all forms of gender-based violence are prohibited and criminalised, in line with international standards?
- Does the State Party plan to amend the definition of “rape” in accordance with the Convention and the jurisprudence of the Committee under the Optional Protocol? What steps will the State Party take to combat child marriage and prosecute sex with children, often young girls?
- What steps has the State Party taken to improve the monitoring and documentation on gender-based violence, including psychological and sexual violence between spouses?

#### **Article 7: Discrimination and inequality in political and public life**

31. In its last Concluding Observations, the Committee recommended that the State Party, in accordance with Article 4(1) of the Convention and General Recommendation No. 25, consider using temporary measures as a necessary strategy to accelerate the achievement of substantive equality of women and men in all areas of the Convention where women are underrepresented.<sup>45</sup>

<sup>39</sup> Law of the Republic of Kazakhstan, “On Prevention of Domestic Violence”, No. 214-IV of 4 December 2009.

<sup>40</sup> See above, note 25, Para 10.

<sup>41</sup> See above, note 39, Article 20, as amended by Law of the Republic of Kazakhstan, “Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Issue of Domestic Violence”, No. 175-V of 18 February 2014.

<sup>42</sup> 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: [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT\\_CCPR\\_ICO\\_KAZ\\_21507\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KAZ/INT_CCPR_ICO_KAZ_21507_E.pdf).

<sup>43</sup> See above, note 26, pp. 167-168.

<sup>44</sup> Women’s Information Center and others, *Alternative Report to the CEDAW Committee*, 2014, available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KAZ/INT\\_CEDAW\\_NGO\\_KAZ\\_16145\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KAZ/INT_CEDAW_NGO_KAZ_16145_E.pdf). See also, Asian Development Bank, *Kazakhstan Country Gender Assessment*, 2013, Para 88, available at: <http://www.adb.org/documents/country-gender-assessment-kazakhstan>.

<sup>45</sup> See above, note 32, Paras 14-15.

32. In 2005, the state adopted the Strategy on Gender Equality for 2006-2016.<sup>46</sup> The Strategy set a target of achieving a 30% representation of women at the decision-making level of elected and appointed bodies by 2016. This target was not achieved. In 2016 as the time-frame for the 10 year Strategy came to an end, the state adopted a new Family and Gender Policy Concept.<sup>47</sup> This Concept includes *inter alia* targets for the share of women in executive, representative and judicial authorities, state, quasi-state and corporate sectors at the decision-making level, as follows: by 2020 - 22%, by 2023 - 25%, by 2030 - 30%. However, there are no clear programmes and actions to achieve these targets.
33. In 2018, Kazakhstan Feminist Initiative “Feminita” undertook research on participation of women in politics and decision-making. Feminita surveyed 116 women involved in local government and non-government bodies and undertook 25 interviews in 11 cities. Approximately 60% of surveyed women were party members and 57% were expecting promotions or running for office. The survey indicated that women believe government support is necessary in order to increase women’s representation in elected positions. Thus, 48% of those surveyed supported the adoption of an effective government policy to encourage women's participation in politics, 32% were in favour of legislative quotas (special measures), while only 13% supported voluntary programmes by political parties.
34. One of those interviewed by Feminita, former MP Aigul Solovyova spoke of the government’s approach to increasing women’s participation in public life. She explained that the government does not have a proactive approach, but instead the National Commission for Women’s Affairs and Family and Demographic Policy “keeps a list of active, socially significant women and recommends them to the government”. She continued:
- There is no special programme. In any case, together with international organizations they [the National Commission] provide round tables, involve women to participate in the grant programs. Therefore, I would not call it a programme. This is policy’.*<sup>48</sup>
35. Another former MP Zauresh Battalova, now the president of an NGO focused on the development of parliamentarism in Kazakhstan stated that:
- No, we do not have quotas [for women]. We have a Commission on Women's Affairs under the President of Kazakhstan, which is not aimed for supporting women. It aims to create the image of the President and the State in the gender policy scope (...) If there are guaranteed state quotas, I would use them to promote women at all levels, including regions and districts (...) I'm a politician since 2001. Over the years I understand that the most important thing is that now the country needs changes in this system of full autocracy (...) I have a feeling if more women were involved then we would change the country.*<sup>49</sup>
36. Feminita found that, in addition to a lack of proactive policy by the government, gender stereotypes and prejudice inhibit women’s participation in public life. During interviews in some cities where people speak in Kazakh (including Aktobe, Atyrau and Shymkent) interviewees referred to a popular proverb which is used to discourage women from assuming leadership positions: “Қатын бастаған көш оңбайды” (translated as “a caravan led by a woman will be lost”).<sup>50</sup> The proverb involves a

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<sup>46</sup> Strategy on Gender Equality in the Republic of Kazakhstan for 2006-2016, approved by the Decree № 1677 of the President of the Republic of Kazakhstan, 29 November 2005.

<sup>47</sup> The Concept of Family and Gender Policy of the Republic of Kazakhstan until 2030, approved by the Order № 384 of the President of the Republic of Kazakhstan, 6 December 2016.

<sup>48</sup> *Ibid.*, excerpt from the interview of Solovyeva A.

<sup>49</sup> *Ibid.*, excerpt from the interview of Battalova Z.

<sup>50</sup> *Ibid.*

stigmatised synonym of the word “woman”, which increases its potency as an insult of women seeking leadership positions. This is just one of a number of popular proverbs in Kazakh which call into question women’s intellectual abilities and competence. For example: “[w]omen have long hair, but short intellect”,<sup>51</sup> “[a]ny simple man is more valuable than a gold-worthy woman”,<sup>52</sup> and “[a] female horse does not win the race”.<sup>53</sup> Alongside these proverbs are others which seek to legitimise violence against women, thus further inhibiting women who wish to assume more prominent roles in public life.

37. There are also examples of state media and educational institutions reinforcing harmful gender stereotypes, in particular in reference to traditional and family values. For example, in 2018, the state television and radio corporation *Kazakhstan* produced a programme using as its title the proverb “Any simple man is more valuable than a gold-worthy woman”.<sup>54</sup> Statements given by purported experts on the programme illustrate the negative social stereotypes promoted by the programme:

*[T]here is a domination of women in society. Over the past 10 years, the share of women entrepreneurs in business has increased by 50%. 55% of civil servants are women, and, in the parliament, the number of women has increased and exceeds 27%. In the past 10 years, unemployment among young women has decreased by 1.6% (...) Equal status of women with male citizens in labor, in most cases, leads to the disintegration of families. According to experts, quarrels, disagreements and rivalry in the family begins with this [equal status of women].<sup>55</sup>*

#### **Suggested Questions on Discrimination in Political and Public Life**

- What steps has the State Party taken to achieve its target of 30% participation of women in positions of leadership, authority or decision-making in political and public life?
- What plans, if any, does the State Party have to adopt positive action measures to increase women’s participation in public life?
- What measures has the State Party taken to counteract the use of negative stereotypes about the role of women in public life or in decision-making positions more broadly?

#### **Article 10: Discrimination and inequality in the field of education**

38. In its report to the Committee on the Rights of the Child, the State Party noted that “[o]ne of the main principles of Kazakhstan’s education policy is that of equal access to free secondary education for all Kazakh citizens, irrespective of sex”.<sup>56</sup> Indeed, recent reports on gender balance in educational

<sup>51</sup> From the Kazakh “*Әйелдің шашы ұзын, ақылы қысқа*”. Google Search provides 72 800 pages matching the statement.

<sup>52</sup> From the Kazakh “*Алтын басты әйелден, бақыр басты еркек артық*”. Google Search provides 1 580 pages matching the statement.

<sup>53</sup> From the Kazakh “*Қатынды бастан, баланы жастан*”. Google Search provides 3080 pages matching the statement and some images of punishment of women and children.

<sup>54</sup> Kazakhstan TV (State Television and Radio Corporation), “*Shanyraq*” Television Programme, Issue 6 “Any simple man is more valuable than a gold-worthy woman”, 17 September 2018, available at: <https://www.youtube.com/watch?v=Gx64BCyestk>.

<sup>55</sup> *Ibid.*

<sup>56</sup> United Nations Committee on the Rights of the Child, *List of issues to be taken up with the consideration of the second and third periodic report: Kazakhstan, Addendum*, UN Doc. CRC/C/KAZ/Q/3/Add.1, 17 April 2007, p. 15.

participation. In a 2015 Review of School Resources, the Organisation for Economic Co-operation and Development (OECD) noted that Kazakhstan has “managed to reach almost universal access to primary and secondary education and few differences are observed in enrolment by geographical location, socio-economic background and gender”.<sup>57</sup> Differences in enrolment rates in primary education between boys and girls were found to amount to “less than one percentage point”;<sup>58</sup> similar statistics were recorded in respect of secondary and higher education.<sup>59</sup>

39. Nevertheless, the equal participation of girls in education is limited as a result of *de facto* sex segregation in subjects of study. *In the Name of Unity* finds that the concerns raised by the Committee in its previous Concluding Observations regarding stereotypes of women as caregivers are indeed reflected in educational institutions, resulting in “stereotypical” choices of subjects (such as sewing).<sup>60</sup> In 2015, a review undertaken by the OECD found that boys and girls frequently chose those classes traditionally associated with male (such as woodworking) and female (such as sewing) fields of social and economic activity.<sup>61</sup> The OECD’s report stated that “[t]he review team was told that girls could elect to take “boys” subjects and boys could elect to take “girls” subjects, but in practice this never happened.<sup>62</sup> According to the review, “no students chose non-stereotyped subjects.<sup>63</sup>

#### **Suggested Questions on Discrimination in the field of Education**

- What measures – beyond legislation – has the State Party taken to ensure equal participation in education for women and girls?
- What steps has the State Party taken to counter stereotypes of men and women in employment and the corresponding *de facto* segregation by subject on the basis of gender?

#### **Article 11: Discrimination in the field of employment**

40. The Law on Gender Equality expressly prohibits discrimination on the basis of sex in economic life.<sup>64</sup> Article 10 specifies that employers shall ensure equal rights and opportunities of men and women. This is supported by Article 7 of the Labour Code which prohibits discrimination in the exercise of labour rights, including on the basis of sex. Despite these legislative provisions, *In the Name of Unity* identifies significant patterns of discrimination against women and inequality in employment.
41. According to the Human Development Report, compiled by the United Nations Development Programme (UNDP), labour force participation of women in Kazakhstan is significantly lower than that recorded for men.<sup>65</sup> *In the Name of Unity* also finds a persistent gender pay gap, exacerbated by a

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<sup>57</sup> Organization for Economic Co-operation and Development, *OECD Reviews of School Resources: Kazakhstan*, 2015, p. 15, available at: <http://www.oecd.org/publications/oecd-reviews-of-school-resources-kazakhstan-2015-9789264245891-en.htm>.

<sup>58</sup> *Ibid.*, p. 40.

<sup>59</sup> *Ibid.*

<sup>61</sup> See above, note 59, p. 170.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> See above, note 5, Article 1.

<sup>65</sup> United Nations Development Programme, Human Development Reports – Kazakhstan, available at: <http://hdr.undp.org/en/countries/profiles/KAZ>.

segregated labour market where women continue to be primarily employed in the lowest paid sectors such as healthcare, education and agriculture.<sup>66</sup>

42. The vertical and horizontal segregation of the labour market also results in women facing a lack of free choice in their employment. When a group of Kazakhstani experts were asked in 2010 to identify the ways in which the principle of gender equality is most often violated, among the most common answers was that “the type of work [available to women] is non-prestigious, low-skilled, and in low-paid sectors”, with 65.2% of respondents selecting this option.<sup>67</sup> Women are disproportionately employed in a limited number of sectors thought to be traditionally “feminine”, such as healthcare, social services or education,<sup>68</sup> where they represent over 70% of the total employees.<sup>69</sup> Other fields, such as construction, transport or industry, are male-dominated.<sup>70</sup>

#### Restrictions on women's employment: the list of banned professions for women

43. In reviewing Kazakhstan's most recent State Party report in 2014, the Committee expressed concern about the “persisting gender pay gap, the high level of unemployment among women and the long list of prohibited occupations for women, totalling 299 professions”.<sup>71</sup> The Committee recommended that the State Party “review the list of prohibited areas of work for women” and take steps to facilitate women’s participation in such professions.<sup>72</sup>
44. Articles 16 and 26 of the Labour Code 2015 mandate the creation of a “list of jobs” involving “harmful and/or hazardous conditions” which women cannot perform.<sup>73</sup> An Order issued by the Minister of Health and Social Development pursuant to these provisions, listed 287 jobs which women are prevented from undertaking, a large number of which are in the construction sector, involving manual labour or exposure to hazardous conditions.<sup>74</sup>
45. In its fifth periodic report to the Committee, the State Party acknowledges that Article 26 of the Labour Code prohibits the employment of women in harmful and/or hazardous working conditions, pursuant to the Order cited above.<sup>75</sup> It further notes that different occupations and specialities are prohibited for women in order to “ensure maternity protection and also safeguard women's health”.<sup>76</sup> The list of

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<sup>66</sup> See above, note 1, p. 163.

<sup>67</sup> National Commission for Women Affairs, Family and Demographic Policy and the UNDP, *Results of Studies on the Development of an Action Plan to Improve Conditions for the Economic Empowerment of Women*, 2010, p. 38.

<sup>68</sup> United Nations Committee on the Elimination of Discrimination against Women (CEDAW), *Report submitted by Kazakhstan under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/KAZ/3-4, 22 March 2012, Para 21.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*, Para 22.

<sup>71</sup> See above, note 32, Para 28.

<sup>72</sup> *Ibid.*, Para 29.

<sup>73</sup> See above, note 22, Articles 16 and 26.

<sup>74</sup> Order of the Minister of Health and Social Development, “On the approval of the list of jobs where persons under the age of 18 may not be employed, limits for carrying and handling weights by persons under the age of 18, and the list of jobs where women may not be employed, and of limits and manual handling of weights by women”, No. 944 of 8 December 2015.

<sup>75</sup> See above, note 14, p.29

<sup>76</sup> *Ibid.*

occupations has been the subject of various discussions for reform.<sup>77</sup> According to the State Party's report, the list of professions which women are prohibited from undertaking has been updated following the adoption of a Decree by the Minister of Labour and Social Security of the Population on 13 August 2018 which narrowed down the list from 287 to 219 professions.<sup>78</sup>

46. Nevertheless, more than 200 professional roles in more than 20 spheres are still inaccessible to women. Women are prohibited from working on railways and other transportation systems. Other professions which women are unable to access include those involving extremes of heat and cold, vibrations, work at height or underground and work in confined spaces.<sup>79</sup> These prohibitions remain in place despite the fact that the Committee, in a decision on an individual communication under the Optional Protocol, has underlined the fact that lists of restricted occupations should "apply strictly to protecting maternity".<sup>80</sup>
47. While these measures may have been taken with the intention of affording women additional protection, intention is not a necessary component of discrimination.<sup>81</sup> Regardless of intention, prohibiting women from undertaking any occupation on the basis of their gender is directly discriminatory. The maintenance of a system of prohibitions on women working in certain roles, professions or types of work is an unjustified interference with, and denial of, their freedom of choice in respect of employment, and contributes to horizontal and vertical segregation in the labour market.<sup>82</sup>

#### **Suggested Questions on Discrimination in the field of Employment**

- What measures are the State Party taking to combat discrimination against women and promote women's equal participation in employment?
- What steps are being taken to address horizontal and vertical segregation in the labour market?
- What measures, if any, are being taken to reduce the unemployment rate among women?
- What plans, if any, does the State Party have to amend or repeal Article 26 of the Labour Code 2015 and the associated list of professions which women are prevented from undertaking?

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<sup>77</sup> ADC Memorial, *Gender Discrimination: Jobs Banned for Women*, March 2018, p. 31, available at: [https://adcmemorial.org/wp-content/uploads/forbidden\\_2018ENG\\_www.pdf](https://adcmemorial.org/wp-content/uploads/forbidden_2018ENG_www.pdf).

<sup>78</sup> See above note 14, p.29

<sup>79</sup> See above, note 77.

<sup>80</sup> United Nations Committee on the Elimination of Discrimination against Women (CEDAW), *Annex: Views of the Committee on the Elimination of Discrimination against Women under article 7 (3) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (sixty-third session) concerning Communication No. 60/2013*, 15 August 2013, Para 13.

<sup>81</sup> See above, note 2, Principle 5.

<sup>82</sup> See above, note 80.