



ALMA-TQ  
Voice of transgender community  
in Kazakhstan

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GLOBAL INITIATIVES  
FOR HUMAN RIGHTS  
A HEARTLAND ALLIANCE PROGRAM

# **Violations by Kazakhstan of the Right of Transgender Persons to Legal Recognition of Gender Identity**

Submitted for consideration at the  
117<sup>th</sup> Session of the Human Rights Committee  
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## Executive Summary

Lesbian, gay, bisexual, and transgender (LGBT) people in Kazakhstan are subjected to an array of violations of the human rights that are guaranteed them in the International Covenant on Civil and Political Rights. These violations include: violent attacks; inadequate and often abusive police response to these attacks; harassment, insults and humiliating remarks; and widespread discrimination in employment, access to health care, education and other arenas. Kazakhstan has neither respected nor ensured the Covenant rights to which all persons – including LGBT individuals – are entitled.

This report, however, focuses on Kazakhstan's violation of one right in particular: the right to legal recognition of one's gender identity. For transgender individuals, this is a singularly important right, because denial of legal recognition of gender leads to many other human rights violations. Without legal identity documents that conform to a person's gender identity and carry the person's chosen name, transgender individuals are made extremely vulnerable to violence, humiliation, and discrimination. Moreover, this is a violation that can be readily corrected, if the Government of Kazakhstan is willing to do so.

Kazakhstan violates the right to legal recognition of gender in the following ways:

1. Kazakhstan refuses to allow transgender individuals to change the gender designation on their official identity documents unless the person first submits to an arduous, humiliating, and expensive series of procedures. These procedures include extensive physical and psychiatric medical examinations, hormone therapy, sterilization, and gender reassignment genital surgery. At various steps in this process, the person must come before a government medical commission to receive – or be denied – permission to proceed in this abusive process.
2. Certain groups of individuals are absolutely barred from obtaining legal recognition of their gender identity. Transgender children, young adults below the age of 21, and persons deemed to have mental disorders are not allowed to apply to change the gender designation on their official identity documents.
3. Transgender people are not allowed to legally change their names without first undergoing gender reassignment surgery.

Kazakhstan's violation of the right to legal recognition of gender violates its obligations under Covenant articles 2 and 26 (anti-discrimination), 16 (recognition as a person before the law), 17 (privacy, honour and reputation), 19 (freedom of expression), 6 and 9 (life and security of person), and 23 (right to form a family).

We urge this Committee to make the following recommendations to Kazakhstan:

1. Kazakhstan should revise its rules governing legal recognition of gender identity to allow any transgender individual, upon request, to obtain a change in their gender designation and (if the person wishes) their name, on all identity documents, including (but not

limited to) birth certificates, identity cards, and passports. The new process for changing one's gender designation and name should be based entirely on self-declaration of gender and name, and should not require any form of medical evaluation, treatment or procedures.

2. Consistent with this Committee's longstanding view that "as individuals, children benefit from all of the civil rights enunciated in the Covenant,"<sup>1</sup> Kazakhstan should adopt a procedure for transgender children to obtain legal recognition of their self-defined gender identity. Such a procedure should conform to the principles of the Convention on the Rights of the Child, including in particular its requirements that (a) "[i]n all actions concerning children, . . . the best interests of the child shall be a primary consideration," and that (b) in all matters affecting a child, the child has the right to be heard, and the views of the child should be "given due weight in accordance with the age and maturity of the child."<sup>2</sup>

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<sup>1</sup> Human Rights Committee, *General Comment No. 17: Article 24 (Rights of the Child)*, ¶ 2, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. 1) (7 Apr. 1989), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/422/35/PDF/G0842235.pdf?OpenElement>.

<sup>2</sup> Convention on the Rights of the Child, arts. 3(1) and 12, 20 Nov. 1989, 1577 U.N.T.S. 3, available at <http://www.refworld.org/docid/3ae6b38f0.html>.

## Violations by Kazakhstan of the Right of Transgender Persons to Legal Recognition of Gender Identity

### I. Introduction

This shadow report is submitted to the Human Rights Committee by ALMA-TQ,<sup>3</sup> the Center for International Human Rights of Northwestern Pritzker School of Law, and Global Initiatives for Human Rights of Heartland Alliance for Human Needs & Human Rights, in anticipation of the Committee's consideration at its 117<sup>th</sup> Session of Kazakhstan's compliance with the International Covenant on Civil and Political Rights ("Covenant").<sup>4</sup>

LGBT people in Kazakhstan regularly experience violence and discrimination in violation of their Covenant rights:

A 2015 Human Rights Watch report concluded that "[h]arassment, neglect, and discrimination against LGBT people are both pervasive and underreported in Kazakhstan," that "[t]hose who attempt to report incidents have encountered inadequate, negligent, and ignorant responses from social services and law enforcement," and that "media portrayals of LGBT people are laden with scandal and hate."<sup>5</sup> The report documented, among other rights violations, instances of violence and examples of discrimination against LGBT people by employers, health care providers, and others.

A 2015 report by the NGO Article 19 found that LGBT people "frequently face discrimination, including biased media coverage and homophobic speech, from both public figures and society more broadly."<sup>6</sup> It further found that "societal prejudices and a lack of legal protections against discrimination based on sexual orientation and gender identity have created an environment in which LGBT people resort to self-censorship to avoid harassment or even violence."<sup>7</sup>

A 2015 survey by ALMA-TQ confirms the extremely difficult situation facing transgender people in Kazakhstan. Of the 41 respondents, all but three reported that they had been subjected to discrimination or violence because of their

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<sup>3</sup> ALMA-TQ is an NGO in Kazakhstan that supports transgender and gender non-conforming people.

<sup>4</sup> International Covenant on Civil and Rights, 16 Dec. 1966, 999 U.N.T.S. 171, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> [hereinafter *Covenant*].

<sup>5</sup> Human Rights Watch, "That's When I Realized I Was Nobody," *A Climate of Fear for LGBT People in Kazakhstan*, pp. 1, 7 (23 July 2015), available at [https://www.hrw.org/sites/default/files/report\\_pdf/kazakhstan07154\\_up.pdf](https://www.hrw.org/sites/default/files/report_pdf/kazakhstan07154_up.pdf) [hereinafter *Human Rights Watch Report*].

<sup>6</sup> Article 19, "Don't Provoke, Don't Challenge," *The Censorship and Self-Censorship of the LGBT Community in Kazakhstan*, p. 7 (9 Dec. 2015), available at <https://www.article19.org/data/files/medialibrary/38219/KZ-LGBT.pdf>.

<sup>7</sup> *Id.*, p. 1.

transgender status. Sixty-three percent of the respondents indicated that they had been insulted and humiliated. Twenty percent reported that they had avoided discrimination by hiding their transgender status.<sup>8</sup>

This report will focus, however, on just one issue: Kazakhstan’s violation of transgender people’s right to legal recognition of their gender identity. It does so for two reasons. First, this is a violation that leads to many other violations. Identity cards are used on a regular basis in the daily life of people in Kazakhstan. The inability of transgender people to obtain identity documents reflecting their gender identity makes these individuals extremely vulnerable to ridicule and harassment, as well as to discrimination in employment and other aspects of life.

The second reason for the decision to focus on the issue of legal recognition of gender identity is that this is an issue that can be readily addressed by the Government of Kazakhstan, if it chooses to do so. Eliminating deep-seated societal prejudices, for example, will take concerted efforts over a significant period of time. By contrast, Kazakhstan can remedy the problems that flow from its refusal to legally recognize gender identity by dropping its various medical requirements (including in-patient psychiatric testing, hormonal treatments, and surgery) and permitting transgender individuals to change their gender designation and (if they so desire) their name, based on their self-declaration of their gender identity.

## **II. Violation of the Right to Legal Recognition of Gender Identity**

### **A. The Right to Legal Recognition of Gender Identity**

Every person has a fundamental right to legal recognition of their self-defined gender identity.<sup>9</sup> Accordingly, transgender individuals are entitled, upon request, to have a name change legally recognized and to have all State-issued identity documents revised to reflect the person’s self-defined gender identity.

Gender identity is among the inviolable aspects of personhood over which the State may not exercise control. As the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity affirm, “[e]ach person’s self-defined . . . gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.”<sup>10</sup> Accordingly, the State may no more dictate or control a person’s gender identity than it can dictate a person’s religious convictions or political beliefs, or control the person’s choice of whom to marry or whether to have children. Respect for “the

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<sup>8</sup> Survey of 41 transgender individuals in Kazakhstan (2015) (Survey results on file with Center for International Human Rights).

<sup>9</sup> Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, Principle 3 (2007), *available at* [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm) [hereinafter *Yogyakarta Principles*.] These principles “were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, NGOs and others.” Website of the Yogyakarta Principles, “*About the Yogyakarta Principles*,” [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm) (last visited 29 May 2016).

<sup>10</sup> Yogyakarta Principles, *supra* note 9, Principle 3.

inherent dignity of the human person”<sup>11</sup> requires the State to give legal recognition, upon request, to a transgender person’s self-declared gender identity.

To respect and ensure the right to legal recognition of gender identity, States must have in place procedures for modifying, upon request, the gender designations on all State-issued identity documents, including (among others) birth certificates, identity cards, and passports.<sup>12</sup> Because names can be a marker of gender, these procedures must allow individuals to change their legally recognized names if they wish to do so.

States may not deny or burden a person’s request to have identity documents modified to conform to their gender identity. Gender identity refers to “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.”<sup>13</sup> It is not for the State to question the legitimacy of a person’s declaration of his or her gender identity. Nor may the State burden the exercise of the right to legal recognition of gender identity. While some transgender individuals choose to receive hormonal or surgical treatments, these treatments cannot be made a prerequisite for legal recognition of gender identity.<sup>14</sup> Nor may a State require other prerequisites such as sterilization or the dissolution of an existing marriage.<sup>15</sup>

This Committee has recognized the right to legal recognition of gender identity and has expressed concern with policies that burden the exercise of that right. In its 2008 Concluding Observations for Ireland, the Committee indicated that the State party “should also recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates.”<sup>16</sup> In its 2013 Concluding Observations for Ukraine, the Committee expressed concern over a requirement that, to obtain legal recognition of their gender, transgender persons must submit to “compulsory confinement in a psychiatric institution” for up to 45 days and “mandatory corrective surgery.”<sup>17</sup>

Other human rights treaty bodies are in accord. The Committee on Economic, Social and Cultural Rights has recognized that “surgery or sterilization requirements for legal recognition of one’s gender identity” are violations of the right to sexual and reproductive health.<sup>18</sup> The Committee on

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<sup>11</sup> See Covenant, *supra* note 4 (recognizing that Covenant rights “derive from the inherent dignity of the human person”).

<sup>12</sup> Yogyakarta Principles, *supra* note 9, Principle 3(C).

<sup>13</sup> *Id.*, at Preamble, fifth paragraph.

<sup>14</sup> Yogyakarta Principles, *supra* note 9, Principle 3.

<sup>15</sup> *Id.*

<sup>16</sup> Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee on Ireland*, ¶ 8, U.N. Doc. CCPR/C/IRL/CO/3 (30 July 2008), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FIRL%2FCO%2F3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FIRL%2FCO%2F3&Lang=en).

<sup>17</sup> Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of Ukraine*, ¶ 10, U.N. Doc. CCPR/C/UKR/CO/7 (22 Aug. 2013), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/UKR/CO/7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/UKR/CO/7&Lang=en).

<sup>18</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 58, U.N. Doc. E/C.12/GC/22 (2 May 2016), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/22&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/22&Lang=en).

the Elimination of Discrimination Against Women has expressed concern with a requirement that transgender women undergo compulsory sterilization as a prerequisite to changing their birth certificates.<sup>19</sup>

The Office of the United Nations High Commissioner for Human Rights (“OHCHR”) has also recognized the right to legal recognition of gender identity. In its 2015 report on “Discrimination and violence against individuals based on their sexual orientation and gender identity,” prepared at the request of the United Nations Human Rights Council, OHCHR expressed concern at the following discriminatory practices:

69. In spite of recent advances in several countries, transgender persons are generally still unable to obtain legal recognition of their preferred gender, including a change in recorded sex and first name on State-issued identity documents. As a result, they face multiple rights challenges, including in employment and housing, applying for bank credit or State benefits, or when travelling abroad.

70. Regulations in States that recognize changes in gender often impose abusive requirements as a precondition of recognition – for example, by requiring that applicants be unmarried and undergo forced sterilization, forced gender reassignment and other medical procedures, in violation of international human rights standards.<sup>20</sup>

The High Commissioner recommended that States remedy this discrimination by “[i]ssuing legal identity documents, upon request, that reflect preferred gender, eliminating abusive preconditions, such as sterilization, forced treatment and divorce.”<sup>21</sup>

Violations of the right to legal recognition of a person’s self-defined gender identity implicate numerous Covenant rights:

\* The non-discrimination and equality guarantees of **Articles 2 and 26** are violated when a State recognizes the gender of non-transgender people, but refuses to recognize the self-defined gender identity of transgender people.

\* A State’s refusal to legally recognize a person’s self-defined gender identity also violates the **Article 16** “right to recognition everywhere as a person before the law,”<sup>22</sup> inasmuch as “[e]ach person’s self-defined . . . gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.”<sup>23</sup>

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<sup>19</sup> *Concluding Observations of the Committee on the Elimination of Discrimination Against Women on the Netherlands*, ¶ 46, U.N. Doc. CEDAW/C/NLD/CO/5 (5 Feb. 2010), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/NLD/CO/5&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/NLD/CO/5&Lang=En).

<sup>20</sup> Office of the U.N. High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, ¶¶ 69-70, U.N. Doc. A/HRC/29/23 (4 May 2015), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/088/42/PDF/G1508842.pdf?OpenElement>.

<sup>21</sup> *Id.*, ¶ 79(i).

<sup>22</sup> Covenant, *supra* note 4, art. 16.

<sup>23</sup> Yogyakarta Principles, *supra* note 9, Principle 3.

\* The **Article 17** right to protection of privacy, honour and reputation is violated when a State refuses to issue identity documents that align with a person's self-defined gender identity. When a transgender person must show an official identity card indicating a name and gender inconsistent with their gender identity and expression, the person is exposed to humiliation, insult, and sometimes violence. Additionally, that individual's right to keep private his or her transgender status is violated.

\* When the State's refusal to issue identity documents consistent with a person's gender identity leads that person to hide his or her true gender, there is a violation of the **Article 19** right to freedom of expression, since freedom of expression "includes the expression of identity . . . through speech, deportment, dress, bodily characteristics, choice of name, or any other means."<sup>24</sup>

\* The rights to life and security of person under **Articles 6 and 9** are violated if disclosure of transgender status leads to the killing or injury of the transgender person.

\* The **Article 7** prohibition of torture and ill treatment is violated when a transgender individual is coerced into undergoing unwanted gender reassignment surgery in order to obtain legal recognition of their gender identity.<sup>25</sup>

\* The **Article 23** right to found a family is violated when a transgender individual is coerced into undergoing an unwanted sterilization procedure in order to obtain legal recognition of their gender identity.

## **B. Kazakhstan's Violation of the Right to Legal Recognition of Gender Identity**

Kazakhstan violates the right to legal recognition of gender identity in the following three ways:

1. Transgender individuals must comply with a series of extremely onerous and abusive requirements before Kazakhstan will give legal recognition to their gender identity. These requirements include extensive medical and psychiatric testing, hormonal treatments, sterilization, and gender reassignment surgery.
2. Certain groups of individuals are absolutely barred from obtaining legal recognition of their gender identity. Transgender children and young adults below the age of 21<sup>26</sup> are not allowed to apply for legal recognition of their gender identity. Transgender individuals "with mental

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<sup>24</sup> *Id.*, Principle 19.

<sup>25</sup> Office of the United Nations High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, ¶ 38, U.N. Doc. A/HRC/29/23 (4 May 2015) available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E); see also Juan E. Mendez (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/HRC/22/53 (1 Feb. 2013) available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf).

<sup>26</sup> The age of majority in Kazakhstan is 18. ON MARRIAGE (MATRIMONY) AND FAMILY, THE CODE OF THE REPUBLIC OF KAZAKHSTAN, Art. 1 § 1.8 (26 Dec. 2011) (Unofficial translation), available at <http://adilet.zan.kz/eng/docs/K1100000518>.

disorders (diseases)”<sup>27</sup> have no right to legal recognition of their gender identity. Ironically, a transgender individual suffering from depression due to discrimination and harassment might be deemed ineligible to apply for legal recognition of his or her gender identity.

3. Transgender people are not allowed to legally change their names without first undergoing gender reassignment surgery.

### **C. Kazakhstan’s Legal Regime Governing Recognition of Gender Identity and Change of Name**

Legal recognition of gender identity is governed by Article 88 of Kazakhstan’s Health Code. Article 88 provides:

“People with gender identity disorders, except for those with mental disorders (diseases) shall have the right to change their sex. The rules of medical examination and sex change operations for persons with gender identity disorders shall be established by the Government of the Republic of Kazakhstan.”<sup>28</sup>

The current version of the rules referred to in Article 88 appear in Decree No. 187, issued on 31 March 2015 by Kazakhstan’s Minister of Health and Social Development and entitled “Medical Certification and Sex Reassignment Procedure for Persons with Sexual Identification Disorders.”<sup>29</sup> These rules, at the outset, prohibit anyone under the age of 21 from applying for legal recognition of their gender identity.<sup>30</sup> Persons 21 and older who do choose to apply for legal recognition of their gender identity must comply with a series of requirements that are burdensome, humiliating, time-consuming, and often prohibitively expensive. The rules set out the following procedure for changing one’s assigned gender:

1. To begin the process, a transgender person must file a written application with a local psychiatric institution.<sup>31</sup>
2. The next step is a medical examination of the applicant’s “mental, neurological, and somatic state,”<sup>32</sup> which must be conducted on an in-patient basis at a psychiatric institution. This examination must include (among other things) various blood tests, an HIV test, genetic tests, a skull x-ray, hormone tests, and various medical specialist opinions.<sup>33</sup>

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<sup>27</sup> ON PUBLIC HEALTH AND HEALTH CARE SYSTEM, THE CODE OF THE REPUBLIC OF KAZAKHSTAN, Art. 88 § 3 (18 Sept. 2009) (Unofficial translation), *available at* [http://adilet.zan.kz/eng/docs/K090000193\\_](http://adilet.zan.kz/eng/docs/K090000193_).

<sup>28</sup> ON PUBLIC HEALTH AND HEALTH CARE SYSTEM, THE CODE OF THE REPUBLIC OF KAZAKHSTAN, Art. 88 § 3 (18 Sept. 2009) (Unofficial translation), *available at* [http://adilet.zan.kz/eng/docs/K090000193\\_](http://adilet.zan.kz/eng/docs/K090000193_).

<sup>29</sup> Decree No. 187 of the Minister of Health and Social Development of the Republic of Kazakhstan, *Medical Certification and Sex Reassignment Procedure for Persons with Sexual Identification Disorders* (31 Mar. 2015).

<sup>30</sup> *Id.*, § 2.3.

<sup>31</sup> *Id.*, § 2.3.

<sup>32</sup> *Id.*, § 2.4 subsec. 1.

<sup>33</sup> *Id.*, § 2.4 subsec. 1 and Attachment No. 1.

3. After this initial medical examination, the person is referred to the Commission for Medical Certification of Persons with Sexual Identification Disorders (hereinafter, “Commission”).<sup>34</sup> The Commission, which includes at least three psychiatrists and a number of other medical specialists, is established within Kazakhstan’s Ministry of Health and Social Development.<sup>35</sup> This government commission decides whether or not the person will be allowed to continue in the process by undergoing hormone therapy.<sup>36</sup>

4. If the person is allowed to proceed in the process, he or she undergoes hormone therapy at a medical institution. At the same time, the person must participate in follow-up care at the psychiatric institution, including “medical and social support” and an “assessment of mental state.”<sup>37</sup>

5. After the hormone treatment stage, the transgender person must go before the Commission a second time, for a decision on whether or not the person is eligible for gender reassignment surgery. A positive decision leads to surgery at an approved medical institution, where a person is surgically sterilized and either male or female genitalia are formed to match the transgender person’s gender identity.<sup>38</sup>

6. Following the gender reassignment surgery, the Commission meets again to decide whether or not the transgender person will be able to change his or her assigned gender. If the Commission allows the change, the person must then undergo a year-long social and psychological “rehabilitation course,” conducted by psychiatric institution “specialists.”<sup>39</sup>

This arduous process is made even more burdensome – often prohibitively so – by the high cost of the various treatments and by geographic realities. Although Kazakhstan provides many health care services at no cost to its citizens, the hormonal and surgical treatments required for legal recognition of gender identity are not included on the list of medical services paid for by the State. According to a news report, the surgery alone costs at least 450,000 tenge,<sup>40</sup> which is a very large amount in a country with an average monthly salary of 124,200 tenge.<sup>41</sup> The difficulty of completing the required process for legal recognition of gender identity is exacerbated for many people by the fact that only one medical facility in Kazakhstan, located in Almaty, has the capacity to perform gender reassignment surgery. This creates significant logistical difficulties for those

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<sup>34</sup> *Id.*, § 2.4 subsec. 2.

<sup>35</sup> *Id.*, § 2.4 subsec. 2; AK ZHAIK, *In Kazakhstan 5 women and 3 men underwent sex change*, 24 Feb. 2015 (Zeena Urynbassarova trans.), available at <http://azh.kz/en/news/view/5614>.

<sup>36</sup> *Id.*, § 2.4 subsec. 3.

<sup>37</sup> *Id.*, § 2.4 subsec. 4.

<sup>38</sup> *Id.*, § 2.4 subsec. 6.

<sup>39</sup> *Id.*, § 2.6.

<sup>40</sup> AK ZHAIK, *In Kazakhstan 5 women and 3 men underwent sex change*, 24 Feb. 2015 (Zeena Urynbassarova trans.), available at <http://azh.kz/en/news/view/5614>; see also TENGRI NEWS, *Sex reassignment surgery costs around \$3000 in Kazakhstan*, 4 May 2012, available at <https://en.tengrinews.kz/health/Sex-reassignment-surgery-costs-around-3000-in-Kazakhstan-9468/>.

<sup>41</sup> Elena Kosolapova, *Average Salary Increases in Kazakhstan*, TREND NEW AGENCY, Sept. 2, 2015, available at <http://en.trend.az/business/economy/2429158.html>.

who live at a distance from Almaty, particularly given Kazakhstan's large size; with an area of 2.7 sq. km,<sup>42</sup> Kazakhstan has been described as being the size of Western Europe.<sup>43</sup>

Kazakhstan also severely limits the opportunity of transgender people to change their names to match their gender. Chapter 30, Article 257, Subsection 13 of the Kazakhstan Family Code, governs state registration of changes of first name, patronymic, and last name, specifying the reasons that are deemed "justifiable."<sup>44</sup> Anyone age 16 or older can request a name change based on one of these reasons, which include matters of personal preference such as "dissonance of first name, patronymic, last name" and "difficulty of pronunciation."<sup>45</sup> But name changes based on a transgender person's "wish to have first name, patronymic, last name that are consistent with the chosen gender" are allowed only "in case of transsexual surgery."<sup>46</sup>

#### **D. Impact on Transgender People of Kazakhstan's Violation of the Right to Legal Recognition of Gender Identity**

From age 16 onward, every citizen of Kazakhstan is required to have a government-issued identity card.<sup>47</sup> These cards must be shown repeatedly in everyday life. For example, identity cards must be shown when a person accesses services at any public office, obtains health care at a community clinic, applies for a job, buys a train ticket, opens a bank account, purchases or registers real estate, or has dealings with the police. Citizens of Kazakhstan may also have a passport for use in traveling internationally. These identity documents indicate the person's gender and carry the person's legal name.

The barriers to legal recognition of gender identity result in transgender people having identity cards that do not correspond to their true gender identity. A 2015 survey of 41 transgender people in Kazakhstan revealed that only two of the 41 had been able to change the gender designation on their legal documents.<sup>48</sup> A 2015 news article in the newspaper *Ak ZhaiK* reports that, since 2010, only eight people in had "approached Kazakhstan medical facilities with the request to change sex," in accordance with the legally-required procedures for legal recognition of their gender identity.<sup>49</sup>

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<sup>42</sup> World Bank, *Data: Land Area*, <http://data.worldbank.org/indicator/AG.LND.TOTL.K2> (last visited May 29, 2016).

<sup>43</sup> BBC NEWS, *Kazakhstan Country Profile*, Sept. 8, 2015, available at <http://www.bbc.com/news/world-asia-pacific-15263826> (last visited May 5, 2016).

<sup>44</sup> ON MARRIAGE (MATRIMONY) AND FAMILY, THE CODE OF THE REPUBLIC OF KAZAKHSTAN, Art. 257 (26 Dec. 2011) (Unofficial translation), available at <http://adilet.zan.kz/eng/docs/K1100000518>.

<sup>45</sup> *Id.* at Art. 257 § 1.

<sup>46</sup> *Id.* at Art. 257 § 13.

<sup>47</sup> *What You Need to Know About the Issuance of ID Card and Passport*, ELECTRONIC GOV. OF THE REPUBLIC OF KAZ., (6 Aug. 2015), available at [http://egov.kz/wps/portal/Content?contentPath=/egovcontent/citizen\\_migration/passport\\_id\\_card/article/faqs\\_passport\\_id&lang=en](http://egov.kz/wps/portal/Content?contentPath=/egovcontent/citizen_migration/passport_id_card/article/faqs_passport_id&lang=en); ADMINISTRATIVE OFFENCES, THE CODE OF THE REPUBLIC OF KAZAKHSTAN, Art. 377 § 1 (30 Jan. 2001) (Unofficial translation), available at [http://adilet.zan.kz/eng/docs/K010000155\\_](http://adilet.zan.kz/eng/docs/K010000155_).

<sup>48</sup> ALMA-TQ survey of 41 transgender individuals (2015).

<sup>49</sup> AK ZHAIK, *In Kazakhstan 5 Women and 3 Men Underwent Sex Change*, Feb. 24, 2015, (Zeena Urynbassarova trans.) available at <http://azh.kz/en/news/view/5614>.

When asked to identify what would most help them integrate more fully into Kazakhstani society, nearly two thirds of the respondents in ALMA-TQ's 2015 survey pointed to the need to have identity documents that match their gender identity.<sup>50</sup> The examples provided below demonstrate the deep harm that results when identity documents do not reflect a person's gender identity.

T., a transgender man, described in a 2015 interview the difficulties he has experienced due to Kazakhstan's denial of the right to legal recognition of gender. "I started my transition six years ago," he reported, "and I still have . . . documents in which I have my old name and old photo, so it's quite a problem to travel somewhere."<sup>51</sup> As T explained, transgender people like himself are exposed as transgender every time they need to provide identification. "The first question they ask is, 'Is it really your documents?' and you have to say, 'Well, of course they are mine.'"<sup>52</sup>

S., an 18-year-old transgender woman from Pavlodar, enrolled in Pavlodar Art College in 2013, but was forced to quit two and a half years later because of her gender identity. Although S. presented as female and used a female name, her identity card indicated that she was male and included her legal name, rather than the name she was using. As a consequence, her professors insisted on calling her by her legal name and using male pronouns to refer to her. Her fellow students acted accordingly, and began to harass, insult, and threaten her, and to spread rumours about her, to the point that she was too frightened to continue going to class. Since leaving school, S. has tried to get work. But every time she is asked to present her identity card, she is fired.<sup>53</sup>

R., a 26-year-old transgender man from the city of Almaty, frequently faces insults and humiliation when accessing public services. In 2009, the registry office in the Bostandikski District of Almaty insisted that he have sex reassignment surgery in order to change his identity documents. R. then began hormonal treatments and had a mastectomy, but he did not want to undergo genital surgery. For this reason, his request to change his legal identity documents was denied in June 2010. Since then, R. has been mocked at the bank, harassed at the community clinic, and denied receipt of a letter at the post office, because his identity card does not match the way that he presents himself. The gender designation and legal name appearing on his identity documents have also caused difficulties for him at the airport when he travels.<sup>54</sup>

TA, a 35-year-old transgender woman, has been fired from three jobs due to her gender identity. After losing a job in 2012 because of her gender identity, she tried making a living through self-employment, but was unable to support herself. In order to obtain a job in Astana, she sacrificed her identity and stopped taking hormones. However, once she was transferred to Almaty, where she had friends who supported her identity, she began to grow her hair out and walk in a more feminine way. Her employers started to call her "baba" and mock her publicly, and eventually fired her. Thereafter, she lost another job due to her gender identity. She finally found a job that accepted her as she is, but the pay is only one third of a normal salary. TA has said, "If I could

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<sup>50</sup> ALMA-TQ survey of 41 transgender individuals (2015); Human Rights Watch Report, *supra* note 5, p. 13.

<sup>51</sup> Corey Flintoff, U.S. National Public Radio (NPR), *For Kazakhstan's LGBT Community, A Struggle for Recognition and Rights* (21 Aug. 2015), available at <http://www.npr.org/sections/parallels/2015/08/21/433450186/for-kazakhstans-lgbt-community-a-struggle-for-recognition-and-rights>.

<sup>52</sup> *Id.*

<sup>53</sup> Case on file with Center for International Human Rights.

<sup>54</sup> Case on file with Center for International Human Rights.

change my documents in accordance with my gender, then this wouldn't be a problem for me and I could finally let my body be in harmony with my soul.”<sup>55</sup>

SN, a transgender man, explained during a 2015 interview, “Since I can't change my documents, I have to work only as an under-the-table freelancer. I can only do small jobs, and even then only for people who trust me.” He also reported that since transitioning, he has experienced verbal harassment at his bank when he had to show his identity documents in order to access his bank account.<sup>56</sup>

V., a 42-year-old transgender man in Astana, reported experiencing harassment after he began transitioning in 2012: “When I walked into an office and applied for a job and gave them my [birth-assigned female name], when they saw my documents, they told me to go to a psychiatric clinic.... I worry [when applying for jobs]: what will happen first? Will they call the police or the ambulance? Both are ways of punishing me, making me disappear – because they think I'm mentally ill and they think that's criminal.”<sup>57</sup>

A transgender woman in Almaty reported in 2015 that she did not intend to go through the legally-required process to change her gender identity because she was “horrified of our state institutions.” To get by on a daily basis, she suppresses her gender expression: “Every time I need to interact with officials, I just present as male. I tie my hair up and they just think I'm a punk or something. I've done this at the bank, the airport, the tax office.”<sup>58</sup>

A transgender man in Almaty described, in a 2015 interview, the difficulties he faces when traveling: “First, the guard looks at my documents and is confused; next he looks at me and asks what's going on; then I tell him I'm transgender; then I show him my medical certificates; then he gathers his colleagues around, everyone he can find, and they all look and point and laugh at me and then eventually let me go.”<sup>59</sup>

### **III. Suggested Recommendations for Kazakhstan**

1. Kazakhstan should revise its rules governing legal recognition of gender identity to allow any transgender individual, upon request, to obtain a change in their gender designation and (if the person wishes) their name, on all identity documents, including (but not limited to) birth certificates, identity cards, and passports. The new process for changing one's gender designation and name should be based entirely on self-declaration of gender and name, and should not require any form of medical evaluation, treatment or procedures.

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<sup>55</sup> Case on file with Center for International Human Rights.

<sup>56</sup> Human Rights Watch Report, *supra* note 5, at pp. 14-15.

<sup>57</sup> *Id.*, p. 15.

<sup>58</sup> *Id.*, p. 14.

<sup>59</sup> *Id.*

2. Consistent with this Committee’s longstanding view that “as individuals, children benefit from all of the civil rights enunciated in the Covenant,”<sup>60</sup> Kazakhstan should adopt a procedure for transgender children to obtain legal recognition of their self-defined gender identity. Such a procedure should conform to the principles of the Convention on the Rights of the Child, including in particular its requirements that (a) “[i]n all actions concerning children, . . . the best interests of the child shall be a primary consideration,” and that (b) in all matters affecting a child, the child has the right to be heard, and the views of the child should be “given due weight in accordance with the age and maturity of the child.”<sup>61</sup>

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<sup>60</sup> Human Rights Committee, *General Comment No. 17: Article 24 (Rights of the Child)*, ¶ 2, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. 1) (7 Apr. 1989), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/422/35/PDF/G0842235.pdf?OpenElement>.

<sup>61</sup> Convention on the Rights of the Child, arts. 3(1) and 12, 20 Nov. 1989, 1577 U.N.T.S. 3, available at <http://www.refworld.org/docid/3ae6b38f0.html>.