

**ALTERNATIVE REPORT
ON THE IMPLEMENTATION OF THE PROVISIONS OF
ICCPR RELATED TO LGBT PEOPLE IN KYRGYZSTAN**

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This report was prepared by the following LGBT organizations in Kyrgyzstan, “Kyrgyz Indigo”¹ and “Labrys”². Nika Yuryeva, Alex Mamytov, Dastan Kasmamytov, Erlan Orsekov, Ruslan Kim, and Julia Votslava participated in the preparation of this report.

SUMMARY

Kyrgyzstan does not take adequate measures to protect the fundamental rights of lesbian, gay, bisexual and transgender people (LGBT) as guaranteed by the Constitution and the ICCPR. LGBT people in Kyrgyzstan are systematically discriminated against in obtaining medical services, in education, and at work. Discrimination against transgender people is particularly predominant in Kyrgyzstan. Despite the fact that paragraph 2 of Article 16 of the Constitution of the Kyrgyz Republic includes the right to protection against discrimination, it does not explicitly indicate protection against discrimination on the grounds of sexual orientation and gender identity (SOGI). Moreover, there are no comprehensive anti-discrimination or hate crime laws in Kyrgyzstan pertaining to SOGI and, therefore, hatred, physical, psychological and sexual violence against LGBT people is exacerbated. Victims of violence are often unable to contact the police due to violence and torture by the police. Moreover, public authorities have created unconstitutional divisions within themselves. Such divisions include the "Department of Morals" under the Ministry of Internal Affairs (MIA) with a tacit consent of the Ombudsman, the Parliament, and the President, who serve as guarantors of human rights in the country.

GENERAL SITUATION AND TRENDS THAT INFLUENCE THE CIVIL AND POLITICAL RIGHTS OF LGBT PEOPLE IN KYRGYZSTAN

In 1998, consensual homosexual relations were decriminalized in Kyrgyzstan (up until 1997 Article 112 on “Sodomy” existed in the Criminal Code of Kyrgyzstan). Despite this, homophobia and transphobia permeate all structures of the state and society. Some officials and MPs in Kyrgyzstan give negative public statements about LGBT people. The police claim that LGBT people do not exist in Kyrgyzstan despite the fact that blackmailing LGBT people is one of the channels of illegal income for the police, along with the blackmail of male and female sex workers. Instructors at medical academies often tell students that homosexuality is a perversion and pathology, contrary to the official documents of the World Health Organization (WHO). There are no modules on sexuality or on sexual and reproductive rights in public education, which aggravates discrimination against LGBT people in governmental agencies: the police, the prosecutor’s office, medical and other institutions of Kyrgyzstan.

LGBT organizations documented that LGBT people living in large cities (Bishkek and Osh) are often attacked on the street through insults, physical and sexual abuse, including gang rape³. In rural areas, LGBT people are forced to live a double life, entering into heterosexual marriages due to strong religious and societal pressures; anyone who is different from the majority is punished⁴. The biological families of

¹ Contact at kyrgyz.indigo@gmail.com

² Contact at kyrgyzlabrys@gmail.com

³ The UN High Commissioner on Human Rights is in Kyrgyzstan. Source: <http://labrys.kg/index.php?show-post=305&language=en>

⁴ Eraliev S. Aidai, who loves women. Source: http://rus.azattyk.org/content/kyrgyzstan_lesbianism/24569344.html

LGBT people can also pose a threat as LGBT people face domestic violence, including rape as a method of punishment and "cure"⁵, if their sexual orientation or gender identity becomes known to their parents or relatives⁶.

Religious groups (mainly conservative and/or fundamentalist Islamic groups) periodically start initiatives and deliver statements questioning the secular status of Kyrgyzstan: one LGBT-themed film has been banned because of recommendations from the State Commission on Religious Affairs in 2012⁷ while Committees of the Parliament discuss the need to limit sexual education for adolescents.

LGBT organizations and activists also face threats and obstacles: intrusion by police officers into the offices and shelters of LGBT organizations was experienced by "Labrys"⁸ in 2008⁹, Public Fund "Oasis", and "Anti-AIDS Association" in 2012 and 2013; threats to employees of LGBT organizations through anonymous SMS-messages such as with "Labrys" in 2010; and throwing of stones at the offices of LGBT organizations like "Labrys" in 2013.

As the state considers its population to be traditional, conservative, and religious, it does not pay attention to the high levels of violence and discrimination against LGBT people in Kyrgyzstan. Violence against LGBT people is not publicly condemned. There are no government programs to support LGBT people and no awareness campaigns to reduce stigma and discrimination against the LGBT population of Kyrgyzstan.

SUBSTANTIVE VIOLATIONS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

1. RIGHT TO LIFE (ART. 6)

1.1. Employees of Public Association "Kyrgyz Indigo" documented four possibly homophobic murders and at least two incitements to suicide between 2011 and 2014, but in none of these cases were homophobia or sexual orientation mentioned by the law enforcement agencies. Such mention is considered a "shameful" fact for the deceased and is hidden not only by relatives of the deceased but also by policemen.

1.2. Ignoring murders on the basis of SOGI often incited by the state leads to the further escalation of violence, honor killings, and hate crimes against LGBT people. Recently the Kyrgyz Muslims Spiritual Directorate issued a fatwa inciting people to kill LGBT people¹⁰. Moreover, after the Human Rights Watch released its report on police violence against gay and bisexual people in Kyrgyzstan, there was a huge backlash in the media and on social networking web-sites including a surge of negative comments

⁵ Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity // Report of the United Nations High Commissioner for Human Rights. 2011. Source: http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf

⁶ These Everyday Humiliations: Violence Against Lesbians, Bisexual Women, and Transgender Men in Kyrgyzstan. Human Rights Watch, 2008. Source: <http://www.hrw.org/reports/2008/10/06/these-everyday-humiliations-0>

⁷ Official statement in support of Human Rights Defenders Group "Citizens Against Corruption". Source: <http://labrys.kg/index.php?show-post=323&language=en>

⁸ Labrys is an LGBTQA organization

⁹ Kyrgyzstan: Halt Anti-Gay Raids. Police Search LGBT 'Safe Space'. Source: <http://www.hrw.org/news/2008/04/16/kyrgyzstan-halt-anti-gay-raids>

¹⁰ RadioLiberty. Kyrgyz Fatwa Against Homosexuality Debated. February 11, 2014. Source: <http://www.rferl.org/content/kyrgyz-antigay-fatwa-debated/25260721.html>

and posts, inciting further hate, violence, and killings of LGBT people in Kyrgyzstan. LGBT activists documented at least 30 death threats towards Dastan Kasmamytov, who publicly came out at a press conference on the Human Rights Watch (HRW) report. LGBT organizations complained about the death threats to different state authorities.

2. NON-DISCRIMINATION (ART. 2, 26)

Protection from Discrimination

2.1. The Constitution of the Kyrgyz Republic guarantees protection against discrimination under Article 16, (" No one shall be discriminated against on grounds of sex, race, language, disability, ethnicity, religion, age, political or other beliefs, education, origin, property or other status, and other circumstances"), however, de-facto there is no existing protection at the level of laws. There is no anti-discrimination legislation that includes sexual orientation and gender identity as protected grounds.

2.2. One of the most recent unconstitutional innovations in Kyrgyzstan is a special "Department for Countering Crimes Against Public Morality", which was created in 2013 by the Ministry of Internal Affairs in Bishkek. The head of this department stated in an interview, "The delay in the elaboration and implementation of reasonable measures [to counter crimes against public morality] directly affects the nation's gene pool and destroys the identity and the culture of our society"¹¹.

2.3. One of the main tasks of this Department is to identify persons who evade treatment of sexually transmitted infections¹². Currently, the Department is committed to detaining sex workers in police stations where they are forced to be tested for HIV and sexually transmitted infections. This situation violates the rights and freedoms of detainees.

2.4. There is no specific description of what is meant by the term "public morality", which can certainly be interpreted in a way that is convenient for the Department. LGBT and other communities fear that LGBT people will become future detainees and will be incriminated for "destruction of public morality".

Discrimination in Access to Health Services

2.5. LGBT people face obstacles in accessing health services. The reason for this is discrimination and hate towards LGBT people on the part of medical personnel, who do not receive any information on LGBT issues.

2.6. Medical personnel assume that all patients are heterosexual and cisgender by default. When faced with a patient who identifies as lesbian, gay, bisexual or transgender, health workers declare their opposition to the patient or completely deny any medical assistance¹³.

¹¹ Uraliev M. Salamat Adylov: Turnover of the sex industry in Bishkek reach up to \$10 million // Vecherniy Bishkek. 21.11.2013. Source: http://www.vb.kg/doc/252680_salamat_adylov:_oboroty_seks_indystrii_v_bishkeke_dohodiat_do_10 mln.html

¹² Department of morals was created the first time in history of the Kyrgyz police // Press Service of Internal Affairs Headquarters of Bishkek. 22.11.2013. Source: http://www.bishkek-guvd.kg/index.php?option=com_content&view=article&id=931%3A2013-11-22-05-50-00&catid=3%3Aimp-news&Itemid=181&lang=ru

¹³ Access to Health Care for LGBT People in Kyrgyzstan. Sexual Health and Rights Project (SHARP). Soros Foundation–Kyrgyzstan. Bishkek, 2007. Source: http://www.opensocietyfoundations.org/sites/default/files/kyrgyzstan_20071030.pdf

2.7. LGBT people often receive poor-quality care as doctors do not have enough knowledge about the health-related needs of LGBT communities. Employees of the Kyrgyz State Medical Academy (KSMA) and the Medical College of Bishkek say that there is no accurate or scientific modern information on homosexuality and transsexuality in the curricula of medical educational institutions. The topic of sexual orientation and gender identity is discussed very superficially in general courses such as "Psychiatry," "Legal examination", and in modules about HIV.

2.8. The LGBTIQ organization "Labrys" interviewed doctors of the Republican Mental Health Center and Municipal Endocrinology Center, as well as teachers of Psychiatry and Endocrinology at the KSMA. It noted that doctors received information about LGBT people and their related issues for the first time during a training conducted by the above-mentioned organization. Most of the doctors tended to regard homosexuality and transsexuality as a deviation from the norm¹⁴.

2.9. Transgender individuals in particular face discrimination in the medical sphere. If the gender expression of a patient does not correspond to passport data, doctors may refuse to treat this patient. Many endocrinologists, who are visited by transgender people for hormone therapy, cannot help because they do not have any information about the standards of providing medical care for transgender people. Despite the fact that there are LGBT-friendly physicians knowledgeable about LGBT specific issues thanks to the work of LGBT organizations, the process of reducing homophobia and transphobia in the healthcare system is very slow as the Government does not provide any support.

2.10. Confidentiality and medical ethics do not apply to homosexual patients. SOGI can cause a situation when the entire hospital staff will ridicule a patient.

Case #1 - Denial of medical care to transgender man: B., 41 years old

"In November 2012, after an attack by an unknown person, trans man B. was hospitalized. After reviewing the patient's passport (the passport's gender marker did not match gender identity and gender expression of the patient), doctors and nurses started to use the female name for B. according to the passport data, despite the fact that B. looked and behaved like a man. The situation occurred in front of other patients and visitors. Nurses loudly discussed the discrepancy between the appearance of the patient and his documents. As a result, B. was forced to abandon hospitalization without receiving any medical care".

Discrimination against Transgender People

2.11. Another problem faced by transgender people includes obtaining new identity documents when transitioning. According to Article 72 of the Law "On Civil Status Acts," the registry of civil status can change information in identity documents if the necessary approval paper to change sex, issued by the Republican Centre on Psychological Health, is submitted. Due to a legal loophole, each registry may arbitrarily decide which documentation is required for changing gender marker.

2.12 Living with documents that do not match one's appearance puts transgender people at risk for the violation of their right to privacy and violence if someone finds out that their gender is different from what is indicated on their passport. Many transgender people avoid disclosing their personal documents to anyone, which limits their rights and freedoms as they do not vote, cannot open a bank account, and

¹⁴ Interviews with medical specialists. LGBTIQ organization "Labrys". Bishkek, 2012.

cannot apply for official employment.

Discrimination in the Workplace

2.13. Contrary to the provisions of the Labor Code of the Kyrgyz Republic (Articles 2, 9: Everyone has an equal opportunity to exercise their labor rights and freedoms. Labor rights and freedoms cannot be restricted, and no one can receive any benefits on a basis of gender, race, nationality, language, origin, social-economic status, age, place of residence, attitude to religion, political beliefs or membership in public associations, as well as other circumstances not related to the quality and results of their labor. Unequal pay for equal work is not allowed {...} Persons who believe they have been discriminated against at work, have the right to apply to the court with the appropriate application for redress, compensation for pecuniary and non-pecuniary damage), discrimination on the basis of sexual orientation and gender identity continues to take place in the workplace. The regulation of labor relations and other relations directly linked to them in accordance with the Constitution of the Kyrgyz Republic shall be exercised by the labor legislation (including legislation on labor protection and other normative legal acts containing norms of labor law, where international treaties and other rules of international law ratified by the Kyrgyz Republic are an integral and effective part of the legislation of the Kyrgyz Republic).

Case #2 - Gay man discriminated against at work: 18 years old

“My colleagues, as well as parents of students in the Children's Creativity Center where I worked, were spreading rumors about my sexual orientation. I had a conversation with the director when she accused me that I can rape boys and insulted me. Then she said that I would be fired as soon as they found a replacement for me. After I had worked for more than two months, they refused to pay my salary, blackmailing me and saying that either I'm out of money, or they will tell my parents (who at the time did not know anything about my sexuality). I accepted and that same day I was fired (in 2012)”¹⁵.

2.14. This man asked for psychological counseling at the LGBT organization "Kyrgyz Indigo" and reported a number of offenses, such as:

- Limiting the right to work and to employee wages according to the employment contract ;
- Limiting the right to a workplace protected from the effects of hazards and other dangerous factors such as discrimination, abuse, humiliation, and psychological pressure from colleagues, and to information on the working conditions and safety regulations in the workplace;
- Limiting the right to timely and full payment of wages in accordance with their qualifications, quality, and quantity of the work performed¹⁶.

Sexual orientation and gender identity are not protected grounds under the Labor Code and cannot be assigned to the cases described in Article 83¹⁷ of Labor Code of KR “On termination of the employment contract by the employer”, but it does not stop the latter from similar violations in the absence of corpus delicti for discrimination .

¹⁵ Documented case of a gay victim. who asked for psychological support in LGBTQA organization "Kyrgyz Indigo", Bishkek, January 2012.

¹⁶ Labor Code of the Kyrgyz Republic. Article 19.

¹⁷ Labor Code of the Kyrgyz Republic. Article 83.

Hate Crimes

2.15. In Kyrgyzstan, there is no legislation on hate crimes and no qualifying attributes for the motives hatred, including SOGI. In Article 97 of the Criminal Code (Murder), aggravating circumstances are determined as motivated by ethnic, racial or religious hatred or enmity. However, the article says nothing about hatred on grounds of SOGI.

2.16. According to the data of LGBTIQA organization "Labrys" that was included in the annual OSCE report, in 2012 alone, there were fifteen cases of hate crimes on the basis of SOGI: *"Kyrgyzstan: No official data on crimes motivated by bias against LGBT people were reported to ODIHR. The NGO Labrys reported 15 physical assaults, including nine resulting in serious injury, all of which were carried out by a group, one of which involved throwing stones, and one of which involved a serious assault, rape and threat to kill a transgender woman; and a further five threats against men and women who were identified as gay"*¹⁸.

Case #3 - Hate killing of a gay man: 30 years old

*Ermek, Bishkek: "In November of 2008 my friend was killed. He stayed in an apartment with a young man who slit his throat. I participated in more than ten trials, where I distinctly heard the words of the killer: "I did it because I hate faggots." When he was asked whether he was gay, the defendant replied, "Of course not, I hate faggots." At the hearing in front of all, he threatened that his friends will find me. The killer was almost acquitted and then given five years of probation, but the situation changed dramatically after my testimony and other witnesses' testimony that indicated that the killer was MSM (men who have sex with men) meeting with other men for money. As a result, the criminal got ten years of strict regime. The murderer was punished, however, we can't return my friend, partner, kind and decent man"*¹⁹.

2.17 The level of trust in the activities of the police and judicial authorities is extremely low²⁰. This trend has continued for several years. Frequent cases of violence by police officers leads to the fact that representatives of the LGBT community are unwilling and afraid to go to the police station, seeing it more as a punitive body rather than as an institution which ensures the safety of its citizens.

2.18. Also, there are cases where an LGBT person files a report to the Internal Affairs Headquarters about an incident of hate violence due to SOGI, but currently they are not considered by employees, as the police insist that homophobia and transphobia as causes of violence are not specified.

Case #4 - Homophobic attack: J., 23 years old

"In 2013 J. was attacked and beaten up by a homophobe. When we came to the police and filed this case, we pointed out the reason for the attack: hate crime towards LGBT people. The

¹⁸ Hate crimes in the OSCE region: incidents and responses. Annual report for 2012. Warsaw, 2013. P. 83. Source: http://tandis.odihhr.pl/hcr2012/pdf/Hate_Crime_Report_full_version.pdf

¹⁹ Documented cases of violence and human rights violations of LGBT, Public Association "Kyrgyz Indigo", Kyrgyzstan, November 2008.

²⁰ Results of the survey on security issues and on work of the law enforcement agencies in Bishkek and Osh. Civil Union "For reforms and outcomes". Bishkek, 2013. Source:

http://reforma.kg/media/uploads/users/admin/files/final%20report_RUS_print.pdf

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investigator said, 'You do not need to write too much information. I have to show this case to the management as well.' However, we insisted on specifying exactly this reason".

2.19. IAB employees also declare that the indication of the causes of a crime as homophobia or transphobia will not help them to find criminals and that nothing will change in the course of the case since there is no article on non-discrimination or hate crimes towards LGBT people.

Case #5 - Police refusal to register hate motivation

Kamal, Osh, southern Kyrgyzstan: 28 years old

"In 2009, when I wrote in a statement that I was beaten up because I am gay, the investigator rudely told me to erase it. He said: "So you are going to indicate that? Are you not ashamed? Write that you were just beaten up"".

2.20. This kind of situation leads to law enforcement bodies announcing that discrimination and violence against LGBT people do not exist. As a result, this leads to the invisibility of the group despite widespread homophobic and transphobic violence.

3. TORTURE AND INHUMAN TREATMENT (ART. 7)

3.1. LGBT people in Kyrgyzstan face torture and cruel, inhuman, and degrading treatment by law enforcement officials.²¹

3.2. Forty gay and bisexual men interviewed by Human Rights Watch in 2012-2013 shared their stories on how they experienced psychological, physical, and sexual abuse by police²². Because of the high level of homophobia and transphobia in Kyrgyz society and in public institutions, LGBT people in Kyrgyzstan are easy targets for abuse by officials. In most cases, these victims do not go to a prosecutor because of fear of retaliation, harassment, or disclosure of their sexual orientation and/or gender identity. In a survey of lesbian and gay people in Kyrgyzstan conducted by Dennis van der Veur in 2004, 51% of respondents mentioned problems with the police. According to the LGBTIQ organization "Labrys," one third of 140 documented cases of discrimination and violence against LGBT people in 2011 - 2014 were committed by police officers²³.

Case #6 - Beating, rape threats, and ill-treatment by the Financial Police

Information on Mihail Kudryashov

"On October 30, 2010, 22-year-old M. Kudryashov was detained by officers of the Financial Police State Service in Bishkek (hereafter the Financial Police) on the suspicion of committing a crime under Article 262 of the Criminal Code of the Kyrgyz Republic (manufacture or sale of

²¹ "They Said We Deserved This". Police Violence Against Gay and Bisexual Men in Kyrgyzstan. Human Rights Watch, 2014. Source: <http://www.hrw.org/reports/2014/01/29/they-said-we-deserved>; "These Everyday Humiliations: Violence Against Lesbians, Bisexual Women, and Transgender Men in Kyrgyzstan". Human Rights Watch, 2008. Source: <http://www.hrw.org/reports/2008/10/06/these-everyday-humiliations-0>

²² "They Said We Deserved This". Police Violence Against Gay and Bisexual Men in Kyrgyzstan. Human Rights Watch, 2014. Source: <http://www.hrw.org/reports/2014/01/29/they-said-we-deserved>

²³ Interview of LGBTIQ organization "Labrys" with LGBT people. Kyrgyzstan, 2011-2014.

pornographic materials). For more than 12 hours he was detained without registering and issuing legal documents on detention and legal aid. During the interrogation the financial police officers (investigator V. Suslov and seven employees, the names of which are unknown) subjected him to physical violence. Mihail was forced to undress, he was insulted, forced to write a statement that he was raped by his friends. They pierced Mihail's hand with a metal pen, punched and kicked him. When his apartment was searched, his friend S. was near the house. Later S. was also taken to the office of the Financial Police. M. Kudryashov was forced to write a confession that he had beaten up his friend S., whom a police officer had punched in the stomach.

According to the forensic report M. Kudryashov received light injuries. However, the diagnosis does not correspond to the report obtained during his treatment at the Bishkek Research Center of Traumatology and Orthopedics, where they diagnosed closed craniocerebral injury, contusion of the occipital area, and soft tissue bruises. This diagnosis was confirmed by a neurologist, but it was not taken into account during the examination. In April 2012, independent experts in the field of forensic medicine, psychology and psychiatry gave their findings with the assessment of evidence of torture or ill-treatment in accordance with the standards of the Istanbul Protocol. The conclusions of the independent experts from 03.06.2012 said that as a result of beatings in November 2010 M. Kudryashov received physical and psychological trauma. He observed psychological symptoms typical of a survivor who experienced torture and ill-treatment.

Repeated complaints about the use of torture were investigated superficially and inefficiently: the necessary investigation was not conducted. In addition, the court did not acknowledge the statement of M. Kudryashov on violence and torture. M. Kudryashov was convicted of a crime under the Criminal Code Art.262 and sentenced to one year of imprisonment and probation.

M. Kudryashov complained about the illegal actions of the Financial Police, but the city prosecutor's office refused to open a criminal case. Appeal of this decision to the General Prosecutor's Office and the courts failed – in all instances M. Kudryashov received rejections to continue criminal proceedings. On grounds of torture M. Kudryashov appealed to the UN Committee on Human Rights²⁴.

3.3. Police officers also commit crimes against LGBT organizations. Three such cases were documented one of which occurred when law enforcement officials raided the office of LGBTIQ organization "Labrys" threatening, "We will rape you! Kill you! Open the door!"²⁵ In April 2008 the organization "Labrys" sent Individual Communication to the UN Special Rapporteurs on violence against women, human rights defenders, and working group on arbitrary detention in response.

Case #7 - Intrusion into Labrys office

"On the evening of April 8, 2008, three police officers forced their way into a building housing the group Labrys, which at the time was hosting a dinner for local and international LGBT groups.

²⁴ They Said We Deserved This. Police Violence Against Gay and Bisexual Men in Kyrgyzstan. Human Rights Watch, 2014. Source <http://www.hrw.org/reports/2014/01/29/they-said-we-deserved>

²⁵ These Everyday Humiliations: Violence Against Lesbians, Bisexual Women, and Transgender Men in Kyrgyzstan. Human Rights Watch, 2008. Source: <http://www.hrw.org/reports/2008/10/06/these-everyday-humiliations-0>; Press release Human Rights Watch Kyrgyzstan: Halt Anti-Gay Raids. Police Search LGBT 'Safe Space'. Source: <http://www.hrw.org/news/2008/04/16/kyrgyzstan-halt-anti-gay-raids>

Police threatened to arrest anyone who did not produce identification and searched private files at the social center, which also serves as a shelter for transgender people and women who are victims of violence.

This is the second time police have raided Labrys without a warrant. On June 4, 2006, police forced their way into the group's office after verbally threatening that they would rape everyone inside. The police came in and searched the place. Members of Labrys started to film in order to stop the anticipated violence.

According to a Labrys representative, police demanded to see the organization's registration documents, statutes, and rent statements. After threats of arrest, the police gained entry to a locked private office and went through desks and files. A short time later, the district police chief arrived and said the officers would leave only if Labrys promised to submit its administrative and financial documents to the police station the following day. Labrys complied with the request. The raid was carried out on the night Labrys was hosting a dinner for groups from the Anti AIDS Association and Tais Plus as well as for international partner organizations – COC (Cultuur en Outspannings-Centrum) and HIVOS (Humanist Institute for Cooperation with Developing Countries) from the Netherlands, and Gender Doc-M from Moldova.

Kyrgyz law does not require citizens to carry a passport or an identity card. Nevertheless, the police often use ID checks to humiliate and arbitrarily arrest people. The warrantless raid on the Labrys office violated the right to freedom of association as set out under the International Covenant on Civil and Political Rights, which Kyrgyzstan ratified in 1995.²⁶

3.4. There was also a case of illegal intrusion into the office of a local NGO, "Gender Vector," in Kara Balta when a policeman invaded the office, beat the employees, and kicked the director of the organization until he lost consciousness. The organization has not filed this case to the relevant authorities (prosecutor's office) because of disbelief that the case will be considered without prejudice believing that the policeman who had committed the violence and/or his colleagues will continue to threaten LGBT activists, as often happens in practice²⁷.

3.5. According to the LGBTIQ organization "Kyrgyz Indigo," 50% of the cases of violence against LGBT people that they have documented are offenses committed by law enforcement officers.

3.6. LGBT groups also documented cases in which transgender individuals were required by courts and registries to undergo forced sterilization and other surgeries when they wanted to change their names and gender markers on identification documents. Forcing these surgeries is also a form of torture and inhuman and degrading treatment.

4. LIBERTY AND SECURITY OF PERSON (ART. 9)

Case #8 - extortion by blackmail and violence: M., 40 years old

"A friend of M. was taken to the police station where policemen demanded money threatening

²⁶ Human Rights Watch press release about police raid of Labrys premises <http://www.hrw.org/news/2008/04/16/kyrgyzstan-halt-anti-gay-raids>

²⁷ Analytical review: Health and Rights of LGBT community in Kyrgyzstan." 27p. COC - Kyrgyz Indigo - Labrys, Bishkek, 2012.

to disclose his sexual orientation if he did not comply. M. brought the necessary amount of money to his friend in the police station where the officer also demanded his contact details. A month later the police arrived at his house and arrested him. They began to beat him in the police car. In the police station, they started to humiliate him and beat him. They also broke a hanger on him.

M. was forced to strip and threatened that he would be forced to have sex with another detainee and that it would be recorded and uploaded to the Internet and shown to his relatives. They demanded \$1,000. By beating him, they forced him to call his friend who had been arrested a month ago. Then they went with him to his work, took money and goods, went with him to his house and took the money requested. In total, he paid 25,000 som (about 520 USD) to the police. They then released M. and at the appointed place took his friend"²⁸.

4.1. Most often LGBT people face violations of their rights by law enforcement agencies. About 60% of clients who came to the human rights organization "Independent Human Rights Group" faced illegal detention, blackmail, and extortion by law enforcement officials. Law enforcement officers have registered themselves on gay dating web-sites, chatted with LGBT people, met them and blackmailed them with threats to reveal their sexual orientation to their family and social networks, extorted money from them, and threatened them with unlawful detention. Being afraid to disclose their SOGI status, LGBT people are forced to do whatever the police ask, which includes giving them money and other valuables.

Case #9 - Police extortion and violence: 19 years old

"A gay man met a man on a dating site. When he arrived for a date at a specified time, it turned out that he had been communicating with a police officer. The police officer physically assaulted him and blackmailed him saying that he would spread his photograph and information on his being gay on social networking sites. The police officer demanded 4000 KGS (80 USD) from him. Scared that the police officer would carry out his threat, the gay man called his friend who brought him the money".²⁹

4.2. There have been cases of gay-friendly clubs that were stalked by young people who waited outside and attacked people leaving the clubs. Sometimes these were taxi drivers, predominantly of young age, who gathered near the clubs and waited for people coming out of the club to beat them up or shout out insults.

4.3. LGBT groups also documented cases where law enforcement officers would wait for representatives of the LGBT community not far from the clubs visited mainly by LGBT people. The police would stop LGBT people under the pretense of checking documents, and if they lack these documents, the people were taken to the police station where they may experience torture, cruel treatment, and sexual violence. This problem is aggravated by the reluctance of LGBT people to report such cases to superior bodies and prosecutor's offices. This reluctance is caused by a complete mistrust of the authorities. Around 90% of clients of the public reception who suffered from the actions of police officers refused to turn to the prosecutor's offices for initial protection. The remaining 10% refused to maintain the

²⁸ Documented cases of violence and human rights of violations of LGBT. Public Association "Kyrgyz Indigo", Kyrgyzstan, November 20, 2013.

²⁹ From cases of Public Fund "Independent Human Rights Group", Kyrgyzstan, May, 2012.

accusation for fear of revenge by accused police officers³⁰.

4.4. LGBT people are also afraid to turn to the police for protection of their rights that are violated when they become victims of hooliganism, mugging, robbery, etc. The fear that their sexual orientation will become known to the police leads to the majority of crimes against LGBT people remaining unreported. This is especially pressing for transgender people who have not received documents that reflect their identity. When filing charges about a crime, the person must present an identification document. Discrepancies in gender on these submitted documents forces transgender persons to hide their gender identity from the police.

Case #10 - Fear to engage in investigation of a crime - 2012

“A trans man - 41 years old - turned to law enforcement agencies with a statement about the infliction of bodily damages to him. The investigator accepted the statement and referred him to the forensic expert. Since he did not have documents that matched his appearance and was therefore afraid that the forensics expert and the investigator would reveal his status, he refused to participate in the forensic examination. After the refusal to do the examination, he was forced to take his statement back from the police”³¹.

4.5. Often law enforcement officials refuse to fulfill their duties upon discovering that the claimant is an LGBT person denying accepting their statement. Homophobic and transphobic attitudes are also common among prosecutors, judges, and lawyers.

5. INHUMAN TREATMENT IN CORRECTIONAL FACILITIES (ART. 10)

5.1. LGBT people experience particular discrimination and psychological violence in correctional facilities of the Kyrgyz Republic. The penitentiary system is built in such a way that adults and under aged persons serve their sentences in separate correctional facilities. Containment in colonies is carried out by the principle of camp type; that is the convicted live in barracks, not in wards. Criminal subculture exists among convicted persons, which creates subdivisions of “supervisors”, “men,” and “rejects”. LGBT people fall under the category of “rejects,” the subdivision that experiences the most difficulty. After entering the correctional facility, LGBT people face psychological and sexual violence as they automatically fall under the category of “rejects”. They are forced to live and eat separately from others and do the dirtiest work in the establishment. Other inmates avoid any contact with them, and they are confined to separate living facilities that do not respect norms for living space, lighting, and ventilation.

5.2. Whereas the average convict is given a 2.5. sq. meters cell in one of the colonies, the “rejects” live in dugouts or in areas of abandoned industrial zones without natural lighting or ventilation³².

Case #11 - Beating and sexual assault of a lesbian woman in a correctional facility: 23 years old

“A lesbian woman was sent to a correctional facility for women to serve her sentence.

³⁰ From cases of Public Fund “Independent Human Rights Group”.

³¹ From cases of Public Fund “Independent Human Rights Group”.

³² Report “Situation with human rights in detention centers and prisons of Kyrgyzstan” Public Supervisory Board under the State Penitentiary System, Kyrgyzstan, 2012.

Information about her sexual orientation became known to other inmates immediately. During the first night after coming to the barracks, she was subjected to sexual harassment by another inmate. After rejecting her advances, the woman was beaten. In her opinion, this would not have happened, if her sexual orientation had not become known to other inmates”³³.

5.3. This problem is aggravated by the fact that the administration of correctional facilities is well informed about the existing criminal subculture and a similar division of inmates. However, no actions are taken to eliminate such practices. Moreover, such a division is supported by the administration through the allocation of a separate living space for the category of “rejects”, the designation of the dirtiest and hardest work, and the promotion of separate eating and living spaces all for the people known as “rejects.”

Case #12 - Discrimination of gay man in a pre-trial detention facility: 28 years old

“Before I was convicted, I was detained in a temporary detention facility for 2 weeks and then for 4 months in Pretrial Detention Center. When I was detained, the policemen took away my cellphone and learned that I was gay from my messages. When I was placed into the Temporary Detention Facility ward, everyone already knew about my sexual orientation for which I experienced insults and mockery for 2 days. I was very afraid of ending up in a prison colony since in Pretrial Detention Center they constantly scared me saying that people like me are brutalized and subjected to sexual violence in the colonies. I am very glad that I was sentenced conditionally and was able to avoid the colony”³⁴.

6. FAIR TRIAL (ART. 14)

6.1. LGBT organizations documented cases where judges discriminated against victims of crimes because of their sexual orientation.

Case #13 - Gay victim of a crime and abuse by lawyer: 35 years old

“A gay man was a victim in a criminal case when he was inflicted grievous bodily harm. This hate crime was committed against him because of his sexual orientation. During the trial, the lawyer of the accused abused the victim mentioning his sexual orientation. The judge and prosecutor did not properly react to such behavior of the lawyer. The judge also ignored the request of the victim to respect him in the courtroom”³⁵.

6.2. In Kyrgyzstan LGBT people are stigmatized and discriminated against in the courts. Judges, prosecutors, and lawyers are often biased against LGBT people because of prejudices and homophobia. Judges are incompetent to conduct impartial and fair hearings allowing hate speech in the courtroom.

7. RECOGNITION AS A PERSON BEFORE THE LAW (ART. 16)

³³ From the monitoring interview, conducted by members of the Public Supervisory Board under the State penitentiary system, Kyrgyzstan, October, 2011.

³⁴ From cases of Public Fund “Independent Human Rights Group”, Kyrgyzstan, September, 2011.

³⁵ From cases of Public Fund “Independent Human Rights Group”, Kyrgyzstan, February, 2013.

7.1. At the moment there is no established procedure for gender recognition for transgender individuals. In this situation, the authorities of civil status registration (the Registrar) may process the change of name and gender marker on the basis of a certificate with a diagnosis of "transsexualism" and may require transgender individuals to pass all possible surgical changes to their body. This is a violation of the human right to "the highest attainable level of physical and mental health"³⁶ since not all transgender people want to make any changes to their bodies, and not all of these individuals can undergo surgical changes because of health reasons. Lack of documents with names and gender markers that correspond to gender identity deprives transgender individuals of recognition as people before the law - this person cannot act as a subject of legal relations in Kyrgyzstan.

7.2. Due to the lack of procedure for changing a gender marker on a passport, transgender people face open and indirect discrimination in all public institutions in the country (law enforcement, health and educational institutions, customs and border services, registrar's offices, etc.) allowing these individuals to become victims of misunderstanding, suspicion, and degrading treatment. In the areas of higher education and the workplace, transgender people are not always able to find jobs because of their appearance, if their gender expression does not match their passport's gender marker³⁷.

Case #14 - Refusal to change documents - D., 43 years old

"Since January 2012 trans man D. repeatedly asked the registrar to change the passport data in accordance with his chosen gender identity. An employee of the office refused to accept the application for name change and the correction for gender marker in the civil registration roster explaining the necessity to undergo sex reassignment surgery. In the spring of 2013 D. removed his mammary glands and received a certificate of "sex reassignment surgery". However, D.'s application was again denied by the registrar because an employee of the registrar's office claimed that in accordance with the legislation of Kyrgyzstan changing the name and gender marker in the civil registration roster can be made only after all sex reassignment surgeries, and after the meeting the panel of doctors of all specialties to confirm the sex reassignment³⁸".

7.3. As seen from this incident, the lack of approved procedure of passport information for transgender people allows officials to make arbitrary decisions and deprives transgender people of their basic human rights.

8. PROTECTION OF PERSONAL PRIVACY (ART. 17)

8.1. Representatives of the Financial Police of Kyrgyzstan violated Article 17 of the Covenant by giving interrogation materials to the newspaper "Delo №" for their publication, which included Kudryashov's³⁹ personal photos and photos taken during the investigation. The newspaper published these materials, and the article stated that the reporters were also given videos of the interrogation featuring

³⁶ Article 12. "International Covenant on Economic, Social and Cultural Rights". Source: http://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml

³⁷ V. Yuryeva. Violations of the rights of LGBT citizens in Kyrgyzstan in the context of international obligations // 2012 Yearbook on Human Rights in the Kyrgyz Republic. Human Rights Council. Bishkek, 2013. p. 100.

³⁸ Interview of LGBTIQ organization "Labrys" with D. Bishkek, July, 2013.

³⁹ See Case #6.

Kudryashov⁴⁰.

8.2. As mentioned above, LGBT organizations have knowledge of a huge number of cases in which LGBT people were blackmailed by law enforcement officials who were threatening to disclose their sexual orientation and/or gender identity to their families, colleagues, and classmates. In the vast majority of these cases, the police also collected mobile phones of victims, went through their text messages, gathered phone numbers of other LGBT people, and called these people to blackmail them as well. There are two cases where the police went to the workplace of one of these individuals to blackmail them using their sexual orientation as a threat expecting that they would be most vulnerable in front of their colleagues. LGBT people are so afraid of a violent and forced “outing” that they prefer to give money as a bribe or not file a report to the police believing that the officer will also extort money if they filed a report.

9. RIGHT TO FREEDOM OF EXPRESSION (ART.19)

9.1. Kyrgyzstan restricts freedom of expression on the basis of SOGI. For instance on September 28, 2012, the movie "I'm Gay and Muslim" by the Dutch director Chris Belloni was to be the last documentary shown at the Sixth International Festival on Human Rights "Bir Duino Kyrgyzstan" in Bishkek. However, the documentary was not shown because the Pervomaysky district court of Bishkek ruled in favor of banning the film. The State Commission on Religious Affairs and subsequently, the court considered the film to contain *“extremist material, arousing intrareligious strife and humiliation directed at Muslims and their inferiority on religious grounds”*⁴¹. The documentary "I'm Gay and Muslim" contained stories of gay men in Morocco speaking about their lives and religious beliefs⁴².

9.2. Certain nationalist and religious organizations in Kyrgyzstan like "Erkin El" and "Religion, Law and Policy" as well as some MPs (for example, Tursunbai Bakir Uulu, who served as the Ombudsman of the Kyrgyz Republic from 2002 to 2008) initiated restriction of access to information about sexual and reproductive health for adolescents - in October 2013 the brochures for adolescents prepared by the NGO "Alliance for Reproductive Health" were cited as "destructive brochures, detrimental to the minds of young people"⁴³ explaining that *"sex education is contrary to moral and ethical principles, traditions, and the mentality of our [Kyrgyz] people"*⁴⁴.

10. INCITEMENT OF HOSTILITY, DISCRIMINATION, AND VIOLENCE (ART. 20)

10.1. Articles in the national newspaper "Delo №" have incited the hatred of LGBT people by religious and ethnic communities in Kyrgyzstan for several years. By using a variety of techniques such as illegally describing details of the private lives of LGBT people, distorting facts, deliberately using stigmatizing

⁴⁰ Sex minorities become more aggressive // "Delo №". 19.04.2012. Source: <http://delo.kg/index.php/2011-08-04-18-06-33/3706-2012-04-19-05-55-08>

⁴¹ Statement of Pervomay District Court of Bishkek from 28.09.2012 // Archive of Human Rights Centre "Citizens Against Corruption". Source: http://anticorruption.kg/wp-content/uploads/2012/10/2012-09-28_18-41-16_434407.jpg

⁴² Press release Human Rights Watch "Kyrgyzstan: Film Ban Violates Free Speech". Source: <http://www.hrw.org/news/2012/10/04/kyrgyzstan-film-ban-violates-free-speech>

⁴³ Kyrgyzstan: Conservatives Cite 'Family Values' to Fight Sex Ed. Source: <http://www.eurasianet.org/node/67744>

⁴⁴ Kyrgyzstan: Conservatives Cite 'Family Values' to Fight Sex Ed. Source: <http://www.eurasianet.org/node/67744>

terminology, and printing unconfirmed data, "Delo №" encourages hatred towards LGBT people.⁴⁵

[Quote from the article]: "Society, which drowned in liberalism, tries to prevent external aggression and create some internal protection mechanisms. These mechanisms immediately lead to a tightening of internal resistance - which usually ends with fascism or dictatorship of the crowd. And in this case of homosexuals will be destroyed the first. But this is not the end. Crowd dictatorship or fascism are rarely confined to destruction of one object or community. Ethnic and racial minorities and intellectuals will also be destroyed. Nobody is immune to this. And why? Because someone from the gay community wanted to oppose himself from the rest of the society and to confront openly⁴⁶".

10.2. In Kyrgyzstan there is no self-regulation of the media, and the ethical code of journalism is only taken into account by a limited number of mass media outlets.

11. RIGHT TO FREEDOM OF ASSOCIATION (ART. 22)

11.1. In January 2011, the Ministry of Justice of the Kyrgyz Republic denied registration of the public association "Alliance and Social Services of Gays and Lesbians Pathfinder" because it deemed that the "... designation of the words "gay and lesbian" in a name of the legal entity promotes destruction of moral norms and national traditions of the people of Kyrgyzstan⁴⁷", which is a violation of Article 22 of the Covenant. Gays and lesbians are social groups (same-sex consensual relationships are not punishable by the law in Kyrgyzstan) with the right to speak openly about their existence and form associations to protect their interests, as well as to enjoy the freedom to share and receive information. Prohibition cannot be motivated by norms and traditions, which are not mentioned in the legislation of Kyrgyzstan.

11.2. In the fall of 2013, the Parliament of Kyrgyzstan discussed the drafting of a bill on "foreign agents," which is similar to a law adopted in Russia that implies a serious restriction of the activities of NGOs in the country. Adoption of the bill would violate international obligations of the Kyrgyz Republic⁴⁸. At the time of the preparation of the current report, the status of the draft bill was unclear.

11.3. Initiatives such as adopting laws similar to those of the Russian Federation have raised serious concerns in civil society in Kyrgyzstan. LGBT people fear the possible promotion of a law on "Propaganda of Homosexuality, Sodomy, Lesbianism, Bisexualism, or Transgenderism", a law adopted as a package

⁴⁵ <http://delo.kg/index.php/2011-08-04-18-06-33/3634-2012-03-22-05-47-39>,

⁴⁵ <http://delo.kg/index.php/2011-08-04-18-06-33/3697-2012-04-12-06-07-21>,

⁴⁵ <http://delo.kg/index.php/2011-08-04-18-06-33/3706-2012-04-19-05-55-08>,

⁴⁵ <http://delo.kg/index.php/2011-08-04-18-06-33/3844-2012-05-24-08-08-51>,

⁴⁵ <http://delo.kg/index.php/2011-08-04-18-06-33/3845-2012-05-24-08-21-14>,

⁴⁵ <http://delo.kg/index.php/2011-08-04-18-06-33/5549-za-geev-kyrgyzskikh-zamolvili-slovo>,

⁴⁵ <http://delo.kg/index.php/health-7/6631-plet-dlya-inakomyslyashchikh-majdan-i-gomiki#comment-1981>

⁴⁶ Novgorodceva. What do militant gay people fight for? // "Delo №" from 12.04.2012. Source:

http://delo.kg/index.php?option=com_content&view=article&id=3697:2012-04-12-06-07-21&catid=38:2011-04-29-05-02-10&Itemid=97

⁴⁷ Order №89 from 12.01.2011 from the head of the Department of Justice N. Kutmanov "On the rejection in state registration of Public Association "Alliance and social services of gay and lesbian "Pathfinder" // Source:

<http://pathfinder.kloop.kg/2011/01/20/76/>

⁴⁸ Press release Human Rights Watch "Kyrgyzstan: Reject 'Foreign Agents' Law". Source:

<http://www.hrw.org/news/2013/12/05/kyrgyzstan-reject-foreign-agents-law>

together with the law against propaganda of pedophilia in the Russian Federation. Moreover, Malikov, a famous Kyrgyz expert on religious affairs, said at a press conference that writing in brochures on sexual and reproductive health that homosexuality is not a disease and that same-sex marriages are allowed in some countries is immoral and dangerous for children and that this issue must be addressed at the national level⁴⁹.

12. THE RIGHT TO MARRY AND FOUND A FAMILY (ART. 23)

12.1. Children growing up with same-sex parents, or when one of the parents is a transgender person can be taken away by their relatives in case of the death of a parent since there is no legislation that gives parental rights to the remaining parent. Such children cannot inherit property upon the death of one or both parent/s.

12.2. Also same-sex partners who have acquired property together may be deprived of their share in the event of the death of their partner or if they separate since, according to the Family Code, marriage is only possible between a man and a woman. In all other cases partners are seen as strangers to each other.

⁴⁹ A Dzhumasheva. "Kadyr Malikov: It's immoral to propagate homosexuality among minors" // Vecherniy Bishkek. 23.09.2013. Source: http://www.vb.kg/doc/244488_kadyr_malikov:_propagandirovat_gomoseksyalizm_sredi_detey_amoralno.html

CONCLUSIONS

1. In Kyrgyzstan the civil and political rights of LGBT people are systematically violated due to the lack of national legislation including comprehensive anti-discrimination law and hate crimes law and the lack of specific mechanisms to protect the security and confidentiality of SOGI when documenting and investigating cases of violence, hate crimes, and discrimination against members of the LGBT community. The legislation does not explicitly prohibit discrimination on grounds of sexual orientation and/or gender identity nor does it mention aggravating circumstances motivated by hatred (except Art. 97 of the Criminal Code - Murder). Lastly it does not provide clear mechanisms for gender marker change for transgender people.
2. LGBT people are often unable to seek protection because of violence and other abuses by law enforcement agencies. Torture and ill-treatment against LGBT people by law enforcement authorities is a systemic phenomenon in Kyrgyzstan. In all regions of the country, the police blackmail, humiliate, illegally detain, beat, and rape LGBT people.
3. The country has no system of media self-regulation with respect to journalistic ethics or for materials that incite hatred against certain groups of society (including LGBT people) – a series of articles do not consider LGBT people as equal incite hate and violence towards LGBT people.
4. Access to quality health care for LGBT people is difficult since medical officials subject LGBT people to discrimination or refuse to provide assistance. They also do not protect confidentiality of their LGBT patients.
5. Security of LGBT activists in Kyrgyzstan is under threat of direct violence, harassment, and illegal invasion by the police, which have previously been documented.

RECOMMENDATIONS

1. Introduce and implement hate crime legislation with a definition of “hate crime” that mentions sexual orientation and gender identity as a bias.
2. Create and implement an effective independent and confidential mechanism to ensure that LGBT people and other vulnerable populations targeted by the police for abuse and extortion are able to complain about violence and torture perpetrated by law enforcement officers.
3. In accordance with accepted Universal Periodic Review recommendation, review the compliance of its national legislation with provisions of the International Covenant on Civil and Political Rights on non-discrimination, in particular with regard to women and persons of minority ethnicity, sexual orientation, or gender identity.
4. Develop and implement a comprehensive anti-discrimination legislation, which will ban discrimination based on sexual orientation and gender identity in close cooperation with civil society and representatives of vulnerable groups.
5. Publicly acknowledge and condemn violence and torture towards LGBT people by law enforcement agencies.
6. Introduce an entire course or course component on medical care for LGBT people in medical educational institutions.
7. Approve the package of documents that regulates name and gender marker changes in the passports of transgender individuals, which was previously developed by the Ministry of Health.
8. Prosecute the administration of prisons that allow separation of prisoners into categories/hierarchies and do not react properly to violence in prisons.
9. Introduce and implement an effective and safe mechanism for complaints in temporary detention facilities and correctional facilities with further proceedings on each complaint.

QUESTIONS TO THE GOVERNMENT OF KYRGYZSTAN:

1. LGBT people in Kyrgyzstan do not file complaints about police violence and extortion or any other crime that they experience due to fear of retaliation and disclosure of their sexual orientation and/or gender identity to others. What measures have the government of Kyrgyzstan taken to encourage LGBT people and other minority groups to file complaints about discrimination and violence that they experience at the hands of the police, thugs, and the general public?
2. How does the government of Kyrgyzstan engage with LGBT organizations?
3. How has the government of Kyrgyzstan responded to documentation of multiple cases of discrimination provided by LGBT NGOs and international human rights organizations such as Human Rights Watch?
4. How does the government of Kyrgyzstan respond to calls for violence against LGBT people by religious authorities and the media?