

Universal Periodic Review of Tajikistan

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Joint submission by the following partners in the Sexual Rights Initiative¹:



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for Sexual Health & Rights**

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CREA
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The Egyptian Initiative for Personal Rights
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The Federation for Women and Family Planning
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¹ The SRI partners developed this submission in collaboration with an organization working in Tajikistan that chooses to remain anonymous.

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Executive Summary

1. Tajikistan made some progress in the implementation of recommendations from its previous UPR, concerning sexual and reproductive rights (hereafter: SRR), however there are still gaps, especially in protecting of rights of vulnerable groups, including but not limited to LGBTI people, sex workers, children, women, youth, migrant workers and their families. Newly introduced legislation and programmes often ignore SRR of these groups and/or have only declarative content. There are still insufficient effective and comprehensive programmes that will timely address such issues as violence against women and girls, gender inequality, torture, violence, hate crimes and discrimination against LGBTI and sex workers, violations of children's rights, early, child and forced marriages, violation of the right to information on sexual and reproductive health and rights, mandatory HIV and STD testings.

Progress and gaps in the implementation of recommendation from 1st cycle of UPR

2. Tajikistan accepted a number of SRR-related recommendations during the 1st cycle of UPR, mostly concerning gender equality, elimination of violence against women and empowerment of women. These recommendations were implemented partially or not implemented. For instance, in 2012 Tajikistan developed a programme on human rights education for law enforcement officers, university and high school instructors, judges and others, however the programme ignores certain issues that are relevant for Tajikistan's current situation, e.g. domestic violence, hate crimes and violence against LGBTI people, sex workers and other vulnerable groups. The programme does not adequately address SRR, specifically of young people, as well as discriminatory and violent social and cultural attitudes and practices. The modules for law enforcement officers do not address blackmailing, torture and other violent acts towards LGBT individuals performed by law enforcement officers.
3. Recommendations concerning children's rights have also only been partially implemented, because state programmes introduced de-facto exclude children with various sexual orientations, gender identities and expressions. The department for prevention of offenses amongst minor and youth under the Ministry of Interior ignores rights of LGBT children who are kicked out of their homes when they revealed their sexual orientations, gender identities or expressions to their families. Furthermore, even though there is the Law on Education that requires measures to eliminate violence and psychological pressure at schools, there is still an alarmingly high level of homophobia and sexism, causing bullying against LGBT children. No measures are taken also when LGBT child faces cruel treatment at home because of his or her sexual orientation, gender identity or expression even though the Family Code and the Law on Prevention of Domestic Violence adopted in 2013 require measures to eliminate such treatment.
4. The adopted recommendation #72 "Intensify the programs on combating HIV/AIDS" was not implemented, since the National Programme on combating HIV and AIDS does not address fully the urgent need to intensify work in fighting the growing epidemic amongst certain groups, eg. sex workers and men who have sex with men (MSM). Especially young sex workers and MSM are still targets for police violence and are forced to HIV testing.

5. Tajikistan also fails to implement fully the recommendation #13 “Engage civil society in the UPR follow-up process”, since certain organizations that work on LGBT rights, rights of sex workers and on other SRR issues are not invited to participate in national discussions and in implementation of UPR recommendations.

Background

6. Tajikistan had a number of legal, policy and program interventions on SRR, however they were limited in scope and in outcomes, scattered and inefficient. There are currently several national programs that somehow address SRR, in particular the National Strategy of the Republic of Tajikistan for the period until 2015², the National Programme on Gender Equality³, the National Programme on Formation of Healthy Lifestyle for the period of 2011-2020, the National Programme on Social Development of Youth for the period of 2013-2015⁴, and the Programme on Mitigation of the Epidemics of HIV and AIDS in the Republic of Tajikistan for the period of 2011-2015⁵. However, the programs are often not implemented due to financial constraints, lack of political will and backlash in rights and freedoms that hinder work of democratic institutions and CSOs. The progress on promoting SRR is challenged primarily by highly conservative societal attitudes and normalization of violence within society especially towards LGBT and sex workers.
7. There are several organizations that address issues of SRR and health and can be grouped into the following categories: a) CSOs working primarily on mitigating HIV b) CSOs working primarily on achieving gender equality and fighting against gender violence (including crisis centers and shelters for women) c) CSOs working on promoting human rights for vulnerable groups, eg. LGBT and sex workers d) CSOs working on youth issues. Data collected for this report is derived primarily from interviews with activists working in above-mentioned sectors.

Problem identification

COMPREHENSIVE SEXUALITY EDUCATION

8. The Ministry of Health and Social Security of Tajikistan introduced a study programme on sexuality education for secondary schools after the Parliament approved the amendments to the Law on Reproductive Health and Reproductive Rights in February, 2015. This is a remarkable achievement that can positively influence the well-being of children and adolescents, lowering the level of STDs and early pregnancies. However, according to the proposed law amendments the course was named as moral-sexual upbringing of children with a focus on traditional moral values, patronizing the youth, exclusion of the issues of sexual orientation, gender identity and expression and school-related gender based violence as well as exclusion of comprehensive sexuality education for younger ages. Sexuality education must be always evidence-based, scientifically accurate, up-to-date, free of bias and boost critical thinking according to UNESCO International Technical Guidance on Sexuality Education⁶ and UNFPA Operational Guidance for Comprehensive Sexuality Education⁷.

TORTURE, VIOLENCE, HATE CRIMES AND DISCRIMINATION AGAINST LGBTI PEOPLE

9. Tajikistan decriminalized same-sex sexual behaviour in 1998, however it remains a country with a highly hostile environment for LGBTI individuals. Widespread homophobia and transphobia forces LGBTI individuals to live

² <http://www.carecprogram.org/uploads/docs/TAJ-National-Development-Strategy-ru.pdf>

³http://www.unece.org/fileadmin/DAM/Gender/publication/Tajikistan_Report_on_the_implementation_of_BPfA_June_30_2014_in_russian.pdf

⁴http://www.youthpolicy.org/national/Tajikistan_2012_Youth_Programme.pdf

⁵http://www.ecuo.org/media/filer_public/2013/01/13/nac_programma_tajikistan2011-2015.pdf

⁶<http://www.unesco.org/new/en/hiv-and-aids/our-priorities-in-hiv/sexuality-education/international-technical-guidance-on-sexuality-education/>

⁷http://www.unfpa.org/sites/default/files/pub-pdf/UNFPA_OperationalGuidance_WEB3.pdf

secret lives with a fear to disclose their sexual orientation, gender identity or expression, and bodily diversity. The media outlets usually unprofessionally and unethically cover issues related to LGBT, causing more homophobic and transphobic speech. Hate speech is not regulated anyhow in public media.

10. LGBT organizations in Tajikistan documented many cases of domestic, physical, sexual and psychological violence against LGBT by their families, classmates, coworkers, medical specialists, governmental employees and law enforcement officers. Tajikistan fails to provide the security for victims of such violence and further remedies and support. LGBT victims are afraid of disclosure of their sexual orientations, gender identities and expressions and normally refuse to complain officially. In rare cases of official complaints, authorities fail to investigate cases thoroughly. The Governmental Department on Human Rights (the Ombudsman) of Tajikistan ignores any complaints regarding torture, violence, hate crimes and discrimination against LGBT people, and law enforcement bodies do not investigate the cases as hate crimes, pointing out that there is no legislation on hate crimes in Tajikistan.
11. There were several cases of violence and torture against LGBT individuals from law enforcement officers that were documented by local LGBT organizations as well as international human rights organizations⁸. The police organized several “moral” raids on meeting zones used by homosexual and bisexual men, where several gay and bisexual men were arrested and detained illegally for being homosexual and “involving in homosexual behaviour” even though same sex sexual behaviour is not considered as a crime in Tajikistan. The police cited an article on ‘Muzhelozhestvo’ (same sex sexual behaviour) from the Criminal Code, which was annulled in 1998. The police also tries to extort money from gay and bisexual men in exchange for letting them go. Sometimes they intimidate individuals with the threat of outing them to their parents, families or coworkers.
12. Some LGBT individuals in Tajikistan have been forced to seek ‘treatment’ of homosexuality, which causes physical and psychological damage. Most of them are forced to visit religious leaders or to go to religious schools, to get married, or to get “treatment” from unprofessional psychologists. Zarina Kenzhebaeva is one such psychologist from Dushanbe, who believes that homosexuality is a form of psychological dependency, like alcoholism or drug addiction: “We can make a true man out of gay man, we can arise his male identity through our treatment. This is like getting rid of smoking habit. Step by step men can get rid of this habit (same sex sexual behaviour).”⁹
13. Widespread homophobia and lack of anti-discrimination legislation enable discrimination against LGBT individuals in the workplace and by health providers. There have been several cases wherein LGBT people have had to leave their jobs after their sexual orientation, gender identity or expression were revealed to other coworkers, and wherein LGBTI individuals were afraid to receive medical support and get an HIV test because of the homophobic attitudes of and discrimination by healthcare personnel.
14. Rights of transgender people specifically are also violated. It is very challenging for them to receive new official identification documents in governmental institutions. The legislation allows individuals to change their gender marker in official identity documents if an appropriate governmental body will issue an official medical document. However, there is not an official form for such a medical document and hence transgender people are not able to change their legal identity according to their gender. The problems with changing names, surnames and gender

⁸ <http://www.globalequality.org/storage/documents/pdf/human%20rights%20reports-2013-south%20and%20central%20asia.pdf>
<https://freedomhouse.org/report/freedom-world/2015/tajikistan#.VfA64xGqpBc>
<http://www.refworld.org/docid/54cf837b15.html>
<http://www.state.gov/documents/organization/220618.pdf>
<http://www.heartlandalliance.org/gishr/publications/tajikistan-shadow-report-iccpr.pdf>

⁹ <http://inosmi.ru/sngbaltia/20140205/217201752.html#ixzz3ghhSPETv>

markers have caused many cases wherein transgender people were not able to find a job legally, to open a bank account, to start their studies at universities, to vote or to travel abroad.

15. Although there is very limited information about the human rights situation of intersex people in Tajikistan because of early detection of intersexuality, pathologization and forced medical interventions in early childhood, we can still assume that intersex individuals face psychological trauma and bullying that is not addressed anyhow. We can also assume that intersex individuals face stigma and discrimination, especially while obtaining medical services. Medically unnecessary surgeries and other interventions during infancy and childhood is considered as torture against intersex individuals and must be outlawed.

TORTURE, VIOLENCE, HATE CRIMES AND DISCRIMINATION AGAINST SEX WORKERS

16. There is a high level of hate crimes and discrimination against sex workers, who can not go to the police and other governmental bodies to complain about the violation of their rights. The Governmental Department on Human Rights (the Ombudsman) in Tajikistan ignores any complaints regarding torture, violence, hate crimes and discrimination against sex workers.
17. Sex workers are often subject to police violence, in particular police raids, sexual violence, extortion and intimidation. Sex workers are also forced to go through HIV and STD testing and other violent invasive medical procedures during the night raids to uncover “crimes against morality”. The police takes pictures and videos of sex workers, leaking it to mass media outlets. In 2013 during such “moral” raids 41 sex workers under the age of 18 in Dushanbe were arrested by the police without any detention protocols. The police continues to operate with a concept of “crimes against morality” even though there is no legal basis for such a concept.
18. Moreover, the rights to education and health are often violated. Sex workers are denied access to medical services, mistreated or verbally abused by medical specialists. There have been several cases, wherein sex workers needed to leave their family homes and universities because of stigma.
19. Sex work in Tajikistan is punished in the form of fines according to the Code of Administrative Offences, Article 130. There have been several attempts from the Ministry of Internal Affairs to introduce criminal punishment for sex work, however, these attempts were withdrawn after strong criticism from international organizations and local activists.

DOMESTIC VIOLENCE

20. The Law on Prevention of Domestic Violence was adopted in 2013 in Tajikistan, but it does not conform to international standards and does not include explicitly marital rape as a criminal offence. The Interior Ministry did not have the competence and the necessary training for the application of this law, but cooperated with the international community in order to improve its efficiency. The five police stations across the country were trained by the Organization for Security and Co-operation in Europe to deal with cases of domestic violence and to provide assistance to victims. There are too few shelters for victims of domestic violence to provide comprehensive care. In rural areas, the government and NGOs have organized hotlines through which women can get advice about legal aid, but many local centers have insufficient resources. Local authorities have provided space for three such centers of refuge. The government has taken some steps to carry out public awareness campaigns and the collection of data on domestic violence. However, despite all the actions taken by the Government not a single case of domestic violence was officially registered since 2013. There are also no statistics on domestic violence recorded by the police or other authorities. According to a survey conducted by the National Statistics Committee 19% of women aged 15 to 49 years reported that they had been physically assaulted since the age of fifteen. The highest percentage of cases of domestic violence were registered in the Sogd region, where 22% of women reported domestic violence within their families. The statistics does not show any figures of domestic violence against men and does not disaggregate for LGBTI people.

21. Victims of domestic violence do not always report the violence out of fear of persecution and inadequate response by the police and the judiciary, leading to de facto impunity. Authorities maintain the traditional distribution of roles between genders and in most cases ignore domestic violence as a "family matter." Sometimes, also the police can not take action without a written statement of the victim, even if there are other witnesses. As a result, in cases of domestic violence, police are often limited to prevention in form of informal conversation with perpetrators, short-term arrests or fines for committing "administrative offenses."
22. No attention at all is given to LGBT victims of domestic violence, who have no place to go if they are kicked out from their houses or can not complain to the authorities. LGBT children and adolescents especially face difficulties as they are often forced to live on the streets or earn through sex work. They are afraid to be placed in children's shelters because of homophobia and transphobia.

EARLY AND FORCED MARRIAGES

23. According to the law the minimum age of marriage for men and women is 18 years. In exceptional circumstances, for example, in the case of pregnancy, the couple can apply to the court and get permission to marry at the age of 17 years. Despite this in rural areas religious marriages of minors are widespread. Many parents require their daughters to drop out of schools after ninth grade and force them to get married.
24. The law specifically prohibits forced marriage of girls under 18 years of age. Forced and early marriages are punishable by imprisonment of those involved in forcing or arranging early marriage for up to six years. Since many couples can not register officially the marriage if one of the future spouses is below the age of 18, many of them turn to local religious leaders (mullahs), who hold the wedding ceremony without official registration. Without a civil marriage certificate a woman has fewer rights. In recent years the state has partially solved this problem by requiring the mullahs not to perform a religious wedding ceremony for couples who do not have a civil marriage certificate. However, this decision is not implemented fully and early marriages without official registration are still taking place in Tajikistan. Women and girls are increasingly exposed to domestic violence because of early and unregistered marriages.
25. Moreover, LGBT people are also often forced into marriage if their sexual orientation, gender identity or expression is revealed to their families. Some people believe that marriage can cure homosexuality and thus can solve the issue. Especially, bisexual and lesbian women are subject to so called "corrective rape", when they suffer physical and sexual violence from their relatives, usually brothers, cousins and uncles, who believe that they can cure homosexuality this way.
26. The virginity test for brides has also become a popular procedure in Tajikistan that forces young women to undergo non-consensual intrusive medical procedures. The state has not done anything to prevent this practice. According to widespread conservative norms and beliefs women need to be virgin before marriage, and thus, they have to go sometimes to doctors, seeking special surgery to restore the hymen.

ADOLESCENTS' ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH SERVICES

27. There are some barriers to adolescents' access to abortion services. They are required to get permission from their parents or other guardians to undergo any medical procedures if they are younger than 18. This creates situations, when adolescent girls seek illegal and unsafe abortion out of hospitals damaging their health. The law that requires parental permission also creates difficulties for adolescents who want to undergo HIV and STD testing, as well as certain difficulties in accessing contraception. Conservative public norms can also be a barrier for adolescents to buy contraception in stores. The state fails to provide any nation-wide programmes on protecting sexual and reproductive rights of adolescents, especially of those, who belong to vulnerable communities (eg. sex workers, LGBTI, adolescents with disabilities). Moreover, governmental strategies on youth policies and programmes do not include any actions to increase access to sexual and reproductive health services

for adolescents. For instance, the National Strategy on Youth Policy for the period until 2020¹⁰ is only declarative and does not include any concrete steps for its implementation and ignores sexual and reproductive rights of adolescents.

Recommendations for action:

The Government of Tajikistan should:

28. Include focus on sexual and reproductive rights of adolescents in the National Strategy on Youth Policy and implement programmes that will empower and educate youth and adolescents about their sexual and reproductive rights, and increase access to sexual and reproductive health services. All policies and programmes must be developed with the meaningful participation of adolescents and youth.
29. Improve the quality and standards of the secondary school programme on comprehensive sexuality education in compliance with UNESCO International Technical Guidance on Sexuality Education and UNFPA Operational Guidance for Comprehensive Sexuality Education.
30. Introduce and implement a school programme on comprehensive sexuality education for younger ages (grades 5 to 9) in compliance with UNESCO International Technical Guidance on Sexuality Education and UNFPA Operational Guidance for Comprehensive Sexuality Education.
31. Develop and implement an effective independent mechanism to protect the confidentiality of victims of all forms of violence, hate crimes and discrimination, especially of sex workers, LBT women and LGBT children if they apply to public authorities for assistance in order to ensure that vulnerable populations are able to complain about violence and torture that is also perpetrated by law enforcement officers.
32. Develop and implement effective programs with a focus on empowerment and awareness raising to prevent domestic violence, early, child and forced marriages and sexual violence, especially against sex workers, LGBTI children and adolescents, and LBT women. Such programmes must be developed with the participation of the affected groups.
33. Introduce and implement national data gathering/statistics of complaints about domestic and sexual violence, early, child and forced marriages, including dis-aggregation of the collected data for LGBT persons.
34. Introduce comprehensive hate crime legislation that mentions sexual orientation and gender identity as a bias, provides specific measures to react to hate crimes and includes monitoring and data gathering on hate crimes also on a basis of actual or perceived sexual orientation and gender identity.
35. Develop and implement comprehensive anti-discrimination legislation, which will also ban direct and indirect discrimination based on actual or perceived sexual orientation and gender identity or expression and will include monitoring and data gathering.
36. Develop and implement programs to prevent hate crimes, discrimination and violence, especially against LGBTI and sex workers, including nation-wide awareness building campaigns for the general population in order to overcome prejudices that cause hatred and violence through the state media and public institutions.
37. Introduce criminal and administrative measures against coercive treatment of homosexuality and non consensual intrusive medical procedures, like “virginity” tests for young women.
38. Develop mechanisms to provide comprehensive legal, psychological and medical assistance to victims of hate crimes, discrimination and violence, including for sex workers and LGBT people, especially LGBT children.
39. Introduce an entire course or course component on medical care for LGBTI people and sex workers in medical educational institutions in order to decrease discrimination against LGBTI people and sex workers when they obtain medical services.
40. Publicly acknowledge and condemn violence and torture towards LGBT people and sex workers by law enforcement agencies.

¹⁰ <http://mmk.tj/ru/Government-programs/strategy/youth-policy>

41. Abolish the “morality” raids against LGBT and sex workers.
42. Abolish mandatory HIV and STD testing as well as other intrusive medical procedures for sex workers.
43. Conduct mandatory training for law enforcement agencies on human rights and hate crimes together with LGBT and sex workers organizations.
44. Introduce and implement clear procedures of changing names and gender markers for transgender individuals, who want to change their passport information and other identity documents according to their gender identity.
45. Introduce and implement programmatic measurements to combat hate speech in mass media, including hate speech against LGBT and sex workers.
46. Introduce legal and policy measures to ban surgeries and other medical interventions performed on intersex people in infancy or early childhood, and depathologize intersex conditions.
47. Ensure proper and timely investigation of cases of early, child and forced marriages.
48. Eliminate parental permission to undergo certain medical procedures, like HIV and STD tests and early stage abortion.
49. Actively engage local non-governmental organizations, in particular LGBT and sex workers organizations for implementation of the UPR and other human rights recommendations.