



**Convention on the
Rights of the Child**

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COMMITTEE ON THE RIGHTS OF THE CHILD

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 12 (1) OF THE OPTIONAL PROTOCOL TO THE
CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF
CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

Initial reports of States parties due in 2004*

KAZAKHSTAN

[21 July 2004]

* The enclosures referred to in the report are available for consultation at the Office of the High Commissioner for Human Rights.

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Introduction

1. This report was prepared by the National Commission for Family and Women's Affairs under the President of the Republic of Kazakhstan, with the participation of interested ministries and departments, representatives of international organizations and non-governmental organizations (NGOs), the United Nations Children's Fund (UNICEF), the Women's League and others. The report on the implementation of the Optional Protocol, together with the anticipated recommendations of the Committee on the Rights of the Child, will be disseminated by the aforementioned State bodies, international organizations and NGOs.

2. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography takes precedence over domestic legislation. This norm is contained in article 4 of the Constitution of Kazakhstan, which provides that "international treaties ratified by the Republic shall take precedence over its laws and be directly applicable, except in cases where the application of an international treaty requires the promulgation of a law".

3. The following bodies are competent to apply the Optional Protocol:

Ministry of Internal Affairs;

Ministry of Justice;

Ministry of Foreign Affairs;

Ministry of Education and Science;

Ministry of Information;

Ministry of Labour and Social Welfare;

Ministry of Economy and Budget Planning;

Ministry of Finance;

Ministry of Health;

Kazakh Agency on Migration and Demography;

Kazakh Agency on Tourism and Sport;

Office of the Procurator-General;

Human Rights Commissioner in Kazakhstan and the National Human Rights Centre of Kazakhstan;

Supreme Court and courts at all levels;

Statistical Agency of Kazakhstan;

Local administrative bodies;

Constitutional Council;

National Security Council;

Ministry of Culture;

National Commission for Family and Women's Affairs under the President of the Republic of Kazakhstan;

NGOs involved in protecting the human rights and the legitimate interests of the family, women and children.

4. Information on the provisions of the Optional Protocol has been disseminated in Kazakhstan among broad sectors of society, including parents, by the media and at international and national conferences, round tables, seminars and training courses.

5. In Kazakhstan, there are State organizations and NGOs with sufficient competence in matters relating to the provisions of the Optional Protocol. In addition to these organizations, the National Commission for Family and Women's Affairs under the President of the Republic of Kazakhstan and the Inter-Agency Commission for the Protection of the Rights and Interests of Children, the advisory body to the Government of Kazakhstan; the Inter-Agency Commission is headed by the Minister of Education and Science.¹

6. Mechanisms and procedures for conducting periodic evaluations of the implementation of the Optional Protocol have not yet been adequately developed. The existing mechanisms are the National Commission for Family and Women's Affairs under the President of the Republic of Kazakhstan, the Inter-Agency Commission for the Protection of the Rights and Interests of Children, the National Human Rights Centre of Kazakhstan and the NGOs and international organizations that cooperate with them.

Article 1

State Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

7. The sale of children, child prostitution and child pornography are prohibited in Kazakhstan. The Rights of Children in Kazakhstan Act of 8 August 2002 guarantees the personal inviolability of children, including from acts of a sexual nature,² from prostitution and pornography³ and unlawful removal.⁴

8. The Rights of Children in Kazakhstan Act was adopted in accordance with the Convention on the Rights of the Child and includes articles that are in full conformity with the articles of the Convention. Kazakhstan's initial report on its implementation of the Convention on the Rights of the Child was considered by the Committee on the Rights of the Child in June 2003.

Article 2

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

9. Kazakh legislation uses the following concepts and definitions:

(a) In article 1 of the Rights of Children in Kazakhstan Act, “child” is defined as “a person who has not reached the age of 18 (majority)”; Kazakhstan’s criminal and criminal procedure legislation uses the concepts “minor” and “young minor” (a minor is a person who has not reached the age of 18 and a young minor is a person who is under the age of 14);

(b) In article 133 of the Criminal Code of Kazakhstan, “sale of children” is defined as the buying and selling of minors or other transactions involving their transfer or acquisition;

(c) Kazakhstan’s Culture Act defines pornography as obscenity and extreme cynicism in representing things related to sex or sexual relations.

Article 3

1. Each State party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) The offering, delivering or accepting, by whatever means, of a child for the purpose of:

a. Sexual exploitation of the child;

b. Transfer of organs of the child for profit;

c. Engagement of the child in forced labour;

10. The Criminal Code of Kazakhstan, which entered into force on 1 January 1998, includes article 133, which establishes liability for the purchase or sale of minors or other transactions involving their transfer or acquisition.⁵ This article of the Criminal Code provides the most complete coverage of the acts and activities listed in article 3 of the Optional Protocol.

11. Paragraphs 1 and 2 of article 133 of the Criminal Code provide for a 10-year statute of limitations for criminal prosecution; paragraph 3 of the same article provides for a 15-year statute of limitations.

12. Paragraph 2 of article 133 of the Criminal Code establishes liability for classified types of this offence. The law describes seven circumstances that entail liability for trafficking in minors:

- (a) Repetition, that is, when the offence is committed two or more times;
- (b) Simultaneous purchase and sale or another transaction involving two or more minors;
- (c) Commission of the offence by a group of persons by prior conspiracy or by an organized group;
- (d) Commission of the offence by a person who makes use of his or her official position (in the context of article 133, such persons include the staff of medical and children's institutions and of social welfare agencies);
- (e) Unlawful transport of a minor abroad, which may be effected both by the illegal transport of a sold child, for example, through the use of false documents, and by adoption in accordance with the established procedure but in connection with the sale of the child; the unlawful return of a minor from abroad presupposes that the child was lawfully taken abroad by his or her natural or adoptive parents, after which the child's purchase or sale or another transaction ensued, in connection with which he or she was illegally returned to Kazakhstan;
- (f) Purchase or sale or hiring out of a minor for the purpose of involving him or her in the commission of an offence or other antisocial acts, for example, making someone else's child engage in begging or prostitution;
- (g) For the purpose of removing from the minor organs or tissues for transplant.

13. According to information provided by the Ministry of Internal Affairs, in 2002 investigations were conducted in Kazakhstan in connection with five criminal cases involving trafficking in minors. Four of them were in South Kazakhstan oblast and one in Almaty oblast. According to statistical data, in 2003 Kazakh courts convicted eight persons, seven of whom were women, for offences covered by article 133 (Trafficking in minors) of the Criminal Code.

14. Moreover, during the same period, Kazakh courts convicted eight persons pursuant to article 124 of the Criminal Code (Corruption of minors).

15. No instances of trafficking in children for the purpose of removing their organs or tissues have been registered in Kazakhstan.

16. At present, an inter-agency commission to combat the unlawful transfer of persons abroad, transfer of persons into the country and trafficking in persons has been established under the Government of Kazakhstan and is headed by the Minister of Justice. Government Decision No. 219 of 24 February 2004 approved the plan of action to combat and prevent offences involving trafficking persons for 2004-2005.

17. The Constitution of Kazakhstan contains a provision prohibiting forced labour. This provision is supplemented by special legislation on child labour. This legislation is based on the recognition of a child's right to protection from the performance of any work that might be hazardous to his or her health or damage his or her physical, spiritual or moral development, or prevent a child from receiving an education.

18. Surprise inspections conducted by the Ministry of Labour and Social Welfare in Kazakhstan's southern regions revealed a number of cases in which workers, including children, were recruited for agricultural work (harvesting of tobacco or cotton) in contravention of the law of Kazakhstan. The guilty parties were prosecuted.

19. The main reason that children take part in such work is that they wish to help their families, which do not have a steady income. In addition, homeless children are often recruited for such work; such children are attracted by the possibility of getting something to eat and having a warm place to spend the night.

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

20. Under article 117 of the Administrative Code, unlawful activities involving adoption are subject to a fine of from 10 to 25 monthly notional units. One monthly notional unit is equivalent to US\$ 6.60.

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

21. Kazakhstan provides for criminal liability for sexual relations and other acts of a sexual nature with a person under the age of 16; clients of child prostitution are also liable.⁶ Article 124 (Corruption of minors) of the Criminal Code is also used to combat child prostitution, particularly child pornography.⁷

22. Article 120, paragraph 2, provides for liability for the rape of a person known to be a minor. Recruitment for prostitution,⁸ and the establishment or maintenance of dens of prostitution or procuring,⁹ are subject to criminal prosecution.

23. In 2003, the courts did not hear any criminal cases involving offences covered by article 270 (Recruitment for prostitution) of the Criminal Code in which the victims were minors or in which the offences infringed their interests.

24. Article 128 of the Criminal Code¹⁰ provides for the maximum punishment for the recruitment of minors for sexual or other exploitation (up to five years' deprivation of liberty). The statute of limitations for prosecuting such offences is five years. The perpetrator of the offence must be a physical person of sound mind who has reached the age of 16.

25. In 2003, the investigation unit of the Almaty oblast central internal affairs department began an investigation of a criminal case involving two female inhabitants of Almaty oblast who, from 24 July 2001 and 8 April 2003, recruited five girls and sent them to the United Arab Emirates for subsequent sexual exploitation (one girl was a minor).

26. The Criminal Code of Kazakhstan places particular emphasis on the involvement of minors in the commission of antisocial acts, including in prostitution.¹¹ The maximum punishment for this offence is deprivation of liberty for up to three years. If the offence is committed by a parent, teacher or another person responsible for a child's upbringing, the maximum punishment is deprivation of liberty for up to five years. If such acts are repeated, the maximum punishment is deprivation of liberty for up to six years.

27. In the investigation and examination of cases relating to the involvement of children in criminal activities or in the commission of antisocial acts, Kazakh legislation considers that such offences are committed only with malice aforethought. In such cases, criminal liability arises if the guilty party was truly aware that the person that he or she involved in such activities was a minor.

28. Involvement of a minor in criminal activities means the deliberate act of instilling in a minor the desire (intention, ambition) and readiness to participate in the commission of a crime. In such cases, the actions of an adult must be active and may be accompanied by the use of psychological or physical pressure (beatings, persuasion, threats and intimidation, bribery, deceit, incitement of feelings of vengeance, envy or other base motives, assurances of impunity, provision of advice on the place and means of committing an offence or the place and means of concealing the traces of the offence, promise to pay for the acts committed, and others).

29. In itself, a proposal made by an adult to a child with a view to inducing the latter to commit an offence, without the use of psychological or physical pressure, is not considered to be involvement of a minor in a criminal activity.¹² In 2002, a total of 48 persons were convicted under this article. The statistical data do not make it possible to determine the number of persons convicted for enticing minors into prostitution.

30. Nevertheless, child prostitution continues to be a serious problem. The analysis of an anonymous survey conducted among students between 15 and 17 years of age in grades 9 to 11 in 20 schools and lycées in Almaty indicated that 33.6 per cent of the teenage respondents have had sexual relations and, of that number, 61.2 per cent have a regular sex life. Of the teenagers surveyed, 0.8 per cent had had sexual contacts by the age of 12, and 12.6 per cent had had sexual contacts by the age of 15. Teenage prostitution has increased considerably; 40 per cent of the female respondents who have a sex life received or receive remunerations for sex acts.

31. The incidence of syphilis among teenage girls is over twice as high as similar indicators for teenage boys. The predominance of the number of registered cases of syphilis among girls over 14 is related to the commercialization of sexual relations.

32. In connection with this situation, on 21 November 2001 the Government adopted guidelines on moral and sexual upbringing in Kazakhstan.

33. Kidnapping is considered a criminal act. Although kidnapping is not covered by the provisions of article 3, paragraph 1, of the Optional Protocol, article 125¹³ of the Criminal Code provides for increased liability for kidnapping a child. If the kidnapping of an adult is punishable by deprivation of liberty for a period of from 4 to 7 years, the kidnapping of a child is punishable by deprivation of liberty for a period of from 7 to 12 years. Kidnapping for the purpose of the sexual or other exploitation of the kidnapped person is punishable by deprivation of liberty for a period of from 10 to 15 years.

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

34. The Criminal Code does not make special reference to the dissemination of materials and articles relating to child pornography. However, it establishes general criminal liability for the dissemination of pornography. Article 273¹⁴ considers perpetrators of such offences to be persons who have reached the age of 16. The statute of limitations for prosecuting this offence is two years. In 2002, four persons were convicted under this article.

35. The dissemination of pornographic materials and articles among persons under the age of 14 and introducing them to similar materials, and also the use of such persons in the pornography business, incur criminal liability for all of the offences referred to in articles 273 and 124 (Corruption of minors) of the Criminal Code.

36. With a view to preventing the offences indicated in the Optional Protocol, the norms of both criminal and administrative law are applied. The Code of Administrative Offences of 30 January 2001 contains article 115 on the involvement of minors in the production of articles with erotic content.¹⁵

37. Local government bodies strictly regulate the sale of audio and video materials and printed periodicals containing materials of an erotic nature. The dissemination of such articles is permitted only at specially designated fixed premises, and they may not be sold to children or in children's and educational institutions or within a radius of up to 300 metres of such institutions.¹⁶

38. The broadcasting of radio and television programmes, and the showing of films and video recordings of a pornographic or special sexual-erotic nature is prohibited by article 14 of the Media Act.

39. Article 6 of the Publicity Act, adopted on 19 December 2003, prohibits the advertising of pornography.

40. A serious problem is the accessibility of porno sites (including sites containing child pornography) on the Internet. Kazakhstan has no real means of preventing or limiting the dissemination of pornographic materials on the Internet. In 2003, certain citizens of Kazakhstan, using a German provider, placed child pornography on the Internet. Although the offence was discovered immediately, efforts to identify the perpetrators were unsuccessful.¹⁷

2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.

41. In Kazakh legislation, an attempt to commit an offence is qualified under the same article of the Criminal Code that deals with a committed offence. In such circumstances, criminal liability arises only for attempted crimes of a moderately serious, serious or particularly serious nature, that is, crimes that carry maximum penalties exceeding two years' deprivation of liberty.

42. Of the aforementioned criminal penalties for acts covered in the Optional Protocol, only article 273 (Unlawful dissemination of pornographic materials or articles) of the Criminal Code does not consider an attempted act covered by this article to be a criminal offence.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

43. Appropriate measures to punish the offences listed in article 3, paragraph 1, of the Optional Protocol, are described in paragraphs 10 to 12, 20 to 29, 34 and 36 of this report.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.

44. In Kazakhstan, only physical persons are criminally liable for committed offences. If acts involving the sale of children, child prostitution and child pornography constituted the main activity or one of the types of activity of a legal person, the question of liability in this case can be considered only with respect to the individual employees of the legal person (perpetrator, organizer, instigator, accomplice) who participated in the commission of the offence as part of a group of persons, an organized group or a criminal association.

45. A legal person is an organization which has, by virtue of ownership, economic management or day-to-day management, separate property and meets its obligations through such property, and which may on its own behalf acquire and exercise property and personal non-property rights and obligations, and be a claimant or a respondent in a court of law.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

46. The procedure for adopting children from Kazakhstan who have been deprived of parental care is governed by the Marriage and Family Act and the Civil Procedural Code.

47. Kazakhstan permits the adoption of minors, which must be only in the interests of such minors.¹⁸ The adoption of a child is considered only by a court with the mandatory participation of the prospective adoptive parents, representatives of tutorship or guardianship agencies, and a procurator. Adoption cases are considered in camera, if necessary with the participation of the child in question, who must be at least 10 years of age.

48. The Ministry of Education and Science and oblast administrations (departments) of education have the right to invite foreigners who wish to adopt children who are citizens of Kazakhstan and to help such foreigners to obtain visas.
49. The rights and duties of adoptive parents and adopted children arise from the date on which the court decision concerning the adoption enters into force.
50. Adoption is permitted in respect of minors whose only parent or both parents are unknown or have been declared dead by a court; whose whereabouts are unknown; who have been declared by a court as having no legal capacity; who have been stripped by a court of their parental rights; who have given their consent to the adoption in accordance with established procedure; or who have not lived with the child and have avoided raising and maintaining the child for more than six months for reasons declared by court to be unacceptable.
51. A child abandoned in a maternity home (ward) or any other medical institution may be adopted when there is a document registering the child's birth, and a document explaining the reason for which and the circumstances in which the child is in the relevant institution, prepared by the administration of the institution in which the child was abandoned.
52. In order to keep a complete and comprehensive register of children deprived of parental care, a primary, regional and central register is kept.¹⁹ In May 2002, the Citizenship Act was amended to guarantee that adopted children who are citizens of Kazakhstan retain their citizenship if they are adopted before they reach the age of majority.
53. To this end, Government Decision No. 1197 of 12 November 2002 approved the regulations governing the adoption by foreigners of children who are citizens of the Republic of Kazakhstan.
54. Taking account of international experience, the State Secretary (Minister for Foreign Affairs) issued a decree approving the instructions for registering children who are citizens of Kazakhstan and are adopted by foreigners.²⁰ In order for a child who has reached the age of 10 to be adopted, the child must give his or her consent.²¹
55. Kazakhstan has not concluded any bilateral or multilateral agreements on adoption with other States. The Government of Kazakhstan is currently conducting internal procedures for accession to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.
56. From 1 January 1999 to 1 January 2004, 21,446 children were adopted; of that number, 17,770 were adopted by citizens of Kazakhstan and 3,676 were adopted by foreigners. According to data from Kazakhstan registry offices, 4,715 children were adopted in 2003; of that number, 3,692 were adopted by citizens of Kazakhstan. Foreigners adopted 1,023 children: 482 boys (47 per cent) and 541 girls (53 per cent).
57. In 2003, foreigners adopted two and more children in 127 cases; 56 children were adopted by their relatives living outside Kazakhstan; and 166 children were adopted by single mothers. Foreigners adopted 492 children under the age of 1, and 119 children under the age of 2.

58. In order to provide a legal framework for the adoption of children who are citizens of Kazakhstan by foreigners in the territory of the Republic, Kazakhstan adopted and enacted a number of regulatory acts that are in keeping with the provisions of the basic international instruments in the field of children's rights, including the Convention on the Rights of the Child, the Convention of the States Members of the Commonwealth of Independent States concerning Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Chişinău, 2002),²² namely:

- Regulations governing tutorship and guardianship agencies of the Republic of Kazakhstan;
- Regulations governing foster care;
- Rules for keeping a central register of children deprived of parental care;²³
- Rules for keeping a register of foreign citizens wishing to adopt children who are citizens of the Republic of Kazakhstan;²⁴
- List of illnesses that prevent the adoption of a child;
- Decision of the plenum of 28 April 2000 of the Supreme Court of the Republic of Kazakhstan on certain questions relating to the application by the courts of legislation on marriage and the family when considering cases involving the adoption of children.

59. Legislation currently in force in Kazakhstan seeks to achieve a fundamental social goal: the creation of the most favourable conditions for the upbringing of children deprived of parental care in family conditions. In this regard, paramount importance is given to the interests of the child. It should be noted that, in accordance with article 21 of the Convention on the Rights of the Child, which Kazakhstan ratified in 1994, and also article 76, paragraph 2, of the Marriage and Family Act, in deciding matters involving intercountry adoption, preference is given to prospective adoptive parents who are citizens of Kazakhstan and who reside in its territory, as well as to the child's relatives (regardless of their citizenship) before consideration is given to foreign citizens wishing to adopt a child from Kazakhstan.

60. Children adopted by foreigners are monitored by the embassies and consular posts of Kazakhstan (article 209, paragraph 6, of the Marriage and Family Act). According to information provided by the Ministry of Foreign Affairs, as at 1 March 2004, 3,334 adopted Kazakh children were placed on a consular register in foreign establishments of the Republic of Kazakhstan. Embassies and consulates of the Republic of Kazakhstan in various countries have registered the following adoptions: in the United States of America - 3,098 children; in the United Kingdom - 85 children; in Canada - 52; in Belgium - 42; in Israel - 16; in Egypt - 16; in France - 9; in Germany - 7; in Spain - 6; and one child each has been registered in embassies of the Republic of Kazakhstan in the Russian Federation, Switzerland and Turkey.

61. Adopted children who leave Kazakhstan with their adoptive parents must have an entry in their passports indicating that the internal affairs agencies of Kazakhstan have granted them permission to exit the country and take up permanent residence abroad; the passports must also bear the stamp of the Ministry of Foreign Affairs of Kazakhstan indicating that the child has been placed on a consular register.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

62. Jurisdiction over the offences referred to in article 3, paragraph 1, in Kazakh legislation is established in accordance with article 6, paragraph 3, of the Criminal Code: “A person who committed an offence on board a ship or aircraft registered at a port of the Republic of Kazakhstan and which is on the open seas or in the air outside the borders of the Republic of Kazakhstan, is subject to criminal liability under this Code, unless otherwise stipulated in an international treaty to which the Republic of Kazakhstan is a party. Under this Code, criminal liability is also borne by a person who committed an offence on board a military vessel or aircraft of the Republic of Kazakhstan, regardless of its location.”

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) **When the alleged offender is a national of that State or a person who has his habitual residence in its territory;**

(b) **When the victim is a national of that State.**

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

63. The provisions of article 6, paragraph 2, and article 7, paragraph 1, of the Criminal Code read:

“Article 6. Effect of criminal law with respect to persons who committed an offence in the territory of the Republic of Kazakhstan

“2. An offence committed in the territory of the Republic of Kazakhstan is considered to be an act which was begun or continued or was completed in the territory of the Republic of Kazakhstan. This Code shall also apply to offences committed on the continental shelf and the exclusive economic zone of the Republic of Kazakhstan;”

“Article 7. Effect of criminal law with respect to persons who committed an offence outside the territory of the Republic of Kazakhstan

“1. Citizens of the Republic of Kazakhstan who committed an offence outside the territory of the Republic of Kazakhstan shall be subject to criminal liability under this Code, if the act which they committed is recognized as an offence in the State in the territory of which it was committed, and if such persons have not been convicted in another State. In any conviction of said persons, the punishment shall not exceed the upper limit for punishment provided by the law of the State in the territory of which the offence was committed. Stateless persons shall also bear liability on the same grounds.”

64. The Office of the Procurator-General of Kazakhstan has not received any requests from other States for legal assistance in criminal cases involving the offences referred to in article 3, paragraph 1, of the Optional Protocol.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in those treaties.

65. Under Kazakh law, all the acts and activities referred to in the Optional Protocol are considered to be criminal offences. Kazakhstan has concluded treaties on legal assistance in criminal matters with a number of States, mostly with States of the Commonwealth of Independent States, in accordance with which persons accused of committing such offences are extradited. The 1993 Minsk Convention concerning Legal Assistance and Legal Relations in Civil, Family and Criminal Matters is currently in force in the Commonwealth.

66. Kazakhstan has concluded a number of bilateral treaties concerning mutual legal assistance in criminal matters and the transfer of convicted persons for the purpose of serving their sentence, with Azerbaijan, Kyrgyzstan, Turkmenistan, Lithuania, the People’s Republic of China, the Democratic People’s Republic of Korea, Mongolia, Pakistan and Turkey. Similar treaties with the Republic of Korea,²⁵ Georgia, Canada and Italy are currently under consideration.

67. In accordance with the bilateral treaties concluded by Kazakhstan concerning legal assistance in criminal matters and extradition, persons are extradited for acts that constitute offences under the law of the two countries and for which the law provides for punishment for a period of at least one year.

68. In accordance with article 521 of the Code of Criminal Procedure, procedural actions covered by the Code, as well as other actions covered by other laws and by international treaties to which Kazakhstan is a party, may be conducted in accordance with the procedure for

rendering legal assistance to investigative and judicial bodies of foreign States with which Kazakhstan has concluded an international treaty on legal assistance, or on a reciprocal basis. It is not possible to indicate the exact number of requirements for the extradition of a person with a view to his or her criminal prosecution for the offences referred to in article 3 of the Optional Protocol, since no statistics are kept on the subject.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

69. While this approach is acceptable for Kazakh legislation, to date no extradition requests have been received from other States parties.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

70. Under article 11 of the Constitution of Kazakhstan, a citizen of Kazakhstan may not be extradited to a foreign State, unless otherwise stipulated by an international treaty.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.²⁶

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and if the requested State party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.²⁷

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

71. According to information provided by the Office of the Procurator-General of Kazakhstan, together with United States law enforcement agencies Kazakhstan is currently investigating a criminal case brought by the West Kazakhstan procurator's office concerning the sexual harassment of the minor S. Doskalieva, born in 1994, while she was staying at a children's home in the town of Uralsk.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

72. Kazakhstan's limited practical experience in this matter is described in paragraph 71 above. See also paragraph 69 of this report.

Article 7

States Parties shall, subject to the provisions of their national law:

- of:**
- (a) Take measures to provide for the seizure and confiscation, as appropriate,**
 - (i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;**
 - (ii) Proceeds derived from such offences;**
 - (b) Executive requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);**
 - (c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.**

73. In accordance with article 51 of the Criminal Code, "confiscation of property" means the mandatory, uncompensated appropriation by the State of all or part of the property owned by a convicted person.²⁸ In accordance with article 58 of the Penal Enforcement Code, the property of a convicted person - including his share of common or joint property, money and securities, bank deposits and other investments in the assets of any type of ownership - is subject to confiscation in accordance with a court judgement. A court may also order the confiscation of property that is used for criminal acts, or as an instrument or a means for committing an offence, or an article that has been taken out of circulation.

74. Article 128 (Recruitment, transport abroad and transit of persons for the purpose of exploitation) and article 133 (Trafficking in minors) of the Criminal Code provide for the confiscation of the property belonging to persons guilty of such offences.

75. Article 273 (Unlawful dissemination of pornographic materials or articles) of the Criminal Code provides for the confiscation of pornographic materials or articles, as well as the means of manufacturing or reproducing them.

76. Article 115 (Involvement of minors in the production of articles with erotic content) of the Administrative Code provides for the confiscation of articles with erotic content and, when the offence is repeated within the course of a year, the confiscation of the means of manufacturing articles with erotic content.

77. In accordance with article 157, paragraph 4, of the Civil Code, if a transaction has a criminal objective, and when both parties acted with intent, all of the proceeds received or accruing as a result of the transaction, are subject to confiscation pursuant to a decision or judgement of a court. In cases where such a transaction was made by one party, everything received by the other party and everything that is owed by the other party to the first party by virtue of the transaction, is subject to confiscation. If neither party has executed the transaction, everything that was due by virtue of the transaction is subject to confiscation.

78. The Media Act provides for the suspension of the activities or the closing of media that allow the publication of pornographic materials that are prohibited by law.

79. Act No. 391-XII of 11 December 1990 of the Kazakh Soviet Socialist Republic (SSR) on freedom of economic activity and development of entrepreneurship in the Kazakh SSR (the Act is still in force) provides for the confiscation of part or all of an entrepreneur's property and the suspension or termination of the entrepreneur's activities in cases where such activities contravene legislation in force in the Kazakh SSR. Although the offences listed in the Optional Protocol are not specifically mentioned, the Constitution of the Republic of Kazakhstan presupposes that the Optional Protocol, which has been ratified by Kazakhstan, is part of its legislation currently in force. However, the suspension or termination of an entrepreneur's activity applies only to small entrepreneurs. This article does not affect the interests of large corporations.

80. International treaties on mutual legal assistance concluded by Kazakhstan provide for the granting of a request by another contracting party for the confiscation of valuables acquired by criminal means, as well as the instruments used in the offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

81. Criminal proceedings involving both child criminals and child victims are based on the provisions of chapter 52²⁹ of the Parties to Criminal Proceedings (State Protection) Act.

82. In accordance with article 488³⁰ of the Code of Criminal Procedure, the participation of a teacher or psychologist is obligatory in the examination of cases involving a child under the age of 16.

83. Article 215 of the Code of Criminal Procedure explains the procedure for the participation of juvenile witnesses and victims in proceedings, and the obligatory participation of the minor's legal representative and counsel. In the hearing of cases involving a minor who has reached the age of 16, a teacher or a psychologist may participate in the proceedings only at the discretion of the investigator or upon application of counsel or another legal representative.

84. At present, Kazakhstan is implementing, together with the Soros Foundation, a pilot project entitled “Juvenile justice” in Almaty and Almaty oblast; the objective of the project is to guarantee all the rights of minors involved in criminal proceedings. Courts, procuratorial and internal affairs bodies, lawyers and social services are participating in the project. Cooperation with international organizations and NGOs is carried out in this area through the holding of round tables, conferences, educational seminars and exchanges of information. Thus, information from international organizations, diplomatic missions of foreign countries and NGOs are being used in the conduct of procuratorial checks.

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

85. Under Kazakh law currently in force, child victims must be informed of their rights, their role and the scope, timing and progress of the proceedings and the disposition of their cases.

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

86. In accordance with article 54 of the Marriage and Family Act, a child is entitled to express his or her views in any family decisions that affect his or her interests and to be heard by a court or another body. The views of a child who has reached the age of 10 must be taken into consideration.

(d) Providing appropriate support services to child victims throughout the legal process;

87. In accordance with the Rights of Children in Kazakhstan Act, a child’s legal representatives protects the rights and legitimate interests of the child in relation to any persons in all State bodies and organizations, including the courts.

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

88. In accordance with the Parties to Criminal Proceedings (State Protection) Act, the rights of victims, including child victims, members of their families, close relatives and witnesses are protected. Under Kazakh law, the right of a child to confidentiality³¹ must be observed at all stages of criminal proceedings.

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

89. The Parties to Criminal Proceedings (State Protection) Act, which was adopted on 5 July 2000, provides for a whole range of measures to prevent the intimidation of and retaliation against victims, their legal representatives, witnesses, and their families and close relatives.

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

90. The Parties to Criminal Proceedings (State Protection) Act, which was adopted on 5 July 2000, provides for a whole range of measures only for parties to criminal proceedings. Such measures do not apply to organizations or persons or organizations engaged in preventive activities or in the rehabilitation of victims, except in cases where such persons or organizations have themselves been victims of a criminal offence.

6. Nothing in the present article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices.

91. In 1999, Kazakhstan registered over 139,000 common crimes and, in 2002, 135,200 (representing a 2.9-per-cent decline in such crimes), 20 per cent of which were committed against women and 2.7 per cent against minors. For the first half of 2003, 61,725 crimes were registered, including 553 against families and minors, and 6,845 crimes (including 6,611 drug-related crimes and 202 crimes involving the establishment and maintenance of dens of prostitution, and procuring) against public health and morality.

92. Measures are being taken to combat organized crime. Law enforcement agencies are making efforts to reduce crime in Kazakhstan, which is faced with the problem of illicit drug trafficking and the spread of drug addiction. There has been a significant rise in demand for drugs; trafficking in "heavy" drugs has also increased. More and more minors and young people are becoming drug users.

93. More than half of all minors who are prosecuted for crimes either do not go to school or are not engaged in any form of employment. There are over 160,000 persons requiring treatment for alcoholism and 47,000 drug addicts on “preventives registers” in internal affairs agencies. Every other murder, and every third assault with intent to rob, is committed under the influence of alcohol or drugs.

94. For various reasons, the problem of social orphans and child vagrancy is becoming exacerbated. In such conditions, there is an urgent need to broaden the network of specialized institutions for minors in difficult circumstances and who require social rehabilitation. The shortage of institutions of this type inevitably leads to situations in which homeless children who do not receive timely assistance from the State join the ranks of juvenile delinquents.

95. There are not enough secure specialized educational institutions for teenagers who have committed socially dangerous acts and who are under the age of criminal liability. Every year, some 3,000 minors in this age group, who have not been punished or re-educated, commit crimes and have a negative influence on other teenagers. At present, Kazakhstan has only one secure specialized general education school for 150 persons in the town of Taraz.

96. In the light of this situation, on 29 December 2002, Kazakhstan adopted a government decision on a programme for preventing offences and measures to combat crime in the Republic of Kazakhstan for 2003-2004. The programme provides for the broadening of the network of specialized institutions for minors in difficult circumstances and who require social rehabilitation; improvement of the education process in general education and vocational schools; enhancement of the role and status of teachers; broadening of the network of extramural educational organizations; and measures to ensure the operation of children’s musical and artistic schools, and children’s and young people’s sport schools.

97. In addition, under the programme a series of measures are being carried out to assist minors returning from young offenders’ institutions who have lost contact with their relatives, and children deprived of parental care, to find employment and to adjust to everyday life. The programme also provides for measures to protect the legitimate rights and interests of minors in cases of divorce, deprivation of parental rights and other matters that involve them. At present, a similar programme is being prepared for 2005-2006.

98. As part of the implementation of the State programme for promoting physical culture and sport in Kazakhstan for the period 2001-2005, which was approved by Presidential Decree No. 570 of 12 March 2001, there are 410 children’s and teenagers’ clubs and 411 physical culture and health clubs in Kazakhstan; the main activity of such clubs is to encourage the rising generation to adopt a healthy lifestyle by engaging in physical culture and sport.

99. Government Decision No. 789 of 2001, which was adopted earlier, approved the regulations governing commissions for the protection of minors’ rights. At present, the Ministry of Internal Affairs has prepared a bill entitled “Prevention of juvenile offences and prevention of child neglect and homelessness”, which by Government Decision No. 1252 of 10 December 2003 was sent to the Majilis of the Parliament of Kazakhstan.

100. It is important to point out that, if materials concerning parents were previously examined at meetings of commissions for the protection of minors' rights, at present, in accordance with administrative legislation, such materials are examined only by a court. The effectiveness of the educational function with respect to persons invited to court hearings has increased. Some 7,000 parents have been held administratively liable for criminal mischief perpetrated by teenagers between the ages of 14 and 16. In 2003, more than 10,000 parents or parental surrogates were held administratively liable under article 111 of the Code of Administrative Offences, for failing to fulfil their child-rearing obligations.

101. In 2003, according to materials prepared by internal affairs agencies, 1,789 parents were deprived of their parental rights for malicious evasion of their obligations to rear, maintain and educate their children. In 2003, minors' affairs units identified over 324 dysfunctional families, in which the continued cohabitation of minor children with their parents endangered such children's lives or health. In all of the aforementioned situations, tutorship and guardianship agencies applied article 74³² of the Marriage and Family Act. Over the same period, 149 criminal cases were prosecuted under article 137³³ of the Criminal Code, six criminal cases were completed and sent to trial under article 133 of the Criminal Code, and six criminal cases were brought under article 270 of the Criminal Code.

102. Particular attention is devoted to preventing teenage homeless and finding homes for minors deprived of the care of their parents or surrogate parents. In 2003, 10,023 homeless children and teenagers and 3,704 children and teenagers deprived of parental care were placed in facilities for the temporary detention, adaptation and rehabilitation of minors.

103. The personnel of internal affairs agencies carry out their activities in close cooperation with crisis centres for women and child victims of violence. There are currently 33 crisis centres in operation in Kazakhstan. Seven crisis centres have shelters to which the police send women and child victims of violence to live until the causes and conditions that gave rise to the violence have been removed and until measures have been taken against the perpetrators.

104. Owing to the lack of appropriate legislation, children without adults who legally represent their interests are not accepted by such shelters. There are no special shelters for child victims of violence (or for men) in Kazakhstan. In this connection, in November 2003 the *akimat* (city administration) of Almaty opened a shelter for children who leave their families temporarily owing to various conflict situations.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

105. As part of the State's policy on youth, the Ministry of Culture and the Ministry of Education are making major efforts to create and strengthen the legal, economic and organizational basis for the civic education and social self-fulfilment of children, teenagers

and young people. So far, Kazakhstan has completed implementation of the programme “Youth of Kazakhstan” for 2001-2002, which was approved by Government Decision No. 249 of 17 February 2001; under the programme, considerable efforts were made to improve the situation of children, teenagers and young people.

106. Government Decision No. 155 of 13 February 2003 approved the programme on a youth policy for 2003-2004, which provides for a number of activities involving the main areas of the State’s youth policy. Under the programme, a number of measures are being taken to reduce social tension among young people, prevent drug addiction and alcoholism and deviant behaviour among teenagers and young people. Greater attention is being devoted to involving NGOs in social work.

107. Experience has shown that the most effective methods of solving young people’s social problems include the organization of interesting leisure activities for teenagers and young people, and the creation of a system for the social rehabilitation and adaptation of young people. At the same time, young people’s direct involvement with their peers in the development of volunteer initiatives, and the involvement of voluntary associations in the implementation of the State’s youth policy, have proved very effective.

108. In this regard, the number of institutions involved in creating conditions for the social development of young people is increasing. Thus, in Aqmola oblast, 439 councils for the prevention of juvenile delinquency (legal councils) have been established. In accordance with the decisions of the second convocation of the Almaty city *maslikhat* (council), 26 neighbourhood military-patriotic, sports, musical and educational clubs were established in six districts of Almaty.

109. The experience of the Association of Neighbourhood Clubs in Semipalatinsk is worthy of note. The Association developed a comprehensive programme of activities for clubs in residential areas; in order to make the clubs’ sports and health activities more effective, the gymnasiums of the city’s schools are used. At the same time, a number of social projects are being carried out in Pavlodar oblast, including the provision of free legal assistance for young people by the Zanger social fund for legal assistance, and the activities of the Samal centre for the rehabilitation and labour adaptation of children and teenagers with disabilities.

110. In 2003, the former Ministry of Culture, Information and Social Accord conducted an open competition among non-profit organizations for State purchases of services for the organization of social services for young people. As part of the competition, young people’s social services were established; the main areas of activity of such services include the protection and guaranteeing of young citizens’ social rights, prevention of deviant and unlawful behaviour among young people, prevention of the spread of drug addiction, sexually transmitted diseases and HIV/AIDS among young people, the organization of leisure and health activities for young people, provision of social protection for young people with limited opportunities, creation of conditions in the area of employment, and the involvement of young people in entrepreneurial activities. As a result of the competition, 21 social service centres for young people were established in various regions of Kazakhstan; the centres carry out the aforementioned activities in accordance with the main areas of the programme’s plan of action. In particular, in Kyzylorda oblast a social service centre has been established that provides interesting leisure activities for

young people near their places of residence. Particular attention is devoted to the social adaptation of young people in socially dangerous situations, and also to work with difficult young people.

111. Social services working in this field have been established in Mangistau, Pavlodar, North Kazakhstan, South Kazakhstan and Atyrau oblasts and in the city of Astana. The main areas of activity of social services include work with difficult young people and teenagers with deviant behaviour, facilitating the social adaptation of young people with limited opportunities, prevention of homelessness and unlawful behaviour, and prevention of the spread of drug addiction, alcoholism and sexually transmitted diseases among young people.

112. During the first half of 2003, the Ministry of Culture, Information and Social Accord supported the establishment of three social services for young people; such services promote healthy lifestyles and take measures to prevent drug addiction, HIV/AIDS and alcoholism among young people. The Ministry actively supported programmes for the social and economic development of young people by taking steps to improve educational opportunities. In the first half of 2002, the Ministry supported a number of projects that had been proposed by youth organizations.

113. In an effort to improve young people's awareness in the area of education, the Ministry supported the project entitled "Education of the future" of the Association of Graduates of the "Bolashak" International Scholarship of the President of the Republic of Kazakhstan. The Ministry of Culture and the Ministry of Information are making concerted and systematic efforts to promote the State policy on the protection of the rights of children and adolescents. These efforts are coordinated primarily through the conduct of the State's policy in the area of information, which was carried out in 2003 by the Khabar (News) Agency, the "Kazakhstan" National Television and Radio Broadcasting Corporation and 52 of Kazakhstan's printed publications.

114. Information on the subject was provided by the campaign entitled "Media support for the State's social policy", which in 2003 received the following coverage: Khabar - 26 hours; "Kazakhstan" - 52 hours; Kazakh radio - 78 hours; and oblast television and radio stations - 140 hours.

115. The discussion of current topics relating to the protection of the rights of children and adolescents, the inculcation in the public consciousness of the principles of non-discrimination against children and the protection of children's interests is continuing in such national publications as *Egemen Kazakhstan*, *Kazakhstanskaya pravda*, *Novoe pokolenie*, *Ekspress-K*, *Novosti nedeli*, *Argumenty i fakty*, *Zhas kazak* and *Oko*. The newspaper *Novoe pokolenie* (New generation) has a special section entitled *Bolshaya peremena* (Big change) that deals with the violation of children's rights, trafficking in children, the situation in family-type children's homes, children's and teenagers' summer holidays and much more.

116. On the whole, some 15 per cent of broadcasting time is devoted to children's programmes. Kazakh radio regularly broadcasts informative and entertaining programmes, and educational programmes, such as "Alakai", "Balalyk shakka sayakhat", "Keshki ertegi", "Pochemuchka" and "Eto tsely mir".

117. The post of deputy director for education has been introduced in all State educational organizations. In many schools of Zhambyl, North Kazakhstan and East Kazakhstan oblasts, inspectors for the protection of minors' rights work together with teachers.

118. In order to create conditions to ensure the safety of children and adolescents, and to protect their rights, security services for minors have been opened with assistance from local government bodies in a number of schools in the city of Astana and in West Kazakhstan and East Kazakhstan oblasts. In many regions there are telephone hotlines, and on-duty social pedagogues, psychologists and doctors and parents' associations.

119. In order to protect the rights, interests and freedoms of minors from unlawful infringements and to assist school administrations in educational institutions, the posts of school police inspectors for minors' affairs (school inspectors) have been introduced and are financed by internal affairs agencies. There are currently 386 school inspectors who work in general education schools in the cities of Astana and Almaty and in Aqmola, Atyubinsk, Atyrau, West Kazakhstan, Zhambyl, Qaragandy (Karaganda), Kyzylorda, Mangistau, Pavlodar, North Kazakhstan and South Kazakhstan oblasts.

120. Since the new 2003/04 academic year, pursuant to Government Decision No. 1168 of 4 November 2002 on approval of staff standards in educational organizations, all educational organizations are introducing the posts of psychologist and social pedagogue. Currently, 4,932 deputy directors for education and 939 psychologists work in general education schools in Kazakhstan's educational institutions.

121. The mandatory subject "Ethics and the psychology of family life" has been introduced into the curricula of Kazakhstan's general education schools. Children and adolescents also receive instruction in disciplines relating to the biological cycle and in the following independent subjects: "Healthy lifestyle" and "Basics of everyday living and safety".

122. In vocational schools and colleges in Aqmola, Almaty, Pavlodar and other oblasts, special training is organized for girls with a view to preventing offences, including violence; lectures are held on such topics as "Healthy women - a healthy nation", "What is trafficking?", "Work abroad: reality or trap?" and "If you're in trouble".

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

123. Pursuant to Government Decision No. 135 of 27 January 2000 on approval of the guaranteed amount of free medical assistance, children receive specialized medical assistance and rehabilitation, including treatment in medical institutions with national standing.

124. In accordance with article 36 of the Children's Rights Act, children who have been subjected to physical or emotional trauma as the result of an offence, violence or another unlawful act, must receive the necessary assistance for the restoration of their health and their social adaptation.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

125. Article 6 of the Publicity Act, adopted on 19 December 2003, prohibits the use of advertising to promote pornography. Radio and television programmes and the showing of films and video recordings of a pornographic and special sexual-erotic nature³⁴ are also prohibited. At the oblast level, local administrative bodies have established commissions to monitor the sale of audio and video recordings and printed periodicals containing materials of an erotic nature. The dissemination of such articles is prohibited in children's and educational institutions and within a 300-metre radius of such institutions.

126. Measures to prohibit and confiscate material advertising the offences described in the Protocol are also taken by the criminal police. Thus, as a result of measures taken, the Taraz city procurator's office referred some 10 administrative cases to the courts. According to a court decision, individual vendors of printed materials were fined, and the publications (which they sold) advertising the offences described in the Protocol were confiscated and destroyed (burned).

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

127. Kazakhstan is a party to the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Political Rights of Women, the Convention on the Nationality of Married Women and International Labour Organization (ILO) Convention No. 105 concerning the Abolition of Forced Labour and a number of additional protocols thereto.

128. In 2000, Kazakhstan signed the United Nations Convention against Transnational Organized Crime. It is currently making preparations to ratify the Convention and to accede to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

129. In 2002, the Republic of Kazakhstan ratified ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. On 2 December 2003, Kazakhstan signed the International Covenant on Civil and Political

Rights and the International Covenant on Economic, Social and Cultural Rights. In accordance with its international obligations, Kazakhstan is making amendments and additions to its national legislation.

130. Kazakhstan cooperates with the International Organization for Migration in providing legal and emergency assistance to victims of trafficking, including child victims.

131. In accordance with the Convention on the Rights of the Child and the Optional Protocol, the previous practice of involving children in forced agricultural work has been discontinued. Local educational institutions are taking measures to prevent the use of child labour, particularly during the academic process.

132. Article 26 of the Tourism Act guarantees the safety of tourists in the territory of Kazakhstan and also protects tourists who are citizens of Kazakhstan when they travel abroad. The concept of “tourist safety” is part of a series of measures to prevent sexual and other exploitation.³⁵

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional or other programmes.

133. The programme for the reduction of poverty and unemployment in the Republic of Kazakhstan for the period 2000-2002 has been successfully completed. The Government of Kazakhstan has adopted a programme for the reduction of poverty in Kazakhstan for the period 2003-2005.

134. Much attention is being given to the development of small and medium-sized businesses. Particular emphasis is placed on the development of a microcredit programme, which has been recognized throughout the world as an effective means of reducing poverty and unemployment. Microcredits have been allocated mainly by the NGO “Microcredit” and the National Fund to Support Poor Families. The NGO “Microcredit” has involved the German company UP and the Islamic Development Bank in the implementation of its programme. Rural women account for two thirds of all recipients of microcredits. Over 45,000 microcredits amounting to some 1 billion tenge have been allocated in Kazakhstan. The campaign “Women of Kazakhstan against poverty”, which has become a tradition, is conducted throughout the Republic.

135. The United Nations Development Programme (UNDP), ILO, UNICEF, the United States Agency for International Development (USAID), the World Bank, the European Development Bank, the Asian Development Bank and other international organizations provide technical assistance to Kazakhstan in its efforts to carry out economic reforms, ensure social development

and security and reduce poverty. In 2002, donor organizations provided Kazakhstan with US\$ 21,536,000 to reduce poverty. In July 2003, the Government of Kazakhstan and the Asian Development Bank signed a partnership agreement to reduce poverty. In 2003, Kazakhstan completed implementation of a joint project with the Asian Development Bank to improve the diet of poor mothers and children, at a cost of some US\$ 1 million. The project was initiated by the National Commission for Family and Women's Affairs under the President of the Republic of Kazakhstan.

136. The next cycle of the Country Programme of Cooperation between Kazakhstan and UNICEF for the period 2005-2009 provides for research and measures to prevent violence against children, and their rehabilitation.

Annexes

1. Act No. 345-II of 8 August 2002 on children's rights in the Republic of Kazakhstan.
2. Government Decision No. 1197 of 12 November 2002 approving the regulations governing the adoption by foreigners of children who are citizens of the Republic of Kazakhstan.
3. Decision No. 17 of 22 December 2000 of the plenum of the Supreme Court of the Republic of Kazakhstan on certain questions relating to the application by the courts of legislation on marriage and the family when considering cases involving the adoption of children.
4. Rules for keeping a central register of children deprived of parental care.³⁶
5. Order No. 08-1/31 of 11 April 2003 of the Secretary of State (Minister for Foreign Affairs) of the Republic of Kazakhstan approving the instructions for registering children who are citizens of the Republic of Kazakhstan and who are adopted by foreigners.
6. Regulatory Decision No. 6 of 11 April 2002 of the Supreme Court of the Republic of Kazakhstan concerning judicial practice in cases involving juvenile offences and the involvement of juveniles in criminal or other antisocial activities.
7. Government Decision No. 1500 of 21 November 2001 on guidelines on moral and sexual upbringing in the Republic of Kazakhstan.
8. Gender statistical guide entitled "Women and men of Kazakhstan - 2003".
9. Decision No. 4 of 28 April 2000 of the plenum of the Supreme Court of the Republic of Kazakhstan concerning the application by the courts of legislation on the settlement of disputes relating to child-rearing.
10. Convention concerning Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk, 22 January 1993).
11. Convention concerning Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Chişinău, 7 October 2002).

Notes

¹ Established by Government Decision No. 308 of 11 March 2004.

² *Article 10. Right of children to life, personal freedom and inviolability of dignity and private life*

1. Every child has the right to life, personal freedom and inviolability of dignity and private life.

2. The State guarantees the personal inviolability of children, protects them from physical and/or psychological violence, cruel, coarse or degrading treatment, acts of a sexual nature, enticement into criminal activities and the commission of antisocial acts and other types of activity that infringe the human and civil rights and freedoms contained in the Constitution of the Republic of Kazakhstan.

³ *Article 40. Protection of children from prostitution and pornography*

The enticement of a child into prostitution, and the distribution, advertisement or sale to a child of pornographic materials or articles, printed publications, films or video recordings, images or other articles of a pornographic nature and with erotic content, shall incur liability in accordance with the provisions of the legislative acts of the Republic of Kazakhstan.

⁴ *Article 42. Protection of children from unlawful removal*

In accordance with the law of the Republic of Kazakhstan and its international commitments, the State shall take measures to prevent and repress the unlawful removal or kidnapping of children, and trafficking in children, irrespective of the aims and forms of such acts and the methods by which they are executed, and also to return them to their country of permanent residence.

⁵ *Article 133. Trafficking in minors*

1. The purchase or sale of a minor or other transactions involving the transfer or acquisition of a minor is punishable by deprivation of liberty for a period of two to seven years.

2. The same actions committed:

- (a) Repeatedly;
- (b) In respect of two or more minors;
- (c) By a group by prior conspiracy or by an organized group;

- (d) By a person who uses his or her official position;
- (e) With the unlawful transport of a minor outside the borders of the Republic of Kazakhstan or the unlawful transport of a minor into the Republic of Kazakhstan;
- (f) For the purpose of involving a minor in the commission of an offence or other antisocial activities;
- (g) For the purpose of removing from a minor organs or tissues for transplant, shall be punishable by deprivation of liberty for a period of 3 to 10 years, with or without confiscation of property.

3. Acts, referred to in paragraphs 1 and 2 of this article, that result in the death of a minor by criminal negligence or in other serious consequences shall be punishable by deprivation of liberty for a period of 7 to 15 years, with or without confiscation of property.

⁶ *Article 122. Sexual relations and other acts of a sexual nature with a person under the age of 16*

Sexual relations, sodomy, lesbianism or other acts of a sexual nature with a person who is known to be under the age of 16, shall be punishable by restriction of liberty for up to three years, or rigorous imprisonment for up to six months, or deprivation of liberty for up to five years.

⁷ *Article 124. Corruption of minors*

The commission of licentious acts, without the use of violence, with a person who is known to be under the age of 14 shall be punishable by restriction of liberty for up to four years or deprivation of liberty for the same period.

⁸ *Article 270. Recruitment for prostitution*

1. Recruitment for prostitution involving the use or threat of violence, the use of a person's dependent position, blackmail, destruction or damaging of property or through deceit, shall be punishable by a fine of from 200 to 500 monthly notional units or the equivalent of the salary or other income of the convicted person for a period of from two to five months or by deprivation of liberty for up to five years.

2. The same act, committed by an organized group, and also by a person who has previously been convicted for recruiting for prostitution or for establishing or maintaining dens or for procuring, shall be punishable by deprivation of liberty for from three to seven years.

⁹ *Article 271. Establishment or maintenance of dens of prostitution, and procuring*

1. The establishment or maintenance of dens of prostitution, and procuring for mercenary ends, shall be punishable by a fine of from 500 to 1,000 monthly notional units or the equivalent of the salary or other income of the convicted person for a period of from five months to one year or deprivation of liberty for up to three years.

2. The same acts, committed by an organized group, and also by a person who has previously been convicted for establishing or maintaining dens, or for procuring, or for recruitment for prostitution, shall be punishable by deprivation of liberty for up to five years.

¹⁰ *Article 128. Recruitment, transport abroad and transit of persons for the purpose of exploitation*

1. The recruitment of persons for sexual or other exploitation, carried out through deceit, shall be punishable by a fine of from 100 to 500 monthly notional units or the equivalent of the salary or other income of the convicted person for a period of from two to five months, or punitive deduction of earnings for up to two years, or by restriction of liberty for up to two years, or rigorous imprisonment for up to six months, or deprivation of liberty for up to one year.

2. The same acts committed:

- (a) By a group of persons by prior conspiracy;
- (b) In respect of a person known to be a minor;

shall be punishable by deprivation of liberty for up to five years.

3. The acts referred to in paragraph 1 or paragraph 2 of this article, committed by an organized group or for the purpose of transporting recruited persons out of Kazakhstan, and also the transport of persons out of Kazakhstan or the transport of persons through the territory of Kazakhstan from one foreign country to another, for the acknowledged purpose of sexual or other exploitation, shall be punishable by deprivation of liberty for a period of from three to eight years, with or without confiscation of property.

¹¹ *Article 132. Involvement of minors in the commission of antisocial acts*

1. The involvement of minors in the non-medical use of narcotics or other stupefying substances, or in the systematic consumption of alcoholic beverages, or in prostitution, vagrancy or begging, shall be punishable by public service for 180 to 240 hours, or punitive deduction of earnings for one to two years, or rigorous imprisonment for up to six months, or deprivation of liberty for up to three years.

2. The same acts committed by a parent, a teacher or another person who is legally responsible for a minor's upbringing shall be punishable by restriction of liberty for up to three years or rigorous imprisonment for from four to six months, or deprivation of liberty for up to five years, with or without deprivation of the right to hold certain posts or engage in certain activities for up to three years.

3. The acts referred to in paragraph 1 or paragraph 2 of this article committed repeatedly or with the use or threat of violence, shall be punishable by deprivation of liberty for up to six years.

¹² See Regulatory Decision No. 6 of the Supreme Court of 11 April 2002 of the Republic of Kazakhstan concerning judicial practice in cases involving juvenile offences and the involvement of juveniles in criminal or other antisocial activities.

¹³ *Article 125. Kidnapping*

1. Kidnapping shall be punishable by deprivation of liberty for a period of from four to seven years.

2. The same act committed:

- (a) By a group of persons by prior conspiracy;
- (b) Repeatedly;
- (c) With the use of force endangering life or health;
- (d) With the use of weapons or objects used as weapons;
- (e) In respect of a person who is known to be a minor;
- (f) In respect of a woman whom the perpetrator knows to be pregnant;
- (g) In respect of two or more persons;
- (h) For mercenary motives,

shall be punishable by deprivation of liberty for a period of from 7 to 12 years, with or without confiscation of property.

3. If the acts referred to in paragraph 1 or paragraph 2 of this article:

- (a) Are committed by an organized group;
- (b) Are committed for the purpose of the sexual or other exploitation of the kidnapped person;

(c) Result in the death of the victim through negligence or in other serious consequences,

they shall be punishable by deprivation of liberty for a period of from 10 to 15 years, with or without confiscation of property.

¹⁴ *Article 273. Unlawful dissemination of pornographic materials or articles*

The unlawful production for the purpose of dissemination or advertisement, the dissemination, the advertisement of pornographic materials or articles, as well as illegal trafficking in printed publications, films or video recordings, images or other articles of a pornographic nature shall be punishable by a fine in the amount of 500 to 1,000 monthly notional units or the equivalent of the salary or other income of the convicted person for a period of from five months to one year, or punitive deduction of earnings for up to two years, or deprivation of liberty for up to two years, with confiscation of the pornographic materials or articles, as well as the means of manufacturing or reproducing them.

¹⁵ *Article 115. Involvement of minors in the production of articles with erotic content*

1. The involvement of minors in the production of articles with erotic content, and in the dissemination, advertisement and sale of articles with erotic content shall incur a fine in the amount of up to 50 monthly notional units, with confiscation of the said articles with erotic content.

2. The same acts committed repeatedly within the course of a year of the imposition of the administrative penalty provided for in paragraph 1 of this article, shall incur a fine in the amount of 50 to 100 notional units with confiscation of the means of manufacturing articles with erotic content.

¹⁶ See Decision No. 034 of 2 May 2001 of the East Kazakhstan oblast Akim, entitled “Basic regulations governing retail trade in audio and video materials and printed periodicals containing materials with erotic content”.

¹⁷ Published on the site of the National Security Committee.

¹⁸ *Article 76. Children eligible for adoption*

1. Adoption is permitted in respect of minors and only in their interests.

2. Children who are citizens of the Republic of Kazakhstan may be adopted by foreigners only when it does not appear possible to place such children in the care of citizens of the Republic of Kazakhstan who permanently reside in the territory of the Republic of Kazakhstan, or adopted by their relatives, regardless of the citizenship or place of residence of such relatives.

Children may be adopted by citizens of the Republic of Kazakhstan who permanently reside outside the territory of the Republic of Kazakhstan, and by foreigners who are not relatives of the children, on the expiry of three months from day on which said children are placed on the central register in accordance with article 101, paragraph 3, of this Act.

3. Foreigners wishing to adopt a child must personally select the child and maintain direct contact with him or her for at least two weeks, submit a written application expressing their wish to adopt the child, as well as information on the financial solvency, family situation, state of health and personal moral qualities of the potential parents issued by agencies licensed by the State to provide such services, to the relevant tutorship or guardianship agency.

¹⁹ See the annexed document entitled “Rules for keeping a central register of children deprived of parental care”. The rules were approved by Government Decision No. 1346 of 9 September 1999.

²⁰ See Order No. 08-1/31 of 11 April 2003 of the Secretary of State (Minister of Foreign Affairs) approving the instructions for registering children who are citizens of the Republic of Kazakhstan and who are adopted by foreigners, which is annexed to this document.

²¹ See Marriage and Family Act, article 84.

²² Although it was ratified by Kazakhstan on 10 March 2004, this agreement has not yet entered into force. At present, the Convention (with the same title) of 22 January 1993, which was ratified by Kazakhstan on 31 March 1993, is in force in the Commonwealth of Independent States.

²³ Approved by Government Decision No. 1346 of 9 September 1999.

²⁴ Approved by the decree of 17 June 1999 of the Minister of Foreign Affairs of Kazakhstan.

²⁵ The treaty has been signed but has not yet entered into force.

²⁶ See paragraph 62 of this report.

²⁷ Ibid.

²⁸ The following forms of property and articles, which are necessary for the convicted person and his dependants, and which belong to him by virtue of the right to private property or constitute his share of common property, are not subject to confiscation:

1. A dwelling house, apartment or individual parts of the same, if the convicted person and his family permanently reside in them.

2. The plots of land on which a house and outbuildings not subject to confiscation are situated, and also plots of land needed for maintaining an individual subsidiary farm.

3. For persons whose principal occupation is farming - farm buildings and domestic livestock sufficient to meet the needs of their families, as well as feed for livestock.
4. Seeds needed for the next sowing of agricultural crops.
5. Articles of household furniture, utensils and clothing, namely:
 - (a) Clothing, shoes, underclothes, bedding and kitchen- and tableware that are in use. Furs and other valuable clothing, dinner services, articles made of precious metals and articles of artistic value may be confiscated;
 - (b) The minimum amount of furniture needed by the convicted person and members of his family;
 - (c) All children's belongings.
6. Foodstuffs sufficient for the subsistence of the convicted person and his family until the next harvest, if the convicted person's principal occupation is farming; in all other cases, foodstuffs and money in the amount established by the Government of the Republic of Kazakhstan.
7. Fuel for the preparation of food and for heating the premises inhabited by the family.
8. Articles (including manuals and books) necessary for the convicted person's continuation of his professional activities, except in cases where the convicted person's court sentence deprives him of the right to engage in the relevant activity and when the articles in question were used by the convicted person in the commission of the offence.
9. Vehicles especially intended for the transport of disabled persons.
10. International, State or other prizes that have been awarded to the convicted person.

²⁹ "Proceedings in cases involving offences committed by minors".

³⁰ *Article 48. Participation of a teacher or a psychologist*

1. In proceedings involving a juvenile suspect or accused person under the age of 16, and also a person who has reached the age of 16 but shows signs of mental retardation, the participation of a teacher or a psychologist is obligatory.
2. In cases involving minors who have reached the age of 16, a teacher or a psychologist is permitted to take part in the proceedings at the discretion of the investigator or the court or upon application of counsel or a legal representative.

3. A teacher or a psychologist is entitled, with the permission of the investigator or the court, to question the juvenile suspect or accused person and, once the proceedings are completed, to examine the record of the investigation (record of the court hearing that reflects the participation of the teacher or the psychologist in the trial) and to make written notes regarding the correctness and completeness of the information contained therein; they are entitled, at the discretion of the investigator or the court to examine the materials of the case that give a description of the juvenile's personality. The investigator or the court shall explain these rights to the teacher or the psychologist before the proceedings begin, and a note to that effect shall be entered in the record of the investigation or the record of the trial.

³¹ Article 482 (Restriction of publicity in cases involving minors) of the Code of Criminal Procedure provides that the right of a juvenile suspect or accused person to confidentiality must be observed at all stages of criminal proceedings.

³² "Removal of the child when there is a direct threat to his or her life or health".

³³ "Failure to fulfil child-rearing obligations".

³⁴ Media Act, art. 14.

³⁵ Act No. 211-II of 13 June 2001 of the Republic of Kazakhstan concerning tourist activity in the Republic of Kazakhstan.

Article 26. Ensuring the safety of tourists

1. The safety of tourists in the territory of the Republic of Kazakhstan is guaranteed by the Republic of Kazakhstan. The Republic of Kazakhstan guarantees tourists who are citizens of the Republic of Kazakhstan protection outside its borders.

2. "Tourist safety" means the personal safety of tourists, the safety of their property and the protection of the environment during travel, as well as a set of measures to ensure that tourism is not used for the purpose of illegal migration or transit to third countries, or for the sexual, labour or other exploitation of citizens.

³⁶ Approved by Government Decision No. 1346 of 9 September 1999.
