

**International  
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## **An analysis of the current status of the fight against trafficking in persons in Kazakhstan**

*A briefing paper to the third session of the 2010 OSCE Review Conference*

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## **Introduction**

One of the objectives identified by the Kazakh OSCE Chairmanship for the OSCE Summit in Astana, which will take place on 1-2 December 2010, is to agree on intensified efforts to counter transnational threats, including trafficking in human beings.<sup>1</sup> It is a welcome initiative by the government of Kazakhstan to seek to promote more effective coordination and cooperation among the OSCE participating States in the combat against trafficking in persons. As OSCE chair-in-office, Kazakhstan is also in a good position to set an example for other OSCE states, in particular other Central Asian countries, with respect to national-level action to counteract trafficking in persons.

This briefing paper looks at measures taken by the authorities of Kazakhstan to counteract trafficking in persons during the past decade and seeks to assess the current status of the fight against trafficking in the country. Through an analysis of existing legislation and law enforcement practice, as well as a review of findings from NGO monitoring undertaken in this area, it summarizes progress made, highlights remaining problems and concerns, and identifies steps needed to further enhance the fight against trafficking and to improve the protection of trafficking victims. The briefing paper ends with a number of recommendations to the authorities of Kazakhstan.

## **Summary**

Trafficking in people has become a significant issue in Kazakhstan during the last ten years. Kazakhstan is a country of destination for trafficking victims from other countries in the Central Asian region, and thousands of trafficking victims are subjected to sexual exploitation and/or forced labor within its territory every year.

National legislation on trafficking in people adopted in 2006 generally provides a good basis for prosecuting and punishing trafficking-related crimes. A growing number of trafficking cases has also been investigated, prosecuted and punished in recent years. However, law enforcement practice in this area is often characterized by a non-holistic approach, which weakens the overall impact of the measures taken. In many cases, only some elements of the trafficking process are investigated and prosecuted. As a result, only individuals on the executing end of the process are held criminally accountable, while the actual organizers are given only administrative penalties or escape responsibility altogether.

There are also concerns that the authorities do not provide adequate protection to trafficking victims before, during and after the criminal processes in their cases. This applies in particular to foreign trafficking victims, who are often expelled for violations of migration legislation rather than assisted and protected as victims of crime.

Despite the increase in the number of criminal cases and prosecutions related to trafficking, most cases of trafficking are still never investigated or prosecuted in Kazakhstan. A major

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<sup>1</sup> See [http://www.osce.org/conferences/revcon\\_1\\_2010.html?page=46503](http://www.osce.org/conferences/revcon_1_2010.html?page=46503)

factor that can help explain this situation is the lack of a systematic approach to identifying trafficking victims in the country. Another important factor is the reluctance of trafficking victims to turn to or cooperate with law enforcement authorities because of mistrust toward these authorities and fear for their own safety and that of their families. In order to improve the situation, more effective measures are needed to train and equip law enforcement officials to identify and deal with trafficking victims, to root out corrupt law enforcement practices in this area and to protect trafficking victims.

In order to enhance the fight against trafficking, it would also be essential that the authorities would cooperate more closely with civil society on assisting and helping trafficking victims, in particular with respect to providing shelters for such victims. Law enforcement cooperation between the authorities of Kazakhstan and the authorities of the countries of origin of trafficking victims in the region is currently at an unsatisfactory level and would need to be developed.

### **Overview of the problem of trafficking in persons in Kazakhstan**

The problem of trafficking in persons resurged in Kazakhstan at the beginning of the current decade, and it is now estimated that up to 50,000 people become victims of trafficking in persons in Kazakhstan every year.<sup>2</sup>

Given its relatively high level of economic development, Kazakhstan constitutes a country of destination for trafficking victims from the other Central Asian countries. Almaty, which with its more than 1-million-strong population is not only the largest city in Kazakhstan but also a regional financial and business center, is a particularly attractive destination.

While Kazakhstan is primarily a country of destination for trafficking victims, its geographic location has also rendered it a transit country, and trafficking victims are brought through its territory to Russia and other third countries. At the same time, Kazakhstan remains a country of origin for trafficking victims, and citizens of the country continue to be brought abroad for the purpose of exploitation. In addition, the problem of internal trafficking of persons, whereby citizens of Kazakhstan are subjected to trafficking and exploitation within their own country, has assumed growing proportions.

According to the UN, sexual exploitation is the most widespread form of exploitation in the world, with women and children being the most frequent victims.<sup>3</sup> This form of exploitation is also a major feature of trafficking with destination in Kazakhstan. However, at the same time, trafficking for the purpose of labor exploitation is common. Faced with poverty and unemployment, many residents of other Central Asian countries are eager to come and work

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<sup>2</sup> “Все больше девушек и парней из Казахстана попадает в мировую секс-индустрию”, 26 November 2009, at <http://www.zakon.kz/155113-vse-bolshe-devushek-i-parnejj-iz.html>

<sup>3</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, February 2009, at [http://www.unodc.org/documents/human-trafficking/Global\\_Report\\_on\\_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Global_Report_on_TIP.pdf)

in Kazakhstan, even if this means agreeing to salaries and working conditions that local residents would not accept. These individuals are at high risk of becoming victims of trafficking and exploitation. Economic underdevelopment and unemployment in rural areas of Kazakhstan are also a major cause of internal trafficking in the country. In connection with the recent global economic crisis, the situation with respect to trafficking for the purpose of labor exploitation worsened as job opportunities decreased and people became increasingly desperate in their efforts to feed their families.

There is reason to assume that also other forms of trafficking than trafficking for the purpose of sexual and labor exploitation take place in Kazakhstan, e.g. trafficking in children for the purpose of illegal adoption, forced begging, and illegal trade and transplantation of organs. However, there is little information about such cases, either because there are few of them, or because they do not come to light.

When the problem of trafficking in persons first arose in Kazakhstan, there was a complete lack of acknowledgment of the problem. However, in recent years, the authorities have made important efforts to counteract trafficking. The country has acceded to the UN Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>4</sup>, which contains the most exhaustive definition of trafficking in persons that currently exists in international law. National legislation has also been developed (a law adopted in 2006 introduced significant changes to existing legislation), and an action plan for preventing and counteracting trafficking in persons for the years 2009-2011 sets out activities to be taken by different government departments in this area. However, despite significant progress, there are still serious gaps and shortcomings in the response of the Kazakh authorities to trafficking in persons. This issue will be further discussed in the subsequent sections of the briefing paper.

Moreover, while trafficking in persons to a high degree is a cross-border issue in Central Asia, and all the countries of the region have set out to fight it (including by signing and ratifying the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons), there has been little cooperation among the different countries at the practical level. This is also a factor that weakens the fight against trafficking in Kazakhstan.

### **National legislation on counteracting trafficking in persons**

One of the main conditions for a successful fight against trafficking in persons is adequate national legislation. Kazakhstan has taken a number of steps toward improving its legislation in recent years. In particular, in March 2006, new legislation was adopted to amend several national laws on issues relating to counteracting trafficking in persons. This step was taken in

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<sup>4</sup> Both are available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

response to pressure from international organizations and national NGOs, as well as to ensure compliance with the provisions of UN Convention against Transnational Crime and its Supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Kazakhstan signed both of these treaties in 2000, although it ratified them only in 2008.

In accordance with the law adopted in March 2006, in whose preparation the authors of this report actively participated, a number of articles of the Criminal Code (CC) of Kazakhstan were amended (see attachment 1). Cardinal changes were made to CC article 128<sup>5</sup>, which is a key provision for punishing trafficking in persons. Previously this provision penalized only certain aspects of trafficking, i.e. the recruitment, transit and transportation of people for purposes of sexual or other exploitation. The maximum penalty foreseen was eight years' imprisonment, while the punishment for the least severe offenses covered by the article ranged between a fine and up to one year in prison. In order to prosecute individuals under the article, it was necessary to prove that victims had been deceived by those recruiting them. As a result of the revision, the article was expanded to cover a broader scope of offenses, the punishment for which ranges between five years' imprisonment and 15 years' imprisonment with confiscation of property. The element of "deceit" of victims was abolished.

Also other CC articles<sup>6</sup> related to trafficking in persons were amended so as to provide for harsher penalties than previously. All trafficking-related crimes are now categorized as either crimes of medium severity, severe crimes, or especially severe crimes.

Despite the revision, CC article 128 unfortunately does not provide for a definition of trafficking in persons that is consistent with the definition laid down in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons.<sup>7</sup> There is only a note in CC article 125

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<sup>5</sup> Please refer to the appendix of the briefing paper for an unofficial translation of this article.

<sup>6</sup>These include articles 113 ("forced or illegal removal of human organs or tissues"), 125 ("kidnapping"), 126 ("unlawful deprivation of liberty"), 133 ("trafficking in minors"), and 275-1 ("illegal removal of organs and tissues from a dead body", which was introduced by the new law). For an unofficial translation of these articles, please see the appendix of the briefing paper.

<sup>7</sup> The definition is laid down in article 3 of the protocol. This article reads:  
For the purposes of this Protocol:

(a) "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, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of 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 the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt

explaining the term “exploitation”,<sup>8</sup> which is used in different CC articles related to trafficking, including key article 128.

On the whole, however, the Criminal Code of Kazakhstan currently provides a good basis for effective measures to prosecute and punish the perpetrators of crimes related to trafficking in persons.

Recent changes to the Criminal Procedural Code of Kazakhstan<sup>9</sup> provides for government compensation of the material damage suffered by victims of especially serious crimes, to which trafficking belongs, to the full extent as long as the amount does not exceed a maximum of 150 units of a monthly rate determined by the government of Kazakhstan.<sup>10</sup> The highest possible amount of compensation is currently equivalent to about 1500 USD.<sup>11</sup>

### **National law enforcement practice in the fight against trafficking in persons**

The number of criminal cases opened into trafficking-related crimes has increased considerably in recent years. According to figures from the Interior Ministry of Kazakhstan, a total of 271 criminal cases were opened into suspected offences related to trafficking in persons in 2009. This figure included 20 cases under CC article 128 (“trafficking in persons”); 16 cases under CC article 133 (“trafficking in minors”); 8 cases under CC article 125, part 3 (“abduction for the purpose of exploitation”); 8 cases under CC article 126 (“illegal deprivation of liberty for the purpose of exploitation”); and 7 cases under CC article 270 (“luring someone into prostitution”). However, most cases, or a total of 212 cases, were opened under CC article 271 (“organization or maintenance of establishments for prostitution and pandering”). Out of the total number of criminal cases opened, 265 were brought to court.

According to the latest figures from the Interior Ministry of Kazakhstan, in the first six months of 2010, 18 cases were opened under CC article 128 (“trafficking in persons”); 10 under CC article 133 (“trafficking in minors”); 8 under CC article 125, part 3 (“abduction for the purpose of exploitation”); 10 under CC article 126 (“illegal deprivation of liberty for the purpose of exploitation”); and 4 under CC article 270 (“luring someone in prostitution”). Again, a great majority of all new cases related to trafficking, or a total 110 cases, were opened under CC article 271 (“organization or maintenance of establishments for prostitution and pandering”).

The number of convictions for crimes related to trafficking in persons has also increased in recent years, although it remains at a clearly lower level than the number of cases opened. In

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of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

<sup>8</sup> Please refer to the appendix of the briefing paper for an unofficial translation of the wording of this note.

<sup>9</sup> Law No. 230-IV from 11 December 2009 (which entered into force as of 1 January 2010).

<sup>10</sup> P. 7 of article 75 of the Criminal Procedural Code of Kazakhstan. Please refer to the appendix of the briefing paper for an unofficial translation of this article.

<sup>11</sup> The government of Kazakhstan sets the monthly amount every year as a basis for the calculation of different fees and duties. In 2010, 1 unit of the pre-determined monthly amount is 1413 Tenge, or around 10 USD.



2009, a total of 198 people were convicted for trafficking-related crimes. Out of these, seven people were convicted under CC article 128 (“trafficking in persons”), nine under CC article 133 (“trafficking in minors”), 182 under CC article 271 (“organization or maintenance of establishments for prostitution or pandering”). Out of those convicted under CC article 271, only eight were convicted under the second part of the article, which is applicable when the prohibited acts have been committed by an organized group or repeatedly.

Out of those convicted, 21 individuals were convicted for trafficking for the purpose of sexual exploitation (an increase from 18 in 2008) and 3 for trafficking for the purpose of labor exploitation (a decrease from 6 in 2008). A total of 14 individuals were sentenced to 5-10 years’ imprisonment and nine to 2-5 years’ imprisonment. Only one person received a conditional sentence.<sup>12</sup> In comparison, in the years 2003-2006 (prior to the amendments of the CC discussed in the previous section), on average 5-6 people per year were convicted of trafficking-related offenses, and 11 out of 22 sentences handed down during the period were of a non-custodial character.<sup>13</sup>

As noted, an overwhelming number of all criminal cases related to trafficking in persons are currently pursued under CC article 271, which covers only certain elements of the complex process of trafficking, rather than under CC article 128, which covers trafficking in general. This is problematic for two major reasons. First, the maximum penalty foreseen under CC article 271 (up to five years’ imprisonment) is significantly less severe than that foreseen under CC article 128 (up to 15 year’s imprisonment with confiscation of property). Second, the use of CC article 271 often means that only those individuals that are on the “executing” end of the trafficking process (e.g. managers of brothels) are held criminally accountable. The actual owners of brothels and other places where exploitation of trafficking victims takes place (in most cases, these are members of organized criminal groups) are at best given administrative penalties for violations of migration regulations (concerning the use of foreign labor)<sup>14</sup>, and are often not punished at all.

Another matter of concern is that trafficking victims often are not provided adequate protection and assistance. Existing legislation<sup>15</sup> allows for the possibility of adopting protection measures even before a criminal case has been opened with respect to individuals who help avert or disclose a crime if they are deemed to be at a real risk of violence or other unlawful action. However, in practice, protection measures are typically only adopted after trafficking victims (or witnesses in trafficking cases, who also often are trafficking victims)

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<sup>12</sup> US Department of State, *Trafficking in Persons Report 2010*, at <http://www.state.gov/g/tip/rls/tiprpt/2010/>

<sup>13</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, February 2009, at [http://www.unodc.org/documents/human-trafficking/Global\\_Report\\_on\\_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Global_Report_on_TIP.pdf)

<sup>14</sup> Such penalties are handed out under article 396 of the Code on Administrative Violations of the Republic of Kazakhstan, which concerns violations of regulations on engaging and using foreign work force in Kazakhstan and provides for penalties in the form of fines ranging from ten-twenty pre-determined monthly amounts (in the case of physical individuals) up to 300-500 pre-determined monthly amounts (in the case of large businesses). Please refer to the appendix of the briefing paper for an unofficial translation of this article.

<sup>15</sup> Law No 72-11 (on state protection of participants in criminal processes) from 5 July 2000.

have been recognized as participants in a criminal process and have submitted a special request for protection. The protection is only in force as long as the criminal process is under way, meaning that the victims are left without protection when the criminal process has ended.

Moreover, in many cases, trafficking victims who have been brought illegally into Kazakhstan from other countries are charged with violations of migration rules and subsequently expelled from the country on the basis of administrative court decisions. This means that they are punished instead of receiving assistance and protection as victims of crimes. According to existing legislation<sup>16</sup>, foreigners who are victims in legal processes concerning serious or especially serious crimes (to which trafficking belongs) have the right to remain in country until these processes are over. However, this provision appears to be rarely implemented in practice.

While there has been an increase in the number of criminal cases and convictions related to trafficking in the recent period, most cases of trafficking are still never investigated or prosecuted. There are many factors that contribute to this, but among the most important ones are a lack of systematic efforts to detect trafficking cases, as well as unwillingness on the part of trafficking victims to turn to law enforcement authorities because they do not trust that this will help them and/or because they fear for their own and their relatives safety. These issues will be further explored in the following section.

### **Insights from interviews conducted with trafficking victims**

As part of a project implemented by the NGO “Charter for Human Rights” and funded by the OSCE Center in Astana, one of the authors of this briefing paper carried out monitoring among possible victims of trafficking in persons in Almaty and neighboring areas in April-July 2010.

While the monitoring was small-scale, it resulted in a number of important observations that can help shed light on the situation with respect to trafficking in persons in Kazakhstan and inform the further elaboration of strategies to counter-act trafficking and to identify and assist victims.

The monitoring was undertaken in 1) temporary detention facilities of district Ministry of Interior departments in the city of Almaty and the Almaty oblast, 2) a special reception-relocation center in the city of Almaty for individuals who lack documents and a permanent place of residence, and 3) Ministry of Interior centers for temporary isolation, adaption and rehabilitation of under-age children in the city of Almaty and the Almaty oblast, where children who have been temporarily taken into care are held. The objective of the monitoring was to identify victims of trafficking by conducting interviews, using specially designed questionnaires.

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<sup>16</sup> See Article 4 of the Law “On the Legal Status of Foreigners in the Republic of Kazakhstan” and Article 56 of the Administrative Violations Code of the Republic of Kazakhstan. Please refer to the appendix for an unofficial translation of both of these provisions.

A total of 390 people were interviewed, including 100 children. Out of these, 29 adults and 7 children were determined to be victims of trafficking. Among the victims were citizens of Kazakhstan, Kyrgyzstan, Uzbekistan and the Russian Federation, as well as stateless persons. Most were found to have been subjected to sexual exploitation (24), and the rest (12) to labor or mixed forms of exploitation. The victims received legal and other forms of assistance according to their needs. Seventeen of them participated in a legal process against the owners of a prostitution establishment in an Almaty hotel, in which the latter were convicted.

The results of the monitoring reinforced the impression that the actual number of victims of trafficking in Kazakhstan is much greater than the number of victims reported by law enforcement authorities and that more systematic efforts to identify victims urgently are needed.

During the interviews that were conducted, it was evident that the trafficking victims often felt intimidated and had received instructions from their exploiters for how to answer questions by police or others. For example, they gave standard answers to questions about their ID documents or the way in which they had been recruited and provided false personal information. It was only when they had developed trust for the monitors that they agreed to provide correct information.

It generally took a lot of efforts to convince the victims about the benefits of turning to police. Many of them were unwilling to seek the assistance of law enforcement authorities because of fear and mistrust, which often were related to previous bad experiences. A number of victims recounted how law enforcement officials provided “protection” to the owners of prostitution establishments in return for bribes. For example, law enforcement officials warned the owners of upcoming police raids and brought back trafficking victims who had managed to escape. In some cases, the accounts of victims suggested that police officers were directly involved in trafficking. These observations underscore the need for more effective measures to fight corruption among law enforcement authorities in this area.

The monitoring also showed that a major factor contributing to the vulnerability of trafficking victims is the lack of ID documents. The trafficking victims who originated from other countries had often had their documents confiscated while they were still in their home countries and had thereafter been brought illegally to Kazakhstan. As these individuals have not formally crossed the border to Kazakhstan, they do not officially exist in the view of the authorities of Kazakhstan. Among the trafficking victims identified were also citizens of Kazakhstan who had lost their ID documents for different reasons and were driven into hands of exploiters because they were not able to work legally.

Moreover, the monitoring indicated that children from risk groups, such as orphans, mentally handicapped and other institutionalized children, are particularly vulnerable to becoming victims of trafficking. It would be important to study this issue more closely and to give more attention to protecting children who belong to risk groups.

The monitoring also showed that it is important to take into consideration the fact that children relate differently to trafficking experiences than adults and do not always realize that they are victims of exploitation. Only one of the children identified as trafficking victims in the course of the monitoring acknowledged that she was a victim of sexual exploitation.

However, generally it can be noted that centers for temporary isolation, adaption and rehabilitation of under-age children are in a key position to identify and provide legal and psychological assistance to child victims of trafficking. In this respect, there is a better starting point for efforts to identify and assist child victims of trafficking than adult victims.

### **The importance of a systematic approach to identifying trafficking victims**

In order to enhance the fight against trafficking in Kazakhstan, it would be essential to ensure that cases of trafficking are uncovered in a more systematic and timely manner. This necessarily entails the development and implementation of more effective mechanisms for identifying victims of trafficking, especially foreign victims who now often are expelled for violations of migration legislation.

Police officers, part of whose job picture it is to deal with victims of trafficking, ought to be well prepared for this task and have sound knowledge of what trafficking is. It should also be part of the regular responsibilities of police officers, who are working in general and specialized detention facilities and institutions across Kazakhstan, to question possible victims of trafficking with a view to determining whether they are indeed victims of such crimes. For this purpose, existing questionnaires used by international organizations and law enforcement authorities in other countries (for example, in the United States and Latvia) should be employed.

Moreover, efforts to identify trafficking victims should be undertaken as part of broader efforts to assist and protect victims. More cooperation and coordination by law enforcement authorities and civil society are also needed for this purpose. There are already examples of successful cooperation between law enforcement authorities and NGOs in this area, in particular at the informal level whereby law enforcement officials direct trafficking victims to NGOs they know provide practical assistance and help to such victims.

Another important step would be to step up government support for shelters for trafficking victims. These are places where trafficking victims can receive legal and other assistance and enjoy safety, including in cases where they choose not to cooperate with law enforcement authorities as that does not reduce their need for assistance and protection. There are currently three shelters for trafficking victims in Kazakhstan – one each in the cities of Almaty, Astana and Kokshetay. They are all run by NGOs, and only the one in Astana is partly financed by government means. It would be essential that the government would allocate more funding to support the operation of shelters and that funding would be provided on a permanent basis. This would be consistent with the obligation of the government to help and assist trafficking victims.

## **Recommendations to the authorities of Kazakhstan**

- Use the Astana summit as an opportunity to make a commitment to ensuring that Kazakhstan is a country that leads the way in the fight against trafficking in people;
- Further improve national legislation in the area of trafficking in persons to ensure that it fully corresponds with international standards and that there are no gaps that allow individuals guilty of trafficking to escape responsibility. In particular, ensure that there is a clear distinction between criminal and administrative responsibility for offenses related to forced labor and strengthen the penalty for the organization or maintenance of establishments for prostitution and pandering by an organized group (CC article 271, part 2);
- Ensure that legislation on trafficking in persons is implemented adequately and consistently and that criminal cases related to trafficking, whenever possible, are opened under the general trafficking provision of the CC (article 128);
- Elaborate and implement a more systematic approach to identifying trafficking victims. To this end, ensure that law enforcement officials working in detention facilities and institutions regularly conduct interviews, using specially designed questionnaires, with a view to identifying trafficking victims;
- Provide specialized training to law enforcement officials on working with victims of trafficking and investigating trafficking cases;
- Take adequate measures to ensure the safety of victims and witnesses in criminal processes in trafficking-related cases, including by implementing the legal provision that allows foreign victims of trafficking to stay in the country as long as legal processes in their cases are under way;
- Do not limit state assistance to trafficking victims who cooperate with law enforcement authorities;
- Take effective measures to counteract and put an end to corruption among law enforcement authorities in this area, including by promptly and thoroughly investigating any allegations that law enforcement officials have cooperated with traffickers and by bringing to justice those responsible;
- Cooperate closely with civil society on measures taken in the fight against trafficking, in particular on identifying and assisting victims;
- Provide government funding for shelters for trafficking victims on a permanent basis;
- Step up cross-border cooperation with other Central Asian countries on trafficking issues.

## Appendix: Excerpts from national legislation related to trafficking in people

*Note: The translation of the excerpts from the legislation of Kazakhstan, which are provided below, is of an unofficial character. For official wording of the legislation in question, please refer to the Russian version of the briefing paper, which also covers additional legal provisions that are not included here.*

### 1. A comparison of articles of the Criminal Code of Kazakhstan related to trafficking in persons before and after the adoption of new legislation on counter-acting trafficking in persons in March 2006

	Until 2 March 2006	After 2 March 2006
<b>1.</b>	<b>Article 113: Forced removal of human organs or tissues for transplantation or other use</b>	<b>Article 113: Forced or illegal removal of human organs and tissues</b>
	<p>1. Forced removal of human organs or tissues for the purpose of transplantation or other use, when committed by means of violence or threats of violence, shall be punished by imprisonment for a term of up to five years, with or without deprivation of the right to hold certain positions or to engage in certain activity for a period of up to three years.</p> <p>2. The same act committed:</p> <p>a) with regard to a person who is in a helpless state or who is materially or otherwise dependent upon the guilty party if the latter was aware of these circumstances;</p> <p>b) with regard to a minor if the guilty party was aware of this fact;</p> <p>c) with regard to two or more persons, shall be punished by imprisonment for a term of three to seven years.</p> <p>3. The acts envisaged in the first or second part of the present article, if they entailed causing the death of the donor by negligence, or other serious consequences shall be punished by imprisonment for a term of five to ten years.</p>	<p>1. Forced or illegal removal of human organs and tissues for the purpose of transplantation or other use, as well as illegal trade in human organs and tissues, shall be punished by imprisonment for a period of up to five years, with or without deprivation of the right to hold certain positions or to engage in certain activity for a period of up to three years.</p> <p>2. The same act committed:</p> <p>a) with regard to a person who is in a helpless state if the guilty party was aware of this circumstance;</p> <p>b) with regard to a minor if the guilty party was aware of this fact;</p> <p>c) with regard to two or more persons,</p> <p>d) by a group of persons, a group of persons upon prior agreement or an organized group;</p> <p>e) repeatedly;</p> <p>f) with the use of weapons or objects used as weapons;</p> <p>g) with regard to a pregnant woman if the guilty party was aware of her condition;</p> <p>h) by means of deceit or breach of confidence;</p> <p>i) by means of abuse of power;</p> <p>j) through exploitation of a position of material or other dependence of the victim, shall be punished by imprisonment for a period of five to seven years with or without deprivation of the right to occupy certain posts or engage in certain activity for a term of up to three years.</p> <p>3. The acts envisaged in the first or second part of the present article if they entailed causing the death of the donor by negligence, or other serious consequences, shall be punished by imprisonment for a term of seven to ten years with or without deprivation of the right to occupy certain posts or engage in certain activity for a term of up to three years.</p>
<b>2.</b>	<b>Article 125: Kidnapping</b>	<b>Article 125: Kidnapping</b>
	<p>1. Kidnapping of a person shall be punished by deprivation of liberty for a period of four to seven years.</p> <p>2. The same act committed:</p>	<p>1. Kidnapping of a person shall be punished by deprivation of liberty for a period of four to seven years.</p> <p>2. The same act committed:</p>

	<p>a) by a group of people upon prior agreement;  b) repeatedly;  c) by means of violence dangerous to life or health;  d) with the use of weapons or objects used as weapons;  e) with regard to a minor if the guilty party was aware of this fact;  f) with regard to a pregnant woman if the guilty party was aware of her condition;  g) with regard to two or more persons;  h) for profit purposes,  shall be punished by imprisonment for a period of seven to twelve years, with or without confiscation of property.</p> <p>3. The acts envisaged in the first or the second parts of this article, if they:  a) were committed by an organized group;  b) were committed for the purpose of subjecting the kidnapped person to sexual or other forms of exploitation;  c) entailed causing the death of the victim by negligence or other grave consequences,  shall be punished by imprisonment for a term of ten to fifteen years, with or without confiscation of property.</p> <p><b>Note.</b> A person who voluntarily releases a kidnapped person shall be exempt from criminal liability, unless there are elements of another crime in his/her actions.</p>	<p>a) by a group of people upon prior agreement;  b) repeatedly;  c) by means of violence dangerous to life or health;  d) with the use of weapons or objects used as weapons;  e) with regard to a minor if the guilty party was aware of this fact;  f) with regard to a pregnant woman if the guilty party was aware of her condition;  g) with regard to two or more persons;  h) for profit purposes,  shall be punished by imprisonment for a term of seven to twelve years, with or without confiscation of property.</p> <p>3. The acts envisaged in the first or the second parts of this article, if they:  a) were committed by an organized group;  b) were committed for the purpose of exploiting the kidnapped person;  c) entailed causing the death of the victim by negligence or other serious consequences,  shall be punished by imprisonment for a period of ten to fifteen years, with or without confiscation of property.</p> <p><b>Notes:</b></p> <p>1. A person who voluntarily releases a kidnapped person shall be exempt from criminal liability, unless there are elements of another crime in his/her actions.</p> <p>2. In the present article, and in articles 126, 128, 133 of the present Code, exploitation of a person shall mean the use of forced labor, prostitution or other services of a person for the purpose of appropriating the earned income, as well as exercising authority as proprietor in relation to a person who for reasons not dependent on him/her cannot refuse to carry out a job or a service.</p>
<p><b>3.</b></p>	<p><b>Article 126: Illegal deprivation of liberty</b></p>	<p><b>Article 126: Illegal deprivation of liberty</b></p>
	<p>1. Illegal deprivation of a person's liberty, which is not associated with the kidnapping of this person, shall be punished by restriction of liberty for a term of up to three years, detention under arrest for a term of three to six months, or imprisonment for a term of up to three years.</p> <p>2. The same act committed:  a) by a group of persons upon prior agreement;  b) repeatedly;  c) by means of violence dangerous to life or health;  d) with the use of weapons or objects used as weapons;  e) with regard to a minor if the guilty part was aware of this fact;  f) with regard to a pregnant woman if the guilty part was aware of her condition;  g) with regard to two or more persons;  h) for profit purposes</p>	<p>1. Illegal deprivation of a person's liberty, which is not associated with the kidnapping of this person, shall be punished by restriction of liberty for a term of up to three years, detention under arrest for a term of three to six months, or imprisonment for a term of up to three years.</p> <p>2. The same act committed:  a) by a group of persons upon prior agreement;  b) repeatedly;  c) by means of violence dangerous to life or health;  d) with the use of weapons or objects used as weapons;  e) with regard to a minor if the guilty party was aware of this;  f) with regard to a pregnant woman if the guilty party was aware of her condition;  g) with regard to two or more persons;  h) for profit purposes;</p>

	<p>shall be punished by imprisonment for a period up to five years, with or without confiscation of property.</p> <p>3. The acts envisaged in the first or second part of this article, if they:</p> <p>a) were committed by an organized group;</p> <p>b) were committed for the purpose of sexual or other exploitation of the person illegally deprived of liberty;</p> <p>c) entailed causing the death of the victim by negligence or other serious consequences, shall be punished by imprisonment for a term of five to ten years, with or without confiscation of property.</p>	<p>i) through of exploitation of a position of material or other dependence of the victim shall be punished by imprisonment for a term of up to five years, with or without confiscation of property.</p> <p>3. The acts envisaged in the first or second part of this article, if they:</p> <p>a) were committed by an organized group;</p> <p>b) were committed for the purpose of exploiting the person illegally deprived of freedom;</p> <p>c) entailed causing the death of the victim by negligence or other serious consequences, shall be punished by imprisonment for a term of five to ten years, with or without confiscation of property.</p>
4.	<b>Article 128: Recruitment, as well as transport and transit of persons for exploitation</b>	<b>Article 128: Trafficking in people</b>
	<p>1. Recruitment of persons for the purpose of sexual or other exploitation, when committed by way of deception, shall be punished by a fine in the amount of one hundred to five hundred monthly assessment indicators, or in the amount of two to five monthly wages or other monthly income of the guilty party; by correctional labor for a term of up to two years; by the restriction of liberty for a term of up to two years; by detention under arrest for a term of up to six months; or by imprisonment for a term of up to one year.</p> <p>2. The same act committed:</p> <p>a) by a group of persons upon prior agreement;</p> <p>b) with regard to a minor, if the guilty part was aware of this fact, shall be punished by imprisonment for a term of up to five years.</p> <p>3. The acts envisaged in the first or the second part of this article when committed by an organized group, or when committed with a view to bringing recruited persons outside of the Republic of Kazakhstan, as well as bringing recruited persons, who are being transported from one foreign state to another, out of the Republic of Kazakhstan or through the territory of the Republic of Kazakhstan for the purpose of sexual or other exploitation shall be punished by imprisonment for a term of three to eight years, with or without confiscation of property.</p>	<p>1. Purchase-sale or other trade transactions concerning a person, as well as exploitation of him/her or recruitment, transportation, transfer or harboring of him/her, and also other acts perpetrated with the objective of exploitation shall be punished by imprisonment for a term of up to five years with or without confiscation of property.</p> <p>2. The same acts commissioned:</p> <p>a) by a group of persons upon prior agreement;</p> <p>b) repeatedly;</p> <p>c) by means of violence that is dangerous to life and health, or threats to use such violence;</p> <p>d) with the use of weapons or objects used as weapons;</p> <p>e) with regard to a pregnant woman if the guilty person was aware of her condition;</p> <p>f) concerning two and more persons;</p> <p>g) with a view to removing organs or tissues of the victim for the purpose of transplantation or other use;</p> <p>h) by means of deceit or breach of confidence;</p> <p>i) by means of abuse of power;</p> <p>j) by means of exploitation of a position of material or other dependence of the victim shall be punished by imprisonment for a term of five to seven years with or without confiscation of property.</p> <p>3. The acts envisaged in the first or second part of the present article, when commissioned with a view to bringing a person out of or into the Republic of Kazakhstan, or to transporting a person from one foreign state to another through the territory of the Republic Kazakhstan, as well as bringing a person into or out of the Republic of Kazakhstan, or transporting a person from one foreign state to another through the territory of the Republic Kazakhstan with a view to committing such acts shall be punished by imprisonment for a term of seven to ten years with or without confiscation of</p>



		<p>property.</p> <p>4. The acts envisaged in the first, second or third part of the present article, if they were:</p> <p>a) commissioned by an organized group;</p> <p>b) entailed causing the death of the victim by neglect or other serious consequences,</p> <p>shall be punished by imprisonment for a term of seven to fifteen years with property confiscation.</p>
<b>5.</b>	<b>Article 133: Trafficking in minors</b>	<b>Article 133: Trafficking in minors</b>
	<p>1. Purchase and sale of a minor, or the commission of other transactions with regard to a minor in the form of transferring or obtaining possession of him/her, shall be punished by imprisonment for a term of two to seven years.</p> <p>2. The same acts committed:</p> <p>a) repeatedly;</p> <p>b) with regard to two or more minors;</p> <p>c) by a group of persons upon prior agreement or by an organized group;</p> <p>d) by means of abuse of power;</p> <p>e) together with the act of illegally bringing the minor out of the Republic of Kazakhstan, or illegally bringing him/her into the Republic of Kazakhstan;</p> <p>f) with a view to involving the minor in the commission of a crime or other anti-social activities;</p> <p>g) with a view to removing organs or tissues of the minor for the purpose of transplantation, shall be punished by imprisonment for a term of three to ten years, with or without confiscation of property.</p> <p>3. The acts envisaged in the first or second part of the present article when they entailed causing the death of the minor by negligence or other serious consequences, shall be punished by imprisonment for a term of seven to fifteen years with or without confiscation of property.</p>	<p>1. Purchase-sale or other trade transactions concerning a minor, as well as exploitation of him/her or recruitment, transportation, transfer or harboring of him/her, and also other acts perpetrated with the objective of exploitation shall be punished by imprisonment for a term of five to seven years with or without confiscation of property.</p> <p>2. The same acts committed:</p> <p>a) by a group of people upon prior agreement;</p> <p>b) repeatedly</p> <p>c) with the use of violence that is dangerous to life and health, or threats to use such violence;</p> <p>d) with the use of weapons or objects used as weapons;</p> <p>e) with regard to two or more minors</p> <p>f) with a view to removing organs or tissues from the victim for the purpose of transplantation or other use</p> <p>g) by means of deceit or breach of confidence;</p> <p>h) by means of abuse of power;</p> <p>i) with a view to involving the minor in the commission of a crime or other anti-social activities</p> <p>j) by means of exploitation of a position of material or other dependence of the victim shall be punished by imprisonment for a term of seven to ten years, with or without confiscation of property.</p> <p>3. The acts envisaged in the first or second part of the present article, when commissioned with a view to bringing a minor out of or into the Republic of Kazakhstan, or transporting a minor from one foreign state to another through the territory of the Republic Kazakhstan, as well as bringing a minor into or out of the Republic of Kazakhstan, or transporting a minor from one foreign state to another through the territory of the Republic Kazakhstan with a view to committing such acts shall be punished by imprisonment for a term of ten to twelve years with or without confiscation of property.</p> <p>4. The acts envisaged in the first, second of third part of the present article, if they were:</p> <p>a) commissioned by an organized group;</p> <p>b) entailed causing the death of the minor by negligence or other serious consequences shall be punished by imprisonment for a term of</p>

		twelve to fifteen years with or without confiscation of property.
6.		<b>Article 275-1: Illegal removal of organs or tissues from a human corpse</b>
		<p>1. Illegal removal of organs or tissues from a human corpse for the purpose of transplantation or other use, as well as the conduct of transactions in organs and tissues of a human corpse shall be punished by imprisonment for a term of up to five years, with or without deprivation of the right to occupy certain posts or to engage in certain activity for a term of up to three years.</p> <p>2. The same acts when committed:</p> <p>a) by a group of persons, by a group of persons upon prior agreement or by an organized group;</p> <p>b) repeatedly;</p> <p>c) by means of abuse of power,</p> <p>shall be punished by imprisonment for a term of five to seven years with or without deprivation of the right to occupy certain posts or to engage in certain activity for a term of up to three years.</p>

**2. Articles of the Criminal Code of the Republic of Kazakhstan related to Prostitution  
- prior to and after the entry into force of amendments on 1 January 2010  
(on the basis of Law no. 227-IV of 10 December 2009)**

The articles as they read prior to 1 January 2010	The articles as they read as of 1 January 2010
<p><b>Article 270: Luring into prostitution</b></p> <p>1. Drawing into prostitution by means of violence or a threat to use violence, exploiting an individual's position of dependence, blackmail, destroying or damaging property, or deceit, shall be punished by a fine in the amount of two hundred to five hundred monthly assessment indicators, or in the amount equivalent to two to five monthly wages or other income of the guilty party, or by imprisonment for a period of up to five years.</p> <p>2. The same act committed by an organized group, as well as by a person previously convicted for luring into prostitution, the organization or maintenance of establishments for prostitution, or pandering, shall be punished by imprisonment for a period of three to seven years.</p>	<p><b>Article 270: Luring into prostitution</b></p> <p>1. Luring someone into prostitution by means of violence or a threat to use violence, exploiting an individual's position of dependence, blackmail, destroying or damaging property, or deceit, shall be punished by a fine in the amount of two hundred to five hundred monthly assessment indicators, or in the amount equivalent to two to five monthly salaries or other monthly income of the guilty party, or by imprisonment for a period up to five years.</p> <p>2. The same act committed by an organized group or repeatedly shall be punished by imprisonment for a period of three to seven years.</p>
<p><b>Article 271: Organizing or maintaining establishments for prostitution and pandering</b></p> <p>1. Organizing or maintaining establishments for prostitution, as well as pandering for profit purposes, shall be punished by a fine in the amount of five hundred to one thousand monthly assessment</p>	<p><b>Article 271: Organizing or maintaining establishments for prostitution and pandering</b></p> <p>1. Organizing or maintaining establishments for prostitution, as well as pandering for profit purposes shall be punished by a fine in the amount of five hundred to one thousand monthly assessment indicators, or in the amount of five to twelve monthly wages or other monthly</p>

<p>indicators, or in the amount of five to twelve monthly wages or other monthly income of the person convicted, or by imprisonment for a period of up to three years.</p> <p>2. The same acts committed by an organized group, as well as by a person previously convicted for organizing or maintaining establishments for prostitution, pandering, or luring into prostitution, shall be punished by imprisonment for a period of up to five years.</p>	<p>income of the person convicted, or by imprisonment for a period of up to three years.</p> <p>2. The same acts committed by an organized group, or repeatedly shall be punished by imprisonment for a period up to five years.</p>
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**3. Legal provisions related to the legal status of foreigners and stateless persons who are victims of trafficking in people (as these provisions read following the entry into force of new legislation on counter-acting trafficking in persons in March 2006)**

**Article 56 of the Administrative Violations Code of the Republic of Kazakhstan: Administrative expulsion of foreigners or stateless person from the Republic of Kazakhstan**

1. Administrative expulsion of foreigners or stateless persons from the Republic Kazakhstan is implemented by a judge as an administrative penalty in the order and on the grounds provided by the particular part of the present Code.

2. If, in the course of the administrative process, a person, in relation to whom administrative expulsion from the Republic of Kazakhstan may be applied, provides information about an act perpetrated in relation to him/her that is recognized in accordance with the Criminal Code of the Republic Kazakhstan as serious or especially serious crime, the consideration of the case about an administrative offense concerning this person is postponed until a decision on the statement or petition has been made in the order established by article 185 of the Criminal Procedural Code of the Republic Kazakhstan.

**Article 4 of the Law “On the Legal Status of Foreign Citizens in the Republic of Kazakhstan”: Foreign citizens who reside permanently or temporarily in the Republic of Kazakhstan**

**Part 3:** Foreign citizens who dwell in the Republic Kazakhstan on some other legal basis, and who have been recognized as victims following the perpetration in relation to them of acts that are recognized as serious or especially serious in accordance with the Criminal Code of the Republic Kazakhstan are considered to be temporary residents of the Republic of Kazakhstan. They are obliged to register in the established order and to leave the Republic of Kazakhstan after the expiration of the term of residence determined in their cases.

**4. Legal provision regarding the illegal employment of foreign work force (as this provision reads following the entry into force of new legislation on counteracting trafficking in March 2006)**

**Article 396 of the Administrative Violations Code of the Republic of Kazakhstan: Violations of the rules for engaging and using foreign work force in the Republic of Kazakhstan**

**Part 1:** Employment of foreigners and stateless persons, who are staying independently in the territory of the Republic of Kazakhstan, without appropriate permission of the authorized body or after obtaining such permission fraudulently; use of the work of unlawful immigrants; and the commission by officials of notary or any other form of judicial (law imitating?) actions in relation to unlawful immigrants, shall be penalized by a fine in the amount of ten to twenty monthly assessment indicators, and in the case of officials, in the amount of twenty to twenty five monthly assessment indicators, and in the case of legal persons in the amount of three hundred to five hundred monthly assessment indicators.