

Implementation of the Recommendations of the UN Committee on Economic, Social and Cultural Rights by the Republic of Kazakhstan

Civil Society's Alternative Report to the Followup Report of the Government of the Republic of Kazakhstan

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Impact of Discrimination on Access of People Living with HIV to Prevention and Treatment of HIV

Prepared by: Central Association of People Living with HIV, Kazakhstani Union of People Living with HIV, Amelia.



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1. Glossary

Key populations at high risk of HIV transmission - people who use drugs, gay men and men who have sex with men, sex workers, transgender people.

2. Abbreviations

HIV - Human Immunodeficiency Virus

LGBTQ - Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Persons

OST - Opioid Substitution Therapy

GVFMC – Guaranteed Volume of Free Medical Care

MSMI – Mandatory Social Medical Insurance

PHC - Primary Health Care

Covenant - International Covenant of Economic, Social and Cultural Rights

3. Summary

The present report contains information prepared by civil society on implementation, by the Republic of Kazakhstan, of the recommendation on non-discrimination contained in paragraph 11 (a) of the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights adopted on 29 March 2019. In particular, the report describes the situation of people living with HIV and the impact of discrimination on access to prevention and treatment services for key populations at high risk of HIV transmission in the Republic of Kazakhstan, including LGBTQ people, people who use drugs, and sex workers. The report is based on research, reports about human rights violations registered in the Republic of Kazakhstan in 2015-2021, as well as official information sources. The report also describes characteristic individual cases.

As the information in the present report concludes, the Republic of Kazakhstan has not implemented the recommendation to adopt comprehensive anti-discrimination legislation regarding discrimination of people living with HIV and key populations.

The report was prepared by Lyubov Vorontsova, human rights expert, jointly with Associations of Legal Entities “Central Asian Association of People Living with HIV” and “Kazakhstani Union of People Living with HIV”, Public Association “Amelia”, with support of the UN Joint Programme on HIV/AIDS (UNAIDS) and substantive participation of representatives of relevant communities. The views expressed in the present document do not necessarily represent the position of UNAIDS.

4. Introduction

Following examination of the Report of the Government of the Republic of Kazakhstan, the UN Committee on Economic, Social and Cultural Rights issued Concluding Observations on 29 March 2019. Paragraph 11 (a) of the Concluding Observations contained the following recommendation:

“11. a) Adopt comprehensive anti-discrimination legislation that addresses direct and indirect discrimination and encompasses all the prohibited grounds of discrimination, including sexual orientation and gender identity, as set out in article 2 (2) of the Covenant, taking also into account the Committee’s general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights;”

In turn, paragraph 33 of the above-mentioned General Comment No. 20 states the following:

“Health status refers to a person’s physical or mental health. States parties should ensure that a person’s actual or perceived health status is not a barrier to realizing the rights under the Covenant. The protection of public health is often cited by States as a basis for restricting human rights in the context of a person’s health status. However, many such restrictions are discriminatory, for example, when HIV status is used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum. States parties should also adopt measures to address widespread stigmatization of persons on the basis of their health status, such as mental illness, diseases such as leprosy and women who have suffered obstetric fistula, which often undermines the ability of individuals to enjoy fully their Covenant rights. Denial of access to health insurance on the basis of health status will amount to discrimination if no reasonable or objective criteria can justify such differentiation¹.”

Therefore, Article 2 (2) of the Covenant protects the right of people living with HIV on non-discrimination.

Currently, the estimated number of people living with HIV in the Republic of Kazakhstan is 31,378 persons according to the Spectrum programme (2019). The estimated numbers of key populations at high risk of

¹ <http://hrlibrary.umn.edu/russian/gencomm/Rescgencom20.html>

HIV transmission in 2019 were as follows: people who use drugs - 94,600, sex workers - 21,450, men who have sex with men and gay men - 62,000, transgender people - no data.

Despite availability of free HIV prevention and treatment services, a considerably high prevalence rate of HIV among key populations is observed. HIV treatment coverage is still not sufficient - as per the end of 2019, the treatment coverage amounted to 56% of the estimated number of people living with HIV, and 68% of people living with their positive HIV status known². **Experts note that stigma and discrimination are the main barrier in achieving full eradication of the epidemic.** Furthermore, discrimination of people living with HIV and people of key populations at high risk of HIV transmission remains a serious barrier to access to medical, social, psychological assistance from the state, reduces their economic and social well-being. Most commonly, discrimination occurs in medical institutions, in labour and education settings.³

Article 14 of the Constitution of the Republic of Kazakhstan prohibits any discrimination. However, discrimination, stigmatisation or prohibition of discrimination are not defined in any separate legal act, except “discrimination based on sex”, referred to by the Law “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”. Along with that, a number of legal acts, including the Criminal Code, prohibits discrimination.

The Criminal Code does not criminalise homophobia and transphobia, limiting the scope of hate crimes to national, racial and religious hatred, which makes it impossible to investigate crimes committed on the grounds of sexual orientation and gender identity as hate crimes. The Criminal Code also does not define crimes committed on the basis of hatred; “committing a criminal act on the motive of national, racial and religious hatred or enmity” qualifies as an aggravating circumstance (Article 54 of the Criminal Code)

5. Discrimination of people living with HIV

People living with HIV, are denied access to staying in shelters, including shelters (residential facilities) for persons with disabilities and elderly persons, as well as shelters (crisis centres) for women victims of violence⁴. The list of medical contraindications for staying in the mentioned facilities includes HIV.⁵ NGOs register incidents of denial of access to personal social assistants for people who have simultaneously HIV and disability. The level of awareness about ways of HIV transmission remains low among personnels and relevant decision makers. Despite numerous appeals of NGOs and international human rights organisations to the Ministry of Labour and Social Protection of the Republic of Kazakhstan (the authorised state agency) in the last years, these restrictions have not been lifted to date. Meanwhile, people living with HIV who did not receive timely assistance are left without shelter, which significantly affects their health. In September 2019, a man who was a person with disability, died on the street after having been denied shelter because of his HIV-positive status.⁶

Case №1, Yevgeniy, City of Almaty.

«There they were met with scandal. People started screaming that they didn't accept people like that, “why did you bring him here?”. Together we started to look for another place. For two days - 20 and 21 September - we were calling and going to crisis centres and residential

² Country Progress Report - Kazakhstan, Global Monitoring of AIDS Epidemic - 2020, <http://kncdiz.kz/files/00007836.pdf>

³ <http://www.capla.asia/index.php/ru/press-tsentr/otchet>

⁴ <https://vlast.kz/obsshestvo/36425-nenuznye-ludi.html>

⁵ Rules of Procedure of Organisations Providing Special Social Services, approved by order № 397 of the Minister of Labour and Social Protection of the Republic of Kazakhstan on 29 August 2018

⁶ https://tengrinews.kz/kazakhstan_news/pensioner-vich-umer-otkaza-prieme-dom-prestarelyih-379983/

facilities. Some didn't have free places, others said that since he was documented and was receiving his pension he couldn't stay there because he was socially secure. And the next day I was told Yevgeniy had died. I think it's not about the illness. He just realised no one needed him..." - an NGO social worker.

Women living with HIV and women who use drugs have limited access to staying in the existing shelters (crisis centres) for women victims of violence, as well. In 2019, a young woman with a newborn baby who suffered from violence was left without housing and turned in a state-run shelter (crisis centre) in the City of Nur-Sultan. The facility's administration refused to admit her because she had HIV.

HIV is not legally a ground to deny naturalisation in the Republic of Kazakhstan. However, migrants who have HIV, due to discrimination from migration police cannot receive citizenship for many years, which in turn limits their access to enjoyment of many economic and social rights.⁷

Case №2, Salavat, City of Almaty, 2021

"Already in 2018, when I was working as a volunteer, people advised me to demand for a written reply from the migration police: on what basis was I constantly being denied citizenship? So I learned that they were refusing me citizenship on the basis of a sexually transmitted disease. They didn't put the name of the disease but it was anyway clear that it was HIV".

Criminalisation of HIV is unequal application of criminal and similar laws towards people living with HIV based on their HIV status or by the means of laws explicitly criminalising HIV transmission, or by means of other general criminal and other laws. The existence of a law that criminalises the risk of HIV transmission⁸ contributes to higher risks of HIV transmission, violence and gender inequality in family, healthcare, wider society. Although the mentioned provision aims at reducing HIV incidence, it in practice has the opposite effect - it increases stigma and discrimination against people living with HIV, limits their access to treatment and reduces efficiency of government's measures to fight HIV/AIDS. Article 118 of the Criminal Code criminalises "Acts of Infection with the Human Immunodeficiency Virus (HIV/AIDS)". In doing so, the legal clarification to the named article, which decriminalises acts of infection in case of timely warning about HIV status, was not detailed (which for example would address the issues of proving the timely warning or cases when the accused person receives HIV treatment which excludes HIV transmission⁹), which hampers its application, creating space for corruption and discrimination.

According to NGO monitoring data, most commonly people living with HIV face discrimination in medical facilities. According to the date of the 2015 People Living with HIV Stigma Index Analytical Report, every fourth person living with HIV faced disclosure of information about their HIV status in a medical facility¹⁰.

Case №3, Rimma, City of Almaty, 2020.

"I couldn't come to the clinic because I was working, about which I had warned the AIDS Centre's doctor. On 28 October 2020 people from the clinic called my brother Aleksandr demanding me, his sister, to urgently come to the clinic to take ARVT, otherwise the medic

⁷ <https://rus.azattyq.org/a/kazakhstan-almaty-hiv-salavat-human-story/30976646.html?fbclid=IwAR1EGlxRc3wypCUMbvp5SevVO-BIUbloGuUJpgF67nsE0Gimu2Vftsx322o>

⁸ Article 118 "Acts of Infection with the Human Immunodeficiency Virus (HIV/AIDS)", Criminal Code 226-V, adopted on 3 July 2014

⁹ <https://www.who.int/ru/news-room/q-a-detail/hiv-aids>

¹⁰ [http://www.capla.asia/images/Kazakhstan Stigma Index Russian Final.pdf](http://www.capla.asia/images/Kazakhstan%20Stigma%20Index%20Russian%20Final.pdf)

was going to call the commander of the military facility (where Aleksandr and his family were registered) and tell him my diagnosis”¹¹.

Due to the lack of timely and quality consulting many women who live with HIV decide not to plan having children, making false assumptions about their inability to protect the child from being infected with HIV¹².

Due to the high incidence rate of discrimination in medical facilities, under the compulsory health insurance in the Republic of Kazakhstan, people living with HIV are limited in the universal access to medical services. Despite HIV being included in the list of socially significant diseases subject to free medical assistance (VGPMC), when seeking medical help people living with HIV hide their status out of fear of disclosure or stigmatisation from medical personnel’s part.

Moreover, those people living with HIV who previously did not do insurance payments (MSMI) do not have access to other medical services in the state healthcare system. NGOs regularly register cases of denial of medical services (PHC) for people living with HIV.

Currently, information about HIV diagnosis is available only to medical officers in specialised AIDS Centres. In order to expand access to vital services in the general medical network, expansion of access to diagnosis information (inclusion in information databases) is necessary.

Case №4, Boris, City of Almaty, 2021

“I have been diagnosed with HIV, acute immunodeficiency, bad health condition, appetite loss, weight loss, swollen lymph nodes, cough, can’t move properly. Relatives brought me to a clinic, there I got denied treatment because I wasn’t insured. They sent me to do an X-ray for pay. They checked my X-ray results, said everything was fine, “go home”. “We can’t come to your house because you don’t live in our coverage district, go register with a clinic in your coverage area”. “Without MSMI we can’t run your tests for tuberculosis check.”

The number of cases of human rights violations of people living with HIV that were documented by NGOs within the first half of 2021 is 115.

6. Discrimination against key populations

6.1. Lack of protection of LGBTIQ people from discrimination

Due to wide-spread discrimination of LGBTIQ people and lack of appropriate anti-discrimination legislation and policies, this group remains a hard-to-reach population for HIV prevention programmes, affecting, thus, their access to enjoyment of the right to protection of health. In a broader perspective, discrimination against LGBTIQ people, including discrimination based on false ideas about their health status, creates obstacles for their enjoyment of economic, social and cultural rights. According to the data of Kok.team (information resource of LGBT community in Kazakhstan)¹³, in 2019, LGBT people reported 119 cases of hate-based crimes, with 84 cases in 2020.

Case №5

“In 2017 in Almaty, a transgender young woman was attacked. The court considered it as a group assault, serious bodily harm, robbery. She had been walking on the street, the attackers started talking to her. When they realised she was a transgender woman, insults

¹¹ <https://pereboi.kz/posts/>

¹² https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KAZ/INT_CEDAW_ICO_KAZ_31511_E.pdf

¹³ <https://www.kok.team/>

and an attack followed. As a result, the attackers were convicted of robbery. SOGI was not an aggravating circumstance”¹⁴.

In a research conducted by ALMA-TQ (Kazakhstani transgender initiative), 80% participants reported to have faced discrimination or violence on the ground of gender identity¹⁵. As activists report, discrimination and violence against transgender people most often starts when they present identity documents. The majority of transgender people, because of complicated and unaccessible procedures of legal gender recognition cannot change documents in accordance with their gender identity. The legislation adopted in 2020 introduces ban on gender transition until age of 21¹⁶. As a consequence, transgender people aged between 18 and 21 cannot access relevant medical services, including consultations by medical specialists, as well change name and social sex in identity documents. Adult transgender persons are forced to receive medical services in other countries. Moreover, a number of transgender persons are forced to start hormonal therapy by themselves because of age restrictions, which affects their health.

6.2. Discriminatory laws and practices against people who use drugs and sex workers

Despite a recommendation made by UNAIDS and heads of all UN agencies and programmes to decriminalise possession of drugs without intent to sell¹⁷, criminalisation of acts related to use of drugs (such as possession of drugs) are main factors of stigma and discrimination of people who use drugs, including their access to healthcare services. Every year, over 35,000 people who use drugs are subjected to harsh punishments related to drugs¹⁸. Instead of social and medical assistance, these people are treated with penalisation and stigma of criminal responsibility, which prevents them from employment, opportunity to continue education, realisation of family rights.

Case №6

“A man, 47 years old, lives with HIV and hepatitis C. Since 2018 he hasn’t been applying for medical assistance, because of drug addiction and problems with police. He’s hiding from law enforcement authorities, afraid of being arrested.”

Case №7

“A woman, uses drugs, since 2019 hasn’t been on HIV treatment, because she’s afraid AIDS Centre’s doctors will hand information to the drug control services and she will get registered as a drug addict.”

Case №8

“Yekaterina, 43 years old, city of Temirtau, when she was using drugs her mom was appointed as her son’s legal guardian. After her mother’s death he is sent to an orphanage. But to make her child receive all social benefits, Yekaterina needs to fully lose her parental rights. Pressure is coming for social services, Yekaterina is being told that “there’s no such thing as former drug addicts, why would he need a mother like that”, being threatened that

¹⁴ <https://ecom.ngo/wp-content/uploads/2020/01/Legislative-Analysis-2018.pdf>

¹⁵ https://19816982-e8d5-45be-a5f7-d5dd84c14f65.filesusr.com/ugd/feded1_583f84c8db944a24a8b044a22683c8a0.pdf

¹⁶ Article 156 “Change of sex identity”, Code “On Public Health and Health Care System”, 7 July 2020 № 360-VI: <https://adilet.zan.kz/rus/docs/K2000000360>

¹⁷ https://unis.unvienna.org/pdf/2021/INCB/INCB_Report_R.pdf

¹⁸ https://eiuperspectives.economist.com/sites/default/files/download/eiu_aph_investing_hiv_launch-russian.pdf

her second child would be taken away too. As a result, Yekaterina is deprived of her parental rights.”

Stigma and discrimination against people who use drugs negatively impacts introduction of prevention programmes, including introduction of opioid substitution therapy. Whereas OST has been existing in Kazakhstan since 2008, currently only a small part of people who use drugs have access to it. At the present time, 295 persons are participating in the OST programme, while the estimated number of people who inject drugs is 94,600. The methadone medication, used for OST, is unavailable in maternity houses, hospitals, and detention facilities. The programme is unavailable in a number of regions. The situation has significantly worsened during COVID-19-related restriction measures due to introduced lockdowns and other limitations on movement, because the medication is only given for one day. At the same time, other similar problems were addressed by the state in relation to other forms of treatment (patients with HIV can receive medication for half a year).

Case №9

“Yegor was suffering. Not only did his legs fail, with his temperature high, but he also had to drag himself to the medical facility for drug addicts to get methadone. Every day within a few weeks his relatives would call an ambulance so paramedics brought him to the specialised clinic. Yegor, like many other participants of the medical programme, was afraid to go to the hospital, because he understood that no one would bring him methadone to an ordinary hospital. And since his legs failed, he couldn’t go to the specialised clinic either. And the ambulance wouldn’t bring him there. So he died at home of purulent pneumonia.”¹⁹

UNAIDS have several times called upon states to decriminalise sex work of adult people on a voluntary basis. Despite formal decriminalisation of sex work by Kazakhstan, criminal prohibitions and punishments remain for acts related to sex work (involvement in prostitution, brothel keeping), allowing to penalise acts aimed at ensuring security of sex workers (for example, keeping an apartment for providing sex services jointly for security reasons). Because of fear of punishment, sex workers do not seek help even in cases of violence against them. Criminalisation of sex work enhances stigma against sex workers and increases their vulnerability to human rights violations.

Societal stigmatisation and discrimination of sex workers lead to violations of their human right to health care. Police jointly with AIDS Centres commits raids and forces female sex workers to pass HIV tests. As an instance, in the city of Nur-Sultan in 2017 136 female sex workers were HIV-tested with police involvement.²⁰ Police and media regularly publish information on similar actions. Such measures from police’s part force sex workers to hide and avoid timely HIV testing and assistance from AIDS Centres.

Women often do not seek medical assistance in cases of violence, if only they did not suffer from grave harm. Women from those groups prefer avoiding state-run healthcare institutions, because they are afraid of stigma and discrimination in medical facilities or afraid that they would suffer from repeated violence.²¹

Case №10, City of Ust-Kamenogorsk, 2020

¹⁹ <https://harmreductioneurasia.org/ru/srochno-nuzhen-tank/>

²⁰ http://dailynews.kz/society/prostitutok_v_astane_proverjajut_na_vich_i_stavjat_na_uchet

²¹

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fL0P%2fKAZ%2f37380&Lang=en

“After leaving the town, he turned on the music loudly. They were driving on a highway, then he turned to the forest belt. There he stopped and hit her cheek hard. He started yelling she wasn’t a woman and couldn’t even be called a whore. That people like her should be destroyed. He grabbed her by the hair and started to choke her with the other hand. She managed to open the door and started running away but not fast because she had a tight skirt and high heels. He ran after her and started beating her. For some reason he stopped beating, returned to the car and before leaving threatened that he would kill her if she told anyone, and it’s easy to find her because he works in law enforcement, so getting her phone number, address and social media wouldn’t be hard”.

7. Recommendations

Based on the information above, we conclude that the recommendation on non-discrimination, contained in paragraph 11 (a) of the Concluding Observations of the Committee on Economic, Social and Cultural Rights issued on 29 March 2019 was not implemented in relation to protection of people living with HIV and key populations at high risk of HIV transmission. In accordance with the information above we suggest the following recommendations to the state:

- 1) Adopt anti-discrimination legislation that would include guarantees in relation to SOGI, drug use, sex work;
- 2) Introduce amendments to the Criminal Code to ensure crimes against LGBTIQ people are investigated and qualified as hate crimes;
- 3) Adopt measures to prevent cases of refusal of access to medical services under medical insurance based on HIV-status;
- 4) Exclude all discriminatory legislative norms in relation to people living with HIV and key populations;
- 5) Ensure systematic education for specialists of shelters (crisis centres), as well as relevant officials, on specificities of work and consulting for people living with HIV and people, from marginalised groups, subjected to multiple discrimination;
- 6) Develop, adopt and implement policies of humanisation in relation to people who use drugs, laws and practices based on respect for human rights that will ensure protection and exclude any discrimination and violence against women;
- 7) Implement information campaigns at the national level among general population and employers, with the view to reduce stigma and fight discrimination against people living with HIV, people who use drugs, sex workers and LGBTIQ people.