

QUICK GUIDE TO ADDRESSING SEXUAL RIGHTS ISSUES DURING THE UNIVERSAL PERIODIC REVIEW ON KAZAKHSTAN

These Guides include:

- A list of issues mentioned in the National Report, the Compilation of official UN Documents and the Summary of Other Stakeholders Submissions, with references to the particular paragraphs in which they can be found.
- The full text of those paragraphs
- In those cases in which the Sexual Rights Initiative has submitted reports, we have included an Annex with our recommendations.

References in the two working languages of the Council (English and French) have been kept in their original language.

Issues are highlighted-References in the National Report are *in Italics*.

Recommendations -including those from UN treaty-monitoring bodies, are at the end of the document.

All sexual rights issues that do not relate specifically to women are referred to in this Guide. Sexual rights' issues referring specifically to women -as well as other women's issues- are referred to in the Guide on Women's Issues

OP-CRC-SC (Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography) ratified

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| Sexual orientation and gender identity | | | No legal protection on basis of sexual orientation or gender identity. No practice of judicial claims (13) Detentions by police. Reluctance of medical specialist to see LGBT people (20) Associated with criminal behaviour in criminal code. LGBT organizations |

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Criminalization of same-sex consensual practices

Joint submission by Labrys and Sexual Rights Initiative (JS4) noted that homosexuality was decriminalized in Kazakhstan. However, the stigma associated with criminalization and medicalization of same sex relationships remained (Para 31, Summary)

Gender identity/Transsexual persons

JS4 also noted that Kazakhstan also had legislation on the rights of transgender people to change gender and name in official documents. However this legislation was not publicized (Para 31, Summary)

HIV/AIDS

Les mesures visant à stabiliser la prévalence de l'infection par le VIH sont mises en oeuvre dans le cadre du Programme gouvernemental 2006-2010 de lutte contre l'épidémie de sida en République du Kazakhstan, qui a pour objectif de stabiliser cette prévalence au stade de l'épidémie concentrée et d'éviter ainsi l'épidémie généralisée. Selon une évaluation d'experts de l'Organisation mondiale de la santé, l'épidémie est à l'heure actuelle au stade concentré et le taux de prévalence de l'infection ne dépasse pas 0,15 %, soit cinq fois moins que la moyenne mondiale et quatre fois moins que la moyenne de l'Europe orientale et de l'Asie centrale (Para 157, NR)

In 2009, the United Nations Office on Drugs and Crime reported that, despite legislation prohibiting discrimination against persons () infected with HIV, there still exists discrimination against these vulnerable groups. In 2007, The Committee on the Rights of the Child (CRC) noted the stigmatization of children infected and affected by HIV/AIDS, including cases of abandonment (Para 10, Compilation). In 2009, UNICEF highlighted an incident in 2006 in southern Kazakhstan, in which 147 children were infected with HIV in pediatric hospitals as a result of prolonged hospitalization and excessive treatment that exposed them to infection. In 2007, CRC was concerned that Kazakhstan () remains with major impact on the HIV infection

rate (Para 34, Compilation). JS3¹ noted reports of poor hygiene standards and inadequate qualifications of health care staff in relation to HIV. According to JS3, due to lack of funding and staff training, medical institutions are using disposable contaminated medical equipment on a number of patients. Particular attention was drawn to children affected with HIV through blood transfusions and that poor hygiene, low salaries of health care staff and corruption had been blamed for these outbreaks. JS3 also expressed concern that measures for HIV prevention and treatment were inadequate. In 2007, less than half of people in need of antiretroviral therapy (ART) received it (Para 43, Summary)

JS3 noted that HIV testing was mandatory for all foreigners entering the country for more than 6 months or for permanent residence (Para 12, Summary). JS3 noted that prisoners were subject to compulsory HIV testing upon admission in the penitentiary institution and six months after admission, although compulsory testing of prisoners was not justified on public health grounds. JS3 expressed concern on the absence of needle and syringe programmes (NSPs) in the correctional system of Kazakhstan; and adequate access to antiretroviral treatment for people with HIV in prison (Para 19, Summary).

JS3 expressed concern that under Law "On Health Protection", the confidentiality of medical information was subject to some very significant and unjustifiably broad exceptions: a patient's health information must be disclosed at the request of health care authorities, police, a prosecutor's office, investigative bodies or a court. Moreover, JS3 noted that Kazakh law contained wide provisions for compulsory HIV testing in a variety of circumstances (Para 29, Summary)

() HIV is listed as medical condition that bars a person from adopting a child (Para 30, Summary)

See Recommendations, JS3 (12), PRI-Central Asia (19)

Sexual orientation and gender identity

JS4 noted that the Criminal Code did not include sexual orientation and gender identity as prohibitive grounds for discrimination. JS1² noted that there was no judicial practice of considering discrimination claims (Para 13, Summary). JS4 expressed concern about police detaining people based on their sexual orientation or gender identity and expression along with medical specialists refusing to provide services to LGBT people (Para 20, Summary)

¹ JS3 Joint submission by Canadian HIV/AIDS Legal Network*, Toronto, Canada; Equal to Equal, Almaty, Kazakhstan; Answer, Kazakhstan; Anti-SPID, Kazakhstan; Foundation Aman Sowlyk, Kazakhstan; GALA (LGBT), Kazakhstan; Amulet (LGBT), Kazakhstan; Credo, Kazakhstan; Centre for Information and Counselling on Reproductive Health "Tanadgoma", Georgia; HCLU (Hungarian Civil Liberties Union), Budapest, Hungary; IDPC (International Drug Policy Consortium), London, United Kingdom; IHRA* (International Harm Reduction Association), London, United Kingdom; NZDF (New Zealand Drug Foundation), Wellington, New Zealand; and INPUD (International Network of People who Use Drugs)

² JS1 Joint Submission by Almaty Helsinki Committee, Kazakhstan; Atyrau oblast Youth Resource Center, Kazakhstan; Kazakhstan Children's Fund, Kazakhstan; Kazakhstan International Human Rights and the Rule of Law Committee, Almaty, Kazakhstan; Committee for Monitoring Penal Reform and Human Rights, Kazakhstan; Crisis Center «Podrugee», Kazakhstan; Crisis Center «Zabota», Almaty, Kazakhstan; WLCI (Women's League of Creative Initiative), Almaty, Kazakhstan; International Fund for Freedom of Speech Protection «Adil Soz», Kazakhstan; International Journalism Center MediaNet, Kazakhstan; Amulet, Kazakhstan; Childhood, Kazakhstan; Childhood Without Borders, Kazakhstan; SF «Charter for Human Rights», Kazakhstan; OS «Women's Association for Development and Adaptation», Kazakhstan; OS «Namyss», Kazakhstan; OS «Legal Center of Women's Initiatives Sana Sezim», Kazakhstan; OS of mothers of disabled children «Raduga», Kazakhstan; OS «SKO Center for Support to Women», Kazakhstan; SF «Aman Saulyk», Kazakhstan; SF of the Center for Development and Adaptation «Fenix», Kazakhstan; SF "Fund for Parliamentarism Development in Kazakhstan", Kazakhstan; RNIO (Republican Network of Independent Observers), Almaty, Kazakhstan; ROS FTUK (Kazakhstan Confederation of Trade Unions), Astana, Kazakhstan; Feminist League, Almaty, Kazakhstan; Center for Legal Policy research, Almaty, Kazakhstan; Center for Protection of Children and Family Support, Kazakhstan; Center for Legal Assistance to Ethnic Minorities, Kazakhstan; Green Salvation, Almaty, Kazakhstan; PRI* (Penal Reform International), London, United Kingdom

According to JS4, Kazakhstan continues to associate homosexuality with criminal behavior in its criminal code, as separate categories for forced sexual contacts. JS4 also noted that LGBT organizations in Kazakhstan had been constantly under threat due to high visibility and had to cease their public activities until tensions decreased (Para 31, Summary)

See Recommendations, JS1 (13); JS4 (20)

Sexual Violence

() In 2008, The Committee Against Torture (CAT) was concerned about consistent allegations concerning the frequent use of torture and ill-treatment, including the threat of sexual abuse and rape, committed by law enforcement officers, often to extract "voluntary confessions" or information to be used as evidence in criminal proceedings () (Para 13, Compilation)

See Recommendations, CAT (13)

Trafficking /Forced prostitution

Le Gouvernement a donc adopté un troisième plan d'action pour combattre la traite (couvrant la période 2009-2011). (Para 88, NR). Pour prévenir les infractions liées à la traite, les organes du Ministère de l'intérieur ont mené l'opération de prévention «Halte à la traite» qui a permis de mettre à jour, en 2008, 6 cas de traite d'adultes, 5 cas de traite de mineurs, 2 cas d'enlèvement, 5 cas de privation de liberté à des fins d'exploitation, 107 cas de proxénétisme et de tenue de maison close et 5 cas d'incitation à la prostitution. Au premier semestre de 2009, 147 affaires pénales visant des infractions liées à la traite ont été ouvertes. Les organes répressifs contribuent activement à faire connaître, par le canal des médias, les actions de lutte contre la traite et mènent, en collaboration avec des ONG, des campagnes d'information. Ainsi, en 2008 les médias électroniques nationaux ont consacré plus de 300 sujets à la question de la lutte contre la traite et la presse nationale près de 400 articles (Para 91, NR). L'État finance actuellement d'importants projets sociaux menés par des ONG oeuvrant contre la traite. L'accompagnement social des victimes de la traite, qui se fait notamment dans des centres d'accueil d'urgence spécialisés, est une question d'actualité. Depuis le début de 2009, le Ministère de la justice reçoit des ressources pour l'exécution de projets sociaux triennaux visant à combattre la traite des êtres humains, qui sont mis en oeuvre avec le concours d'ONG et concernent en particulier la création d'un centre d'accueil temporaire d'urgence pour la réadaptation des victimes de la traite et le lancement de campagnes d'information (Para 92, NR)

Jubilee Campaign (JC) noted that the Government had shown efforts in recent years to reduce the amount of human trafficking into the country; however, Kazakhstan remained a country of great concern in relation to trafficking in persons (Para 22, Summary)

See Recommendations, JC (22)

Trafficking/sexual exploitation/violence against children

In 2007, CRC was particularly concerned at the violations of the rights of street children, children who are foreign citizens or who belong to ethnic minorities and their vulnerability to trafficking () and sexual exploitation. () UNICEF highlighted the fact that child exploitation and trafficking are seasonal and increase during the warm period when agricultural work begins and the homeless become prey to potential traffickers. CRC, the Committee on the Elimination of All Forms of Racial Discrimination (CERD), CAT and CEDAW noted the legislative and other measures taken to combat human trafficking. However, CEDAW was concerned about the

persistence of trafficking in women and girls, and CERD was concerned in particular that it affected non-citizens and ethnic minorities. CRC remained concerned in particular, about allegations of complicity by State officials in trafficking and that corruption impedes the effectiveness of prevention measures (Para 18, Compilation)

Suggested Questions and Recommendations

CAT

§ To apply a zero-tolerance approach to the persistent problem of torture and cruel, inhuman or degrading treatment or punishment, including by changing the performance evaluation system of investigators so as to eliminate any incentive for obtaining confessions (Para 13, Compilation)

JC

§ To make efforts to prosecute traffickers and encouraged it to develop protection programmes for victims of trafficking (Para 22, Summary)

JS1

§ To put in place a set of legislative, administrative and organizational measures to promote development of effective anti-discrimination institutes, mechanisms and procedures (Para 13, Summary)

JS3

§ To take effective measures to counter stigma and discrimination faced by children and families affected by HIV/AIDS. JS3 further recommended, inter alia, the inclusion of HIV () as condition recognized as disability under domestic law, and to ensure that people with these condition receive protection from discrimination on the basis of their health status, supporting the recommendations of the Committee on the Rights of the Child (Para 12, Summary)

JS4

§ That Kazakhstan, inter alia, take all necessary policing and other measures to prevent and provide protection; and undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence to combat the prejudices that underlie violence related to sexual orientation and gender identity (Para 20, Summary)

§ To adopt a gender neutral rape provision in the Criminal Code (Para 21, Summary)

PRI-Central Asia

§ To review the regulations and legislation governing the (HIV) treatment of persons serving life sentences, in order to bring these into line with UN standards and norms (Para 19, Summary)