

Research Article

HUMAN TRAFFICKING: PROBLEMS OF COUNTERACTION IN KAZAKHSTAN

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ABSTRACT

Background: This paper assesses the current circumstances regarding the protection and rights of victims of human trafficking in Kazakhstan. The study aims to evaluate Kazakhstan's main national instruments and laws adopted to combat human trafficking.

Methods: The study employed several key methodological approaches, including a systematic approach, which involves the study of combating human trafficking in conjunction with the provision of guarantees of human rights; an integrated approach that consists of the study of objective and subjective factors, as well as an analysis of internal and external (socio-economic, demographic, geopolitical, etc.) factors that are the causes of illegal migration and human trafficking; an empirical approach involving research, taking into account the application of relevant experience available in Kazakhstan and abroad; a formal-legal approach to analyse the existing regulatory framework for combating human trafficking and ways to improve it.

Results and Conclusions: Based on the study's results, several practical proposals are put forward to eliminate the identified shortcomings and gaps in the legal framework of Kazakhstan and law enforcement practice. This paper concludes that Kazakhstan's response to its international obligations to prevent human trafficking has some shortcomings. However, we conclude that significant improvements are possible through the adoption of a special law, as well as in cases of implementation of special organisational measures, strengthening legal responsibility.

1 INTRODUCTION

According to Counter-Trafficking Data Collaborative, from 2002 to 2022, an average of 108 foreign victims of human trafficking (hereinafter referred to as foreign VHTs) were identified in Kazakhstan each year. This figure is twice the number of cases involving victims who were citizens of the Republic of Kazakhstan (approximately 50). The nations from which these foreign victims originate are Uzbekistan (84.5%), Kyrgyzstan (6.8%), China (1.8%), and Tajikistan (1.7%).¹ The geography of identified foreign VHTs in Kazakhstan is extensive

1 See 'CTDC Global Dataset IOM' (Counter-Trafficking Data Collaborative (CTDC), 2023). <<https://www.ctdatacollaborative.org/map/ctdc-iom>> accessed 10 August 2023. Virtual map with data collected by the International Organization for Migration since 2002. This data reflects victims assisted/identified/referral/reported to aid providers, which may not represent all victims identified in the country. This map is based on a global dataset hosted by the Collaborative Data Counter-Trafficking Data Collaborative

and includes victims from countries such as Ukraine, Belarus, Moldova, Turkmenistan, Mongolia, Nigeria, the Philippines, and South Africa. Out of all foreign victims of human trafficking identified in Kazakhstan since 2002, 66% were subject to cross-border trafficking.

Per the official data in 2022, Kazakhstan reported 103 instances of crimes tied to human trafficking, which included cases involving minors. In 2021, 117 offences were registered in the Unified Register of Pre-Trial Investigations, 179 in 2020, 151 in 2019, and 190 in 2018.²

In the annual report presented in July 2022 by the U.S. State Department's Office to Monitor and Combat Trafficking in Persons, it is stated that 'over the past five years, human traffickers continue to exploit local and foreign victims in Kazakhstan, and traffickers exploit victims from Kazakhstan abroad... The most vulnerable groups at risk of trafficking include undocumented migrants, persons without identity documents, unemployed individuals, individuals experiencing homelessness, and disabled persons.'³

The U.S. State Department report indicates that women and girls from nearby East Asian, Central Asian, and Eastern European nations, as well as from Kazakhstan's rural areas, are exploited for sexual purposes within Kazakhstan. Traffickers increasingly force Central Asian citizens, primarily men and women from Uzbekistan and, to a lesser extent, from Tajikistan and Kyrgyzstan, into roles such as domestic servants, construction labourers, market workers, and agricultural workers, making them targets for exploitation by human traffickers. Thousands of undocumented Uzbek migrants, arriving daily in Kazakhstan via informal border crossings for seasonal work in sectors like construction, agriculture, retail, hospitality, and commercial sex, are especially vulnerable to human trafficking due to their unregulated immigration status. This vulnerability extends to their children, who often forego schooling despite having the right to attend. NGOs have reported a rising trend in traffickers' use of debt bondage to exploit migrants in recent years. Using stringent law enforcement policies, traffickers coerce migrants to endure exploitative conditions and intimidate victims with threats of legal repercussions and deportation if they approach authorities, thereby fostering a deep mistrust of law enforcement agencies.⁴

The U.S. State Department report recognises some improvement in Kazakhstan's efforts to prevent and identify human trafficking victims, highlighting increased governmental action to eliminate such trafficking. This shifted Kazakhstan's ranking from the "Tier 2 Watch List" to "Tier 2" in 2022.⁵

In the first half of 2023, there were 111 recorded criminal cases related to human trafficking in the country, marking a significant 91.4% increase from the same timeframe the previous year. The predominant offences in this category were tied to the facilitation or operation of brothels and pandering, with 67 cases registered. This is a sharp 2.1-fold rise from the year before. Additionally, cases involving the trafficking of minors have surged, with 17 incidents this year compared to just five the previous year. Other offences during this period included eight cases of adult trafficking, seven cases of coercing minors into prostitution, seven cases of coercing adults into prostitution, and five instances of unlawful detainment with the intent

(CTDC) prior to k-anonymization. The IOM data includes information on approximately 53,000 victims of human trafficking from 138 nationalities who were exploited in 171 countries.

2 'Statistical Reports' (Legal Statistics, 2023) <<https://qamqor.gov.kz/crimestat/statistics>> accessed 10 August 2023. See, Report Form No SNG-1 'Information on the state of crime and the results of the investigation of criminal offenses', section No 1 'General information on the state of crime'.

3 Office to Monitor and Combat Trafficking in Persons, '2022 Trafficking in Persons Report: Kazakhstan' (US Department of State, 2023) <<https://www.state.gov/reports/2022-trafficking-in-persons-report/kazakhstan>> accessed 10 August 2023.

4 *ibid.*

5 *ibid.*

of exploitation.⁶

These figures underscore the growing severity of the human trafficking crisis in the country. The escalating number of criminal cases is alarming and emphasises the need for enhanced efforts from both law enforcement and the broader society to combat this grave issue.

The objective of this study is to develop theoretical and practical suggestions for enhancing the guarantee of rights for human trafficking victims in Kazakhstan, pinpointing shortcomings in national law and enforcement practices, assessing the degree of social and legal protection for victims across all categories, and analysing the problems faced in safeguarding the rights of trafficking victims, with the intent of proposing solutions.

This research aims to provide academic and practical advice and suggestions for improving the situation concerning the safeguarding of rights for victims of human trafficking in Kazakhstan, identifying gaps in national laws and enforcement methods, analysing the level of social and legal protection for all classes of trafficking victims, and addressing the main challenges in safeguarding the rights of trafficking victims and the methods for solving them.

In addition, the research is aimed at systematising the necessary measures and actions with the following objectives:

- prevention of human trafficking incidents;
- determining priority areas of work in the field of victims' rights protection;
- increasing the effectiveness of prevention and detection of criminal offences related to human trafficking;
- pinpointing the key strategies for evolving legislative and law enforcement practices in Kazakhstan in relation to safeguarding the rights of victims of human trafficking;
- enhancing the mechanisms of the standard for providing special social services to human trafficking victims, irrespective of their nationality and residency status, across all regions of Kazakhstan.

2 LITERATURE REVIEW

In the past twenty years, the research field dedicated to human trafficking has expanded considerably, resulting in a vast collection of scholarly work. This increase is highly commendable as the wealth of research and advocacy literature has substantially impacted shaping policies and determining funding priorities. More specifically, much progress has been made on measurement and prevalence estimation techniques, and some consensus is forming gradually on the standard measures and counting rules to quantify human trafficking activities.⁷

Significant progress has been made in assessing the impact of the measures taken to prevent the trafficking of persons in different parts of the world.⁸

6 'Breaking Data: The Number of Trafficking Offenses in Kazakhstan Almost Doubled' (Ranking.kz, 8 August 2023) <<https://ranking.kz/reviews/socium/aktualnye-dannye-kolichestvo-pravonarusheniy-v-sfere-torgovli-lyudmi-v-kazahstane-vyroslo-pochti-vdvoe.html>> accessed 10 August 2023.

7 Sheldon X Zhang, 'Progress and Challenges in Human Trafficking Research: Two Decades after the Palermo Protocol' (2022) 8(1) *Journal of Human Trafficking* 4, doi:10.1080/23322705.2021.2019528.

8 Stephanie Hepburn and Rita J Simon, 'Hidden in Plain Sight: Human Trafficking in the United States' (2010) 27(1-2) *Gender Issues* 1, doi:10.1007/s12147-010-9087-7; Lauren A McCarthy, 'Beyond Corruption: An Assessment of Russian Law Enforcement's Fight Against Human Trafficking' (2010) 18(1) *Demokratizatsiya* 5, doi:10.3200/DEMO.18.1.5-27; Julie Kaye, John Winterdyk and Lara Quarterman, 'Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada' (2013) 56(1)

Modern scientific research aims to study three main areas: the definition of the concept and parameters of human trafficking,⁹ factors influencing the prevalence of human trafficking¹⁰ and the evaluation of measures to combat and prevent trafficking in persons.¹¹

The last research type, as mentioned above, based on the evaluation of measures to combat and prevent trafficking in persons, involves measuring the effectiveness of international and national law. Our review of previous works allows us to present the following conclusions.

Efficient strategies to combat human trafficking require integrating various elements, which collectively can generate the expected outcome. One such measure concerns both international and domestic legislation that are fundamental components of any anti-trafficking strategy.¹² Scholars call on states to marshal human rights, tax, trade, tort, public health, and labour laws to combat this growing international crime and human rights violation.¹³

Based on the importance of scientific recommendations for making practical decisions, considering the impact of research results on the rationale for new approaches to improving legislation, this paper aims to evaluate Kazakhstani laws that form the legal framework for combating human trafficking. Consequently, it will present several practical suggestions for addressing certain identified weaknesses and shortcomings within the legal system.

Canadian Journal of Criminology and Criminal Justice 23, doi:10.3138/cjccj.2012.E33; Vladislava Stoyanova, 'The crisis of a legal framework: Protection of victims of human trafficking in Bulgarian legislation' (2013) 17(5-6) International Journal of Human Rights 668, doi:10.1080/13642987.2013.832217; Siddhartha Sarkar, 'Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors' (2014) 103(5) Round Table 483, doi:10.1080/00358533.2014.966499; Dana C Beck and others, 'Human Trafficking in Ethiopia: A Scoping Review to Identify Gaps in Service Delivery, Research, and Policy' (2017) 18(5) Trauma, Violence, and Abuse 532, doi:10.1177/1524838016641670; Laura A Dean, 'Criminalizing Human Trafficking in Latvia: The Evolution and Implications of Human Trafficking Policies' (2018) 49(2) Journal of Baltic Studies 129, doi:10.1080/01629778.2018.1441887; Sani S Ibrahim, Adlina Ab Halim and Zatul Himmah Adnan, 'A Review of Human Trafficking Issues in Malaysia and Nigeria' (2019) 27(S1) Pertanika Journal of Social Sciences and Humanities 15; Zbigniew Lasocik, 'Response for Human Trafficking in Poland in a Nutshell' in J Winterdyk and J Jones (eds), The Palgrave International Handbook of Human Trafficking (Palgrave Macmillan 2020) 1033, doi:10.1007/978-3-319-63058-8_55; Janane El Khoury, 'Combatting Human Trafficking in Lebanon: Prosecution, Protection, and Prevention' in J Winterdyk and J Jones (eds), The Palgrave International Handbook of Human Trafficking (Palgrave Macmillan 2020) 1205, doi:10.1007/978-3-319-63058-8_120.

- 9 Carolina Villacampa and Núria Torres, 'Human Trafficking for Criminal Exploitation: The Failure to Identify Victims' (2017) 23(3) European Journal on Criminal Policy and Research 393, doi:10.1007/s10610-017-9343-4; Ike Herdiana, Mein Woei Suen and Myrtati D Artaria, 'The Society's Perspective of Human Trafficking' (2019) 43(4) Collegium Antropologicum 241; Ângela Fernandes, Mariana Gonçalves and Marlene Matos, "'Who are the Victims, Who are the Traffickers?'" University Students' Portrayals on Human Trafficking' (2020) 15(2) Victims & Offenders 243, doi:10.1080/15564886.2019.1711276.
- 10 Alicja Jac-Kucharski, 'The Determinants of Human Trafficking: A US Case Study' (2012) 50(6) International Migration 150, doi:10.1111/j.1468-2435.2012.00777.x; Katherine Taken Smith, Hannah M Russell and L Murphy Smith, 'Human Trafficking: A Global Multi-Billion Dollar Criminal Industry' (2014) 4(3) International Journal of Public Law and Policy 293, doi:10.1504/IJPLAP.2014.063006.
- 11 Deanna Davy, 'Understanding the Support Needs of Human-Trafficking Victims: A Review of Three Human-Trafficking Program Evaluations' (2015) 1(4) Journal of Human Trafficking 318, doi:10.1080/23322705.2015.1090865; Alex Kreidenweis and Natalie F Hudson, 'More Than a Crime: Human Trafficking as Human (In)Security' (2015) 16(1) International Studies Perspectives 67, doi:10.1111/insp.12066; Nathaniel A Dell and others, 'Helping Survivors of Human Trafficking: A Systematic Review of Exit and Postexit Interventions' (2019) 20(2) Trauma, Violence, & Abuse 183, doi:10.1177/1524838017692553; Michelle Munro-Kramer and others, 'Human Trafficking Victim's Service Needs and Outcomes: An Analysis of Clinical Law Data' (2020) 6(1) Journal of Human Trafficking 95, doi:10.1080/23322705.2019.1574476.
- 12 Reza Montasari, Hamid Jahankhani and Fiona Carrol, 'Combating Human Trafficking: An Analysis of International and Domestic Legislations' in H Jahankhani, S Kendzierskyj and B Akhgar (eds), Information Security Technologies for Controlling Pandemics (Advanced Sciences and Technologies for Security Applications, Springer 2021) 135, doi:10.1007/978-3-030-72120-6_5.
- 13 Janie A Chuang, 'Exploitation Creep and the Unmaking of Human Trafficking Law' (2014) 108(4) American Journal of International Law 609, doi:10.5305/amerjintlaw.108.4.0609.

In addition, we have identified the assessment of Kazakhstan's implementation of certain provisions of the Palermo Protocol¹⁴ and the obligations that the Protocol imposes on states to prevent human trafficking as an additional aim of this paper.

It should be said that scientific studies of human trafficking in relation to the conditions of Kazakhstan are at an early stage. Projects, ideas, and field strategies are just being formed, which follows from the totality of the collection of a few papers in this field that take place in the scientific space.¹⁵ As such, this publication will complement existing knowledge and strategies on new anti-trafficking measures in Kazakhstan.

3 MONITORING SOURCES OF LEGAL REGULATION

Given the complexity of human trafficking, it can be examined from various angles, making numerous international conventions and accords relevant to this domain. These include those related to forced labour, the rights of women and children, migration, slavery, and the slave trade, as well as broader agreements pertaining to civil, cultural, economic, political, or social rights that can contribute to the fight against human trafficking.

International human rights law is a tool that is accepted as a conceptual paradigm for analysing state behaviour in the field of preventing human trafficking.¹⁶ Kazakhstan is extensively engaged in incorporating international human rights law standards into its domestic legislation when it ratifies international agreements aimed at combating human trafficking.

Kazakhstan has joined over 25 international agreements related to combating human trafficking, including the Palermo Protocol, obliging the nation to protect the rights of victims of human trafficking. Key treaties that Kazakhstan has ratified include the Slavery Convention 1926, the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949, the Supplementary Convention for the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956, ILO Abolition of Forced Labour Convention 1957, International Convention on the Elimination of All Forms of Discrimination Against Women 197, International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Convention on the Rights of the Child 1989, ILO Worst Forms of Child Labour Convention 1999, the United Nations Convention against Transnational Organized Crime 2000, the Protocol

- 14 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000 UNGA Res 55/25) <https://treaties.un.org/Pages/ViewDetails.aspx?src=ind&mtdsg_no=XVIII-12-a&chapter=18&clang=_en> accessed 10 August 2023. This Protocol, often simply called the 'Palermo Protocol', provides an international definition of human trafficking and forms the basis for global initiatives to combat this crime.
- 15 Bakhyt Moldatjaevich Nurgaliyev and Alexey Vladimirovich Boretsky, 'Resistance to Investigation of Crimes, Related to Human Trafficking: The Forms, Methods and Ways to Overcoming' (2015) 6(3S1) Mediterranean Journal of Social Sciences 86, doi:10.5901/mjss.2015.v6n3s1p86; Dauren Balgimbekov and others, 'Scientific Researches of Counteraction of Illegal I Business in the Sphere of Human Trafficking in the Republic of Kazakhstan' (2016) 11(15) Social Sciences 3721, doi:10.3923/sscience.2016.3721.3727; Denis Leonov and Sagynsh Ayaganova, 'Issues of Improving the Legislation of the Republic of Kazakhstan Based on the International Standards on Counteraction to Crimes Connected with Human Trafficking' (2018) 9(3) Journal of Advanced Research in Law and Economics 1026, doi:10.14505/jarle.v9i3(3).29; Amangeldy Khamzin, Yermek Buribayev and Kaliya Sartayeva, 'Prevention of Human Trafficking Crime: A View from Kazakhstan and Central Asian Countries' (2022) 17(1) International Journal of Criminal Justice Sciences 34, doi:10.5281/zenodo.4756088; Amangeldy Sh Khamzin and others, 'Historical and Legal Analysis of the Institute for Countering Human Trafficking and Slavery in the Central Asian States' (2023) 8(1) BiLD Law Journal 86.
- 16 Muhammad Natsir and Nanda Ivan Natsir, 'Legal Arrangement in the Criminal Act of Human Trafficking' (2017) 20(1) Journal of Legal, Ethical and Regulatory Issues 1.

to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000, and the Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention against Transnational Organized Crime.

The current anti-trafficking legislation consists of the following main legal acts:

Law of December 29, 2008 No. 114-IV 'On Special Social Services',

Law of July 22, 2011 No. 477-IV 'On Population Migration',

Law of January 10, 2018 No. 131-VI 'On the Compensation Fund for Victims',

Order of the Minister of Health and Social Development of February 24, 2016 No. 138 'On Approval of the Standard for the Provision of Special Social Services to Victims of Human Trafficking',

Government Decree of April 28, 2022 No. 258 'On the Approval of the Plan for Further Measures in the Field of Human Rights and the Rule of Law',

Rules for the use of funds provided in the republican budget under the program 'Providing financial assistance to citizens of the Republic of Kazakhstan illegally imported into foreign countries and victims of trafficking, as well as those who suffered abroad from other crimes and found themselves in force majeure circumstances', approved by order of the Minister of Foreign Affairs dated November 28, 2005 No. 08-1/361,

Joint Order of the Minister of Labor and Social Protection of the Population of July 1, 2022 No. 235 and the Minister of Internal Affairs of July 1, 2022 No. 550 'On the Formation of an Interdepartmental Commission on Combating Illegal Export, Import and Human Trafficking',

Government Decree of February 24, 2021 No. 94 'On Approval of the Action Plan of the Government of the Republic of Kazakhstan for the Prevention and Combating of Crimes Related to Human Trafficking for 2021-2023'.

Articles of the Criminal Code of the Republic of Kazakhstan establishing liability for crimes related to human trafficking: Article 113 Coercion to remove or illegal removal of human organs and tissues, Article 125 Kidnapping, Article 126 Illegal imprisonment, Article 128 Human trafficking, Article 132 Involvement of a minor in committing antisocial acts, Article 133 Trafficking in minors, Article 270 Involvement in prostitution.

However, Kazakhstan has not enacted a specific legislative act dedicated to preventing and combatting human trafficking. Instead, the norms of international law related to human trafficking are incorporated into individual sector-specific legislative acts of the Republic of Kazakhstan.

At the same time, in Category 1, the countries with the best performance in combating human trafficking from the states of the former Soviet Union are Estonia, Georgia, and Lithuania.¹⁷ The actions taken in these countries towards eradicating human trafficking align entirely with the minimum standards set in this field. The governments of these countries continue to demonstrate serious and consistent efforts, which has led to the fact that in 2022: Georgia and Lithuania remained in Category 1 since 2016; Estonia has remained in Category 1 since 2017.¹⁸

In addition, the governments of Moldova and Armenia are also frontrunners, making substantial efforts to eradicate human trafficking. However, they have not yet fully met the

17 Office to Monitor and Combat Trafficking in Persons, '2022 Trafficking in Persons Report' (US Department of State, 2023) <<https://www.state.gov/reports/2022-trafficking-in-persons-report>> accessed 10 August 2023.

18 *ibid.*

minimum standards, which is why they remained at “Tier 2” in 2022, similar to the previous reporting period.

Significant achievements in some of the listed countries have been the adoption of individual legislative acts to protect the rights of VHT foreigners. For example, Georgia adopted the Law ‘On Combating Trafficking in Persons’ in 2006,¹⁹ which stipulates that a victim or person of a foreign state who has suffered from the crime of human trafficking committed on the territory of Georgia enjoys the same rights as those provided for all victims and persons who have suffered from human trafficking. In 2005, Moldova adopted the Law ‘On the Prevention and Combating of Trafficking in Persons’,²⁰ which regulates legal relations related to the prevention and suppression of human trafficking, the provision of protection and assistance to VHTs and presumed VHTs, cooperation between state authorities and NGOs. In 2014, Armenia adopted the Law ‘On the Identification and Support of Persons Subjected to Trafficking and Exploitation’,²¹ which establishes standard procedures for the identification, support, protection, and reintegration of presumed and identified VHTs, taking into account the capacities of state authorities, NGOs, international organisations, and civil society. As per Armenian law, foreign victims are accorded the same rights and services as those enjoyed by Armenian nationals.

In general, the leading positions of Georgia, Lithuania, Estonia, Moldova, and Armenia are ensured to a large extent by the adoption and continuous improvement of comprehensive national legislation aimed at:

- the detection and identification of VHTs;
- providing VHTs with medical and psychological assistance, creating conditions for their privacy, and protection from causing further harm;
- providing VHTs with a recovery and reflection period;
- provision of temporary residence permits to VHTs (compliance with the principle of ‘no expulsion’).

4 RESEARCH METHODS

This study is grounded in the analysis of the outcomes of the Human Rights Commission’s activities in the Republic of Kazakhstan. It also utilises data from governmental agencies, non-governmental organisations, and crisis centres in the Republic of Kazakhstan, the International Organization for Migration (IOM) in Kazakhstan, the United Nations Development Program (UNDP) in the Republic of Kazakhstan, the OSCE Program Office in Astana, other international organisations, and results from the sociological research ‘Human Rights in Kazakhstan: Public Opinion’ conducted by the independent Association of Sociologists of Kazakhstan, which is a permanent member of the International Sociological Association (ISA). The research also incorporates findings from sociological and other studies conducted by the IOM, crisis centres, and specialised NGOs (ULE ‘Union of Crisis Centers’ in Kazakhstan, PF ‘Rodnik’, NGO ‘Women Support Center’, NGO ‘Sana-Sezim’, Private Fund ‘Korgau-Astana’,

19 Law of Georgia No 2944 ‘On Combating Human Trafficking’ of 28 April 2006 <<https://matsne.gov.ge/en/document/view/26152?publication=9>> 10 August 2023.

20 Law of the Republic of Moldova No 241 ‘On Preventing and Combating Trafficking in Human Beings’ of 20 October 2005 <https://www.legis.md/cautare/getResults?doc_id=133158&lang=ro> 10 August 2023.

21 Law of the Republic of Armenia No HO-212-N ‘On the Identification and Support of Persons Subject to Human Trafficking and Exploitation’ of 17 December 2014 <<https://www.arlis.am/documentview.aspx?docID=94984>> 10 August 2023.

PF 'El Daryn', PF 'Medialife').

As sources of primary information, information obtained as a result of processing statistical official data and reports of the Ministry of Labor and Social Protection of the Population of the Republic of Kazakhstan; the Committee on Migration; the Bureau of National Statistics; the Commissioner for Human Rights in the Republic of Kazakhstan; special electronic services of the Supreme Court of the Republic of Kazakhstan;²² statistical data on the consideration of civil and criminal cases of the Supreme Court;²³ statistical reports on the work of the courts, presented on the information service of the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan.²⁴ The method made it possible, based on a quantitative method of obtaining and processing data, to analyse the main demographic indicators, statistics in the field of migration, and the increase or decrease in crimes related to human trafficking.

This article was formulated based on the study of international experience, specifically, the practices implemented by authorised government agencies in the USA, Canada, Australia, New Zealand, Sweden, and the European Union countries in dealing with human trafficking victims.

The key issues identified in the legal regulation of combating human trafficking in Kazakhstan that require scientific investigation are:

The national legislation's conceptual framework lacks harmony with international standards. The absence of basic concepts in national legislation can lead to confusion between trafficking in persons and other criminal offences, potentially causing challenges in mutual legal assistance with foreign countries adhering to definitions more in line with the UN Protocol to Combat Human Trafficking or other international standards.

Current Kazakhstani legislation does not pinpoint specific government bodies authorised to execute activities in combating human trafficking — including prevention, detection, suppression, case disclosure and investigation, as well as the provision of special social services to human trafficking victims.

The collaboration issues among anti-human trafficking stakeholders need to be resolved; the legal status of state Interdepartmental and regional commissions on countering illicit import, export, and trafficking in persons remains ambiguous.

It is crucial to enact appropriate norms on all NGOs' activities in combating human trafficking, including their interaction with competent authorities.

Establishing norms regulating an all-inclusive system for the prevention, detection, and suppression of human trafficking and related offences is required, as well as a system of measures for assisting human trafficking victims.

It is essential to legislate the mechanism of national risk assessment for combating human trafficking. It involves identifying and studying the characteristic forms and methods of committing crimes and finding and identifying weak points in the human trafficking tackling system.

A mechanism needs to be established for controlling and monitoring organisations involved in the import, export, and transit of citizens abroad and within the Republic of Kazakhstan.

The rights of human trafficking victims need to be developed and reinforced. The rights

22 Office of the Court <<https://office.sud.kz>> 10 August 2023; Bank of Judicial Acts <<https://sud.gov.kz/kaz/court-acts>> 10 August 2023.

23 'Statistics' (Supreme Court of the Republic of Kazakhstan, 2023) <<http://sud.gov.kz/rus/content/statisticheskie-dannye-o-rassmotrenii-grazhdanskih-del>> 10 August 2023.

24 Portal of Legal Statistics and Special Accounts <<https://qamqor.gov.kz>> 10 August 2023.

inconsistency in the legislation prevents victims of human trafficking from fully understanding their rights, utilising them, reaching out to the appropriate authorities, and receiving the necessary assistance and protection.

Including provisions on juvenile victims of human trafficking in legislation is crucial. Minors, like adults, are subjected to trafficking as well as labour, sexual, and other types of exploitation. Minors' specific characteristics include their vulnerability and dependence. It is essential to define a minor's status in line with international standards (paragraph c) of Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons) and to encode them in the legislation.

The provisions for foreigners who have become victims of human trafficking need to be revised in accordance with international standards.

5 DISCUSSION

The rise in human trafficking in recent years, coupled with the persistence of modern forms of slavery in Kazakhstan, can be attributed to clear and objective factors such with some countries of the post-Soviet space (there is no visa regime with Armenia, Azerbaijan, Moldova) and Central Asian countries; increased migration flows, both between states and within the country; a prosperous position in the economy and higher earnings than in other post-Soviet countries; organised crime, which sees Kazakhstan in a more minor role as a supplier, but more as a consumer, and also as a transit corridor.

Kazakhstan is an attractive market for human traffickers from neighbouring countries such as Kyrgyzstan, Uzbekistan, and Tajikistan and serves as a country of origin and transit for live goods for Europe, the UAE, Greece, Turkey, Israel, Albania, Qatar, and others.

In the global slavery ranking, in 2018, Kazakhstan ranked 83rd out of 167 countries, lagging behind post-Soviet countries such as Russia (64), Tajikistan (75), Uzbekistan (69), and Georgia (78).²⁵

Despite the unfolding global economic crisis, Kazakhstan continues to allure citizens from economically unstable Central Asian countries. The rising incidence of internal human trafficking in recent years can be attributed to unemployment and heightened migration from rural regions to major cities. Adhering to the joint efforts of the world community, Kazakhstan is taking the necessary measures, including in the legislative, socio-economic, and international spheres, to effectively counteract new forms of the slave trade.

The problematic issues that hinder effective prevention and counteraction of human trafficking are broad and go beyond the powers of only law enforcement agencies, relating to the competence of most authorised state bodies and the activities of crisis centres and specialised NGOs. Such problems include:

- the lack of effective interaction between law enforcement and state bodies with non-governmental organisations and crisis centres;
- the lack of clear legal regulation of the competencies and powers of the concerned state bodies on the issues of preventing and combating human trafficking;
- the lack of high-quality regulation of mechanisms for assisting victims of human trafficking;

25 Walk Free Foundation, 'The Global Slavery Index 2018' (Walk Free, 2019) 179 <<https://cdn.walkfree.org/content/uploads/2023/04/13181704/Global-Slavery-Index-2018.pdf>> accessed 10 August 2023.

- a low detection by law enforcement agencies of offences related to human trafficking;
- inadequate practical execution of the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the UN Convention against Transnational Organized Crime (also known as the Palermo Protocol).

In the annual report of the US State Department 2019 Trafficking in Persons Report,²⁶ among other 187 countries, Kazakhstan was assigned to the 2nd category of states under the Watch List — a Control list (such post-Soviet countries as Azerbaijan, Kyrgyzstan, and Uzbekistan were on the same list for the specified period). This fact led in the subsequent period to some strengthening of the response measures by the Government of the Republic of Kazakhstan and the elimination of misconceptions. Despite the lack of significant efforts, the Government has taken certain steps to solve the problem of human trafficking, and by the end of 2021, Kazakhstan was able to improve its position in the ranking.

The report of the US State Department indicated that Kazakhstan does not fully comply with international minimum standards in the field of preventing human trafficking.²⁷ Concurrently, it was highlighted that the law enforcement agencies performance was inadequate in terms of investigating, prosecuting, and sentencing crimes in this category. The report concluded that Kazakhstan does not fully meet the international minimum standards for combating human trafficking. This conclusion underscored the lack of effectiveness displayed by law enforcement agencies in investigating, prosecuting, and convicting perpetrators of such crimes. Emphasis was also placed on the complicity of officials and police officers in human trafficking, while only a small number of criminal cases, including against police officers, were in the proceedings of the law enforcement system. According to reports, traffickers bribed ordinary police officers to avoid criminal prosecution.

Our examination reveals that the national authorities in Kazakhstan are still lacking in mechanisms to identify victims of human trafficking and subsequently connect them to the necessary assistance services. Considering the magnitude of the human trafficking issue in Kazakhstan, the total number of victims identified by government bodies remains strikingly low. Furthermore, the country's Criminal Code does not include a specific definition for 'human trafficking victims', which hampers victim identification and limits their access to pertinent services. Authorities occasionally enforce punishments on potential victims, including detention and deportation for potential forced labour victims due to immigration law violations and prosecute potential sex trafficking victims for prostitution without scrutinising for indicators of trafficking. There's practically no governmental funding or dedicated programs for providing services to victims of human trafficking. Like in past years, the government has not formulated a national strategy or allocated roles and responsibilities to government departments for tackling human trafficking.

Our review also illustrates that to meet international human rights obligations and implement inter-state programs and national plans aimed at preventing human trafficking, monitoring and controlling external and internal labour migration, and assisting victims, several countries worldwide tend to adopt distinct anti-trafficking laws. This practice is common in developed countries such as Australia, Austria, Bahrain, Great Britain, Spain, Canada, the Netherlands, Singapore, the USA, France, and others. In former Soviet Union countries, separate laws have been enacted in Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

26 Office to Monitor and Combat Trafficking in Persons, '2020 Trafficking in Persons Report' (US Department of State, 2020) <<https://www.state.gov/reports/2020-trafficking-in-persons-report>> accessed 10 August 2023.

27 *ibid.*

Our study asserts that the absence of a fundamental legislative act in Kazakhstan's legal system that systematically and comprehensively regulates all matters related to combating human trafficking leaves a significant legal void and could pose challenges in practically implementing the provisions of the Palermo Protocol, such as in the areas of victim rehabilitation and provision of specialised assistance. The lack of this fundamental law is somewhat offset by the regular adoption of Action Plans by the Kazakhstan Government to prevent and combat crimes associated with human trafficking.

However, the complete and exhaustive implementation of all the significant positions of the Protocol within the framework of the government's Plan seems hardly feasible.

The practice of identifying violations related to human trafficking in Kazakhstan is limited. According to statistical data from the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan, annually, more than 100 pre-trial investigations into crimes related to human trafficking are registered by the internal affairs bodies (2019 — 182, 2020 — 111, 2021 — 103, 2022 — 107), with up to 90 victims identified (2019 — 44, 2020 — 92, 2021 — 29, 2022 — 38).²⁸ As can be seen from the presented data, there has been a decrease in these parameters in recent years.

The Ministry of Labor and Social Protection of the population of the Republic of Kazakhstan establishes facts of violations of labour legislation, wherein the current year, under Article 86 of the Code of Administrative Offenses (Admission of a person to work without concluding an employment contract), 45 administrative proceedings were registered; under Article 87 of the Code of Administrative Offenses (Violation of wage requirements) — 370; under Article 89 of the Code of Administrative Offenses (Illegal overtime) — 35; under Article 90 of the Code of Administrative Offenses (Allowing discrimination in the workplace) — 53; and under Article 93 of the Code of Administrative Offenses (Violation of safety and labour protection rules) — 241.²⁹

Over the past three years, the Ministry of Labor and Social Protection of the Republic of Kazakhstan has assisted 543 victims of human trafficking within the framework of providing special social services (2019 — 145, 2020 — 97, 2021 — 143, 2022 — 158), non-governmental organisations have helped 614 people (2019 — 120, 2020 — 141, 2021 — 200, 2022 — 153), and the International Organization for Migration in the Republic of Kazakhstan has assisted 151 victims (2019 — 76, 2020 — 21, 2021 — 16, 2022 — 38).³⁰

In Kazakhstan, paradoxically, there is no legislation establishing liability for forced labour; the state in this direction relies on criminal penalties for human trafficking since these two phenomena are closely related. However, these are different offences, with different objective and subjective aspects of crimes; human trafficking, as a rule, precedes or is carried out for the purpose of labour and other exploitation — its purpose in some cases is slavery, and forced labour. We believe that the Kazakh legislation on human trafficking remains incomplete and does not regulate the situation with forced labour.

Today, responsibility for forced labour remains out of focus on the agenda of public authorities. Despite the robust legislative framework prohibiting forced labour, which includes a constitutional ban on forced labour, the Labor Code of the Republic of Kazakhstan's prohibition on forced labour, and Kazakhstan's ratification of the 1926 Slavery Convention, the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and

28 'Statistical Reports' (Legal Statistics, 2023) <<https://qamqor.gov.kz/crimestat/statistics>> accessed 10 August 2023. See, Report on the work of law enforcement agencies according to the information service of the Committee for Legal Statistics and Special Accounting of the General Prosecutor's Office of the Republic of Kazakhstan.

29 *ibid.*

30 *ibid.*

Practices Similar to Slavery, the 1957 ILO Convention on the Abolition of Forced Labor, the 1984 International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the 1999 ILO Convention on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, legislative resources aimed at preventing forced labour, particularly among labour migrants, remain untapped and unutilised.

There is no separate law providing for punishment for labour slavery in Kazakhstan. Such offences, as a rule, are classified under the following articles of the Criminal Code of the Republic of Kazakhstan:³¹ 126 — ‘Illegal imprisonment’ or 128 — ‘Human trafficking’. Therefore, it is practically impossible to hold accountable for labour exploitation, and there is no criminal or administrative liability for forced labour. Two main criteria apply for defining forced labour: the work must be done involuntarily, and the work must be done under threat of punishment. Trafficking in human beings is probably the most common phenomenon associated with forced labour, but not necessarily an accompanying feature.

Article 25 of the Convention on Forced or Compulsory Labor (Convention 29),³² adopted in Geneva by the 14th session of the General Conference of the International Labor Organization on June 28, 1930, establishes the following guarantee: illegal involvement in forced or compulsory labour is punishable by criminal law, and each member of the ILO that ratifies the Convention is obliged to ensure effectiveness and strict enforcement of the sanctions prescribed by law.

Kazakhstan ratified Convention No. 29 on December 14, 2000, and for 23 years, it has not fulfilled its obligations to secure criminal prosecution for involvement in forced or compulsory labour. Articles of the Criminal Code of the Republic of Kazakhstan establishing liability for crimes related to human trafficking: Article 113 Coercion to remove or illegal removal of human organs and tissues, Article 125 Kidnapping, Article 126 Illegal imprisonment, Article 128 Human trafficking, Article 132 Involvement of a minor in committing antisocial acts, Article 133 Trafficking in minors, Article 270 Involvement in prostitution.

However, the Criminal Code of the Republic of Kazakhstan does not provide a separate composition for involvement in forced labour.

The criminal codes of the EAEU countries establish responsibility for using slave labour; however, in our opinion, slave labour is a multidimensional concept, and forced and unfree labour are related but not identical concepts. A multifaceted approach is needed to fully understand the heterogeneity of the unfree labour relations that characterise forced labour. We believe that one should proceed in this aspect of their international standards for the definition of forced labour and slavery, as well as the concept of forced labour, enshrined in Article 7 of the Labor Code of the Republic of Kazakhstan.³³

We propose to supplement the Special Part of the Criminal Code of the Republic of Kazakhstan, namely Chapter 3, ‘Criminal offences against constitutional and other rights and freedoms of man and citizen’, with the following element of a crime.

Use of forced and slave labour

1. Forced labour is defined as any work or service extracted from an individual under the threat of punishment, which the individual did not voluntarily offer to perform. This includes using someone’s labour by exercising powers similar to those inherent

31 Criminal Code of the Republic of Kazakhstan No 167 of 16 July 1997 <<https://adilet.zan.kz/eng/docs/K970000167>> accessed 10 August 2023.

32 Convention Concerning Forced or Compulsory Labour (No 29) (signed 28 June 1930) <https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C029> accessed 10 August 2023.

33 Labor Code of the Republic of Kazakhstan No 414-V of 23 November 2015 <<https://adilet.zan.kz/eng/docs/K1500000414>> accessed 10 August 2023.

in property rights, especially when the individual cannot refuse to do the work or service due to circumstances beyond their control. This also encompasses exploiting an individual with the intent to coerce them into work or service or creating a scenario in which a person, whether paid inadequately, somewhat fairly, or not at all, carries out work or provides services for someone else's benefit, and cannot alter this circumstance due to their dependency on the other person.

2. The qualified composition must contain such signs as an act committed:
 - against two or more persons;
 - in relation to a minor;
 - by a person using his official position;
 - with the use of blackmail, violence or the threat of its use;
 - with the seizure, concealment or destruction of documents proving the identity of the victim,
 - by a group of persons by prior agreement;
 - against a pregnant woman known to the perpetrator.
3. A case may be classified as particularly severe if it negligently leads to death, inflicts serious bodily harm on the victim or other severe consequences, or is committed by an organised group.

State labour inspections could help detect instances of labour exploitation. However, national inspectors lack the knowledge and methodology to identify and report victims of human trafficking to law enforcement agencies. Article 191 of the Labor Code of the Republic of Kazakhstan states that state labour inspectors enforce labour legislation within the country. However, their established competencies do not mandate them to report any suspicious instances of human trafficking to the prosecutor's office or police. The question of equipping labour inspectors with essential methodological resources, like guidelines, recommendations, and manuals detailing the process of identifying and assisting victims of human trafficking, is still unresolved.

Authorities authorised to detect VHTs are law enforcement agencies which should specialise in the prevention and combating of human trafficking, as well as agencies authorised to identify and assist victims. At the same time, cooperation issues and interaction in this area between various entities, including police officers, border guards, prosecutors, labour inspectors, consular officials, and officials of local executive bodies, have not been regulated.

Victim identification is usually based on three elements: performance evaluation, stakeholder interviews, and information from third parties. The assessment should take into account the risks to the potential victim and include a proposal for the protection, security, and confidentiality measures required. The legislation of Kazakhstan does not contain any basic recommendations regarding the identification of VHTs, criminal investigations, and interagency cooperation.

At the same time, basic methodological clarifications, combined with the framework of interdepartmental recommendations on identifying VHTs, can become one of the main tools for identifying and applying procedures to VHTs. Appropriate guidelines can become an operational tool to guide the steps to be taken by central and local governments, NGOs, and service providers in the identification process. They should provide a methodology for identifying victims and potential VHTs and procedures for interagency cooperation while respecting appropriate confidentiality provisions. The methodology should proceed from the fact that official identification of VHTs is not required to receive assistance. In other words,

every person suspected of being a VHT should be treated as such, with all relevant rights, unless proven otherwise.

Some problems hinder the timely provision of assistance to victims of human trafficking. Today, one of them is the activity of the migration service, which considers any foreign citizen (migrant worker) identified at various work sites first, as a potential offender. The main emphasis is on the lack of documents or overdue periods of stay in the country. At the same time, the reasons for their appearance in Kazakhstan, their living conditions, and whether wages were paid are not clarified.

Thus, a foreign person is primarily brought to administrative responsibility for violating migration legislation. Subsequently, foreign citizens are often deported without the right to enter Kazakhstan, and the employer avoids responsibility or pays an insignificant fine for attracting foreign labour. Only if foreign citizens subjected to labour or sexual exploitation are recognised as victims, the legislation extends their stay in the country until a court decision is made in a criminal case.

Over the past three years, no state order has been placed for NGOs to communicate about the risks of human trafficking or to engage in informational and preventative efforts within the population. Moreover, the corresponding costs associated with those activities have not been allocated in the national budget. Information is provided by NGOs on a volunteer basis or as part of an International Organization for Migration project.

6 PROBLEMATIC ISSUES IMPEDING THE EFFECTIVE PREVENTION AND COUNTERACTION OF HUMAN TRAFFICKING

In recent years, the socio-economic situation in Kazakhstan has turned the country into a kind of regional centre of attraction for migrant workers. Many residents of the neighbouring states of Uzbekistan, Kyrgyzstan, and Tajikistan illegally work on construction sites, harvest crops, and trade in kiosks and markets in large and small cities. No one knows exactly how many migrant workers work in the city of Shymkent and the Turkestan region. Migrants mostly come to Kazakhstan and do not always stay in the country legally. Kazakhstan has a so-called “visa-free” regime with these countries, so it is not difficult to come here. Low wages are among the main reasons forcing people to leave their country. This is followed by a bad business climate, a lack of work, and a desire to return to their historical homeland.

Getting information about employment opportunities is almost entirely informal, shady, or downright criminal. Before leaving, most migrants do not know where and for whom they will work in Kazakhstan. At the same time, most migrants do not get the work they expect, and even if the type of work aligns with the pre-agreed working conditions, they often differ from the promises initially made.

Migrant workers often seek employment assistance from private intermediaries. The so-called “black brokerage activity” has turned into an organised enterprise of the shadow economy, actively using proven schemes: advertising in newspapers and other media, personal employment of an employee (for example, at train stations and bus stops, when passing a border checkpoint). They can be hired directly at the workplace, and then the employee is transferred from one employer to another, usually for a fee. Sometimes the facilities are located across the street, and the owners approve the employees and transfer them hand to hand. Sometimes the ‘old’ employer does not pay employees but promises that a new employee will do it. Recruitment can also be carried out where immigrants looking for work gather.

Intermediaries often become part of the human trafficking mechanism. Therefore, special agents recruit girls in villages from rural areas of Central Asia to work on private farms and

provide sexual services in other states. The recruiter comes to the village and finds the most vulnerable families there (poor, with many children, alcoholic parents, the sick, the elderly, etc.). With the help of psychological pressure, a person convinces parents to “give” him their daughter, whom he undertakes to support, “arrange” in the city, help with work or study, and housing. Parents are usually paid a small amount (about \$ 100–200) and promised regular money transfers from their daughters in the future. Essentially, a person is being bought. The procedure for moving across the border is regulated (if the girl is a minor — with the help of a power of attorney from her father). The girl is transferred and handed over to the “owner”. Similar schemes are used to hire construction workers, cotton cleaners, underground workshop workers, and other purposes.

Resorting to the services of shadow brokers, migrants are initially forced to take risks. Private “entrepreneurs” themselves behave almost openly:

firstly, because of gaps in legislation that allow them to evade responsibility (they can only be held accountable for non-payment of taxes and similar “related” crimes);

secondly, thanks to corruption, which permeates all relations of labour migration.

The organisation of migration includes a full range of services: transportation of migrants, their work, housing, and sometimes temporary registration. Strict employer control over the employee can be carried out in different ways. The most common is the seizure of documents and the so-called debt bond. At the same time, the debt, as a rule, significantly exceeds the monthly earnings. Several practices lead to such debt: this may be a fabricated shortage on the seller’s part, excessive consumption of construction materials, and work on the fees the employer pays to the intermediary for the employee.

The most brutal forms of exploitation of migrants have become widespread. Elements of slavery, violence, and coercion are inherent in labour relations and are often perceived as a norm rather than a violation of human rights.

Several factors contribute to this:

- the willingness of the employee, under the influence of certain circumstances, to tolerate the working conditions of enslaved people;
- complicity in the attitude of society and the authorities to exploitation in the workplace;
- stereotypes and distrust of the authorities and society towards migrants;
- corruption.

7 LEGAL APPROACHES AND TOOLS TO RESPOND TO THE CHALLENGE OF COUNTERING HUMAN TRAFFICKING

In 2018, criminal liability for organising illegal migration was tightened by Article 394 of the Criminal Code of the Republic of Kazakhstan (participation in public works was added to the types of punishment).³⁴

For organising illegal immigration committed by a criminal group, imprisonment for a term of three to seven years is provided. Measures to combat human trafficking are being implemented within the framework of the interstate program of joint measures to combat crime

34 Criminal Code (n 31).

for 2019–2023, adopted by the resolution of the Council of CIS Heads of State.³⁵

In 2018–2020, an action plan was implemented to prevent and combat crimes related to human trafficking. During this period, the criminal activities of six organised groups engaged in human trafficking were suppressed. Two channels of importation of citizens from Uzbekistan and Kyrgyzstan for labour exploitation and seven channels of export of citizens of Kazakhstan for sexual exploitation to Qatar, Indonesia, Bahrain, the United Arab Emirates, Turkey and the Republic of Korea were eliminated.³⁶

According to the Law of the Republic of Kazakhstan ‘On the Victims Compensation Fund’ dated January 10, 2018, persons recognised as victims of crimes related to human trafficking are entitled to monetary compensation from 2020.³⁷

Expanding the legal channels of entry and employment of foreign citizens and simplifying the procedure for obtaining permits is an effective measure to prevent illegal immigration.

During the implementation of the migration policy concept for 2017–2021, a set of measures was implemented to improve the country’s migration system, including creating an understandable and transparent system for providing migration services to foreign citizens. The Ministry of Internal Affairs of the Republic of Kazakhstan, within the framework of continuous modernisation and systemic reforms, is taking measures to improve the provision of stat-emigration services.

Migration Service Centres were opened in all regional cities in 2018–2019, and the “one window” principle was introduced when issuing labour patents.³⁸ From November 1, 2020, the function of processing documents for migrant workers has been transferred to Public Service Centers.

One of the effective international measures aimed at reducing illegal migration is readmission, that is, the return of foreign citizens illegally residing on the territory of the Republic of Kazakhstan to the territory of the countries from which they arrived. To create a legal basis for the return of illegally residing migrants, the Republic of Kazakhstan has concluded readmission agreements with 17 countries, including several Western European States, the Russian Federation, Tajikistan, Uzbekistan, and Kyrgyzstan.³⁹

To deter instances of dual citizenship, as well as combat illegal immigration, the Law of the Republic of Kazakhstan № 306-VI on March 26, 2020, ratified the agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Uzbekistan on cooperation in combating illegal immigration on April 15, 2019.⁴⁰

The fight against illegal migration on the way to its prevention can be carried out by establishing transparent and understandable procedures for obtaining the necessary permits and removing unnecessary bureaucratic obstacles to legalising migrants in the host country.

35 Interstate program of joint measures to combat crime for 2019–2023 (adopted 28 September 2018) <<http://www.cis.minsk.by/reestr2/doc/5863#text>> accessed 10 August 2023.

36 Concept of Migration Policy of the Republic of Kazakhstan for 2023–2027 (approved 10 December 2022) <<https://www.gov.kz/memleket/entities/enbek/documents/details/383914?lang=kk>> accessed 10 August 2023.

37 Law of the Republic of Kazakhstan No 131-VI ‘On the Victims Compensation Fund’ of 10 January 2018 <<https://adilet.zan.kz/eng/docs/Z1800000131>> accessed 10 August 2023.

38 Ministry of National Economy of the Republic of Kazakhstan, Voluntary National Review of Kazakhstan: On the Implementation of the 2030 Agenda in the Field of Sustainable Development (Economic Research Institute 2022) 129, 135 <https://economy.kz/kz/Celi_ustojchivogo_razvitija/Nacionalnyj_otchet> accessed 10 August 2023.

39 *ibid* 135.

40 Agreement between the Government of the Republic of Uzbekistan and the Government of the Republic of Kazakhstan of 15 April 2019 On Cooperation in the Fight Against Illegal Migration <https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=114142&p_lang=en> accessed 10 August 2023.

The Republic of Kazakhstan is partially working on the abolition of migration cards, simplification of obtaining work permits and patents for migrants, de-registration of specific categories of migrants and raising awareness of migrants about migration legislation and existing rules through the visa and immigration portal.

The legal status of illegal immigrants can be improved by increasing their access to effective remedies that guarantee them the right to legally stay in the host country or return to their homeland.

Implementing the guiding principles and objectives of the global agreement on safe, orderly, and legal migration in the national migration policy of the Republic of Kazakhstan is integral. Given that the Republic of Kazakhstan is a country of origin for migrants, as well as their transit and destination, the country's migration policy is multilateral and comprehensive, aimed at ensuring the regularity, regulation, and legality of migration processes while respecting the rights and freedoms of both migrants and citizens of Kazakhstan.⁴¹

In 2018, the Republic of Kazakhstan was among the countries that voted for the Global Compact on Safe, Orderly, and Legal Migration.⁴² During the implementation of the provisions of the global migration system, work was intensified to improve migration legislation, simplify the visa regime, the procedure for issuing invitations, entry, and registration of visiting foreign citizens, as well as modernising the visa and immigration portal. These measures correspond to the implementation of the goals set out in the global migration regime as a prerequisite for ensuring safe, orderly, and legal migration (in particular, Goals 4, 5, 9, and 12).

During 2018-2020, an action plan for the prevention and suppression of crimes related to the smuggling of migrants and human trafficking was implemented in the Republic of Kazakhstan. Measures to combat human trafficking are also being implemented within the framework of the interstate program of joint measures to combat crime for 2019-2023, adopted by the resolution of the Council of CIS Heads of State (Goals 9 and 10).

The Republic of Kazakhstan, among 103 countries, signed a joint statement on the impact of Covid-19 on migrants on 12.06.2020,⁴³ demonstrating its commitment to joint international actions to solve migration problems. The country implemented stabilisation measures to combat the crisis in the context of the pandemic, including protecting the rights of migrants stuck in the country due to the termination of interstate transport links.

The Kazakhstani government has not fully met the minimum standards required to eradicate human trafficking. However, they have been markedly increasing their efforts recently. In May 2023, a draft law titled 'On Combating Human Trafficking in the Republic of Kazakhstan' was proposed to the Parliament.⁴⁴ Developed by the Ministry of Internal Affairs, the draft aims to:

- Update definitions to align with international standards and introduce new terms.
- Specify the individuals covered by the new law.
- Identify and define the roles of official bodies responsible for tackling human trafficking, detailing their rights and duties.
- Describe the entities involved in counteracting human trafficking and their jurisdiction.

41 Concept of Migration Policy (n 36).

42 Global Compact for Safe, Orderly and Regular Migration (adopted 19 December 2018 UNGA Res 73/195) <<https://www.iom.int/resources/global-compact-safe-orderly-and-regular-migration/res/73/195>> accessed 10 August 2023.

43 Joint Statement on the Impact of COVID-19 on Migrants (adopted 12 June 2020) <https://www.un.int/philippines/statements_speeches/joint-statement-impact-covid-19-migrants> accessed 10 August 2023.

44 Draft Law 'On Combating Human Trafficking in the Republic of Kazakhstan' of 02 May 2023 <<https://www.parlam.kz/kk/mazhilis/post-item/36/16028>> accessed 10 August 2023.

- Implement a system for assessing human trafficking risks and a procedure to assist victims.
- Outline the role of non-governmental organisations in the effort.
- Highlight the rights and responsibilities of trafficking victims.
- Ensure the protection of minors' rights.
- Set the foundation for international collaboration on the issue.

Upon reviewing the draft, we believe it does not adequately plan for the intended outcomes for several reasons. The draft law's nature is too broad and general, encompassing only 22 articles with vague norms that lack specificity in addressing human trafficking. The proposed definition of 'trafficking in human beings' in the draft deviates from that established in the UN's Palermo Protocol. Enhanced collaboration is necessary between law enforcement, other government departments, and NGOs dedicated to rehabilitating trafficking victims. Ways to strengthen cooperation between social network administrators, information services, and law enforcement must be established to prevent crimes against individuals better. The law's provisions should encompass Kazakhstani citizens, permanent residents, and those without formal migration status. The Kazakhstani legal system must be systematically updated to offer legal aid and social services to protect such victims. Emerging legislation needs to address the unique rights, needs, and vulnerabilities of child trafficking victims, ensuring they receive additional protection. The draft should mandate the protection of human trafficking victims' family members. It is imperative that the draft includes a stipulation that proceeds from the sale of confiscated traffickers' assets be channelled towards compensating trafficking victims.

The draft law introduces a holistic approach to protect and assist human trafficking victims and witnesses. For any national anti-trafficking initiative to work effectively, it must be multifaceted, involving experts from various disciplines. We suggest that the Kazakhstani government consider the creation of a dedicated entity, like a National Rapporteur, or another independent mechanism to oversee state activities related to human trafficking.

A more unified approach to tackling human trafficking could be achieved by enhancing national-level coordination. Regular information exchanges among all key agencies responsible for trafficking prevention, victim identification, assistance, and the prosecution of traffickers can facilitate this. We believe that designating a National Coordinator for Combating Trafficking in Human Beings, supported by a specialised office, could enhance this coordination significantly.

For effective policy creation, monitoring, and evaluation, the draft law should advocate for a comprehensive human trafficking database. This should contain trustworthy statistics about suspected and confirmed trafficking victims from all stakeholders, including specialised NGOs and international bodies. Moreover, it should cover data on investigations, legal proceedings, and convictions related to trafficking, detailing gender, age, exploitation type, and countries of origin or destination. The management of this database should prioritise protecting personal data, especially when sharing information with NGOs assisting trafficking victims.

The draft law should mandate that state entities adhere to international human rights standards and domestic laws. There should be increased accountability and transparency of state institutions, achieved through routine evaluations involving both governmental and non-governmental representatives.

In summary, while the proposed draft law on human trafficking by the Kazakhstani government is foundational and general, it represents a step in the right direction. However, its endorsement should come with the understanding that it serves not merely as legislation but as an impactful policy instrument.

8 RESULTS

We advocate for the development and adoption of a distinct law in the Republic of Kazakhstan titled 'On Combating Human Trafficking'. This law would clearly delineate the responsibilities and authorities of relevant governmental bodies and promote collaboration with NGOs and crisis centres. Furthermore, it would better adhere to the stipulations of the Palermo Protocol in practice. This would not merely be a declaration but a series of concrete steps outlined by the law.

- 1) We suggest adding to the Criminal Code of the Republic of Kazakhstan an explanation of the terms 'crimes related to human trafficking, as well as 'purchase, sale, and other transactions related to human trafficking' and 'victim's consent to the anticipated exploitation'. We propose the inclusion of a distinct, qualified crime provision, 'Use of forced and slave labour'.
- 2) The definitions of 'trafficking in persons and trafficking in minors' need to be clarified in line with the definitions enshrined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Also, the penalties for these offences should be increased to reinforce criminal liability.
- 3) To improve the detection of human trafficking-related crimes, we recommend enhancing collaboration between law enforcement, governmental bodies, NGOs, and crisis centres, drawing from the experiences of the US and certain developed EU countries.
- 4) To better prevent and detect human trafficking-related offences, we suggest the implementation of special survey forms to be used by police officers, particularly those in special institutions, district police officers, and the migration service.
- 5) To expose labour exploitation and prevent such offences, the Migration Committee of the Ministry of Labor and Social Protection should create a permanent monitoring group in cooperation with relevant state bodies.
- 6) State labour inspectors should receive regular training on identifying victims of human trafficking and redirecting them to law enforcement agencies.
- 7) Efforts should continue to refine national legislation to align with international obligations and draw from global best practices in combating human trafficking. The main legally binding international instruments must be ratified. Recognition of advanced international acts will make it possible to move beyond the minimum standards that the Government of Kazakhstan proposes today, which in turn will significantly strengthen the component for the protection of victims of human trafficking. The development of a national legal framework in this area in the context of the international obligations assumed by the country will ensure the solution of a significant proportion of shortcomings in the developed draft law. It will provide guarantees for future improvement of legislation.
- 8) Regular monitoring of compliance with international human rights and anti-human trafficking obligations should be ensured by the Ministry of Internal Affairs and the General Prosecutor's Office in collaboration with NGOs and international organisations.
- 9) Regular trainings should be conducted for law enforcement officials to adopt a special methodological approach to investigate crimes involving victims of human trafficking.
- 10) We recommend the recognition of the competence of the UN Committee on Enforced

Disappearances to consider individual and interstate communications in accordance with Articles 31 and 32 of the International Convention for the Protection of All Persons from Enforced Disappearance.

- 11) The Anti-Corruption Agency should intensify efforts to detect and expose corruption crimes involving government officials and law enforcement officers aiding or engaging in human trafficking.
- 12) A special program or Roadmap for the social integration of victims of human trafficking should be adopted by the Ministry of Labor and Social Protection, with the participation of relevant state bodies, NGOs, and experts.
- 13) The Ministry of Labor and Social Protection should develop and implement criteria and mechanisms for assessing the quality of special social services provided to victims of human trafficking.
- 14) Mechanisms should be developed to encourage the private sector to abandon exploitative labour, possibly by offering tax incentives for corporations and organisations that abide by an accepted ethical code of conduct.

9 CONCLUSIONS

We must acknowledge that the contemporary legislation and legal enforcement approach in Kazakhstan primarily targets illegal immigration rather than effectively enhancing preventive measures and detecting criminal acts related to human trafficking, including the social protection of trafficking victims. Regrettably, this often results in a cycle of re-victimisation for the victims of human trafficking, leading to continued social dislocation and hardship.

Our investigation underscores the pressing nature of the issue concerning safeguarding the rights of human trafficking victims in Kazakhstan. By consolidating the noted deficiencies in our national laws and law enforcement methods, as well as evaluating the extent of social and legal protection provided to human trafficking victims, we have been able to propose solutions to address the protection of these victims' rights.

Our study highlights the significance of the issues surrounding the protection of the rights of trafficking victims in Kazakhstan. By pinpointing gaps in our national legislation and law enforcement methods, assessing the level of social and legal protection offered to victims, evaluating their awareness of their rights, and addressing the main issues of victims' rights protection, we have been able to identify potential solutions to these issues.

The national mechanisms in place for safeguarding the rights of trafficking victims and ensuring their access to specialised social services require significant adjustments in line with the international obligations under the Palermo Protocol. The main objective of the recommendations put forward in this study is to enhance the national legislation and law enforcement practices regarding the protection of the rights of all categories of trafficking victims in adherence to international standards.

When revising the legislative acts of the Republic of Kazakhstan, it is crucial to consider the successful strategies of other countries in addressing human trafficking issues. Examples include the approaches taken by the United States, Sweden, Canada, Australia, and New Zealand.

Adopting the recommendations derived from this study could cultivate a human rights culture focused on combatting human trafficking. It can also facilitate the enhancement of effective collaboration methods among state and law enforcement bodies, non-governmental organisations, crisis centres, expert groups, and international organisations. Ultimately,

by implementing these recommendations, Kazakhstan can progress significantly towards establishing a law-based state, reinforcing national and public mechanisms for protecting the rights of human trafficking victims in line with international standards, and completely eliminating the potential risk of our country being placed on the “2 Watch List” (Control list) of the US State Department, which annually reports on human trafficking issues globally.

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Summary: 1. Introduction. — 2. Literature review. — 3. Monitoring sources of legal regulation. — 4. Research methods. — 5. Problematic issues impeding the effective prevention and counteraction of human trafficking. — 6. Legal approaches and tools to respond to the challenge of countering human trafficking. — 7. Results. — 8. Conclusion.

Keywords: human trafficking, illegal migration, a victim of human trafficking, slavery, forced labour

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