

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: +1-212-290-4700
Fax: +1-212-736-1300; 917-591-3452



hrw.org

November 27, 2019

Reference # K025-N112619

Mr. Nurdauletov Gizat Daurenbekovich
Prosecutor General of the Republic of Kazakhstan
010000, the Republic of Kazakhstan, Nur-Sultan city,
Mangilik El avenue, 14
Chancery: +7 (7172) 71-28-68

Via postal mail: DHL

Dear Prosecutor General Nurdauletov Gizat Daurenbekovich,

Please accept my regards on behalf of Human Rights Watch. As you may know, Human Rights Watch is an independent, non-partisan, nongovernmental organization that monitors human rights in more than 90 countries and makes recommendations on how to more effectively promote their protection. We have conducted research on human rights conditions in Kazakhstan for more than 30 years, including on freedom of speech, freedom of assembly, workers' rights, and rights of children with disabilities. We have researched and reported on violations of the rights of women in countries including Kyrgyzstan, the United Arab Emirates, India, Tanzania, Nepal, Hungary, and Russia in the past years. And, as you are aware, on October 17 we released a report on domestic violence in Kazakhstan. We attach it here for your convenience.

To ensure that our publication included the Kazakh government's perspective and views and accurately referenced the authorities' efforts to prevent and address domestic violence against women in Kazakhstan, we sent a comprehensive request for information to the Ministry of Foreign Affairs on September 23 prior to the release of our report. On October 16 we received a letter from your office in response to our request. Unfortunately, due to the late nature of the response, we were unable to reflect it in the report.

We are grateful for the letter and appreciate the readiness of your office to engage with us on this important issue. We would like to reply to the information provided in your October 16 letter.

We note that a draft law presently before the Mazhilis, the lower chamber of Parliament, amending the criminal procedure codes, has a provision that would transfer the offence of "torment" (Criminal Code art. 110) from private to private-public prosecution, and increase the penalty that can be imposed for the offence from three to four years in prison, including in cases of domestic violence.

Europe and Central Asia
Division

Hugh Williamson, Director
Rachel Denber, Deputy Director
Benjamin Ward, Deputy Director
Philippe Dam, Advocacy Director
Tanya Lokshina, Associate Director
Inna Khodzhaeva, Moscow Office Director
Giorgi Gogia, Associate Director
Emma Sinclair-Webb, Turkey Director
Judith Sunderland, Associate Director
Damelya Aitkhozhina, Researcher
Lydia Gall, Researcher
Yulia Gorbunova, Researcher
Mihra Rittmann, Senior Researcher
Steve Swerdlow, Researcher
Eva Cosse, Researcher
Kartik Raj, Researcher
Vladislav Lobanov, Research Assistant
Anahit Chilingaryan, Research Assistant
Oksana Antipova, Associate
Viktoria Kim, Senior Coordinator
Catherine Plishvili, Senior Associate
Elida Vikic, Associate
Aichurek Kurmanbekova, Research Assistant

ADVISORY Committee

Catherine Zennström, Chair
Jean Paul Marthoz, Vice-chair
Henri Barkey
Gerhart Baum
Rudolf Bindig
Yves Robert-Charrue
Alexander Cooley
Stephen Del Rosso
Felice Gaer
Michael Gellert
Miklós Haraszti
Alice H. Henkin
Jeri Laber
Walter Link
Masha Lipman
Helena Luczywo
Jane Olson
László Jakab Orsós
Arjan Overwater
Kimberly Marteau Emerson
Glenda Nühn-Morris
Can Paker
Lucy Pereira
Signe Rossbach
Colette Shulman
Leon Sigal
Malcolm Smith
Mark von Hagen
Joanna Weschler

Human Rights Watch

Kenneth Roth, Executive Director
Michele Alexander, Deputy Executive Director,
Development and Global Initiatives
Nicholas Dawes, Deputy Executive Director, Media
Iain Levine, Deputy Executive Director, Program
Chuck Lustig, Deputy Executive Director, Operations
Bruno Stagno Ugarte, Deputy Executive Director,
Advocacy

Dinah PoKempner, General Counsel
James Ross, Legal & Policy Director
Hassan Elmasry, Co-Chair
Robert Kissane, Co-Chair

AMSTERDAM · BEIRUT · BERLIN · BRUSSELS · CHICAGO · GENEVA · GOMA · JOHANNESBURG · KIEV · KINSHASA · LONDON · LOS ANGELES · MOSCOW · NAIROBI
NEW YORK · PARIS · SAN FRANCISCO · SÃO PAULO · SEOUL · SILICON VALLEY · STOCKHOLM · SYDNEY · TOKYO · TORONTO · WASHINGTON · ZÜRICH

“battery” and “intentional infliction of light bodily harm” “in order to strengthen preventive work [conducted] with abusers and make it easier to hold them accountable.” The prosecutor’s office also stated that criminalizing the two aforementioned offences and making them matters of public prosecution would entail immediate criminal record, eliminate any possibility of reconciliation, initiate legal proceedings regardless of the victim’s complaint and make prevention impossible. We would respectfully submit that such an analysis does not reflect a zero-tolerance approach to domestic violence and is incompatible with evidence-based best practice of how to combat domestic violence. An approach that prioritizes mediation and reconciliation and operates on minimal punitive and deterrent measures for perpetrators is not effective and discriminates against women, who are the overwhelming victims of domestic violence, including by failing to provide them with effective protection under the law.

Earlier this month the UN committee that oversees Kazakhstan’s compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) specifically stressed that decriminalization of “battery” and “intentional infliction of light bodily harm” “contradicts the spirit of the Convention and weakens women’s protection” and called on the government to give priority to criminal proceedings over reconciliation in matters of domestic violence. Cases Human Rights Watch documented clearly demonstrate that existing preventive measures, such as preventive conversations with abusers are not working in practice and measures such as protection orders are not being adequately implemented by law enforcement officials. In some cases that we documented, women suffered abuse for years, due to police failure to appropriately investigate reports of domestic violence even after women filed complaints. Abusive husbands and/or partners are well aware of the non-criminal penalty for ‘battery’ and ‘light bodily harm’ and may commit these offences repeatedly for years without risking serious criminal penalties, which puts women at risk of continued abuse. The risk of criminal prosecution, including the prospect of a criminal record, should serve as a deterrent for abusers.

The Prosecutor General office’s letter also stated that criminalizing domestic violence as a standalone crime handled with a public prosecution is “impractical and difficult to implement, because the [existing] Criminal Code is designed by objects of assault [against an individual, family and minors, constitutional order, environmental, etc.], while domestic violence has different forms [sexual, physical, economic, psychological and etc.] and therefore different objects of assault - health, sexual integrity, religious freedom, etc. that can be prosecuted by existing relevant criminal offences, for example such as ‘heavy bodily harm,’ through public prosecution.”

It is precisely because domestic violence is in many ways unique in comparison with general crimes of assault committed by strangers or persons outside of an intimate relationship with the victim that international standards call on states to criminalize it specifically and as a standalone crime. General criminal laws are not sufficient to address domestic violence, while elements used to define general criminal offences, such as “heavy bodily harm,” might be satisfied in domestic violence cases, they do not accurately describe or capture all the elements of domestic violence including the context, its purpose and the way it manifests and persists in patterns of abuse and control. Domestic violence is best addressed through standalone offences and specialized training for law enforcement including police, prosecutors and judiciary in how to effectively investigate and prosecute domestic violence while ensuring the safety of the victim.

While early intervention and prevention of escalation are essential goals of an effective approach to combating domestic violence, they are not achieved by eschewing proactive criminal prosecution strategies, but rather by having staff, specialized in the dynamics of domestic violence, who are best placed to avail of the appropriate intervention, ensure preventive measures are in fact enforced and respond when they fail. A key strategy adopted by many prosecutorial services is evidence-based prosecution where the focus is on collecting evidence beyond the testimony of the victim, so the burden of prosecution is taken off the victim and placed with the state. The purpose is not to override the wishes of the victim but to recognize that in cases of domestic violence, direct victims are often least able to testify safely.

International Standards

Human Rights Watch's recommendation and call to criminalize domestic violence as a standalone criminal offence is based on international standards and best practices. Under international law, domestic violence is a violation of human rights, and governments have a positive obligation to prevent and punish it. Kazakhstan is bound under international law to respect, protect and fulfill the human rights of all persons regardless of gender and has the responsibility to prevent violence against women in all its forms, hold perpetrators accountable, and provide adequate compensations to survivors.

Under the International Covenant on Civil and Political Rights (ICCPR), Kazakhstan is obliged to prohibit discrimination based on gender and to provide equal protection before the law.

CEDAW, referenced above, and to which Kazakhstan has been a party since 1998, requires states parties to "undertake a series of measures to end discrimination against women in all forms." The CEDAW committee, the body of independent experts that monitors implementation of CEDAW, confirmed in general recommendation No. 19 that gender-based violence is "a form of discrimination."

In general, recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, the Committee states that "[W]omen's right to a life free from gender-based violence is indivisible from and interdependent on other human rights, including the rights to life, health, liberty and security of the person, equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment..."

In 2014, CEDAW called on Kazakhstan to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, known as the Istanbul Convention. The convention establishes standards for ensuring prevention, protection, and accountability related to domestic violence and is open to ratification by non-Council of Europe member states. Kazakhstan has not yet ratified it. This call was once again reiterated by CEDAW in its October 2019 review of Kazakhstan.

During its 74th session the committee raised concerns about the "decriminalization of physical violence in domestic contexts" and noted that this was against the Istanbul Convention. This month, on November 8, 2019, the committee called on Kazakhstan to criminalize domestic violence as a specific offence, to make sure that prosecution of perpetrators can be brought by the authorities and does not depend on the victim pursuing a prosecution, to ensure the punishment is appropriate for the gravity of the offence and that police who fail survivors of domestic violence, either through inaction or deterring reporting, are held to account. The

committee also called for mandatory training for relevant authorities on prevention of gender-based violence, including domestic violence, and a victim-centered response in line with international standards.

Kazakhstan is also a party to other core UN human rights instruments that contain domestic violence related provisions, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). It also ratified the Convention on the Political Rights of Women and the Convention on the Nationality of Married Women.¹

Reforming Kazakhstan law on domestic violence in line with international standards would also give proper expression to formal guarantees of equality and protection of women and their rights that exist in national legislation.

Such guarantees include a constitutional guarantee that everyone is equal “before the law” and there should be no discrimination based on gender. The 2009 Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women ensures gender equality in marriage and family relations. Kazakhstan’s Family and Marriage Code protects equality within marriage.

The constitution also states that “no one must be subject to torture, violence or other treatment and punishment that is cruel or humiliating to human dignity.” The UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has referred to gender-based violence against women, including domestic violence, as amounting “to torture or cruel, inhuman or degrading treatment in certain circumstances.”²

National domestic violence law states that prevention of domestic violence is based on the principles of “guaranteeing the respect of rights, freedoms and legitimate interests of a person and a citizen; and the inadmissibility of causing physical and (or) mental suffering to a person and citizen.”

Domestic violence is a serious crime and should be prosecuted as a standalone criminal offence by way of public prosecution with appropriate punishments commensurate to the gravity of the abuse. The criminal prosecution for domestic violence will acknowledge survivor’s right to the state’s full protection and will send a clear message that abuse inside the home is not acceptable and that women’s safety and wellbeing take precedence.

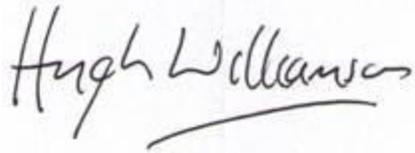
We thank you for your attention to this letter and look forward to continuing our constructive dialogue. Should you have any questions arising from this letter, please feel free to contact me directly at williaa@hrw.org. Please also copy my colleague Viktoriya Kim at kimv@hrw.org.

Sincerely yours,

¹ UN treaty bodies database.

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=KAZ&Lang=EN

² Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment ([A/HRC/31/57](https://www.hrw.org/report/2013/03/15/2013-03-15))

A handwritten signature in black ink that reads "Hugh Williamson". The signature is written in a cursive style with a long horizontal stroke underlining the name.

Hugh Williamson
Director, Europe and Central Asia Division
Human Rights Watch