

Legislative analysis related to LGBT rights and HIV in Kyrgyzstan

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Eurasian Coalition
on Male Health

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The information presented in this review may be useful both for non-governmental organizations and community activists and for the government, when planning advocacy processes, promoting the rights of PLWH, gay men, other MSM, and trans*people and eliminating the barriers hindering their access to services.

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EURASIAN COALITION ON MALE HEALTH

LEGISLATIVE ANALYSIS RELATED TO LGBT RIGHTS AND HIV IN KYRGYZSTAN

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Tallinn - 2017

Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
ART	antiretroviral therapy
CSO	civil society organizations, umbrella term which includes non-governmental organizations, professional associations, and community organizations
ECOM	Eurasian Coalition on Male Health
ECRI	the European Commission against Racism and Intolerance
GB	the Global Fund
HIV	Human Immunodeficiency Virus
IDAHOT	International day against homophobia and transphobia
Intersex	people who are born with any of several variations in sex characteristics including chromosomes, gonads, sex hormones, or genitals that, according to the UN Office of the High Commissioner for Human Rights, "do not fit the typical definitions for male or female bodies"
FtM	transgender male, person in transition from female to male
LGBT	Lesbian, Gay, Bisexual, and Trans* people
MSM	men who have sex with men
MtF	transgender female, person in transition from male to female
ODIHR	the Office for Democratic Institutions and Human Rights OSCE
OSCE	Organization for Security and Co-operation in Europe
NGO	non-governmental organization
PLWH	people who live with HIV
PWID	people who use injection drugs
PWUD	people who use drugs
SOGI	sexual orientation and gender identity
STD	sexually transmitted disease
SR	sub-recipients
Trans*	people who have a gender identity or gender expression that differs from their birth assigned sex
TB	tuberculosis
UN	United Nations Organization
UNHRC	United Nations Human Rights Committee



The goal of this review is to identify the legal barriers for people living with HIV, gay men, other men who have sex with men and trans*people in exercising their rights in different areas. To conduct such review, ECOM developed a methodology and a survey questionnaire, which was filled in with the help of our local partners. When analyzing legal practices, consideration was given both to judicial practices and to the information provided by activists, received from the organizations documenting cases of human rights violations and protection of such rights, news in mass media, and reports of non-governmental organizations submitted to the international agencies.

Both legislation and law enforcement practices were analyzed in terms of their compliance with the international and European standards. Besides, there were analyzed the recommendations received by Kyrgyzstan within the international monitoring mechanisms as well as implementations of such recommendations by the government.

To present information on the legislation currently in force, in this review we used extracts from the regulatory documents, which are, unfortunately, not always correct and fail to comply with the international terminology standards. In this case, the original wording is presented to ensure objective demonstration of the existing regulatory framework and the language used in the matters analyzed. All quotations from the regulatory documents are given in quotation marks.

The information presented in this review may be useful both for non-governmental organizations and community activists and for the government, when planning advocacy processes, promoting the rights of PLWH, gay men, other MSM, and trans*people and eliminating the barriers hindering their access to services.



Summary and key recommendations

The Kyrgyz Republic makes consistent efforts to adapt its national legislation to the international standards in terms of human rights of people living with HIV, gay men and other MSM, and trans*people. Positive developments include a new and thoroughly developed procedure for legal gender recognition. Another important novelty will be the new Criminal Code to enter into force, which will divide the responsibility for unintended and intended transmission of HIV and will stipulate commuting the punishment. There is no criminal responsibility for voluntary same-sex relations.

On the other hand, a number of questions, which are critical to ensure well-being and safety of the LGBT community in KR, remain unresolved. Despite legislative guarantees, analysis of the enforcement of some regulatory acts in practice shows disappointing results. Thus, the biggest problems are observed with compliance with the right of freedom of peaceful assembly and freedom of speech in the context of LGBT. The government not only fails to protect peaceful assemblies organized by the LGBT activists, it also impedes the restoration of their violated rights, failing to ensure effective investigation and punish the offenders.

Such actions of the government as development of a draft law on prohibition of the "propaganda of non-traditional sexual relations" raise serious concerns about possible aggravation of the situation and growth in the level of LGBT discrimination in the Kyrgyz Republic. There are also certain concerns related to the lack of anti-discrimination legislation, which would not only offer definitions of the various forms of discrimination, but would also contain provisions on protection from discrimination based on SOGI.



Recommendations

- The Kyrgyz Republic should introduce amendments into the national legislation on prohibition of LGBT discrimination and should improve the system of response to the cases of such discrimination from the side of law enforcement and judicial authorities.
- Conduct training for law enforcers and ensure adequate investigation of the cases of attacks on LGBT.
- Withdraw from the national legislation the obligation of non-citizens to pass medical examinations for HIV on the annual basis, with possible deportation in case of positive results.
- Recognize at the legislative level institution of same-sex partnerships and the same-sex marriages, which will also allow to avoid LGBT discrimination when exercising the right to private life, in particular to family, will ensure guarantees in the matters of inheritance, property disputes between partners, access to partners in case of criminal prosecution or confinement.



Prohibition on travel and immigration to the KR for people living with HIV

In Kyrgyzstan, there is no legislative prohibition on travel and immigration of people living with HIV (hereinafter – PLWH) to the country. In accordance with the Law "On HIV/AIDS in the Kyrgyz Republic", PLWH have full rights (personal, political, social and economic) guaranteed by the Constitution.

In accordance with article 25 of the Constitution, every person has a right to the freedom of movement and choice of place of stay and residence within the Kyrgyz Republic. This regulation in combination with article 19 of the Constitution confers the right of non-citizens, as well as citizens of the country, to freely move within the country and travel outside its territory. The procedure of movement of the KR citizens within the country is regulated by the Law "On internal migration". This law contains restrictions on the internal migration of the KR citizens in terms of movement, choice of the place of stay and residence, which are not related to the HIV-positive status of a person.

The procedure of entry to and stay in the KR for the non-citizens is regulated by the Law "On external migration" and the Law "On the legal status of foreign citizens in the KR." In the Law "On external migration", there are no direct restrictions for people living with HIV to enter the country. However, one of the reasons to restrict the entry of non-citizens to the country is a threat to the health of the KR citizens and other people residing in the country.

In accordance with the Medical Examination Rules, non-citizens who live in the territory of the KR on a permanent or temporary basis, are required to pass mandatory HIV testing or present a certificate of such testing, if it is stipulated by the intergovernmental agreements signed by the KR and the country of their permanent residence. In case of long-term stay in the country, such persons are required to get tested for HIV on an annual basis. Thus, despite of the fact that there is no express prohibition in the Kyrgyz legislation for non-citizens living with HIV to enter the country, in fact such prohibition may be applied.

Citizens of 11 CIS countries are allowed to enter the country without presentation of a certificate about their positive/negative HIV status based on the agreement on cooperation in resolving the problem of HIV infection.



Criminalization of HIV transmission

The Kyrgyz legislation stipulates criminal and civil responsibility for the harm to human health. The criminal responsibility is stipulated in article 117 of the Criminal Code. Responsibility for knowingly endangering another person with the risk of HIV transmission, with a punishment of confinement for up to three years, is stipulated even in case if the person was not aware about his/her HIV infection and if the transmission did not occur. "Transmission of HIV to another person by a person who knew about the presence of infection" leads to a more severe punishment: confinement for the term from three to five years.

HIV transmission is qualified only by express intent. In this case, the intent refers to knowingly endangering the victim, placing him or her under the threat of HIV, i.e. when the offender realizes that his or her actions lead to a real possibility of HIV transmission to the victim, foresees the consequences and wishes such consequences to occur. However, taking into account that the second part of this article stipulates the responsibility for people aware of their HIV infection, it is assumed that proceedings according to the first part of this article may also be initiated against a person who was not aware of his or her HIV status.

In comments to article 117 of the Criminal Code, it is stated that a person shall be "exempt from criminal liability in case, if the second person, who was put under the threat of HIV transmission, was previously informed about the presence of such infection in the former and gave his/her voluntary consent to the actions, which put him/her under such threat". Nevertheless, in the course of investigations initiated in such cases, it is very difficult for the defendant to prove that during the sexual intercourse he disclosed his HIV positive status, as the law enforcers and the court often perceive his words as an attempt to avoid the responsibility.

Comments to the Criminal Code contain further explanations, stating that "if the defendant took necessary and sufficient measures to avoid transmission of the virus to the partner, and the sexual intercourse is conducted based on mutual consent, the responsibility may be excluded." At the same time, comments to the Criminal Code are not a regulatory document, the courts are not obliged to use them, and there is no other basis to apply such measures apart from the defendant's statement.

The procedure of redress for the material and moral harm caused by the HIV transmission is defined by article 1013 and paragraph 4 of chapter 51 of the Kyrgyz Civil Code, stipulating full responsibility for causing harm to health.

On 2 February 2017, a new Criminal Code was approved, which is entering into force on 1 January 2019. Article 149 of this Code stipulates the responsibility for HIV transmission as for the infection with an incurable infectious disease. The new code also differentiates between two elements essential to the offense: negligent HIV transmission (fine or from two and a half to five years of imprisonment) and intended HIV transmission (from five to

seven and a half years of imprisonment). In this Code, there remains a provision for putting another person under the threat of HIV infection if the transmission does not occur.

In comments to article 149, it is stated that a person shall be exempt from the criminal liability for actions, stipulated in part 1 or 2 of the article, in case if the second person, who was put under the threat of HIV transmission, was previously informed about the presence of such infection in the former and gave his/her voluntary consent to the actions, which put him/her under such threat.

The Criminal Code also stipulates the responsibility for health workers for infecting a person with HIV due to the improper performance of their professional duties. In the new Criminal Code, this provision is included into article 152, stipulating failure to perform or improper performance, due to recklessness or negligence, of professional duties by a medical or pharmaceutical worker, which led to unintended grievous harm. The right of redress for moral harm and compensation of the expenses in case of harm to the health of a citizen in a health care institution is stipulated in article 65 of the Law "On public health care in the Kyrgyz Republic", which regulates the legal relations of patients and health care institutions.



Prohibition for MSM to be blood donors

In the laws of the Kyrgyz Republic, there is no direct prohibition for MSM to be blood donors. In accordance to article 9 of the Law "On the donation of blood and blood components", a donor has to go through a medical check-up to confirm that he/she has got no contraindications for blood donation, including HIV.

Article 10 of this Law stipulates that the "donor has to disclose the information he is aware of concerning the diseases he has or has had in the past as well as about the use of narcotic drugs, psychotropic substances and precursors." Health care institutions may not demand that donors provide any other information. The procedure of medical check-up is the same for all people and may not be different in any terms for any person who would like to become a donor.



Access of NPOs working with MSM or LGBT to the state funding to provide social and health services

The Law "On non-profit organizations" stipulates that non-profit organizations within the goals of their activities may cooperate with governmental agencies, sign agreements with them and perform certain works at their request. This issue is also regulated by the Law "On social contracting", which defines the formats of such contracting: "1) governmental procurement of social services; 2) state funding of public projects; 3) provision of social services using the social vouchers."

Funding of public projects is provided "to resolve social problems and/or achieve the goals significant for the society." The procedure of project financing includes the announcement of a call for proposals, consideration of the submitted proposals by the bidding committee and provision of a grant to the winning bidder. NPOs also have an opportunity to receive budget funds through the social contracting mechanism. They are allowed to provide health services if they have a proper medical license. The example of such social contracting is Crisis Center "Sizim" for elderly people suffering from violence providing services within a social contract with the Ministry of Labor and Social Development.



Health care

There are so far no mechanisms to regulate distribution of the governmental funds for the NPOs working in the area of health care. Currently, such mechanisms are being developed within implementation of the Law "On social contracting".

The government does not provide financing to NGOs working in the area of HIV either permanently or periodically, in particular to provide services to MSM and trans*people. NGOs providing HIV services were financed in 2011-2012. As for the activities aimed at MSM and trans*people, only once in 2011 the Socium NGO in Bishkek and Musaada CF in Osh received financing within the state social contracting to provide social services to vulnerable populations (PWID and PLWH).



Social services

Distribution of the governmental funds for the NPOs working in social sphere is conducted mainly through the Ministry of Labor and Social Development. To develop the mechanism of implementing the Law "On social contracting", the Ministry approved the following rules and regulation:

- Regulation on the bidding procedure for social programs;
- Guidelines on how to organize and conduct bidding for social programs;
- Instructions on how to monitor the quality of social services.

However, the mechanisms to disburse funds from the budget have not been developed so far. They are in the process of development by the Soros Foundation-Kyrgyzstan, USAID, Partner Network Association, Socium NGO and other partners. The following documents are planned to be approved:

- Regulation "On the procedure of the bidding for public projects within implementation of the social contracting mechanism";
- Regulation "On the procedure of monitoring and evaluation of public projects within implementation of the social contracting mechanism";
- Regulation "On the procedure of provision of social services using the social vouchers";
- Regulation "On the web portal of governmental grants to finance public projects".



Same-sex relations

The laws of the Kyrgyz Republic define the age of consent – 16 years of age – irrespective of the gender. The Criminal Code of the Kyrgyz Republic stipulates criminal responsibility for any persons of full legal age for sexual relations, including same-sex, with people under sixteen years of age. There is no punishment stipulated for sexual relations between adults only for the reason that such adults are of the same sex. The new Criminal Code also does not contain any provisions on the criminal responsibility for same-sex relations.

However, for convicts, serving their sentences in penal institutions, homosexuality is an offense. In accordance with article 88 of the Penal Code, homosexuality is a gross violation of the procedure of serving the sentence.



Prohibition of the “homosexual propaganda”

The Kyrgyz legislation does not contain an express prohibition of the "propaganda of homosexuality." At the same time, articles 262 and 262-1 of the Criminal Code include prohibition of the production, distribution and promotion of any pornographic materials. In 2014, a draft law was submitted for consideration of the Kyrgyz Supreme Council on prohibition of the "propaganda of non-traditional sexual relations" to impose criminal responsibility on any persons promoting "non-traditional sexual relations", including the journalists who promote such relations through mass media, with a punishment for such offense of up to one year of imprisonment. Besides, this draft law prohibits creating LGBT associations to protect their rights and stipulates restrictions on the "organization of and participation in peaceful assemblies with a goal of making public any messages or positions relating to any formats of non-traditional sexual relations."

A group of independent UN experts called the parliament and the representatives of official Kyrgyz authorities to refrain from adopting this law, as it would discriminate against the LGBT. Due to the critical comments of international organizations, the draft law was withdrawn for finalization. After being finalized, it was brought back for consideration, and in February 2017, the Kyrgyz Supreme Council approved the draft law at the second reading. So far, there has been no third reading and the draft law has not come into force.

Anti-discrimination laws – in particular, in relation to sexual orientation, gender identity and gender expression

In Kyrgyzstan, there are no laws prohibiting the discrimination based on sexual orientation, gender identity or gender expression. Currently, a draft law "On equality" is being developed, which includes SOGI. This draft law is discussed at the platform of anti-discrimination coalition and relevant experts. It covers all areas of life of the society and is aimed at prevention, discontinuation and elimination of all the forms of discrimination from the side of governmental agencies, local authorities, relevant civil servants, legal entities and individuals.

The draft law stipulates creation of an independent Equality Center, which should be a body to investigate any discrimination-related complaints.



Laws on gender identity/expression (legal gender recognition and related procedures)

In the Kyrgyz Republic, every person has a right to change the gender identity. This right is affirmed in the Law "On protecting the health of the Kyrgyz Republic citizens." The first gender reassignment surgery was performed on a transgender person in Bishkek at the end of 2013. Article 38 of the Law reads, "the sexual identity may be changed or corrected in health care facilities through medical interventions at the request of a full-aged patient based on medical, biological, social and psychological indications in accordance with the procedure set forth by the responsible governmental body of the Kyrgyz Republic in the area of health care." In January 2017, the Ministry of Health approved the Guidelines on the provision of medical and social help to transgender, transsexual and gender non-conforming people for medical workers of all levels of health care and other government departments of the Kyrgyz Republic." In addition to the recommendations on medical and social assistance, the Guidelines define the procedure of examination (setting a diagnose) and change of gender marker and name in the relevant documents of trans* people – with no requirements on the surgical intervention or compulsory hospitalization based on a clearly defined list of medical check-up procedures.

A sufficient indication to change the gender marker in passport is compliance with the criteria of the current version of the International Classification of Diseases. After outpatient examinations and follow-up of the patient, assessment of their psychical and psychological state (no more than 4 months), based on the decision of a medical consultative board (MCB), a medical certificate of Form No. 048/u is issued, which serves as a basis to introduce the required changes (name, gender marker in passport) and issue relevant documents (legal gender recognition) in civil registration offices at the place of residence. This procedure is regulated by article 72 of the Law "On civil registration" and Guidelines "On the civil registration procedure in the Kyrgyz Republic", paragraph 155 whereof stipulates introduction of changes and amendments into the civil registration records.



Freedom of expression and assembly in the context of LGBT community

In the laws of Kyrgyzstan, there is no separate regulation, which guarantees the freedom of expression and assembly of the LGBT community representatives. Those are the constitutional rights of every citizen of the Kyrgyz Republic in accordance with articles 31 and 34 of the Kyrgyz Constitution. Besides, the freedom of peaceful assembly is regulated by the Law "On peaceful assembly", which stipulates guarantees on exercising this right. This law guarantees the right of free assembly with no differences based on gender, race, language, ethnicity, religion, age, political opinions or other beliefs, background, financial and other status or any other circumstances.

Civil society organizations of Kyrgyzstan documented a number of cases, when the state did not protect the rights of LGBT representatives for the freedom of expression and peaceful assembly – the attacks on the open LGBT events were not investigated, there was no response to the calls of religious leaders and extreme right movements in Kyrgyzstan to violence towards LGBT, etc.

Besides, NGOs emphasize that the government hinders implementation of full sexual education in secondary schools. The case of attack on the Reproductive Health Alliance of Kyrgyzstan (RHAK) from the side of conservative political groups, which were blaming the RHAK for introducing the values foreign to the Kyrgyz society, has not been properly investigated.



Legal status of the same-sex couples

In the laws of the Kyrgyz Republic, the legal status of same-sex marriages is not recognized. Article 2 of the Kyrgyz Family Code defines a family as a registered union of a man and a woman. Thus, as a legal concept the marriage is defined as a union between a man and a woman, irrespective of their sexual orientation. Any other forms of partnership may not be legally recognized or have any legal consequences. The referendum to amend the Constitution of the Kyrgyz Republic in 2016 resulted in a change to Article 36, which had not prior restricted marriage to the union of a man and a woman. Thus, the language of the article changed from "persons who have reached adulthood may enter into a marriage" into "marriage is created between a man and a woman."



Hate crimes

The Kyrgyz laws do not contain any definition of the hate crimes and do not determine hate, in particular based on SOGI, as an aggravating circumstance when committing violence. According to the NGOs, "lack of legislation on the hate crimes leads to the growth of violence and hate towards the LGBT. For example, there was an outbreak of violence towards the LGBT community members after the fatwa issued on 30 January 2014 by the Spiritual Directorate of the Muslims of Kyrgyzstan, citing the hadith attributed to Prophet Muhammad: "If you find anyone doing as Lot's people did, kill the one who does it, and the one to whom it is done."

The cases of attacks on members of the LGBT community are investigated only if in the actions of the offenders there are other breaches of law, which lead to criminal or administrative responsibility, such as disorderly conduct or bodily injuries. Thus, when the LGBT community members were attacked by representatives of the Kalys movement in May 2015, criminal proceedings were initiated for the disorderly conduct (art. 234 of the Criminal Code). Such approach does not allow defining the key motive of the offense committed and imposing punishment for the offenses against minorities. Besides, law enforcement and judicial bodies are not trained to properly qualify and investigate such offenses.



Adoption

In the laws of the Kyrgyz Republic, there are no express regulations, hindering or prohibiting LGBT community members to act as legal guardians or adoptive parents. However, same-sex couples may not adopt a child together, because in accordance with the Kyrgyz Children's Code, part 2 of article 48, a child may be adopted by two people only if they are officially married. In practice, though, one of the partners may act as the adoptive parent considering that the laws allow adoption of children by people who are not married. However, in this case the relations of the second partner with such child will not be legally recognized. Currently, the government does not plan to introduce any changes to the regulatory framework on this issue.

On 27 October 2015, Regulation No. 733 of the Kyrgyz Government was issued to approve the Procedure of adoption of children by citizens of the Kyrgyz Republic and foreign citizens and the List of diseases, which do not allow a person to act as a legal guardian or an adoptive parent. According to this list of diseases, a person may not act as a legal guardian or an adoptive parent if such person has "HIV infection, AIDS."



Using international and regional mechanisms to change laws and practices in the area of human rights of gay men, other MSM, trans*people and PLWH

In 2014, Kyrgyz non-governmental organizations prepared and submitted a Universal Periodic Review (hereinafter – the UPR) on Kyrgyzstan. The UPR was prepared by a coalition of 10 non-governmental organizations, with the relevant data collection conducted by 26 organizations. This report included separate information on discrimination of the vulnerable populations in Kyrgyzstan. Besides, it was stated in the report that: "Absence of the term "discrimination" is one of the reasons of inefficiency of the Kyrgyz anti-discrimination policies. In the national laws, there are no special anti-discrimination regulations on the responsibility of civil servants for discriminatory decisions and behaviors. There is no practice in the national courts of carrying out legal proceedings on the discrimination cases as the courts do not consider discrimination as a subject matter of such proceedings."

In 2014, non-governmental organization "Kyrgyz Indigo" prepared a combined alternative report on the UPR on LGBT human rights violations in Kyrgyzstan. The report describes the general situation with the human rights of LGBT in the country, including cases of violence, hate crimes and discrimination based on sexual orientation and gender identity. In this report, apart from the gaps stated in this review, the question of security of the LGBT activists was also brought up, with description of the cases of harassment, threats and violence towards both activists and other members of the LGBT community, in particular in the first half of 2014, and lack of response from the law enforcement agencies to the statements of such offenses.

At the end of 2014, the Human Rights Movement "Bir Duino Kyrgyzstan", EL-PIKIR Center of Public Opinion Study and Forecasting also submitted an alternative report on the UPR to the UN Human Rights Council. This report included questions of the right to associations and stressed the need to stop the pressure on the LGBT groups and individual activists.

In 2014, non-governmental organizations prepared and submitted to the UN Human Rights Committee a Report on the implementation of the International Covenant on Civil and Political Rights by the Kyrgyz Republic. The report also points out the anti-discrimination gap in the national laws. Besides, the document emphasizes systematic violence towards the LGBT and homophobic attitudes prevailing in the society as well as prosecution from the side of law enforcers using threats and blackmailing with disclosure of the information on sexual orientation. It is stated that during the survey 51% of responded stated that they had problems with militia.



Recommendations of the UN committees to Kyrgyzstan

The UN Human Rights Committee in the Concluding observations on the second periodic report of Kyrgyzstan, being concerned about the reports of violence against lesbian, gay, bisexual and transgender (LGBT) persons by both State and non-State actors, and the failure on the part of the State party to address such violence, issued its recommendations:

- The State party should ensure that violence against LGBT persons is thoroughly investigated, that perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims are adequately compensated and protected against reprisals."

The United Nations Committee on Economic, Social and Cultural Rights in its concluding observations to the combined second and third periodic reports of Kyrgyzstan, expressed its concerns about the lack of "comprehensive anti-discrimination legislation, and the persistent discrimination on the basis of... sexual orientation or disability,... introduction to parliament of bill No. 6-11804/14, which would impose administrative sanctions for persons who foster positive attitudes towards non-traditional sexual relations", and pointed out that it:

- recommends that the State party adopt a comprehensive anti-discrimination law that provides a definition of direct and indirect discrimination,
- withdraw the above-stated bill No. 6-11804/14;
- it is necessary to carry out public education campaigns to eradicate common misperceptions and stereotypes;
- ensure that all persons, irrespective of their sexual orientation, can fully enjoy economic, social and cultural rights without discrimination..."

The Committee also pointed out that discrimination in access to health care persists against lesbian, gay, bisexual, transgender and intersex persons, women involved in sex work, persons with disabilities, and persons living with HIV/AIDS and provided the following recommendations on this matter:

- "increase human, technical and financial resources allocated to the health sector, and:
 - a) monitor discrimination in access to health services and ensure that health professionals who hamper anyone's access are duly sanctioned; ...
 - c) Disseminate information on patients' rights and ensure the availability of adequate implementation mechanisms, with particular focus on access to appropriate compensation in the event of medical errors."

As the review of laws and practices presented herein shows, all of the recommendations provided by the UN committees have not been implemented yet. There is no information on the cases of individual complaints from the LGBT community members to the relevant UN agencies or any decisions issued on such cases. There is also no information on the use of the institute of special rapporteurs and working groups of the United Nations in case of violations of the rights of gay men, other MSM, trans* people and PLWH by non-governmental organizations of Kyrgyzstan.

Legislation

- Constitution of the Kyrgyz Republic dated 27.06.2010.
- Law "On HIV/AIDS in the Kyrgyz Republic" dated 13 August 2005 N 149
- Law "On external migration" dated 17 July 2000 N 61
- Law "On internal migration" dated 30 July 2002 N 133
- Law "On the legal status of foreign citizens in the Kyrgyz Republic" dated 14 December 1993 N 1296-XII
- The Rules of Medical Examination to Detect Human Immunodeficiency Virus, Medical Records and Follow-up of People with Positive and Equivocal Results of HIV Tests in the Kyrgyz Republic, approved with a Resolution of the Kyrgyz Government dd. 25 April 2006 N 296
- Agreement on cooperation in addressing the problems of HIV infection of the member states of the Commonwealth of Independent States, signed on 25 November 1998 in Moscow, approved by the Resolution of the Kyrgyz Government dated 9 October 2000 N 616.
- Criminal Code of the Kyrgyz Republic dated 1 October 1997 N 68
- Criminal Code of the Kyrgyz Republic dated 2 February 2017 N 19
- Civil Code of the Kyrgyz Republic part II dated 5 January 1998 N 1
- Comments to the Criminal Code of the KR
- Law "On protecting the health of the Kyrgyz Republic citizens" dated 9 January 2005 N 6
- Law "On the donation of blood and blood components" dated 2 July 2007 N 96
- The Rules of Medical Examination to Detect Human Immunodeficiency Virus, Medical Records and Follow-up of People with Positive and Equivocal Results of HIV Tests in the Kyrgyz Republic, approved with a Resolution of the Kyrgyz Government dd. 25 April 2006 N 296
- Law "On social contracting" dated 28 April 2017 N 70
- Law "On local government" dated 15 July 2011 N 101
- Law "On non-profit organizations" dated 15 October 1999 N 111
- Regulation on the bidding procedure for social programs approved with a Government Resolution dated 24 January 2009 N 41
- Guidelines on how to organize and conduct bidding for social programs
- Instructions on how to monitor the quality of social services provided by NPOs within the social contracting arrangements
- Criminal Code of the Kyrgyz Republic dated 1 October 1997 N 68
- Penal Code of the Kyrgyz Republic dated 13 December 1999 N 142
- Law "On protecting the health of the Kyrgyz Republic citizens" dated 9 January 2005 N 6
- Law "On civil registration" dated 12 April 2005 N 60
- Guidelines on the provision of medical and social help to transgender, transsexual and gender non-conforming people for medical workers of all levels of health care and other government departments of the Kyrgyz Republic, approved with an order of the Ministry of Health N 42 dated 18 January 2017
- Law "On peaceful assembly" dated 23 May 2012 N 64
- Children's Code of the Kyrgyz Republic dated 10 July 2012 N 100
- Procedure of adoption of children by citizens of the Kyrgyz Republic and foreign citizens approved with the Resolution of the Kyrgyz Government dated 27 October 2015 N 733
- List of diseases, which do not allow a person to act as a legal guardian or an adoptive parent approved with the Resolution of the Kyrgyz Government dated 27 October 2015 N 733



International and regional documents which were ratified/signed/passed the procedure of accession by the Kyrgyz Republic



7 October 1994

International Covenant on Civil and Political Rights, 16 December 1966

Optional Protocol to the International Covenant on Civil and Political Rights, 16 December 1966

International Covenant on Economic, Social and Cultural Rights, 16 December 1966

Convention on the Rights of the Child, 20 November 1989



10 February 1997

Convention on the Elimination of all Forms of Discrimination Against Women, 18 December 1979



5 September 1997

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984



29 September 2003

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 December 1990



21 September 2011 года

Convention on the Rights of Persons with Disabilities, 13 December 2006

¹ Article 25 of the Constitution: "1. Every person has a right to the freedom of movement and choice of place of stay and residence within the Kyrgyz Republic. 2. Every person has a right to freely travel outside the Kyrgyz Republic."

² Article 19 of the Constitution: "1. In the Kyrgyz Republic, non-citizens have the same rights and obligations as the citizens of the Kyrgyz Republic, apart from the cases set forth in the laws or international treaties, approved by the Kyrgyz Republic. 2. In accordance with its international obligations, the Kyrgyz Republic shall grant asylum to foreign citizens and stateless persons prosecuted for political reasons as well as for reasons of violation of human rights and freedoms."

³ Article 8 of the Law "On internal migration" <http://cbd.minjust.gov.kg/act/view/ru-ru/1090>

⁴ P.3 art. 7 of the Law "On external migration" <http://ssm.gov.kg/law/view/3>

⁵ The Rules of Medical Examination to Detect Human Immunodeficiency Virus and Follow-up for HIV Infected Persons and Patients with AIDS in the Kyrgyz Republic " <http://cbd.minjust.gov.kg/act/view/ky-kz/34694>

⁶ 11 CIS countries are Azerbaijan Republic, Republic of Moldova, Republic of Armenia, Russian Federation, Belarus Republic, Tajikistan Republic, Georgia, Turkmenistan, Kazakhstan Republic, Uzbekistan Republic, and Ukraine.

⁷ The Criminal Code of the Kyrgyz Republic dated 1.10.1997 <http://cbd.minjust.gov.kg/act/view/ru-ru/568>

⁸ Comments to the Criminal Code of the Kyrgyz Republic <http://medialawca.org/old/node/5318>

⁹ The Criminal Code of Kyrgyz Republic dated 2.02.2017, <http://cbd.minjust.gov.kg/act/view/ru-ru/111527>

¹⁰ Article 149 of the Criminal Code of Kyrgyz Republic dated 2.02.2017, <http://cbd.minjust.gov.kg/act/view/ru-ru/111527>

¹¹ Art. 40 of the Law of the Kyrgyz Republic "On non-profit organizations",

https://online.zakon.kz/Document/?doc_id=1021519#pos=70;-102

¹² Art. 6 of the Law of the Kyrgyz Republic "On social contracting" http://cbd.minjust.gov.kg/act/view/ru-ru/111577?cl=ru-ru#st_5

¹³ Article 17 of the Law of the Kyrgyz Republic "On social contracting", see the reference above

¹⁴ Human Rights Watch made the following statement concerning this draft law: "Vague wording used in the law create preconditions for its use against a wide range of people and groups the activities of which are directly and indirectly related to the issues of sexual health or to the status of sexual and gender minorities in Kyrgyzstan. The organizations working in the area of HIV prevention; right to health and provision of health services; conducting activities aimed at lesbian, gay, bisexual and transgender (LGBT) and human rights as well as journalists are at risk."

¹⁵ Kyrgyzstan Information Agency, 22 October 2010,

http://kyrtag.kg/news/operatsiya_po_smene_pola_vpervye_provedena_v_natsionalnom_gospitale_bishkeka/

¹⁶ Law "On civil registration" <http://cbd.minjust.gov.kg/act/view/ru-ru/1655>

¹⁷ Guidelines "On the civil registration procedure in the Kyrgyz Republic"

<http://soft.el.kg/assets/%D0%B8%D0%BD%D1%81%D1%82%D1%80%D1%83%D0%BA%D1%86%D0%B8%D1%8F-%D0%BE-%D0%BF%D0%BE%D1%80%D1%8F%D0%B4%D0%BA%D0%B5-%D1%80%D0%B5%D0%B3%D0%B8%D1%81%D1%82%D1%80%D0%B0%D1%86%D0%B8%D0%B8-%D0%B0%D0%BA%D1%82%D0%BE%D0%B2-%D0%B3%D1%80%D0%B0%D0%B6%D0%B4%D0%B0%D0%BD%D1%81%D0%BA%D0%BE%D0%B3%D0%BE-%D1%81%D0%BE%D1%82%D0%BE%D1%8F%D0%BD%D0%B8%D1%8F-%D0%BA%D1%80.pdf>

¹⁸ In the recent years, there were several cases when such rights of the LGBT community members were violated from the side of radically minded members of the society. On 29 January 2014, the Spiritual Directorate of the Muslims of Kyrgyzstan issued a fatwa (legal opinion on a situation), which defined unacceptability of the same-sex relations and contained a quotation from the Hadith (narrative record of the sayings or customs of the Prophet Muhammad), with a call to kill people who are condemned in such relations. After the speech of the mufti (clergy member empowered to issue fatwas), a human rights advocate Tolekan Ismailova addressed the Prosecutor General's Office concerning this fatwa asking to "protect the representatives of sexual minorities in Kyrgyzstan." According to T. Ismailova, the Prosecutor General's office was ignoring her requests in all possible ways and did not provide any response to her letters.

On 3 April 2015, office of the Labris LGBT organization was attacked. Two unidentified individuals made an attempt to burn out the office, throwing bottles with incendiary mixture. According to a representative of the Labris NGO, the organization did not insist on opening a criminal case after this attack to ensure the security of staff members and

clients of this organization because law enforcers requested them to provide all available videos from the surveillance cameras.

On 17 May 2015, there was an attack during one of the events organized by the LGBT community. Among the attackers, there were representatives of "Kyrk choro" as well as "Eldik revolution korgo keneshi", "Zhashtar keneshi" and "Kalys" movements. On this case, law enforcers initiated criminal proceedings in accordance with article 234 of the Kyrgyz Criminal Code "disorderly conduct." Later, this case was brought into court, but due to lengthy legal litigation, no final decision on it has been taken.

On 16 May 2016, representatives of the Kyrgyz Choroloru and Kalys movements ran a rally against the "LGBT propaganda" with a request to fire the host of the Kyrgyz Republican Television Company, Aigul Kurmanova, who hosted the program "Tolerance or Spiritual Values." In June 2017, a group of about 30 aggressive people initiated disturbances in a club where members of the LGBT community gathered. Apart from the broken furniture, damage was also done to some of the visitors. The law enforcers did not investigate this case. In both cases, there was no proper response from the government to protect the violated human rights of the LGBT community members.

¹⁹ *Combined alternative report for the UN Universal Periodic Review*

²⁰ *Joint submission of non-governmental organizations on the Universal Periodic Report on Kyrgyzstan*

http://lpf.kg/images/2014_%D0%94%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%9D%D0%9F%D0%9E%20%D0%BF%D0%BE%20%D0%A3%D0%9F%D0%9E_%D1%80%D1%83%D1%81%D1%81.doc

²¹ *Kyrgyzstan: violation of the LGBT human rights* <http://indigo.kg/wp-content/uploads/2016/03/UPO2014.pdf>

²² *NGO Report to the UN Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights by the Kyrgyz Republic*
http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KGZ/INT_CCPR_CSS_KGZ_16331_R.PDF

Eurasian Coalition on Male Health

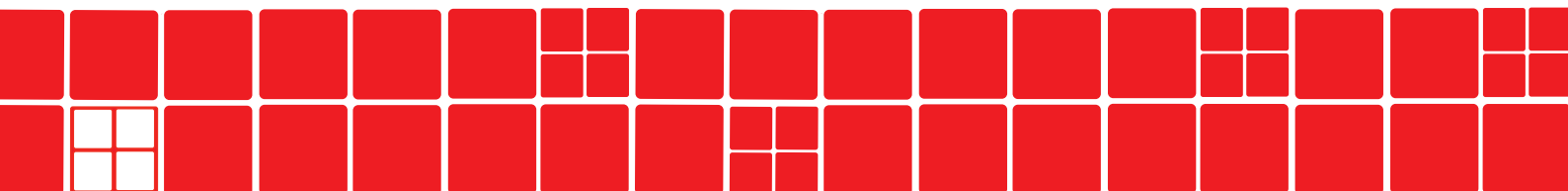
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A collage of icons representing various aspects of justice and law. The central icon is a white scale of justice on a red background. Surrounding it are several other icons: a judge at a bench (green background), a witness at a stand (blue background), a gavel (light blue background), a sun (red background), a person at a desk (dark blue background), and a pair of glasses (dark blue background). The icons are arranged in a grid-like pattern with varying background colors.