



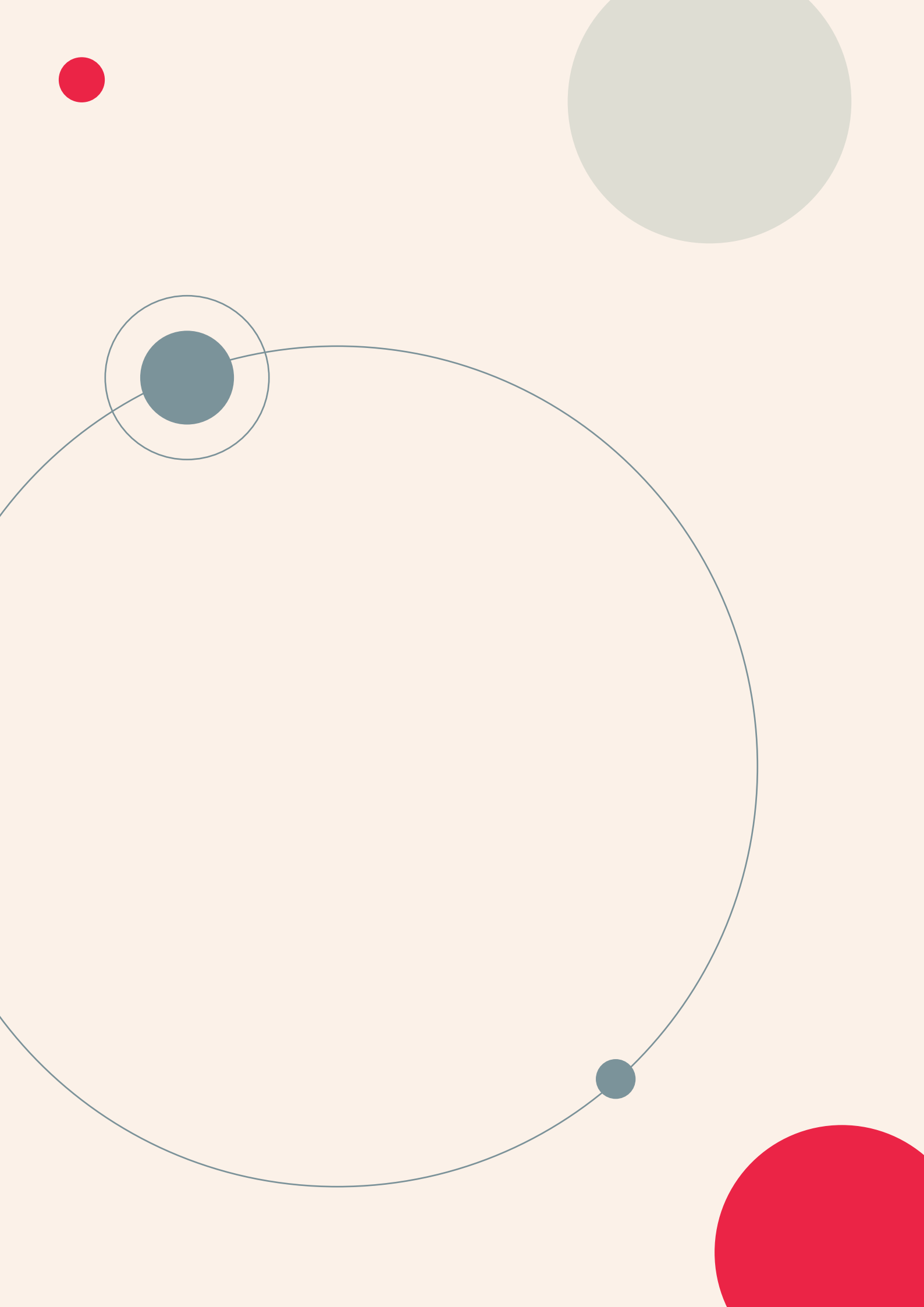
EHPV

Eesti HIV-positiivsete Võrgustik
Estonian Network of PLWH

2020

NGO Submission In Connection with Uzbekistan's Mid-Term Reporting On the Implementation of the 2018 UPR Recommendations

(Third Cycle)



INTRODUCTION

- 1 Estonian Network of People Living with HIV (EHPV) is a non-governmental organization based in Tallinn, Estonia, that provides diverse support programmes and services for LGBT people, including HIV-prevention and treatment services. One of EHPV's programmes deals with creating protection mechanisms and ensuring access to healthcare services for men who have sex with men (MSM) and trans people, including HIV+, who experience SOGI-based state-sponsored prosecution in the Caucasus region of Russia, as well as in Turkmenistan and Uzbekistan. Based on its ongoing work with and for various actors in Uzbekistan, EHPV files the present report as part of its activity to help ensure the highest attainable standard of health for MSM and trans people in Uzbekistan.
- 2 On May 9, 2018, the National Report of Uzbekistan within the framework of the Universal Periodic Review (UPR) was considered at the session of the UPR Working Group of the Human Rights Council (HRC). Following the review of the country's report and all the other available facts provided by governmental and non-governmental organisations, 47 UN Member States presented Uzbekistan with 212 recommendations, 198 of which it accepted and noted 14¹.
- 3 EHPV has been closely monitoring Uzbekistan's advances in terms of human rights during the past several years, particularly when it comes to human rights of the LGBT. Based on the statements of EHPV's partner NGOs and information channels, LGBT persons have been increasingly fleeing Uzbekistan, often to the EU, to seek refuge there. With this in mind, in 2020, EHPV concluded an extensive review of human rights observation in Uzbekistan through the lens of the State's third periodic report to the Human Rights Council under the UPR Process. This follow-up submission marks the mid-term review of Uzbekistan's third cycle. It aims at providing a snapshot of the State's progress in implementing the recommendations made in the *Report of the Working Group on the Universal Periodic Review*².
- 4 The main arc of the present stakeholder mid-term report is related to LGBT persons and PLHIV in Uzbekistan who have no effective legislative means of enjoying their fundamental rights and freedoms on par with the rest of the State's population. Specifically, the presence of article 120 of the Uzbekistan Criminal Code that considers consensual same-sex sexual activities between adult men to be a crime is the core foundation for profound systemic discrimination and stigmatization that befalls the mentioned key population groups in all areas of their lives.
- 5 EHPV is pleased to have the opportunity to provide the present submission to the Human Rights Council.

¹ Responses to Recommendations: Uzbekistan, UPR, 2018, https://www.upr-info.org/sites/default/files/document/uzbekistan/sesion_30_-_mayo_2018/uzbekistan_2rp.pdf (23.06.2020).

² https://www.upr-info.org/sites/default/files/document/uzbekistan/session_30_-_may_2018/a_hrc_39_7_add.1_e.pdf



METHODOLOGY

- 6 With reference to *UPD Mid-Term Reporting: Good Practices for UPR Stakeholders*, EHPV has limited itself to considering, inter alia, the implementation of the recommendations by the Uzbekistan Government since the last UPR in 2018, and the current situation with human rights and equality in Uzbekistan. In this submission, EHPV draws on the diverse work of its partner NGOs in the EECA region and in Uzbekistan specifically, to measure the Uzbekistan Government's progress in advancing the recommendations accepted and noted by the Government during UPR 2018.
- 7 Among others, EHPV collected data from human rights monitoring activities conducted by itself and its partner NGOs; first-hand evidence from victims of human rights abuse; analysis of secondary and tertiary sources from official governmental institutions, legislation, other NGO reports and news outlets publications. Diverse data was collected, grouped, and contextually analyzed considering the State's actions in response to the recommendations accepted and noted by the Government during UPR 2018, particularly, with regards to human rights of Uzbekistan LGBT populations and people living with HIV (PLHIV).

INTERNATIONAL OBLIGATIONS

- 8 While EHPV would very much like to commend Uzbekistan on its endeavours to promote human rights and equality for all, during this mid-term reporting period, there are not that many reasons to rejoice. International treaties that are crucial to enhancing all-round nondiscrimination and preventing illegal actions by the general public and civil servants when it comes to LGBT persons have not been ratified.
- 9 Uzbekistan has not yet implemented the recommendations it accepted regarding the ratification of the Optional Protocol of the Convention Against Torture (101.1-101.12)³. The State has not extended its invitation to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Uzbekistan (101.33, 101.79). Moreover, during the periodic review of the State's report to the UN Committee Against Torture, the Uzbekistan Government noted that it considers the implication that it should invite the said Special Rapporteur unwarranted, despite the Committee Against Torture revealing numerous instances of torture and other inhuman behaviour happening in the country⁴.

³ «Ratification Status for Uzbekistan», UNHCHR, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=189&Lang=EN

⁴ «In dialogue with Uzbekistan, Committee against Torture», UNHCHR, 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25294&LangID=E>

⁵ «Ratification Status of the Rome Statute», UN Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?s-rc=IND&mtdsg_no=XVIII-10&chapter=18&lang=en

- 10 Uzbekistan has not yet implemented the recommendations it accepted with regards to ratifying the Rome Statute of the International Criminal Court (101.1, 101.2)⁵. After the UPR Working Group's conclusion in 2018, Uzbekistan changed its «accepted» decision to noted in relation to recommendations 101.29 and 101.30 coming from Estonia and Iceland which also urged the State to ratify the mentioned Rome Statute.
- 11 Uzbekistan has not yet implemented the recommendations it accepted with reference to the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (101.15-101.17). Forcible disappearances out of various reasons happen in Uzbekistan from time to time. In November 2019, a controversy happened when an audio recording emerged where a man — reportedly Jahongir Ortiqhojaev, mayor of Tashkent — could be heard making threats to journalists, saying he could «easily» make them disappear or turn them into social outcasts by telling everyone they were gay if they do not cooperate with the authorities; several journalists quit their jobs in an act of protest⁶.

RECOMMENDATIONS:

- 12 Promptly ratify and square its national legislation with the Optional Protocol to the Convention Against Torture.
- 13 Ratify the Rome Statute of the International Criminal Court without delay.
- 14 Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and bring the national legislation in line with its provisions with expedition.

NATIONAL LEGISLATION

- 15 Uzbekistan overtly and consciously marks the UPR recommendations concerning the adoption of all-inclusive non-discrimination framework that would ban all forms of discrimination, including based on sexual orientation and gender identity, as «noted». The country has done nothing to alleviate the burden of systemic discrimination that befalls the LGBT persons, PLHIV among them. It is the third UPR that emphasizes this, yet, the State willfully denies adopting any steps towards mitigating the stigma of non-heterosexual people within its borders.

⁵ «Ratification Status of the Rome Statute», UN Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-10&chapter=18&lang=en

⁶ «Journalists Resign After Tashkent Mayors 'Death,' 'Gay' Threats», Radio Liberty, 2019, <https://www.rferl.org/a/uzbek-journalists-resign-after-tashkent-mayors-death-gay-threats-/30282235.html>

- 16 UPR 2018 for Uzbekistan includes recommendations 102.1-102.11, all of which urge the country to adopt laws that would ban discrimination based on sexual orientation and gender identity (SOGI). Specifically, 102.3-102.5, 102.9-102.11 indicate that Uzbekistan should decriminalize consensual same-sex sexual activities between adult men. Uzbekistan «noted» these recommendations. As of today, Article 120 of the Uzbekistan Criminal Code has not been decriminalized, there are no draft laws in the parliament to support the Government's intention to fulfill the 11 «noted» recommendations, and no laws that would ban all forms of discrimination, including based on SOGI, are being considered by the State.

RECOMMENDATIONS:

- 17 Immediately decriminalize voluntary sexual conduct between adult men as it explicitly violates all of the international and national laws of Uzbekistan that protect fundamental human rights and freedoms.
- 18 Ensure that its criminal laws do not police voluntary consensual sexual conduct between adult people and that all people are protected from involuntary sexual actions enacted upon them or coercion to perform sexual activities against their will regardless of the victim's sex, sexual orientation, gender identity, and gender expression.
- 19 Adopt criminal laws that will appropriately define and punish hate speech and hate crimes, criminal acts committed out of enmity based on the victim's sexual orientation or gender identity, or other attribute or status, and include sexual orientation and gender identity as aggravating circumstances if the motive of the crime was enmity towards the victim's SOGI.

● UZBEKISTAN DENYING LGBT PERSONS EQUALITY ●

- 20 As a result of its activities, EHPV came to reveal that a lot of community members that turn to it for help in Estonia are LGBT people and PLHIV from Uzbekistan who are forced to leave their country because of the inability to not only acquire the highest attainable standard of living there — they cannot even acquire a decent one. They are constantly afraid for their lives, becoming victims of verbal and physical abuse, torture and other inhuman behavior, having their right to health, movement, privacy, and other freedoms violated as well.
- 21 Uzbekistan has made it clear during the review of its Fifth Periodic Report to the Human Rights Committee (HRCtee) that «decriminalizing article 120 of the Criminal Code runs counter to traditions of the country's multi-ethnic population, its family values and national customs, which have been formed over the course of thousands of years, and would be strongly opposed by the public at large»⁷. It means that Uzbekistan is hypocritically «noting» recommendations 102.1-102.11 while having no intention of making any advancement in the direction of decriminalizing consensual same-sex sexual activities between men.

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•⁷ Fifth Periodic Report Submitted by Uzbekistan CCPR/C/UZB/5, UNDOCS, 2018, <https://undocs.org/en/CCPR/C/UZB/5>, para 69

- 22 After HRCtee inquired Uzbekistan regarding its plans to decriminalize Article 120 in its List of Issues, the State responded that «the question of exceptions to article 120 of the Criminal Code and the decriminalization of sexual acts between men is under discussion in expert groups as part of the process of drafting the new version of the Criminal Code. In view of the country's religious, ethical and cultural traditions and the underpinnings of Uzbek society, these issues must be widely discussed among the population before any final decision is reached»⁸.
- 23 It should be noted that, as of the moment of the current report's drafting, no public hearings related to decriminalization of Article 120 have been made, no LGBT NGOs were invited to discuss the matter, and no draft laws have been introduced. Also, considering the high levels of stigma, outdatedness of the public's knowledge about sex education and gender matters, as well as the prevalence of high levels of stigma towards the LGBT, holding a public discussion without any prior national-wide sensitization and educational activities will be useless. Moreover, it will most likely only fuel the public's ungrounded hostility towards non-heterosexual people. Uzbekistan, as a member of all the fundamental international human rights mechanisms, should remember that bias or religion or any other excuse cannot be made to promote discrimination and violence against people based on their SOGI.
- 24 Uzbekistan uses «traditional», «cultural», and «family» «values» as hostages whenever LGBT issues are brought during the dialogue with the State at the level of UN Treaty Bodies. However, using traditional and cultural values as excuses for institutional discrimination and violence against non-heterosexual people (primarily, PLHIV, gay men, other men who have sex with men (MSM) and trans* persons) concludes an outright frivolous violation, considering Uzbekistan's national and international obligations under various human rights frameworks.
- 25 EHPV's partner NGOs report that due to institutionalised violence against gay men in Uzbekistan, the general public's stigma is extended to lesbian, bisexual, and trans* people as a result of rejection of homosexuality and queerness as something illegal, wrong, and hurtful. The continuous presence of article 120 only solidifies this discriminatory belief and puts consensual non-heterosexual intercourse on par with actual criminally dangerous activities, like rape, murder, burglary, and other criminal acts. Human rights NGOs report that approximately 500 men were imprisoned under article 120 in 2012 alone⁹. This violates all the universal fundamental human rights and freedoms Uzbekistan has pledged to promote and protect.
- 26 In 2019, Uzbekistan Deputy Justice Minister Mahmud Istamov, after human rights reviews regarding the State, told the reporters that decriminalization of same-sex intercourse «is not on our agenda. We have not accepted this recommendation. This is not a topical subject for us»¹⁰. Interesting how Official Uzbekistan keeps pressing this position when Uzbek LGBT people, like the ones EHPV is helping out in Estonia, are forced to seek refuge in other countries.

⁸ Replies of Uzbekistan to LOI CCPR/C/UZB/RQ/5, UNDOCS, 2019, <https://undocs.org/en/CCPR/C/UZB/RQ/5>, para 52

⁹ Summary Prepared by OHCHR: Uzbekistan, OHCHR, 2013, https://lib.ohchr.org/HRBodies/UPR/_layouts/15/WopiFrame.aspx?sourcedoc=/HRBodies/UPR/Documents/Session16/UZ/A_HRC_WG.6_16_UZB_3_Uzbekistan_E.doc&action=default&DefaultItemOpen=1

¹⁰ «The Missing Piece in Uzbekistan's Reform Puzzle», The Diplomat, 2019, <https://thediplomat.com/2019/01/the-missing-piece-in-uzbekistans-reform-puzzle/>

RECOMMENDATIONS:

- 27 Immediately adopt a unified national law that would explicitly and effectively ban all forms of discrimination, including based on sexual orientation and gender identity, in conformity with UN standards, as the current state of national law enforces discrimination against non-heterosexual and non-cisgender people and does not protect their interests as for disadvantaged populations.
- 28 Define what actions conclude an act of discrimination and what «gender» means in such a law in accordance with contemporary science- and practice-based UN approach to those notions.

RIGHT TO HEALTH

- 29 Uzbekistan has taken upon itself the obligation to ensure everyone's right to the highest attainable standard of health and well-being¹¹. In addition to the State implying that decriminalizing article 120 is against traditional values, it also, generally, states that the homosexual relations are causing the spread of HIV/AIDS. However, there is no reliable data that homosexual relations are the primary cause of HIV prevalence in Uzbekistan because the government does not collect HIV data broadly, properly, and contextually.
- 30 MSM, trans* people, as well as non-heterosexual women are not included as key populations when it comes to HIV monitoring and prevention in Uzbekistan. Therefore, any implications by the State that LGBT people are responsible for HIV/AIDS prevalence is grounded on zero scientific data. That being said, UNAIDS reports that the prevailing route of HIV transmission (69.5%) in Uzbekistan is sexual, which is mainly linked to working migrants and trafficking of people¹². With this in mind, UNAIDS' research also states that 94.6% of MSM in Uzbekistan use condoms during sex¹³. This means that the continuous rising of HIV prevalence in the State overall cannot be linked to the LGBT as the primary source.
- 31 In 2017, the State reported that more than 2,039 MSM from five administrative territories were covered by HIV prevention measures with 151,918 condoms being distributed. Nonetheless, the presence of Article 120 casts doubt on such information since LGBT usually do not disclose their sexuality and those who know their HIV-positive status do not register out of fear of being criminally prosecuted¹⁴.

• ¹¹ Universal Declaration of Human Rights, UN, <https://www.un.org/en/universal-declaration-human-rights/>, Article 15;
• International Covenant on Economic, Social, and Cultural Rights, OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>, Article 12

• ¹² *Country Progress Report — Uzbekistan*, UNAIDS, 2018, https://www.unaids.org/sites/default/files/country/documents/UZB_2018_countryreport.pdf

• ¹³ «Country Factsheets: Uzbekistan», UNAIDS, 2019, <https://www.unaids.org/en/regionscountries/countries/uzbekistan>

• ¹⁴ *Legislative Analysis Related to LGBT Rights and HIV in Uzbekistan*, ECOM, 2019

- 32 Article 120 also prevents LGBT people's access to healthcare. They are reluctant to undergo HIV-testing because HIV-positive people are obliged to disclose their partners under article 57 of the Uzbekistan Code on Administrative Liability. Consequently, their SOGI-status is forcefully revealed by and to authorities, which then use this information to initiate a criminal investigation under Article 120 against these people who are in the most vulnerable state and have done nothing wrong. They are subject to harsh stigma on every level.
- 33 Article 120 instils fear in HIV-positive LGBT people that causes them to avoid applying to antiretroviral treatment (ART). Applying for ART will mean undergoing medical examinations that disrespect their right to confidentiality since medical workers are obliged to inform other relevant authorities of new cases of HIV-infection. LGBT NGOs report that community members indicated that, after testing, their HIV-status was reported to mahalla committees, local responsible militia officers, and neighbours, despite Uzbekistan legal provisions on confidentiality of personal medical information. Currently, these PLHIV face severe stigmatization. The ostracism forces them to change their residence, including moving to other countries, like Estonia.
- 34 On another note, the Tashkent testing centre is equipped with surveillance cameras. One gay man reported to an NGO that, during his conversation with a doctor at an AIDS Centre in Tashkent, an outsider person in civilian clothing entered the room and threatened him with Article 120, blackmailing him and extorting money to preserve confidentiality. Confidentiality of personal medical information is an integral part of the right to health, not only when it comes to HIV, but also to any other health-related information.
- 35 According to the law «On counteracting the spread of diseases caused by the human immunodeficiency virus», the following groups of people are required to undergo medical examinations for HIV:
- Donors of blood and other biological fluids;
 - Persons under the age of 50 who are getting married;
 - Pregnant women;
 - Persons who are suspected of using injecting drugs;
 - Children born to HIV-positive mothers;
 - Medical workers in contact with blood, biological fluids, and human organs and tissues;
 - Persons whose partner contracts HIV¹⁵.
- 36 Mandatory HIV testing is applied according to article 16 of the said law and is carried out without the consent of the relevant person or their legal representative by order of the official of the body conducting the preliminary investigation, the person leading the inquiry, the investigator, or the prosecutor, or by court order in the manner established by law¹⁶. In other words, the person has virtually no say in this and is forced to undergo HIV-testing.

15 Law of the Republic of Uzbekistan «On preventing the spread of diseases caused by the human immunodeficiency virus (HIV-infection)». Article 15 «Mandatory medical testing for HIV» of 23 September, 2013, 3PY-353.

16 Ibid. Article 16 «Mandatory medical testing for HIV» of 23 September, 2013, 3PY-353.

41 EHPV has been helping out and observing an increasing number of LGBT, PLHIV among them, citizens of Uzbekistan who flee their country because they are unable to support themselves and live in conditions of personal safety. LGBT and PLHIV are not only key population groups (groups at an increased risk of getting infected with HIV), they are also a very vulnerable social group, considering the current Uzbekistan laws and practices. Under the accepted recommendation 101.151, Uzbekistan should direct its efforts, humility, understanding, and science-based approach to the LGBT and PLHIV to help reduce the stigma and discrimination when it comes to their right to health.

RECOMMENDATIONS:

- 42 Bring its current data collection, prevention and treatment measures in line with UNAIDS best practices.
- 43 Revise its current national laws and action plans when it comes to HIV-prevention and include MSM and trans* people as key populations within the national framework of HIV-monitoring, HIV-data collection, HIV-prevention, and HIV-treatment.
- 44 Devise and adopt a national action plan to educate, raise the awareness of, and sensitize medical workers, those working with HIV-services first and foremost, throughout Uzbekistan about the issues of sexual orientation, gender identity, human rights and needs of the LGBT overall and in terms of HIV, as a means of tackling discrimination and stigma LGBT face when turning for healthcare services of any kind.
- 45 Ensure the confidentiality of personal medical information of PLHIV and that all those who breach it are punished in accordance with national criminal laws.
- 46 Reverse the laws that foresee forced HIV testing for migrants.

CRIMINALIZATION OF HIV TRANSMISSION

47 Currently, article 113 paragraph 4 of the Uzbekistan Criminal Code defines it punishable for a person who knows about their positive health status to put the victim at the risk of getting infected with a sexually transmitted disease, including HIV²⁰. Whether the victim actually gets the disease is irrelevant. Also, Comments to the Uzbekistan Criminal Code indicate that even if the victim knew about the other person's health status and still voluntarily engaged in sexual activities with them, the latter is still prosecutable under the said article.

²⁰ Criminal Code of Uzbekistan. Article 113 «Spread of a sexually transmitted disease or HIV infection/AIDS», part 4 «Intentionally putting at risk of infection or infection with HIV/AIDS» of 24 May, 2010 3PY-248.

- 52 Partner NGOs also report that lawyers are reluctant to take up such cases out of fear of public retaliation and homophobia. Consequent to the mechanisms of forced membership in the Chamber of Lawyers and Qualification Committees, lawyers in Uzbekistan are deprived of their professional independence and risk disbarment if they take up the so-called “sensitive” cases or having too active a position in defence in such cases. It is also reported that Uzbekistan police use Article 120 to blackmail and otherwise use extra-legal measures against political opponents of the government, activists, and employees of NGOs²⁴.
- 53 After publishing a video addressed to the President of Uzbekistan in August 2019, urging to abolish article 120, Shohrukh Salimov was forced to flee the country. After having posted the video, the police blackmailed Salimov’s friend and coerced a confession about his whereabouts. Salimov was arrested, beaten, and humiliated during detention. The police extorted \$2,000 for the investigation against him to be closed²⁵. NGOs also reported a secretive internal operation “Oriyat” being enacted by the law enforcement August 15 through September 15, 2019, during which sex workers and LGBT people were detained. During that period, gay PLHIV missed their medical visits to receive medication out of fear of prosecution.
- 54 Uzbekistan accepted several recommendations (101.93, 101.96, 101.97, 101.98, 101.101-101.1013) that urge the State to respect freedom of expression, bring its national legislation in line with its international obligations, and punish those who obstruct this freedom. Uzbekistan also accepted a recommendation (101.106) urging it to observe that everyone enjoys the right to fair trial. LGBT people, just like anyone else, are entitled to freedom of expression, right to fair trial and privacy.

RECOMMENDATIONS:

- 55 Take immediate steps to ensure the confidentiality of a person’s sexual orientation or gender identity, as well as other elements of their right to privacy, and make sure that justice is adequately and effectively served if such privacy is breached.
- 56 Ensure that all law enforcement officials who exceed their authority and commit acts of crime against people based on hate towards their sexual orientation, gender identity, or other attribute or status are brought to justice in fair legal proceedings. All sanctions imposed should be commensurate with the severity of the violations committed.
- 57 Commit to securing the right to fair trial of all people within its borders indiscriminately and that the judiciary that does not serve justice in line with national laws are punished for it.
- 58 Devise and adopt a national action plan to educate, raise the awareness of, and sensitize law enforcement and police officers about the issues of sexual orientation, gender identity, human rights and needs of the LGBT overall and PLHIV, as a means of tackling discrimination and stigma LGBT face when turning for protection.

• ²⁴ *Needs Assessment of Gay Men and Other MSM in Uzbekistan*, ECOM, 2019.

• ²⁵ *In Uzbekistan, Homosexuality Is Illegal*, Open Democracy, 2020, <https://www.opendemocracy.net/en/odr/uzbekistan-homosexuality-illegal-heres-what-lgbt-life/>

FREEDOM FROM TORTURE, DEGRADING AND OTHER INHUMAN BEHAVIOUR

- 59 Uzbekistan pledged that it will ensure that nobody shall be subjected to torture, degrading, or other inhuman behaviour or punishment²⁶. However, the UN Committee Against Torture (CAT) expressed grave concern about the fact that torture and ill-treatment is exercised by state and non-state actors without proper prevention and punishment mechanisms enacted in relation to perpetrators.
- 60 On 12 September 2019, Shokir Shavkatov (25 years old) was brutally murdered after he «came out» on his Instagram page. Police say he suffered «several» knife wounds on his «neck and arms», and an officer said his throat had been cut so deeply he was nearly decapitated²⁷. In January 2020, a fashion designer Nariman Grigoryan was brutally killed in his apartment. Local activists reported that he was a gay man which served as the motive for the atrocious crime. Allegedly, the murderer cut his throat, multiple stab wounds including to anus area and then attempted to burn his body. However, the prosecution denied homophobia motive and presented this case as a murder linked with robbery.
- 61 LGBT community members and NGOs in Uzbekistan report frequent acts of ill-treatment against gay men, other MSM, and trans* people. Lesbian, bisexual, and trans (LBT) women are subjected to forced marriages, correctional rape, and marital rape. LGBT people are left at the mercy of such vicious, cynical, and predatory people who seek them out to bestow their own personal sense of «justice» upon them.
- 62 N. and K., lesbian women were having a date outside, when they were detained by police officers under article 120, interpreting it as prohibition of homosexual relationship (although it only criminalizes same-sex sexual activities between men). N. was released after writing an explanatory note, but K., who refused to do so, was tortured for two days. Police officers raped K. for two days stating that afterwards K. would understand that it is better to have sex with a man. Correctional rape was used in this case while torturing K. to force her to sign necessary papers. She was released only when she wrote an explanatory letter and signed papers that she was treated well and had no claims against the law enforcement officers.
- 63 Such victims of institutional and public violence are left without any chance to prosecute the perpetrators and restore their rights. NGOs report about hate groups in the Telegram app and in the social media platform Vkontakte that post videos of how their members humiliate, insult, beat and sexually abuse gay people. Men are raped with bottles, stripped naked, severely beaten. Amnesty International reports that physical and sexual abuse of LGBT persons with recording of such activities and further dissemination via social media and other apps is frequent practice²⁸. Moreover, they are offering money to other groups who will do the same and sharing videos with them.

²⁶ *Universal Declaration of Human Rights*, UN, <https://www.un.org/en/universal-declaration-human-rights/>, Article 5; *Convention Against Torture*, OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>, Article 2

²⁷ «Murder in Tashkent: Killing of Gay Man», Radio Liberty, 2019, <https://www.rferl.org/a/killing-of-gay-man-spotlights- plight-of-uzbek-lgbt-community/30167271.html>

²⁸ «Everything Your Need to Know About Human Rights in Uzbekistan», Amnesty International, 2019, <https://www.amnesty.org/en/countries/europe-and-central-asia/uzbekistan/report-uzbekistan/>

- 64 NGOs also report that state and non-state actors use dating apps to set up dates with LGBT people. They then subject them to physical, verbal, and/or sexual abuse, as well as blackmail them to extort money in exchange for not disclosing their SOGI status. Such actions constitute criminal acts but LGBT victims will not turn to police because of the above-mentioned reasons.
- 65 Amnesty International reports that on June 26, 2019, «the Tashkent City Criminal Court found former Prosecutor General Rashitjon Kadirov and his 12 co-defendants guilty of abuse of office and financial crimes, and sentenced Rashitjon Kadirov to 10 years in prison. The Court dismissed allegations that confessions had been extracted under torture despite these claims being supported by credible evidence. Sources close to Rashitjon Kadirov reported that he had been subjected to physical abuse, mock executions, sleep deprivation and other ill-treatment to coerce him to give evidence against himself and others»²⁹.
- 66 Uzbekistan accepted multiple recommendations urging it to ratify the Optional Protocol to the Convention Against Torture and to strengthen its national policies and practices to prevent torture and ill-treatment, as well as prosecute the perpetrators (101.73, 101.77-101.84). It is unheard of for a contemporary legal and social state to facilitate behaviour that promotes torture. Everyone engaged in such online groups who promote hate and inhuman behaviour against based on SOGI, as well as those who commit acts of torture and other inhuman behaviour, should be immediately detained and prosecuted based on Uzbekistan's national and international laws. Every state and non-state actor should be prosecuted for such acts and any promotion of violence against the LGBT should be publicly reprimanded and punished according to Uzbekistan laws.
- 67 Currently, Uzbekistan executes its legislation that prohibits torture, degrading, and other inhuman behaviour and punishment arbitrarily. LGBT, PLHIV among them, seem to not fall in the State's favour of enjoying freedom from torture on par with heterosexual people.

RECOMMENDATIONS:

- 68 Prohibit law enforcement agencies from conducting raids and arbitrarily detaining people, as well as hold police officers accountable for acts of blackmail, extortion, torture, cruel, inhuman, and degrading treatment and punishment of people based on their sexual orientation and/or gender identity.
- 69 Ensure that any acts of violence against people, including murder, that are committed based on the victim's sexual orientation and/or gender identity are thoroughly investigated and punished as hate crimes.
- 70 Put a stop to state's propaganda of homophobia and transphobia through state-controlled media channels, as well as to censorship and other interference with independent media.

²⁹ «Everything Your Need to Know About Human Rights in Uzbekistan», Amnesty International, 2019, <https://www.amnesty.org/en/countries/europe-and-central-asia/uzbekistan/report-uzbekistan/>

- 71 Reprimand everyone, including high profile politicians and people of power, for any hate speech and other hateful discourse when it comes to discrimination of non-heterosexual and/or non-cisgender people.
- 72 Prevent forced marriages and «correctional rape» and punish anyone who commits these illegal acts against all women, including but not limited to LBT women, thoroughly investigate and serve justice for perpetrators of such criminal acts as hate crimes, if the victim's SOGI was the motive for the crime.

● —● FREEDOM OF ASSEMBLY AND ASSOCIATION —● ●

- 73 Uzbekistan has the obligation to ensure freedom of peaceful assembly and association to everyone³⁰. Unfortunately, in light of article 120 and severe persecution from the State, the said freedoms are vigilantly policed and restricted. Any public group that is to be deemed as an association or an organization is to be registered with the State. The State has the prerogative of allowing or not allowing such registration. It is illegal to conduct activities as an NGO if you are not registered with the State: punishment goes as far as 3 years of imprisonment³¹.
- 74 The laws establish a very complicated procedure of registration for non-profit, non-governmental organizations and a strict procedure of monitoring of their activity. Monitoring goes as far as NGOs having to report if their members go abroad³². The reception of alien funding is also governed by the State, choosing whether to allow or not allow it and disclose any information regarding an attempt to receive foreign funding. Any failure to comply with the laws that govern NGO registration and activity will result in great fines or imprisonment. EHPV's partners report that one organization that was to work with PLHIV in Uzbekistan was able to get registered only after its fifth attempt.
- 75 Uzbekistan accepted recommendations (101.103, 101.122) that ask the state to observe the freedom of assembly and association, and that the State does not create unnecessary barriers to the excursion of those freedoms. NGOs usually consist of non-professional volunteers. Such strict procedures and monitoring deter them from organizing into NGOs. Also, the open State discourse against LGBT and article 120 serve as fundamental obstacles to LGBT and PLHIV exercising their said freedoms.

RECOMMENDATIONS:

- 76 Amend national laws that govern NGO activity to allow free operation of NGOs that provide services for PLHIV, including representatives of the LGBT community, without unjustified barriers for registration and unproportional monitoring of their activity.

• ³⁰ *International Covenant on Civil and Political Rights*, OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, Article 21, 22

• ³¹ Article 216 Criminal Code of the Republic of Uzbekistan, according to amendments introduced in March 2017. See details in: Assembly of legislation of the Republic of Uzbekistan, 2017, 13, art. 194; National database of legislation, 30.01.2018, 03/18/463/0634)

• ³² *Legislative Analysis Related to LGBT Rights and HIV in Uzbekistan*, ECOM, 2019

- 77 Bring its national laws that govern the activity of NGOs that provide HIV-services in line with UNAIDS best practices. Namely, follow the principle of community-based HIV-services that should be provided by LGBT NGOs to their respective communities directly when it comes to legislation that governs NGO activity. Uzbekistan should amend its existing regulations to ensure that HIV-services that are provided to key population groups are decentralized. NGOs that provide HIV-services should be able to coordinate their activity directly with their donors and other financing institutions based on their own programmes that fit the national HIV-prevention action plan but without extensive governmental control, bureaucracy, and interference. Uzbekistan should simplify the regulations related to granting and monitoring of NGOs that provide HIV-services to key population groups to encourage and increase the effectiveness of their work.
- 78 Ensure that all NGOs that conform to the required registration demands are granted registration and that illegal and/or unjustified refusal to register an NGO can be effectively overturned in court.

● ● FREEDOM OF GENDER IDENTITY AND EXPRESSION ● ●

- 79 Based on Article 2 paragraph 1 of the International Covenant on Economic, Social, and Cultural Rights, Uzbekistan is to endeavour all its resources to ensure the realisation of the rights enshrined therein for everyone³³. The Committee on Economic, Social, and Cultural Rights states that Article 2 of the aforementioned Covenant includes SOGI:
- States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace³⁴.
- 80 The laws establish a very complicated procedure of registration for non-profit, non-governmental organizations and a strict procedure of monitoring of their activity. Monitoring goes as far as NGOs having to report if their members go abroad³². The reception of alien funding is also governed by the State, choosing whether to allow or not allow it and disclose any information regarding an attempt to receive foreign funding. Any failure to comply with the laws that govern NGO registration and activity will result in great fines or imprisonment. EHPV's partners report that one organization that was to work with PLHIV in Uzbekistan was able to get registered only after its fifth attempt.
- 81 According to internal instructions of the Ministry of Health for making a differential diagnosis, inpatient monitoring of the patient is required for a period of at least one month. A certificate with an F 64.0 diagnosis is then issued based on the results of the consideration of a medical commission. The trans* person in question then brings this certificate to the civil registration authorities where amendments should be made to the person's civil registration and passport.

• ³³ *Fact Sheet No.16*, OHCHR, <https://www.ohchr.org/Documents/Publications/FactSheet16rev.1en.pdf>

• ³⁴ *General Comment No.20 E/C.12/GC/20*, Committee on Economic, Social, and Economic Rights, <https://www.refworld.org/docid/4a60961f2.html>

- 82 In 2019, the World Health Organization published the eleventh version of the International Classification of Diseases (ICD-11) eliminating F 64 gender identity disorders. Uzbekistan's health authorities are expected to switch to ICD-11 and, accordingly, to remove gender identity disorders from the list of mental diseases. In addition, the government needs to amend the Family Code, provide a definition of the concept of «gender», and develop instructions for employees of state services for working with trans* people.
- 83 That being said, the current gender confirmation procedure is not clear and significantly narrows the options for a trans* person to legally confirm their desired identity. Uzbekistan «noted» all of the UPR 2018 recommendations that urged it to include gender identity as a protected ground. Even with the presence of the mentioned only option to change one's documents, state-wide stigma and article 120 prevent trans* people from successful realization of that right.

RECOMMENDATIONS:

- 84 Introduce an inclusive legislative framework that would allow all people to enjoy legal gender confirmation of their desired gender without them being forced to undergo compulsory psychiatric examination.
- 85 Bring its national legislation in line with WHO ICD-11 as soon as possible. Specifically, stop defining issues related to gender identity, like gender dysphoria, gender incongruence, and others as mental disorders and bring its national legislation when it comes to mental and sexual health, including issues of sexual orientation and gender identity, in line with ICD-11.
- 86 Update Uzbekistan's legislative framework to promote and allow modern and science-based health-care and support for trans* people during transitioning, any following t medical treatment and legal confirmation documentation procedures.
- 87 Devise and adopt a contemporary, non-discriminatory, and scientifically-based legal gender recognition regulations that would define the framework and procedure for medical services and medical workers when it comes to dealing with trans people who are not undergoing transition but who still require sex-specific medical specialists that would help ensure their highest attainable standard of health while keeping in mind their needs as trans people.

TRADITIONAL VALUES

- 88 Uzbekistan noted 14 recommendations that «it cannot implement either for legal or constitutional reasons or because they go against the letter, spirit or practical application of the legislation in force and the country's national interests»³⁵. The UPR respected Uzbekistan's right to do so. However, all of the said recommendations involve the adoption of effective legislation that would ban and prosecute discrimination based on SOGI. Considering that it is the third time UPR Member States provide this recommendation and Uzbekistan still does not accept it implies its denial to comply with it.
- 89 That being said, UPR is an international instrument created to promote the universality of fundamental human rights and freedoms for everyone across the globe if the respected country has acknowledged its authority. In 2015, 12 UN Treaty Bodies issued its Joint Statement on «Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People». This Statement calls all States to act urgently to end violence against the LGBTI people. Particularly, it states that:
- Failure to uphold the human rights of LGBTI people and protect them against abuses such as violence and discriminatory laws and practices, constitute serious violations of international human rights law and have a far-reaching impact on society – contributing to increased vulnerability to ill health including HIV infection, social and economic exclusion, putting strain on families and communities, and impacting negatively on economic growth, decent work and progress towards achievement of the future Sustainable Development Goals. States bear the primary duty under international law to protect everyone from discrimination and violence³⁶.
- 90 It is unacceptable and illegal even that Uzbekistan keeps invoking «traditional», «cultural», and «family» «values» as the reason for continued discrimination and violence against LGBT. The HRC Advisory Committee's Study A/HRC/22/71 states that «[h]uman rights have moral universality, since human rights are held universally by all persons 'simply because one is a human being', and international normative universality, meaning that human rights are universally accepted by Governments through their commitments and obligations under international human rights law»³⁷. Further, the Study explains that «[n]o one may invoke cultural diversity as an excuse to infringe on human rights guaranteed by international law or limit their scope [...] seek to sanctify differences that run counter to the universality, indivisibility and interdependence of human rights»³⁸.
- 91 EHPV would also like to emphasize that it is not true that homosexuality contradicts the long-established history and culture of Uzbekistan. Criminal prosecution of homosexuality is associated with Russian colonization and Soviet modernization of Uzbekistan. It discharged various local traditions, including «bachabozlik», an ancient Central Asian tradition involving «games» between men which are entertaining and sexual in nature.

³⁵ «Youth and Comprehensive Sexuality Education», UN, https://www.upr-info.org/sites/default/files/document/uzbekistan/session_30_-_may_2018/a_hrc_39_7_add.1_e.pdf

³⁶ «Joint UN Statement on Ending Violence Against LGBTI», OHCHR, https://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF

³⁷ HRC Advisory Committee's Study A/HRC/22/71, https://www.ohchr.org/documents/HRBodies/HRCouncil/Advisory-Com/Session10/A.HRC.22.71_en.pdf

³⁸ HRC Advisory Committee's Study A/HRC/22/71, https://www.ohchr.org/documents/HRBodies/HRCouncil/Advisory-Com/Session10/A.HRC.22.71_en.pdf

The Russian Empire colonization branded this activity as «sodomy», «sin», and «prostitution», although some Russians participated in it to receive «pleasure»³⁹. The Islamic intellectual modernization of Jadidism also supported the prohibition of «bachabozlik»⁴⁰. The Soviet dominion over Uzbekistan demonized the practice and criminalized homosexuality between men⁴¹, which continues to live in Article 120.

- 92 It is contrary to all the international obligations that Uzbekistan has acknowledged for the UPR to allow the State to continue its systemic discrimination and institutional violence against the LGBT. «Traditional values» and «cultural values» centred around hate, discrimination, stigma, and violence towards peaceful and law-abiding citizens that are non-heterosexual or living with HIV have no place in a modern democratic, social, and legal state.

RECOMMENDATIONS:

- 93 Immediately put a stop to veiling state-sponsored homo- and transphobia and consequent arbitrary institutional violence against people based on their sexual orientation and/or gender identity and impunity of hate crimes perpetrators under notions of «traditional», «cultural» and «family» «values».

EDUCATION AND SENSITIZATION

- 94 All of the above-mentioned acts of rights and freedoms violation in relation to LGBT stem from lack of education and awareness. All UN Human Rights Treaty Bodies, as well as UPR, emphasize the importance of comprehensive sexuality education (CSE) in all educational institutions and on all levels⁴². As an NGO working with PLHIV and LGBT and as a result of preparing the present report together with other stakeholders, EHPV can certainly state that CSE is necessary as a mandatory nation-wide action plan.
- 95 CSE, however, should not bolster stereotypical heteronormative behaviour. The UN indicates that to achieve universal access for knowledge and to contribute to improve sexual and reproductive health (including HIV outcomes) for young people, States need to:

- Place gender and human rights at the heart of sexuality education
- Address vulnerabilities and fight exclusion
- Take a positive lifecycle approach to sexuality⁴³.

³⁹ Latypov A., Rhodesc T. and Reynolds L. Prohibition, stigma and violence against men who have sex with men: effects on HIV in Central Asia. *Central Asian Survey*, 2013, Vol. 32, No. 1: 52–65. C. 53-54.

⁴⁰ Peshkova S. A Post-Soviet Subject in Uzbekistan: Islam, Rights, Gender and Other Desires. *Women's Studies*, 2013, Vol. 42, No. 6: 667-695.

⁴¹ Healey D. *Homosexual Desire in Revolutionary Russia: The Regulation of Sexual and Gender Dissent*. Chicago: The University of Chicago Press, 2001. C. 160.

⁴² «Youth and Comprehensive Sexuality Education», UN, <https://www.un.org/esa/socdev/documents/youth/factsheets/youth-sexuality-education.pdf>

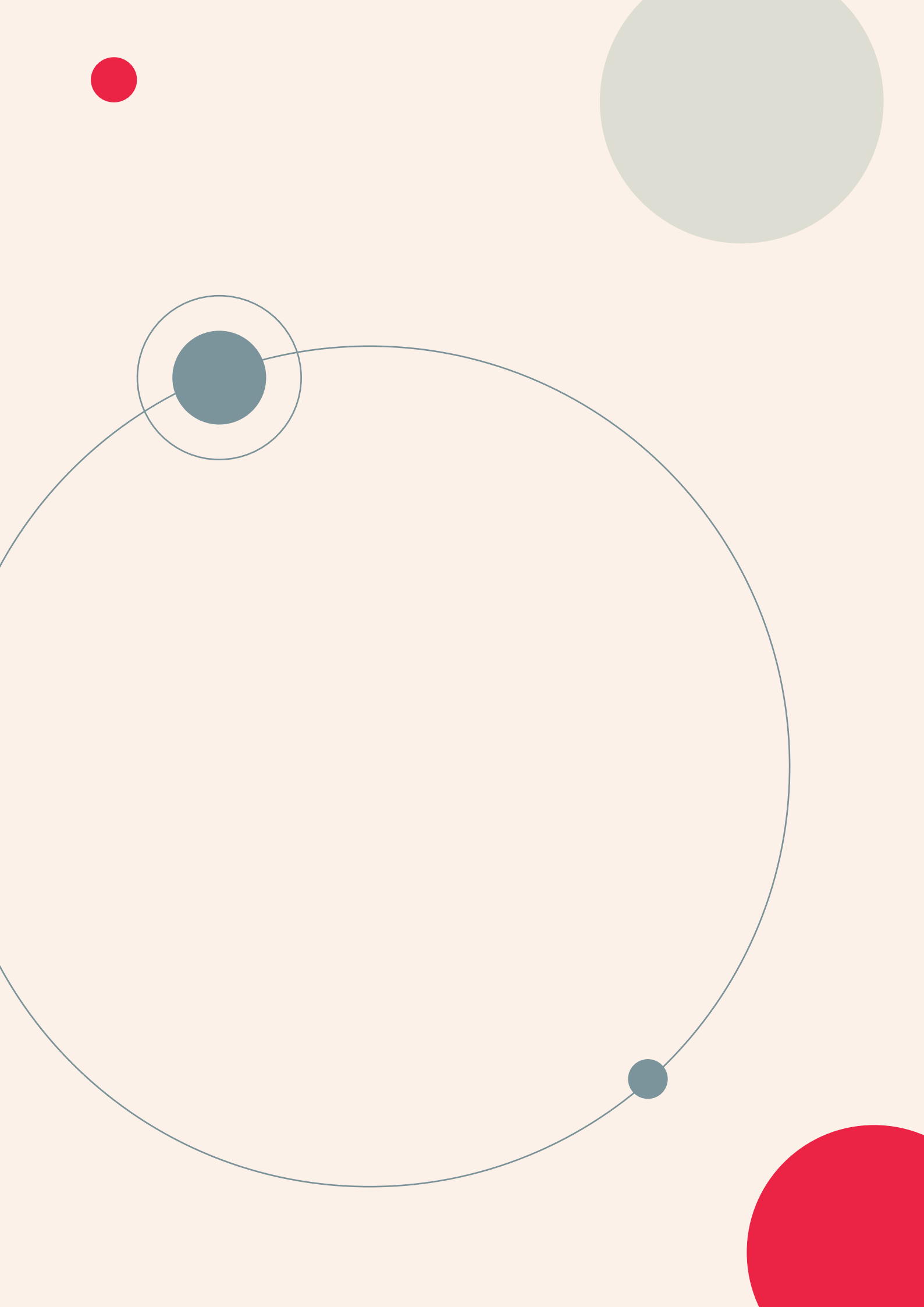
⁴³ Ibid.

- 96 Right to education is inalienable from the right to the highest attainable standard of physical and mental health: «For example, the right to sexual and reproductive health, combined with the right to education (articles 13 and 14) and the right to non-discrimination and equality between men and women (articles 2 (2) and 3), entails a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age-appropriate»⁴⁴.
- 97 Uzbekistan accepted several recommendations (101.154, 101.47) that urge the State to adopt legal and political measures to improve access to comprehensive sexual education, as well as to continue its efforts on human rights education and training for the benefit of civil servants and authorities. The current approach to sexual education as an instrument of strengthening a heteronormative family exclusively while ostracizing all other forms and shapes of love, consent, and sexual freedom does not do Uzbekistan or its nation any justice. The same goes for human rights education of law enforcement and medical workers. Such an approach is not scientifically- or life skill-based and only fosters hate and illegal discrimination against people based on their sexual orientation and gender identity.

RECOMMENDATIONS:

- 98 Devise and adopt a national action plan to educate, raise the awareness, and sensitize staff of educational institutions of all levels and the general public about issues of sexual orientation, gender identity, human rights and specific needs of LGBT people, including those living with HIV, as a means of tackling discrimination and stigma that befall LGBT people.
- 99 Develop a national strategy for comprehensive sexuality education that is scientifically accurate, age-appropriate, gender-sensitive, and life skills-based, which would conform to contemporary views on sexuality, sex health, issues of sexual orientation and gender identity, and other knowledge and skills that would allow Uzbekistan children and youth to make informed decisions when it comes to their sexuality and life choices.

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 ⋮⁴⁴ *General Comment No.22*, Committee on Economic, Social, and Cultural Rights, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdlmnsJZZVQfQejF41Tob4CvIjeTiAP6sGFQktiae1v-lbbOAekmaOwDOWsUe7N8TLm%2BP3HJPzjHySkUoHMavD%2Fpyfcp3YlZg>





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