



Additional Comments to the Alternative Report on Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in Kazakhstan

Submitted for the consideration of the CEDAW on the fifth periodic report by Kazakhstan for the 74th (2019) Session of the Committee on the Elimination of Discrimination against Women (CEDAW)

September 2019

Kazakhstan Feminist Initiative “Feminita” (“Feminita”) is a grassroots queer-feminist activist group working on advancement of LBQ(TI) women’s rights and freedoms and dignified life on the basis of systematic feedback loop from communities in Kazakhstan. "Feminita" was created in 2015 and has two primary focuses: (1) national and international advocacy; (2) research and education on human rights, 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 was prepared by Kazakhstan Feminist Initiative “Feminita” in cooperation with initiative group AlmaTQ with the technical support of IWRAW Asia Pacific for the consideration of the UN Committee on the Elimination of Discrimination against Women (CEDAW) as an additional source of information to the fifth periodic report of the Republic of Kazakhstan with some proposed recommendations for the Concluding Observations to be provided to the State party.

The submission covers the following issues: (1) suggested recommendations for the Concluding Observations; and comments on the List of issues and questions in relation to the fifth periodic report of Kazakhstan¹ on: (2) Question 7. Stereotypes and harmful practices (under Article 5); (3) Question 10. Gender based violence against women. Clarification of the reference to “lesbianism” under articles 121, 122, and 123 of the Criminal Code; (4) Question 12. Participation in political and public life (under Article 7), including (a) Challenges to registration and operation of civil society organisations (CSOs) advocating for LBQT women’s rights, and (b) Challenges to peaceful assembly of feminist groups advocating for LBQT women’s rights; (5) Question 18. Employment (under Article 11); (6) Question 19. Health (under Article 12).

Most of the data presented in the present submission were obtained by the reporting organisation in the course of its research and monitoring activities in Kazakhstan.

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¹ CEDAW, List of Issues, [CEDAW/C/KAZ/Q/5](https://www.unhcr.org/refugees/countries/kazakhstan/country-reporting/2019/03/18/cedaw-c-kaz-q-5), 18 March 2019.

Suggested recommendations for the Concluding Observations

1. The State party should adopt **comprehensive anti-discrimination legislation** which includes **sexual orientation and gender identity (SOGI) as protected grounds** in line with the UN Human Rights Committee (2016)² and Committee on Economic, Social and Cultural Rights' (2019)³ recommendations and implement them in accordance with the roadmap developed and presented by the local civil society in 2018⁴.
2. The State party should review and **repeal all 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 (*please see the section on Question 10 on pp.6-7 of this report*).
3. The State party should take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and psychological integrity of transgender people, including by repealing 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 Family Code**⁵.
4. The State party should guarantee an enabling environment for civil society organisations (CSOs) and human rights defenders (HRDs) engaged in the advocacy and protection of the LBQT women's rights, including by ensuring a **functional and accommodating registration procedure** (*please see the section on Question 12 on pp.7-9 of this report*).
5. The State party should 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 (*please see the section on Question 12 (a) on pp.7-9 of this report*).
6. **Stop persecution** of feminist and LBQT rights activists, among them Z.S. and V.D., and carry out an immediate, thorough and impartial investigation into reported cases and guarantee in all circumstances that all feminist and LBQT activists in Kazakhstan are able to carry out their legitimate human rights activities **without fear of reprisals and free of all restrictions**.
7. The State party should guarantee the right to **freedom of assembly of feminist and LBQT rights groups** by allowing them to hold peaceful assemblies and women's marches in practice **without discrimination on the basis of SOGI** (*please see the section on Question 12 (b) on pp.9-10 of this report*).

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

³ Committee on Economic, Social and Cultural Rights, Concluding Observations on Kazakhstan, [E/C.12/KAZ/CO/2](#), 29 March 2019, para. 11.

⁴ 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.

⁵ Human Rights Committee, Concluding Observations on Kazakhstan, [CCPR/C/KAZ/CO/2](#), 9 August 2016, para.10.

8. The State party should regulate all forms of peaceful assemblies by changing from an existing permit system requiring prior authorisation of local authorities to a system of notification (*please see the section on Question 12 (b) on pp.9-10 of this report*).
9. **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 2018⁶ and ensure equal accessibility to all professions to women (*please see the section on Question 18 on pp.10-12 of this report*).
10. 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 LBQT women and rights groups.
11. 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 relevant legislative and policy making process.
12. 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”.
13. 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”.
14. The State party should **address widespread misconduct of police, law enforcement, prison and judicial authorities** in relation to LBQT women, hold perpetrators accountable and provide effective remedies to victims.
15. 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 LBQT women against attacks and harassment, and (3) ensure their equal access to justice and effective remedy.
16. 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.
17. 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** (*please see the section on Question 19 on pp.12-13 of this report*).

⁶ Decree of the Minister of Labour and Social Security of the Population dated 13 August 2018

Comments on the List of issues and questions in relation to the fifth periodic report of Kazakhstan

QUESTION 7. Stereotypes and harmful practices (under Article 5)

Improving the status of women in Kazakhstan is widely regarded as implementation of state commitments to provide social protection to women as mothers and caregivers, with little attention given to counteracting existing negative stereotypes and discriminatory practices and ensuring equal opportunities for all genders. The new strategy adopted in 2017⁷ combines gender equality and family portfolios rather than establishing a stand-alone gender equality strategy in Kazakhstan⁸, and thereby strengthens and reinforces the traditional link between women and the family institution. The new strategy also remains exclusive of the gender spectrum.

While the state has the obligation to protect the rights of all people, the Kazakhstani government's deafening silence on the human rights of LBQT women, combined with the acerbic homophobic rhetoric of some members of parliament, has contributed to the social sanctioning of discrimination against people based on their real or perceived sexual orientation and gender identity⁹. Negative stereotyping, shaming and moral policing by wider public remain persistent in the Kazakhstani society.

Case of S. and A^{10 11}. On 30 July 2019 the Supreme Court of Kazakhstan ruled¹² that two lesbian women receive compensation from a Facebook user, Eldar Mamedov, who posted a video of them kissing on the social media platform without their permission, and solicited homophobic comments. The court ruled that the posting violated the women's privacy rights, rejecting a lower court's argument¹³ that the intimate embrace violated the "moral foundations of society" and justified the video and public shaming.

Previously, the Appeals Court found that "[Kazakhstani] society is not ready for open sexual relations between people of the same sex". Saying the actions and behavior of the plaintiffs openly violated "the morale and moral foundations of society", the court concluded that Mamedov "acted as a defender of the morals of the population".

The video of the women, which was posted on Facebook and quickly shared on other social media platforms on 30 January 2018, received derogatory and threatening comments. Though the man who posted the video deleted it within a day, the video had been viewed at least 60,000 times by then.

Fearing for their safety, the women left Kazakhstan for eight months. As the Supreme Court noted, the film, which urged viewers to "shame" the women, "triggered a wave of offensive

⁷ [Family and Gender Policy Concept in the Republic of Kazakhstan until 2030](#) (2016).

⁸ OECD (2017), Gender Policy Delivery in Kazakhstan, OECD Public Governance Reviews. OECD Publishing, Paris.

⁹ Human Rights Watch, ["That's When I Realised I Was Nobody": A Climate of Fear for LGBT People in Kazakhstan](#), 23 July 2015.

¹⁰ Case documented and supported by Kazakhstan Feminist Initiative "Feminita".

¹¹ Kazakhstan Feminist Initiative "Feminita", [Alternative Report on Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in Kazakhstan](#), January 2019, Annex 1, pp. 24-25.

¹² The Supreme Court of the Republic of Kazakhstan, [Judgement No. 6001-19-00-3гп/389](#), 30 July 2019.

¹³ The Almaty City Court, [Judgement No. N 2 a – 5822/18](#), 17 August 2018.

comments” and “placed the applicants in the focus of public attention, their private life having become public against their will”

The Supreme Court’s decision which has overturned the decision of the Appeals Court and found “a substantial and gross violation of the right to self-portrayal under Article 145 of the Civil Code” infringing the rights of a lesbian couple is an important ruling amidst ongoing anti LBQT hostilities in the country.

In a communication prior to the Supreme Court hearing the UN Special Procedures expressed grave concern about the fact that “a law about offence of public morals be used inappropriately to justify acts of harassment and discrimination based on sexual orientation and gender identity in Kazakhstan” in decisions that affect the enjoyment of human rights and freedoms of LBQT women as such discriminatory attitudes lead to stigma, violence and abuse¹⁴. In view of Human Rights Watch experts, the Supreme Court has demonstrated that “a sober assessment free of moralizing establishes everyone as equal before the law”¹⁵.

Although the court ruling has been regarded as “the first legal victory for LGBTIQ rights in Kazakhstan”¹⁶ and “a landmark decision”¹⁷, it falls short of registering and addressing discrimination and bias motivated incitement to hate against the lesbian women. Therefore, continuing upholding the privacy rights of LBQT women, the State party should strengthen the legislative framework and court practice protecting women from discrimination and hate crimes on the basis of SOGI.

QUESTION 10. Gender based violence against women.

Clarification of the reference to “lesbianism” under articles 121, 122, and 123 of the Criminal Code

As noted in “Feminita”’s alternative report to the 72rd PSWG of the CEDAW¹⁸, 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 criminal liability for “lesbianism” and “sodomy” under Articles 121, 122, and 123 which discriminate on the basis of sexual orientation and still remain in the Kazakhstan’s updated Criminal Code of 2014.

¹⁴ Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the right to privacy; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on the issue of discrimination against women in law and in practice, [AL KAZ 2/2019](#), 22 July 2019, pp. 2-3.

¹⁵ Human Rights Watch, [“Kazakhstan Supreme Court Upholds Privacy Rights: Judges Dismiss “Moral Policing” Justification for Anti-Lesbian Facebook Post”](#), 24 September 2019.

¹⁶ ILGA Europe, [“ILGA-Europe welcome landmark decision by Kazakhstan’s Supreme Court to uphold the privacy of a lesbian couple”](#), 9 September 2019.

¹⁷ ILGA World, [Statement for the 42rd Human Rights Council Session](#), 26 September 2019.

¹⁸ Kazakhstan Feminist Initiative “Feminita”, [Alternative Report on Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in Kazakhstan](#), January 2019, p. 6.

In its Reply to List of Issues the State party do not provide comprehensive clarification of the substance of these three articles in question¹⁹. Thus, it is reasonable to provide them below.

Article 121. Violent acts of a sexual nature.

“1. Sodomy, lesbianism or other acts of a sexual nature with use of force or with threat of use of force²⁰ in relation to a victim or other persons or with using the helpless state of a victim is punishable by imprisonment for a period from 3 to 5 years”²¹.

Article 122. Sexual intercourse and other acts of a sexual nature with a person under the age of sixteen.

“1. Sexual intercourse, sodomy, lesbianism and other acts of sexual nature with a person under the age of sixteen is punishable by restriction of freedom for up to 5 years or imprisonment for the same period”²².

Article 123. Coercion to sexual intercourse, sodomy, lesbianism or other acts of sexual nature.

“1. Coercion 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 is punishable by a fine in the amount of up to 1 000 monthly calculation index²³, or corrective labour in the same amount, or restriction of freedom for up to 1 year or imprisonment for the same period”²⁴.

Despite having a specific article setting the criminal liability for rape under Article 120²⁵, the Kazakhstani legislator singles out “lesbianism” and “sodomy” in a separate Article 121. In Article 122 the legislator appends “lesbianism” and “sodomy” to a separate *corpus delicti*, namely, sexual intercourse with minors. Similarly, in Article 123 it appends “lesbianism” and “sodomy” to *corpus delicti* of “coercion to sexual intercourse”.

This creates a negative representation and stigmatisation of LBQ women and a wider LGBTIQ community at large. Although there have not been many known cases when people were held accountable for “lesbianism” and “sodomy”, existence of such articles in the Criminal Code creates potential risks for threats and blackmailing of LBQ women. “Feminita” has documented two cases of threats and blackmailing of LBQ women by family members of their intimate partners.

Following the Presidential Address to the Nation, on 11 September 2019 the Central Communication Service under the President of Kazakhstan announced that with the support of the Prosecutor General’s Office a draft law on increasing criminal liability for committing serious

¹⁹ CEDAW, State Reply to List of Issues, [CEDAW/C/KAZ/Q/5/add.1](#), 17 September 2019, p. 9.

²⁰ [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”#.

²¹ [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014, Article 121.

²² [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014, Article 122.

²³ 1 monthly calculation index (MCI) in 2019 amounts to 2 525 KZT, approximately 6,5 USD.

²⁴ [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014, Article 123.

²⁵ [Criminal Code of the Republic of Kazakhstan](#), 3 July 2014, Article 120.

crimes had been prepared²⁶. The draft law envisions increasing criminal liability for committing, among others, a rape (Article 120), violent acts of a sexual nature (Article 121), sexual intercourse and other acts of a sexual nature with minors (Article 122), and coercion to sexual intercourse (Article 123). Although prohibition of violent sexual acts and the initiative on increasing criminal liability for committing serious crimes is highly commendable, the purposeful inclusion of “lesbianism” and “sodomy” as distinct from “other acts of sexual nature” clearly represents a direct discrimination on grounds of sexual orientation. The draft plans to establish a stricter punishment – imprisonment for a period up to 8 years for criminal offences under articles 121, 122, 123.

In light of the upcoming review of criminal liability under articles 121, 122, and 123 of the Criminal Code, we invite the State party to repeal discriminatory liability for “lesbianism” and “sodomy” from the Criminal Code which single out people based on their sexual orientation. 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 this legislative and policy making process.

QUESTION 12. Participation in political and public life (under Article 7)

(a) Challenges to registration and operation of CSOs advocating for LBQT women’s rights

Article 7(c) of the CEDAW Convention establishes a state obligation to ensure the right of women “to participate in non-governmental organisations and associations concerned with the public and political life of the country”²⁷.

In 2019 the Committee on Economic, Social and Cultural Rights (CESCR) expressed a concern on information that some non-governmental organisations (NGOs) in Kazakhstan, “working for the protection and promotion of human rights, in particular on the rights of lesbian, gay, bisexual and transgender persons, had faced difficulty in registering”²⁸. Despite CESCR recommendation to guarantee an enabling environment for these NGOs, “including a functional and accommodating registration procedure”²⁹, the situation with registration of NGOs working on LBQT women’s rights have not been improved.

Case of “Feminita”³⁰. Following 3 consecutive decisions to discontinue the terms of registration by the Almaty Justice Department on 9 January 2018³¹, 20 February 2018³²

²⁶ The Central Communication Service under the President of Kazakhstan, [“Разработан законопроект по ужесточению уголовной ответственности за совершение тяжких преступлений”](#), 11 September 2019.

²⁷ [Convention on the Elimination of All Forms of Discrimination against Women](#), Article 7(c).

²⁸ Committee on Economic, Social and Cultural Rights, Concluding Observations on Kazakhstan, [E/C.12/KAZ/CO/2](#), 29 March 2019, para. 8.

²⁹ Committee on Economic, Social and Cultural Rights, Concluding Observations on Kazakhstan, [E/C.12/KAZ/CO/2](#), 29 March 2019, para. 9.

³⁰ Kazakhstan Feminist Initiative “Feminita”, [Alternative Report on Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in Kazakhstan](#), January 2019, Annex 1, pp. 18-19.

³¹ Almaty Justice Department, Order №24 On Discontinuation of Terms of Registration of “Kazakhstan Feminist Initiative “Feminita”, 9 January 2018.

³² Almaty Justice Department, Order №124 On Discontinuation of Terms of Registration of “Kazakhstan Feminist Initiative “Feminita”, 20 February 2018.

and 3 January 2019³³, on 12 March 2019 Kazakhstan Feminist Initiative “Feminita” filed a complaint to the Almaty Medeu District Court: (1) to find the orders of the Almaty Justice Department unlawful, and (1) to register “Feminita” as a legal entity. On 27 May 2019 the Almaty Medeu District Court dismissed the claim on two grounds largely based on reasonings of the Almaty Justice Department³⁴.

On 27 June 2019 “Feminita” filed an appeal to the Almaty City Court. On 3 September 2019 the Almaty City Court upheld the decision of the court of first instance. The appeals court found that:

“Article 2 of the Law On Charities establishes that the goal of charity is to support the development of self-organisation of society by means of forming, supporting and strengthening the spiritual and moral values of charity in society.

*The goal of charity is reached by realisation of, among others, objectives on support of strengthening peace, friendship and public accord, unity of the nation, spiritual culture, **prestige and role of the family in society as well as protection of motherhood, patriotic upbringing of children and youth.***

*The court [of first instance] came to a well founded conclusion that the objectives of the fund’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**”.*

“In light of the above and in accordance with Article 72 of the Civil Procedural Code, the court of first instance came to the right decision that claims of Gulzada Serzhan [“Feminita”’s co-founder] are unfounded and are subject to dismissal”. “Feminita” has submitted a communication to the Human Rights Commissioner (Ombudsman) and plans to challenge the decision in the court of cassation.

It is important to note that registration and operation of NGOs in Kazakhstan is not a subject of regulation of the Law On Charities. Registration and operation of NGOs in Kazakhstan is a subject of regulation of the Law On Non-commercial Organisations. An independent legal expertise conducted by the ICNL found “Feminita”’s registration documents compliant with the requirements of local legislation, including the requirements of the Law On Non-commercial Organisations. Regarding the second reasoning of the Appeals Court, the first edition of the “Feminita”’s Charter included an objective to *protect political rights* which is allowed and not forbidden by the Law On Non-commercial Organisations. In two consecutive editions of the Charter this objective was put down³⁵. In either case there has been no violation of the relevant law in substance.

³³ Almaty Justice Department, Order №2 On Discontinuation of Terms of Registration of “Kazakhstan Feminist Initiative “Feminita”, 3 January 2019.

³⁴ Amnesty International, [Kazakhstan fails to register the LBQ initiative “Feminita”](#), 6 June 2019.

³⁵ The latest Charter objectives read as follows (in para 2.1. of the Charter):

Following the trial Human Rights Watch condemned the Appeals Court judgement stating that it “allows an arbitrary and discriminatory decision by the Ministry of Justice to stand”³⁶. Earlier Front Line Defenders stressed that this decision was “solely motivated by Feminita’s peaceful and legitimate work protecting LBTIQ women’s rights” to curtail the full operation of the human rights organisation³⁷.

(b) Challenges to peaceful assembly of feminist groups advocating for LBQT women’s rights

Case of 8 March. *In February 2019 feminist and queer feminist activists G.S. of Kazakhstan Feminist Initiative “Feminita”, V.D. of KazFem, Z.M. and D.K. have submitted 4 individual applications to the Almaty Akimat (City Hall) to hold a peaceful assembly (a women’s march) in Almaty on 8 March to mark the historical significance of the International Women’s Day as required under the Law on the Order of organisation of and conducting peaceful meetings, rallies, processions, pickets and demonstrations³⁸ and Article 32 of the Kazakhstan Constitution³⁹. None of the marches was authorised. The applicants received same/closely worded replies from the Almaty Akimat that:*

“In accordance with paragraph 1.2 of the Decision of XVII session of the Almaty City Maslikhat of III convoking №167 dated 29 June 2005, it is recommended to hold all non-governmental events of public-political nature in the square behind the “Saryarka” cinema theatre. In light of non-compliance with the established legal norms, your application is subject to return”.

In their applications the activists indicated different assembly points in the city (other than the square behind the “Saryarka” cinema theatre which is located in the city suburbs) to hold the marches.

When the activists resubmitted their applications with indication of the suggested assembly place they received consecutive rejections. Namely, G.’s five consecutive applications to hold a women’s march on 8 May, 8 June, 8 July, 8 August, 8 September 2019 were rejected. At all five occasions the Almaty Akimat either claimed that on those dates “on the square behind the “Saryarka” cinema theatre organisation of national sport competitions dedicated to the Youth Year in Kazakhstan is planned” or alleged “scheduled sewage replacement works”. Similarly, Z. and D.’s individual applications were rejected.

Following V.’s consecutive applications for a peaceful women’s march she was summoned to the Almaty Akimat on 20 July 2019 for a 1,5 hour talk with a deputy head of the Department of Public Development. The authorities expressed a concern that “LGBT

“The main objective of the Fund [“Feminita”] is **protection of rights, legitimate interests of individuals**, namely, support in protection of rights of women with limited physical and mental abilities, LBTIQ (lesbian, bisexual, transgender, intersex, queer) communities, sex workers; human rights awareness raising”.

³⁶ Human Rights Watch, [“Kazakhstan: Feminist Group Denied Registration”](#), 13 September 2019.

³⁷ Front Line Defenders, [“Human Rights Organisation Feminita Denied Registration”](#), 4 June 2019.

³⁸ [Law on the Order of organisation of and conducting peaceful meetings, rallies, processions, pickets and demonstrations in the Republic of Kazakhstan](#) №2126 dated 17 March 1995 requires a prior authorisation of peaceful assemblies with local authorities.

³⁹ [Constitution of the Republic of Kazakhstan](#), 30 August 1995.

people may attend the demonstration which they viewed as dangerous and to which Kazakhstan was not ready".

On 28 September 2019 the first feminist assembly on the square behind the "Saryarka" was authorised following V.'s latest of 36 applications themed for combating domestic violence. Themed differently, applications of Z. and D. to hold an assembly on the same date were denied.

The replies of the Almaty Akimat and the Decision of the Almaty City Maslikhat it refers to are unlawful as they contradict Article 32 of the Kazakhstan Constitution, the Law on the Order of organisation of and conducting peaceful meetings, rallies, processions, pickets and demonstrations as well as Article 21 of the International Covenant on Civil and Political Rights which guarantee exercise of the right to freedom of assembly and association and to which Kazakhstan is a party.

The procedure of obtaining an authorisation for a peaceful assembly is not designed to facilitate or regulate public assemblies. In fact, the Almaty Akimat's rejections constitute effective bans to exercise the right to freedom of assembly and association of feminist and queer feminist groups.

QUESTION 18. Employment (under Article 11)

In its report to the CEDAW, the State Party acknowledged that 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 (the List)⁴⁰. It further notes that different occupations are prohibited for women to "**ensure maternity protection** and also safeguard women's health". In 2018, the list was narrowed from 287 banned occupations to 219 professions⁴¹ following the adoption of the Decree of the Minister of Labour and Social Security of the Population of the Republic of Kazakhstan dated 13 August 2018⁴². The List includes well paid occupations in, among others, spheres of agriculture, cargo shipping, oil and gas industries.

In its Reply to List of Issues the State party highlights that: "Given that with the introduction of modern manufacturing technologies and digitalization many jobs are becoming less dangerous to **the health of mothers**, the list is periodically reviewed"^{43 44}. The List's periodic review, in the State party's view, may happen solely due to "the introduction of modern manufacturing technologies and digitalization"⁴⁵. Grounding the rationale of the List's existence in protection of mothers and maternity leaves out a vast majority of women outside of perinatal period. As a result, women (1) who are not able to have children or (2) who already have them or (3) lead a childfree lifestyle are not able to overcome these professional bans. Above all, women are denied the opportunity to choose a job and decide what their priorities for personal and professional

⁴⁰ CEDAW, Fifth periodic report submitted by Kazakhstan, [CEDAW/C/KAZ/5](#), 1 June 2018.

⁴¹ The State report indicates 191 jobs.

⁴² Decree of the Minister of Labour and Social Security of the Population of the Republic of Kazakhstan dated 13 August 2018.

⁴³ CEDAW, State Reply to List of Issues, [CEDAW/C/KAZ/Q/5/add.1](#), 17 September 2019.

⁴⁴ State Report on Implementation of the Beijing Declaration and Platform for Action, 2019, p. 19.

⁴⁵ CEDAW, State Reply to List of Issues, [CEDAW/C/KAZ/Q/5/add.1](#), 17 September 2019.

development are which reinforces the stereotype that “limit the role of women exclusively to the care and upbringing of children, which affects the empowerment of women in all areas”⁴⁶.

*Case of A*⁴⁷. A woman named A. has reported her case of employment discrimination to “Feminita”. In June 2019 while working as a heavy truck driver [job No. 60 of the List], on one of her work shifts A. decided to record a video for her social media channel. As soon as it was noticed by the company’s administration, the administration immediately launched her search. Right on a work shift A. was unexpectedly interrupted by a security officer for “a talk”. According to A.:

“I was taken off the car, they introduced themselves and there I learned that the List existed and that I was not allowed to perform this job. That I can work but not for public display - “quietly” or what to call it... In the recorded video I just wanted to tell about myself and my job, nothing more... I wanted to inspire other people that everything is possible!”

“It was unexpected and scary that I was treated as a criminal as if I committed a crime. And they [the security officers] terrorised me until 21:30 at a 12 hour shift on a hot day without giving me some time to rest. [They] asked me why I posted the video and told that it was not allowed because of the list; I was saying that I didn’t understand that the list existed - that’s when I discovered its [the List of banned jobs for women] existence”.

As a result, A. was forced to submit a notice on her voluntary resignation and leave the job. In addition to forcing to leave the workplace, A.’s records in her employment history book were backdated where she was registered as a driver of a lighter vehicle and was remunerated accordingly. This is despite the fact that she was qualified for the job, had been performing required workload in full and the employer had no complaints regarding the quality of the work performed.

Being a remnant of the Soviet time, the List, nevertheless, establishes direct employment discrimination against women, contributes to widening of the gender pay gap and, above all, reinforces the gender roles limiting women to childbearing and care in a modern day Kazakhstan. In light of the above, the State party should stop assuming a protective approach to the women’s reproductive function, improve working conditions at the listed jobs for employees of all genders and repeal the List in full. The State party should ensure fulfillment of everyone’s right, including the right of LBQT women, to free choice of profession and occupation and the right to safe working conditions free from any discrimination guaranteed under Article 24 of the Kazakhstan’s Constitution⁴⁸ complaint with its obligations under Article 11 of the CEDAW Convention.

QUESTION 19. Health (under Article 12)

In April 2019 “Feminita” started the pilot project on the right to health for LBQT women and transgender men in Kazakhstan. Despite the fact that the research project is still in progress, more than 170 respondents have been included throughout the country up to date. Based on the

⁴⁶ CEDAW, List of Issues, [CEDAW/C/KAZ/Q/5](#), 18 March 2019, para. 7.

⁴⁷ Case documented by Kazakhstan Feminist Initiative “Feminita”.

⁴⁸ [Constitution of the Republic of Kazakhstan](#), 30 August 1995, Article 24.

preliminary results of the research, different issues specifically related to LBQT women and transgender men have been identified.

One of the most common issues that have been noted by the respondents was the fear of facing stigma and discrimination while receiving healthcare services. This mainly led to hiding one's sexual orientation and (or) practices while attending doctors. Moreover, some respondents have been denied services based on their sexuality or dealt with unprofessional treatment and attitude from the medical staff. In addition, the breach of confidentiality was noted to be one of the main problems that the respondents have experienced or are afraid of while seeking professional medical help. Thus, most respondents shared that they prefer self-medication at home. Most respondents also highlighted that in case of discrimination and (or) abuse from medical staff, they would not file complaints due to associated risks of disclosing their sexual orientation and the absence of trust that it would change the situation.

In general, one of the main trends that were common for most of the respondents is low level of awareness about HIV and STIs. The widespread belief among respondents is that lesbian sexual practices do not bear any health risks and, henceforth, there is a low level of adherence to practicing safe sex. On the other hand, those respondents who knew about the risks of STIs and HIV, still did not have access to so-called "friendly offices" that exist in urban AIDS centers. Such offices provide free and anonymous services, such as testing and distribution of condoms and lubricants for men practicing sex with men (MSM) and sex workers, yet LBQ women are not covered by such services. As a result, several respondents admitted that they had to pass themselves as sex-workers, which made them feel humiliated due to general stigmatisation and prejudice against sex-workers in the society.

Among other problems that were identified by the research, an issue of forced conversion by relatives of LBQ women have been raised a number of times. One of the cases of institutional instances of a "conversion therapy" was testified by a respondent D.

***Case of D.** In September 2019, young queer woman D. from the capital of Kazakhstan reported that her parents attempted to "treat" her by means of a conversion therapy. "My parents discovered about me [D.'s sexual orientation]. My brother has connections in the Ministry of Healthcare and he made enquiries on what could be done with me. [They] suggested [to undergo] on an anonymous basis the following option: work with a psychologist, with subconscious, you sleep constantly, [they] constantly pump [drugs], treat you under hypnosis. It starts with 2 weeks, then a month, a complete course lasts 4 months. I was about to be placed there by my family and it costs 3 800 000 tenge for 4 months". D. recalled her personal experience of treatment by a narcologist at a state hospital on the city's leftbank where she later learned about the possibility of treatment of "lesbianism" in private".*

When it comes to reproductive services, some participants of the research admitted that they have experienced cases when they were denied services, even in private centers. For some, having a heterosexual intercourse in order to conceive a child was seen as the only available choice of reproduction given the high costs of reproductive services and professional negligence of medical staff due to one's sexual orientation and gender identity.