



Written submission for the 74th Pre-Session of the UN Human Rights Council Working Group on the Universal Periodic Review of Kazakhstan

Follow up to the previous review

During its second Universal Periodic Review in 2014 Kazakhstan received two recommendations on sexual orientation and gender identity (SOGI). Among them, the recommendation to “[e]nact specific legislation that prohibits discrimination against women and on the basis of sexual orientation, and develop a system through which all individuals can safely report cases of discrimination and access avenues of redress”¹ enjoyed the support of Kazakhstan, which it considered to be already implemented.

At the same time the recommendation to “[s]trengthen the legal framework for the protection and non-discrimination of lesbian, gay, bisexual, transgender and intersex people”² was rejected. Similar recommendations on adoption of comprehensive anti-discrimination legal framework which “explicitly lists sexual orientation and gender identity among the prohibited grounds for discrimination” have been issued by the Human Rights Committee (2016)³ and the Committee on Economic, Social and Cultural Rights (2019)⁴ throughout the reporting period.

No recommendation on SOGI received by Kazakhstan during the previous UPR cycle has been implemented, and discrimination, hate crimes and police misconduct have continued throughout the reporting period.

I. Discrimination of LBQ women (lesbian, bisexual, queer) and transgender people

According to the Research on Needs Assessment of LBQ Women conducted by Kazakhstan Feminist Initiative “Feminita” (“Feminita”) in 2016-2017 more than half of the women surveyed (57%) know someone from their environment who has been abused or insulted because of their sexual orientation. Almost half of the respondents (44,3%) have experience of violence or negative attitudes because of sexual orientation. Absence of anti-discrimination legislation and court practice do not allow to file a complaint and register any crime on grounds of SOGI while court judgements concerning discrimination cases against LBQ women and transgender persons go to other *corpus delicti* (e.g. robbery, hooliganism, etc).

Although Kazakhstan has ratified key international treaties relevant to equality and non-discrimination, it falls short in meeting international standards in their implementation. Despite a number of provisions directed at equality across national legislation, at best this offers “a patchwork of protection from discrimination” with a weak enforcement and implementation framework and no codified definition of the “discrimination” term, its forms, and grounds. **There is no explicit prohibition of discrimination on the basis of SOGI under national law.**

In March 2018 “Feminita” in a coalition with local civil society organisations (CSOs) presented a road map on implementation of the Human Rights Committee’s recommendation on adoption and promotion

¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review, [A/HRC/28/10](#), 10 December 2014, para. 124.6. (Canada).

² Human Rights Council, Report of the Working Group on the Universal Periodic Review, [A/HRC/28/10](#), 10 December 2014, para. 126.24. (Spain).

³ Human Rights Committee, Concluding Observations on Kazakhstan, [CCPR/C/KAZ/CO/2](#), 9 August 2016, para. 10.

⁴ Committee on Economic, Social and Cultural Rights, Concluding Observations on Kazakhstan, [E/C.12/KAZ/CO/2](#), 29 March 2019, para. 11.

of such anti-discrimination legislation to the state authorities⁵. So far the government has not taken steps towards initiation of a lawmaking process and implementation of the recommendation.

II. (a) Discriminatory procedure on legal gender recognition of transgender people

The mandatory requirement for changing the gender marker, surname, name and patronymic established by legal legislation is to undergo invasive genital surgeries which include coerced sterilisation and deprive transgender people of their reproductive health. This requirement is stipulated in Article 257, Subsection 13 of the Code on Marriage (Matrimony) and Family of the Republic of Kazakhstan⁶.

Legal recognition of gender identity is also an important component of other fundamental rights, including the right to privacy, the right to freedom of expression, the right to be free from arbitrary arrest, and rights related to employment, education, health and free movement. Human rights organisations regularly receive reports of refusal to hire and receive education for transgender people, obstacles and refusals in obtaining medical care, degrading procedures for passing border controls, refusals to provide all kinds of services, such as banking and postal services. All of them occur when it becomes clear that their appearance does not match the gender marker on their official documents.

(b) Discriminatory provisions in the criminal legislation: liability for “lesbianism” and “sodomy”

Although consensual same-sex relationships were decriminalised in Kazakhstan with adoption of the Criminal Code in 1999, simultaneously the legislator introduced discriminatory provisions on “sodomy” and “lesbianism” in Articles 121, 122, 123 as a compromise decision⁷.

Whereas the prohibition of violent sexual acts are commended, the purposeful inclusion of “sodomy” and “lesbianism” as distinct from “other acts of sexual nature” clearly represents a direct discrimination on grounds of sexual orientation. Furthermore, it provides a potentially dangerous ground for bringing to criminal account people based on their sexual orientation.

III. State challenges to feminist and LBQT advocacy groups

Although the Kazakhstan Law on Non-commercial Organisations does not explicitly prohibit registration of LBQT organisations, the justice authorities deny LBQT advocacy groups the right to formally register as legal entities. In the case of “Feminita” the justice authorities denied to register the initiative 3 times without providing clear reasoning throughout the 2018-2019 period. “Feminita”’s claims to the district and appeals court were dismissed on two grounds largely based on reasonings of the justice authorities. On 3 September 2019 the Appeals Court found that:

“the objectives of the fund’s [“Feminita”’s] activities stipulated in paragraph 2 of its Charter *do not provide for strengthening of well-established spiritual and moral values, spiritual culture, prestige and role of the family in society.*

Furthermore, [according to] paragraph 2.1 of the entity’s Charter are entitled *to bring changes in the political sphere which is unacceptable for a legal entity in the form of a public fund*”.

This state approach placing limitations to activities of feminist and LBQT advocacy groups not only prevents them from operating as a fully-fledged organisation receiving various benefits that accompany

⁵ Kazakhstan Feminist Initiative “Feminita”, [‘Feminita’ takes part in development of “the road maps”](#), 11 April 2018; Kazakhstan International Bureau for Human Rights and Rule of Law, [Seven stumbling “road maps”](#), 27 March 2018.

⁶ [Code on Marriage \(Matrimony\) and Family of the Republic of Kazakhstan](#), 26 December 2011, Article 257(13).

⁷ [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014, Articles 121, 122, 123.

formal legal status, but individuals can face hefty fines and administrative charges if they direct or participate in an unregistered organisation⁸.

IV List of prohibited professions for women

Article 26 of the Labour Code prohibits the employment of women in jobs involving heavy physical labour or harmful and hazardous working conditions on the basis of the list of banned occupations for women, which was approved by order No. 944 of the Minister of Health and Social Development of 8 December 2015. It further notes that different occupations are prohibited for women to “ensure maternity protection and also safeguard women's health”⁹.

In 2018, the list was narrowed from 287 banned occupations to 219 professions following the adoption of the Decree of the Minister of Labour and Social Security of the Population of the Republic of Kazakhstan on 13 August 2018.

Nevertheless, jobs in more than 20 spheres are still forbidden for women which constitutes direct discrimination and limits women's economic opportunities. These include jobs in the areas of transportation, railway transport (above or below ground), river transport; driving tractors, earth movers and trucks, jobs related to thermal actions and vibrations, aerial and underground jobs, jobs inside a confined space, and jobs on derrick boats and floating units, firefighters, and more than 20 types of engine drivers. These are extremely important occupations in a country like Kazakhstan, where agriculture, cargo shipping, oil and gas industries are well developed.

Recommendations for the 3rd cycle UPR review:

- 1. Adopt the comprehensive anti-discrimination legislation** which includes **SOGI as a protected ground** in line with the UN Human Rights Committee (2016)¹⁰ and Committee on Economic, Social and Cultural Rights' (2019)¹¹ recommendations and implement them in accordance with the roadmap developed and presented by the local civil society in 2018.
- 2. Repeal all provisions on sex reassignment and coerced sterilisation surgeries** from the list of requirements for legal gender recognition, *i.e. changing the last, first and patronymic names and the gender marker by transgender people*, in particular from **Article 257, Subsection 13 of the Code on Marriage (Matrimony) and Family** of the Republic of Kazakhstan¹².
- 3. Review and repeal all the discriminatory provisions** on the grounds of SOGI from the national legislation, including provisions on “sodomy” and “lesbianism” in **Articles 121, 122, 123** of the Criminal Code of the Republic of Kazakhstan.
- 4. Reverse the course of arbitrary and discriminatory decisions** by the Ministry of Justice and national courts, which deny registration of feminist and LBQT advocacy groups like Kazakhstan Feminist Initiative “Feminita”, and **allow them to register and operate lawfully within the country**.
- 5. Repeal the list of prohibited professions for women** which consists of 219 professions listed in the Decree adopted by the Minister of Labour and Social Security of the Population on 13 August 2018¹³ and ensure equal accessibility to all professions to women.

⁸ [Administrative Offences Code](#) of the Republic of Kazakhstan, 5 July 2014, Article 489.

⁹ CEDAW, Fifth periodic report submitted by Kazakhstan, [CEDAW/C/KAZ/5](#), 1 June 2018.

¹⁰ Human Rights Committee, Concluding Observations on Kazakhstan, [CCPR/C/KAZ/CO/2](#), 9 August 2016, para. 10.

¹¹ Committee on Economic, Social and Cultural Rights, Concluding Observations on Kazakhstan, [E/C.12/KAZ/CO/2](#), 29 March 2019, para. 11.

¹² [Code “On Marriage \(Matrimony\) and Family”](#) of the Republic of Kazakhstan, 26 December 2011, Article 257, Subsection 13.

¹³ Decree of the Minister of Labour and Social Security of the Population dated 13 August 2018