



HUMAN
RIGHTS
WATCH

“That’s When I Realized I Was Nobody”

A Climate of Fear for LGBT People in Kazakhstan



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Printed in the United States of America

ISBN: 978-1-6231-32637

Cover design by Rafael Jimenez

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Summary

Harassment, discrimination, and the threat of violence color the everyday lives of LGBT people in Kazakhstan. They are faced with hostility behind the closed doors of private homes and in public places, such as in parks and outside nightclubs. State institutions fail to provide consistent care and protection. In many cases, the abuses suffered by LGBT people are immediately—even instinctively—shrouded in shame due to homophobic attitudes.

While Kazakhstan decriminalized consensual same-sex conduct in 1998, a climate of intense homophobia remains. Legal recognition of transgender people has become more difficult in recent years, with coerced sterilization now a prerequisite. Media portrayals of LGBT people are laden with scandal and hate. In early 2015, a “propaganda” law that seemed aimed at curtailing positive expressions of sexual and gender diversity threatened to make this dire situation even worse.

At present there are only a handful of LGBT rights activists active in Kazakhstan, most of whom operate independently in “initiative groups” or through HIV prevention activities without formal institutional backing, and who sometimes avoid publicity for fear of provoking backlash. Other mainstream human rights and public health organizations have on occasion addressed LGBT rights issues in their work as well.

Homophobia was deeply entrenched by Soviet laws. Since Kazakhstan gained independence from the Soviet Union in 1991, fear and abuse have continued to drive LGBT people in Kazakhstan to conceal their identities and curtail their free expression. This is the case even when it is crucial to provide information about sexual orientation or gender identity, such as when a person is seeking health care. A 2009 survey of nearly 1,000 LGBT people conducted by the Soros Foundation-Kazakhstan found that more than 81 percent of respondents felt that gay and lesbian people “face disapproval and disrespect from those in the general population.” Kazakh sexual and reproductive health experts have commented that sexuality remains a sensitive topic in Kazakhstan.

While the state has the obligation to protect the rights of all people, the Kazakh government's deafening silence on the human rights of LGBT people, combined with the acerbic anti-gay rhetoric of some members of parliament, has contributed to the social sanctioning of discrimination against people based on their real or perceived sexual orientation and gender identity. In recent years politicians have invoked "family values," Kazakhstan's membership in the Organization of Islamic Cooperation, and the need to maintain the country's birth rate as reasons for proposing anti-LGBT laws.

In this report, Human Rights Watch describes the hostility and abuse faced by LGBT people in Kazakhstan and the inadequate official responses in the rare cases when victims report abuses or seek social services. National human rights bodies such as the National Commissioner for Human Rights and the National Center for Human Rights, which have a specific mandate to cover human rights issues, have been criticized for their insufficient responses and failures to provide adequate remedies for those who face discrimination. It is against this backdrop that the adoption of anti-LGBT "propaganda" legislation generated such intense fear among LGBT individuals.

LGBT people in Kazakhstan courageously adjust their daily lives to avoid harm or exposure—curtailing their movement and silencing themselves for safety. But as much as these tactics reflect the resilience of individuals, they also expose the government's failure to uphold its human rights commitments, and point to what Anara A. (not her real name), a transgender person in Almaty, described as "a deep sense of alienation—that nothing around you in society is there for you to take part in."

President Nursultan Nazarbaev, who has been Kazakhstan's leader for nearly 25 years, construes his country's development as a "great journey from disorderliness to prosperity." Kazakhstan is deeply invested in a veneer of international respectability. The country is economically attractive thanks to its vast oil and gas resources and its international economic relationships; Nazarbaev has repeatedly promised palatable social reform.

Kazakhstan has also played a proud leadership role in international forums, including as the chair of the Organization for Security and Cooperation in Europe (OSCE) in 2010 and in its election to the UN Human Rights Council in 2012. International ambitions continue to pulse among the country's political elite. "Expo 2017," scheduled to be held in Astana, is being branded as an opportunity for investors to participate in the "energy of the future."

Kazakhstan hopes to gain a non-permanent seat on the UN Security Council in 2017-18, and Almaty is currently bidding against Beijing to host the 2022 Winter Olympic Games.

These cosmopolitan aspirations and Kazakhstan's significant economic development, however, have not been matched with meaningful human rights reforms. Indeed, Kazakhstan's stated commitments to reform ring hollow in the face of serious and ongoing human rights abuses in the country.

Kazakhstan has long been a country of quiet repression, but since December 2011, when strikes in western Kazakhstan were brought to a violent end, the government's overall human rights record has significantly worsened. At that time, authorities began an overt crackdown on outspoken critics, putting an opposition leader and other activists in jail following unfair trials, and shutting independent and opposition media outlets. Freedom of assembly is heavily restricted and people who participate in unsanctioned protests are regularly fined and thrown in jail.

The country's new criminal code, which was signed into law by President Nazarbaev on July 3, 2014, and entered into force in January 2015, contains articles relating to the rights to freedom of speech, assembly, religion, and association that do not meet international human rights standards set out in treaties Kazakhstan has ratified. While Kazakhstan has stated a zero-tolerance policy toward torture, the UN Committee Against Torture in November 2014 noted concern about "persistent allegations of torture and ill-treatment committed by law enforcement officials."

For LGBT people, widespread homophobia, the failure of the government to protect people against abuses on the basis of sexual orientation and gender identity, and recent attempts to adopt anti-gay "propaganda" legislation signal continuing human rights violations and decreasing space for free expression.

Recommendations

To the Government of Kazakhstan

- Publicly acknowledge the scope and gravity of the problem of violence and discrimination against lesbian, gay, bisexual, and transgender (LGBT) people in Kazakhstan, and work with human rights organizations and LGBT activists to improve protections.
- Ensure that the National Center on Human Rights and the National Commissioner on Human Rights include an effective mechanism for receiving complaints from victims of abuse, including LGBT people, who might require that their personal information be kept confidential.
- Commit the Ministry of Health to engage effectively with men who have sex with men (MSM) and transgender populations on HIV education, prevention, counseling, testing, and treatment activities, including by making strong public statements against discrimination.
- Amend Kazakhstan's gender recognition procedure to allow transgender people to change their legal gender on all documents through a process of self-declaration that is free of medical procedures or coercion.

To the Organization for Security and Co-operation in Europe

- In consultation with human rights organizations and LGBT activists, include LGBT rights as an integral part of the OSCE's support and training programs in Kazakhstan.
- In communications with senior officials, including officials within the National Security Committee, Ministry of Internal Affairs, and the Office of the Procurator General, emphasize the need for public declarations of a policy of zero tolerance for police abuse or neglect, including in cases involving LGBT people.

To the Governments of the United States, the European Union, and Individual EU Member States

- Raise the issue of homophobic rhetoric and acts of violence against LGBT people in routine and high-level meetings with government.

- Make available financial and other support to LGBT rights and other human rights organizations that provide legal, psychological, and other services.
- In line with the June 2013 EU guidelines to promote and protect the enjoyment of all human rights by LGBTI persons and the USAID “LGBT Vision for Action,” contribute to combating any form of anti-LGBTI violence by seeking assistance and redress for victims of such violence, and by supporting civil society and governmental initiatives to monitor cases of violence.

To the United Nations Office of the High Commissioner for Human Rights (OHCHR)

- Include LGBT rights among the priority issues to be addressed by the Regional Office for Central Asia, in line with the OHCHR “Free and Equal” campaign launched in July 2013 and phased into a field office activity in 2014, which “aims to raise awareness of homophobic and transphobic violence and discrimination, and encourage greater respect for the rights of LGBT people.”
- Engage with the government of Kazakhstan to develop amendments to ensure all relevant national legislation is consistent with international human rights standards, including on LGBT rights, as identified by UN treaty monitoring bodies and other UN mechanisms.

To Donors and UN Technical Agencies with Projects in Kazakhstan

- Work with the government to draft and implement a comprehensive sex education policy as a matter of upholding the rights to education, information, and health.
- Work with the Ministry of Health to ensure that HIV surveillance data is collected on transgender populations.
- Ensure that all efforts are made to overcome the difficulties of reaching men who have sex with men and transgender women with safe and confidential HIV services.

To the International Olympic Committee

- Hold Kazakhstan accountable for the values enshrined in the Olympic Charter, including by ensuring that the non-discrimination clauses in Principle 6 of the Charter are upheld in domestic law in advance of the July 2015 decision on the 2022 Winter Games and in the event that Kazakhstan is awarded the games.

Methodology

The report is based on in-depth Human Rights Watch research from January to June 2015, including interviews with lesbian, gay, bisexual, and transgender people in three cities in Kazakhstan in March 2015. Human Rights Watch interviewed 23 LGBT people, as well as a number of human rights activists and public health and social services practitioners and experts.

Interviews were conducted in English with the assistance of an interpreter in safe locations selected by participants. A handful of interviews were conducted in Russian with a Russian-speaking researcher.

Human Rights Watch informed all interviewees of the purpose of the interview and how information collected would be used, and received verbal consent before conducting the interview. No incentives were offered or provided for interviewees. At least 10 LGBT people declined to be interviewed by Human Rights Watch because they said they feared retaliation or lacked confidence in human rights procedures or advocacy to bring about change. Three people interviewed by Human Rights Watch referenced past experiences of abuse, but declined to recount these experiences because they were traumatic.

Additional information was gathered from published sources, including laws, United Nations documents, academic research, and media.

All interviewees' names were changed for security reasons and the report uses pseudonyms, as indicated in the relevant citations. In some cases, Human Rights Watch has withheld additional identifying information to protect interviewees' privacy and safety.

A Climate of Fear

The LGBT people Human Rights Watch interviewed in Kazakhstan said that fear influences all aspects of their lives—fear that their sexual orientation or gender identity will impede their access to education, employment, and health care; fear of violence while walking down the street; and, too often, dread at the prospect of everyday interactions with intolerant and sometimes psychologically abusive family members.¹ Some described feelings of isolation and exhaustion from constantly masking their identities to protect themselves. Every LGBT person interviewed by Human Rights Watch said that discretion was essential to secure a measure of safety.

But even invisibility comes with its own problems. Because LGBT people keep quiet in order to stay below the radar, society does not acknowledge the gravity of the abuses they experience, officials fail to take them seriously, and abuses are severely under-reported.

Inadequate Official Responses Fuel Distrust

Harassment, neglect, and discrimination against LGBT people are both pervasive and underreported in Kazakhstan. A 2009 survey of nearly 1,000 LGBT people conducted by the Soros Foundation-Kazakhstan found that nearly 75 percent of respondents who had experienced violence did not report the incident to the police. Of those who had attempted to report to the police, 38.5 percent received a “negative response.”²

Many LGBT people understand violence perpetrated against them as a source of shame or accept it as a “fact of life.” This appears to affect not only their willingness to report abuses but also the responses of officials when they do come forward, reinforcing their lack of confidence in authorities.

In addition to shortcomings in law and policy discussed in later sections of this report, LGBT people are often reluctant to come forward because they fear reprisals from abusers and because police do not take their complaints seriously. Those who attempt to report incidents have encountered inadequate, negligent, and ignorant responses from social services and law enforcement.

¹ A 2008 Human Rights Watch report documented similar abuses in Kyrgyzstan. Human Rights Watch, *These Everyday Humiliations: Violence Against Lesbians, Bisexual Woman, and Transgender Men in Kyrgyzstan*, October 2008, <http://www.hrw.org/sites/default/files/reports/kyrgyzstan1008.pdf>.

² Soros Foundation—Kazakhstan, *Unacknowledged and Unprotected: Lesbian, Gay, Bisexual, and Transgender People in Kazakhstan*, November 2009, http://www.soros.kz/uploads/user_67/2013_09_04_04_43_19_269.pdf (accessed July 16, 2015).

LGBT people Human Rights Watch interviewed told us they distrust police because of their own or their friends' negative experiences, and that they lack confidence in the authorities' willingness to pursue their complaints. One activist in Astana described his opinion about responses from the police: "If LGBT people go to the police, we risk getting insulted at best, and at worst—attacked again. Most of the time it's insulted and intimidated; they threaten to expose us to our families and communities."³

Several people provided Human Rights Watch with examples of what happened when they tried to file reports of the incidents with the police.

In one case, a gay man in Almaty said he had attempted to report a random mugging to the police who were standing a few hundred meters away from him when the incident took place. He explained: "I ran over to the police and told them what happened. I pointed to where it had happened, across the park. They shrugged and laughed at me, saying, 'Oh you were over there, walking from that direction? Well that's where the faggot night club is so we can't help you.'" He said that since that incident in March 2014, he has been attacked again, and several of his friends have been similarly mugged in parks at night. None have reported any of the instances to the police. "We don't report anything, we even accept that this is our fate and worse – that we deserve this as punishment for who we are," he said.⁴

In another case, Anya L., a transgender woman in Almaty, told Human Rights Watch about a time when two men forced their way into her apartment and beat her until she was unconscious.⁵ She said that although she was discovered by a neighbor and taken to the hospital, the ensuing police investigation was characterized by intense prejudice. "The police asked a lot of useless questions. They didn't believe what I said about the violence, and they didn't stay on topic," Anya L. said. "They asked me questions about my body and harassed me when I gave them honest answers, and they must have asked 10 times, 'Why do you look like this as a man?' and 'Why are you acting like this?'" Overwhelmed by such harassing questions, Anya L. asked the officers to leave. They told her they would only depart if she agreed to sign an order that said she was dropping the case. "I signed it just so they would leave and stop the questions. I was still wearing a neck brace and I was still in pain and I didn't need to answer more questions about my genitalia," she said.⁶

³ Human Rights Watch interview with Alexander M. (pseudonym), Astana, March 23, 2015.

⁴ Human Rights Watch interview with Nikolai B. (pseudonym), Almaty, April 9, 2015.

⁵ Human Rights Watch interview with Anya L. (pseudonym), Almaty, March 20, 2015.

⁶ Human Rights Watch interview with Anya L. (pseudonym), Almaty, March 20, 2015.

In a case of domestic violence, Galina T., a 40-year-old lesbian in Astana, told Human Rights Watch that she hid material facts – including her sexual identity and nature of the relationship—from the police out of fear of their reaction to her sexual identity and the potential for future blackmail.⁷ She explained that she had been in co-habiting relationships in the past seven years with two different female partners who abused her. She reported some cases to the police but never told them the perpetrator was her intimate partner. All of these cases were resolved by the police issuing warnings to her cohabiter.

In 2014, during a domestic dispute, Galina T.’s partner stabbed her with a knife. “I did not report it, I just went to the hospital and took care of the wound,” she explained. “I knew the police would want to investigate something so violent, and they would ask questions – and I couldn’t risk having my girlfriend tell them we were a couple and then running away to leave me to deal with that.”⁸ While Galina T. cannot say what would have happened had she reported the stabbing to the police, she described a fear so overwhelming that she preferred keeping silent about the knife attack to reporting it and risking that her sexual identity would be exposed in the course of a police investigation.

Damira K., 19, told Human Rights Watch her mother verbally abused and humiliated her repeatedly over the course of several months after discovering Damira had a girlfriend.⁹ For example, immediately after discovering text messages between Damira and her girlfriend, the mother verbally harassed Damira in front of several relatives, and later that night took off her own pants and threw them at Damira’s face, saying, “Well, if you are attracted to women, you must enjoy this.” She then denied Damira food for two weeks in an attempt to coerce her into visiting a psychotherapist who, her mother said, could “correct” her sexual orientation.

A few months later, one night in December 2014, Damira’s mother became enraged when she read Damira’s Facebook postings about lesbianism and immediately destroyed the computer. At that point Damira’s mother brought up an incident from when Damira was five years old when she had left her alone in a room with an uncle who apparently had been drinking and he had put his fingers inside of her. “It would have been better if he had just raped you then,” her mother shouted. Damira began to cry softly. “That’s when I realized I was nobody.”

⁷ Human Rights Watch interview with Galina T. (pseudonym), Astana, March 23, 2015.

⁸ Ibid.

⁹ Human Rights Watch interview with Damira K. (pseudonym), Almaty, March 17, 2015.

Damira sought advice from her city’s crisis center and police, but neither service provider offered her the kind of support she sought. “My voice was shaky, cracking when I called the police. I was so nervous and exhausted,” she recalled. The police asked Damira if she was planning to file a complaint against her mother. She said no. “I didn’t really know what that meant. It sounded strange to file a complaint against my own mother, I wasn’t sure what would happen then – maybe it could get worse.” The police then hung up the phone without offering any other advice or options. At the crisis center, Damira spoke with two counselors. “I don’t think they understood sexuality, so most of their questions were about that – not about the abuse,” she said. When the session finished, one of the counselors told her: “Oh well, it’s your mother and she loves you and only wants the best for you.”¹⁰

Four people who had been employed at gay clubs in three cities in Kazakhstan told Human Rights Watch that club owners negotiated special relationships with police to protect their businesses and clients. Their descriptions of these relationships differed considerably. One club owner said the police were “completely friendly as long as everyone stayed inside.”¹¹ Another club owner said the police demanded regular bribes, and that he believed known gay clubs paid up to twice the amount of non-gay clubs “because the police know they can use that information [about the clientele being gay] against us in the negotiation.”¹² Another former club employee described the relationship between the clubs and police as cosmetic: “It’s only to create safety in the immediate area for business purposes. The police are still completely homophobic, so once you walk away from the club you’re in danger again.”¹³

A young gay man in Astana summed up his intense distrust of the police, a distrust echoed by almost a dozen of the LGBT people interviewed by Human Rights Watch: “Without protections in any laws, how can we trust the police enough to even contact them? The combination of knowing there is no protection and knowing there is general homophobia in society means I have to distrust the police in order to survive.”¹⁴

¹⁰ Ibid.

¹¹ Human Rights Watch interview with Oleg B. (pseudonym), Almaty, March 19, 2015.

¹² Human Rights Watch interview with Daniil O. (pseudonym), Astana, March 23, 2015.

¹³ Human Rights Watch interview with Aliya C. (pseudonym), Astana, March 24, 2015.

¹⁴ Human Rights Watch interview with Daniil O. (pseudonym), March 23, 2015.

NEW DATA ON TRANSGENDER INDIVIDUALS IN KAZAKHSTAN

A 2015 survey conducted by AlmaTQ, an initiative group (unregistered activist group) in Almaty formed in 2014 to support transgender and queer people, provides the only data on the transgender population to date. Though the survey does not provide results representative of the transgender population in Kazakhstan, it is the first ever dataset on this difficult to reach population. Forty-one respondents from 11 cities and towns across the country responded to an online questionnaire. Eight respondents said they had experienced physical abuse due to prejudice against transgender people; 20 said they had not. Of the 20 who answered that they had not experienced physical abuse, more than half reported they believed they avoided abuse because no one knew about their gender identity.

When LGBT people in Kazakhstan face discrimination, they can also turn to national human rights institutions, such as the National Commissioner for Human Rights, to seek remedy.¹⁵ However, this institution has not been found to be fully compliant with the Principles relating to the Status of National Institutions (“the Paris Principles”).¹⁶

In its 2014 review of Kazakhstan, the UN Committee on Elimination of Racial Discrimination (CERD) highlighted structural insufficiencies that limit the ability of these offices to deal with cases of discrimination. According to the Committee, “the Commissioner lacks adequate budgetary and human resources” and “the mandate of the Commissioner excludes consideration of complaints against various State authorities.” The Committee also noted “the low number of complaints” and the “absence of court decisions in administrative, civil, and criminal proceedings on acts of racial discrimination, which are indicative of a lack of practical remedies for victims of such acts.”¹⁷

¹⁵ Information on the commissioner’s office is available at: <http://www.ombudsman.kz/en/>; information on the human rights center, its affiliate institution that “provides the Commissioner for Human Rights with information on the legislation of the Republic of Kazakhstan, international treaties of the Republic of Kazakhstan in the sphere of human rights,” is available at: http://www.ombudsman.kz/en/about/polozhenie_o_centre.php

¹⁶ Office of the United Nations High Commissioner for Human Rights, International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Chart of the Status of National Institutes, http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf (accessed July 15, 2015).

¹⁷ Committee on the Elimination of Racial Discrimination, “Concluding observations on the combined sixth and seventh periodic reports of Kazakhstan,” CERD/C/KAZ/CO/6-7, March 14, 2014, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/KAZ/CO/6-7&Lang=En (accessed July 16, 2015).

When asked about how they are seeking recourse to justice, LGBT people in Kazakhstan told Human Rights Watch they did not trust either of the national human rights institutes or other bodies, such as the courts, to fully safeguard their identity if they were to bring forth a complaint, and were thus reluctant to make use of them. And in a 2015 report, Kazakhstan’s leading human rights NGO, Kazakhstan Bureau for Human Rights and Rule of Law, found a similar situation with respect to court cases, noting: “To this date we have no knowledge of any court cases regarding discrimination [against] sexual minorities.”¹⁸

Obstacles to Effective Health Care

Due to abusive experiences in medical settings and society-wide homophobic attitudes, LGBT individuals in Kazakhstan often conceal their identities from health care providers. In a 2014 essay, the director of the Kazakhstan Association on Sexual and Reproductive Health argued: “In spite of all the efforts made in the last twenty years by NGOs and international organizations, sexuality remains an extremely sensitive issue here.”¹⁹

A 2009 Soros Foundation survey found that 66 percent of LGBT people conceal their identity from health care providers,²⁰ while a 2012 survey of 400 men who have sex with men (MSM) in Almaty, conducted by researchers at Johns Hopkins University, recorded that barely 3 percent of respondents had told their health care providers of their same-sex intimate relations.²¹ A 2009 evaluation of the Global Fund’s HIV project in Kazakhstan noted that “MSM remain one of the hardest to reach groups with the minimal level of coverage by preventive activities.” The report attributed the inadequate prevention interventions to “Negative and sometimes hostile attitude of the society, including medical personnel and the law enforcement agencies towards MSM, as well as self-stigmatization of this group.” It noted that, as a result, “MSM tried to avoid visiting medical institutions due to the fear of being seen by acquaintances or police...”²²

¹⁸ Kazakhstan Bureau for Human Rights and Rule of Law, “Kazakhstan: Analysis of National Legislation Discriminating Against or Violating Rights of LGBT Community,” 2015, on file with Human Rights Watch.

¹⁹ International Planned Parenthood Federation, “HIV prevention: why sexuality needs a makeover in Kazakhstan,” July 23, 2014, <http://www.ippf.org/news/blogs/HIV-prevention-why-sexuality-needs-makeover-Kazakhstan>.

²⁰ Soros Foundation-Kazakhstan, “Unacknowledged and Unprotected: Lesbian, Gay, Bisexual, and Transgender People in Kazakhstan,” 2009, http://www.soros.kz/uploads/user_67/2013_09_04_04_43_19__269.pdf (accessed April 30, 2015).

²¹ Mark Berry, et al., “Risk Factors for HIV and Unprotected Anal Intercourse among Men Who Have Sex with Men (MSM) in Almaty, Kazakhstan,” *PLoS ONE*, August 24, 2012 (accessed July 16, 2015), doi: 10.1371/journal.pone.0043071.

²² Anna Deryabina and Larisa Bashmakova, “Report on the results of the GFATM second round HIV project in the Republic of Kazakhstan,” June 2009, <http://www.rcaids.kz/files/0000094.pdf> (accessed July 16, 2015). HIV programs include MSM on paper, and there is a MSM representative on the Country Coordinating Mechanism, the monitoring body for all Global Fund

Nikolai B., a 38-year-old gay man in Almaty, told Human Rights Watch that in March 2014 he took his gay male friend to the hospital after the latter complained of a fever and pain in his rectum. “The doctor examined him and then stepped back and said ‘I don’t help faggots,’” Nikolai B. said. The medical workers left the room. He followed them into the hallway, begging them to return. “The nurses never came back—no one did,” Nikolai B. said. His friend died two days later; since the doctors never returned to the room, he never learned the cause of death.²³

After intruders brutally beat a transgender woman in her Almaty apartment, a neighbor helped her go to a government hospital in the city. There, she said, doctors asked her questions about her genitalia before examining her injuries and repeatedly made pejorative remarks, which made her feel unsafe during her seven-day stay for recovery. She told Human Rights Watch she could not repeat the terms they used because they were so hurtful, and that she would never go back to a government hospital no matter what her injury was.²⁴

A Step Back for Gender Recognition

Transgender people in Kazakhstan face intense social prejudice and discrimination. Bigotry on behalf of police, health care staff, and other officials can mean transgender people have few, if any, places to turn for refuge or services.

In the 2015 AlmaTQ survey of 41 transgender people in Kazakhstan, when asked what needed to happen to help them become more fully integrated in society, nearly two-thirds of respondents answered that they needed to change their legal gender on documents, while only two respondents had actually been able to do so.

For transgender people in Kazakhstan, as detailed below, the legal gender recognition procedure requires humiliating, invasive, and abusive procedures in order to change gender on official documents. Transgender people who attempted to go through the

grants in country. However in a 2015 report, the Eurasian Coalition on Male Health noted “the need to work with [MSM] is not recognized.” Eurasian Coalition on Male Health, “The Global Fund New Funding Model and Country Dialogue: Involvement of MSM and Transgender People in Eastern Europe and Central Asia,” 2015, <http://ecomnetwork.org/wp-content/uploads/2015/04/ECOM-Country-Dialogue-Report-V2.pdf> (accessed July 16, 2015).

²³ Human Rights Watch interview with Nikolai B. (pseudonym), Almaty, April 9, 2015.

²⁴ Human Rights Watch interview with Anya L. (pseudonym), Almaty, March 20, 2015.

procedure described being harassed and insulted by officials, and coerced into having medically unnecessary procedures performed.

A transgender woman in Almaty explained that she was not planning to attempt to change her legal gender because she was “horrified of our state institutions.” She explained that, “Every time I need to interact with officials, I just present as male. I tie my hair up and they just think I’m a punk or something. I’ve done this at the bank, the airport, the tax office.”²⁵

Among the most fundamental barriers to realizing the human rights of transgender people, including protecting them from violence and discrimination, are obstacles to having their gender identity legally recognized.²⁶ When transgender people carry documents that list a sex or gender that does not match their identity and appearance, officials subject them to humiliating and sometimes abusive scrutiny.

A transgender man in Almaty told Human Rights Watch that the four times he has traveled internationally, airport security officials have harassed him. “First, the guard looks at my documents and is confused; next he looks at me and asks what’s going on; then I tell him I’m transgender; then I show him my medical certificates; then he gathers his colleagues around, everyone he can find, and they all look and point and laugh at me and then eventually let me go.”²⁷ A transgender woman in Almaty told Human Rights Watch that in early 2015 police held her without charge after officers stopped her as she was walking home from work, and harassed her when they saw her “male” ID document.²⁸

For some transgender people, the difficulty in obtaining legal recognition of their gender identity can prevent them from getting jobs. Producing official documents is a requirement for obtaining work in Kazakhstan, and transgender individuals face added scrutiny and possible accusations of fraud if they do not conform to the gender set forth on their official documents. As Slava N., a transgender man, explained: “Since I can’t change my documents, I have to work only as an under-the-table freelancer. I can only do small jobs,

²⁵ Human Rights Watch interview with Anara K. (pseudonym), Almaty, March 18, 2015.

²⁶ Open Society Foundations, “License to Be Yourself: Laws and Advocacy for Legal Gender Recognition of Trans People,” May 2014, <http://www.opensocietyfoundations.org/reports/license-be-yourself> (accessed July 8, 2015).

²⁷ Human Rights Watch interview with Vadim K. (pseudonym), Astana, March 24, 2015.

²⁸ Human Rights Watch interview with Anya L. (pseudonym), Almaty, March 20, 2015.

and even then only for people who trust me.”²⁹ He said that since transitioning, he has been verbally harassed at a bank where he had to show his (female) documents in order to access his account.

Vadim K., a 42-year-old transgender man in Astana, explained his experience after he began his transition in 2012. “When I walked into an office and applied for a job and gave them my [birth-assigned female name], when they saw my documents, they told me to go to a psychiatric clinic.... I worry [when applying for jobs]: what will happen first? Will they call the police or the ambulance? Both are ways of punishing me, making me disappear—because they think I’m mentally ill and they think that’s criminal.”³⁰ Based on reading message boards about gender transitioning, Vadim understood that hormones and other medical procedures would be expensive, and obtaining formal employment would be difficult. He prepared for this by registering an enterprise in his birth-assigned (female) name, then listing himself (Vadim) as the president of the company. He tells his clients the owner of the company is his sister and that she lives abroad, which has enabled him to maintain some basic income after he visibly transitioned.

Previously, Kazakhstan allowed individuals to change their legally recognized gender under a Ministry of Health directive, Order No. 435, that dates back to 2003.³¹ The procedure required invasive and abusive processes, but it did not explicitly mandate genital surgery. During that period, people who wanted to change their legal gender had to receive a diagnosis of “gender identity disorder,” involving several medical tests and a 30-day psychiatric evaluation. Once the diagnosis was delivered, the person had to appear before a special commission to confirm the diagnosis.

In 2009, a new health code³² introduced the “the right to sex change,” specifying sex reassignment surgery as a possibility. The government then considered the specific meaning and implementation of this right and drafted guidelines.³³ The guidelines,

²⁹ Human Rights Watch interview with Slava N. (pseudonym), Astana, March 24, 2015.

³⁰ Human Rights Watch interview with Vadim K. (pseudonym), Astana, March 24, 2015.

³¹ Order of the Minister of Health of the Republic of Kazakhstan, June 3, 2003, No. 435, “On the Guidelines of Medical Investigation of People with Gender Identification Disorders,” <http://www.shb-info.org/sitebuildercontent/sitebuilderfiles/kazakhstan.pdf> (accessed July 8, 2015).

³² Code on People’s Health and System of Healthcare of the Republic of Kazakhstan, 2009, art. 88.

³³ LGBT Organization Labrys (Kyrgyzstan) in cooperation with NGO Amulet (Kazakhstan), ILGA-Europe, and Sexual Rights Initiative, “Recommendations on Sexual Rights in Kazakhstan 7th session of Universal Periodic Review,” <http://sexualrightsinitiative.com/wp-content/uploads/Kazakhstan-UPR-7.pdf> (accessed July 16, 2015).

passed in 2011, specifically added increasingly coercive and humiliating procedures to the previous requirements in order for the commission to confirm a diagnosis.³⁴ The new procedure reads:

Gender reassignment medical measures are realized upon the results of the Commission's decision, and include two stages:

- 1) Hormonal therapy;
- 2) Surgical correction.³⁵

Numerous international bodies have called for the clear separation of medical procedures from legal procedures in gender recognition processes, including the Council of Europe.³⁶

The Yogyakarta Principles note that: “No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity.”³⁷ The UN Special Rapporteur on Torture has called upon all states “to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation ... when enforced or administered without the free and informed consent of the person concerned.” He also called upon states “to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups.”³⁸

³⁴ Decree of the Government of the Republic of Kazakhstan No. 1484, December 7, 2011; Code of the Republic of Kazakhstan, art. 88, clause 3.

³⁵ *Ibid.*

³⁶ Parliamentary Assembly of the Council of Europe Resolution 2048, *Discrimination Against Transgender People in Europe*, 2015, <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21736&lang=en> (Accessed July 16, 2015).

³⁷ The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, Principle 3, http://www.yogyakartaprinciples.org/principles_en_principles.htm (accessed July 8, 2015).

³⁸ United Nations Special Rapporteur on Torture, “Report on Torture in Healthcare Settings,” February 1, 2013, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf (accessed July 16, 2015).

Media Distortions

Consistently negative media portrayals distort public perceptions of LGBT people in Kazakhstan. A recent incident involving the prosecution of an advertising agency for creating and circulating a poster that depicted two men kissing illustrates some of the underlying dynamics.

On August 24, 2014, a copy of an unpublished poster, designed by Havas Worldwide Kazakhstan, an Almaty-based advertising agency, was posted on Facebook. The image depicted two male cultural icons, Kazakh composer Kurmangazy Sagyrbaiuly and Russian poet Aleksandr Pushkin, kissing. The embrace shown on the poster is a reference to the intersection of Kurmangazy and Pushkin streets in Almaty, which is also the location of a gay-friendly club, Studio 69.



Poster of Kazakh composer Kurmangazy Sagyrbaiuly and Russian poet Aleksandr Pushkin. © 2014 Havas Worldwide Kazakhstan

Within a month, the Almaty mayor's office filed a suit against the advertising agency. Separately, a group of individuals studying or working at a national conservatory and orchestra named after Kurmangazy also filed suit against the agency. The class action plaintiffs claimed the poster was "unethical" and offensive not only "to the honor and dignity of the composer's and poet's descendants" but to "all people not indifferent to their art...."

The mayor's office contended that the poster "offends the image of these great artists and violates widespread moral norms and behaviors, given that it shows nontraditional sexual relations, which are unacceptable to society."³⁹

³⁹ Human Rights Watch, "Kazakhstan: Lawsuits Over Same-Sex Kiss on Poster," October 2, 2014, <http://www.hrw.org/news/2014/10/01/kazakhstan-lawsuits-over-same-sex-kiss-poster>.

An Almaty court ruled in favor of the mayor's office, finding the poster "unethical" and fined both Havas and its director a total of approximately \$1,700 for violating Kazakhstan's law on advertising. A second Almaty court, ruling on a class action lawsuit against the advertising agency, stated that "the poster leaves a lasting, negative impression amongst a large group of people toward the memory of Kurmangazy Sagyrbaiuly." The 34 plaintiffs were awarded 34 million tenge (approximately US\$186,000) in damages in October 2014.⁴⁰

The kissing poster case is a high profile example of the repercussions people in Kazakhstan can face when they express information about LGBT people in a neutral or positive light. A journalist working in Karaganda told Human Rights Watch: "I get backlash when I publish stories about LGBT people that are not purely scandalous." She recounted an incident after she published a television report about gay people when a man, having recognized her from TV, accosted her in a grocery store and shouted: "You cannot convince me LGBT people are good and right. If I see faggots in the street, I would beat them up."⁴¹

In the case of the Kurmangazy-Pushkin poster, the impact of the public backlash went beyond hateful rhetoric in social media networks. The publication of the poster on Facebook prompted leaders of the Bolashak (Future) national movement⁴² to organize a roundtable against homosexuality in Almaty in August.⁴³ Then, on September 11, 2014, Bolashak leaders called on Kazakhstan lawmakers to adopt a law banning LGBT "propaganda," akin to the 2013 Russian law banning "propaganda of nontraditional sexual relationships among minors."⁴⁴

⁴⁰ Human Rights Watch, "Kazakhstan: Draconian Ruling in Lawsuit," October 29, 2014, <http://www.hrw.org/news/2014/10/29/kazakhstan-draconian-ruling-lawsuit>.

⁴¹ Human Rights Watch interview with Olga V. (pseudonym), Karaganda, March 22, 2015. This reporter conducted a survey of journalists in Karaganda in 2012 on the occasion of the International Day Against Homophobia. She reports that 52 percent of her respondents said that the murders of LGBT people in that city were "irrelevant" because "a couple of murders of sexual minorities does not mean we can talk about discrimination against the group." In addition, 24 percent of respondents said LGBT people were "sick" and therefore could not be shown to children, and another 45 percent said they hold "mainly a negative opinion" of LGBT people.

⁴² The Bolashak (Future) national movement is a "national patriot's republican movement" - not to be confused with President Nazarbayev's "Bolashak," which is an international educational scholarships program.

⁴³ For media coverage of the Bolashak movement's announcement of the roundtable to discuss the "need for the adoption of the law 'On the prohibition of LGBT – propaganda,'" see: <http://yvision.kz/post/428946> (accessed July 8, 2015). For a video clip of the event, including discussions between the hosts and some LGBT activists who courageously attended, see: http://flashvideo.rferl.org/Videoroot/Pangeavideo/2014/09/7/7f7fd49c42-a50e-46e0-a934-ca89e1c69b2e_mobile.mp4 (accessed July 8, 2015).

⁴⁴ Human Rights Watch, "Russia: Anti-LGBT Law a Tool for Discrimination," <http://www.hrw.org/news/2014/06/29/russia-anti-lgbt-law-tool-discrimination>.

When asked about the pending propaganda bill, interviewees expressed to Human Rights Watch a variety of fears related to it, many of which were related to access to information. For example, public health practitioners told Human Rights Watch that they feared the law would force them to censor or otherwise demarcate HIV education materials.

Askar B., a 28-year-old gay man in Almaty, explained that he was concerned about young people – based on his own experience. He said:

I knew when I was 12 that I liked boys. I went looking for information of course, to explain what this was. What happens if this law is in place? A gay boy gets harassed at school and under this new law no one will stand up for him because they're afraid of "promoting" homosexuality – even the law in this case would be against him. But it's not propaganda, it's his life and he's trying to learn about it.⁴⁵

He referenced Deti-404, or "Children 404," an online support group for LGBT children in Russia where they can go to discuss violence and harassment they face at school and home and receive help. Deti-404 administrators have been sued multiple times in various Russian courts under the "propaganda" law.⁴⁶

"When you read Deti-404 you get an idea of how this law has affected children in Russia. It will be the same here, if not worse," explained Askar B.⁴⁷ He told Human Rights Watch he thought part of the information access problem in Kazakhstan is that, without fact-based information about LGBT people, outspoken homophobic government officials can claim expert status:

These deputies involved in the bill know so much about homosexuality, they say. But the problem is that they speak authoritatively and come across as experts even though everything they're saying is nonsense. If they legally scare us into silence with the propaganda law, they will have the last word on all of these issues.⁴⁸

⁴⁵ Human Rights Watch interview with Askar B. (pseudonym), Almaty, March 20, 2015.

⁴⁶ For details of the multiple cases against Deti-404's administrators, see: Human Rights Watch, "Russia: Court Hearing against LGBT Group," April 3, 2015, <http://www.hrw.org/news/2015/04/02/russia-court-hearing-against-lgbt-group>.

⁴⁷ Human Rights Watch interview with Askar B. (pseudonym), Almaty, March 20, 2015.

⁴⁸ Ibid.

People in same-sex relationships who are raising children in Kazakhstan described to Human Rights Watch their struggles to counter the tide of negative opinions and distorted information their children were exposed to outside of the home.

“All of the Russian language resources [that I have found] online cite the Regnerus study. I was so upset to see this, but there’s not any counter-sourcing in Russian language,” explained Ninel V., a 26-year-old lesbian mother, referring to a paper published in 2012 by the University of Texas sociologist, Mark Regnerus.⁴⁹ The widely-discredited paper purported to demonstrate that children raised in same-sex households have poor outcomes as adults.⁵⁰ She described searching the Internet for Russian-language materials about same-sex parenting as “impossibly frustrating because everything available reinforces the hate I already feel from people around me.”

For Elena R., a woman who has been raising her 12-year-old daughter in Astana with her partner, who began transitioning from female to male two years ago, the struggle to counter the onslaught of distorted information about LGBT people her daughter receives is overwhelming. “Even my mother tells my other family members to be careful around me, and that I’m like a pedophile because I’m queer and I have a child,” she said. Elena R. explained that she attempts to talk with her daughter on a regular basis. “I try to remind her that I’m her mother, I’m a normal human being,” she said. “But she spends most of her time with her friends or at school, so the majority of the information she receives is hateful, people tell her I’m a freak and unnatural and immoral.”⁵¹

⁴⁹ Human Rights Watch interview with Ninel V. (pseudonym), Almaty, March 19, 2015.

⁵⁰ The Human Rights Campaign has described the “Regnerus Study,” named for its author, the sociologist Mark Regnerus, as follows:

A large-scale, U.S. population-based study on the outcomes of young adults raised in various family structures, commissioned in 2010 by a social-conservative think tank called the Witherspoon Institute. The study’s intended goal – detailed in grant proposals, internal emails, and fundraising letters – was to debunk the widely accepted claim, bolstered by multiple sociology studies, that children do fine when raised by same-sex parents. The study has been criticized for its flawed methodology; its suspect peer-review and publication process; and the involvement of the study’s ideologically motivated funders – an involvement that was initially concealed. Meanwhile, the study continues to be used as a political weapon against marriage and adoption rights for LGBT people all over the world.

Human Rights Campaign, “Regnerus Fallout,” 2013, <http://www.regnerusfallout.org/frequently-asked-questions> (accessed May 5, 2015). In 2013 a Russian lawmaker cited the study while proposing a bill that would deny gay parents custody over their children. (See Associated Press, “Russian lawmaker proposes bill that would deny gay parents custody over children,” September 5, 2013, <http://www.foxnews.com/world/2013/09/05/russian-lawmaker-proposes-bill-that-would-deny-gay-parents-custody-over/>.) Mark Regnerus has condemned the citation of his study for such purposes (See The Wire, “A Russian Lawmaker Is Misusing My Gay Parenting Study,” <http://www.thewire.com/global/2013/09/russian-lawmaker-misusing-my-gay-parenting-study/69453/>.)

⁵¹ Human Rights Watch interview with Elena R. (pseudonym), Astana, March 24, 2015.

Anara K., a transgender woman in Almaty, said it was important for her safety to “stay invisible” and explained that similar fears kept most LGBT people in Kazakhstan from publicly disclosing their identities. This “invisibility” inevitably contributes to public ignorance on matters of gender and sexuality, and she worries that “[w]hen [LGBT issues] come up in the form of a propaganda law, that means their introduction to the subject is skewed from the outset.”⁵²

According to a submission on Kazakhstan made to the UN Human Right Council by the Sexual Rights Initiative and Labrys, a national NGO in Kyrgyzstan, “well-known sexologists repeatedly make remarks in the media about reasons why people can be LGBT that are scientifically unproven.” The report noted that “stereotypes expressed by medical professionals through means of media and during individual consultations that can and have been harmful.”⁵³ A physician at a government-run HIV clinic in Almaty told Human Rights Watch that she sees evidence of misleading information in the questions some of her gay and bisexual patients ask: “Instead of asking about sexual behaviors or protection methods, they ask about whether they are really mentally ill.” The same physician said that faculty at the Almaty medical school contribute to the problem: “I hear my colleagues talking about how they refuse to treat people because they are gay, for example, and I know the students overhear this as well.”⁵⁴ The UNESCO country programming document for Kazakhstan notes that “teachers generally ... encounter a shortage of comprehensive teaching and learning materials on HIV and AIDS.”⁵⁵

LGBT people grapple with the barrage of inaccurate and hateful information by sharing personal stories in networks of friends and on the Internet, and seeking what limited scientific information there is available in Russian and Kazakh languages online. But despite this resilience, the unchecked deluge of homophobic vitriol can have profound impact. Or, as Ninel V., the young lesbian mother, explained: “The problem is that we start to believe these nasty things about ourselves because there’s no counter-argument in public.”⁵⁶

⁵² Human Rights Watch interview with Anara K. (pseudonym), Almaty, March 18, 2015.

⁵³ Sexual Rights Initiative and Labrys, “Report on the occasion of Kazakhstan’s Universal Period Review,” 2010, <http://sexualrightsinitiative.com/wp-content/uploads/Kazakhstan-UPR-7.pdf>.

⁵⁴ Human Rights Watch interview with Tamara A. (pseudonym), Almaty, March 19, 2015.

⁵⁵ UNESCO Country Programming Document, Republic of Kazakhstan 2013-14, <http://unesdoc.unesco.org/images/0022/002239/223965E.pdf>

⁵⁶ Human Rights Watch interview with Ninel V. (pseudonym), March 19, 2015.

The government of Kazakhstan should publicly counter hateful and inaccurate statements, including by introducing accurate information about gender and sexuality in school curriculums and providing sensitivity training to public officials. They should make it clear in all public government messaging that LGBT people are entitled to equal protection under the law, equal protection of their human rights, and full and equal respect.

Kazakhstan’s “Propaganda” Law

On May 18, 2015, Kazakhstan’s Constitutional Council found two pieces of pending anti-gay “propaganda” legislation unconstitutional. The later stages of the process by which amendments, including the amendment introducing the ban on “propaganda” of nontraditional sexual orientation, had been introduced, debated, and passed through the parliament and executive office, however, was troublingly non-transparent. The months-long consideration of the laws since the propaganda clauses were introduced also stoked fears among LGBT people in Kazakhstan because of the hateful message the laws sent and the potential impact had they come into force.

The two draft laws passed the upper house of Kazakhstan’s parliament, the Senate, on February 19, 2015. The bills were titled: “On Protecting Children from Information Harmful to Their Health and Development” and an accompanying set of laws entitled “On Amendments and Additions to Several Legal Acts of the Republic of Kazakhstan Concerning the Protection of Children from Information Harmful to Their Health and Development.”

The draft laws appeared to include a broad ban on the publication or sharing of information relating to same-sex relations in settings where children might receive or encounter that information.⁵⁷ Specifically, according to information available online, an amendment to the draft bill “On Protecting Children from Information Harmful to their Health and Development” broadly prohibited “propagandizing nontraditional sexual

We are already trying to be as strict as possible with ourselves, invisible. We are not trying to aggravate or provoke anyone – that’s how we’ve learned to survive. And the government still does this against us, calling us propaganda. Even when we have already been so silent, we are getting targeted.

– Aliya C., a 28-year-old lesbian in Astana

⁵⁷ Draft Laws of the Republic of Kazakhstan, “On Protecting Children from Information Harmful to Their Health and Development,” January 2015, http://online.zakon.kz/Document/?doc_id=31249501 (accessed July 20, 2015), and “On Amendments and Additions to Several Legal Acts of the Republic of Kazakhstan Concerning the Protection of Children from Information Harmful to Their Health and Development,” January 2015, http://online.zakon.kz/Document/?doc_id=31486605 (accessed July 20, 2015).

orientation” among children. An amendment to the draft bill “On Amendments and Additions to several legal acts of the Republic of Kazakhstan concerning the protection of children from information harmful their health and development” would have introduced changes to the law “On Broadcasting,” including a ban on the broadcasting of “foreign television and radio material that contains information harmful to the health and development of children, and which propagandizes nontraditional sexual orientation.”

As discussed in more detail below, while such laws speak of concerns for children, the risk is that such a law could be applied to any and all materials that include positive portrayals of LGBT individuals of any kind, including materials aimed at adult readers.

On the propaganda law, people see what they want to see. That’s the danger – people will call all kinds of things propaganda.

– Psychologist at an HIV clinic, Almaty

On March 26, Human Rights Watch wrote to the Kazakhstan presidential administration seeking clarity on the content of the draft legislation, but never received a reply.

Nearly everyone Human Rights Watch interviewed in Kazakhstan in March 2015 as the drafts moved from the Senate to the president for signature expressed fear of the impending laws. As one 28-year-old lesbian in Astana explained: “If the law comes into

effect, it’s not about its specific use. It’s about giving sanction to the homophobia that is already everywhere around us. We feel it constantly, this law would just put it on paper.”⁵⁸ As a doctor at an HIV clinic in Almaty put it: “If the propaganda bill becomes law, the LGBT community will go into deeper hiding. We will become a clinic that registers deaths of young men because they don’t get care in time due to fear of being honest about themselves – and this fear will be in law.”⁵⁹

Enshrining Discrimination

The provisions in the draft laws are discriminatory and would limit free expression and freedom of the media in Kazakhstan by effectively preventing dissemination of information and any positive affirmation of LGBT people.

⁵⁸ Human Rights Watch interview with Aliya C., Astana, March 24, 2015.

⁵⁹ Human Rights Watch interview with Tamara A., Almaty, March 19, 2015.

The final stages of the process surrounding the draft laws were troublingly non-transparent, making it very difficult to fully verify the progress of the draft laws. A number of local and international human rights groups expressed concern about the bills. Amnesty International issued a public urgent action alert about the draft legislation on March 30, 2015.⁶⁰ On April 14, 2015, the International Partnership for Human Rights, along with the Kazakhstan International Bureau for Human Rights and Rule of Law, wrote an open letter to the International Olympic Committee calling on them to ensure the “propaganda” law did not pass.⁶¹

Even if the propaganda law doesn't impact the majority of LGBT people because we live our lives as invisible, it will be another tool in the toolkit of oppression – and an official one this time around.

-- Anara K., a transgender woman in Almaty

On March 17, 2015, the website of the Constitutional Council indicated that the bills were on its docket for review.⁶² On May 26, a Constitutional Council’s spokesperson announced that the bills had been found unconstitutional given their “vague wording.” On June 25, the *Kazakhstanska Pravda* newspaper reportedly published the Constitutional Council decision dated May 18.⁶³

Media reports quoting the Constitutional Council clarify that the rejection of the legislation was strictly on technical grounds and that the government of Kazakhstan reserves the right to “enact laws that restrict citizens’ rights to access and distribute information as part of its responsibility to ‘defend marriage and family, motherhood, fatherhood and childhood.’”⁶⁴ Another media report quoted a member of parliament saying the draft

⁶⁰ Amnesty International, “Urgent Action: Kazakhstan - Stop LGBTI ‘Propaganda’ Legislation,” March 30, 2015, <https://t.co/K8zUOY5KyC> (accessed July 8, 2015).

⁶¹ International Partnership for Human Rights and Kazakhstan International Bureau for Human Rights and Rule of Law, “Open letter to the International Olympic Committee: Speak out against bill threatening LGBTI expression in Kazakhstan,” April 16, 2015, <http://www.iphronline.org/ioc-letter-on-kazakhstan-20150416.html> (accessed July 8, 2015).

⁶² Parliament of the Republic of Kazakhstan, IV Section V Convocation, September 1, 2014, <http://www.parlam.kz/ru/senate/Activity/OpenInfoDocument/3231?infold=10> (accessed July 16, 2015).

⁶³ The decision was also published by the website Zakon.kz: http://online.zakon.kz/Document/?doc_id=37647015.

⁶⁴ Susie Armitage, “Kazakhstan’s Constitutional Council Rejects ‘Gay Propaganda’ Bill,” BuzzFeed News, March 27, 2015, <http://www.buzzfeed.com/susiearmitage/kazakhstans-constitutional-council-rejects-gay-propaganda-bi#.ehzPIZZRgx> (accessed July 8, 2015).

legislation would be introduced in parliament again before the end of this year, reiterating that the Constitutional Council's decision was only technical.⁶⁵

While the Constitutional Council set an important precedent by rejecting this discriminatory legislation, its decision does not address the discriminatory elements of the draft “propaganda” legislation. Authorities should do more to tackle homophobic attitudes and discrimination in Kazakhstan. This includes providing sensitivity training, including about sexual orientation and gender identity, to police, health care workers, and social service providers, and the government should publicly condemn acts of violence and discrimination.

Russia's “Propaganda” Law

On June 29, 2013, Russian president Vladimir Putin signed Federal Law No. 135-FZ which, like the legislation proposed in 2015 in Kazakhstan, bans the “promotion of nontraditional sexual relationship to minors,” a reference that is universally understood to be lesbian, gay, and bisexual relationships.⁶⁶ In a report published in December 2014, Human Rights Watch documented LGBT people being beaten, abducted, humiliated, and called “pedophiles” or “perverts,” in some cases by homophobic vigilante groups and in others by strangers on the subway, on the street, at nightclubs, at cafes, and in one case, at a job interview.⁶⁷

As reactions to Russia's “propaganda” law demonstrate, such legislation violates international human rights standards and can stoke hate and violence against LGBT people. A legal opinion issued in June 2013 by the Venice Commission, the Council of Europe's advisory panel on constitutional matters, concluded that Russia's federal anti-LGBT (at that

⁶⁵ TengriNews, “The bill to ban the promotion of homosexuality will bring to Parliament before the end of the year,” June 18, 2015, <http://tengrinews.kz/unsort/velikobritanii-gosudarstvennoe-imuschestvo-prodadut-dolgi-27640/> (accessed June 18, 2015).

⁶⁶ Federal Law of June 29, 2013 No. 135-FZ, “On Amendments to Article 5 of the Federal Law ‘On Protecting Children from Information Harmful to their Health and Development,’” <http://www.rg.ru/2013/06/30/deti-site-dok.html> (accessed October 2, 2014). The explanatory note of the anti-propaganda law in its bill form referred explicitly to:

The promotion of homosexuality ... carried out via the media as well as via the active pursuit of public activities which try to portray homosexuality as normal behavior. This is particularly dangerous for children and young people who are not able to take a critical approach to this avalanche of information with which they are bombarded on a daily basis. In view of this, it is essential first and foremost to protect the younger generation from exposure to the promotion of homosexuality.

“Putin signed a law banning gay propaganda to children [Путин подписал закон о запрете гей-пропаганды среди детей],” RIA Novosti, June 30, 2013, <http://ria.ru/politics/20130630/946660179.html> (accessed September 15, 2014).

⁶⁷ Human Rights Watch, “License to Harm: Violence and Harassment against LGBT People and Activists in Russia,” December 15, 2014, <http://www.hrw.org/reports/2014/12/15/license-harm>.

time draft) law was “incompatible with the European Convention on Human Rights and international human rights standards” and should be repealed.⁶⁸

Like in Kazakhstan, Russia’s law was promoted and drafted by politicians who purported it would protect children from a potential harmful subject matter. However, in a January 2014 review of Russia’s compliance with the Convention on the Rights of the Child, the Committee on the Rights of the Child recommended that the Russian authorities repeal the law and “ensure that children who belong to LGBTI groups or children of LGBTI families are not subjected to any forms of discrimination by raising the awareness of the public on equality and nondiscrimination based on sexual orientation and gender identity.”⁶⁹

Human Rights Watch wrote on June 23, 2015 to Kazakhstan’s Constitutional Council and Presidential Administration seeking clarity on the content of the drafts that were under consideration and the Constitutional Council’s decision. On July 13, the Constitutional Council replied, confirming the date they issued their decision (May 18) on the constitutionality of the bills, noting that the decision had been published on June 25 in two official newspapers. However, the Constitutional Council did not provide Human Rights Watch copies of the final drafts of the bills or of the decision as requested.⁷⁰

⁶⁸ Council of Europe Venice Commission, Opinion on the issue of the prohibition of so-called “Propaganda of homosexuality” in the light of recent legislation in some member states of the Council of Europe, CDL-AD (2013) 022-e, June 18, 2013, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)022-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)022-e) (accessed December 3, 2014).

⁶⁹ United Nations Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of the Russian Federation, CRC/C/RUS/CO/4-5, January 31, 2014, http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/RUS/CRC_C_RUS_CO_4-5_16305_E.pdf (accessed December 3, 2014).

⁷⁰ Letters on file with Human Rights Watch and in Annex I and II.

Kazakhstan's Human Rights Legal Obligations

Despite some protections for discrimination on the basis of sex, which could be interpreted to protect against discrimination against LGBT people, Kazakhstan's laws offer no specific protection for discrimination on the basis of sexual orientation or gender identity. The government's pejorative construal of homosexuality in some policies, moreover, makes it unlikely that authorities will apply existing law in ways that extend meaningful protections to LGBT individuals.

Kazakhstan's Laws

Kazakhstan's laws contain protections against discrimination that can protect sexual orientation. However, the lack of specific mention of sexual orientation leaves protection gaps. Kazakhstan's Constitution, under article 14, part 2, guarantees that: "No one shall be subject to discrimination for reasons of ... sex ... or any other circumstances." It also guarantees, under article 20, "freedom of speech and creative activities."

Kazakhstan's Criminal Code forbids: "Direct or indirect restriction of rights and freedoms of a person (citizen) on the grounds of origin, social, official capacity or property status, gender, race, nationality, language, attitude towards religion, convictions, place of residence, belonging to public association, or any other circumstances."⁷¹ The Administrative Code Article 9 on "Equality in court and law" states: "Everyone is equal in court and law in administrative procedure. Nobody can be subjected to discrimination on the grounds of origin, social, position, property, sex, race, nationality, language, religious views, convictions, residence or any other circumstances." The Code on Public Health and Healthcare System, in Article 91 on Patients' Rights, states: "The patient has a right to ... medical assistance in order of precedence determined by medical criteria with no discrimination factors."⁷²

But beyond the absence of enumerated protections on the grounds of sexual orientation and gender identity, other policies in Kazakhstan openly discriminate on the basis of sexual orientation and gender identity, stigmatizing LGBT people. For example, the "Requirements for Health Status of Law Enforcement Servicemen" deems applicants unfit

⁷¹ Criminal Code of the Republic of Kazakhstan, July 3, 2014, entered into force January 1, 2015, art. 143.

⁷² Code of the Republic of Kazakhstan on Public Health and the Healthcare System, September 18, 2009, as amended, March 7, 2014.

if they have “personality disorders” including “gender identity disorder [and] sexual preference disorder.”⁷³ The 2001 Concept of Moral and Sex Education in the Republic of Kazakhstan lists homosexuality in the same section as “teen prostitution,” and alcohol and drug consumption.⁷⁴ Kazakhstan’s National Human Rights Action Plan 2009-2012 only mentions LGBT people once, in the human trafficking section, where it remarks: “The recipients of profit are transnational organizations of dealers and homosexuals.”⁷⁵

International Standards

The International Covenant on Civil and Political Rights (ICCPR), which Kazakhstan ratified in 2006, requires states to “respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.”⁷⁶

In the 1994 case of *Toonen v. Australia*, the U.N. Human Rights Committee, the authoritative body responsible for interpreting the ICCPR and monitoring States’ compliance with their obligations, held that “sexual orientation” was a status protected from discrimination under the ICCPR’s equality clauses.⁷⁷ Specifically, it held that “the reference to ‘sex’ in article 2, paragraph 1 and article 26 is to be taken as including sexual orientation.”⁷⁸ Two resolutions by the Human Rights Council, in 2011 and in 2014, affirmed these principles.⁷⁹

⁷³ Minister of Internal Affairs of the Republic of Kazakhstan, March 31, 2010, “On Enacting Requirements for Health Status of Law-enforcement Servicemen,” order no. 6175, registered by the Ministry of Justice of the Republic of Kazakhstan, April 15, 2010.

⁷⁴ Government of the Republic of Kazakhstan, November 21, 2001, “On the Concept of Moral and Sex Education in the Republic of Kazakhstan,” enactment no. 1500.

⁷⁵ National Human Rights Action Plan of the Republic of Kazakhstan, 2009-2012, <http://www.ohchr.org/Documents/Issues/NHRA/Kazakhstan2009-2012.pdf> (accessed July 8, 2015).

⁷⁶ International Covenant on Civil and Political Rights, art. 2.1.

⁷⁷ *Nicholas Toonen v. Australia*, Human Rights Committee, 50th Sess., Case No. 488/1992, UN Doc. CCPR/c/50/D/488/1992.

⁷⁸ The ICCPR states in article 26: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

⁷⁹ During its 2010 Universal Periodic Review, Kazakhstan rejected 7 of 102 recommendations. One of the rejected recommendations, from France, was: “Join the declaration on sexual orientation and gender identity, while noting with congratulations the decriminalization of homosexuality.” See http://www.upr.info/sites/default/files/document/kazakhstan/session_7_-_february_2010/recommendationstokazakhstan2010.pdf.

As party to the ICCPR, Kazakhstan has an obligation to respect freedom of expression; the personal, private, and family lives of individuals; the right to equality; and the ban on discrimination in the enjoyment of those rights.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Kazakhstan acceded to in 1998, obligates states in article 1 to eradicate "any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women." CEDAW article 5.a. commits states "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." Both articles are violated when people are singled out for unequal treatment because they fail to conform to social or cultural expectations for women and men.⁸⁰

The 2006 Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity affirm the standards of the ICCPR and CEDAW. The Principles state: "Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity." They instruct states to amend domestic legislation accordingly, including by targeting public and private acts of discrimination.⁸¹

The Yogyakarta Principles instruct states to "take all necessary legislative, administrative, and other measures to prevent and provide protection from torture and cruel, inhuman, or degrading treatment or punishment, perpetrated for reasons relating to the sexual orientation or gender identity of the victim, as well as the incitement of such acts."⁸²

⁸⁰ For example, in its concluding comments on Kyrgyzstan in 1999, the Committee on the Elimination of Discrimination Against Women condemned reports that lesbians were subject to punishment in Kyrgyzstan, and stated, "The Committee recommends that lesbianism be reconceptualized as a sexual orientation." The Committee's recommendation that lesbian identity be located under the rubric of "sexual orientation" requires according it the discrimination protections demanded under international law. See Report of the Committee on the Elimination of Discrimination against Women (Fifty-fourth session, 1999), U.N. Doc A/54/38 (Part I), May 4, 1999, p. 128.

⁸¹ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, principle 2.

⁸² Yogyakarta Principles, principle 10.

Acknowledgments

This report was researched by Kyle Knight, researcher in the lesbian, gay, bisexual, and transgender rights program at Human Rights Watch, and Mihra Rittmann, researcher in the Europe and Central Asia division. Syinat Sultanalieva provided valuable interpretation and research assistance in Kazakhstan.

The report was written by Kyle Knight and reviewed by Mihra Rittmann, Graeme Reid, director of the LGBT rights program, Aisling Reidy, senior legal adviser, and Joe Saunders, deputy program director. Kathryn Zehr and Viktoriya Kim, associate and coordinator, respectively, in the Europe and Central Asia division, provided valuable support during the research process. Minky Worden, director of global initiatives, Jane Buchanan, associate director of the Europe and Central Asia division, and Boris Dittrich, advocacy director in the LGBT rights program, engaged with the International Olympics Committee as part of the research for this report.

Adam Frankel, coordinator in the LGBT rights program, and Elizabeth Wilke, associate in the development and outreach department and LGBT rights program, Grace Choi, publications director, and Kathy Mills, publications specialist, provided production assistance.

Human Rights Watch would like to thank the activists, experts, and LGBT people who gave us their valuable time during the research for this report, and shared with us their analysis and personal stories.

Annex I

Letter from Human Rights Watch to the Constitutional Council of the Republic of Kazakhstan

June 16, 2015

Rogov Igor Ivanovich
Chairman of the Constitutional Council of the Republic of Kazakhstan
Kunaev 39
010000 Astana
Kazakhstan

Dear Mr. Igor Ivanovich,

On behalf of Human Rights Watch, please accept our regards.

As you may know, Human Rights Watch is an international nongovernmental organization that investigates and reports on human rights abuses in over 90 countries. Human Rights Watch has been monitoring the situation in Kazakhstan for approximately 20 years. We work on a range of human rights issues, including freedom of expression and the media, children's rights, and the rights of lesbian, gay, bisexual and transgender (LGBT) people in countries worldwide.

We are currently preparing a report on LGBT rights in Kazakhstan. In March, colleagues in our LGBT program and Europe and Central Asia division travelled to Kazakhstan and spoke to a range of LGBT people and relevant human rights and health experts to gather information about this issue.

Human Rights Watch makes every effort to ensure that our findings include the government's perspective. We are thus writing to inquire about two bills that had passed the upper house of Kazakhstan's senate, and which were reviewed and ultimately rejected by Kazakhstan's Constitutional Council.

These are “On Protecting Children from Information Harmful to their Health and Development” and “On Amendments and Additions to several legal acts of the Republic of Kazakhstan concerning the protection of children from information harmful to their health and development.” There was no transparency in the process by which the bills moved from the Senate to the Constitutional Council and, to date, there are no publicly accessible versions of the final copy of the bills or the Constitutional Council’s decision.

On March 26, 2015, we sent a letter to the Presidential Administration inquiring about the content of the final drafts of the above-mentioned two bills and expressing our serious concern that they appeared to contain discriminatory provisions that, if adopted, would violate Kazakhstan’s constitution and international legal obligations. Regrettably, we did not receive a response to our letter.

A government website indicates that on April 29, the draft laws were with the Constitutional Council. According to limited publicly available information, the Constitutional Council announced on May 26, 2015, that the pending legislation was unconstitutional because of the bills’ vague wording. Media reports quoting Constitutional Council officials reiterate that the Council’s findings are narrowly limited to the vagueness of the legislation.⁸³ While the Constitutional Council took an important decision in rejecting the propaganda bills, we remain concerned that the decision does not address the discriminatory elements of the bills and potentially leaves open the possibility that such bills could be considered in the future.

During our research on the human rights situation for LGBT people in Kazakhstan, we interviewed people who expressed intense fears of how such laws would sanction hatred, discrimination, and violence against the LGBT community in Kazakhstan. We interviewed victims of violence who had been unable to achieve appropriate redress for the abuses they had suffered because of hateful attitudes and discriminatory behavior on the part of police and social service providers. We heard from LGBT people and public health practitioners how readily-available public information about sexual orientation and gender identity in Kazakhstan was already harmfully distorted, and would only become more restricted and inaccurate if a so-called “propaganda” law came into effect.

⁸³ <http://www.buzzfeed.com/susiearmitage/kazakhstans-constitutional-council-rejects-gay-propaganda-bi#.ehzPIZZRgx>

We seek clarification about the content of the final drafts of the bills as they were reviewed by the Constitutional Council, and the official analysis of the Council in finding the legislation unconstitutional. Could your office kindly provide Human Rights Watch a copy of the final drafts of the bills, as well as a copy of the decision of the Constitutional Council announced on May 26, 2015?

We would also be happy to receive any additional relevant information or materials you wish to provide on these issues.

Thank you for your attention to this letter. We look forward to your reply by July 1, 2015 so that we may accurately reflect the government of the Republic of Kazakhstan's perspective in our forthcoming report. We can be reached at:

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Neue Promenade 5
10178 Berlin, Germany
FAX: +49-30-259306-29

Human Rights Watch
350 5th Avenue, 34th Floor
New York, NY 10118, USA
FAX: +1-212-736-1300

Sincerely,

Hugh Williamson
Director
Europe and Central Asia Division

Graeme Reid
Director
Lesbian, Gay, Bisexual and Transgender Rights Program

Annex II

Letter from the Constitutional Council of the Republic of Kazakhstan to Human Rights Watch

Received July 13, 2015.

STATE INSTITUTION “CONSTITUTIONAL COUNCIL OF THE REPUBLIC OF KAZAKHSTAN”
39 Kunaev St., Astana 010000, Kazakhstan
Tel.: (7172) 74 76 31. Fax: (7172) 74 76 51
Email: org@constcouncil.kz

To: Hugh Williamson
Director, Europe and Central Asia Division
Human Rights Watch

Graeme Reid
Director, Lesbian, Gay, Bisexual, and Transgender Rights Program
Human Rights Watch

Dear Sirs,

We are referring to your letter of June 16, 2015.

Indeed, on May 18, 2015 the Constitutional Council of the Republic of Kazakhstan at its open meeting reviewed and made its final decision on the submission by the Chairman of the Senate of the Parliament of the Republic of Kazakhstan who asked to check conformity of the Kazakhstan’s laws “On Protecting Children from Information Harmful to their Health and Development” and “On Amendments and Additions to several legal acts of the Republic of Kazakhstan concerning the protection of children from information harmful to their health and development” to the Kazakhstan’s Constitution and the request by the Chairman of Mazhilis of

the Parliament of the Republic of Kazakhstan to give a formal interpretation of several constitutional provisions. The submission and the request were consolidated into a single constitutional proceeding.

On June 25, 2015, regulatory resolution N 3 of the Constitutional Council of the Republic of Kazakhstan of May 18, 2015 was published in official newspapers, namely in *Kazakhstanskaya Pravda* and *Egemen Kazakhstan*.

The Constitutional Council and its Apparatus do not comment on the decisions taken.

Sincerely,
A. Temerbekov
Head of Apparatus

Prepared by I. Maripova, tel.: 74-76-25

0010932

“That’s When I Realized I Was Nobody”

A Climate of Fear for LGBT People in Kazakhstan

Lesbian, gay, bisexual, and transgender (LGBT) people in Kazakhstan face hostility and abuse, inadequate official response and support mechanisms such as police and social services, and an intensified climate of fear amid calls to adopt anti-LGBT “propaganda” legislation.

“That’s When I Realized I Was Nobody” is based on in-depth interviews with LGBT people, activists, and human rights experts, as well as social service and public health practitioners in Kazakhstan. It documents pervasive homophobic attitudes, threats and intimidation, and failure of state services to support and protect LGBT people in Kazakhstan. The experience of LGBT people in Kazakhstan and the actions and omissions of officials documented in the report indicates a serious failing on the part of the government to uphold its human rights obligations to LGBT people under international law.

Human Rights Watch calls on the government of Kazakhstan to strongly and publicly denounce anti-LGBT rhetoric and discriminatory policies, and uphold its commitments to protect all people from discrimination and violence.



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