



**Additional Comments to
“Situation of lesbian, bisexual and transgender women in
Kazakhstan:
Alternative report on implementation of the International
Covenant on economic, social and cultural rights”**

Submitted for the consideration of the CESCR on the Reply of the Republic of Kazakhstan to the List of issues under articles 2, 6, 7 and 12 of the International Covenant on Economic, Social and Cultural Rights (CESCR) E/C.12/KAZ/Q/2/Add.1.

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These comments to the report was prepared by the Kazakhstan Feminist Initiative “Feminita”

Summary

The additional comments to previously submitted alternative report¹ is prepared for the consideration of the UN Committee on Economic, Social and Cultural Rights as an additional source of information and recommendations in response to the reply of the Republic of Kazakhstan to the List of issues² in relation to the second periodic report by the State party.

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¹ [Situation of lesbian, bisexual and transgender women in Kazakhstan: Alternative report on implementation of the International Covenant on economic, social and cultural rights.](#)

² [E/C.12/KAZ/O/2/Add.1](#)

1 Article 2 (2) Non-discrimination

In its reply to the List of issues in relation to the second periodic report of Kazakhstan the State party admits that there is no effective legislation on protection of lesbian, gay, bisexual, trans (LGBT) persons and that the national criminal and criminal procedure legislation does not provide grounds to register attacks and persecution of LGBT people³. The State, therefore, finds it impossible to provide information on investigation and court decisions on these cases. Furthermore, it is important to note that the Kazakhstan's legislation contains a number of normative provisions which directly discriminate lesbian, bisexual, queer and trans (LBQT) women.

Discriminatory provisions in the criminal legislation: "Lesbianism"

The State reply states that the the criminal law and criminal procedure legislation "establish no specific status for attacks against or harassment of lesbian, gay, bisexual and transgender persons"⁴. However, the criminal liability is established under Article 123 of the Kazakhstan Criminal Code 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"⁵. 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)⁶ 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)⁷.

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"⁸.

Although consensual same-sex relationships were decriminalised in Kazakhstan after the disintegration of the Soviet Union with adoption of the Criminal Code in 1999, at the same time the legislator introduced the above-mentioned discriminatory provisions which 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"⁹, 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 (LBQ) women and a wider lesbian, gay, bisexual, trans, intersex and queer (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

³ [E/C.12/KAZ/O/2/Add.1](#), paras. 62-64.

⁴ [E/C.12/KAZ/O/2/Add.1](#), para. 63.

⁵ [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014, Article 123.

⁶ [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014, Article 121(1).

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

⁸ [Normative Decree of the Supreme Court of the Republic of Kazakhstan](#), 11 May 2007.

⁹ [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014, Article 120.

direct discrimination on grounds of sexual orientation. On the one hand, 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.

It is important to note that the state party's report does not touch upon sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) and LBQT women's rights with the sole exception of the reference to the criminal liability established under the above-mentioned provisions of the Kazakhstan Criminal Code. The fact that the party presents the above provisions as instruments "applied to protect women"¹⁰ is misleading and disturbing.

Discriminatory legislation on marriage and family life

Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) sets a state obligation to eliminate discrimination against women in all matters relating to marriage and family relations and provides for, on a basis of equality of men and women, the same right to enter into marriage¹¹. The State reports that in accordance with the Kazakhstan Code on Marriage (Matrimony) and Family adopted on 26 December 2011 "marriage is an equal union between a man and a woman concluded with free and full consent of the parties in compliance with the procedure established by the Kazakhstani law, with the aim of creating a family, and bearing property and personal non-property rights and obligations between spouses"¹². Although states have been urged by UN treaty bodies to provide legal recognition of same-sex civil unions¹³, no such recognition for same-sex relationships is provided under the Kazakhstan's family law.

Moreover, Article 11 of the Family Code explicitly prohibits same-sex marriages and, therefore, directly discriminates LBQT women's rights to marriage and family life established by CEDAW¹⁴. 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 adoption¹⁵.

2 Articles 6-7 Right to work and conditions at work

Despite the Committee's specific question to provide information on the measures taken, and their impact, to increase employment opportunities among lesbian, gay, bisexual and transgender persons, the State party's reply is confined to provision of general information without specification of the right to work of LBQT women¹⁶.

¹⁰ CEDAW, Fifth periodic report submitted by Kazakhstan, [CEDAW/C/KAZ/5](#), 1 June 2018, para. 68.

¹¹ [Convention on the Elimination of All Forms of Discrimination against Women](#), Article 16(a).

¹² CEDAW, Fifth periodic report submitted by Kazakhstan, [CEDAW/C/KAZ/5](#), 1 June 2018.

¹³ CESCR, Concluding Observations on Bulgaria, [E/C12/BGR/CO/4-5](#), 30 November 2012, para. 17.

¹⁴ [Code on Marriage \(Matrimony\) and Family of the Republic of Kazakhstan](#), 26 December 2011, Article 11.

¹⁵ [Code on Marriage \(Matrimony\) and Family of the Republic of Kazakhstan](#), 26 December 2011, Article 91(8).

¹⁶ [E/C.12/KAZ/O/2/Add.1](#), paras. 66-83.

As it is highlighted in the International Covenant on Economic, Social and Cultural Rights (ICESCR) General Comment No. 23 (2016) on the right to just and favourable conditions of work (Article 7 of the ICESCR), “equality applies to all workers without distinction based on [...] sexual orientation [and] gender identity or any other ground”¹⁷; and the State parties should “[g]uarantee through law the exercise of the right [to just and favourable conditions of work] without discrimination of any kind as to [...] sexual orientation, gender identity, intersex status [...] or any other status.”¹⁸ ICESCR General comment explicitly includes such grounds as sexual orientation and gender identity into the scope of article 2, paragraph 2 of the ICESCR.¹⁹ Article 11 of CEDAW provide for an inalienable right to work for women free from discrimination²⁰.

Labour discrimination against LBQT women in Kazakhstan ranges from insults, humiliation, harassment, withholding of bonuses, illegal dismissals, or forced resignations. These negative consequences and risks affect LBQT persons regardless of whether they are open about their sexual orientation and gender identity or not. In either case, regardless of the tactic chosen by LBQT persons, there always remains the risk of outing – the collection of information about a person’s sexual orientation or gender identity and disclosure of this information by someone to a third party or to an employer without the person’s consent.

In its fifth periodic report to CEDAW in 2018, Kazakhstan notes that all necessary legal conditions for realisation of women’s right to work in Kazakhstan are created²¹. Article 6 of the Kazakhstan Labour Code states that no one may be subjected to any discrimination in the exercise of labor rights on grounds of origin, social, official and property status, sex, race, nationality, language, attitude towards religion, beliefs, residence, age or physical disabilities, as well as belonging to public associations.

However, the provisions of the laws are violated by the state itself. During the period 2016-2017 - we know of several cases (see cases 1 and 2), when sexual orientation and gender identity (SOGI) caused the dismissal of a person from employment.

Case of private correspondence. In the Soros Foundation Kazakhstan based research project on "Stigmatization of the LGBTIQ community in interaction with law enforcement agencies in the Republic of Kazakhstan," a case was recorded: "My acquaintance [from the LBTIQ community] was fired from her job. The system administrator read and gave her private correspondence with her girlfriend to the company’s leadership, which immediately fired the woman. But she did not report this case to law enforcement bodies on this occasion because of lack of direct prohibition of people based on their sexual orientation and gender identity.”²²

¹⁷ CESCR, General Comment No. 23 (2016) on the right to just and favourable conditions of work, [E/C.12/GC/23](#), 27 April 2016, para. 11.

¹⁸ CESCR, General Comment No. 23 (2016) on the right to just and favourable conditions of work, [E/C.12/GC/23](#), 27 April 2016, para. 65(a).

¹⁹ CESCR, General comment No. 20 (2009) Non-discrimination in economic, social and cultural rights, [E/C.12/GC/20](#), 2 July 2009, para. 32.

²⁰ [Convention on the Elimination of All Forms of Discrimination Against Women](#), 18 December 1979, Article 11.

²¹ CEDAW, Fifth periodic report submitted by Kazakhstan, [CEDAW/C/KAZ/5](#), 1 June 2018, p. 26.

²² Pushilin A. Stigmatization of the LGBTIQ community in interaction with law enforcement agencies in the Republic of Kazakhstan, Almaty, 2016, p. 15.

Case of Border Guard Service. On May 6, 2015, management of the Border Guard Service of the National Security Committee of the Republic of Kazakhstan fired two female soldiers for kisses between them following an anonymous video taken from outdoor CCTV-surveillance cameras broadcasting monitor that went viral in the local social media. On the video the two women, clearly identifiable, are seen kissing at the security outpost. Following the scandal the management of the border service instituted disciplinary proceedings against women and dismissed them, stating, as an official reason, "absence from post for 3 hours or more without a good reason". After the dismissal, these women soldiers appealed to the local court demanding that their dismissal be declared illegal. The court granted the claim and found their dismissal illegal²³. In its decision, the court did not refer to discrimination as the possible reason for the dismissal of women from military service. The Border Service of the Committee of the National Security Committee of Republic of Kazakhstan denied the connection between the video and dismissal of women. Women themselves link their dismissal with the online video and their sexual orientation.

It is important to note that the indicators of perceived discrimination would be much higher, and the number of incidents with discrimination in the workplace (unlawful dismissals, refusals to promote) would be significantly greater if many employees did not hide their sexual orientation or gender identity. It is the awareness of these serious risks and the fear of further negative consequences that make many LBQT women continue to hide their sexual orientation or gender identity at work. The threat of discrimination, including undue dismissal, means that people with a different sexual orientation are forced to bear the additional burden of silence and isolation from others in order to avoid the negative consequences that can result from openness about their gender identity or sexual orientation. This fear, as well as the obsession with silence about their sexual orientation and gender identity, can have various negative consequences, affecting the relationship of LBQT women with colleagues in the workplace, and oftentimes leading to serious psychological problems.

Case of D. At work, lesbian D. was outed and her direction called her for meeting to speak privately. She has three chiefs, a general director and two of his deputies. They immediately summoned her and said: "We did not know about your personal life, we got information and we give you a guarantee that it will stay between us. "We are the four of us and no one else will know about you. We do not want to lose you as an employee. So choose - rather you hide your personal life or you have to leave your job", - direction commented. D. chose to hide her private life. "But after six months I realized that everyone knows [about my sexual orientation]", - lesbian D. concluded.

3 Article 12 Right to physical and mental health

Although the Committee explicitly asked for information on the measures taken to remove practical obstacles faced by lesbian, bisexual and transgender women in access to health-care services, due to stereotyping and prejudices, including among medical personnel²⁴, the State's reply primarily focused on the state HIV prevention and treatment programmes which are

²³ Today.kz, ["In Atyrau dismissed women border guards won the court"](#), 27 August 2015.

²⁴ E/C.12/KAZ/Q/2, para. 24.

exclusively designed for men who have sex with men (MSM)²⁵ and does not include LBQT women.

As stated in the CESCR General Comment, “[n]on-discrimination, in the context of the right to sexual and reproductive health, [...] encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status.”²⁶ Article 12 of CEDAW provides for women’s right to health, including the right to access to health care services without discrimination²⁷.

When it comes to women’s right to health the state party’s report primarily focuses on the women’s reproductive health and leaves the question of LBQT women’s health and specific needs unaddressed.

According to the needs assessment research of LBQ-women in Kazakhstan conducted by Kazakhstan Feminist Initiative “Feminita” in 2016-2017²⁸, the most important 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.

The discourse about the health of L(G)BQT people in Kazakhstan is aimed at covering only those related to HIV/AIDS, 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 "homosexuality", 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.

Case of A. When visiting clinics, lesbian woman A. often pretends that she is a heterosexual, because when once she informed a medical specialist about her sexual orientation she was forced to listen to gynecologist’s instruction regarding the importance of having children and that men’s sexual energy is important for women’s health and life purpose²⁹.

Case of N. A bisexual women N. told her gynecologist that she has sexual relationships with women. The doctor was shocked and recommended her to go to a psychiatrist first. She denied to conduct observation of N³⁰.

²⁵ E/C.12/KAZ/Q/2/Add.1, paras. 195-210.

²⁶ CESCR, General Comment No. 22 (2016) on the right to sexual and reproductive health, [E/C.12/GC/22](#), 2 May 2016, para. 23.

²⁷ [Convention on the Elimination of All Forms of Discrimination Against Women](#), 18 December 1979, Article 12.

²⁸ Kazakhstan Feminist Initiative “Feminita”, [“I call my partner “sister”: Results of needs assessment of lesbian, bisexual, queer women in Kazakhstan”](#), May 2018.

²⁹ Case documented by Kazakhstan Feminist Initiative “Feminita”.

³⁰ Case documented by Kazakhstan Feminist Initiative “Feminita”.

Case of Z. Lesbian woman Z. shared information, that in order to have HIV tests lesbian women in Astana had to pretend that they were sex workers. In other cases access to HIV tests was limited³¹.

Because of such unpleasant experiences lesbian, bisexual and transgender women rarely visit medical specialists, prefer self-medication at home and do not visit HIV centers or HIV-focused projects such as UNI (sponsored by the Columbia University, USA) which serves only men, excluding women and transgender people without transition. Such practices eliminate LBQT women from health services related to AIDS/HIV and may be an alarm for changing the situation.

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 legislatively lesbians or bisexual women can not legally form a recognised union. A representative of the Center for In Vitro Fertilization "IVF" in Almaty commented: "It is possible to apply for in vitro fertilization 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"³².

In Kazakhstan, the cost of the IVF procedure is about 1 million tenge (equivalent to about 3080 USD) and it is included in the guaranteed amount of free medical care. However, such quotas are not given to all women who wish, 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)³³. Thus, the reproductive rights of lesbian and bisexual 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.

Both the World Health Organisation (WHO) and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity stress the adverse effects SOGIESC-based discrimination and stigmatisation on health of individuals:

“Many people in the world are stigmatized and discriminated against because of their actual or perceived sexual orientation or gender identity. Among other disparities, lesbian, gay and transgender people are significantly more likely than the general population to be targeted for violence and harassment, to contract HIV, and to be at risk for *mental health* concerns such as depression and *suicide*”.³⁴

According to the WHO’s 2017 data Kazakhstan has one of the highest suicide rates in the world and leads on the suicide rating among teenagers³⁵.

³¹ Case documented by Kazakhstan Feminist Initiative “Feminita”.

³² Case documented by Kazakhstan Feminist Initiative “Feminita”.

³³ Karapuz.kz, [“How to get a quota for in vitro fertilization in Kazakhstan”](#), 27 May 2016.

³⁴ World Health Organisation, [Sexual Health, Human Rights and the Law](#) (2015), p. 23;

Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, [A/HRC/35/36](#), p. 11.

³⁵ [World Health Statistics 2017: Monitoring health for the SDGs](#), p. 61.

As it turned out during the needs assessment research by “Feminita” 55% of the interviewed respondents noted signs of depression. In addition, data on suicide attempts were obtained, more than 35% of respondents said that they had ever tried to commit suicide or had thought about it. 14% of respondents indicated that they had made such an attempt once, 12% had not taken any action, but had similar thoughts, 11% - made such attempts several times. 22% of the participants caused themselves conscious bodily injuries without the desire for suicide³⁶.

4 Recommendations

1. To provide thorough legal analysis and revoke discriminatory provisions in Kazakhstan’s criminal legislation and legislation on marriage and family which provide grounds for direct discrimination and incitement of hate crimes against lesbian, gay, bisexual, trans persons in order to guarantee the rights enunciated in the Covenant without discrimination on sexual orientation, gender identity and expression, and sex characteristics.
2. To undertake effective measures to ensure fulfilment of the right to work of LBQT women in practice and increase employment opportunities among disadvantaged and marginalised groups and individuals, including lesbian, gay, bisexual and trans persons and collect statistical data for purpose of analysis of impact of undertaken measures.
3. The steps are to be taken by the State to achieve full realisation of the right to work shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.
4. We invite the State to recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure safe and healthy working conditions including lesbian, bisexual trans women who bear the additional burden of silence and isolation from others in order to avoid the negative consequences from openness of their sexual orientation, gender identity and expression, and sexual characteristics.
5. We invite the State to recognise and address the women’s right to health including lesbian, bisexual, queer and trans women and their specific needs in addition to the State’s focus for the reproductive health of women to achieve the highest attainable standard of physical and mental health.

³⁶ Kazakhstan Feminist Initiative “Feminita”, [“I call my partner “sister”: Results of needs assessment of lesbian, bisexual, queer women in Kazakhstan”](#), May 2018, p. 54.

5 About Kazakhstan Feminist Initiative “Feminita”

The Kazakhstan Feminist Initiative "Feminita" is a queer-feminist grassroots initiative aimed at building and consolidating the LBQT-community (lesbian, bisexual, queer, trans people). "Feminita" was created in 2015 as a platform for many other activists and feminists in Kazakhstan and focuses on two important tasks - international advocacy and education, giving an understanding of sexuality, identity, feminism, queer theory, corporeality.