



MPA 699: Master's Project

**Do imperfections in legal system distort real cases of human trafficking
victims in Kazakhstan**

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ABSTRACT

The human trafficking is one of the most profitable international crimes. Unfortunately, Kazakhstan is among notoriously known countries where human trafficking takes all possible forms. Being a country of origin, destination and transit, despite all the anti-human trafficking measures, this year Kazakhstan has been placed on the 2nd “tier” list of countries according to the Report of the US Government. It indicates that undertaken measures are not sufficient and the situation has deteriorated. One particular issue is that statistically the numbers of human trafficking cases are decreasing, which does not fit into preliminary information about increasing migration flows, the establishment of a whole Interdepartmental Commission on combating illegal export, import and trafficking in human beings and a major increasing concern about this issue by the Government.

The goal of this study is to determine what are the factors that cause or influence distortions in the real numbers of human trafficking. For the purposes of this research several focus groups of respondents were interviewed in order to get a maximally full understanding of the reasons for these distortions. Lawyers, police officers, rehabilitation centers, NGOs and members of the Interdepartmental Commission altogether provided valuable insights.

Our research findings allowed us to establish four main groups of factors - legal, social, economic and political - that have a negative impact on the process of detecting and investigating human trafficking cases, and as a result on a statistical reflection of these crimes. Precise recommendations are proposed as possible solutions on how to improve the system and dismantle future mishaps in recording data.

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National Human Rights Centre of Republic of Kazakhstan, US Department of State, Ministry of Labour and Social Protection, several police officers and lawyers have provided sufficient legal and practical aspects of the topic in order to have a broad as well detailed picture.

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LIST OF ACRONYMS AND ABBREVIATIONS

CA - Central Asia

CC - Criminal Code

CPC - Criminal Procedure Code

HT - Human trafficking

ILO - International Labour Organization

KZ - Kazakhstan

NGO - Non -governmental organization

Rehabs - Rehabilitation centers

Stats Committee - Committee on the legal statistics and special accounts of the state office of public prosecutor of Republic of Kazakhstan

U.S. Department of State - federal executive department responsible for carrying out U.S. foreign policy and international relations

UNODC - United Nations Office on Drugs and Crime

INTRODUCTION

Human trafficking is a very complex and multilayered topic that involves not only legal entities within one country or region, it is spread across the world. It is also very personal and emotional, which makes the topic even more complex. According to the UN International Labour Organization, at any given time in 2016, an estimated 40.3 million people are in modern slavery, including 24.9 million in forced labour and 15.4 million in forced marriage. The complexity of the topic can be clearly seen in the example of mendicacy. At first glance, it is not so apparent but in most cases children, women and elderly (physically weak) men are forced to work on the streets by begging for money for their “employer”. An illegal business of human trafficking for various types of exploitation (labour, sex, organs etc...) is flourishing everywhere, including Kazakhstan, which, given its geographical location is a recipient country of trafficked humans.

Unfortunately, due to various reasons Kazakhstan has not been dealing with combatting human trafficking in a very efficient way. There have been organised committees at both local and international, there have been amendments to the legislation, tens of rehabs have been established; however, at the end of the day the victims have not received the support that is required. Despite the increase of measures undertaken to fight human trafficking, which is supposed to increase the number of detected and investigated cases, the overall statistical number has been declining. It is not clear what causes this discrepancy.

In this paper we attempt to prove that due to a variety of reasons the number of victims provided by the Ministry of internal affairs does not reflect the real situation. In fact, we believe that the complexity of existing local legislation, poor professionalism of civil servants, poor interagency communication, corruption, lack of transparency are the real barriers for victims to overcome, which eventually leads to a distorted number of victims. Distortion of the situation prevents governments from realizing the importance of the issue, which, as a result, leads to the ignorance of the suffering human beings.

In order to determine the factors which have an impact on the process of detection and investigation of human trafficking cases, as well as on the process of victims’ rehabilitation, we explored the issue from different dimensions. As a result we found out factors cause statistical distortions in either direct or indirect way. The findings of our research provide a decent basis for policy implications in political, social and economic spheres of life.

LITERATURE REVIEW

In this part, we provide a broad overview of the literature regarding different aspects of human trafficking as a phenomenon and a crime. First, we look at how the definition of human trafficking is interpreted among international and domestic scholars. Then, we explore the problem of human trafficking, particularly in Kazakhstan, by analyzing the development of the anti-human trafficking legislation and activities of rehabilitation centers for victims of human trafficking. Statistics and examples of real cases of human trafficking will be presented as a part of explaining the situation in Kazakhstan. Finally, we will try to come up with our suggestions about the gaps in literature that would potentially become our field of research and eventually become a new policy proposal on how to fight human trafficking.

Definition of human trafficking

As any social phenomena, the term ‘human trafficking’ is complex, multidimensional and is subject to different interpretations. Debates about the definition of human trafficking are mostly concerned about the universally accepted term set forth in the Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime (hereinafter “Protocol”) adopted in 2000. According to the 3rd article of the Protocol, trafficking in persons is defined as:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (Protocol, p.42, 2000).

There are 3 major strands in the literature covering the issue of human trafficking definition. The first direction is concerned with a human rights violation and their rehabilitation, which we, in general, identify as a “human rights perspective” on human trafficking. The second direction is focused more on the causes of human trafficking and is mainly concentrated on the social and economic conditions of the labour market that

predetermines conditions for the emergence of human trafficking. We will be further referring to this strand of literature as a “labour market perspective” on human trafficking. Finally, the last perspective considers the issue of human trafficking from the formal legal implication with relation to the local context of a particular country, therefore this direction is identified as a “legal perspective” on human trafficking.

Now we can explore three human trafficking paradigms in more details.

Human rights perspective

There is no doubt that human trafficking as a crime is a violation of human rights and that there is a certain link between human trafficking and human rights. Nowadays, most of the international NGOs are advocating for further dissemination and application of the human rights approach in anti-trafficking policies. “Human rights law has unequivocally proclaimed the fundamental immorality and unlawfulness of one person appropriating the legal personality, labour or humanity of another” (Human Rights Fact Sheet of the UN Human rights Office of the High Commissioner, 2014, № 36, p.4).

“A human rights-based approach is a conceptual framework for dealing with a phenomenon such as trafficking that is normatively based on international human rights standards and that is operationally directed to promoting and protecting human rights”. This approach seeks to find the conditions under which violation of human rights takes place during the trafficking process. Also, it analyzes obligations of countries in regard to respect for the international human rights law. Human rights approach is aimed at detecting the reasons of human trafficking, such as discrimination unjust distribution of power. These are the factors that eventually allow traffickers to stay unpunished (Human Rights Fact Sheet of the UN Human rights Office of the High Commissioner, 2014, № 36, p.8)

The same approach of defining human trafficking as a crime against human rights is shared by other international organizations. For instance, International Labour Organization in the Forced Labour Convention identifies the term “*forced or compulsory labour*” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Forced Labour Convention, article 2). International organization for Migration takes a comprehensive approach to addressing human trafficking. The central point of all IOM’s efforts against trafficking are concentrated on such concepts as “respect for human rights, the physical, mental and social well-being of the individual and his or her community, and the sustainability of our actions

through institutional capacity development and partnerships” (<https://www.iom.int/counter-trafficking>).

Niina Meriläinen and Marita Vos (2015) addressed the issue of human trafficking from the perspective of human rights violations and explored in greater detail how two above mentioned international actors and the European Union Parliament shape their own definition of human trafficking in their documents. Authors underline the crucial importance of the political decision-making process that directly influences the final form of the issue. Besides, they put great stress on the interrelatedness of the problem with many other spheres as political context, economic development and local context of states.

Human rights watch, Amnesty International and the European Union Parliament have much in common when defining human trafficking. All three of them consider this crime as both national and international and admit that human trafficking is directly linked to problems of poverty, poor judicial systems of countries (Meriläinen, Vos, p.36, 2015). As a result, Meriläinen and Vos identify human trafficking as a “salient global political issue that needs attention” (Meriläinen, Vos, p.37, 2015).

As it can be observed, the human rights approach treats trafficked people as victims, whose rights were violated and must be restored and claims that traffickers must be punished. This approach is widely spread among the majority of states who follow this strategy in their anti-trafficking policies. However, this approach is now highly criticized and the new labour market approach is offered to tackle the problem of human trafficking.

Labour market perspective

Under the labour framework an individual who was trafficked is considered as a an exploited worker. An exploitation is understood through the prism of a market context. This approach, therefore, analyzes such notions as “the individual’s weak bargaining power, substandard working conditions and lack of workers’ rights”. There are many factors that contribute to vulnerability to exploitation. The list includes ethnic origin, race, national identity, lack of legal status, limitations and constraints of the market, debts, lack of labour protection, lack of other sources of income and isolation from one’s social network (Shamir, p.106, 2012).

The scope of anti-trafficking measures, according to the Protocol, is vague, which leads to confusion and debates (Chuang, p.610). The definition of human trafficking should be expanded in terms of the perception of labour trafficking to underline the importance of targeting the local environment that nurtures conditions for human trafficking (Chuang,

p.649, 2014, Shamir, p.76, 2012). The current human rights approach, established in the Protocol, is unsuccessful as it is too narrow and neglects preventative measures of anti-human trafficking (Shamir, p.102, 2012). It is important to find the roots of labour traffic and to call the international community to shift the paradigm of anti-trafficking policies (Shamir, p.135-136, 2012).

One of the criticisms about UN's definition is that concepts of coercion, forced labour and exploitation are interpreted differently by international organizations, such as Coalition Against Trafficking in Women (CATW), Human rights watch and Amnesty International (Hussein, p.136, 2015). For instance, CATW considers prostitution as a crime of human trafficking regardless of the fact whether it is forced or voluntary. Human rights watch and Amnesty international misinterpret the definition to an extent when the victim becomes a criminal itself (Hussein, p.136, 2015). Misunderstanding of the human trafficking term led to a tendency of identifying victims of this crime as illegal immigrants (Hussein, p.137, 2015).

The disadvantage of the definition as it is embedded in Protocol is the ignorance of the differences between sex, labour and organ trafficking (Efrat, p.34, 2015). Israeli experience in this sphere is the evidence of how these three different crimes are tackled in different ways. Israel showed excellent work in fighting sex traffic, but labour and organ traffic issues remain to be unsolved (Efrat, p.50, 2015). By ignoring the differences between these concepts, we risk our ability to build effective counter-trafficking efforts (Efrat, p.34, 2015). There are three factors that explain why policy responses vary. First, legal status of a perpetrator and its political influence. Second, the quality of the norms in terms of their clarity. Third, enforcement costs (Efrat, p.50, 2015). Only by finding common challenges and attributes of all three types of traffic we can hope for an effective response to human trafficking in general (Efrat, p.51, 2015).

The word "exploitation" in the Protocol's definition of human trafficking is a controversy as it problematic to identify whether the exploitation is coercive or not (Plant, p.1, 2015). The main problem is not in our attempts to define the human trafficking, but in understanding which crimes can be addressed individually through law-enforcement, and which of them through comprehensive social and economic strategies (Plant, p.3, 2015).

Another issue arising about the definition is the recent emergence of new forms of human trafficking which were not included in the Protocol. For instance, ransom becomes a notoriously popular form of human trafficking in Africa, according to the research done by

Mogos O Brhane. Ransom partly falls into the category of forced exploitation of humans for the purpose of earning money (Brhane, p.140, 2015). However, in this case third parties are effected by ransom and their status is still unexplored. This offence is a tricky one as it predetermines that other types of human trafficking can be used only as possible ways for collecting ransom, but not for the exploitation itself (Brhane, p.140, 2015). Anyway, taking into consideration the wide spread of ransom in Africa, the author urges to reconsider the definition and include ransom in the list of crimes (Brhane, p.141, 2015).

The main difference between human rights and labour market approaches is in the way the trafficked person is treated. It is a passive victim from the perspective of violation of human rights, but is an agent with active position and opportunities to change the status from the position of a labour market approach. One more divergence lays in the understanding of trafficking. For the human rights activists trafficking is a crime with specific features, while for the labour market approach trafficking means a set of practices on the labour market. As a result, these differences lead to diverse strategies against trafficking. The strategy of a human rights approach puts stress on the claim of individual rights and urges for greater representations of victims in NGOs. By contrast, labour market perspective is focused on direct collective action, setting of contextualized standards and democratic representation of workers' interests (Shamir, p.106-107, 2012).

Legal perspective

Luuk B Esser and Corinne E Dettmeijer-Vermeulen in their work examined the role of domestic courts in the Netherlands in interpreting the universally accepted definition of human trafficking. Authors explored how two particular concepts are interpreted by courts: abuse of a position of vulnerability and the purpose of exploitation. Results show that the use of open norms in the definition “invariably requires domestic courts to engage in interpretation” (Esser, Dettmeijer-Vermeulen, p.7, 2016)

To summarize, it can be clearly observed that the definition of human trafficking evokes many controversies both in theory and practice. UN Protocol drafted a definition of human trafficking that, on one hand, creates a universal framework of anti-trafficking measures, but on the other hand, it certainly suffers from ambiguity and vagueness of the concepts, that are misinterpreted in the local context. The role of international non-governmental organizations and international cooperation among states is undoubtedly vital in combatting human trafficking and this is admitted by all scholars and practitioners. The

debate is concentrated on the particular ways and approaches to fighting this transnational crime.

Human trafficking worldwide and in Kazakhstan

Globally, there are many books and researches dedicated to human trafficking (HT). It has many forms across many countries. Two stories that explicitly portray existing problems in HT in RK. According to Bekirova (2011), Director of rehabilitation center Rodnik in Almaty mentioned that two teenage Uzbek girls served 15-20 men per day. Twice they ran away but were brought back to the 'owner', moreover once from the police station. One of the girls got pregnant and undergone abortion. After all, the 'owner' was sentenced only to one conditional year of imprisonment. Another story by Lillis (2012), is about 17 and 18 year old sisters of RK nationality who went to work in Russia and ended up in the hands of criminals. They served as prostitutes and were kept in poor conditions; one girl gave birth to a child. She could escape back to Shymkent. Her sister could not. Her case collapsed in court because the authorities have decided that there were no grounds to call it a crime.

The issues addressed in these cases will be revealed through differentiated literature, which refers to legislation, migration, RK position towards combating the problems and figures. Global Human Smuggling by Kyle D. and Koslowski R. (2011) give a global understanding of HT and combating measures. Gender politics in Post-Communist Eurasia by Raccioppi L, O'Sullivan See K (2009) and international reports by UNODC, U.S. Department of State, ILO, and Analytical Report by Commission on Human Rights under the President of Republic of Kazakhstan (2015) provide details about the situation in the RK. Statistical data from Statista.com and Laws of the Republic of Kazakhstan – Criminal Code, Law on Legal Status of Foreigners and Legislative acts on issues related to combating trafficking in human beings support research on the topic.

The main topic for consideration in the research is a gap between existing human trafficking (HT) cases and prosecuted ones, the legislation perspective towards the issue, the rehabilitation centers development and evidence of figures and numbers. In Kazakhstan different HT is present - domestic and international. There are migrants forced into sexual labour in KZ, citizens of KZ forced into HT abroad, and also KZ citizens forced into HT slavery in KZ. HT is a recent phenomenon in the country in terms of its scope, number of people involved and increased number of victims.

By the definition of HT, it can be observed that in KZ the issue is mostly considered from the perspective of legal framework and rehabilitation of victims, while no attention is

paid to the social and economic reasons of human trafficking emergence. One of the socio-economic factors that directly influences on the scale of human trafficking is migration.

Concerning the legal framework, legislation plays a crucial role in defining HT, establishing measures that will protect victims and punish perpetrators. The ILO Report (2017) estimated that traffickers exploit 77 percent of all victims in the victims' countries of residence. Therefore, the better legislation and its implementation a country has, the more efficient it becomes in combatting human trafficking internally. It is stated in the U.S. Department of State Report (2019): 'Addressing HT at home takes political courage – in inspecting local sectors and industries, investigating official power structures...' Internal improvements in legislation and migration are considered in the historical development of legislation in HT.

Research in legislation was conducted by Bekmagambetov (2014). He undertook a comparative analysis of the legislation in Kazakhstan and Russia. The research examined the criminal law based on the constructive - critical methodology, in addition to the formal – logical approach. The migration side of the research is globally described as 'a mega-trend of our century'. The latest UN estimates indicate that the number of international migrants has grown by nearly 50 per cent since the start of the millennium, more than twice as fast as the world population, reaching a total of some 258 million in 2017. The closely linked phenomenon of internal migration, which is not included in this figure, is even more significant, e. g. Rohingya in Myanmar, civil wars in Syria and South Sudan, and the economic crisis of Venezuela (Meyer&Boll, p.2, 2018). Along with migration trends there are socio-economic trends in Central Asian (CA) countries which add up to migration to RK.

The research topic will cover general aspects of the socio-economic backgrounds of CA countries and disclose circumstances that benefit for the HT. Racioppi and O'Sullivan (2009) describe the topic of public policy and migration in CA, gender politics, the roots and causes in the countries. It will confirm the flaws in either legal framework or in its implementation for the decrease of number of victims through public policy on migration. Most women flee their home countries in search for a better life. Also, countries that have riots or other socio-economic instability, tend to have higher rates of migration. RK specific information on current problems in the protection of the rights of migrant workers and victims of trafficking in person in Kazakhstan is mentioned in the Analytical Report by Commission on Human Rights under the President of RK (2015). The report contains useful

legislative regulation of combating trafficking in persons in the country and implementation difficulties.

The international research by Kyle and Koslowski (2011) propose scenarios in migration law of different countries and legal construction of 'prostitutes' that allow traffickers to succeed in crime. The majority of cases fall into the category of women willingly crossing the border in search for better opportunities. Unfortunately, this turned into inhumane conditions of work afterwards. Trafficked people in CA by Statista in 2016 stand for 48% for sexual exploitation and 45% for the forced labour, and the movement flows from poorer countries to richer ones, from CA to RK.

International reports provide a good clue in understanding the position of RK women on this delicate topic. According to U.S. Department of State Trafficking in Person Report (2019), RK women are subject for sex trafficking to the Middle East, Europe, East Asia, USA. Sex traffic within the country consists of women from CA, Eastern Europe and rural areas of RK. In addition, the report explores existing legislation in force, assigns country a grading of Tier 2 watch list, and provides prioritized recommendations, protection and prevention measures. UNODC Global Report on Trafficking in Persons (2016) explores key findings of victims' and offenders' profiles, trafficking flows and forms of exploitation in Eastern Europe and CA. According to the data provided, RK is a destination country for human trafficking at regional level and a supplier at sub-regional level. The region stands for Eastern Europe and CA and sub-region for the Middle East, the Western and Central Europe, and South and East Asia. ILO Global Estimates of Modern Slavery: Forced Labour and Forced Marriage Report (2017) has figures on the estimated human trafficking market with subdivision between men, women, and children in percentages. It contains insights on forced sexual exploitation of adults and children where Europe and Central Asia account for 14%.

There are many cases where RK women were lured and trafficked to Russia or vice-versa. The elaboration of work on cooperation between Russia and RK in terms of HT was explained in paper of Khanov T.A., Boretsky A.V. (2012). The authors conducted questionnaires of 78 investigators and other police officials concerning the interaction of two countries in the sphere of fighting against human trafficking. Results showed that interaction is very low or doesn't exist at all (94%). Authors suggest that there are 6 possible forms of cooperation and that by using these forms of cooperation countries could facilitate their effective interaction in combatting human trafficking.

Alzhankulova et al. (2016) and Criminal Code, Law on Legal Status of Foreigners and legislative acts on issues related to combating trafficking in human beings of Kazakhstan will support our research of gaps within the legislation and migration, its implementation. The research methodology by Alzhankulova et al. is based on theoretical methods. Firstly, comparative legal analysis was conducted, through which the main gaps in the legislation of the RK were identified. Secondly, proposals for the adoption of special legislation to combat human traffic were developed and submitted with relevant international instruments and standards.

Even when gaps in legislation are identified and closed, as statistics on legal cases suggest, problems in investigation and finalization of criminal cases exist. Statistics from *statista.com* provide various data for the region rather than for RK. It shows that crime detection is low despite huge estimated figures. The cases that go to court are even half of the detected cases in the country. In addition, in several instances, police officers were accused of trafficking or sentenced for other offences that may have involved trafficking. Work of Boretsky and Zhetpisov (2013) who wrote on issues of investigation techniques, will broaden understanding of tools for investigation and collapse. In the methodological basis of the study lies the system of common, separate and special methodological principles, approaches and methods of scientific cognition, applicable either separately or in combination with each other. In particular, the methods, such as dialectical, historical, comparative analysis simulation, statistical and systematic-structural, action and situational approaches are used in the study of the processes and phenomena (Boretsky et.al, p.2, 2015).

Special attention is paid to rehabilitation centers which reveal and enlighten stories of victims, statistics they observe on HT and migration, crime detection, and socio-economic reasons behind cases. Rehabilitation centers are often underfunded and are at the same time the focal points of help for victims. Also, the analysis on legislative history gives hints for the current situation and helps to establish gaps in the research.

Rehabilitation centers

The rehabilitation centers play an extremely important role in overcoming the tragedy of victims. They are also the centers of statistics on their own. The formation of rehabilitation centers for trafficked victims was not straightforward. They appeared as an extension of the women movement in Kazakhstan. In 1994, there were six registered women NGOs (Akmola Committee of soldiers' mothers, Union of women of Kazakhstan, League of Muslim women, Union of large families of Kazakhstan, Feminist League and Kazakhstan

Association of disabled women with dependent children). In 1997 the quantity of NGOs increased to 30, and at the start of 2003 - to 200. Today, women organizations can be classified into 3 categories: NGOs, a national organization (National Commission for family and women Affairs under the President of the Republic of Kazakhstan), and an international organization (UNIFEM). Women NGOs have different goals and audiences. Crisis centers "Podrugi", "Zabota", and "Nezabudka" are rehabilitation centers, among others.

In general, activities of women's NGOs are mainly sponsored by international funds or special programs run by diplomatic missions. Most of them are the Soros-Kazakhstan Foundation, the County Consortium, Eurasia, the Embassy of the Netherlands, Germany, and the British Consulate. As mentioned by Salagdinova (2003), provided assistance is not long-term; therefore, lawyers, doctors, and teachers often work in such NGOs without any payment. And the situation persists.

According to Anna Ryl (2018), the head of NGO "Korgau Astana" fund help comes from ordinary people. There is no a constant sponsor of the fund, sponsors are reluctant to help due to the specific and unpopular topic of the fund – domestic violence, victims of slavery. In general, they have two sources of funding - the state social order and occasional international grants. The stable source of funding is Anna Ryl's family savings: "everything we earn, we invest in our shelter".

Ryl mentioned participating in the development of standards for victims of domestic violence and human trafficking, which helped to issue grants to 16 regions to support rehabilitation centers. Akimats of South Kazakhstan region and Shymkent were committed, and opened a social support service for the population, even in villages. On the opposite side, Uralsk and Semey, cities previously considered to be safe, reported severe abuse of women.

In 2016, there were 28 crisis centers for victims of domestic violence. Seven centers are state-supported shelters that accept victims of domestic violence only after they report the incident to the police. However, if a victim of domestic violence does not report the incident, they cannot use the services of public centers. In this case, they can contact one of the 21 NGO crisis centers that provide free services, anonymity and confidentiality, while operating under a lack of funding and a huge burden as a result of growing demand for their services.

Literature review conclusion

Based on the literature review, it can be concluded that the problem of human trafficking is extremely complicated and demands lots of efforts from the international community to tackle it. Official statistics clearly indicate the scale of the problem worldwide and in Kazakhstan. Human trafficking is correlated with migration, which highly depends on socio-economic background.

Human trafficking, legislation and combatting approaches are described throughout the literature review. There are still debates about what is the best approach to define human trafficking and consequently how to fight it - whether to deal with rehabilitation of victims of human trafficking and restore their rights, or to find the reasons for the emergence of human trafficking in economic and social spheres of each country. Kazakhstan is currently making certain steps on the way of addressing the issue of human trafficking in a more comprehensive manner. And the problem itself is considered only from the legal and human rights perspective, aimed at the execution of traffickers and rehabilitation of victims, while the reasons and roots of statistical discrepancy of human trafficking cases remain to be uncovered.

RESEARCH METHODOLOGY

Based on the literature review it can be concluded that there are certain fields of research left uncovered so far. First of all, regarding the perspectives of human trafficking, labour market approach was not considered for the exploring of this issue, particularly in Kazakhstan. As labour market perspective deals with the reasons of emergence of human trafficking, mostly in socio-economic sphere, we suppose that by addressing the problem from this angle, we could contribute to better understanding of its nature. By socio-economic factors we understand migration flows, salaries, rates of unemployment, labour conditions and others. Legal perspective of human trafficking in Kazakhstan so far is the most frequently used approach of addressing this problem. However, exploration of the legal system was mostly concerned on the development of anti-trafficking legislation. The link between law and the actual statistics of human trafficking was neglected. While this is a vital connection as it allows to understand what are the pitfalls of the legal system that hinder anti-trafficking measures. Therefore, taking into account the above mentioned gap in the literature, our research question is following:

Do imperfections in legal system cause distortions in real numbers of HT victims?

Research areas for exploration:

- To identify correlation between human trafficking and migration in Central Asian region;
- To identify correlation between socio-economic stance of a Central Asian countries and its' impact (*if there is one*) on human trafficking and migration;
- To explore legal side of human trafficking and migration in order to identify barriers and loopholes that impact (*both positively and negatively*) human trafficking and migration (*if so*);
- To explore governmental assistance (*if there is one*) in prevention of human trafficking (*non-legal aspects*), in rehabilitation of victims of human trafficking;
- To explore legal procedural aspects of dealing with human traffickers and their victims.

Formal Hypotheses

Following from research objectives and research question, we propose several research hypothesis:

- *Hypothesis 1: Overlap between the definition of violation of migration laws and human trafficking leads to lower level of detection of HT crimes*

- *Hypothesis 2: Complex legal proceedings prescribed by Criminal Processing Code leads to low disclosure of HT criminal cases*
- *Hypothesis 3: Lack of definite prohibition of prostitution in Criminal Code leads to the increase of HT*
- *Hypothesis 4: High rates of corruption in law enforcement agencies lead to lower level of detection of HT cases*
- *Hypothesis 5: High rates of migration flows from Central Asian countries to Kazakhstan increase the probability of human trafficking*
- *Hypothesis 6: Low level of governmental support of rehabilitation centers for victims of human trafficking negatively affects the reduction and full rehabilitation of victims*
- *Hypothesis 7: In 10 years time period economically rising Kazakhstan attracts more trafficking cases from economically low with high rates of unemployment Central Asian countries*

Analysis and justification

Human trafficking topic is extremely complex and multidimensional. Clear justification for the argument is the lack of unified understanding of what human trafficking truly is. Each country and NGOs have their own perspective and understanding of what human trafficking includes within itself and as a result victim of human trafficking suffers the most. Governments around the world take numerous attempts to fight the human trafficking, but numbers of victims are constantly growing. Kazakhstan held several conferences for the past decade on multiple political and NGO levels but to this day, not much has been actually implemented.

Also, it is very important to understand the link between human trafficking and migration. To a certain extent the correlation between the two seems obvious. However, when a person is forced to stay in a country, he/she is breaching the migration laws as well. Therefore, it is our goal to identify the border between human trafficking and violation of the migration laws in order to provide an overview of potential policy changes in order to increase protection of victims.

In addition, having gone through a path of human trafficking victim, the latter have to be supported in one way or another. There are, of course, rehabilitation centers but the question is to what extent such centers are supported by governments of various states of the Central Asian region. Are the centers sponsored by individuals or are they subsidized by

governments? Governments should be the first in line to provide assistance to victims, which is why one of our goals is to explore the extent to which governments are involved.

We would like to find out actual procedural aspects that victims go through when they are discovered by representatives of state authorities – police officers for example. It is very important to investigate the court procedures, claims and other legal mechanisms that victims have at their disposal in order to gain protection of their rights.

Our final and main goal is to determine whether there is a link between all the downfalls and difficulties in the legal system and the collection of statistical data and real numbers of victims of human trafficking. All the questions we are going to unpack represent different dimensions and sectors of the whole legal anti-trafficking system and include the legal definition of human trafficking, overlap in legal definitions of migration/prostitution and human trafficking, legal procedures of detecting traffickers and victims, legal procedures of criminal investigation of human trafficking cases, support of rehabilitation centers and victims of human trafficking. Legal framework will be considered from the perspective of Kazakhstan’s legislation and from the perspective of several international organizations, involved in anti-trafficking campaigns in Kazakhstan. By exploring all of these discourses in the legal framework of anti-trafficking measures, we’ll be able to determine what are the main obstacles and difficulties in legislation that should be overcome.

Research methods and data

Kazakhstan is a destination point of human trafficking in the Central Asian region. Thus, coverage of migration, specific data and numbers are to be studied. As literature review suggests, migration and human trafficking have strong correlation. We will look at various legislations and migration in order to come up with a policy proposal. As a methodology we will use reports of NGOs, scholars, governments, and any other organizations that disclose information on the topic. Interviews with investigators in order to find out the “in-practice” situation are planned. Predefined questions on possible loopholes in the legal system that prevents the police officers from detection of criminals and victims will be asked. Also, interviews and surveys from rehabilitation centers authorities/ staff members will be taken. Primary data is planned to be taken from the directors (managerial personnel) of rehabilitation centers, police officers who have experience in investigating such cases, from criminal lawyers, who have been dealing with protecting victims and Interdepartmental Commission on combating illegal export, import and trafficking in human beings

- Police officers 5 – 7 people;

- Criminal lawyers 5 – 7 people;
- Rehabilitation centre directors 10 people
- experts from Interdepartmental Commission 1-3 people

Secondary data is planned to be taken from the available literature and statistics:

- History of legislation development and coverage of loopholes on the topic of human trafficking to be analyzed.

- Statistics from international reports and statista, Committee on the legal statistics and special accounts of the state office of public prosecutor of Republic of Kazakhstan

- Though if legislations are not an obstacle in the process of finding the cases and going through the cases to the court, then other reasons to be checked like:

- attitude towards the sensitive topic, towards ‘prostitutes’ by public, which helps government officials to change status to migrants and send victims asap from the country.

- weak social position of victims which stops them to protect herself/ himself in a court, though to be proved by primary data.

- procedural difficulties which arise from the legislative regulations

We are planning to use the following research methods:

1. Interview of proposed groups of people:

We would ensure maximum level of confidentiality to every interviewee due to the high degree of sensitivity of the topic. Also, we would ensure that no victims’ names appear in any of the work composed by us. All participants will be assured that their names and their setting will not be divulged.

From the technical point of view, we plan to list 10 – 20 questions to each group of interviewees. Each group will have various questions based on their personal experience. Interviews will be either held online (most likely) or in person (depending on the situation around quarantine and other potential barriers).

Possible questions for groups:

1. Police officers.

- We believe that it is easier for police officers to claim that a person has breached migration laws instead of digging deeper into the situation and realizing that it was not a breach of migration laws but rather HT case. Therefore, we would ask the following: what do you think should be changed in terms of the overlap of CC and migration laws in

order to encourage police officers to reveal the milestone of the case and help the victim to solve it by taking it to court?

- We believe that the government does not provide enough support to the victims, which is why most victims (probably) are not willing to deal with HT proceedings and chose to be deported (in case of international HT) or chose to avoid any legal actions. As a result it distorts the real situation (numbers) with HT victims. Therefore, we would ask the police officers as well as the criminal lawyers the following - what, in their opinion, should the government do in order to assist the victims (physically/morally/financially) in order to encourage them to fight for the truth. The goal is to make every HT victim to go to court, so that the statistics of HT crimes were closer to the absolute stats instead of what Kazakhstan has now.

2. Lawyers.

- Lawyers are well-prepared for making proposals in legal proceedings that would ease life for everyone - the police officers (investigators), judges, victims and so on... Therefore, it would be useful to see what they think of the general change of CPC in order to contribute to the revelation of real HT victims' numbers. We plan to propose unified definition of the human trafficking, thus definitely will ask all parties involved (police officers, lawyers, directors of rehabilitation centers) for their opinion on "what does HT mean". We believe that they would be able to provide a real definition, which we would transform into legal language (with the assistance of lawyers) and make the policy proposal.

- We have discovered that one of the ways for the government to help HT victims without using the general country's budget is to use the money (property) that was confiscated from other crimes and use such money (Property) to assist the HT victims. Therefore, we will ask the lawyers and police officers whether they think it would be useful. Of course, they would probably agree with that but the goal of the question would be to see - how exactly to see the mechanics (legal/practical) of the use of the finances and the final goal - the implementation of the assistance. How and where would such initiative bring the HT victims.

List of all questions per group attached in Appendix 1

FINDINGS

1. Legal factors

1.1. Rulemaking (policy making) factors

Human trafficking is a heavy crime against humanity governed and prosecuted by the corresponding agencies worldwide. Adequate, relevant and literate law, constructed in line with international protocols eases its application. This includes the definition of crime, processing of crime and victim treatment and rehabilitation legislation. Policy making initiatives in this field were introduced as soon as Kazakhstan obtained independence. To date there is a set of legislative acts governing anti-human trafficking policies. The list includes the following legislation:

- Criminal Code of the Republic of Kazakhstan (2014);
- Criminal Procedure Code of the Republic of Kazakhstan (2014);
- Law on Special Social Services (2008);
- Standard on provision of special social services to victims of trafficking (2016);
- Criteria for assessing abuse which led to social maladjustment and deprivation (2014);
- Plan of measures of the Government aimed at prevention and fight against crimes connected with human trafficking for 2018-2020 years (2018);
- Provision on the Interdepartmental Commission on combating illegal export, import and trafficking in human beings (2017).

All of these acts cover different aspects of anti-human trafficking policies, which are explained in details below.

The definition of human trafficking is outlined in the article 128 of the Criminal Code of Kazakhstan. This crime is defined as “buy and sale or commission of other transactions in relation of person, as well as his (her) exploitation or enlistment, transportation, transfer, concealment, receipt, as well as the commission of other actions in order of exploitation” (Criminal Code of RK, 1997).

What many of our respondents mentioned is that this article is poorly formulated and doesn't allow to establish the corpus delicti of the crime. It is unclear why the word “exploitation” is repeated twice, because if we interpret this article we eventually come to a conclusion that this is a crime which implies exploitation for exploitation. In fact, one of the respondents stated the following: “*This article is not working*” (Respondent # 4). Respondent

argues that it is extremely difficult for an investigator to ensure compliance with the article prior to taking the case to a court. As a result, very few cases are “eligible” for trial.

The shortcoming of formulation of this article subsequently affects the procedures of establishing the crime, collecting evidence for proving the crime and so on. It also leads to misunderstanding of human trafficking among police officers and investigators as the scope of article includes two conditions for fulfillment (reference to “exploitation” and “purpose/order of exploitation”,) whilst according to Palermo protocol first part of the article would be enough for initiation of process. Process can take place if there is evidence for exploitation of a person, and on top of that, the purpose of exploitation should be proven. As one of the respondent states: *“We need to modernize the article and delete the tautology in the definition of human trafficking” (Respondent # 1).*

Many of the respondents noted that there are obvious reasons to make amendments to article 128. First of all, because *“this definition of human trafficking creates difficulties in the qualification of crime” (Respondent # 16).* Second of all, it complicates the collection of evidence. *“It is impossible to prove the crime according to this article” (Respondent # 1)* Third of all, the definition seems to be outdated, not taking into consideration the changing patterns and types of trafficking and exploitation of people. *“Definition should include the tendency of increased labour trafficking over sexual in Kazakhstan” (Respondent # 2).* Fourth of all, Kazakhstani definition differs a lot from the internationally accepted term of trafficking in persons, set in the Palermo protocol. According to the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, is much wider and more specific. It follows as “trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”. The difference in the definitions is clear (UN, 2000).

The definition of human trafficking crime in Criminal Code is one part of the story. There are other policies that deal with the issue.. General vision of the anti-human trafficking

policy is reflected in Plan of measures of the Government aimed at prevention and fight against crimes connected with human trafficking for 2018-2020 years. In 2017 the government created the Interdepartmental Commission on combating illegal export, import and trafficking in human beings as an advisory body for elaborating recommendations on anti trafficking issues.

The next stage that needs revision is the legislation for rehabilitation of victims. This is a crucial stage in obtaining evidence and statement from the victim, trust and treatment of traumatized people. Thus, anti-human trafficking policies include not only rules of defining and investigating human trafficking, but also the rules regarding the rehabilitation of victims of human trafficking, developed by the Ministry of labour with help of OECD and other corresponding agencies. It is also important to revise general strategies of the government in this field.

Legislation in the area of rehabilitation has to be revised through the prism of the current situation in a rapidly changing world. According to the respondepts: *“Psychological traumatization from years of labour slavery or sexual exploitation needs long rehabilitation. Some of them (victims) go through 2-5 years of rehabilitation. Usually it takes a month of live in rehabilitation center before person starts to talk about what have actually happened”* (Respondent # 2).

There are several acts that need to be analyzed in terms of provision of help to victims. These are The Law on special social services, Standard on provision of special social services to victims of human trafficking and Criteria for assessing abuse which led to social maladjustment and deprivation.

One of the main drawbacks in this regard, which was mentioned in many interviews, is that the help for foreign citizens is not considered at all, while statistically there are many people from foreign countries among victims of human trafficking. *“...we (Centers like ours) work with the international organizations because it is not allowed to use governmental funds to assist international HT victims. We believe that there should be no limitations on assisting HT victims. Our main argument that the crime has taken place in Kazakhstan, which as a result means that international citizens should be able to receive assistance”* (Respondent # 9). In addition, the Head of the State Mr. Tokayev has noted during the National council of public confidence in October 2020 that international citizens should also be supported in case they become human trafficking victims.

If we look closely at these legislative acts, we will find that many respondents were not precisely aware about this problem. The real issue is that legislation allows to provide help for foreign citizens permanently residing in Kazakhstan. And the status of a permanently residing foreign citizen in Kazakhstan is obtained through certain procedures and only after getting an official permission to stay. According to the Rules for granting permission for temporary or permanent residence for foreign citizens in the Republic of Kazakhstan, foreigners are obliged to provide a certain list of required documents, including documents proving that a person has a place for living with the registration of this place.

It is a well known fact that victims of human trafficking do not have an official and registered place for living. Therefore this rule creates a vicious circle where foreign citizens become victims of human trafficking, hence don't have a status of permanent residence, therefore they can't apply for special social services in Kazakhstan because they don't have a status of permanent residence. It is an inherently non-working clause.

There are cases when a person is trafficked to Kazakhstan for sole reason - exploitation, which practically means that a person will not be able to go through required procedures in order to obtain required status, which eventually, when a person is found and rescued from exploitation, he/she would be able to obtain help from the government. It is a straightforward indicator that our policies are insufficient and require additional work.

To summarize, legislation on anti-human trafficking is complicated and fragmented. There is no unified approach in this regard. Most of the legislation has deficiencies which hinder the process of battling trafficking in persons. Even though rules are prescribed in much details, there are reasonable doubts about its effectiveness.

1.2. Law enforcement

According to the Criminal Procedure Code of the Republic of Kazakhstan, there are 3 ways in which cases are carried out depending on the nature and gravity of the criminal offence. Criminal prosecution and accusation in court can be carried out in private, private-public and public order. Human trafficking cases are carried out in a public order, which means that the case starts independently of the complaint to the complainants (Article 32 of the Criminal Procedure Code). This clause seems to benefit the effective detection and prosecution of traffickers as there is no need for victims to apply to law enforcement agencies.

There are 6 officials, performing the functions of criminal prosecution: prosecutor, head of the investigation department, investigator, the body of inquiry, head of the body of inquiry and interrogating officer (Chapter 8 of the Criminal Procedure Code).

The detection and investigation of human trafficking cases are complicated by many factors. The process consists of 2 stages: pre-trial and trial. During the first stage, the collection of evidence is carried out by criminal prosecution officials, usually by investigators (Article 187 of the Criminal Procedure Code). Pre-trial investigation begins with the registration of a statement, a report of a criminal offence in the Unified Register of Pre-trial Investigations or the first urgent investigative action (Article 179 of the Criminal Procedure Code). Regarding the terms of pre-trial investigation, there are no fixed periods of investigation. Instead, according to article 192 of the Criminal Procedure Code “pre-trial investigation should be completed within a reasonable time based on the complexity of the criminal case, the volume of investigative actions and the adequacy of an investigation of the circumstances of the case”.

At the trial, the evidence must be supported by testimony. To give more details, “In the proceedings all the evidence in the case shall be subject to direct research. The court must hear the testimony of the defendant, victim, witnesses, and announce and explore the findings of experts, examine material evidence, read out protocols and other documents, produce other judicial actions to study the evidence” (Article 331 of the Criminal Procedure Code). So, the first issue here is with collecting evidence, especially from witnesses. According to Respondents #1 and #4 “*Witnesses change their testimony during the investigation*” very often when all evidence must be proved eligible in court. There are multiple reasons for witnesses to change their mind during court. Some of them do not wish to continue with trials as it becomes emotional and overwhelming. In other cases witnesses are forced to change their testimonies.

Another issue, which was mentioned by most of the interviewed people, is low level of professionalism among investigators. There is no common understanding of how to deal with cases of human trafficking. Additionally, internal interaction in law enforcement agencies often hinders the investigation process. Research has shown that there are a lot of issues with investigators that result in distortion of statistics: “*They need to prove that the case is worthy of investigating. They are working for their own statistics. There are communication problems inside of the law enforcement bodies.*” (Respondent # 4). Due to the fact that there are a lot of various agencies, legal barriers and certain obligations imposed

by higher supervisory bodies, investigators tend to fail in their day-to-day duties with regards to the investigation of human trafficking cases.

In general, the whole process of investigation is accompanied by many pitfalls for all types of crimes. Prosecution and defense have different legal instruments. This can partly be explained by the way in which matters of law are designed. For example, one of the key issues identified by our respondents: *“Matters of law are not designed objectively with a strong focus on the interests of prosecution. Defense side has much less legal instruments in comparison with the side of prosecution” (Respondent # 1)*

As a result, many human trafficking cases are either not proved or they are stopped before trial. Besides, many victims of human trafficking are not willing to continue the long process of investigation because of the lack of trust in law enforcement agencies and fear of prolonged investigation. In fact, respondents state the following: *“Victims are crashing because of the actions of investigators” (Respondent # 4)*. Based on the information provided by respondent it becomes apparent that victims go through a lot of pressure, which as a result leads to

1.3. Interagency communication

There are many public agencies, nongovernmental organizations and international organizations involved in anti-human trafficking policies and their implementation. In 2003 Government established an Interdepartmental Commission on combating illegal export, import and trafficking in human beings. This Commission is responsible for the analysis of current situation on human trafficking and providing recommendations for improving existing anti-human trafficking policies. It is a consultative public body, consisting of a variety of different stakeholders. *The chairmanship of the Commission is carried out by two ministries - Of internal affairs and of Labour and Social protection, which replace each other every 2 years (Respondent # 2)*.

There were several controversial answers regarding the effectiveness of the Interdepartmental Commission. Some respondents were sure that it brings some positive results, while others were saying that the work of the Commission is absolutely ineffective. Information about the reports of the Commission is unavailable for the public. Results of its work are publicized in different mass media, but in general the information is fragmented. Therefore, it is hard to assess their work but given the fact that there are a lot of problems in the area of human trafficking combat, one can assume that there is lack of communication among public servants.

Other respondents state that “Interdepartmental Commission” is the “poorest” commission. It has only a declarative character. Lack of interagency communication can be seen even during sessions. *We asked to reconsider the financing, raised the question of raising expertise - but everything stays only on paper. Absolutely ineffective*” (Respondent # 7)

Criminal investigation, detection of crime is carried out by structural units of the Ministry of internal affairs of the Republic of Kazakhstan. General statistics of the victims of human trafficking is collected by this Ministry as well. It is also an interchangeable chairman of the Interdepartmental Commission on combating illegal export, import and trafficking in human.

The Ministry of Labour and Social Protection of the population of the Republic of Kazakhstan is responsible for providing and protecting safety at work, monitoring migration, providing social protection and special social services to certain categories of population. Just as the Ministry of internal affairs, it chairs the Interdepartmental Commission on combating illegal export, import and trafficking in human beings.

There is a special department in the Ministry of Labour that deals with the elaboration and implementation of anti-human trafficking policies. The title of the department is the Department of the development of social services policies. One of the structural units of the Department is the Office of special social services.

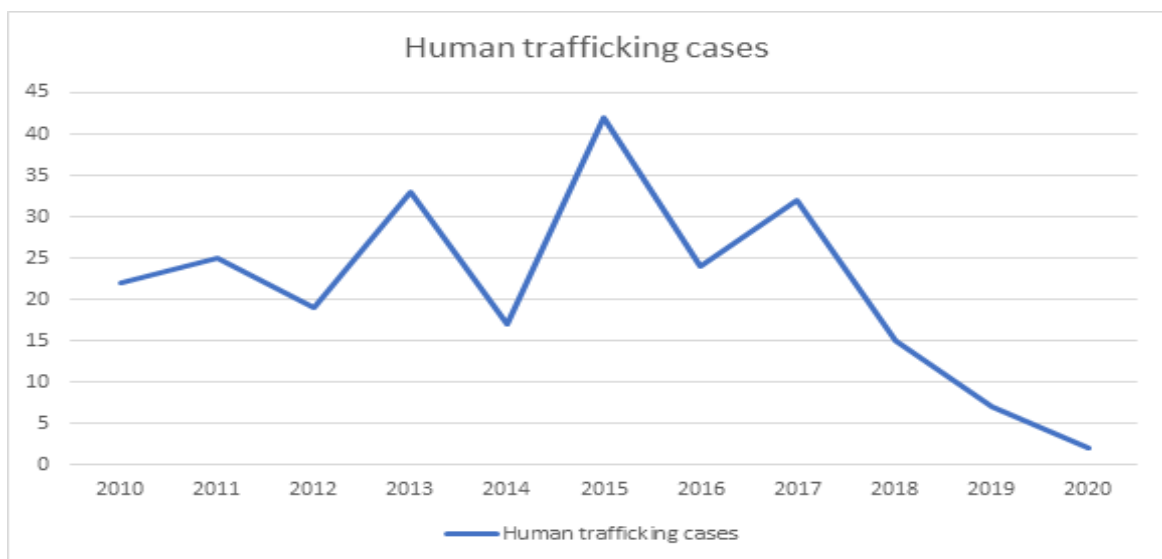
In addition, there is another structural unit in the Ministry of Labour, which is the Committee of labour, social protection and migration. It has similar functions as the Department of the development of special social services, as it controls the implementation of legislation in the sphere of labour security, migration, employment and special social services.

There is no permanent public agency governing anti-human trafficking policies. There are several separate bodies that are providing special social services, which in turn include help for victims of human trafficking.

Many nongovernmental organizations in Kazakhstan are also carrying out their own analysis of anti-human trafficking policies. They were interacting closely with the Ministry of internal affairs before, but currently these channels of communication are closed. However, some NGOs are addressing requests to the Administration of the President of the Republic of Kazakhstan regarding the issues of improving anti-human trafficking policies.

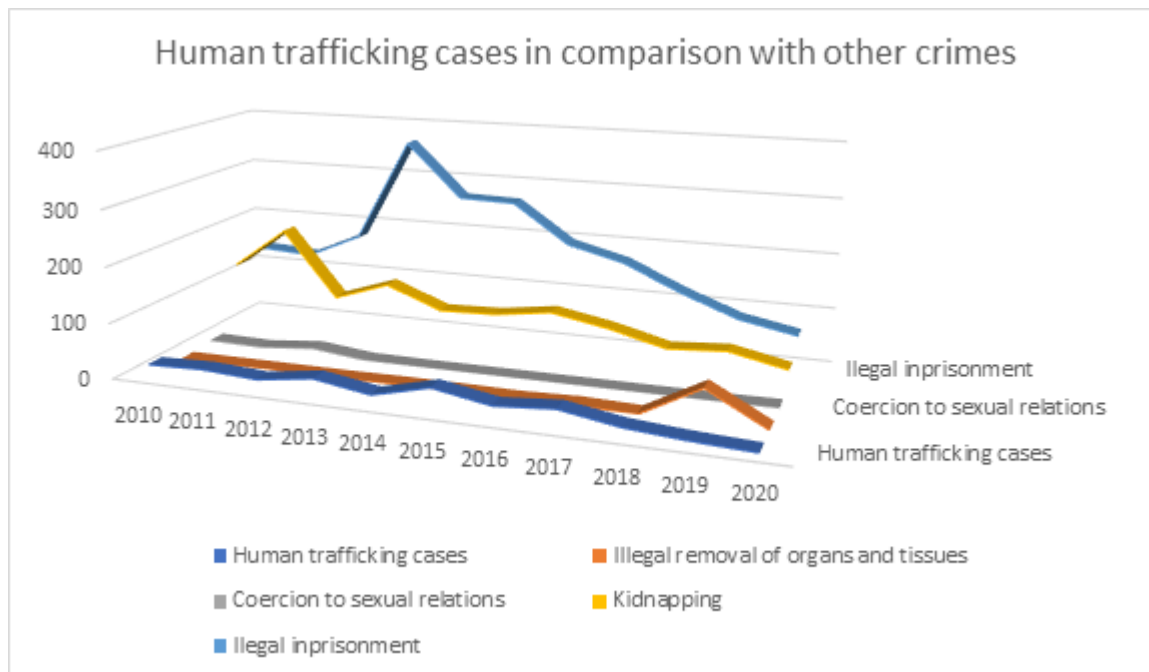
Administration of the President then addresses different Ministries to provide an official report or a plan of work.

In general, lots of measures has been undertaken to improve anti-human trafficking policies. However, there are certain problems in interagency communication in this regard. Obstacles are in place on each stage of criminal prosecution and accusation, and also on stages of rehabilitation of victims. The reasons are: inefficient and fragmented legislation, unwillingness of investigators to deal with human trafficking cases, difficulties with establishing and proving evidence. Therefore, despite the increasing amount of measures undertaken, the number of human trafficking cases is gradually falling. According to an official response of the Committee on the legal statistics and special accounts of the state office of Public Prosecutor of the Republic of Kazakhstan, in the time period of 2010-2020 years number of human trafficking cases registered according to the article 128 of the Criminal Code has declined sharply.



*data from the Committee on the legal statistics and special accounts of the state office of Public Prosecutor of the Republic of Kazakhstan

Along with the information of human trafficking, we also requested data on other articles of the Criminal Code, including forcible removal or illegal removal of organs and tissues of person (article 116), coercion to sexual relations, pederasty, lesbianism or other actions of a sexual nature (article 123), kidnapping (article 125) and illegal imprisonment (article 126). The situation is as following:



*data from the Committee on the legal statistics and special accounts of the state office of Public Prosecutor of the Republic of Kazakhstan

It should be noted that this information does not include how many cases were registered and how many of them went to court. However, in general, it can be observed that the numbers are falling down sharply. There was a surprising rapid growth in cases of illegal removal of organs and tissues in 2019, when numbers reached 57 cases after 0 cases in 2018.

As findings of our research show, we assume that there are several factors, influencing this trend. Legal factors, including issues of policy making and their implementation, were described in this chapter. As we proceed, we will unpack several more directions.

1.4. International law aspects

The United Nations has established several legal acts in order to combat Human Trafficking commonly known as Palermo protocols. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Protocol) is one of the main documents that has been addressed by our interviewees. Most interviewees believe that Kazakhstani law enforcement authorities should use the Protocol's definition of HT as the basis for defining human trafficking. In fact, under the section 4 of the Protocol the following is indicated: "This Protocol shall apply, except as otherwise stated herein, **to the prevention, investigation and prosecution of the offences** established in accordance with article 5 of

this Protocol, **where those offences are transnational in nature** and involve an organized criminal group, as well as to the protection of victims of such offences”. In other words, Kazakhstan, being part of the United Nations, should either adopt provided understanding (definition) of HT or adjust current clauses in Criminal Code.

As it is well noted in previous chapters, the article 128 of the Criminal Code of Kazakhstan is too ambiguous, too narrow and hard to follow and even harder to use when a human trafficking case boils down to execution at any level.

Table of contrast

The Protocol	The article 128 of the CC
<p>HT means: the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;</p>	<p>HT means: Purchase and sale or performance of other transactions in relation to a person, as well as its exploitation or recruitment, transportation, transfer, harbouring, receipt, as well as the commission of other acts for the purpose of exploitation.</p>

First issue that is clear is the fact that understanding and explanation of human trafficking case in the Protocol is much broader, which allows law enforcement agencies to have more freedom in investigation and subsequently to launch criminal investigation. Respondents №1, №4, №11, №12, №16 (lawyers and police officers) have stated that very few HT investigations lead to a court hearing due to the difficulties with proving the article 128 of the CC. In essence, in order to prove that a case belongs to the HT clause, an investigator should be able to demonstrate to his/her superiors that a case includes a combination of financial transaction in relation to a person as well as exploitation or

recruitment, transportation, transfer, harbouring, receipt. Respondent №1 provides an explicit example of a case where it is merely impossible for an investigator to prove a financial transaction along with all other aspects of the article. Also, the same respondent states that not every HT case is about any financial transactions. For example, Zhambyl region has a case where a police officer has provided international citizens to his father's house for labour exploitation. The case, obviously, hasn't gone to court. On top of that, the police officer was fired from the job with no jail time at all for an abuse of power.

Another important aspect of the Protocol's definition is that it does not distinguish a victim as local or nor an international person. The idea is that any victim is a victim despite his/her origins. Article 7 (Status of victims of trafficking in persons in receiving States) of the Protocol states: "State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases". However, in accordance with the article 5 of Standards on provision of special social services to victims of trafficking (2016) of the RoK, rehabilitation centers, centers for social assistance to victims of human trafficking and shelters for victims of human trafficking can assist only to the citizens of the Republic of Kazakhstan, as well as foreigners and stateless persons permanently residing on the territory of the Republic of Kazakhstan, including for various reasons who do not have identity documents. There is a large number of victims who have come from various countries and do not receive any state assistance. As a result, HT cases of international citizens are not investigated and for the most part they are departed to their home country. All interviewees from rehabilitation, social centers and shelters for victims of human trafficking point out such discriminatory approach to international citizens. As a result, the Trafficking in Persons report provided in July 30, 2020 (20th anniversary of the World Day Against Trafficking-in-Persons) by the Department of State of the United States of America recommends that Kazakhstan increases **assistance to foreign victims** of trafficking and ensure assistance is **not contingent** on participation in investigation or prosecution efforts; increase efforts to identify victims, particularly foreign forced labour victims; and, investigate and prosecute more trafficking crimes.

1.5 Human Trafficking Criminal Code comparison

Balgimbekov et al. divided the history of the development of the anti-human trafficking legislation in Kazakhstan into three parts: the first period before the Revolution in Russia; the second period covering the time of the existence of USSR and the third period

starting from the Criminal Code of 1997 of independent Kazakhstan. As it was observed, in the first two periods of the development, the crime of “human trafficking” was not considered by legislators, even though some stipulations partly covered this crime. Moreover, during the Soviet period, the issue of human trafficking was not even acknowledged.

In this part, we make an analysis of three versions of the Criminal Code of the Republic of Kazakhstan. Specifically, we focus on the very first edition of the CC of the Soviet Republic of Kazakhstan (1959), CC of independent RK (1997), and the latest edition of CC (2014). The idea is to discover the exact amendments that have been made in order to provide more protection to potential victims. Also, we analyse several other CC’s of Central Asian (CA) region in order to provide a thorough policy review on the issues of Human Trafficking. Despite the fact that Kazakhstan puts a lot of effort into decreasing the number of human trafficking victims, there is still a lot to cover.

Table 1: Comparative analysis of three versions of CC

Edition dated July 22, 1959	Edition dated July 17, 1997	Current edition dated July 3, 2014
<i>Articles on human trafficking as a crime</i>		
<i>In general, Soviet version of CC did not include the crime of “human trafficking” per se. However, there were several articles that are somehow connected to human trafficking and to crimes against individuals, their health and life.</i>	<i>Human trafficking was officially introduced in the CC of this edition. A separate article was dedicated to the issue of trafficking of minors.</i>	<i>The same 128 article now has a different definition of human trafficking and a modified punishment. The term of imprisonment is now more exact - from 3 to 5 years. And confiscation of property is now compulsory.</i>
Article 115 Unlawful deprivation of liberty - was punished by imprisonment or correctional labour for a term up to 1 year	Article 128 included the term of human trafficking that was defined as a “purchase and sale, recruitment, conveyance, transfer, concealment or	Article 128: buy and sale or commission of other transactions in relation of person, as well as his (her) operation or enlistment, transportation, transfer,

	reception or other actions in respect of persons for the purpose of exploitation”. It was punishable with deprivation of liberty for a term of up to five years with or without confiscation	concealment, receipt, as well as commission of other actions in order of operation - shall be punished by imprisonment for the term of three to five years with confiscation of property.
<i>Articles on human trafficking of minors</i>		
<i>Similar to the lack of human trafficking crime, CC in this version also did not include an article about human trafficking of minors. However, there were indeed articles concerning crimes, that involve minors</i>	<i>Human trafficking of minors is separated as a distinctive article</i>	<i>Similar to the modification of the 128 article, the definition of human trafficking of minors also changed, as well as the punishment for this crime was clarified</i>
Article 201 Involvement of a minor in criminal activity – is punished by imprisonment for a term not exceeding eight years. Involving a minor in begging, prostitution, gambling, as well as use a minor for the purposes of parasitic existence – is punished by imprisonment for a term not exceeding three years.	Article 133 stipulates purchase and sale or settlement of other transactions with regard to a juvenile person, and equally his exploitation or enlistment, transportation, delivery, concealment, as well as commission of other offences with a view of exploitation are punished with the deprivation of liberty for a period from five to seven years with confiscation of property or without it.	Article 135 Buy and sale or commission of other transactions in relation of minor, as well as his (her) operation or enlistment, transportation, transfer, concealment, receipt, as well as commission of other actions in order of operation- shall be punished by imprisonment for the term of five to seven years with confiscation of property.

<i>Articles on sexual exploitation, rape, compulsion to sexual intercourse</i>		
<i>Even though previous edition does include some aspects of compulsion to sexual intercourse, the new CC has a separate section to cover such activities.</i>		
<p>Section 101 Rape</p> <p>Rape, i.e. sexual intercourse using physical abuse, threat, or using helpless the state of the victim, - the applicable sentence is deprivation of liberty for a term of three to seven years.</p> <p>Rape committed by a person who has previously committed rape - the applicable sentence is deprivation of liberty for a term of five to ten years.</p> <p>Group rape or rape minor, - the applicable sentence is deprivation of liberty for a term of five to fifteen years.</p> <p>Rape committed by a particularly dangerous recidivist or entailing particularly grave consequences, as well as rape minors - the applicable sentence is deprivation of</p>	<p>Article 120 Rape.</p> <p>Rape, that is an act of sexual intercourse by means of violence, threats or taking advantage of the state of helplessness of a female victim, shall be punished by deprivation of liberty for a term of three to five years.</p> <p>a) committed by a group of persons, a group of persons under a preliminary conspiracy, or an organized group;</p> <p>b) connected with the threat of murder or the infliction of grave injury, or committed with especial cruelty towards the victim or to other persons;</p> <p>c) entailing the infection of the victim with a venereal disease;</p> <p>d) committed repeatedly shall be punished with</p>	<p>Section 120 Rape</p> <p>1. Rape, that is, sexual intercourse with the use of violence or with the threat of its use against the victim or to other persons or using the helpless state of the victim, - the applicable sentence is deprivation of liberty for a term of five to eight years.</p> <p>2. Rape:</p> <p>1) committed by a group of persons, a group of persons by prior conspiracy;</p> <p>2) combined with the threat of murder, as well as committed with particular cruelty in relation to the victim or to other persons;</p> <p>3) entailing infection of the victim with a venereal disease;</p> <p>4) committed repeatedly;</p> <p>5) committed by a person in the performance of official</p>

<p>liberty for a term of eight to fifteen years with reference to a period of two to five years or without reference.</p>	<p>deprivation of liberty for a term of five to ten years.</p> <p>3. Rape:</p> <p>a) entailing, by negligence, the death of the victim;</p> <p>b) entailing, by negligence, the infliction of grave injury to the victim, the infection of the victim with HIV, or other grave consequences;</p> <p>c) of a victim who is obviously juvenile;</p> <p>d) committed in the circumstances of public disaster or during of mass disorders;</p> <p>e) committed with regard to a minor by a parent, teacher or another person, who is responsible for his upbringing by law, shall be punishable by deprivation of liberty for a term of eight to 15 years, and in cases, specified by item d), from eight to fifteen years with deprivation of the right to hold specific offices or to engage in specific activities for a term of ten to twenty years.</p>	<p>duties, - the applicable sentence is deprivation of liberty for a term of nine to twelve years.</p> <p>3. The acts provided for by the first or second parts of this article, if they:</p> <p>2) caused by negligence the infliction of grievous bodily harm to the victim's health, HIV infection or other grave consequences;</p> <p>4) committed in an emergency or during a riot;</p> <p>6) committed by a criminal group, - shall be punishable by deprivation of liberty for a term of twelve to fifteen years with deprivation of the right to occupy certain positions or engage in certain activities for a term of ten years or without it.</p> <p>3-1. The acts provided for by the first, second or third parts of this article, if they:</p> <p>1) committed against a minor;</p> <p>2) committed in relation to a minor parent, step-father, teacher or other person to whom the law of the</p>
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	<p>Article 121. Violent Sexual Actions</p> <p>1. Pederasty, lesbianism, or any other sexual actions with the use of violence or with the threat of its use against the victim or against other persons, or taking advantage of the helpless condition of the victim, shall be punishable by deprivation of liberty for a term of three to five years.</p> <p>2. The same acts</p> <p>a) committed by a group of persons, a group of persons under a preliminary conspiracy, or an organized group;</p> <p>b) connected with the threat of murder or the infliction of grave injury, or committed with especial cruelty towards the victim or to other persons;</p> <p>c) entailing the infection of the victim with a venereal disease;</p> <p>d) committed repeatedly shall be punished with deprivation of liberty for a term of five to ten years.</p>	<p>Republic of Kazakhstan has the responsibility for raising her, - shall be punishable by deprivation of liberty for a term of twelve to seventeen years with life imprisonment of the right to occupy certain positions or engage in certain activities.</p> <p>3-2. The acts provided for by the first, second, third or 3-1 parts of this article, if they:</p> <p>1) committed against two or more minors;</p> <p>2) caused by negligence the death of the victim, - shall be punishable by deprivation of liberty for a term of seventeen to twenty years with life deprivation of the right to occupy certain positions or engage in certain activities or life imprisonment.</p> <p>4. The acts provided for by parts one, two, three, clause 2) of part 3-1 and part 3-2 of this article, if committed in relation to a minor, shall - shall be punishable by deprivation of liberty for a term of twenty years with life</p>
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	<p>3. The acts specified by the first or second parts of the present article</p> <p>a) entailing, by negligence, the death of the victim;</p> <p>b) entailing, by negligence, the infliction of grave injury to the victim, the infection of the victim with HIV, or other grave consequences;</p> <p>c) of a victim who is obviously juvenile;</p> <p>d) committed with regard to a minor by a parent, teacher or another person, who is responsible for his upbringing by law, shall be punishable by deprivation of liberty for a term of eight to 15 years, and in cases, specified by item d), from eight to fifteen years with a possible deprivation of the right to hold specific offices or to engage in specific activities for a term of ten to twenty years.</p> <p>4. The Acts, specified by the first, second or third parts of the present article, if they have been committed</p>	<p>imprisonment of the right to occupy certain positions or engage in certain activities or life imprisonment.</p>
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	<p>with regard to an injured person who obviously has not attained 14 years of age are punished with deprivation of liberty for a term of fifteen to twenty years with a possible deprivation of the right to hold specific offices or to engage in specific activities for a term of ten to twenty years.</p>	
	<p>Article 123. Coercion to sexual intercourse, pederasty, lesbianism or other sexual actions</p> <p>Coercion to sexual intercourse, pederasty, lesbianism or other sexual actions by means of blackmail, threat of destruction, damage, or taking of property, or with the advantage of material or any other dependence of the victim, shall be punishable by a fine in the amount of two hundred to five hundred monthly calculation indices or with corrective labour for a term of up to two years, or with the restraint of liberty</p>	<p>Article 123. Compulsion to sexual intercourse, sodomy, lesbianism or other sexual acts</p> <p>1. Forcing a person to have sexual intercourse, sodomy, lesbianism or to commit other acts of a sexual nature by means of blackmail, the threat of destruction, damage or seizure of property or using the material or other dependence of the victim (victim) - shall be punishable by a fine in the amount of up to three thousand monthly calculation indices, or by corrective labour in the same amount, or restriction of liberty for a term of up to</p>

	for a term of up to two years, or with the deprivation of liberty for the same term.	three years, or imprisonment for the same term. 2. The same act committed in respect of a minor (minor), - shall be punishable by a fine in the amount of up to five thousand monthly calculation indices, or by corrective labour in the same amount, or restriction of liberty for a term of up to five years, or imprisonment for the same term.
<i>Articles on kidnapping</i>		
<p>Section 116 Kidnapping</p> <p>The abduction of a person with a mercenary purpose, out of revenge or other base motives - the applicable sentence is deprivation of liberty for a term of two to seven years.</p> <p>The same act committed repeatedly, by prior conspiracy, by a group of persons, an alcoholic, drug addict or a person evading socially useful work, or against two or more persons, as well as associated with violence dangerous to the life and</p>	<p>Section 125 Kidnapping</p> <p>1. Kidnapping shall be punishable by deprivation of liberty for a term of four to seven years.</p> <p>2. The same act committed:</p> <p>a) by a group of persons under a preliminary conspiracy;</p> <p>b) repeatedly;</p> <p>c) with the use of violence with danger for human life and health, or a threat to apply such violence;</p> <p>d) with the use of weapons or objects used as weapons;</p> <p>e) against an obvious minor;</p>	<p>Section 125 Kidnapping</p> <p>1. The abduction of man -the applicable sentence is deprivation of liberty for a term of four to seven years.</p> <p>2. The same act committed:</p> <p>1) by a group of persons by prior conspiracy;</p> <p>2) repeatedly;</p> <p>3) with the use of violence dangerous to life or health;</p> <p>4) with the use of weapons or objects used as weapons;</p> <p>5) in relation to a known minor;</p> <p>6) in relation to a woman, obviously for the guilty</p>

<p>health of the victim, or with a threat the use of such violence - the applicable sentence is deprivation of liberty for a term of five to twelve years, with or without confiscation of property.</p> <p>The abduction committed by a particularly dangerous recidivist, or entailing grave consequences, as well as the abduction of a minor - the applicable sentence is deprivation of liberty for a term of seven to fifteen years with confiscation of property.</p>	<p>f) against a woman who is in a state of pregnancy, which is evident to the convicted person;</p> <p>g) against two or more persons;</p> <p>h) out of mercenary motives, shall be punishable by deprivation of liberty for a term of seven to twelve years with or without confiscation of property.</p> <p>3. The actions stipulated by the first and second parts of this Article, if they:</p> <p>a) have been committed by an organized group;</p> <p>b) have been committed with the purpose of exploitation of the kidnapped person;</p> <p>c) have entailed by negligence the death of the victim or any other grave consequences are punishable with deprivation of liberty for a term of ten to fifteen years with or without confiscation of property.</p> <p>Notes.</p>	<p>person who is in a state of pregnancy;</p> <p>7) in relation to two or more persons;</p> <p>8) from selfish motives;</p> <p>9) a person using his official position;</p> <p>10) with falsification, concealment or destruction of documents proving the identity of the victim, -the applicable sentence is deprivation of liberty for a term of seven to twelve years, with or without confiscation of property.</p> <p>3. The acts provided for by the first or second parts of this article, if they:</p> <p>1) committed by a criminal group;</p> <p>2) committed for the purpose of exploiting the stolen (stolen);</p> <p>3) caused by negligence the death of the victim or other grave consequences, - the applicable sentence is deprivation of liberty for a term of ten to fifteen years, with or without confiscation of property.</p>
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	<p>1. A person who has set free the kidnapped person voluntarily shall be released from criminal responsibility, unless his actions contain a different corpus delicti.</p> <p>2. Under exploitation of a person mentioned in this article and in articles 126, 128, 133 of this Code is understood the use of hard labour, coercion into prostitution or other activities with a purpose of appropriation of his profits as well as exercising authority of a proprietor with regard to a person, who cannot refuse to work or perform services due to reasons beyond his control.</p>	<p>Note. A person who has voluntarily released the kidnapped (kidnapped) is exempted from criminal liability, if his actions do not contain another crime.</p>
<i>Other articles on crime, involving minors</i>		
	<p>Article 122. Sexual Relations or Other Sexual Actions with a Person Who Has Not Attained 16 Years of Age</p> <p>1. Sexual relations, pederasty, or lesbianism, committed with a person who obviously has not</p>	<p>Article 134 sub article 1 Involving a minor in prostitution is punished by 3 – 6 years of imprisonment with confiscation of property;</p> <p>Sub article 2 Involvement of a minor in prostitution through the use of violence</p>

	<p>attained 16 years of age, shall be punishable by restraint of liberty for a term of up to three years or by deprivation of liberty for a term of up to five years.</p> <p>2. The same acts committed with a person who has not attained 16 years of age by a parent, teacher or another person, who is responsible for his upbringing by law shall be punishable by deprivation of liberty for a term of five to seven years with deprivation of the right to hold specific offices or to engage in specific activities for a term of ten to twenty years.</p> <p>3. The acts, specified by the first or second parts of the present article, committed repeatedly are punishable with deprivation of liberty for a term of seven to ten years with a possible deprivation of the right to hold specific offices or to engage in specific activities for a term of ten to twenty years.</p>	<p>or the threat of its use, use of a dependent position, blackmail, destruction or damage to property, or by deceit – is punished by five to eight years of imprisonment with confiscation of property.</p> <p>Sub article 3 The acts provided for by the first or second parts of this article, committed:</p> <p>1) by a group of persons by prior conspiracy;</p> <p>1-1) through the use of telecommunications networks, including the Internet;</p> <p>2) repeatedly, - shall be punishable by imprisonment for a term of six to ten years with confiscation of proper</p> <p>Sub article 4 The acts provided for by the first, second or third parts of this article, committed:</p> <p>1) a criminal group;</p> <p>2) by a parent, teacher or other person on whom the law of the Republic of Kazakhstan has the responsibility for raising a</p>
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		<p>minor, -shall be punishable by deprivation of liberty for a term of seven to twelve years with confiscation of property, and in the cases provided for in clause 2), with life deprivation of the right to hold certain posts or engage in certain activities.</p>
<p>Article 103 Corruption of minors</p> <p>The corruption of minors by committing against them depraved actions - the applicable sentence is deprivation of liberty for a term not exceeding five years.</p>	<p>Article 124 Corruption of minors</p> <p>1. Commission of sexual abuse without use of force of a person who obviously has not attained 14 years of age, shall be punishable by restraint of liberty for a term of up to four years or by deprivation of liberty for a term of three to five years.</p> <p>2. The same acts committed with a person who has not attained 14 years of age by a parent, teacher or another person, who is responsible for his upbringing by law shall be punishable by deprivation of liberty for a term of five to seven years with deprivation of the right to hold specific offices or to engage in specific activities</p>	<p>Article 124 Corruption of minors</p> <p>1. The commission of depraved acts without violence against a knowingly underage (underage) - the applicable sentence is deprivation of liberty for a term of five to ten years, with deprivation of the right to occupy certain positions or engage in certain activities for a term of seven to ten years.</p> <p>2. The same act committed in respect of a minor (minor) parent, stepfather, stepmother, teacher or other person who is charged with the law of the Republic of Kazakhstan with responsibilities for her (his) education, - the applicable</p>

	<p>for a term of ten to twenty years.</p> <p>3. The acts, specified by the first or second parts of the present article, committed repeatedly are punishable with deprivation of liberty for a term of seven to nine years with a possible deprivation of the right to hold specific offices or to engage in specific activities for a term of ten to twenty years.</p>	<p>sentence is deprivation of liberty for a term of seven to twelve years with life imprisonment of the right to occupy certain positions or engage in certain activities.</p> <p>3. The acts provided for by parts one or two of this article, committed repeatedly, shall be punishable by deprivation of liberty for a term of ten to fifteen years with life deprivation of the right to occupy certain positions or engage in certain activities.</p>
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Results of comparative analysis of three versions of Criminal Code.

As a part of USSR, Kazakhstan did not have a special article for human trafficking and denied its existence, even though there were articles more or less connected to this crime, such as deprivation of liberty, kidnapping, rape, and so on. CC of 1997 introduced the human trafficking as a crime, and the later edition of 2014 clarified it.

Regarding other types of crimes, as one can see, past edition of the involvement of a minor in prostitution article of CC includes not only prostitution but is also begging and gambling. Begging (article 133 of CC) and gambling (article 307 of CC) have an entirely new section within the current edition of the CC. It is also worth to note that current edition of CC does not have anything about parasitic existence. However, the crucial difference between the two is the time of imprisonment of the articles, where the maximum time period of imprisonment is 3 years. Also, the previous edition has separate sections for begging and gambling, but they do not contain any information with regards to the exploitation of minors.

On the other hand, the new edition includes aspects of forced prostitution (use of force, threat, use of a dependent position, blackmail, destruction or damage to property and prior conspiracy). Another difference is that the time of imprisonment has increased to up to 8 years, depending on the number of people involved and other circumstances. What is quite

overwhelming is the fact the new CC also includes parents, teachers or other people who have the responsibility for raising a minor and the imprisonment time is 7 – 12 years or lifetime sentence.

Provided that Kazakhstan makes attempts to ensure more security to HT victims, the CC has expanded by including various aspects of HT and potential criminals. It is also apparent that harsher punishment is a tool to implement preventative measures.

There are legal discrepancies of HT that cause difficulties in reducing the number of victims. For example, article 128 of the Criminal Code of RK states that criminal offenses that are linked to the human trading offences are recognized under article 133 (forced removal or unlawful removal of organs and tissues of a person) of the CC, subarticle b) of the article 125 (abduction for exploitation), subarticle b) of the article 126 (unlawful deprivation of liberty for the purpose of exploitation), article 128 (trafficking in persons), 132-1 of the CC (involvement of a minor in prostitution), 133 of the CC (trafficking in minors), 270 (involvement in prostitution) and 271 (organization or maintenance of brothels for prostitution and pandering). According to Bekmagambetov, due to the lack of authenticity of the definition, legal authorities tend to view each case differently. Therefore, there is a need to introduce a separate legal act that would cover human trafficking offenses by providing exact legal measurement of what HT is and only in such clarity, there will be a way to implement preventive measures in fighting the HT. As Bekmagambetov puts it: “human trafficking must be distinguished from other crimes that infringe on personal freedom and the inviolability of human dignity, provided for in articles 113, 125, 126, 132-1, 133 and 270 of the Criminal Code of the Republic of Kazakhstan” (translated from Russian).

Bekmagambetov provides statistics of the application to the articles 126 and 133 of the CC

Year	Article 128 of the CC	Article 133 of the CC
2004	15	0
2005	13	1
2006	20	4
2007	19	5

2008	17	5
2009	19	8

“...Here you can immediately encounter the main problem - the lack of uniformity in the doctrinal and, as a consequence, in legislative approaches to defining the HT exclusion from related structures (involvement in prostitution, organization of prostitution, illegal migration, etc.) This naturally provokes a chain reaction: differences in the doctrinal characterization of the phenomenon of trafficking in human beings — lack of unification in law-making in the formulation of attributes — problems of the proper qualification of acts related to human trafficking.”

In essence, the author argues that due to the complexity of the topic, due the variety of instances and uniqueness of each case, RK authorities shall implement a separate legal act in order to deal with such cases.

Having analysed CC of other countries such as Kyrgyzstan, Georgia and Azerbaijan Bekmagambetov states the following: Part 1 of article 159 of the Criminal Code of the Kyrgyz Republic “Trafficking in children” enshrined: “Transactions with a minor by way of sale, as well as in other forms of transferring and taking possession of him ...”. 11 Part 1.2 of Art. 172 of the Georgian Criminal Code “Trade in minors” contains the following wording: “Purchase and sale of a minor or other illegal transactions in relation to him for the purpose of adoption ... Purchase or sale of a minor or other illegal transactions in relation to him ... ”. 12 Part 1 of Art. 173 of the Criminal Code of Azerbaijan it is written: “Purchase and sale of a minor and other illegal transactions in respect of a minor in the form of its transfer and possession ...” . It can be seen that the definition of trafficking in minors is based on the definition of such signs as sale and purchase or other transactions in the form of transfer-possession of “live goods”. Qualifying signs are almost identical: repeated (except for the Criminal Code of Kyrgyzstan), in respect of two or more victims, using their official position, committing an act in complicity, with the aim of engaging in antisocial activities, with illegal movement (removal from the country, imported into the country), with the aim of using organs or tissues for transplantation, resulting in death or other serious consequences. The differences in criminal codes show that policymakers are aware of the need to change the attitude towards the problem. However, there is still no separate legal act covering concrete actions against human trafficking in Kazakhstan.

2. Social factors

2.1. Attitude and status of the victim

This is quite an emotional and sensitive factor, which is however of crucial importance for our research. Social attitude towards victims of human trafficking has an immense influence on the whole process of anti trafficking. Neglect or ignorance of the sufferings that victims go through leads to low interest in fighting human trafficking. This attitude, which by the way is shared by police officers as well, makes the rehabilitation of victims quite complicated and tricky. This idea was confirmed by all respondents that we interviewed.

The approximate portrait of potential victim by Respondent #7 is: “The victims are less educated people who do not require contracts and fulfillment of the terms of contracts. The victim is just a person who would like to have a good income, but who does not have the opportunity to get an education, trusting”, “Criminals choose victims who lived in social families, where they will be happy that the extra mouth left the family” and “it all starts in good faith”, then “a high level of intimidation of the victim” is present.

Though, the attitude to the victim by the society and the police is quite negative. As mentioned by respondent #2 “Because of uninterest of police officers, cases fall apart. The worst comes from inquiry and investigation officers”. They use harsh words and misbehave. At a difficult stage for the victim when he/she just gets released, any side hindrance and humiliation can shut the person, so they prefer to keep silence, stop the case and leave the country. Respondent #17 from the investigation division revealed that in juvenile trafficking (CC art 134) difficulties appear when a juvenile is so shocked that he/she keeps silence on the case and a suspect uses his/her rights and refuses to give evidence. Then investigators experience difficulties putting the picture together.

Moreover, victims often do not realize that they have a very strong and severe status of a victim of human trafficking. Often they refuse to agree with the ‘victim’ status, especially people who were in labour slavery. It causes implications on crime detection, decreases the number of cases that go to the court. Respondent #8, a rehab center official, had no court cases in 2020, rather victims received some compensation for damage from exploiters. Thus, no further process was established. Respondent added that it is very seldom when cases get to the court at the status of human trafficking. Usually cases are reclassified. Human trafficking with sexual harassment was reclassified to prostitution, and pimp received just 2 years of prison in 2018.

Victims of sexual trafficking are also afraid of being blamed by the family members for selling their bodies even if pushed to do so, for being abused, for being “dirty”. Respondent #3 mentioned that “victims of sexual exploitation often do not write statements because they are afraid of publicity. Therefore, we need to explain to them that if the perpetrators are not punished, other girls may suffer”. Patriarchal society in Kazakhstan and even more in Central Asia put sexual trafficking as a guilt for the women who willingly pursued income goals. But there is a line between prostitution and human trafficking. Either a person pursues a work in a supermarket and ends up in the hands of smugglers or willingly sells herself through the world wide web. At the end, the negative attitude of the society to body selling despite the fact of intention and willingness of a person, is blamed. Therefore sexual trafficking is not a popular topic among police officers as well. They consider it as a prostitution.

Traditionality of Central Asian societies where men is a breadwinner shuts the doors for claims from labour trafficked men. Coupled with the distrust to the system and law inconveniences in help provision they prefer to keep silence. Since 2014 Kazakhstan has experienced an increase in foreign victims. According to 2020 Trafficking in Persons Report “NGOs reported increased instances of traffickers using debt-based coercion in the exploitation of migrants. Traffickers capitalize on tough law enforcement policies to coerce migrants to remain in exploitative situations and leverage these policies to threaten victims with punishment and deportation if they notify authorities, fostering distrust in law enforcement”. Respondent #3 mentioned that in “April 2019-April 2020 155 people applied to the center. Of these, 109 men and 49 women. Mostly labour exploitation and no cases have been brought to court in 2019”.

To battle the social attitude towards victims among the police Respondent #8 suggested to Parliament and at International Conferences that CC article 128 part 1 should have stricter punishment - at least 6 years of prison. Then this violation will be classified as serious crime and reconciliation of the parties would be impossible. Currently, the abuser prefers to provide a small monetary refund to the victim. “If at least one or two offenders will be put in prison without reconciliation of parties - a word of mouth will work among all those farmers who keep people in confinement for 10-15 years”.

2.2. Corruption

Victims feel socially unprotected by the system in Kazakhstan. According to Respondent #9 “*Some victims do not believe in the government and some are simply willing*

to leave Kazakhstan back to their own country. At this point at least 2000 people left the country”. No surprise there is a lack of trust between parties, as Kazakhstan is well-known for corruption and there are many cases of close relationships between farmers and the police. Respondent #2 disclosed the story where two girls run away from abusers but were brought back to the “owner” by the police officers.

A social destabilizer - corruption - has an effect on HT undisclosed. As mentioned by Respondent 17 police officers are not taken to court. *“We received a call from a church in Zhambyl oblast, that informed us that there is a farm with a lot of HT victims exploited by police officers. Police officer’s father and a brother exploited HT people. However, prosecutor’s office has not taken the police officer to court under 128 CC. Instead, police officer was charged with abuse of power and fired. There is always a conflict of interest between the prosecutor’s office and police officers. Probably all parties have financial interest”*.

By 2020 Trafficking in Persons Report - NGOs continued to report allegations of police officers’ complicity in human trafficking, yet there were few government investigations or prosecutions of police or other officials suspected of complicity. The crime groups are not in scope of this analysis but to get an aerial picture of vicious circle and mutual responsibility of offenders “organized crime groups and small trafficking rings with recruiters in Kazakhstan operate in conjunction with brothel operators in Kazakhstan and abroad”. For 2018-2019 the government did not convict any labour traffickers. Besides, as 2020 Report states, NGOs continued to report traffickers bribed low-ranking police officials to avoid charges and alleged that some police officers facilitated forced labour or sex trafficking crimes.

2.3. Human trafficking in cases and faces

This section will show human trafficking topic from human perspective. Let us put aside figures and graphs and tell a short story of individuals who became a victim and had different positive or negative prevailing factors in their destiny. Stories brought back to life by rehab centers, and many are not not legally battled.

Evidence by Respondent #12, case 1: legal formulation of human trafficking article matters. “We had a case when two girls were rescued from exploitation, removed from the train. They did not reach one station to the destination where they would have become victims. But the case fell apart because there was no fact of exploitation, although there is a fact of recruitment and deception”. Other story Respondent #3 “last year, we were contacted

by an organization in Russia. A woman in the South of Kazakhstan applied to the “wait for me” program, contacted us and we freed a man from slavery. But the case was dismissed for lack of evidence”.

Case 2 by Respondent #12: abuse of power by police officers “who used a person to work at STO. We felt that the person was not telling us something and was lying. And this interfered with the investigation. But then the victim confessed and said that he was just afraid that police officers would find him and chase him. He had an injury after the labour exploitation”. Police officers also left footprint in sexual slavery. “A girl was rescued from sexual slavery. During one training session, which was attended by police officers, she recognized one employee who recruited her. As a result, the police officer was simply removed from his post and we were asked not to make a fuss”.

Case 3: victim does not understand his/her status of a victim of human trafficking. “There was a case when a woman worked in the fields for 24 years and she thought it was normal to work for a piece of bread and live in a stable with goats. Psychologists worked with her for a long time. She didn't realize that she was a victim of human trafficking”.

Case 4: exploitation of poor condition and psychological traumas. “A juvenile girl from Karakalpakstan, pregnant. The midwife saw the girl's weak position - poor and no relatives around. The child was sold. The child was never returned. Despite 100 % DNA testing. The woman returned back home without a child. The girl herself did not want to finish the case and make a fuss, she was so depressed”. Before providing legal help psychological assistance is needed. A person doesn't want to do anything because of depression and trauma.

Case 5: good luck. “There was a case when a girl gave a visit card to a taxi driver and a few years later he helped her as she was forced to work in a restaurant. And the girl has been rehabilitated and now she is a multidisciplinary master in a beauty salon”. Tragically “many victims are completely isolated and cannot seek help. We don't know these statistics. There were cases when a girl threw a piece of paper out of the window and then she was found”.

Case 6: injustice of court. “The girl was 12 years old. She was walking around the market. She was kidnapped and brought to Almaty. She was enslaved for 8 years. Her father searched for her for a long time and did not lose hope. Girl was found. There was a trial. The perpetrators were jailed for two years. There was compensation, but scanty. This is so unfair. A child's childhood was stolen”.

Case 7: “Labour exploitation is often impossible to prove”.

Here mentioned are hindrance factors for human trafficking cases: weak law formulation, abuse of power and corruption of police, social misunderstanding of human trafficking status, psychological traumas which block victims and difficulty to legally prove human trafficking.

2.4. Discrepancy in official data and NGOs

We would like to point out the differences in statistical approaches among legal authorities as well as rehabilitation centers. Legal authorities mainly look at the number of cases that went through courts whereas rehabilitation centers focus on every single case. Unfortunately not all victims get justice.

According to the Walk free foundation, an international human rights organization focused on the eradication of modern slavery, estimates in 2019 were as huge as 75 000 people kept in labour and sexual slavery in Kazakhstan. In comparison, police investigated 45 trafficking cases in 2019. According to information from rehabilitation centers they get funding from the government for victim support for approximately 10 people and the rest finances come from foreign organizations or personal savings. Government supports 10 rehabs per year. Many rehabs do not rely on government support. Respondent #8 mentioned that “MOM supports their activities. Government provides help to 10 people, but there are way more. To get help from government victims should register cases at police. But not all victims want it. Therefore those are international organizations that help to buy victims tickets back home”. Respondent #7 receives 70-100 hotline calls per month, 10-15% refer to facts of human trafficking. Besides, almost 80% of victims are foreigners and 80% of cases do not go to court (Respondent #7).

Thus, here listed are several points that influence the ‘no-show’ of cases:

1. A discrepancy in official statistics with the number of cases in rehabs or in research conducted by Respondent 15, stands for MIA statistics counting only cases that go to court, and there were just 106 investigated cases in 2018 and 46 in 2019. Which means there is a probability that 74 894 people were left behind. Unfortunately by accepting low statistics Kazakhstan minimizes efforts to combat the problem. As mentioned by respondents, decreased effort helps police officers to leave planned detection numbers of cases low for the next year. This should be combined with low number of police officers working on human trafficking cases and even lower number of skilled police officers working on human trafficking cases multiplied by risks associated with police service. By respondent

#7 “human trafficking is difficult to deal with, and there are high risks to the employee's health and family”.

2. Another reason for low court cases stands for victims being mainly foreign citizens who do not want to stay in the country during a long court process. Human trafficking victims leave the country asap after being relieved. At this point, they are categorized as illegal migrants, rather victims. By Respondent #8: “It is often difficult with foreign victims, because process lasts 5, 6, 7 months and they do not want to lose a season of working time”. Respondent #7 mentioned that “a very long time frame is also against the case itself - evidence is lost, the desire to participate too. The police themselves are involved in many other cases. On the one hand, the duration of the trial is justified by the difficulty of the crime itself, on the other hand, this is a minus”. On top of that “about 80 % of cases do not go to court. The applicants themselves are not ready to write an application and wait for the process to end”.

3. Additionally, victims cannot afford to pay living costs during the court. Unfortunately, rehabs are subsidized for helping local people only. A US Department of State issued a report with recommendations for Kazakhstani Government to include in rehabs list all victims irrespective of citizenship. This request was earlier raised by rehab centers. Respondent #9 mentioned “the problem is that we can assist only to Kazakhstani citizens, people without IDs and people without citizenship. Therefore, we (Centers like ours) work with the international organizations because it is not allowed to use governmental funds to assist international HT victims”. It should be mentioned that rehab centers play a crucial role in bringing victims back to normal life. Respondent #7: “Individual plans for the rehabilitation of victims are drawn up. This helps the victim of human trafficking to fully rehabilitate”.

4. Human trafficking victims are not people in power. As mentioned by respondent #8 “In Kazakhstan people are met by clothes”. Low self-esteem of victim who according to Respondent #2: “Has a stolen piece of life. 10-15 years of life, when a person is beaten to blood the whole place, works from 6 am irrespective of illness, finishes at 10 pm, lives like an animal, feels like an animal with only light in life - rare 50gm of vodka”. Respondent #7 ascertain “high level of low self-esteem, unwillingness to live among victims of human trafficking”. Their vulnerable and breakable condition is used by authorities to manipulate the behavior of the person. There is no “krisha” for victims and often their needs are

neglected. NGOs reported that some criminal cases were closed by police “due to lack of evidence,” despite the testimony of trafficking victims (2020 Trafficking in Person report).

5. By Respondent 15 “A lot of governmental servants have personal businesses and farms, where HT victims are exploited”. Police officers are not taken to court, even if a case becomes evident. They are just expelled from the service. Personal interest of police and lack of punishment does not help to increase the official number of cases.

According to the US Government report in 2019, NGOs reported assisting 76 trafficking victims, compared to 122 in 2018; among these, 21 were Kazakhstani and 55 were foreigners; the majority were men and victims of forced labour. Of the 55 foreign victims, 51 were from Uzbekistan.

The government received fewer funding applications from NGOs to run trafficking shelters and as a result funded eight NGO-operated shelters. In 2018, more NGOs applied for funding, and 10 were funded. The eight NGO-operated trafficking shelters offered legal, psychological, and medical assistance and were accessible to all Kazakhstani trafficking victims, regardless of gender or age.

In 2019, the government provided one foreign victims legal protection (compared to one foreign victim in 2018 and two in 2017), including suspension of deportation proceedings and special temporary residency throughout the criminal investigation.

In February 2020, the government announced it concluded operation “Zhusan,” which repatriated more than 550 Kazakhstani women and minors from Iraq and Syria, including potential trafficking victims, whose parents or spouses were alleged fighters with ISIS. ISIS was known to use child soldiers and perpetrate other forms of trafficking. The children were generally housed with family members, and the state fully funded and supported their rehabilitation and reintegration (<https://www.state.gov/reports/2020-trafficking-in-persons-report/kazakhstan/>).

To sum up, there is a complex of social issues that needs to be considered:

- The initial information on human trafficking and its dissemination amongst possible victims. According to Respondent #7 “The state information service does not provide enough information. You need to provide information at the checkpoint about all helplines, patents, patent completion dates, and fines. If everything was calculated in advance, many people would not come to Kazakhstan”.

- Trust in the state system which is shattered by low efficiency, corruption, low qualified and low-numbered employees. Even when case is successfully completed by police

and a rehab, Respondent #7, asked to encourage employees of the Department of internal Affairs of Almaty “the Minister of internal Affairs replied that they were encouraged and given a bonus. In fact, nothing was given”. The police themselves were not ready to encourage and improve their image”.

- The mentality of blaming a victim in the problem rather than the violator.
- Financing of rehabilitation centers by the Government is poor and does not support foreign victims who are the majority.

3. Economic factors

Human trafficking can certainly be considered as a consequence of an adverse economic environment that forces people to seek for opportunities to survive. Such factors as high unemployment, low salaries, lack of job prospects, migration flows altogether create conditions in which human trafficking not only exists but thrives. Visa-free border crossing, the internet coverage and level of internet penetration also play a major role in shaping the tendencies of human trafficking.

Kazakhstan to a larger extent remains a country of destination for human trafficking, and to a lesser extent it is a country of origin and transit. However, all three dimensions of trafficking in persons do exist and are of equal importance. Therefore, it is important to understand the state of economic development of Kazakhstan and of the neighboring countries. Here we are able to unpack the reasons why human trafficking emerges and to some extent trace the influence of economic factors on the whole process of detecting, investigating and registering cases of human trafficking.

In this regard, economic factors can be categorized into three groups:

- factors under which citizens of Kazakhstan become victims of human trafficking abroad;
- factors under which citizens of Kazakhstan become victims of human trafficking on the territory of Kazakhstan;
- factors under which foreign citizens become victims of human trafficking on the territory of Kazakhstan.

A separate issue is the financial support provided by the government to exercise special social services, stipulated in the legislation. We suppose that it is important to find out how and how much money is allocated from the budget to help victims of human trafficking. This economic factor has an impact on the effectiveness of rehabilitation centers and the services they provide.

3.1. First group of factors:

According to the information from IOM “the destination countries for external human trafficking are the Russian Federation (the majority of cases), Bahrein, Brazil, the Republic of Korea, Turkey and the United Arab Emirates. Girls and women from Kazakhstan are trafficked for sexual exploitation to the countries of the Middle East, Europe, East Asia and the United States of America. One of the destinations for labour trafficking from Kazakhstan is the Republic of Korea” (IOM, Study Report, 2019, Exploring the role of ICTS in recruitment for human trafficking in the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Tajikistan).

Many of our respondents confirmed that there were cases when Kazakhstani citizens were recruited by traffickers for labour and sexual exploitation in other countries. Mostly it regards young girls and women, who are hoping to find a better job and life. Usually luring people abroad is done under false promises, such as highly paid work or opportunity to marry a rich man. As one of our respondents called it, this "fairytale" is a well-known bait for human desire to earn easy money.

Here it is important to note the newest ways of recruitment, including the use of social networks. Kazakhstan is the country with one of the highest levels of internet penetration with a relatively high level of internet users. The comparative numbers with Kyrgyzstan and Tajikistan are presented in a table below.

Country	Kazakhstan	Kyrgyzstan	Tajikistan
Population in 2018	18,403,860	6,132,932	9,107,211
Number of Internet users in 2000	70,000	51,600	2,000
Number of Internet users as at 31 December 2017	14,063,513	2,493,400	3,013,256
Internet penetration rate in 2018 (% of population)	76.4	40.7	33.1
Internet penetration rate in 2016 (% of population in 2016)	55.8	34.4	18.7
Facebook users as at 31 December	2,500,000	650,000	170,000

2017			
ICT development index 2017	6,79 (6,72 in 2016)	4,37 (4,06 in 2016)	n/a

*IOM, Study Report, 2019, Exploring the role of ICTS in recruitment for human trafficking in the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Tajikistan

And this aspect is both a blessing and a curse for those who are somehow involved in trafficking of persons and the fight against it. For traffickers- internet and social networks are free and fast ways of recruiting people. For trafficked people - internet sometimes becomes a chance to escape a cage and death. For law enforcement agencies evidence from internet is not always considered as eligible evidence to prove the fact of human trafficking (IOM, Study Report, 2019, Exploring the role of ICTS in recruitment for human trafficking in the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Tajikistan).

3.2. Second group of factors:

The rate of internal migration increased from 337,800 migrants in 2012 to 610,700 in 2016, including cross-regional migration (from one region to another, 294,000) and regional migration (inside one region, 316,700). Mostly, migrants come from the south of the country. The cities of Almaty and Astana, Mangistau and Karaganda Regions are the main destination point from southern migrants (IOM, Study Report, 2019, Exploring the role of ICTS in recruitment for human trafficking in the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Tajikistan).

These tendencies were confirmed in our study as well. As one of the respondents mentioned due to the outflow of ethnic russians, germans and other ethnic groups, today the large proportion of trafficked people in Kazakhstan are ethnic kazakhs. Besides, the main source of victims are the city of Shymkent and Saryagash town, which are located in the south of Kazakhstan (Respondent № 2).

According to several IOM reports tendencies of internal migration shouldn't be neglected or ignored. This is one of the major concerns in the anti-human trafficking process. It is important to monitor internal migration flows and pay attention to the economic development of regions, facing massive outflow of its inhabitants. It is clear that the increasing gaps in the level of welfare between peripheral regions and rapidly developing cities like Nur-Sultan and Almaty plays a major role in internal migration.

3.3. Third group of factors:

Among Central Asian countries Kazakhstan is still one of the most favourite places for migration. According to data from IOM study findings, estimates suggest that between 250,000 and one million migrant workers arrive in Kazakhstan every year (IOM report, 2015, Labour Exploitation, Trafficking and Migrant Health: Labour Exploitation, Trafficking and Migrant Health Multi-country Findings on the Health Risks and Consequences of Migrant and Trafficked Workers).

Low-skilled migrant workers from Kyrgyzstan, Tajikistan and Uzbekistan, which constitutes the largest group, choose Kazakhstan as a destination for work. The number of migrants from these countries residing in Kazakhstan nearly doubled, from 500,000 to 950,000 between 2011 and 2015 (IOM, Study Report, 2019, Exploring the role of ICTS in recruitment for human trafficking in the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Tajikistan).

Despite the fact that Kazakhstan does not offer any favourable work conditions for migrant workers from neighbouring countries, it still attracts a lot of labour force. According to the IOM study, the comparison of living standards among CIS countries shows that Kazakhstan has one of the highest average monthly salary, which is considered as a push factor for migration. Indicators are presented in a table below.

Country	Unemployment, according to workforce survey data for 2009, % of economically active population	Average monthly salary in 2010, USD
Kazakhstan	6.6	525.7
Kyrgyzstan	8.4	155.4
Russian Federation	8.4	689.4
Tajikistan	11.5	81.0
Uzbekistan	-	522.2 (2004)

*IOM report, 2015, Labour Exploitation, Trafficking and Migrant Health: Labour Exploitation, Trafficking and Migrant Health Multi-country Findings on the Health Risks and Consequences of Migrant and Trafficked Workers

Similar findings were discovered in our research as well. One of the respondents provided data on the number of trafficked people for the last year, according to which the largest group of victims corresponds to citizens of Uzbekistan, who were mostly exploited for labour (Respondent № 3).

It can be observed from the analysis of three groups of factors that economic conditions do have an enormous impact on the processes of migration and consequently on the human trafficking as well. Kazakhstan remains to be one of the most popular country of origin, destination and transit of victims of human trafficking. Regarding the statistical reflection of human trafficking cases we need to clarify that Kazakhstan being a country of destination for trafficked people has a declining number of registered cases of this crime. And this happens in times when immigration levels are only increasing. One of the reasons why this discrepancy occurs can be the fact that foreign citizens apply about the crime only after they return to their homeland. So even if the crime took place in Kazakhstan, the case will not be registered and therefore will not be reflected in the statistics.

Regarding the governmental funding of providing special social services to victims of human trafficking we first need to indicate how it is stipulated in the legislation. Thus, in 2018, the Minister of Labour and Social Protection approved the Rules for financing and monitoring the provision of special social services in the field of protection of the population.

According to the article 3 of the Rules, the financing of entities providing special social services is carried out by local budgets funds, funds received for the provision of paid special social services and other sources. The executive body financed from the local budget shall form an individual financing plan for liabilities and payments within the limits of funds provided for the relevant budget programs of regional budgets (budgets of cities of republican significance, the capital) and district (cities of regional significance) budgets for financing subjects providing special social services, using local budget (Article 4 of the Rules). The financing of entities providing special social services is divided into entities that depend and do not depend on the number of recipients of special social services.

The Rules require carrying out the monitoring of provision of special social services by the Committee of labour, social protection and migration of the Ministry of labour and social protection of population. The committee is obliged to publish analytical reports with the results of monitoring on their official web-site. However, currently there is no any available information in this regard. The reasons of non-fulfillment of these requirements are unknown.

According to the Law on the Republican budget for 2020-2022 years it is unclear what is the exact amount of money allocated for the provision of special social services. Titles of budget programs are formulated in pretty vague terms. It is only clear that there is one budget program that involves the increase of salaries for workers providing these services. For each year 2020, 2021 and 2022 the sum is 8 368 939 000 tenge. The previous laws on the republican budget in 2018 and 2019 years did not include this category. Special social services include not only services provided to victims of human trafficking, therefore so far it is unknown which part of this budget will be given to those who are involved in the rehabilitation of trafficked people.

In addition, starting from July, 2020, the Victims Compensation Fund started to function. It is a control cash account opened in the central authorized body on budget execution for crediting the proceeds of money and compensation to victims in the manner prescribed by the legislation of the Republic of Kazakhstan on the Victims' Compensation Fund (Law on the Victims Compensation Fund, 2018). Compensation is awarded to victims of different crimes, including victims of human trafficking. The amount of compensation for victims of human trafficking is forty monthly calculation indices, which is 83 340 tenge in 2020.

According to the article 10 of the Law on the Victims Compensation Fund the sources of the Victims Compensation Fund are non-tax revenues, which include

- 1) Compulsory payments collected by the court;
- 2) Monetary penalties imposed by the court for non-fulfillment of procedural obligations under Articles 71, 78, 80, 81, 82, 90, 142, 156 and 165 of the Code of Criminal Procedure of the Republic of Kazakhstan, and violation of the order of the court session on the victim, witness, specialist, interpreter and other persons, except for the lawyer, prosecutor and defendant;
- 3) Monetary penalties from a convicted person in respect of whom a guilty verdict of the court has come into force and in respect of whom a punishment in the form of correctional labour has been imposed;
- 4) money collected as recourse claims;
- 5) other sources not prohibited by the legislation of the Republic of Kazakhstan.

It is expected that the Fund will be collecting 1 billion tenge annually (<https://kapital.kz/gosudarstvo/70937/fond-kompensatsii-poterpevshim-zarabotal-v->

[kazakhstan.html](#)). Right now it is hard to make any predictions whether it will become an effective tool for providing compensations, but it is certainly a positive change.

To summarize, economic factors mostly concern the reasons why human trafficking exists with an indirect impact on the statistical reflection of human trafficking cases. The importance of economic conditions and the interconnectedness of human trafficking and migration was confirmed by respondents in our research.

4. Political factors

The United States Department that deals with monitoring and combating trafficking in persons has published a report where Kazakhstan is placed in the 2nd tier “watchlist” for not providing minimally required support to the victims. Such an indicator mainly means that the absolute number of victims has increased. As it is argued within this paper, there are two sources that provide statistics of victims. One of the sources is the Ministry of internal affairs, which provides number of victims based on the cases that went to court and eventually have been proven to be the human trafficking case. However, as we can see it is extremely hard for the legal entities and the victims themselves to prove the case. Also, in most cases victims are not willing to fight for justice because they do not believe in the support of the government.

The second source of information related to the number of victims is the rehabilitation centers and other non-governmental agencies that assist victims. Unlike the governmental agencies that provide *relative* statistics, the non-governmental agencies provide absolute statistics. In essence it means that NGOs show the number of people who asked for support.

Therefore, given the fact that official numbers are distorted, the United States Department has taken the absolute number of victims and declared that Kazakhstan is not proactive in combatting human trafficking.

Being on the “watch list” implies certain sanctions can be placed from the United States on Kazakhstan. Sanctions vary but they also include business sanctions and other measures in order to facilitate and push the Kazakhstani government to increase their effectiveness in fighting the trafficking. Moreover, Kazakhstan in accordance with the Strategic Plan attempts to place itself on the list of 30 most developed countries in the world and being on the “watch list” would create several barriers for Kazakhstan.

Lesson that could be derived from the whole story with US “watch list” is that international politics does not ignore the topic of human trafficking and attempts to facilitate and assist in combatting criminals in the field of human trafficking.

Recently elected President of the Republic of Kazakhstan Mr. Tokayev has established a The National Council of Public Trust under the President of the Republic of Kazakhstan. It is an advisory body under the President of the Republic of Kazakhstan. The main goal of the National Council is to develop proposals and recommendations on topical issues of state policy based on a broad discussion with representatives of the public, political parties, and civil society. The Council has proven its effectiveness by producing several important socio-economic mechanisms that greatly affected citizens of the country. Recently, on October 22, 2020 as we write this paper, the President has announced that the Human Trafficking is an important topic that has not been fought effectively.

It is a little early to make judgements about the consequences of his attempt but as we have learned from multiple sources, our governments as well as non-governmental organizations (by law) are not allowed to assist foreign citizens if they are involved in human trafficking. Rehabilitation centre representatives stressed on the fact that it is important to make certain changes to the legislation in order to include **every single person** who has been involved in trafficking to be covered by support and assistance despite their country of origin. As the President said: “It is necessary to provide assistance to all persons, including foreign citizens, who have become victims of human trafficking and forced labour. The fate of thousands of people and the international reputation of Kazakhstan, including as a legal and progressive state, depends on the effectiveness of the measures taken.”

We strongly believe that when certain amendments to the legislation are made we will see an increase in official statistics of trafficked victims, which again supports our idea that the official numbers provided by the Ministry of internal affairs are distorted.

In general, politics play crucial role in combatting human trafficking and there is a lot of room for improvement in terms of international cooperation. Countries should establish stronger bounds in order to reduce the number of victims.

When we consider the impact of politics on anti-human trafficking policies we need to take into consideration the influence of corruption and media coverage of human trafficking cases. All of these aspects altogether show general willingness of the state to fight human trafficking.

4.1. Corruption

During our research respondents were most unwilling to give answers about corruption. Their answers were generalized and blurred, without any specific details. However, there are certain common narratives among the responses.

First of all, all respondents confirm that corruption definitely exists in cases of human trafficking at all stages of investigation starting from detection of cases till the court decision.

“The rate of corruption is high. Kinship ties, nepotism determine the politics of unwillingness to investigate these cases and bring them to a conclusion. This is a gloomy picture on human trafficking” (Respondent # 7)

“Police officers are corrupt themselves and judges as well. Victims of human trafficking are bribed with small amounts of money. Only NGOs are not presented in this chain” (Respondent # 7)

“There are cases when police officers are exploiting people themselves. For instance, at car service stations” (Respondent # 12)

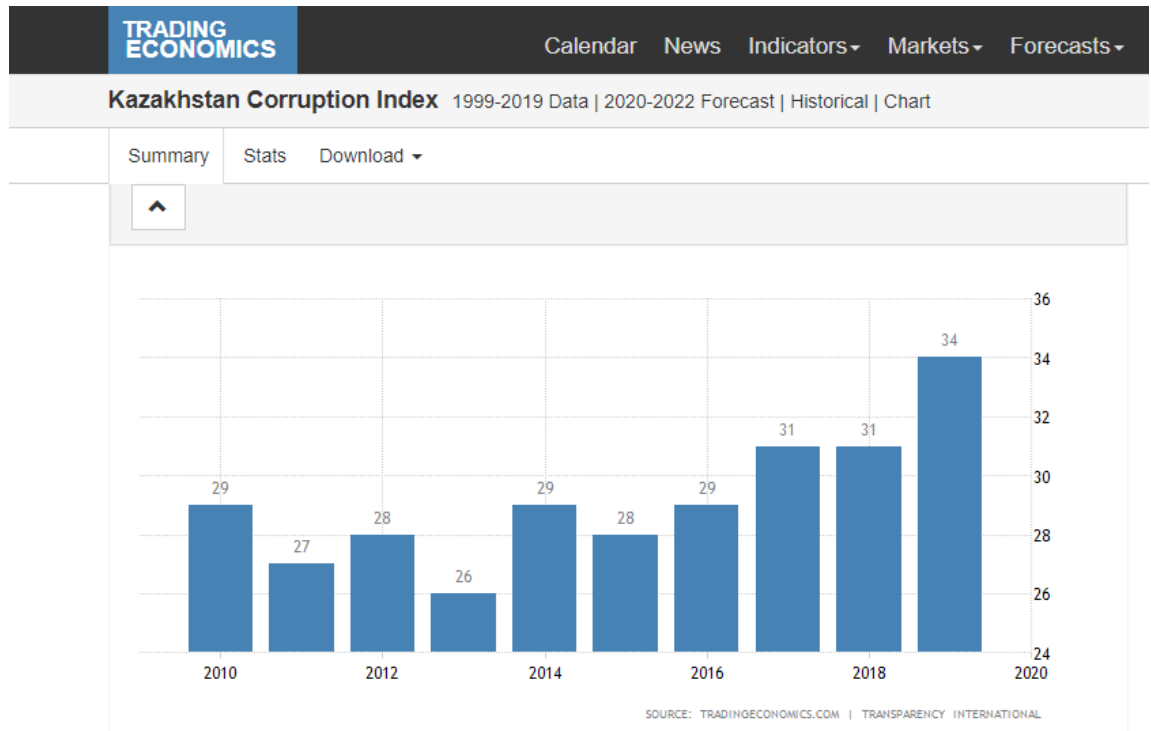
Second of all, many respondents mentioned that corruption in this sphere is as common as in many other policy areas in Kazakhstan. And even though they never faced corruption in person, they are aware of its existence.

“Unfortunately, corruption is everywhere” (Respondent # 16)

“I can’t give a straight answer about corruption. But undoubtedly I think that corruption does exist. But no one ever offered us a bribe and no one ever told that if we pay they will advance the cause of our case” (Respondent # 3)

“Corruption is a topic that is not liked by the government, but it is one of the reasons why we can’t see the real numbers of HT victims. A lot of governmental servants have personal businesses and farms, where HT victims are exploited. Precinct policeman also use homeless people for personal exploitation because they know that nobody is going to look for HT victims” (Respondent # 15)

Interestingly enough, but according to international indicators, such as Corruption Perception Index (CPI), Kazakhstan has actually improved its positions. For the last ten years the CPI was fluctuating, but to the latest date it peaked its highest score. See the picture below.



*derived from <https://tradingeconomics.com/kazakhstan/corruption-index>

If we recall the statistics on human trafficking cases we will see that the number of cases declined. Taking into account the increase in CPI and decrease in human trafficking cases, it may seem as though the situation has improved in general. However, our findings prove the opposite.

4.2. Coverage in the media

Regarding the coverage of human trafficking cases all of our respondents have one common and certain opinion - the role of mass media here is crucial. And the potential of this instrument in anti-human trafficking is not fully explored and used.

“Mass media plays a big role. They must form the understanding of anti-human trafficking measures. They must tell stories of human trafficking with real examples. Today mass media are not interested in it” (Respondent # 7)

“We need informing citizens. Public information service provides not enough information. We need to give information at all checkpoints about helplines, patents, penalties” (Respondent # 7)

“Government must take action in informing citizens. Make commercials. At least for one run in buses. At least one banner or billboard in the city” (Respondent # 12).

“We need to cover the existence of this problem. Government must take preventive measures. We need to explain that before giving your agreement to work abroad you need to check everything. It will be more effective” (Respondent # 3)

“The process of investigation should be made open to public scrutiny. Investigator should voluntarily share the information about the case of human trafficking, without violating the confidentiality of investigation. Information about victims of human trafficking shouldn’t be disseminated through social webs. There should be accredited mass media to disclose the information about human trafficking cases. Publicity will help to decrease corruption when dealing with human trafficking” (Respondent # 1)

Both the impact of corruption and low coverage of human trafficking cases in mass media represents whether government is paying attention to this problem or leaves it as a residual. To sum up, it shows whether or not there is a political will to fight human trafficking, to actively and openly speak about this issue. Some of our respondents noted that “Kazakhstan doesn’t strive to prosecute all guilty persons. There are high official who do not receive punishment” (Respondent # 7)

There was one opinion worth mentioning that the reasons of human trafficking and the measures we can undertake to fight it are well known, the problem is in the lack of political will to take action. And the problem of human trafficking itself is actually a consequence of a far more complex problems in our country (Respondent # 15).

Despite the fact that the impact of political factors is well-known, it is far beyond of the limits of this research and solutions for this problem require a multidimensional approach in many policy areas.

DISCUSSION OF RESEARCH RESULTS

Now with all the findings of our research we are able to discuss whether or not our hypotheses were true. It should be noted that as we proceeded with the research many of our theories were clarified and the general understanding of the problem became deeper.

One of the biggest parts of factors that were discovered are presented in the legal sphere. The process of detection and investigation of human trafficking cases inevitably lays upon legal proceedings, stipulated in the legislation. Here findings of our research confirmed that many legal acts are either lacking precise rules or having too complicated requirements. For instance, it was proved that the definition of human trafficking suffers from inefficient wording, hindering the establishment of evidence and the offense itself. It was also proved that aside from the definition, legal proceedings prescribed by the Criminal Processing Code leads to unwillingness of both victims and police investigators to deal with human trafficking.

Therefore, based on our findings about the drawbacks of national legislation, we may conclude that Hypothesis number 2 is proved. Complex legal proceedings prescribed by Criminal Processing Code do lead to low disclosure of HT criminal cases.

Regarding the Hypothesis number 1 about the overlap between the definition of violation of migration laws and human trafficking we cannot say that this is exactly how it works in practice. It is not about an overlap, but again it is about unwillingness to open the case on human trafficking because this crime is hard to prove and because of all the complexities in the legislation. Another supplementing reason is that most of the victims of human trafficking are foreigners, who don't have their identifying documents. Altogether this leads to an excessive use of migration rules instead of criminal ones. Therefore our Hypothesis number 1 is confirmed.

The second biggest portion of factors belongs to the economic ones. By finding out the tendencies of labour market, rates of unemployment and migration flows we determined that two of our hypotheses are proved. First of all, the increase of immigration of foreign workers indeed increases the probability of human trafficking because most of the labour force come from poorer social classes, who usually are more vulnerable to become victims. These tendencies were proved in our findings both by the interviewed respondents and in the official sources of secondary data (reports of IOM). The same concerns our assumption that Kazakhstan attracts more unemployed migrants from Central Asian Countries. Our findings confirmed that Kazakhstan is mostly a destination country for foreign illegal workers and the

official statistics also demonstrates the same trend in this regard. So hypotheses number 5 and 7 were proved.

Social factors contribute enormously to the perception of the victim of human trafficking by society, mass media, law enforcement agencies and victims themselves. Altogether it creates an atmosphere of ignorance and neglect of the problem, even though the overall situation with anti-human trafficking is deteriorating. It is worth mentioning that because victims do not associate themselves with victims of human trafficking many cases were simply uncovered and lost. And we will never find out how many people refused to admit that they were trafficked and therefore didn't appeal to police. The way the government is treating victims is crucial. The amount of financing that is provided to rehabilitation centers and the process of receiving this financing reflects the general attitude to this issue. The process of receiving funds is complex. The case of human trafficking must be registered by police in order to receive financing Therefore our hypothesis number 6 is confirmed.

Last, but not least, politics certainly plays an important role here. As we mentioned, there are no certain and definite answers here in comparison with other groups of factors. And even if there are certain tendencies, confirmed by respondents, they do not always match with official secondary data, which in turn raises even more questions we don't have answers to. We have a hypothesis that claims that high rates of corruption in law enforcement agencies lead to lower level of detection of HT cases. In fact, this was confirmed by the findings of our research. We heard many different real life stories where police officers were exploiting foreigners for personal uses or when traffickers are bribing victims to close the deal and avoid the prosecution. There is no doubt that corruption exists in this field, just like in any others. So the hypothesis number 4 is confirmed by our research findings.

Overall, 6 out of 7 hypotheses were proved by our findings. Regarding Hypothesis number 3 that wasn't confirmed there was no enough evidence to prove that lack of definite prohibition of prostitution in Criminal Code leads to the increase of HT. What was discovered is that there are cases when sexual exploitation is misconcepted with prostitution. And the prostitution itself is not prohibited, the organisation of bordells is prohibited instead. Prostitutes are not considered as victims of human trafficking, but as criminals.

CONCLUSIONS AND RECOMMENDATIONS

As we determined the main narratives in our research findings and divided them into 4 groups of factors, we continue with this framework when we come to the conclusion and recommendations. Based on the results of interviews and analysis of all the primary and secondary data we provide recommendations for legal, social, economic and political factors.

In regard to legal factors, negatively influencing on the process of detection and investigation of human trafficking cases, we have several precise recommendations. First, we are addressing the issues of rulemaking. We suggest to refine the 128 article of the Criminal code, particularly, to align it with the definition stipulated in Palermo protocol. By doing so, the article will be modernized and technical mistakes in the wording of the article will be eliminated. It will expand the various types of trafficking that this crime can be and will make the process of establishing the corpus delicti of the crime and collecting evidence more feasible. As a result, we expect that this amendment will enhance the understanding of the crime by all parties involved.

Aside from the Criminal code, there are other legislative acts that need to be modified as well. Thus, the rehabilitation of victims of human trafficking is regulated by the Law On Special social services and the Standard of providing special social services. These laws apply to citizens of Kazakhstan, oralmans and permanently residing foreign citizens and people without citizenship. However, they do not apply to temporarily residing foreign citizens or foreign citizens without any permission to reside in Kazakhstan. And this is quite a tricky stipulation in our legislation, because in order to receive a permission for permanent residing a foreign citizen must meet certain requirements, have identification documents and have a registered place for a living. According to information from the respondents in our research, trafficked foreigners are usually those who don't have any documents and a place to live. So, the law deliberately eliminated foreigners, who are more vulnerable to become victims. Taking into account that there is a portion of foreigners among victims and these are foreigners without any status of official residing, it is crucial to include them into the recipients of special social services. As most of our respondents mentioned, the crime takes place on the territory of Kazakhstan and it is absolutely fair and necessary to rehabilitate foreign victims.

As for the legal proceedings, following the detection of human trafficking, we offer to elaborate methodological instructions for police officers and investigators with clear and precise steps which they need to follow while investigating. This was a suggestion offered

by one of our respondents which we think is worth mentioning in our work. The problem here is that cases of human trafficking are detected so rarely and are often transferred to administrative cases of violating migration rules or other laws, law enforcement agencies sometimes simply don't know how to deal with it. With these instructions we could potentially eliminate frustration among police officers, foster the investigation process, facilitate the interaction between police and victims. In the report by the US Government it was recommended to “vigorously investigate, prosecute, and convict suspected trafficking cases, including allegedly complicit government officials and police officers and labour traffickers” and “significantly increase efforts to identify trafficking victims—particularly foreign forced labour victims—among vulnerable populations and refer these victims for assistance”. Our recommendations could contribute to achieving these goals.

In addition, what we think will improve the investigation process is the establishment of a separate department in the Ministry of internal affairs that deals solely with human trafficking cases. In fact, according to the latest news, this recommendation has already been implemented. This is certainly a positive sign, indicating that government is actually responding to the criticism of anti-human trafficking policies.

Altogether, these efforts could definitely have a positive impact on the process of detecting and investigating human trafficking cases. The modified article will start to cover all types of human trafficking and ease the work of police officers, methodological instructions will facilitate the process of investigation, a separate department will have more resources to prevent and investigate the crime. Overall, we expect more cases of trafficked people to be revealed and investigated and reflected in the official statistics.

What is lacking in Kazakhstan is a unified approach for rulemaking, that would equally take into consideration rights and interests of all stakeholders - police officers and investigators, victims, lawyers. Also, the legislation in this regard is fragmented, covering different aspects of anti-human trafficking policies in separate laws, increasing the need for interagency communication, which is now not as efficient as it should be. Therefore, perhaps our final recommendation here will be a proposal of a separate law, uniting all anti-human trafficking measures, creating a unified umbrella for all steps of fight against human trafficking, starting from preventative measures and ending up with victims rehabilitation. We believe that this measure is quite obvious and logical and is potentially extremely effective.

However, there are other factors that need to be addressed to make our recommendations truly efficient. Thus, even if all amendments are made, victims of human trafficking can still be resisting to start fighting for their rights. And there are many reasons for this. As our research shows, victims do not perceive themselves as victims, are afraid of social judgement and threats from traffickers, are unaware of the opportunities to fight for their rights. In addition, there is no or low trust in law enforcement agencies, therefore many cases of human trafficking are simply not known and people either continue suffering or returning to their homelands, hoping to forget the nightmare.

Here we are facing some peculiar challenges, that particularly have their roots in the legislation as well. First of all, as it was mentioned by our respondents, there is no institution of the victim of human trafficking. Our legislation does not provide any special protection and status for victims. They are left alone with their problem, faced to seek for shelter on their own, without any guarantees that traffickers won't find them again. This is a true horror, in which they have to survive.

Currently there are Criteria on assessing abuse that led to social de-adaptation and deprivation. So the victim of human trafficking is being assessed on the degree to which he or she has been abused. They are literally being graded and based on this grading they are identified as victims of human trafficking and are eligible to receive special social services from the government, i.e. to receive help. Taking into account the vulnerability of victims, low rates of detection of this crime and all other supplementing negative factors, we suggest to abolish these criterias at all. Instead, we recommend to establish an institution for protecting special protection to victims of human trafficking and granting an official status of a victim based on the application of a trafficked person, without any grading of the degree of abuse.

We realize that in order to change the social perception of victims many measures need to be undertaken simultaneously and they require a general shift of the social attitude to this problem. In fact, it requires to raise awareness about human trafficking in the first place. The role of mass media here is of a crucial importance. Media could use several instruments and inform society about many aspects of human trafficking. First and foremost, the media could spread more useful information about all the hotlines for victims, ways to avoid situations in which people can be easily trafficked. Information campaigns, videos, banners, trips to the borders, booklets, brochures with phone numbers and addresses where people can ask for help - this is not a complete list of all the available options. Second, the

process of investigation of these cases could be made open for public through official state media channels. By doing so, government could raise awareness, eliminate fake news, increase trust in law enforcement agencies, decrease corruption risks and change the attitude of the population to victims.

We suppose that all these measures aimed at changing the social status of a victim and the social attitude to victims can encourage a more active and open fight against human trafficking, urge victims to speak out loud, attract more funding from the government and eventually improve the whole set of anti-human trafficking policies.

As we proceed, with a more efficient legislation and a more active and caring society, we are facing the problem of low level of financial support. Starting from 2020 a Fund for victims compensation started to operate. However, the amount of compensation for victims of human trafficking is incredibly little for such crime. It amounts to 40 monthly calculation indices, which is 83 340 tenge in 2020. Moreover, this compensation is collected from the fees and fines that convicted people are paying. There is no available data on the effectiveness of this mechanism yet, but we suppose that the size of the compensation needs to be definitely increased. And the sources of Fund should also be reconsidered, because there are no guarantees that criminals will actually have sources to pay penalties.

The process of funding rehabilitation centers should also be reconsidered. The financing shouldn't depend on the fact whether the case of human trafficking is registered or not. And the requirement of the state to provide estimated numbers of victims should be abolished.

Another source of financing is definitely required to improve the competence of police workers, particularly to increase the amount of different workshops and seminars on how to deal with HT cases.

Finally, all of our recommendations would be pointless unless there is a strong political will to fight human trafficking and really make changes in this sphere. The resistance to change the situation can be presented by the following case. One of our respondents proposed additional national indicators for a comprehensive study of the problem. "At the moment there is no information about which indicators were finally approved. We identified the problem based on statistics of victims of human trafficking. We suggested registering by the number of requests. We need a bad indicator for the state to start paying attention. When the numbers are small, the state does nothing. There was a terrible opposition to our proposals. Especially from the Prosecutor General's office. As a result, national indicators

remained unchanged” (Respondent # 14). It is clear that eventually real numbers of victims of human trafficking will be reflected only when all of the negative factors will be eliminated or at least decreased. Political will here is of crucial importance, because it pushes forward all the efforts of all public agencies in the sphere.

To summarize, we provided thoroughly selected recommendations, based on our research findings, that will have a positive impact on all 4 groups of factors in this field. Our research was initially aimed at analyzing imperfections in the legal system. And we can actually trace the link of all factors to legislative base. By making amendments to legislation, it will be possible to create a ground for the further improvement of anti-human trafficking policies and show the real number of human trafficking cases. All of our proposals need to be implemented simultaneously to make the real effect. We believe that the results of our research have public, social and economic values and will contribute enormously to a more efficient fight with human trafficking.

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APPENDIX 1

Questions for each group of respondents:

1. Police officers

- What are the main legal difficulties in solving the cases of human trafficking?
- What are the practical obstacles to solve these cases?
- Is it law inefficiency or practical matters that slow down / stop the process?
- How do you usually solve these cases?
- Are there cases when human trafficking was considered as breach of migration?
- Do you cooperate with police officers from neighboring countries to tackle this issue?
- Do you cooperate with NGOs and rehabilitation centers to make anti human trafficking measures more effective?
- How many cases went to court?
- How many cases failed due to process difficulty?
- What were the main obstacles during the process?
- Did CPC require too much and allow it to delay the process?
- If you face obstacles from the CPC, what would you suggest to change in order to benefit the victims?
- Do you think there is an ongoing corruption when dealing with migration cases?
- Do you think there is an ongoing corruption when dealing with trafficked human beings?
- Do you know when HT cases were closed because of bribery?
- Do you know cases when important material evidence was lost or hidden because of bribery?

2. Lawyers.

- Who are your clients? Women/men? KZ citizens or foreigners?
- What are the main legal difficulties in dealing with victims of human trafficking?
- What is the social status of victims? Do they have means of payment?
- How many cases end up in court? And how many succeed?
- Is there a negative moral attitude towards the victims from the public?
- Does it influence the course of case development?
- It is because of attitude to the topic that cases end up broken in court?
- How many of human trafficking cases were reconsidered into migration cases?

- How many cases went to court?
- How many cases failed due to process difficulty?
- What were the main obstacles during the process?
- Did CPC require too much and allow it to delay the process?
- Do you think there is an ongoing corruption when dealing with migration cases?
- Do you think there is an ongoing corruption when dealing with trafficked human beings?
- Do you know when HT cases were closed because of bribery?
- Do you know cases when important material evidence was lost or hidden because of bribery?

3. Interdepartmental Commission on combating illegal export, import and trafficking in human beings

- How many cases went to court out of total figure?
- How many cases failed due to process difficulty?
- What were the main obstacles during the process?
- Did CPC require too much and allow it to delay the process?
- Do you think there is an ongoing corruption when dealing with migration cases?
- Do you think there is an ongoing corruption when dealing with trafficked human beings?
- Do you know when HT cases were closed because of bribery?
- Do you know cases when important material evidence was lost or hidden because of bribery?

4. Directors of rehabilitation centers:

- What is the statistics on numbers of trafficked people among all patients of rehabilitation centers?
- How do you find them or how do they find you?
- Are victims citizens of Kazakhstan for foreigners? What is the share?
- Who are the victims: women, men? What is the share?
- What is the common age of victims?
- How did the victims end up in being trafficked?
- How does the rehabilitation work in practical terms?
- How many cases went to court? and how many succeeded?
- How many cases failed due to process difficulty?

- Do you think corruption played its role as victims went through the HT?
- Did victims suffer from police corruption? Can you explain how?
- Did victims who applied to court suffer from corruption?
- Who was most corrupted in the corruption chain?
- What are the main sources of financial support of rehabilitation centers - government of Kazakhstan/NGOs/international organizations/private sector/free donations?
- What are the procedures of getting governmental financial support?
- What is the gap between aid that is needed and aid that is received?
- Has the governmental financial support increased or decreased for the last 10 years?
- What, in their opinion, would help the victims to overcome the tragedy? Should the government provide any financial subsidies to the rehabilitation centers? Should it provide better equipment/training/other educational/financial/infrastructural support?
- Do you think that the government should be more public on the HT topic and if so, how do you think the mass media would be helpful in preventing HT, in encouraging women to apply/ask for help, in encouraging victims to fight for the truth.