



**Civil Society Submission In Connection with
Uzbekistan's Mid-Term Reporting
on the Implementation of the
2018 UPR Recommendations**

October 2020

Uzbekistan' implementation of human rights obligations was reviewed in the UPR process in 2008, 2012 and 2017. The latest set of recommendations was adopted in the Plenary on 20 September 2018. Government representatives initially supported 201 out of 212 recommendations, while in the latter response three more recommendations were noted. Uzbekistan from the onset of UPR process rejects recommendations on decriminalization of consensual sexual activities between adult males and introduce legal safeguards against discrimination on the basis of sexual orientation and gender identity. In the Universal Periodic Review Third Cycle, Uzbekistan rejected all 11 recommendations made on the rights of LGBT people.

This report is prepared by ECOM - Eurasian Coalition on Health, Rights, Gender and Sexual Diversity in consultations with Uzbek civil society groups working on LGBT rights.

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Below are recommendations directly linked to the international obligations of Uzbekistan on LGBT people's human rights.

Recommendations	Brief Overview	Status of Implementation and Progress
Prohibition of Discrimination		
102.1 Adopt legislation against discrimination based on gender, disability, migration status, and sexual orientation and gender identity	Legislation of Uzbekistan lacks explicit prohibition of discrimination on the basis of sexual orientation and gender identity.	NOT IMPLEMENTED; NO PROGRESS
102.5 (2) Adopt laws to prevent discrimination based on sexual orientation and gender identity		NOT IMPLEMENTED; NO PROGRESS
102.3 (1) Combat any form of discrimination or violence against persons based on their sexual orientation or gender identity	Access to justice of LGBT people is highly limited due to Article 120 and thus they are unlikely to report violence committed.	NOT IMPLEMENTED; NO PROGRESS
102.6 Combat violence and discrimination on all grounds, including on the grounds of sexual orientation and gender identity, through the adoption of comprehensive anti-discrimination legislation and by investigating and prosecuting all acts of violence and discrimination	No data is collected on crimes committed against LGBT people on the grounds of their sexual orientation and gender identity. ¹	NOT IMPLEMENTED; NO PROGRESS
102.7 Adopt legal measures to combat effectively all forms of discrimination on all grounds, including sexual orientation and gender identity		NOT IMPLEMENTED; NO PROGRESS
102.8 Punish discrimination and violence based on sexual orientation and gender identity prejudices		NOT IMPLEMENTED; NO PROGRESS

¹ UN CAT Uzbekistan's Replies to the List of Issues, CAT/C/UZB/Q/5/Add.1 (20 September 2019) para 91

102.9 Take measures to alleviate the discrimination against the lesbian, gay, bisexual, transgender and intersex community and to investigate and punish acts of violence and so-called "hate crimes"	Hate crimes are not defined in Uzbekistan penal provisions.	NOT IMPLEMENTED; NO PROGRESS
102.11 Eliminate, in law and in practice, all forms of discrimination, including that based on sexual orientation or gender identity		NOT IMPLEMENTED; NO PROGRESS
Abolition of criminal persecution of consensual sexual activities between adult males		
102.3 (2) Repeal article 120 of the Criminal Code, which criminalizes consensual sexual activities between adult males	Article 120 of the Criminal Code has not been abolished.	NOT IMPLEMENTED; DISCUSSIONS ARE IN PROGRESS
102.4 Consider repealing provisions that criminalize homosexuality		NOT IMPLEMENTED; DISCUSSIONS ARE IN PROGRESS
102.5 Repeal legislation that criminalizes consensual same-sex conduct		NOT IMPLEMENTED; DISCUSSIONS ARE IN PROGRESS
102.9 (2) Repeal article 120 of the Criminal Code that criminalizes consensual relationships between men		NOT IMPLEMENTED; DISCUSSIONS ARE IN PROGRESS
102.10 Decriminalize consensual sexual relations between people of the same sex and combat stigmatization on the grounds of sexual orientation or gender identity		NOT IMPLEMENTED; DISCUSSIONS ARE IN PROGRESS

Brief assessment

Currently in the acting Criminal Code, the article 120 is still present. It provides up to 3 years imprisonment for sexual activity between male adults without violence. As stated above, the Government of Uzbekistan demonstrated the intention to discuss repealing Article 120. Particularly, in its replies to the List of Issues of the UN Human Rights Committee, it states, *"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"*.² It should be considered as a positive sign, as before the Government of Uzbekistan was strongly refusing to discuss this issue providing that this goes against traditional values and customs. Although, in the aforementioned quote, the Government is again making reference to traditions of the society, the universality of human rights and State's obligations to respect, protect and fulfil the rights of every individual under its jurisdiction despite religious and cultural traditions should be emphasized here.

Clearly, more international pressure is needed to ensure that Uzbekistan is fulfilling its obligations under the international human rights law. Criminalization of same-sex conduct has its negative impact on all basic human rights and freedoms of LGBT people. Moreover, it creates overall perception of the prohibition of homosexuality and gender reassignment and significantly increases stigmatization and prejudices against LGBT people in Uzbekistan. The level of homophobia is increasingly leading to real-life violence against LGBT people, including beatings, torture, and killings.

Criminalization of same-sex conduct and lack of anti-discrimination policies for LGBT people results in institutional systemic violence against LGBT people. State does not provide training programs for law enforcement or medical personnel on anti-discrimination on the basis of sexual orientation and gender identity or even discuss this topic openly. Consequently, LGBT people's access to healthcare, to justice and other basic human rights services are being hampered on the daily basis. They face humiliation and stigmatization on the institutional level. Gender re-assignment procedure is directly linked with psychiatric diagnosis of transsexualism and requires a person to undergo at least 1 month treatment in psychiatric hospital. This pathologization, in turn contributes to stigmatization of LGBT people.³ According to UN Independent Expert on SOGI, who welcomes reclassification of "transsexualism" by WHO, wrong perception of some forms of gender of gender as a pathology has a significant impact on trans* people.⁴ Uzbekistan needs to reconsider gender

² UN Human Rights Committee, Replies of Uzbekistan to the list of issues in relation to its fifth periodic report, (9 January 2020) CCPR/C/UZB/RQ/5 para 52

³ UN HRC Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health A/HRC/35/21 (28 March 2017) para 48

⁴ UN "Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity" A/73/152 as of 12 July 2018, para 14

reassignment procedure as it will “promote the visibility of those forms of gender and will allow individuals to access better health care.”⁵

Although criminalization of same-sex conduct refers only to males, it has its impact on lesbian, bisexual and trans* women. LGBT civil society groups reported that the overall perception of homosexuality being prohibited adds on discrimination against LBT women. They face obstacles at the right to work, reproductive rights and access to healthcare, access to justice in the cases of homophobic attacks and other issues.

The next sections of this report review human rights of LGBT people in details.

Access to healthcare

Access to healthcare is significantly limited for homosexual people in Uzbekistan. Particularly, HIV-testing and treatment is hampered as people are reluctant to test and even if person is aware of an HIV-positive status, the perceived risk of persecution poses significant obstacle for life-saving treatment. Under the Article 57 of the Code on Administrative Liability, persons tested positive must disclose their sexual partners to authorities. This can immediately initiate the criminal persecution for people having same-sex partners under the article 120 of the Criminal Code of Uzbekistan.

There are credible reports that LGBT people refuse to apply to ART treatment due to abovementioned reasons. Moreover, the medical personnel is obliged to inform law enforcement on sexual contacts of HIV-positive people. Article 113 of the Criminal Code of Uzbekistan provides from five to eight years of imprisonment for deliberate exposure of another person to the risk of HIV contamination. This article does not make exemptions for cases when the sexual partner is aware of the HIV-positive status and consents to relationship.

The right to privacy is frequently violated in Uzbekistan for HIV positive people. Medical personnel openly reports the HIV status to mahalla committees and law enforcement officers. This creates a situation of double stigmatization for LGBT people with HIV. Confidentiality is not fully ensured during the testing process as the testing centres are equipped with cameras.

Access to healthcare of trans* people is highly limited due to a number of reasons. Firstly, high levels of stigmatization that exists within medical institutions. Trans* people reported numerous cases of humiliations from doctors and nurses. State does not provide training programs for medical and law enforcement personnel to combat prejudices against LGBT people. Secondly, trans* women are under the high risk of being persecuted under the Article 120 of Criminal Code of Uzbekistan and thus are exposed to the risks as discussed above.

Reproductive rights to LBT women is hampered by the existing legislation on reproductive rights. Despite proclaiming protection of the reproductive rights, the new law on “Protection of Reproductive Health of Citizens” has some controversial issues.⁶

⁵ Ibid

⁶ Law on Protection of Reproductive Health of Citizens, Uzbekistan 11.02.2019

Article 11 of this law states: “Medical interventions during pregnancy are undertaken with written consent of both spouses, when one is absent – with consent of woman or her parents”. Primarily, this clause is discriminatory against women, in general, as when it comes to reproductive health of men no consent is required from the spouse or parent under the same law. In the case of lesbian, bisexual women forced to marriage this law puts them even in more vulnerable position. Moreover, this law does not determine access to abortion in the cases of rape and incest and puts women in dependent position from their male relatives.

The Law on Reproductive Health also provides for the assisted reproductive technology.⁷ In addition, Ministry of Healthcare adopted Regulations on Assisted Reproductive Technology.⁸ Surrogacy and donor materials are not discussed in the legislation stated in this review.

Gender Re-assignment Process is considered to be burdensome and humiliating procedure. The legislation of Uzbekistan provides the possibility to change sex, but the trans* people are not recognized in Uzbekistan. The Article 201 of the Family Code of Uzbekistan states that the change of gender is recorded in the acts of civil registry, further Article 229 allows gender amendment with the conclusion of health authorities. 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. UN Human Rights Committee recommended the Government of Uzbekistan to “Eliminate unwarranted requirements for legal recognition of gender reassignment, including mandatory psychiatric hospitalization, as well as provide and effectively implement a quick, transparent and accessible gender recognition procedure on the basis of self-identification by the applicant”.⁹

Access to justice

101.47 Continue efforts on human rights education and training for the benefit of civil servants and authorities **NOT IMPLEMENTED** (with regards to education on sexual orientation and gender identity)

Torture and ill-treatment cases perpetuated against LGBT people has been recognized by the UN Committee against Torture, who called for “prompt, effective and impartial investigations of all allegations” of such cases.¹⁰ Committee also expressed concerns over reports “violence and torture while in detention; persecution by the police,

⁷ Ibid, Article 15

⁸ Adopted on 14 January 2020, Appendix to Order No.106 of the Ministry of Healthcare https://static.norma.uz/official_texts/10022020/3217.pdf accessed on 14 October 2020

⁹ HRC para 11 (d)

¹⁰ UN CAT Concluding Observations para 64

including through entrapment schemes carried out using websites, threatening videos and extortion; and violence by private persons”.¹¹

UN Human Rights Committee reiterated recommendations of CAT experts and noted the lack of training for law enforcement, prosecutors and the judiciary on sexual orientation and gender identity. It recommended to “Take effective measures to combat any form of social stigmatization, harassment, hate speech, discrimination or violence against persons based on their sexual orientation or gender identity, [...]and by conducting awareness-raising campaigns promoting sensitivity and respect for diversity among the general public”.¹²

Both Committees called for repealing Article 120 from penal provisions of Uzbekistan, “which renders lesbian, gay, bisexual and transgender persons unable to report violence and discrimination against them for fear of prosecution”.¹³ Indeed, Article 120 restricts access of LGBT people to justice, as they are afraid that revelation of their sexual orientation and gender identity to law enforcement could trigger persecution on the basis of article 120.

Therefore, hate crimes against LGBT people remain unreported. 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’.¹⁴ Clearly, this is due to the issues discussed above. Moreover, LGBT groups in Uzbekistan recorded cases when LGBT people attempted to report violence to police officers, they were humiliated and threatened with being imprisoned for their sexual behaviour. Hate crimes are discussed next.

Hate crimes against LGBT people

101.188 Legally define and include in the Criminal Code the crimes of domestic violence and gender-based violence, taking into account sexual orientation and gender identity NOT IMPLEMENTED

Sexual orientation and gender identity are not considered by the Criminal Court as a ground for discrimination. Moreover, hate crimes are not explicitly defined by the legislation of Uzbekistan. The Criminal Code contains provisions for aggravating circumstances as interethnic or racial motives¹⁵ or religious prejudices¹⁶. The remaining protected categories stated by the international human rights mechanisms¹⁷ and particularly sexual orientation and gender identity is not provided by the

¹¹ Para 63

¹² UN HRC para 11 (a)

¹³ Ibid, para 10

¹⁴ CAT/C/UZB/Q/5/Add.1 paragraph 9 (a), (b) and (c)

¹⁵ Article 56, Criminal Code of Uzbekistan 1992

¹⁶ Article 97, 104, 105, 173 Criminal Code of Uzbekistan 1992

¹⁷ UNGA Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (9 October 2019) UN Doc A/74/486 9, Here, the Special Rapporteur explains that the restrictions under the Article 20 of ICCPR should be understood in relation to the Article 26 and ‘apply to a broader set of protected categories now covered under IHRL, including ‘race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including indigenous origin or identity, disability, migrant or refugee status, sexual orientation, gender identity or intersex status.’

legislation of Uzbekistan. This is contrary to the international obligations of Uzbekistan under the articles 20 and 26 of ICCPR.

These legal gaps significantly increases exposure of LGBT people to human rights violations. It exacerbates homophobia in the society, leading to the systemic violence against LGBT people committed by both state and non-state actors. 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.

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.¹⁸

The Social Media has been widely used to incite violence against LGBT people. According to local activists, Facebook removes content against LGBT in Russian language, but there is a clear failure to remove analogous content in Uzbek language. There are numerous homophobic slurs and hateful posts on Facebook in Uzbek language, however, reports on such posts are disregarded by moderators. The lack of independent complaint mechanisms for social media publications and weak domestic provisions protecting LGBT people from hate speech and incitement to violence spread on social media, contributes to daily sufferings, marginalizes them and increases vulnerability of LGBT people to crimes and violations. We have seen numerous examples of social media hate speech campaigns turning to actual offline violence against particular groups of people. Uzbekistan does not only address incitement to violence in the social media through its legislation but also lacks comprehensive educational and other types of programs to prevent such violence.

Freedom of Associations

101.103 Guarantee freedom of expression, assembly and association, and end the harassment of journalists, human rights defenders and those exercising their constitutional right to peaceful protest **NOT IMPLEMENTED**

101.119 Enhance efforts to create an environment in which journalists, human rights defenders and NGOs can freely operate in accordance with international standards **NOT IMPLEMENTED**

101.121 Review the June 2015 law on NGOs and the laws on defamation to bring them into line with international standards, including Uzbekistan's obligations under the International Covenant on Civil and Political Rights **NOT IMPLEMENTED**

¹⁸ <https://www.rferl.org/a/killing-of-gay-man-spotlights-plight-of-uzbek-lgbt-community/30167271.html>

101.122 Ensure that NGOs, human rights defenders, journalists and other members of civil society can freely exercise their rights to freedom of expression, association and peaceful assembly **NOT IMPLEMENTED**

101.127 Further promote the enjoyment of the right to freedom of association and the right to participate in public affairs and facilitate the registration and unhindered work of NGOs, including those focusing on human rights, as well as the registration and functioning of opposition political parties **NOT IMPLEMENTED**

Uzbek LGBT groups have no participation in civil and political life. This report identifies two major obstacles for this. Firstly, the criminalization of consensual sexual activities of male adults prevents LGBT people from applying for the registration as a non-governmental organization and lobby for their rights domestically. Article 22 of the Law on Non-Governmental Non-Commercial Organizations requires to provide a list of 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.

Secondly, the process of NGO registration in Uzbekistan is complicated and highly restricted process. Contrary to the international obligations of Uzbekistan¹⁹, the registration of nongovernmental organisations takes permissive character rather than nominal inclusion to the state registry. Registered NGOs in Uzbekistan 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.²⁰ Law also provides Ministry of Justice with powers to control funding received by nongovernmental organizations: prior to grant proposal submissions, NGOs are obliged to seek permission of registering body.²¹ In addition, registered NGOs in Uzbekistan must have Ministry of Justice's permission for events they want to conduct and provide access to Ministry's representative to monitor events.²² Consequently, there is no possibility for registered NGOs 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.

At the same time, groups of citizens united without state permission i.e. registration are subject to heavy penalties²³, arrest and up to 3-years imprisonment²⁴.

¹⁹ Article 22, ICCPR, signed by Uzbekistan in 1995.

²⁰ Article 239 Code of Administrative Liability of Uzbekistan

²¹ article 8, Law on Nongovernmental Noncommercial Organizations of the Republic of Uzbekistan

²² Ibid.

²³ Article 239 Code of Administrative Liability of Uzbekistan

²⁴ Article 202, Code of Administrative Liability of Uzbekistan and Article 216, Criminal Code

Domestic Violence against LGBT people

The real scale of domestic violence has not been examined in Uzbekistan, as up to September 2019 Uzbekistan's legislation lacked basic provisions on domestic violence, thus no statistical data was available on this issue. Uzbekistan has recently adopted a law on Violence against Women and Girls. Initially, the draft was on general domestic violence, however the final adopted version excluded men from the scope of its protections. Thus if violence occurs in male gay couples, it is not covered by the Law on Violence against Women and Girls. However, even if law might be interpreted to provide protection from violence for lesbian, bisexual and transgender women, the institutional design of protection services and stigmatization against LGBT people prevent them from accessing these services.

Conclusion

Criminalization of consensual sexual activities between male adults in Uzbekistan has its enormous impact on all aspects of the lives and well-being of LGBT people. It affects every aspect of not only gay men but also lesbian, bisexual and trans* people in general. None of the recommendations related to decriminalization of consensual same-sex conduct and providing equality for people regardless their sexual orientation and gender identity were adopted by the Government of Uzbekistan. We reiterate recommendations provided by the relevant States, participating in the Universal Periodic Review. We call the Government of Uzbekistan to repeal article 120, as violating its international human rights obligations and address legal gaps in protection from discrimination on the basis of sexual orientation and gender identity. To combat stigmatization of LGBT people in Uzbekistan's society we urge the Government of Uzbekistan to implement a comprehensive educational program for medical and law enforcement personnel and adopt additional measures to ensure equality and non-discrimination and prevent violence against LGBT people.