

Information on Violence against Women and Girls in Kazakhstan for Consideration by the European Union Prior to its EU-Kazakhstan Human Rights Dialogue

09 April 2024

1. This information prepared for the EU-Kazakhstan Human Rights Dialogue 2024 focuses on legal and policy measures to address violence against women and girls, including sexual violence, in Kazakhstan. Specifically, the report highlights persistent challenges in ensuring access to justice for survivors, particularly concerning sexual violence, adequate support for survivors, and the collection of disaggregated data.
2. The recommendations outlined in the report focus on enhancing legal frameworks and implementing measures in the aforementioned areas. These recommendations are intended for advocacy by the EU Delegation with the Kazakhstan Government.
3. This information is prepared by Equality Now. Equality Now¹ is an international human rights NGO with ECOSOC status with the mission to achieve legal and systemic change that addresses violence and discrimination against all women and girls around the world. Founded in 1992, Equality Now is a global organisation with partners and members in every region. Ending sexual violence, ending sex trafficking, ending harmful practices and achieving legal equality are the main areas of Equality Now's work. Equality Now has been working on Kazakhstan in collaboration with local partners (including Public Fund "The Public Movement against Violence #NeMolchi.Kz" and Feminist League of Kazakhstan) since 2019.²

NEED FOR FURTHER LEGAL CHANGES TO PROTECT WOMEN AND GIRLS FROM VIOLENCE

4. Domestic violence remains widespread in Kazakhstan. Despite explicit recommendations from the UN Committee on the Elimination of Discrimination against Women to ensure that domestic violence is specifically criminalised, can be prosecuted *ex officio* and is sanctioned with appropriate penalties commensurate with the gravity of the abuse,³ Kazakhstan has not done this.
5. The aggravated murder of Saltanat Nukenova in November 2023 and subsequent charge of her husband, Kazakhstan's former Economy Minister, with torture and murder with extreme violence has attracted nationwide attention amid growing outrage over domestic violence in Kazakhstan.⁴

¹ <https://equalitynow.org/>

² In particular, see our following reports and submissions: [Roadblocks To Justice: How The Law Is Failing Survivors Of Sexual Violence In Eurasia](#); [Kazakhstan – Submission to the UN Universal Periodic Review](#); [Kazakhstan – joint submission to the Committee on the Elimination of Discrimination against Women](#); [Sexual Violence Laws In Eurasia: Towards A Consent-Based Definition](#); [Kazakhstan-Submission To The Human Rights Committee](#)

³ CEDAW/C/KAZ/CO/5, para. 26(a)

⁴ <https://www.rferl.org/a/kazakhstan-minister-wife-beating-murder-trial/32896438.html>

6. In 2023, 47.6 thousand administrative offences in the sphere of family and domestic relations were registered in Kazakhstan. However, out of this number, 24.5 thousand cases in the sphere of family and domestic relations were terminated (51.5%). Administrative penalties were imposed in the remaining 19,200 cases. Of the 19.2 thousand cases 9.5 thousand ended in administrative arrest, 9.4 thousand - a warning, 247 - an administrative fine.⁵
7. Therefore, domestic violence remains largely unpunished in Kyrgyzstan. To address the widespread impunity for it and law-enforcement authorities' perception of domestic violence as a private matter, domestic violence has to be considered a stand-alone criminal offence with appropriate penalties commensurate with the gravity of the abuse.

NEED TO IMPROVE LAWS FOR ACCOUNTABILITY ON SEXUAL VIOLENCE AGAINST WOMEN

8. In Kazakhstan significant gaps persist in aligning laws concerning sexual violence with international human rights standards. Despite the recorded cases, sexual violence remains significantly underreported and the official data does not reflect the prevalence of sexual violence. Survivors encounter a number of barriers to reporting, including legislative obstacles, limited access to fair justice, as well as fear of disbelief, humiliation from law enforcement officials and blame from their relatives.
9. When it comes to legal barriers in relation to sexual violence, several critical issues persist – including **the lack of a consent-based definition of rape** in line with human rights standards, failure to treat all acts of rape as serious crimes and the need to make sure that all forms of sexual violence are proactively investigated and prosecuted.⁶
10. In January 2023, Equality Now published a report examining legal provisions relating to sexual violence in Kazakhstan. The report identified shortfalls in the definition and enforcement of sexual violence crimes, exposing systemic challenges within the criminal justice systems.⁷ Key findings can be summarised as follows:
 - a. The definition of rape, as provided in the Criminal Code of Kazakhstan, is not based on the lack of genuine, free and voluntary consent. Such definition is the requirement of international human rights instruments including standards developed by the UN Convention on the Elimination of All Forms of Discrimination against Women, binding on Kazakhstan.⁸ Instead, the definitions of rape in the Criminal Codes Kazakhstan focus on violence, threat of violence, or abusing the helpless condition of the victim.

⁵<https://ranking.kz/reviews/regions/kolichestvo-administrativnyh-pravonarusheniy-v-semeyno-bytovoy-sfere-vyroslo-srazu-pochti-na-90.html>

⁶ CEDAW, General Recommendation No. 35, CEDAW/C/GC/35, para. 29(e)

⁷<https://www.equalitynow.org/resource/sexual-violence-laws-in-eurasia-towards-a-consent-based-definition/>

⁸ For example, [CEDAW/C/KAZ/CO/5](#), para. 25(b)

- b. Compulsion or coercion into sexual intercourse, a crime that equals rape by its essence (Article 123), is categorised as a “less serious crime,” resulting in disproportionately lower penalties.

NEED TO IMPROVE LAWS FOR ACCOUNTABILITY ON SEXUAL VIOLENCE AGAINST GIRLS

11. As with sexual violence against women, significant gaps persist in relation to laws concerning sexual violence against children, while recognising the disproportionate impact on girls and the additional barriers they face compared to adult women.
12. When it comes to legal barriers, the definition and enforcement of crimes of sexual violence against girls remain problematic. The Criminal Code of Kazakhstan differentiates between sexual intercourse with a person under 16 years (statutory rape, Article 122) and rape of/assault of a sexual nature against a person under 18 years (committed by violence, the threat of violence or abusing the victim’s helplessness, Articles 120 and 121, where the age of a victim is an aggravating factor).
13. Article 122 of the Criminal Code addresses sexual acts with a person under sixteen years of age committed by an adult. The way the article is interpreted and enacted implies that the minor somehow consented to or initiated the sexual intercourse which disregards the power dynamics and vulnerabilities inherent in such situations. Furthermore, instances where rape or assault of a sexual nature occur without evidence of additional serious physical harm are often inappropriately charged under Article 122, which carries significantly lesser penalty compared to crimes that are classified under the article of rape against a minor.
14. Additionally, the clarification from the Supreme Court⁹ provides that “[t]he helpless state [to qualify actions as rape or assault of a sexual nature] shall be understood as the victim’s inability due to her physical or mental condition, minor [under the age of 14¹⁰], elderly age, physical defects, mental disorder, other painful or unconscious condition, etc.) to resist the perpetrator **who was aware** that the victim is in such state” (emphasis added). However, in practice, if a victim is under the age of 14, the actions of the perpetrator are still not classified as either rape or violent action of a sexual nature because authorities largely side with the perpetrator who says that the girl did not look underage, but looked older.

PROCEDURAL LAWS, PROCEDURES AND PRACTICES RELATED TO SEXUAL VIOLENCE WHICH EFFECTIVELY DENY ACCESS TO JUSTICE FOR SURVIVORS

15. Kazakhstan’s justice system maintains burdensome evidentiary standards for sexual violence crimes. Law enforcement authorities often rely on physical injuries and biological evidence, which can disadvantage victims without visible signs of abuse, such

⁹ Resolution of the Supreme Court of Kazakhstan from 11 May 2007 No 4 "On Certain Issues of Qualification of Crimes Related to Rape and Other Violent Acts of Sexual Nature", para. 5

¹⁰ Article 23 of the Civil Code

as those who did not resist due to fear. At the same time, forensic experts are predominantly male, exacerbating the discomfort and potential re-traumatisation experienced by female victims (who form the vast majority of victims) during forensic examinations. Moreover, the forensic examination bureaus are not located within the investigative authorities and often, if a victim receives a referral for forensic examination, it is challenging for her to access these establishments, leading to potential loss of crucial evidence and hindering the path to justice.

16. While provisions allowing termination of criminal proceedings upon reconciliation of the parties were mostly repealed, there are still provisions allowing impunity for perpetrators of sexual violence. Under Article 35(5) of the Code of Criminal Procedure “Circumstances precluding the proceedings”, a criminal case is subject to termination in the absence of a complaint from a victim in cases under Articles 120(1) and 121(1) (non-aggravated rape and violent action of a sexual nature).
17. The lack of mandatory (ex officio) prosecution for sexual violence denies justice to survivors and is contrary to international human rights standards. Criminal cases under Articles 120(1) and 121(1) of the Criminal code (non-aggravated rape or violent action of a sexual nature) still remain cases of public-private prosecution. As noted by the Human Rights Committee in its Concluding Observations on Kazakhstan’s second periodic report, Kazakhstan should “[c]lassify acts of violence against women as public prosecution cases subject to ex officio investigation and prosecution”.¹¹
18. Article 32 of the Criminal Procedure Code provides that cases defined as non-aggravated compulsion to perform sexual actions (Article 123(1) of the Criminal Code) will qualify as cases of private prosecution, meaning they are initiated upon a claim by the victim and will be terminated in case of reconciliation with the defendant, or when the victim has withdrawn the complaint for any other reason. Such legal provisions deny justice to survivors, because the survivor, rather than the state, is required to bear the burden of the criminal proceedings, including when it comes to the collection of evidence required to prove the circumstances of the crime.
19. The provisions mentioned in this subsection also give space to local law enforcement authorities to discourage women from filing such claims and to postpone the initiation of the investigation, anticipating in practice that one way or another, a woman is likely to withdraw her claim. Local groups further assert that they frequently hear from investigators that the women themselves are to blame for the sexual violence they suffered, even those who come forward with additional severe physical injuries. Moreover, the authorities fail to protect victims from pressure from relatives or family members to withdraw her complaint and local groups report there have often been situations where the victims have been intimidated or convinced to take bribes. Due to the clustering of the population in small, close-knit communities or enclaves, it is incredibly difficult for reports to be filed against the perpetrators. There is also pressure on women to keep silent by the senior community leaders.

¹¹ See also CEDAW/C/KAZ/CO/5, para. 26(f)

20. Furthermore, gender stereotyping and discriminatory investigation procedures applied in practice constitute a significant barrier to justice for survivors of sexual violence. These practices include the routine usage of the “investigative experiment” (provided under the law), which requires the victim to “re-enact” the crime; victims often being interviewed in shared spaces without privacy considerations; without respect for confidentiality by employees who are not specifically trained to conduct this type of investigation and do not have a sensitive approach to victims; victim-blaming by law enforcement; a hymen examination which is rarely probative and diverts attention from establishing injuries and evidence of rape; lack of gender-sensitive protocols in forensic examinations and female experts. *For more comprehensive insights, please see our detailed analysis.*¹²
21. Women from vulnerable and marginalised groups experience intersecting forms of discrimination and serious barriers in accessing justice for sexual violence. In particular, women with disabilities, ethnic minority women, LBT women, women in prostitution, drug users and migrant women, all experience specific challenges related to their unique situation. Barriers include the existing legislative regulation preventing women from filing reports for fear of themselves being penalised for their activities, stigma towards women in prostitution, drug users, LBT women and women with disabilities, lack of procedural accommodations (for women with disabilities) and language barriers (for migrant and ethnic minorities).

LACK OF SUPPORT SERVICES FOR SURVIVORS OF VIOLENCE

22. In Kazakhstan, there is a serious lack of support services and protection for women and girls, survivors of violence. This includes the need to put in place 24/7 hotlines, free legal aid, adequate shelters, medical treatment, psychosocial counselling and economic support across the country. The funds allocated by the State to support rehabilitation and adaptation centres for victims of violence are insufficient.

RECOMMENDATIONS

We kindly ask the EU Delegation to propose the following recommendations to the Government of Kazakhstan, which are grounded in recommendations given to Kazakhstan by various UN Human Rights Mechanisms. In particular:

- Amend the Criminal Code of Kazakhstan to make sure that the definition of rape is based on the lack of genuine and free consent rather than the use or threat of force.
- Amend the Criminal Code of Kazakhstan to ensure that the issue of “consent” of a minor under 16 is immaterial and not examined in practice with regard to sexual acts committed by adults against minors and that these are treated as rape and entail sentences reflecting the gravity of the crime.
- Amend the Criminal Procedure Code of Kazakhstan to ensure that all crimes of violence against women and girls, including sexual violence, are investigated/prosecuted

¹²<https://equalitynow.storage.googleapis.com/wp-content/uploads/2023/01/24121013/Kazakhstan-CCRC-137-Session-LoIPR-Equality-Now-NeMolchi.KZ-Feminist-League.pdf>, paras. 23-29

proactively by authorities (*ex officio*, public prosecution) and that “reconciliation of parties” is not used as the basis to terminate the proceedings of sexual violence.

- Develop, in collaboration with civil society organisations, protocols for judges, prosecutors, police, other law enforcement officials, medical staff, social workers and other professionals working with victims on assisting victims and investigation, prosecution and adjudication sexual and other forms of violence against women and girls based on international human rights standards.
- Provide comprehensive and sustained training to judges, prosecutors, police, other law enforcement officials, medical staff, social workers and other professionals working with victims on appropriate victim-centred approaches and criminal justice procedures.
- Strengthen victim support services and protection, including 24 / 7 hotlines, free legal aid, adequate shelters, medical treatment, psychosocial counselling and economic support throughout Kazakhstan.
- Enhance data collection on violence against women and girls, especially sexual violence, by gathering disaggregated statistics based on factors including sex, age and disability. Include tracking of attrition rates and other relevant factors for informing prevention and response measures.
- Investigate, prosecute and adjudicate all cases of violence against women and girls with a victim-centred approach, considering a gendered perspective throughout the process.
- Remove burdensome evidentiary standards and corroboration requirements in relation to sexual violence crimes.