

Alternative Follow-up Report by

Shah-Aiym Network NGO

on the Follow-up Concluding Observations

to the Combined Fourth and Fifth Periodic Reports of Tajikistan (56th CEDAW Session, October 2013)

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1. Introduction

The Shah-Aiym Network is a community-based organization founded and run by sex workers and our allies. The organization is based in Bishkek, Kyrgyzstan. The organization unites sex workers and allies from Kyrgyzstan, Tajikistan and Russian Federation. We are partnering with NGOs in Tajikistan. The report is submitted by the Shah-Aiym Network because of widespread pressure and persecution of Tajik NGOs known as human rights defenders or known as submitters of alternative reports to UN treaty bodies using international human rights mechanisms. Thus, our report does not mention the names of Tajik NGOs taking part in development of this report in order to avoid possible future persecution.

This report discusses implementation of the follow-up recommendation #18 applied to sex workers. The Alternative Report on sex workers' condition in Tajikistan was submitted for the 56th CEDAW Session in October 2013. Concluding Observations included a recommendation to review legal framework on prostitution, in order to ensure that women in prostitution are not criminalized. Since that time condition of sex workers gets worse. Despite severe human right violations perpetrated by state and non-state actors, sex workers are traditionally considered only in a discourse of crimes and morality.

We would like to follow up implementation of the concluding observation #18 (a), (b), (d), (e) related to sex workers. The Committee urges the State party to give priority attention to combating all forms of violence against women and girls both within and outside the context of family. It means that women facing violence, which occurs not in a family, also must be protected from violence. As usual sex workers are subjected to violence outside the family. Sex workers are forced to hide the way of earning due to the high stigma and discrimination expressed in various forms from public shaming till even murder.

The State Follow-up Report provides information about measures to protect women and girls from violence in context of family. Other women, including sex workers are staying invisible and thrown out programs, which are formally framed to protect all women. All measures listed in the State Follow-up Report as implemented according to follow-up Concluding Observations cover only part of women in Tajikistan.

2. Legislative initiatives and legal practices in the period 2013-2015 which are in contradiction with priority recommendation #18 (a), (b), (d), (e) and leading to worse sex workers' condition

2.1. Massive police raids against sex workers in June 2014.

On June 6, 2014, Minister of Interior of the Republic of Tajikistan announced during the Ministry of Internal Affairs (MIA) meeting about worsening situation with so-called moral crimes. He instructed that henceforth detainees for such crimes will be subject to testing for sexually transmitted diseases (HIV, syphilis, gonorrhoea), and to special record in the MIA database with fingerprints. It was also ordered to

conduct special raids all over the country to identify persons involved in prostitution, pimping and brothels keeping¹.

Radio Free Europe/Radio Liberty published immediately on 6th of June 2014 an article "World's Oldest Profession Up For Discussion In Tajikistan" saying: "Tajik Interior Minister Ramazon Rahimzoda, meanwhile, has told RFE/RL that amid all the attention he has instructed police to compile a list of anyone who is detained in connection with prostitution, and to subject sex workers detained in police raids on brothels to compulsory medical tests for HIV/AIDS, and sexually transmitted diseases"².

BBC, Russian service also pointed out introduction of database to record people as perpetrators of moral crimes quoting MIA: "If relevant amendments are made [in Family Code], young people will be able to check not only committing [moral] crimes, but also whether any of them was a carrier of sexually transmitted diseases. This will help them before the wedding to ensure the honesty of their elects for marriage"³.

Just after releasing the information about MIA initiative to fight moral crimes massive raids against sex workers and people who are supposed to be LGBT covered the capital of Tajikistan and were continuing from 6 to 10th of June 2014. According to official MIA information, 505 sex workers were brought to police, all of them were fingerprinted and HIV&STI tested. 450 out of 505 detained were diagnosed with STI^{4, 5}. All detained sex workers were HIV&STI tested compulsory.

Sex workers were closed in detention center during 24-48 hours, which violated existing legislation. Some sex workers were capable to go out via different means: paying money, providing free sexual services to policemen or calling higher ranked policemen to help with their release. All detained were humiliated, beat and violated via different means. There were cases when sex workers were not allowed to go toilet. All these actions by the police could be classified as torture. Later, sex workers were forced to tell their story in front of video camera, including who they are, how many years they do sex work and other personal details. Relatives, parents and Makhallas' leaders were called to come to the detention centre. Policemen conducted with them "prevention informational sessions" disclosing personal details of detained people. Part of sex workers were released only when their relatives/parents came, talked to the police and wrote a paper that they would be responsible to care of moral behavior of the detained women.

One of the Tajik human rights organization wrote the **request to MIA** dated June 10, 2014 asking of what kind of MIA legal acts and the legislation of Republic of Tajikistan were used to justify order of MIA to conduct compulsory fingerprinting and medical tests for sexually transmitted diseases such as HIV, syphilis, gonorrhoea, etc. MIA answer was received on the 2nd of July 2014 with the following arguments:

¹ Operativnoye soveshchaniye pri Ministre vnutrennikh del dated on 5th of June 2014 (Russian). Source: <http://mvd.tj/index.php/ru/glavnaya/4164-operativnoe-soveshchanie-pri-ministre-vnutrennikh-del> (available on January 15, 2016)

² World's Oldest Profession Up For Discussion In Tajikistan, dated 6th of June 2014. Source: <http://www.rferl.org/content/tajikistan-prostitution-in-spotlight/25412872.html> (available on January 15, 2016)

³ Grazhdan Tadzhiqistana khotyat proverit' na nraavstvennost', dated 6th of June 2014 (Russian). Source: http://www.bbc.com/russian/society/2014/06/140606_tajikistan_spouses_morality.shtml (available on January 15, 2016)

⁴ Meropriyatiya v bor'be s nraavstvennymi prestupleniyami, dated 12th of June 2014 (Russian). Source: <http://mvd.tj/index.php/ru/glavnaya/4241-meropriyatiya-v-bor-be-s-nraavstvennymi-prestupleniyami> (available on January 15, 2016)

⁵ 450 of 505 detained prostitutes proved to be infected with STDs, dated 12th of June 2014. Source: <http://news.tj/en/news/450-505-detained-prostitutes-proved-be-infected-stds> (available on January 15, 2016)

- Prostitution, pimping and brothel keeping are negative phenomena affecting morality in society and not in compliance with our culture and religion.
- Referring to the Article 29 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights, MIA points out that human rights and freedoms are restricted in order to protect state safety, public order, health or morality and respect for the rights and reputation of others.
- In order to prevent indecency, certain regulatory acts were adopted to limit the rights of individuals who commit moral offenses.
- On the basis of the Article 6 of the Law On State Fingerprint Registration, MIA of the Republic of Tajikistan is obliged to register with fingerprints the persons who commit moral and other crimes against public health; the list of registered people is a subject to submission to the Ministry of Health and Social Welfare for compulsory treatment.
- There is the State Program on HIV/AIDS for 2011-2015, which should be implemented by the ministries and respective information should be provided to Tajik authorities.

In other words, MiA demonstrated in its answer one-sided understanding of international and national legislation related to human rights and HIV. In this case, the State acts as perpetrator of violence against one group of population to protect morality of other people.

The Amnesty International was the first international human rights organization who attracted attention to these unprecedented human rights violations against sex workers and people who were supposed to be LGBT. Press release was issued on June 13, 2014 indicating that:

- These midnight raids, disguised as a campaign to ensure public morality, are in truth an exercise in discrimination and ill treatment.
- Officers forced detainees to have blood tests, and those suspected of being sex workers to undergo smear tests, physically restraining anyone who objected.
- All those detained were fingerprinted, photographed and filmed. Police did not follow the protocol for registering detainees.
- Police can't round people up, hold them for days without access to a lawyer, without warrants or charges, just to impose their own view of public morality.⁶

On June 18, 2014, Local and international NGOs issued an open Letter⁷ addressed to Minister of Interior and urged him:

- Ensure that all allegations of violations of the rights of those who were detained during the recent raids are promptly and thoroughly investigated;
- Put an end to arbitrary, stigmatizing and discriminatory raids in the fight against so-called crimes against morality, including compulsory medical testing and the creation of a data basis with personal information about those detained during such raids;
- Focus on implementing measures recommended by the CEDAW, other international bodies and NGOs working in this area for how to combat sexual exploitation, in particular with the aim to address root causes;

⁶ Police Seize Sex Workers And Men Believed To Be Gay In Tajikistan's New 'Morality' Campaign, dated 13th of June 2014. Source: <https://www.amnesty.org/en/press-releases/2014/06/police-seize-sex-workers-and-men-believed-be-gay-tajikistan-s-new-morality/> (available on January 15, 2016)

⁷ Tajikistan: Open letter about measures taken in the fight against so-called crimes against morality, dated 18th of June 2014. Source: <http://iphronline.org/tajikistan-open-letter-about-fight-against-so-called-crimes-against-morality-20140618.html> (available on January 15, 2016)

- Provide adequate protection and assistance to victims of trafficking and sexual exploitation; and
- Ensure that any initiatives aimed at enhancing moral or family values in the country are in full compliance with Tajikistan's international human rights obligations.

Later in July 2014, the illegal massive raids against sex workers were mentioned in monitoring report "Protection of fundamental rights in Central Asia: Update on developments in April-June 2014"⁸.

AIDS Center and Country Coordination Mechanism (CCM) officials responsible for implementation and oversight of HIV prevention programs in the country in private communication said that it was not possible for MIA to organize HIV and STI testing of more than 500 people during several days; also it was noted that this MIA activity is their own deal and it shouldn't be intervened by other state or public bodies. Minister of Health expressed a surprise about the figures reported by MIA that 505 sex workers were detained and tested for HIV&STI⁹.

International organizations based in Tajikistan including UN system were sensitized and tried to support sex workers and civil society, but support was very limited to face-to-face negotiation related to this exact case between high officials behind the closed doors. No further support to protect sex workers from police violations and structural violence was undertaken.

NGOs' involved in HIV prevention with sex workers and LGBT/MSM reported about police visits to their offices. Police requested to disclose personal information about beneficiaries visiting organizations. NGOs were forced to show logs where only codes are instead of names and surnames. Some NGOs staff were called to the police stations to give more information about NGO work and people who visit NGOs.

2.2. Documenting human rights violations against sex worker after June 2014 raids

After mass raids in June, 2014 one of local NGOs conducted a research with sex workers in October-November 2014 in order to assess the dimension of violence perpetrated by police. It was perceived that MIA initiative to arrest sex workers for crimes against morality limited to the capital of the country and took place only once in June 2014. In fact, the wave of violence under the pretext of MIA fighting with moral crimes was extended to other cities and rural areas. Police violence against sex worker is common, but after official MIA campaign it became more sever and widespread.

A total of 93 female sex workers took part in the survey. Cases of human rights violations reported by respondents took place from July till November 2014:

- **45 out of 93** sex workers reported illegal arrests, which in majority cases, was accompanied with extortion.
- Extortion is regular practice by police perpetrated in a variety of forms, including through threats to be arrested: "... we have to pay to the law enforcement not to end up in the police station and get humiliated", - explains sex worker in an interview. Frequently, policemen approach sex workers under the disguise as clients, then taking an advantage of their status of police officers and refuse to pay. Such conduct of police often is accompanied by direct threats up to threat of a murder.

⁸ Protection of fundamental rights in Central Asia: Update on developments in April-June 2014, dated 17th of July 2014. Source: <http://iphronline.org/central-asia-monitoring-report-april-june-2014.html> (available on January 15, 2016)

⁹ Minzdrav: Za polgoda dlya obsledovaniya byli dostavleny 130 rabotnits seksa, dated 7th of July 2014. Source: <http://news.tj/ru/news/minzdrav-za-polgoda-dlya-obsledovaniya-byli-dostavleny-130-rabotnits-seksa> (available on January 15, 2016)

- Unlawful detention is widespread. Even a mere suspicion of doing sex work is enough for an unlawful detention. Unlawful detention is also accompanied by inhuman degrading treatment: "I ended up in the police station and they called me names. There were 11 of us and they kept us there for two days. They did not let us sleep nor gave us food" (interview with sex worker). Also policemen coerce under pressure to disclose information on HIV and STI status of other sex workers.
- Sex workers have no legal protection by police in case of violence against them. Police officers consider violence against sex workers as a norm that is fueling further more severe violations and violence. Only 9 out of 93 sex workers reported attempts to use mechanisms of legal protection.
- 12 out of 93 respondents reported coercion to **undergo the compulsory HIV testing**. Police and AIDS Centers practiced joint raids. One of respondent said that after being tested for HIV during such a raid, she was required by policemen to show him the medical certificate with HIV results immediately, then police officer wrote down name and surname and filmed her for the database.

2.3. New legislation on sex work in Republic of Tajikistan tightening punishment for doing sex work effective since November 2015.

The first media and public messages about tightening punishment for engagement in sex work appeared in the middle of October 2015 saying the Lower House of Parliament approved an amendment to the Administrative Code of the Republic of Tajikistan¹⁰: "...according to the Member Parliament previously adopted measures to eradicate prostitution in the country have not yielded the desired result". In other words, the Government authorities prefer to fight sex work as a phenomenon and to ignore that sex workers are mostly women facing daily human rights violations and strive to survive. Also media message referring to the Tajikistani Government Committee on Women's Affairs covered issues of deteriorating socio-economic situation, its impact on women in the country and its linkage with sex work.

According to official information at the Ministry of Justice website, the new Law of the Republic of Tajikistan # 1234 as of November 23, 2015 came into force to amend the Article # 130 of the Administrative Code of republic Of Tajikistan by following changes¹¹:

- The main text of article is considered as Part 1: Prostitution is punishable by a fine of ten to twenty indicators for calculations.¹²
- To introduce Part 2 with the following content:
- The same act envisaged in part 1 of this article, committed repeatedly within one year after an application of the administrative penalty, punishable by a fine of twenty to forty indicators for calculations¹³ or an administrative arrest from ten to fifteen days¹⁴.

It means that in case of repeated arrests, the fine was increased twofold.

¹⁰ Tajik Parliament Authorized The Planting Of Prostitutes, dated 16th of October 2015. Source:

<http://rushincrash.com/ussr/tajik-parliament-authorized-the-planting-of-prostitutes/> (available on January 14, 2016).

¹¹ Zakon Respubliki Tadjikistan ot 23 noyabrya 2015 goda, № 1234 "O Vnesenii izmeneniya I Dopolneniya V Kodeks Respubliki Tadjikistan Ob Administrativnykh Pravonarusheniya". Source: http://www.adlia.tj/show_doc.fwx?Rgn=125508 (available on January 14, 2016).

¹² The indicator for calculations is 40 tajik somoni (according to 14th of January 2016 exchange rate 40 Tajik somoni = 5.4 USD)

¹³ Ibid

¹⁴ The whole text of the Article #130 is available here in Russian - <http://mmk.tj/ru/legislation/legislation-base/codex/> (available on January 14, 2016)

It is proven by numerous surveys that criminalization of sex work is a harmful practice, which puts sex workers in unfavorable conditions in terms of safety, health, human rights and seeking means to survive. Based on its first-hand research results and a comprehensive consultations with sex workers, the Amnesty International, adopted their policy to stand up for sex work decriminalization in August 2015. The Amnesty International declared: "We have chosen to advocate for the decriminalization of all aspects of consensual adult sex - sex work that does not involve coercion, exploitation or abuse. This is based on evidence and the real-life experience of sex workers themselves that criminalization makes them less safe".¹⁵

2.4. Sex Workers Human Rights Violations in Tajikistan: update situation

The Shah-Aiym Network conducted a brief survey of sex workers in 5 sites in Tajikistan, including the capital, north and south regions. A total of, 39 sex workers were surveyed in December 2015¹⁶. We asked about human rights violations, which sex workers faced in 2015, and their experience of paying fines according to the legislation affective until November 2015.

- **Only one** respondent said that none violated her human rights in 2015.
- **29 out of 39 sex workers** (three-fourths) reported human rights violations by the police in 2015. The most frequent human rights violations and violence include: threatening and blackmailing; extortion; illegal detention; verbal humiliation and inhuman degrading treatment by police.
- **14 respondents** reported paying fines for doing sex work, but only 3 of them paid fines officially via bank; the other sex workers paid to the police in cash. The paid amount varied from 50 to 400 tajik somoni (in average 8-65 USD with an USD exchange rate increasing over 2015). Only one person reported a receipt issued by the police in confirmation of payment. In other words, the remaining cases of payments to police were not fines, police just took money from sex workers illegally going beyond the verge of powers and perpetrating violence.
- **All sex workers** were not aware how much should be paid as a fine for engaging in sex work according to the legislation. As a rule, when arresting sex workers the police does explain to sex workers neither the reasons of their arrest nor their rights.
- **9 out of 39 sex workers** (one-fourth) heard about new legislation increasing penalties for engagement in sex work. They mentioned increased fines and a 15-days arrest. Respondents indicated that source of information was the other sex workers and outreach workers doing HIV prevention activities.

3. Conclusions

Initiatives by Ministry of Interior like mass arrests of sex workers accompanied by forcibly HIV testing, fingerprinting, filming for database and new legislation introduced tightening penalties for sex work which are justified by officials' arguments of protection family and traditional values and public morality in fact create conditions for further and more brutal persecution of sex workers in Tajikistan. Patriarchal grounds carrying harm to women are strengthened more and more both in practice and in law. Moreover, these initiatives violate the CEDAW Committee recommendation to ensure that sex workers are not criminalized (Recommendation #20b).

While Government reporting a progress made in fighting domestic violence in the State Follow-up report to CEDAW, in fact the Government of Tajikistan continues to ignore the violence not related to

¹⁵ Sex Workers' Rights are Human Rights by Amnesty International, dated August 14, 2015. Source: <https://www.amnesty.org/en/latest/news/2015/08/sex-workers-rights-are-human-rights/> (available on January 14, 2016).

¹⁶ Tightening punishment for sex work is effective since 23d of November 2015

family affairs and puts out of the legal system a large number of women, opposing them to women in marriage. Thus it fuels stigma, discrimination and violence against sex workers who are out of patriarchal system of the society.

4. Recommendations - to urge the State Party

1. To withdraw the new law tightening punishment for sex workers and to implement the Recommendation #20 (b) ensuring that sex workers are not criminalized.
2. To establish an oversight mechanism to monitor violence against sex workers perpetrated by police, other state and non-state actors.
3. To stop compulsory HIV and STI testing among sex workers
4. To ensure that main body responsible for implementation the CEDAW recommendations considers Concluding Observations and Convention in a way guarantying inclusion of all women irrespectively their marital status, migration status, way of earning, sexual orientation and gender identity.
5. To call UN agencies based in Tajikistan to follow up their mandate to protect human rights, ensure rule of law and implement their specific programs in health area in compliance with human rights based approach