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

Shadow Report

To the UN Human Right Committee for consideration at 126th session

(List of Issues)

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I. INTRODUCTION

This report gives an overview of the main concerns regarding key areas of human rights violations based on sexual orientation and gender identity (SOGI) in Uzbekistan. It discusses Uzbekistan's compliance with the International Covenant on Civil and Political Rights. This report is a joint submission of Eurasian Coalition on Male Health (ECOM) and Central Asian groups and organizations working in the field of human rights, health and well-being of the most vulnerable groups of the population, including LGBTQ people. The report is based on information received directly from representatives of the LGBTQ community of Uzbekistan, including information on human rights violations, committed on the basis of sexual orientation and gender identity. *For security purposes, the names of the individuals that provided the information are not disclosed, or their precise places of residence.*

This report was developed in preparation for the List of Issues at the upcoming 126th session of the Human Rights Committee and refers to the documented cases of violations based on sexual orientation and gender identity in Uzbekistan. It also takes into account the following sources, available online: Concluding Observation of the Committee from 2015¹, The Committee's follow-up to the concluding observations in 2015, as well as the latest (the 5th) periodic report submitted by Uzbekistan under article 19 of the Convention.

II. DESCRIPTION OF THE PROBLEM AND PROPOSED QUESTIONS TO THE STATE

Discrimination on the Basis of Sexual Orientation (arts. 2, 7, 17 and 26).

In its 2015 concluding recommendations to Uzbekistan's 5th periodic report, the Committee reiterated its previous recommendation to take effective measures to combat any form of social stigmatization, hate speech, discrimination or violence against persons based on their sexual orientation or gender identity. It should ensure the investigation, prosecution, and punishment of such violent acts and should repeal article 120 of the Criminal Code (criminalization of homosexual contact between men) in line with its obligations under the Covenant (paragraph 7). Still, the Government of Uzbekistan in its report rejects this recommendation and states that decriminalization of offence under the article 120 contradicts the traditions of Uzbekistan's people, family values and customs and also it will cause broad objection from the population.² Another argument used by authorities in the follow-up to the concluding recommendation is that homosexual relations are one of the causes of the spread of HIV/AIDS in the country.³ Uzbekistan also rejected similar recommendations made during the UPR process in 2018.

¹ Concluding observations on the fourth periodic report of Uzbekistan, August 2015

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fUZB%2fCO%2f4&Lang=en

² Para 69 State report

³ Information received from Uzbekistan on follow-up to the concluding observations Para 32, January 2016

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fUZB%2fCO%2f4%2fADD.1&Lang=en

Highly criticized by the international human rights society, Article 120 of the Criminal Code provides that “Besoqolbozlik”, voluntary sexual intercourse of two male individuals, shall be punished with imprisonment up to three years.⁴

In 2015 the Parliament of Uzbekistan adopted the law under which the sanctions of the article 120 were changed. If previously, consensual male same-sex conduct was punished by imprisonment of up to 3 years, from the year 2015 it is as following: “imprisonment from one to three years”. This can be interpreted as a signal to courts for lowering punishment for homosexual sex between men. Most importantly it should be emphasized that this amendment went absolutely unnoticed by the Uzbek society. Thus, clearly, the excuse of authorities that abolishing article 120 would cause objection of the population is not tenable.

Moreover, according to the international obligations that Uzbekistan must implement in its legislation, the criminalization of private consensual homosexual acts violates an individual's rights to privacy and to non-discrimination and constitutes a breach of international human rights law.⁵ Human Rights Committee also confirmed that adult consensual sexual activity in private is covered by the concept of “privacy” under the International Covenant on Civil and Political Rights.⁶

We are deeply concerned with the persistence of the Government refusing to abolish discriminatory provision of article 120 and violating not only the rights of its citizens but also international human rights law. If the Government of Uzbekistan states that consensual homosexual act contradicts the local traditions, while understanding the right to privacy, then the question is what steps had been taken by Uzbek government to combat such negative stereotypes? Moreover, it is important to highlight that under international law, traditions and customs must not serve as justification for human rights violations.

Questions:

- **ECOM and Central Asian group of LGBTQ activists recommends the Committee to request Uzbekistan to provide information on the measures it has taken to combat homophobia?**
- **What activities have been implemented to raise people’s awareness about the individual’s rights to privacy in terms of the consensual homosexual act?**
- **What steps have been taken to abolish 120 Article of Criminal Code?**

We further urge the Committee to reinforce the recommendation on decriminalization of the same-sex conduct in Uzbekistan as violating the article 17 of ICCPR.

Trans People in Uzbekistan – Discrimination Based on Gender Identity

⁴ http://fmc.uz/legisl.php?id=k_ug_21

⁵ Human Rights Council, *Discrimination and Violence against Individuals based on their Sexual Orientation and Gender Identity*, Report of the United Nations High Commissioner for Human Rights, U oc. H 29 2 , May 2 15, Para 41

⁶ https://www.ohchr.org/documents/issues/discrimination/a.hrc.19.41_english.pdf para 41

Although the legislation of Uzbekistan provides the possibility to change sex, the trans people are not recognized in Uzbekistan. There is no protection from the discrimination as its definition in this country lack both gender identity and sexual orientation as a basis. The Constitution of Uzbekistan does not explicitly provide prohibition of discrimination on the basis of sexual orientation and gender identity, nor do any other legislative acts and codes, including the Labour Code.

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 provides that gender amendment is possible with the conclusion of health authorities.⁷ In practice this procedure is carried out through the examination of psychiatrists, meaning that trans person is required to go through the at least 1 month hospitalization at the psychiatric clinic. In those cases, when doctors are uncertain, they can even keep a 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 cases, trans people are harassed by representatives of law enforcement bodies during the documents check.

Another reason why trans people refuse to change their sex in the personal documents is related to the existence of the article 120 of the Criminal Code, as militia officers and the general public still perceive this article as a total prohibition of homosexuality and transgenderism.

The harassment and persecution faced by trans people in Uzbekistan are cruel, humiliating and degrading. Our organization recorded numerous cases when trans people were abused by authorities, some of such cases were published in the Mass Media sources:

A trans person from Samarkand faced numerous harassments at the passport control, when travelling outside the country in September 2018. 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. Afterward, this trans woman made numerous complaints on it, but every time she received humiliating responses.

In January 2016, Radio Ozodlik shared a video on which two militia officers cruelly beat trans person.⁸ There were numerous videos on the Youtube when groups of men were attacking and severely beating trans persons.

26 years-old trans woman K. claimed that she was raped by militia officer on 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 (militia) 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. If they

⁷ Family Code of Uzbekistan, <http://lex.uz/docs/104723#161914>

⁸ Radio Ozodlik article <https://rus.ozodlik.org/a/27467993.html>

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 for the 5-6 days”.⁹

In April 2019, Government published the draft law “On equal rights and opportunities for women and men”. This law proposes some gender-related definitions to our legislation, such as *gender-legal expertise, gender statistics, gender stereotypes*.¹⁰ However, it lacks the most important – the definition of “gender”. Providing this definition to the laws of Uzbekistan could serve as a platform for further amendments in legislation on non-discrimination on the basis of gender identity and help trans people to fully enjoy their human rights and freedoms.

Questions:

- **ECOM and Central Asian LGBTQ groups urge the Committee to include concerns regarding transgender people recognition and prohibition of discrimination on the basis of sexual orientation and gender identity.**
- **We recommend the Committee to request Uzbekistan to provide information on the measures it has taken to investigate the cases of violence faced by trans people in Uzbekistan.**

We further invite the Committee to ask the Government of Uzbekistan to amend the procedure for transgender people identity documentation change.

Human Rights Violations against Homosexual People in Uzbekistan

The level homophobia is extremely high within the Uzbekistan’s society. The Government itself is not taking any measures to combat hate and intolerance towards LGBTQ people, who experience stigma and prejudice on the daily basis. Discussion of sexuality-based discrimination is a banned issue for the official media. Society in general believes that same-sex conduct is a kind of “psychological disorder” and homosexual people should not have children, because they are “unable to bring-up “normal” persons” for Uzbekistan’s society.

In November 2017, two homosexual men were arrested under the charges of the article 120 of the Criminal Code. They were forced to undergo the anal screening and thus authorities proved that they had consensual sex.

Homosexual men are easy victims of mistreat and extortion for law enforcement officers. Our group documented several cases of set-ups, when gay man is being invited to a “fake” date in a private apartment through online dating services. This meeting follows by militia officers breaking into apartment and blackmail victim with screenshots of chat messages until victim pays big amounts of money.¹¹ Corrupted militia officers use every possible mean to extort from gay people,

⁹ <https://www.currenttime.tv/a/28956669.html>

¹⁰ Public Discussion of the Law on Equal Rights for Women and Men <https://regulation.gov.uz/ru/document/3220>

¹¹ In the cases our group documented militia officers extort from 200 to 1000 US dollars from homosexual people they caught.

even if they just see suspiciously-looking two men together. We are highly concerned with such practices taking endemic scale in Uzbekistan.

According to the lawyer we interviewed, highly – professional lawyers do refuse to defend anyone accused under Article 120 as this can damage the professional reputation due to the enormous levels of homophobia in this country. The only legal defence available to gay people is the one provided by State. These attorneys are known to be so-called “pocket lawyers” who do nothing more than just follow the instructions of investigator and prosecutor without providing any real protection.

Homosexual people are forced to flee the country in the case if their sexuality becomes known to their relatives.

D. and A. were dating for some time, when father of A. learned about his son's homosexuality. Being a former law enforcement officer, father of A. wanted to imprison D. under the article 120 and forced his son to marry a woman. Two gay men had to flee the country and apply for LGBTQ-refugee status as father of one of the gay men tried to use his personal connections to bring them back in country.

Homosexual people 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. Where one's sexuality becomes known, dismissal from employment is a real possibility.¹² The Labour Code of Uzbekistan lack defining the discrimination on the basis of sexual orientation. Homosexual people face harassment at workplace they could be fired based on their gender expression or behaviour, which do not fit to generally accepted norms.

A lesbian woman was working as sports teacher in school. Parents who lived nearby complained to the school director that they don't want a masculine woman, who might be a 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.¹³

Violence against homosexual people happens on the daily basis. Uzbekistan lacks definition of hate crimes in its legislation, thus no efforts has been made in preventing such crimes.

On 14th of April gay person from Samarkand decided to meet with another man with whom he was chatting for two months through social network. A gay person was asked to come to a date being dressed like a woman. When he actually arrived to meeting place he faced a group of homophobic men who kidnapped him. They drove him to the area near Dargom channel, stripped him naked and severely beaten him. They aimed at his genitals

¹² After the Padishah: Addressing Discrimination and Inequality in Uzbekistan. <https://www.refworld.org/docid/5888604e4.html>

¹³ IG interview March 2017

particularly. Being unable to bear pain, a gay person jumped to the river and spend 1 hour in the cold water. He was unable to go to militia as there is a fear of persecution under the article 120 of the Criminal Code against him.¹⁴

In September 2017, 24 years-old student accused of his homosexuality was stripped naked and severely beaten in Fergana. Violence was filmed and video was spread through the messengers and later published by several news agencies. On the video men forced him to sit on the glass bottle threatening him with murder. In the same article 26 years old gay man Erbulat says that he also had such incident and when he went to militia, they blamed him for the happened and laughed at him.¹⁵

Questions:

- **ECOM and Central Asian LGBTQ group urges the Committee to ask the Government what measures it is taking to train law enforcement personnel on non-discrimination on the basis of SOGI?**
- **What measures has been taken to amend Labor Code, to prohibit discrimination based on sexual orientation and gender identity?**

Lesbian Women

Although lesbian and bisexual female relationships are not a crime, our organization recorded numerous cases when LBT women are threatened with the article 120 and humiliated. As this article contributes to homophobia in the society and perceived as a general ban on LGBTQ people existence. Thus lesbian women face so-called indirect criminalization. Our organization recorded numerous cases when lesbian women were detained by militia officers and insulted, humiliated and even raped. Although the following case happened in 2013, it is very illustrative about the discriminatory and abusive practices of law enforcement officers to homosexual people with criminalization of the same-sex conduct:

N. and K., lesbian women were having a date outdoors, when they were detained by militia officers under the article 120, interpreting it as prohibition of homosexual relationship. N. was released after writing explanatory letter, but K. who refused to do so, was tortured for two days. Militia officers raped K. for two days stating that afterwards K. would understand that it is better to have sex with a man. A correctional rape was used in this case while torturing K. to force her sign necessary papers. She was released only when she wrote

¹⁴ <https://rus.ozodlik.org/a/29890288.html>

¹⁵ <https://rus.ozodlik.org/a/28764955.html>

*explanatory letter and signed papers that she was treated well and has no claims against law enforcement officer.*¹⁶

This case clearly demonstrates that homosexual people are treated as criminals while international law provides them protection in respect of the right to privacy.

In its concluding observations the Committee recommended Government to ensure effective enforcement of legal provisions prohibiting forced and early marriage and bride abductions.¹⁷ Since the revision of the 4th State report by the UN Human Rights Committee, the situation has changed little. Although legislation provides some different types of punishment for forcing women into marriage in the case of lesbian women the situation deteriorates. They face a whole range of measures starting from both psychiatric and alternative treatments to correctional rapes, forced marriages and marital rapes.

*In 2015, a mother found out about her daughter M.'s sexuality. M. was locked up at mullah's house upon the request of her mother for 1 month. They were trying to exorcise her demons. M. faced continues humiliation and insults during this period. She was forced to read religious literature for long hours, beaten and locked up in the basement room.*¹⁸

In publication of the World Bank report “Women, Business and Law, 2018” Uzbekistan scored one of the worst as it failed to provide effective protection for women from violence and harassment. on 2nd July 2018, president of Uzbekistan issued decree on preventing domestic violence.¹⁹ This decree requested development of draft law on domestic violence. The draft law was presented to the public discussion in November 2018, promising to be adopted in the first quarter of 2019. To the moment of writing this report no effective protection from domestic violence exists in Uzbekistan. Again with frightening levels of homophobia and reluctance of the Government to acknowledge the problem and tackle it, lesbian women face double stigmatization in this country. They are being stigmatized for both roles – being a woman and a lesbian. Uzbek law provides no explicit definitions of marital rape and referring to the general definition of rape provided by article 118 (Rape) which includes provision on being raped by the close relative. However, this does not explicitly prohibit rape committed by sexual partners.

Questions:

- **ECOM and partner recommends the Committee to ask Uzbekistan to clarify the current status of the draft laws on domestic violence and equal rights for women and men.**
- **We further recommend the Committee to ask Uzbekistan what measures and sanctions are available to women in cases of domestic violence, including marital rape and forced marriages.**

¹⁶ IG interview September 2017

¹⁷ Concluding observations on the fourth periodic report of Uzbekistan, August 2015

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fUZB%2fCO%2f4&Lang=en

¹⁸ IG interview September 2017

¹⁹ Uzbekistan's President Decree as of 2nd July 2018 <http://www.lex.uz/ru/docs/3804813>

Right to Health

Access to healthcare is seriously limited to LGBTQ people. The Law on Public Health provides that the Right to Health is inalienable. According to article 13 of this law, access to healthcare is provided to all citizens, irrespective of age, sex, race, nationality, language, religion, social origin, beliefs or individual or social status.²⁰ Additionally, under the same Article, the state is required to guarantee citizens protection from discrimination “irrespective of whether they have any form of disease”.²¹ However, analogously to other legislation the Law on Public Health has no explicit provisions on non-discrimination based on SOGI. Consequently, medical personal receives no sensitization trainings on SOGI. Equal Rights Trust research discusses the neglect of doctors towards people living with HIV that the negative attitudes of healthcare professionals can lead to discrimination and adversely impact the treatment of HIV patients.²² This report also provides cases when hospitals refused to hospitalize people with HIV or treated them no longer than three days and forced to leave.

This reflects the strong stigma in Uzbek society against HIV positive people, while LGBTQ people with this status are exposed to much higher risks of stigmatization, harassment and abuse, due to double and triple stigma.

Elior (name is changed due to security reasons) is HIV positive homosexual person. He stated that no confidentiality is provided in AIDS centre as it is video monitored. Healthcare personnel are rude and arrogant with gay people. Elior says that antiretroviral therapy is difficult to receive when you are a gay. You cannot change the scheme if it is not appropriate for you. He also faced the neglect and abuse by medical personnel during hospitalization.²³

Patient confidentiality is provided by the law “On Public Health” of Uzbekistan, yet, contrary to its provisions doctors AIDS centre sends information on HIV status to local policlinic services. This is done in accordance with internal regulations. Afterwards, according to the protocol duty therapist is supposed to contact the HIV positive patient. According to gay person we interviewed

the therapist came to patient’s his house and because he was not available asked neighbours to tell him to come and register his virus status with policlinic.

In another case, a gay person went to AIDS centre for antiretroviral therapy and when doctor left the room, a militia officer came into the room and started blackmailing him. He threatened him with the article 120 and extorted money.²⁴

There are numerous cases when healthcare professionals either offer treatment against

²⁰ The Law on Public Health , <http://www.lex.uz/acts/41329>

²¹ Ibid

²² After the Padishah Addressing Discrimination and Inequality in Uzbekistan. <https://www.refworld.org/docid/5888604e4.html> p 244

²³ ECOM interview, April 2019

²⁴ IG interview, September 2017

homosexuality or confirm that this is psychiatric disease. One of the well-known urologist made a statement on his Youtube channel that men have same-sex conduct are deficient and need to be treated as it is against the religion. In other medical discussions the Chief medical officer stated that “homosexuality”²⁵ is a disease to be treated.

Trans people are also highly stigmatized in Uzbekistan. Healthcare personnel are unaware on issues dealing with trans people. Medical schools’ curricula exclude information on hormonal treatment of trans people. They are forced to travel to the neighbouring country to get medical assistance from friendly consultants. Mastectomy is the one cosmetic surgery provided in Uzbekistan, nonetheless, it is performed without psychological expertise. Trans people are becoming the most excluded group from access to healthcare.

Questions:

- **ECOM and Central Asian LGBTQ group recommends the Committee to include in the List of Issues question on what measures were taken to sensitize medical personnel on SOGI-related topics and what measures have been taken to provide equal access to healthcare for LGBTQ people?**

²⁵ we are deliberately quoting this person as he was using this terminology, although it was removed from International Classification of Diseases in 1991