

Hate crimes and torture concerning LGBT people in Kazakhstan

Submission within the Follow-up procedure on the Concluding Observations of the UN Committee against Torture (CAT) on the Fourth Periodic Report of Kazakhstan

The present follow-up submission was prepared jointly by the ECOM and “Alma-TQ” Initiative Group. It consists of comments on the results of Kazakhstan’s actions regarding CAT’s concluding observations set out in paragraphs 39, 40, 41 and 42.

ECOM is the Eurasian Coalition on Health, Rights, Gender and Sexual Diversity. ECOM is an international NGO based in Tallinn, Estonia, that is adept in working with gay men, other MSM, and transgender people specifically in the area of HIV prevention, treatment, care, and support in Eastern Europe and Central Asia (EECA) region. The network currently has 101 members from 20 countries of the EECA.

“Alma-TQ” is a Kazakhstani transgender initiative aimed to improve the quality of life and strengthen the community of transgender, transsexual, gender non-conformal, and gender non-binary people in Kazakhstan through community support, social support system development, mobilization, community capacity building, and advocacy.

“Alma-TQ” sent a letter to the Ministry of Justice of Kazakhstan requesting to share the follow-up report on the Committee’s recommendations in accordance with paragraph 45 of the Concluding observations. Unfortunately, by the time of this submission, we have not received a reply to our request.

1. According to paragraph 45 of the Concluding Observations, the Committee recommended to Kazakhstan to provide information regarding the implementation of recommendations outlined in paragraphs 14 (a), 24 (a), 28 and 44. Kazakhstan was encouraged to provide the Committee with details regarding its strategies for implementation, during the upcoming reporting period, either some or all of the outstanding recommendations outlined in the Concluding Observations. In this follow-up report we would like to highlight paragraphs of 24 (a), 39, 40, 41 and 42 of the Concluding Observations.

24. The State party should:

*(a) Ensure that all allegations of violence against detainees, **including violence on the basis of sexual orientation and gender identity**, are thoroughly investigated and that suspected offenders are prosecuted and, if convicted, punished appropriately, with specific attention paid to allegations of violence against female detainees;*

2. Article 14 of the Constitution of Kazakhstan prohibits discrimination based on various grounds such as origin, social, official and property status, gender, race, nationality, language, attitude towards religion, beliefs, place of residence or any other circumstances. The state ensures equal protection of the rights of all citizens under the law and the court. However, it is crucial to highlight that the Constitution’s non-discrimination provision does not explicitly include sexual orientation. This lack of explicit recognition and the absence of specific anti-discrimination laws addressing the rights and protections of LGBT individuals have created a gap in legal safeguards. Consequently, the LGBT community continues to face stigma, marginalization and persecution, hindering their ability to fully exercise their human rights.

3. On April 15, 2024, Kazakhstan adopted the law “On amendments and additions to some legislative acts of the Republic of Kazakhstan on ensuring the rights of women and the safety of children”. This law introduces amendments and additions to 15 legislative acts, including seven codes and eight laws. These include amendments to the Family and Marriage Code, however, the Committee’s recommendations made in paragraphs 41, 42 of the Concluding Observations were not considered and implemented. Transgender people still need to undergo mandatory reassignment surgery in order to change gender as well as their family and first name in line with Article 257(13) of the Family and Marriage Code¹.
4. Requirement for transgender people to undergo mandatory reassignment surgery to change their gender as well as their family and first name is practically impossible to comply with. Making such surgery mandatory is not feasible given its specific conditions and challenges. Transgender individuals should have the autonomy to decide whether or not to undergo surgery, and this choice should not impede their right to have their gender identity recognized. Additionally, discrimination in medical institutions against transgender individuals is a widespread issue. Alma-TQ has documented six cases in which transgender individuals were denied gender-affirming procedures and subjected to personal questions, insults, and unnecessary requests to undress, purely out of the curiosity of medical practitioners themselves. “... they told me on the phone that they were performing the operations that I needed, but when I came and told the surgeon about my identity, he started kicking me out, aggressively insulted me and said that there would be nothing for people like me to do.” M, transgender woman, Almaty.
5. This limbo of legal recognition and change of documents in line with their gender identity creates significant obstacles for transgender people in Kazakhstan. This lack of legal recognition and protection further compounds the struggles they encounter across various aspects of their lives. Transgender persons do face significant discrimination in healthcare, employment, education, and accessing public services. This lack of recognition of their gender identity leaves them vulnerable to discrimination, exclusion, and limited opportunities. Furthermore, the absence of legal protection hampers their ability to seek justice and obtain remedies for any violations they may experience.
6. The discriminatory practices and ill-treatment experienced by transgender individuals, including the denial of gender recognition and difficulties in accessing healthcare and other essential services, are clear examples of the systemic barriers they encounter. Moreover, transgender detainees face the fear of being placed in detention centers based on their biological sex rather than their gender identity since Kazakhstan’s legislation does not have provisions to regulate such cases. This practice is considered a form of torture and ill-treatment. Being placed in a detention facility that does not align with their gender identity exposes transgender people to a hostile and unsafe environment. They face heightened risks of physical and psychological abuse, discrimination, and harassment. This treatment violates their human rights and exacerbates the already vulnerable situation they face. The failure to recognize and respect their gender identity in detention settings denies transgender people their dignity, privacy, and the right to be treated in a manner consistent with their affirmed gender.
7. Besides, the evasion by the state officials to provide hormone therapy for transgender detainees is a form of torture and ill-treatment. It violates their right to receive appropriate healthcare, infringes upon their bodily autonomy, and exacerbates the already vulnerable situation they face while detained. Hormone therapy is a crucial aspect of medical transition for transgender individuals and plays a significant role in aligning their physical appearance with their gender identity. Denial or delay in accessing necessary medical treatment can have severe physical and psychological consequences, causing distress and discomfort to these people.

¹ National report on violations of the rights of LGBT people and MSM in Kazakhstan, ECOM, 2024, available at: <https://ecom.ngo/library/national-report-kazakhstan-23>

8. Kazakhstan’s legislation does not specifically recognize hate crimes as a distinct category. While the Criminal Code does include provisions that aggravate liability for crimes committed “motivated by social, national, racial, or religious hatred”, it is unfortunate that sexual orientation is not explicitly listed as an aggravating circumstance. The absence of explicit recognition and protection for SOGI in hate crime legislation is a significant concern. It creates a gap in addressing and preventing acts of violence and discrimination against individuals based on their sexual orientation or gender identity. In order to provide adequate protection for all individuals, including those who identify as LGBT, it is recommended that Kazakhstan consider amending its legislation to include SOGI as an aggravating circumstance for hate crimes. This would contribute to a more comprehensive and inclusive legal framework that recognizes and addresses the unique vulnerabilities and experiences of LGBT community.
9. The failure to explicitly recognize hate crimes based on SOGI contributes to the perpetuation of discrimination and marginalization of LGBT persons. It sends a message that acts of violence and discrimination against them are not treated with the seriousness they deserve. This lack of recognition undermines efforts to hold perpetrators accountable and discourages victims from reporting incidents and seeking justice. The situation regarding hate crimes related to LGBT community and the lack of their investigation raises serious concerns about the protection of human rights and the well-being of the community.
10. According to Alma-TQ’s data, law enforcement agencies, in cases of hate crimes on the basis of SOGI, frequently fail to provide adequate protection and support to the victims. Law enforcement officials abuse their official positions by engaging in acts of torture and other cruel and inhuman treatment specifically targeting LGBT individuals. These actions are often motivated by personal gain, including the extortion of money and other selfish purposes. One common method employed is the use of threats and blackmail, which involves disclosing the individual’s sexual orientation, gender identity, and sharing personal data such as photos and videos with their relatives. Such behavior by law enforcement officials not only violates the fundamental rights and dignity of LGBT individuals but also creates an atmosphere of fear, intimidation, and further marginalization. It undermines the trust and confidence that should be placed in law enforcement agencies to protect and serve all members of society impartially. Only one out of 59 registered cases of violation of transgender rights led to criminal proceedings. Since most of the victims do not believe in justice and fair investigation. *“I didn’t go to the police because I think it’s useless,”* a transgender woman from Almaty said. *“I will not go against police officers as it may harm me even more”*, a transgender sex worker, Astana.
11. The prevailing anti-LGBT sentiment expressed by certain high officials and the lack of political will to address these issues only contribute to further marginalization and discrimination. On April 20, 2024 members of the Parliament of Kazakhstan proposed to introduce criminal liability for the propaganda of non-traditional sexual relations by supplementing Article 174 (1) of the Criminal Code (“Incitement of social, national, tribal, racial, class, or religious discord”) with the following text: “including through the propaganda of non-traditional sexual relations”. Additionally, the MPs proposed to specify in the law “On the procedure for organizing and holding peaceful assemblies” that “propaganda of non-traditional sexual relations may become a ground on which local authorities may refuse to hold a rally or a picket.”²
12. The newly adopted law “On amendments and additions to some legislative acts of the Republic of Kazakhstan on ensuring the rights of women and the safety of children” includes a provision regarding the promotion of “traditional family values” emphasizing the reinforcement of the institution of marriage and family. However, the term “traditional family values” lacks a clear definition and is often used to target feminist and LGBT activists³, as evidenced by the ongoing developments in Russia.

² In Kazakhstan, members of parliament proposed to criminalize LGBT propaganda, <https://www.currenttime.tv/a/kazakhstan-lgbt-propaganda/32898887.html>

³ Kazakhstan: New Law to Protect Women Improved, but Incomplete. Increases Protections, But More Reforms Needed, <https://www.hrw.org/news/2024/04/23/kazakhstan-new-law-protect-women-improved-incomplete>

13. Efforts should be made to strengthen the capacity of law enforcement agencies, sensitize them to the unique challenges faced by the LGBT community and foster a culture of accountability to ensure proper investigation and prosecution of hate crimes. It is imperative for Kazakhstan to enact comprehensive anti-discrimination legislation that explicitly recognizes and protects the rights of LGBT people. Additionally, comprehensive legal frameworks and procedures should be established to enable gender recognition and protect the rights of transgender individuals. By doing so, the state can ensure equal treatment, inclusion, and freedom from discrimination and persecution for all of its citizens, regardless of their sexual orientation or gender identity.
14. Addressing the stigmatization, discrimination, and violence faced by the LGBT community requires a multi-faceted approach, including awareness-raising campaigns, educational programs and the promotion of inclusivity and diversity. By embracing these measures and ensuring a full protection of human rights for all its citizens, Kazakhstan can move towards a more tolerant and inclusive society.