

# Universal Periodic Review of Kazakhstan

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

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

And



## Sexual Rights Initiative

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Formed in 2006, the Sexual Rights Initiative (SRI) is a coalition of organisations including Action Canada for Sexual Health and Rights (Canada), Akahata (Argentina), CREA (India), Coalition of African Lesbians (South Africa), Egyptian Initiative for Personal Rights (Egypt) and the Federation for Women and Family Planning (Poland), with an office in Geneva. The SRI partners advocate together for the advancement of human rights related to sexuality, gender and reproduction at UN Human Rights Council.

**Key Words: domestic violence, sexual and reproductive rights, comprehensive sexuality education, access to SRH services**

## **Executive Summary**

1. This report jointly submitted by Legal Center for Women's Initiatives "Sana Sezim" (NGO "Sana Sezim") and the Sexual Rights Initiative.<sup>1</sup> The report examines existing initiatives in Kazakhstan addressing themes related to sexual and reproductive rights including gender based violence and sexuality education.
2. Domestic violence remains an acute problem in Kazakhstan. Although the RK has made efforts to combat domestic violence, there is still room for improvement: There are administrative and criminal penalties of physical domestic violence but no law or program that works with perpetrators of domestic violence to change their behavior. There are also penalties for sexual, emotional and financial forms of domestic violence but in practice, these are difficult to prove and rarely executed.
3. Although minors have the right to reproductive health and sexual education, to date, sexuality education meeting international standards has not been established sustainably and nationwide. The lack of knowledge on sexuality and reproductive health of young persons as well as the assumption by society and many governmental representatives that sexuality is something shameful leads to inadequate youth-friendly SRH services which in turn contributes to a high number of unwanted pregnancies and sexually transmitted infections among young persons.

## **Domestic Violence**

### **Recommendations from previous cycle**

4. During the 2<sup>nd</sup> UPR cycle, Kazakhstan received seven recommendations relating to domestic violence, all of which were accepted. These recommendations included law reform to align with international human rights standards, investigation and prosecuting of perpetrators and the provision of services and redress for victims and survivors of domestic violence:
  - i) Strengthen the legislative framework through the criminalization of all forms of violence against women and children, including within the family, and foresee infrastructures to shelter victims. (Belgium) – **partially implemented**
  - ii) Enact the draft law on domestic violence in full compliance with the international human rights standards (Slovenia) – **partially implemented**
  - iii) Put forward its best efforts to reform legislation dealing with the relatively high rate of domestic violence against women and ensure that those violations are effectively investigated and perpetrators of such acts are prosecuted (Republic of Korea) – **partially implemented**

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<sup>1</sup> The Sexual Rights Initiative (SRI) is a coalition of organizations that advocates for the advancement of human rights in relation to gender and sexuality within international law and policy. The SRI focuses its efforts particularly on the work of the United Nations Human Rights Council, including its resolutions and debates as well as the work of the Universal Periodic Review mechanism and the system of Special Procedures. The SRI combines feminist and queer analyses with a social justice perspective and a focus on the human rights of all marginalized communities and of young people. It seeks to bring a global perspective to the Human Rights Council, and collaborates in its work with local and national organizations and networks of sexual and reproductive rights advocates, particularly from the Global South and Eastern Europe. The SRI partners are: Action Canada for Population and Development, Akahatá - Equipo de Trabajo en Sexualidades y Generos, Coalition of African Lesbians, Creating Resources for Empowerment in Action (India), Egyptian Initiative for Personal Rights, and Federation for Women and Family Planning (Poland).

- iv) Strengthen Government efforts to ensure protection and provide redress to victims of domestic violence (Maldives) – **partially implemented**

5. Kazakhstan also received a recommendation on data collection and statistics:

- i) Put in place a system of comprehensive data collection on all forms of violence against women, and encourage reporting of all forms of violence against women and girls, including domestic and sexual violence. (Liechtenstein) - **partially implemented**

### **National Legal Framework**

- 6. The legal basis for the prevention of domestic violence in Kazakhstan is guided by: The Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the UN General Assembly, The Constitution of the RK, the Criminal Code of the RK, Code of the RK “On Administrative Offenses”, Law of the RK “On the Prevention of Domestic Violence”, Code of the RK “On Marriage (Matrimony) and the Family”, Law of the RK “On the Internal Affairs Bodies of the Republic of Kazakhstan” and other regulatory legal acts.

### **Progress and gaps**

- 7. In Kazakhstan gender equality is envisaged in national legislation and guaranteed in the Constitution. In practice however women are lagging significantly behind men in their ability to realize and exercise their rights because of patriarchal and gender norms. Additional barriers include high levels of gender violence, inequality of opportunities between men and women in all spheres of life, and internalized gender norms by women. For example, in cases where a woman has been subjected to domestic violence, her parents do not accept her returning to the family because it is considered to bring shame to the family: in other words home “quarrels” should not be made public. Lack of awareness about the law and human rights among the population also results in victims not knowing what their options are for redress and justice.
- 8. The approved Order of the Minister of Health and Social Development of the Republic of Kazakhstan dated December 21, 2016 No. 1079 “On approving the standard of providing special social services to victims of domestic violence”<sup>ii</sup> provides for 6 types of services to victims of domestic violence (social-legal, social-domestic, social-medical, social-psychological, social-cultural, social-pedagogical). Such services are provided by: crisis centers for victims of domestic violence, centers for social assistance to victims of domestic violence, shelters for victims of domestic violence, and other organizations. Persons subjected to ill-treatment, which led to social deprivation, as well as those in difficult life situations due to the threat of ill-treatment and violence can contact these organizations. Temporary stay and residence institutions accept citizens of Kazakhstan, foreign citizens and stateless persons permanently residing on the territory of the RK, as well as persons without identity documents as beneficiaries, if they are recognized as victims of domestic violence, unless otherwise provided by an international agreement ratified Republic of Kazakhstan. Moreover, if there are minor children with the victim of domestic violence at the time that this person approaches a shelter, the children are accommodated in the shelter along with the victim.
- 9. In order to prevent violence against women and children, several measures were taken in Kazakhstan from 2015 to 2017. The Code of the RK on Administrative Offenses of July 5, 2014 No. 235-V (with amendments and additions as of February 3, 2019) introduced several changes to the Administrative Code of the RK which significantly limits actions and sets special requirements for perpetrators of violence. The Code of the Republic of Kazakhstan on

Administrative Offenses of July 5, 2014 No. 235-V (with amendments and additions as of 03/02/2019) introduced a number of changes to the Administrative Code of the Republic of Kazakhstan, which significantly limit actions and establish special requirements for offenders of violence. In Article 54, paragraph 2 it says: “... *When establishing special requirements for the behavior of a person who committed an administrative offense in the sphere of family and domestic relations, the court in exceptional cases has the right to apply legal impact for the protection and defense of the victim and members of his family in the form of a ban to the person who committed domestic violence, to live in an individual house, apartment or other dwelling as the victim in case that this person has a different housing*”. During the term of the special requirements for the behavior of the offender, he may be obliged to report to the police for preventive conversations from one to four times a month.

10. Additional measures for the prosecution of ‘battery’ and causing minor damage to health were introduced. Criminal prosecution has been removed and an administrative penalty (fine or arrest) is provided for battery and the causing of minor damage to health. The administrative penalty, as a measure for the prevention of domestic violence, has not been effective: In practice, the NGO “Sana Sezim” is facing the fact that firstly, the amount of the fine is quite large for many families and in practice it is often paid by the victim and secondly, this measure does not have any effect on the perpetrators’ character or behavior. Meanwhile, such administrative practice, we believe, can lead to an increase in the latency of domestic violence. In this regard, in order to strengthen the mechanisms for preventing domestic violence in Kazakhstan, it is necessary to focus on improving the effectiveness of psychological interventions carried out for domestic violence offenders, and to fix more specific provisions in this Law or other related regulatory acts.
11. The term of the protective order was increased from 10 to 30 days, and a rule was adopted prohibiting a person who committed domestic violence to live in a dwelling with a victim, if he has an opportunity to provide himself with housing. In practice, when a protective order is being issued, offenders often do not leave their own homes. Thus, the offender continues to commit violence against the victim. It is imperative that maximum efforts are made to exclude contact between the perpetrator and the victim of domestic violence. In order to comply with the prohibitions included in a protective order, the conflicting parties must live separately.
12. For the further implementation of the law of the Republic of Kazakhstan “On the prevention of domestic violence” in 2017-2018. Additional changes were made that significantly help victims of domestic violence and additional social services were provided which expands the power of state and public organizations. Amendments were made in the Law of the Republic of Kazakhstan of December 29, 2008 No. 114-IV “On Special Social Services” (with amendments and additions as of December 28, 2018). These amendments significantly expanded social services, such as state control over the provision of social services, guaranteeing a range of social services at state expense. Victims of domestic violence can stay in special shelters for up to 6 months.
13. Despite the efforts of the state to counteract domestic violence, the problem of violence against women remains acute, as it is a common offense in Kazakhstan. According to the sample survey on violence against women in Kazakhstan of 2017, around 16.5% of women in Kazakhstan aged 18 – 75 have experienced physical and/ or sexual violence from their intimate partner in their lifetime. Around 20.6% of women in Kazakhstan have experienced emotional violence and 6.3% have experienced economic violence from their intimate partner in their lifetime. In practice, acts of violence against family members, regardless of the sex or age of the victim, are often ignored. Those experiencing domestic violence often do not tell anyone about this, and if they try, these cases rarely reach the court or are terminated in court because of reconciliation of the parties. When the parties reconcile, no

measures can be applied to the offenders in order to exclude violent behavior in the future. Often, the same parties again come to court after another incident of domestic violence occurs.

14. In 2017, the General Prosecutor's Office of the Republic of Kazakhstan, together with representatives of government agencies, international organizations and civil society in the South Kazakhstan region, implemented the pilot project "Kazakhstan without domestic violence". The goal of the project is to reduce the level of domestic violence by 20% by 2020. As a result of the project, the Family Affairs Office was established, and psycho-social centers were opened for victims of domestic violence. Also, a Concept of the Draft Law of the Republic of Kazakhstan "On Counteracting Violence in the Family and Domestic Sphere" was developed, which recommends amendments to the existing principles for the prevention of domestic violence. In particular, to provide for the principles of "gender equality", "the provision of protection against domestic violence regardless of whether a criminal case or administrative proceedings are initiated". In addition, the law does not provide a definition of "sexual harassment", which in turn makes it difficult to bring the aggressors to account. It is worth paying attention to the measures for the prevention of domestic violence, as the law is not fully regulated, such as analyzing the causes and conditions of committing offenses in the domestic sphere, introducing response measures, legal and practical information.

## **Sexuality Education and Sexual and Reproductive Health**

### **Recommendations from previous cycle**

15. During the 20th session and the second cycle of the UPR Kazakhstan received and accepted one recommendation related to sexuality education and sexual and reproductive health:
  - i) Enhance women's access to sexual and reproductive health services and provide comprehensive education on sexuality, especially to female adolescents. (Thailand) – partially implemented.

### **National Legal Framework**

16. According to the Code of the Republic of Kazakhstan on Public Health and Healthcare System dated September 18, 2009, No. 193-IV, Art. 93, Clause 2, children and adolescents have the right to reproductive health protection and moral and sexual education.<sup>ii</sup> By definition, Sexuality Education provides scientific accurate, realistic and non-judgmental information about sex and relationships.<sup>iii</sup> By choosing the term moral-sexual education instead of (comprehensive) sexuality education in the legislation, there is the danger of providing youth with judgmental sexual education. The choice of formulating the provision of moral-sexual education implies that topics such as sexual orientation and gender might be not taught in a human rights based way.

### **Progress and gaps**

17. Expanding programs on educating youth about sexual and reproductive health within the education system is one of the goals of the Concept of Family and Gender Policy in the Republic of Kazakhstan Up to 2030, adopted in December 2016. However, sexuality education is currently not part of the mandatory school curriculum in Kazakhstan and there is no law or national policy introducing this subject into the school curriculum.<sup>iv</sup> Thus, teachers are not provided with systematical training on teaching sexuality education. Instead, there are subjects that include some topics of sexuality education, such as issues related to violence and sexually transmitted diseases (STD). HIV and STD are taught only in class 7-9 in biology. The optional subject "Valeology" is taught in some schools and colleges as an alternative to sexuality education. In 2012, the United Nations Fund for

Population Activities in Kazakhstan (UNFPA) in collaboration with the East Kazakhstan Regional authorities adapted the existing course on “Valeology” in line with the UNESCO standards<sup>iii</sup> in the Eastern Kazakhstan Oblast within a pilot project. By now this course is taught in colleges of two more Oblasts. This course is covering a range of issues related to sexuality education and reproductive health, as well as gender equality, gender-based violence and practices harmful to the well-being of girls. In 2018, UNFPA carried out a training for journalists on the reproductive health of adolescents as well as a training for teachers on teaching “Valeology” with additional content on reproductive health and gender equality. Both trainings were held in the Turkestan Oblast. Since 2007, the Y-PEER network provides sexuality education for youth in a peer to peer setting outside the school and is still expanding.

18. Although there has been a positive development in the field of sexuality education for the last years thanks to the cooperation of some regional authorities with the UNFPA, there are indicators that show that sexuality education is much needed as an examinable subject in the school curriculum and that the quality of this subject has to be ensured:
  - In 2015, only 26,7 % of women aged 14-24 could correctly identify ways of preventing the sexual transmission of HIV, and who reject major misconceptions about HIV transmission.<sup>v</sup>
  - The percentage of the sexual transmission of HIV infections in Kazakhstan has increased from 5% in 2001 to 62% in 2017.<sup>vi</sup>
  - In Kazakhstan, there are a high number of unwanted pregnancies among young girls: More than 16% of girls at the age of 15 to 19 were pregnant, 2% admitted that they resorted to domestic abortions.<sup>vii</sup>
19. Another factor that leads to unwanted pregnancies of minors, is the refusal of selling contraceptives to minors in pharmacies and drug stores. Although this is not a legislative norm and even the idea of selling special condoms for minors in pharmacies has been discussed<sup>viii</sup>, in practice sellers refuse to sell contraceptives to minors because they are not meant to have sex according to social norms. This not only can result in unwanted pregnancies but also exposes minors at higher risk to STDs.
20. To date, girls younger than 18 cannot access legal abortion services without the permission of their parents or another representing adult. Fearing the reaction of relatives and society and not knowing where to seek help, many pregnant girls resort to illegal and unsafe abortions or hide their pregnancy and abandon the newborn babies. Minors have the right to reproductive health and services (Code of the Republic of Kazakhstan on Public Health and Healthcare System dated September 18, 2009, No. 193-IV, Art. 93, Clause 2) but at the same time they are not allowed to access medical services without the consent of their parents or legal representatives and thus cannot choose abortion independently. These contradicting provisions lead to healthcare workers being in a position to interpret the laws in the ways they wish – and this often undermines the autonomy and agency of women seeking abortions. However, the Ministry of Health has recently drafted a law that allows minors from the age of 16 to receive medical services without knowledge and consent of their parents, including abortions. This draft law is currently being examined.<sup>ix</sup>

#### **Recommendations:**

32. Introduce a supplement to the Code of Administrative Offenses to provide charges for non-fulfillment of special requirements of the behavior of the offender, as well as for causing harm to health in the sphere of family and everyday life.
33. Establish the legal foundations of psychological intervention programs for perpetrators of domestic violence in the legislation additional to the existing criminal and administrative sanctions.

34. Integrate comprehensive sexuality education and/or the existing valeology course developed by UNFPA into the national school curriculum as an examinable subject and provide CSE programs for out-of-school youth.
35. Accept the proposal of the Ministry of Health of the RK to allow minors from the age of 16 to receive medical services without the consent of their parents, including abortions.
36. Provide training on sexual and reproductive health rights of minors to the staff of pharmacies

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<sup>i</sup> [http://online.zakon.kz/Document/?doc\\_id=35388740#pos=0;0](http://online.zakon.kz/Document/?doc_id=35388740#pos=0;0)

<sup>ii</sup> [https://online.zakon.kz/Document/?doc\\_id=30479065#pos=3455;-46](https://online.zakon.kz/Document/?doc_id=30479065#pos=3455;-46)

<sup>iii</sup> UNESCO, 2009. International Technical Guidance on Sexuality Education. An evidence-informed approach for schools, teachers and health educators. Paris: UNESCO.

<sup>iv</sup> Evert, Ketting/ Ivanova, Olena, 2018. Sexuality Education in Europe and Central Asia. State of the Art and Recent Developments. An Overview of 25 Countries. Cologne: Federal Centre for Health Education (BZgA), International Planned Parenthood Federation European Network (IPPF EN), p.111:

[http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0010/379054/BZgA\\_IPPFEN\\_ComprehensiveStudyReport\\_Online.pdf](http://www.euro.who.int/__data/assets/pdf_file/0010/379054/BZgA_IPPFEN_ComprehensiveStudyReport_Online.pdf)

<sup>v</sup> The Statistics Committee of the Ministry of National Economy of the Republic of Kazakhstan, 2016. 2015 Kazakhstan Multiple Indicator Cluster Survey, Key Findings. Astana, Ka zakhstan: The Statistics Committee of the Ministry of National Economy of the Republic of Kazakhstan, p.17: [https://mics-surveys-prod.s3.amazonaws.com/MICS5/Europe%20and%20Central%20Asia/Kazakhstan/2015/Key%20findings/Kazakhstan%202015%20MIC%20KFR\\_English.pdf](https://mics-surveys-prod.s3.amazonaws.com/MICS5/Europe%20and%20Central%20Asia/Kazakhstan/2015/Key%20findings/Kazakhstan%202015%20MIC%20KFR_English.pdf)

<sup>vi</sup> <https://www.zakon.kz/4948989-seksualnyy-debyut-podrostkov-kazahstana.html>

<sup>vii</sup> <https://www.zakon.kz/4949072-uroki-polovogo-vospitaniya-v-shkolah.html>

<sup>viii</sup> [https://tengrinews.kz/kazakhstan\\_news/vopros-prodaji-prezervativov-podrostkov-trebu-et-izucheniya-292071/](https://tengrinews.kz/kazakhstan_news/vopros-prodaji-prezervativov-podrostkov-trebu-et-izucheniya-292071/)

<sup>ix</sup> <https://www.zakon.kz/4947494-o-razreshenii-abortov-v-16-let-bez.html>