

# Legal Protection of Children in Kazakhstan: Problems and Challenges

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## Abstract

Since gaining independence in 1991, Kazakhstan has seen its child protection laws evolve through three phases: inception, establishment, and early development. This evolution has led to significant improvements in various aspects of child protection, including the enhancement of legislative goals, principles, and both conceptual and substantive elements of child welfare. The progression has introduced improved measures in criminal, civil, and administrative justice related to child protection, along with advanced systems for monitoring and implementing these laws. At the core of these advancements are the principles of the United Nations Convention on the Rights of the Child, emphasizing the prioritization of the child's best interests, ensuring non-discrimination, respecting the child's views, and protecting essential rights for the child's survival and development. These principles have become integral to Kazakhstan's relevant legal documents. However, despite these advancements,

Kazakhstan continues to encounter challenges in the realm of legal protection for children.

**KEYWORDS** *Children's Rights, Legal Protection of Children, Legislation on Child Protection, UN Convention on the Rights of the Child, Law Enforcement*

## Introduction

As of 2024, Kazakhstan's population of children aged 0-17 reached 6,717,954, marking a 1.5% increase from the previous year and reflecting a steady rise of 25% over the past decade. Protecting children's rights and interests is a cornerstone of Kazakhstan's social and legal policy. The country has made significant strides in this area by ratifying key international treaties on child protection and continually refining its laws and regulations to enhance child welfare and uphold children's rights.<sup>1</sup> Child protection is a fundamental component of national policy, emphasizing a balance between rights and responsibilities.<sup>2</sup> The framework holds individuals and officials accountable for any violations of minors' rights or harm to their well-being. Kazakhstan's legal system is regularly updated to align with global standards and the evolving realities of child protection, drawing from the Constitution, the UN Convention on the Rights of the Child, and national laws aimed at promoting child welfare.<sup>3</sup>

The adoption of the "*Law on the Rights of the Child in the Republic of Kazakhstan*" on August 8, 2002, marked a significant advancement. This law delineates the state's goals concerning children's welfare, sets forth basic rights,

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<sup>1</sup> See Малгаждарова, Меруерт, and Лейла Ахметжанова. "The European system for the protection of children's rights: experience for Kazakhstan." *ЛН Гумилев атындағы Еуразия ұлттық университетінің хабаршысы. Саяси ғылымдар. Аймақтану. Шығыстану. Түркітану сериясы* 143, no. 2 (2023): 59-69.

<sup>2</sup> For broader perspective, also see Waluya, Steny Roby. "Child Prisoners and Their Attitudes: The Capture of Child Behavior Changes in Correctional Institutions." *Unnes Law Journal* 7, no. 2 (2021): 225-236.

<sup>3</sup> Kapsalyamov, Kairat, et al. "International legal regulation of the children's rights." *Journal of Advanced Research in Law and Economics* 10, no. 7 (2019): 2002-2007; Zainurohmah, Zainurohmah, et al. "Provisions of Legal Aid as a Form of Protection for Child Victims of Rape." *The Digest: Journal of Jurisprudence and Legisprudence* 4, no. 1 (2023): 21-46; Annisa, Sigma Febby. "A Legal Protection of Children as Victims of Sexual Human Right Accidents." *Jurnal Scientia Indonesia* 5, no. 2 (2019): 134-149.

and details the child's relationship with the family and society, including specific provisions for disabled children and those lacking parental care.

Kazakhstan has incorporated more than 60 international human rights treaties into its national legislation, 16 of which are specifically focused on the protection of children's rights. The concept of child rights as a distinct legal and moral category in Kazakhstan developed in the 1990s, moving from viewing children as under parental authority or as objects of state policy to acknowledging them as individuals with rights, in line with the international standards set by the UN Convention on the Rights of the Child. Recognizing children's rights as human rights is crucial, yet it's also important to address the specific needs and protections that minors require.

Article 12 of the Kazakhstan Constitution suggests that a child's legal status is rooted in the broader concepts of human and citizenship rights, tailored to age-specific needs. This status includes a comprehensive array of rights and responsibilities officially recognized by the state. Although children are granted the general (constitutional) legal status akin to adults, their distinct situation calls for a nuanced interpretation of their constitutional rights, especially given the Constitution sparse direct mentions of child rights. Therefore, it is more precise to refer to the constitutional basis for children's rights within the nation.

Furthermore, while Kazakhstani law frequently invokes the term *rights protection*, it lacks a formal definition.<sup>4</sup> The protection of children's rights is envisioned as a comprehensive system designed to facilitate the full and free exercise of those rights. This system encompasses various elements, including judicial support and a range of legislative, economic, organizational, and technical measures, alongside mechanisms for individual civil rights defense. In this context, the legal framework should clearly delineate the responsibilities of various stakeholders to ensure accountability and effectiveness in safeguarding children's rights.

In an ideal legal framework, child welfare should be approached through five critical dimensions: legislation, program development, management, implementation, and education.<sup>5</sup> Legislation involves enacting robust laws that

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<sup>4</sup> See also Khamzina, Zhanna, et al. "Is it possible to achieve gender equality in Kazakhstan: Focus on employment and social protection." *International Journal of Discrimination and the Law* 20, no. 1 (2020): 5-20.

<sup>5</sup> See Dettlaff, Alan J., and Reiko Boyd. "Racial disproportionality and disparities in the child welfare system: Why do they exist, and what can be done to address them?." *The ANNALS of the American Academy of Political and Social Science* 692, no. 1 (2020): 253-274; Dolan, Patrick, Nevenka Žegarac, and Jelena Arsić. "Family Support as a right of the child." *Social Work and Social Sciences Review* 21, no. 2 (2020): 8-26; Briggs, Freda. *Child Protection: A Guide for Teachers and Child Care Professionals*. (London: Routledge, 2020).

explicitly outline children's rights, while program development focuses on creating targeted initiatives to meet their specific needs. Effective management structures are essential for coordinating efforts across sectors, ensuring consistent application of policies. Implementation emphasizes the practical application of laws and programs, requiring adequate resources and training for professionals involved in child welfare. Finally, education plays a crucial role in raising awareness among children and adults about rights and responsibilities, fostering a culture that respects and advocates for children's rights. Each of these facets demands distinct legal mechanisms to ensure their success, contributing to a holistic approach to child welfare in Kazakhstan.

The growing urgency of child-related issues not only persists but also poses risks to the country's future. Scholarly literature<sup>6</sup> and official documentation<sup>7</sup> underscore the need for child-focused policies to be integrated within the broader directives of state social policy to improve the welfare of children.

The mid-1990s marked the beginning of the development of a comprehensive legal theory on children's rights in Kazakhstan, in response to changes in the political landscape and a new academic viewpoint treating children as unique legal subjects. This advancement was spurred by the country's ratification of the UN Convention on the Rights of the Child, leading to a series of publications that examined various aspects of children's existence, including their societal and familial roles, legal status, and the frameworks for

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<sup>6</sup> Bidaishiyeva, Ademi, Kalamkas K. Nadirova, Saltanat Kuldinova, Nurlan Apakhayev, Zhanna A. Khamzina, and Yermek A. Buribayev. "Improving Quality of Legal Regulation for Social Rights of Family and Child within New Social Course in the Republic of Kazakhstan." *Journal of Legal, Ethical and Regulatory Issues* 21, no. 1 (2018): 1-7; Ibraev, Zhandos G., Nurshat A. Yerkebaeva, Balzhan A. Mirzakulova, Lazzat T. Nazarkulova, Yermek A. Buribayev, and Zhanna A. Khamzina. "Social Rights, Family and Child Guarantees in the Context of the Implementation of a New Social Course in the Republic of Kazakhstan." *Journal of Legal, Ethical & Regulatory Issues* 20, no. 1 (2017): 1-8.

<sup>7</sup> Kazakhstan. "Resolution of the Government of the Republic of Kazakhstan Dated March 20, 2022, No. 148 'On the Approval of the Plan of Actions for the Year of Children.'" 2022, accessed from <https://adilet.zan.kz/rus/docs/P2200000148>; Kazakhstan. "Resolution of the Government of the Republic of Kazakhstan Dated August 31, 2023, No. 748 'On the Approval of the Comprehensive Plan for the Protection of Children from Violence, Prevention of Suicide, and Ensuring Their Rights and Well-being for 2023–2025.'" 2023, accessed from <https://adilet.zan.kz/rus/docs/P2300000748>.

protecting, defending, and promoting their rights, as well as the establishment of juvenile justice systems.<sup>8</sup>

This collection of works has greatly contributed to the theoretical landscape of children's rights. Through research and scholarly articles based on comprehensive legal theories,<sup>9</sup> a wide range of topics related to children's rights and the necessary protective measures to support these rights have been thoroughly explored.

However, the conditions in the country have changed, which in turn led to changes in the legislation in this area, undoubtedly requiring its understanding and comprehensive analysis. Numerous publications in contemporary mass media and scientific literature about the dire situation of children and violations of their rights indicate a national problem of a protracted nature. Therefore, a current task is to summarize theoretical positions and, based on them, develop recommendations for the practical implementation of adopted laws and measures planned by the state.

The theoretical foundation of this study is built upon the research of both domestic and international scholars who have extensively investigated the complex issue of children's rights. The wide-ranging nature of this topic has led to the incorporation of perspectives from various academic disciplines, including law, history, politics, sociology, and education, among others. The

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<sup>8</sup> Lorraine, M., and Fox Harding. "Recent Developments in 'Children's Rights': Liberation for Whom?" *Child & Family Social Work* 1, no. 3 (1996): 141-150; Van Bueren, Geraldine. "Combating Child Poverty--Human Rights Approaches." *Human Rights Quarterly* 21, no. 3 (1999): 680-706; Mitchell, Richard C. "The United Nations Convention on the Rights of the Child and Canadian implementation efforts for indigenous children and youth." *Child & Family Social Work* 1, no. 4 (1996): 243-254.; Casas, Ferran. "Children's Rights and Children's Quality of Life: Conceptual and Practical Issues." *Social Indicators Research* 42 (1997): 283-298; Roche, Jeremy. "Children's Rights: In the Name of the Child." *The Journal of Social Welfare & Family Law* 17, no. 3 (1995): 281-299; Freeman, Michael. "The right to be heard." *Adoption & Fostering* 22, no. 4 (1998): 50-59.

<sup>9</sup> Nadybska, Oksana, Hanna Fedotova, Serhii Shcherbyna, Yulia Chornous, and Iryna Basysta. "Children's Rights Ombudsman: Experience of Ukraine and Foreign Countries." *Journal of Legal, Ethical & Regulatory Issues* 23 (2020): 1-6; Chernaya, Anna V. "Children's rights concept in modern social and humanitarian discourse." *Journal of Social Studies Education Research* 9, no. 4 (2018): 140-167; Kilkelly, Ursula. "Operationalising children's rights: lessons from research." *Journal of Children's Services* 1, no. 4 (2006): 35-46; Quennerstedt, Ann. "Children's rights research moving into the future--Challenges on the way forward." *The International Journal of Children's Rights* 21, no. 2 (2013): 233-247; Erdem Türkelli, Gamze, Wouter Vandenhoe, and Jan Wouters. "Introducing New Frontiers in Children's Rights: From Protection to Empowerment." *Nordic Journal of Human Rights* 39, no. 2 (2021): 103-112; Hale, Brenda. "Understanding children's rights: theory and practice." *Family Court Review* 44.3 (2006): 350-360.

work of Kazakhstani researchers, such as Madiyarova et al.,<sup>10</sup> Omarova et al.,<sup>11</sup> and others<sup>12</sup>, has been particularly critical in formulating the methodological approach to the study of children's rights in this setting.

Additionally, valuable insights have been derived from the field of legal theory and specialized legal disciplines thanks to the significant contributions

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<sup>10</sup> Madiyarova, Ainur S., Gulzira T. Baisalova, Ainur Baitanova, Zhambyl K. Oryntayev, Gulzhazira B. Meirbekova, Yermek A. Buribayev, and Zhanna A. Khamzina. "Social Security for Family and Child in Kazakhstan: Theory and Practice." *Journal of Legal, Ethical & Regulatory Issues* 20 (2017): 1-8.

<sup>11</sup> Omarova, Ayman Bekmuratovna, Binur Adamovna Taitorina, Adlet Tokhtamysovich Yermekov, Bulat Doszhanov, Yermek Abiltayevich Buribayev, Zhanna Amangeldinovna Khamzina. "Application of International Rules Ensuring Social Rights of Families and Children in Kazakhstan." *Journal of Advanced Research in Law and Economics* 8, no. 1 (2017): 153-163.

<sup>12</sup> Kapsalyamov, Kairat, Saule Kapsalyamov, Dinara Osmanova, Baurzhan Zhuzbaev, Bakhyt Zhusipova. "International legal regulation of the children's rights." *Journal of Advanced Research in Law and Economics* 10, no. 7 (2019): 2002-2007; Duissenkyzy, Elmira, Daulet Baideldinov, Aizhan Zhatkanbayeva, Ualikhan Akhatov, Marat Zhumagulov. "Kazakhstan's Implementation of International Conventions on the Protection of Children's Rights (Juvenile Responsibility)." *Asian Social Work and Policy Review* 17, no. 3 (2023): 176-184; Zhatkanbayeva, Aizhan, Nazgul Tuyakbayeva, Arailum Jangabulova, Aliya Tasbulatova, Serikkhan Adilgazy, "Review on legal issues of socially vulnerable groups of population (old people, children, etc.)." *Ponte* 73, no. 5 (2017): 211-222; Zhumabayeva, Zhanar, Roza M. Zhamiyeva, Gulnara U. Balgimbekova, Leila Arenova, Rizagul Smagulova. "Ensuring the protection of the rights of the child is a priority in the legislation of Kazakhstan." *Journal of Advanced Research in Law and Economics* 9, no. 7 (2018): 2484-2495; An, Sofia, and Meri Kulmala. "Global deinstitutionalisation policy in the post-Soviet space: A comparison of child-welfare reforms in Russia and Kazakhstan." *Global Social Policy* 21, no.1 (2021): 51-74; Abikenova, Gulzhan, Yerkin Kinoyatovich Kubeyev, Altai Bozhkarauly, Marat Abdikeev, Dinara Rustembekova. "On the issue of the concept and status of minors in constitutional law and current problems of the implementation of the rights and freedoms of minors." *Journal of Advanced Research in Law and Economics* 9, no. 3 (2018): 805-818; Apakhayev, Nurlan, Kultay Adilova, Dina Bugybay, Gulyiya Mukaldyeva, Gulzhan N. Mukhamadiyeva, and Bakhytkali M. Koshpenbetov. "Childhood Legal Protection in Kazakhstan." *Journal of Advanced Research in Law and Economics* 8, no. 3 (2017): 714-721; Musabayev, Musabayev, Guldana Abenova, Serik Zhetpisov, Gulnar Alibayeva, and Kultay Adylova. "Protection of Rights of Minors in Administrative Proceedings in the Countries of the European Legal Framework." *Access to Justice in Eastern Europe* 4 (2020): 135-150.

of scholars like Collins & Wright (2022),<sup>13</sup> Payne (2019),<sup>14</sup> Raz & Almog (2023),<sup>15</sup> Bonvin & Stoecklin (2016),<sup>16</sup> Vandekerckhove & O'Brien (2013),<sup>17</sup> Adonteng-Kissi (2022),<sup>18</sup> Helwig & Turiel (2002),<sup>19</sup> Hansen & Ainsworth (2009),<sup>20</sup> Ryskaliyev et al. (2019).<sup>21</sup>

The research on the Child Well-Being Index has been notably influenced by the work of Moore et al. (2012)<sup>22</sup> and Garifulina & Ipatova (2021),<sup>23</sup> among

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<sup>13</sup> Collins, Tara M., and Laura HV Wright. "The challenges for children's rights in international child protection: Opportunities for transformation." *World Development* 159 (2022): 106032.

<sup>14</sup> Payne, Lisa. "Child Rights Impact Assessment as a policy improvement tool." In *Human Rights Monitoring and Implementation*. (London: Routledge, 2020), pp. 91-106. *See also* Ali, Muhammad Imran. "Navigating smog: Legislation addressing children's right to health in India and Pakistan." *Human Rights in the Global South (HRGS)* 2, no. 2 (2023): 139-161.

<sup>15</sup> Raz, Daniella Zlotnik, and Shulamit Almog. "Children's Political Rights and the UN Convention on the Rights of the Child." *The International Journal of Children's Rights* 31, no. 2 (2023): 500-523.

<sup>16</sup> Bonvin, Jean-Michel, and Daniel Stoecklin. "Children's rights as evolving capabilities: towards a contextualized and processual conception of social justice." *Ethical Perspectives* 23, no. 1 (2016): 19-39.

<sup>17</sup> Vandekerckhove, Ankie, and Killian O'Brien. "Child-Friendly Justice: Turning Law into Reality." *ERA Forum* 14, no. 4 (2013): 523-541.

<sup>18</sup> Adonteng-Kissi, Obed. "Potential tension between children's engagement in work and the rights of the child: resolving the conflict using margin of appreciation doctrine." *The International Journal of Human Rights* 26, no. 6 (2022): 978-1003.

<sup>19</sup> Helwig, Charles C., and Elliot Turiel. "Civil liberties, autonomy, and democracy: Children's perspectives." *International Journal of Law and Psychiatry* 25, no. 3 (2002): 253-270.

<sup>20</sup> Hansen, Patricia, and Frank Ainsworth. "Human rights abuse in aspects of child protection practice?." *Australian Journal of Social Issues* 44, no. 2 (2009): 183-193.

<sup>21</sup> Ryskaliyev, Dauletбай U., Aigerim Mirzaliyeva, Galiya Tursynbayeva, Elmira M. Muratova, Yermek A. Buribayev, Zhanna A. Khamzina. "Gender inequality among employees in Kazakhstan." *The Lawyer Quarterly* 9, no. 4 (2019): 319-332.

<sup>22</sup> Moore, Kristin A., David Murphey, and Tawana Bandy. "Positive child well-being: An index based on data for individual children." *Maternal and Child Health Journal* 16 (2012): 119-128.

<sup>23</sup> Garifulina, Elvira Sh, and Anna A. Ipatova. "Child Survey as an Essential Part of Child Well-Being Index Design." *Psychological Science and Education* 26, no. 6 (2021): 139-148.

others<sup>24</sup>. This body of research offers a thorough overview of children's legal status, their rights in various legal systems, and the mechanisms for their protection, leveraging the knowledge of experts such as Rastogi (2015),<sup>25</sup> Morrison & Thronson (2010),<sup>26</sup> and other authorities<sup>27</sup> in international law.<sup>28</sup>

<sup>24</sup> Fernandes, Liliana, Américo Mendes, and Aurora Teixeira. "A Weighted Multidimensional Index of Child Well-Being Which Incorporates Children's Individual Perceptions." *Social Indicators Research* 114 (2013): 803-829; Moore, Kristin, David Murphey, Tawana Bandy, and Elizabeth Lawner. "Indices of Child Well-Being and Developmental Contexts." In *Handbook of Child Well-Being: Theories, Methods and Policies in Global Perspective*, 5 (2014): 2807-2822; Prada, Albino, and Patricio Sanchez-Fernandez. "World child well-being index: a multidimensional perspective." *Child Indicators Research* 14, no. 6 (2021): 2119-2144; Buck, Kyle D., J. Kevin Summers, Lisa M. Smith, and Linda C. Harwell. "Application of the Human Well-Being Index to Sensitive Population Divisions: A Children's Well-Being Index Development." *Child Indicators Research* 11 (2018): 1249-1280.

<sup>25</sup> Rastogi, Prateek. "Legal Status of Rights of Child." *Anil Aggrawal's Internet Journal of Forensic Medicine and Toxicology* 16, no. 2 (2015).

<sup>26</sup> Morrison, Angela D., and David B. Thronson. "Beyond status: Seeing the whole child." *Evaluation and Program Planning* 33, no. 3 (2010): 281-287.

<sup>27</sup> Tomescu, Madalina. "Children's Rights in Today's Society." *Transylvanian Review* 20, no. 1 (2011): 138-146; Bendo, Daniella. "Parallel lines? Childhood discourses emphasized by the children's rights movement and the emerging field of children's rights studies." *Childhood* 27, no. 2 (2020): 173-187; Tisdall, E. Kay M., and Fiona Morrison. "Children's human rights under COVID-19: Learning from children's rights impact assessments." *The International Journal of Human Rights* 27, no. 9-10 (2023): 1475-1491; Ferguson, Lucinda. "Not merely rights for children but children's rights: The theory gap and the assumption of the importance of children's rights." *The International Journal of Children's Rights* 21, no. 2 (2013): 177-208.

<sup>28</sup> Arts, Karin. "Twenty-five years of the United Nations Convention on the Rights of the Child: Achievements and challenges." *Netherlands International Law Review* 61, no. 3 (2014): 267-303; Grugel, Jean. "Children's rights and children's welfare after the Convention on the Rights of the Child." *Progress in Development Studies* 13, no. 1 (2013): 19-30; Lindkvist, Linde. "Rights for the World's Children: Rädga Barnen and the Making of the UN Convention on the Rights of the Child." In *Nordic Histories of Human Rights*. (London: Routledge, 2020), pp. 99-115; Alderson, Priscilla. "UN Convention on the Rights of the Child: Some Common Criticisms and Suggested Responses." *Child Abuse Review* 9.6 (2000): 439-443; Veerman, Philip. "The Ageing of the UN Convention on the Rights of the Child." *The International Journal of Children's Rights* 18, no. 4 (2010): 585-618; Borská, Jana, Jitka Vacková, and Mark A. Small. "United Nations convention on the rights of the child and its implementation in the 21st century." *Kontakt* 18, no. 2 (2016): 96-102; Holzschelter, Anna. "Power of discourse or discourse of the powerful?: The reconstruction of global childhood norms in the drafting of the UN Convention on the Rights of the Child." *Journal of Language and Politics* 10, no. 1 (2011): 1-28; Todres, Jonathan, Mark E. Wojcik, and Cris Revaz, eds. *The United Nations Convention on the Rights of the Child: An analysis of treaty provisions and implications of US ratification*.



However, the evolving historical backdrop calls for a reevaluation of these theoretical approaches to more accurately reflect the contemporary situation in Kazakhstan. The literature consistently points to the special need for protection and focus on minors due to their heightened vulnerability, a theme stressed by authors like Featherstone et al. (2014)<sup>29</sup> and Ruiz-Casares et al. (2020).<sup>30</sup> Despite its critical importance, this aspect has not been sufficiently addressed in ongoing scholarly debates. The emergence of practical difficulties further emphasizes the need for theoretical inquiry to devise effective interventions.

Violations of children's rights have escalated into a national issue in Kazakhstan. Children from socially vulnerable groups are at a heightened risk of poverty, with the proportion of the population living below the subsistence minimum officially increasing to 5.7%. An indicator of the declining health of the population is the rise in the number of children with disabilities, which has increased from 75,000 to 104,000 over the last five years. Incidents of violence against children are becoming increasingly common. There has been a trend in recent years towards an increase in criminal offenses against minors, including crimes against the sexual inviolability of minors. The network of Support Centers for children in difficult life situations is underdeveloped, currently operating in only 10 regions. The mechanism for implementing the medico-social registration legally established in 2019 for individuals registered with internal affairs bodies has not been fully realized.<sup>31</sup>

Families with children continue to be disproportionately vulnerable to poverty and social isolation, with those on the brink of poverty often comprising children. According to the "Listening to Kazakhstan" surveys conducted by the World Bank and UNICEF from December 2020 to August 2022, 19% of

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(Leiden: Martinus Nijhoff Publishers, 2006); Rosemberg, Fúlvia, and Carmem Lúcia Sussel Mariano. "A convenção internacional sobre os direitos da criança: debates e tensões: The international convention on the child's rights: debates and tensions." *Cadernos de Pesquisa* 40 (2010): 693-728; Lundy, Laura, and Lesley McEvoy. "Childhood, the United Nations Convention on the Rights of the Child, and Research: What Constitutes a 'Rights-Based' Approach?." In *Law and Childhood Studies: Current Legal Issues Volume 14*. (Oxford: Oxford University Press, 2012), pp. 75-91.

<sup>29</sup> Featherstone, Brid, Kate Morris, and Susan White. *Re-imagining child protection: Towards humane social work with families*. (Bristol: Policy Press, 2014).

<sup>30</sup> Ruiz-Casares, Mónica, Carl Lacharité, and Florence Martin. "Child neglect indicators: A field in critical need of development globally." *Child Indicators Research* 13, no. 2 (2020): 363-367.

<sup>31</sup> Kusmanova, A., E. Appelganz, A. Satybaeva, A. Beimisheva, D. Shaimova, S. Mukan. *Reports on the situation of children in the Republic of Kazakhstan*. (Kazakhstan: Committee for the Protection of Children's Rights of the Ministry of Education of the Republic of Kazakhstan, 2022).

adults and 22% of children lived in families that self-identify as "poor," with large families being significantly more vulnerable to deprivation. In 2022, 14,752 Kazakhstani children deprived of parental care were living in institutional care facilities. The number of children in such institutions is concerning, particularly for children with disabilities.<sup>32</sup> In addition, childhood violence is an undeniable reality in Kazakhstan. The results of a formative assessment on violence against children revealed that three out of four, or 74.3 percent of parents/adults, resorted to violence for disciplining children at home. A unified vision and plan to effectively combat violence against children is lacking, despite considerable inter-sectoral consultations, coordination, and training. The system remains too fragmented to offer comprehensive multisectoral and interdisciplinary support to children at risk or victims of violence.<sup>33</sup>

The welfare issues of children have sparked significant public concern. Consequently, in recent years, not only scholars but also politicians, public figures, and the media in Kazakhstan have paid increasing attention to issues affecting minors in society. The relevance of these societal issues naturally prompts efforts to identify solutions, understand the causes of negative phenomena, and establish mechanisms for their resolution.

This study is founded on a methodological framework that integrates a wide spectrum of scientific research methods, carefully selected for their relevance to investigating child rights and their protection. The core methodological approach is the universal dialectical method, which employs general logical processes such as analysis, synthesis, induction, deduction, comparison, analogy, and abstraction. This foundational approach is further enhanced by a variety of methods, including systemic, structural-functional, statistical, concrete-sociological, comparative-legal, formal-logical interpretation, and historical-legal methods.

The legal basis of this research is grounded in a diverse collection of international legal documents that are relevant to child rights and their protection. This encompasses both universal and regional instruments, spanning general to specific applications, alongside pertinent Kazakhstani laws and regulatory legislation. The empirical foundation of the study is rooted in

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<sup>32</sup> Report. "Annual Report of the United Nations Children's Fund (UNICEF) in Kazakhstan." 2022, accessed from <https://www.unicef.org/kazakhstan/en/publications-and-reports>.

<sup>33</sup> UNICEF. "Violence Against Children in Families in Kazakhstan: Knowledge, Attitudes and Practices Survey." 2022, accessed from <https://www.unicef.org/kazakhstan/media/10841/file/KAP%20survey.pdf>.

an analysis of socio-legal practices and the amalgamation of experiences from an extensive range of international, national, and non-governmental organizations. Included are the United Nations and its subdivisions, especially the Committee on the Rights of the Child, the Council of Heads of Governments of the CIS and its Commission on Human Rights, the President of the Republic of Kazakhstan, its Parliament, Government, and departments, the Constitutional Court, the Human Rights Ombudsman, and the Children's Rights Ombudsman of the Republic of Kazakhstan, as well as international and Kazakhstani human rights NGOs. Insights into specific aspects of child rights were also derived from reports by the Republic of Kazakhstan's Human Rights Ombudsman and Children's Rights Ombudsman, other state and alternative reports, and media publications providing factual, statistical, and sociological data.

The study adopts an interdisciplinary approach, merging theoretical and empirical insights to deepen our understanding of child rights and protection across various legal, social, and cultural contexts. This approach facilitates a thorough investigation of the complex issues surrounding the protection of children's rights, underscoring the collaboration between different fields and disciplines in addressing these essential matters.

The study analyzed and summarized results from in-depth interviews and focus groups previously conducted by UNICEF, government agencies, and NGOs with a broad range of stakeholders, including politicians, legal experts, child rights advocates, families, and children. This qualitative approach facilitated the collection of rich, detailed insights into issues of child protection. Thematic analysis was applied to the qualitative data to identify recurrent themes and patterns, providing insight into the challenges associated with child rights protection.

The study reviewed and summarized findings from earlier surveys by UNICEF, government agencies, and NGOs of a representative population sample aimed at quantifying public perceptions, attitudes, and awareness of child rights and protection laws. A comprehensive legal analysis was conducted to review the current legal framework for child protection at national and international levels, including a thorough examination of laws, regulations, and judicial decisions pertaining to child rights, as well as analysis of compliance with international conventions and treaties. Comparative legal methods were employed to benchmark Kazakhstan's legal framework against international standards and best practices, identifying areas for reform.

The study also examined case studies highlighting specific issues or exemplary practices in child protection, providing a solid foundation for the study's findings and recommendations. This methodological approach ensured

a thorough, multidimensional analysis of child rights and protection in Kazakhstan, offering a comprehensive perspective on the subject and enabling the development of informed, actionable insights for policy and practice in the realm of child protection.

## Children's Well-being Index in Kazakhstan

Since its launch in 2022, Kazakhstan has implemented the Children's Well-being Index to enhance the quality of political, administrative, and financial decisions and to expand public access to information on child welfare. The goal of the Children's Rights Index is to provide reliable data on children's rights, serving as a valuable resource for government agencies, non-governmental organizations, researchers, and anyone concerned with the welfare of children.<sup>34</sup> The introduction of the Index seeks to improve the efficiency of government organizations addressing child welfare issues. The advantages of using the Index include: 1) the ability to select, compare, and benchmark indicators within Kazakhstan and against international standards for child welfare; 2) engaging societal, political, and government attention on pressing issues affecting children and families; 3) incorporating public feedback, including through sociological research displayed on an interactive map of child welfare; 4) the strategic management and monitoring of budget funds for social and infrastructure projects aimed at supporting low-income families; and 5) the longitudinal monitoring of child development to assess and analyze children's progress and well-being from birth to adulthood.

An examination of the early results from the Index's initial implementation period provides insights into the legal protections for children in Kazakhstan. The Index's primary aim is to annually assess the well-being of children and the effectiveness of state policies in fostering environments conducive to child development across different areas. The Index is compiled from both statistical data and insights gained from sociological research. The data for the Index in 2022 were collected through a study conducted by the Information Computing Center of the Bureau of National Statistics of the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan. In the 2023 survey, 6000 individuals participated, divided equally between children aged 10–17 and their parents. The structure of the Index is organized around four main areas ("Child", "Family and Society", "State Policy", "Well-

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<sup>34</sup> Gran, Brian. "Comparing children's rights: Introducing the children's rights index." *The International Journal of Children's Rights* 18, no. 1 (2010): 1-17.

being of the Country") and includes 56 indicators (35 from statistical data and 21 from survey findings).

## **Conclusions about the level of legal protection for children**

Children's awareness of their rights can be quite high, but they are often unable to realize them. The specifics of family relationships in Kazakhstan, which follow a patriarchal-authoritarian model, certain types of upbringings, and the tabooing of the topic of violence, lead to parents themselves becoming obstacles to the growth of children's legal consciousness and the protection of their interests. As a result, in the family, a child often does not have a voice or a choice, and their rights are ubiquitously violated by parents. The scenario in which a child can report violence by relatives does not effectively function in the realities of Kazakhstani society. Therefore, it is necessary to conduct active educational and informational work not only with educators and children but also with parents.

A noticeable disparity exists between urban and rural areas in Kazakhstan concerning the availability and effectiveness of resources for informing about and protecting children's rights. Urban areas have access to more robust resources and utilize them more efficiently. Therefore, there is a critical need to improve the resources and their usage in rural regions. Efforts should focus on enhancing informational and educational campaigns about child rights protection for rural parents, increasing the skills and support for professionals involved in child rights protection in these areas, providing training programs for parents, developing and upgrading local child support and protection centers in villages, and expanding access to social organizations and resources dedicated to child rights protection in rural areas.

Since 2018, juvenile crime rates in the Republic of Kazakhstan have significantly declined, with a decrease to 1.7 thousand incidents in 2023. However, the incidence of offenses committed by or involving minors per 100,000 children aged 14-17 increased in 2023.

In the last five years, crimes against minors have fallen by 6%, with a marginal decrease in the crime rate against children per 100,000 children in 2023. This rate, however, shows significant regional differences. Notably, incidents against the sexual inviolability of minors per 100,000 children dropped threefold in 2023 compared to 2021, despite significant regional disparities. Concerningly, in 2023, at least 15% of Kazakhstani children were subjected to bullying or harassment, including through social media.

The issue of domestic violence and violence against children in Kazakhstan is worsening each year. Public intolerance of such incidents has significantly increased. There is a pressing need for the introduction of a new domestic violence law, the criminalization of domestic violence, and the improvement of the process for assisting victims. Against this backdrop, government bodies and institutions should proactively work with public organizations and activists. These groups have achieved substantial progress in protecting the rights of women and children, accumulating extensive and valuable experience and knowledge in these areas.

## **Results of the Sociological Study on the Level of Legal Protection of Children**

One of the notable challenges facing contemporary society is the growing trend of passivity among students and young individuals, their difficulties with integrating into modern society, and a broadly low level of legal consciousness. The legal awareness among students is pivotal not only in reflecting their potential for development but also in safeguarding the legal protection of children within society. To assess the level of legal consciousness among children, the authors of this study conducted a sociological survey. This survey aimed to evaluate the legal literacy of children throughout Kazakhstan, addressing various aspects of their lives. Spanning 16 regions, the survey included 991 children aged 10 to 18 years and 356 parents. To collect qualitative data, two focus groups with children aged 15–16 years and five in-depth interviews with specialists from education departments and heads of educational institutions were also conducted.

From 2021 to 2023, the study demonstrated a 23% increase in legal protection levels across different age groups of students, improving from 63% to 86%. The "Level of Legal Protection of Children" study focused on three primary indicators: the awareness of children about their rights, their satisfaction with the application of these rights in practice, and their understanding of their responsibilities. In 2023, 5,612 children participated in the survey, revealing an overall legal protection level of 86.2%. This included an 81.4% satisfaction rate with rights observation, a 94.4% rate of rights awareness, and a 79.5% rate of awareness of responsibilities. Notably, high levels of legal protection for children were recorded in the Karaganda and North Kazakhstan regions, and Astana, with scores of 91.1%, 91.2%, and 90.4%, respectively, marking a significant improvement from the 76.3% perception of legal protection in 2022. The increase in legal literacy over these years suggests an evolving legal consciousness and a culture of behavior within society among

the surveyed children. A significant portion of them are now prepared to act legally, utilize their rights, meet their obligations, respect prohibitions, and advocate for their rights when violated.

When considering children's satisfaction with the monitoring of certain rights separately, children are interested in state protection and support of their rights, the opportunity to fully express their opinions, have their own opinions, protection from violence and cruelty, leisure and free time, a good home, and equality. Child respondents indicated that human rights are not fully observed in the following areas: access to medical care, healthy development, living conditions, and parental care. The proportion of parents who believe that all children's rights are fully ensured is slightly lower than that of children (65.7%). 24% of parents indicated that not all children's rights are observed, and 10% found it difficult to answer this question. A detailed analysis of the responses shows that parents' opinions about the completeness of supervision over individual rights coincide with those of children. Thus, parents point to the incomplete realization of the following children's rights: limited support from the state (16.9%), leisure and free time (15.5%), a good home (13.8%), protection from cruel treatment (13%), medical services (14.3%), and healthy development (12.3%).

## **Child rights protection mechanism in Kazakhstan**

Both the state and society are tasked with creating an environment where every child can discover, obtain, and exercise their rights. This involves a coordinated application of social and legal strategies to enable the realization of children's rights, which our study identifies as the mechanism for their protection. In essence, we are analyzing a holistic system for the social and legal safeguarding of children's rights. Yet, in Kazakhstan, this mechanism faces significant challenges for several reasons.

Firstly, although a wide range of normative acts within various legal domains (including constitutional, civil, family, and administrative law) addresses children's rights and offers extensive advisory content on applying minors' rights across different social sectors, the connections between different branches of law and disciplines are poorly represented. This lack of integration impedes the progress of legal regulation, the resolution of conflicts, and the effective implementation of policies aimed at benefiting children.

Secondly, the problem does not lie in the absence of state entities designated to protect children's rights but in the inadequate collaboration among them. Agencies responsible for social protection, education, guardianship, youth affairs, healthcare, employment services, and law

enforcement must work together more effectively. The enforcement of legal compliance within the system designed to prevent neglect and juvenile delinquency falls under the oversight of prosecutorial authorities, with specialized courts adjudicating cases involving minors.

Thirdly, the absence of a unified system solely dedicated to this critical social issue undermines the effectiveness of the legal and social protection framework for children. Most agencies carry out protective functions in addition to their other roles, a common feature across all governmental levels and local administrations.

For years, the UN Committee on the Rights of the Child has recommended that Kazakhstan develop independent state and public oversight mechanisms for children's rights and bolster support for non-governmental human rights organizations and international initiatives. Responding to this, Kazakhstan introduced Child Representatives (children's ombudsmen) in 2020 to enhance children's rights and their involvement in social and state activities. These representatives work under a variety of national and international legal frameworks, aiming to resolve issues related to peer rights, encourage child social initiatives, participate in formulating state child policies, contribute to drafting laws on childhood concerns, and foster a culture of legality, civic maturity, and social accountability among children.

In Kazakhstan, the defense of children's rights is undertaken by both government and non-governmental human rights organizations, in addition to international instruments. Non-governmental organizations serve to augment the state's protective efforts, oversee governmental activities, and contribute to addressing these challenges comprehensively. Despite the valuable role of non-governmental organizations in championing children's rights, enhancing cooperation between these groups and state bodies remains a significant challenge, underscoring the need for more robust legal mechanisms for collaboration.

Legal protection is fundamentally about securing rights and interests through legal avenues, with its effectiveness dependent on the actions of child rights defenders and the strategies they employ. The Ministry of Education's Committee for the Protection of Children's Rights and the Children's Rights Ombudsman, supported by regional ombudsmen, could play pivotal roles in this area.

The Children's Rights Ombudsman in Kazakhstan, established in 2016, underscores the nation's dedication to fulfilling the UN Convention on the Rights of the Child and supporting global efforts to foster a child-friendly environment. The Ombudsman is tasked with protecting children's rights, addressing grievances, and combating child trafficking, among other duties.



Although the Ombudsman possesses a range of legal powers, proposals exist to strengthen the legal framework by delineating specific responsibilities and enhancing international cooperation in child protection endeavors.

## International legal protection of children's rights

The international protection of children's rights features distinct characteristics, underscoring the unique legal position of the child within the expansive realm of human rights. This uniqueness relates to the child serving as both the subject and the beneficiary of these rights. Globally and in national legislations, children are acknowledged as a distinct demographic group, warranting a specialized legal categorization due to their particular legal status. The prevalent legal view recognizes a child's dependency in legal matters, offering a detailed understanding of their limited capacity to fully exercise rights. The international community agrees that although children, as humans, should have access to all fundamental human rights, their ability to independently make and comprehend certain decisions is constrained. This contrast questions the practice of equating the legal statuses of "child" and "human" because of the variance in rights and duties. The Convention on the Rights of the Child emphasizes this by granting children certain basic human rights (articles 12–16) instead of an all-encompassing set, justifying this method by pointing out the children's vulnerability and necessity for "*special safeguards and care, including appropriate legal protection*" (paragraph 9 of the Preamble), thus confirming their right to "special care and assistance" (paragraph 4 of the Preamble).

Some academic discussions<sup>35</sup> suggest reducing the disparities between the legal interpretations of "*human*" and "*child*" in terms of their rights. However, we contend that completely blending these categories is neither possible nor advisable, as doing so would ignore the essential legal differences that validate the recognition of children as a special segment of the populace. The global agreement and legal standards strive to guarantee that children not only enjoy all fundamental human rights but also benefit from additional protections and rights designed for their specific requirements, demonstrating international law's dedication to preserving the distinct status and rights of children.

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<sup>35</sup> Pecora, Peter J., James K. Whittaker, Richard P. Barth, Sharon Borja, William Vesneski. *The Child Welfare Challenge: Policy, Practice, and Research*. (London: Routledge, 2018); O'Neill, Onora. "Children's rights and children's lives." *Ethics* 98, no. 3 (1988): 445-463; Cantwell, Nigel. "Are children's rights still human?." *The Human Rights of Children*. (London: Routledge, 2016), pp. 37-59.

Several countries, as noted by O'Neill & Zinga (2008)<sup>36</sup> and Pupavac (2001),<sup>37</sup> challenge the need for a specific entity focused on the international protection of children's rights. They argue that since children possess the same rights as adults and many national constitutions and laws underscore everyone's equal rights, there appears to be little justification for specifically highlighting children's rights as distinct from adults' rights or the broader concept of human rights. Nonetheless, this viewpoint is flawed for various reasons. Firstly, in many societies, children are not seen as fully independent citizens due to their restricted legal capacity. Each country's legal framework establishes age limits for certain legal rights and responsibilities, clearly differentiating the legal abilities of children from those of adults. This distinction underscores the necessity for separate regulation of children's rights.

Secondly, not every right outlined in international legal documents is applicable to children, as some rights assume adulthood for their exercise. These rights include, but are not limited to, being treated equally under the law (with certain age groups being exempt from criminal responsibility), freedom of movement and residence, the unrestricted right to marry and start a family, the right to participate in elections and governance, and the right to voluntarily join the military. Moreover, the realization of certain rights by children, such as registration at birth, naming, or property ownership, often requires action by their legal guardians.

Therefore, it's evident that children's rights demand specific regulation. Considering that individuals under 18 make up about half of the world's population and are frequently unable to independently exercise or safeguard their rights, the pivotal role of parents or guardians is emphasized. Additionally, specific child groups, including those in armed conflicts, refugee children, children of migrant workers, stateless children, and children with disabilities, require enhanced protection designed for their particular circumstances and rights.

As a result, modern international law maintains a clear distinction between the concepts of "protection of human rights" and "protection of child rights." These categories must not be merged, as children consistently require tailored protection. Although children are undoubtedly entitled to all fundamental human rights, the application and interpretation of these rights must recognize children's special legal status. This uniqueness highlights the

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<sup>36</sup> O'Neill, Tom, and Dawn Zinga. *Children's Rights: Multidisciplinary Approaches to Participation and Protection*. (Toronto: University of Toronto Press, 2008).

<sup>37</sup> Pupavac, Vanessa. "Misanthropy without borders: The international children's rights regime." *Disasters* 25, no. 2 (2001): 95-112.

necessity of identifying the international legal protection of children's rights as an independent legal institution, underlining the specialized character of children's rights based on their distinct legal standing.

We propose a classification for the sources governing the international legal framework for children's rights. At the foundation are treaties that establish a comprehensive framework for the protection of human rights, applicable to all individuals. Complementing these are both universal and regional agreements specifically crafted to safeguard the rights of children, addressing their unique vulnerabilities and needs. Additionally, specialized international legal documents serve to provide further protections, outlining specific measures to enhance children's rights. Lastly, there are non-binding recommendations that offer guidance for the protection and promotion of children's rights, serving as valuable tools for states and organizations to implement effective child welfare practices.

A significant challenge in protecting children's rights today is the variation and sometimes conflicting regulations that define the legal status of children, which are influenced by their specific circumstances or life situations.<sup>38</sup> This inconsistency is largely due to the ambiguity and lack of detail in international legal documents concerning the fundamental norms and concepts of children's rights as an area of international law.<sup>39</sup> Additionally, the responsibility of states to uphold and promote human rights is a universal obligation, applicable to all countries regardless of their participation in international treaties related to this area of law. A critical step forward would be to establish a universally recognized definition of "child," legally solidifying this concept to facilitate further development of children's rights within international law.

Existing international agreements contain provisions for the legal status of various categories of children, but these are often overly general. We believe it is crucial to adopt more precise legal standards to ensure effective protection of children's rights. Furthermore, a comprehensive system to monitor state compliance with their treaty obligations is essential for preventing and addressing violations of children's rights. The UN Committee on the Rights of

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<sup>38</sup> Mnookin, Robert H., and D. Kelly Weisberg. *Child Family and State: Problems and Material on Children and the Law*. (Boston: Aspen Publishing, 2014).

<sup>39</sup> Freeman, Michael DA. *The moral status of children: Essays on the rights of the children*. (Leiden: Martinus Nijhoff Publishers, 1997). See also Peters, Anne. "Compensatory constitutionalism: the function and potential of fundamental international norms and structures." *Leiden Journal of International Law* 19, no. 3 (2006): 579-610.

the Child plays a key role in this respect, but its authority needs to be expanded to effectively enforce state compliance.<sup>40</sup>

Regular international research is needed to better understand the current state of violations of children's rights. Such research should aim not only at data collection but also at uncovering the root causes of these violations. Identifying common and significant rights violations by region, social environment, and other relevant factors can guide the development priorities of this area of international law and enhance the prevention of rights violations.

Moreover, creating a global framework for state collaboration in protecting and promoting children's rights is crucial. This involves relying on existing legal norms and developing new standards and enforcement mechanisms. Given the political challenges of international cooperation, fostering bilateral relationships focused on child protection issues is also essential. The development and reform of international legal norms in this area should be based on thorough theoretical analysis and understanding of the legal relationships involved. This approach will enable states to develop effective legal instruments and advisory acts to better protect children's rights.

Our review of how Kazakhstan has integrated the 1989 UN Convention on the Rights of the Child into its national legislation illustrates the significant impact of ratifying the Convention. It marked the beginning of a shift toward greater awareness and improved state policies on child protection in Kazakhstan, leading to an increase in legal measures to safeguard children's rights and a growing focus on this area in legal research. However, societal changes have also presented challenges to children's welfare, indicating areas where further efforts are needed to fully align national laws with the Convention's standards and to enhance the legal mechanisms for children's protection.

## Conclusion

Finally, this study emphasized and concluded that child welfare and the protection of children's rights are fundamental objectives in the Republic of Kazakhstan. The government is dedicated to fostering a nurturing environment that supports children's growth and development, as demonstrated by its robust legislative framework. Since gaining independence, Kazakhstan has enacted 14 laws, issued over 200 government resolutions, and implemented more than 700 directives focused on children's rights. Additionally, the establishment of the

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<sup>40</sup> Detrick, Sharon. *A Commentary on the United Nations Convention on the Rights of the Child*. (London: BRILL, 2023).

Child Well-Being Index in 2021 highlights the government's commitment to evaluating and improving children's living conditions across various domains.

Despite these advancements, challenges remain in ensuring children's safety and equitable access to education, healthcare, and social services. The recent evaluation of the Child Well-Being Index reveals the urgent need for targeted strategies to combat child poverty, with nearly half of the nation's children living below the poverty line. Effective solutions require enhancing legal protections, improving social integration, and strengthening the involvement of local authorities and civil society. While progress has been made in aligning Kazakhstan's laws with the UN Convention on the Rights of the Child, the absence of a dedicated constitutional chapter on children's rights and the dispersion of relevant laws hinder a cohesive approach. Continuous refinement and adaptation of the legal framework are essential to safeguard children's rights and create a more just society in Kazakhstan.

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