

UPR Submission on Sexual Rights in Tajikistan

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This report is submitted by: Equal Opportunities (Tajikistan)¹, LGBT Organization Labrys (Kyrgyzstan)² and The Sexual Rights Initiative³.

1. Summary

This report describes the sexual rights situation with particular reference to: the rights of gay, lesbian, bisexual and transgender people (LGBT) in Tajikistan, widespread violence against women, the situation of sex workers, and gender stereotypes that contribute to violations of women's human rights. It provides concrete recommendations to the State on how to address these issues in line with its international legal obligations.

2. Tajikistan has ratified seven of the nine major UN Conventions, specifically the Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights, Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and the Convention on the Rights of the Child. It has also ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the first Optional Protocol to the International Covenant on Civil and Political Rights. However, it has as yet not ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearances or the Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and to the Convention against Torture.

Background and gender equality legislation gaps

3. Tajikistan is the poorest country in the former Soviet Union with high rates of migration to Russia (approximately 700 thousand to 1 million of Tajik citizens work in Russia). The government of Tajikistan has been responsive to gender equality measures and passed legislation on state guarantees of achieving equality between men and women (2005)⁴. However, implementation of the legislation remains very low due to gender stereotypes and traditions harmful to women and LGBT people and there remain gaps in the existing legislative framework.

¹ Founded in 2009 to protect human rights of lesbian, gay, bisexual and transgender people in Tajikistan

² Founded in 2004 to protect human rights of lesbian, gay, bisexual and transgender people in Central Asia

³ Coalition including Action Canada for Population and Development (ACPD); Creating Resources for Empowerment and Action (CREA, India); Federation for Women and Family Planning (Poland); Mulabi, Latin American Space for Sexualities and Rights; and others.

⁴ http://ravzana.freenet.tj/zakon_baza/National/N1_ru-tj/ru.pdf (text of the law in Russian, accessed 3 March 2011)

4. A law on 'Protection against violence in the family' has been discussed in the parliament since 2009 but has never been passed while violence against women inside families remains one of the key issues preventing women from achieving their full potential⁵.

5. Tajik social norms leave little space for choices about sexual and reproductive rights. Women are expected to marry virgin at a young age often to a man chosen by their family for them. Female children are seen as belonging to the family of their future husbands and are unlikely to have a fair share of resources from their family compared to male children. This expectation also leaves women very few options in case of a violent marriage because they do not have the skills necessary to seek employment. The government does not recognize the harm of existing customary practices and does not take measures to modify cultural and social patterns of conduct that perpetuate inequality.

6. Recommendations:

- a) *Establish mechanisms to ensure that the existing and proposed legislation is enacted, monitored and implemented by the state institutions;*
- b) *Train public officials to use a gender perspective in their work;*
- c) *Prevent, investigate and prosecute violence against women in the family through passing effective domestic violence legislation;*
- d) *Increase protection and support of victims and collect data on violence against women, in particular domestic violence disaggregated by sex;*
- e) *Ratify Optional Protocol of ICESCR;*
- f) *Meet the reporting commitments under CEDAW and other international treaty monitoring bodies regarding sexual rights;*
- g) *Enact appropriate and specific legislation and policies that address the effects of discriminatory stereotypes, cultures, practices and traditional practices in all areas of life. It is important that punishments for breaking the law be consistently applied and are not excessively severe and thus deter women from bringing charges or make the mechanism for punishment ineffective;*
- h) *Ensure effective implementation of existing legislation through gender sensitizing and training relevant public officials in various sectors and levels to raise their awareness as to the importance of women's full and equal participation in all areas. In this, the State has the obligation to ensure that private actors also comply with such legislation.*

The situation of lesbian, gay, bisexual and transgender people in Tajikistan

7. The only mention of lesbianism and sex between men in Tajik legislation is found in Criminal Code articles 139 and 141 that deal with forced sexual relations between adults or between an adult and a minor under 16 years old.

⁵ Amnesty International Report 'Violence is not just a family affair: women face abuse in Tajikistan' <http://www.amnesty.org/en/library/asset/EUR60/001/2009/en/59bb6e9b-727d-496b-b88d-1245a750d504/eur600012009en.pdf> (accessed 3 March 2011)

Discrimination of Transgender people

8. Article 74 of the Civil Code allows for changing of gender in identity papers if a document of authorized form issued by a medical organization is provided. This document does not exist which makes it impossible for transgender people to change their legal identity to match their gender. Any situation, therefore, where legal identity papers are required puts transgender individuals at risk of humiliation and potentially violence. For example, transgender woman Karina reported being stripped naked by Dushanbe airport security because her passport gender and her appearance did not match. She has to fly to Moscow in order to obtain her hormonal therapy which is not available in Tajikistan and is harassed in the airport each time⁶.

9. As Tajikistan does not offer access to hormonal therapy or surgeries transgender people have to travel abroad to obtain them. In Tajikistan transgender people experience high levels of violence. If they wish to leave the country it is difficult to obtain state IDs in their expressed gender. It is also very difficult for transgender people to be employed legally because of the ID situation. Equal Opportunities assisted transgender people in obtaining legal identification but the state referred to lack of legislation regulating this process.

10. Recommendations

a) apply international best practices (eg the Yogyakarta Principles on the application of international law in relation to sexual orientation and gender identity) to recognize the rights of transgender people to change gender and name in passports and other official documents in accordance with their self-defined gender identity and without the need to undergo surgeries;

b) Train law enforcement bodies, medical specialists and civil registry clerks on gender identity issues to ensure access to quality services for transgender people including protection from violence, right to health, freedom of movement, privacy and security of the person;

Harassment and discrimination of gay and bisexual men

11. Many gay and bisexual men would like to migrate to Russia or Kazakhstan because their opportunities in Tajikistan are limited. They are controlled by their families and ridiculed by the general public. Many are forcefully married to women or plan to get married following pressure from their families. Gay and bisexual men from smaller towns and villages move to big cities in order not to be under surveillance by their families and communities.⁷

12. Very often even in larger cities the police, knowing about the social vulnerability of gay and bisexual men, set up meetings and blackmail the men who turn up believing that they are meeting another gay man. Sexual and physical violence against gay and bisexual men perpetrated by the police is also very common.

13. Recommendations:

a) Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity;

b) Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual

⁶ Communication with Karina (name changed) June 2010

⁷ Information provided by Equal Opportunities NGO February 2011

orientation or gender identity of any person or group of persons, in all spheres of life, including the family and the state agencies;

- c) *Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.*

Invisibility of and violence against lesbian and bisexual women

14. The lives of lesbian and bisexual women in Tajikistan are regulated and controlled by their families and communities. They are not expected to make choices in finding a partner and are married off to men chosen by their family at an early age.⁸ Those of them able to resist the pressure to get married have to hide their sexual orientation and relationships. Due to high level of risk and secrecy around their lives, it is almost impossible for them to organize or be associated with LGBT organizations publicly.

15. When a lesbian woman decides to leave her heterosexual marriage, her family is likely to marry her again and she could become second wife in a polygamous marriage with a man⁹. Some women choose to lead double-lives with a cover-up marriage to fulfill their parents' expectations¹⁰.

16. In December 2010 a 28-year-old lesbian woman was raped by her former husband of three years whom she divorced. The man visited her in an apartment where she lived with her female partner. He offered to remarry her and have her partner as his second wife. When the woman reported the rape, a police officer advised her to keep her mouth shut and be grateful that her former husband did not kill her. The police officer perceived her sexual orientation as a justification for violence¹¹.

17. Recommendations:

- a) *Raise awareness around the benefits of women's independence and full participation in all spheres of life – political, economic, social and cultural;*
- b) *Comply with Article 16 of CEDAW that obliges states to ensure on a basis of equality, the right to freely choose a spouse and to enter into marriage only with free and full consent;*
- c) *Ensure that perpetration of violence based on sexual orientation and gender identity is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation.*

LGBT Organizing

18. Given the social circumstances LGBT organizing is unsafe and LGBT rights concerns are hard to address using state human rights mechanisms. Organizations working with LGBT communities have to keep a low profile in order to avoid social backlash. The mainstream human rights movement in Tajikistan is not supportive of organizing around sexual orientation and gender identity¹². Recruitment of qualified staff to work for LGBT organizations is a challenge because very few professionals want to be associated with an LGBT organization.

19. Recommendations:

⁸ Information provided by Equal Opportunities NGO February 2011

⁹ Information provided by Equal Opportunities NGO February 2011

¹⁰ Labrys Oral History Research Project , interview with Zibo 09.07.2010

¹¹ Information provided by Tajik women's rights activist 08.03.2011

¹² Labrys Oral History Research Project , interview with Zibo 09.07.2010

- a) *Create an enabling environment for LGBT organizations and take measures to address existing stigma against LGBT individuals and organizations;*
- b) *Take measures to eliminate gender stereotypes that allow for discrimination based on sexual orientation and gender identity.*

Gender roles, stereotypes and violence against women

20. Religious marriages are a common occurrence in rural areas of Tajikistan. These marriages are not acknowledged by the state and the woman cannot claim either alimony or part of shared property in case of a divorce. Religious divorce is performed by the husband by pronouncing the word 'taloq' three times. Women have no control over deciding when to marry, who to marry and whether to stay in a marriage or not.

21. One third to one half of women in Tajikistan experience physical, psychological or sexual violence from their husbands or other family members.¹³ No government statistics are available on the prevalence of family violence.

22. Recommendations

- a) *Introduce and implement state regulations securing the rights of cohabiting couples either in religious or other kinds of partnerships, specifically economic rights in case of separation or death of one of the partners;*

Situation of sex workers

23. Women that provide sexual services in rural areas experience high levels of stigma, they have to conceal their source of income from neighbors and their families. This stigma constrains sex workers' access to medical, social, legal or any other support. Many sex workers are illiterate which creates further vulnerability for them.¹⁴ In larger cities of Tajikistan police officers harass and rape sex workers, and systematically also demand bribes.

24. Recommendations

- a) *Involve sex workers in developing policies that affect their lives;*
- b) *Investigate cases of police violence against sex workers, duly punish those responsible and ensure that no further violence occurs.*

¹³ Amnesty International Report 'Violence is not just a family affair: women face abuse in Tajikistan' p. 5. <http://www.amnesty.org/en/library/asset/EUR60/001/2009/en/59bb6e9b-727d-496b-b88d-1245a750d504/eur600012009en.pdf> (accessed 3 March 2011)

¹⁴ Interview with HIV prevention expert Kristina Mahnicheva