

GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

Global Information Society Watch 2015

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Political context

In 1991 Kazakhstan became independent from the Soviet Union, a country where homosexual relationships were regarded as criminal and same-sex intercourse was widely considered part of jail culture only. In the early years of independence, a progressive sense of politics in Kazakhstan was shared by pro-democracy activists and the ex-communist elite that effectively retained power, as well as by the population in general.

The late 1990s, however, saw the curtailing of progressive reforms, and a further consolidation of autocracy, that continued into the 2000s. No elections in Kazakhstan have been considered free and fair by the Organization for Security and Co-operation in Europe (OSCE) monitors and no political opposition exists in parliament. The presidential vote, essentially a farce, is meant to showcase popular support for Nursultan Nazarbayev, who is now 75, and who has been in charge since 1989.

In the last decade, Kazakhstan's civil society has shrunk, opposition parties have been banned or co-opted, and critical media shut down. Yet the regime has managed to improve the economy (largely due to petrodollars) and preserve internal stability. In this way it has secured a sense of legitimacy amongst the citizens, despite widespread corruption and erosion of social welfare.

The authorities try to balance their authoritarianism with a craving for international recognition, and see the hosting of international events as symbols of the foreign approval of their policies. As the president is ageing, the issue of succession in power is becoming acute for elite factions, which show an increased interest in making use of conservative, traditional discourse in their political statements. The migration of the rural population to cities is growing, and has become a serious factor in shaping conservative narratives. As the Russian media dominates the media landscape of Kazakhstan, the impact of Russia's reactionary official agendas on Kazakhstani politics is huge.

Internet in Kazakhstan

The internet penetration rate among the population in Kazakhstan has increased enormously over the past 15 years, skyrocketing from 0.67% in 2000 to over 54% in 2014.¹ The authorities claim that penetration has exceeded 70%² and that the telecommunications sector is one of their developmental priorities. At the same time, the government is fearful about the self-expression and opportunities for mobilisation that the internet provides to citizens. Laws regulating online activities have become more and more restrictive in the last decade.

There is little evidence of the use of mass surveillance by the state, the monitoring of private communications or the state hacking personal accounts, but the authorities possess technologies for deep-packet inspection and the sophisticated monitoring of social media. Recently, the government targeted circumvention, anonymity and encryption tools. Cybercafés are forced to delete and block circumvention tools, and in September 2014, a court decision banned “the functioning of networks and/or means of communication that can be used to circumvent the technical blocking by ISPs.”³ Many anonymisers are blocked, and users experience difficulties while using the Tor network.

Media laws, which also govern online discussions, do not support freedom of expression, even though the right is formally enshrined in the constitution. When the authorities prosecute the media it is mainly on charges of libel and insult. Defamation and dissemination of “knowingly false information” are criminal offences. In both cases the use of the internet is an aggravating factor. Self-censorship is pervasive offline and online, both when it comes to what journalists say and do not say, and regular internet users.

In sum, the authorities in Kazakhstan favour the development of internet-related infrastructure and technologies for socioeconomic purposes, but they want to regulate the online content with an iron fist.

1 See ITU statistics in a downloadable file “Percentage of Individuals using the Internet” at: www.itu.int/en/ITU-D/Statistics/Documents/statistics/2015/Individuals_Internet_2000-2014.xls

2 Inform.kz. (2014, 15 July). “Internet penetration in Kazakhstan is more than 70 per cent” [in Russian]. *Inform.kz*. www.inform.kz/eng/article/2677907

3 Muminov, A. (2015, 8 June). “Anonymizers outlawed” [in Russian]. *Kursiv.kz*. bit.ly/1KWIYzw

The government enjoys a broad array of legal means to punish domestic content providers and block foreign ones. At the time of writing (June 2015) several major online platforms have been blocked, along with some foreign media sites, and scores of adult pornography sites.

The LGBTQ community in Kazakhstan

Kazakhstan boasts about its experience in tolerance, meaning how it manages its inter-ethnic and inter-religious relations, but this tolerance does not extend to sexual minorities. Same-sex relationships were decriminalised in 1997, but no anti-discriminatory legislation has been developed since then. Likewise, no liability is prescribed for discriminatory behaviours or hate speech against sexual minorities, even if by public figures and members of parliament. While the state does not place any systemic pressure on lesbian, gay, bisexual, transsexual and queer (LGBTQ) people, it also has not launched any awareness raising or inclusion campaigns involving LGBTQ rights. Until recently, state policy development in this sphere has been almost non-existent.

Many view LGBTQ people through the lens of prejudice and myths, such as thinking they are responsible for the prevalence of HIV, pose a threat to children, or that their sexual orientation is a medical condition that needs to be treated. Sexual education is not taught at school, and the public opinion favours heteronormative sexual relationships. Media skills in gender-related issues are low. Negative stereotypical views on feminism, the objectification of women and moralising narratives about their “due place” are widespread, as is stigmatisation of LGBTQ people.

Donors, with only a few exceptions, show little interest in supporting non-discrimination campaigns or those pushing for acceptance of LGBTQ people. There used to be a handful of NGOs in Kazakhstan providing services for the gay community under internationally funded AIDS prevention programmes, and several gay-rights NGOs focusing on psychological support for LGBTQs, sharing information and resources and serving as a meeting place for LGBTQ people. In the last five years they all stopped working or went underground, and their websites are no longer available. This was either because of the fear of negative reactions from the public or financial difficulties, rather than due to any persecution from the state.

Gay.kz, the most popular community website, which is not affiliated to any NGO, had a vibrant forum, news, literature and features about gay and queer culture, and an online radio station called “Boys and Girls”. It stopped operating after

longstanding financial troubles in 2012. No viable informational alternative has been developed since then. The gay community’s online experiences are confined to dating sites and dedicated groups on social media where they share “fun stuff”. These platforms are not used to raise their voices publicly or coordinate any meaningful joint activity to push for LGBTQ rights in Kazakhstan.

Sexual minorities in Kazakhstan choose to remain in the closet, and some are lucky enough to do so. “There is no tension at work or with friends if everyone follows this unspoken ‘don’t ask, don’t tell’ rule,” says MV.⁴ “It is much more difficult for transgender people than for gays,” says Ksan, an emerging activist in the field, who expressed understanding towards those who do not want to “come out”. Many heterosexual respondents in Kazakhstan say they “have nothing against LGBTQ people, as long as they sit quietly and don’t make themselves too evident.”

Despite sporadic statements by fringe politicians and an unfriendly media, the gay community was not always in hiding. The degree of public acceptance used to be higher 10 or even five years ago, with gay clubs flourishing in Almaty, Kazakhstan’s biggest city. Today, coming out for gays is a fraught experience, which is likely to involve public humiliation and pain, unlike the early 1990s – many still prefer *kvartirniki*, or having meetings with gay friends in someone’s private apartment, rather than meeting in public places.

The language used by journalists has notably changed to include emotionally loaded words and the use of obsolete terms that serve to stigmatise LGBTQs, such as “homosexuality” or “sodomy”, and the public is readily consuming these. Many accuse Russia’s frenzied propaganda that frames LGBTQs as a sign of the West’s moral obscenity. Cases of violence against LGBTQs are rarely documented, despite nearly 25% of LGBTQ respondents having experienced physical or psychological violence, according to a 2009 report by local NGO Soros-Kazakhstan, the most downloaded report on its website.⁵ In 2013, a transgender’s house was burnt to ashes after appearing in a TV show.⁶ In 2010, a gay rights activist was murdered.⁷

4 Interviews were conducted for this report in May-June 2015 in Almaty. Respondents identified by initials preferred to remain anonymous.

5 Soros-Kazakhstan Foundation. (2009). *Unacknowledged and Unprotected: Lesbian, Gay, Bisexual and Transgender People in Kazakhstan*. en.soros.kz/press_center/publications/unacknowledged_and_unprotected

6 Tengrinews.kz. (2013, 9 January). “A Kapshagai Transsexual in Trouble” [in Russian]. *Tengrinews.kz*. tengrinews.kz/crime/transseksual-iz-kapshagaya-popal-v-bedu-226348

7 Novosti-Kazakhstan. (2010, 29 June). “Gay Rights NGO’s Leader Killed in Karaganda” [in Russian]. *Novosti-Kazakhstan*. sptnkne.ws/wy

Although no new major attacks on LGBTQs have been reported lately, the change in public perception is visible, especially on the internet. Homophobic and transphobic narratives and discussions about sexual “normalcy” often become hot topics on social media and in comments on articles on news sites. Cyber bullying is not widespread, but sometimes does target people who speak out in support of LGBTQs. It rarely involves physical threats – more commonly it involves insults and statements urging the person speaking out about LGBTQ rights to leave the country, says CT, a gay man who decided to follow this unfriendly advice and leave the country.

The “archaisation” of public opinion, as Ainur Shaikenova from Soros-Kazakhstan calls it, can be aggravated by the internet, which exposes human arrogance and ignorance. Online commentators, calling for death to homosexuals, amongst other forms of hate speech, can negatively influence otherwise neutral readers. Social media can reinforce the impact of traditional media biases and further consolidate homophobia and transphobia. Yevgeniya Plakhina from the Friedrich Ebert Stiftung branch in Kazakhstan notes that the internet can help LGBTQs to create a supporting community, but for those who do not belong to this community, everyday discourses online are destructive.⁸

The “poster controversy” and gay propaganda law

In late summer 2014, Kazakhstani internet users were plunged into a stand-off between conservative groups and those supporting homosexuality: the worst combination possible if you want to ignite the flames of online war in this country. A Havas Worldwide advertising agency branch in Kazakhstan created a poster for “Studio 69”, an Almaty-based gay club, and entered it into the influential Central Asian ads competition called the “Red Jolbors”.⁹ The poster won. It was not supposed to be used, but the award-winning work was shared online, generating a tsunami of hate. The artwork, echoing iconic graffiti on the Berlin Wall, depicted two historic personalities kissing – Russian poet Pushkin and Kazakh composer Kurmangazy. Studio 69 is located on the intersection of two streets named after these figures.

The immediate response was widespread public indignation at the “mockery of Kazakhs’ great ancestor”, but it almost instantly turned into a homophobic witch hunt. The advertising agency was blamed for

“propagating gay culture in the ugliest way”, by representing a figure of national pride as homosexual. In the swell of public outrage, all gays in Kazakhstan became collateral victims. The most innocuous user comments called for gays to remain invisible; the most radical urged people to burn them alive. Both agreed that the advertising agency – and, by extension, all LGBTQ people – should not get away with it.

In early September Nurken Khalykbergen, who claimed to be a descendant of the composer, filed a lawsuit for “moral damages” of around USD 55,000, but was denied his court action because he failed to prove he was related to the composer.¹⁰ The ultra-conservative Bolashak (Future) youth movement organised a roundtable against homosexuality, urging the state to criminalise “LGBTQ propaganda”, to expel gays from public institutions and to close all gay clubs. They also picketed outside Studio 69, breaking into the venue and shouting homophobic chants. The action was endorsed by the head of the city administration’s youth policy department.¹¹ It is difficult to trace the origin of Bolashak, but many believe it can hardly be acting on its own, given the regime’s tight control over public politics. “Following two decades of active migration from rural to urban areas, today anti-liberal discourses in Kazakhstan have a lot of influence. Political actors play on it,” says Gulnara Bazhenova, a prominent public commentator.¹²

The next lawsuit arrived from the city administration, which accused the ad makers of “production and dissemination of illegal materials”, saying the poster was “unethical”. The court was criticised by the defendants as biased after it forced them to pay about USD 1,200 in fines.¹³ Later, 34 students and faculty members of the State Conservatory named after Kurmangazy filed another suit against Havas, seeking more than USD 180,000 in moral damages. One of the plaintiffs later revealed that this suit had been supported by the city administration¹⁴ – per-

8 Interview with Yevgeniya Plakhina in Almaty, June 2015.

9 See the artwork’s page on the official website of the Red Jolbors, at: <https://jolbors.com/applications/preview/495>

10 Urazova, D. (2014, 4 September). Descendant of Kazakh composer demands 1mln in damages from gay smooch poster creators. *Tengrinews.kz*. en.tengrinews.kz/politics_sub/Descendant-of-Kazakh-composer-demands-1mln-in-damages-from-255907

11 Aimbetova, M. (2014, 28 August). “Until they close themselves” [in Russian]. *Time.Kz*. www.time.kz/articles/zloba/2014/08/28/pokasami-ne-zakrojutsja; *Radiotochka.kz*. (2014, 22 October). “Public figures in Almaty demand legislative restrictions on gays and lesbians” [in Russian]. *Radiotochka.kz*. radiotochka.kz/4041-obschestvenniki-almaty-trebuyut-zakonodatelno-ogranichit-v-pravah-geev-i-lesbijanok.html

12 Interview with Gulnara Bazhenova in Almaty, June 2015.

13 *Radiotochka.kz*. (2014, 24 September). “Creators of Pushkin and Kurmangazy kissing poster to pay 314 million tenge” [in Russian]. *Radiotochka.kz*. radiotochka.kz/4271-.html

14 *Radiotochka.kz*. (2014, 1 November). “Akimat and vice-rector asked to file a suit – conservatory professor” [in Russian]. *Radiotochka.kz*. radiotochka.kz/5299-elena-nikonova-nas-poprosili-my-kak-normalnoe-grazhdanskoe-obschestvo-iniciativu-podderzhal.html

haps the reason why it was accepted by the court, unlike Khalykbergen's equally groundless claim. The court upheld the suit despite a lack of evidence, leaving the agency bankrupt and forcing its director, Daria Khamitzhanova, to flee the country.

"There is little doubt that the city administration was behind this," says Khamitzhanova, citing numerous procedural violations during the trial. "Reaction from the general public and authorities would have been less hostile 10 years ago,"¹⁵ she adds, acknowledging the recent shift in public opinion. The regime that typically ignores the existence of LGBTQs in Kazakhstani society decided to meddle because it saw the poster as a broader threat to its conservative agenda, explains Plakhina, who added that the authorities do not want to lose control over public discourse. "Their reaction was meant to reinforce self-censorship," agrees MV. "Freedom of expression can be extrapolated into the political area, and they don't want that."

The poster controversy coincided with the final stage of discussions on a draft law that aimed to ban "gay propaganda", although the draft first emerged in 2012 – troublingly, at the time of a similar legislative move in Russia's St. Petersburg. The law in Kazakhstan, initiated by members of parliament, stalled for almost three years, but in 2014 it quickly passed through both chambers of parliament and went to the president on February 2015. The parliamentary decision took only three months and the process of debating the bill was disturbingly non-transparent. Only after a Constitutional Council's resolution in May did the public learn that the draft law was sent to the Council for consideration. The Council, which deliberates on the constitutionality of parliamentary laws, declared the draft law unconstitutional because "several provisions were formulated incorrectly and could violate the constitutional rights of citizens."¹⁶ A few weeks before this decision, a group of 27 top-profile athletes addressed Thomas Bach, the International Olympic Committee (IOC) president, urging him to reject Kazakhstan's bid to host the 2022 Winter Olympics in light of the looming discriminatory anti-LGBTQ bill.¹⁷

The regime's aspirations for international approval helped to prevent the scandalous legislation from being passed this time, says BS, but the way

it was adopted was very alarming, he adds. "It underwent all stages of official law making in the government and in the parliament. Didn't they notice that it was illegal?" he asks. Besides, given the mostly technical nature of the Constitutional Council's ruling, meaning the law can easily be amended and resubmitted for presidential approval, it can be expected that if Kazakhstan loses its Winter Olympic bid to China, the law will be back on the table. Aldan Smail, the main proponent of the draft law and head of the parliamentary working group, has been quick to tell the media that the bill would be altered and re-submitted.¹⁸ "The main danger of this legislation is not about repression," BS believes. "There would hardly be outright persecutions; but it is meant to intimidate people. The wave of hatred we are already witnessing, when backed by the state, may lead to vigilante justice."

There is another dimension to this row over the draft law. In the same way that in many other countries, rights activists criticise attempts by governments to use the issue of protecting children online as a pretext for intensified state control of the internet, the Kazakh "gay propaganda" bill has similar far-reaching implications. In particular, it is aimed at isolating the country's internet users from the global internet by introducing full control over internet service providers' (ISPs) access to external traffic, as well as in-country traffic exchange points, says Max Bokayev, a free internet proponent. Additionally, it planned to introduce liability for the use of alternative IP addresses, in this way targeting various circumvention tools. The state hiding its real agenda when passing laws is not new in Kazakhstani law making, says Plakhina, but it is probably the first time the regime has used sexual rights and a moral pretext to conceal its political goals.

Conclusion

There are various views on how helpful or disruptive the poster controversy was for the LGBTQ community in Kazakhstan. Opinions within the community differ too. Some respondents lament the "unnecessary attention" that the whole affair exposed them to, and blame the advertising company for the radicalisation of public opinion. Plakhina, albeit a strong supporter of the poster, admits that it lent additional arguments to the arsenal of LGBTQ haters, because "the internet is more effective in spreading hate speech rather than helping free speech."

15 Telephone interview with Dariya Khamitzhanova, June 2015.

16 Armitage, S. (2015, 27 May). Kazakhstan's Constitutional Council Rejects "Gay Propaganda" Bill. *BuzzFeed*. www.buzzfeed.com/susiearmitage/kazakhstan-constitutional-council-rejects-gay-propaganda-bi#.mh6l4zN122

17 Terkel, A. (2015, 15 May). Athletes Pressure Olympics To Take A Stand On Kazakhstan's Anti-Gay Legislation. *The Huffington Post*. www.huffingtonpost.com/2015/05/15/olympics-kazakhstan-_n_7291662.html

18 Mamashuly, A. (2015, 27 May). Blockage of the gay propaganda law explained by "inaccuracies". *Azattyq.org*. rus.azattyq.org/content/gei-propaganda-zakonoproekt-blokirovka-kazakhstan/27039630.html

Khamitshanova thinks that if there were more public voices in support of LGBTQ rights, the situation could develop differently. On the other hand, EF is grateful that the poster helped LGBTQ people see not only the extent of homophobia in Kazakhstan, but also identified those opinion leaders who support equal rights for all. She is currently moderating a Facebook group for sexual minorities and heterosexuals that sympathise with their cause. It is a closed group for the time being.

Amina Altayeva, a KIMEP University student who is researching the impact of the internet on sexual minorities in Kazakhstan, also thinks that raising awareness of LGBTQ rights is necessary, but that public scandals might be counterproductive. In the first five months of 2015, there have been more donors engaged in gender issues, supporting public film screenings, discussions on feminism, the publication of thematic *samizdat*,¹⁹ and capacity-building programmes for LGBTQ-oriented groups that have recently started to emerge (such as Almaty, a transgender youth rights initiative).

This renewed interest in LGBTQ rights in Kazakhstan suggests that the effects of the poster controversy were not entirely undesirable. Human Rights Watch (HRW), a leading international NGO, released two statements condemning the court rulings that “supported homophobia, masked as cultural concern.”²⁰ Later on, letters from HRW, as well as from Freedom House and Amnesty International, targeted the “gay propaganda” legislation.

Shakenova says the Kazakh regime’s clinging to conservative traditions should not trample on the Universal Declaration of Human Rights, and that the institution of marriage and family should not be promoted at the expense of LGBTQ people’s rights. The Kurmangazy-Pushkin poster furore helped many people realise this, she says. But many more clearly still do not understand or support the rights of sexual minorities in the country, as the reaction of hordes of online homophobes to the US Constitutional Court’s ruling on same-sex marriages²¹ showed in June 2015.

Action steps

Donors should continue to support programmes aimed at sensitising journalists on gender issues and LGBTQ rights, encouraging progressive standards of reporting on this topic.

Given the hostility or cautiousness of most Kazakhstanis towards discourse on LGBTQ rights, and the government’s legislative initiatives that use the argument of public morals to disguise further control of freedom of expression and association, online activists need to focus on awareness-raising campaigns that explain the potential implications and risks for all citizens when these laws are passed.

In view of the government’s sensitivity about its international image, activists and organisations should appeal to the various countries who have economic and other relationships with Kazakhstan, in order to get their support for LGBTQ rights in the country.

Human rights NGOs should include LGBTQ issues in their advocacy agenda and conduct collective advocacy campaigns pushing for non-discriminatory legislation to be passed in Kazakhstan and for the country to meet its international commitments according to the International Covenant on Civil and Political Rights²² and the recommendations made during the United Nations Universal Periodic Review, amongst others. Initiating lawsuits against discriminatory practices or homophobic statements by politicians can set important precedents for future judicial practice.

There is an absence of a comprehensive online platform dealing with LGBTQ and gender identity issues. Social networking sites are not enough to serve the information and support needs of the LGBTQ community – to guide those who are yet to come to terms with their sexual identity, and to offer support to their parents. Helpful information is scattered and difficult to find. Internet users are confronted with mostly hateful rhetoric. Psychological advice, the sharing of stories and experiences, as well as the offer of legal consultations can be a valuable resource for LGBTQ people.

Self-organised LGBTQ groups should receive donor support for capacity building and forge horizontal partnerships with other human rights defenders, media and sympathising opinion leaders.

More research is necessary to identify the needs of LGBTQ people, and ways to address these needs, given the lack of comprehensive studies in this field.

19 <https://en.wikipedia.org/wiki/Samizdat>

20 Human Rights Watch. (2014, 1 October). Kazakhstan: Lawsuits Over Same-Sex Kiss on Poster. www.hrw.org/news/2014/10/01/kazakhstan-lawsuits-over-same-sex-kiss-poster

21 Liptak, A. (2015, 26 June). Supreme Court Ruling Makes Same-Sex Marriage a Right Nationwide. *The New York Times*. www.nytimes.com/2015/06/27/us/supreme-court-same-sex-marriage.html?_r=0

22 www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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