



LEGISLATIVE ANALYSIS RELATED TO LGBT RIGHTS AND HIV IN TURKMENISTAN

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The information presented in this review may be useful both for non-governmental organizations and community activists and for the government, when planning advocacy processes, promoting the rights of PLHIV, gay men, other MSM, and trans* people and eliminating the barriers hindering their access to services.

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*Eurasian Coalition
on Male Health*

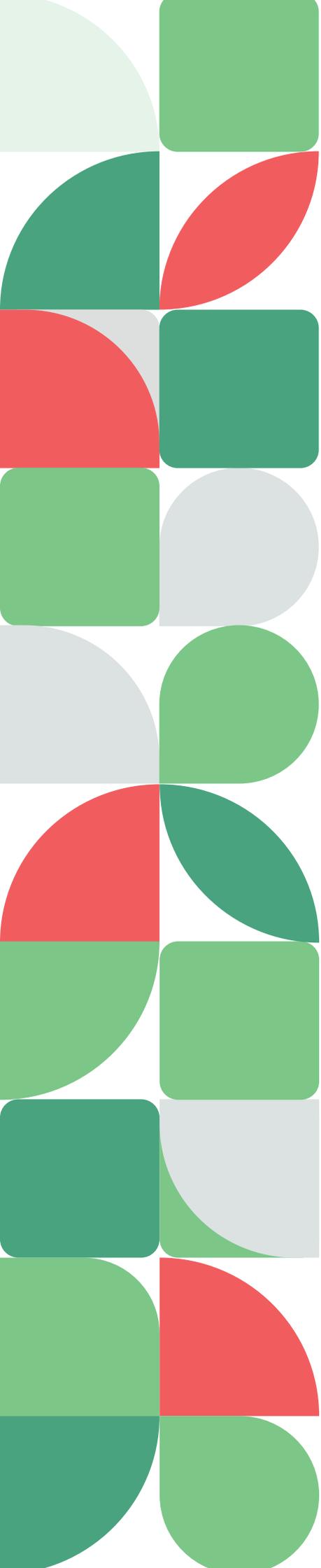


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The goal of this review is to identify the legal barriers for people living with HIV, gay men, other men who have sex with men and trans* people in exercising their rights in different areas. To conduct such review, ECOM developed a methodology and a survey questionnaire, which we filled in with the help of our local partners. When analyzing legal practices, consideration was given both to judicial practices and to the information provided by activists, received from the organizations documenting cases of human rights violations and protection of such rights, news in mass media, and reports of non-governmental organizations submitted to the international agencies.

Both legislation and law enforcement practices were analyzed in terms of their compliance with the international and European standards. Besides, we analyzed the recommendations received by Turkmenistan within the international monitoring mechanisms as well as performance of such recommendations by the government.

To present information on the legislation currently in force, in this review we used extracts from the regulatory documents, which are, unfortunately, not always correct and fail to comply with the international politically correct terminology standards. In this case, the original wording is presented to ensure objective demonstration of the existing regulatory framework and the language used in the matters analyzed. All quotations from the regulatory documents are given in quotation marks.

The information presented in this review may be useful both for non-governmental organizations and community activists and for the government, when planning the advocacy processes, promoting the rights of PLHIV, gay men, other MSM, and trans* people and eliminating the barriers hindering their access to services.

ABBREVIATIONS

AIDS Acquired Immune Deficiency Syndrome

ECOM Eurasian Coalition on Male Health

HIV Human Immunodeficiency Virus

LGBT Lesbian, Gay, Bisexual, and Trans* people

MSM Men who have sex with men

PLHIV People who live with HIV

SOGI Sexual orientation and gender identity

UN United Nations Organization

Trans* People who have a gender identity or gender expression that differs from their birth assigned sex



INTRODUCTION

Turkmenistan is a state in Central Asia, a former republic of the USSR, and is considered to be one of the most closed and repressive countries in the world. In 2019, Turkmenistan was ranked last (180th) in «Reporters without Borders» World Press Freedom Index, behind countries such as Eritrea and North Korea¹.

In Turkmenistan, systematic work is being carried out, including with the participation of international experts, in order to update and improve legislation related to various areas of life. Even at the international level, it is recognized that the laws of the country are not necessarily bad. However, as the Deputy Foreign Minister of Turkmenistan, **Vepa Khadzhev**, once stated «in the East, in addition to laws and regulations, there is also practice»².

In Turkmenistan, there are no independent civil society organizations or associations that could exercise oversight over the application of legislation in particular areas, monitor certain «sensitive» domains, such as prisons or the observance of the rights of convicts, and subsequently provide their assessment and recommendations to government bodies. There is not a single independent body in the country that could conduct research on sensitive topics, such as forced labor, domestic violence, violations of the rights of representatives of the LGBT community, etc. The lack of such organizations is coupled with the fact that it is impossible to obtain any statistical or other data from government agencies. In addition to a number of legislative restrictions on obtaining information³, all existing quasi-independent public organizations in the country (so-called GONGOs) have unspoken prohibitions on their activities.

Turkmenistan is a traditional, patriarchal society. Despite the secular status of the state, the dominant religion (Islam), culture, and customs of the Turkmen define familial and societal behavior, and the relationships between people of the opposite sex. According to tradition, men are the head of the family and have the last word, while women are responsible for everyday life, looking after the home, and for raising children. In Turkmen society, especially in rural areas, parents often determine when and whom their sons should marry; it is becoming increasingly difficult for girls older than 25 to find a husband. In such conditions, deviations from generally accepted «norms», for example, a son's refusal to marry the girl chosen by his parents, is considered a challenge to the family or even to society, and is seen as a violation of unwritten rules.

¹ <https://rsf.org/en/turkmenistan>

² Statement made at a meeting of the UN Human Rights Committee in New York in March 2012 <http://www.hronikatm.com/2012/03/sushhestvuet-eshhe-i-praktika/>

³ For example, section 2 of article 9 of the law of Turkmenistan «On the ethics and official conduct of a civil servant» establishes the liability of civil servants for the disclosure of information obtained in connection with the performance of their official duties http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=15097. Neither this law nor any other clearly defines the scope of application of this provision. It is also unclear from the law what kind of information cannot be disclosed. These restrictions are partly the reason why Turkmenistan remains such a closed country, and why it is impossible to conduct any independent research in the country on a specific topic.

Open, romantic relationships between people of the same sex are completely out of the question. This topic is taboo, and it is not acceptable to discuss it either in the family or in society in particular. Issues related to LGBT community are not addressed in the local media, which is completely dependent on the state, and are not included in the educational programs of secondary schools and higher education institutions. This topic does not exist, and therefore LGBT people do not exist.



Moreover, the legislation of Turkmenistan does not provide any definitions for concepts such as LGBT, MSM, or same-sex couples, relationships, or marriages. Therefore, it is difficult to analyze restrictions, prohibitions, or discrimination in the regulations of the country that affect these particular communities.

The authorities of Turkmenistan have consistently rejected the recommendations of UN Member-States regarding the issue of discrimination on the basis of gender identity and sexual orientation. These recommendations, in particular, relate to the abolishment of criminal liability for consensual sexual relations between adults of the same sex. Turkmenistan, along with Uzbekistan, are the only countries of the former USSR that retain a provision on «sodomy» (Article 135 of the Criminal Code). This article imposes imprisonment for up to two years⁴, however, people accused of sodomy often face charges under other provisions of the Criminal Code as well, such as for the gratification of perverted sexual desires.

During the investigative stage, people suspected of sodomy are subjected to a forensic medical examination, during which the rectum and anal area are examined. Often, the fact that a person's phone number is in the address book of someone suspected of sodomy is enough to have police call that person in for questioning. Threats, humiliation, and torture by law enforcement agencies are commonplace, both during investigations and in detention centers. It should be noted that before **Gurbanguly Berdimuhamedow** came to power in 2007, the article on "sodomy" was almost never enforced⁵.

«[Abolishment of the criminal penalties for sodomy] is contrary to Turkmen culture, and the mentality of the Turkmen people, which are based on traditional family values. Therefore, making such changes to the legislation is unacceptable», stated **Shemshat Atadzhanova**, head of the Department for Democracy and Human Rights of the Turkmen National Institute of Democracy and Human Rights under the President⁶.

At the same time, «sodomy» is clearly understood as sexual intercourse between men. The legislation of the country does not impose penalties for sexual intercourse between women.

⁴ Under certain conditions, the defendant under this article may receive up to 20 years in prison. See: http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=8091

⁵ Information obtained during a series of interviews with former Turkmen citizens sentenced under the «sodomy» article conducted during the development of the film «Turkmenistan: forbidden homosexuality» in 2015.

⁶ Statement made on 8 March, 2017 in Geneva during consideration of Turkmenistan's second periodic report on its compliance with the International Convention on Civil and Political Rights (ICCPR) by the UN Human Rights Committee. More details: <https://habartm.org/archives/6555>

HIV is a taboo subject. Although Turkmenistan has adopted a law «On counteracting the spread of the disease caused by the human immunodeficiency virus (HIV infection)» that provides social guarantees for people with HIV, the authorities of the country do not recognize the spread of HIV, or even its existence in the country. In the UNAIDS statistical profile for Turkmenistan, there are dashes under the main indicators for the spread of HIV, meaning that data is not provided⁷. «Doctors without Borders», which left Turkmenistan in 2009, called HIV one of the diseases «invisible» (to authorities)⁸. Despite the drug use, primarily heroin by injection, widespread among the population in the 1990s⁹, since independence only two cases of HIV infection have been officially registered in the country. One of these patients later became infected with AIDS and died. Unofficially, there are several, if not tens of thousands of cases of HIV in Turkmenistan¹⁰, and several reasons for the spread of the infection:

- ① Injecting drug use in the 1990s and early 2000s;
- ② The prosperity of sex work in the absence of other job opportunities and employment prospects. The services of sex workers were actively used by Turkish construction workers who inundated Turkmenistan in the 1990s;
- ③ The high level of labor migration abroad, primarily to Turkey and Cyprus. Over time, people returned and left again.

Turkmen doctors are still required not to diagnose people with «HIV», but to use the term «Form 50» instead¹¹. People with HIV are kept in separate buildings in infectious diseases hospitals¹² in conditions that do not even meet basic standards. The level of medical care and the attitudes of medical staff towards people with HIV are extremely poor. The knowledge of doctors about HIV infection and transmission is extremely low. Because of this, the level of stigma towards people with HIV is high. Although the law provides for free antiretroviral treatment, there is virtually no treatment at all. People diagnosed with HIV are already being treated for concomitant diseases, such as tuberculosis and pneumonia.

Since 2010, Turkmenistan has been cooperating with the Global Fund to Fight AIDS, Tuberculosis and Malaria. However, such cooperation is only carried out under the "tuberculosis" component of the Global Fund's activities. After all, there is «no HIV problem» in Turkmenistan.

At the same time, some activities are being carried out on HIV prevention among the general population. For example, from 2012-14, the National Red Crescent Society of Turkmenistan (NRCST) reported on the distribution of condoms on World AIDS Day, and on a series of educational seminars and trainings for schoolchildren, students, adolescents from dysfunctional families, members of the military, truck drivers, etc.

⁷ <https://www.unaids.org/en/regionscountries/countries/turkmenistan>

⁸ See page 11 https://www.msf.or.jp/library/pressreport/pdf/100408_TURK-Report_english_FINAL.pdf

⁹ At the end of the 1990s up until 2006, a hit of heroin in Ashgabat cost 15,000 manats, while 1 USD was worth 25,000 manats.

¹⁰ This information was obtained from infectious disease doctors during informal conversations. More details: <https://habartm.org/archives/9168>

¹¹ <https://fergana.agency/articles/107863/>

¹² <https://habartm.org/archives/6925>

According to the information of the NRCST, over 20,000 people were covered by these events with the support of the British Red Cross and Population Services International, and in two cities of the country, a voucher system was implemented in 2013 for receiving low-threshold services in drop-in centers established under the Ministry of Health¹³.

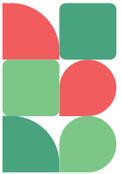
However, the data of the NRCST should be used with caution. Firstly, the report includes all target groups among which the educational activities were carried out, including sex workers and men who have sex with men, however, both of these key populations are criminalized in Turkmenistan. Administrative liability is imposed for engaging in sex work in the country (a fine or imprisonment of up to two years for repeated acts during the course of one year), while there is criminal liability for sexual relations between persons of the same sex. Moreover, the National Program on the Prevention of HIV/AIDS and STIs for 2005-2010 did not provide for prevention work among MSM. Although the timeframe for the implementation of this program already passed years ago, the program for 2012-2016 also failed to provide for work with MSM¹⁴.

Secondly, due to the closed nature of the country, it is impossible to audit the activities of the NRCST, the only national organization receiving large international grants. Thirdly, the executive director of the NRCST, **Gulnabat Dovletova** is the sister of the president of Turkmenistan, and her activities in this post since 2014 have been criticized for actually running counter to the principles of the Red Cross and Red Crescent movement¹⁵.

¹³ See Annual Report of the NRCST for 2012-2014 <https://www.ifrc.org/en/what-we-do/where-we-work/europe/red-crescent-society-of-turkmenistan/>

¹⁴ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=FhOD6sgggzAhFXD9F%2FeKaFMm83LbFY75RhklFGrig%2B4cIKWbLH80GfOAehAeWgQ4WeLOMcUaubmY%2FvM9SwCzkgQC3hiqx9NEJtPyh60Y0jhpbdDNtr6KsYO3g760uptG>

¹⁵ See «По велению сестры. О ситуации внутри Общества Красного Полумесяца Туркменистана» <https://turkmen.news/news/po-veleniyu-sestry-o-situatsii-vnutri-obshhestva-krasnogo-polumesyatsa-turkmenistana/>



DESCRIPTION OF THE EXISTING LEGAL ENVIRONMENT FOR HIV-SERVICES FOR MSM AND TRANS* PEOPLE



CRIMINALIZATION OF SEXUAL RELATIONS BETWEEN MEN

The Criminal Code of Turkmenistan (article 135) imposes imprisonment of up to two years for sexual relations between men. Often, people accused of sodomy face charges under other provisions of the Criminal Code as well, such as for the gratification of perverted sexual desires.

An active «hunt» for homosexual men in Turkmenistan has been ongoing since about 2007, when Gurbanguly Berdimuhamedow came to power. Law enforcement officials often organize ambushes in apartments or places where young people meet, and monitor online forums, dating sites, and chat rooms popular among young people. Men suspected of homosexual relationships are detained and have their phones, calls, and messages examined. Police correspond with other people using the names of the detained men, thereby catching more and more people. Given the high levels of corruption, many young people are forced to pay large bribes to avoid punishment and the disclosure of this information to their friends and relatives.

Those who cannot pay are subjected to moral humiliation and torture during the investigative stage. First, men are subjected to a forensic examination of their rectum and anal area. This examination is accompanied by offensive comments from the forensic experts. Second, the men are tortured during the investigative stage, including by electric shock, so that they reveal the names of other gay men. In prisons, those convicted under article 135 live in separate barracks, and eat, shower, and use the toilet separately from other prisoners. According to reports of those convicted under the "sodomy" article, violence, torture, and humiliation in prisons are common, and there are no effective mechanisms to protect their rights. However, virtually all other prisoners are also deprived of the opportunity to assert their rights through legal mechanisms¹⁶.



MEDICAL EXAMINATION FOR HIV

The law of Turkmenistan «On counteracting the spread of the disease caused by the human immunodeficiency virus (HIV infection)» provides for three types of medical examinations for HIV:



Voluntary (upon the informed consent of the examined person or his legal representative, and conducted confidentially);

¹⁶ According to people convicted under the «sodomy» article.



Mandatory (for example, pregnant women, blood donors and recipients, and others);



Forced (carried out without the consent of the examined person or his legal representative).

It should be noted that compulsory examinations for HIV are a condition for marriage «*in order to create conditions for a healthy family and prevent the birth of HIV-infected children*». However, the law does not directly prohibit HIV-positive persons from marrying. It is assumed that people with HIV (or if one of the partners has HIV) who wish to marry have the risks and consequences of this step explained to them, and that measures are taken to prevent the birth of HIV-positive children. In practice, the requirement of a certificate from an AIDS center is far from mandatory, especially in rural areas. The possibility or impossibility of marriage when one or both partners has HIV has not previously been reported on.

A compulsory examination for HIV is performed on a person «*with respect to whom there are sufficient grounds to believe that he has been diagnosed with HIV infection*». The law does not define what is meant by «sufficient grounds». In addition, the wording of this condition itself is incorrect: if a person has already been diagnosed with HIV, then why should they be forced to be examined again?

Despite the existence of an entire law on counteracting HIV, which describes the scope of its application in detail, it does not mention representatives of the LGBT community or any other vulnerable groups.



PROHIBITION ON GUARDIANSHIP AND TRUSTEESHIP FOR THE LGBT COMMUNITY AND PLHIV

There are no direct regulations in the legislation of Turkmenistan that restrict or prohibit representatives of the LGBT community or PLHIV from acting as guardians or trustees¹⁷. There are no such restrictions in relation to same-sex couples. At the same time, the very definition of the LGBT community is not described in the legislation of Turkmenistan, and same-sex relationships are a priori criminalized.



TRAVEL AND IMMIGRATION OF PEOPLE LIVING WITH HIV TO TURKMENISTAN

According to the requirements of the diplomatic missions of Turkmenistan abroad, citizens of foreign countries entering Turkmenistan for a period of more than 3 months must submit a certificate about their HIV status¹⁸. HIV infection can be the basis for the denial of a visa. At the same time, the migration service of Turkmenistan clarifies that a certificate on the absence of HIV, drug addiction, or sexually transmitted or other diseases may be required if necessary.

¹⁷ See Law «On guardianship and trusteeship» http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=15159

¹⁸ According to information of the Embassy of Turkmenistan in Russia <https://russia.tmembassy.gov.tm/ru/consular-services/obshchaya-informatsiya-o-pravilakh-polucheniya-vizy-v-turkmenistan>

The law «on counteracting the spread of the disease caused by the human immunodeficiency virus (HIV infection)» states that if HIV is detected in foreign citizens and stateless persons living or residing in the territory of Turkmenistan, «issues related to their further stay in Turkmenistan are resolved in accordance with the legislation of Turkmenistan and the international treaties of Turkmenistan». In practice, this means deportation from the country. Organizations such as UNAIDS and UNDP claim that restrictions on the travel and stay of HIV-positive people are discriminatory in nature and do not protect the health of the population of the country where such restrictions apply¹⁹.



CRIMINALIZATION OF HIV TRANSMISSION

Turkmenistan imposes criminal liability for «infection with AIDS» (article 119 of the Criminal Code of Turkmenistan²⁰, the transmission of HIV is not mentioned). The law imposes up to three years of imprisonment for deliberately putting people at risk of contracting HIV. This article does not define the conditions according to which a person knew whether he had HIV or not. Infection of another person with HIV by a person who knew about their status is punishable by imprisonment of up to five years. If the act is committed against two or more persons, or against a minor, the punishment is imprisonment for up to eight years.

The Criminal Code also imposes liability on medical and pharmaceutical workers for HIV infection resulting from the improper performance of their professional duties. The act is punishable by imprisonment of up to five years with a possible deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.

An OSCE expert commentary²¹ states that this article of the Criminal Code actually refers to the danger of infecting another person with HIV, which in turn, puts the victim at risk of developing AIDS.



LAWS ON GENDER IDENTITY/EXPRESSION

(legal change of sex in passport, gender confirmation procedures, etc.)

There are no separate laws on gender identity and/or expression in Turkmenistan. The concepts of «gender identity» and «gender reassignment surgery» are absent both in legal frameworks and in practice. This also applies to gender reassignment procedures in official documents (birth certificates, passports, etc.). In fact, a person who wishes to legally change their sex can only do so abroad. However, they will subsequently have problems with having their documents reissued.

¹⁹ UN News <https://news.un.org/ru/story/2019/06/1358291>

²⁰ Criminal Code of Turkmenistan http://minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=8091

²¹ <https://www.osce.org/ru/ashgabat/117369?download=true>



PROHIBITION ON BLOOD DONATION BY THE LGBT AND PLHIV

There is no direct prohibition on blood donation by representatives of the LGBT community in the legislation of Turkmenistan (as there is no concept of LGBT itself). In accordance with article 13 of the Law «On blood donation», donors can be capable persons between 18 and 60 years of age who do not have any medical contraindications related to donating blood. Blood donors cannot be persons who have diseases that are dangerous to the life and health of the recipient. Although HIV is not explicitly mentioned in this article, the presence of HIV infection in the blood of a person prohibits them from being a blood donor.

Blood donors are obligated to inform medical workers in blood centers about any vaccinations they have received, any operations they have undergone, any infections they have had, and whether they have been in contact with any infectious patients. In accordance with the legislation of Turkmenistan, the donor is liable for the provision of any false information.



STATE GUARANTEES TO HIV-POSITIVE PEOPLE AND THEIR PARENTS

The law of Turkmenistan «On counteracting the spread of the disease caused by the human immunodeficiency virus (HIV-infection)» provides a number of benefits to children with HIV, as well as to their parents. According to article 19, «Social protection of HIV-infected children, their parents, or persons in loco parentis», HIV-infected children under the age of 18 are granted state disability benefits, as well as other benefits provided for by the legislation of Turkmenistan. One of the parents of the child, or a person (in loco parentis) replacing the parents who directly cares for the HIV-infected child in the hospital is given a document certifying their incapacity to work in the manner established by the legislation of Turkmenistan.

The state provides free baby formula to children born to HIV-positive mothers.



INTERNATIONAL AND REGIONAL DOCUMENTS WHICH WERE RATIFIED/SIGNED/PASSED THE PROCEDURE OF ACCESSION BY TURKMENISTAN

- 1 International Covenant on Civil and Political Rights — **ratified**.
- 2 Optional Protocol to the International Covenant on Civil and Political Rights — **ratified**.
- 3 International Covenant on Economic, Social, and Cultural Rights — **ratified**.
- 4 Convention on the Rights of Persons with Disabilities — **ratified**.
- 5 UN Convention on the Rights of the Child — **ratified**.
- 6 International Convention on the Rights of All Migrant Workers and Members of Their Families — **NOT ratified**.

