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Alternative information on
Tajikistan's implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women

For the 87th Pre-Sessional Working Group of the UN CEDAW
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Tajikistan:
Gender discrimination in employment
The situation of women and girls from Mugat/Jughi minority
Repressions against LBTI+

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Discrimination of women in employment

Labour legislation of Tajikistan so far contains discriminative bans for a number of jobs and professions for women. In 2013, the UN CEDAW issued a recommendation to proper analyze and review consequences of Articles 160 and 161 of the Labour Code (CEDAW/C/TJK/CO/4-5, 2013), but even after the recent revision (2015) the discriminative provisions are kept in the Article 216 of the Labour Code, which strictly bans employment of women on "hazardous and underground works, works with harmful working conditions".

The Government of Tajikistan confirmed the professional bans for women with the re-adopted "List of occupations banned for women and the approved limits for the lifting and moving of heavy objects for them" (up-dated in 2017)[1]. According to this document, 326 professions are still closed to women, including well-paid jobs in many spheres of industry.

In 2018, the UN CEDAW had to repeat the recommendation – to repeal article 216 of the Labour Code and the list of occupations for which the employment of women is restricted or prohibited to ensure that any restrictions are applied on the basis of an individual's capacity and not to women in general (CEDAW/C/TJK/CO/6, November 2018).

Meanwhile, this recommendation was not taken into account properly in the National Action Plan on Implementation of the Recommendations of the UN CEDAW 2019-2022 (adopted in May 2019). In this Plan, some measures are listed in order to attract women and girls to "non-traditional professions" and educate them in these professions (point 38), but in absence of legal framework for real gender equality in employment and, on the contrary, due to the existing discriminatory Article 216 of the Labour Code and the list of professions forbidden for women such measures have questionable chance to be effective.

The situation of women and girls from Mugat/Jughi minority

Jughi (also known as Lyuli, or Central Asian Gypsies/Roma, with the autonym Mugat or Mughat) formerly led a nomadic life and even now often migrate in search of work, both within and beyond the borders of Tajikistan. According to the data provided by Tajikistan to the UN CERD (2020), there are approximately 12,000 Jughi living in Tajikistan. The Jughi community face structural discrimination, meaning vicious circle of lack of education, segregation at school and difficult access to secondary school level, extreme poverty, unemployment, unregistered housing and the associated risk of expulsion or demolition, problems of birth registration and personal documents, conflict with law and related ethnic profiling and police violence, negative stereotypes widespread in the society.

Women and children are particularly vulnerable and, in addition to discrimination from the outside, face the pernicious effects of harmful traditional practices (early arranged marriages, polygamy, the exploitation of children, and the occupation of begging).

The Jughi remain a despised and marginalized group, while the government of Tajikistan denies the existence of discrimination against this community and the need to adopt a complex of government programs to improve its situation (in particular, in its report to the UN CERD reviewed in 2017, (CERD/C/TJK/9-11, paragraph 33)). In December 2018, concluding the review cycle, the UN CERD regretted the unwillingness of the Tajikistan authorities to adopt an action plan to improve the situation of Mughat (Jughi) and encouraged the authorities to change their position, pointing out the urgent need to overcome discrimination of this ethnic minority, to ensure access to education for all children, especially girls, as well as to provide for equal rights for housing, access to public services and medical care.

Discrimination based on sexual orientation or gender identity (SOGI)[2]

The authors of this report welcome the adoption by Tajikistan of the Law on Equality and Elimination of All Forms of Discrimination (entered into force in July 2022). It should be noted, however, that in the definition of discrimination given in the law, there are neither such grounds of

1 Government regulation "On the list of occupations banned for women and the approved limits for the lifting and moving of heavy objects" 4/04/2017 № 179.

[2] SEE MORE INFORMATION IN THE REPORT BY ADC MEMORIAL AND ITS PARTNERS: "LGBTI+ IN THE REGION OF CENTRAL ASIA: REPRESSIONS, DISCRIMINATION, EXCLUSION" (2020).

discrimination as sexual orientation and gender identity, nor the very concept of "gender". This reduces the protective potential of the law for such a vulnerable and discriminated group in Tajikistan as LGBTI+.

The government has also neglected to follow recommendations to end repressions on the basis of SOGI and the practice of maintaining official and unofficial lists of LGBTI+ people.[3] The statement from Tajikistan's human rights ombudsman that the country cannot implement recommendations made by international organizations regarding LGBTI+ rights because of "moral [norms] and ethics for relationships between people in the country"[4] is typical of the attitude in the country.

Consensual same-sex relationships between adult men and women are not criminalized in Tajikistan, but the Criminal Codes includes the term *"lesbianism"* as one of the unnatural forms of forced sexual contact listed in the article "Sexual Assault." The presence of a term like this in the Criminal Code speaks to public disapproval of same-sex contact between women. The sexual orientation of lesbian and bisexual women is an additional stigma that only aggravates the already difficult position of women in Central Asia, where religious norms have a tremendous influence, harmful traditional practices are widespread, and patriarchal stereotypes are deeply entrenched.

In Tajikistan, it is still not possible to register advocacy groups that work directly on LGBTI+ issues because the protection of LGBTI+ rights is seen as a violation of public morality.[5] As a result, several groups operate without a registration, while others find ways around the ban by working on related topics like health.

The transgender community is the most closed and stigmatized within the larger LGBTI+ community. Transgender violence and police persecution of transgender people is particularly brutal, they regularly endure physical, psychological, and sexual violence, threats, and harassment. It is possible to transition in Tajikistan, but the process is poorly regulated[6] and takes up to one year. The Bureau of Vital Statistics requires presentation of a "standard form attesting to a change in gender and issued by a medical organization," but respondents assert that this "standard form" does not exist, which leaves the door open for arbitrary decisions and illegal demands from medical professionals and workers at registration and documentation offices, so often the only way to change the gender marker appears to be application to court. The discrimination and harassment of transgender people can often be linked to requests for assistance from government workers and physicians regarding the procedures required for transition. Both officials and physicians are not only openly hostile to transgender people, but are also poorly trained.

LGBTI+ people living with HIV belong to several vulnerable groups at once and suffer from multiple discrimination in all the countries in the region. They are in a group at high-risk of infection, but they cannot effectively protect themselves or their potential partners without sufficient access to information, means of prevention, and safe, anonymous testing. Police officers in Tajikistan check the status of some LGBTI+ people arrested during raids and sham dates. According to informants, the police keep a record of LGBTI+ and HIV-positive people. Biases against HIV-positive people and homophobia are also widespread among medical personnel, who may notify police officers of their patients' HIV status and SOGI, so LGBTI+ people are afraid to seek help from AIDS centers.

Hatred against LGBTI+ people is incited also via state TV. Thus, hate speech is openly articulated by "experts" in a propagandistic documentary "Besharafi" ("Dishonor") that was shown on state channels in the beginning of 2021; screenings were also organized in universities, scientists and teachers recommend it to general public. In the film, the theme of homosexuality was used to discredit the leaders of the Islamic party and the political opposition.

A high level of public display of hatred of LGBTI+ people and unchallenged open calls for homophobic violence in the media and on social media, which often list the names and addresses of LGBTI+ people, has given regular citizens and the police free rein to blackmail and persecute LGBTI+ people.

Illegal discriminatory actions by police officers are a tragic daily occurrence for LGBTI+ people in Tajikistan. Many LGBTI+ believe that the police pose the main threat to their life, health, and

[3] CEDAW recommendations in relation to Tajikistan, March 2019.

[4] "Ombudsman: Tajikistan dismisses recommendations concerning the rights of sexual minorities, Radio Ozodi, January 2019, [in Russian]

[5] Law of the Republic of Tajikistan "On Non-governmental Organizations.

[6] Law of the Republic of Tajikistan No. 188 of April 29, 2006 "On the State Registration of Vital Records," Article 74, [in Russian]

safety. Many LGBTI+ people are repeat victims of violence (physical, psychological, and, less frequently, sexual), threats, extortion and blackmail, experience constant pressure from the police, and suffer from special repressive practices (compilation of lists of LGBTI+ and HIV-positive people, special operations, raids, and round-ups). LGBTI+ people are accustomed to regularly buying off police officers who threaten to out them. Police impunity gives rise to new violations and normalizes blackmail, bribery, and inhuman treatment.

Police persecution of transgender women is notable for its extreme heavy-handedness in all Central Asian countries. The methods include "sham dates," during which officers take their phones and insult, beat, blackmail, and rape transgender women and force them to cooperate.

Law enforcement bodies in Tajikistan carry out raids that result in the compilation of lists of LBGTI+ people that are then used for repressive purposes. In 2017, almost 50 lesbians (together with approximately 310 gay men) were identified and placed on special lists as a result of the special operations "Akhlok" ("Morality") and "Tozakuni" ("Cleanup"), which were conducted by the Ministry of Internal Affairs and the Procurator General's. Reportedly, the authorities explained these illegal arrests as preventive measures against HIV. Attention from the international community helped bring about a temporary pause in these widespread violations, but isolated arrests continued. In 2019, however, law enforcement officers started up-date of the list again. Some members of the community believe that this list will be used over the next few years for several purposes, including never-ending blackmail (field data, ADC Memorial, April 2019).

Recommendations

Women in employment

Guarantee women equal access to work; cancel the list of occupations banned for women and exclude the corresponding Article 216 from the Labor Code; promote and facilitate the entry of women into previously restricted or prohibited jobs by improving working conditions and adopting appropriate temporary special measures to encourage such recruitment.

Women and girls from Jughi/Mughat minority

Adopt and implement a state program of comprehensive support for Jughi/Mugat people aimed at overcoming structural discrimination that includes positive measures for documentation and the exercise of the right to housing and registration at place of residence, to a high-quality education, employment, and access to medical and social assistance. Special attention should be paid to the rights of children, especially girls, by ensuring their access to quality education and providing protection against exploitation and harmful traditional practices.

L(G)BTI+ rights

Eliminate repressive practices and persecution on the basis of SOGI on the part of law enforcement agencies, including raids, roundups, blackmail, violence, and extortion; recognize the use of torture against LGBTI+ people as unacceptable and declare evidence obtained through violence, threats, and humiliation inadmissible.

Conduct effective investigations into crimes against LGBTI+ people, including crimes committed by law enforcement officers, and prosecute the guilty parties. Ensure that the motive of hate is considered when crimes against LGBTI+ people are registered and investigated.

Prosecute officials, public figures, and authors of publications in the media and online for calls to violence and the use of hate speech.

Make it possible to register NGOs that protect LGBTI+ rights and the activities of human rights defenders and activists, hold public dialogues and events and give speeches about SOGI issues, and provide legal remedies for LGBTI+ people.

Ensure that LGBTI+ people have access to medical, social, and other services without discrimination. Increase awareness of the needs of LGBTI+ people among medical and social workers.

Make amendments and additions to laws so that an extended psychiatric hospitalization and surgery are not mandatory for changing gender or gender markers on documents on the basis of the applicant's self-identification. End the practice of forced medical or surgical interference without the free, prior, and informed consent of intersex people. Ensure access to quality information about sexual orientation, gender identity, and HIV.