

HUMAN RIGHTS VIOLATION OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER RIGHTS IN UZBEKISTAN

A Shadow Report

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Executive Summary

Uzbekistan became a party to the International Covenant on Civil and Political Rights (ICCPR) on August 31, 1995.¹ Its constitution establishes equal rights for all citizens “without discrimination by sex, race, nationality, language, religion, social origin, convictions, individual and social status.”² Article 27 of the constitution also grants protection against “encroachments on a citizen’s honour and dignity and interference in a citizen’s private life”. Article 43 of the constitution asserts that the state shall protect all rights and freedoms guaranteed under the constitution.

During its previous Human Rights Committee periodic review Uzbekistan failed to address violations of the human rights of individuals based on their sexual orientation or gender identity at the country level. Furthermore, it did not report on any of the concerns of LGBT human rights in its state report. When questioned on the issues of LGBT rights, the state responded that it was not protecting LGBT individuals and correcting violations of LGBT rights was not part of the state’s international obligation. These omissions highlight the continuing plight of the LGBT community in Uzbekistan and the state’s unwillingness to make meaningful reforms and improvements with regards to LGBT rights.

Lesbian, gay, bisexual, and transgender (LGBT) individuals have faced numerous human rights violations in spite of the guarantees of the Uzbekistan constitution. State actions and laws, as well as state inaction, have led to an environment of hostility, repression, and danger for the Uzbek LGBT community. Uzbekistan continues to flagrantly violate its obligations under international laws and agreements through repression of the LGBT community. Uzbekistan is currently in violation of Articles 2(1), 26, (Non-discrimination), 17 (Freedom from Arbitrary Interference with Privacy, Family, Home), 7 (Freedom from Torture and Cruel Inhuman or Degrading Treatment), 9 (Right to Liberty and Security of Person and Freedom from Arbitrary Arrest or Detention), 21 (Right of Peaceful Assembly), and 22 (Freedom of Association) of the International Covenant on Civil and Political Rights.

¹ http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=189&Lang=EN

² Constitution of Uzbekistan, Article 17. <http://www.gov.uz/en/constitution/>

1. Introduction

This report on human rights violations on the basis of sexual orientation, gender identity and expression (SOGI) is supported by Central Asian Gender and Sexuality Advocacy Network, and prepared with collaborative efforts from grassroots and community activists, local NGOs, groups and civil society working for the protection and promotion of human rights of most at risk populations and vulnerable groups in Central Asia.

Documented cases and reports of violations on the basis of sexual orientation, gender identity and expression in Uzbekistan have been very limited or non-existent in Uzbekistan. This report developed in collaboration with Central Asian groups and organizations working in the areas of human rights, health and well-being of most at risk population including LGBTIQ persons seeks to focus on exposing and highlighting violations of fundamental human rights targeted at people, community and individuals on the basis of sexual orientation and gender identity.

2. Substantive Violations of the Convention

2.1 Articles 2(1), 26, (Non-discrimination) and 17 (Freedom from Arbitrary Interference with Privacy, Family, and Home)

Article 2(1) guarantees that the rights established by the ICCPR apply to all individuals of signatory states without “distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or other status”.³ Article 26 states that “All persons are equal before the law and are entitled without any discrimination to all equal protection under the law”.⁴ Article 17 establishes that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family or home...”⁵

Under the Human Rights Committee’s jurisprudence, the rights of LGBT individuals are protected and recognized by the ICCPR. The Committee held in *Toonen v. Australia* that references to sex in Article 2 and 26 of the ICCPR apply to sexual orientation. As such, the non-discrimination rights established by the ICCPR are held by all individuals regardless of their sexual orientation and gender identity within signatory member states. *Toonen v. Australia*

³ Id. Article 27.

⁴ ICCPR <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁵ Id.

specifically addressed the criminalization of private consensual same sex acts in Australia.⁶ The committee held that such laws violate the right to privacy guaranteed under Article 17.⁷ The committee stated that, "...undisputed that adult consensual sexual activity in private is covered by the concept of "privacy..."⁸ As such, any laws that criminalize private consensual sexual activities are in blatant violation of Article 17 of the ICCPR. The committee also stated that moral justifications for penal codes should comply with "human dignity and diversity".⁹

Criminalization of Same Sex Acts

During its periodic review in 2010, the Human Rights Committee urged Uzbekistan to repeal Article 120 of the Penal Code.¹⁰ Despite this, the law remains in force and continues to criminalize consensual same sex acts between men with up to 3 year imprisonment.¹¹ Uzbekistan also currently has no plans to repeal Article 120 and has repeatedly stated that it is not under international human rights obligations to repeal Article 120.¹²

Since Uzbekistan's previous review in 2010, Article 120 continues to be enforced. In 2011, a prominent businessman was arrested and charged under Article 120 for sodomy. Combined with a guilty conviction for a charge for extremism, he was sentenced to 15 years in prison, of which he served 9 months before being pardoned and released from prison.¹³ Even though he was eventually pardoned and release from prison, this conviction provides clear evidence that individuals are being targeted and prosecuted under Article 120 in clear violation of Articles 2(1), 17, and 26.

LGBT persons in Uzbekistan, especially gay men, live in constant fear of their sexual orientation being discovered or revealed by the public. In 2011, a same-sex couple had their sexuality revealed, forcing them to flee Uzbekistan. Before seeking refugee status in another country, they were repeatedly harassed, attacked, and arrested simply for being gay men. Their harassment began in May 2011 after being spotted by the police holding hands while walking home together. The police confronted them and demanded identification documents. They were then taken to a

⁶ *Toonen v Australia, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994)*

⁷ *Id.*

⁸ *Id.*

⁹ Constitution of Uzbekistan, Article 40. <http://www.gov.uz/en/constitution/>

¹⁰ Criminal Code of the Republic of Uzbekistan, Article 120, <http://www.legislationline.org/download/action/download/id/1712/file/a45cbf3cc66c17f04420786aa164.htm/preview>

¹¹ *Id.*

¹² Submission on Uzbekistan: Universal Periodic Review – September 2012. In its 2012 Universal Periodic Review, several member states recommended that Uzbekistan repeal Article 120. Uzbekistan rejected all requests relating to decriminalizing same sex acts between consenting adults. Uzbekistan stated that decriminalizing same-sex sexual relationships is "...not part of its obligations under internationally agreed human rights standards." Uzbekistan also stated that it has not plans to repeal the law because the law reflects its traditions as a Muslim nation. This language mirrored Uzbekistan's statements during its previous review by the Human Rights Committee in 2010.

¹³ Case on file with Heartland Alliance, Case 1.

police station where they were told that they had also been seen kissing and that the police had more than enough information to charge them under Article 120. While in police custody they had their phone and valuables stolen, were repeatedly beaten, ridiculed, and forced to write a statement saying that they were involved in a relationship with one another. The police also threatened to inform the couple's family and employers of their relationship and sexuality. After hours of detention and abuse the men were told that if they paid the chief of police \$500 they would be released. Fearing for their safety, the men paid the demanded amount. Upon leaving the station they were told that if they were ever seen in that area again, the police would kill them¹⁴.

The troubles of the couple did not stop with the above incident. In 2012 one of the men received a phone call from an individual at the Ministry of Internal Affairs of Uzbekistan. He was told that they must meet and talk urgently. Later the man from the Ministry of Internal Affairs came to the workplace of the other and told him that the Ministry knew everything about the couple and that he was dangerous for the society of Uzbekistan and could be arrested at any time¹⁵.

Also, even when Article 120 is not actively being enforced, the existence of the law creates a stigma against LGBT individuals and encourages violence and discrimination based on real or perceived sexual orientation or gender identity. When LGBT individuals are assaulted or made victims of other crimes, they almost always are unable to rely on the police force or judicial system for justice, because the police are either the ones perpetrating the violations of the LGBT community's human rights or they are unsympathetic to them¹⁶. Police actively use Article 120 to extort large sums of money from gay and bisexual men and harass them into continuous payments.

The presence of the law further entrenches prejudicial beliefs and marginalizes the LGBT community, leading to police harassment of LGBT persons. In August 2013, a man was harassed by the police after his neighbors complained to the police. The neighbor told the police that the man was gay and that he had insulted the neighbor¹⁷. He was then taken to the police station for questioning. There the police interrogated the man and stated that they could easily make a case against him. Despite, eventually being released by the police, the fact that man was gay was the sole real predicate for the police response and his detention. This detention and harassment shows clear evidence of the environment of discrimination against LGBT Uzbeks that Article 120 creates. As shown, LGBT individuals typically cannot depend on police protection because the police are often committing the violations of LGBT rights or are complicit in them.

¹⁴ Case on file with Heartland Alliance, Case 13

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Case on file with Heartland Alliance, Case 8

2.2 Articles 7 (Freedom from Torture or Cruel, Inhumane, or Degrading Treatment or Punishment) and 9 (Right to Liberty and Security of Person and Freedom from Arbitrary Arrest or Detention).

Article 7 of the ICCPR ensures the right of individuals to a life free of torture, or cruel, inhumane, or degrading treatment or punishment.¹⁸ Article 9 of the ICCPR guarantees that a person may not be arbitrarily detained or arrested.¹⁹ State officials must inform the detained individual of the charges against him or her and the detained individual has the right to legal counsel and the right to be brought before a judge.²⁰

During the last periodic review of Uzbekistan, the Human Rights Committee raised serious concerns with ongoing torture and abuse of persons detained by police officers²¹. The committee urged the State Party to create an independent body to investigate instances of torture and prisoner abuse, to end the use of torture and abuse of prisoners and to compensate victims.²² To date, Uzbekistan has not enacted measures to eliminate or reduce to torture and abuse of individuals.²³ Disturbingly, individuals continue to be specifically targeted on the grounds of their sexual orientation or gender identity and remain one of the most vulnerable groups to state torture and abuse.

LGBT individuals who are detained are often subject to violence and torture at the hands of police officers. Police officers are also engaged in the disturbing practice of entrapping gay men using online dating websites to lure gay men into compromising situations. In July 2011 a gay man in Tashkent was invited to a café by another man through one such dating website. He was later invited back to the other man's apartment for alleged sexual encounter. While the two men were engaged in sexual acts, the police entered the apartment and proceeded to take photographs and arrest the invited man.²⁴ He was kept in isolation for several hours, repeatedly and severely beaten, and told if he did not pay \$4,000 he would be charged with sodomy under Article 120.²⁵ Such actions by police officers are in flagrant violation of Article 7 and demonstrate Uzbekistan's refusal to take meaningful and affirmative measures to combat torture and abuse within its police forces. Furthermore, the fact that the police are proactively targeting and entrapping LGBT individuals adds further alarm to conduct of the police and the state.

The state consistently violates individuals' rights with regards to lengths of detentions without charges and not allowing detained individuals access to an attorney. In October of 2013, four gay

¹⁸ ICCPR <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹⁹ Id.

²⁰ Id.

²¹ *Concluding Observations of the Human Rights Committee: Uzbekistan*, Human Rights Committee, Ninety-eighth session, March 26, 2010

²² Submission on Uzbekistan: Universal Periodic Review – September 2012

²³ Case on file with Heartland Alliance, Case 5.

²⁴ Id.

²⁵ Id.

men were arrested under suspicion of murder. The police raided their apartment without presenting identification and took the men to the police station without allowing them to inform their families that they were being arrested. Once at the police station, they were also not given a chance to contact relatives or an attorney. In total, they were held for two weeks without access to an attorney or being brought before a judge²⁶. While being detained they were only fed bread and water, beaten severely and forced to sign confessions to the murder. While in police custody, they were also repeatedly ridiculed and mocked for being gay.²⁷ The actions of the police in this case are in direct violation of the Articles 7 and 9 of the ICCPR. During its periodic review in 2010, Uzbekistan was urged to enact reform to its violations of Articles 7 and 9. Disappointingly, it is clear that no such improvements to police practices have been made.

Extortion of LGBT Individuals

Article 120 is also frequently used by police as a means to intimidate and extort LGBT individuals. In a similar incident as described above, a man was lured into a date in a park in 2013 by another man from a dating website. After sitting for a few minutes on a park bench, he was approached by three police officers who told him that they knew he was gay and that they had enough evidence to arrest him under Article 120. The officers had printed out the man's conversation with the man from the dating site and told him that if he did not pay a \$500 bribe they would arrest him the following day. The man, having no other alternative, returned the next day and gave the police the demanded amount.²⁸

The above extortion, furthermore was not an isolated incident, in July 2008 a man was similarly lured onto a date via a dating website. When he arrived at the apartment of his date, the other man left, saying he was going to buy alcohol. After a few minutes police officers entered the apartment and threatened the man with criminal charges under Article 120. In order to avoid being arrested and prosecuted the man then had to sell his apartment to pay the bribe.²⁹

In July 2012, police officers also detained gay youths and forced them to sign statements that they intended to engage in prostitution with foreign men. The police had also taken one of the youth's computer and after finding photographs of naked men on the computer, refused to release the youths until they paid a \$200 bribe.³⁰

According to the testimonies, police have also been actively forming "hunting" groups with the specific purpose of patrolling the streets of Tashkent to find men sitting together in automobiles.

²⁶ Case on file with Heartland Alliance, Case 9.

²⁷ Id.

²⁸ Case on file with Heartland Alliance. Case 7.

²⁹ Case on file with Heartland Alliance, Case 4

³⁰ Case on file with Heartland Alliance, Case 10

Once found, the men are threatened with arrest under Article 120 unless they pay a \$200 - \$500 bribe.³¹

Extortion of gay individuals is endemic within Uzbekistan. This corruption and abuse leaves is in clear violation of Uzbekistan's obligations under the ICCPR. Furthermore it is even more disturbing because it is being perpetrated by Uzbekistan's police force and LGBT Uzbeks without any recourse to seek justice. It is, therefore, critical that Uzbekistan take substantive action to combat the ongoing extortion of LGBT persons.

Violence against and Forced Marriages of Lesbian Women

During Uzbekistan's previous Periodic Review, the Human Rights Committee expressed concern at reports of violence against Uzbek women and forced marriages.³² The council expressed additional concern that no portion of the Uzbekistan criminal code prohibited or punished bride abductions.³³ Despite this, women in Uzbekistan continue to be subjected to violence and forced marriages because of their sexual orientation or gender identity. In Andijan in 2011, a woman was forced by her family to marry a man after they discovered her sexual orientation.³⁴ Similarly, in 2014 a woman in Namangan was married against her will to a man when her family discovered that she was dating a woman.³⁵ Not only were these women forced into a marriage they did not consent to but it was done specifically because their families did not agree with their sexual orientation or gender identity. As the Human Rights Committee noted during the previous review of Uzbekistan, the state has a duty to ensure that the practice of forced marriage is prohibited and prevented. Therefore, these forced marriages are particularly troubling when because women whose sexual orientation identifies with same sex partnerships are forced into relationships with persons of the opposite sex.

2.3 Article 18 (Freedom of thought, conscience, and religion), Article 24 (Equality and Protection of Minors by the State)

Article 18 guarantees the freedom of thought, conscience, and religion without interference from the state. Article 24 establishes that the state has certain obligations to protect minors until they reach the legal age of adulthood. Despite these rights and obligations, in February of 2014 two

³¹ Case on file with Heartland Alliance, Case 3

³² *Concluding Observations of the Human Rights Committee: Uzbekistan*, Human Rights Committee, Ninety-eighth session, March 26, 2010

³³ *Id.*

³⁴ Case 14

³⁵ Case 15

gay teenagers were found kissing by their teacher in the locker room of their school.³⁶ The director of the school notified their parents of what was discovered and the boy were then forced to attend classes with lessons stating that homosexuality is wrong and a sin.³⁷ Furthermore, the city prosecutor would come to the classes to ensure that the boys were attending and that they were being instructed against homosexuality.³⁸ Furthermore, in 2012 attempted to commit suicide after her teacher revealed her sexual orientation to her parents.³⁹ The fact that young men and women in Uzbekistan are being subjected to anti-homosexuality classes is a disturbing development and in clear violation of Uzbekistan's obligation under the ICCPR.

2.5 Articles 21 (Right of Peaceful Assembly, 22 (Freedom of Association)

Repression of NGOs and Civil Society

Uzbekistan remains a repressive state with regards to civil society and non-governmental organizations (NGOs). The situation for LGBT activist groups is even more repressive and most groups are forced to work in secret for fear of government targeting and retribution. NGOs and civil society organizations are heavily regulated by the government despite prior recommendation by the human rights committee that Uzbekistan enact reforms to foster a more robust and free civil society. During the 2010 periodic review of Uzbekistan, the human rights committee expressed concern regarding the harassment and repression of NGOs and human rights defenders.⁴⁰ Disappointingly the situation for NGOs and human rights defenders has not changed since 2010.

³⁶ Case on file with Heartland Alliance, Case 12

³⁷ Id.

³⁸ Id.

³⁹ Case 16

⁴⁰ Submission on Uzbekistan: Universal Periodic Review – September 2012

3. Recommendations to the State

The State of Uzbekistan should:

- repeal Article 120 of the Uzbek Criminal Code and rehabilitate and compensate individuals convicted under Article 120;
- prohibit law enforcement officials from running entrapment operations and hold them accountable for acts of extortion, torture, cruel, inhuman and degrading treatments of individuals based on their sexual orientation or gender identity, especially when arrested or in detention;
- ensure that any acts of violence against individuals on grounds of their sexual orientation or gender identity, including murders, are thoroughly investigated and that the perpetrators are brought to justice;
- ensure that by state controlled media do not run homophobic campaigns but rather promote social acceptance of all individuals, regardless of their sexual orientation or gender identity;
- take any necessary step to socially discourage and legally ban the practice of forced marriage for all women, and particularly for those women who are forced into marry because of their sexual orientation;
- ensure that the non-discrimination clauses enshrined in the Uzbek Constitution extend to all individuals, regardless of their sexual orientation or gender identity, as well as set up a system that allows victims to report discriminatory acts for investigation and redress;
- allow for registration of all NGOs that meet the administrative criteria for registration and allow those de-registered to appeal the decision and demonstrate that they have met the relevant criteria and be re-registered.
- allow the free operation of organizations providing services to people with HIV/AIDS, including LGBT individuals, and encourage the spread of information around safe sex and prevention practices.

4. Suggested questions to the State

1. What steps is the State of Uzbekistan undertaking to repeal Article 120 of the Uzbek Criminal Code criminalizing same sex conducts among consenting adults?
2. What steps is the State undertaking to ensure that law enforcement officials do not carry out deliberate actions that may lead to arbitrary arrest or detention, torture, extortion, cruel, inhuman and degrading treatment of individuals based on their sexual orientation or gender identity, and that in case such human rights violations occur the perpetrators are hold accountable?
3. What steps is the State undertaking to ensure that acts of violence and discrimination on grounds of sexual orientation and gender identity are adequately investigated, that the perpetrators, whether state or non-state actors, are brought to justice, and that systems of redress are ensured to the victims of violence and discrimination?
4. What steps is the State undertaking to ban forced marriage of women, and what actions is it taking to prevent and punish violence against lesbian women commonly perpetrated by family members?
5. What steps is the State undertaking to ensure registration and free operation for non-governmental organizations, particularly those working to protect the rights of LGBT individuals?