### Joint submission to Independent Expert on SOGI on colonialism and sexual orientation and gender identity by Feminita and EL\*C - Eurocentralasial Lesbian\* Community

The present report examines the impact of the colonial relationship between Kazakhstan and the Russian Federation on the lives of LGBTI persons in Kazakhstan. The influence of Russia, in terms of legal, cultural, and social aspects, has persisted beyond the dissolution of the Soviet Union, and LGBTI people are frequently targeted with an aim to maintain Kazakhstan within Russia’s area of influence. Additionally, the current criminal legislation in Kazakhstan still reflects the the criminalisation of same-sex relationship enacted under the Soviet Union, and political movements aligned with Russia are replicating methodologies and narratives of the Russian “anti-gender” movement.

In January 2022, Russian armed forces intervened in Kazakhstan during what became known as the “bloody January”, to suppress the demonstrations against the government[[1]](#footnote-0). It is important to notice that since January 2022, it has become even more difficult to protect the rights of LGBTQI persons. Feminita is routinely denied the authorisation to hold an 8th of March rally and has already been refused permission to hold a march planned for 2024, on the grounds that it would constitute “a threat to public order.” Despite the promises from the government for a "New and Fair Kazakhstan” promoting democracy and respecting human rights, this year, the public authorities denied Feminita the authorization to register in the country for the 11th time. Law enforcement authorities deploy intimidation tactics against feminist gatherings and meetings, as it was the case during EL\*C visit to activists in Astana.[[2]](#footnote-1) At the same time, since 2022, the “anti-gender” movements in the country gained traction and initiated defamation campaigns against LGBTI and feminist activists, resulting in an alarming number of death and rape threats both online and offline.

**Articles 121, 122, and 123 of the Criminal Code of Kazakhstan.**

As noted in Feminita’s alternative report to the 72rd Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women (CEDAW),[[3]](#footnote-2) consensual same-sex relationships were decriminalized in Kazakhstan after the dissolution of the Soviet Union with adoption of the Criminal Code in 1999. However at the same time the legislator introduced criminal liability for “violent acts of sexual nature” explicitly mentioning “lesbianism” and “sodomy” under Articles 121, 122 and 123 of the Criminal Code.[[4]](#footnote-3) These references to “lesbianism” and “sodomy” constitute a form of discrimination on the basis of sexual orientation, as they equate consensual homosexual acts with rape and sexual violence.

The text of the abovementioned Articles reads as follow:

***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 force[[5]](#footnote-4) 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”[[6]](#footnote-5).*

***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”[[7]](#footnote-6).*

***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 index[[8]](#footnote-7), or corrective labour in the same amount, or restriction of freedom for up to 1 year or imprisonment for the same period”[[9]](#footnote-8).*

Despite the presence of Article 120[[10]](#footnote-9) of the Criminal Code, which specifically addresses criminal liability for rape, “lesbianism” and “sodomy” are singled out in a separate Article 121. Additionally, in Article 122 “lesbianism” and “sodomy” are appended to a separate offense, namely, “sexual intercourse with minors”. Similarly, in Article 123 “lesbianism” and “sodomy” are appended to the offense of “coercion to sexual intercourse”. This situation contributes to the negative portrayal and stigmatization of LBQ women as well as the broader LGBTIQ community. While there have been few reported instances of individuals being prosecuted specifically for “lesbianism” and “sodomy”, the mere presence of these articles in the Criminal Code exposes LBQ women to potential risks, such as threats and blackmail. Feminita has documented two cases of LBQ women being threatened by family members of their partners, who intended to exploit these articles against them.[[11]](#footnote-10)

In September 2019, the Central Communication Service under the President of Kazakhstan announced a proposal for a draft law aimed at increasing criminal liability for committing serious crimes.[[12]](#footnote-11) The legislation sought to enhance the punishment for various offenses, including 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). Under the proposed changes, stricter penalties, namely imprisonment for up to 8 years, would be established for offenses covered by Articles 121, 122, 123. However, no proposals were made to remove the references to “lesbianism” and “sodomy” from the legislation. The abovementioned legislation was passed and entered into force on January 11, 2020.

**Anti-gender movement supported by Russia**

As mentioned above, over the past three years, Feminita has observed a deeply concerning rise of the anti-gender movement in the country. This increase in influence appeared to be linked in particular with the organization ‘Kazakhstanskyi Souz Roditelei’ (The Parents’ Union of Kazakhstan, hereinafter referred to as “the PUK”).

The PUK, registered in 2021, primarily operates in the northern regions of Kazakhstan and employs methods similar to those of the anti-gender movements in the Russian Federation. Specifically, they actively disseminate false information about vaccination, juvenile justice, LGBT, women’s rights, WHO, UN Committees, UNICEF, USAID.[[13]](#footnote-12) This information is aimed at frightening the public and creating a false perception among them regarding the mentioned activities, social groups, and organizations.

According to the report published by a local activist (R.),[[14]](#footnote-13) the PUK appears to be affiliated with the organization called Narodnye Sovety (‘The People's Council of Workers’). The People’s Council of Workers is an organization that emerged in Petropavlovsk in 2023, advocating against the “corporation of Kazakhstan” and its “agents,” and for a return to the “constitutional system of the Kazakh SSR.” When R. publicly raised the question to the PUK regarding their connection with Nardonye Sovety, the PUK responded by filing a defamation lawsuit against him..

Initially, the PUK were primarily focused on criticizing vaccinations and fostering mistrust in the Kazakhstan government. Additionally, activists associated with the PUK participated in discussions surrounding a draft legislation aimed at combating domestic violence. Utilizing social networks and their followers, they initiated an active campaign against women's and feminist organizations that strive to prevent domestic violence in the country and support the proposed legislation. Despite the efforts made by these organizations and the alarming statistics of violence against women presented by Dina Tansari, from Nemolchi.kz (MeToo),[[15]](#footnote-14) this bill was rejected.

The anti-gender movement is heavily focused on targeting recommendations from international children's rights organizations. In particular, the PUK opposes the introduction of juvenile justice. In the name of protecting children, the PUK disseminates hate speech and false information about human rights defenders, prominent lawyers and LGBTI activists. Moreover, the PUK accused the UN Committees of promoting pornography and pedophilia.[[16]](#footnote-15)

Additionally, following the outbreak of COVID-19 pandemic, anti-gender activists have effectively utilized various show business figures to disseminate a narrative against the feminist and LGBT+ movement in Kazakhstan, especially through social media platforms. With the quarantine measures in place, these show business figures, who previously enjoyed a significant audience, found themselves without work and sought ways to monetize their social media accounts. Some of them aligned themselves with the anti-gender movement and began spreading hate speech targeting feminist and LGBTI activists, thus increasing their engagement and expanding their audiences.

The PUK has demonstrated its capacity to influence public authorities. On March 12, 2022, the PUK, in collaboration with another group named ‘The Unity of Conscious’, organized a rally that received official approval. Bagilya Baltabayeva, the leader of the rally and a member of the PUK, spread hate speech targeting LGBT+ community during the rally and utilized the National Hymn and Kazakh ethnic symbols and ornaments to show that the State and the Nation are supporting the anti-gender movement. Participants reported that local authorities (Akimat) sent representatives to support the rally. However, no public announcement was made by State officials followed to refute their support of the anti-gender movement.

**Recommendations**

In order to fully repeal the colonial legacy, it is fundamental that legal, cultural and social structures that are related with Russian domination of Kazakhstan or are related with the present efforts of keeping the country under the area of influence of Russia are questioned. The opposition to LGBTI rights is one of the areas where the cultural influence exerted by Russia is especially strong with dangerous consequences for the democratic development of the country and for the safety of LGBTI people. For this reason, EL\*C and Feminita offer the following recommendations.

**Recommendations to Kazakhstan authorities:**

* Ensure that processes related with furthering the advancement of rule of the law and democracy in the country are inclusive of civil society organizations protecting the rights of women, LGBTI people and other minority groups.
* Allow the legal registration of civil society organizations focusing on the protection of human rights of LGBTI people and stop discriminatory practices committed by members of law enforcement, judicial and other public authorities.
* Allow and protect peaceful rallies for human rights such as the 8th of March Demonstration and the IDAHOBIT celebration or the Equality March.
* **Repeal all discriminatory provisions** **on the grounds of SOGI** from the national legislation, including reference to **“sodomy”** and **“lesbianism”** from **Articles 121, 122, 123** of the Criminal Code.

**Recommendations to UN bodies and other international organizations and stakeholders:**

* Support democratic processes in the country and ensure that diverse civil society organizations, especially those protecting women’s rights and LGBTI rights, are included in the relevant discussions.
* Support Kazakhstan civil society organization, especially by providing access to funds, legal support and other kinds of support to organizations that focus on the doubly discriminated communities such as LBT women and women belonging to other minority groups.
* Monitor the situation and the respect of the fundamental rights of LGBTIQ activists and call the government of Kazakhstan to ensure the security of Feminita organizers and the community members attending their meetings, including during the 8 of March 2024 rallies, the 2024 IDAHOBIT celebrations and the 4th EL\*C International Lesbian Conference planned in Almaty in October 2024.
* Call the Kazakhstan public authorities to end violations of the right of peaceful assembly by allowing Feminita and other LGBTIQ organizations to legally register as an NGO and by authorizing peaceful marches and demonstrations.
* Call the Kazakhstan public authorities to repeal legislation or practice discriminatory

### ABOUT EL\*C

The EL\*C - EuroCentralAsian Lesbian\* Community is a non-governmental organization, representing lesbian, queer, bi and trans women and non-binary people perceived or socialized as LBTIQ women as well as lesbian organizations in Europe and Central Asia.

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**ABOUT FEMINITA**

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.

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1. <https://cabar.asia/ru/krovavyj-yanvar-izmenilis-li-vlast-i-obshhestvo-v-kazahstane> [↑](#footnote-ref-0)
2. https://europeanlesbianconference.org/support-feminist-and-lgbti-initiatives-in-kazakhstan/ [↑](#footnote-ref-1)
3. Kazakhstan Feminist Initiative “Feminita”, [Alternative Report on Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in Kazakhstan](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fCSS%2fKAZ%2f33738&Lang=en), January 2019, p. 6. [↑](#footnote-ref-2)
4. The words “lesbianism” and “sodomy” are used in the Russian version of the Criminal Code. However in Kazakh text of the Articles 121, 122 and 123 contain constructions “sexual intercourse between man and man, between woman and woman” instead, which puts the rapist and the victim on the same level by gender. Russian language is officially used along with Kazakh at state agencies and local authorities (according to Article 7 of the Constitution of the Republic of Kazakhstan). [↑](#footnote-ref-3)
5. [The Normative Decree of the Supreme Court of the Republic of Kazakhstan](https://online.zakon.kz/Document/?doc_id=30105463#pos=0;164) 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”#. [↑](#footnote-ref-4)
6. [Criminal Code of the Republic of Kazakhstan](https://online.zakon.kz/document/?doc_id=31575252#pos=1584;-75), 3 July 2014, Article 121. [↑](#footnote-ref-5)
7. [Criminal Code of the Republic of Kazakhstan](https://online.zakon.kz/document/?doc_id=31575252#pos=1584;-75), 3 July 2014, Article 122. [↑](#footnote-ref-6)
8. 1 monthly calculation index (MCI) in 2019 amounts to 2 525 KZT, approximately 6,5 USD. [↑](#footnote-ref-7)
9. [Criminal Code of the Republic of Kazakhstan](https://online.zakon.kz/document/?doc_id=31575252#pos=1584;-75), 3 July 2014, Article 123. [↑](#footnote-ref-8)
10. [Criminal Code of the Republic of Kazakhstan](https://online.zakon.kz/document/?doc_id=31575252#pos=1584;-75), 3 July 2014, Article 120. [↑](#footnote-ref-9)
11. Case registered by Feminita in May, 2018. [↑](#footnote-ref-10)
12. The Central Communication Service under the President of Kazakhstan, [“Разработан законопроект по ужесточению уголовной ответственности за совершение тяжких преступлений”](https://ortcom.kz/en/novosti/razrabotan-zakonoproekt-po-uzhestocheniyu-ugolovnoj-otvetstvennosti-za-sovershenie-tyazhkih-prestuplenij), 11 September 2019. [↑](#footnote-ref-11)
13. <https://factcheck.kz/false/konferenciya-kazaxstanskogo-soyuza-roditelej-lozh-i-manipulyacii-v-zayavleniyax-spikerov/> [↑](#footnote-ref-12)
14. <https://www.instagram.com/p/Cqop8p_In9v/?igshid=MTc4MmM1YmI2Ng==> [↑](#footnote-ref-13)
15. <https://www.facebook.com/dina.tansari.kz> [↑](#footnote-ref-14)
16. <https://factcheck.kz/false/pravda-li-chto-mezhdunarodnye-organizacii-sistemy-oon-prodvigayut-detskuyu-pornografiyu-i-pedofiliyu/> [↑](#footnote-ref-15)