



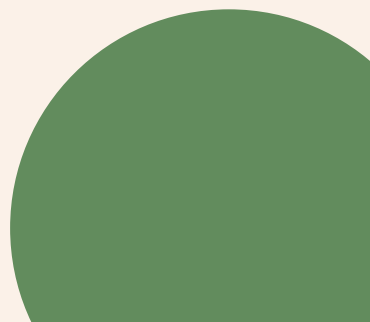
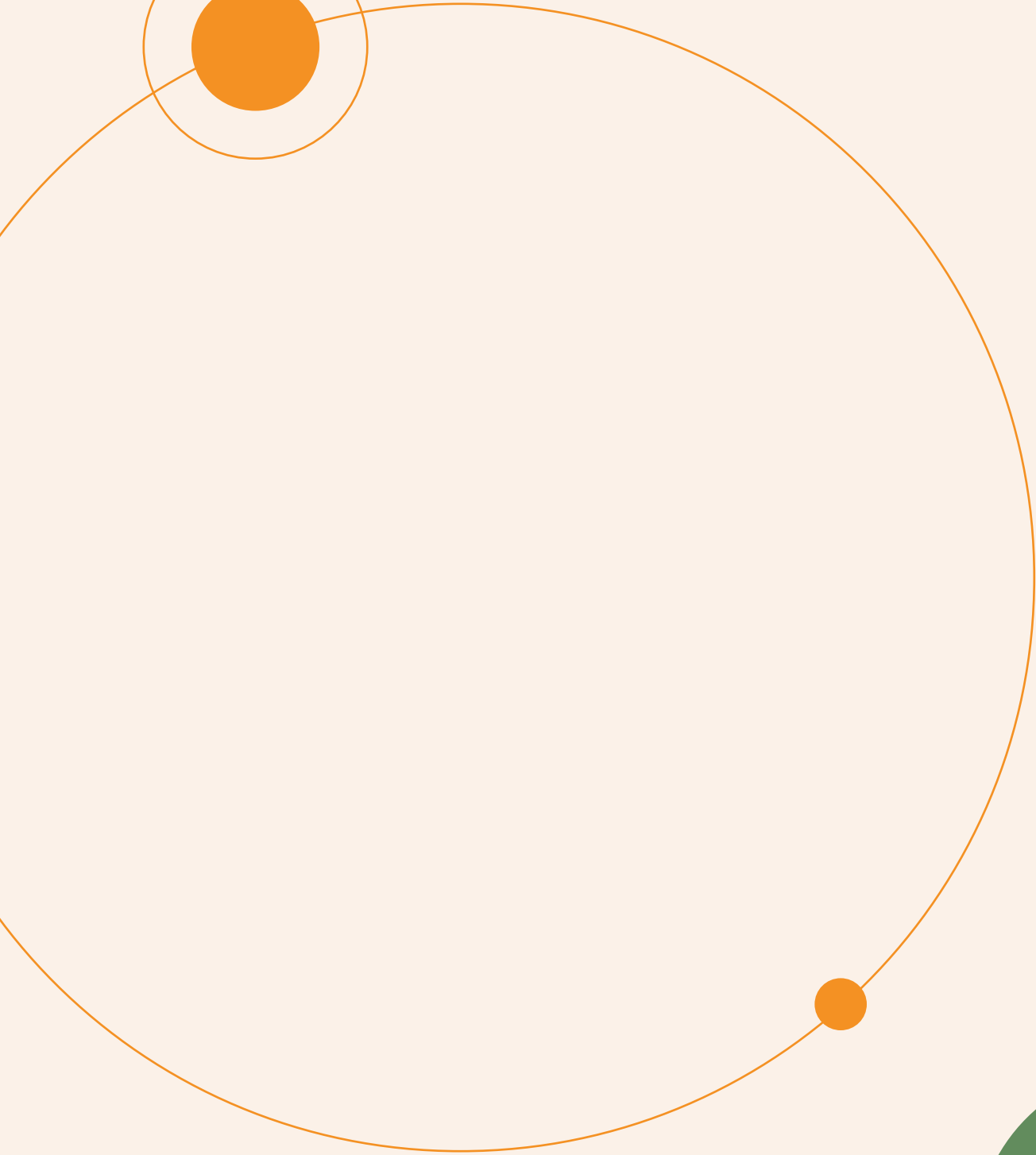
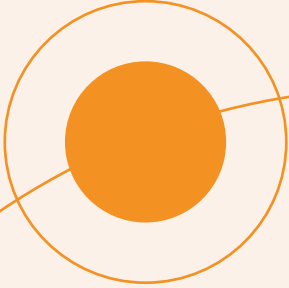
EHPV

Eesti HIV-positiivsete Võrgustik
Estonian Network of PLWH

2020

NGO Submission In Connection with Turkmenistan's Mid-Term Reporting On the Implementation of the 2018 UPR Recommendations

(Third Cycle)





METHODOLOGY

- 6 With reference to *UPD Mid-Term Reporting: Good Practices for UPR Stakeholders*, EHPV has limited itself to considering, inter alia, the implementation of the recommendations by the Turkmenistan Government since the last UPR in 2018, and the current situation with human rights and equality in Turkmenistan.
- 7 Among others, EHPV collected data from human rights monitoring activities conducted by EHPV partner NGOs; first-hand evidence from victims of human rights abuse; analysis of secondary and tertiary sources from official governmental institutions, legislation, other NGO reports and news outlets publications. Diverse data was collected, grouped, and contextually analyzed considering the State's actions in response to the recommendations accepted and noted by the Government during UPR 2018, particularly, with regards to human rights of Turkmenistan LGBT populations and people living with HIV (PLHIV).

INTERNATIONAL OBLIGATIONS

- 8 More than 2.5 years have passed since Turkmenistan was reviewed by UPR in 2018. EHPV would hope to commemorate Turkmenistan on substantial developments when it comes to human rights since then but, unfortunately, there is little reason to praise it for with regards to human rights observation relevant for non-heterosexual populations. International treaties that are crucial to enhancing all-round nondiscrimination and preventing illegal actions by the general public and state actors when it comes to LGBT persons have not been ratified.
- 9 Turkmenistan has not yet implemented the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (116.1, 116.4-12, 116.15, 116.24)². So many Member-States emphasized this particular aspect of Turkmenistan's shortcomings because the country seems to both utilize and leave unpunished acts of torture or other ill-treatment by civilians and civil servants alike. Particularly, the Committee against Torture, during the State's review in 2016, has identified Turkmenistan as a country with:

Consistent allegations of widespread torture and ill-treatment, including severe beatings, of persons deprived of their liberty, especially at the moment of apprehension and during pretrial detention, mainly in order to extract confessions. It is also gravely concerned at continued reports about impunity for acts of torture since no cases of torture have been recorded or examined by the State party's courts during both the previous and current reporting periods³.

UPR 2018 also recommended that Turkmenistan extends the invitation to all UN monitoring mandates, including to Special Rapporteur on Torture (116.26, 116.27, 116.29), which the country has not done as of the moment of this report's drafting as well.

² «Ratification Status of Optional Protocol», <https://indicators.ohchr.org>

³ *Concluding Observations on the Second Periodic Reports of Turkmenistan*, CAT, 2016, <https://www.refworld.org/publisher,CAT,,TKM,584963974,0.html>, para 7

- 10 Turkmenistan has not yet implemented the recommendations it accepted with regards to ratifying the Rome Statute of the International Criminal Court (116.20-23, 116.25)⁴. It is suspicious that the State is continuously trying to avoid ratifying the Rome Statute since it does provide the opportunity to judge the country on crimes against humanity. Considering that multiple recommendations referred to Turkmenistan exercising institutional discrimination against cultural and religious minorities, such suspicions only raise concerns.
- 11 Turkmenistan has not yet implemented the recommendations it accepted with reference to the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (116.2, 116.3, 116.14). Human Rights Watch (HRW) reported a young gay man, Kasymberdy Garayev, missing after his coming out on the Internet. Specifically, HRW reports that Radio Free Europe / Radio Liberty had published the man's coming-out narrative without identifying his name for security reasons, but authorities quickly commenced a campaign for identifying the man⁵. Garayev posted a video where he said he was scared for his life later, and went to the police per the summons. He was lost for several days. Then, a man claiming to be Garayev's father called Radio Liberty to say Garayev was fine; after a few days, Garayev reappeared and took back all his statements⁶.

RECOMMENDATIONS:

- 12 Promptly ratify and square its national legislation with the Optional Protocol to the Convention Against Torture.
- 13 Ratify the Rome Statute of the International Criminal Court without delay.
- 14 Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and bring the national legislation in line with its provisions with the expedition.
- 15 Extend its invitation to Special Rapporteur on Torture as soon as possible for them to conduct a thorough investigation of the state of torture and ill-treatment practices in the country and devise recommendations and tools for Turkmenistan to use in abolishing current practices and justly punishing those at fault for committing relevant acts.

• 4 «Ratification Status of the Rome Statute», International Criminal Court, https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx

• 5 «Turkmenistan: Gay Man Missing After Coming Out», Human Rights Watch, 2019, <https://www.hrw.org/news/2019/11/01/turkmenistan-gay-man-missing-after-coming-out-online>

• 6 «Gay Turkmen Doctor Who Vanished Returns», Radio Liberty, 2019, <https://www.rferl.org/a/gay-turkmen-doctor-who-vanished-after-coming-out-suddenly-back-home/30256870.html>

- 16 Turkmenistan overtly and consciously marks the UPR recommendations concerning the adoption of all-inclusive non-discrimination legislation that would ban all forms of discrimination, including based on sexual orientation and gender identity (SOGI), as «noted». The country has done nothing to tackle the systemic discrimination of the LGBT persons, PLHIV included. It is the third UPR that emphasizes this, yet, the State willfully denies adopting any steps towards decreasing the stigma of non-heterosexual persons, particularly MSM and trans people.
- 17 UPR 2018 for Turkmenistan includes recommendations 115.3, 116.35-37, 116.140, all of which urge the country to adopt laws that would ban discrimination based on SOGI. Specifically, 116.38 and 116.39 urge Turkmenistan to decriminalize consensual same-sex sexual conduct and put a stop to discrimination of non-heterosexuality. Turkmenistan «noted» these recommendations. As of today, Article 135 of the Turkmenistan Criminal Code has not been decriminalized, there are no draft laws in the parliament to support the Government's intention to fulfil the «noted» recommendations, and no laws that would ban all forms of discrimination, including based on SOGI, are being considered by the State.
- 18 In the second half of March 2020, a famous Turkmen actor, showman, and entertainer, along with a dozen other men, was arrested on sodomy charges in the city of Ashgabat, Turkmenistan. For ethical reasons, the names of the men were not disclosed in the media⁷. All of the men are successful professionals of the Turkmen show business and modelling. Most of the men were able to bribe the police and buy themselves out from under the investigation⁸. On May 7, 2020, the entertainer and several other men were sentenced to two years' imprisonment for sodomy, stipulated by article 135 of the Turkmen Criminal Code⁹. It should be noted that before Gurbanguly Berdimuhamedow came to power in 2007, the article on «sodomy» was rarely enforced¹⁰.
- 19 Turkmenistan accepted recommendation 116.41, urging it to take the necessary measures to establish, in its national legislation, a comprehensive legal framework of adequate and effective protection against all forms of discrimination, including discrimination based on sexual orientation and gender identity, and also repeal the criminalization of consensual sexual relations between consenting adults of the same sex. Sexuality, sexual identity, gender identity, and sexual needs of an individual exist outside of state regulation. Moreover, all fundamental human rights and freedoms international acts explicitly indicate that such issues are of private matter.

⁷ «Well-Known Turkmen Actor 'Under Arrest'», <https://www.rferl.org/a/well-known-turkmen-actor-under-arrest-gay/30561124.html>

⁸ Ibid

⁹ «Two Years in Prison for Gay Sex», Human Rights Watch, 2020, https://www.hrw.org/news/2020/05/26/two-years-prison-gay-sex-turkmenistan?fbclid=IwAR1aSmCeQoNHvmaBCy_1duBhsOGiQvx-Q7GdcqC2_ePhH_fvfCjhW7SlyA4

¹⁰ Information obtained during a series of interviews with former Turkmen citizens sentenced under the «sodomy» article conducted during the development of the film «Turkmenistan: forbidden homosexuality» in 2015.

RECOMMENDATIONS:

- 20 Immediately decriminalize consensual sexual conduct between adult men as it explicitly violates all of the international and national laws of Turkmenistan that protect fundamental human rights and freedoms.
- 21 Ensure that its criminal laws do not police voluntary sexual conduct between adult people and that all people are protected from involuntary sexual actions enacted upon them or from coercion to perform sexual activities against their will regardless of the victim's sex, sexual orientation, gender identity, and gender expression.
- 22 Adopt criminal laws that will appropriately define and punish discrimination, hate speech and hate crimes, criminal acts committed out of enmity based on the victim's sexual orientation or gender identity, or other attribute or status, and include sexual orientation and gender identity as aggravating circumstances if the motive of the crime was enmity towards the victim's SOGI.

TURKMENISTAN DENYING LGBT PERSONS EQUALITY

- 23 LGBT community members and PLHIV from Turkmenistan are forced to leave their country because of the inability to not only acquire the highest attainable standard of living there — they cannot acquire even a decent one. They are constantly afraid for their lives, becoming victims of verbal and physical abuse, enforced disappearance, torture and ill-treatment, having their right to health, movement, privacy, and other freedoms violated.
- 24 Turkmenistan made it clear during the review of its Second Periodic Report to the Human Rights Committee (HRCtee) in 2017 that G[Abolishment of the criminal penalties for sodomy] is contrary to Turkmen culture, and the mentality of Turkmen people, which are based on traditional family values. Therefore, making such changes to the legislation is unacceptable¹¹. It means that Turkmenistan is hypocritically «noting» recommendations 116.35-116.40 while having no intention of making any advancement in the direction of decriminalizing consensual same-sex sexual activities between men.
- 25 In its Concluding Observations, as a result of reviewing Turkmenistan's Second Periodic Report in 2017, HCRtee indicated that:

While acknowledging the diversity of morality and cultures internationally, the Committee recalls that State laws and practices must always be subject to the principles of universality of human rights and of non-discrimination and that a failure to comply with the obligations contained in the Covenant cannot be justified by reference to political, social, cultural or economic considerations within the State¹².

11 Statement made on 8 March, 2017 in Geneva during consideration of Turkmenistan's second periodic report on its compliance with the International Convention on Civil and Political Rights (ICCPR) by the UN Human Rights Committee. More details: <https://habartm.org/archives/6555>

12 Concluding Observations on the Second Periodic Report of Turkmenistan, UN Treaty Bodies Database, 2017, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/TKM/CO/2&Lang=En

- 26 EHPV notes that, as of the moment of this report's filing, no draft laws have been filed for consideration, no NGOs were invited for consultation or discussion, and no other public statements have been made by the Turkmen Government that would indicate its willingness to decriminalize consensual same-sex sexual conduct and/or to adopt all-inclusive non-discrimination laws.
- 27 Turkmenistan uses «traditional», «cultural», and «family» «values» as hostages whenever LGBT issues are brought up during the dialogue with the State at the level of UN Treaty Bodies. However, using traditional and cultural values as excuses for institutional discrimination and violence against non-heterosexual people (primarily, gay men, other men who have sex with men (MSM), as well as trans persons) concludes an outright frivolous violation, considering Turkmenistan's national and international obligations under various human rights frameworks.
- 28 EHPV's partner NGOs report that due to state-sponsored violence against gay men in Turkmenistan, the general public's stigma is extended to lesbian, bisexual, and trans people as a result of a rejection of homosexuality and queerness as something illegal, wrong, and hurtful. The continuous presence of article 135 only solidifies this discriminatory belief and puts consensual non-heterosexual intercourse on par with actual criminally dangerous activities, like rape, murder, burglary, and other criminal acts. Any form of institutionalized discriminatory violence against disadvantaged groups made by Turkmenistan concludes an explicit violation of its international obligations.
- 29 In 2019, due to severe stigmatization, police harassment, and inability to sustain himself and lead a fulfilled life, a young HIV-positive gay man was forced to seek refuge in the EU. The gay man wanted to escape discrimination in his home country of Turkmenistan, so he entered a university in Russia; he was diagnosed with HIV in 2019 and was deported per Russian law; soon, local Turkmen police brought him in for ungrounded questioning and severely beat him up¹³. The man was lucky to survive and received asylum in one of the EU countries, but the psychological damage will continue to haunt and impact him for the years to come. EHPV comes across similar Turkmen MSM and trans people-refugees during its activities as well.
- 30 Turkmenistan accepted recommendation 114.30 to protect the constitutional principle of equality of rights and freedoms of citizens and fulfil the country's international commitments of gender equality. LGBT people are also entitled to constitutional equality under Turkmen law and under that recommendation. Thus, all other laws and government practices denying them equality are explicit violations of Turkmenistan's Constitution and international obligations.

RECOMMENDATIONS:

- 31 Immediately adopt a unified national law that would explicitly and effectively ban all forms of discrimination, including based on sexual orientation and gender identity, in conformity with UN standards, as the current state of national law enforces discrimination against non-heterosexual and non-cisgender people and does not protect their legal interests.

¹³ «Gay Man Flees Turkmenistan», PinkNews, 2020, <https://www.pinknews.co.uk/2020/04/14/gay-homophobia-turkmenistan-police-hiv-aids-lgbt-rights-radio-free-europe-asylum-seeker/>

32 Define what actions conclude an act of discrimination and what «gender» means in such a law in accordance with contemporary science- and practice-based UN approach to those notions.

RIGHT TO HEALTH

33 Turkmenistan has taken upon itself the obligation to ensure everyone's right to the highest attainable standard of health and well-being¹⁴. Nonetheless, during an ongoing global epidemic of HIV, Turkmenistan is grossly failing when it comes to HIV-prevention for its citizens, especially for MSM and trans people. Since 1989, there have only been 2 officially registered cases of HIV in Turkmenistan¹⁵. It is unheard of. The national HIV-prevention plan has no effective methodology for properly collecting broad and contextual HIV-data. It is reported, unofficially, that there are thousands (if not tens of thousands) of cases of HIV in Turkmenistan which go unidentified, un-noted, and untreated¹⁶.

34 MSM, trans people, as well as non-heterosexual women are not included as key populations when it comes to HIV monitoring and prevention in Turkmenistan. Moreover, Turkmenistan is not collecting any HIV-data for its general population: UNAIDS statistical profile for Turkmenistan includes dashes under the main indicators of HIV spreading, which means that no data is being provided¹⁷. In this regard, not only is the Turkmenistan Government outrightly failing in observing the right to health of LGBT and other people under the Universal Declaration, it is consciously and overtly undermining the health of its entire population, breaking its constitutional obligations and obligations under its national HIV-legislation. In 2012, the Deputy Foreign Minister of Turkmenistan stated: «in the East, in addition to laws and regulations, there is also practice»¹⁸, alluding to the fact that even if Turkmenistan has good laws in place, there is evident state-sponsored violation going on.

35 ECOM reports that the level of medical care, knowledge and awareness about HIV of medical workers, and the knowledge about HIV of the general population, considering the government's undermining of HIV-prevention nation-wide, is extremely low. Despite there being free antiretroviral therapy available per law, there is virtually no treatment at all. People who are diagnosed with HIV are not treated for HIV, they are being treated for concomitant diseases, like tuberculosis and pneumonia¹⁹. This blatant denial of executing internationally acknowledged HIV-prevention and treatment practices, that Turkmenistan acknowledged and ratified, must be investigated as ill-treatment.

¹⁵ *Legislative Analysis Related to LGBT Rights and HIV in Turkmenistan*, ECOM — Eurasian Coalition on Health, Rights, Gender, and Sexual Diversity, 2019, p. 7.

¹⁶ This information was obtained from infectious disease doctors during informal conversations.

More details: <https://habartm.org/archives/9168>

¹⁷ «Statistical Profile of Turkmenistan», UNAIDS, <https://www.unaids.org/en/regionscountries/countries/turkmenistan>

¹⁸ Statement made at a meeting of the UN Human Rights Committee in New York in March 2012 <http://www.hron-ikatm.com/2012/03/sushhestvuet-eshhe-i-praktika/>

¹⁹ *Legislative Analysis Related to LGBT Rights and HIV in Turkmenistan*, ECOM — Eurasian Coalition on Health, Rights, Gender, and Sexual Diversity, 2019, p. 7

- 36 EHPV would like to bring UPR's attention to the utter un-effectiveness and even discriminatory value of Turkmenistan's current HIV-related legislation. Firstly, no key population groups (groups at increased risk of getting infected with HIV) are mentioned in Turkmenistan's HIV-laws. Such groups include MSM, trans people, people who inject drugs (PWUD), sex workers, and others. These key population groups are non-existent for Turkmen HIV-laws. On another note, a compulsory examination for HIV is performed on a person «with respect to whom there are sufficient grounds to believe that he has been diagnosed with HIV infection»²⁰. There are no context, validation, or cases when such a compulsory diagnosis may be warranted.
- 37 Foreigners who wish to enter Turkmenistan for a period of more than 3 months should provide a HIV-negative certificate; otherwise, they may be denied their visa. Non-citizens who are located within Turkmenistan's borders and are diagnosed with HIV, in practice, are deported; although, the law says that their fate will be decided in conformity with Turkmenistan's laws and international treaties. Organizations such as UNAIDS and UNDP claim that restrictions on the travel and stay of HIV-positive people are discriminatory in nature and do not protect the health of the population of the country where such restrictions apply²¹.
- 38 Article 135 instils fear in HIV-positive LGBT people that causes them to avoid getting tested and then, if necessary, applying for antiretroviral treatment (ART). Applying for ART in Turkmenistan will mean undergoing medical examinations that are not only outdated and counter-effective, the confidentiality of their personal medical information as well as their SOGI-status will most likely be breached, too. This further invests in the entire population not getting HIV-tested and treated according to international standards. The ostracism forces LGBT HIV+ persons to change their residence, including moving to other countries; including but not limited to Estonia. Such provisions and activities are in direct violation of the ICESCR, the Universal Declaration, and WHO documents.
- 39 The Preamble of the WHO Constitution stipulates that health is «a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity»²². Not only are LGBT people discriminated against in terms of HIV-prevention measures, they are also at high risk of getting discriminated against during their attempts to receive other healthcare. They are at risk of getting their SOGI and/or HIV-status voluntarily disclosed by any medical worker (as seen in the above-mentioned case with the young Turkmen gay who sought asylum) to law enforcement authorities and their neighbours, which can then entail prosecution under article 135 and public abuse. As a result, they are in constant fear for their employment, health, and lives, which is very far from being in a healthy state of mind and body.
- 40 The above-mentioned policies are damaging to Turkmenistan's national HIV-prevention laws and action plans. They also violate a strain of fundamental human rights and freedoms of the LGBT. EHPV has been observing an increasing number of LGBT, PLHIV among them, citizens of Turkmenistan who flee their country due to being unable to support themselves or live in conditions with a significant lack of personal safety.

• ²⁰ *Legislative Analysis Related to LGBT Rights and HIV in Turkmenistan*, ECOM — Eurasian Coalition on Health, Rights, Gender, and Sexual Diversity, 2019, p. 10

• ²¹ <https://news.un.org/ru/story/2019/06/1358291>

• ²² *Constitution of WHO*, WHO, https://www.who.int/governance/eb/who_constitution_en.pdf

• ²³ «In Turkmenistan, Doctors Are Tested for STIs to Single Out Gays», Babel, 2019, <https://babel.ua/ru/news/37660-radiio-svoboda-v-turkmenistane-obyazali-vseh-medrabotnikov-proyti-obsledovanie-na-zpp-chtoby-vyavit-vrachey-geev>

- 41 The above-mentioned victim of law enforcement harassment, Kasymberdy Garayev, was a cardiologist. Radio Liberty reports that, after his coming out video/story, the Turkmen Ministry of Healthcare ordered all doctors to be tested for STIs within two weeks with the aim of singling out homosexual men²³. It reveals severe governmental stigma towards MSM and PLHIV, including a biased, scientifically ungrounded perception of HIV as a condition inherent exclusively to homosexual men. Such mandatory testing and harassment of workers also constitutes ill-treatment, in addition to the medical and other personal data about them being most likely misused, misinterpreted, and disclosed.
- 42 Under the accepted recommendation 116.88, Turkmenistan should direct its efforts, humility, understanding, and science-based approach to the LGBT and PLHIV to help reduce the stigma and discrimination when it comes to their right to health on practice and, in essence, save their lives. Such actions are also relevant to fulfilling recommendations 114.59-61, under which Turkmenistan promised to strengthen and enhance healthcare for its entire population, especially in rural areas and for disadvantaged groups.

RECOMMENDATIONS:

- 43 Bring its current HIV-data collection, HIV-prevention and HIV-treatment laws and measures in line with UNAIDS best practices immediately.
- 44 Revise its current national laws and action plans when it comes to HIV-prevention and include MSM and trans people as key populations within the national framework of HIV-monitoring, HIV-data collection, HIV-prevention, and HIV-treatment.
- 45 Devise and adopt a national action plan to educate, raise the awareness of, and sensitize medical workers, those working with HIV-services first and foremost, throughout Turkmenistan about the issues of sexual orientation, gender identity, human rights and needs of the LGBT overall and in terms of HIV specifically, as a means of tackling discrimination and stigma LGBT face when turning for healthcare services of any kind.
- 46 Ensure the confidentiality of personal medical information of PLHIV, and that all those who breach it are punished in accordance with national criminal laws.
- 47 Reverse the laws that foresee forced HIV testing for migrants.

CRIMINALIZATION OF HIV TRANSMISSION

- 48 Currently, article 119 of the Turkmenistan Criminal Code criminalizes putting the victim at risk of getting AIDS²⁴. The transmission of HIV is not mentioned. The article foresees the punishment of up to 3 years of imprisonment for putting people at risk of contracting HIV. This article does not define the conditions according to which a person knew whether they had HIV or not. Infection of another person with HIV by a person who knew about their status is punishable by imprisonment of up to five years. If the act is committed against two or more persons, or against a minor, the punishment is imprisonment for up to eight years.
- 49 The wording of the current Turkmenistan Criminal Code's article related to STI transmission is faulty. Firstly, AIDS is a condition that develops as a result of the person getting HIV and not treating it timely. Secondly, conditions for the perpetrator to be identified as knowing about their HIV-status, the victim knowing about the perpetrator having HIV and consenting, and other elements of proper protection of victims are absent from those articles. Such an approach does not comply with UNAIDS recommendations when it comes to criminalization of HIV and STI transmission²⁵.

RECOMMENDATIONS:

- 50 Amend the wording of Article 119 of the Criminal Code of Turkmenistan and other articles related to transmission of HIV and other STIs for them to fully conform to UNAIDS practices when it comes to transmission of HIV and other STIs. Specifically, remove HIV from the equation and apply general criminal law to cases of transmission of STIs, and establish that a person shall be criminally punished only when it has been proven beyond a reasonable doubt that the perpetrator that knew they had an STI, they intentionally put the victim at risk of infection, the victim had no awareness about the perpetrator's STI condition.

RIGHT TO FAIR TRIAL, PRIVACY, AND FREEDOM OF EXPRESSION

- 51 Turkmenistan pledged to promote and protect everyone's right to privacy and freedom of opinion and expression indiscriminately, as well as ensure every person's equality before the law and the court²⁶. In light of the above, it is already apparent that Turkmenistan does not respect the right to privacy of the LGBT and PLHIV. Article 135, as well as stigma from the general public and the authorities, additionally results in LGBT and PLHIV not having access to a fair trial.

²⁴ Legislative Analysis Related to LGBT Rights and HIV in Turkmenistan, ECOM — Eurasian Coalition on Health, Rights, Gender, and Sexual Diversity, 2019, p. 11

²⁵ «Criminalization of HIV Transmission», http://data.unaids.org/pub/manual/2008/jc1601_policy_brief_criminalization_long_en.pdf

²⁶ Universal Declaration of Human Rights, UN, <https://www.un.org/en/universal-declaration-human-rights/>, Article 12, 19; International Covenant on Civil and Political Rights, OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, Article 14

- 52 EHPV's partner NGOs report alarming practices that the Turkmen police resort to when it comes to LGBT people. While «investigating» under article 135, Turkmen police also press other charges against the accused male persons, like gratification of perverted sexual desires. «Since homosexuality is perceived as a mental disorder in the country, punishment for homosexual acts between men or perceived homosexual behaviour can also include placement in psychiatric institutions to be 'cured' of their sexual preferences²⁷».
- 53 As a result of researching men convicted under article 135, ECOM reports that:
Law enforcement officials often organize ambushes in apartments or places where young people meet and monitor online forums, dating sites, and chat rooms popular among young people. Men suspected of homosexual relationships are detained and have their phones, calls, and messages examined. Police correspond with other people using the names of the detained men, thereby catching more and more people. Given the high levels of corruption, many young people are forced to pay large bribes to avoid punishment and the disclosure of this information to their friends and relatives²⁸.
- 54 Turkmenistan was ranked the last (180th) in «Reporters Without Borders» World Press Freedom Index²⁹. This not only indicates that censorship and violence against free-thinkers is at large in Turkmenistan; it also means that people who express ideas different to what the state insists on are met with outright hostility. This goes in line with the concerns and recommendations outlined during UPR 2018 in 116.62, 116.64-67. EHPV's partner NGOs and community members report that they are afraid to reveal their SOGI or confront authorities in any way because they are scared for their lives. Freedom House ranks Turkmenistan as «Consolidated Authoritarian Regime» with 0.00% Democracy percentage, saying that the state-controlled media leaves the population in the dark about the country's shortcoming and economic decline, and that freedom of speech is out of the question³⁰.
- 55 Turkmenistan accepted multiple recommendations (114.47,114.40-43) that urge the State to respect freedom of expression, freedom of speech, right to a fair trial and bring its national legislation in line with its international obligations, and punish those who obstruct this freedom. LGBT people, just like anyone else, are entitled to all of those fundamental rights and freedoms.

RECOMMENDATIONS:

- 56 Repeal governmental practices that propagate and facilitate censorship, as well as ensure that everyone's right to freedom of speech and freedom of expression is observed, and that everyone, including civil servants and high-profile politicians and state figures, are reprimanded and punished for any acts that try to limit such freedoms.

²⁷ «Turkmenistan LGBTI Resources», Right in Exile Programme, <https://www.refugeelaidinformation.org/turkmenistan-lgbti-resources>

²⁸ Legislative Analysis Related to LGBT Rights and HIV in Turkmenistan, ECOM - Eurasian Coalition on Health, Rights, Gender, and Sexual Diversity, 2019, p. 9

²⁹ World Press Freedom Index, Reported Without Borders, 2019, <https://rsf.org/en/2019-world-press-freedom-index-cycle-fear>

³⁰ «Nations in Transit: Turkmenistan», Freedom House, 2020, <https://freedomhouse.org/country/turkmenistan/nations-transit/2020>

- 57 Take immediate steps to ensure the confidentiality of a person's sexual orientation or gender identity, as well as other elements of their right to privacy, and make sure that justice is adequately and effectively served if such privacy is breached.
- 58 Ensure that all law enforcement officials who exceed their authority and commit acts of crime against people based on hate towards their sexual orientation, gender identity, or other attribute or status are brought to justice in fair legal proceedings. All sanctions imposed should commensurate with the severity of the violations committed.
- 59 Commit to securing the right to a fair trial of all people within its borders indiscriminately, and that the judges that do not serve justice in line with national laws are punished for it.
- 60 Devise and adopt a national action plan to educate, raise the awareness of, and sensitize law enforcement and police officers about the issues of sexual orientation, gender identity, human rights and needs of the LGBT overall and of PLHIV, as a means of tackling discrimination and stigma LGBT face when turning for protection.

FREEDOM FROM TORTURE, DEGRADING AND OTHER INHUMAN BEHAVIOUR

- 61 Turkmenistan pledged that it will ensure that nobody shall be subjected to torture, degrading, or other inhuman behaviour or punishment³¹. However, the UN Committee Against Torture (CAT) expressed grave concerns about the fact that torture and ill-treatment are exercised by state and non-state actors without proper prevention and punishment mechanisms enacted in relation to perpetrators.
- 62 Continuing the topic of article 135, EHPV, international NGOs, and EHPV's partner NGOs report that blatant humiliation is used during the investigation of cases under that article. Notably, suspected or accused men are subjected to forensic examination of their rectum and anal area³². During the entire already humiliating process, the men are subjected to offensive comments from forensic 'experts.' Men are also tortured during questioning, for example, by electric shock, to confess and reveal names of other men. It is also reported that being a contact in such a person's cell phone is enough for the police to bring that person in for questioning and even start investigating them under article 135.

³¹ Universal Declaration of Human Rights, UN, <https://www.un.org/en/universal-declaration-human-rights/>, Article 5; Convention Against Torture, OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>, Article 2

³² Legislative Analysis Related to LGBT Rights and HIV in Turkmenistan, ECOM — Eurasian Coalition on Health, Rights, Gender, and Sexual Diversity, 2019, p. 9

FREEDOM OF ASSEMBLY AND ASSOCIATION

- 71 Turkmenistan has the obligation to ensure freedom of peaceful assembly and association to everyone³⁵. Unfortunately, in light of article 135 and severe persecution and censorship, those freedoms are vigilantly policed and restricted. With this in mind, there are no LGBT NGOs registered or actively, openly acting in Turkmenistan. That being said, the process of registration, acting, and reporting of an NGO in Turkmenistan is complicated by demanding and strict laws. ILGA-Europe reports that human rights organisations cannot operate freely in Turkmenistan³⁶.
- 72 Turkmenistan accepted recommendations (114.20, 114.28, 114.72-74, 116.79) that urge the state to observe the freedom of assembly and association, and that the State abolishes unnecessary barriers to the execution of those freedoms. NGOs usually consist of non-professional volunteers. Strict procedures and monitoring deter them from organizing into initiatives or NGOs. Also, the open State discourse against LGBT and article 135 serve as fundamental obstacles for LGBT and PLHIV exercising the said freedoms.

RECOMMENDATIONS:

- 73 Amend national laws that govern NGO activity to allow free operation of NGOs that provide services to PLHIV, including representatives of the LGBT community, without unjustified barriers for registration and disproportionate monitoring of their activity.
- 74 Bring its national laws that govern the activity of NGOs that provide HIV-services in line with UNAIDS best practices. Namely, follow the principle of community-based HIV-services that should be provided by LGBT NGOs to their respective communities directly when it comes to legislation that governs NGO activity. Turkmenistan should amend its existing regulations to ensure that HIV-services that are provided to key population groups are decentralized. NGOs that provide HIV-services should be able to coordinate their activity directly with their donors and other financing institutions based on their own programmes that fit the national HIV-prevention action plan but without extensive governmental control, bureaucracy, and interference. Turkmenistan should simplify the regulations related to granting and monitoring of NGOs that provide HIV-services to key population groups to encourage and increase the effectiveness of their work.
- 75 Ensure that all NGOs that conform to the required registration demands are granted registration and that illegal and/or unjustified refusal to register an NGO can be effectively overturned in court, and that illegal interference with an activity of a human rights NGO can be effectively reversed and punished in court as well.

³⁵ International Covenant on Civil and Political Rights, OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, Article 21, 22

³⁶ «Turkmenistan Profile», ILGA-Europe, 2019, <https://www.ilga-europe.org/sites/default/files/Turkmenistan.pdf>

FREEDOM OF GENDER IDENTITY AND EXPRESSION

76 Based on Article 2 paragraph 1 of the International Covenant on Economic, Social, and Cultural Rights, Turkmenistan is to endeavour all its resources to ensure the realisation of the rights enshrined therein for everyone³⁷. The Committee on Economic, Social, and Cultural Rights states that Article 2 of the aforementioned Covenant includes SOGI:

States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace³⁸.

77 Turkmenistan's legislation does not recognize transgenderism. ECOM reports that there are no laws that govern gender identity and gender expression in the country. Moreover, there are no regulations that would govern legal aspects of gender confirmation, transitioning, gender/sex-reassignment surgery and validation of transitioning results, awarded hormonal therapy, etc. Trans people are non-existent to Turkmenistan's law.

78 For the record, in 2019, WHO published the eleventh version of the International Classification of Diseases (ICD-11) eliminating F 64 gender identity disorders. Homosexuality was eliminated from the list of mental disorders decades ago. Nothing that Turkmenistan offers as justification for its persecution, prosecution, 'treatment' or disregard when it comes to MSM and trans people can be taken as an argument since it contradicts contemporary scientific evidence and UN Treaty Bodies practice.

RECOMMENDATIONS:

79 Introduce an inclusive legislative framework that would allow all people to enjoy legal gender confirmation of their desired gender without them being forced to undergo a compulsory psychiatric examination.

80 Bring its national legislation in line with WHO ICD-11 as soon as possible. Specifically but not exclusively, stop defining sexual orientation or gender identity/expression issues as mental disorders and bring its national legislation when it comes to mental and sexual health, including issues of sexual orientation and gender identity, in line with ICD-11.

81 Update the current legislative framework to promote and allow modern and science-based healthcare and support for trans people during transitioning, provide all necessary medical treatment, including hormone therapy, and ensure non-stigmatizing legal confirmation procedures.

³⁷ Fact Sheet No.16, OHCHR, <https://www.ohchr.org/Documents/Publications/FactSheet16rev.1en.pdf>

³⁸ General Comment No.20 E/C.12/GC/20, Committee on Economic, Social, and Economic Rights, <https://www.refworld.org/docid/4a60961f2.html>

- 82 Devise and adopt a contemporary, non-discriminatory, and science-based legal gender recognition regulations that would define the framework and procedure for medical services and medical workers when it comes to dealing with trans people who are not undergoing transition but who still require sex-specific medical specialists that would help ensure their highest attainable standard of health while keeping in mind their needs as trans people.

TRADITIONAL VALUES

- 83 Turkmenistan noted 6 recommendations (116.35-40) that «it cannot implement either for legal or constitutional reasons or because they go against the letter, spirit or practical application of the legislation in force and the country's national interests». The UPR respected the State's right to do so. However, all of the said recommendations involve the adoption of effective legislation that would ban and prosecute discrimination based on SOGI. It is the third UPR Turkmenistan «notes» SOGI-related recommendations and takes no action to fulfil them.

- 84 UPR exists to promote the universality of fundamental human rights and freedoms for everyone across the globe if the respected country acknowledges its authority. In 2015, 12 UN Treaty Bodies issued its Joint Statement on «Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People». This Statement calls all States to act urgently to end violence against the LGBTI people. Particularly, it states that:

*Failure to uphold the human rights of LGBTI people and protect them against abuses such as violence and discriminatory laws and practices, constitute serious violations of international human rights law and have a far-reaching impact on society — contributing to increased vulnerability to ill health including HIV infection, social and economic exclusion, putting strain on families and communities, and impacting negatively on economic growth, decent work and progress towards achievement of the future Sustainable Development Goals. States bear the primary duty under international law to protect everyone from discrimination and violence*³⁹.

- 85 It is unacceptable, and even illegal, that Turkmenistan keeps bringing up «traditional», «cultural», and «family values» as the arguments for continued discrimination and violence against LGBT. The HRC Advisory Committee's Study A/HRC/22/71 states that «[h]uman rights have moral universality, since human rights are held universally by all persons 'simply because one is a human being', and international normative universality, meaning that human rights are universally accepted by Governments through their commitments and obligations under international human rights law»⁴⁰. Further, the Study explains that «[n]o one may invoke cultural diversity as an excuse to infringe on human rights guaranteed by international law or limit their scope [...to] seek to sanctify differences that run counter to the universality, indivisibility and interdependence of human rights»⁴¹.

³⁹ «Joint UN Statement on Ending Violence Against LGBTI», OHCHR, https://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF

⁴⁰ HRC Advisory Committee's Study A/HRC/22/71, https://www.ohchr.org/documents/HRBodies/HRCouncil/AdvisoryCom/Session10/A.HRC.22.71_en.pdf

⁴¹ Ibid.

86 It is contrary to all the international obligations that Turkmenistan has acknowledged for the UPR to allow the State to continue its systemic discrimination and state-sponsored violence against the LGBT. «Traditional values» and «cultural values» centred around bias, hate, discrimination, stigma, and violence towards peaceful and law-abiding citizens that are non-heterosexual or living with HIV constitute outright criminal acts.

RECOMMENDATIONS:

87 Immediately put a stop to veiling state-sponsored homo- and transphobia and consequent arbitrary institutional violence against people based on their sexual orientation and/or gender identity and abolish the impunity of hate crime perpetrators under notions of «traditional», «cultural» and «family» «values».

EDUCATION AND SENSITIZATION

88 All of the above-mentioned violations of fundamental human rights and freedoms of LGBT come from lack of education and awareness. All UN Human Rights Treaty Bodies, as well as UPR, emphasize the importance of comprehensive sexuality education (CSE) in all educational institutions and on all levels⁴². As an NGO working with PLHIV and LGBT and as a result of preparing the present report together with other stakeholders, EHPV can certainly state that CSE is necessary as a mandatory nation-wide action plan.

89 CSE, however, should not bolster stereotypical heteronormative behaviour. The UN indicates that to achieve universal access for knowledge and to contribute to improving sexual and reproductive health (including HIV outcomes) for young people, States need to:

- Place gender and human rights at the heart of sexuality education
- Address vulnerabilities and fight exclusion
- Take a positive lifecycle approach to sexuality⁴³.

90 Right to education is inalienable from the right to the highest attainable standard of physical and mental health: «For example, the right to sexual and reproductive health, combined with the right to education (articles 13 and 14) and the right to non-discrimination and equality between men and women (articles 2 (2) and 3), entails a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age-appropriate»⁴⁴.

⁴² «Youth and Comprehensive Sexuality Education», UN, <https://www.un.org/esa/socdev/documents/youth/factsheets/youth-sexuality-education.pdf>

⁴³ «Youth and Comprehensive Sexuality Education», UN, <https://www.un.org/esa/socdev/documents/youth/factsheets/youth-sexuality-education.pdf>

⁴⁴ General Comment No.22, Committee on Economic, Social, and Cultural Rights, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0S zab0oXTdlmnsjZZVQfQejF41Tob4CvljeTiAP6sGFQktiae1v-lbbOAekmaOwDOWsUe7N8TLm%2BP3HJPzjHySkUoHMavD%2Fpyfcp3YlZg>



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