

## CHAPTER 3. INSTITUTIONAL FRAMEWORK FOR IMPROVING GENDER EQUALITY

### 3.1 Review of existing policies

Since the time of independence, national policies in Kazakhstan concerning women's status and gender equality have gone through major changes. In the early 1990s, Kazakhstan was pursuing the policies based on legally enshrined equality of men's and women's rights aimed at "enabling women to effectively combine professional, maternal and familial responsibilities". Such policies provided for representation of women in elective authorities, a very extensive system of government-guaranteed allowances and benefits for women with maternal and familial responsibilities and limitations for use of female labour.

The social and economic changes put forward the need for a different gender policy that would also take into account changed international policies concerning gender equality. Just like in many other countries, Kazakhstan's national policy was impacted by the Fourth World Women Conference on Women held in Beijing in 1995.

In order to implement the Beijing Platform for Action, Kazakhstan developed the Concept of National Policy for Improving Women's Status in the Republic of Kazakhstan<sup>1</sup>. The Concept defines general strategies and priorities of the national policy aimed at ensuring principles of

equal rights and freedoms and providing equal opportunities for women and men based on Kazakhstan's Constitution and international commitments. Also, the Concept defines crucial areas to be ensured such as observance of women's rights in accordance with basic human rights and freedoms; enabling full participation of women in state activities and social life and equal rights on the labour market; women's health protection; and prevention of violence against women.

In order to implement the Concept of National Policy for Improving Women's Status in Kazakhstan and the Beijing Platform for Action, Kazakhstan adopted the National Action Plan for Improving Women's Status in Kazakhstan<sup>2</sup>. The National Action Plan (NAP) contains 12 priorities as defined by the Fourth World Conference on Women (Beijing, 1995) and contains 105 specific programs and major activities. The NAP goals and targets are to be achieved stage-by-stage, namely stage I (short-term) over 1999-2000, stage II (mid-term) over 2001-2005 and stage III (long-term) over 2006-2030.

<sup>1</sup> Approved by RK Presidential Decree #3395 on March 5 1997

<sup>2</sup> Governmental Decree #999 of 19 July 1999

The priorities are grouped into four main areas of activities defined by the National Commission for Family and Women's Affairs. These include 1) political empowerment, 2) economic advancement, 3) improvement of women's health and 4) combating violence against women.

1. As for political participation, NAP provides for the creation of mechanisms to promote women's involvement in decision making, revision of existing laws as well as the development of new legislation based on a gender sensitive approach, including a law concerning equal rights and opportunities.

2. Economic advancement of women implies ensuring equal access to economic and land resources, facilitating the development of women's enterprises, and improving social protection of families and women.

3. The major targets in the area of women's health are improved reproductive health and family planning, reduced anaemia-incidence among women and negative environmental impact on women's and children's health, prevention of sexually transmitted diseases, etc.

4. The NAP provides for the establishment of mechanisms to protect women from violence along with rehabilitation of victims through revision of existing legislation, creation of an information data base, crisis centers and hot lines for women, etc.

In order to implement recommendations of the Committee on the Convention on the Elimination of All Forms of Discrimination against Women concerning development of comprehensive policies and an institutional approach to achieve gender equality in all spheres of life, the

Concept of Gender Policy in the Republic of Kazakhstan was adopted<sup>3</sup>. It determines major principles, priorities, and goals of gender policy in Kazakhstan both in the short (till 2010) and long-term (till 2030).

The Concept defines the goals of gender policy in Kazakhstan as follows:

- achieving balanced representation of women and men in decision-making bodies,
- ensuring equal opportunities for economic independence, including setting up their own business and developing a career,
- enabling equal rights and responsibilities within a family,
- ensuring freedom from sex-based violence.

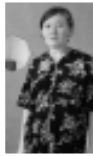
The Concept is also targeting the introduction of gender education, revision of legislation in a gender-sensitive manner, including gender analysis of the budget, national plans and programmes, development of new approaches to improve women's health and combating violence against women.

The development and adoption of the draft law "On Equal Rights and Equal Opportunities" is expected to also advance the national gender equality policy. The fact that the President, at the Fourth Kazakhstan Women's Forum held in September 2004, requested to speed up the adoption of this particular law, is highlighting its importance. The Programme for Further Deepening of Social Reforms in Kazakhstan for 2005-2007 provides for actions to further improve the social security system and develop a new social policy. For example, benefits to mothers tak-

ing care of children under 1 year and benefits for children under 18 from low-income families will be paid as part of the Programme. According to the programme, targeted social assistance should be provided to the most vulnerable individuals based on actual need. In addition, special programmes should be elaborated to provide supplemental assistance to certain groups, including disabled people and mothers of large families. Steps have been taken to legislatively regulate and address issues to improve the status of families, women, and children. Laws concerning Rights of the Child in Kazakhstan and Prevention of Juvenile Offence and Child Neglect and Homelessness have been adopted and legislation protecting rights and interests of families, women, and children revised. Draft law concerning Government-Provided Benefits for Mothers and Children and other laws as well as special programmes on professional training and re-training of various groups of unemployed women are under development and implementation. The Employment Programme for 2005-2007 provides for special actions to be taken to ensure employment and social support to unemployed women.

The Law concerning Labour (23 January 2001) makes it mandatory for the Government to ensure protection from all forms of discrimination and ensure equal opportunities for men and women in accessing professional training and obtaining work. It also takes steps to promote employment of single parents and parents of large families with under-aged children. The Labour Law

<sup>3</sup> Governmental Decree of 27 November 2003



states that additional unpaid childrearing leave upon the child's reaching of the age of 1.5 can only be provided to women (by their request). The post will be kept during the period of additional leave. The fact that only women have this right discriminates against men and decreases women's competitiveness in the labour market, because child care (including nursing of a small child) is the right and responsibility of both parents.

An employer is individually liable for the cost of temporary disability and maternity benefits as well as benefits to women (men) adopting a child. The employer is liable for failure to fulfill or improper fulfillment of obligations to pay benefits as prescribed by Kazakhstani laws (Article 87, RK LL). This provision does not correspond to the ILO Convention, which says that in no case shall the employer be

individually liable for the cost of maternity benefits. This does not promote employer's motivation to employ women, particularly those of childbearing age (article 4, Paragraph 8).

Protection of women against violence is of special concern for the national policy for improving women's status. In 2003, Kazakhstan adopted the Law concerning Amendment of the Criminal Code, which controls illegal departure and migration for purposes of sexual and other types of exploitation. It classifies illegal human trafficking or transit as a crime, subject to three to eight years of imprisonment and forfeiture of estate. Some other laws concerning human trafficking have been amended as well. The National Plan to Control and Prevent Human Trafficking for 2004-2005 has been developed to provide for actions to be taken by government authori-

ties. In October 2004, Kazakhstan signed the Convention on combating human trafficking and exploitation of prostitution by third parties and Final Protocol thereto. At present the Convention is under ratification. Ongoing monitoring of observance of rights as well as research into factors causing women's vulnerability are required to achieve gender equality, and are targets identified in the Concept of Gender Policy. They have triggered the development of specialised gender-related statistics. Accordingly, since 1999 the National Commission in cooperation with the Agency on Statistics with support from UNDP has been producing specialised statistical digests called "Women and Men of Kazakhstan". Statistical information published in the digest allows for monitoring trends and evaluating the effectiveness of national gender policies.

### 3.2 Mechanisms for implementation of the National Action Plan for Improving Women's Status

Over the years of independence, Kazakhstan has developed a system of institutional mechanisms to protect women and improve their status. These mechanisms are continuously becoming more effective and efficient in all areas of life.

The Council for Family and Women's Affairs and Demographic Policy under the President of Kazakhstan was set up in 1995 to address challenges faced by families, women, and children. The Council was reorganised to become the National Commission for Family and Women's Affairs under the President in 1998. This was done to more effectively protect family interests and

enable women to participate in political, social, economic, and cultural life. In addition, the National Commission has greater authority than the Council had. The Chair of the National Commission has ministerial status and the status of a Government member which allows him/her to take part in high-level decision making. The main task of the National Commission is to define priorities and develop recommendations for shaping public policy regarding family, women, and children and to facilitate the development of social, economic, and legal support. The mandate of the National Commission enabled the development of the

National Action Plan for Improving Women's Status in the Republic of Kazakhstan.

Cooperation between the National Commission for Family and Women's Affairs under the President, its regional offices, international organisations and NGOs has been successively strengthening to improve the status of families, women, and children. In order to improve active communication, an e-network has been set up to connect the National Commission with its regional offices as well as NGOs.

Another area of focus for the National Commission is economic advancement of women. In 2002, the national budget allo-

cated 150 million tenge, (\$98,000), to provide credit resources for women. Referring to the respective article of the CEDAW Convention, the Government issued a Special Decree concerning Support to Women's Enterprises. Pursuant to the National Programme for Micro credit of Poor People, two thirds of available micro credit resources were issued to rural women. Eradicating violence against women is another priority area for the National Commission. As a result of revision of the Criminal and Criminal Procedure Codes, sanctions for rape and other violent actions against women have been toughened. A draft law concerning prevention and suppression of domestic violence has been developed. The National Commission initiated the establishment of the first comprehensive Crisis Centre *Zabota* in Almaty. The Centre has both a hot line and a shelter for abused women. The National Action Plan for Improving Women's Status provides for establishment of cri-

sis centres in all rayon centres and towns by 2010.

Over 27,000 calls were received on the hotlines run by crisis centres in 2003 alone. Issues that are brought up concern mostly physical (23%) and emotional (22%) abuse as well as psychological and legal issues (50%). Besides the crisis centres, in the case of domestic violence a woman also has the possibility of seeking help, with specialized departments for combating violence against women and children. These departments have been operational in the Ministry of Internal Affairs since 1999.

In 2004, Kazakhstan set up the Special Interdepartmental Commission on Combating Illegal Trafficking in Persons headed by the Ministry of Justice.

The National Commission is also setting up and administering monitoring of the progress towards the National Plan of Action. The National Commission provides the Government with informational papers on an annual basis.

When reviewing mechanisms

to improve women's status in Kazakhstan, the Human Rights Ombudsman institution should be highlighted, set up in September 2002 as recommended by the CEDAW Committee. According to the Statement concerning Human Rights Ombudsman (Article 2), the Ombudsman shall complement the existing government mechanisms to protect human rights and freedoms. The Ombudsman shall consider complaints from citizens, foreign citizens, and individuals without citizenship over actions and decisions of government officials and authorities infringing upon their rights and freedoms that are guaranteed by the Constitution, legal acts and international agreements of Kazakhstan (Article 17). Protecting women's rights is one of the six priority areas of work of the Ombudsman with a Gender Specialist working in the team.

In addition, there is the Human Rights Commission under the President. The National Human Rights Centre was established in December 2002.

### 3.3 Other actors involved in improving women's status

Non-governmental organisations, NGOs, play an important role in improving women's status in Kazakhstan. Currently, there are 4,500 NGOs in Kazakhstan with approximately 150 of them being women's NGOs. There is also a Coalition of Women's NGOs of Kazakhstan. The adoption of the law "On State Social Procurement" will promote more

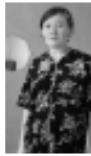
extensive NGO involvement in achieving national goals.

Women's NGOs have established employment and professional guidance centres, centres for small business development, and legal advice.

NGOs also do extensive work to develop a network of crisis centres to fight violence against women. There were 38 centres

in 2003, most of them funded out of non-governmental sources.

Several international organisations, for example UNIFEM, OSCE, IOM, USAID, British Council and UNDP work actively to support the development of gender equality in Kazakhstan, combat trafficking, and promote women's participation in decision making.



### 3.4 Conclusion

Kazakhstan has developed institutional mechanisms to protect women's rights and improve their status. Further fine-tuning and improvement of the mechanisms takes place on an ongoing basis taking an increasing account of the realities of today's life.

At the same time, gender equality concepts are not inte-

grated into the national legislation in full and do not underlie all legislative and normative acts adopted in Kazakhstan. In addition, some laws, for example the labour law, break the principle of gender equality by providing for traditional division of labour. Some laws providing for women's rights do not fully comply

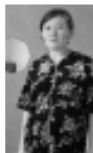
and sometimes disagree with international treaties and conventions that Kazakhstan has either acceded to and/or ratified. There is a need to continuously explore new methods for overcoming gender inequality as well as gender "blindness" in an institutional context.



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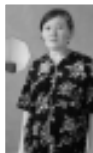
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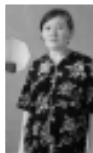
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## Annex 1

# GLOSSARY OF BASIC TERMS AND INDICATORS

**Birth rate by age** measures the frequency of childbirths among women of a certain age group. It represents the number of live births among women of a certain age group compared to mid-year female population in the same age group.

**Domestic violence** means any form of physical, sexual or emotional abuse that endangers safety or health of family members and is expressed as a threat of and/or application of physical force for battering, including emotional abuse of children, child assault and battery, child sexual abuse, emotional abuse, assault and battery of wives or any other family member and marital rape.

**Duncan's Dissimilation Index S** (the most commonly-used tool to measure segregation) shows the percentage of men and women workers that would have to alter their occupation in order to achieve a balance in the proportion of men and women in each occupation. The Index may vary from 0 to 100, with the "0" value indicating that the number of men and women workers is equal and with the "100" value indicating 100% gender segregation of labour. Accordingly, a decrease in the value of the Index over a period of time indicates a reduction in segregation, and an increase indicates increasing segregation. The indicator is calculated as follows:

$$S = \frac{1}{2} \sum_i |M_i - F_i| \times 100\%$$

where  $M_i$  — percentage of all men workers employed in profession or sector  $i$ ;

$F_i$  — percentage of all women workers employed in profession or sector  $i$ .

**Employment** refers to labour activity which brings a person income or remuneration necessary to meet their human needs.

Full employment refers to a situation when everyone who wants a job is employed; all labour resources of a country are fully utilized. Frictional unemployment is not taken into account. It is suggested that such a situation means full use of all labour resources of the country.

Self-employment - an occupation in which remuneration depends on profit raised from production of goods and services (and the persons' own consumption is considered as part of profit).

**Employment in harmful and hazardous working conditions** means employment in a place

where at least one factor exceeds the permissible limit of concentration of a chemical/industrial dust or the maximum allowable level of an element as determined by sanitary and hygienic standards.

**Economically active population** (labour force) refers to the part of a country's population (labour supply available for production of goods and services) that includes those employed (people above a specific age (15+ in Kazakhstan)) who, during the reference period, were in paid employment at work, self-employed or with a job but not at work and those unemployed (people above a specific age) who, during the reference period, were without work, currently available for work and seeking work.

**Economic activity rate** (rate of participation of labour force) is expressed as a percentage of the number of people in the labour force out of the total number of population aged over 15.

**Emancipation** refers to women's emancipation from emotional dependence on men and, as a result, the acquisition of legal, economic, emotional and cultural independence and liberty. The term emerged during the French Revolution and gained wide circulation in Europe, the USA and Russia in the 19th century.

**Feminism** refers to 1. a holistic theory of the nature of global oppression of women and subordination of women to men. 2. a sociopolitical theory and practice urging the emancipation of women from male superiority and exploitation. 3. a social movement that proposes strategic confrontation with gender and class systems 4. any ideology that dialectically disagrees with misogynist (disliking or hate of women) ideology or action.

**Feminist theory** shall mean a theory affected by political and social changes of the 1960-70s that challenged traditional concepts of femininity and gender.

**Gender.** Social and scientific literature of the last decades has come to differentiate between the terms "sex" and "gender". The term "sex" comprises anatomic and biological characteristics, particularly those of the reproductive system, used to differentiate men and women. The term "sex" should only be used in relation to characteristics and lines of conduct that are the direct result of biological differences between men and women. Gender (social sex) is a complex socio-



cultural construction, suggesting differing roles, lines of conduct and mental and emotional characteristics of male and the female that are shaped by the community. From this it is clear that the terms “sex” and “gender” are not interchangeable but rather complementary.

**Gender identity** shall mean the perception of the self that is concerned with cultural definitions of the masculine and the feminine. It is by no means disconnected from personal experience and serves as a psychological internalisation of the masculine and feminine characteristics developing through the interaction of the “self” and others. Transvestite and transsexual identities show that gender is not only determined by sex but rather results from development of a gender identity.

**Gender differentiation** shall mean a process where biological differences of men and women have a social value and are used as a means of social classification. In some cultures biological differences of genders may be exaggerated, while in others minimised, so they should not be regarded as integral characteristics or universal values.

**Gender role** shall mean social expectations resulting from concepts around gender and lines of conduct in the form of speech, manners, dressing and gestures. Male and female gender roles are conceptualised as incompatible and in some communities, gender roles may for example be attributed to passivity for women and activity for men. Perceptions concerning lines of conduct conditioned by gender roles are particularly demonstrated by the division of labour into ‘female’ and ‘male’ types of labour.

**Gender socialization** shall mean the process of a person acquiring a social role that society attributes to that person from his/her birth, depending on whether the person is male or female (i.e. gender role).

**Gender stratification** shall mean the process through which gender becomes the basis of social stratification, whereby perceived gender differences become methodically assessable and assessed. This type of stratification was sometimes distorted and subordinated to social-class or ethnic stratification. However, feminism-influenced sociologists have highlighted the value of gender stratification as a system demonstrating that female individuals get lower appraisal and reward than male individuals. Feminist sociologists, for example, introduced the concept of ‘patriarchy’ to understand and analyze present-day and past oppression against women.

**Gender mainstreaming** shall mean the (re) organisation, enhancement, development and evaluation of policy processes ensuring that policy-makers integrate the gender equality principle into all stages of policy development at all levels. It involves evaluating the gender implications of any action, including legislative, political and programme actions, taken in any field at any level. Gender mainstreaming is a strategy to allow the incorporation of both men and women’s requirements and experiences into the development process and the implementation and evaluation of policies and programmes in all political, economic or social spheres, resulting in welfare being equally divided between women and men, though not encouraging inequality.

**Gender research** shall mean interdisciplinary research practices using heuristic facilities of the gender approach to review social changes and domination systems.

**Gender analysis** shall mean the procedure of identifying the specific content of gender relations in a given situation or the undertaking of a specific project to change this situation. A variety of gender analysis methods allow the identification of the actual status of men and women in various fields of day-to-day life.

**Gender balance** shall mean an actual or planned environment in which the social, economic and political status of men and women are proportional. Gender balance is based on a set of key indicators, most important of which are equal income distribution, gender representation at leadership and political positions, involvement in housework and local community affairs, educational attainment, disease incidence and life expectancy.

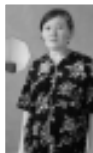
**Gender-disaggregated** data shall mean the gathering and use of quantitative and qualitative data separately for men and women in carrying out a gender analysis of policies and programmes, research, strategic planning, implementation and monitoring.

**Gender equality** shall mean a process resulting in an equality of rights, i.e. the application of the equality principle to all spheres of social life in which genders may be unequal.

**Hired (paid) workers** shall mean those working on the basis of an employment contract that provides remuneration in the form of wage, bonus, allowance, etc. or remuneration in kind.

**Human rights** can be divided into a first, second and third generation sets of rights. The first generation includes the so-called inalienable





human rights, which are the right to freedom of thinking, conscience and religion; the right of each citizen to manage state affairs; the right to equal protection of the law; the right to life, freedom and safety. The second generation of rights includes the so-called positive or basic human rights, which are enshrined in constitutional rights and freedoms, i.e. ensured by a system of guarantees and protection mechanisms. Today, basic human rights as specified by generally accepted norms are rights enshrined in national constitutions and international human rights instruments. However, if a basic right has not been made part of a national constitution, it shall nevertheless be recognized in that state, regardless of any constitutional provision; in the human rights field, the precedence of international over national laws is an accepted standard. Fundamental rights lie in personal, political, social, economic and cultural fields. Collective rights constitute the third generation of rights, which include the right to peace, healthy environment and social and economic development. Every person and each nation possesses such rights, however; they can only be exercised by a collective, a community or a group of people rather than an individual person. In particular, women's rights fall under the category of collective rights.

**Infant mortality** rate means frequency of deaths of children under 1 year of age per 1000 live births during the same period.

**Job segregation** by sex shall mean a stable trend in the employment of men and women in certain professions, sectors or posts. There are two types of job segregation - horizontal and vertical segregation. Horizontal job segregation means there is an irregular breakdown of men and women by profession or sector (sectoral segregation), while vertical segregation means irregular breakdown by hierarchical position at work.

**Life expectancy at birth** is a widely used measure for the average level of mortality in a country. This is a theoretical number of years that a new-born would live if the mortality rate by age in its year of birth is taken as constant.

**Live birth** The WHO standard definition defines a live birth as a complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of the pregnancy, which, after such separation, breathes or shows any other evidence of life. The foetal is considered to be live born if s(he) has body weight of 500g and more and body length of 25

cm and more. The 'soviet' definition (still used in Kazakhstan) considers the foetus as live born if he/she is born after 28 weeks of pregnancy, has initial body weight of 1000 grams or more and body length of 35 cm or more. The infant is considered as live born if he/she has all features of breathing.

**Maternal mortality** rate means the number of female deaths due to complicated pregnancy, confinement or postnatal period, per 100,000 live births.

**Registered crime** shall mean a detected and officially registered socially dangerous act for which criminal proceedings may be instituted.

**Reproductive rights** According to the Programme of Action adopted at the International Conference on Population and Development held in Cairo in 1994, reproductive right is "the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents".

**Sex discrimination** shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

**Sex-based division of labour** shall mean a form of division of labour according to concepts based on gender differences of "male work" and "female work", which are thought to emerge socially resulting from "natural" qualities and abilities of genders. Sex-based division of labour is found in most communities but its manifestation and levels of differentiation are socially and historically relative. Although spheres are divided between and associated with genders (the private sphere is associated with women, while the public one with men), such distinctions are largely ideological, rather than empirical.

**Sexual harassment** shall mean humiliating action taken, which can be shown as outspoken hints, assumptions, statements and gibes. It can also be shown as molestation in the street, in public places and at work. Sexual harassment on

the part of an employer or superior at work is of particular concern as the career may depend on consent to engage in sexual relations.

**State social benefits** are regular monetary transfers to citizens who need them due to disability, loss to a family/individual of principal breadwinner/provider or to old age.

**Special state benefits** are monetary transfers to those who need special social protection. They are a monetized form of what was previously additions paid 'in-kind' to a pension or salary. This is given regardless of other types of allowances. Persons eligible for the benefit include active participants in, or those disabled by, World War II, families of dead military personnel/police-men, persons rewarded with orders and medals of the Former Soviet Union recognising their hard work during the World War II, etc.

**Total birth rate** shall indicate the average number of births a woman would have over her childbearing life (age of 15-49), using for each age the birth rate for the given year in which the total rate is being calculated. The value of the rate does not depend on the age makeup of population; it gives the average birth rate for a given calendar year.

**Trafficking in persons** shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, by abduction, fraud, deception, by the abuse of power or a person's position of vulnerability, by the giving or receiving of payments or benefits to achieve the consent of one person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, exploiting the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; (b) The consent of a victim of trafficking in persons to an intended form of exploitation according to the means set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

Unemployment refers to a social and economic phenomenon determined by lack of demand in the labour market for a part of labour force; a situation in which people are willing and able to work, but cannot find a job.

Unemployment (general) is determined on the basis of the Labour Force Survey by the Agency on Statistics in compliance with the ILO requirements. A person is called unemployed if the

following criteria are met: a) the person does not have a job/income b) the person actively seeks job c) the person is willing to start a job in certain period of time (as a rule, within two weeks).

Official (registered) unemployment refers to the total number of registered/recorded unemployed without taking into consideration seasonal fluctuations.

Hidden unemployment covers the employees who are considered by official statistics as employed when, however, they are in fact on forced leave or they work reduced working hours.

Long-term unemployed are those unemployed for 12 or more months.

**Unemployment rate** refers to a proportion of unemployed in the total labour force.

The unemployment rate (general) is calculated based on the Labour Force Survey by the Agency on Statistics using ILO methodology. A person is considered employed if (s)he works at least one hour a week.

Official (registered) unemployment rate refers to the proportion of unemployed in the total labour force registered as such by state employment bodies.

**Violence against women.** Article 1 of Declaration on the Elimination of Violence against Women defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to a woman, including the threat of such an act, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Violence against women is subdivided into several types, which are emotional, physical and sexual abuse. As a type of violence, emotional abuse can be by intimidation or threatening of physical violence and with unavoidable payback. Psychological violence may be expressed in words, gestures, demonstrating threat with a gun or other objects.

**Wage** shall mean remuneration (income) based on complexity, volume and quality of work undertaken.

Nominal wage refers to any monthly remuneration, including basic wages, wage supplements, bonuses, premiums and one-time payments.

Minimum wage is a minimum monetary payment guaranteed by a Constitution to all employees irrespective of the ownership (state or private) of the employer.

**Women's Health Index** shall mean the proportion of healthy women out of all women.



## Annex 2

# Review of Kazakh laws related to gender equality and women's rights

## Compliance of laws with ratified international and UN Conventions on Women's Rights

The Constitution of 28 January 1993 guaranteed equality of rights and freedoms irrespective of sex and prohibited all forms of discrimination (Article 1).

The Constitution of 1995, which is currently in effect, declares that ratified international treaties precede Kazakhstani laws. Such international treaties should apply directly, apart from cases in which the international treaty stipulates that it can only be applied if a special law is adopted (Article 4). Thus, ratified international conventions are integrated in the national legislation of Kazakhstan and are mandatory to apply and implement. However, in practice, judges, lawyers, investigators, and police workers are only guided by national laws. In addition, application of laws prohibiting sex-based discrimination and the CEDAW Convention is difficult due to the lack of interpretation of many terms and concepts in the Kazakhstani laws.

The Parliament of Kazakhstan ratified the UN Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979. The Facultative Protocol to the Convention on the Elimination of All Forms of Discrimination against Women was ratified in 2000.

## Political rights

Article 33 of the RK Constitution provides equal rights to vote for men and women. In addition, the Constitutional Law of 28 September 1995 concerning Elections in Kazakhstan grants people the right to vote upon reaching the age of 18, irrespective of sex (Article 4).

The UN Convention on the Political Rights of Women and the Convention on the Nationality of Married Women were ratified in 2000.

The Law concerning Political Parties of 15 July 2002 says that membership may not be restricted on the basis of sex. At the same time, the Law has a provision that does not only disagree with this principle, but also the CEDAW

Convention (Article 2b) and the Constitution of Kazakhstan. This provision states that "no indication of gender shall be ... contained in the names of political parties" (Article 7, Paragraph 2).

## Labour law

The Constitution of 1995 provides for the right to freedom of labour and free choice of occupation and profession and non-discriminative remuneration.

In 2000, in order to correspond national labour laws to international standards, Kazakhstan ratified six conventions by the International Labour Organisation, including the Conventions concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, Minimum Age for Admission to Employment, Organisation of the Employment Service, the Abolition of Forced Labour and others. The Law concerning Employment of 23 January 2001 makes it mandatory for the Government to ensure protection from all forms of discrimination, and it ensures equal opportunities in accessing professional training and obtaining work. It also provides measures to promote employment for the target group of the population (single parents and parents of large families with under-aged children).

National laws provide for criminal and administrative responsibility for violation of labour laws<sup>1</sup> and more severe penalties for violation of rights of pregnant women<sup>2</sup>.

National laws detail the legal status of pregnant women in the employment arena. The law concerning Labour in Kazakhstan (10 December 1999) provides for pregnant women, on the basis of a medical report, to transfer to another post with no severe or adverse consequences, keeping the same average monthly wage (Article 23).

<sup>1</sup> The Administrative Code provides for instituting proceedings for violation of labour protection regulations (Article 89), pension provision laws (article 88) and employment laws (Article 94).

<sup>2</sup> An administrative offence in relation to pregnant women committed by a fully aware offender shall aggravate responsibility (Article 62).

Women may take 70 calendar days off before delivery and 56 calendar days off (or 70 days in case of complicated labour or birth of two or more children) after delivery as maternity leave. Days off may be taken at one go, irrespective of days actually taken off before delivery, with maternity benefits paid for all days, irrespective of duration of the post.

Women residing in areas affected by nuclear tests are entitled to a maternity leave 170 calendar days long in case of easy delivery or 184 days in case of complicated delivery or birth of two or more children (Article 14 of the Law concerning Social Protection of Individuals Affected by Nuclear Tests at the Semipalatinsk Nuclear Testing Ground of 18 December 1992).

A woman or a man adopting a newborn infant straight from a maternity hospital may take as many days off as there are days between the day of adoption and the 56th day after the birth of the child, with benefits paid for all days, irrespective of duration of the post. Maternity benefits and social benefits (tax-exempt) for women (or men) adopting a newborn infant straight from a maternity hospital shall be paid for all days of maternity leave or as many days off as there are days between the day of adoption and the 56th day after the birth of the child. In cases of induced abortions, a temporary disability benefit shall be paid (Article 66, 85 and 86 of the LL).

Law concerning Labour Safety and Protection prohibits women to work in rough, adverse (specially adverse) and hazardous (specially hazardous) working conditions.

The CEDAW Committee strongly recommended that the Government of Kazakhstan should ensure equal opportunities for women and men in the public administration and revise the legislative framework of the system of social benefits and allowances to reduce hindrances for women's participation in the labour market. To implement this recommendation, the draft of the Labour Code<sup>3</sup> has a special section #16 containing 10 articles regulating labour issues for women and other workers with family responsibilities. Unlike the labour laws currently in effect, the draft code limits the terms for termination of contracts for pregnant women, at the employer's initiative, work and rest routines for women and other workers with family responsibilities, and baby-feeding breaks for women (or fathers or adoptive parents). Parents are free to choose whether the

mother or the father should take unpaid child-rearing leave before the child has reached the age of 3. The duration of such a leave shall be included in the overall employment record and the respective work record.

### Military service

The law concerning Universal Military Service of 19 January 1993 is formally gender-neutral, i.e. does not have any indication of gender. However, the Law provides that women with a profession related to an appropriate military profession as specified in the Government-designed register shall be registered on the military register. In peacetime, women may enlist on a voluntary contractual basis. In wartime, women registered on the military register or with universal military training may be enlisted by Presidential decision.

### Right to health protection

The Constitution of 1995 declared state protection to maternity and paternity.

The Presidential Decree "On Priority Action to Improve the Health Status of the Population of the Republic of Kazakhstan" (18 March 1998) was adopted to improve healthcare delivery. In 1998, the State Programme "Population Health"<sup>4</sup> was adopted, consisting of such sections as maternal health protection, family planning, infant food, prevention, and treatment of respiratory infections and diarrhoea diseases among children, etc. The law "On Reproductive Rights and Guarantees to Exercise them"<sup>5</sup> regulates social relations in the field of reproductive health, determines government-provided guarantees, and describes fundamental principles of national reproductive rights policies.

The Programme for Demographic and Migration Policy of Kazakhstan for 2005-2010<sup>6</sup> provides for comprehensive maternity protection, regulation of, and increase in the birth rate. It promotes incentives to support positive trends in demographic processes, including one-time allowances for women with early pregnancies registered with a medical organisation as well as other benefits.

The State Programme for Health Care Reform

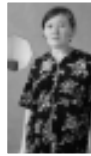
<sup>3</sup> The *Kazhstanskaya Pravda* of 31 July 2004.

<sup>4</sup> Presidential Decree #4153 of 16 November 1998

<sup>5</sup> #565-11 adopted on 16 June 2004

<sup>6</sup> Presidential Decree of 13 September 2004





and Development for 2005-2010 provides for free provision of iron-bearing and iodinated medicines for pregnant women at the out-patient level, preventive examinations of women of childbearing age and children under 18, improved prenatal detection, and prevention of hereditary and in-born diseases in children.

Kazakhstani citizens have a right to health protection and access to guaranteed free medical services (Article 29 of the Constitution). This constitutional provision found a tangible form in the Law concerning Health Protection of Citizens of the Republic of Kazakhstan (19 May 1997). For example, women and men (citizens) have equal rights to access information on the health status of their children and spouses if otherwise not legally stipulated. In cases of in-patient treatment arrangements for children under three and severely ill children of older age in need of care as medically reported, a parent may go with the child while in an inpatient facility and receive a social insurance benefit (Article 51 and 55).

Women have a right to health protection and assistance during pregnancy, labour, and after delivery. Pregnant women must be timely registered, examined, and follow medical recommendations. Healthcare facilities shall ensure medical, consultative, and medicine provision assistance to pregnant women, women in childbirth, and women recently confined within the limits of guaranteed free medical assistance.

The Government shall guarantee non-interference in exercise of reproductive rights and ensure decision making concerning childbearing free of discrimination, threat, or violence. Reproductive health is defined as health reflecting the ability to reproduce healthy children. The Law concerning Reproductive Rights and Guarantees to Exercise Them of 16 June 2004, determines basic guarantees of ensuring conception, bearing and birth of healthy children, procedures for and terms of artificial impregnation, abortion, sterilisation, and contraception.

Both women and men have equal rights to make and implement decisions concerning in- or out-of-wedlock birth or failure to do so, methods of child conception and bearing, parity, time, and place of birth. Equal rights are guaranteed to medical, social, informational, and consultative assistance as well. Men and women of marriageable age have a right to keep sex cells.

Women are free to make decisions pertaining to childbearing. Methods of un-wanted pregnancy prevention may be applied to protect women's health (Article 54). Operative sterilisation as a method of un-wanted pregnancy prevention may only be applied to individuals of at least 35 years of age or with at least two children. It may also be applied to any individual irrespective of age and existence of children if personal consent is obtained and the operation is medically required. Women have a right to abort an up-to-twelve-week-old pregnancy or an up-to-twenty-two-week-old pregnancy if required by social circumstances. They may also abort any pregnancy that may have an adverse life effect as long as the operation is medically required and personal consent is obtained. Abortions may be administered to underage individuals if parental or any other legal representative's consent is obtained.

### Right to education

An education-oriented goal is enabling parents to combine family responsibilities, work, and social participation by developing a system of preschool education, for which the Law concerning Education makes provision.

The State Programme for Educational Development in Kazakhstan for 2005-2010 provides for the rehabilitation of the network of kindergartens, the development of an effective preschool education system, and increased Government contracts for training teaching personnel.

That all citizens of Kazakhstan be granted equal rights to education is fundamental. Citizens are free to choose educational facilities and education modes as per entrance terms (Article 3 and 36 of RK Education Law of 7 June 1999).

### Right to social security

Minimum wage and pension, social security on the ground of retirement age, illness, disability, survival, etc. are constitutionally guaranteed (Article 28).

The Concept of Social Protection of People of Kazakhstan of 2001 provides for in-kind social assistance only to disabled people. As per able-bodied people, social assistance is provided through the funding of government-provided employment, training programmes, and employment assistance. Salaries paid for government-provided short-term

employment are not sufficient to stay employed like this for a long time. This encourages such employees to look for permanent jobs.

The Programme of Further Deepening of Social Reforms in Kazakhstan for 2005-2007 provides for an improved system of social security and the development of a new social policy in general.

Currently, there are the following groups covered by social security and social assistance under the mother and child protection goal:

- residential service children, orphans and abandoned children, children with special development needs, including children with disabilities;
- large families and children from large or single-parent families; mothers with the medals Alтын-alka and Kumis-alka and women with the Order of Maternal Glory of Category 1 or 2 or women previously granted the title Heroine Mother, pregnant women, or just-confined women.

The laws of the Republic of Kazakhstan and other regulatory legal acts determine the procedures for granting the following benefits paid under the mother and child protection goal:

- state disability benefit;
- survival benefit;
- special state benefit;
- one-time state child birth benefit amounting to 15 monthly calculation rates. The initiation of this benefit took effect on January 1, 2003. Since then, 5.1 billion tenge have been spent as payments for over 300,000 families;
- maternity benefits and benefits for women (or men) adopting a child straight from a maternity home as provided by Law concerning Law in the Republic of Kazakhstan of 10 December 1999.

The current stage of social reforms and the building of a multi-level social security system are linked with the initiation of a social insurance system in 2005.

A revised Law concerning Social Insurance took effect on January 1, 2005.

According to the laws, such social risks as incapacitation, loss of breadwinner, and loss of work, are eligible for social insurance.

Kazakhstan has acceded to a number of international treaties, which guide its social policy,

including policies concerning social protection of women. Some of them are:

Agreement on Guarantees of Rights for Social Benefits, Entitlement Payments for Families with Children and Maintenance (ratified on June 19, 1995);

Agreement on State-Provided Social Assistance to Families of Military Personnel Who Died in Afghanistan and Other States of War Operations (ratified on February 28, 1995);

Agreement of CIS States on Social and Legal Guarantees for Military Personnel, Individuals Dismissed from Military Service and Their Families (February 14, 1992);

Agreement on Guarantees of Rights of CIS citizens concerning Pension Provision (March 13, 1992);

Agreement of Ministries of Social Protection of Kazakhstan and Ukraine on Cooperation on Pension Provision (September 21, 1995), and others.

The rights of women in Kazakhstan to social protection are regulated by laws, some of which are:

Law "On Pension Provision in the Republic of Kazakhstan" of 20 July 1997,

Law "On State Disability, Survivor's and Age Benefits in the RK" of 16 June 1997,

Law "On Special State Benefit in the RK" of 5 April 1999,

Law "On State Targeted Social Assistance" of 17 July 2001,

Law "On Social Protection of Invalids in the RK" of 13 April 2005,

Law "On Social Protection of Individuals Affected by the Aral Disaster" of 18 December 1992,

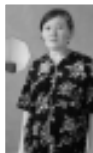
Law "On Social Protection of Individuals Affected by Nuclear Tests at the Semipalatinsk Nuclear Testing Ground" and other laws,

Governmental Decree "On Approval of Interim Regulations on Provision of Targeted Social Assistance" of 22 July 1999 and others.

### Right to pension provision

The Concept of Reforming the Pension Provision System in Kazakhstan, approved through Governmental Decree on 12 May 1997, stated that the primary principle of the pension reform was a shift from solidarity to a personal pension saving system. As of 1 January 1998, Kazakhstan has





started using the pension provision system, which incorporates institutions of the solidarity and savings systems.

The Law concerning Pension Provision in Kazakhstan (20 June 1997) provides for various terms of pension payment to be paid from the State Centre for Pension Payment for men and women. Retirement age has been set at 63 for men and 58 for women, with an employment record of at least 25 years for men and 20 years for women. Retirement age has been set at 45 and 50, with an overall employment record of at least 20 and 25 years respectively for women and men residing in areas of extreme and maximum radiation risk. Women giving birth to and raising five or more children up to the age of 8 are entitled to full pension payment upon reaching the age of 53.

### Right to social assistance

The Law "On State Targeted Social Assistance", which became effective on January 1, 2002, governs the administration of targeted social assistance (TSA) in Kazakhstan. The law identified the range of individuals entitled to financial support to be provided by the Government in case of no or limited income. The TSA eligibility criterion is the "poverty line", which the Law "On Subsistence Minimum" defines as a threshold of income determined by economic capacities. The current poverty line indicator stands at 40% of subsistence minimum.

Children, the unemployed, people with disabilities, pensioners, students, and other individuals may be TSA recipients. Generally, large families account for the majority of TSA recipients. The implementation of the Law through the TSA mechanism enabled the "legalization" of the unemployed status, because in order to receive TSA, individuals of working age must be registered as unemployed with authorized bodies, while unemployment benefits have been cancelled.

Targeted social assistance may be provided to unemployed people not registered with the Employment Centre if they take care of disabled people of category 1 and 2, older people of 80+ and children under 7 years of age. Women taking care of disabled family members usually constitute this group.

Along with targeted social assistance, Article 97 of the Law "On Housing Relations" provides

for housing benefits to support low-income individuals, so that they can cover the costs of housing and utilities. Housing benefits are administered in accordance with procedures determined by local authorities.

The right to special priority provision of housing out of the state housing stock shall be granted to mothers with medals Altyn Alka and mothers previously granted the title of Heroine Mother (Articles 68 and 118 of Law "On Housing Relations").

### Rights of disabled women and parents of disabled children

The rights of disabled people are provided for in such legal acts as the Law "On Social Protection of Invalids in the Republic of Kazakhstan", "On State Disability, Survivor's and Age Benefits in the RK", the Governmental Decree "On Approval of Rules for Granting and Payment of State Disability, Survivor's and Age Benefits", the Order of the Ministry of Healthcare "On Benefits to Individual Groups of RK Population" and some others.

The Programme for Rehabilitation of Disabled People for 2002-2005 provides for the social integration of disabled people. The Government provides support to mothers supporting disabled children through state disability benefit and special state benefit.

The Tax Code provides for a number of tax privileges for disabled workers. Organisations with at least 51% of disabled employees out of all employees over the fiscal period are classified as organisations working in the social sector and entitled to tax exemption (RK Tax Code, Article 121).

The Law "On Social, Medical, Educational, and Correctional Support of Children with Disabilities" of 11 July 2002 provides for equal rights and responsibilities of parents of disabled children. In addition to legally specified responsibilities, parents must ensure financial support, education, medical examination and treatment, care, protection of rights and interests, and involvement in specially designed rehabilitation programmes for their disabled children. Parents shall be liable for neglect of child care and education responsibilities, child abuse and damaging of child health as specified by Kazakhstani laws (Article 16 and 17).

Criminal proceedings shall be instituted in relation to able-bodied individuals for persistent

evasion of court-induced maintenance of a disabled spouse in need of financial support. Correctional services shall be sanctioned for up to 2 years (Article 140 of RK CC).

### Marital and family relations

The Kazakhstani laws currently in effect are focused on the legal regulation of marital and family relations. Marriage is an equal-right union of a man and a woman concluded at their free and voluntary consent under a legally specified order with the purpose of having a family entailing marriage property and non-property relations.

Existing laws should be further improved to promote marital and family relations and the status of families and ensure real equality of rights and responsibilities of men and women in relation to marriage and child rearing. The Programme for Demographic and Migration Policy of the Republic of Kazakhstan for 2005-2010 prioritises comprehensive maternity protection, regulation of and increase in the birth rate, and reinforced family institution.

The Law "On Marriage and Family" of 17 December 1998 sets voluntary consent of a man and a woman to be married and attainment of marriageable age as mandatory requirements for marriage (Article 9). Marriageable age is set at 18 for both men and women. Upon reasonable grounds, registry offices may decrease the marriage age by up to two years. In any case, a decrease in the marriage age is only allowed at the consent of the people to be married. Individuals under marriageable age can only be married at the consent of their parents or guardians (Article 10).

In Kazakhstan, the new Criminal Code of 16 July 1997 rules out criminal proceedings for bigamy and polygamy as it does not contain a direct prohibition of polygamy.

Spouses must support each other financially (Article 133 of MFL). In case of avoidance of such support and absence of an agreement providing for payment of maintenance, the spouse in need may claim maintenance judicially to be paid by the other spouse with appropriate means. In some cases the court may relieve a spouse of the responsibility to support a disabled spouse in need or set a specific period both in marriage and after divorce, over which maintenance shall be provided<sup>7</sup>.

A marriage may be terminated through an application handed in by one or both spouses and through an application handed in by the guardian of the spouse judicially acknowledged disabled. Termination of marriage may not happen without the consent of a wife when she is pregnant or before the child is one year old (Article 15 of MFL). The present or ex-wife may judicially claim maintenance to be provided for by her spouse while she is pregnant or before the child is three years old (Articles 133 and 134, MFL).

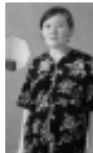
Kazakhstani civil laws provide for equal property rights of spouses. Property acquired in a marriage shall be matrimonial property, which is income any spouse has gained from labour or entrepreneurship activities or as a result of intellectual activities, income generated through matrimonial and separate property, pensions, benefits, and any other monetary payments of no special target.

Matrimonial property shall include movable and immovable property purchased with matrimonial income, securities, shares, deposits and shares in capital of credit institutions or other profit-making organisations and any other property acquired in a marriage, regardless of which spouse owns it or paid for it. Right to matrimonial property shall be granted to the spouse in charge of housekeeping or child care, or to the spouse who could not independently gain income on other reasonable grounds (Article 32, MFL).

At the same time, the pension laws and Law "On Family and Marriage" do not classify mandatory or voluntary pension contributions accumulated but not received in a marriage to be matrimonial property. If one of the spouses dies, such pension contributions may be inherited. However, in case of divorce they are not considered matrimonial property and shall not be divided, which impairs the rights of the spouse staying home and doing the household work instead of earning a pension and divorcing at an older age. In most cases the spouses staying at home are women.

Personal property shall be property gained before marriage; property gained in a marriage as

<sup>7</sup> Criminal proceedings shall be instituted in relation to able-bodied individuals for persistent evasion of court-induced maintenance of a disabled spouse in need of financial support. Correctional services for up to 2 years shall be sanctioned (Article 140 of RK CC).



a gift, inheritance, or through other gratuitous transactions; and personal belongings apart from valuables or luxuries.

Matrimonial property may be divided both in a marriage and after divorce upon request of any spouse or upon creditors' claim for division of matrimonial property to cover debts of one spouse out of matrimonial property (Article 36, MFL).

### Parenthood

Child care and education are parents' right and responsibility (Article 27, RK Constitution). Men and women have equal parental rights and responsibilities regardless of their family status. Their rights and responsibilities are based on the genealogy of their children, which is certified under legally specified procedures. However, there are exceptions to the rule. For example, women under 16 do not bear any legal responsibility for maternity. Men under 16 may not claim affiliation. Men above the age of 16 may be prosecuted criminally for having sexual intercourse with a person under 16 (Article 122, RK CC).

Men and women have equal parental rights and responsibilities concerning child maintenance and have equal rights to affiliation<sup>8</sup>. Consent of both parents is required for their child under 18 to be taken out of the country.

Single mothers may judicially claim monetary child maintenance to be provided by fathers before and after birth. Credibility of paternity by a man who is not married to the mother shall be identified as specified by the law (Article 46 (4), MFL).

Upon judicial termination of marriage, spouses may submit an agreement specifying which spouse their underage children will live with (Article 21, MFL). As recommended by the Resolution of the RK Supreme Court Plenum concerning Application by Courts of Laws when Deciding Disputes concerning Child Care of 28 April 2001, the focus should be on the personal qualities of parents or other individuals to take care of the child and the relationship between them and the child. Better financial and housing resources available to one of the parents shall not be an absolute ground to satisfy claims of either parent.

Section II of the RK Criminal Code (Article 131-139) "Crimes against Family and Underage Children" provides for sanctions against parents

avoiding child care responsibilities and child abuse damaging a child's health.

### Right to housing

Housing owned by several persons shall be owned by them as 1) matrimonial property; 2) common ownership of privatised housing. The spouse and children living together with the owner of housing on a permanent basis shall be considered family members.

### RK Land Code of 20 June 2003

Legal status of right of property or right of tenure of land owned by spouses is determined by civil and marital and family laws regulating matrimonial property relations. Land or allotment owned by spouses before marriage or gained as a gift or inheritance shall be property (land tenure) of both spouses. Land owned by each spouse may be declared matrimonial property (joint land tenure) if it is ascertained that in a marriage investments were made through matrimonial property, which significantly increases the value of land (Land Code of 20 June 2003, Article 60).

As the Land Code of Kazakhstan was adopted de jure, women were granted the right to land, including agricultural land, on terms equal to those for men. Upon divorce, widowhood, or change of place of residence, women do not forfeit their right to land if they can legally protect their rights.

However, de facto most women cannot exercise their right to land for farming purposes. The Land Code (Article 101 (1)) and the Law concerning Farming of 31 March 1998 (Article 8) grant such a right to individuals with special agricultural knowledge or qualifications or practical agricultural experience. The same facts are reinforced by the List of workers with the right to work on land, which only identifies two professions for which female labour may be used (Paragraph 8).

<sup>8</sup> Paternity by a person not married to the mother can be determined through a joint application submitted to the registry office. If a joint application is not submitted, affiliation is determined through the court upon the request of one of the parents, guardian or individual who supports the child financially. At that, the court shall take into account evidence authentically proving affiliation.

## Women's rights as specified in criminal, criminal procedure, and criminal execution laws

### Right to protection from sexual abuse

Today, the public tend to blame the victims of physical and sexual abuse for abuse done to them in the middle of the street. Rape of a woman by her husband is not a topic for public discussion as it is perceived as women's family responsibility. There is no special provision concerning matrimonial rape, which falls under the general provisions concerning rape.

Kazakhstani laws still fail to ensure the maximum possible legal protection of rape-victims. Article 120, Section 1 of the *Criminal Code (CC)* classifies simple rape as a medium-degree crime. An offender may be relieved of criminal responsibility if peace was made with the victim and damage was made up for (Article 67 of RK CC). It is deemed necessary to increase sanctions for rape up to six years of imprisonment, which will move rape out of the medium-degree crimes (Article 120, Section 1, RK CC).

The initial wording of Article 33 of the Criminal Procedure Code rated Article 120, Section 1 *Rape* as a private prosecution case, which actually meant decriminalisation, depriving rape-victims of state support. Proceedings concerning private prosecution may only be instituted through an application of the victim and are to be terminated upon accommodation of peace between the victim and the offender. The Law concerning Amendment to Some RK Laws Combating Crimes of 5 May 2000 changed the situation by providing for exercise of criminal prosecution in a private-public procedure. In some cases the prosecutor may institute criminal (?criminal what?)

### Illegal trafficking in women

Kazakhstani laws do not provide for legal responsibility for commercial sex work. Criminal proceedings are instituted for child molestation (Article 124, RK CC), sexual intercourse, or other actions of a sexual nature with a person under 16 as well as for involvement in prostitution (Article

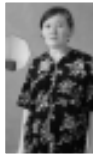
270 RK CC), organisation and maintenance of brothels and pimping (Article 271 RK CC), illegal sale of pornographic materials or articles (Article 271 RK CC), illegal distribution of literature promoting the cult of cruelty and violence (Article 274 RK CC), trade in under-age children (Article 133 RK CC), recruitment, trafficking, and transit in persons for exploitation (Article 128 RK CC).

The legal framework for combating illegal trafficking in women is inadequate. There are no provisions defining trafficking operations, traffickers, victims of trafficking and, most importantly, health implications of trafficking. Legal instruments do not describe the role of clients who promote prostitution by their demand for such services. However, a draft law on combating human trafficking is underway "On Amendments and Supplements to Some Legislative Acts of the Republic of Kazakhstan on Human Trafficking Counteraction". In this draft law a clear definition of the concept "human traffic", which is missing in the national legislation, will be given. This draft law provides for amendments and supplements to the Penal Code and Code of Administrative Offences.

### Sexual harassment

RK laws do not provide a clear definition of sexual harassment at work. However, there are provisions making possible the institution of legal proceedings. Article 130 of the Criminal Code provides for criminal responsibility for insult, dishonour, and disparagement expressed indecently. Article 121 of the Criminal Code provides for sanctions against offenders committing a sexual action with application or threat of application of violence against the victim or other persons, or taking advantage of the helpless. Article 123 of the Criminal Code provides for proceedings for forcing sexual intercourse or other sexual actions taking advantage of financial or other needs of the victims. Articles 307 and 228 of the RK CC provides for sanctions for power abuse, abuse of authority, and crime committed out of personal motives and significantly infringing upon individual rights and interests. However, there are no publicly known cases of instituting proceedings against sexual harassment at work.





### Rights of female prisoners

The Criminal Code provides that all offenders are equal before law irrespective of sex (Article 14). In criminal law, sex is taken into account when qualifying the crime, instituting, relieving from, or executing the sentence.

A better legislative status of women than men results from positive discrimination of women, which complies with international legal provisions. The criminal laws reflect the peculiarities of the legal status of women. For example, women may not be sentenced to death (Article 49, Criminal Code) or life-time imprisonment (Article 48, Criminal Code). The Presidential Decree of 17 December 2003 vetoes death penalty for men in Kazakhstan. Adult women serve time in correctional institutions with two modes, which are minimum and high security modes, while there are three modes for men (Article 48, Criminal Code).

Pregnancy is rated as extenuating circumstances for female offenders (Article 53, Section 1, Paragraph B, Criminal Code). Committing a crime against a pregnant woman is an aggravating circumstance (Article 54, Section 1, Paragraph Zh). Pregnant victims aggravate the severity of the crime and add to the sentence for such crimes as murder (Article 96, Section 1), torture (Article 107, Section 2, Paragraph B), kidnapping (Article 125, Section 1, Paragraph E), illegal deprivation of liberty (Article 126, Section 1, Paragraph E) and intended health damage of high or medium severity by a fully aware offender who committed a prior murder of a pregnant woman (Article 103, Section 2, Paragraph K; Article 104, Section 2, Paragraph Zh).

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