



**ANALYSIS
OF THE NATIONAL LEGISLATION
OF THE REPUBLIC OF UZBEKISTAN
RELATED TO SOGI AND HIV**

2022
ECOM



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ABBREVIATIONS

CC RUz Criminal Code of the Republic of Uzbekistan

ECOM Eurasian Coalition on Health, Rights, Gender and Sexual Diversity

EECA Eastern Europe and Central Asia

HC Hate crimes

HIV Human immunodeficiency virus

LGBT Lesbian, gay, bisexual, and trans* people

MSM Men who have sex with men

NLA Normative and legal act

NGO Non-governmental organization

ODIHR Office of Democratic Institutions and Human Rights

PLH People living with HIV

RUz Republic of Uzbekistan

SOGI Sexual orientation and gender identity

WHO World Health Organization



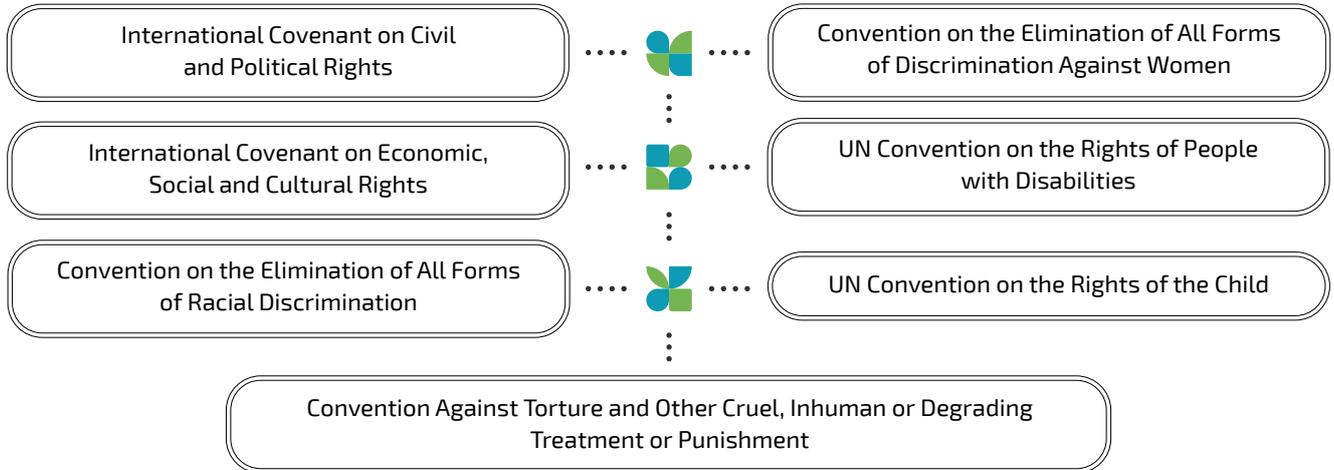
The purpose of this comparative analysis is to identify legal barriers that affect the quality of life of lesbian, gay, bisexual and trans* people (LGBT) and people living with HIV (PLH). The Eurasian Coalition on Health, Rights, Gender and Sexual Diversity (ECOM) developed a methodology and survey, which was completed by international experts on Uzbekistan. The following were used to analyze legal practices: judicial practice, reports from activists, statistics from partner organizations, cases documented by ECOM, and publicly available data.

Legislation and law enforcement practice were examined in relation to their compliance with international standards on human rights and freedoms, as well as in terms of the actual ability to obtain protection of the rights guaranteed by national and international law.

Based on the data obtained, a list of recommendations was compiled for the state and for representatives of international organizations. This information can be useful when planning advocacy processes to promote the rights of LGBT people and PLH, as well as for removing barriers that limit their access to protection of their rights and freedoms.



INTERNATIONAL HUMAN RIGHTS STANDARDS RATIFIED BY THE COUNTRY¹



RECOGNITION OF THE INDIVIDUAL COMPLAINT PROCEDURE



USE OF THE UN SHADOW REPORT MECHANISM IN 2020-2022 WHERE THE LGBT COMMUNITY IS MENTIONED



ECOM submitted shadow reports on LGBT rights to committees. The submission of reports directly by local initiatives is not possible due to political pressures against LGBT people. To date, there are no officially registered LGBT organizations in Uzbekistan.

The Republic of Uzbekistan is a member of the OSCE, which gives civil society the right to participate in hate crimes monitoring in cooperation with the Office for Democratic Institutions and Human Rights (ODIHR). The state does not provide any official data; however, international organizations provided data on 12 cases of hate crimes in 2020, of which 9 were based on the SOGI of the victims².

¹Information available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=189&Lang=-RU

² Full data for 2020 in the ODIHR database is available at: <https://hatecrime.osce.org/index.php/ru/uzbekistan>

LAWS	YES	NO
PROTECTION FROM DISCRIMINATION, HATE SPEECH, HC		
Provision on the prohibition of discrimination in the Constitution		✗
Separate law defining and prohibiting discrimination, including based on SOGI		✗
Provision on hate crimes in the CC of Uzbekistan		✗
Provision on hate speech		✗
RIGHT TO HEALTH		
Is there a separate law on the rights of PLH prohibiting discrimination?		✗
Prohibition on migration or entry to the country for PLH		✗
Criminal liability for the intentional/unintentional transmission of HIV	✓	
Prohibition on blood donation by MSM		✗
Legislatively enshrined procedure for legal transgender transition		✗
Possibility of legal transgender transition without the participation of third parties (courts, medical commissions)		✗
Mandatory medical intervention (hormone therapy, surgery) for transgender transition	✓	
RIGHT TO PRIVATE AND FAMILY LIFE		
Recognition of same-sex partnerships at the legislative level		✗
Criminalization of voluntary homosexual relations	✓	
Trans* people allowed to enter into heterosexual marriages after legal transgender transition	✓	
Adoption for same-sex couples		✗
Adoption for single LGBT people	✓	
Adoption for PLH*		✗
RIGHT TO FREEDOM OF SPEECH AND PEACEFUL ASSEMBLY		
Legislation regulating the process of holding peaceful assemblies	✓	
Permission from the authorities obligatory for holding a peaceful assembly	✓	
Prohibition on peaceful assemblies for LGBT people		✗
Fines for holding a peaceful assembly without the agreement of the authorities	✓	
Law «on the prohibition of gay propaganda»		✗
Attempts to introduce draft bills limiting the freedom of speech of LGBT people, including bills «on the prohibition of gay propaganda»		✗
FREEDOM OF ASSOCIATION AND NGO FUNDING		
Registration of LGBT public organizations		✗
Are there legal restrictions on the activities of registered NGOs?	✓	
Opportunity to receive donor support from international organizations and foundations		✗
State funding of HIV services for LGBT people		✗
Opportunity for NGOs to receive funding from the national and/or local budgets		✗



INTRODUCTION

The Republic of Uzbekistan is an independent, secular state in Central Asia. It is one of two EECA countries that have not yet decriminalized same-sex sexual activity between adult men³.

According to Freedom House's annual freedom rating, Uzbekistan has slightly improved its position over the past years. In 2019, the country received 9 out of 100 possible points, and 11 points in 2022⁴. Uzbekistan still remains an unfree state, ranking 189th out of 209 countries and territories.

In the 2022 «Reporters Without Borders» press freedom ranking, Uzbekistan ranked 133rd out of the 180 countries surveyed, up 24 places compared to 2021⁵. However, there has been little improvement in relation to freedom of speech. Only state media outlets exist in the country. Independent media outlets that report on Uzbekistan are often located outside the country, including due to security reasons.

Uzbekistan has ratified most of the primary UN documents in the field of human rights, but has not brought national legislation in line with international law. Although the preamble of the Constitution of the RUz⁶ states that the country recognizes the primacy of universally recognized norms of international law, Uzbekistan still refuses to decriminalize homosexual relations between men.

The state submits reports to UN treaty bodies and reports under the Universal Periodic Review mechanism. In 2019, when submitting its fifth periodic report to the Human Rights Committee, Uzbekistan stated that it would not repeal Article 120⁷ of the CC RUz, because «**this is contrary to the traditions of the multinational people of Uzbekistan, the values of the family and national customs that have evolved over thousands of years, and will cause widespread objection from the population**»⁸. In 2020, the Committee⁹ once again recommended repealing Article 120 and adopting effective measures to combat hate speech, discrimination, and hate crimes against LGBT people. These recommendations have not been implemented.

Criminal prosecutions and the lack of alternative media force LGBT people to go underground, where it is almost impossible to hold advocacy or activist events. Civil society in Uzbekistan is poorly developed compared to other Central Asian countries.

³ Second country: Turkmenistan.

⁴ Information on Uzbekistan available at: <https://freedomhouse.org/country/uzbekistan/freedom-world/2022>

⁵ Full information available at: <https://rsf.org/en/country/uzbekistan>

⁶ Constitution RUz available at: <https://lex.uz/docs/35869>

⁷ Article 120 — Besoqolbozlik (sodomy) is a discriminatory term. Voluntary sexual relations between men is punishable by restriction of freedom from 1 to 3 years or by imprisonment of up to 3 years. CC RUz available at: <https://lex.uz/docs/111457>

⁸ CCPR/C/UZB/5 para 69, available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRi-CAqhKb7yhsj07MlyGKLOR0JAcDdF0t9%2bwMAZOAtiVSdHhMGWh53blbegNCbaUVRPlykHTnvrYG%2fLgxKOh6XEmf3%2bAu-J21V69eYMElVgoJ4br774wyrAK>

⁹ CCPR/C/UZB/CO/5 para 11, available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRi-CAqhKb7yhsj07MlyGKLOR0JAcDdF0t9%2fmNbr457d5EDo002gGTLkDDd0XlnHhi3Dnhj0dNPkjrCbd7Cj%2fy2HaxWUSM-eLwEAlc3RzOz4e5%2b4Mld7uEr%2bNJ>

According to Freedom House's annual rating, Uzbekistan received a score of 1 for its level of freedom of association and organization, lagging behind other countries in the region, such as Kyrgyzstan, Kazakhstan and Tajikistan, in relation to this indicator¹⁰.

Human rights activists in Uzbekistan are either not willing to speak openly about hate crimes and repression based on sexual orientation and gender identity, or speak negatively about LGBT people in accordance with the policy of the country. In 2022, ECOM registered two cases where human rights defenders violated the rights of LGBT people. In one case, a human rights activist disclosed the victim's SOGI to his colleagues and engaged in hate speech, after he had previously turned to her for help on a case related to SOGI. In the second case, an activist from the «NeMolchiUz» [***Don't be silent Uz***] movement published posts using hate speech, and called for gay men to be handed over to the authorities. These cases demonstrate that LGBT people are marginalized even within the human rights movement.

¹⁰ Available at: <https://freedomhouse.org/country/uzbekistan/freedom-world/2022>



LEGISLATION AND LAW ENFORCEMENT PRACTICE



CHANGES IN LEGISLATION BETWEEN 2020-2022

In August 2020, a draft law on assemblies was published, which has not yet been adopted. The draft law retains the permissive nature of assemblies, but imposes stricter rules related to prohibitions on peaceful assemblies. In the proposed version of the law, peaceful assemblies cannot be held on the eve of elections, in the territory of cities where international events of national importance are held, or where preparations are being made ahead of such events. In addition, the draft law prohibits the holding of peaceful assemblies near the administrative buildings of state and executive authorities, court buildings, diplomatic missions, and international organizations.

In August 2022, the Ministry of Internal Affairs of Uzbekistan proposed to approve a procedure for compulsory medical examination of persons suspected of being infected with HIV. The draft resolution of the Cabinet of Ministers was submitted for public discussion and contains discriminatory provisions on forced examination of representatives of various groups, including gay and bisexual men, as well as those who had contact with these groups¹¹. Compulsory medical examination is a violation of human rights, and does not result in any positive changes in the fight against HIV, but rather worsens the situation.

The World Health Organization (WHO) and UNAIDS, in a joint statement¹² spoke out against compulsory HIV testing, and stressed that HIV testing must always respect personal choice and human rights, and adhere to ethical principles and public health approaches.

In addition to compulsory testing, it is provided that the authorities keep records of people included in the «risk group» in order to prevent «moral and spiritual decay among the population». The Uzbek authorities will have additional leverage over the LGBT community, people living with HIV, and any citizens who are objectionable to the authorities, since the draft bill covers a wide range of population groups and uses abstract language.

¹¹ Information available at: <https://mediazona.ca/news/2022/08/30/prinuditelno>

¹² https://www.unaids.org/sites/default/files/media_asset/2017_WHO-UNAIDS_statement_HIV-testing-services_en.pdf



PROTECTION FROM DISCRIMINATION, HATE SPEECH, HATE CRIMES

The Constitution of Uzbekistan does not explicitly mention the prohibition of discrimination, however equality is ensured by law¹³. The Republic lacks the necessary legislation to prevent hate crimes, hate speech and discrimination.

At the same time, it is worth noting the inclusion of a clause on studying the need to adopt a law «**On Equality and Non-Discrimination**» as part of the National Action Plan for the Implementation of the Concluding Observations and Recommendations of the UN Committee on the Elimination of Racial Discrimination for 2020-2022¹⁴. However, there is no information in open sources about this process.

Legislation related to people living with HIV does not meet international standards and contains direct discrimination. Under the framework of the Law «**On counteracting the spread of the disease caused by HIV**»¹⁵, persons who marry before the age of 50, as well as persons whose sexual partners have been diagnosed with HIV, are subject to mandatory medical examination¹⁶.

In Uzbekistan, there is a practice of compulsory HIV testing of migrants. Medical examination often takes place with the participation of medical workers, district police officers, employees of internal affairs bodies and local governments (mahalla), and violates the principles of confidentiality and medical secrecy¹⁷. Involving police officers and neighbors in testing is a violation of the right to health enshrined in the International Covenant on Economic, Social and Cultural Rights, as well as in WHO documents.

The CC RUz does not distinguish between intentional and unintentional transmission of HIV. According to Article 113, «**knowingly placing someone in danger of infection or infecting someone with HIV/AIDS**» is punishable by imprisonment from five to eight years. This means that PLH who engage in sexual relationships are at risk of prosecution, regardless of whether:

- they transmitted HIV;
- they told their partner they were infected with HIV.

In 2022, ECOM recorded a case where an HIV-positive gay man received 6 years in prison under articles 120 and 113 of the CC RUz. He was convicted of transmitting HIV, despite the fact that he had previously warned his sexual partner about his HIV status and was also on ARV therapy.

¹³ Article 117, available at: <https://lex.uz/docs/35869>

¹⁴ Decree of Uzbekistan on the National Action Plan for the Implementation of the Concluding Observations and Recommendations of CERD for 2020-2022, section 2, paragraph 2-7 <https://lex.uz/docs/5091688>

¹⁵ Law available at: <https://lex.uz/docs/2240472?ONDATE=18.05.2022>

¹⁶ Article 15 of the Law «On counteracting the spread of the disease caused by HIV»

¹⁷ The cases are available in ECOM's report «As if on another planet: gay and bisexual men and trans* people face violence, imprisonment and discrimination in Uzbekistan»: <https://ecom.ngo/library/otchet-budto-na-drugoy-planete-gei-biseksual-jnie-mujchini-i-transludi-podvergautsya-nasilju-turemnomu-zaklucheni-u-i-diskriminatsii-v-uzbekistane>

¹⁸ Criminal Code available at: <https://lex.uz/mobileact/111457>



PRIVATE AND FAMILY LIFE

Article 120 of the CC RUz prohibits voluntary sexual relations between two adult men, and imposes a punishment of 1 to 3 years of restriction of liberty or imprisonment. Men suspected of being homosexual are forced to undergo anal examinations¹⁹. According to Human Rights Watch, authorities subjected at least six men to such examinations between 2017 and 2021. Such treatment can be considered a form of cruel, inhuman, and degrading treatment and can reach the level of torture²⁰. The World Health Organization condemns this practice as a form of violence and torture. The World Medical Association urges healthcare professionals to refrain from conducting such examinations, noting «**deep concern about the complicity of medical personnel in these involuntary and unscientific examinations**»²¹.

In 2021, ECOM recorded a case in Uzbekistan where a police officer arranged a fake date with a homosexual man, who was then charged under article 120. During the investigation, his HIV status was discovered and article 113 was added to his charges. This case demonstrates that intersectional identities can increase the vulnerability of victims. In addition, ECOM has registered cases where law enforcement officials have met gay and bisexual people on the Internet and arranged fake dates, and then committed torture, attacks and blackmail, demanding large sums in exchange for freedom.

The existence of a criminal article on homosexuality negatively affects the access of LGBT people in Uzbekistan to their rights and freedoms. In 2021, ECOM registered a case where a homosexual man was brutally attacked by a homophobe, but the police threatened him with a criminal sentence if he filed a complaint.



PROCEDURE FOR LEGAL TRANSGENDER TRANSITION

Difficulties with changing the gender marker in the identification documents of trans* people remains problematic in Uzbekistan due to the lack of clear transparent procedures.

The possibility of changing one's gender marker is regulated by the Decree of the Cabinet of Ministers of the RUz «**On approval of the rules for registration of civil status acts**». Article 149 of this decree states that changes, corrections and additions to civil status records can be made when a person changes their gender²². However, legislation does not regulate the concept of «**sex change**» and the requirements for trans* people wishing to change their gender marker may vary.

¹⁹ More details at: <https://ecom.ngo/library/otchet-budto-na-drugoy-planete-gei-biseksualjnie-mujchini-i-transludi-pod-vergautsya-nasiliu-turemnomu-zaklucheniui-diskriminatsii-v-uzbekistane>

²⁰ Information available at: <https://www.hrw.org/ru/news/2021/08/06/379459>

²¹ Resolution of the World Medical Association available at: <https://www.wma.net/policies-post/wma-resolution-on-prohibition-of-forced-anal-examinations-to-substantiate-same-sex-sexual-activity/>

²² Full text of the decree available at: <https://lex.uz/docs/3064983>

In addition, article 229 of the Family Code of the RUz states: **«correction of civil status records in case of a change of sex shall be allowed only upon the conclusion of the healthcare authorities»**.

Partners from Uzbekistan note that it is sometimes possible to change documents, using the wording «gender reassignment was performed through hormone replacement therapy». In addition, the person's medical history, examination results, and hormone tests must be submitted.

However, in order to obtain all of these documents, you must go through a long process of medical examination²³: first, a trans* person must apply to a psycho-neurological dispensary at their place of registration, where they begin a questionnaire; then they are sent to a local psychiatrist to determine whether they suffer from any disorders; only in the absence of any disorders, they then consult a psychologist, sexologist, psychiatrist and psychotherapist, and obtain a preliminary diagnosis; then the trans* person is observed for a month in a clinical psychiatric hospital; a final decision on the diagnosis is made by a public advisory board; after receiving a diagnosis, the person can begin hormone therapy; after completion of the medical assessments, the doctor may or may not give a certificate of sex change on the basis of hormone therapy, because there are no clear definitions of the term «sex change»; if a person has received such a certificate, they can change their gender marker..

The whole process can take a long time. At the same time, trans* women who have not changed their gender marker, or who are in the process of changing it, may fall under Article 120 of the CC RUz.



FREEDOM OF ASSOCIATION FOR LGBT PEOPLE AND PLH

A decree of the Cabinet of Ministers of the Republic of Uzbekistan «On measures to further improve the procedure for organizing and holding mass events» is in effect in the country²⁴. According to the decree, organizers are not only obliged to notify the authorities of their intent to hold a peaceful assembly, but also do not have the right to publish information about the planned event before it is approved. Thus, the authorities of Uzbekistan can prohibit the holding of a peaceful assembly, and also ensure that information about planned assemblies will not be available.

Paragraph 59 of the decree states: **«during a mass event, participants are prohibited from using emblems, symbols, flags, banners and other items, which are aimed at destroying the moral foundations of society...»**²⁵.

LGBT symbols or banners that call for equality and non-discrimination for LGBT people may be considered by authorities as symbols that undermine the moral foundations of society.

²² Full text of the decree available at: <https://lex.uz/docs/3064983>

²³ Article on changing documents in Uzbekistan available at: <https://old.hook.report/2020/07/transgender/>

²⁴ Available at: <https://lex.uz/docs/2438875>

²⁵ Full text available at: <https://lex.uz/docs/2438875>

Registration of non-governmental, non-profit organizations requires permission, which is contrary to the concept of freedom of association and assembly. At the same time, participation in unregistered organizations is punishable by restriction of freedom from 2 to 5 years, and inducement to participate in an unregistered organization is punishable by imprisonment from 1 to 3 years²⁶.

All this makes it impossible to register an LGBT organization or hold a peaceful assembly for LGBT people, as people from the community risk criminal penalties.



STATISTICAL DATA

There is no official data on LGBT people in Uzbekistan. Even in the context of the HIV epidemic, MSM are not taken into account, and the size of the group has not been assessed²⁷. On the one hand, the issue of statistical data may be related to repressive legislation, according to which people who have been diagnosed with HIV are required to disclose the details of their sexual partners who are then forced to be tested for HIV. If a MSM reveals that he is a member of this group, he can be imprisoned under Article 120. On the other hand, the Republic of Uzbekistan does not want to speak openly about LGBT people and does not collect any data on this group.

The Global Commission on HIV and the Law notes that punitive laws targeting key populations make them more vulnerable to HIV²⁸. In all countries where reliable epidemiological data is collected, empowered communities are much better placed to lobby for changes in national HIV responses in line with community needs²⁹.

²⁶ Article 216 CC RUz. Available at: <https://lex.uz/docs/111457>

²⁷ For more information, see the brief on the HIV situation among MSM and trans* people in Uzbekistan, ECOM, 2019: <https://ecom.ngo/resource/files/2021/05/kratkaya-spravka-o-situatsii-s-vich.pdf>

²⁸ Global Commission on HIV and the Law, 2012 <https://www.unaids.org/ru/resources/presscentre/featurestories/2012/july/20120711lawcommission>

²⁹ Implementing comprehensive HIV and STI programmes for men who have sex with men. Practical guidance, 5 p., <https://ecom.ngo/resource/files/2021/05/realizatsiya-kompleksnih-programm-po-voprosam-ipp-p-s-mujchinami-imeuschimi-seks-s-mujchinami.pdf>



CONCLUSIONS

Expectations of an improvement in the human rights situation after the death of the first President Karimov and the arrival of the new President Mirziyoyev did not materialize. The Republic of Uzbekistan continues to repress LGBT people, and to violate the norms of international law and the obligations assumed by the country.

Uzbekistan is a member of the OSCE, but does not report on hate crimes. However, civil society has the opportunity to provide relevant data. In 2020, out of 12 cases submitted by civil society, 9 involved LGBT people.

In 2023, Uzbekistan will report under the Universal Periodic Review, and civil society will need to coordinate efforts to ensure that the issue of decriminalization of same-sex sexual relations between adult men is at the top of the agenda.

As part of the analysis of legal barriers, international partners filled out a form to evaluate two sections: «Legal barriers» and «Protection of rights». Each of the sections included a set of questions that could be answered «yes» or «no», for which a score of either 1 or 0 was assigned. Each component was assessed according to various aspects, which increases the objectivity of such an assessment and allows for an evaluation of the level of existing legal barriers and their impact on the LGBT community in practice. The higher the score, the more barriers exist in the country.

The Republic of Uzbekistan received 35 points out of 60, with each point indicating the presence of a certain barrier. Accordingly, there are serious legal barriers in Uzbekistan and there are no effective mechanisms for protecting the rights of LGBT people. Thus, out of 34 possible points in the «Legal barriers» section, Uzbekistan received 16 points, and 19 out of a possible 26 points in the «Protection of rights» section.

Barriers faced by lgbt people in uzbekistan



As a result, discriminatory repressive legislation has left LGBT people without effective protection tools, and hate crimes against members of this group can be committed with near impunity.



RECOMMENDATIONS



TO THE REPUBLIC OF UZBEKISTAN

- Decriminalize sexual relations between adult men;
- Decouple intentional and unintentional transmission of HIV in legislation, with the second exempted from criminal prosecution;
- Abolish criminal liability "for putting someone at risk of HIV infection": this wording can be used against all PLH;
- Adopt an anti-discrimination law that includes SOGI as a protected ground, and involve civil society in the process of developing such a law;
- Collect data on the number of MSM and the percentage of HIV-positive MSM within the group;
- Put an end to forced anal examinations, a practice that violates human rights;
- Put an end to the practice of forced HIV testing, as well as non-compliance with confidentiality standards in HIV testing.



TO INTERNATIONAL ORGANIZATIONS

- Support civil society in promoting human rights;
- Carry out advocacy at the international level for the decriminalization of Article 120 of the CC RUz.

