**Human Rights in the Context of HIV and AIDS**

**Information for the UN Office of High Commissioner for Human Rights**

1. **Authors**: Association of Legal Entities “Kazakhstan Union of People Living with HIV”, Eurasian Women's Network on AIDS, Public Foundation “Answer” Branch in Almaty, Public Association “Amelia”
2. **Introduction**

This report contains information prepared by Kazakhstan’s civil society for inclusion in the High Commissioner for Human Rights’s report on Human rights in the context of HIV and AIDS (Human Rights Council resolution 47/14) that will be presented to the Human Rights Council at its 50th session. Particularly, the report indicates issues in the human rights context pertaining to HIV/AIDS response measures nationally and locally in the Republic of Kazakhstan. The Report touches upon human rights challenges in the HIV context on the following thematics: drug policy; application of TRIPS opportunities; discrimination; rights of women and key populations; transgender persons’ rights; rights of sex workers; criminalisation of transmission; forced testing of military personnel; rights of migrants; right to adoption. As the report concludes, discriminatory laws and practices still persist in the country (punitive drug policy, criminalisation of HIV transmission, barriers for expansion of treatment access, prohibitions to adoption and employment, forced testing of certain populations). There is a high level of stigmatisation and discrimination against persons living with HIV and key populations in relation to high risks of HIV transmission. The Report contains recommendations on measures necessary to achieve innovative goals in relation to social enablers recognised by the Political Declaration on HIV and AIDS adopted by the UN General Assembly in 2021.

The Report is based on research, cases of rights violations recorded, inter alia, by civil society in 2015-2021, and official sources of information.

1. **Access to Opioid Substitution Therapy (OST).**

The emergency situation which Kazakhstan has faced in the last two years, have exacerbated multiple issues related to the right of the OST programme patients to quality and uninterrupted treatment, such as the lack of take-home methadone, lacking possibility to receive treatment in other medical facilities, insufficient number of OST distribution facilities.

With the beginning of the coronavirus pandemic in March 2020, the Republic of Kazakhstan introduced measures to control the epidemiological situation which in turn led to restriction of several human rights, such as freedom of movement and access to healthcare. Lockdowns and suspension of public transport in several cities, restricted movement within and between cities, led patients of the OST programme (who must visit OST distribution facilities for treatment daily) face difficulties of several kinds. Many women lost jobs as the consequence of restrictions for small and medium-sized businesses.

The situation repeated during the January 2022 events in Almaty, when mass unrest led to the state of emergency and suspension of public transport. Twice in just under two years OST patients had to suffer the same difficulties with treatment.

1. **Application of TRIPS.**

Kazakhstan does not use its right to “fully implement TRIPS provisions” (WHO Agreement on Trade-Related Aspects of Intellectual Property Rights). The cost of generic medicines recommended by WHO for preferred treatment regimes for HIV and opportunistic diseases remains excessive even after being included in the voluntary licence for upper-middle-income countries. This negatively affects access to HIV treatment, not allowing full access to all for innovative medicines (including migrants). It is necessary for Kazakhstan to implement compulsory licence for Government use, without litigation.

1. **Discrimination of People Living with HIV.**

Most often people living with HIV face discrimination in medical facilities. According to the People Living with HIV Stigma Index Report 2015, every 4th person living with HIV faced disclosure of information about his status in a medical facility[[1]](#footnote-1). Due to lacking timely and quality consulting, many women living with HIV give up planning a child after making false conclusions on their inability to protect their child from HIV transmission[[2]](#footnote-2). Persons living with HIV are deprived of access to shelters for people with disability and elderly persons, as well as shelters for women victims of domestic violence[[3]](#footnote-3); HIV is mentioned in the list of medical contraindications for housing in the said organisations, adopted in a bylaw[[4]](#footnote-4). NGOs report cases of denial to provide social assistance of an individual assistant for people living with HIV who have disability.

1. **Rights of Women Living with HIV and Women from Key Populations in Relation to HIV.**

Women living with HIV have limited access to services of existing shelters (crisis centres) for women victims of violence. It is caused by discriminatory legislation, ignorance of forms of HIV transmission, a high level of societal stigma. Due to lacking timely and quality consulting many women living with HIV decide not to plan children, making false conclusions about their inability to protect their child from HIV infection. Women who use drugs face several forms of violence from police officers: psychological (police officers exert pressure) and physical (battery). Meeting police causes anxiety, feeling of hopelessness and despair among women because of their perceived social status and stigma, including internalised stigma. NGOs also receive reports about police officers’ actions that violate the right to confidentiality of HIV status. Drug use is widely condemned in Kazakhstan, despite being decriminalised. A woman, as a rule, is pressured by double stigmatisation because they are additionally accused of breaking cultural norms because of their behaviour “improper for a woman”. Because of stigmatisation, pregnant drug-dependent women reluctantly apply for medical help and cannot always use necessary medical services, including narcological, prenatal and postnatal assistance. Substitution therapy is unavailable for women in maternity clinics[[5]](#footnote-5).

1. **Rights of Transgender People.**

Transgender people in Kazakhstan have limited access to timely HIV prevention and treatment. According to the Code on Healthcare and the System of Healthcare, young transgender persons have a limited right to access to medical certification and medical transition services, which also restricts their access to legal gender marker recognition, which requires surgical intervention[[6]](#footnote-6). The procedure of gender marker change does not comply with international standards and violates the right of trans\*people to legal personality. The procedure, furthermore, requires sterilisation and can be considered as torture. As the result of the complexity of the procedure of gender marker change in IDs, HIV prevention services often are inaccessible for trans\*persons[[7]](#footnote-7). There is no statistics on HIV prevalence among trans\*people, it complicates their inclusion in HIV prevention programmes as a separate key population.

1. **Rights of Sex Workers.**

Sex work is not recognised as a form of labour. Subsequently sex workers lack an opportunity to enjoy their right to create unions.

Although individual sex work is decrminalised, police systematically raids, illegally arrests sex workers, blackmails and extorts bribes. Apart from that, sex workers are often falsely accused and forced to pay administrative fines. Sex workers suffer from inequality in accessing justice: police refuses to start investigations against perpetrators of crimes against sex workers, including because such allegations are brought against police officers.

Despite legally guaranteed voluntary testing, cases of illegal forced HIV testing against sex workers are increasing (500 in 2018-2019 according to NGO accounts). However, because of the criminalisation of HIV transmission, sex workers do not want to apply for anti-retroviral treatment and are not available for prevention programmes. Moreover, sex workers suffer from discriminatory attitudes in medical facilities.

NGOs also report cases of removal of parental rights based on alleged neglect of parental responsibilities.

1. **Criminalisation of HIV transmission.**

Kazakhstan retains criminal liability for HIV transmission and exposure to the risk of HIV transmission, ignoring the latest scientific achievements, including essential changes in science in the last years and proven efficiency of ART. According to the Prosecutor General’s Office, overall 11 persons were convicted through Article 118 of the Criminal Code which criminalises HIV transmission, including potential transmission (for the entire time of its existence). Of them, 4 - for deliberate exposure of another person to the risk of HIV transmission, 2 - for transmission of HIV to another person by the person who knew about his status. Also, 5 were convicted for transmission of HIV to more than one person or a minor. Criminal liability negatively affects detection of new HIV cases. People prefer not to get tested and if they do they prefer not to register out of fear of criminal prosecution. When a person is unregistered, they do not have an opportunity to receive necessary treatment which would prevent further infections. Decriminalisation of HIV transmission in Kazakhstan is necessary. In the isolated cases of intentional HIV transmission, when the virus is weaponised, it is possible in Kazakhstan to use general criminal provisions on infliction of severe harm to health without discriminating the majority of people living with HIV.

1. **Forced Testing of Military Personnel**

Acceptance to work, studies, promotion, dismissal for military and law enforcement personnel is based on HIV testing results. If HIV is detected, personnel are dismissed from their jobs. These categories are persons for whom it is particularly hard to defend themselves because they fall under the state institutions’ jurisdiction. According to research, the military are 2 to 5 times more likely to acquire HIV than the general population in view of the practice of sending them to serve distantly from settings familiar to them[[8]](#footnote-8). Forced testing of the military and law enforcement personnel violates a number of human rights, including the rights to work and privacy. Kazakhstan’s public associations have already called the authorities to lift these criteria for those who are already in service, in order to guarantee employment for the personnel who are infected with HIV, or otherwise assign disability, including reasonable conditions of work. However, the appeals were not taken into account. Moreover, a new provision has appeared in the Health Code that entitles bylaws to take all decisions on law enforcement and military personnel dismissals.

1. **Rights of Migrants Living with HIV.**

Legalle, HIV is not a ground for refusal of citizenship of the Republic of Kazakhstan, however in practice migrants who live with HIV due to discriminatory views from the part of the migration police cannot obtain citizenship for many years, which in turn limits access to realisation of many economic and social rights[[9]](#footnote-9).

1. **Right to adoption.**

Another violation of PLHIV rights in Kazakhstan is the legal prohibition for PLHIV to adopt children. This norm needs revision, including in view of the proven efficiency of ART and classification of HIV as a manageable chronic medical condition. It is important to note that certain legislative acts have recently seen progressive changes on the issue; thus, the last version of the Health Code already has the norm on adoption which establishes that Kazakhstan citizens living with HIV have the equal right to adopt children[[10]](#footnote-10). However in practice, as the result of collision with other legislative acts this right cannot be realised. Therefore, it is necessary for Kazakhstan as soon as possible to bring its normative base to a unified model which would be focused on the commitment to ensure human rights, including the natural right to family.

1. **Recommendations.**

Based on the above, the authors of the Report propose the following recommendation in relation to the Republic of Kazakhstan:

1. To improve the access to the right to health through improvement of access to opioid substitution therapy, introduce the practice of dispensation of medicines (methadone) for several days, especially in the situations of emergency;
2. Ensure the right to health through use of TRIPS opportunities, including the compulsory licence for Government use without litigation;
3. Remove all forms of discrimination against people living with HIV that remain in laws, bylaws and practice, including those that are scientifically outdated and the laws that criminalise HIV transmission, prohibtions of adoption, citizenship acquisition, prohibitions of housing in shelters and others;
4. Ensure full access to HIV services for women living with HIV and women from key populations through expansion of access to crisis centres, OST, medico-social assistance through community organisations, training of medical personnel on providing quality services on sexual and reproductive health;
5. Ensure the right of trans\*people to achieve the highest level of health through bringing the legislation on gender affirmative medical assistance and legal recognition of gender in compliance with international human rights standards.

1. <http://www.capla.asia/images/Kazakhstan_Stigma_Index__Russian_Final.pdf> [↑](#footnote-ref-1)
2. <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KAZ/INT_CEDAW_ICO_KAZ_31511_E.pdf> [↑](#footnote-ref-2)
3. <https://vlast.kz/obsshestvo/36425-nenuznye-ludi.html> [↑](#footnote-ref-3)
4. Правила деятельности организаций, оказывающих специальных социальных услуги», утвержденный приказом Министерства труда и социальной защиты РК от 29.08.2018 г № 379

   [↑](#footnote-ref-4)
5. <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fICO%2fKAZ%2f31511&Lang=en> [↑](#footnote-ref-5)
6. <https://adilet.zan.kz/rus/docs/K2000000360> [↑](#footnote-ref-6)
7. <http://adilet.zan.kz/rus/docs/Z080000114_>; <http://adilet.zan.kz/rus/docs/Z1500000314> [↑](#footnote-ref-7)
8. UNAIDS. AIDS and Military, 1998: <https://www.unaids.org/sites/default/files/media_asset/militarypv_en_0.pdf> [↑](#footnote-ref-8)
9. <https://rus.azattyq.org/a/kazakhstan-almaty-hiv-salavat-human-story/30976646.html?fbclid=IwAR1EGlxRc3wypCUMbvp5SevVO-BlUbloGuUJpgF67nsE0Gimu2Vftsx322o> [↑](#footnote-ref-9)
10. Para 5 Article 79, Code on Healthcare and the System of Healthcare [↑](#footnote-ref-10)