

Legal Analysis of the Draft Law “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Archival Affairs” with regard to the proposed amendments on the prohibition of “LGBT propaganda” for compliance with international human rights standards

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SUMMARY

This document provides a legal analysis of the proposed amendments introducing a ban on the so-called “propaganda of non-traditional sexual orientation” and the corresponding administrative liability. The analysis shows that the amendments contain vague and discriminatory provisions that restrict freedom of expression, access to information, and equality before the law.

I. International treaties binding on the Republic of Kazakhstan

Kazakhstan is a party to key international treaties that directly address issues of non-discrimination and freedom of expression, including:

1. International Covenant on Civil and Political Rights (ICCPR). The ICCPR was adopted¹ by the UN General Assembly on 16 December 1966 and became one of the key universal treaties in the field of human rights protection. Kazakhstan signed the Covenant on 2 December 2003 and ratified² it on 24 January 2006; it entered into force for the country on 24 April 2006. Within the UN system, the ICCPR provides international protection for such fundamental rights as freedom of expression, protection from discrimination, the right to privacy, and freedom of assembly. The State is obliged to uphold the principles of equality and non-discrimination and to guarantee the freedom to disseminate information. Kazakhstan is also a party to the Optional Protocol³ to the ICCPR, which allows individual applicants to submit complaints to the UN Human Rights Committee.
2. International Covenant on Economic, Social and Cultural Rights (ICESCR). Like the ICCPR, the ICESCR was adopted⁴ by the UN General Assembly on 16 December 1966 and constitutes the second pillar of the International Bill of Human Rights. Kazakhstan signed it on 2 December 2003 and ratified⁵ it on 24 January 2006. The Covenant entered into force for Kazakhstan on 24 April 2006. The document obliges the State to ensure equal access to education, health care, cultural life, and social protection without any discrimination, including discrimination based on sexual orientation.

¹ See International Covenant on Civil and Political Rights, 1966, UN Treaty Series, vol. 999, p.171.

² Law of the Republic of Kazakhstan of 28 November 2005 No. 91-III “On the Ratification of the International Covenant on Civil and Political Rights.”

³ See Optional Protocol to the ICCPR, 1966, UN Treaty Series, vol. 999, p.302.

⁴ See International Covenant on Economic, Social and Cultural Rights, 1966, UN Treaty Series, vol. 993, p. 3.

⁵ See Law of the Republic of Kazakhstan of 21 November 2005 No. 87-III “On the Ratification of the International Covenant on Economic, Social and Cultural Rights.”

3. Convention on the Rights of the Child (CRC). The Convention on the Rights of the Child was unanimously adopted⁶ by the UN General Assembly on 20 November 1989 and is the most widely ratified international treaty in the world. Kazakhstan signed the Convention on 16 February 1994 and ratified⁷ it on 12 August 1994; it entered into force for the State on 11 September 1994. The Convention establishes the State's obligation to ensure non-discrimination of all children, respect their best interests, and guarantee the right to freedom of expression and access to information.
4. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW was adopted⁸ by the UN General Assembly on 18 December 1979 and has the status of the principal international treaty on gender equality. Kazakhstan acceded⁹ to the Convention on 26 August 1998, and it entered into force for the State on 25 September 1998. The Convention obliges Kazakhstan to eliminate all forms of discrimination against women, including stereotyping, violence, and restrictions related to access to information and participation in public life.
5. Convention on the Rights of Persons with Disabilities (CRPD). The Convention on the Rights of Persons with Disabilities was adopted¹⁰ by the UN General Assembly on 13 December 2006. Kazakhstan signed it on 11 December 2008 and ratified¹¹ it on 21 April 2015; the Convention entered into force for the country on 21 May 2015. The CRPD establishes the State's obligations to ensure equality and non-discrimination, accessibility of information and services, freedom of expression and access to information, as well as special protection for children with disabilities.
6. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Convention against Torture was adopted¹² by the UN General Assembly on 10 December 1984 (resolution 39/46) and is one of the core treaties of the international system for protection against ill-treatment. Kazakhstan signed the Convention on 29 November 1997 and ratified¹³ it on 26 August 1998; it entered into force for the State on 25 September 1998. The Convention obliges Kazakhstan to prevent all forms of cruel or degrading treatment and to investigate acts of violence, including hate crimes committed on the basis of sexual orientation or gender identity.
7. International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). The Convention for the Protection of All Persons from Enforced Disappearance was adopted¹⁴ by the UN General Assembly on 20 December 2006

⁶ See Convention on the Rights of the Child, 1989, UN Treaty Series, vol. 1577, p. 3.

⁷ See Resolution of the Supreme Council of the Republic of Kazakhstan of 8 June 1994 "On the Ratification of the Convention on the Rights of the Child" (database No.: B940001400).

⁸ See Convention on the Elimination of All Forms of Discrimination Against Women, 1979, UN Treaty Series, vol. 1249, p. 13.

⁹ See Law of the Republic of Kazakhstan of 29 June 1998 No. 248 "On the Accession of the Republic of Kazakhstan to the Convention on the Elimination of All Forms of Discrimination against Women."

¹⁰ See Convention on the Rights of Persons with Disabilities, 2006, UN Treaty Series, vol. 2515, p. 3.

¹¹ See Law of the Republic of Kazakhstan of 20 February 2015 No. 288-V ZRK "On the Ratification of the Convention on the Rights of Persons with Disabilities."

¹² See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, UN Treaty Series, vol. 1465, p. 85.

¹³ See Law of the Republic of Kazakhstan of 29 June 1998 No. 247 "On the Accession of the Republic of Kazakhstan to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."

¹⁴ See International Convention for the Protection of All Persons from Enforced Disappearance, 2006, UN Doc. A/61/177, UN Treaty Series, vol. 2716, p. 3.

(resolution 61/177). Kazakhstan signed it on 27 February 2007 and ratified¹⁵ it on 18 February 2021; the Convention entered into force for the country on 18 March 2021. The document prohibits all forms of arbitrary detention, secret detention, and other actions that deprive a person of the protection of the law.

8. International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The International Convention on the Elimination of All Forms of Racial Discrimination was adopted¹⁶ by the UN General Assembly on 21 December 1965 (resolution 2106 (XX)) and became the first universal treaty aimed at eliminating all forms of discrimination, intolerance, and hostility. Kazakhstan acceded¹⁷ to the Convention on 26 August 1998, and it entered into force for the State on 25 September 1998. Within the system of international law, CERD establishes the obligations of states to prevent and suppress any actions aimed at creating a hostile, destabilizing, or discriminatory environment, including the dissemination of stereotypes and incitement to hatred against certain groups of the population.

All the aforementioned international treaties form a comprehensive set of human rights obligations for the Republic of Kazakhstan and require the State not only to take measures to ensure non-discrimination, the protection of human dignity, freedom of expression, and access to information, but also to refrain from adopting legislative and administrative measures that may lead to violations of these rights or restrict their exercise. These obligations must be taken into account when drafting any normative legal acts affecting human rights and freedoms.

II. Priority of International Treaties in the Legal System of the Republic of Kazakhstan

International treaties ratified by the Republic of Kazakhstan constitute an integral part of its applicable law. In accordance with Article 4 of the Constitution of the Republic of Kazakhstan, ratified international treaties have priority over national laws and are subject to direct application in cases where their provisions do not require the adoption of separate normative acts. This means that in the event of a conflict between the norms of national legislation and the provisions of an international treaty, the State's international obligations prevail.

Recognition of the primacy of international law is also reflected in the constitutional principle enshrined in Article 8 of the Constitution, according to which the Republic of Kazakhstan recognizes the principles and norms of international law. This constitutional provision forms the basis for integrating international human rights standards into the national legal system and applying them in legal practice.

The priority of a State's international obligations is also affirmed by international law. Article 26 of the Vienna Convention on the Law of Treaties (1969) establishes¹⁸ the general principle of *pacta sunt servanda*, according to which states are obliged to perform in good faith the treaties to

¹⁵ See Law of the Republic of Kazakhstan of 15 December 2008 No. 104-IV "On the Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance."

¹⁶ See International Convention on the Elimination of All Forms of Racial Discrimination, 1965, UN Treaty Series, vol. 660, p. 195.

¹⁷ See Law of the Republic of Kazakhstan of 29 June 1998 No. 245 "On the Accession of the Republic of Kazakhstan to the International Convention on the Elimination of All Forms of Racial Discrimination."

¹⁸ See Vienna Convention on the Law of Treaties, 1969 (Articles 26–27), UN Treaty Series, vol. 1155, p. 331.

which they are parties. In addition, Article 27 of the Convention expressly provides that a state may not invoke its internal law as justification for its failure to perform an international treaty.

III. Obligation to Take International Standards into Account in the Development and Adoption of Legislation

The obligation of the State to ensure that national legislation complies with international obligations is also confirmed by the practice of UN treaty bodies. In its General Comment No. 31 (2004), the UN Human Rights Committee states that States parties to the International Covenant on Civil and Political Rights must bring their domestic legislation into conformity with the Covenant and ensure that no legislative acts violate the rights guaranteed by the Covenant¹⁹. The Committee emphasizes that compliance with the Covenant includes both the adoption of positive measures and the obligation to refrain from actions that may lead to violations of rights.

A similar position is taken by other treaty bodies. The UN Committee on the Rights of the Child has repeatedly²⁰ emphasized in its General Comment No. 5 (2003) that states are obliged to ensure the harmonization of national legislation with the provisions of the Convention on the Rights of the Child, including the prohibition of discrimination and the protection of the child's right to access information.

The UN Committee on the Elimination of Discrimination against Women, in its General Recommendation No. 28 (2010), states²¹ that States are prohibited from adopting laws that may lead to violations of the rights guaranteed by the Convention on the Elimination of All Forms of Discrimination against Women. The Committee emphasizes the need to assess all legislative initiatives for compliance with the principles of non-discrimination and equality.

The UN Committee against Torture consistently²² notes in its General Comment No. 2 (2008) that States are obliged to prevent the adoption of norms or practices that may facilitate cruel, inhuman or degrading treatment or create conditions for their use.

The position of the Committee on the Elimination of Racial Discrimination is also unequivocal²³ in its General Recommendation No. 14: the State is obliged to prevent the creation of a discriminatory environment through legislation and state actions, and any norms that reinforce stigma or intolerance are contrary to the obligations under the Convention.

The body of the aforementioned international norms and the positions of UN treaty bodies confirm that Kazakhstan is obliged both to ensure that national legislation is brought into conformity with international human rights standards and to refrain from adopting laws that may lead to their violation. In this regard, any draft laws and amendments affecting human rights and freedoms must be developed in strict compliance with the State's international obligations.

¹⁹ See CCPR General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004).

²⁰ See CRC General Comment No. 5: General Measures of Implementation of the Convention, UN Doc. CRC/GC/2003/5.

²¹ See CEDAW General Recommendation No. 28, UN Doc. CEDAW/C/GC/28 (2010).

²² See CAT General Comment No. 2: Implementation of Article 2, UN Doc. CAT/C/GC/2 (2008).

²³ See CERD General Recommendation No. 14 (1993), UN Doc. A/48/18.

IV. Relationship of the Proposed Amendments with the International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights establishes the State's obligations to ensure protection for all persons against discrimination (Article 26), to respect and protect the right to freedom of expression (Article 19), and to prevent all forms of incitement to hatred (Article 20). In its practice, the Human Rights Committee consistently emphasizes that state restrictions on freedom of expression or access to information must meet strict criteria of necessity, legitimate aim, and proportionality.

The proposed amendments introducing administrative liability for the so-called “propaganda of non-traditional sexual orientation” effectively imply a ban on positive, neutral, or even scientifically informative information about persons belonging to a particular social group. Such a ban inevitably places members of the LGBTQIA+ community in a disadvantaged position and leads to a violation of the principle of equality before the law. Article 26 of the ICCPR provides that no person shall be subjected to discrimination on any ground, including status or social affiliation.

In General Comment No. 18, the Committee emphasizes²⁴ that discrimination includes any distinction that has the purpose or effect of impairing or nullifying the equal recognition of rights. A prohibition on the “formation of a positive image” of a particular group of persons directly corresponds to the definition of discrimination and contradicts Kazakhstan's obligations.

The right to freedom of expression enshrined in Article 19 of the ICCPR permits restrictions only under strict compliance with a three-part test: (1) the restriction must be provided by law; (2) it must pursue one of the limited legitimate aims; and (3) it must be necessary and proportionate. In its General Comment No. 34, the Committee emphasizes²⁵ that states may not impose excessive or vague prohibitions on information, particularly when it concerns social groups subject to stigmatization. Amendments establishing liability for the “positive image” or “expansion of information” about sexual orientation do not meet the criterion of necessity in a democratic society.

Particular significance attaches to Article 20 of the ICCPR, which prohibits any advocacy of hatred that may lead to discrimination, hostility, or violence. Amendments that place LGBTQIA+ people together with pedophilia within a single category of “dangerous behavior” create precisely such an environment. The Committee has repeatedly²⁶ stated that the State bears responsibility for preventing incitement to hatred not only in the form of actions by private individuals, but also through the content of legislation that may reinforce stigma and provoke hostility.

²⁴ See Human Rights Committee General Comment No.18: Non-discrimination, para. 7

²⁵ See Human Rights Committee, General Comment No. 34: Article 19 – Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (2011).

²⁶ See HRC, General Comment No.11: Prohibition of propaganda for war and inciting national, racial or religious hatred, UN Doc. HRI/GEN/1/Rev.1 (1983) и Human Rights Committee, General Comment No.34, UN Doc. CCPR/C/GC/34 (2011), para. 7, 48.

In a number of countries where similar provisions have been adopted, the UN Human Rights Committee has expressed²⁷ concern that such laws violate Articles 19 and 26 of the Covenant. The Committee has emphasized that references to sexual orientation in a negative or criminalizing context by the State contribute to discrimination and may lead to the deterioration of the situation of the group concerned. Thus, the proposed amendments contradict the key provisions of the ICCPR and the established practice of the treaty body responsible for monitoring its implementation.

One of the key decisions of the UN Human Rights Committee shaping international standards on issues of discrimination and stigmatization is the case *Toonen v. Australia* (1994)²⁸. In this decision, the Committee explicitly recognized that sexual orientation falls within the protection of Articles 2 and 26 of the ICCPR, stating that the term “sex” includes sexual orientation. The Committee also noted that the existence of criminal provisions that negatively single out a particular group reinforces social prejudice and contributes to discrimination.

The decision in *X v. Colombia* (2007)²⁹ is particularly important for analyzing the amendments in Kazakhstan, as the Committee recognized that the State may not adopt legislative acts that reinforce social stigma against a particular group. The Committee noted that state policy reflected in normative acts may provoke hostility toward social groups, thereby violating Article 26 of the Covenant.

Thus, the proposed amendments directly contradict Articles 17, 19, 20, and 26 of the International Covenant on Civil and Political Rights, as well as the practice of the Human Rights Committee, including its General Comments No. 18, No. 34, and No. 11, and the decisions in *Toonen v. Australia*, *X v. Colombia*, and other communications concerning discrimination and the stigmatization of vulnerable groups. The amendments reinforce negative stereotypes, create an unfavorable and hostile environment toward LGBTQIA+ people, restrict freedom of expression, create barriers to access to information, and violate the principle of equality before the law. They also contradict the State’s obligation to prevent incitement to hatred under Article 20 of the Covenant, as the law-making process itself becomes a source of stigmatization and social hostility. In light of Kazakhstan’s obligations under the ICCPR, the proposed amendments are incompatible with international standards in the field of civil and political rights.

V. Relationship of the Proposed Amendments with the International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights establishes³⁰ the State’s obligations to ensure equal and non-discriminatory access to education, information, cultural life, health care, and social services. Article 2 of the Covenant explicitly provides that rights must be guaranteed without discrimination of any kind, including on the basis of “any other status.” The UN Committee on Economic, Social and Cultural Rights has repeatedly clarified that this list is

²⁷ See HRC, General Comment No. 18: Non-discrimination.

²⁸ See *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (31 March 1994).

²⁹ See *Cm. X v. Colombia*, Communication No. 1361/2005, UN Doc. CCPR/C/89/D/1361/2005 (30 March 2007).

³⁰ See Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/20 (2 July 2009).

open-ended and includes sexual orientation and gender identity. This position is clearly articulated in General Comment No. 20 on non-discrimination.

In General Comment No. 20, the Committee emphasizes³¹ that discrimination includes not only direct prohibitions but also any state measures that have the purpose or effect of restricting a group's access to social benefits, education, information, or cultural resources. The Committee particularly notes that states must refrain from adopting laws that reinforce stigma or exclude vulnerable groups from public life.

Article 15 of the ICESCR enshrines³² the right of everyone to take part in cultural life. In General Comment No. 21, the UN Committee on Economic, Social and Cultural Rights notes that culture includes identity, forms of self-expression, social practices, and forms of information that are important for self-respect and personal development. The State is obliged to create conditions in which all groups of the population can participate in cultural life without fear of stigma or punishment.

Article 12 of the Covenant enshrines the right to the highest attainable standard of health, including mental health. The Committee has repeatedly emphasized³³ that stigmatization and discrimination against vulnerable groups constitute barriers to the realization of the right to health. In its recommendations, the Committee has stated that the State should not adopt measures that reinforce prejudice or exclude groups from access to information necessary for health and well-being.

Particular importance is attached³⁴ to the open nature of economic and social rights recognized by the Committee. The State is obliged not only to refrain from imposing restrictions but also to actively take measures to eliminate discrimination, promote tolerance, and ensure access to information. In General Comment No. 20, the Committee explicitly emphasizes that states must prevent legislative measures that lead to the marginalization of certain groups and the restriction of their rights.

Thus, the proposed amendments directly contradict Articles 2, 12, and 15 of the ICESCR, as well as General Comments No. 20 and No. 21 of the UN Committee on Economic, Social and Cultural Rights. They reinforce stigma, restrict access to information, undermine the right to health, and exclude members of the LGBTQIA+ community from cultural and social life. In light of Kazakhstan's obligations under the ICESCR, such legislative measures are incompatible with international standards in the field of economic, social and cultural rights.

³¹ See Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/20 (2 July 2009).

³² See Committee on Economic, Social and Cultural Rights, General Comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1(a), of the Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/21 (21 Dec 2009).

³³ See Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), UN Doc. E/C.12/2000/4 (11 Aug 2000).

³⁴ See Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/20 (2 July 2009).

VI. Relationship of the Proposed Amendments with the Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child establishes the State's obligations to ensure protection of the child from all forms of discrimination, guarantee access to information necessary for development, and respect the child's right to freedom of expression. Article 2 of the CRC provides for the prohibition of any discrimination based on the status or other characteristics of the child's parents, legal guardians, or family members.

In accordance with Article 13 of the CRC, the child has the right to freely express their views, including seeking, receiving, and imparting information. Article 17 further requires states to ensure children's access to a wide range of information and materials from diverse sources, especially those that contribute to the child's social and cultural development and promote respect for human rights and dignity. The Committee has emphasized³⁵ that state measures should not restrict children's access to information about the diversity of human identities and social groups, as such information is essential for fostering tolerance and preventing hate-based violence.

In General Comment No. 15 on the child's right to health, the Committee stated³⁶ that the State is obliged to protect children from stigma, discrimination, and intimidation, including in school, family, and society, and to ensure access to reliable and scientifically grounded information necessary for physical and psychological well-being. The Committee explicitly notes that stigmatizing approaches by the State may pose a threat to children's mental health and hinder their willingness to seek help.

The Committee on the Rights of the Child has also considered similar issues in relation to countries that introduced so-called "propaganda laws." In its concluding observations on Russia (2014)³⁷ and Hungary (2020)³⁸. The Committee explicitly stated that such laws are discriminatory, violate Articles 2, 13, and 17 of the CRC, reinforce prejudice, and create a hostile environment for children belonging to the LGBT community or living in such families. The Committee emphasized that children's access to information about the diversity of identities is a necessary part of healthy development, and that the State must protect children from discrimination rather than reproduce it through legislation.

Thus, the proposed amendments are incompatible with Articles 2, 13, and 17 of the Convention on the Rights of the Child and contradict General Comments No. 5, No. 12, No. 13, and No. 15 of the Committee on the Rights of the Child. The amendments reinforce stigma, restrict children's access to information important for their development and well-being, and create

³⁵ See Committee on the Rights of the Child, General Comment No. 12: The Right of the Child to be Heard, UN Doc. CRC/C/GC/12 (2009), para. 82–83.

³⁶ See Committee on the Rights of the Child, General Comment No. 15: The right of the child to the enjoyment of the highest attainable standard of health (art. 24), UN Doc. CRC/C/GC/15 (2013).

³⁷ See Concluding observations on the combined fourth and fifth periodic reports of the Russian Federation (CRC/C/RUS/CO/4-5, 25 February 2014).

³⁸ See Concluding observations on the sixth periodic report of Hungary (CRC/C/HUN/CO/6, adopted 3 March 2020).

conditions for discrimination against children on the basis of sexual orientation or gender identity—whether their own or that of their family members. In light of Kazakhstan’s obligations under the CRC, such measures do not comply with international standards for the protection of children’s rights.

VII. Relationship of the Proposed Amendments with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a key international treaty aimed at eliminating discrimination and stereotypes that hinder women’s equality. The Convention places an obligation³⁹ on the State not only to repeal discriminatory norms but also to prevent all forms of prejudice and stereotypes that undermine women’s rights (Articles 2–5).

The proposed amendments introducing administrative liability for the so-called “propaganda of non-traditional sexual orientation” contradict Kazakhstan’s obligations under CEDAW, as they affect a vulnerable group of women—lesbian, bisexual, and transgender women—by reinforcing their marginalization and subjecting them to double discrimination: on the basis of sex and on the basis of sexual orientation or gender identity. The UN Committee on CEDAW, in its General Recommendation No. 28, explicitly⁴⁰ states that discrimination on the basis of sexual orientation and gender identity falls within the definition of discrimination under Article 1 of the Convention and is impermissible.

The Committee has also repeatedly emphasized⁴¹ that the State is obliged to eliminate gender stereotypes and negative social perceptions of women. In General Recommendation No. 33, the Committee notes that any legislation that increases the vulnerability of certain categories of women violates the State’s obligations to ensure equal access to rights and justice. Amendments that stigmatize LGBTQIA+ women and restrict access to information create additional barriers to the realization of rights and violate the principles of non-discrimination.

In General Recommendation No. 35, the Committee emphasizes⁴² that state measures based on stereotypes may reinforce violence against women, and that normative acts portraying certain identities as “deviant” contribute to the creation of a hostile environment and increase the risk of discrimination and persecution.

In its concluding observations, the Committee has analyzed similar situations. With regard to Russia, the Committee expressed⁴³ concern about “propaganda laws,” noting that such provisions reinforce negative stereotypes and create an unsafe environment for women belonging to the LGBT community. With regard to Kazakhstan, the Committee recommended⁴⁴ that the State prevent the adoption of laws that increase the vulnerability of women subjected to discrimination on the basis of sexual orientation or gender identity.

³⁹ See CEDAW, UN Treaty Series, vol. 1249; Kazakhstan accession: United Nations Treaty Collection

⁴⁰ See CEDAW General Recommendation No. 28, UN Doc. CEDAW/C/GC/28 (2010), paras. 18–19.

⁴¹ See CEDAW General Recommendation No. 33, UN Doc. CEDAW/C/GC/33 (2015), para. 51.

⁴² See CEDAW General Recommendation No. 35, UN Doc. CEDAW/C/GC/35 (2017), paras. 18, 24.

⁴³ See CEDAW/C/RUS/CO/8 (2015), paras. 8–9, 20–21.

⁴⁴ See CEDAW/C/KAZ/CO/5 (2019), paras. 17–18.

Thus, the proposed amendments directly contradict Articles 2, 3, and 5 of CEDAW, which require the State both to repeal discriminatory norms and to actively prevent stereotypes and prejudices. They reinforce negative attitudes, strengthen stigma, and expose LGBTQIA+ women to additional risks of violence, discrimination, and exclusion from public life.

VIII. Relationship of the Proposed Amendments with the Convention on the Rights of Persons with Disabilities (CRPD)

The Convention on the Rights of Persons with Disabilities (CRPD) is a key document that establishes⁴⁵ the rights of persons with disabilities and the obligations of states to ensure their full and equal participation in all areas of life. The CRPD provides that the State must eliminate discrimination, stigma, and barriers, and ensure the accessibility of information, services, and resources for persons with disabilities.

The proposed amendments introducing administrative liability for the so-called “propaganda of non-traditional sexual orientation” particularly affect persons with disabilities who belong to the LGBTQIA+ community. Research and the findings of UN treaty bodies confirm⁴⁶ that persons with disabilities who also belong to the LGBTQIA+ community face multiple and intersecting forms of discrimination. In its General Comment No. 6 on equality and non-discrimination, the Committee on the Rights of Persons with Disabilities explicitly states that states must prevent any normative measures that lead to the marginalization of groups experiencing intersectional discrimination, including discrimination based on sexual orientation and gender identity.

Particular significance attaches to Article 5 of the CRPD, which establishes the State’s obligation to ensure equality before the law and effective protection against discrimination. Article 9 of the CRPD provides for the obligation to ensure accessibility of information and communications. Normative restrictions that prohibit positive or neutral information about certain social groups violate the requirement of accessibility—especially for persons with disabilities, who often rely on official state information resources. The Committee has repeatedly emphasized⁴⁷ that the State must ensure free access to information necessary for the exercise of rights and the enhancement of the autonomy of persons with disabilities.

Article 21 of the CRPD enshrines the right to freedom of expression and access to information, including the obligation of the State to promote access to information in accessible formats and to prevent any forms of censorship or restrictions based on discriminatory logic.

In its concluding observations on various states, the Committee on the Rights of Persons with Disabilities has criticized⁴⁸ normative acts that reinforce stereotypes or restrict access to information⁴⁹ for persons with disabilities, emphasizing that states should not adopt legislative measures that reinforce prejudice, discrimination, and social isolation.

⁴⁵ See CRPD, UN Treaty Series, vol. 2515; Kazakhstan ratification — United Nations Treaty Collection.

⁴⁶ See CRPD General Comment No. 6 (2018), UN Doc. CRPD/C/GC/6, paras. 19, 20, 28.

⁴⁷ See CRPD/C/GC/2 (2014), para. 31.

⁴⁸ See CRPD/C/RUS/CO/1 (2015), paras. 14–16.

⁴⁹ See CRPD/C/HUN/CO/1 (2012), paras. 8–9.

Thus, the proposed amendments directly contradict Articles 5, 7, 9, and 21 of the CRPD, as well as the position of the Committee on the Rights of Persons with Disabilities as expressed in its General Comments. The amendments reinforce discriminatory perceptions, restrict the accessibility of information, intensify social stigmatization, and undermine the ability of persons with disabilities—especially those belonging to the LGBTQIA+ community—to enjoy their rights on an equal basis with others.

IX. Relationship of the Proposed Amendments with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The Convention against Torture is one of the core universal treaties aimed at preventing all forms of cruel, inhuman, or degrading treatment or punishment. The Convention obliges⁵⁰ states to prevent any forms of ill-treatment, investigate such cases, ensure protection for vulnerable groups, and refrain from discriminatory practices that create conditions for degrading or hostile treatment.

The proposed amendments introducing administrative liability for the dissemination of information about LGBTQIA+ persons contribute to the formation of a hostile and dehumanizing environment that creates risks of degrading treatment. The Committee against Torture has repeatedly⁵¹ stated that states must remove from their legislation provisions that provoke stigma, reinforce prejudice, or create conditions for violence against certain groups of the population. With regard to LGBTQIA+ persons, the Committee has emphasized that discriminatory laws and state rhetoric increase the likelihood of ill-treatment, as they legitimize practices of persecution and violence.

Particular importance attaches to Article 16 of the Convention, which requires⁵² states to prevent not only torture but also any act of cruel, inhuman, or degrading treatment committed by public authorities or arising as a result of state policy. Amendments that associate LGBTQIA+ identities with “dangerous” or “destructive” behavior may contribute to the humiliation of human dignity, reinforce social hostility, and increase the risk of violence or persecution by private individuals.

Moreover, the Committee against Torture has emphasized⁵³ that discriminatory state policies may themselves be considered degrading treatment if they lead to social stigmatization, threats to security, psychological pressure, or fear of persecution.

Thus, the proposed amendments are in direct contradiction with Articles 2 and 16 of the Convention against Torture, as well as with General Comment No. 2 of the Committee, which emphasizes the need to prevent state policies that reinforce discrimination, stigma, and hostility. The amendments entrench negative attitudes, increase the risk of degrading treatment, and

⁵⁰ See Convention against Torture, UN Treaty Series, vol. 1465; Kazakhstan ratification — United Nations Treaty Collection.

⁵¹ See Committee against Torture, General Comment No. 2, UN Doc. CAT/C/GC/2 (2008), paras. 21–22.

⁵² See CAT General Comment No. 2, para. 15.

⁵³ See Committee against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, UN Doc. CAT/C/GC/2 (2008).

contribute to the creation of an unsafe social environment for LGBTQIA+ persons, including minors and persons with disabilities.

X. Relationship of the Proposed Amendments with the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) is aimed at protecting individuals from all forms of enforced disappearance and from related violations—arbitrary detention, deprivation of liberty without registration, denial of access to legal assistance, and threats to security.

Although the Convention does not directly regulate issues of freedom of expression or non-discrimination, the Committee on Enforced Disappearances emphasizes⁵⁴ that the State must prevent any form of state policy that creates an atmosphere of threat, intimidation, or vulnerability for certain groups of the population. This position is reflected in the Committee’s general comments, which state that hostile rhetoric, stigma, and discriminatory measures may increase the risk of unlawful actions by state authorities or private actors.

The proposed amendments, which portray LGBTQIA+ people as a “dangerous” phenomenon and introduce liability for the dissemination of information about them, reinforce stigma and create an atmosphere of fear. Such measures may increase the risk of arbitrary interference in private life, pressure from law enforcement authorities, and threats to the security of community members, which contradicts Articles 7 and 12 of the Convention, requiring⁵⁵ the prevention of intimidation and the protection of vulnerable groups.

In this context, the amendments are incompatible with Kazakhstan’s obligations under the ICPPED, as they create conditions for discriminatory pressure and increase security risks for a particular group of the population.

XI. Relationship of the Proposed Amendments with the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) requires states to prevent any policy or practice that leads to the creation of a hostile, dehumanizing, or dangerous environment for certain groups of the population.

The Committee emphasizes⁵⁶ that the State must refrain from measures that “have the purpose or effect” of creating negative stereotypes or social exclusion of groups. The Committee also notes⁵⁷ that public statements and legislative initiatives by state authorities that reinforce prejudice or portray any group as “dangerous” or “undesirable” may lead to discrimination and

⁵⁴ See CED General Comment on Women Affected by Enforced Disappearances, UN Doc. CED/C/GC/Women (2022), paras. 12–14.

⁵⁵ See CED/C/GC/2 (2022), paras. 6–8.

⁵⁶ See CERD General Recommendation No. 14 (1993), paras. 1–3.

⁵⁷ See CERD General Recommendation No. 35 (2013), paras. 10–15.

denial of protection from violence. Such measures are incompatible with the State's obligations to ensure equal dignity and protection for all persons under its jurisdiction.

The proposed amendments, which reinforce negative stereotypes and create a hostile environment for a particular social group, have a discriminatory effect and contradict the general principles of preventing hostility and negative stereotyping established under CERD.

XII. European Court of Human Rights

In addition to the Committee's decisions, the judgments of the European Court of Human Rights carry significant legal weight, are widely cited by the United Nations, and are used in global legal doctrine. In *Bayev and Others v. Russia* (2017), the Court held that "gay propaganda" laws violate freedom of expression, reinforce social hostility, and legitimize discrimination. The Court emphasized that associating LGBT+ people with a threat to children is unfounded and dangerous.

Similarly, in *Fedotova and Others v. Russia* (2021/2023), the Court noted that the State must not only refrain from discrimination but also take measures to prevent the stigmatization of vulnerable groups. The Court emphasized that legislation must not create a negative image of any social group or contribute to its isolation.

CONCLUSION

The proposed amendments contradict the international obligations of the Republic of Kazakhstan under key UN treaties, including the ICCPR, ICESCR, CRC, CEDAW, CRPD, and CAT. These instruments prohibit discrimination, guarantee freedom of expression, and require states to prevent the adoption of measures that reinforce stigma or hostility toward certain groups of the population.

The amendments introduce vague prohibitions and administrative liability for the dissemination of information, which violates the principles of legality, necessity, and proportionality. The State has not presented evidence of threats that could justify such restrictions. Moreover, international bodies have already recognized similar provisions as discriminatory and incompatible with human rights.

The legislative structure of the amendments creates a negative image of the LGBTQIA+ community and may provoke hostility, as well as create conditions for pressure, threats, and denial of protection. This is incompatible both with Kazakhstan's international obligations and with the constitutional guarantees of dignity, equality, and freedom of expression.

In conclusion, the analysis demonstrates that the amendments do not comply with the principles of the rule of law and international human rights standards. Their adoption would create risks of further violations and negative consequences for Kazakhstan's international reputation. In light of the above, these amendments cannot be supported and should be removed from the draft law.