



**Human Rights violation based on Sexual Orientation and  
Gender Identity in Kazakhstan**

**Submission to the Committee against Torture**

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**For the consideration of the Kazakhstan's fourth periodic report**

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## **Human Rights Violations Based on Sexual Orientation and Gender Identity in Kazakhstan**

An alternative report in relation to the consideration of the Kazakhstan's fourth periodic report under the International Convention against Torture and other cruel, inhuman or degrading treatment or punishment

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## INTRODUCTION

The report describes the situation related to torture and cruel, inhuman treatment against representatives of LGBT+ communities in Kazakhstan and recommendations for their prevention. It draws attention to LGBT+ discrimination in Kazakhstan and in the hope of reducing the stigma and violence that befall the LGBT+ in the country due to the ongoing reign of discriminatory patriarchy and enmity towards them by the general public and the government.

### **Information in this report is provided by the following organizations:**

*Eurasian Coalition on Health, Rights, Gender and Sexual Diversity (ECOM)*, an international non-governmental organization based in Tallinn, Estonia. We are a membership organization open to non-profit organizations and activists working in the areas of HIV prevention, treatment, care, and support for men who have sex with men and transgender people in Eastern Europe and Central Asia (EECA) region. The network currently has 76 members from 19 countries, stretching from Estonia to Tajikistan.

*Alma-TQ* is a Kazakhstan transgender initiative that aims to improve the quality of life and strengthen the community of transgender, transsexual, gender nonconforming, and gender non-binary people in Kazakhstan through community support, development of social support, mobilization, community capacity building, and advocacy.

*Feminita* is Kazakhstan Feminist Initiative, a grassroots queer feminist collective that aims to create and strengthen women's rights and activist communities that can bring social, political, economic, and cultural change to the most oppressed groups in Kazakhstan (lesbian, bisexual, queer, women with disabilities, women in sex work).

We recognize that Kazakhstan is taking measures to combat torture and to establish accountability for the use of torture, but these measures do not cover the LGBT+ community. At the same time, human rights activists continue to document cases of torture and cruel, inhuman treatment by law enforcement officials against members of the community. The state does not keep statistics on torture in relation to various groups, including LGBT+ people.

In its reply to the List of Issues CAT/C/KAZ/Q/4 Kazakhstan mentions that police officers take advanced training courses, including such topics as "Human rights" or "Risks and vulnerability: law enforcement against key risk groups and protection of human rights". However, it does not mention education of law enforcement officers, medical workers, or other civil servants about the equality of human rights with regards to sexual orientation and gender identity issues; there are no statements regarding their training on working with people who live with HIV if they happen to be LGBT+. The LGBT+ community is a minority group with a specific profile and needs that arise due to high stigmatization and discrimination. Additional governmental efforts, policies, and programs are required in order to ensure their equality and observation of their human rights and freedoms on the same level as the general population.

Kazakhstan's reply does not contain statements on ensuring of equality of people in Kazakhstan based on sexual orientation and gender identity. Although the Committee did not inquire the State Party to provide any information on the matter, LGBT+ people are a key population with a high HIV prevalence rate and they should be included in Kazakhstan's national HIV program as a separate target group. Sensitisation, awareness-raising, education, and legal mechanisms are required to be introduced on the state-wide scale to ensure that this minority group is not discriminated against and subject to ill-treatment. Kazakhstan's report provides no status of the current legal provisions that would ensure a broad scope of protection from discrimination based on sexual orientation and gender identity in their combined SOGI perspective.

## RECOMMENDATIONS

We recommend that the Committee uses its authority over the Republic of Kazakhstan and inquires it to follow its international obligations under the Convention, as well as its national obligations, and to undertake respective activities and steps to secure the rule of law and equality of all people, LGBT+ people included, before the law on all its territory. With this consideration in mind, ECOM asks the Committee to consider the following issues:

1. To encourage Kazakhstan to adopt all-inclusive anti-discrimination legislation, which would ban all forms of discrimination and would protect all people from and discrimination, including from discrimination based on the grounds of gender identity and sexual orientation;
2. To advise Kazakhstan to introduce measures to combat torture against LGBT+ people in the national plan for the prevention of torture and implement them in partnership with LGBT+ organizations;
3. To recommend Kazakhstan to criminalize domestic violence, including crimes based on the grounds of gender identity and sexual orientation into a distinct, individual category of crimes and to identify sexual orientation and gender identity as protected grounds that construe aggravating circumstances if they are the motive for committing a crime;
4. To advise Kazakhstan to separate and collect the data on the crimes committed based on the victim's sexual orientation and/or gender identity;
5. To suggest that Kazakhstan adapts its healthcare policies and national HIV program to the needs of the key population group of LGBT+;
6. To urge Kazakhstan to remove the requirement in Marriage and Family Code, in section 257, par.13, for mandatory surgical correction as a basis for legally recognizing gender and to create a framework for non-discriminatory and voluntary procedures of legal gender confirmation;
7. To suggest to provide training on working with LGBT+ people for law enforcement officers with the involvement of community-based organizations;
8. Legally prohibit conversion therapy for LGBT+ people.

## ARTICLE 2 OF THE CONVENTION

It is necessary to stress that section 2 of article 14 of the Kazakhstan Constitution does not include the word “gender”.<sup>1</sup> Notably, the article declares, “No one may be subjected to discrimination of any kind on grounds of origin, social status, official position, material circumstances, sex, race, ethnic background, language, attitude to religion, beliefs, place of residence or any other circumstances.” Gender and sex are different categories and imply different things, where “sex” refers to a person’s assigned-at-birth sex (male/female), based on their sexual characteristics, while “gender” “refers to men and women, within the context of society. This definition acknowledges the social construction of gender, and the accompanying roles, behaviour, activities, and attributes assigned to men and women, and to girls and boys.” The Constitution of Kazakhstan does not include the words “gender” or “gender identity” anywhere. However, the list of grounds protected from discrimination is open (“or any other circumstances”), which is plausible in the event a person attempts to seek protection based on some other grounds not explicitly stated in that article. Article 14 section 1 of the Kazakhstan Constitution also declares that “[e]veryone is equal before the law and the court.”<sup>2</sup>

De facto, law-enforcement and judicial bodies do not utilize the non-exhaustive existing broader non-discrimination provisions to extend their protection to LGBT victims of SOGI-based human rights violations. The only article in the Criminal Code of Kazakhstan they could appeal to would be Article 145, which imposes criminal liability for “the violation of the equality of person and citizen.” The article imposes liability for “the direct or indirect restriction of the rights and freedoms of a person (citizen) for reasons of origin, social, employment, or property status, sex, race, nationality, language, attitude towards religion, beliefs, place of residence, membership in public associations, or any other circumstances.” Seemingly, this article should be able to extend its protection against SOGI-based hate crimes. Nevertheless, in practice, law enforcement agencies do not do so. As a result, perpetrators are not held accountable for the commission of hate crimes, and the real motives for committing these crimes are not disclosed, which makes it impossible for the victim to redress their actual rights that were violated.

In 2020, two men organized a criminal group that used fake dates to extort money from gay men. The victims would be lured into a romantic conversation in an apartment, and then accomplices would appear from hiding and record the encounter on video. They would then blackmail the victims, often using traumatic or cold weapons and demanding sums starting at 1 million tenge (\$2200). In some cases, victims were forced to take out loans from an app called Kasp.kz, which could be processed in three minutes and withdrawn from the nearest ATM. The group would hold onto the victim until the money was received. The gang continued to operate, and more than 15 victims reported being blackmailed but did not report to the authorities. In November 2022, one victim reported to the police and took the case to court.

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<sup>1</sup> Constitution of the Republic of Kazakhstan, [http://www.akorda.kz/ru/official\\_documents/constitution](http://www.akorda.kz/ru/official_documents/constitution).

<sup>2</sup> Constitution of the Republic of Kazakhstan, [http://www.akorda.kz/ru/official\\_documents/constitution](http://www.akorda.kz/ru/official_documents/constitution).

The court decision was a four-year prison sentence, the minimum term that did not take into account the use of weapons, the involvement of multiple offenders, and the recurring nature of the crime and that is a hate crime targeting a vulnerable group of the population.<sup>3</sup>

In the past year there were 6 applications from trans people under Article 145, not a single one of them was accepted and registered. The police officers refuse to accept complaints from trans people and do everything possible not to investigate the case. According to ALMA-TQ in January and February 2023 alone, there were 19 cases of violence and discrimination and abuse against trans people, 13 of which were committed by police officers.

Here is a case documented by transgender initiative ALMA-TQ: on September 28, 2022, a trans woman S. was robbed in her apartment and called the police. A police squad arrived and took the women and the alleged perpetrators to the Almalinskiy district police station. The woman was held in the police station for more than 6 hours. They abused her, humiliated her, used psychological pressure, and disclosed her personal information (the woman's documents had not been changed). Moreover, they locked her in a cell with other suspects, thus putting the woman's life in danger. They did not accept the victim's statement about the assault. The victim turned to the transgender initiative ALMA-TQ for help, a lawyer was hired and a petition under Article 145 of the Criminal Code of the Republic of Kazakhstan was filed. The woman and her lawyer went through all the national judicial instances, including applications, complaints to the General Prosecutor's Office, involving the ombudsman, but the application under Article 145 was not accepted, and the investigation has not begun. Now S. was preparing an appeal to the UN Committee on Human Rights.

Kazakhstan is a country that allows people to change their names to the alternate sex (gender) – however, only after a mandatory sex reassignment surgery. According to Family Law, Art. 257 (13), individuals are unable to change the gender marker without surgical intervention.<sup>4</sup> This requirement ignores the diversity of gender identity and expression and perpetuates discrimination against transgender people. The Kazakhstan Rules of Medical Examination and Sex Reassignment for People with Gender Identity Disorder allow transgender people to undergo the respective procedure and perform not only medical but also legal gender reassignment procedure.<sup>5</sup> The checklist to meet the requirements for the government to grant the procedure is unnecessarily high-barriered. Among others, a person has to be diagnosed with a gender identity disorder and a list of other disorders, as well as has to undergo sterilization. No social and psychological support for the transition is provided before, during, and after the gender reassignment procedure.

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<sup>3</sup> National Report on Violations of the Rights of Gay, Other MSM, and Trans\*people in Kazakhstan, 2022, ECOM

<sup>4</sup> [https://online.zakon.kz/Document/?doc\\_id=31102748&pos=2678;-54#pos=2678;-54](https://online.zakon.kz/Document/?doc_id=31102748&pos=2678;-54#pos=2678;-54)

<sup>5</sup> <https://adilet.zan.kz/rus/docs/V2000021680#z273>

According to Alma-TQ's study only 20% of the interviewed transgender people have access to changing documents. 75% of transgender people surveyed cited the requirement for surgical correction as a barrier to changing documents.<sup>6</sup>

These procedures further bolster discrimination, stigmatization, and ostracism of transgender people, in Kazakhstan since they are forced to undergo examinations that display them as mentally ill, and they are sterilized; both factors severely aggravate their already impaired lives.<sup>7</sup> Not all transgender individuals want the gender reassignment surgery: a person may just want to alter their gender and name legally or undergo hormonal therapy in addition but without a sex reassignment surgery. And even if a person wants the gender reassignment surgery, they should not be forced to undergo sterilization. The current approach of Kazakhstan legislation in relation to sex reassignment is a violation of transgender individuals' right to health, privacy, and freedom to self-determine their gender identity.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, called upon all States to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, "reparative therapies" or "conversion therapies", when enforced or administered without the free and informed consent of the person concerned. He also called upon them to outlaw forced or coerced sterilization in all circumstances and to provide special protection to individuals belonging to marginalized groups.<sup>8</sup> Kazakhstan should allow for ethical and unobstructed gender confirmation procedures without mandatory gender reassignment surgery and get rid of a sterilization requirement altogether. Adequate social and psychological support for the transition should be provided.

In one of the cases, documented by the transgender initiative ALMA-TQ, trans woman R. underwent sterilization surgery in Kazakhstan in March 2022, at a private clinic, so that she could change her documents. She did not plan for this surgery, but was forced to have it. After the surgery, she started having complications and her health condition worsened due to the incorrectly performed surgery. The woman went to the surgeon who performed the surgery, he helped her several times outside the clinic, as he did not want to have problems with his colleagues and management. Then he simply stopped responding to messages and blocked the woman. She wrote a statement to the police, but it was not accepted when they found out about her gender identity. As a result the problems remained after the surgery and she had to go to other clinics and look for doctors who could give her help. At the moment she is still in the process of restoring her health.

Significant barriers to changing documents for transgender people in Kazakhstan directly result in negative socio-economic consequences. For example, respondents of the study "Living our

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<sup>6</sup> [www.alma-tq.org/files/ugd/feded1\\_8b56537a381b4a87a714de85830a7a16.pdf](http://www.alma-tq.org/files/ugd/feded1_8b56537a381b4a87a714de85830a7a16.pdf)

<sup>7</sup> Trans Rights Europe & Central Asia Map & Index 2019, <https://tgeu.org/trans-rights-europe-central-asia-map-index-2019/>

<sup>8</sup> [www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53.English.pdf](http://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53.English.pdf)



Lives Unseen" report difficulties in finding a job, getting an education, obstacles in self-actualization, as well as generally low incomes with high financial expenses for the huge number of medical procedures required by the state for legal recognition of gender.<sup>9</sup> Additionally, the lack of an accessible procedure for legal recognition of gender creates difficulties in accessing medical services, including HIV and STI testing.<sup>10</sup>

In paragraph 7 the Committee asks the government of Kazakhstan to inform it about “any measures planned to criminalize domestic violence as a separate offence and to increase support and services for survivors of domestic violence.” In its reply to List of Issues Kazakhstan claims that “on 02.02.2023, a meeting was held with representatives of the Council of Europe on legislative amendments on domestic violence. In the course of the discussion, international experts came to the conclusion that it is **inexpedient** to criminalize domestic violence.” However, there are no official statements or news to prove the claim, besides it is extremely important not only criminalize domestic violence, but also include SOGI based violence in it.

In 2020, there has been an updated Domestic Violence Prevention Act.<sup>11</sup> It lists basic measures to be taken by state agencies to prevent violence and to coordinate the actions of local executive authorities, police, and medical workers. However, as many activists point out, the law is primarily aimed at preserving the family. For example, it provides for the eviction of the aggressor, but if he has no other housing, he is left to live with his family. Other measures of influence are preventive conversations, protective orders, the so-called penalties, but they are paid from the family budget.<sup>12</sup> As a result, statistics show that the current law does not protect domestic violence victims.<sup>13</sup>

The case documented by ECOM monitors in December 2022 is a vivid illustration of domestic violence based on SOGI. A transgender individual, A., who witnessed a family dispute and was subsequently beaten by her father. Her father suspects her of being queer and homosexual, and A. attempted to leave home but was unable to due to high apartment prices. Her father barged into A.'s room, insulted her, and said that she was abnormal and needed to go to the hospital. A. called the police, but the arriving officer took the parents' side and said, “If she calls again and says that you beat or kill her, we won't come. She shouldn't even count on it.” The next day, a psychologist arrived, and A.'s father began to threaten and humiliate her in front of the psychologist, who listened approvingly and nodded. The psychologist suggested taking A. to an institution and hospitalizing her at her father's insistence. The psychologist was convinced that A. was "ill" and needed help, and that people like her needed to be treated at their institution. This refers to a mental health center known for its old punitive psychiatry methods in Almaty, so people try to avoid it. A. refused to go anywhere. A. wrote a statement

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<sup>9</sup> [https://19816982-e8d5-45be-a5f7-d5dd84c14f65.filesusr.com/ugd/feded1\\_3ab180f74a9148abb0e1d5932145c760.pdf](https://19816982-e8d5-45be-a5f7-d5dd84c14f65.filesusr.com/ugd/feded1_3ab180f74a9148abb0e1d5932145c760.pdf)

<sup>10</sup> [www.alma-tq.org/files/ugd/feded1\\_8b56537a381b4a87a714de85830a7a16.pdf](http://www.alma-tq.org/files/ugd/feded1_8b56537a381b4a87a714de85830a7a16.pdf)

<sup>11</sup> [https://online.zakon.kz/document/?doc\\_id=30525680&pos=12;-43#pos=12;-43](https://online.zakon.kz/document/?doc_id=30525680&pos=12;-43#pos=12;-43)

<sup>12</sup> <https://www.ktk.kz/ru/news/video/2018/03/05/91473/>

<sup>13</sup> <https://factcheck.kz/health/semjino-bytovoe-nasilie-chto-govorit-statistika/>

to the police about her father, but later withdrew the statement, for fear that it would aggravate her situation.

## **ARTICLE 10 OF THE CONVENTION**

Situations in places of detention and the restriction of freedom, where LGBT+ people are subjected to double violence and intolerance, both from law enforcement agencies themselves and from other detainees (prisoners or suspects), require close attention.

A trans prisoner, V. B. reported to her lawyer and Kazakhstan's National Preventive Mechanism, that an employee in the Zhaugashty women's prison repeatedly raped her in July 2019. A transgender woman accuses a member of the security service of sexual violence. She lists the place where the crime was committed as the general security colony where she was serving her sentence and where a representative of the National Security Committee, who worked with convicts on "extremist" articles, had unimpeded access.

V. B. is also subjected to humiliation and pressure from other detainees too. The court sentenced the rapist to five and a half years in prison, deprivation of the special rank of major and a ban on working in public service. However, according to V. B.'s lawyer the accused officer was given a minimum term, because such judicial practice is usually applied when the defendant admits the charge, but in this case everything is exactly the opposite, since the defendant categorically denies the incriminated acts. The victim considers the sentence lenient, the human rights activists say that this case demonstrates the legalized lawlessness behind bars.<sup>14</sup>

It is necessary to introduce a training manual and instructions for active police officers on working with LGBT+ people in Kazakhstan. The instructions should clearly state that outing (disclosing information about SOGI to third parties without the permission of the LGBT+ person) is a violation of the confidentiality of the victim or suspect. The instructions should also address issues related to detention and the conditions of detention of trans\* people.

A study conducted by Alma-TQ in Kazakhstan has revealed that transgender people face numerous barriers in accessing HIV and STI prevention and treatment.<sup>15</sup> The lack of information about HIV and STIs, as well as limited access to protection means other than condoms, are major issues. Transgender people face transphobia when seeking medical services, with healthcare providers often failing to understand and consider their needs.

A study also found that workers at AIDS center offices do not receive specialized training on working with transgender individuals, making it impossible to guarantee sensitive services without understanding their needs and realities. The article suggests that educating medical

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<sup>14</sup> <https://rus.azattyq.org/a/kazakhstan-verdict-for-sexual-assault-of-a-transgender-person-in-prison/30879815.html>

<sup>15</sup> [www.alma-tq.org/files/ugd/feded1\\_8b56537a381b4a87a714de85830a7a16.pdf](http://www.alma-tq.org/files/ugd/feded1_8b56537a381b4a87a714de85830a7a16.pdf)

professionals on transgender individuals should be part of basic medical education, and that professionals who work with transgender clients should receive information on ethics and medical care for them.

## **ARTICLE 12 AND 13 OF THE CONVENTION**

LGBT+ people in Kazakhstan face widespread discrimination and violence, including hate crimes motivated by sexual orientation, gender identity, and gender expression (SOGI). Kazakhstan's government has failed to effectively investigate and prosecute such crimes, and many victims of hate crimes do not report them due to fear of further discrimination and violence.

In one of the cases documented by ECOM monitors in 2022 a gay man was attacked in the center of Almaty. He was beaten until he lost consciousness by a group of young men. When police officers arrived, they dissuaded him from making a statement, saying he was most likely to blame himself for provoking the attack. Despite the fact that the victim felt dizzy and most likely had a concussion and multiple bruises, he did not go to the hospital and stayed home. He is unwilling to solve the case for fear of being re-victimized by the police.<sup>16</sup>

Since 2018, a transgender woman named A., who lives in Shymkent, has been systematically subjected to violence, harassment, and threats of reprisal against her and her family. During this time, 9 criminal and administrative cases were initiated. A. has a large evidence base of video-photo materials of attacks on her, conclusions of medical examinations about causing her various severity of harm to health. The police, the prosecutor's office and local executive bodies do not take into account the evidence. Due to the high level of stigma and transphobia, her cases are being closed or retrained into ordinary household affairs, the police are refusing to punish the crimes and do not take into account the gender identity which is being the ground for all the violence and discrimination.

On June 14, 2021 a transgender young woman I. was abducted from home and forcefully detained in an unknown place. She was forced to believe in Islam, praying 5 times a day. They shaved her hair against her will. From time to time her hands were tied and she was harassed. Her personal belongings and phone were stolen. Her mother did not know where to find her. The kidnappers were familiar with the victim's mother, though the mother did not know that they were the abductors. The abductors told her they did not know where the victim was. She could escape the abduction. The abduction was not reported to the police.

On March 8, 2022, at 03:30 in the morning, two night club employees severely beat a gay man P., born in 1988, one of the frequent visitors to the Persona club at 31 Zenkov Street, Almaty. The crime was committed inside the building. The victim received significant damage to his

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<sup>16</sup> National Report on Violations of the Rights of Gay, Other MSM, and Trans\*people in Kazakhstan, 2022, ECOM

health: a fracture of the lower jaw, multiple hematomas and a concussion. In addition, he also suffered financial losses: due to his injuries, the victim was not able to work for a week, as a result of which he lost his income for some time.

In response to the claims of the victim, the administration of the night club stated that since LGBTI persons come to the club, adequate security services are not willing to work there, so they have to hire non-professional people who would agree to serve, in their opinion, marginalized groups. Thus, the club's employees are not officially employed in accordance with the Labor legislation of the Republic of Kazakhstan, and this allows the administration not to be responsible for any incidents within the night club and not to be responsible for the safety of visitors.

The victim reported the incident to the police. An investigation is known to have been launched, but not on grounds of sexual orientation and gender identity (SOGI).

It is important to note that the lack of statistics segregated by type of human rights violation and by victim characteristics raises concerns not only regarding the registration of hate crime allegations, but also regarding other data collected by government agencies, which lacks disaggregation by, among other things, SOGI characteristics. Concerns about the lack of data on human rights violations are reinforced by information about widespread corruption, with people not reaching the authorities with their complaints, or those complaints not or these complaints are not adequately addressed.<sup>17</sup>

## **ARTICLE 16 OF THE CONVENTION**

In the List of Issues (par.28) the Committee asks government of Kazakhstan to “describe measures taken to protect human rights defenders, lawyers and journalists from harassment, surveillance, intimidation, threats and arbitrary arrest and detention in connection with their human rights work and activities, including those working on terrorism and extremism cases, defending political opponents, protecting the rights of persons deprived of liberty or promoting the rights of women and combating discrimination based on sexual or gender identity.” However, the State did not indicate whether reports of such harassment were promptly, impartially and thoroughly investigated, prosecuted and punished, and it did not include the number of investigations carried out during the period under review.

Human Rights Measurement Initiative compared Kazakhstan to the other 40 countries in their sample and came to the conclusion that Kazakhstan is performing worse than average on the right to be safe from the state, which includes the right to freedom from torture and ill-treatment, arbitrary arrest, forced disappearance and extrajudicial execution. Members of the LGBT+ community are especially vulnerable to torture and ill-treatment by government agents. In addition, 40% of experts identified human rights advocates as being at risk of having the right to freedom from torture and ill-treatment violated.<sup>18</sup>

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<sup>17</sup> [https://ecom.ngo/library/kazakhstan-legislative-analysis\\_2020](https://ecom.ngo/library/kazakhstan-legislative-analysis_2020)

<sup>18</sup> <https://rightstracker.org/en/country/KAZ?tab=report-physint>

LGBT+ NGOs on the ground share that they are reluctant to hold public actions to raise LGBT+ visibility or otherwise draw attention to their situation out of fear of being persecuted or shut down.<sup>19</sup> In May 2021, members of the feminist group Feminita were harassed and attacked by unidentified men while holding a private event to discuss gender equality in Shymkent, Kazakhstan. When police officers arrived, they confronted activists and instead of prosecuting the perpetrators the police detained the event organizers and held them for eight hours. Later they were escorted back to Almaty by five police officers for their "own safety." The incident highlights the urgent need for better protection of women's and LGBT rights in Kazakhstan.<sup>20</sup> This was one in a series of similar incidents.<sup>21</sup>

The UN Committee on Economic, Social and Cultural Rights, in its concluding observations and recommendations to the country in 2019, instructed government of Kazakhstan take all necessary measures to prevent and combat discrimination against lesbian, gay, bisexual and transgender persons, ensure their equal enjoyment of Covenant rights, and provide for specialized legal protection for these individuals from attack and harassment.<sup>22</sup> The UN Committee on the Elimination of All Forms of Discrimination against Women made similar recommendations regarding LBT women that year. It is important to note that, according to local human rights activists, none of the numerous recommendations of the UN committees to combat discrimination in general, and against LGBT people in particular, has yet been implemented by the government in practice.<sup>23</sup>

A horrendous case happened during the first COVID-19 lockdowns in 2020, parents abducted their son, who had come out as gay, and forced him through a brain surgery to "cure" his homosexuality.<sup>24</sup> In this blatant torture of a case, B. M., a 29-year old queer man from Kazakhstan, came out as gay to his parents. They forced him into marriage with a woman, his father beat him up until unconscious, and they would threaten B. M. and his boyfriend with murder if B. M. would not lead a "traditional" life. B. M. would escape his family several times, only to be re-captured. Finally, his family lured him out under the pretense of his mother having cancer. Only in the clinic in Russia, B. M. understands it was a setup. B. M. was diagnosed with hydrocephalus in 2015, a condition with a build-up of liquid in his brain. His parents blamed the diagnosis for "making B. M. gay." Russian doctors refused to perform any surgery and said any intervention would threaten B. M.'s life. The parents found cooperative surgeons in Nur-Sultan and forced an unnecessary, illegal brain surgery on B. M.: "According to B. M., the surgeons drilled his brain and drained it of any excess liquid."<sup>25</sup> Several LGBT Initiatives tried to rescue B. M. and his boyfriend, but B. M.'s parents would interfere with authorities and, eventually, they reclaimed B. M. and everyone lost touch with him. It is a

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<sup>19</sup> Legislative Analysis related to LGBTQ rights and HIV in 11 CEECA countries, ECOM, 2018.

<sup>20</sup> <https://www.hrw.org/news/2021/06/01/activists-detained-kazakhstan-their-own-safety>

<sup>21</sup> <https://hatecrime.osce.org/index.php/kazakhstan>

<sup>22</sup> Concluding observations on the second periodic report of Kazakhstan <https://rb.gy/boyqim>

<sup>23</sup> [https://ecom.ngo/library/kazakhstan-legislative-analysis\\_2020](https://ecom.ngo/library/kazakhstan-legislative-analysis_2020)

<sup>24</sup> <https://hromadske.ua/en/posts/family-forces-a-man-through-brain-surgery-to-cure-homosexuality>

<sup>25</sup> <https://hromadske.ua/en/posts/family-forces-a-man-through-brain-surgery-to-cure-homosexuality>

wallowing case of horrible torture and homophobia that received widespread media coverage yet Kazakhstan authorities did nothing to save B. M. or punish his parents; if anything, they only cooperated with his parents to kidnap , restrain him, and subject him to forced surgery and other torture.

The practice of conversion therapy for LGBT+ people continues in Kazakhstan. Religious leaders often take part in such activities. In February 2022 the Spiritual Administration of Muslims of Kazakhstan (DUMK) issued a fatwa on their website regarding the LGBT community. The fatwa declares same-sex relationships as the worst type of immorality and is prohibited according to Sharia law. It also implies that LGBT people will face severe punishment in the afterlife unless they repent and seek treatment. The fatwa does not explicitly call for violence against the LGBT community but could serve as a form of indulgence for potential violence. DUMK is an organization created during the Soviet era to exert centralized control over Soviet Muslims and continues to carry out state policies. The fatwa could also be interpreted as a blessing for conversion therapy.<sup>26</sup>

## CONCLUSION

Article 1, section 1 of the Constitution of Kazakhstan proclaims: “The Republic of Kazakhstan affirms itself to be a democratic, secular, legal and social state, the highest values of which are the human, his life, rights and freedoms.”<sup>27</sup> Democratic, secular, and legal states create laws to quell chaos and create the conditions that allow their nation to thrive. Article 5 section 1 of the Kazakhstan Constitution stipulates that “ideological and political pluralism are acknowledged in the Republic of Kazakhstan.”<sup>28</sup> Unfortunately, LGBT+ people have no means of obtaining this level of thriving because of the stigma and absence of legal mechanisms that would protect them from discrimination and ensure their equality on par with the heterosexual, cisgender population. The right to health is a fundamental right of every person. Without dedicated assurance of the right to health, it is impossible for people to realize their other rights since human rights are interdependent and interconnected. Considering the Committee’s practice and the framework of the Convention, the LGBT+ should have their rights protected and observed on the same level as any other person, while observing their needs as a key population group to avoid disproportion in power compared to the majority. Currently, LGBT+ community do not enjoy their right from torture and ill-treatment as well as right to health, privacy, dignity, freedom of expression, freedom of assembly, and freedom to self-determine their gender identity because the legislation and governmental practices are lacking the required mechanisms for them to obtain the highest attainable standard of health and development in the Republic of Kazakhstan. They are denied a framework of protection of their rights based on sexual orientation and gender identity as attributes that are universally protected by the Convention, the Universal Declaration, both

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<sup>26</sup> <https://ecom.ngo/news-eeca/kvir-po-kazahski-v-2022>

<sup>27</sup> Constitution of the Republic of Kazakhstan, [http://www.akorda.kz/ru/official\\_documents/constitution](http://www.akorda.kz/ru/official_documents/constitution)

<sup>28</sup> Ibid.

Covenants and other international treaties ratified by the State Party. Considering Kazakhstan's momentous developments since the last concluding observations of the Committee, ECOM files this Alternative Report in hopes that the Kazakhstan government will direct its attention at LGBT+ people as a key population group that has special needs that require specialized regulations to decrease discrimination and stigma that currently impales their ability to lead healthy and fulfilling lives free from torture and ill-treatment.