



LEGISLATIVE ANALYSIS RELATED TO SOGI AND HIV IN KAZAKHSTAN

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The goal of this comparative analysis is to identify legal barriers, as well as problems in areas where necessary legislation already exists, but does not fully ensure the realization of the rights and freedoms of gay men, other MSM, and trans* people. For this analysis, ECOM developed a methodology and questionnaire that was completed by local partners in Kazakhstan. When analyzing legal practices, judicial practice and government statistics were taken into account, as well as reports of activists, information and statistics from organizations involved in documenting and protecting from human rights violations, press reports, and the reports of non-governmental organizations to international bodies.

Legislation and law enforcement practice were considered from two dimensions. The first is their compliance with international standards on human rights and freedoms. The second is the actual ability to obtain protection and realize the rights and freedoms provided for by international obligations and national law.

To provide information on current legislation as part of this analysis, excerpts from normative and legal acts are provided, which, unfortunately, are not always correct and do not always comply with international terminology standards. In this case, the original formulations are used in order to provide an objective reflection of the existing legal framework and language adopted in relation to the issues being considered. All quotes from normative and legal acts appear in italics and have corresponding citations to original document.

The information presented in this document can be useful for both non-governmental organizations and LGBT community activists, as well as for government representatives in planning advocacy processes, promoting the rights of gay men, other MSM, and trans* people, and in overcoming and eliminating barriers that prevent them from accessing services and protecting their rights and freedoms.

ABBREVIATIONS AND ACRONYMS

EECA Eastern Europe and Central Asia

HC Hate crimes

HIV Human immunodeficiency virus

LGBT Lesbian, gay, bisexual and trans* people

MSM Men who have sex with men

NGO Non-governmental organization

PLH People living with HIV

SOGI Sexual orientation and gender identity

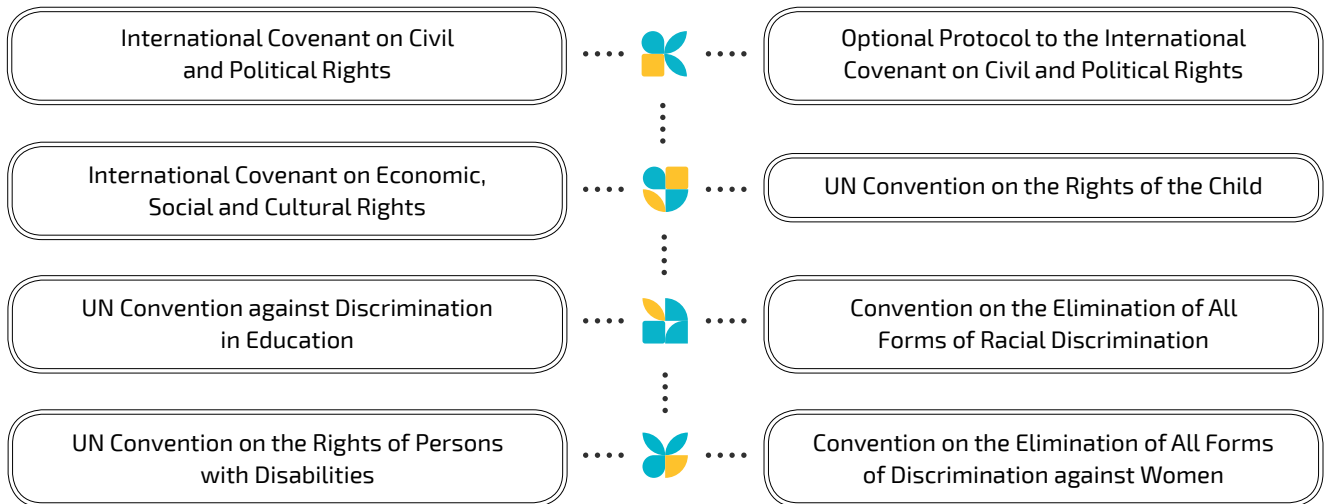
TB Tuberculosis

WHO World Health Organization

Trans* Describes a person who identifies as transgender, non-binary, or otherwise gender non-conforming, including, but not limited to, transgender, gender-queer, gender-fluid, agender, third gender, bigender



INTERNATIONAL HUMAN RIGHTS STANDARDS RATIFIED BY THE COUNTRY



CIVIL SOCIETY IN KAZAKHSTAN USES MECHANISMS FOR ALTERNATIVE REPORTING TO UN BODIES



Citizens of Kazakhstan are able to use individual protection tools by filing complaints with UN Committees². In 2018–2019, NGOs cooperated with UN special rapporteurs³ to advocate for the removal of provisions discriminating against LGBT people from the Law of the Republic of Kazakhstan «On the protection of children from information harmful to their health and development»⁴. Kazakhstan is also a member of the OSCE, and civil society has the opportunity to work with the Office for Democratic Institutions and Human Rights (ODIHR) in monitoring hate crimes⁵. The police reported 14 registered cases in 2018, however, according to data from the same police, 64 cases were investigated and the perpetrators punished⁶. In 2018, NGOs provided some excellent data: they recorded 5 hate crimes based on SOGI, and 3 on other grounds.

¹ Year of submission by NGOs of the most recent periodic alternative reports.

² In 2019–2020, the UN Committee on Economic, Social and Cultural Rights issued 13 decisions in relation to violations of the Covenant by the Republic of Kazakhstan, but none of them related to PLH or LGBT people.

³ On the promotion and protection of the freedom of opinion and expression—David Kaye, on the human right to the highest attainable standard of physical and mental health—Dainius P. ras, on the situation of human rights defenders —Michel Forst, and the Independent Expert on violence and discrimination based on sexual orientation and gender identity—Victor Madrigal-Borloz.

⁴ <https://feminita.kz/2019/01/подзаконный-акт-о-запрете-пропаганды/>

⁵ Data from 2018 available at: <https://hatecrime.osce.org/kazakhstan?year=2018>




⁶ ODIHR notes that these cases do not fall under the OSCE definition of hate crimes.



AT THE NATIONAL LEVEL, INTERNATIONAL HUMAN RIGHTS STANDARDS HAVE BEEN INCORPORATED IN THE FOLLOWING LAWS⁷

LEGISLATION	YES	NO
PROTECTION FROM DISCRIMINATION		
Provision on the prohibition of discrimination in the Constitution,	✓	
separate law defining and prohibiting discrimination, including on the basis of SOGI		✗
Provision on the prohibition of discrimination (unequal treatment) in the field of education	✓	
Law on the prohibition of domestic violence,	✓	
including on the basis of SOGI		✗
Provision on hate crimes in the Criminal Code of the Republic of Kazakhstan		✗
RIGHT TO HEALTH		
Separate law on the rights of people living with HIV		✗
Provision on the rights of PLHIV in the Code of the Republic of Kazakhstan «On people's health and the health care system»	✓	
Provision on the prohibition of discrimination (unequal treatment) in the field of health	✓	
including on the basis of SOGI		✗
HIV+	✓	
Prohibitions on immigration or entry into the country for PLH		✗
Criminal liability for intentional and/or unintentional transmission of HIV	✓	
Prohibition on blood donation by LGBT people (formally no)		✗
special screening procedures for LGBT donors	✓	
RIGHT TO HEALTH FOR TRANS* PEOPLE		
Legal gender recognition procedure	✓	
Mandatory opinion of a psychiatrist needed for gender reassignment	✓	
Regulated mandatory and optional surgical procedures for trans* transition	✓	
Adopted medical protocol for trans* people in accordance with ICD-10		✗
Permission to use international medical protocols for doctors caring for trans* people (but may be advisory in nature)		✗
Normatively established list of contraindications to gender reassignment	✓	

⁷ How these laws protect PLH and LGBT people in practice is detailed in the next section.

LEGISLATION	YES	NO
 RIGHT TO PRIVATE AND FAMILY LIFE		
Recognition of same-sex partnerships at the legislative level		✗
Recognition through the courts of unregistered cohabitation of same-sex couples as a legal marriage		✗
Criminalization of voluntary same-sex relations (legislatively no)		✗
Possibility for trans* people to enter into heterosexual marriages after legal gender change	✓	
Adoption by same-sex couples		✗
Adoption by single LGBT people (not prohibited for women; prohibited for men without children)	✓	✗
Adoption by PLHIV		✗
 RIGHT TO FREEDOM OF SPEECH AND PEACEFUL ASSEMBLY		
Legislation regulating the procedure for holding peaceful assemblies	✓	
Criteria according to which permission to hold a peaceful assembly may be refused	✓	
Prohibition on peaceful assemblies for LGBT people (formally no)		✗
Penalties for holding a peaceful assembly that has not been coordinated with the authorities	✓	
Law «on the prohibition of gay propaganda»		✗
Attempts to introduce bills restricting the freedom of speech of LGBT people, including bills «prohibiting gay propaganda»	✓	
 FREEDOM OF ASSOCIATION AND FUNDING OF NGOS		
Possibility for NGOs to receive funding from national and/or local budgets	✓	
Real working mechanisms for the distribution of public funds to NGOs working in the social sector, excluding healthcare, for example in the field of education, culture, sports, youth, social protection	✓	
Real working mechanisms for the distribution of public funds to NGOs working in the health sector	✓	
Stable state funding for HIV-service NGOs		✗
State funding for HIV services for LGBT people		✗
Obligatory authorization procedure for the registration of a public organization	✓	
Registration of an LGBT public organization		✗
Possibility to receive donor support from international organizations and foundations (but there are strict requirements for public reporting and fines)	✓	



INTRODUCTION

The Republic of Kazakhstan is the largest country among the former Soviet republics in the region of Central Asia. As in its neighboring, independent countries, the Republic of Kazakhstan proclaims in its Constitution that it is a democratic, secular, law-based, and social state, the highest values of which are the person, and their life, rights, and freedoms⁸.



The fundamental principles of the Republic's activities are: social harmony and political stability, economic development for the benefit of all people, Kazakhstani patriotism, and the resolution of the most important issues of civic life by democratic methods, including voting in a republican referendum or in Parliament⁹.

In practice, the Republic of Kazakhstan is an authoritarian and unfree state, in which the president was replaced only after 28 years after the declaration of independence. Nursultan Nazarbayev was the first president, and was in office for 28 years. Since 2019, this position has been held by Kosym-Zhomam Tokayev. In Freedom House's Freedom in the World ratings, the Republic of Kazakhstan is rated as not free, with a score of 23 out of 100 points¹⁰. The main observations of human rights defenders relate to the lack of political freedom and free elections, the continued significant influence of the former president on the running of the country, the persecution of opposition, the high level of corruption and significant restrictions on civil rights and freedoms, including significant restrictions on the freedom of speech and freedom of peaceful assembly. Human rights defenders also note the close control over Internet freedoms and social networks:

«users are regularly prosecuted on charges such as incitement to social and ethnic hatred, insulting government officials, and promoting separatism or terrorism. The media law, which came into force in 2018, also made it impossible for Internet users to leave anonymous comments online, further restricting the freedom of expression. In 2019, the authorities have increased their efforts to track and block access to content they deem inappropriate. In July, mobile service providers instructed their clients to install encryption software on mobile phones that would allow security services to intercept data traffic and bypass e-mail and messaging applications and encryption»¹¹.









⁸ Literal quote from Article 1 of the Constitution of the Republic of Kazakhstan, full text in Russian is available at: https://www.akorda.kz/ru/official_documents/constitution

⁹ Id.

¹⁰ Full overview in English is available at: <https://freedomhouse.org/country/kazakhstan/freedom-world/2020>

¹¹ Id.

On the other hand, from the point of view of the fulfillment of formal human rights obligations and participation in international structures, the Republic of Kazakhstan does the bare minimum. As a member of the UN, the country has ratified almost the entire list of international human rights instruments¹²:

-  International Covenant on Civil and Political Rights;
-  Optional Protocol to the International Covenant on Civil and Political Rights;
-  International Covenant on Economic, Social and Cultural Rights;
-  UN Convention on the Rights of the Child;
-  UN Convention against Discrimination in Education;
-  Convention on the Elimination of All Forms of Racial Discrimination;
-  Convention on the Elimination of All Forms of Discrimination against Women;
-  UN Convention on the Rights of Persons with Disabilities.

State bodies regularly submit reports to UN Treaty Bodies and regularly report on the fulfillment of their obligations as part of Universal Periodic Review. In 2019, the country was considered by the UN Committee on the Elimination of Discrimination against Women and the UN Committee on Economic, Social and Cultural Rights. The UN Committee on Economic, Social and Cultural Rights in its concluding observations and recommendations to the country in 2019 included many of the recommendations and issues that NGOs detailed in their alternative reports. These included the following recommendations¹³:

- 1 Create favorable conditions for non-governmental organizations involved in the promotion and protection of economic, social and cultural rights, including a streamlined and convenient registration procedure;
- 2 Take all necessary measures to prevent and suppress discrimination against lesbian, gay, bisexual, and transgender people, ensure the equal enjoyment of their rights provided in the Covenant, and provide specialized legal protection for them from attacks and harassment.

In the same year, the UN Committee on the Elimination of Discrimination against Women voiced similar recommendations regarding LBT women. It is important to note that, according to local human rights defenders, so far none of the numerous recommendations of the UN Committees regarding combating discrimination in general, and in relation to LGBT people in particular, have been implemented in practice by the government.

¹² Except for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
¹³ Full text of the conclusion of the UN Committee on Economic, Social and Cultural Rights in relation to the Republic of Kazakhstan of 29 March 2019 is available in Russian at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6Q5m-lBEDzFEovLCuWzkLn5QA2sHMzcglLbdGh1o+E7e9LVeibvxLDw2/H/jPni2eASbE/kqCDqg6MHosDf/zw1OqQBsuYhU+0iuRtbaaz-tjlv1+3Dlpu9o2nAW1Z>

Local human rights defenders actively use mechanisms for submitting individual complaints to UN Committees, the only mechanism available in the country for submitting individual complaints to international bodies about the actions, or rather the inaction, of state bodies in cases of violations of fundamental human rights. In 2019—2020 alone, the UN Committee on Economic, Social and Cultural Rights issued 13 recommendations in relation to violations of the Covenant by the Republic of Kazakhstan, but none of them related to PLHIV or LGBT people, which indicates the need to strengthen support and increase the literacy of activists in this area in order to more effectively use existing mechanisms, such as using international advocacy mechanisms together with UN special rapporteurs. In 2018—2019, NGOs cooperated with UN special rapporteurs¹⁴ in advocating for the removal of provisions discriminating against LGBT people from the Law of the Republic of Kazakhstan «On the protection of children from information harmful to their health and development»¹⁵.

The country is also a member of the OSCE, and, in recent years, has been submitting data recorded by the police on hate crimes to the common database of the participating states of the OSCE. However, the data of the police and the data of NGOs, as in other post-Soviet countries, do not correspond to each other. Taking into account the relatively high rate (64 cases per year) of hate crimes registered by the police (in 2018¹⁶), OSCE experts note that not all of the described cases meet the definition of a hate crime adopted by the OSCE participating states. The problems associated with registering and investigating hate crimes are discussed in more detail in the next section.

However, it is important to note that the lack of statistics disaggregated by type of human rights violation and according to the characteristics of the victim, raises concerns not only with regards to the registration of hate crime claims, but also in relation to other data collected by government bodies that is not disaggregated according to SOGI, among other things. Concerns about the lack of data on human rights violations are heightened by information about widespread corruption, and cases where people are unable to reach authorities with their complaints, or where these complaints are not adequately addressed.

The Republic of Kazakhstan declares itself to be a secular state, however, as in other countries of the region, in recent decades there has been a rather significant surge in religious fervor in the country. The majority religion is Islam. At the same time, existing legislation strictly controls the registration and activities of groups defined as «non-traditional», including Protestant Christians, Jehovah's Witnesses, and Muslims who do not adhere to the state-approved version of Islam¹⁷. In relation to LGBT people, traditional religious sentiments and manifestations are becoming more prevalent in society, especially in remote and small towns and villages. This is another source of danger for LGBT people, as there is less support and a higher level of stigma in closed and traditional communities.

¹⁴ On the promotion and protection of the freedom of opinion and expression—David Kaye, on the human right to the highest attainable standard of physical and mental health—Dainius P. Pranas, on the situation of human rights defenders —Michel Forst, and the Independent Expert on violence and discrimination based on sexual orientation and gender identity—Victor Madrigal-Borloz.

¹⁵ <https://feminita.kz/2019/01/подзаконный-акт-о-запрете-пропаганды/>

¹⁶ Data from 2018 is available at: <https://hatecrime.osce.org/kazakhstan?year=2018>

¹⁷ According to Freedom House and Forum 18

As in other EECA countries, researchers find it difficult to unequivocally answer the question of what the primary and most significant problem is for LGBT people living in these countries — the lack of certain guarantees at the legislative level (including those corresponding to international human rights standards) or the ineffectiveness of existing means of protection. In the case of the Republic of Kazakhstan, the main difficulty lies in the fact that even existing minimum means of protection barely function, due to the high level of corruption and almost complete absence of the rule of law.

The only positive development in 2019 in relation to LGBT people at the official level was the decision of the Supreme Court of Kazakhstan regarding a complaint about the privacy of a lesbian couple. According to Human Rights Watch¹⁸, the decision states that the man who filmed a lesbian couple kissing and distributed the video on the Internet violated their right to confidentiality¹⁹:

«The Supreme Court also found that the actions of the defendant that are the subject of the dispute, resulted in a large number of offensive comments in relation to the plaintiffs, which violated their personal moral rights. In its ruling, the Supreme Court emphasized that: «The Court of Appeals committed a significant and gross violation of substantive law and infringed upon the constitutional rights of the plaintiffs» guaranteed by Part 1 of Article 18 of the Constitution of the Republic of Kazakhstan, according to which everyone has the right to privacy, personal and family secrets, and the protection of their honor and dignity. Based on the above conclusions, the Supreme Court ruled to reverse the decision of the Court of Appeals and uphold the decision of the Auezov District Court of Almaty»²⁰.

In the next section, we will examine in more detail how individual human rights standards for LGBT people are reflected in national legislation and implemented in practice.

¹⁸ HRW report for 2019 is available in English at: <https://www.hrw.org/world-report/2020/country-chapters/kazakhstan#e81181>

¹⁹ More information about the case is available in Russian at: <https://www.kok.team/ru/2019-08-28/lesbiyanki-vyigrali-process-v-verhovnom-sude-kazahstana> и <https://feminita.kz/2019/08/как-уятмен-проиграл-бесстрашным-деву/>

²⁰ According to a quote from the case on the website of the feminist initiative “Feminita”, which supported the victims in the complaint process, the full text is available at: <https://feminita.kz/2019/08/как-уятмен-проиграл-бесстрашным-деву/>



PROBLEMATIC ASPECTS OF THE LEGISLATION AND LAW ENFORCEMENT PRACTICES OF KAZAKHSTAN

The Constitution of the Republic of Kazakhstan, establishing the principle of equality, separately enshrines the principle of non-discrimination with an open-ended list of protected grounds: **«no one shall be subject to any discrimination for reasons of origin, social, employment, and property status, sex, race, nationality, language, attitude towards religion, beliefs, place of residence, or any other circumstance»**²¹. The open-endedness of this list is a positive moment, since it makes it possible to take into account characteristics such as SOGI, despite the fact that neither is mentioned directly, as in other normative acts of the Republic of Kazakhstan.

There is no specific legislative act on the prohibition of discrimination in the Republic of Kazakhstan, however, a number of laws contain a prohibition on discrimination. For example, discrimination on the basis of sex²² is prohibited in the field of labor²³, and citizens of the Republic of Kazakhstan are guaranteed protection **«from any forms of discrimination and stigmatization due to the presence of any diseases and conditions»**²⁴, as well as the **«prevention of any forms of discrimination related to the nature of the disease»**²⁵.

It should also be noted that the Criminal Code contains a separate norm that regulates issues of equality before the law of people who have committed criminal offenses: **«People who have committed criminal offenses are equal before the law regardless of origin, social, employment, or property status, sex, race, nationality, language, attitude towards religion, beliefs, membership in a public organization, place of residence, or any other circumstances»**²⁶.

The country also lacks a separate law regulating the rights of PLHIV. However, some issues related to the provision of medical care are regulated by paragraph 2 of the Code of the Republic of Kazakhstan «On people's health and the healthcare system», which contains three articles: **«Provision of medical care to persons infected with HIV»**²⁷, **«Social and legal protection of persons infected with HIV»**²⁸ and **«Screening for HIV infection»**²⁹.

It is established separately that services for the **«prevention and diagnosis of HIV infection»** are included within the scope of guaranteed free medical care, which is provided by the state from state funds. This is an important point in relation to access to medical care, since the Republic of Kazakhstan is introducing compulsory social health insurance from 2020³⁰.

²¹ Constitution of the Republic of Kazakhstan, article 14.

²² Law of the Republic of Kazakhstan «On state guarantees for equal rights and equal opportunities for men and women».

²³ Labor Code of the Republic of Kazakhstan, article 6.

²⁴ Code of the Republic of Kazakhstan «On people's health and the healthcare system», article 76.

²⁵ Id., article 157.

²⁶ Criminal Code of the Republic of Kazakhstan, article 15.

²⁷ Code of the Republic of Kazakhstan «On people's health and the healthcare system», article 160.

²⁸ Id., article 161.

²⁹ Id., article 162.

³⁰ Id., article 196.

It should be noted that Article 79 of the Code of the Republic of Kazakhstan «On people's health and the health-care system», adopted in 2020, guarantees the right of adoption to PLHIV: **«citizens of the Republic of Kazakhstan who are infected with HIV have the right to adopt children on an equal basis with other citizens of the Republic of Kazakhstan in accordance with the legislation of the Republic of Kazakhstan»**³¹. At the same time, **«acquired human immunodeficiency syndrome (AIDS) and infection with the human immunodeficiency virus (HIV)»**³², are direct contraindications for adopting a child or acting as their guardian, which creates a certain conflict and may cause serious problems and difficulties for PLHIV who wish to adopt a child.

The transmission of HIV is criminalized in the Republic of Kazakhstan by an article³³, which imposes liability for **«knowingly endangering another person with HIV infection»** and **«infection of another person with HIV by a person who knew that they have this disease»**. At the same time, a person charged under this article is **«absolved of criminal responsibility in this case, if the other person in danger of HIV infection or infected by HIV, was warned in a timely manner of the presence of HIV infection in the first person and voluntarily agreed to perform actions that created the risk of infection»**.

The intentional or unintentional transmission of HIV is not included in the list of circumstances that aggravate criminal responsibility or punishment. However, it is present as a separate part of an article that provides criminal liability for rape³⁴, as a variant of more serious consequences for the victim.

Liability for the spread of HIV is also imposed **«improper performance of professional duties by a medical worker, or the employee of an organization providing consumer or other services to the population, which results in the infection of another person with HIV due to a negligent or unconscientious attitude towards this person»**³⁵, as well as for disclosing information about whether **«a person has HIV»**³⁶.



HATE CRIMES

The criminal legislation of the Republic of Kazakhstan does not contain a definition for hate crimes, but, it can be argued, that it does impose liability for such crimes. For instance, aggravating circumstances are recognized for **«the commission of a criminal offense motivated by national, racial, and religious hatred or hostility»**³⁷. In addition, legislation imposes criminal liability for **«the violation of the equality of person and citizen»**³⁸. The article imposes liability for **«the direct or indirect restriction of the rights and freedoms of a person (citizen) for reasons of origin, social, employment, or property status, sex, race, nationality, language, attitude towards religion, beliefs, place of residence, membership in public associations, or any other circumstances»**.

³¹ Id., article 79.

³² List of diseases, which prevent a person from adopting a child or taking a child under guardianship or care, full text in Russian available at: <http://adilet.zan.kz/rus/docs/V1500012127>

³³ Criminal Code of the Republic of Kazakhstan, article 118.

³⁴ Id., article 120.

³⁵ Id., article 317.

³⁶ Id., article 321.

³⁷ Id., article 54.

³⁸ Id., article 145.

These circumstances provide an opportunity to include SOGI as protected characteristics, but in practice, law enforcement agencies do not do so. As a result, perpetrators are not held accountable for the commission of hate crimes, and the real motives for committing these crimes are not disclosed.

Despite the fact that voluntary homosexual relations were decriminalized in the Republic of Kazakhstan in 1998, LGBT people continue to be at risk if they speak openly about their sexual orientation and/or gender identity. This leads to the fact that only activists or those with nothing to lose can speak openly about the issue. In 2020, a story was made public about a Kazakh gay couple who were forced to leave the country due to harassment from their relatives. When one of them was obligated to return temporarily, he was unable to leave again, despite the active assistance of human rights organizations. Following this, he ceased all communication³⁹.

Currently, there are no real reasons to believe that the situation in relation to intolerant attitudes towards LGBT people will change for the better. This is shown by the fact that, in 2015, parliamentarians of the Republic of Kazakhstan made an attempt to amend legislation and provide liability for the propaganda of «**non-traditional sexual orientation**»⁴⁰, among minors, but the Constitutional Council of the Republic of Kazakhstan adopted a resolution on the unconstitutionality of the proposed bills⁴¹.



PRIVATE AND FAMILY LIFE

The Republic of Kazakhstan does not recognize same-sex marriages and does not allow marriage between «**persons of the same sex**»⁴². Moreover, «**de facto cohabitation of persons of the same sex**»⁴³ is not recognized as a marriage.

In this regard, it is not surprising that paternity/maternity issues for LGBT people are regulated in a way as to exclude their access to parenthood. The LGBT community as a whole does not have access to adoption due to an article that excludes «**persons of non-traditional sexual orientation**»⁴⁴ from the list of those able to adopt.

The same article also excludes from the list of those able to adopt «**males who are not in a registered marriage (matrimony), except in cases involving the de facto raising of a child for at least three years due to the death of the mother or the deprivation of her parental rights**». Therefore, lesbians and/or bisexual women (who hide their sexual orientation) may have a chance to adopt a child, however, gay or bisexual men have no access to adoption at all.

³⁹ <https://rus.azattyq.org/a/kazakhstan-disappearance-of-a-gay-man-bekzat-mukashev/30695316.html>

⁴⁰ The text of the comparative table to the draft Law of the Republic of Kazakhstan «On the protection of children from information harmful to their health and development» can be found at: https://online.zakon.kz/Document/?doc_id=31249501#pos=23;-54

⁴¹ The full text of the Regulatory Resolution of the Constitutional Council of the Republic of Kazakhstan of 18.05.2015 N3 can be found at: https://online.zakon.kz/document/?doc_id=37647015#pos=71;-11

⁴² Code of the Republic of Kazakhstan «On marriage (matrimony) and family», article 11.

⁴³ Id., article 2.

⁴⁴ Id., article 91.

Meanwhile, trans* people are deprived of the opportunity to become adoptive parents on the basis that the psychiatric diagnosis F64.0 «**Gender Identity Disorders**» is included in the list of diseases which prevent a person from adopting a child⁴⁵. At the same time, the legislation lacks a mechanism to regulate issues of paternity/maternity in relation to trans* people who are officially married and who have children at the time they change their sex in their passport.



LEGAL GENDER RECOGNITION

The legislation of the Republic of Kazakhstan contains an article that states: «**persons with gender identity disorders who have reached the age of 21 and are competent, except for people with mental and behavioral disorders (diseases), have the right to change their gender**»⁴⁶, which indicates that there is an opportunity for trans* people to legal gender recognition. However, it should be pointed out that the prerequisite for making changes to one's birth certificate is the «**wish to have the first name, patronymic, and last name consistent with the chosen gender in the case of sex reassignment surgery**»⁴⁷.

The requirement of mandatory «**sex reassignment surgery**» in order to change one's passport gender marker is fully consistent with the rules of medical examination and «**gender reassignment for people with gender identity disorders**», which were approved in 2015⁴⁸. This document, which defines «**the procedure for medical examination and gender reassignment for persons with gender identity disorders**», made the existing procedure more strict, and created a two-step process, further distancing it from international standards.

Currently, the prerequisites for obtaining permission to change one's passport gender are: examination in a psychiatric hospital for 30 calendar days and surgical intervention to develop so-called male or female genitals. In addition, the text of the document contains a list of grounds upon which a person may be refused permission to «change their gender», which can be linked to both a health condition or diagnosis and to obtaining a refusal to proceed to the second stage of the procedure.

Given the current situation, the relatively high costs of surgical interventions, as well as the lack of appropriate specialists, trans* people are seriously limited in their access to medical care and the opportunity to change their gender marker in passport. In this regard, there have been some judicial precedents, in which the right to legal gender recognition without surgical intervention is defended through the courts⁴⁹, however, these are isolated cases and do not remove the need for systematic changes.

⁴⁵ List of diseases which prevent a person from adopting a child or taking a child under guardianship or patronage is available at: <http://adilet.zan.kz/rus/docs/V1500012127>

⁴⁶ Code of the Republic of Kazakhstan «On people's health and the healthcare system», article 156.

⁴⁷ Code of the Republic of Kazakhstan «On marriage (matrimony) and family», article 257.

⁴⁸ The full text of the Rules for medical examination and gender reassignment for people with gender identity disorders, approved by Order of the Minister of Health and Social Development of the Republic of Kazakhstan of 31 March 2015 N187 can be found at: <http://adilet.zan.kz/rus/docs/V1500010843>

⁴⁹ <https://kursiv.kz/news/obschestvo/2017-04/vpervye-v-kazahstane-transgenderu-vydali-novye-dokumenty>



FREEDOMS OF PEACEFUL ASSEMBLY AND MOVEMENT

The holding of peaceful assemblies in the Republic of Kazakhstan is governed by the norms of a special law⁵⁰, which stipulates that the right to the freedom of peaceful assembly cannot be limited except in cases established by law. It should be noted that **«peaceful assemblies are held in specialized places for organizing and holding peaceful assemblies»** and that holding them in other places is prohibited, with the exception of picketing.

To hold a **«picket, assembly, meeting»** the organizer must notify local executive bodies in writing about the event, and, in the case of a **«demonstration, procession»** application for approval must be submitted to the local executive body. In both cases, it is necessary to indicate the **«sources of funding for holding peaceful assemblies»**. In these documents. Based on the consideration of the notification or application, a decision is made to authorize the holding of a peaceful assembly, to prohibit it, or to change the route, time, and place.

It should be noted that permission to hold a peaceful assembly may be refused if the funding of the organization and the holding of peaceful assemblies are carried out **«by individuals and (or) legal entities included in the list of organizations and individuals associated with the financing of the proliferation of weapons of mass destruction and (or) in the list of organizations and individuals associated with the financing of terrorism and extremism; by a legal entity whose activities are suspended or prohibited in the manner prescribed by the law of the Republic of Kazakhstan; or by foreigners, stateless persons, and foreign legal entities»**.



FREEDOM OF ASSOCIATION FOR LGBT PEOPLE AND PLHIV

There has been no improvement with respect to freedom of association, including in relation to LGBT organizations. As in previous years, the authorities closely monitored and repressed NGOs defending fundamental human rights and freedoms, as well as organizations advocating for freedom of speech and political rights. The country has legal restrictions on the establishment and operation of NGOs, including onerous financial rules and harsh penalties for non-compliance. Organizations may incur fines and other penalties for vaguely defined offenses, such as interfering with government activities or engaging in work outside the scope of their charters⁵¹.

Currently, LGBT organizations are under attack from the repressive system of registration. In 2019, a Court of Appeals upheld a decision by the Ministry of Justice not to register «Feminita», a non-governmental organization that protects the interests of members of the LGBT community, as it violated these restrictions.

⁵⁰ Law of the Republic of Kazakhstan «On the procedure for organizing and holding peaceful assemblies in the Republic of Kazakhstan».

⁵¹ According to Freedom House.

No explanation of how exactly the organization violated these rules was ever provided by the Ministry of Justice. There are currently no registered LGBT organizations in the country. There are only initiative groups, while some human rights and HIV-service organizations are involved in supporting LGBT people. There are also no broad coalitions between human rights groups, the LGBT community, and feminist groups, such as in neighboring Kyrgyzstan, which could jointly and openly advocate for LGBT rights.

At the same time, the country has the Law «On public procurement» and the Order of the Ministry of Social Development «On approval of the standard on state social orders», which create an opportunity for NGOs to participate in competitions for receiving state funding. However, according to local activists, no organization has (openly) received such funding to work with MSM and trans* people, while HIV-service organizations rarely receive such funding. According to official data⁵², the main focus of such state social orders is on support aimed at social assistance to hospices, people with disabilities, the promotion of a healthy lifestyle, and the promotion of family values. Human rights issues, even in a very general and broad sense, are not among the supported projects.



STATISTICAL DATA

Available government data only provides the number of PLHIV and MSM, sex workers, and people who use drugs⁵³. Official statistics on cases of domestic violence do not contain data on cases of violence against LGBT people. There are no separate official statistics on cases of discrimination, due in part to the lack of legislation and a separate body that could collect such statistics. The remaining existing data is that of non-governmental organizations, and does not show the full scale of the problems faced by LGBT people or reflect the nature of the state's response to these problems.

It is also important to note that the data collected by government agencies does not always correspond to reality. For instance, this is the case for data on hate crimes, which is registered by the national police of the Republic of Kazakhstan and submitted to the OSCE database. According to the OSCE, this data does not meet the accepted definition and meaning of a hate crime, which, at the very least, suggests that not all crimes can be registered, and that some cases go without proper investigation and punishment. This is especially true in relation to incidents of illegal actions by law enforcement agencies that are reported by local activists. High levels of corruption and impunity in relation to violations committed by law enforcement agencies make LGBT people easy and silent targets for such violations.

⁵² «Civil Initiatives Support Center» — reports on supported projects available in Russian at: https://cisc.kz/ru/projects/?_projects_theme=6c05744a6ba3f84c21334f66f2e16521

⁵³ National AIDS monitoring data, full text available at: <http://kncdiz.kz/files/00007836.pdf>

In analyzing the current situation in relation to the observance of human rights in the Republic of Kazakhstan, it should be noted that, due to the persistent manifestation of corruption, data on cases of the persecution of LGBT people, and the refusal of authorities to investigate cases of violations of the rights of LGBT people, the situation of representatives of the community is not improving⁵⁴. Prohibitions on adoption, the inconsistency of regulatory and legal acts, the outright prohibition on same-sex marriage, and the tightening of legal gender recognition procedures for trans* people do not contribute to an increase in the quality of life of representatives of these groups.

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•⁵⁴ 2019 Country Reports on Human Rights Practices: Kazakhstan. Bureau of Democracy, Human Rights, and Labor <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/kazakhstan/>



RECOMMENDATIONS



FOR THE GOVERNMENT

- 1 Amend Part 2 of Article 14 of the Constitution of the Republic of Kazakhstan and expand the list of characteristics protected from discrimination to include HIV status, sexual orientation, and gender identity.
- 2 Amend Article 54 of the Criminal Code of the Republic of Kazakhstan, adding the following new paragraph to the list of aggravating circumstances: «**committing a hate crime (hostile attitude) in connection with the victim's HIV status and/or his sexual orientation and gender identity**».
- 3 Amend Article 145 of the Criminal Code of the Republic of Kazakhstan, expanding the list of protected characteristics and adding health status (HIV status) and sexual orientation and gender identity.
- 4 Align the norms of Article 79 of the Code of the Republic of Kazakhstan «On people's health and the healthcare system» and the List of diseases which prevent a person from adopting a child or taking a child under guardianship or patronage, thereby allowing adoption by PLHIV.
- 5 Bring the legal gender recognition procedures in line with international standards, including abolishing the requirements of a mandatory 30-day examination in a psychiatric hospital and mandatory surgical intervention.



FOR CIVIL SOCIETY ORGANIZATIONS

- 1 Initiate the alignment of the norms of Article 79 of the Code of the Republic of Kazakhstan «On people's health and the healthcare system» and the List of diseases the presence of which precludes a person from adopting a child or taking a child under their guardianship or patronage.
- 2 Develop proposals and initiate the development of a new transparent and accessible procedure for legal gender recognition for trans* people, which would not require mandatory long-term examinations in psychiatric hospitals or surgical interventions.

