

## Submission on Kazakhstan

ENGLISH only

This report is submitted by: LGBT Organization Labrys (Kyrgyzstan) and Sexual Rights Initiative (a coalition including Action Canada for Population and Development; Creating Resources for Empowerment and Action – CREA- India; Mulabi, Latin American Space for Sexualities and Rights; and others).

1. This report deals with **sexual rights** in Kazakhstan and makes references specifically to **violence against women; the situation of lesbian, gay, bisexual and transgender people (LGBT); ethnic and gender differences in access to sexuality education/information and medical institutions negligence in HIV transmission.**

### Summary

2. This report describes gender perspective on relations between men and women in Kazakhstan and government response to the gender realities. The largest part of the report covers the situation of lesbian, gay, bisexual and transgender people in Kazakhstan. While having decriminalized homosexuality in 1998 and passed favorable legislation in relation to gender marker change, Kazakhstan continues to associate homosexuality with criminal behavior in its criminal code and does not include discrimination based on sexual orientation and gender identity in its anti-discrimination legislation. Issues of sexual orientation and gender identity are often discussed in the public realm but in a stereotypical way which creates a hostile atmosphere for lesbian, gay, bisexual and transgender people and provides obstacles for the work of organizations that promote their rights. Due to discriminatory attitudes of media, religious institutions and state officials, organizations working on sexual orientation and gender identity matters are unable to fully address the issues publicly. The report covers violence based on sexual orientation and gender identity, identifying lack of state response to the violent incidents. Finally, ethnic and gender differences in access to sexuality information are discussed.

### Background

3. Kazakhstan has ratified all major UN Conventions, specifically the Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child.

4. Since gaining its independence from the Soviet Union in 1991, Kazakhstan has been making a steady progress in improving its economy and establishing a system of human rights protection. The Kazakh government committed itself to establishing a National Commission on family affairs and gender policy which is responsible for making the strategy of Kazakhstan's development by 2030 gender-sensitive and implementing the strategies for UN Millennium Development Goals. The Commission has developing a number of measures to secure and improve reproductive health of men, women and children and eliminating domestic violence. The Commission meets at least once in three months and is entitled to demand the government and different state institutions to provide information on gender situation in Kazakhstan. In practice, the Commission see the efforts to advance women's rights not being very fruitful because the government prioritizes other issues over it.

### 5. Recommendations:

- a) Establish mechanisms to ensure that the strategy stated in the policy document on establishing National Commission on Family Affairs and Gender Policy is followed by the state institutions;
- b) Educate officials working on gender about sexual and reproductive rights to ensure that they use the most up-to-date methods in applying their mandate both at the state and at local level;

c) Include a mechanism of monitoring the work of Commission both by the state and nongovernmental organizations (NGOs);

6. Kazakhstan has a number of nongovernmental organizations working on sexual and reproductive rights mostly in the area of HIV prevention mostly focusing on injecting drug users, sex workers with some initiatives focusing on working with men who have sex with men. The area of sexual rights is primarily reserved for HIV prevention organizations while women's organizations focus on issues which are less taboo.

7. Relations between government and NGOs have been rather difficult due to state efforts to establish some level of control over civil society manifested in restrictive legislation on internet use and general fear of the state among civil society groups.

### **Gender relations in Kazakhstan**

8. The gendered structure of Kazakhstani society emphasizes motherhood and preserving the family as the key goal in women's lives which puts stigma on unmarried women and keeps married women in violent relationships. Men in Kazakhstan are seen as aggressive and self-centered by nature and women need to adjust to the men's needs in order to keep their family together. Women's jobs are considered to be secondary sources of income both by the family and employers which contributes to their economic dependency on the men and extended family. Divorces are discouraged by the society and women are blamed for leaving a violent relationship because they are seen as capable of maintaining peace in the family due to neglecting their own needs.<sup>1</sup>

9. Recommendations

a) To design and implement an awareness-raising program on violence against women as a human rights violation, working at various levels (state officials, health and justice professionals, communities and women themselves).

### **Sexual orientation and gender identity-based discrimination**

10. Homosexuality was decriminalized in Kazakhstan in 1998. However, the stigma associated with criminalization and medicalization of same-sex relationships remains. It is expressed through police detaining people based on their sexual orientation or gender identity and expression along with medical specialists refusing to provide services to lesbian, gay, bisexual and transgender people.

11. Lesbianism and 'muzhelozhstvo' (in English: sodomy) are listed in Kazakh Criminal Code in articles 121-123 as separate categories for forced sexual contacts which may have negative consequences for LGBT people given the stigmatizing attitudes about LGBT people in Kazakhstani society.

12. Article 141 on 'Violating equality of the citizens' and article 164 on promoting hate based on different social characteristics of Kazakh Criminal Code do not include sexual orientation and gender identity which contributes to lawlessness regarding severe cases of discrimination against LGBT people.s

13. The situation of lesbian, gay, bisexual and transgender people in Kazakhstan has been in a realm of public discussion due to commitment of nongovernmental organizations and funders to bringing light to the issue. Kazakhstan has prominent legislation on the rights of transgender

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<sup>1</sup> Mara Seitova *Woman in Kazakh family: to tolerate or to leave* available online in Russian: <http://www.genderstudies.info/hist/hist2.php> (accessed 11 July 2009)

people to change gender and name in official documents since 2003. However, the legislation is not publicized which limits transgender people's access to recognition of their identities by the state.

14. Medical institutions in Kazakhstan are mostly funded by the state and those of them in large cities have qualified staff to address the concerns of families that bring their children to psychiatric hospital seeking to understand their sexual orientation or gender identity. However, there are a number of stereotypes expressed by medical professionals through means of media and during individual consultations that can and have been harmful to the lesbian, gay, bisexual and transgender (later in the text LGBT) people. Specifically, well-known sexologists repeatedly make remarks in the media about reasons why people can be LGBT that are scientifically unproven.

15. Recommendations:

- a) Adopt gender neutral rape provision in Criminal Code;
- b) Reconceptualize homosexuality ('lesbianism' and 'muzhelozhstvo' as worded in Kazakh Criminal Code) as a sexual orientation;
- c) Abolish using the stigmatizing term 'muzhelozhstvo' (sodomy) as a legal term;
- d) Add sexual orientation and gender identity as grounds for discrimination to articles 141 and 164 of Kazakh Criminal Code;
- e) Raise awareness among civil servants at state-funded institutions about sexual orientation and gender identity;
- f) Include most recent research about sexual orientation and gender identity in medical universities' curriculum;
- g) Implement programs to adequately train health professionals in public hospitals in the latest developments in the area of sexual orientation and gender identity to ensure that they will provide good quality and non-discriminatory services to their clients and families
- h) In accordance with UDHR Article 21, para. 2, ICCPR Article 25 (c), ensure LGBT people's access to quality health services;
- i) To adequately publicize the national laws allowing transgender people's to change their name and sex in public identity papers so more individuals will be able to benefit from them

### **Limitations and disapproval of LGBT associations by state and non-state institutions**

16. Due to a number of lesbian, gay, bisexual and transgender NGO initiatives' activity in the country, Kazakh public institutions have been making public statements of disapproval of existence of same-sex relations and families. In 2008 during a public discussion of the reforms to Kazakh Family Code, public servants of Almaty department on the Protection of Children and Almaty Public Security Office stated that children can be traumatized by living a family with parents of the same sex while Kazakhstan is not ready for providing acceptance or recognition to same-sex couples.<sup>2</sup>

14. The hostility of public institutions is fuelled by religious institutions which have been actively promoting intolerance especially following a media hoax about a possible pride parade in capital city of Almaty in summer 2008. Organizing the parade was not confirmed by any LGBT organization, however, religious leaders of a number of denominations issued public statements denouncing the event. These institutions referred to LGBT people as 'decomposing pseudo-subculture' that is a threat Kazakh society's spiritual traditions and morality.<sup>3</sup> They urged the state to 'oppose the tendencies which decompose society and harm the dignity, security and wellbeing of people'. A number of NGOs that work on protecting the rights of LGBT people received threats

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<sup>2</sup> <http://www.centrasia.ru/newsA.php?st=1219814280> (accessed 9 July 2009)

<sup>3</sup> Press releases of Union of Kazakh Muslims, Roman Catholic Holy Trinity Church and articles about press conferences available at [www.lgbt.kz](http://www.lgbt.kz) (accessed August 2008)

from groups and individuals. Soros Foundation – Kazakhstan had to make a public statement about not being involved in financing pride events but in general providing support to LGBT community organizations following public outrage about the pride event<sup>4</sup>.

15. Since the hoax pride incident LGBT organizations in Kazakhstan has been constantly under threat due to high visibility and had to cease their public activities until tensions decreased. Activists are also concerned with 2009 internet legislation that may put them at risk for putting information about sexual orientation and gender identity issues online.

16. Lesbian, gay, bisexual and transgender people name public hostility, family violence, homo and transphobic attitudes promoted by the media and by public officials as the main threats to their wellbeing. According to LGBT NGOs, police often neglects cases of violence that are reported by LGBT people. According to LGBT NGOs, police often neglects cases of violence that are reported by LGBT people and continuously detains LGBT people to extort bribes.

17. Recommendations:

- a) In accordance with Principle 25 of Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, ‘Take all appropriate measures to eliminate stereotypes and prejudices regarding sexual orientation and gender identity that prevent or restrict participation in public life’;
- b) In accordance with Yogyakarta Principles and Declaration on Human Rights Defenders, take all necessary legislative, administrative and other measures to ensure a favorable environment for activities directed towards the promotion, protection and realization of human rights, including rights relevant to sexual orientation and gender identity;
- c) Take all appropriate measures to combat actions or campaigns targeting human rights defenders working on issues of sexual orientation and gender identity, as well as those targeting human rights defenders of diverse sexual orientations and gender identities;
- d) Ensure that human rights defenders, regardless of their sexual orientation or gender identity, and regardless of the human rights issues they advocate, enjoy non-discriminatory access to, participation in, and communication with, national and international human rights organizations and bodies;
- e) Ensure the protection of human rights defenders, working on issues of sexual orientation and gender identity, against any violence, threat, retaliation, *de facto* or *de jure* discrimination, pressure, or any other arbitrary action perpetrated by the State, or by non-State actors, in response to their human rights activities.

## **Violence against LGBT people**

18. According to a study conducted by Open Society Institute’s Sexual Health and Rights Project and Soros Foundation – Kazakhstan in 2008, 30% out of 991 interviewed LGBT people experienced different types of violence ranging from armed attack to sexual violence.<sup>5</sup> Most commonly the perpetrators of violence were individuals but in 15% of cases law enforcement employees were responsible for committing violent acts. Out of all the perpetrators, 30% were people that the survivor was familiar with. The most common violent situation described in the study were committed by the family of the LGBT people or someone in their close social circle such as school, workplace or neighborhood. Over 75% of survivors did not report the violent incidents to the police due to their perceived hostility and fear of disclosure. In addition, in cases of family violence survivors did not want to report their family members to law enforcement agencies. Out of those who reported the incidents, about 40% experienced hostile attitudes from the police.

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<sup>4</sup> Official statement of Soros Foundation – Kazakhstan available online <http://www.soros.kz/226.html> (accessed July 2009)

<sup>5</sup> The study is to be published in autumn of 2009, its findings were obtained through email communication with Soros Foundation – Kazakhstan in summer 2009

## 19. Recommendations

According to principle 5 of the Yogyakarta Principles, 'everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group'. On response to violence against LGBT people in Kazakhstan, the state should:

- a) Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity;
- b) Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation or gender identity of any person or group of persons, in all spheres of life, including the family;
- c) Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation;
- d) Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.

## Gender, ethnicity and sexuality

20. According to a cross-sectional survey conducted in Semey, Kazakhstan<sup>6</sup>, there are significant differences between the number of men and women in the same age cohort which were sexually active at the time of the study. Among female students only 25% had sex while among male students the number was 75%. Of all the sexually active students, men had their first sexual contact earlier ages varying from 11 to 20 years with a median age of 16, for women the range was 14 to 22 with median age of 18 years old<sup>7</sup>. Out of all the sexually active men 32% used sex workers' services<sup>8</sup>.

21. A number of academic studies indicate differences in access to information about sexual and reproductive rights among members of different ethnic communities. Specifically ethnic Kazakhs have less access to sexuality education than ethnic Russians due to cultural differences and sexuality issues being a taboo among ethnic Kazakhs<sup>9,10</sup>. Kazakh students learn about HIV at later age and mostly from school while Russian students learn about it from their parents or media.<sup>11</sup>

## 22. Recommendations

- a) Research the gender and ethnic differences in access to information about sexuality;
- b) Provide education and information materials that are contextualized to people of different ethnic groups, gender identities and sexual orientations;

## Medical negligence related to HIV infection

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<sup>6</sup> Hansson, Stockfelt et al (2008), BMC International Health and Human Rights 'HIV/AIDS Awareness and risk behavior among students in Semey, Kazakhstan: a cross-sectional study' (accessed July 2009) p.5

<sup>7</sup> Hansson, Stockfelt p. 5

<sup>8</sup> Ibid p. 6

<sup>9</sup> Hansson, Stockfelt et al (2008), BMC International Health and Human Rights 'HIV/AIDS Awareness and risk behavior among students in Semey, Kazakhstan: a cross-sectional study' p.8 (accessed July 2009)

<sup>10</sup> Annie Dude (2005) University of Chicago, 'Recent Trends in Infant Mortality in Kazakhstan: The result of Discrimination?' (paper can be accessed online, obtain from the author through email communication)

<sup>11</sup> Hansson, Stockfelt p. 3

23. Due to lack of funding and staff training, medical institutions in Kazakhstan are using disposable contaminated medical equipment on a number of patients. In Shymkent, a city in southern Kazakhstan, 94 toddlers were infected with HIV in 2006 due to negligence and corruption among medical personnel.

24. Recommendations

- a) Monitor the use of disposable equipment by medical institutions to avoid further infections by blood transfusion and shots;
- b) Train medical staff about HIV transmission to ensure proper use of disposable equipment;
- c) Increase funding for purchase of disposable medical equipment and monitor its use.