



## **Joint Submission on the Situation of Lesbian, Bisexual, Queer Women and Transgender Persons in Kazakhstan**

Submitted for the consideration of the 34th session of the UN Human Rights Council  
Working Group on the Universal Periodic Review of Kazakhstan

March 2019

Kazakhstan Feminist Initiative “Feminita” (“Feminita”) is a queer-feminist grass-roots initiative working on monitoring and documentation of discrimination and hate crime cases on the basis of sexual orientation and gender identity (SOGI) and advocacy of the rights of lesbian, bisexual and queer (LBQ) women in Kazakhstan. "Feminita" was created in 2015 as a platform for many other feminist and queer activists in Kazakhstan and focuses on two important tasks: (1) national and international advocacy; (2) research and awareness raising, giving an understanding of human rights, sexuality, identity, feminism, queer theory, and corporeality.

Initiative Group AlmaTQ (AlmaTQ) is a trans led community based initiative group. Its main directions of work are community mobilisation and empowerment, social support and trans advocacy. AlmaTQ was formed in 2014.

## **Executive summary**

The present submission has been prepared by Kazakhstan Feminist Initiative “Feminita” and Initiative Group AlmaTQ for the consideration of the 34th session of the UN Human Rights Council Working Group on the Universal Periodic Review (UPR) of Kazakhstan as an additional source of information to the third periodic report of the Republic of Kazakhstan with suggested recommendations to be provided to the State party.

Following up on the previous review, the submission covers the following issues: (1) discrimination of LBQ women and transgender persons and shortcomings of the existing legal framework; (2) legal gender recognition of transgender persons; (3) hate crimes, police misconduct and access to justice of LBQ women and transgender persons; (4) state challenges to feminist and LBQT advocacy groups; (5) health needs of LBQT women; and Annex 1. List of supporting cases.

Most of the data presented in the present submission have been obtained by the reporting organisations in course of their research and monitoring activities in 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”<sup>1</sup> 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”<sup>2</sup> was rejected.

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

## **PART 1. DISCRIMINATION OF LBQ WOMEN AND TRANSGENDER PERSONS AND SHORTCOMINGS OF THE EXISTING LEGAL FRAMEWORK**

### **1.1. Overview of the existing legal framework on non-discrimination of LBQ women and transgender persons**

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

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

<sup>2</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, [A/HRC/28/10](#), 10 December 2014, para. 125.24. (Spain).

patchwork of protection from discrimination” with a weak enforcement and implementation framework and no codified definition of the “discrimination” term, its forms and its grounds<sup>3</sup>.

There is no explicit prohibition of discrimination on the basis of sexual orientation and gender identity under Kazakhstan’s Constitution or any other national law. When confronted with a question to provide information on the measures taken to prevent discrimination on grounds of sexual orientation and gender identity<sup>4</sup> the State commonly highlights sufficiency of Article 14 of the Kazakhstan’s Constitution<sup>5</sup> which provides that “[n]o one shall be subjected to discrimination on grounds of origin, social, property status occupation, sex, race and nationality, language, religion, convictions, place of residence or any other circumstances”<sup>6</sup>. Whilst it may be argued that “other circumstances” in Article 14 extend to SOGI there have been no precedents of any court judgements finding discrimination against LBQ women and/or transgender persons under this provision.

The concern about absence of a comprehensive legal framework ensuring non-discrimination of women on the grounds of sexual orientation and gender identity was expressed in the “Feminita”’s alternative report on the implementation of the provisions of the International Covenant on Civil and Political Rights (ICCPR) in 2016<sup>7</sup>. Then Kazakhstan received recommendations from the Human Rights Committee (HRCtee), in which the State party was recommended to include sexual orientation and gender identity as prohibited grounds for discrimination<sup>8</sup>. To the Committee’s enquiry to “indicate whether steps have been or are being taken to adopt comprehensive anti-discrimination legislation that addresses discrimination, including in the private sphere; prohibits direct, indirect and multiple discrimination; contains a comprehensive list of prohibited grounds for discrimination, including sexual orientation and gender identity; and provides for effective remedies in judicial and administrative proceedings”<sup>9</sup> the State reported that:

*“regulations on the prohibition of any form of discrimination, without distinction between indirect, direct and multiple discrimination, are set out in the relevant laws. Establishing an exhaustive list of prohibited grounds for discrimination, as the Committee has requested, seems impracticable, as the right of persons to bring proceedings before a court would be limited if they faced a form of discrimination not covered by such a list”<sup>10</sup>.*

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<sup>3</sup> The Equal Rights and the Kazakhstan International Bureau for Human Rights and Rule of Law, [In the Name of Unity: Addressing Discrimination and Inequality in Kazakhstan](#), The Equal Rights Trust Country Report Series: 10, London, December 2016, p. 26.

<sup>4</sup> CESCR, List of Issues in relation to the Second Periodic Report of Kazakhstan, [E/C.12/KAZ/Q/2](#), 23 April 2018, para. 7.

<sup>5</sup> CESCR, Reply to List of Issues in relation to the second periodic report of Kazakhstan, [E/C.12/KAZ/Q/2/Add.1](#), 7 December 2018, paras. 62-64.

<sup>6</sup> [Constitution of the Republic of Kazakhstan](#), 30 August 1995, Article 14.

<sup>7</sup> Kazakhstan Feminist Initiative “Feminita”, [Alternative Report on the Implementation of the Provisions of the International Covenant on Civil and Political Rights Related to LGBT People in Kazakhstan](#), 27 May 2016

<sup>8</sup> Human Rights Committee, Concluding Observations on Kazakhstan, [CCPR/C/KAZ/CO/2](#), 9 August 2016, para. 10.

<sup>9</sup> Human Rights Committee, List of Issues in relation to the second periodic report of Kazakhstan, [CCPR/C/KAZ/Q/2](#), 4 December 2015, para. 3.

<sup>10</sup> Human Rights Committee, Reply to List of Issues in relation to the second periodic report of Kazakhstan, [CCPR/C/KAZ/Q/2/Add.1](#), 24 March 2016, para. 11.

In March 2018 Kazakhstan Feminist Initiative “Feminita” in partnership with the Kazakhstan International Bureau for Human Rights and Rule of Law and other local CSOs with the support of the Equal Rights Trust has presented a road map on implementation of the UN HRCtee’s recommendations on adoption and promotion of the anti-discrimination legislation which would include SOGI as prohibited grounds for discrimination to the state authorities<sup>11</sup>. So far the government has not taken steps towards initiation of a lawmaking process and implementation of the recommendation.

In 2019 following “Feminita”’s alternative report, the above recommendation has been reinforced by the Committee on Economic, Social and Cultural Rights (CESCR) urging the State “to adopt comprehensive anti-discrimination legislation that encompasses all the prohibited grounds of discrimination, including sexual orientation and gender identity” with a requirement to follow up within 24 months on its implementation<sup>12</sup>.

### **RECOMMENDATION 1:**

**1) The State party should adopt the comprehensive anti-discrimination legislation which includes SOGI as a protected ground in line with the HRCtee and CESCR’s recommendations and implement them in accordance with the road map presented by the local civil society.**

#### **1.1.1. Article 145 of the Criminal Code and its application in practice**

Although the State claims a wide application of the concept of “discrimination” in judicial practice<sup>13</sup>, term “discrimination” is used only once in the state Constitution, while related judicial practice is almost non-existent. Neither does the Kazakhstan legislation establish a definition of discrimination. The state often underlines the role of Article 145 of the Kazakhstan Criminal Code in ensuring compliance with non-discrimination legislation<sup>14</sup>. It is important to note that, firstly, Article 145 is worded as “violation of equal rights of a human and a citizen” (as opposed to “discrimination”), next it establishes criminal liability for direct and indirect “limitation of rights and freedoms of a human (citizen)” and an open-ended list of grounds: of origin, status, official position, material circumstances, gender, race, ethnic background, language, attitude to religion, beliefs, place of residence or any other circumstances<sup>15</sup>. In practice the number of cases invoking Article 145 is extremely low (about 1-2 cases per year) with the majority of them being dismissed.

Despite the stipulated criminal liability for “violation of equal rights of a human and a citizen”, the *case of V*. (Please see *case of V*. in Annex 1 to this report) demonstrates ineffectiveness of Article 145 of the Kazakhstan’s Criminal Code in ensuring non-discrimination of women on the basis of SOGI in practice. As a result, the lack of legal protection and judicial remedy under Article 145 prevents people from reporting to the police or filing cases to the court. (On discriminatory procedure of legal gender recognition of transgender persons please see Part 2 below).

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<sup>11</sup> 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.

<sup>12</sup> CESCR, Concluding Observations on Kazakhstan, [E/C.12/KAZ/CO/2](#), 8 March 2019, para. 11.

<sup>13</sup> CEDAW, Fifth periodic report submitted by Kazakhstan, [CEDAW/C/KAZ/5](#), 1 June 2018, para. 59.

<sup>14</sup> Ibid.

<sup>15</sup> [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014, Article 145.

## 1.2. Discriminatory legislation

Further to not fulfilling its state obligations to protect from discrimination on the grounds of SOGI at the national level, Kazakhstan retains a number of discriminatory laws.

### 1.2.1. Discriminatory provisions in the criminal legislation: “lesbianism” and “sodomy”.

Article 123 of the Kazakhstan Criminal Code established a criminal liability for “[c]oercion to sexual intercourse, sodomy, lesbianism or other acts of sexual nature by use of blackmail, threats of destruction, damage or seizure of property or use of material or other dependence of a victim”<sup>16</sup>. Similarly, criminal liability is set under Article 121 for “[s]odomy, lesbianism or other acts of sexual nature with use of force or with threat of use of force” (punishable by 3 to 5 year imprisonment)<sup>17</sup> and under Article 122 for “[s]exual intercourse, sodomy, lesbianism and other acts of sexual nature with a person under the age of sixteen” (punishable by imprisonment for up to 5 years)<sup>18</sup>.

The Normative Decree of the Supreme Court of the Republic of Kazakhstan of 11 May 2007 defines that rape should be understood as “a sexual intercourse in a natural form with use of force or threat of use of force”, while “acts committed [...] under same circumstances in unnatural form” such as “lesbianism, sodomy, etc” should be understood as “other violent acts of a sexual nature”<sup>19</sup>.

Although consensual same-sex relationships were decriminalised in Kazakhstan after the disintegration of the Soviet Union with adoption of the Criminal Code in 1999, simultaneously the legislator introduced the above-mentioned discriminatory provisions as a compromise decision. The provisions still remain in the Kazakhstan’s updated Criminal Code of 2014. Despite having a specific article setting the criminal liability for “[r]ape, i.e. sexual intercourse with “use of force” or “using the helpless state of a victim”<sup>20</sup>, the Kazakhstani legislator singles out “sodomy” and “lesbianism” and appends it to separate *corpus delicti* (e.g. pedophilia, rape), therefore, creates a negative representation and stigmatisation of lesbian, bisexual and queer women and a wider LGBTIQ community at large.

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.

Such framing implies that same-sex relations are not equivalent to other forms of sexual behaviour, while on the other hand, this approach may have serious implications by creating an impression that the public are in need of additional protection against gay men and women, or that such individuals may be more likely to commit violent sexual offences. The fact that the party presents the above provisions as instruments “applied to protect women”<sup>21</sup> is misleading and disturbing.

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<sup>16</sup> [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014, Article 123.

<sup>17</sup> [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014, Article 121(1).

<sup>18</sup> [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014, Article 122.

<sup>19</sup> [Normative Decree of the Supreme Court of the Republic of Kazakhstan](#), 11 May 2007.

<sup>20</sup> [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014, Article 120.

<sup>21</sup> CEDAW, Fifth periodic report submitted by Kazakhstan, [CEDAW/C/KAZ/5](#), 1 June 2018, para. 68.

## **RECOMMENDATION 2:**

- 2) **The State party should review and repeal all the discriminatory provisions on the grounds of sexual orientation from the Criminal Code, namely, provisions on “sodomy” and “lesbianism” in Articles 121, 122, 123.**

### **1.2.2. Discriminatory legislation on marriage and family life**

Although states have been urged by UN treaty bodies to provide legal recognition of same-sex civil unions<sup>22</sup>, no such recognition for same-sex relationships is provided under the Kazakhstan’s family law.

Article 11 of the Family Code explicitly prohibits same-sex marriages and, therefore, directly discriminates LBQ women and transgender persons’ rights to marriage and family life established by the CEDAW<sup>23</sup>. Although the previous Law on Marriage (Matrimony) and Family adopted on 17 December 1998 defined the marriage similarly as an equal union between a man and a woman it did not explicitly ban same-sex marriage. As a result, this discriminatory legislation prevents LBQT couples from acquiring respective "property and personal non-property rights and obligations between spouses" guaranteed by Articles 32-38 of the Family Code. Article 91 (8) of the Family Code further bans “individuals of non-traditional sexual orientation” from adoption<sup>24</sup>.

### **1.2.3. Discriminatory “anti-propaganda” draft by-laws on protection of minors**

In 2018 the Kazakhstan Ministry of Information and Communication drafted two by-laws: the Instruction “On Classification of Informational Products” and “Methodology of Defining Informational Products for Children (Not) Harming Their Health and Development”, which aimed at implementation of the Law "On Protection of Children from Information Harming their Health and Development" adopted on 5 July 2018. A previous version of the Law “On protection of children from information harming their health and development” adopted in 2015, had directly provided for the ban of so-called "propaganda of non-traditional sexual orientation". The 2015 Law was declared unconstitutional by the Kazakhstan’s Constitutional Council in 2015 on technical grounds.

The draft by-laws declared homosexuality as a perversion and prohibited dissemination of information about LGBTIQ to minors under the age of 18. If adopted, public information related to LGBTIQ would be banned from open access in printed media, internet, social networks and others. In addition, the text of the draft by-law on “Methodology of Defining Informational Products for Children (Not) Harming Their Health and Development” contained inaccurate and stereotypical perceptions towards LGBT people. In particular, paragraph 5 of the draft indicated:

*“Information prohibited for distribution among children: a) encouraging children to commit acts that threaten their lives and/or health, including harm to their health, suicide, demonstration of the culture of the LGBT society (LGBT community, gay community, also LGBT community and gay community (from English LGBT community*

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<sup>22</sup> CESCR, Concluding Observations on Bulgaria, [E/C12/BGR/CO/4-5](#), 30 November 2012, para. 17.

<sup>23</sup> [Code on Marriage \(Matrimony\) and Family of the Republic of Kazakhstan](#), 26 December 2011, Article 11.

<sup>24</sup> [Code on Marriage \(Matrimony\) and Family of the Republic of Kazakhstan](#), 26 December 2011, Article 91(8).

*(gay community) - a community of lesbian, gay, bisexual and transgender (LGBT) people, united by common interests, problems and goals)*"<sup>25</sup>.

It is not the first time when discriminatory provisions are placed not in the main bill but rather in its subordinate by-laws which, as a general rule, are not discussed with the civil society. The by-laws' recent development demonstrates a continuation of the ongoing attempts on adoption of so-called "anti-propaganda laws" on protection of minors which is still on the legislator's current agenda. In the recent Communication of the UN Special Rapporteurs and Independent Expert on SOGI expressed their grave concern on serious negative impacts of the by-laws "on the lives of LGBT people living in Kazakhstan, leading to exclusion, stigma and prejudice, including in accessing healthcare services", their potential to contribute to "a social environment which explicitly permits and tolerates discrimination and violence based on sexual orientation and gender [identity]" as well as violation of "the rights of Kazakhstanis to freedom of expression and access to information"<sup>26</sup>. Following effective collective advocacy effort of local CSOs and LBQT initiatives, the adopted versions of the by-laws do not contain the provisions legalising direct discrimination on the basis of SOGI<sup>27</sup>.

### **RECOMMENDATIONS 3-5:**

- 3) The State party should withdraw from any future attempt to adopt and/or reintroduce legislation banning so-called "propaganda of non-traditional sexual orientation" which impede the right to freedom of expression of LGBT community and the rights groups.**
- 4) The State party should ensure systematic consultations with the local civil society and interest groups, including feminist and LBQT advocacy groups, at all stages of legislative and policy making process.**
- 5) The State party should review and repeal all the discriminatory provisions on the basis of SOGI from the national legislation.**

### **PART 2. DISCRIMINATORY PROCEDURE ON LEGAL GENDER RECOGNITION OF TRANSGENDER PERSONS**

The right to have documents that correspond to their gender identity<sup>28</sup> is not available to the most of transgender people. Under Article 257, Subsection 13 of the Family Code, transgender people are allowed to change their first name, patronymic, last name that correspond with the chosen gender only in case of undergoing sex reassignment surgery<sup>29</sup>. The surgery also includes mandatory sterilisation which deprives transgender people of their right to reproduction.

Legal recognition of gender identity is also an important prerequisite for the fulfilment 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

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<sup>25</sup> Draft by-law on "Methodology of Defining Informational Products for Children (Not) Harming Their Health and Development", para. 5.

<sup>26</sup> Communication of UN Special Procedures on Kazakhstan, [OL KAZ 5/2018](#), 7 November 2018, p. 2.

<sup>27</sup> [Instruction "On Classification of Informational Products", "Methodology of Defining Informational Products for Children \(Not\) Harming Their Health and Development"](#), 11 January 2019.

<sup>28</sup> The right to legal recognition is set out in the [Yogyakarta Principles](#), 2006, Principle 31.

<sup>29</sup> [Code on Marriage \(Matrimony\) and Family of the Republic of Kazakhstan](#), 26 December 2011, Article 257(13).

movement. Human rights organisations regularly receive reports from transgender people on refusals to employ and/or accept them to educational establishments, obstacles and refusals in receiving medical care, degrading treatment at border controls, refusals on provision of various services, such as banking and postal services. All of the above occurs when it becomes clear that transgender person's appearance does not match the gender marker in the official documents.

In addition to mandatory requirement on undergoing sex reassignment surgery to be able to change the gender marker, it is necessary to undergo a number of other procedures, including the obtaining of diagnosis F64 gender identity disorder (in accordance with ICD 10). These procedures are established in Decree No. 187 of the Kazakhstan's Minister of Health and Social Development on "Medical Certification and Sex Reassignment Procedure for Persons with Sexual Identification Disorders" dated 31 March 2015. According to these rules, persons over the age of 21 who choose to apply for legal gender recognition must comply with a series of requirements that are burdensome, humiliating, time-consuming, and often prohibitively expensive.

Transgender people who receive the diagnosis F64 gender identity disorder (in accordance with ICD 10), a mandatory requirement for legal gender recognition, are deprived from the exercise of other rights. According to the "List of Diseases Under which a Person Cannot Adopt a Child, Take him Under Guardianship or Patronage", "disorders of gender identity" are included to the diseases that do not allow adopting a child, taking a child under guardianship or patronage<sup>30</sup>. This provision prevents a transgender parent raising a child from seeking legal registration of a change of gender, as the price of his/her gender recognition may be separation from the child.

A similar rule exists in relation to a ban on transgender people for certain professions and jobs. Annex 18 of Order No. 132 of the Minister of Internal Affairs of the Republic of Kazakhstan on "Requirements for Compliance with the State of Health of Persons for Service in the Internal Affairs Bodies" dated 31 March 2010 provides the category ICD-10 "Personality disorders" (F60-F69). In accordance with its requirements, transgender people cannot serve in the internal affairs bodies of the Republic of Kazakhstan or may lose their job and place of work<sup>31</sup>.

#### **RECOMMENDATIONS 6-8:**

- 6) The State party should repeal all provisions on sex reassignment and sterilisation surgeries from the list of requirements for legal gender change, in particular from Article 257, Subsection 13 of the Family Code.**
- 7) The State party should repeal the diagnosis F64 from the "List of Diseases Under which a Person Cannot Adopt a Child, Take him Under Guardianship or Patronage".**
- 8) The State party should repeal the diagnosis F64 from the "Requirements for Compliance with the State of Health of Persons for Service in the Internal Affairs Bodies".**

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<sup>30</sup> Order of the Minister of Health and Social Development of the Republic of Kazakhstan No. 692 on ["List of diseases, under which a person cannot adopt a child, take him under guardianship or patronage"](#), 28 August 2015.

<sup>31</sup> Order of the Minister of Internal Affairs of the Republic of Kazakhstan No. 132 on "Requirements for Compliance with the State of Health of Persons for Service in the Internal Affairs Bodies", 31 March 2010.



### **PART 3. HATE CRIMES, POLICE MISCONDUCT AND ACCESS TO JUSTICE OF LBQ WOMEN AND TRANSGENDER PERSONS**

Despite the government provided data, cases of gender-based violence remain underreported<sup>32</sup>. The Kazakhstan Criminal Code has no provision enabling individuals to report on cases of hate crime based on SOGI. As a result, when reporting internationally the state claims alleged absence of such crimes.<sup>33</sup> On rare occasions when LBQ women and transgender persons report abuse, they “face indifference and hostility from authorities”.<sup>34</sup>

The enforcement and implementation of the imperfect existing framework on equality and non-discrimination in Kazakhstan requires strengthening. It has been noted that in addition to improving legal protection from discrimination, Kazakhstan must also provide effective remedies for violation of the right to non-discrimination on the basis of SOGI<sup>35</sup>. However, in reality LBQ women and transgender persons often have no effective access to justice, investigation and remedy where state actors, among them police, law enforcement, prison authorities and courts, often act as perpetrators or accomplices of violations. The *case of T.* demonstrates respective misconduct by police and law enforcement authorities, the *case of Viktoriya B.* is an example of misconduct by prison authorities (Please see *case of T. and case of Viktoriya B.* in Annex 1 to this report).

According to the US Department of State’s Country Reports on Human Rights Practices for 2017, there were no prosecutions of anti-LGBTIQ violence in Kazakhstan<sup>36</sup>. Although there were no government statistics on discrimination or violence based on SOGI, there were reports of such actions. According to an NGO survey within the LGBTIQ community, 48% of respondents experienced violence or hate because of their sexual orientation, and 56% responded they knew someone who suffered from violence<sup>37</sup>. The most frequent forms of abuse were verbal insults, harassment, interference in private life, and physical assaults. (Please see *case of S. and A.* in Annex 1 to this report).

According to the analysis of the results of the survey “Access to healthcare for transgender people in Kazakhstan”<sup>38</sup>. 12 out of 58 people faced with the refusal to provide medical care and/or intentionally causing harm to their health, due to the fact that they are transgender people. An assessment of the needs of transgender people in Central Asia<sup>39</sup> showed that the overwhelming majority of respondents from Kazakhstan (98%) face emotional, verbal, and psychological violence from others. Over a half of respondents was subjected to various kinds of physical abuse. Such cases are not treated as appropriate, as discrimination and violence based on gender identity by the police.

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<sup>32</sup> Amnesty International [World Report 2017/18. The State of the World’s Human Rights](#), pp. 221-222.

<sup>33</sup> OSCE/ODIHR [Hate Crime Reporting. Kazakhstan](#) (2012-2017).

<sup>34</sup> Human Rights Watch, [The World Report 2018](#).

<sup>35</sup> The Equal Rights and the Kazakhstan International Bureau for Human Rights and Rule of Law, [In the Name of Unity: Addressing Discrimination and Inequality in Kazakhstan](#), The Equal Rights Trust Country Report Series: 10, London, December 2016, p. 83.

<sup>36</sup> US Department of State, Bureau of Democracy, Human Rights and Labor, [Country Reports on Human Rights Practices for 2018](#).

<sup>37</sup> Ibid.

<sup>38</sup> Initiative Group AlmaTQ, “Access to Healthcare for Transgender People in Kazakhstan”, 2015-2016.

<sup>39</sup> Initiative Group AlmaTQ, “Results Analysis of “Access to health care for transgender people in Kazakhstan” Survey. Almaty, 2018. 6 pages.

Violence against LBQ women and transgender persons is often exercised by family members. However, in 2017 the Kazakhstan’s legislator decriminalised domestic violence committed by family members. By adoption of the new law of 3 June 2017, “intentional infliction of light bodily harm” (Article 108) and “battery” (Article 109) were reclassified from criminal to administrative offence. As a result, the punishments have significantly lightened: “intentional infliction of light bodily harm” is now punishable by a fine in the amount of 15 MCI or administrative arrest for 15 days and “battery” is punishable by a fine in the amount of 10 MCI or administrative arrest for 10 days (as opposed to the previous 200 MCI fine or 60 day arrest for “light bodily harm” and 100 MCI fine and 45 day arrest for “battery”)<sup>40</sup>. A repeated act of such violations is punishable by an administrative arrest of 20 days or 30 MCI fine. Oftentimes cases of domestic violence are covered by the police and courts because of their strong family orientation, where it is believed that family matters should remain behind closed doors and dealt with privately. (Please see *case of I. and A.* in Annex 1 to this report).

### **RECOMMENDATIONS 9-11:**

- 9) The State party should take all the necessary steps to (1) prevent and combat hate crimes on the basis of SOGI, (2) enact tailored legal protections of LBQ women and transgender persons against attacks and harassment, and (3) ensure their equal access to justice and effective remedy.**
- 10) The State party should address widespread misconduct of police, law enforcement, prison and judicial authorities in relation to LBQ women and transgender persons hold accountable.**
- 11) The State party should (1) criminalise all forms domestic violence, (2) introduce a mechanism of protective orders, (3) classify all gender-based violence crimes as crimes of public accusation, and (4) remove the provisions which require prosecutions to end or relieve individuals of responsibility for rape or any other form of gender based violence on grounds of reconciliation.**

## **PART 4. STATE CHALLENGES TO FEMINIST AND LBQT RIGHTS ADVOCACY GROUPS**

### **4.1. Challenges to registration of feminist and LBQT rights advocacy groups**

Despite the growing number of feminist and LBQT initiative groups and activists across the country as of today there are no registered LBQT civil society organisations (CSOs) actively operating in Kazakhstan other than those focused on service provision. Although the Kazakhstan Law on Non-commercial Organizations does not explicitly prohibit registration of LBQT CSOs, the justice authorities deny LBQT groups the right to formally register as legal entities under the existing CSO framework law. In the *case of “Feminista”* the justice authorities have denied the initiative’s applications to register on ambiguous grounds 3 times throughout the 2018-2019 period. (Please see *case of “Feminista”* in Annex 1 to this report).

This state approach placing limitations to activities of feminist and LBQT rights advocacy groups not only prevents them from operating as a fully-fledged organisation receiving various benefits that accompany formal legal status, including the right to open bank accounts, apply for institutional donor funding, and own/rent an office/estate in their organisation’s name, but

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<sup>40</sup> [Administrative Code of the Republic of Kazakhstan](#), 5 July 2014; [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014; [Law On introducing changes and amendments in some legislative acts of the Republic of Kazakhstan on improvement of the law enforcement system](#), 3 July 2017.

it can deter the formation of such associations in the first place by sending a loud and visible message that such organisations are not welcome. The state’s repeated rejection to register Kazakhstan Feminist Initiative “Feminita” creates a chilling effect on other L(G)BQT initiatives which, according to testimonies, prefer to remain unregistered until “Feminita” is successfully registered proving the feasibility of registering a CSO advocating for L(G)BQT rights in Kazakhstan.

#### **RECOMMENDATION 12:**

**12) The State party should guarantee the right to freedom of assembly and association of the feminist and LBQT rights groups by allowing these initiatives to register as legal entities in practice.**

#### **4.2. Challenges to peaceful assembly of feminist and LBQT rights advocacy groups**

Over the past two years there has been an increasing crackdown on and closure of civic space for feminist and LBQT rights advocacy groups. Activists are being surveilled and persecuted in a systematic way. (Please see *case of Zhanar*, *case of Veronika* and *case of 8 March* in Annex 1 to this report).

The show case against Zhanar Sekerbayeva is a clear illustration of the authorities’ intolerance to queer feminist groups which they do not endorse, as well as harassment, digital surveillance, persecution and constant pressure these activists constantly face in their daily work. By targeting high profile activists and human rights defenders like Zhanar the authorities send a chilling message to the wider community of feminist and LBQT rights advocacy groups and activists. Amnesty International has called upon the state authorities to end their illegitimate interference in Zhanar’s rights to freedom of expression and peaceful assembly<sup>41</sup> yet she was found guilty of petty hooliganism; her application to the UN Special Procedures is pending communication.

#### **RECOMMENDATION 13:**

**13) The State party should stop persecution of feminist and LBQT rights activists and carry out an immediate, thorough and impartial investigation into the above cases and guarantee in all circumstances that all feminist and LBQT human rights defenders in Kazakhstan are able to carry out their legitimate human rights activities without fear of reprisals and free of all restrictions.**

### **PART 5. HEALTH NEEDS OF LBQT WOMEN**

When it comes to women’s right to health the state party primarily focuses on the women’s reproductive health and leaves the question of LBQT women’s health and their specific needs unaddressed. According to the needs assessment research of LBQ women in Kazakhstan conducted by Kazakhstan Feminist Initiative “Feminita” in 2016-2017<sup>42</sup>, the most important required services for 228 respondents included those of a psychologist (for 105 respondents), possibility to attend an informational-resource center (105) and general medical services (93). Also 64% of respondents answered that they do not know anything about specific health needs of LBQ women.

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<sup>41</sup> Amnesty International, [Kazakhstan: Feminist LGBTI activist standing trial for photoshoot](#), 16 August 2018.

<sup>42</sup> Kazakhstan Feminist Initiative “Feminita”, [“I call my partner “sister”: Results of needs assessment of lesbian, bisexual, queer women in Kazakhstan”](#), May 2018.

The discourse about the health of L(G)BQT people in Kazakhstan is aimed at covering only those related to HIV, whereas L(G)BQT people can have very different health needs and problems or not have them at all. In the former Soviet Union homosexuality was seen as "homosexualism," which only meant illness. When visiting medical institutions lesbian, bisexual, transgender women are perceived by default as heterosexual. And often, in order to avoid unnecessary questions and/or interference in privacy, LBQT women prefer not to disclose their sexual orientation. The *case of A.*, *case of N.* and *case of Z.* demonstrates this in practice (Please see *case of A.*, *case of N.* and *case of Z.* in Annex 1 to this report).

However, access of LBQT women to healthcare is troublesome not only because of problematic visits to gynecologists, but also because of unavailability of reproductive services, such as artificial insemination, which are only available to heterosexual couples in Kazakhstan, because LBQ women can not legally form a recognised union. A representative of the Center for In Vitro Fertilisation "IVF" in Almaty commented:

*"It is possible to apply for in vitro fertilisation only if you register it as one girl who undergoes IVF individually with donor sperm. Our legal department states that you will not be able to formalize everything as a lesbian couple in the registry office, as we cannot legislate it"<sup>43</sup>.*

In Kazakhstan, the cost of the IVF procedure is about 1 million KZT (equivalent to approximately 2 650 USD) and it is included in the guaranteed amount of free medical care. However, such quotas are not given to all women, and despite the fact that the procedure is available for single women, the preference is given to married heterosexual couples, since the quota does not cover the costs of donation (eggs, sperm bank)<sup>44</sup>. Thus, the reproductive rights of LBQ women are violated at the legislative level in Kazakhstan. These women are forced to resort to independent, domestic injections of sperm, or far more expensive services abroad.

#### **RECOMMENDATION 14:**

**14) The State party should take all the necessary steps to ensure the effective access to all available medical services for LBQT women without facing discrimination and/or humiliation, in particular to services on HIV prophylaxis.**

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<sup>43</sup> Case documented by Kazakhstan Feminist Initiative "Feminita".

<sup>44</sup> Karapuz.kz, "[How to get a quota for in vitro fertilization in Kazakhstan](#)", 27 May 2016.