



Feminist League

Kazakhstan

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Submitted by: Equality Now, the Public Movement Against Violence #NeMolchi.Kz and the Feminist League of Kazakhstan

Equality Now
Europe/Eurasia office
1 Birdcage Walk
London SW1H 9JJ
Phone: +44-207-304-6902
Email:
ukinfo@equalitynow.org
www.equalitynow.org

**Public Fund "The Public
Movement against Violence
#NeMolchi.Kz"**
Leader of the Movement: Dinara
Smailova
Director of the Fund: Almat
Mukhamedzhanov
Tel: +77024173477
Email: nemolchikz@mail.ru

**Feminist League of
Kazakhstan**
President: Yevgeniya
Kozyreva, Tel:
+77272387538
Email:
kazfemline@gmail.com

Introduction and Summary

1. Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 190 countries.
2. The public fund “The Public Movement Against Violence #NeMolchi.Kz” is based in Almaty, Kazakhstan but operates across the country and in Central Asia more broadly. Since July 2016, it has been working as a national public movement to protect the rights of women and children who have experienced different forms of violence. The majority of cases that it deals with are sexual abuse, but it also works on domestic violence, economic violence and bride kidnapping. It provides legal, psychological and social support to survivors, organizes trainings and seminars for youth and undertakes litigation in cases relating to child custody, property and alimony.
3. The Feminist League of Kazakhstan is an organization with ECOSOC status, based in Almaty in Kazakhstan and has been registered as an organization in 1994. It has been advocating for equality in all spheres of life, including economic, political, social, cultural and within the family unit. It engages in fighting against sexism in education, culture and the media, creating a space for feminist culture and examining laws relating to women and making recommendations to the Kazakh government.
4. In this submission, Equality Now, the public fund "The Public Movement against Violence #NeMolchi.Kz" and the Feminist League of Kazakhstan provide information as stipulated in the *Universal Periodic Review (Third Cycle): information and guidelines for relevant stakeholders' written submissions*. The submission deals with our concerns with regard to laws related to rape and other forms of sexual violence and practices which effectively deny access to justice for survivors of sexual violence. Specifically, Kazakhstan’s legal system provides a number of opportunities for perpetrators to escape criminal liability or punishment, namely through the way sexual violence crimes are defined; allowing for the direct release of a perpetrator from liability of punishment in certain circumstances; and through the way sexual violence crimes are investigated and prosecuted, including with respect to adolescent girls. This submission is in reference to Equality Now’s recent report, “Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia”ⁱ which identified gaps in the law, thereby allowing for actual and potential impunity for perpetrators of sexual violence crimes.
5. We reiterate the Conclusions adopted during the previous cycleⁱⁱ which enjoyed the support of Kazakhstan, and underline in particular the recommendations that Kazakhstan should adopt legislative measures to criminalize violence against women in line with international standards;ⁱⁱⁱ the need to strengthen its legislative framework through the criminalization of all forms of violence against women and children within the family;^{iv} putting in place legislation which formally criminalizes violence against women;^v and reforming legislation dealing with domestic violence against women to ensure that those violations are effectively investigated and perpetrators of such acts are prosecuted.^{vi}

Definitions of sexual violence crimes enabling impunity for perpetrators

6. Kazakhstan's Criminal Code provides an inadequate and limited definition of sexual violence crimes leaving many of the coerced and non-consensual acts of a sexual character without any punishment. In addition, classifying such offenses as less serious serves to obstruct proper justice for victims of sexual violence. Article 120 defines rape as sexual intercourse with the use of violence or threats of violence, of a female victim or other persons or abusing the helpless state of the victim, while Article 121(1) criminalizes "pederasty, lesbianism or other actions of a sexual character committed with the use of violence or with a threat thereof, with respect to a male (or female) victim or other persons, or with the use of the helpless state of the victim". Even though the law punishes forms of penetration other than vaginal penetration (as per Article 121), there is an extremely limited understanding that other forms of penetration also constitute rape/sexual violence and often the authorities tend not to initiate any criminal investigation in such cases. As a result, due to this limited interpretation, it has been virtually impossible to prove rape when penetration is not penile-vaginal, even in cases where there is additional violence, and the victim is instead perceived to be slandering the alleged perpetrator.

7. Violence and threat of violence, as elements of rape, are interpreted only by physical means, rather than also psychological or economic harm or of any other form of coercion. There is no definition of economic violence under the civil or criminal codes. In addition, threat of violence needs to be a threat of imminent violence. Threats of future violence, no matter how severe, are not considered as an element of rape. Whilst the victim may have suffered other additional forms of physical violence, they are not being recorded as separate offenses by the authorities. If the rape resulted in serious bodily harm, the courts will add greater punishment. However, in cases where rape is alleged but there is no additional serious physical harm, the courts may even dismiss the rape charge. It is common practice that nobody, including law enforcement and the courts, will believe that a rape was committed when there is no shouting, witnesses, resistance or additional injuries. The "helpless state of the victim" is included in the law as an alternative element to the requirement for additional violence on the part of the perpetrator, but in practice there does not appear to be any understanding about what this would entail.

8. Contrary to international and regional standards, Articles 120, 121 and 123 (which criminalizes compulsion to sexual acts) do not include the lack of voluntary and genuine consent on the part of the victim as a constituent element for sexual violence crimes. As well as neglecting the importance of willing consent, the reviewed sexual violence laws do not enumerate a wide range of coercive circumstances that can paralyze the will and the actions of the victim, such as abuse of trust and authority and situations of dependence as highlighted above, but also deceit.

Legal provisions allowing impunity for perpetrators of sexual violence

9. Contrary to international human rights standards, Kazakh law allows impunity for perpetrators of sexual violence if they "reconcile" with the victim. According to Article 68 of the Criminal Code, a person might not be found responsible for a crime if he reconciles with the victim and "compensates" the harm without further examination by the authorities. This

Article can also be applied in cases of rape (non-aggravated), violent actions of a sexual character, statutory rape and compulsion to perform sexual actions. Local groups report that there have been cases of rape and gang rape which did not reach the trial stage yet, but where investigators were found to be exerting pressure on the relatives to get the victim to close the case as the authorities did not want to harm their relationship with the perpetrators whom they knew. In such cases where there is undue pressure by investigators, victims and their relatives often stop pursuing legal justice and agree on a form of compensation. Pressure to “reconcile” directly exerted on the victims by the perpetrators is also a serious concern. There are however no official records or statistics on how many cases were closed like this.

10. Reconciliation is often used and abused with the result that perpetrators of sexual violence escape any form of criminal punishment or repercussions for their criminal behavior, including avoiding a criminal record. Such provisions serve to undermine and prevent survivors of rape and sexual violence from seeking justice.

11. Article 70 enables a perpetrator to be released from criminal responsibility due to change of circumstances, such as if it is established that at the time of the trial, the perpetrator ceased to be “socially dangerous”. This provision has often been abused to exonerate the perpetrators of sexual violence from responsibility after marriage to the victim. In the case of adolescent girls and statutory rape, their relatives and parents negotiate with the police to arrange the marriage with the perpetrator. The police are seen to always try to resolve statutory rape cases in this way without filing a case. In rural communities, local groups report that there have been cases where a victim would be forced to ‘marry’ one of the men who gang raped her in an attempt to ‘keep the village peace’. In some cases, they may later divorce. For relatives in these communities it is perceived as more important that the victim has been ‘married’ than have her family honour destroyed as a result of having being raped.

12. Local groups have reported that the police assist perpetrators to evade criminal responsibility by encouraging them to pay a relatively small amount over a period of time to the victim or assist perpetrators in ensuring that their case does not reach the trial stage. Such practices give impunity for gender-based violent crimes against women and girls.

Failure to provide mandatory prosecution for sexual violence

13. The lack of mandatory (ex officio) prosecution for sexual violence, as provided by the law, denies justice to survivors and is contrary to international human rights standards. Article 32 of the Criminal Procedure Code provides that for cases defined as ‘compulsion to perform sexual actions’ (Article 123 of the Criminal Code), they 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 to withdraw the complaint for any other reason. Rape and other violent sexual acts (Articles 120 and 121) qualify as private-public prosecution which again is initiated upon the claim of the victim and will be terminated in cases of reconciliation with the defendant. Such legal provisions deny justice to survivors, because the survivor, rather than the state, is required to bear the burden of the criminal proceeding, including when it comes to the collection of evidence required to prove the circumstances of the crime. These provisions also allow local law enforcement authorities to

discourage women from filing such claims and to postpone initiation of investigation, anticipating in practice that one way or another, a woman is likely to withdraw her claim. Moreover, there is often also pressure from relatives or family members on the victim to withdraw her complaint, and local groups report there have often been situations where the victims have been intimidated or bribed. Due to the clustering of the population in small, close-knit communities or enclaves, it is incredibly difficult for reports to be filed against perpetrators. There is also pressure on women to keep silent by the senior community leaders.

14. Moreover, local groups also assert that in practice that there is no distinction made between numerous acts of rape: multiple rapes by the same person will be considered as one act of rape despite the fact that Article 120 of the Criminal Code explicitly criminalizes multiple rapes by the same individual and imposes a graver penalty than for a single rape committed by the same individual.

15. Burdensome evidence requirements, gender stereotyping and secondary victimization throughout the legal proceedings further deny justice to survivors. There are no clear criteria or adequate awareness by authorities and investigators to evaluate the impact of rape on a victim's psychology and the subsequent trauma she endures, which influences her behavior throughout the criminal proceedings. In a case worked on by a contributor to this submission involving a 16 year old girl who was raped on a train by two train attendants, the investigators interrogated residents from the girl's village which served to re-traumatize her. There was no awareness or appreciation that in asking all residents about information pertaining to the case, this would publicize her personal ordeal and force her to re-live the traumatic experience. In another case, a 16 year old girl committed suicide two years after she reported that her step-father had raped her. In her suicide note, she wrote "nobody believes me".

16. Local groups report that the situation is particularly difficult for women and girls living in rural areas where it is often the case that they do not have enough knowledge or confidence to file a complaint and instead are easily dissuaded from accessing justice. If there are no witnesses, a victim living in a rural area will, in most cases, keep silent about the crime, while in cases where there are witnesses, there is a greater, yet still limited, chance that the case will be able to proceed.

17. There is a lack of common rules and procedures across the country, resulting in each investigator operating in his/her own way. This detrimentally affects the uniform application of justice and is difficult for victims to navigate within this system. Furthermore, local groups have expressed that there have been claims that investigators have impeded access to justice by assisting perpetrators to escape justice, without facing any legal repercussions themselves for obstructing justice. Examples include assisting perpetrators to flee and being influenced by their own personal relationship to the perpetrator.

Recommendations for Action by the Government of Kazakhstan

Equality Now, the Public Movement Against Violence #NeMolchi.Kz and the Feminist League of Kazakhstan respectfully call on the government of Kazakhstan to:

Definitions of sexual violence crimes

- 1) Amend Articles 120, 121 and 123 of the Criminal Code to ensure that the definitions of sexual violence crimes are in compliance with CEDAW and the Istanbul Convention and cover all forms of sexual acts committed without the victim's voluntary, genuine and willing consent, and include a wide range of coercive circumstances;
- 2) Ensure that sentences for sexual violence crimes (rape, sexual assault, compulsion to sexual intercourse, statutory rape, rape of a minor) are commensurate with the gravity of the acts by classifying sexual violence crimes in the more serious category;

End impunity for sexual violence

- 3) Make relevant amendments in the Criminal Code of Kazakhstan to ensure that perpetrators of sexual violence do not go unpunished based on "reconciliation" with the victim, or due to the "change of circumstances" of the perpetrator;

Mandatory investigation/prosecution for sexual violence crimes

- 4) Amend the Criminal Procedure Code of Kazakhstan to ensure that sexual violence crimes (rape, sexual assault, compulsion to sexual intercourse) are subject to mandatory investigation and prosecution by the state (ex officio, public prosecution). Ensure that the Criminal Code excludes private or public-private prosecution options for these crimes.

ⁱ The Report can be accessed at: https://www.equalitynow.org/roadblocks_to_justice

ⁱⁱ Report of the Working Group on the Universal Periodic Review on Kazakhstan, HRC 28th session, A/HRC/28/10

ⁱⁱⁱ As put forward by the state of Mexico

^{iv} As put forward by Belgium

^v As put forward by Sierra Leone

^{vi} As put forward by the Republic of Korea