



Human Rights Violations Based on Sexual Orientation and Gender Identity in Uzbekistan

Alternative Report

as a commentary on the report CCPR/C/UZB/5 by Uzbekistan
and as a response to the List of issues CCPR/C/UZB/RQ/5

128^h Session of the Human Rights Committee
Review of the fifth periodic report of Uzbekistan

February 2020

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ECOM - Eurasian Coalition on Health, Rights, Gender and Sexual Diversity
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I. Introduction

LGBT community in Uzbekistan faces numerous problems, the main out of which is the systemic negative impact created by the criminalization of the consensual same-sex intercourse between adult males (Article 120 of the Criminal Code of Uzbekistan). Criminalization of consensual sexual activities between adult males is punishable with up to three-years imprisonment.

This institutionalized violence against gay men has its influence on lesbian, bisexual and trans* persons as this is perceived as general prohibition of homosexuality and queerness among the general public. LGBT people face numerous intersecting human rights violations in Uzbekistan and the State offers no protection and legal remedies as by criminalisation of same-sex intercourse between males it leaves this group of people vulnerable to violence, abuses and even killings.

This report responds to the questions raised by the Human Rights Committee to Uzbekistan in its List of Issues prior to the review of Uzbekistan¹ for 128th session of the Committee.

II. Non-discrimination (arts. 2 and 26)

*4. With reference to the previous concluding observations (para. 6), please report on measures taken to ensure that the legal framework: (a) provides full and effective protection against direct, indirect and multiple discrimination in all spheres, including in the private sphere, and on all the grounds prohibited under the Covenant, including colour, political or other opinion, national origin, property, birth, **sexual orientation, gender identity** and other status; and (b) provides for effective remedies in judicial and administrative proceedings for victims of discrimination. In this respect, please clarify if there are any plans to adopt comprehensive anti-discrimination legislation to address the above requirements.²*

The State replied that non-discrimination is provided in the Constitution of Uzbekistan and prohibited grounds include sex, race, ethnicity, language, religion, social origins, beliefs, personal and public status. However, none of the listed can be explicitly referred to sexual orientation and/or gender identity.

Anti-discrimination legislation in Uzbekistan lacks explicit provisions on sexual orientation and gender identity. These grounds are not mentioned anywhere, including the Constitution, constitutional laws, Codes and other legislative acts.

The Government of Uzbekistan refuses to amend its legislation to include legal safeguards for LGBT people referring that it is against cultural values and traditions of Uzbek people, however, such argumentation is not consistent with the existing human rights obligations of the country. In particular, it is against the universality of human rights which is a value that government of Uzbekistan has signed up to in 1995 and agreeing to implement provisions of the International Covenant on Civil and Political Rights to its domestic legal provisions. Moreover, traditional values and customs could not serve as an excuse for the continuous human rights violations against the people of Uzbekistan.

¹ CCPR/C/UZB/Q/5

² Ibid.

III. Decriminalization of consensual sexual activities between adult males

5. With reference to the information in paragraph 69 of the State party's report (CCPR/C/UZB/5), please report on the measures taken: (a) to raise awareness about the principles of universality of human rights and of non-discrimination among the population at large; and (b) to implement the Committee's long-standing recommendation to **decriminalize consensual sexual activities between adult males** (CCPR/C/UZB/CO/3, para. 22 and CCPR/C/UZB/CO/4, para. 7). Please respond to reports of social stigmatization, harassment, violence and discrimination against lesbian, gay, bisexual and transgender individuals by both State officials and private individuals, including extortion and arbitrary arrest and detention by law enforcement officials. Please clarify the procedure for legal recognition of gender reassignment and comment on reports that it requires a minimum of one month's hospitalization in a psychiatric clinic.³

State's reply⁴:

*The issue of the elimination of Article 120 from the Criminal Code and the decriminalization of homosexuality is discussed in expert circles as part of the development of a new draft of Criminal Code. Given the religious, ethical, cultural traditions and foundations of society, these issues should be widely discussed among the population before making a final decision on them.*⁵

We highly welcome the intention of Uzbekistan's government to discuss repeal of article 120 from its criminal provisions. It should be emphasized that this intention is a big step forward by the State and shows the readiness for the dialogue. We would like to remind authorities of the universality of human rights and its obligations to respect, protect and fulfil the rights of every individual under its jurisdiction despite religious and cultural traditions. The rule of law and democracy declared by the Uzbekistan Constitution should be reiterated here.

During the UPR process on all three rounds Uzbekistan regularly received recommendations to decriminalize same sex conduct, however all these recommendations were refused by the Government. Generally, State employs two arguments for refusal: a) decriminalization is contrary to the national values and traditions and also it will cause broad objection from the population; b) homosexual relations are causing the spread of HIV/AIDS in Uzbekistan.

In relation to the first argument, clearly, it is the state obligation to ensure that the universality of human rights is properly educated in the country. Decriminalization of same sex conduct is under the human rights obligations of Uzbekistan and it needs to be carried out within comprehensive framework tackling homophobia and preventing hate crimes in the country.

There is no reliable data that homosexual relations are causing the spread of HIV/AIDS in Uzbekistan simply because this data is not collected appropriately. Having the risk of persecution under the article 120, LGBT people rarely disclose their sexuality or in many cases are even reluctant to test for HIV. According to semi-official data HIV spread among men having sex with men is around 0.7% and under the Order of the Ministry of Healthcare from 2012, MSM are not included in the high risk group.⁶ Alarmingly, the sexual way of HIV transmission is prevailing in Uzbekistan (69.5%) and mainly linked to working migrants and trafficking of people.⁷ The root causes of this

³ CCPR/C/UZB/Q/5

⁴ ECOM's translation from Russian;

⁵ CCPR/C/UZB/RQ/5

⁶ Order of the Ministry of Healthcare of the Republic of Uzbekistan #80 (28 march 2012) "On Improvement of prevention measures on HIV – infection and organisation of medical aid in the Republic of Uzbekistan"

⁷ https://www.unaids.org/sites/default/files/country/documents/UZB_2018_countryreport.pdf
Country progress report Uzbekistan, Global AIDS Monitoring 2018

are believed to be linked with absence of appropriate sexual education in schools and universities, lack of HIV-prevention campaigns. Campaigns that are carried out designed under the framework of cultural values and traditions, that obviously, do not respond to the challenges of HIV spreading as directed at preventing young people engaging in extra-marital sex and as can be seen from the above statistics are ineffective. Moreover, UNAIDS reports 94.6% use of condoms among MSM, thus the increase of HIV in Uzbekistan cannot be linked with LGBT people.⁸

IV. Access to healthcare

Criminalization of consensual sexual conduct between males limits LGBT people's access to healthcare. Most importantly, people are reluctant to test as under the Uzbek law HIV-positive people are obliged to disclose their sexual partners to authorities under the article 57 of the Code on Administrative Liability. This way their sexuality becomes known to authorities who in turn forward this information to the law enforcement to initiate criminal cases under the article 120 of the Criminal Code of Uzbekistan.

Fearing persecution LGBT people, even if they know of the positive HIV status, refuse to apply for ART treatment as it means that will have to undergo medical examinations that do not respect the right to confidentiality as medical personnel is obliged to inform other relevant authorities of newly identified cases of HIV-infection.

LGBT communities in Uzbekistan reported cases when after testing their HIV status was disclosed to *mahalla* committees, local responsible militia officers and neighbours despite provisions of Uzbek law on confidentiality of personal medical information. Currently, these people are facing stigmatization and some of them were forced to change their residence place, in order to protect their privacy.

Moreover, confidentiality of HIV testing is not provided in full. Testing centre in Tashkent, for example, is equipped with cameras.

HIV-positive gay person reported that during his conversation with doctor in AIDS Centre in Tashkent, an outsider person in civil clothes came to the room and threatened him with article 120 and attempted to extort money from him.⁹

V. Access to justice

LGBT people have restricted access to justice in the cases of offences against them committed on the basis of their sexual orientation or gender identity. In majority of cases they are afraid that their sexuality will be revealed to law enforcement and this could serve to open persecution against them on the basis of article 120.

In responses to the UN Committee against Torture's List of Issues, the Government states 'The Investigative Department and its regional branches have no criminal cases open involving violence against lesbian, gay, bisexual or transgender persons'.¹⁰ It is an obvious result of the existence of article 120 in the criminal provisions of Uzbekistan that violence against LGBT people is unreported. Moreover, LGBT groups in Uzbekistan recorded cases when gay people attempted to report violence to police officers, they were humiliated and threatened with being imprisoned for their sexual behaviour.

In April 2019 a gay person reported that he was severely beaten and was forced to jump to canal to save his life after a set-up date. He claimed that he could not go to

⁸ <https://www.unaids.org/en/regionscountries/countries/uzbekistan>

⁹ IG interview March 2017

¹⁰ CAT/C/UZB/Q/5/Add.1 paragraph 9 (a), (b) and (c)

*law enforcement as he was afraid that they will start investigation against him according to offence provided in the article 120.*¹¹

Due to this situation, numerous cases of violence against LGBT people are unreported.

It has been reported by our local partners that lawyers are generally reluctant to take a case related to the article 120 fearing for their reputation and pressured by homophobia. Furthermore, there is a significant control imposed by the Ministry of Justice over the legal profession, supposed to be independent from authorities. Through the mechanisms of forced membership in Chamber of Lawyers and Qualification Committees lawyers in Uzbekistan deprived from independence in their profession and risk disbarment in cases of taking so-called "sensitive" cases or having too active position in defence in such cases.¹²

On 23 July 2019, a group of LGBT people published open-letter to President of Uzbekistan asking to abolish the article 120. "Our aim is to ensure that article 120 ("Sodomy") is abolished. This article opens a path to vigilantism and corruption" was said in this letter.¹³ Following this statement, a video appeal was recorded and published by gay person urging president of Uzbekistan to abolish article 120 of the Criminal Code. He was forced to seek asylum as law enforcement officers visited his parent's house seeking for him.¹⁴ According to local LGBT activists, law enforcement internally announced operation "Oriyat" from 15 August to 15 September on detaining sex workers and LGBT people. Activists reported that several gay people were detained and interrogated during this operation. Moreover, during that month, gay people living with HIV missed their medical visits to receive therapy medicines, fearing the persecution.

VI. Violence against LGBT people and hate crimes

LGBT people in Uzbekistan remain particularly vulnerable and marginalized both due to criminalization of consensual homosexual conduct and reluctance of government to provide protection for people on the basis of their sexual orientation and gender identity. Denial of LGBT people's rights exacerbates homophobia in the society, leading to increase of violence against LGBT people committed by non-state actors. Thus the level of the hatred and homophobia is raising to the extreme levels in Uzbekistan. Local activists reported groups named TashGangs and AntiGay, communicating through the Telegram messengers and some other hate groups in VKontakte social media service. These groups are posting videos of how they humiliate, insult, beat and sexually abuse gay people. Moreover, they are offering money for other groups who will be doing the same and sharing videos with them.

Due to the existence of the article 120 LGBT people have to access to legal actions and remedies against such violations. In addition, there is no definition of hate crimes in the legislation of Uzbekistan and it is not recognized as aggravating circumstances by the law enforcement. Still, hate crimes against LGBT people are increasing due to the State's denial to abolish article 120 leading to increased perception that there is a general prohibition of homosexuality in Uzbek legislation.

*On 12 September 2019, Shokir Shavkatov (25 years old) was brutally murdered after he "came out" on his Instagram page. Police say he suffered "several" knife wounds on his "neck and arms," and an officer said his throat had been cut so deeply he was nearly decapitated.*¹⁵

¹¹ <https://rus.ozodlik.org/a/29890288.html>

¹² Articles 12(1,2,3) and 13, Law on Advocatura

¹³ <https://rus.ozodlik.org/a/30071738.html>

¹⁴ <https://www.ozodlik.org/a/30115849.html> and <https://rus.ozodlik.org/a/30119816.html>

¹⁵ <https://www.rferl.org/a/killing-of-gay-man-spotlights- plight-of-uzbek-lgbt-community/30167271.html>

In January 2020, a fashion designer Nariman Grigoryan was brutally killed in his apartment. It has been reported by local activists that he was homosexual and this crime was committed due to his sexuality. Allegedly, murderer cut his throat, multiple stab wounds including to anus area and then attempted to burn his body. However, prosecution denied sexual orientation motive and presented this case as a murder linked with robbery.

VII. Freedom of Association

Contrary to the international obligations of Uzbekistan¹⁶, the registration of nongovernmental organisations takes permissive character rather than nominal inclusion to the state registry. Meanwhile, groups of citizens united without state permission i.e. registration are subject to heavy penalties¹⁷, arrest and up to 3-years imprisonment¹⁸.

Criminalization of consensual homosexual relations affects other rights of LGBT people in Uzbekistan, particularly freedom of association. On one hand, there is literally no possibility for civil society organisations to conduct advocacy work on combating homophobic stereotypes and stigmatization of LGBT people due to heavy restrictions on freedom of associations and speech in Uzbekistan. On the other, hand LGBT people cannot even apply for registration of LGBT organisation as it would mean they will have to declare their sexuality as the registration process requires providing list of founders with full details of each person. Particularly, article 22 of the NGO Law list documents that needs to be submitted for registration, including full personal details of persons anyhow involved with NGO creation. With existence of article 120 of the Criminal Code, LGBT people clearly risk imprisonment for applying to registration and declaring homosexuality on paper to authorities.

Registered NGO in Uzbekistan are also highly restricted in terms of the issues they can raise. Primarily, they are obliged to work within the boundaries of their Charter under the monitoring of Ministry of Justice as registering body, otherwise they are subjected to heavy penalties.¹⁹ Law also provides Ministry of Justice with powers to control funding received by nongovernmental organizations: prior to grant proposal submissions, NGO are obliged to seek permission of registering body.²⁰ In addition, registered NGO in Uzbekistan must have Ministry of Justice's permission and provide access to any event conducted.²¹ Consequently, there is no possibility for registered NGO to open up the discussion on combatting homophobia without consequences of losing registration, being not allowed to work further or prohibited from accessing external funding.

Currently, LGBT people live in the environment when government is reluctant to abolish the criminal persecution of consensual homosexual intercourse and it is impossible for LGBT activists to register NGO and openly advocate for their basic rights and freedoms and combat homophobia. LGBT activists are being trapped in the circle of violence where on one hand they are under high risk of imprisonment and on the other hand, they have no voice to advocate for their freedoms and non-discrimination.

VIII. Trans* people in Uzbekistan

Although the legislation of Uzbekistan provides the possibility to change sex, the trans* people are not recognized in Uzbekistan. The Family Code of Uzbekistan provides a possibility to change gender identity in the following: Article 201 provides that the change of gender is recorded in the acts of civil registry, further Article 229

¹⁶ Article 22, ICCPR, signed by Uzbekistan in 1995.

¹⁷ Article 239 Code of Administrative Liability of Uzbekistan

¹⁸ Article 202, Code of Administrative Liability of Uzbekistan and Article 216, Criminal Code

¹⁹ Article 239 Code of Administrative Liability of Uzbekistan

²⁰ article 8, Law on Nongovernmental Noncommercial Organizations of the Republic of Uzbekistan

²¹ Ibid.

provides that gender amendment is possible with the conclusion of health authorities.²² In practice this procedure is carried out through the examination of psychiatrists, meaning that trans* person needs to go through the at least 1 month hospitalization psychiatric clinic. In cases if doctors are unsure they can keep person hospitalized for longer. This is humiliating procedure needs to be reconsidered. Those refusing to go through psychiatric examination procedure risk higher as maintaining the documents showing gender contradicting to their appearance. In majority of case trans* people are harassed by representatives of law enforcement during documents check.

Article 120 of the Criminal Code also affects trans* persons as it is perceived as general prohibition of other than heterosexual orientation and cis-gender identity.

The harassment and persecution trans* people face in Uzbekistan is cruel, humiliating and degrading. Our partner organization recorded numerous cases when trans* people were abused by authorities, some of them were published in the Mass Media sources:

A trans person from Samarkand faced numerous harassments including when travelling from the country during passport control. In September 2018 the trans* woman was travelling outside of the country and she was requested to undergo personal physical check. She was taken to the utility room by two male officers breaking all legal procedures required during such searches. She was stripped naked and insulted. Afterwards, this trans* woman made numerous complaints on it, but every time she received snide responses.*

In January 2016, Radio Ozodlik shared a video on which two militia officers cruelly beat trans person.²³ There were numerous videos on the Youtube when groups of men were attacking and severely trans* person.*

26 years-old trans woman K. claimed that she was raped by militia officer 3 January 2017 when she was detained. Perpetrator's name and details of this incident she provided in her application for asylum. She also stated that she was detained three times before January 2017. "They detain person in the night and do not record the fact of detention. If something happens to you, there is no possibility to prove anything. In the case if they write protocol, then they record that the person was detained to identify their personality, says K. They beat you badly, so you can only lay down 5-6 days."²⁴*

IX. Lesbian and bisexual women

Homophobia and hate powered by criminalization of same-sex intercourse has its negative impact on lesbian and bisexual women in Uzbekistan. LGBT activists of Uzbekistan recorded cases of human rights violations against lesbian and bisexual women, including assaults, humiliations, loss of jobs, forced marriages, correctional rapes. LGBT activists in Uzbekistan recorded cases of suicides committed by LGBT people. One case, particularly, demonstrates people and authorities' attitudes towards lesbian women in Uzbekistan:

20 years-old lesbian woman committed suicide as a result of her parents' rejection of her sexuality and planned forced marriage. Both parents and militia officers agreed to register this case as a heart attack in order to avoid investigation.

In September 2019, the Government of Uzbekistan adopted the law "On Protection of Women from Harassment and Violence" defining different types of violence against women. We welcome the adoption of this long-awaited law. Despite the fact that this

²² Family Code of Uzbekistan, <http://lex.uz/docs/104723#161914>

²³ Radio Ozodlik article <https://rus.ozodlik.org/a/27467993.html>

²⁴ <https://www.currenttime.tv/a/28956669.html>

law provided numerous useful definitions on violence against women, it lacks clear definition of marital rape, implacable to lesbian women in cases of forced marriages.

Homosexual women face tremendous discrimination at workplace when their sexuality is suspected or discovered. The risk of unemployment acts as a particularly strong disincentive for lesbian women to reveal their sexual orientation. As if her sexuality is anyhow disclosed, she is under high risk of dismissal. The Labour Code of Uzbekistan lack defining the discrimination on the basis of sexual orientation. Homosexual women face harassment at workplace they could be fired based on their appearance or behaviour not related to work duties.

A lesbian woman was working as sports teacher in school. Parents who lived nearby her complained to the school director that they don't want masculine woman who might be lesbian to teach their children. This way she was fired in 2016. Moreover, director informed all his colleagues in the same area about the reason of her dismissal. She managed to find a job only in 2018 in the different region.²⁵

X. Recommendations

The Uzbekistan state should:

- repeal Article 120 of the Criminal Code of Uzbekistan, rehabilitate and compensate the persons convicted under Article 120;
- ensure that the provisions on non-discrimination enshrined in the Constitution of Uzbekistan apply to all persons, regardless of their sexual orientation or gender identity, as well as a system that allows victims to report discriminatory actions for investigation or redress;
- allow registration of all NGOs that meet the administrative criteria for registration and allow those who have not registered to appeal the decision to refuse registration and prove that they are relevant criteria and re-register;
- allow volunteer operation of the organisations providing assistance services for people living with HIV and AIDS, including the representatives of LGBTQ, and proliferating information about safe sex and preventive behaviour;
- introduce definition of hate crimes and provide this to be an aggravating circumstance for offences;
- prohibit law enforcement agencies from conducting operations for detaining or holding people in detention, also make the police officers accountable for acts of extortion, torture, cruel, inhuman and degrading treatment of persons based on their sexual orientation or gender identity, especially during arrest or detention;
- ensure that any acts of violence against individuals based on their sexual orientation or gender identity, including murder, are thoroughly investigated and that perpetrators are prosecuted and qualify the crimes as "hate crimes";
- take any necessary step to prevent any encouragement of a practice of forced marriage for all women, and especially for those women who are forced to conclude a marriage because of their sexual orientation.

²⁵ IG interview March 2017