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Human Rights Violations Based on Sexual Orientation and Gender Identity in Kyrgyzstan

An “alternative report”
as a commentary on the
Third Periodic Report CCPR/C/KGZ/3
by Kyrgyzstan
and
Concluding Observations CCPR/C/KGZ/CO/2

130th Session
Human Rights Committee
Review of the third periodic report by Kyrgyzstan

August 2020

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Introduction

1. The Kyrgyz Republic acceded to the International Covenant on Civil and Political Rights (hereinafter referred to as Covenant) in 1994 and has a "State Party" status within the framework of the Covenant. Kyrgyzstan submitted its third periodic report on 25 February 2020. The Report contains the State Party's replies to the previous concluding observations and other updates on the state of human rights in the country.

2. The current Alternative Report — a commentary on Report CCPR/C/KGZ/3 and Concluding Observations CCPR/C/KGZ/CO/2 — is submitted as per the invitation of the Human Rights Committee (hereinafter, Committee/HRCtee) that welcomes "alternative reports" from regional NGOs regarding the observation of the Covenant by a State Party, in this case, by Kyrgyzstan.

3. In its Concluding Observations CCPR/C/KGZ/CO/2 (later referred to as CO), the Committee inquired of Kyrgyzstan to comment on the steps it would have undertaken to ensure justice for all people, the LGBT minority particularly, by the time of the next reporting period. The CO voiced that the "Committee is concerned about reports of violence against lesbian, gay, bisexual and transgender (LGBT) persons by both State and non-State actors, and the failure on the part of the State party to address such violence (arts. 2 and 26)." The issues in the CO indicated at the Committee's concern, based on the reports by the Kyrgyz civil society, regarding the derogatory treatment that the LGBT face in Kyrgyzstan, being discriminated against by the general population and by the government in the areas of healthcare and law-enforcement that deny them the ability to realise and protect their right to health, freedom of thought, beliefs, gender identity, gender expression, self-determination, and the right to privacy. HRCtee emphasized that Kyrgyzstan should collect thorough statistics to support non-discrimination of the LGBT, diligently investigate all cases of discrimination and punish the perpetrators accordingly. It also underlined the necessity of reviewing the Kyrgyz domestic legislation to ban all forms of discrimination as protected by the Covenant's framework.

4. Before we provide our alternative commentary and report on the issues regarding the non-equality and discrimination of the LGBT in the Kyrgyz Republic, ECOM - Eurasian Coalition on Health, Rights, Gender and Sexual Diversity (hereinafter, ECOM), Public Organization "Kyrgyz Indigo" and LGBT organization "Labrys" express their full understanding of the state of economic development that the country is in and a wide spectrum of areas the government requires to improve based on the Committee's Concluding Observations. ECOM, Kyrgyz Indigo and Labrys are aware of the devastating short-term and long-term effects the COVID-19 pandemic has induced upon the entire international community, the state of Kyrgyzstan included. We understand the enormous financial, mental, and human resources it takes the State Party to tackle the consequences of the said pandemic, deal with its ongoing routine and introduce changes as per the Committee's recommendations. ECOM is a regional NGO that is adept in working with gay men, other MSM, and trans people specifically in the area of ensuring their right to health, which makes it competent in revealing drawbacks in state healthcare services and offering professional recommendations to amend them, which public servants may lack due to not having the necessary training. "Kyrgyz Indigo" is one of the largest LGBT organizations in Kyrgyzstan with the main office in the capital city of Bishkek. "Kyrgyz Indigo" strives to improve the lives of LGBTQI people in the region. Mostly, by helping build the democratic society, including promotion of anti-discrimination initiatives, raising awareness of and increasing tolerance towards LGBTQI persons, and collaborating with academic institutions such as medical schools, law-enforcement academies and other government institutions. Labrys is a grassroots platform for advancement and protection of the human rights of LGBT people in Kyrgyzstan and Central Asia equipped with advocacy instruments moved by different generations of activists. Therefore, the following commentary and reports on the right to health in Kyrgyzstan are provided in the hope to participate in alleviating the burden that befalls the LGBT in this country due to the ongoing lack of understanding of this

marginalised group by the general public and because of the absent legal mechanisms that would help decrease the discrimination and stigma they face.

5. As NGOs that work to ensure the equality and non-discrimination of LGBT and the full realisation of their right to health, ECOM, "Kyrgyz Indigo" and "Labrys" commend Kyrgyzstan's efforts to improve the way that specialised medical services are provided to trans people. Report CCPR/C/KGZ/3 (hereinafter, Report) states that the medical and social aid for transgender people is provided by healthcare facilities according to regulations defined by the Ministry of Healthcare, and it includes specialised medical and psychological aid, medical examination and evaluation, and passing a medical conclusion, which serves as the grounds for changing the gender marker and further help in social re-adaptation (para 435). Indeed, the adoption of the general Order No. 42 of 18 January 2017 is, at least, a starting point on the government's part to acknowledge trans persons and will hopefully result in positive changes regarding the public perception of trans people and their unique needs. It is also commendable that the Kyrgyz Republic is on an endeavor to fight the HIV epidemic. The Report (para 434) states that "the situation regarding the LGBT has changed thanks to numerous harm reduction programmes, the Anti-Drug Programme 2014, National HIV Prevention Programmes (the updated State Programme for Overcoming the HIV-Infection 2017-2020, dated 30 December 2017 №852), which ensure non-discriminatory intervention and access to friendly medical services, including access to standards of treatment of populations that are at an increased risk of getting infected with HIV." Unfortunately, Kyrgyzstan has not included any figures to show the progress that the regulations entail. The mentioned efforts deserve acknowledgement and praise. However, men who have sex with men (MSM) and trans people are still categories that undergo transformation in the face of the national HIV-prevention programme, which has only recently dedicated focused attention to them. For example, within the framework of the Kyrgyz Indigo study on trans women sex workers with migration experience, it was found that among those who know their status, 26% are HIV-positive.¹ According to UNAIDS, HIV-prevalence among Kyrgyz gay men and MSM was 6.3% in 2016, and that, overall, new HIV infections have increased by 21% and AIDS-related deaths by 9% between 2010-2016.² Transgender people, men and women, unfortunately, are not part of effective government data collection, which exacerbates their right to health, particularly, in the area of HIV. These data require meritable and immediate improvement in terms of key population groups diversification and scope and methods of collection, so as to enhance the right to health of the LGBT, which is a universal right without the observation of which, all the other fundamental rights and freedoms are in danger.

6. Article 40 section 1 of the Covenant states that "[t]he State Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights." Article 40 section 2 of the Covenant stipulates that "[r]eports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant." Having studied the Report, ECOM, Kyrgyz Indigo, and Labrys consider that, within the scope of the right to equality before the law (Article 26 of the Covenant), right to privacy (Article 17 of the Covenant), freedom from torture (Article 7 of the Convention), and the *a priori* inclusive and universal right to health, Kyrgyzstan's report does not provide the HRCtee with the chance to assess the full picture of the situation with human rights of the Kyrgyz LGBT. The given Alternative Report is meant to serve as additional information regarding the wider non-discrimination of the LGBT people in Kyrgyzstan, particularly when it comes to non-discrimination of their right to health, and as an instrument to advance positive changes to amend the current underwhelming position that the mentioned these populations tend to find themselves in.

¹ Kyrgyz Indigo, [Challenges and barriers to migration as a consequence of the economic vulnerability of trans women](#), 39

² "Kyrgyzstan Overview," <https://www.unaids.org/en/regionscountries/countries/kyrgyzstan>

Article 26 — Right to Equality Before the Law

7. The Report (para 432) argues that the current legislation demonstrates a non-discriminatory relation to and a positive realisation of human rights of the LGBT. While there have been truly positive shifts in legislation during the period in question, particularly when it comes to trans health, the former statement is an exaggeration. Also, other statements in the Report are quite vague and do not provide data or specific legislative norms that it claims are to increase the level of life satisfaction of the LGBT to such a great extent, over just the past few years. For example, there is the Kyrgyz Law “On State Guarantees of Equal Rights and Equal Opportunities of Men and Women” (a.k.a the Equality Act) and the National Strategy to Achieve Gender Equality 2020. This national strategy includes a statement that says: “At the representational level: all citizens can benefit from the services regardless of their sex, age, gender identity, sexual orientation or other grounds for discrimination.” Although the Strategy claims to be based, among others, on the principle of complex gender approach,³ no such complexity is present in the strategy as it mainly refers to equalizing the opportunities for cisgender men and women. It should be duly noted that a strategy is not a law and it cannot be enforced by the police, court, or other instruments of human rights protection. Not to offend the existence of such a programme since it is, indeed, crucial for tackling the daily discrimination that cisgender women face in Kyrgyzstan; however, a “complex gender approach” should go beyond just considering the social, political, and economic disparities that exist in the Kyrgyz society between the sexes.

8. We welcome Kyrgyzstan efforts to focus government regulations to accommodate certain needs of the LGBT. The Report (para 436) indicates that “the Kyrgyz Republic concludes sequential steps in terms of adapting the national legislation to international human rights standards when it comes to HIV, LGBT.” ECOM, “Kyrgyz Indigo” and “Labrys” acknowledge this statement, considering that medical and law-enforcement institutions are indeed becoming more welcoming to sensitization, education, and training that comes from LGBT NGOs. The progress is slow but it is there and affords praise. Nevertheless, it should be noted that the government itself has no defined national strategy in terms of raising the awareness of the public, medical workers and law-enforcement officers when it comes to non-discrimination of LGBT and nuances when dealing with their needs or providing them with aid. Furthermore, the issues of sexual and reproductive health and education of children in schools is still a topic of discomfort; stigma, and outdatedness. The present gender laws, strategies, and respective government bodies work in the direction of promoting equality of sexes — those assigned at birth as men and women. There is no definition of gender, gender expression, and there are no other progressive provisions defining gender as a social construct. Trans persons are not the target of gender equality with regards to the current Kyrgyz legislation. As stated by the State Party itself, “the Kyrgyz Republic has no laws that prohibit discrimination based on sexual orientation, gender identity and gender expression” (para 440). There is no way to use the current Kyrgyz law effectively in trying to prove a case of discrimination based on SOGIGE. The absence of express protection of LGBT from discrimination hinders the positive changes in the minds of the public, law-enforcement, and healthcare staff. Sexual orientation or gender identity are not mentioned anywhere in the Kyrgyz legislation in the way that the progressive international society views these issues.

9. Article 1 of the Kyrgyz Equality Act includes various definitions; among others, it defines gender as “acquired, socially ascribed behaviour of individuals of a different sex; a social aspect of relationships between men and women which manifests in all areas of life, including politics, economics, law, ideology and culture, education and science.”⁴ The same article defines “gender discrimination (direct/indirect)” as “any discrepancy, exclusion or preference, which limits the rights and interests of individuals based on sex; [discrimination] at weakening or devoiding [one] of recognition, use or realisation of equality of men and women in the political, economic, cultural, civil or any other areas of public life.” Unlike other CEECA countries that have adopted similar Equality Acts, the

³ National Strategy to Achieve Gender Equality 2020, <http://cbd.minjust.gov.kg/act/view/ru-ru/12728?cl=ru-ru>

⁴ Law On State Guarantees of Equal Rights and Equal Opportunities of Men and Women, <http://cbd.minjust.gov.kg/act/view/ru-ru/202398/10?cl=ru-ru>

Kyrgyz one at least made an effort of defining gender and gender discrimination.⁵ While it is definitely suitable enough to provide a general course of action for the law-enforcement and judiciary when it comes to discrimination based on sex, because of the express reference to “based on sex,” it renders impossible for trans or gender nonconforming people to use those provisions. Furthermore, one of the Kyrgyz parliamentarians, in 2019, offered to exclude the word “gender” from the national legislation because it may imply trans people, i.e., that such option is deteriorating and only cisgender biological men and women should be covered by the non-discrimination “sex” clause.⁶

10. ECOM, “Kyrgyz Indigo,” and “Labrys” welcome the mentioned national gender strategy and Equality Act⁷ but would like to expand on why more detail and elaboration is necessary when it comes to legislation regarding gender identity and gender expression. Article 16 section 2 states, “The Kyrgyz Republic respects and observes the human rights and freedoms of all individuals that are present on its territory or within its jurisdiction. None shall be subjected to discrimination based on sex, race, language, disability, ethnic affiliation, creed, age, political or other beliefs, education, origin, material or other status, or other circumstances.”⁸ While the list is non-exhaustive, considering the intersectional factors induced by religious and social prejudice when it comes to LGBT people in general, and Kyrgyzstan being a former USSR state that had criminal liability for homosexual conduct *per se*, the law-enforcement and judiciary are reluctant, if not unwilling, to use that provision to interpret it as such that includes protection from discrimination based on SOGIGE. Like in other countries around the world, and as per the Committee’s practice, specialised all-inclusive non-discrimination laws that explicitly protect people from discrimination based on sexual orientation, gender identity, and gender expression are necessary to protect the respective marginalised groups within the LGBT community. The absence of a general definition of what “discrimination” is in Kyrgyz legislation also creates confusion in enforcing the law to protect the equality of all people.

11. Within the scope of Article 26 of the Covenant, provisions from the Kyrgyz Criminal Code should be noted, which enforce the negative public stereotype about the LGBT and that hinder the right of the LGBT to protect themselves fairly and justly when discrimination based on SOGIGE occurs. Consequently, the following articles also hinder the state from adopting a proactive approach to promoting equality of all. Article 185 section 1 of the Criminal Code states, “Violation of human equality, i.e. direct or indirect limitation of rights or establishment of direct or indirect privileges based on sex, race, nationality, language, disability, ethnic affiliation, creed, age, political or other beliefs, education, origin, material or other status that has caused considerable harm as a result of negligence”⁹ is subject to punishment by a respective form of criminal liability. The article repeats the grounds listed in article 15 of the Kyrgyz Constitution. However, the wording creates confusion and inconsistency by ending the disposition with a special condition that the mentioned actions are punishable only if they cause considerable harm out of negligence. “Considerable harm” is a vague category and establishing a test to identify whether the harm caused was considerable enough to determine an act of discrimination is ineffective. In addition, acts of discrimination are, for the most part, performed with direct intent or with the perpetrator being aware of their biased or hateful relation to the victim. There are considerable issues with regards to this article and such faulty wording. The “other status,” as explained above, is refused by the law-enforcement and judiciary to be interpreted as such that includes the SOGIGE. There is no other article establishing punishment for discrimination based on hate or inequality. Notably, the Kyrgyz Criminal Code has no hate crimes, no explanation or any other kind of protection of victims who have suffered from hate based on SOGIGE or other grounds. There is the general aggravating circumstance of committing crimes based on racial,

⁵ Legislative Analysis Related to LGBTQ Rights and HIV in 11 CEECA Countries, 2018, ECOM, <https://ecom.ngo/en/library/legislative-analysis-2018/>

⁶ “Torobay Zuplukarov Offered Not to Use the Word “Gender” in Kyrgyzstan,” https://kaktus.media/doc/391935_torobay_zylypykarov_predlozil_ne_ispolzovat_slovo_gender_v_kyrgyzstane_video.html

⁷ Legislative Analysis Related to LGBTQ Rights and HIV in 11 CEECA Countries, 2018, ECOM, <https://ecom.ngo/en/library/legislative-analysis-2018/>

⁸ Constitution of the Kyrgyz Republic, <http://cbd.minjust.gov.kg/act/view/ru-ru/202913?cl=ru-ru>

⁹ Criminal Code of the Kyrgyz Republic, <http://cbd.minjust.gov.kg/act/view/ru-ru/111527>

ethnic, national, religious, inter-regional enmity only. SOGIGE is not included as an aggravating circumstance. LGBT victims who file for prosecution of discrimination based on hate report that, even if the police commences investigation (because often they do not act and, eventually, close the case because the reported deed fails certain elements of crime or they do not find the perpetrator), they investigate it as hooliganism or battery/assault, which are crimes that infringe other social-legal relations and do not provide the ability to investigate the cases of homo- or transphobia properly.

12. The Report (para 433) argues that a latent problem, such as the widespread stigma in relation to LGBT, did indeed exist among state and non-state actors and that cases of violence perpetrated by those close to the LGBT did indeed occur. The Report continues, saying that, in the past, separate cases of discriminatory behaviour towards transgender people committed by civil servants, medical workers, and law-enforcement officers happened because of outdated knowledge. Kyrgyzstan uses the past tense as if the issues are no more, which could not be farther from the actual truth. For instance, a gay man met another man on a dating social media platform, after which they decided to meet up at a park for a walk. The victim reported the case to "Kyrgyz Indigo" in 2019. After they had held a conversation for 30 minutes exactly, the man showed his ID, revealing he was an employee of the district court of Osh city. The man said he recorded their conversation and that unless the victim brought him 30,000 som, he would prosecute him for "homosexuality" under article 130 of the Criminal Code. The victim was mortified, called all his friends and gathered 17,000 som by the end of that day and gave them to the wrongdoer. In light of just this case, the Report saying that misunderstanding, discrimination, and stigma against the LGBT is something of the past is simply untrue. Horrible acts of discrimination and violence against them happen every day across the country. Dozens of other cases of blackmailing have been reported to Kyrgyz NGOs.

13. The Report does not include any information about educating the law-enforcement and healthcare workers about SOGIGE issues, HIV, or working with such disadvantaged groups like LGBT. Sensitization, awareness-raising, education, and legal mechanisms require introduction on a state-wide scale. The Report mentions that a draft of the Law On Ensuring Equality was discussed by anti-discrimination coalitions and experts, and that the draft encompasses new guarantees on all levels of social life (para 441). Then again, no actual details have been provided as to the stage that the draft law is currently at. Kyrgyz NGOs report that there is indeed a draft on eliminating all forms of discrimination, including based on SOGI, that's been registered with the Kyrgyz parliament. Nonetheless, this does not provide any guarantees that grounds like sexual orientation, gender identity and gender expression will survive the conservative pressure of the public and the parliamentary scrutiny when the final bill is adopted. There is virtually no data in terms of observation of human rights of the LGBT community, in relation to their right to health, hate crimes, and such. Despite the admirable goals achieved by the Kyrgyz government in terms of primary healthcare, as well as HIV-prevention and treatment of trans people and gay men, the issues of SOGIGE and how discrimination and stigmatization affect their lives are poorly articulated in the Report.

14. Most LGBT victims have no ability to effectively defend their violated rights because there are no provisions that would protect them against crimes committed out of hate based on sexual orientation, gender identity, and gender expression. Investigating these crimes as ordinary blackmail, assault, coercion, and malfeasance do not make the cut: they do not focus on the infringed social-legal relations correctly. In addition, the absence of such provisions does not allow to collect truthful data when it comes to hate crimes committed out of discrimination based on SOGIGE. This also creates a sense of impunity among the law-enforcement, bolstering their criminal actions against the LGBT as there is no law that condemns homo- and transphobia. The daily life of LGBT is far from being safe and equal to the general public. Their right to health, as will be discussed below, is violated ubiquitously still, entailing other violations of their right to privacy and freedom of self-determination.

Article 17 — Right to Privacy

15. Although there is no direct legal prohibition or discrimination of people based on their sexual preferences or gender identity, the Post-Soviet remnants and the new take of the current Kyrgyz government on them in the novel Criminal Code pose serious concerns when it comes to people being prosecuted for their consensual non-heterosexual sexual conduct, i.e., their sexual life, which is an innate part of their right to privacy. Article 162 section 1 of the Kyrgyz Criminal Code stipulates that "Sodomy, lesbianism or other actions of sexual character in a perverse form committed with the use of violence that does not endanger one's life or health, or with a threat of using it against the victim [male or female] or against other individuals, or with the use of the helpless state of the victim [male or female]" is subject to punishment. Article 164 reads, "Sexual intercourse, sodomy or lesbianism committed by a person who has reached eighteen years of age with a person whom the perpetrator knew did not reach the age of sixteen, if the elements of crimes established by articles 161 and 162 of the present Code are absent" is subject to punishment. It is peculiar that the Kyrgyz Republic created a new "Chapter 26. Crimes Against the Spiritual and Moral Health of an Individual" and moved the latter article there. Article 163 section 1 of the Criminal Code states that "[c]oercion of a person to sexual intercourse, sodomy, lesbianism or committing other actions of sexual character by means of blackmailing, threatening to destroy, damage or seize property, or by using the material or other type of dependency of the victim [male or female], if the elements of crimes established by articles 161 and 162 of the present Code are absent" is subject to punishment. Keeping all this in mind, there is a separate article 161 called "Rape," which defines that "[r]ape, i.e., sexual intercourse with the use of violence that does not endanger one's life or health, , or with a threat of using it against the victim [female] or against other individuals, or with the use of the helpless state of the victim [female]" is subject to punishment.

16. The words "sodomy" and "lesbianism" are degrading in the given context and refer to coercion to same-sex conduct and are placed in individual articles. The Criminal Code should expel the words "sodomy" and "lesbianism" and find a new formulation to protect people regardless of their sex, sexual orientation, gender identity, or gender expression from involuntary sexual actions enacted upon them by the perpetrators. Such homophobic terms enforce the public stereotype about consensual same-sex sexual conduct being wrong. Apart from this, article 164 of the Criminal Code being situated in a new chapter on "Crimes Against the Spiritual and Moral Health of an Individual" seems like an attempt that echoes the "gay propaganda" laws adopted in Russia and certain other countries in the CEECA region. With this in mind, the novel conditions in articles 161, 162, 163 create an evidently discriminatory approach to punishing involuntary sexual conduct being imposed on the victim or coercing the victim to participate in it. On the one hand, homosexual sexual conduct (between females or males) is now in line with "other actions of sexual character in a perverse form." On the other hand, these "novelties" carry alarming sexist and homophobic inclinations and further enhance the public perception that being non-heterosexual is perverse. All in all, these new iterations of old articles seem like a setback and a way around not expressly adopting "gay propaganda laws" but still creating certain loops and discrepancies in law that can be used against the LGBT.

17. Article 17 of the Covenant proclaims that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks" Adding to the comment about abuse and violence from law-enforcement in relation to the LGBT in Kyrgyzstan being far from over, certain cases reported by victims to LGBT NGOs in recent years are due. They will also reflect the heavy policing of others' sexuality and gender expression that the general public and law-enforcement, especially, feel like they are entitled to. As reported by "Kyrgyz Indigo," two law-enforcement officers and a self-proclaimed LGBT worker came to a certain office in Osh city and started seeking out a particular gay man in 2019. The man called "Kyrgyz Indigo" but by the time they arrived at the office, the strangers arrested him on the charges of alleged rape. After the "Kyrgyz Indigo" lawyer intervened, the law-enforcement officers got scared of prosecution and let the gay man

go. The victim did not file for abuse because he was afraid of police retribution as his SOGIGE status, workplace, and other data had been disclosed by somebody to them already and the latter disclosed it to the entire office that the innocent victim was working at.

18. Law-enforcement frequently seeks out gay men and trans people on dating apps or otherwise to then manipulate them, threatening to disclose their SOGI status to their close ones, colleagues, and the public. In another 2019 case, the victim, a gay man, reported to "Kyrgyz Indigo" that on the morning of July 16, a stranger came to his workplace and asked for assistance with repairing his car, stated the address. The victim agreed and sat in the stranger's car who, instead of the designated place, brought the victim straight to the police station of the Osh city. There, another stranger, a police officer, waited for them; they arrested the victim, brought him to a questioning room. There, the police officer hit the victim several times in the abdomen area, started calling him a "faggot" that was molesting children. The policeman took away the victim's phone and started threatening him that he would disclose his status to his wife and children since he could not imprison him for being gay; that he would prosecute him as a pedophile. The police officer demanded 20,000 som to not prosecute him. They drove to the victim's workplace and he gave the officer 7,000 som immediately. The officer further threatened the victim that if he turned to LGBT NGOs and their workers, then he would call his wife and children.

19. In another outrageous case, also reported to "Kyrgyz Indigo" in 2019, two law-enforcement officers approached the workplace of the victim and asked him to play two CDs that they gave him. When the victim turned them on, gay pornographic material started playing; one of the officers was recording all of this on his phone, alleging vocally and blaming the victim of spreading pornographic material, which included gay sex. The officers said they would jail the victim under article 262 of the Kyrgyz Criminal Code. The victim confronted the officers but they retaliated, saying nobody would believe him and that the police officer's word has more weight. They said they would drop the situation if the victim paid them \$350. One of them came the next day and the victim was forced to pay him a bribe of \$135. The situation is widespread and alarming. Law-enforcement officers seek out information about the identity of gay men and trans people to then coerce them into paying them bribes, blackmailing them that their SOGIGE status will be disclosed. The LGBT live in perpetual fear of being randomly approached one day by such villains and forced to do unspeakable deeds. The right to privacy of the LGBT is routinely violated by law-enforcement officers and even other, regular people, knowing that there is nothing to punish them for such illegal deeds as there are no effective legislative mechanisms that protect people from discrimination based on SOGIGE and that would work as preventive mechanisms that would deter people with ill intent to abuse the LGBT. Without the adoption of a comprehensive non-discrimination law that will ban all forms of discrimination, including based on sexual orientation, gender identity and gender expression, the degrading or sometimes even dangerous, criminal behaviour towards LGBT on the part of law-enforcement officers, certain medical workers and the general public will continue. While "Kyrgyz Indigo" reports that due to extensive effort of various LGBT NGOs the mobilisation of LGBT communities has increased during the reporting period and that these organizations provide legal assistance for victims of hate crimes, prosecuting such cases and finding common ground with the police and judiciary is very complicated. Such a situation occurs because of the absence of hate crimes in the Kyrgyz Criminal Code and the absence of anti-discrimination legislation.

Article 17 — Freedom from Torture

20. Effective legal mechanisms of protection from discrimination based on SOGIGE must be adopted as soon as possible since they are detrimental for ensuring equal protection of fundamental freedoms and human rights of the LGBT, especially, their right to health. Article 7 of the Convention declares: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Unfortunately, the special routine needs the LGBT have regarding their mental and physiological health have difficulties in being met due to absence of the necessary protective and regulatory

legislation. ECOM, “Kyrgyz Indigo” and “Labrys” understand the burden that the government faces on its way to becoming a free, democratic, and economically powerful state, following the Committee’s CO and dealing with the world economic crises but considers it necessary to report on the actuality of the right to health of the LGBT since their human rights, freedoms, and dignity are currently being obstructed in Kyrgyzstan and acts of violence against them are far from over and still go unpunished.

21. As several of the mentioned cases already imply, the LGBT, especially gay men and trans people, especially those involved in sex work, are frequently subjected to cruel and inhuman treatment, sometimes even torture, by the law-enforcement. Such acts are universally banned, however, Kyrgyzstan, for some reason, stalls for time with the adoption of the necessary state-wide all-round anti-discrimination legislation that would help prevent many of such cases of violence against the LGBT and provide the victims with effective means of protection and defense. For example, in a case reported to “Kyrgyz Indigo” in 2019, a victim met another man online and decided to meet him at a rented apartment. When the male victim came there, he was ambushed by law-enforcement officers, confined and beaten up; they threatened to disclose his SOGI to his parents. They started blackmailing him to pay 20,000 som for discretion. The victim had paid the sum but they turned up to blackmail him again after a month, forcing the victim to lure out another gay in the officers’ stead. He was used as a sitting duck, a scapegoat by these officers for six months, being repeatedly beaten up, used to lure out other gay men, or forced to pay up.

22. Just like with previous cases, the victims do not prosecute the wrongdoers because they are afraid of police retribution and public judgement. They also fear discrimination in court on the judiciary’s part. As a result, such law-enforcement officers frequently resort to malfeasance, coercion, blackmail, battery, and other degrading treatment, keeping the victims in perpetual fear. Because of the absence of prohibition of discrimination based on sexual orientation, gender identity, and gender expression, the victims feel helpless in pursuing a hate case in court and the perpetrators feel empowered and immune to continue these atrocious acts freely.

The Universal and Inalienable Right to Health

23. The right to health is a fundamental right of all people that should be unequivocally protected by every state, including Kyrgyzstan. Article 25 section 1 of the Universal Declaration of Human Rights states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including [...] medical care and necessary social services [...]”.¹⁰ In combination with the above-mentioned national and international norms, MSM and trans people are entitled to an adequate, healthy living standard in Kyrgyzstan that should be ensured by the government without any discrimination. In conformity with the OHCHR Fact Sheet No. 31, among others, the right to health means that “non-discrimination is a key principle in human rights and is crucial to the enjoyment of the right to the highest attainable standard of health. [...] Non-discrimination and equality further imply that States must recognize and provide for the differences and specific needs of groups that generally face particular health challenges, such as higher mortality rates or vulnerability to specific diseases.”¹¹ Because of stigmatization and discrimination, the LGBT conclude a marginalised group that is vulnerable to increased health risks, including higher HIV-risks. Apart from this, the constant reality of living in fear of being abused or assaulted by the general public, law-enforcement officers or seldom medical workers already contradicts the Preamble of the Constitution of the World Health Organisation, which outlines that health is “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”¹²

24. Kyrgyzstan has an obligation before its people, and the international community, to ensure the conditions for a healthy fulfilling life for all people who reside within its

¹⁰ Universal Declaration of Human Rights, <https://www.un.org/en/universal-declaration-human-rights/>.

¹¹ OHCHR Fact Sheet No. 31: Right to Health, <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>, pp. 4, 7

¹² Constitution of WHO, https://www.who.int/governance/eb/who_constitution_en.pdf.

borders. Article 47 of the Kyrgyz Constitution indicates that “[e]veryone has the right to healthcare.”¹³ Article 9 section 2 declares: “The Kyrgyz Republic ensures the support of socially disadvantaged categories of citizens, guaranteed minimum wage, protection of labour and healthcare.”¹⁴ Despite the mentioned universal constitutional guarantees, LGBT in Kyrgyzstan meet many obstacles in successfully realising their constitutional right to healthcare, which, in turn, infringes their right to health and creates hazard for their right to life. They are reluctant to come for medical and legal aid. In a case reported to Kyrgyz Indigo in 2019, in the city of Osh, the victim (a man) turned to a proctologist having pain concerns in the anus area. The doctor examined the man and asked whether he was sexually assaulted since bleeding wounds had been found in the respective area. The proctologist said that if the man was sexually assaulted, he would help him with turning to the police to find the perpetrator. Having trusted the doctor, the man confessed he was gay and did have anal intercourse with men, after which the doctor immediately denied him any further medical assistance and asked him to leave the medical office “on good terms” since he did not treat gays. Not only do such doctors deny the LGBT their special needs when it comes to providing healthcare, they even leave these people stranded without emergency care.

25. The inability to express their sexuality and gender identity forces MSM and trans people into unsafe life and sex practices. They have no means to acquire satisfactory healthcare services because of the danger to the confidentiality of their health, including their HIV status. Their medical privacy can be easily infringed or they can be harassed or blackmailed by medical workers or law-enforcement officers without them receiving any punishment for that. Having to be afraid for their lives and being ostracized by the general public, trans women, for example, often resort to secretive sex work as the sole source of income. Because of stigmatization and discrimination, trans persons conclude a marginalised group that is especially vulnerable to increased health risks; trans persons are universally acknowledged as a key population group at an especially high HIV-risk.¹⁵ The UN reported more than 8,500 PLHIV in Kyrgyzstan in 2018, but the percentage of trans persons is unknown; the UN reports that transgender people “face strong social pressure and stigma, with frequent reports of violence against community members, which also limits access to [HIV] services.”¹⁶ In a study by Kyrgyz Indigo, 88% of trans women sex workers with migration experience said they had experienced discrimination and violence. 80% have experienced violence by clients, 81% have experienced violence by law-enforcement agencies¹⁷. ECOM, “Kyrgyz Indigo” and “Labrys” commend the Kyrgyz government for making steps to try and include LGBT NGOs in government funding. However, in Needs Assessment by Kyrgyz Indigo and Labrys, 34% of trans people said they were forced into homelessness because of their trans identity. The government has to allocate funding for shelters for these trans persons and to help them find work and tackle discrimination in the labour sector. In late 2018, a social contracting programme to procure social services in 2019-2021 was approved in Kyrgyzstan; in May 2019, the Ministry of Social Development announced a call for proposals for NGOs to implement social projects, and some local NGOs that work with LGBT communities or provide services to them applied, as reported by NGO “Kyrgyz Indigo.” Although there is no legal barrier for LGBT NGOs to apply for state funding, the seldom drafts in the parliament to ban “gay propaganda,” official statements by high-profile political figures that include homophobic and transphobic rhetoric and discrimination from local authorities create barriers for such NGOs.

26. Apart from this, while not publicly discussed, issues of “conversion therapy” that happen in Kyrgyzstan behind closed doors should be brought to light. There is not much quantitative data since the “therapy” is usually ordered by families of the LGBT, conducted discreetly and the victims are too traumatized and scared to share their story. “Conversion therapy” in Kyrgyzstan is conducted by Muslim religious figures (*moldo*) who come to exorcise *jinn*s (supernatural creatures) from the victims (*jinn*s are

¹³ Constitution of the Kyrgyz Republic, <http://cbd.minjust.gov.kg/act/view/ru-ru/202913?cl=ru-ru>

¹⁴ Ibid.

¹⁵ “HIV Prevention, Diagnosis, Treatment and Care for Key Populations,” <https://apps.who.int/iris/bitstream/handle/10665/258967/WHO-HIV-2017.05-eng.pdf;jsessionid=0820526977250B4F83EB63B26DDFF2C2?sequence=1>

¹⁶ “HIV Epidemic Control in Central Asia,” <https://www.un.org/en/un-chronicle/hiv-epidemic-control-central-asia-still-has-long-way-go>

¹⁷ Kyrgyz Indigo, [Challenges and barriers to migration as a consequence of the economic vulnerability of trans women](#), 12.

considered to be the root-cause of a person's non-heterosexuality). The ritual usually involves bodily blows with a ritualistic instrument and/or strangulation while chanting surah from Quran. "Kyrgyz Indigo" reports that in 2019, a lesbian woman was locked away in her family home by her brother and her mother. They forced her to a clinic, several times, to see the *moldo*. The *moldo* would strangle her, hit her on the sides of her torso and, when she would get nauseous, he would say that it was the *jinn* coming out. She got the chance to turn to "Kyrgyz Indigo" who took her away to a safe place. The victim denied turning to the police because she did not want any social retribution for her mother, and she was afraid that the *moldo* would use his power to further pursue her or harm her family.

27. It should be duly noted that contemporary science and the developed international community urge State Parties to ensure that no such barbaric practices as "conversion therapy" are bolstered or go unpunished. The UN Independent Expert on Protection against violence discrimination based on SOGI reports that in such communities, "Children and adolescents often lack the legal authority to make medical or mental health decisions, and, in instances where they have the right to consent or to refuse treatment, they are especially prone to undue influence or coercion, particularly from family members or others in a position of authority. [...] In that regard, the Independent Forensic Expert Group has concluded that [all] practices attempting conversion are inherently humiliating, demeaning and discriminatory. The combined effects of feeling powerless and extreme humiliation generate profound feelings of shame, guilt, self-disgust, and worthlessness, which can result in a damaged self-concept and enduring personality changes. The injury caused by practices of "conversion therapy" begins with the notion that an individual is sick, diseased, and abnormal due to their sexual orientation or gender identity and must therefore be treated. This starts a process of victimization."¹⁸

28. The above-mentioned reports create an impression of Kyrgyzstan being a country of paradox when it comes to LGBT issues. On the one hand, there is evident discrimination from the general public,¹⁹ politicians and the law-enforcement. On the other hand, NGO "Kyrgyz Indigo" conducted a social survey among medical workers in Kyrgyzstan in 2018. The survey questioned 100 medical workers 80 per cent of which voiced positive attitudes towards LGBT and heterosexual/cisgender equality.²⁰ The same research reports that out of 80 questioned police officers, 86 per cent stated that they consider homosexuality to be disease or a result of a psychiatric trauma. "Kyrgyz Indigo" reports that it was able to provide educational training to more than 100 medical workers in 2018, teaching them about gender issues, sexual diversity and issues of working with LGBT patients. The National Programme on Preventing HIV 2017-2020 mentions transgender people, stating that 75 percent of MSM and transgender people will have been covered by STI and HIV-services by 2021.²¹ The direct mentioning of transgender people in the national HIV programme created a gateway for NGOs to conduct sensitization among medical workers and, indirectly, a cue for medical staff to start changing their perception of LGBT overall. There is no statistic regarding trans people, and their HIV situation is not reflected in the Report or anywhere in domestic official documentation, which leads to the assumption that the government does not have a consistent protocol for gathering statistics when it comes to delivering HIV-services to trans persons. The total opposite results of the mentioned survey where medical staff are more pro-LGBT while the police are anti, and the mentioned positive results in the field of healthcare because of the inclusion of transgender people as a target key population group in the national HIV-programme leads to the conclusion that a similar programme is necessary for the law-enforcement and effective laws that ban discrimination based on SOGIGE and punish such actions as crimes are in dire need.

¹⁸ *Practices of the So-Called "Conversion Therapy,"* UN Independent Expert on SOGI-Based Violence, <https://undocs.org/A/HRC/44/53>, para 26, 55

¹⁹ "They Live With HIV and Fight to Save Others," <https://kyrgyzstan.un.org/en/35487-they-live-hiv-and-fight-save-others>

²⁰ "How Social, Medical, and Police Workers in Kyrgyzstan Relate to LGBT," https://indigo.kg/wp-content/uploads/2018/10/Otnoshenie-k-LGBT_infografika-1.pdf

²¹ National HIV Programme 2017-2021, <http://cbd.minjust.gov.kg/act/view/ru-ru/11590>

29. The paradox continues, as article 149 section 1 of the Kyrgyz Criminal Code states that “Endangering the other person with getting infected with HIV or other incurable infectious disease that is dangerous to the human life, if the infection did not occur” is punishable by a respective form of criminal liability.²² Section 2: “Infecting the other person with HIV or other incurable infectious disease if the perpetrator knew about them carrying the disease, if the infecting occurred out of carelessness...” Section 3: “Infecting the other person with HIV or other incurable infectious disease that is dangerous to human life...” The entire article creates inconsistency in approaching the intent, the circumstance of the perpetrator being aware of their status and intentionally infecting the victim; the circumstance of the infection not occurring is also punishable. Kyrgyzstan should reformulate the mentioned article in conformity with UNAIDS guidelines, i.e., “States [...] should issue guidelines to limit police and prosecutorial discretion in application of criminal law (e.g. by clearly and narrowly defining “intentional” transmission, by stipulating that an accused person’s responsibility for HIV transmission be clearly established beyond a reasonable doubt, and by clearly indicating those considerations and circumstances that should mitigate against criminal prosecution).”²³ In other words, only direct intent or negligence of the perpetrator who knew about their HIV-positive status (including the victim's informed consent when necessary) that resulted in the victim getting the virus should be punished (while observing mitigating circumstances and other UNAIDS recommendations). The existence of such faulty provisions enforces the stigma around HIV and trans women by extension. The Report (para 436) indicates that after the new Criminal Code is adopted, the intentional and unintentional transmission of HIV to the victim will be separated and mitigating circumstances will be included. However, until such provisions are enabled by the law, the current faulty crimes keep enforcing the stigma, providing malicious doctors and police officers with tools to harass, blackmail, and abuse the LGBT.

30. The right to health includes protection from disclosing one’s health status. Confidentiality is a key factor for many persons in terms of turning to receive care, and its critical when it comes to LGBT. As the General Comment No.14 indicates, “accessibility [as an element of the right to health] has four overlapping dimensions, [...one of them being] information accessibility [which includes] the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.” Confidentiality for Kyrgyz LGBT makes or breaks their health, especially when HIV is considered. In another 2019 case reported to “Kyrgyz Indigo,” a man reported that strangers from an unknown organisation came to his home and offered him to receive medical services. The man asked them who they were and how did they know him and where he lived, and the strangers answered that the local epidemiologist (stated his name) had disclosed the man’s HIV and MSM status. Another victim came to “Kyrgyz Indigo” for legal aid because of his HIV-status having been disclosed. The victim turned a clinic because of feeling quite unwell, in 2015. After having done all the blood tests, the nurse told him he was HIV-positive. After some time, the said nurse disclosed his HIV-status to her friend, who happened to be the victim’s sister. Because of the small rural locality, some other people learned about the victim’s status. To avoid stigma, the victim had to flee to Bishkek. The latter victim had enough bravery to step forward and turn to an LGBT NGO for legal assistance in pursuing the wrongdoer. However, the predominant majority do not because they are scared of wide disclosure of their status, public stigma and discrimination in court, for them being non-heterosexual and HIV-positive. Thus, breaches of confidentiality occur without effective justice being served.

31. When it comes to trans health, violations should be mentioned. On top of breach of confidentiality, trans people are often denied medical care when they turn to healthcare facilities. In one case that happened on the night of 22 November 2019 in the city of Osh, a trans woman turned to the district hospital because of strong pain in her abdomen. The duty doctor accepted her, but when she found out that the patient was a trans woman, she denied administering medical aid. The female duty doctor argued that the trans woman was under influence and that she had no experience of

²² Criminal Code of the Kyrgyz Republic, <http://cbd.minjust.gov.kg/act/view/ru-ru/111527>

²³ “Criminalization of HIV Transmission,” http://data.unaids.org/pub/manual/2008/jc1601_policy_brief_criminalization_long_en.pdf

working with trans people. The doctor deliberated that the pain may be caused by the hormonal intake and suggested that the trans woman turned to another doctor during the day shift, leaving her without emergency care at the given moment. In another, horrible case, a trans woman who was a sex worker, on the evening of 8 September 2019, received her client at her place. The client brought a bottle of whiskey and they both conversed while drinking it. The client, eventually, confessed that he was a police officer at the Osh city police station and started demanding money from the trans woman as blackmail to allow her to continue her sex services. The trans woman denied giving him any money, after which he started verbally insulting her and strangling her. The trans woman lost her consciousness. After coming to her senses at around 03:00 a.m., she discovered that the police officer (client) stole 70,000 som (app. \$1,000) from her and disappeared. She called the man and asked to return the money, to which he replied that he had not taken anything and if she reported the case to authorities, he would arrest her for sex work. With this in mind, it appears that stigma, aggression, and violence on the part of law-enforcement officers and medical workers is far from being a “misunderstanding because of outdated knowledge” in the past. These are real threats that the LGBT face daily and have no legal means to effectively protect or defend themselves, so the perpetrators go unpunished, feeling that the State Party is on their side since no retribution comes.

32. One other case involved a trans woman. As reported by an NGO, she, as a sex worker, turned to an organization that provided HIV-services for sex workers; she underwent express testing and received a positive result. The trans woman turned to an LGBT organization, took another express test and received the same positive result. She refused to go to the governmental AIDS Centre to receive final approving testing and further treatment because she said she was afraid of the HIV+ verdict, getting addicted to medication and bad treatment from the personnel that had observed her earlier at the AIDS Centre. In another case, on 12 April 2019, an MSM reported to Kyrgyz Indigo that a certain massage salon denies PLHIV massage services. The presence of HIV infection in one’s body is included as a medical precaution for any massage services. In addition, On 15 June 2019, another MSM reported that he saw that one of the swimming pools in his area, on their website, stated that people with HIV/AIDS are forbidden from attending the pool. Cases like this happen very often across Kyrgyzstan, leaving the MSM victims helpless and scared for their health and lives; they almost never turn to police and very rarely muster courage to come to NGOs looking for aid. Such cases exact considerable investment not only in stigma and discrimination against LGBT but also against PLHIV, and this further enables the stereotype of MSM and trans people being blamed for the HIV epidemic overall. Not only are the medical workers and law-enforcement officers severely undereducated when it comes to SOGI and HIV, the LGBT have little education regarding these issues and their fundamental human rights and freedoms as well. Considering the contents of the section on equality in the Report of the Kyrgyz government while considering just the few mentioned cases, to state that LGBT persons are as equalized in terms of the right to health, privacy, and freedom of self-determination is not just premature, it ultimately does not conform to reality that strikes them in this country. Medical workers violate the right to health of the LGBT, breaching the confidentiality of their health status or their SOGIGE status, providing them with poor treatment or denying them emergency aid or care at all.

33. Kyrgyzstan adopted Order No. 42, dated 18 January 2017, that contains regulations pertaining to the healthcare needs of transgender, transsexual, and gender-nonconforming people. When looked at closely, the literal name of the Order reads “Order of the Ministry of Healthcare of the Kyrgyz Republic dated 18 January 2017 No. 42 ‘On Enacting the Clinical Guidelines and Protocols on Emergency Pediatrics, Obstetrics, Maintenance of Health while Using Psychoactive Drugs During Pregnancy and Labor, Gender Violence and Contagions for All Levels of Healthcare.’” The Order’s text goes as follows: “In order to increase the quality of medical aid during emergency conditions in pediatrics, obstetrics, using psychoactive drugs during pregnancy and labor, transgenderism, gender violence and contagions for all levels of healthcare, based on the principles of evidence-based healthcare, I hereby order [...],” and then there is a colon that lists different clinical protocols and guidelines for every individual mentioned category. Section 1.9 in the list is dedicated to the “Clinical Guidelines [for] ‘Delivering

Medical-Social Aid to Transgender, Transsexual, and Gender-Nonconforming People' (Appendix 9)."²⁴ This is probably the biggest accomplishment of the Kyrgyz Republic during the reporting period, which deserves credit and encouragement in order to further develop and change the said regulation for the better. Coupled with the National HIV-Prevention Programme 2017-2021, the said Guidelines grant NGOs the right to conduct educational events and continue the advancement of sexual and gender diversity in government healthcare facilities, as argued by "Kyrgyz Indigo." Unlike in other CEECA countries, in Kyrgyz Republic, every person has the right to change the gender marker in their documents, but only after going through a medical examination and evaluation procedure. This right is affirmed in the Law "On Protecting the Health of the Kyrgyz Republic Citizens." Article 38 of the Law reads, "the sexual identity may be changed or corrected in healthcare facilities through medical interventions at the request of a full-aged patient based on medical, biological, social and psychological indications in accordance with the procedure set forth by the responsible governmental body of the Kyrgyz Republic in the area of health care."

34. With the adoption of the mentioned Guidelines, the situation improved further. In addition to the recommendations on medical and social assistance, the Guidelines define the procedure of examination (setting a diagnosis) and change of gender marker and name in the relevant documents of trans people — with no requirements of surgical intervention or compulsory hospitalisation based on a clearly defined list of medical check-up procedures. Notably, "Transgender, transsexual, and gender-nonconforming persons should undergo medical examination in the Republican Centre for Psychiatric Health for affirm one of the diagnoses in section F64 (ICD-10), receive a Medical Assessment Report No. 48/y (as a result of psychological-psychiatric examination of transgender, transsexual, gender-nonconforming people, and people with gender dysphoria) from a medical consulting commission with recommendations to change one's sex (gender) marker in their passport, to present it at civil registry offices as a necessary and sufficient document of a set format for a legal confirmation of one's gender."²⁵ This procedure is regulated by article 72 of the Law "On civil registration" and Guidelines "On the civil registration procedure in the Kyrgyz Republic," paragraph 155 whereof stipulates introduction of changes and amendments into the civil registration records. ECOM, "Kyrgyz Indigo" and "Labrys" express their respect and regard for the Kyrgyz government in adopting such an extensive official document when it comes to providing medical assistance to trans people, and when it comes to making the process of changing one's gender marker, name, or sex clearer and enforceable. The language used in the Guidelines is sensible, sensitive, and respectful; the document was developed with the help of WPATH (World Professional Association of Transgender Health). The only limitation to initiate changes when it comes to legal confirmation of one's transition is the person's age: one should be full of age. Unfortunately, in 2017, the State Registration Service under the Government of the Kyrgyz Republic abolished the Instruction, thanks to which trans people could change their personal identification number, the first digit of which indicates sex. Because of this, trans people who change the gender marker in documents face barriers to access multiple services and indirect outing because their tax code ascertains their previous ID and not the one that confirms the transition.

35. Considering the mentioned above, it should be noted that the WHO excluded gender dysphoria from the list of its mental and behavioural disorders; the Global Manual of Diagnoses does not include such a term anymore.²⁶ While such progress has opened new ways for NGOs to advocate for trans people and receive more support in terms of conducting sensitization at healthcare facilities, the human factor still remains. Not only do trans people who are victims of crimes or other abuse cannot defend themselves, they cannot be protected because those who discriminate or abuse them feel that they are immune to punishment, as there are no provisions to prosecute them for. The mentioned presence of homophobic terms and discriminatory criminal provisions do not

²⁴ Order No. 42 of 18 January 2017, https://online.zakon.kz/Document/?doc_id=37080051#pos=0;38

²⁵ Clinical Guidelines [for] "Delivering Medical-Social Aid to Transgender, Transsexual, and Gender-Nonconforming People," <https://www.steppeuca.info/single-post/rukovodstvokyrgyzstan>

²⁶ "Transgender No Longer Recognised as 'Disorder' by WHO", BBC, <https://www.bbc.com/news/health-48448804>; ICD-11, WHO, <https://icd.who.int/browse11/l-m/en#/http://id.who.int/icd/entity/411470068>

help the case for legal assistance and aid for trans people as members of a disadvantaged group. LGBT NGOs report occasional transphobic and homophobic rhetoric by politicians in mass media; they usually support their anti-LGBT arguments with “traditional values” and the LGBT being a danger to the Kyrgyz morals, and such. There was much outrage against the march for women’s rights in 2019. One of the parliamentarians, Jyldyz Musabekova, called out to assault the LGBT and other pro-feminists who “damage the traditional family institute.”²⁷ During court proceedings regarding the ban of another such march, the internal affairs representative said that trans people are wrong, transgenderism is something against our [Kyrgyz] mentality.²⁸

36. Unfortunately, the predominant majority of transphobic cases remain undocumented. Creating an effective, comprehensive legislative framework that would govern the correct definition of gender, gender identity, discrimination, and hate crimes is the way to ensure the trans people’s right to health, privacy and to self-determination. Because of the inability to express themselves freely, trans people live in stress, depression, and anxiety that distort their lives. Also, they are broadly subjected to degrading treatment and blackmail by law-enforcement officers. They are perceived as psychiatrically ill. Trans people are victims of intersectional stigmatization since not only are they at higher risks of getting infected with HIV due to the reasons gay men or MSM have, but they are also discredited by the medical workers as non-cisgender, creating higher risks of being abused or denied even the common healthcare services. Currently, trans people are far from being equal compared to the heterosexual Kyrgyz population. At present, trans people prefer to live in the shadows and have unsafe living and sexual practices because they are afraid to turn for medical, psychological, legal, or social help and wither away in misery, watching their lives fade away, being bullied, ignored, and violated.

The Way Out — Sex Education

37. In light of all of the mentioned cases, statistics, and legislative analyses, it becomes apparent that one of the core reasons for stigma and discrimination of the LGBT in Kyrgyzstan is absence of education and low awareness on the matters not only of sexual and reproductive health, but gender education in general. Firstly, the Kyrgyz government needs to adopt special tailored national programmes that will focus on educating the medical staff and law-enforcement officers about gender and LGBT issues, and about working with LGBT PLHIV. It also needs to invest in supporting LGBT NGOs financially to raise the awareness about HIV for LGBT and decrease the stigma. Members of this marginalised community are simply afraid of getting degraded and ostracised and, instead, chooses a path that has dangerous repercussions. Not only are they undereducated and scared to undergo regular HIV screening and/or treatment and exercise safe sex practices, they are afraid to turn for regular medical or legal aid, fearing abuse and violence; and, as the cases prove, they have more than enough reasons to believe that. On top of there being no effective anti-discrimination legislation to protect the LGBT from discrimination based on sexual orientation, gender identity and gender expression, little policies and funds are allocated to educate the medical workers and law-enforcement officers on these matters and decrease stigmatization and discrimination on their part. Little funds are allocated to LGBT NGOs, which could help change the situation for the better dramatically if the Kyrgyz government adopted a firm national strategy of sensitization. The current policy of cripingly slow action enforces intersectional discrimination of LGBT. They are left on their own, at the mercy of fate, or forced to emigrate to other countries, but the worst thing is that, either way, their mental and physiological health is in perpetual danger, considering the given conditions of the public attitude, police hostility, occasional degradation by medical workers, and governmental impassiveness.

38. Like in many CEECA countries, the topics of sex, sexual orientation, sexual identity, and gender have an inadequate perception among the general Kyrgyz public.

²⁷ “Rainbow Rage: Kyrgyz Rally Against LGBT,” <https://www.rferl.org/a/rainbow-rage-kyrgyz-rail-against-lgbt-after-central-asia-s-first-gay-pride-march/29825158.html>

²⁸ “Kyrgyz Authorities Banned the Women’s March Because of Coronavirus,” <https://kloop.kg/blog/2020/03/05/vlasti-zapretili-marsh-za-prava-zhenshin-iz-za-koronavirusa-2/>

Whenever raised publicly or at family meetings, they entail strong shame and irrationality. Although the Kyrgyz government tries to incorporate sexual and reproductive health in schools, the suggested programmes are focused on biological boys and girls only, and the information is not up-to-date entirely as well. Children are often ashamed to ask their parents questions related to that area; the school staff is undereducated in that regard, also. Therefore, the discriminatory stereotypes that are voiced by the family, media, peers, or other public figures are taken at face value and critical thought is met with hostility. The government needs to adopt a contemporary, scientifically driven educational curriculum regarding sexual and reproductive health for children at schools, which will not be simply focused on girls not getting pregnant as teenagers. This has to be an awareness-raising and positively educational curriculum that will encompass issues of sexual identity, hygiene, gender, gender identity and expression, sexual orientation, friendliness and non-hostility towards people who have different sexual needs, and, of course, sexual health and reproductive health and safety during sex, and other sex-health related issues. The Kyrgyz government should also introduce, on a national scale, issues of sexual orientation and gender identity, as well as PLHIV issues, into the mandatory curriculum of medical students of all specializations. It is on these levels, during secondary and higher education, that roots of stigma and discrimination towards LGBT and PLHIV take place. By providing not only the currently working medical and law-enforcement staff with contemporary education and awareness-raising regarding those topics but also educating the future generations based on actual scientific data and not discriminatory stereotypes will result in a broad positive impact across the general public and the LGBT community.

Concluding Note

39. The Preamble to Kyrgyz Constitution proclaims, "We, the people of Kyrgyzstan, [...] confirming [our] dedication to the goal of building a free and democratic state, the highest values of which are the person, his life, health, rights and freedoms [...] adopt the current Constitution."²⁹ Article 1, section 1 of the Constitution of Kyrgyzstan states that "[it is a] sovereign, democratic, legal, secular, unitarian, social state."³⁰ Democratic, secular, and legal states create laws to propagate peace, equality, and create conditions in which all their people can thrive. Unfortunately, the LGBT do not have the same opportunities and abilities in terms of enjoying their fundamental rights and freedoms like the heteronormative Kyrgyz majority does. Currently, they meet intersectional complications in enjoying their right to health, privacy, dignity, freedom of expression, freedom from torture, and freedom of assembly because the legislation and governmental practices are lacking the necessary effective mechanisms for them to feel protected and to use as means of defense in case they meet discriminatory conduct. Considering Kyrgyzstan's momentous developments since the last CO of the Committee, ECOM, "Kyrgyz Indigo" and "Labrys" file this Alternative Report in hopes that the Kyrgyz government will direct more attention at and invest more effort in gay, lesbian, bisexual, and trans* persons as a diverse range of key population groups that have distinct civil, social, and political needs that require specialised regulations to decrease discrimination and stigma that currently impale their ability to lead healthy and fulfilling lives.

²⁹ Constitution of the Kyrgyz Republic, <http://cbd.minjust.gov.kg/act/view/ru-ru/202913?cl=ru-ru>

³⁰ Ibid.

Recommended questions

All things considered, in conformity with the International Covenant on Civil and Political Rights, recognized by Kyrgyzstan, ECOM, "Kyrgyz Indigo" and "Labrys" ask the Human Rights Committee, during its 130th Session, to inquire Kyrgyzstan the following:

- What measures have been taken to adopt all-inclusive anti-discriminatory legislation, which would ban all forms of discrimination and would protect all people from any discrimination, including from discrimination based on the grounds of gender identity, gender expression, and sexual orientation?
- What has been undertaken to eradicate all homophobic language from its legislation, particularly from the Criminal Code, as a part of its journey to becoming a free, democratic, secular state?
- What has been done to separate the crimes committed out of hate based on the victim's sexual orientation and/or gender identity 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?
- What steps have been taken to adapt its criminal law in accordance with the UNAIDS recommendations when it comes to criminalization of HIV transmission?
- What has been concluded to review its current criminal provisions when it comes to rape, alter and universalize them into non-discriminatory articles that protect everyone from rape or other coerced sexual conduct regardless of their sex or gender?
- What activities have been made to introduce contemporary definitions of hate speech to its criminal legislation and add sexual orientation and gender identity as protected grounds against which hate should not be incited?
- What has been done to integrate progressive and scientifically based sex and reproductive health education into secondary and higher education institutions while observing that LGBT and SOGI issues are included into the curriculum?
- What policies and activities have been adopted and carried out to sensitize the law-enforcement and medical workers, as well as the general public, when it comes to raising awareness about SOGI issues and decreasing stigmatization of the LGBT?
- Have alterations into the Order for Assigning and Altering of the Identifying Number been introduced with the aim to allow trans people to alter their tax ID in their documents based on the changing of their gender marker?
- What has been done to effectively de-centralize medical services for the LGBT, make HIV testing for key populations free and accessible?
- What has been done to ban "conversion therapy," locate, investigate, and render justice on those who perform "conversion therapy" on LGBT-victims as a crime that violates their right to privacy, self-determination, health, bodily and mental integrity and freedom from cruel and inhuman treatment?