



*Eurasian Coalition
on Male Health*

Human Rights Violations Based on Sexual Orientation and Gender Identity in Tajikistan

Alternative Report

as a commentary on the report CCPR/C/TJK/3/Add.1 by Tajikistan
and as a response to the List of issues CCPR/C/TJK/Q/3

126th Session of the Human Rights Committee
Review of the third periodic report of Tajikistan

June 2019

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Introduction

1. Tajikistan acceded to the International Covenant on Civil and Political Rights in 1999 and has a 'State Party' status within the framework of the Covenant. Tajikistan submitted its third periodic report on 30 April 2019, which included its response to the List of issues that the UN Human Rights Committee (HRCtee) had presented it in 2018.

2. This Report - a commentary on the Report CCPR/C/TJK/Q/3/Add.1 and a separate response to the List of issues CCPR/C/TJK/Q/3 - is submitted as per the invitation of the HRCtee that welcomes "alternative reports" from regional NGOs regarding the observation of the Covenant by a State party, in this case, by Tajikistan.

3. The Report was prepared by Eurasian Coalition on Male Health – ECOM (hereinafter, ECOM) in collaboration with Central Asian groups and organizations working in the field of human rights, health and well-being of the most vulnerable groups of the population, including LGBTQ people, based on information received directly from representatives of the LGBTQ community of Tajikistan, including information on human rights violations, committed on the basis of sexual orientation and gender identity. *For security purposes the names of the individuals that provided the information are not disclosed, or their precise places of residence.*

4. In its List of issues CCPR/C/TJK/Q/3 (hereinafter, the List), the HRCtee presented Tajikistan with Question 6, which included a query for the Tajik government to clarify whether there were any comprehensive legislative, including constitutional, mechanisms for the identification of prohibition against all forms of discrimination and whether there were any corresponding legal provisions that allowed effective protection in case discrimination occurs. ECOM considers the Report CCPR/C/TJK/Q/3/Add.1 to be such that is inconsistent with the norms established by the Covenant (a. 40 p. 1) and the principles that are acknowledged by the HRCtee (Human Rights Council Resolution 27/32). Apart from this, the said Report does not provide the HRCtee with any ability to understand the state of legislation in Tajikistan with regards to upholding non-discrimination on the grounds of sexual orientation and gender identity and in relation to its ability to protect men who have sex with men and trans persons who are entitled to freedom of gender and sexual expression by their very nature as human beings who are born with equal fundamental rights and freedoms, and who have the right to enjoy those fundamental rights and freedoms without distinction of any kind and in a fair and equal manner.

5. The HRCtee has also expressed an inquiry for Tajikistan in Question 7 to "respond to the following allegations, and report on the measures taken to address the reported violations effectively: (a) lesbian, gay, bisexual and trans individuals face discrimination, violence and harassment, are targeted by law enforcement officials for amoral behaviour and crimes against morality, are forcibly registered on lists of lesbian, gay, bisexual and trans persons and are subjected to arbitrary arrest, detention and extortion; and (b) the Ministry of Internal Affairs and the Office of the Prosecutor General created, in October 2017, a register of 367 individuals suspected of being lesbian, gay, bisexual or trans following investigative operations reportedly aimed at protecting them and at preventing the transmission of sexually transmitted infections, including HIV." Within the scope of this inquiry, Tajikistan has, in essence, ignored reporting on the matter and has provided no substantial answer and offered no explanation on the highly discriminatory situation that is pertinent to the reality of all the LGBTQ persons in Tajikistan, especially, men who have sex with men (MSM) and trans individuals.

6. Report CCPR/C/TJK/Q/3/Add.1 (hereinafter, Report) includes answers to Questions 6 & 7 from the List and these answers are located in paragraphs 65-67. Paragraph 65 states that there are no legal provisions in Tajik legislation that limit the rights and legal interests of people based on their sexual orientation. The paragraph then goes on to state that the criminal norm that used to criminalise homosexuality was decriminalised in 1998. Tajikistan has provided no response as to whether its legislation has any general or constitutional norms that prohibit all forms of discrimination, including that which is based on colour, opinion, birth, sexual

orientation, gender identity and other status. The Report provides no status of the current legal provisions that would ensure a broad scope of protection from discrimination based on a plethora of attributes, including sexual orientation and gender identity. In addition, the report ignores answering the query about the reports of the government discriminating and persecuting LGBT individuals based on their sexual orientation and HIV status.

7. Article 40 paragraph 2 of the Covenant clearly states that “[r]eports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.” Thus, within the scope of Questions 6 & 7 of the List and with regard to the Covenant (a. 41 p. 2), Tajikistan avoids implementing articles 2 and 26 of the Covenant and ignores the HRCtee’s authority by providing it with either unclear answers to the Questions or not answering them in certain parts at all.

The Absence of Non-Discrimination Legislative Framework

8. The Report (para 66) indicates that, currently, the Tajik Criminal Code includes an article that prosecutes people based on ‘sodomy’, ‘lesbianism’ or other acts of sexual character only if such actions have been enforced upon the victim or there was a threat of committing such actions in relation to the victim or their close ones while taking advantage of the victim’s vulnerable state. Such actions are also deemed criminal if the victim is coerced to engage in ‘sodomy’, ‘lesbianism’, or other acts of sexual character via blackmail, a threat to their property or by using any kind of authority upon which the victim is dependent on the perpetrator. ‘Sodomy’, ‘lesbianism’, and other acts of sexual character are deemed to be a crime also if they are performed by the perpetrator with a person who has not yet reached the age of sixteen, about which the perpetrator was aware or able enough to assess their underage status. All three of these cases are separate articles in the Tajik Criminal Code and are included in articles 139, 140, and 141, respectively.¹

9. In its Report (para 67), Tajikistan states that it has created a governmental group that is to develop the anti-discriminatory legislation for the country. The group is said to have been working with Regional Office of the High Commissioner for Human Rights in Central Asia, the OSCE Programme Office in Dushanbe, the Institute for open society and other institutes of civil society. As of the Report’s submission date, Tajikistan states that the group has conducted an overview of the anti-discrimination law in other countries and that the adoption of the anti-discrimination legislation has been included in its National Strategy for Human Rights 2030.

10. However, the Report has provided no substantial answers to Questions 6 & 7 from the List. The Tajik government has not included any references to direct norms in its current legislation that would provide protection from discrimination based on sexual orientation, gender identity, or other status. Although the Report (para 65) states that there is no law that limits the interests of people based on their sexual orientation, the Criminal Code articles that include ‘sodomy’ and ‘lesbianism’ as being forcefully enacted upon the victim are, in fact, aggravating circumstances. For example, article 138 of the Tajik Criminal Code states that rape, i.e. sexual intercourse with the use of violence or a threat to use violence in relation to a woman or her close ones, or by taking use of her vulnerable state is punished by imprisonment from 3 (three) to 7 (seven) years.² Article 139 of the Criminal Code includes punishment for the same rapist actions only within a non-heterosexual context, and it is punished by imprisonment from 5 (five) to 7 (seven) years.³ With regards to the criminal law theory, the higher lower threshold of non-heterosexual rape means that homosexuality is an aggravating circumstance in the context of rape. Subsequently, it means that the law of Tajikistan deems homosexuality as a higher threat to the social and legal relations in the country. The use of the word ‘sodomy’, reminiscent of articles that criminalise homosexual conduct, is a degrading term in itself that emulates discrimination based on sexual orientation.

¹ *Criminal Code Of The Republic Of Tajikistan* (Уголовный Кодекс Республики Таджикистан), <https://www.wipo.int/edocs/lexdocs/laws/ru/tj/tj023ru.pdf>.

² Ibid.

³ Ibid.

11. Article 17 of the Constitution of Tajikistan states that “[a]ll are equal before the law and the court. The state guarantees the rights and freedoms of everyone, regardless of their nationality, race, sex, language, religion, political beliefs, education, social or material status.”⁴ This is the finite list of attributes that the Tajik Constitution protects within the framework of its non-discrimination legislation. There is no other constitutional or general high-level law that would expand on the grounds from which the people would be protected from discrimination in Tajikistan. Since there is no mention of ‘other status’ or ‘other grounds’, there is no possibility to expand this list of protected attributes to sexual orientation and/or gender identity. Coupled with the above-mentioned criminal code articles, the legislative situation regarding the equality of people based on sexual orientation, gender identity and expression is highly questionable. On the contrary, it creates legal grounds for the perception of non-heterosexuality as something dangerous to the social and legal relations in Tajikistan.

Obstructing the Right to Health of MSM and Trans Persons

12. With regards to the past prosecution of people in Tajikistan based on homosexuality being a crime, eliminating any homophobic language from the country’s legislation and including effective legal mechanisms of protection from discrimination, particularly on the grounds of sexual orientation and gender identity, are key in ensuring equal protection of the fundamental freedoms and human rights of gay men, other MSM, and trans people, especially of their right to health. Constitution of Tajikistan Article 5: “The life, honour, dignity, and other natural human rights are inalienable.”⁵ Further, article 36 of the Constitution defines that “[e]veryone has a right to healthcare. Everyone, within the boundaries defined by law, has the right to free medical care at state healthcare institutions.”⁶ Unfortunately, the remnants of normative homophobia, the systemic homophobia still pertinent in governmental institutions, particularly, in law enforcement and healthcare, require all vestiges of homophobic lexicon being eliminated from the current legislation and anti-discrimination norms should be introduced immediately in order to create a ban on discriminatory actions on the part of civil servants, medical workers and the public, as well as to create an official platform for a dialogue and education of the nation and its government about issues of sexuality, sexual and gender identity and expression. At present, despite the decriminalisation of homosexuality *per se*, homophobia and transphobia are a sad reality that MSM and trans individuals in Tajikistan have to face in their home country.

13. The idea behind adopting legal clauses that will overtly prohibit any discrimination, including on the grounds of sexual orientation and gender identity, is that, firstly, Tajikistan is bound by the Covenant and has to accommodate its legislation to adhere to its obligations before the international community and, secondly, that without a legislative framework, there is no possibility for the discriminated MSM and trans individuals to protect themselves. Article 26 of the Covenant states that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” MSM and trans persons are currently experiencing discrimination and abuse on the fundamental level of being denied their constitutional right to healthcare, which infringes their right to health. Because MSM and trans individuals have to live in constant stress and fear of being abused by regular citizens or civil servants, they are reluctant to turn for medical or legal protection to government institutions. In turn, not only they are forced into the dark by the stigma, the inability to express their sexuality and identity forces them into unsafe health practices, including unsafe sexual practice. MSM and trans people cannot acquire satisfactory healthcare services because of the danger of the secrecy of their health, including their HIV status, being infringed, or them being harassed or blackmailed by medical workers or law enforcement officers. They cannot turn for protection to the police or other law enforcers because of the additional abuse they are afraid to be subjected to there. The combination of

⁴ Constitution of the Republic of Tajikistan, <https://www.wipo.int/edocs/lexdocs/laws/ru/tj/tj001ru.pdf>

⁵ Constitution of the Republic of Tajikistan, <https://www.wipo.int/edocs/lexdocs/laws/ru/tj/tj001ru.pdf>

⁶ Ibid.

the mentioned factors creates a danger to the health of MSM and trans people in the short or long run since not only they cannot receive regular healthcare and legal protection in case they are harassed, they are also discriminated in receiving HIV services that the country is bound to qualitatively provide to all, as per Healthcare Code of Tajikistan, article 163 para 2.

14. The right to health is a fundamental right of all people that should be unequivocally protected by states, including Tajikistan. Article 25 section 1 of the Universal Declaration of Human Rights states that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including [...] medical care and necessary social services [...]."⁷ In combination with the above-mentioned national and international norms, MSM and trans people are entitled to an adequate, healthy living standard in Tajikistan that should be ensured by the government without discrimination. However, high levels of social stigma and discriminatory practices of medical and law enforcement institutions in relation to MSM and trans persons obstructs their right to health and, in turn, endangers their lives. In conformity with the OHCHR Fact Sheet No. 31, among others, the right to health means that "non-discrimination is a key principle in human rights and is crucial to the enjoyment of the right to the highest attainable standard of health. [...] Non-discrimination and equality further imply that States must recognize and provide for the differences and specific needs of groups that generally face particular health challenges, such as higher mortality rates or vulnerability to specific diseases."⁸ Because of stigmatization and discrimination, MSM and trans persons conclude a minority group that is vulnerable to increased health risks, including higher risks of HIV infection. Apart from this, the constant reality of living in fear of being harassed or abused by regular citizens, medical workers or law enforcers already contradicts the Preamble of the Constitutions of the World Health Organisation, which outlines that health is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."⁹

15. Combined with the facts and cases outlined below, such a situation will make a case for an urgent necessity for adoption of anti-discrimination laws in Tajikistan that would protect men who have sex with men and trans individuals from being harassed by the government and regular folk based on sexual orientation and gender identity. The current situation of stigmatization and discrimination of MSM and trans persons without a working legal mechanism for protection and defence in case of harassment or abuse is unacceptable. The right to health and, by extension, the right to life of this stigmatized group is in perpetual danger unless Tajikistan adopts the necessary anti-discrimination legislation as soon as possible. Considering the aforementioned, certain empirical data is due to reveal the general state of homophobia and transphobia in Tajikistan, which will then reveal the need for explicit, all-purpose legislative protection for the LGBT persons in the country, for, at present, they suffer from discrimination and even violence in all aspects of human life but, especially, in healthcare and human development.

Cases for Governmental Persecution

16. The Republic of Tajikistan abstained from answering the HRCtee's Question 7 from the List regarding the practices of identifying and harassing open, discreet or alleged LGBT individuals. As per the Report by the Helsinki Foundation and the International Partnership for Human Rights, the HRCtee already knows that Tajikistan, under the pretense "to prevent and combat offences against morality and amoral behaviour" launched operations "Morality" and "Purge" "targeting a wide range of people including LGBTs."¹⁰ Considering that the practice is ongoing, the Republic of Tajikistan's declarations that no laws limit the rights of people based on sexual orientation seems like a defiance of the country's obligations under the Covenant. Not only does such a registry infringe a plethora of fundamental human rights and freedoms by

⁷ *Universal Declaration of Human Rights*, <https://www.un.org/en/universal-declaration-human-rights/>

⁸ *OHCHR Fact Sheet No. 31: Right to Health*, <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>, pp. 4, 7

⁹ *Constitution of WHO*, https://www.who.int/governance/eb/who_constitution_en.pdf

¹⁰ *LGBT People in Tajikistan: Beaten, Raped, and Exploited by Police*, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/TJK/INT_CAT_CSS_TJK_30680_E.pdf

itself, the Tajikistani government has also been proven to use the registry for blackmail, extortion, rape and other abuse of the LGBTs via that registry.¹¹ "Радио Озоди" ("Radio Freedom"), earlier this year, reported that the Tajikistani Ombudsman officially declined all the recommendations of international organisations regarding the enhancement of the human rights situation regarding sexual minorities.¹² The Head Psychiatrist of Tajikistan considers homosexuality to be a psychiatric disorder that requires treatment which he and his colleagues exercise with a guaranteed result of curing – an opinion he has shared officially,¹³ despite the facts that homosexuality was removed from the list of psychiatric and psychological disorders by WHO in 1992,¹⁴ and that non-consensual medication and forced treatment of homosexuality are internationally acknowledged as torture and inhumane conduct. This only confirms, that the risks for discriminatory policies against the LGBT in Tajikistan are pertinent and growing.

17. A number of cases and reports delivered by ECOM's partner organisations raise concerns regarding the right to health and the security of lives of MSM and trans persons. For the purposes of fear of being persecuted, the names of certain organisations and individuals will remain confidential. A trans community group has reported that, having conducted 40 (fourty) in-depth interviews with trans persons, their responses allowed singling out primary concerns of this minority group: security and access to legal services; access to qualitative medical professionals to receive care, access to gender confirmation procedures. In 2017, one of human rights NGOs in Tajikistan conducted a research of cases of discrimination and persecution of LGBT. 10 people officially reported being abused in healthcare facilities in several cities in Tajikistan. In accordance with these ten cases, it became apparent that medical workers at Tajikistani healthcare facilities: used homophobic and other degrading language; denied HIV services and care to MSM and trans people ; forcefully threw them out of the facilities' premises; extorted money for providing HIV services which are free as per Tajikistani law; breach confidentiality of the HIV status and privacy (sexual orientation and gender identity).

18. Not only do medical facilities in Tajikistan infringe on the right to health of MSM and trans persons directly, they also create hazards to the lives of such people because of confidentiality breach. With reference to the aforementioned registry of LGBT persons, an NGO has reported that the governmental AIDS Centres that receive HIV -positive MSM or trans people, collect the codes for statistical purposes to identify HIV transmission route and, de facto, distinguish key population groups. When seeing the code that signifies the status of an MSM, adding on to the HIV -positive status, medical workers at the AIDS Centres often resort to stigmatization and other discriminatory behaviour. Although the coding was designed to assist the people in getting targeted HIV services, the access to these codes has become a tool for hate in the hands of some unscrupulous medical workers. For example, one MSM reported to an LGBT NGO that he was approached by a few policemen who extorted 1,000 USD from him and blackmailed him by threatening to disclose his MSM status. In another case, a young gay male turned to an LGBT NGO based on a recommendation from his friend. This young man was beaten up and degraded by his neighbours on a number of occasions; they also threatened to disclose his status. The young gay man did not even think about turning to the police or human rights organisations because of the level of stigma and him thinking that he was somehow at fault for being gay and such social punishment was in order. After speaking to a legal counsel, the young man shared he learned and understood that these attackers were acting out of the law and learned that, in reality, he was at no fault for being gay and that he had the right to protect himself from such abuse. Because of there being no anti-discrimination legislative mechanisms, these victims have no effective means for remedying their infringed rights. Non-heterosexual people are afraid to turn to medical facilities for any kind of medical help, including treating their injuries, or to law-enforcement to protect them because they are afraid of receiving further abuse based on discrimination there. In addition, because of such absence

¹¹ Ibid

¹² Радио Озоди (Radio Freedom). "Ombudsman: Tajikistan Rejected Recommendations Regarding The Rights Of Sex Minorities", 2019. <https://rus.ozodi.org/a/29744170.html>.

¹³ Ibid

¹⁴ "Declassification of sexual orientation as a mental disorder", <https://www.who.int/bulletin/volumes/92/9/14-135541/en/>

and because of the government's open homophobic and transphobic policies, medical workers are not afraid to exercise discrimination.

19. Another highly alarming issue that stems from the lack of anti-discrimination mechanisms in the Tajikistani law is the situation with the right to health of MSM and trans people who are in prisons and other detention centres. As per unofficial data from several NGOs, there is increased stigmatization and abuse present in relation to MSM and trans persons in Tajikistani detention centres. HIV positive MSM are ostracized to the point of being cast-offs who live in degrading conditions somewhere where they can be protected by the jailers from other inmates because confidentiality of their HIV status is breached and their "cases" are "marked" respectively. Besides, due to coding and other leaks of information during HIV testing, the sexual orientation and gender identity of MSM becomes known by the inmate population. Such MSM are then subjected to degrading and often violent acts by other inmates. The breach in confidentiality of their SOGI and/or HIV status create direct hazard to such people's health and lives.

20. MSM, acknowledged by the United Nations Joint Programme on HIV/AIDS (UNAIDS) as one of the main key populations groups particularly vulnerable to HIV¹⁵, have not been included in the Tajikistani national HIVstrategy 2017-2020. It means that no national funds are allocated to accessible and adequate HIV services targeting MSM specifically. Neither does national HIV-strategy allocate funds to awareness raising and education of the police and medical workers regarding sexual orientation, gender identity and nuances of working with this vulnerable group, particularly, in terms of HIV prevention, and decrease stigmatization and discrimination.

Trans Health

21. Apart from the issues mentioned above, trans persons in Tajikistan remain to be one of the most vulnerable minority groups, virtually non-present in the Tajik legislation – people whose interests are not tended by law. Again, as defined by the Preamble of the WHO Constitution, health "is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."¹⁶ People are unique in their character, development, and persona. Some are born into a birth-assigned sex in which they feel utterly uncomfortable because their mentality, character, and individuality does not coincide with the socially established behaviour that the society is used to ascribe to either of the two biological human sexes. Behaviour is something a person develops to communicate their "self" with the world and not something that is inscribed in their DNA automatically. In an exemplary case, *A.R. Coeriel and M.A.R. Aurik v. The Netherlands*, the HRCtee observed that, *inter alia*, article 17 of the Covenant includes "the notion of privacy [that] refers to the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone."¹⁷ Paragraph 3, Article 10 of the Tajikistani Constitution indicates that "international legal acts, acknowledged by Tajikistan, are a part of the republic's legal system. In case a contradiction between the republic's laws and the acknowledged international legal acts, the norms of the acknowledged legal acts are to be used."¹⁸ The Tajikistani Constitution does not regulate or define its relation to the right to privacy, which means that the general principles of privacy applicable to the country is to be used from article 17 of the Covenant. Further on, *A.R. Coeriel and M.A.R. Aurik v. The Netherlands* mentions that "The Committee is of the view that a person's surname constitutes an important component of one's identity and that the protection against arbitrary or unlawful interference with one's privacy includes the protection against arbitrary or unlawful interference with the right to choose and change one's own name." Defining one's name to accommodate one's desire to communicate with the world as effectively and ecologically as possible in conformity with one's gender identity and without any express or implied harm to others is crucial in ensuring the protection of such a person's

¹⁵ UNAIDS, <https://www.unaids.org/en/topic/key-populations>

¹⁶ *Constitution of WHO*, https://www.who.int/governance/eb/who_constitution_en.pdf

¹⁷ *OHCHR Selected Decisions of the HRCtee Under the Optional Protocol*, vol. 5, <https://www.ohchr.org/Documents/Publications/SDecisionsVol5en.pdf>, p. 75

¹⁸ *Constitution of the Republic of Tajikistan*, <https://www.wipo.int/edocs/lexdocs/laws/ru/tj/tj001ru.pdf>

right to (mental) health and privacy. In *Christine Goodwin v. the UK*, the European Court of Human Rights emphasized that “[the] stress and alienation arising from a discordance between the position in society assumed by a post-operative transsexual and the status imposed by law which refuses to recognise the change of gender cannot, in the Court’s view, be regarded as a minor inconvenience arising from a formality. A conflict between social reality and law arises which places the trans people in an anomalous position, in which he or she may experience feelings of vulnerability, humiliation and anxiety.”¹⁹ WHO has recently excluded gender dysphoria from the list of mental and behavioural disorders; the International Classification of Diseases 11th Revision does not include such a term anymore and only gender incongruence is present in the chapter of sexual health.²⁰ Any person with a strong discord between their gender identity and their birth-assigned sex, should be entitled to opt for another identity that will ensure their healthy development as a human being and the state – Tajikistan – should help them in their transition in the spirit of observing equality of all people before the law and tending to the interests of those underrepresented.

22. At present, the Tajikistani law has no procedure that would ensure the trans person’s right to receive a civil document that conforms to their persona and gender identity of their choice based on the situation where they decide it and it is held necessary for them to transition to a gender identity that does not coincide with their birth-assigned sex. There is no legislation that would govern the procedure of gender confirmation and/or reassignment in terms of medical, social, and legal assistance. There is no possibility for trans people to acquire civil registrar or other legal documents that would reflect their transition and confirm the gender identity of their choice is they decide to transition. According to ECOM’s *Legislative Analysis Related to LGBTQ Rights and HIV in 11 CEECA Countries 2018*, the only case when gender reassignment option is mentioned in laws is the Law of the Republic of Tajikistan “On the Civil Registration Procedure.” Article 74 of that law states: “Conclusion of the civil registration office on introducing corrections, amendments or additions to the civil status act shall be made by a civil registration body if [...] a document on gender reassignment issued by a healthcare institution in the set format is submitted.” All other aspects remain unsettled as there is no procedure to issue such documents “in the set format”, no agency authorized to issue such documents, and, finally, no set format for such document to be issued. There are also no medical protocols for managing trans patients and no doctors qualified to provide medical services to trans people. Besides, doctors refuse to work with trans people referring to the lack of necessary regulatory framework, which is why, as reported by trans persons to ECOM, they have to leave for Russia or other countries. Earlier this year, two trans persons turned to one of the governmental clinics in Dushanbe, seeking the help of a psychotherapist and an endocrinologist. They required certificates from these two health areas in order to commence their gender transition and to receive other documents which would be necessary later to alter their passports as a result of the transition. “This is no place for the likes of you,” was an initial response from the health specialists to the trans persons. After the verbal abuse ended, other, more lenient medical workers said that they could not provide them with the medical assistance and respective documents because the law enforcement would then come to question the medical facilities’ workers and trouble would arise for them. The predominant majority of cases of homophobia and transphobia remain undocumented or unreported because of the high levels of stigma. Developing a comprehensive regulation that would govern the procedure of gender confirmation and gender reassignment is a part of the trans persons’ right to health and privacy. Because of the inability to express themselves, they live in constant stress, anxiety, and misery with declining mental and physiological state. In addition, they are subjected to widespread transphobia by the general public, medical workers and law enforcers. Currently, they are far from being equal before the law compared to the ordinary citizens. Their gender identity is ignored by the law; and those who should uphold the law, *inter alia*, their right to health and privacy, mock them and even abuse them.

23. Article 1 of the Tajikistani Constitution proclaims: “The Republic of Tajikistan is a sovereign, democratic, legal, secular, and unitarian state. Being a social state, Tajikistan creates

¹⁹ *Christine Goodwin v. the UK* in ECHR, [https://hudoc.echr.coe.int/eng#{"itemid":\["001-60596"\]}](https://hudoc.echr.coe.int/eng#{)

²⁰ ICD-11, WHO, <https://icd.who.int/browse11/l-m/en#/http://id.who.int/icd/entity/411470068>

the conditions that ensure an exalted life and free development of every person.”²¹ Laws are created to define boundaries and frameworks for people to live in that would ensure the society from delving into chaos, on one hand, and, on the other, would allow people to develop in conditions that make them thrive. Article 8 of the Tajikistani Constitution governs that “the public life in Tajikistan develops on the premises of political and ideological pluralism.”²² The position of the government to conceal the issue of discrimination of the LGBT individuals and active persecution of them through verbal and physical abuse, extortion, blackmail and non-consensual therapies or other actions to ‘cure’ homosexuality do not conform to the internationally acknowledged principles of observation of the fundamental human rights and freedoms. Based on the HRCtee’s practice and the Covenant, the LGBT individuals are protected equally like any other people. Men who have sex with men and trans persons in Tajikistan are denied their right to health, right to privacy, and right to life, as a result, because the state infringes upon their natural right to ensure the highest attainable standard of health and development in the Republic of Tajikistan; because they are denied a framework of protection of their rights based on sexual orientation and gender identity as attributes that are universally protected by the Covenant, the international obligations of which Tajikistan has acknowledged.

Recommendations

All things considered,
to uphold the highest attainable standard of health for the LGBT,
to ensure that their privacy and lives are respected,
to observe that the fundamental human rights and freedoms are ensured equally for all, and
in conformity with the International Covenant on Civil and Political Rights recognized by Tajikistan,

ECOM recommends that the HRCtee uses its authority and requests Republic of Tajikistan to abide by its international obligations under the Covenant, as well as its other international and national obligations before its people, and that the Republic of Tajikistan immediately undertakes the following steps to secure the rule of law and the equality of all people, the LGBT included, before the law on all of its territory:

- Tajikistan should immediately develop and pass appropriate, high-profile, general, multi-dimensional anti-discrimination legislation in the form of a law that will prohibit discrimination of all people based on sexual orientation and gender identity, and this prohibition should leave an open-ended list of grounds that would allow for protection of people from other forms of discrimination not expressly outlined in the law;
- Tajikistan should promptly adjust its criminal and civil legislation in conformity with such a law on non-discrimination, and these areas of law should have a realistic, working legal mechanism for people who are discriminated based on sexual orientation and/or gender identity to be able to reinstate their infringed rights, seek retribution and punishment for those in blame;
- Tajikistan should immediately eliminate the words “sodomy” and “lesbianism” from articles 139, 140, and 141 of the Criminal Code of Tajikistan, as well as it should eliminate such words and similar homophobic lexicon from the entirety of its legislation as they bolster homophobia and transphobia. Tajikistan should alter its section on crimes against sexual freedom and sexual integrity in a way that will protect all people universally, using gender-neutral language, from all kinds of sexual conduct that forces the victim into non-consensual sexual practices with the perpetrator against their will;
- Tajikistan should introduce sexual orientation and gender identity as aggravating circumstances to all crimes in its Criminal Code that may be committed based on hate, on par with other grounds, like nationality, race, religion, and others;

²¹ *Constitution of the Republic of Tajikistan*, <https://www.wipo.int/edocs/lexdocs/laws/ru/tj/tj001ru.pdf>

²² Ibid.

- Tajikistan should develop and pass a regulation that will create the ability for trans persons to be able to acquire their gender confirmation, reassignment, and be allowed to transition, once necessary, with respect and dignity while having the chance to officially use the necessary medical procedures and acquire respective civil documents that will confirm their transition and legitimize their transitioned identity;
- Since the government of Tajikistan did not provide commentary in its Report regarding the policies that allow the law enforcement to forcefully register LGBT persons, Tajikistan should present a statement within an extraordinary, shorter term and not in a periodic report in a few years, with explanation of the reasons to enact in October 2017 a still valid policy, under the aegis of the Ministry of Internal Affairs and the Office of the Prosecutor General, that arbitrarily apprehends actual or alleged LGBT persons, forcefully puts them on a register, conducts investigations regarding their identity and amoral behaviour that allegedly constitutes crimes against morality and that allegedly should protect them and prevent STDs, including HIV, from being transmitted. In this extraordinary report, Tajikistan should provide an official statement that this policy will be struck down shortly;
- Tajikistan should introduce comprehensive sensitization training events for medical workers of healthcare facilities that would raise their education and awareness about SOGI issues;
- Tajikistan should arrange comprehensive, mandatory, and progressive sensitization training events for the law-enforcement workers on SOGI issues, as well as on issues related to investigating hate crimes based on sexual orientation and/or gender identity.