

Kazakhstan

1. Discrimination in the family

a) Overarching legal framework for marriage

The Matrimonial and Family Code regulates marriages in Kazakhstan and only confers legal validity to those contracted in a State registry office (art. 2 para. 3), provided that both parties freely and fully consent to the union (art. 9). Informal relationships are not prohibited, nor are religious and customary marriages, but they have no legal standing (art. 2 para. 3). Despite this, many couples continue to marry through religious and traditional ceremonies only, thus denying women and children any legal and economic protection upon the dissolution of the marriage (CEDAW, 2014).

Polygamy and forced marriages are prohibited (art. 11 and art. 21 para. 1), and kidnapping is criminalised (Criminal Code art. 125). Yet, girls continue to be subject to forced marriages and bride kidnappings, especially in rural areas (CRC, 2015).

b) Child marriage

The legal minimum age of marriage for women and men is set at 18 years (age of majority), although civil registration bodies may reduce the marriageable age by up to two years if those wishing to enter into marriage are expecting a child or already have one – provided that their parents or guardians consent to the early marriage (art. 10). The court can also reject a request to invalidate a marriage contracted by a minor to protect the best interests of the child (art. 27 para. 2).

Child marriage remains a problem (CRC, 2015; CEDAW, 2014), especially in Muslim communities, and is a gendered phenomenon particularly affecting girls (UNFPA, 2014). In this context, the United Nations has asked the government to develop awareness-raising campaigns and programmes on the harmful effects of early marriages, and to establish protection schemes for victims of early and forced marriages who file a complaint (CRC, 2015).

The government has responded to these observations by rolling out a new strategy ‘on the concept of family and gender policy until 2030’ (hereafter referred to as the ‘2030 Family and Gender Policy’). This text, which was adopted in December 2016, recognises the role of local and traditional institutions (e.g. community councils, elders) in advocating to religious institutions about the harmful effects of early marriages.

c) Household responsibilities

Spouses have equal rights and obligations (art. 30 para. 1) and jointly exercise parental authority (art. 68 para. 1). Spouses thereby owe mutual respect and assistance to one another and have a shared duty to raise their children and provide for their education (art. 30 para. 3-4, art. 70). Family matters, including choosing where to live, must be jointly resolved (art. 30 para. 3) and either parent can be the legal guardian of their children (art. 71 para. 1).

The government is striving to enforce the concept of gender equality in the family through the 2030 Family and Gender Policy (Presidential Decree No. 384 of 6 December 2016), which aims to revise Kazakhstan's family legislation to ensure the application of the principles of equal rights and obligations among spouses, and the principle of shared parental responsibilities towards children. The policy namely recalls the results of the 2015 Multi-Indicator Cluster Survey to highlight the inadequate participation of fathers in relation to child support and educational responsibilities. According to these statistics, only 6.6% of children under five receive paternal support for early childhood education. The policy also refers to the need to address "unacceptable cultural values that are contrary to the present position of women in the family, in society and in employment", but does not specify what these values are.

d) Divorce

Either spouse can file for divorce (Matrimonial and Family Code art. 14 and 16), although men are prohibited from divorcing during their wives' pregnancy and in the 12 months following the birth (art. 16). In considering a unilateral request for divorce, the court is entitled to adjourn the proceedings for up to six months, in order to reconcile both parties (art. 20). The court is also entitled to dissolve the marriage without establishing the motives (art. 21).

Parental rights continue after divorce (art. 14), in which case child custody is jointly determined by both parents or awarded to either parent by the court, if an agreement cannot be found among them (art. 22).

Divorced women suffer from social stigma, to the extent that their sisters often have trouble marrying, and that their parents may prohibit them from returning home (Emery, 2013).

e) Inheritance

Inheritance of non-land assets is regulated by section 6 of the Civil Code. Under the law daughters and sons have the same rights to inherit property, as do male and female surviving spouses (art. 1061-1064). Disinheritance of a surviving spouse is prohibited, with the law further stipulating that the inheritance of the widow shall not infringe upon his/her rights associated with matrimonial property, including the right of ownership to part of the estate acquired during marriage (art. 1070). Moreover, property dispossession is criminalised (art. 194 of the Criminal Code on extortion). Women and men also have the same right as men to make a will (art. 1046 para. 1).

Inheritance of private land is regulated by the Land Code. This text provides women with the same right as men to inherit land, regardless of their marital status (art. 40 para. 2). There are no reports of discriminatory practices towards women in relation to the inheritance of land and property.

2. Restricted Physical integrity

a) Violence against women

The United Nations has raised concerns about Kazakhstan's legal framework on violence against women, in particular the requirement for the victim to initiate criminal proceedings by lodging a complaint, the lack of legislation criminalising all forms of violence against women, and the

possibility for the perpetrator to be absolved of his/her responsibility by reconciling with the victim (CEDAW, 2014),

The 2030 Family and Gender Policy aims to address these legal gaps, particularly in relation to legislation on domestic violence. The strategy focuses on creating a culture of zero tolerance towards all types of domestic violence, on combatting child rape, and on enhancing access to justice for victims of violence against women.

b) Domestic violence

A specific law on domestic violence was passed in 2009. While its adoption led to the introduction of harsher administrative penalties for ‘illegal actions in the family sphere’, and for battery and other violent acts causing pain without bodily harm, it did not lead to the specific criminalisation of domestic violence.

The law defines domestic violence as an “intentional wrongful act (action or inaction) committed against another person in the family sphere, causing or threatening to cause physical and/or mental suffering” (art. 1 para. 3). The text further specifies that domestic violence can take the form of physical violence, psychological violence, sexual abuse and economic violence (art. 4). Under the law, family relations cover relations between spouses, former spouses, persons living together, close relatives and parents (art. 1 para. 2).

Survivors of domestic violence are entitled to receive medical, psychological, pedagogical and legal assistance from aid organisations (art. 13-14), and are classified as beneficiaries of the Law on special social services (art. 5). As such they are entitled to financial compensation and priority access to social services. 17 shelters are functioning across the country (Government of Kazakhstan, 2016), but the legislation does not clearly state how victims can benefit from temporary accommodation, or for how long.

The 2009 law contains several measures to protect victims from further harm, including the issuing of restraining orders for immediate protection from the abuser for up to 30 days (art. 20), administrative detention of the abuser for 24 hours (art. 21), and special restrictions imposed by the court on the abuser (e.g. prohibition from continuing to live with the victim, prohibition from buying, storing or carrying firearms) (art. 22). The law also tasks local representative bodies with approving and controlling the execution of local budget spending for domestic violence prevention (art. 15).

Moreover, the law also focuses on supporting perpetrators of domestic violence and their families in order to prevent further violence. For instance, aid organisations are tasked with providing psychological assistance to perpetrators (art. 15), health authorities are mandated to carry out measures to reduce alcoholism, drug addiction and substance abuse (art. 13), and violent persons can receive counselling (art. 19).

Domestic violence remains prevalent and underreported (CEDAW, 2014) despite awareness-raising campaigns and the establishment of special domestic violence police units in 133 out of 247 districts (Government of Kazakhstan, 2016). The government has therefore set out to curb domestic violence in the framework of the 2030 Family and Gender Policy. Priorities include halving the number of female victims by 2030. Measures include the revision of current legislation on domestic violence, the improvement of victim identification and referral mechanisms, the establishment of a

coordinated inter-agency response mechanism, the improvement of shelter services, and the creation of an information portal for victims (Presidential Decree No. 384 of 6 December 2016). Although 17 shelters currently support female survivors nationwide, the United Nations has raised concerns about the inadequate and irregular nature of State funding (CEDAW, 2014).

c) Rape

Rape is criminalised under art. 120 of the Criminal Code and defined as compelling someone to submit to sexual intercourse through violence or the threat of violence, or by taking advantage of the helpless state of the person. Rape is therefore based on the lack of consent, and on the use or threat of force. The United Nations has raised concerns about the latter requirement, and about the lack of reference to marital rape (CEDAW, 2014).

Penalties range from 3-5 years of imprisonment, and a life ban on occupying certain positions or performing certain activities can be imposed if the crime was committed with aggravating circumstances (Criminal Code art. 120 para. 1-2). Child rape carries a heavier penalty of 15-20 years of imprisonment, together with the aforementioned bans (Criminal Code art. 120 para. 3).

Medical and legal support is available to rape victims, but only in the framework of the legislation on domestic violence. The 2030 Family and Gender Policy therefore aims to provide rape victims adequate protections in all instances, by guaranteeing State-funded assistance (Presidential Decree No. 384 of 6 December 2016). The policy also mentions the government's concern about the high rate of child rape.

d) Sexual harassment

There are no laws on sexual harassment, nor any provisions on sexual harassment in the Criminal Code or Labour Code. However, the government has committed to tackling sexual harassment in the framework of the 2030 Family and Gender Policy, by stating that the prosecutor's office will work with law enforcement authorities to respond to complaints of sexual harassment in family homes and prisons.

Reports indicate that sexual harassment is a serious problem in the workplace, especially for young women, but that women are scared of reporting it from fear of losing their jobs, and due to the absence of workplace policies on sexual harassment (ADB, 2013).

e) Female genital mutilation

There is no law on female genital mutilation and no evidence it is practised in the country (UNICEF, 2016).

f) Abortion

The 2009 Code on public health and health systems sets out the legal framework on abortion (art. 96 para. 1). Abortions can be performed upon request until 12 weeks of gestation, until 22 weeks for social reasons, and at any stage if the pregnancy threatens the life of the pregnant woman or foetus (art. 104).

The rate of abortion is relatively high, and linked to the prevalence of early marriage and sexual abuse (government of Kazakhstan, 2016), as well as limited access to sexual and reproductive health information and facilities, in particular in rural areas (CRC, 2015). The United Nations has expressed concern about the high rate of abortion among teenage girls and urged the government to ensure that sexual and reproductive health education is part of the mandatory school curriculum (CRC, 2015). The government has committed to conduct awareness-raising measures and to expand access to contraception, reproductive health services, family planning services and counselling services (2030 Family and Gender Policy).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Women have the same rights as men to own, use, pledge and dispose of property, regardless of their marital status (Matrimonial and Family Code, art. 33-34; Civil Code art. 188). Spousal consent is required for the administration of marital property and must be notarised for certain transactions (e.g. relating to land estates) (Matrimonial and Family Code art. 34). Marital property is divided equally among spouses upon divorce, unless otherwise specified (Matrimonial and Family Code art. 38).

The Land Code provides all citizens, including foreigners and stateless persons, with the right to own private land (art. 20 para. 2). Under the law any landowner can possess, use and dispose of their land (art. 21 para. 1), and can carry out any transaction on it (art. 25 para. 2). Women therefore have the same right as men to access land. The Land Code also allows spouses to jointly own private land by setting out the general right to joint tenancy (art. 53), and by specifying that individual land plots belonging to a spouse may be recognised as the joint property of the couple (art. 60). Spousal rights and obligations relating to joint land ownership are subject to the provisions of the Civil Code and Matrimonial and Family Code (art. 60). These texts do not contain any specific provisions on joint land titling.

In reality women in Kazakhstan have limited opportunities to own land or other property, due to limited access to loans and limited opportunities to become financially literate (ADB, 2013). Banks require loan applicants to be formally employed and to own property, yet property is often registered in the name of the husband or the male head of household (ADB, 2013). Moreover, loan officers often doubt women's ability to manage and repay loans (ADB, 2030). In this context, the 2030 Family and Gender Policy aims to increase female ownership of land and non-land assets, and to promote entrepreneurial opportunities for rural women.

b) Secure access to formal financial resources

The law provides women with the same right as men to open a bank account, regardless of their marital status (Civil Code art. 747 para. 2). The procedure is written and does not require the signature of the husband or any third party (Civil Code art. 748). The law on payments and payment systems also provides women with the same right as men to obtain credit, regardless of their marital status.

Women face more difficulties in accessing credit than men due to prejudices about their ability to repay loans, and due to the difficulty for women to draw up business plans and provide collateral, owing to financial illiteracy and the fact that property is often registered in the name of the husband or male head of household (ADB, 2013). Bureaucratic challenges, including high taxes, heavy customs procedures and numerous inspections, further hinder women's access to credit (ADB, 2013).

Numerous government programmes have been established to promote the economic empowerment of women – e.g. the 2020 Business Road Map, the 2020 Employment Road Map and the 2009-2015 Program on Microcredit for Female Entrepreneurship. This trend continues in the 2030 Family and Gender Policy, with the government committed to increasing female participation in economic sectors traditionally occupied by men, and in emerging sectors (e.g. IT, communications, tourism, entertainment). The government has also committed to ensuring equal access to financial services for all citizens by 2030, and to establishing training centres focusing on business and entrepreneurial support.

c) Workplace rights

The Constitution (art. 24) and the Matrimonial and Family Code (art. 30 para. 2) protect the right of each citizen to freely choose a profession (art. 24) inside and outside of marriage. Moreover, the Labour Code and the 2009 Law on State guarantees for gender equality (hereafter referred to as the 2009 Law) aim to promote women's labour rights through positive discrimination and a general prohibition of discrimination in employment on the basis of sex.

However, women are prohibited from performing 'heavy work' or working in dangerous conditions, as per government-classified lists (Labour Code art. 16 para. 18 and 27), although the government has committed to revisiting this list in the framework of the 2030 Family and Gender Policy.

The law recognises the principle of equal pay for work of equal value (Labour Code art. 22 para. 15) and provides women and men with equal opportunities to conclude contracts, access vacant positions, be promoted, and benefit from professional development and training (2009 Law, art. 10 para. 1). Employers cannot refuse to recruit a woman on the sole grounds of pregnancy or parenthood (Labour Code art. 25 para. 1), although since 2016 employers no longer need to justify their choice of recruiting another candidate. Employers cannot terminate the contract of a female employee during her pregnancy or during the three years following the birth of her child (Labour Code art. 54 para. 2).

Female employees are entitled to 18 weeks of paid maternity leave (70 days pre-natal leave and 56 days post-natal leave). Two additional weeks are granted in the event of a complicated birth or multiple births (Labour Code art. 99 para. 2). During this period, women receive a monthly government allowance that is calculated by multiplying their average monthly income by a coefficient of 'disability' days (Labour Code art. 99 para. 4). A one-off payment is also issued by the State after the birth of a child (Law on state allowances to families with children).

Male employees are not entitled to paid paternity leave, although they can request five days of unpaid leave after the birth of their child (Labour Code art. 97 para. 3). Moreover, they can benefit from paid parental leave until their child is one year old (Law on state allowances to families with

children). Unpaid parental leave can also be granted until the child reaches three years of age (Labour Code art. 100).

In practice, women suffer from a pay gap compared to men, and are more likely to work in less lucrative sectors (e.g. health, education, social services) (Government of Kazakhstan, 2016). The government has committed to reducing the pay gap between men and women by 75% by 2030, and to expanding women's access to the labour market (2030 Family and Gender Policy).

4. Restricted Civil liberties

a) Citizenship rights

The Law on Citizenship provides women with the same rights as men to acquire, change or retain their nationality, irrespective of their marital status (CEDAW, 2012). Kazakh nationality can be granted after three years of marriage to a Kazakh or five years of permanent residency (art. 16). It can also be granted to individuals of the former Soviet Union who have a close Kazakh relative and who move to Kazakhstan with the aim of obtaining permanent residency (art. 16). Both parents have the same right to confer Kazakh nationality to their child, with art. 11-12 stipulating that Kazakh nationality is conferred in several circumstances: if both parents are Kazakh, regardless of the place of birth; if the child is born in Kazakhstan to one Kazakh parent; or if the child is born in a foreign country to a parent with Kazakh permanent residency. Adoptive parents also have the same right to confer Kazakh nationality to their adopted child (art. 25). The law further stipulates that Kazakh nationality is retained when marrying a foreigner (art. 7), and that no citizen can be deprived of his/her nationality or right to change nationality (Preamble). The United Nations has expressed concern that some women and girls continue to be stateless and has asked the government to undertake programmes to accelerate the regularisation of their situation (CEDAW, 2014).

Identity cards are mandatory for all Kazakh citizens, foreigners and stateless people residing or temporarily staying in Kazakhstan, aged 16 and over, whereas passports are granted upon request, at any age (Law No. 73V on identification documents, art. 5 para. 2, art. 8 para. 1 and art. 9). ID cards and passports are both obtained by filling in an application form, paying a fee and providing two photographs, along with a birth certificate or passport (2013 Decree No. 852 on passports and identification documents, art. 6 and 13). These provisions provide women with the same rights as men to obtain ID cards and passports, regardless of their marital status, and to obtain these documents for their children. No discriminatory practices or laws were found.

Women also have the same right as men to register the birth of their child, and must do so within two months of the delivery (Matrimonial and Family Code, art. 188-189). This process can be done electronically via the government's web-portal, or via a Civil Registry Office or Public Service Centre (PSC). Married parents must provide a marriage certificate, in addition to medical documentation (Matrimonial and Family Code art. 47 para. 2). Late registration is possible and requires a written application if the child is older than 12 months (Matrimonial and Family Code, art. 198). The United Nations has asked the government to take specific measures to ensure that poor and rural women are aware of these requirements for child birth registration, and that they are able to easily access birth registration services (CEDAW, 2014), while the United States government has highlighted the

fact that legislation prevents parents without identification documents from registering the birth of their children (US Department of State, 2016).

b) Voting

The right to vote is granted to all citizens aged 18 and over, aside from those declared incapable, including detainees (1995 Constitutional law on elections, art. 4 para. 1 and 3). Voting is not mandatory (1995 Constitutional law on elections art. 3 para. 3) and there are no reports of traditional practices restricting this right.

c) Political voice

The Constitution provides all citizens with equal rights to hold public office, aside from detainees and legally incapable persons (art. 33). This principle is further outlined in the 1995 Constitutional law on elections, which covers executive and legislative mandates at the national and local level. Under this text women have the same right as men to stand for President (art. 54), to be elected to the upper or lower house of Parliament (art. 70 and 86), and to participate in local politics (art. 102). The 1995 constitutional law on the judicial system and status of judges also provides women with the same right as men become judges of the Supreme Court and of district / regional courts (art. 29).

No legislative quotas exist to promote female participation in political life, although the government has announced a 30% target for female participation in executive and legislative authorities by 2030, under the 2030 Family and Gender Policy. It is hoped that this new approach will build on the results of the 2006-2016 national strategy on gender equality.

Women remain underrepresented in leadership positions in elected bodies, political parties, the public service and the diplomatic corps (CEDAW, 2014).

d) Access to justice

The law provides women with the same capacity as men to sue or be sued, regardless of their marital status (Civil Procedural Code, art. 47). Women's testimonies carry equal weight as those of men in civil and criminal courts, regardless of their marital status (art. 16 of the Civil Procedural Code, art. 25 of the Criminal Procedural Code). However, there are no procedural rules addressing the specific interests of women and girls, nor measures to facilitate access to justice for women, aside from free translation services. The National Commission on Family and Women's Affairs is the state agency responsible for coordinating the government's work on gender equality. As such the Commission oversaw the 2006-2016 gender equality strategy and has been tasked with implementing the 2030 Family and Gender Policy. The Commission has parallel structures in all regions, as well as in the cities of Astana and Almaty.

The United Nations has raised concerns that women who seek justice are stigmatised and that free legal aid is inadequately provided, especially for women belonging to disadvantaged groups (CEDAW, 2014). The referral of disputes to the *akim* figure (a village leader or local representative) is also seen as hampering women's access to justice in some cases, particularly in relation to issues of violence against women, as this informal justice mechanism is based on mediation and reconciliation (EFCA et al., 2011).

Sources

Asian Development Bank (ADB) (2013), *Kazakhstan country gender assessment*, Mandaluyong, <https://www.adb.org/sites/default/files/institutional-document/34051/files/kazakhstan-country-gender-assessment.pdf>

ADB (2013), *Gender equality and the labor market: Cambodia, Kazakhstan and the Philippines*, Mandaluyong, <https://www.adb.org/sites/default/files/publication/31167/gender-equality-cambodia-philippines-kazakhstan.pdf>

Emery R. (2013), *Cultural sociology of divorce: an encyclopaedia*, SAGE Publications, https://books.google.be/books?id=ix9zAwAAQBAJ&pg=PA636&lpg=PA636&dq=social+stigma+divorce+kazakhstan&source=bl&ots=wQeOCskG5r&sig=IVeBBphsd1piI3Gpt_kcqIBEp_A&hl=en&sa=X&ved=0ahUKEwixJj3l7jUAhVIU1AKHd9OD8sQ6AEILTAA#v=onepage&q=social%20stigma%20divorce%20kazakhstan&f=false (accessed 12 June 2017)

Eurasia Foundation of Central Asia (EFCA), Finland Ministry of Foreign Affairs, Caucasus Research Resources Centre (CRRC) (2011), *Equal before the law? A study of how citizens experience access to justice in Kazakhstan, Kyrgyzstan and Tajikistan*, http://www.geowel.org/files/ca_access_to_justice_final_report_in_english.pdf

KazWorld (2012), website, *Business Roadmap-2020*, <http://kazworld.info/?p=25401>

Knoema, Judges by sex, 2016 dataset, <https://knoema.com/UNECEJBS2015/judges-by-sex-2016?location=1000230-kazakhstan>

MDM Wage Indicator, *Working fathers in Kazakhstan*, <http://mdm.wageindicator.org/chart/paternity/398>

MDM Wage Indicator, *Working mothers in Kazakhstan*, <http://mdm.wageindicator.org/chart/maternity/398>

Republic of Kazakhstan, Ministry of National Economy (website), The official delegation of the Republic of Kazakhstan is participating in the annual 61st session of the United Nations Commission on the Status of Women, http://economy.gov.kz/en/news/detail.php?ELEMENT_ID=73124 (accessed 2 May 2017)

TMF Group (2016), website, *2016 Labour Code changes in Kazakhstan*, <https://www.tmf-group.com/en/news-insights/articles/2016/january/kazakhstan-labour-code-jan16/> (accessed 3 May 2017)

The Astana Times (2016), website, *Kazakhstan Makes Strides in Gender Equality; Issues of Labour Inclusion and Violence Remain*, <http://astanatimes.com/2016/12/kazakhstan-makes-strides-in-gender-equality-issues-of-labour-inclusion-and-violence-remain/> (accessed 1 May 2017)

United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) (2014), *Concluding observations on the combined third and fourth periodic reports of Kazakhstan - CEDAW/C/KAZ/CO/3-4*, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/KAZ/CO/3-4&Lang=En

CEDAW (2012), Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women – Combined third and fourth periodic reports – Kazakhstan - CEDAW/C/KAZ/3-4,

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKAZ%2f3-4&Lang=en

United Nations Committee on the Rights of the Child (2015), *Concluding observations on the fourth periodic report of Kazakhstan - CRC/C/KAZ/CO/4*,

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/KAZ/CO/4&Lang=En

United Nations International Children's Emergency Fund (UNICEF) (2016), FGM/C prevalence among girls aged 0 to 14 years (dataset), <https://data.unicef.org/topic/child-protection/female-genital-mutilation-and-cutting/>

United Nations Population Fund (UNFPA) (2014), *Child marriage in Kazakhstan (overview)*, <http://www.girlsnotbrides.org/reports-and-publications/unfpa-child-marriage-country-profile-kazakhstan/>

United States Department of State (2016), *Kazakhstan 2016 human rights report - Country Reports on Human Rights Practices for 2016*, <https://www.state.gov/documents/organization/265750.pdf> (accessed 12 June 2017)

World Bank (2014), Global Financial Inclusion Database (Findex), <http://datatopics.worldbank.org/financialinclusion/country/kazakhstan> (accessed 3 May 2017)

Zeinilova M. (2017), *An Alternative Approach to the Advancement of Women Political Participation in Non-Democratic Post-Soviet Regimes - Policy Paper – 2017, 5*, Dublin City University, <http://caspianet.eu/2017/04/07/alternative-approach-advancement-women-political-participation-non-democratic-post-soviet-regimes/>