

Report on colonialism and sexual orientation and gender identity in Eastern Europe and Central Asia (EECA) region

Introduction

This report focuses on the impact of colonialism on sexual orientation and gender identity in Eastern Europe and Central Asia (EECA) region and explores the enduring effects of Soviet and post-Soviet era laws on the rights and freedoms of the LGBT community in the region. We will look at what colonial laws regulating sexual orientation and gender identity are still in place today as well as explore what the ongoing impact of gender- and sex-regulating colonial laws on the enjoyment of human rights by LGBT persons is.

Throughout history, the Soviet Union and then its successor, Russia, which represents colonial powers in the region, have exerted control over their territories by implementing or pushing laws that regulate various aspects of society, including sexual orientation and gender identity. These laws were introduced and enforced with the intention of imposing and maintaining colonial power dynamics. They often aimed to prohibit certain sexual acts and regulate gender identities and expressions.

The persistence of these laws, coupled with widespread societal and religious homophobia, policy influences from contemporary Russia, and anti-Western sentiment, create a toxic environment for LGBT individuals. The consequences include a climate of fear and discrimination, violations of privacy and freedom of expression, and unequal protection under the law. This report seeks to highlight the importance of addressing and advocating for the reconsideration of colonial-era laws in the context of human rights and equality.

The Continuing Effects of Soviet Articles

Under Joseph Stalin, the Soviet Union recriminalized homosexuality in a decree signed in 1933.¹ The new Article 121, which punished “muzhelozhstvo” with imprisonment for up to 5 years, saw raids and arrests. Lesbian and bisexual women were sent to mental institutions.

The legacy of colonial-era laws continues to cast a long shadow over the rights and freedoms of the LGBT community. Turkmenistan and Uzbekistan, former Soviet republics, have retained laws criminalizing homosexuality that were originally established during the Soviet era. On the example of Turkmenistan and Uzbekistan we can see how the criminalization of consensual same-sex relations creates a toxic environment for LGBT people.

In both Turkmenistan and Uzbekistan, laws criminalizing homosexuality persist, albeit with varying degrees of enforcement. Officially, consensual same-sex sexual activity is classified as a criminal offense, often punishable by imprisonment or fines. The enforcement of these laws has led to a climate of fear and discrimination against LGBT individuals, impacting their rights to privacy, freedom of expression, and equal protection under the law.

¹Morgan, Joe (17 June 2018). "The Secret Gay History of Russia". Gay Star News. Retrieved 21 March 2021.

According to ECOM report Uzbekistan's criminalization of consensual same-sex relations between men under Article 120 of the Criminal Code (sodomy) has dire consequences for LGBT individuals².

The fear of abuse and extortion by both law enforcement and aggressive homophobes looms large, leading to a climate of intimidation. LGBT individuals face arbitrary detention, imprisonment, and severe discrimination. Due to the potential repercussions and lack of trust in the justice system, many victims choose not to report abuses, perpetuating a cycle of silence and further marginalization.

Colonial-era laws, along with prevailing cultural attitudes, have deeply influenced the perception of homosexuality as a contagious disease that poses a threat to society. Families, upon learning or suspecting that a relative identifies as LGBT, often resort to subjecting them to medical consultations, religious interventions, or even banishment from the family home. Such social and moral stigmatization fuels discrimination and exclusion, hindering LGBT individuals from expressing their identities openly and freely not only in Uzbekistan but all through the region.

In 2022 our organization recorded 81 cases of human rights violations against gay, bisexual, and trans people in Uzbekistan 2022³. The most frequent perpetrators were law enforcement officials. Among this array of cases, five victims were convicted under Article 120 of the Criminal Code of the Republic of Uzbekistan. One of the case documented by ECOM: *"Gay was sentenced to 6 years under articles 113 (Spread of a venereal disease or HIV/AIDS) and 120 of the Criminal Code. During the investigation, he was subjected to compulsory testing for STIs, and an anal examination was performed. Police officers subjected the victim to psychological pressure."*

LGBT individuals in Uzbekistan often face torture, ill-treatment, and extortion as punitive measures. Perpetrators employed these methods to humiliate and punish gay and bisexual men, coercing them into paying bribes to secure their release. Invasive anal examinations, conducted to gather so-called "evidence" of homosexual intercourse, violate human rights standards and are deemed futile and unscientific by the World Medical Association. These degrading practices underscore the grave mistreatment experienced by LGBT individuals in Uzbekistan.

Law enforcement agencies in Uzbekistan play a significant role in the persecution of LGBT individuals. Widespread homo- and transphobia within the police force fosters active targeting and harassment of LGBT community members. Exploiting the criminalization of homosexuality, some police officers seek personal gain by threatening to expose individuals or charge them under Article 120 unless they pay bribes. This abuse of power intensifies the atmosphere of fear, reinforcing a culture of discrimination and violence. One of the cases of extortion and blackmail: *On May 2, 2022, the victims celebrated a holiday at their home, where a conflict occurred. Neighbors called the local police station. The policeman, during the investigation into the circumstances of the conflict, found out about their sexual orientation.*

²Torture, Blackmail, Disclosure of Personal Information: Report on Violation of Gay Rights in Uzbekistan. <https://ecom.ngo/news-ecom/report-on-violation-of-gay-rights-in-uzbekistan>

³Annual report 2022. https://ecom.ngo/resource/files/2023/04/ecom_report22_1_en-1.pdf

Two days later, the district police officer invited them to the police office to testify, where he stated that they would be tried under Article 120 of the Criminal Code of the Republic of Uzbekistan. The men gave a bribe of 1500 USD.

The Uzbekistani authorities severely curtail freedom of expression concerning support for LGBT rights and the dissemination of information about human rights violations affecting the LGBT community. Bloggers, activists, and individuals expressing solidarity with LGBT individuals face persecution and punishment, highlighting the systematic repression of dissent and the denial of basic freedoms.

Despite significant societal changes, colonial laws continue to shape the legal landscape of EECA region countries. As global conversations around LGBT rights progress, it becomes increasingly important to address the persistence of these colonial-era laws and advocate for their reconsideration in the context of human rights and equality.

Replication of Russian Laws: Impact on Eastern Europe and Central Asia

The adoption of laws similar to those in Russia further deepens Russian influence on neighboring countries. This influence extends beyond the legal sphere and seeps into cultural, social, and political aspects, ultimately shaping national policies and attitudes.

Recently there was an attempt to pass a law on agents of foreign influence in the Parliament of Georgia. The proposed law required non-governmental organizations (NGOs) and media outlets that receive more than 20% of their funding from foreign sources to register as "agents of foreign influence."⁴ Around 300 NGOs in Georgia have issued a joint statement expressing concerns about the proposed law, citing its resemblance to the Russian law on foreign agents. In December 2022, the new draft legislation to further restrict freedom of expression for LGBT people came into force in Russia⁵. This version of the law shrinks civil space more radically than the previous one. Now sharing any information about queerness is prohibited.

According to Mediazona⁶, a Russian independent media outlet, seven charges related to the new law were made, all of them against trans women sex workers. None of them are Russian citizens.

It is likely that a single police officer is responsible for the first three cases, according to the media, as he discovered the trans sex workers profiles on an online advertising platform for sex-workers. The court decided to fine the victims and deport them from Russia.

The proposed amendments in Kyrgyzstan in 2023, which raised concerns about its potential effects on the human rights and freedoms of LGBT individuals within the country, bear a striking resemblance to Russian laws banning the promotion of homosexuality⁷. This emulation reflects a replication of colonial-era practices, where dominant powers imposed their legal and cultural norms on subordinate territories. By replicating Russian legislation, the Kyrgyz

⁴ ECOM's Position Paper on the Initiation of a Law on the Transparency of Foreign Influence in Georgia. <https://ecom.ngo/news-eeca/law-foreign-influence-in-georgia>

⁵ Russia Adopts Law on «LGBT Propaganda». <https://ecom.ngo/news-eeca/russia-adopts-law-on-lgbt-propaganda>

⁶ Russia has started expelling transgender women who lack Russian citizenship. <https://meduza.io/en/news/2023/02/23/russia-has-started-expelling-transgender-women-who-lack-russian-citizenship>

⁷ ECOM Commentary on the Draft Law "On Amendments to Certain Legislative Acts of the Kyrgyz Republic"

Republic risks perpetuating colonial power dynamics and compromising its own sovereignty and cultural identity.

The draft law “On Amendments to Certain Legislative Acts of the Kyrgyz Republic” (“On Measures to Prevent Harm to the Health of Children, their Physical, Intellectual, Mental, Spiritual and Moral Development in the Kyrgyz Republic,” “On the Mass Media”)⁸ is the prohibition of information promoting non-traditional sexual relationships, and it raises concerns regarding its compatibility with the country's constitutional and international legal obligations. The Kyrgyz Constitution emphasizes the democratic, law-based, and secular nature of the state and prohibits laws that limit human rights and freedoms. Moreover, Kyrgyzstan has ratified international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), which guarantees equal rights and freedoms regardless of sexual orientation or gender identity.

International human rights bodies, including the UN Human Rights Committee and the Committee on the Rights of the Child, have consistently condemned laws prohibiting the promotion of homosexuality as discriminatory and in violation of fundamental human rights. These laws infringe upon the rights to freedom of expression, non-discrimination, family life, safety, well-being, health, and access to necessary information. The vagueness of terms and the selective targeting of specific sexual orientations or gender identities further undermine legal certainty and the principle of non-discrimination.

Finally, the proposed amendments in the Kyrgyz Republic, which closely mirror Russian laws, not only suppress the rights and freedoms of the LGBT community but also perpetuate a colonial relationship and compromise national sovereignty. By emulating the legal framework of a dominant neighboring power, the Kyrgyz Republic risks deepening the influence of external forces and perpetuating a legacy of discrimination and oppression.

Conclusion

The replication of repressive norms that suppress LGBT rights and reinforce a colonial relationship is a concerning phenomenon observed in Soviet and post-Soviet history. The enduring effects of Soviet-era laws in countries like Turkmenistan and Uzbekistan, along with the adoption of similar laws in neighboring countries influenced by Russia, underscore the need for urgent action. The criminalization of consensual same-sex relations, societal and religious homophobia, and policy influences have created hostile environments for LGBT individuals, hindering their ability to enjoy basic human rights and freedoms. The proposed laws in Georgia and the Kyrgyz Republic, mirroring Russian legislation, further perpetuate the legacy of discrimination and oppression. By shedding light on these issues, we hope to contribute to a deeper understanding of the challenges faced by LGBT individuals within this region. It is imperative to challenge and dismantle these laws, advocating for the rights of all individuals, regardless of their sexual orientation or gender identity. By doing so, we can work

⁸<http://www.kenesh.kg/ru/article/show/10431/na-obshtestvennoe-obsuzhdenie-s-17-marta-2023-goda-vinositsya-proekt-zakona-o-vnesenii-izmeneniy-v-nekotorie-zakonodatelnye-akti-kirgizskoy-respubliki-v-kodeks-kirgizskoy-respubliki-o-pravonarusheniyah-i-zakoni-kirgizskoy-respubliki-o-merah-po-preduprezhdeniyu-prichineniya-vreda-zdorovyyu-detey-ih-fizicheskomu-intellektualnomu-psihicheskomu-duhovnomu-i-nravstvennomu-razvitiyu-v-kirgizskoy-respublike-o-sredstvah-massovoy-informatsii>

towards a future where equality, dignity, and respect are afforded to everyone, free from the shackles of colonial-era laws and cultural norms imposed by dominant powers.

