



ENGLISH only

The Violations of the Rights of Lesbian, Gay, Bisexual and Transgender Persons in UZBEKISTAN

A Shadow Report

Submitted to the Human Rights Committee by:

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Acknowledgments

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1. Introduction

Uzbekistan is a party to the International Covenant on Civil and Political Rights (ICCPR), following its accession on August 31, 1995. Its Constitution lays out a principle of equality and prohibits discrimination. Article 18 reads, “All citizens of the Republic of Uzbekistan have equal rights and freedoms and are equal before the law, irrespective of their sex, race, nationality, language, religion, social origin, opinions, or personal or social status.”¹ Article 43 delineates the State’s obligation to protect the human rights embodied in the law and Constitution, while Article 44 guarantees Uzbek citizens the legal protection of their rights and freedoms.²

Despite these protections established by the Constitution and Uzbekistan’s accession to the ICCPR, lesbian, gay, bisexual, and transgender individuals (LGBT) in Uzbekistan have been denied basic human rights as a result of their sexual orientation and gender identity. Uzbekistan’s laws and policies violate a number of rights laid out in the ICCPR with regards to its LGBT citizens. In particular the country’s criminalization of same sex activities leads to severe discrimination, abuse by law enforcement officials, and drastic curtailment of NGO activities. Uzbekistan is consequently in violation of Articles 2(1), 26 (Non-discrimination), 17 (Freedom from Arbitrary Interference with Privacy, Family, Home), 7 (Freedom from Torture and Cruel, Inhumane or Degrading Treatment), 21 (Right of Peaceful Assembly), and 22 (Freedom of Association).

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) establishes that rights identified within the ICCPR are guaranteed to all citizens of signatory countries, “without distinction of any kind, such as race, color, [or] sex.”³ Article 26 addresses the rights of all people to be considered equal before the law and receive equal protection within the laws of all signatory countries. Article 17 prohibits “arbitrary or unlawful interference with privacy, family, home, or correspondence.”⁴

In *Toonen v. Australia*, the Human Rights Committee determined that references to sex in the non discrimination clause of articles 2 and 26 of the ICCPR include sexual orientation.⁵ The case specifically addressed the provision criminalizing private sexual activity between consenting same-sex adults, which the Committee considered in violation of the principle of non discrimination as well as of the right to privacy, since people cannot be denied the rights guaranteed by the Convention based on their sexual orientation.⁶ The Committee also explicitly rejected the argument that restrictions on same-sex activities were a public health measure against

¹ Third Periodic State Report of Uzbekistan to Human Rights Committee, International Covenant on Civil and Political Rights.

² Id.

³ ICCPR: <http://www2.ohchr.org/english/law/ccpr.htm>

⁴ Id.

⁵ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

⁶ Id.

the spread of HIV/AIDS, since such restrictions in fact interfere with HIV/AIDS prevention efforts.⁷

Criminalization of Same Sex Activity

The most glaring violation of LGBT rights in Uzbekistan is found in Article 120 of the Criminal Code. Article 120 states that "voluntary sexual intercourse of two male individuals," is punishable by up to three years of imprisonment.⁸ Although the majority of post-Soviet states have removed this provision, Uzbekistan continues to enforce it, with conviction being nearly certain after an individual is charged.⁹ Reports indicate that between 2000 and 2004 at least 70 men have served prison terms related to Article 120,¹⁰ an egregious violation of Articles 2(1), 17 and 26 of the ICCPR.

During Uzbekistan's Universal Periodic Review (UPR) in December 2008, the Working Group of the UPR included among its recommendations, the "decriminalization of consensual same-sex activity between adults and the adoption of measures to promote tolerance in this regard."¹¹ Uzbekistan responded that it did not believe the suggested measure fell under Uzbekistan's obligations under international human rights standards.¹²

2.2 Articles 7 (Freedom from Torture or Cruel, Inhumane, or Degrading Treatment or Punishment)

Article 7 of the ICCPR guarantees individuals freedom from torture or cruel, inhumane, or degrading treatment or punishment.¹³

In its country report issued in 2003 following its visit to Uzbekistan, the U.N. Special Rapporteur on the question of torture wrote that "[i]n recent years, the Special Rapporteur had received information according to which torture is widespread and targets persons suspected of having committed ordinary crimes as well as persons accused of membership in banned political or religious organizations or of having committed crimes related to their alleged religious beliefs or activities. It was alleged that law enforcement agents seek to coerce self-incriminating confessions or testimonies against third parties, to extort bribes, or to punish, humiliate or break the will of those suspected of or convicted on political or religious grounds as well as of human rights activists"¹⁴.

The existence and enforcement of Uzbekistan's Article 120 contributes to the frequent and appalling violation of this basic freedom against individuals on grounds of their sexual orientation or gender identity. In the above mentioned report, in fact, the Special Rapporteur highlighted to have "received information according to which persons belonging to sexual minorities have been subjected to various forms of torture, including of a sexual nature, and harassment, and to have been arbitrarily detained with a view to threatening or punishing them and to obtaining bribes"¹⁵.

Use of Article 120 against Human Rights Advocates

⁷ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

⁸ <http://www.unhcr.org/refworld/type,QUERYRESPONSE,,UZB,46fa537c28,0.html>

⁹ International Research Center on Social Minorities Report 'Sexual Minorities in Uzbekistan' (December 2005).

¹⁰ Id.

¹¹ http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/UZ/A_HRC_10_83_Uzbekistan_E.pdf

¹² Id.

¹³ Id.

¹⁴ Report of the Special Rapporteur on the question of torture, Theo van Boven, submitted in accordance with Commission resolution 2002/38 – Mission to Uzbekistan, E/CN.4/2003/68/Add.2, 3 February 2003, para. 34.

¹⁵ Id., para 42.

Several prominent people have been charged under Article 120. In 2003 Ruslan Sharipov, a human rights activist, was sentenced to over five years in prison after being convicted of homosexual conduct.¹⁶ While in custody, officers threatened Sharipov with physical violence, including rape with a bottle.¹⁷ He was released from prison and emigrated after pressure from the international community, but two of his colleagues were also interrogated under Article 120 charges in 2004.¹⁸

The Special Representative of the Secretary General on the situation of human rights defenders, in conjunction with the U.N. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression intervened with an urgent appeal on the matter on January 16th, 2004 as documented in the annual report.¹⁹ A similar action was undertaken by the Special Rapporteur on the question of torture, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative on human rights defenders.²⁰

In 2007, a prominent theater director whose plays portrayed homosexual characters was murdered.²¹ With little evidence, the police arrested Oleg Sarapulov, a journalist who had written about LGBT rights;²² Sarapulov had previously been harassed by police,²³ and activists feel that his arrest demonstrates how Article 120 and its criminalization of same sex relations allow the state to silence and abuse activists who report human rights violations.²⁴

¹⁶ <http://www.unhcr.org/refworld/type,QUERYRESPONSE,,UZB,46fa537c28,0.html>

¹⁷ <http://www.hrw.org/ru/news/2003/08/11/uzbekistan-rights-defender-faces-discriminatory-charges>

¹⁸ International Research Center on Social Minorities Report 'Sexual Minorities in Uzbekistan' (December 2005).

¹⁹ The Report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2005/101/Add.1, March 16, 2005, paras. 586-587, reads: "*On 16 January 2004, the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent a follow-up urgent appeal concerning Ruslan Sharipov, a 25-year-old journalist and human rights defender. According to the information received, Ruslan Sharipov was allegedly excluded from a general amnesty announced in December 2003 by the President, reportedly on the ground that the crime he committed was "too serious". According to our previous information, Ruslan Sharipov was arrested on 29 May 2003 and convicted on 13 August by the Tashkent City Court on charges of homosexual conduct, sex with a minor and involving minors in "antisocial behaviour" (articles 120, 128 and 127 of the Criminal Code). He was reportedly first sentenced to five and a half years in prison, which was subsequently reduced to four years following his appeal in September. This was maintained despite reports indicating that forensic medical tests conducted after his arrest found no evidence of sexual relations with minors and despite reported evidence that his confessions were obtained under duress. Reports also indicate that Mr. Sharipov may have been framed in connection to his human rights activities, including his reporting on police corruption and human rights abuses in the country. Fears have been expressed that his exclusion from the presidential general amnesty may aim at further targeting him for his activities in the defence of human rights. It is reported that calls have been made for the presidential general amnesty to extend to his conviction.*

On 14 April 2004, the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent a follow-up urgent appeal concerning Ruslan Sharipov, a journalist and human rights activist. Ruslan Sharipov was reportedly found guilty on 13 August 2003 under articles 120 (homosexuality) and 128 (sexual relations with a minor) of the Criminal Code, despite the lack of forensic medical evidence, and sentenced on appeal to four years in prison. He was reportedly subjected to torture and threats while in detention. It is widely believed that his prosecution was linked to his work as an investigative journalist and a human rights defender, in particular reporting on corruption and human rights abuses. According to recent information received, Mr. Sharipov, who is reportedly eligible for early release on 11 June 2004, has reportedly been placed since 13 March 2004 under house arrest and is required to report to a low-security prison for work every day. It is reported that such a transfer is automatic once one-quarter of a sentence has been completed. In this context, it is alleged that he has been barred from resuming his human rights and journalism activities, under threat of losing the possibility of early release. In particular, it is reported that Mr. Sharipov will not be allowed to travel to Istanbul in late May 2004 to receive an award on the occasion of the World Newspaper Congress and World Editors' Forum".

²⁰ Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2004/56/Add.1, March 23, 2004, para. 1878 and 1899.

²¹ <http://www.eurasianet.org/departments/insight/articles/eav091107.shtml>

²² http://www.uznews.net/news_single.php?lng=en&cid=20&sub=top&nid=1405

²³ http://www.ifex.org/uzbekistan/2003/05/29/human_rights_watch_calls_on_government/

²⁴ Interviews with human rights and HIV/AIDS activists conducted in April 2008 on file with Labrys.

Abuse and Extortion of LGBT Individuals by Police

Furthermore, the existence of this law criminalizing same-sex sexual relations enables discriminatory and threatening police practices. There are many reports of police officers targeting gay establishments, creating fraudulent charges, and blackmailing gay men who fear public disclosure of their sexual orientation.²⁵ It has been reported that demanding bribes in exchange for not bringing Article 120 charges is commonplace and a significant form of revenue for Uzbek law enforcement officials.²⁶ Once detained, men charged under Article 120 are subject to violence by officials, including threats of anal rape and other forms of degrading treatment.

LGBT individuals are subject to violence from their communities, which goes unreported due to fear of being imprisoned in violation of Article 120.²⁷ LGBT individuals are often ridiculed and stigmatized by the state-controlled media,²⁸ and since there are no laws protecting their rights or bodily safety, many LGBT individuals try to avoid disclosing their sexual orientation to escape persecution, extortion, and severe physical harm.²⁹

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

Article 21 of the ICCPR guarantees individuals the right to peaceful assembly, while Article 22 requires that the freedom of association be enforced. Neither right is adequately protected in Uzbekistan, due to the severe restrictions placed on NGOs, particularly those seeking to provide health services to people with HIV/AIDS or circulate information on HIV/AIDS prevention.

Repression of NGOs

A key impediment to strengthening LGBT rights in Uzbekistan is the lack of non-governmental organizations and a weak civil society. A number of international organizations have been deregistered and expelled from Uzbekistan, having been accused of “activity against the state”.³⁰ Efforts around HIV/AIDS awareness and prevention are also reported as having been “discontinued due to political reasons”³¹ with the Ministry of Justice citing paperwork violations as a reason for the closure of several NGOs.³² The state has set up its own quasi-NGOs³³, which distribute available funding to organizations that follow official policies³⁴ and do not disclose data around issues such as the number of HIV cases to non-state entities³⁵. During the 2008 Universal Periodic Review, Uzbekistan rejected as factually inaccurate any recommendations concerning restrictions on the activities of human rights NGOs and human rights defenders.³⁶

Without NGOs and a robust civil society, organizing around LGBT rights is nearly impossible, and it is even difficult to obtain information on specific violations because of widespread fear.³⁷ In fact, the criminal code adopted in 2004 prohibits the reporting of issues deemed ‘hostile to

²⁵ <http://www.unhcr.org/refworld/type,QUERYRESPONSE,,UZB,46fa537c28,0.html>

²⁶ International Research Center on Social Minorities Report ‘Sexual Minorities in Uzbekistan’ (December 2005).

²⁷ Interviews with human rights and HIV/AIDS activists conducted in April 2008 on file with Labrys.

²⁸ International Research Center on Social Minorities Report ‘Sexual Minorities in Uzbekistan’ (December 2005).

²⁹ Id.

³⁰ WHO Summary Country Profile for HIV/AIDS Treatment Scale-Up: Uzbekistan (2005).

³¹ Id.

³² <http://www.registan.net/index.php/2007/02/28/ngo-shutdowns-uzbek-rapprochement-with-the-west/>

³³ http://www.rferl.org/content/Activists_Say_Uzbekistan_Controlling_Civil_Society_With_GoNGOs/1782559.html

³⁴ http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2008/uzbekistan.pdf

³⁵ Interviews with HIV activists conducted in April 2008, on file with Labrys.

³⁶ Id.

³⁷ Id.

Uzbekistan' or critical of human rights violations.³⁸ Indeed, homosexuality is rarely discussed publicly in Uzbekistan. It has been reported that homosexuality is considered a forbidden topic for journalists in Uzbekistan.³⁹

Concealment of HIV/AIDS infection rates and Barriers to Treatment

State repression around HIV/AIDS awareness and treatment is particularly detrimental to Uzbek citizens, given that Uzbekistan has the highest number of HIV infections in Central Asia, with an increase in the number of new infections. According to activists, the state has concealed the number of registered cases, but UNAIDS estimates the number of HIV cases to be 31.000 or 0,2% of the population.⁴⁰ UNDP estimates that existing services cover no more than 1% of vulnerable groups, and the criminalization of same sex activity (in addition to sex work and drug use) reduces the likelihood of individuals seeking treatment services.⁴¹

In addition, due to rampant prejudice within the government and society generally against same sex activities, programs that are intended to focus on men who have sex with men cannot be safely carried out. Those organizations that try to provide services are often closed. In 2009, psychologist Maksim Popov, the head of Izis, an NGO that assisted AIDS patients and drug users, was arrested. Popov's sentence of seven years included 'involving an underage person in anti-social behavior' (article 27 of Uzbek Criminal Code), 'lewd actions towards a person who has not reached 16 years of age,' (article 129), and 'engaging [others] in using narcotics or psychoactive substances' (article 274). All of these offenses were based on a teacher's manual 'Healthy lifestyle' that his organization had been disseminating.⁴² The book, which had been approved by a number of international organizations, provides information for teachers about condoms use and discusses myths around drug use and other information relevant to preventing HIV, including safe sex information for heterosexual and homosexual contacts.⁴³ Popov was accused of 'being aware beforehand of the content of this book, in the period between 2006-07, with a purpose of committing lewd acts against people who he knew were under 16 years of age [and] intentionally disseminating books which include text that teaches minors about sexual acts, contain propaganda of homosexuality [medicalized way of referring to homosexuality commonly used in Uzbekistan] and prostitution, and [distributing] pornographic images among youth including underage people in educational institutions of Uzbekistan.'⁴⁴

The text of Popov's sentence contains two pages describing how the book 'threatens the formation of conception and aspirations for healthy lifestyles and gender identification (including formation of sexual orientation) among young people'⁴⁵. The text of the sentence calls homosexuality antisocial and, in reference to a brochure for safe sex between men, calls homosexuality 'categorically incompatible with the mentality, moral customs of the society, religion and traditions of the Uzbek people'.

³⁸ International Crisis Group Report <http://www.crisisgroup.org/home/index.cfm?id=5477>

³⁹ Radio Free Europe/Radio Liberty (RFE/RL). 2 May 2005. Julie A. Corwin. "Central Asia: How to Survive as a Journalist in Uzbekistan."

⁴⁰ WHO Summary Country Profile for HIV/AIDS Treatment Scale-Up: Uzbekistan (2005).

⁴¹ <http://irinnews/country.aspx?CountryCode=UZ&RegionCode=ASI>

⁴² Text of the sentence of Maksim Popov, Tatiana Kostyuchenko and Dinahan Eshenova, Chilanzar district Court of Tashkent on criminal affairs 9 June 2009.

⁴³ <http://www.irinnews.org/report.aspx?reportid=26456>

⁴⁴ Text of the sentence of Maksim Popov, Tatiana Kostyuchenko and Dinahan Eshenova, Chilanzar district Court of Tashkent on criminal affairs 9 June 2009.

⁴⁵ Id.

A court declared the booklet to be illegal and ordered that all copies be seized and destroyed.⁴⁶ Popov's arrest underscores the Uzbek government's refusal to allow a robust civil society to develop and demonstrates how the public is routinely denied invaluable information and services.

⁴⁶ Id.

3. Detailed Recommendations to the Government

- 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 and torture of LGBT individuals, especially when arrested or in detention.
- Ensure that any acts of violence against LGBT individuals, including murders, are thoroughly investigated.
- Release Maksim Popov and other human rights activists working on HIV/AIDS, gender and sexual rights from prison and punish those responsible for prosecuting human rights defenders.
- Eliminate homophobic campaigns by state controlled media and set up a system with which acts of discrimination can be reported.
- Ensure that the nondiscrimination clauses enshrined in the Uzbek Constitution extend to LGBT individuals so that no institutionalized prejudice exists regarding sexual orientation.
- 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. Proposed Questions for the Government Delegation

- Why has no mention of discrimination against LGBT individuals been made in the state party report?
- Articles 2 and 26 of the ICCPR state clearly that state parties agree not to discriminate against their citizens, including on the basis of sex. This prohibition has been recognized to apply to discrimination against people on the basis of their sexual orientation. How then does the government explain its failure to repeal its law criminalizing homosexual relations, when heterosexual relations remain legal, and the law is clearly discriminatory?
- What steps can be taken to ensure that LGBT individuals are not subject to physical and mental abuse by law enforcement officials and what actions will be taken against law enforcement officials who entrap and threaten LGBT people?
- What steps are being taken to prevent the spread of HIV/AIDS and to ensure that individuals with HIV/AIDS have access to treatment, particularly LGBT persons?
- What should be made of the disparity between the officially reported number of HIV/AIDS cases in Uzbekistan and estimates made by activists and NGOs?
- What government action will be taken to ensure that international NGOs can operate freely in Uzbekistan?