

**NGO Parallel Report on the  
Republic of Kazakhstan's 2nd Report  
on the Implementation of the  
International Covenant on Economic, Social and  
Cultural Rights**

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*Submitted to the  
UN Committee on Economic, Social and Cultural Rights  
for consideration in the formulation of the  
List of Issues during the 62<sup>nd</sup> Pre-Sessional Working Group (3 –6 April 2018)*

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## KAZAKHSTAN – EXECUTIVE SUMMARY

This “Parallel Report” assists the Committee on Economic, Social and Cultural Rights in the formulation of the List of Issues during the 62<sup>nd</sup> Pre-Sessional Working Group (3 – 6 April 2018), leading to the discussion of Kazakhstan’s Second Periodic Reports on its implementation of the Covenant on Economic, Social and Cultural Rights during the 65<sup>th</sup> Session of the Committee on Economic, Social and Cultural Rights.

In the past 20 years, Kazakhstan has moved from a lower-middle-income status nation to an upper-middle-income nation. Buoyed by its economic growth, Kazakhstan’s science and technology sector is developing, too. However, despite its economic and industrial progress, Kazakhstan is still falling short of its obligations under the Covenant, in three key issues: Research with human Embryonic Stem Cells (hESC); Assisted Reproductive Technologies (ART); and Abortion and Contraception (A&C).

On hESC research, Kazakhstan does not have a regulation or law that clearly specifies what the status of the human embryo is. Although the Kazakh People’s Health and the Health Care System Code states that human embryos may not be obtained for commercial, military, and industrial purposes, it does not assert whether they may be used for reproductive or health purposes.

Any experimentation with pre-implantation embryos (i.e. embryos created through in-vitro fertilization before they have been implanted in uterus) is banned. This includes research on donated unused pre-implantation embryos. Furthermore, pre-implantation genetic diagnosis is not accepted for assisting in generating a diseased embryo for research/experimentation. However, aborted embryos can be used for stem cell research, and scientists can perform research on fetal stem cells. Kazakhstan has licensed clinics that purchase stem cells from abroad and implant them into individuals.

In Kazakhstan, Artificial Reproductive Technologies (ART) are only partially regulated. There are no clear instructions on qualifications of medical professionals and reporting requirements, and

donation guidelines. Only heterosexual couples can resort to *in-vitro* fertilization (IVF) and surrogacy, resulting in a discrimination against homosexuals and single women with fertility problems.

Regarding Abortion and Contraception, Kazakhstan is falling short of its obligations under the Covenant in several ways. By requiring women under 18 to receive the consent of their parent or guardian before receiving an abortion, the state fails to protect a woman's autonomous right to decide if she wants to become a parent. Mandatory counseling for those who decide to proceed with an abortion also restricts a woman's reproductive autonomy by making her feel guilty or ashamed by her decision. Kazakhstan does not ensure widespread access to medical professionals who can perform abortions, and bans the practice of certain types of abortion procedures, such as Manual Vacuum Aspiration. Women in rural areas have little access to abortion and contraception as they do not know about the availability of abortion clinics or centers. By failing to regulate the price of contraceptives, Kazakhstan fails to ensure access to contraceptives for low-income parts of the population or at-risk individuals.

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## PURPOSE OF THE REPORT

1) The purpose of this “Parallel Report” is to assist the Committee on Economic, Social and Cultural Rights in the formulation of the List of Issues during the 62<sup>nd</sup> Pre-Sessional Working Group (3 – 6 April 2018), leading to the discussion of Kazakhstan’s Second Periodic Reports on its implementation of the Covenant on Economic, Social and Cultural Rights during the 65<sup>th</sup> Session of the Committee on Economic, Social and Cultural Rights.

2) The Republic of Kazakhstan ratified the Covenant on Economic, Social and Cultural Rights (hereinafter “CESCR” or “Covenant”) on 24 January 2006.<sup>1</sup> Its first periodic review was completed in 2009. It is currently undergoing its 2<sup>nd</sup> periodic review.

3) This Parallel Report focuses on three issues: Research with human Embryonic Stem Cells (hESC); Assisted Reproductive Technologies (ART); and Abortion and Contraception (A&C). All these three issues come under the purview of the Covenant (Articles 10, 12 and 15).

4) Kazakhstan’s 2<sup>nd</sup> periodic report, of 13 September 2017, has several lacunae.<sup>2</sup> It discusses only some aspects of the right to reproductive health services in response to Recommendation 33 made by this Honorable Committee after the review of Kazakhstan’s initial report in 2010.<sup>3</sup>

5) In its 2010 Concluding Observations, this Committee noted that it was concerned with Kazakhstan’s lack of “comprehensive sexual and reproductive health education programmes for girls and for boys in the national school curricula, providing them with objective information in accordance with medical and education standards.”<sup>4</sup> It recommended that Kazakhstan include sexual

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<sup>1</sup> International Covenant on Economic, Social and Cultural Rights, art. 15(1)(b), Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 [hereinafter CESCR]. *States Party to the International Covenant on Economic, Social and Cultural Rights*, United Nations Treaty Collection, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en) (last visited Jan. 14, 2017).

<sup>2</sup> U.N. Economic and Social Council, *Second Periodic Reports of States Parties Due in 2015 – Kazakhstan*, UN Doc. E/C.12/KAZ/1, (13 September 2017).

<sup>3</sup> *Id.*

<sup>4</sup> U.N. Economic and Social Council, *Concluding Observations of the Committee on Social, Economic, and Cultural Rights- Kazakhstan*, UN Doc. E/C.12/KAZ/CO/1, (21 May 2010).

and reproductive health education programmes in schools and provide a broad range of sexual and reproductive health care services through its primary health care system,” and requested that in its next report, Kazakhstan provide “information on sexual and reproductive health, including the practice of abortion.”

6) In its second periodic report, Kazakhstan reported that the Ministry of Health has taken measures to improve reproductive health. These developments are outlined in the “Strategic Development Plan to 2020, the strategy for the development of the Republic of Kazakhstan up to 2030, the Kazakhstan 2050 Strategy and the State programme for the development of health care for 2016–2019, ‘Densaulyk.’”<sup>5</sup> These developments include the protection of reproductive health; measures taken to improve reproductive health include “sex education programmes for adolescents and young people based on WHO recommendations, including a training course and manual, methodological guidelines on hygiene training and sex education for girls and boys in organized groups (in secondary and higher education institutions), as well as programmes on sexually transmitted infections, HIV/AIDS and so forth.”<sup>6</sup> Additionally, the government has set up centers for family planning that are youth friendly, and raise awareness about the importance of successful family planning, reproductive health, prevention of abortion, and family problems.<sup>7</sup> To further raise awareness about reproductive health, NGOs are carrying out social projects, “publicity materials are being produced,” medical workers and other members of the population are being trained in reproductive health care, family planning, preparation for pregnancy, and the birth of healthy children,” and the country office of the United Nations Population Fund has developed a training manual for teachers at educational institutions containing teaching tools for the aforementioned issues.<sup>8</sup> The report further addresses the Ministry of Health’s plan for improving family planning services by providing free modern contraceptives to “vulnerable groups of adolescents and youth, as well as women with absolute contraindications to pregnancy and high social risk.”<sup>9</sup> It also

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<sup>5</sup> *Supra* note 2, at Recommendation 33.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

commends the state's decline in the abortion rate.<sup>10</sup> Additionally, the report discusses the State Program for Health Development of the Republic of Kazakhstan (“Salamatty Kazakhstan”) regarding its intensified efforts to prevent the spread of diseases from environmental impact. It further discusses its efforts to promote healthy lifestyles, the improvement of infant mortality and neonatal care, the improvement of medical care for children, and efforts to ensure occupational health and safety. However, the report does not discuss improving access to abortions, Assisted Reproductive Technology, or embryonic research. It further does not discuss the limits it puts on Assisted Reproductive Technology. This report complements Kazakhstan’s report to enable the Honorable Committee to get a clearer picture of how Kazakhstan is discharging its obligations under these articles of the Covenant.

7) Other than this, neither this Honorable Committee nor Kazakhstan have addressed the question of the compatibility of current Kazakh laws and policies regarding research with human embryonic stem cells, assisted reproductive technologies, and abortion and contraception, with the obligations under Article 12 and 15 of the Covenant.

#### ABOUT THE AUTHORS OF THIS REPORT AND SOURCES

8) This report has been prepared by Layal Bishara, JD Candidate 2019, under the Supervision of the International Human Rights Clinic of Loyola Law School, Los Angeles — directed by Professor Cesare Romano— and by the Luca Coscioni Association for Freedom of Scientific Research.

9) The International Human Rights Clinic of Loyola Law School, Los Angeles is committed to achieving the full exercise of human rights by all persons, and seeks to maximize the use of international and regional political, judicial, and quasi-judicial bodies through litigation, advocacy,

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<sup>10</sup> *Id.*



and capacity-building.<sup>11</sup> Loyola Law School, Los Angeles is the school of law of Loyola Marymount University, a Jesuit university.

10) The Luca Coscioni Association for the Freedom of Scientific Research is a non-profit organization comprised of members of parliament, academics, researchers and students, along with representatives of patients and advocacy associations. The Luca Coscioni Association promotes the freedom of scientific research and treatment as well as the civil and political rights of patients and people with disabilities. It was founded in 2002 by Dr. Luca Coscioni, an Italian economist affected by Amyotrophic Lateral Sclerosis, who launched a national campaign to promote freedom of scientific research on embryonic stem cells.<sup>12</sup> Since its foundation, the Association has been active on a range of issues, including the rights of persons afflicted with illness and disabilities, the right to die, reproductive health, and freedom of scientific research.

11) The World Congress for Freedom of Scientific Research is a permanent forum of activities to promote freedom of scientific research worldwide. Since the founding session of the World Congress, in October 2004, the Luca Coscioni Association is the Operational Secretariat of the World Congress.

## **BACKGROUND**

12) The Republic of Kazakhstan (Kazakhstan) is a large nation with a land area equal to that of Western Europe; however, it has one of the lowest population densities.<sup>13</sup> It has a strategically advantageous position on the world map, linking the economies of China and South-East Asia with those of Russia and Western Europe.<sup>14</sup> Its economic growth is heavily reliant on its natural resources, particularly the oil sector.

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<sup>11</sup> See *International Human Rights Clinic*, Loyola Law School, Los Angeles, <http://www.lls.edu/academics/experientiallearning/clinics/socialcriminaljusticeclinics/internationalhumanrightsclinic/> (last visited Sept. 1, 2017).

<sup>12</sup> See Luca Coscioni Association, <http://www.associazionelucacoscioni.it> (last visited Jan. 14, 2017).

<sup>13</sup> <http://www.worldbank.org/en/country/kazakhstan/overview>

<sup>14</sup> *Id.*

13) In the past 20 years, Kazakhstan has moved from a lower-middle-income status nation to an upper-middle-income nation.<sup>15</sup> Since 2002, its GDP has risen six fold and poverty has fallen greatly.

<sup>1617</sup> However, from 2013 to 2016, the poverty rate rose from 5.6% to 7.8%, and household incomes are still under pressure due to the lack of recovery in the labor market from the worldwide fall in oil prices.

14) Buoyed by its economic growth, Kazakhstan's science and technology sector is developing, too. The Alliance of Technology Commercialization Professionals (ATCP) promotes the development of technology commercialization, and is the "first of its kind in the Commonwealth of Independent States." It is actively improving the regulatory and legal framework for the protection of intellectual property and technological commercialization.<sup>18</sup> Furthermore, Kazakhstan's International Science and Commercialization Board ensures "independent selection of science commercialization projects based on international standards of scientific excellence and highest commercialization potential."<sup>19</sup> It also brings in international experts in research and development, as well as leading Kazakh scientists, to support R&D innovation in the nation.<sup>20</sup>

15) However, despite its economic and industrial progress, Kazakhstan is still falling short of its obligations under the Covenant, in three key issues: Research with human Embryonic Stem Cells (hESC); Assisted Reproductive Technologies (ART); and Abortion and Contraception (A&C).

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *In Kazakhstan, Exciting Developments in Innovation Research and Technology*, THE WORLD BANK (Jan. 19, 2017) <http://www.worldbank.org/en/news/feature/2017/01/19/in-kazakhstan-exciting-developments-in-innovation-research-and-technology>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

Research with human embryonic stem cells (hESC) in Kazakhstan

16) “Embryonic stem cells,” as their name suggests, derive from embryos. They are “formed during the blastocyst phase of embryological development.”<sup>21</sup> It must be stressed: stem cells used for research do *not* come from eggs fertilized that have been transferred in a woman's body.<sup>22</sup> The vast majority of stem cells used in research come from embryos that were developed via IVF (surplus embryos or embryos that are not viable enough to lead to pregnancy), and then were donated to research with the informed consent of the donor(s).<sup>23</sup>

17) An “adult stem cell” is an “[u]ndifferentiated cell, found among differentiated cells in a tissue or organ. The adult stem cell can renew itself and can differentiate to yield some or all of the major specialized cell types of the tissue or organ.”<sup>24</sup> These type of stem cells can be found in many organs and tissues, including the brain, bone marrow, peripheral blood, blood vessels, skeletal muscle, skin, teeth, heart, gut, liver, ovarian epithelium, and testis.<sup>25</sup>

18) However, the number of adult stem cells in each tissue is very small.<sup>26</sup> Besides, once removed from the body, their capacity to divide is limited, making the generation of large quantities of stem cells difficult.<sup>27</sup> For this reason, “scientists in many laboratories are trying to find better ways to grow large quantities of adult stem cells in cell culture and to manipulate them to generate specific cell

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<sup>21</sup> John Harris, *It's time to Extend the 14-day Limit for Embryo Research*, The Guardian (May 6, 2016), <https://www.theguardian.com/commentisfree/2016/may/06/extend-14-day-limit-embryo-research> (last visited Dec. 7, 2017).

<sup>22</sup> *Stem Cells Basics I*, National Institute of Health (2016), <https://stemcells.nih.gov/info/basics/1.htm> (last visited Dec. 7, 2017).

<sup>23</sup> Kerstin Bjuresten & Outi Hovatta, *Donation of Embryos for Stem Cell Research — How Many Couples Consent?*, 18 Hum. Reprod. 6, 1353-1355 (2003), <https://academic.oup.com/humrep/article/18/6/1353/2913611/Donation-of-embryos-for-stem-cell-research-how> (last visited Mar. 7, 2017).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

types so they can be used to treat injury or disease.”<sup>28</sup> Research on stem cell lines derived from human embryos is significantly more efficient and faster than the one on adult stem cells.<sup>29</sup> Research on human stem cells is believed to be the key to cure many diseases that cause suffering and eventually kill millions each year, such as Alzheimer’s, Parkinson’s diseases as well as diabetes, and heart disease.<sup>30</sup>

19) Research with human embryonic stem cells (hESC) is not prohibited in Kazakhstan. However, it is very vaguely regulated, it is not regularly practiced, and the embryos must be aborted in order for them to be used for research.

20) Kazakhstan does not have a regulation or law that dictates the status of the embryo, or at which point human life begins.<sup>31</sup> Article 99 of the Code of the Republic of Kazakhstan on People’s Health and the Health Care System states that human embryos may not be obtained for commercial, military, and industrial purposes; however, it does not assert whether they may be used for reproductive or health purposes.<sup>32</sup>

21) In Kazakhstan, embryonic stem cells are imported from organizations or clinics abroad and implanted in licensed clinics within the state, so long as scientists or physicians receive a permit from the state allowing them to do so.<sup>33</sup> They can only be imported for the purpose of: 1) transplantation in public health organizations, 2) diagnostic studies in the territory of the Republic of Kazakhstan, and 3) joint scientific researches.<sup>34</sup>

22) Any experimentation with pre-implantation embryos (i.e. embryos created through in-vitro fertilization before they have been implanted in uterus) is banned in the state.<sup>35</sup> This ban includes

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<sup>28</sup> *Id.*

<sup>29</sup> Harris, *supra* note 21.

<sup>30</sup> *Stem Cell Basics I*, *supra* note 22.

<sup>31</sup> Global Reproductive Health, IFFS Surveillance 2016, INTERNATIONAL FEDERATION OF FERTILITY SOCIETIES, 1, 144 (Sept. 2016), <https://www.scribd.com/document/323145609/GRH-D-16-00001-Manuscript>.

<sup>32</sup> The Code of the Republic of Kazakhstan on People’s Health and the Health Care System, Art. 99 (Sept. 18, 2009).

<sup>33</sup> *Id.* at art. 13.

<sup>34</sup> *Id.* at art. 172.

<sup>35</sup> *Supra* note 31, at 125.

research on donated unused pre-implantation embryos, research on donated unused pre-implantation embryos for stem-cell research, and the generation of embryos specifically for research purposes.<sup>36</sup> Furthermore, pre-implantation genetic diagnosis is not accepted for assisting in generating a diseased embryo for research/experimentation.<sup>37</sup>

23) However, aborted embryos can be used for stem cell research, and scientists can perform research on fetal stem cells.<sup>38</sup> Kazakhstan has licensed clinics that purchase stem cells from abroad and implant them into individuals.<sup>39</sup> In 2006, NFL star John Brodie traveled to Kazakhstan for injections of stem cells from aborted human fetuses to recover from the consequences of a stroke.<sup>40</sup>

Analysis: Research with human embryonic stem cells (hESC) under the Covenant.

24) It is difficult to reconcile Kazakhstan's limitation on embryo research and the obstacles it puts on research with human embryonic stem cells (hESC) with the obligations it has under the Covenant. To wit, Article 15.1.b of the Covenant recites: "The States Parties to the present Covenant recognize the right of everyone ... to enjoy the benefits of scientific progress and its applications." According to the Venice Statement, a document adopted in 2009 by a group of experts convened under the aegis of UNESCO, States have a duty "to respect the freedoms indispensable for scientific research and creative activity, such as freedom of thought, to hold opinions without interference, and to seek, receive, and impart information and idea of all kind."<sup>41</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 105.

<sup>38</sup> Global Reproductive Health, IFFS Surveillance 2013, INTERNATIONAL FEDERATION OF FERTILITY SOCIETIES, 1, 127 (Oct. 2013), [http://c.ycdn.com/sites/www.iffs-reproduction.org/resource/resmgr/iffs\\_surveillance\\_09-19-13.pdf](http://c.ycdn.com/sites/www.iffs-reproduction.org/resource/resmgr/iffs_surveillance_09-19-13.pdf).

<sup>39</sup> *Id.*

<sup>40</sup> *Fetal Stem Cells and the Sports Heros They Revitalized*, Brent Schrotenboer, USA TODAY SPORTS, <https://www.usatoday.com/story/sports/2015/05/18/fetal-stem-cells-gordie-howe-john-brodie-tijuana-stroke-stemedi-ca/27501717/>.

<sup>41</sup> UNESCO, *Venice Statement: The Right to Enjoy the Benefits of Scientific Progress and its Applications*, ¶ 14 (Jul. 16-17, 2009), <http://unesdoc.unesco.org/images/0018/001855/185558e.pdf>. (last visited Aug. 30, 2017).

25) Under Article 15.1.c of the Covenant, “The States Parties to the present Covenant recognize the right of everyone ... [t]o benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”.

26) According to Article 15.2: “The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.” This general obligation implicitly contains several more specific obligations: first, “conservation of science includes retaining scientific discoveries as well as the data behind them, which must be preserved in a form that allows replication of those discoveries;”<sup>42</sup> second, “development demands an explicit commitment to the development of science and technology for human benefit;”<sup>43</sup> and third, “diffusion encompasses the dissemination of scientific knowledge and application both within the scientific community and in society at large.”<sup>44</sup>

27) Article 15.3 provides that: “[t]he States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.”

28) As Farida Shaheed, the Special Rapporteur in the Field of Cultural Rights, remarked: “Freedom of scientific research means ensuring that the scientific enterprise remains free of political and other interference, while guaranteeing the highest standards of ethical safeguards by scientific professions.”<sup>45</sup> Likewise, the Venice Statement emphasizes that freedom of inquiry is vital for advancing knowledge on a specific subject, procuring data and testing hypotheses for some practical

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<sup>42</sup> Margaret W. Vitullo & Jessica Wyndham, American Ass’n for the Advancement of Sci., Sci. and Human Rights Coal., *Defining the Right to Enjoy the Benefits of Scientific Progress and its Application: American Scientist’s Perspective* 5 (2013), [http://www.aaas.org/sites/default/files/content\\_files/UNReportAAAS.pdf](http://www.aaas.org/sites/default/files/content_files/UNReportAAAS.pdf) (last visited Aug. 30, 2017).

<sup>43</sup> *Id.* at 4.

<sup>44</sup> *Id.* at 5.

<sup>45</sup> Farida Shaheed (Special Rapporteur on Cultural Rights), *The Right to Enjoy the Benefits of Scientific Progress and Its Applications*, U.N. Doc. A/HRC/20/26 (May 14, 2012) [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-26\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-26_en.pdf). (last visited Aug. 30, 2017).

purpose, as well as for promoting further scientific and cultural activity.<sup>46</sup> In the preamble to its recommendation on the status of scientific researchers, UNESCO called for measures enabling scientists to work in a spirit of intellectual freedom to pursue, expound and defend the scientific truth as they see it, and to help define the aims and objectives of the programs they are engaged in and the methods adopted.

29) Finally, under Article 15.4: “The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.”

30) A majority of European States engaged in embryo and stem cell research have found a way to better balance the need to protect human life at its earliest stages with the right of everyone to benefit from scientific and technological progress and the right to health.<sup>47</sup> Although Kazakhstan’s attitude toward research on hESC has improved, its lack of prevalence and limitations on its practice can be detrimental to the potential efforts of its surrounding former-Soviet countries. By failing to nationally recognize it, Kazakhstan is violating its obligations under the Covenant to give its citizens access to and enjoyment of all of scientific innovations, and preventing scientists from seeing the fruits of their labor.

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<sup>46</sup> UNESCO, *Venice Statement: The Right to Enjoy the Benefits of Scientific Progress and its Applications*, ¶ 8 (Jul. 16-7, 2009), <http://unesdoc.unesco.org/images/0018/001855/185558e.pdf>. (last visited Aug. 30, 2017)

<sup>47</sup> France, Spain, Portugal, the Netherlands, Denmark, Norway, Finland, Estonia, Slovenia, Hungary, Czech Republic and Greece allow research with supernumerary embryos and the derivation of hESC from supernumerary embryos. France modified its statute concerning stem cell research and now allows it under special circumstances. Loi 2013-715 tendant à modifier la loi 2011-814 du 7 juillet 2011 relative à la bioéthique en autorisant sous certaines conditions la recherche sur l’embryon et les cellules souches embryonnaires du 6 août 2013 [Law 2013-715 of August 6, 2013 to amend Law No. 2011-814 of 7 July 2011 on bioethics by authorizing under certain conditions research on the embryo and embryonic stem cells], Journal Officiel de la République Française [J.O.] [Official Gazette of France], Aug. 6, 2013. The regulations in the United Kingdom, Belgium and Sweden are even more liberal. They allow the production of embryos for research purposes. The United Kingdom and Belgium allow the derivation of stem cells from embryos created by nuclear transfer, which in fact means therapeutic cloning (Eur. Grp. on Ethics in Sci. and New Techs. Opinion No. 15/2000, at 11). *Id.*

## ASSISTED REPRODUCTION TECHNOLOGIES (ART)

### ART in Kazakhstan

31) Overall, Kazakhstan's laws and policies regulating Assisted Reproduction Technologies are liberal, more so than many other states, but still fall short of the obligations it has under Articles 10, 12 and 15 of the Covenant.

32) Although In Vitro Fertilization (IVF) has been practiced in Kazakhstan since 1995,<sup>48</sup> the country still lacks a comprehensive law that regulates all aspects of aspects of ART. Several laws and regulations have a bearing on it, including the Code of the Republic of Kazakhstan on People's Health and the Health Care System.<sup>49</sup> It is fairly unlimited in practice, and even practices such as cytoplasmic transfer to treat older women that were thought to have less viable eggs is allowed. Cytoplasmic transfer occurs when doctors borrow part of a younger egg to mix with the older egg prior to fertilization; this procedure is only allowed in five countries in the world, including Kazakhstan.<sup>50</sup> This technique was developed for the purposes of avoiding mitochondrial disorders.<sup>51</sup> Kazakhstan also permits both the de-novo generation of embryos with donor gametes for purposes of donation along with conventional embryo donation from previous IVF cycles.<sup>52</sup>

33) Donor embryos are permitted for use by single and married women.<sup>53</sup> Both de-novo generation of embryos with donor gametes for the purposes of donation and conventional embryo donation from previous IVF cycles are permitted and practiced.<sup>54</sup> Furthermore, there are no guidelines addressing the number of embryos that can be transferred.<sup>55</sup>

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<sup>48</sup> The first IVF laboratory opened in the city center in October 1995, and the first Kazakhstan child "from a test tube" was born a year later. <http://www.enbek.gov.kz/en/node/332400>

<sup>49</sup> *Supra* note 32

<sup>50</sup> Emily Graham, *15 Laws on IVF Treatments From Around the World*, BABY GAGA (Feb. 28, 2017), <https://www.babygaga.com/15-laws-on-ivf-treatments-from-around-the-world/>

<sup>51</sup> *Supra* note 31, at 54.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 195.

<sup>54</sup> *Id.* at 54.

<sup>55</sup> *Supra* note 31, at 36.



34) Cryopreservation of fertilized eggs is also allowed and practiced.<sup>56</sup> Additionally, there is no limit to the duration of storage of these eggs.<sup>57</sup> Oocyte cryopreservation, a process in which a woman's eggs (oocytes) are extracted, frozen and stored as a method to preserve reproductive potential in women of reproductive age who decide to pursue pregnancy later in their life, is also allowed and practiced.<sup>58</sup> These eggs can in turn become donor eggs, and egg donation is fully allowed in Kazakhstan.<sup>59</sup> These donor eggs are available to single and married women.<sup>60</sup> However, there is no specific law regulating egg donation in Kazakhstan. Ovarian tissue donation is also permitted, but has never been performed.<sup>61</sup>

35) Men can also donate sperm.<sup>62</sup> The donation of sperm cells, including the use of sperm cells which do not come from the female patient's male partner (heterologous or third-party donation, including a mixture of sperm cells from different donors), is allowed. The only requirement for using donated sperm is a written declaration of consent by the future parents and the sperm donor. Additionally, male sperm donors are given complete anonymity.<sup>63</sup> Donor sperm is available to single and married women.<sup>64</sup> Testicular tissue donation is also permitted, but has never been performed.<sup>65</sup> Both identifying and non-identifying data of the gamete donor must be disclosed upon request after the donor is 18 years of age.

36) Surrogacy, a method whereby a woman agrees to carry a pregnancy for another person or persons who will become the newborn child's parent(s) after birth, is allowed in Kazakhstan.<sup>66</sup> Surrogacy agreements are fully enforceable, allowing women who are infertile or cannot carry to term a pregnancy for health reasons the possibility of having a biological offspring. However,

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<sup>56</sup> *Supra* note 38, at 47.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Jan Tesarik, *Egg Donation and Surrogate Motherhood: Opposed Ideologies, Common Goal*, MEDCRAVE, MOJ Women's Health (Feb. 22, 2017), <http://medcraveonline.com/MOJWH/MOJWH-04-00087.pdf/>.

<sup>60</sup> *Supra* note 38, at 54.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 70.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 54.

<sup>66</sup> *Supra* note 45, at art. 54.

surrogacy is only available to married, heterosexual couples,<sup>67</sup> and for single women,<sup>68</sup> but not homosexual couples. Surrogacy contracts are regulated by the Code on Marriage and Family.<sup>69</sup> Additionally, married women who want to become surrogates must receive the consent of their spouse, certified by a notary.<sup>70</sup>

37) In Kazakhstan, Preimplantation Genetic Screening (PGS), Preimplantation Genetic Testing (PGT), and Preimplantation Genetic Diagnosis (PGD), techniques that can be used to detect certain genetic disorders or abnormalities and prevent them from being passed on to the child, are allowed and are considered to be a part of an established medical practice.<sup>71</sup> However, PGT is not allowed for sex selection,<sup>72</sup> and PGD/PGS can be done only in a sole-practitioner clinic.<sup>73</sup> PGD is used to prevent or allow disease in the child to be born from the embryo, for assisting in generating a child/embryo on behalf of a diseased sibling, for assisting in generating a child/embryo for any immunologically donor matched diseased child, and to be manifested the child to be born from the embryo.<sup>74</sup>

38) The question of how to pay for these treatments is one of equality of opportunity, which is relevant for a discussion of obligations under Article 10 of the Covenant. The reimbursement of the costs associated with ART varies between private and statutory health insurance. Since the launching of the Program “Salamatty Kazakhstan” (Healthy Kazakhstan) in 2010, the state has allocated funds for IVF in the framework of guaranteed medical care.<sup>75</sup> Since 2010, 14,000 children have been born with the help of assisted reproductive technology, and the number of publicly funded procedures have risen from 100 a year in 2010 to 900 a year in 2017.<sup>76</sup> These procedures are available to married

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<sup>67</sup> In Kazakhstan, marriage is defined as “a union with equal rights between a man and a woman.” The Code of the Republic of Kazakhstan on Marriage (Matrimony) and Family, Art. 1(26), (Dec. 26, 2011 (amended 2014)).

<sup>68</sup> *Id.* at art. 58(1); *supra* note 38, at 196.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Supra* note 38, at 109.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 107.

<sup>74</sup> *Id.* at 105.

<sup>75</sup> Salamatty Kazakhstan.

<sup>76</sup> Frol Leandoer, *14,000 Babies Born With IVF in Kazakhstan in Seven Years*, ASTANA TIMES (Nov. 19, 2017), <https://astanatimes.com/2017/11/14000-babies-born-with-ivf-in-kazakhstan-in-seven-years/>.

couples who qualify for government insurance.<sup>77</sup> The state has spent \$11.4 million on 4,780 fertilization procedures over the past 10 years.<sup>78</sup> Out of the 13 IVF centers in Kazakhstan, 3 of them are run by the state.<sup>79</sup> However, insurance coverage and government funding only covers IVF, assisted hatching, and ICSI; it does not cover diagnostic evaluations, fertility medications, intrauterine insemination, any donors, any gestational carriers (surrogates, donated ova and commissioning male sperm, commissioning couple's ova and sperm, donated ova and donated sperm), or any form of cryopreservation.<sup>80</sup> The government funded procedures are limited to women who are of reproductive age, and have a normal allowance of ovaries, since these women will receive the best results.<sup>81</sup> Even without government funding, IVF procedures in Kazakhstan are relatively well-priced in comparison to those in other states. The President of the Kazakhstan Association of Reproductive Medicine reported that the total cost for IVF procedure, including the medicines used, totals between \$2,300-\$2,500, which is reportedly three times cheaper than procedures in the United States.<sup>82</sup>

#### Analysis: ART under the Covenant

39) Arguably, under the Covenant (Art. 12 and 15), everyone, without discrimination, has the right to benefit from Assisted Reproductive Technology, and scientist have the right to practice it and improve it through practice and research. ART designates medical techniques within the scientific field of “reproductive endocrinology,”<sup>83</sup> and, as such, falls under the definitions set forth in the

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<sup>77</sup> *How Much Does Artificial Insemination Cost In Kazakhstan?*, BNEWS KZ (Dec. 10, 2015), [https://bnews.kz/en/news/how\\_much\\_does\\_artificial\\_insemination\\_cost\\_in\\_kazakhstan](https://bnews.kz/en/news/how_much_does_artificial_insemination_cost_in_kazakhstan).

<sup>78</sup> Leandoer, *supra* note 74.

<sup>79</sup> *Kazakhstan's Fertility Programme to Help Families Conceive Children*, KAZINFORM (Nov. 2, 2011), [http://www.inform.kz/en/kazakhstan-s-fertility-programme-to-help-families-conceive-children\\_a2416210](http://www.inform.kz/en/kazakhstan-s-fertility-programme-to-help-families-conceive-children_a2416210).

<sup>80</sup> *Supra* note 38.

<sup>81</sup> *Supra* note 75.

<sup>82</sup> *Id.*

<sup>83</sup> *Reproductive Medicine Associates of Connecticut: What is a Reproductive Endocrinologist?*, <http://www.rmact.com/our-fertility-doctors/what-is-a-reproductive-endocrinologist> (last visited Jan. 23, 2015).

Venice Statement and in the Special Rapporteur on Cultural Rights' 2012 Report as “science” and a “benefit of scientific progress.”<sup>84</sup>

40) The World Health Organization (“WHO”) recognizes infertility as a disability, because it intrinsically limits the major life activity of reproduction.<sup>85</sup> The WHO emphasized that environmental factors that aid disabled people can allow them to participate in society “on an equal basis with others.”<sup>86</sup> IVF is a widely recognized and utilized treatment that effectively helps women overcome disabling fertility issues for over forty years.<sup>87</sup>

41) The Committee on Economic, Social, and Cultural Rights (CESCR), stated in General Comment 14 that the right to health entails “the right to control one’s health and body, including sexual and reproductive freedom.”<sup>88</sup> Specifically, the CESCR elaborated that “women and men have the freedom to decide if and when to reproduce,” and have a right of access to “appropriate health care-services that will, for example, enable women to go safely through pregnancy and childbirth.”<sup>89</sup>

42) In the *Artavia Murillo* case, the Inter-American Court of Human Rights determined that the right to enjoy the benefits of scientific progress (found in Article 14.1.b of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (“Protocol of San Salvador”)), includes accessing medical technology necessary to exercise the right

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<sup>84</sup> The U.N. Special Rapporteur on Cultural Rights stated in her 2012 Report on the Right to Enjoy the Benefits of Scientific Progress that the term “science” as used in the ICESCR is “knowledge that is testable and refutable, in all fields of inquiry . . . and encompassing all research.” *Id.*, ¶ 24. She elaborated that “[t]he ‘benefits’ of science encompass not only scientific results and outcomes but also the scientific process, its methodologies and tools.” *Id.* Consistent with the Special Rapporteur’s definition, the Venice Statement says that the right to benefit from scientific research is “applicable to all fields of science and its applications.” UNESCO, *Venice Statement: The Right to Enjoy the Benefits of Scientific Progress and its Applications*, §12(a) (Jul. 16-7, 2009).

<sup>85</sup> WHO *Infertility Definitions and Terminology*,

<http://www.who.int/reproductivehealth/topics/infertility/definitions/en/> (last visited Jan. 23, 2016); Shorge Sato, *A Little Bit Disabled: Infertility and the Americans With Disabilities Act*, 5 N.Y.U.J. LEGIS. & PUB. POL’Y 223 (2002).

<sup>86</sup> WHO *World Report on Disability* at 4 (2011),

[http://whqlibdoc.who.int/publications/2011/9789240685215\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf) (last visited Jan. 23, 2016).

<sup>87</sup> *Id.*

<sup>88</sup> United Nations Committee on Economic, Social, and Cultural Rights, General Comment No. 14, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: The Right to the Highest Attainable Standard of Health* at ¶ 8, Doc. E/C. 12/2000/4 (Aug. 11, 2000).

<sup>89</sup> *Id.* at 20, ¶ 14, n. 12.

to private life and reproductive freedom to found a family.<sup>90</sup> This requires access to the best healthcare including assisted reproductive techniques, and prohibits any arbitrary or disproportionate restrictions on accessing this technology.<sup>91</sup>

43) In *Artavia Murillo*, the Inter-American Court of Human Rights determined that “reproductive autonomy and access to reproductive health services ... includes the right to have access to the medical technology necessary to exercise this right.”<sup>92</sup>

44) The legal framework regulating ART in Kazakhstan should be strengthened, especially considering that, because surrogacy and ART is much cheaper in Kazakhstan than in other countries, “surrogacy tourism” has become prevalent.<sup>93</sup> The only provisions regulating ART in Kazakhstan are Articles 54, 57, and 58 of the Code of the Republic of Kazakhstan on Marriage (Matrimony) and Family, and Article 98 and 99 of the Code on the Right of People’s Health and Health Care System. However, these articles only assert the regulations of surrogacy contracts, and who may obtain access to ART and surrogacy. The fact that assisted reproduction in Kazakhstan is only partially regulated means that there are no clear instructions to providers on how to manage other aspects of ART, such as how it is covered by insurance providers, procedural guidelines to providers regarding qualifications of medical professionals and reporting requirements, and donation guidelines.

45) Limiting access to IVF and surrogacy to heterosexual couples in a recognized and stable relationship is a clear violation of CESCR’s provision requiring that all citizens be given the right to appropriate health-care services, as so is Kazakhstan’s allocation of state funded IVF cycles are only available to married heterosexual couples.

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<sup>90</sup> *Artavia Murillo et al. (In vitro fertilization) v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 28, 2012, I/A Court H.R., Series C No. 257 (2012), ¶ 146.

<sup>91</sup> *Id.*, ¶¶ 287-284.

<sup>92</sup> *Id.* at ¶ 146.

<sup>93</sup> Kamini Rao, 1 Principles & Practice of Assisted Reproductive Technology, *Infertility*, 816.

Abortion and Contraception in Kazakhstan

46) The ‘Roadmap of Strengthening Reproductive Health of Citizens of Republic of Kazakhstan’ by MOH Decree No. 881 issued on December 25, 2012 supports the realization of one of the Salamatty Kazakhstan Program objectives, which is to strengthen the reproductive health of citizens.

<sup>94</sup> Unfortunately, this decree is not fully carried out in practice, as discussed in the following sections.

Abortion

47) “Abortion” means the termination of pregnancy by the removal or expulsion from the uterus of a fetus or embryo prior to viability. Under Kazakhstan’s Code on the Right of People’s Health and Health Care System, women have the right to abortion and free reproductive choice.<sup>95</sup> Under this law, citizens are also given protection of their reproductive rights, and the use and free choice of contraceptive methods.<sup>96</sup>

48) Under the Code on the Right of People’s Health and Health Care System, abortions shall be performed at a woman’s request up to twelve weeks. Abortion is legal up to twenty-two weeks after fertilization for social reasons, and there is no time limit for medical indications, for instance when pregnancy threatens the life of a woman and (or) a fetus, or when in the presence of mono-gene genetic diseases, not-corrective congenital malformations and fatal fetal conditions.<sup>97</sup> Under the

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<sup>94</sup> Kazakhstan Association on Sexual and Reproductive Health & Sexual Rights Initiative, UPR of Kazakhstan (Oct.-Nov., 2014), [http://www.sexualrightsinitiative.com/wp-content/uploads/Universal-Periodic-Review-of-Kazakhstan-SRHR\\_KMP\\_A\\_March2014\\_Final.pdf](http://www.sexualrightsinitiative.com/wp-content/uploads/Universal-Periodic-Review-of-Kazakhstan-SRHR_KMP_A_March2014_Final.pdf).

<sup>95</sup> *Supra* note 32, at art. 96(1).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

Code, women under 18 are only allowed to receive an abortion with the consent of their parent or guardian.<sup>98</sup>

49) Doctors performing an abortion are required to conduct interviews to women seeking abortion to “explain ethical, psychological, physiological adverse effects and possible complications.”<sup>99</sup> However, mandatory counseling for unwanted pregnancy can make women feel guilty, ashamed or very uncomfortable, which is at odds with the obligation of all states party to the Covenant to encourage reproductive autonomy and freedom.

50) While Kazakhstan Ministry of Health Decree No. 626, which was issued in 2009, sets out the requirements and regulations for abortion, it fails to accurately or adequately describe the proper medical procedures that should be used. For example, it leaves out the practice of Manual Vacuum Aspiration, which is a widely recognized and practice safe form of abortion.<sup>100</sup> Furthermore, many doctors do not have the skills to perform the medical abortion procedures allowed under Decree No. 626, which in turn leads to unsafe and illegal abortions being performed by either the woman herself, or an unlicensed individual.<sup>101</sup> The Decree does not address these issues or provide a remedy to resolve this issue.<sup>102</sup> Furthermore, women are generally not aware of their ability to access safe abortions, especially in rural areas, which leads to further unsafe abortions, resulting in death.<sup>103</sup>

51) Abortions requested prior to 12 weeks of pregnancy, for any reason, are covered under state funding, and are therefore free to women.<sup>104</sup> Gynecological exams and intrauterine devices are also free to women and are funded by the state.<sup>105</sup> However, Kazakh women have testified that the free

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<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at art. 104(a).

<sup>100</sup> *Supra* note 94.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *74 Improvement of Maternal and Child Health in Kazakhstan*, *Entre Nous: The European Magazine for Sexual and Reproductive Health*, WHO Regional Office for Europe, 17 (2011), [http://www.euro.who.int/\\_data/assets/pdf\\_file/0008/146978/313914\\_Entre\\_Nous\\_74\\_low.pdf](http://www.euro.who.int/_data/assets/pdf_file/0008/146978/313914_Entre_Nous_74_low.pdf).

<sup>104</sup> Michelle Witte, *Women's Health Coverage in Kazakhstan Becoming More Comprehensive*, *ASTANA TIMES* (Mar. 30, 2015),

<https://astanatimes.com/2015/03/womens-health-coverage-in-kazakhstan-becoming-more-comprehensive/>.

<sup>105</sup> *Id.*

public clinics generally do not provide the most thorough service, and women are forced to wait in long lines and “wait for hours.”<sup>106</sup> Additionally, while these services are available to women, most women are unaware of their availability, particularly in rural areas.<sup>107</sup> There are few health care facilities in rural areas, and they usually only have an internist, pediatrician, nurse, and sometimes a midwife. There are few specialists, and particularly women’s health specialists; therefore, legal abortions cannot be performed in rural areas, since by law, abortions can only be performed by licensed gynecologists.<sup>108</sup> Under Kazakhstan Ministry of Health Decree No. 626, abortions must be provided by obstetric and gynecological doctors.<sup>109</sup> The government has offered social benefit packages and incentives to specialists who will perform in rural areas, but there is still a lack of such specialists.<sup>110</sup>

52) Although the government provides for free abortion services under certain circumstances, the lack of such services in rural areas limits the rights of citizens under the Covenant. The lack of abortion services in rural areas, along with the lack of awareness that a large population of women in the state have as to these services, pushes women towards seeking and having illegal abortions, which are often dangerous and can lead to death. Furthermore, rural areas in South Kazakhstan tend to be more conservatively traditional and religious, and there are “reported cases where husbands or mothers-in-law, have restricted married women’s access to family planning counselling or other services related to her reproductive health. Such situations violate the individual’s right to obtain the highest attainable standard of health.”<sup>111</sup> Additionally, not allowing minors to receive abortions without the consent of their parent/guardian is a violation of these minors’ rights. If a parent/guardian forbids a minor from receiving an abortion, it can put her at risk. Particularly for adolescent girls, it can be dangerous to carry a pregnancy to full term. In fact, the risk of death from

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<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Supra* note 103.

<sup>109</sup> Kazakhstan Ministry of Health Decree No. 626

<sup>110</sup> *Id.*

<sup>111</sup> *Supra* note 94.



abortion through the middle of the second trimester is lower than the risk of death in childbirth.<sup>112</sup> Whatever the reason, the woman should be in charge of her decision without the interference of the government or her family.

### Contraception

53) Kazakhstan fares worse on the issue of access to contraception. It could make further progress towards ensuring greater reproductive autonomy of women.

54) Citizens are given the right to use and free choice of contraceptives under Article 96 of the Code on the Right of People's Health and the Health Care System.<sup>113</sup> Ministry of Health Degree No. 881 further "outlines activities and responsibilities of regional administrative unit health departments to ensure the provision of reproductive health services, including contraceptives at all regions."<sup>114</sup> Under the state benefit plan, outpatient pharmaceuticals are made available to all women of reproductive age.<sup>115</sup>

55) However, contraceptives are not included among the outpatient pharmaceuticals that are accessible to the population free of charge or at a reduced cost.<sup>116</sup> Additionally, mechanisms for the provision of contraceptives are not regulated and monitored by the Ministry of Health. Prices of contraceptives are unregulated on the open market, which causes them to be driven up by pharmaceutical companies, making them inaccessible to large portions of the population.<sup>117</sup>

56) Even more alarmingly, some contraceptives are completely unavailable on the market, since they are not registered within the state. These include transderm patches, female condoms, and

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<sup>112</sup> Rachel N. Pine, *Achieving Public Health Objectives through Family Planning Services*, 1 *Reproductive Health Matters* 2 (November 1993) at 79, available at [http://www.rhm-elsevier.com/article/0968-8080\(93\)90010-Q/abstract](http://www.rhm-elsevier.com/article/0968-8080(93)90010-Q/abstract) (last visited Jan. 26, 2017).

<sup>113</sup> *Supra* note 32, at art. 96.

<sup>114</sup> *Supra* note 94.

<sup>115</sup> Alexandr Katsaga et al., *Kazakhstan: Health System Review*, 14 *HEALTH SYSTEMS IN TRANSITION*, 41 (2012), [http://www.euro.who.int/\\_data/assets/pdf\\_file/0007/161557/e96451.pdf](http://www.euro.who.int/_data/assets/pdf_file/0007/161557/e96451.pdf).

<sup>116</sup> Ilze Viberga, *Improvement of Family Planning in Kazakhstan Through Application of UNFPA/WHO Approaches*, UNFPA, 7 (Oct. 2011),

[http://kazakhstan.unfpa.org/sites/default/files/pub-pdf/Viberga\\_REPORTFINAL\\_AMproofread.pdf](http://kazakhstan.unfpa.org/sites/default/files/pub-pdf/Viberga_REPORTFINAL_AMproofread.pdf).

<sup>117</sup> *Id.*

intra-uterine devices. Although the Code on the Right of People's Health and the Health Care System gives citizens the right of free choice of contraceptives, the state does not make all methods of contraceptives available, thereby nullifying this right. The Code also says nothing about government commitments to meet contraceptives needs of the population.<sup>118</sup>

57) The availability of contraceptives depends on business choices of private pharmaceutical companies. “[I]f they decide that selling contraceptives do not give them anticipated profits,” the population will not be able purchase contraceptives.<sup>119</sup> For example, “from time to time tablets of 750 mg Levonogesterel (Postinor) are unavailable to the population,” despite the fact Postinor is the only state registered medication for emergency contraception.<sup>120</sup>

58) Contraceptives are not available to the population free of charge or at a reduced cost under the state health plan. However, some women with contraindications to pregnancy can become eligible to receive contraceptives free of charge. This is not a legally guaranteed right. While local authorities have “pledged” to provide contraceptives to women with this condition, they are not bound by state law to do so.<sup>121</sup> “The eligibility criteria to receive contraceptives for free are based on the approved list of extra-genital diseases, abnormalities and conditions making the pregnancy risky. Currently the average coverage of such women with contraceptives is about 50 percent varying in different regions of the country from 0 to 75 percent.”<sup>122</sup> The provision of contraceptives to such women are funded by local budgets, and the central government has only allocated a minimal portion of the budget to this provision.<sup>123</sup>

59) Kazakhstan could do much better to ensure accessibility to contraception. According to the UN Population Division, in Kazakhstan an estimated 53 percent of women used a modern method of

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<sup>118</sup> *Id.* at 6.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 7.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

contraception during the year.<sup>124</sup> However, a large portion of the most population most vulnerable to reproductive health issues are unable to access contraceptives since they are unable to afford them. Such women include “women with disabilities, women with HIV, sex workers, migrants and other marginalized groups are not eligible to receive contraceptives for free.”<sup>125</sup> Free condoms to individuals with HIV are limited to funds allocated by AIDS centers rather than the state.<sup>126</sup> The state has issued several decrees addressing initiatives for women’s reproductive health, but takes a narrow approach to the subject, focusing only on maternal mortality.<sup>127</sup> “Modern contraceptives are regularly used by 55% of the richest women and by only 45% of the poorest women; while intrauterine contraceptives are used by 90% of the poorest and 55% of the richest women. Contraceptives in Kazakhstan are among the most expensive in ex-Soviet countries.”<sup>128</sup> Women have reported that a package of pills ranges from \$5.92 - \$13.47.<sup>129</sup> Free access to contraception is a fundamental aspect of women’s autonomy. The fact that contraception is not covered by state health insurance puts women who cannot afford paying for their own contraception at risk of unwanted pregnancy.

#### Analysis: Abortion and Contraception under the Covenant

60) The right to benefit from scientific progress includes the right to benefit from scientific procedures and methods that help improve health and safety, including controlled, medical abortion procedures. Access to legal and safe abortion procedures falls within the rights Kazakhstan has undertaken under the Covenant of Economic, Social, and Cultural Rights. Article 10 of the Covenant provides: "The widest possible protection and assistance should be accorded to the family ... particularly for its establishment". The Covenant demands that States respect the decision to become or not become a parent — including under what conditions conception should occur. As

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<sup>124</sup> Kazakhstan 2016 Human Rights Report, United States Department of State, Bureau of Democracy, Human Rights and Labor (2016), <https://www.state.gov/documents/organization/265750.pdf>.

<sup>125</sup> Viberga, *supra* note 116, at 7.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> Viberga, *supra* note 116, at 7.

<sup>129</sup> Witte, *supra* note 104.

this honorable Committee remarked in General Comment 14, on Article 12 of the Covenant, “reproductive health means that women and men have the freedom to decide if and when to reproduce.”<sup>130</sup> The right to health entails “the right to control one’s health and body, including sexual and reproductive freedom.”<sup>131</sup> Specifically, “women and men have the freedom to decide if and when to reproduce,” and have a right of access to “appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth.”<sup>132</sup>

61) The “right to reproductive autonomy” is well-established in international human rights law. According to the Programme of Action of the International Conference on Population and Development, held in Cairo in 1994, “[r]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents, and other relevant UN consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children . . . .”<sup>133</sup>

62) Likewise, Article 16.1.e of the Convention on the Elimination of Discrimination against Women guarantees men and women equal rights to “decide freely and responsibly on the number and spacing of their children...”<sup>134</sup> In its General Recommendation No. 24 (Women and Health), the CEDAW Committee stressed the importance of the right to reproductive autonomy, stating that

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<sup>130</sup> U.N. Committee on Economic, Social, and Cultural Rights, General Comment No. 14, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: The Right to the Highest Attainable Standard of Health*, ¶ 14, n. 12, U.N. Doc. E/C. 12/2000/4 (Aug. 11, 2000).

<sup>131</sup> *Id.* at ¶ 8.

<sup>132</sup> *Id.* at ¶ 14, n. 12.

<sup>133</sup> Programme of Action of the International Conference on Population and Development, Cairo, 1994, ¶ 7.3, U.N. A/CONF.171/13/Rev.1 (1995), [http://www.unfpa.org/sites/default/files/pub-pdf/programme\\_of\\_action\\_Web%20ENGLISH.pdf](http://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf) (last visited 27 February 2017).

<sup>134</sup> “States Parties shall . . . ensure, on a basis of equality of men and women . . . (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.” U.N. General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women art. 16.1.e, Dec. 18 1979, U.N.T.S. 1249, <http://www.refworld.org/docid/3ae6b3970.html>. (last visited 15 March 2017).

this right is violated when the means by which a woman can exercise the right to control her fertility are restricted.<sup>135</sup>

63) In *Costa and Pavan v. Italy*, as well as in *Evans v. UK*,<sup>136</sup> *Dickson v. UK*,<sup>137</sup> and *S.H. and Others v. Austria*,<sup>138</sup> the European Court of Human Rights found that the decision to become or not become a parent is an “expression of private and family life,” and is therefore protected under Article 8 of the European Convention of Human Rights, which is similar to Article 10 of the Covenant.<sup>139</sup>

64) Finally, in *Artavia Murillo*, the Inter-American Court of Human Rights held that the right “to decide freely and responsibly on the number and spacing of their children .... is violated when the

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<sup>135</sup> U.N. Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, ¶¶ 21 and 31(b), A/54/38/Rev. 1 (1999),

<http://www.refworld.org/docid/453882a73.html>. (last visited 15 March 2017).

<sup>136</sup> See ECHR *Case of Evans v. United Kingdom*, (No. 6339/05), Judgement of 4 October 2007, ¶ 7172, where the ECHR indicated that “private life [...] incorporates the right to respect for both the decisions to become and not to become a parent” and, regarding the regulation of the practice of IVF, clarified that “the right to respect for the decision to become a parent in the genetic sense, also falls within the scope of Article 8.”

<http://hudoc.echr.coe.int/webservices/content/pdf/001-72684?TID=ihgdqbxnfi>. (last visited 14 March 2017).

<sup>137</sup> See ECHR *Case of Dickson v. United Kingdom* (No. 44362/04), Judgement of 12 December 2007, ¶ 66 (the Court indicated, with regard to the technique of assisted reproduction that “Article 8 is applicable to the applicants' complaints in that the refusal of artificial insemination facilities concerned their private and family lives which notions incorporate the right to respect for their decision to become genetic parents.”),

<http://hudoc.echr.coe.int/webservices/content/pdf/003-2204926-2350295?TID=ihgdqbxnfi>. (last visited 14 March 2017).

<sup>138</sup> See ECHR *Case of S.H. and others v. Austria* (No. 57813/00), Judgement of 3 November 2011, ¶ 82 (the Court referred explicitly to the right of access to assisted reproduction techniques, such as IVF, indicating that “the right of a couple to conceive a child and to make use of medically assisted procreation for that purpose is also protected by Article 8, as such a choice is an expression of private and family life.”),

<http://www.ieb-eib.org/en/pdf/cedh-shothers-c-austria-20100401.pdf> (last visited 14 March 2017); see also ECHR, *Case of P. and S. v. Poland* (No. 57375/08), Judgment of 30 October 2012, ¶ 96 (the ECHR indicated that, “[w]hile the Court has held that Article 8 cannot be interpreted as conferring a right to abortion, it has found that the prohibition of abortion when sought for reasons of health and/or well-being falls within the scope of the right to respect for one’s private life and accordingly of Article 8.”),

[http://www.grocjusz.edu.pl/Materials/\\_archiwum/archiwum2012/js\\_16.11.2012.pdf](http://www.grocjusz.edu.pl/Materials/_archiwum/archiwum2012/js_16.11.2012.pdf). (last visited 14 March 2017).

<sup>139</sup> *Costa and Pavan v. Italy* (No. 54270/10), Judgement of 28 August 2012, art. 8, ¶ 56-57 of the European Convention recites: “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.” European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively.

means by which a woman can exercise the right to control her fertility are restricted. Thus, the protection of private life includes respect for the decisions both to become a mother or a father, and a couple's decision to become genetic parents.”<sup>140</sup>

65) Kazakhstan is falling short of its obligations under the Covenant in several ways. By requiring women under 18 to receive the consent of their parent or guardian before receiving an abortion, the state fails to protect a woman's autonomous right to decide if she wants to become a parent, as guaranteed under Article 10. Mandatory counseling for those who decide to proceed with an abortion also restricts a woman's reproductive autonomy by making her feel guilty or ashamed by her decision.

66) Additionally, the Covenant guarantees women the right to reproductive freedom under Article 12. Kazakhstan has violated this right by not ensuring widespread access to medical professionals who can perform abortions, and banning the practice of certain types of abortion procedures, such as Manual Vacuum Aspiration. A woman's right to reproductive freedom and choice is violated when she cannot obtain a safe abortion due to the state's inability to provide access to abortions in all areas, particularly rural areas, or does not know about the availability of abortion clinics or centers. Similarly, by allowing contraceptive prices to be subject to the whim of pharmaceutical companies, the state fails to ensure access to contraceptives for certain portions of the population, particularly those who are unable to afford expensive birth control or at-risk individuals.

## RECOMMENDATIONS

67) We recommend this honorable committee to include at least one of the following questions in the List of Issue it will prepare for Kazakhstan.

- i. Please, explain the rationale for prohibiting research on stem cells derived from pre-implantation or non-aborted embryos.

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<sup>140</sup> *Artavia Murillo*, *supra* note 90, at ¶146.

- i. Please, explain how denying access to Artificial Reproductive Technology to homosexual couples is compatible with the duty to ensure everyone's right to health, without discrimination.
- ii. Please, report on what steps has Kazakhstan taken, or intends to take, to ensure respect of the "right to reproductive autonomy".
- iii. Please, report on what steps has Kazakhstan taken, or intends to take, to make abortion more accessible in rural areas.
- iv. Please, explain how denying autonomy to minors in their decision to obtain an abortion can be reconciled with the state's obligations under the Covenant.
- v. Please, report on what steps has Kazakhstan taken, or intends to take, to increase awareness about government funded reproductive services in both rural and urban areas.
- vi. Please, report on what steps has Kazakhstan taken, or intends to take, to make contraception more available and affordable.
- vii. Please, report on what steps has Kazakhstan taken, or intends to take, to make all modern contraceptive products available.