

Additional information to the Shadow Report of Civil Society Organisations on Discrimination and Violence against Women who use Drugs, Women Living with HIV, Sex Workers and women in prison in Kazakhstan.

This information has been drafted by a coalition of NGOs including: Kazakhstan Union of People Living with HIV; Public Foundation for Women Living with HIV in Kazakhstan; Public Foundation, 'Answer'; Public Association, 'My Home'; Public Association, 'Amelia'; and the Public Charitable Foundation, 'Shapagat'.

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Introduction

From the outset of this submission, we would like to express our concern that despite the information contained in our 2018 report for the List of Issues, the issue of gender-based violence against women in prostitution was not raised with the authorities of Kazakhstan. In this submission, we provide more detailed information about the gender-based violence and discrimination against sex workers (Annex I).

We thank the Committee for including into paragraph 19 of the List of Issues the matter of measures taken to eliminate discrimination and violence against women living with HIV and women who use drugs, including those in prisons, and to ensure their access to adequate health services, including sexual and reproductive health, drug dependency treatment and HIV treatment.

Taking into account that the Government of Kazakhstan did not provide the Committee with information related to the issue outlined in paragraph 19 of the List of Issues, we would like to inform the Committee that the information provided in our 2018 report for the List of Issues remains actual and relevant. The situation with HIV among women in Kazakhstan has become worse since 2018 when we submitted our previous report to the Committee. According to official statistics, as of June 2017, the number of women living with HIV in Kazakhstan is 8,863¹, all factors outlined in our 2018 report continue to play a role, including gender-based violence and other forms of discrimination against women who use drugs and sex workers (Our 2018 report is at Annex II).

Requested recommendations for the State Party

We kindly request the Committee to include the following recommendations into the Concluding Observations related to Kazakhstan:

¹ Information provided by the Kazakh Scientific Center of Dermatology and Infectious Diseases of the Ministry of Health of the Republic of Kazakhstan, <http://www.kncdiz.kz/en/>

Trafficking and exploitation of prostitution

Stop the practice of police raids against sex workers and forced testing of female sex workers for HIV; limit the use of criminal law provisions in cases of involuntary engagement of women into prostitution.

Health

Reconsider punitive laws to protect vulnerable groups of women, such as women who use drugs and women engaged in sex work, from discrimination and to ensure their access to HIV prevention and other health services. In particular, repeal Article 118 of the Criminal Code of Kazakhstan and limit the application of criminal law provisions related to bodily (health) harm to cases of intentional transmission of HIV, as recommended by international public health standards; repeal criminal law provisions which provide criminal punishment, especially imprisonment of women for behaviour related to drug use, such as activities including drug possession for personal use; ensure that women from vulnerable groups have access to drug dependence treatment, including opioid substitution therapy, as recommended by WHO, as well as to HIV prevention, care and treatment and other appropriate health services without discrimination.

Gender-based violence against women

Actively investigate cases of violence, and any illegal acts, committed by law enforcement officers against sex workers, women who use drugs, and patients of opioid substitution therapy, including cases registered and reported by civil society organisations representing marginalised women. Develop mechanisms to ensure personal security and privacy that will allow women to report incidents of violence without fear. Introduce the concept of 'motive of hatred' in relation to various social groups in the Criminal Code and include, as a form of criminal motive of hatred, a motive for revenge on women for engaging in sex work, and for drug use. Educate law enforcement officials, medical staff, and employees of 'crisis centers' on the prohibition of discrimination against women who use drugs and women sex workers.

Annex I

Gender-based violence and discrimination against sex workers

Annex to the Shadow Report

on Violence and Discrimination of Women Living with HIV, Women who Use Drugs, Sex Workers and Women Prison Inmates

Introduction

This Annex, developed by the Public Association "Amelia", supplements information provided in the coalition report that was submitted to the pre-session, expanding on key human rights violations that female sex workers face. In particular, it calls attention to issues of forced HIV testing, access to health, stigma and discrimination, state violence, and access to justice.

Amelia is a non-governmental organization founded on October 10, 2012 in Taldykorgan, Kazakhstan.

Scope of the Problem

There were an estimated 19,600 sex workers² in the Republic of Kazakhstan as of January 2018, based on sentinel surveillance research and epidemiological analysis of HIV, conducted by the

² Individuals who had provided sexual services in the last 12 months.

Republican AIDS centre. The incidence of HIV infections has grown since 2012, largely due to foreign funding cuts, specifically the country transitioning out of the Global Fund funding. HIV prevalence among sex workers was 1.3% in 2012 and 1.9% in 2019.

Forced HIV Testing

According to the WHO recommendations, voluntary HIV counselling and testing should be routinely offered to all key populations both at medical institutions and outside of them, for example in places where key populations gather. It is recommended to create opportunities for key populations to receive such services not only at medical institutions as initiated by a physician, but also outside of them, so that if necessary, key populations' members would be referred to the prevention, treatment and care services.

Kazakhstan has several key documents which regulate HIV testing for sex workers:

- Order of the Minister of Health of Kazakhstan no. 575 from 11 July 2002 on approving the guidelines for HIV testing.
- Order of the Minister of Health of Kazakhstan: no 552 from 28 July 2010: On approving rules for HIV testing.
- Government Decree no 1280 from 03 November 2011: On approving rules for HIV screening for individuals with special clinical and epidemiological characteristics.

According to the law on testing for HIV/AIDS, HIV testing should be voluntary. It should be conducted only together with pre-test counselling and after an informed consent for testing has been received. The law does allow for the possibility of compulsory HIV testing, but this should be implemented only if there is relevant court decision.³

Nonetheless, police organize raids and conducts forced HIV testing of sex workers. For example, on May 19, 2017, police officers forcibly tested 163 women for HIV in the capital of the country Nur-Sultan. What is more, 53 sex workers were entered into a police database, and 7 workplaces of sex workers were disclosed.

The media broadcasted that of these 163 women, “136 prostitutes were tested for HIV with the help of the AIDS-centre, and none of them was HIV positive”. Similar raids with forced testing were organized in Shymkent, Kokshetau, and Almaty.

Illegal HIV testing of sex workers by police is still a widespread practice. According to the protocol, only medical workers should have access to HIV testing results, but not outreach workers or social workers; medical workers are also responsible for ensuring the confidentiality of data and its transfer to the client. However, in order to comply with the formal legal requirements, the police officers invite AIDS centre staff who are then requested to obtain consent for testing while a sex worker is being illegally detained. There were also cases when police officers were detaining sex workers and illegally sending them for forced HIV and STI testing, referring to article 309 of the Criminal Code on organizing brothels and pimping.^{4 5}

This police behaviour forces sex workers to conceal their HIV status and to avoid HIV testing. If HIV-positive status of a sex worker becomes known, police and medical staff will try to harass

³ <http://adilet.zan.kz/rus/docs/V1500011145>

⁴ https://kodeksy-kz.com/ka/ugolovnyj_kodeks/309.htm

⁵ <https://ru.sputniknews.kz/society/20170519/2292863/dvd-sredi-stolichnyh-prostitutok-vich-inficirovannyh-ne-vyavleno.html>

this sex worker. Employees of the AIDS-centre threaten sex workers that they will take the sex workers to court for HIV transmission and that they will involve police into the search for HIV-positive sex workers. This all means that the right to privacy and confidentiality of the medical data is being violated. Sauna and hotel administrators fire sex workers and decline them a possibility to earn money by providing sexual services.

Forced testing is a violation of patients' rights, since HIV testing should be voluntary and confidential. This right is being violated because the results of testing were disclosed to the third parties (police).

Sex workers frequently face violence from police, pimps and third parties in medical institutions, which leads to non-consensual disclosure of HIV status, reluctance to visit doctors regularly, low access to timely treatment of sexually transmitted infections, violations of property and other rights, loss of family and home.

Access to Health

Kazakhstan has been implementing HIV prevention programmes for 15 years. These programs include sensitization trainings for doctors who provide sexual and reproductive health related services and other impartial and non-judgemental support. Internationally funded programmes offer a minimum set of free diagnostic and treatment services. Nonetheless, issues around contraception which women who use drugs and sex workers face are largely ignored. In case such a woman gets pregnant, she will be unable to state sponsored pregnancy services due to the lack of proper ID cards and other relevant documents and will have to cover most of the costs associated with pregnancy herself.

Women frequently fail to seek medical assistance when they have suffered violence, unless they receive serious traumas. Women from these groups prefer to avoid the state healthcare system, as they are afraid of stigma and discrimination in medical institutions or are afraid that they might suffer from repeated violence.

According to the laws on stigma and discrimination (The Code of the Republic of Kazakhstan from September 18, 2009 Law 193-IV on people's health and healthcare and the Constitution), everyone should be free from stigma and discrimination irrespective of their race, religious beliefs, social status and profession. Nonetheless, medical workers enjoy impunity, humiliating sex workers and causing physical and mental pain to them.

“At some point I visited a friendly gynaecologist for a screening. Usually, the size of medical instruments is selected individually for each woman. I told the gynaecologist that I was a sex worker. The doctor's facial expression changed; it was obvious that she hated me. The doctor took the biggest mirror and inserted it into my vagina without any lubrication. I screamed from pain. The doctor however did nothing to reduce the pain; she said I was a bitch, and asked if it was not painful to sleep with so many men. I believe that was violence. She has called me names and she has caused physical pain to me. I complained to the head of the hospital, and I was told that I was not supposed to say that I was a sex worker. The doctor was not prosecuted, and next time I will have to conceal my occupation, which leads to stigma and violence. There is an atmosphere of impunity.”⁶

⁶ Report for the Human Rights Abuse Documentation Project (HRADP), a community-led research project implemented by Public Association Amelia in Kazakhstan with financial support from SWAN and Robert Carr Foundation., <http://swannet.org/ru>

-P., 37 years old, Taldykorgan

The state guarantees access and quality of medical screening, psychosocial, legal and medical consultations, medical assistance and prescription drugs within the framework of the guaranteed medical assistance; the state also guarantees social and legal protection, absence of discrimination based on race, gender, occupation (i.e. engagement in sex work). The practice of providing medical, social, legal and other services is not gender sensitive, and it does not prevent stigma from service providers, which is especially true in rural areas.

The main reason for the lack of consideration for sex workers' human rights violations and gender inequality in HIV/AIDS state policies (including State Healthcare development program) is a lack of strong clear arguments and evidence on access to services and rights violations among sex workers, since there was no state-sponsored community-led research of this issue. Sex workers capacities are also underutilized when it comes to developing, adopting and monitoring HIV/AIDS policies and strategies, as well as in drafting of the national reports on implementing declarations on commitment to fight HIV/AIDS, national and shadow CEDAW reports.

Stigma and Discrimination

Women sex workers and women drug users in the present-day Kazakhstan are disproportionately vulnerable to stigma and discrimination. This is due to the subjugated position of women in politics, social, economic and sexual life enshrined in national laws and deeply rooted in culture and practice. Stigma and discrimination are a day to day reality of many women, especially of female sex workers living with HIV; due to the HIV-status a woman becomes even more marginalized and vulnerable in society.

All sex workers, including transgender female sex workers have fewer instruments and opportunities to implement their enshrined in the Constitution rights compared to other citizens. Restriction of their rights is supported by public opinion, practices of state bodies (namely law enforcement agencies), medical workers and separate population groups who are strongly influenced by of traditional and/or religious values⁷. This group of women faced double discrimination: they are discriminated as women compared to men, and also in relation to other women since their behaviour is indecent and they should not be part of Kazakhstani society.⁸ Thus, one of the NGOs was declined registration due to the term "sex worker" in the founding documents.

Police Violence Against Sex Workers

Sex workers in Kazakhstan are subjected to raids and arbitrary arrest, which is both a violation of sex workers' rights and exposes sex workers to violence at the hands of law enforcement.

*"They already know me, so when raids are on the way, they start approaching me first of all. They would say, you know, you should provide some information, otherwise we will "find" a package among your things, and we will note it down that such and such was detained without documents during the raid, and a package of heroin was discovered during search. At that point this meant that I would land in prison for quite some time, so I would do anything they say..."*⁹

⁷ <https://informburo.kz/novosti/kandidat-v-prezidenty-sadybek-tugel-predlozhit-borotsya-s-gryaznoy-gey-propagandoy.html>

⁸ <https://informburo.kz/novosti/feministkam-kazahstana-otkazali-v-registracii-fonda-iz-za-slova-seks-rabotnica-v-ustave.html>

⁹ <https://vk.com/@almalife-nuzhna-li-legalizaciya-prostitucii-v-kazahstane>

A., Almaty

“Sex workers are detained maximum for three hours during the raids; they are databased and normally have to pay a fine of about 5 minimal salaries (around 12625 tenge)”.¹⁰

L., Almaty

Police claims that this is the ultimate end of the “preventive” actions. In truth, sex work in Kazakhstan should not be punished by law, since sex work is not criminalized. Fining sex workers for violations they haven’t committed, and fabrication of administrative cases is a form of abuse.

NGO Amelia has documented more than 70 cases of violence against sex workers from police in 2018-2019; they included extortion of bribes by police (77%), verbal and physical humiliation (56%), illegal detentions (51%), threats and blackmailing (46.5%). Those were the cases where women were brave enough to talk about cases of violence for them to be documented.

Access to Justice

Article 9 of the Administrative code on equality before the law states: “Everyone is equal before the law and the court in administrative cases. No one shall be discriminated on the basis of his or her origins, social, professional or material status, gender, race, nationality, language, religious beliefs, place of residence or any other grounds”.

However, women who use drugs, sex workers and LGBT people are not equal with men before the law. Due to frequent illegal detentions and other human rights violations by police, women cannot enjoy their rights to unbiased investigation and justice. Women cannot complain to police for a variety of reasons: lack of passport or other IDs, threats from perpetrators and police to disclose sex workers’ occupational status to their families, employers and child custody services in case complaint is submitted; risk of even greater violence.

Due to the high level of police abuse and impunity for abuse, sex workers and transgender women do not complaint to police about domestic violence or other forms of gender violence; they do not see protection due to the fear of extortions, blackmailing, threats, possible forced sex and rape, even though all these activities are a direct violation of their rights.

If a sex worker submits a complaint to police, this may cause greater violence and harassment from both police and the perpetrator than was the case originally. At this point, there is no efficient mechanism to protect survivors of violence from further violence. For example, one cannot complain about cruel treatment or violence confidentially.

Police violence and abuse of sex workers and women who use drugs should be investigated and prosecuted. The government should condemn all forms of violence towards these population groups.

Recommendations:

We ask the CEDAW Committee to recommend to the Kazakhstani Government to:

1. End forced HIV and STI testing of female sex workers.

¹⁰ This quote comes from the Sex Workers Rights Violations Documentation project; case 63 from 12.04. 2019.

2. Ensure that all medical procedures are carried out only with the free and informed consent, in accordance with international standards, and improve access to complaint mechanisms and adequate support to them.
3. Combat the stigmatization, exclusion and social ostracism that female sex workers face by state and non-state actors.
4. Address barriers that female sex workers face in access to health services and justice systems, including through the provision of training to police and medical providers and of legal services to female sex workers.
5. Take measures necessary to prevent, prosecute and sanction sexual and emotional violence, extortion and harassment committed by the police against female sex workers.

Recommendations to the Kazakhstani Government:

1. Ensure implementation of CEDAW's framework principles: de facto equality, non-discrimination and state obligations in relation to all women without exception for groups which are invisible and strongly discriminated: women who use drugs, sex workers, lesbian, bisexual and transgender women.
2. Ensure access to sustainable, non-discriminatory and non-judgemental services to all women suffering violence irrespective of their health and occupational status, sexual orientation and/ or gender identity.
3. Create a separate department for victim protection within the General Prosecutor's Office or Ministry of Justice, which would allow women to seek assistance confidentially and to enjoy protection during investigation and court proceedings.
4. Officially recognize that crimes against these groups of women are hate crimes with the view of using this statement later to review anti-discriminatory legislation.
5. Introduce the notion of "hate motive" towards different social groups (especially LBT community, sex workers and women who use drugs) into the Criminal code as an aggravating circumstance.
6. Women should have equal access to sexual and reproductive healthcare as well as to services for the victims of violence.
7. Illegal forced testing of sex workers for HIV and STIs should be stopped.
8. The Ministry of Health and other relevant bodies shall take all relevant measures to prevent inhumane and degrading treatment bordering on torture in healthcare system.
9. The Ministry of Interior should build awareness of its staff on existing forms of HIV treatment and on the principles and guidelines for voluntary, anonymous (or confidential) and free medical HIV screening and counselling for citizens of Kazakhstan, foreign citizens stateless persons permanently residing in Kazakhstan.
10. Include sensitization trainings for medical staff of the AIDS-centres and general medical institutions on sexual and reproductive health, safe contraception methods, condom-use and safe sexual behaviour and issues around HIV as well as other health-related issues into the comprehensive prevention programming.

11. Include local level sensitization trainings and other educational events for local police (Drug Enforcement Agency, Office of Internal Affairs, Department of Internal Affairs, Prosecutors) on sex workers rights, harm reduction, fighting stigma and discrimination against sex workers, including transgender sex workers, HIV (issues of confidentiality and human rights) into the comprehensive prevention programs.
12. Allocate funding from the local budgets for friendly service provision in the AIDS centre and NGOs with drop-in centres.
13. Modify the law on crisis centres so that anyone can use these services without discrimination based on gender or occupational status (sex work). There is a need for crisis centres that would provide comprehensive services (medical, social, psychological, legal, domestic, training and counselling), including services to women with children.
14. Develop a need-based package of services for sex workers in accordance with the WHO recommendations and other international guidelines.
15. Introduce pre-exposure and post-exposure prophylaxis for HIV-negative patients (sex workers).
16. Include representative of sex workers' community in the Healthcare Working Groups and working groups at the local health department, Public Councils, Country Coordination Mechanism and other decision-making bodies.

Annex II

2018 report to the Committee for the List of Issues

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fICO%2fKAZ%2f31511&Lang=en