



LEGISLATIVE ANALYSIS RELATED TO SOGI AND HIV IN TAJIKISTAN

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ECOM



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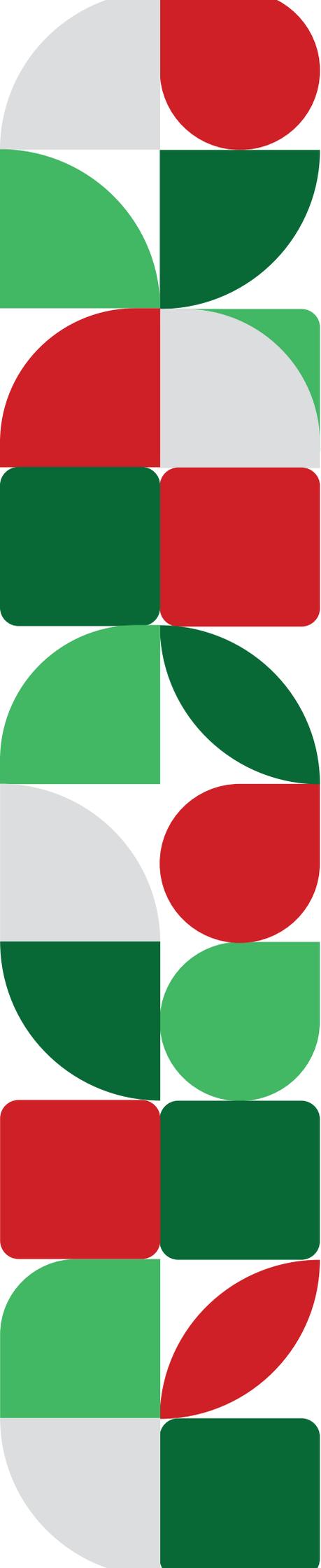


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The goal of this comparative analysis is to identify legal barriers, as well as problems in areas where necessary legislation already exists, but does not fully ensure the realization of the rights and freedoms of gay men, other MSM, and trans* people. For this analysis, ECOM developed a methodology and questionnaire that was completed by local partners in Tajikistan. When analyzing legal practices, judicial practice and government statistics were taken into account, as well as reports of activists, information and statistics from organizations involved in documenting and protecting from human rights violations, press reports, and the reports of non-governmental organizations to international legal bodies.

Legislation and law enforcement practice were considered from two dimensions. The first is their compliance with international standards on human rights and freedoms. The second is the actual ability to obtain protection and realize the rights and freedoms provided for by international obligations and national law.

To provide information on current legislation as part of this analysis, excerpts from normative and legal acts are provided, which, unfortunately, are not always correct and do not always comply with international terminology standards. In this case, the original formulations are used in order to provide an objective reflection of the existing legal framework and language adopted in relation to the issues being considered. All quotes from normative and legal acts appear in italics and have corresponding citations to original document.

The information presented in this document can be useful for both non-governmental organizations and LGBT community activists, as well as for government representatives in planning advocacy processes, promoting the rights of gay men, other MSM, and trans* people, and in overcoming and eliminating barriers that prevent them from accessing services and protecting their rights and freedoms.

ABBREVIATIONS AND ACRONYMS

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

NGO Non-governmental organization

PLHIV People living with HIV

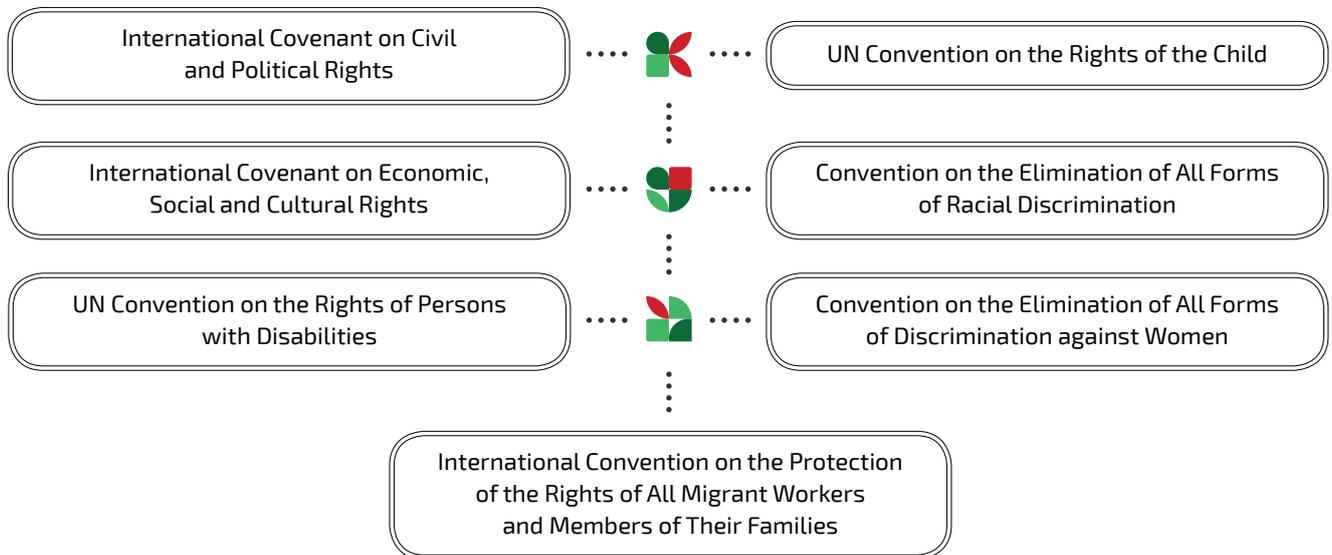
SOGI Sexual orientation and gender identity

WHO World Health Organization

Trans* Describes a person who identifies as transgender, non-binary, or otherwise gender non-conforming, including, but not limited to, transgender, genderqueer, gender-mutable, agender, third gender, bigender



INTERNATIONAL HUMAN RIGHTS STANDARDS RATIFIED BY THE COUNTRY



CIVIL SOCIETY IN THE REPUBLIC OF TAJIKISTAN USES MECHANISMS FOR ALTERNATIVE REPORTING TO UN BODIES



Citizens of the Republic of Tajikistan have the opportunity to use individual protection tools, such as complaints to UN Committees, however no complaints have been submitted so far by PLHIV and/or LGBT people.

The Republic of Tajikistan is also a member of the OSCE, and civil society has the opportunity to work with the Office for Democratic Institutions and Human Rights (ODIHR) in monitoring hate crimes². The government does not provide official data, however, NGOs provided data for 2018 and identified 3 incidents based on SOGI and 10 incidents based on other grounds.

¹ Years of submission of the most recent alternative reports by NGOs are indicated.

² Data for 2018 can be found on the ODIHR website at: <https://hatecrime.osce.org/tajikistan?year=2018>



AT THE NATIONAL LEVEL, INTERNATIONAL HUMAN RIGHTS STANDARDS HAVE BEEN INCORPORATED IN THE FOLLOWING LAWS ³

LEGISLATION	YES	NO
 PROTECTION FROM DISCRIMINATION		
Provision on the prohibition of discrimination in the Constitution,	✓	
separate law defining and prohibiting discrimination, including on the basis of SOGI		✗
Provision on the prohibition of discrimination (unequal treatment) in the field of education		✗
Law on the prohibition of domestic violence,	✓	
including on the basis of SOGI		✗
Provision on hate crimes in the Criminal Code		✗
 RIGHT TO HEALTH		
Separate law on the rights of people living with HIV	✓	
Provision on the prohibition of discrimination (unequal treatment) in the field of health	✓	
including on the basis of SOGI		✗
Prohibitions on immigration or entry into the country for PLHIV		✗
Criminal liability for intentional and/or unintentional transmission of HIV	✓	
Prohibition on blood donation by LGBT people		✗
special screening procedures for LGBT donors		✗
 RIGHT TO HEALTH FOR TRANS* PEOPLE		
Legal gender recognition for trans* people ⁴		✗
Mandatory opinion of a psychiatrist needed for gender reassignment	✓	
Regulated mandatory and optional surgical procedures for trans* transition		✗
Adopted medical protocol for trans* people in accordance with ICD-10		✗
Permission to use international medical protocols for doctors caring for trans* people		✗
Normatively established list of contraindications to gender reassignment		✗

³ How these laws protect PLH and LGBT people in practice is detailed in the next section.

⁴ It is possible to change the full name in one's passport documents without changing the gender marker.

LEGISLATION	YES	NO
 RIGHT TO PRIVATE AND FAMILY LIFE		
Recognition of same-sex partnerships at the legislative level		✗
Recognition through the courts of unregistered cohabitation of same-sex couples as a legal marriage		✗
Criminalization of voluntary same-sex relations		✗
Possibility for trans* people to enter into heterosexual marriages after legal gender change	✓	
Adoption by same-sex couples		✗
Adoption by single LGBT people	✓	
Adoption by PLHIV		✗
Age of consent for voluntary heterosexual and homosexual relations—no difference, 18 years	✓	
 RIGHT TO FREEDOM OF SPEECH AND PEACEFUL ASSEMBLY		
Legislation regulating the procedure for holding peaceful assemblies	✓	
Criteria according to which permission to hold a peaceful assembly may be refused	✓	
Prohibition on peaceful assemblies for LGBT people (formally no)		✗
Penalties for holding a peaceful assembly that has not been coordinated with the authorities	✓	
Law «on the prohibition of gay propaganda»		✗
 FREEDOM OF ASSOCIATION AND FUNDING OF NGOS		
Possibility for NGOs to receive funding from national and/or local budgets	✓	
Real working mechanisms for the distribution of state funds to NGOs working in the social sector, excluding healthcare, for example in the field of education, culture, sports, youth, social protection		✗
Real working mechanisms for the distribution of state funds to NGOs working in the health sector		✗
Obligatory authorization procedure for the registration of a public organization	✓	
Registration of an LGBT public organization		✗
Possibility to receive donor support from international organizations and foundations (yes, but there are strict requirements for public reporting and fines)	✓	



INTRODUCTION



Article 1. The Republic of Tajikistan is a sovereign, democratic, law-based, secular and unitary state. Tajikistan, as a social state, creates the conditions for a decent life and the free development of each person⁵.

As in other EECA countries, modern Tajikistan declares itself as an independent, law-based, and democratic state, which must obey secular laws and adhere to human rights standards in accordance with its international obligations.

In practice, Tajikistan is a former Soviet republic that, after a military coup in 1994, became a presidential republic and can now be called, at a minimum, an authoritarian country, where repression of civil, political, and personal human rights and freedoms is widespread, both for the heterosexual population, and to an even greater degree for LGBT people.

President Emomali Rahmon has been continuously leading the country since 1994. According to the annual Freedom House rating, «Freedom in the World—2020: A Leaderless Struggle for Democracy»⁶, the Republic of Tajikistan scored only 9 out of a possible 100 points, including 0 points for the observance of political rights, and only 9 points for the observance of civil rights and freedoms. Of these, the researchers gave minimal positive ratings for rights such as the right to private family life (for heterosexual people, of course), the freedom of speech (if political opposition is not taken into account), and the possibility of registering a public association (whose activities will be strictly regulated).

In the freedom of the press rating developed by «Reporters without Borders», the Republic of Tajikistan is also at the bottom of the list in 161st place⁷. The authors of the rating note the continuing pressure on freedom of speech, mass self-censorship, the closure of all conditionally independent media outlets, and the persecution of journalists by the intelligence agency. Foreign journalists are either refused accreditation or are forced to work under the constant threat of having their accreditation withdrawn. The blocking of major news sites and social networks is now essentially permanent. In such conditions, the exchange of information between activists and work to mobilize the community is virtually impossible due to self-censorship, fear, and mistrust between people, which are exploited by law enforcement agencies.

⁵ Constitution of the Republic of Tajikistan https://mewr.tj/wp-content/uploads/files/Konst_RT.pdf

⁶ Report for 2019 available in English at: <https://freedomhouse.org/country/tajikistan/freedom-world/2020>

⁷ 2020 Ratings available in English at: <https://rsf.org/en/tajikistan>

After declaring independence in 1991, the Republic of Tajikistan joined the OSCE, and in 1992 the UN. The country signed and ratified the required minimum of international human rights instruments. Some of these documents are reflected in national legislation, such as the Constitution and other laws. However, the process of promoting human rights and freedoms has not been continued in a meaningful way, and does not have a significant impact on the life of LGBT people in the country.

The Republic of Tajikistan is party to the following international instruments:

-  International Covenant on Civil and Political Rights;
-  International Covenant on Economic, Social and Cultural Rights;
-  UN Convention on the Rights of the Child;
-  Convention on the Elimination of All Forms of Racial Discrimination;
-  International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
-  Convention on the Elimination of All Forms of Discrimination against Women;
-  UN Convention on the Rights of Persons with Disabilities.

These documents have all been «transformed» into at least corresponding constitutional guarantees and a number of separate laws. However, as in many other former Soviet republics, there has been a huge gap between declared rights and their actual observance in Tajikistan since its independence.

Formally, the state observes certain deadlines for submitting mandatory reporting on progress in the field of human rights and freedoms to international bodies, submits reports to UN Committees, and also provides some access to information to OSCE structures. However, in practice, such reporting looks like a desecration of progress both in connection with the lack of real progress, and with the subsequent ignoring of the implementation of the recommendations received from international bodies. The formally developed plan of action for the implementation of recommendations of the UN Committee against Torture (CAT) for 2019-2022⁸ contains results of implementation, such as «**the issue has been considered**», «**measures have been taken**», or «**appropriate changes have been made**» without reference to the specific quantitative indicators and an analysis of the qualitative results. In this plan of action, there is no mention of the implementation of CAT's recommendations regarding LGBT people.

There are no such references in other state plans to implement the recommendations of other UN Treaty Bodies, which illustrates the atmosphere of the systematic suppression of rights and violations against members of the LGBT community.

⁸ Full text available in Russian at: [http://www.notabene.tj/Doc/Kaz/compl/CAT-NAP-Russ%20\(2%20\(1\).pdf](http://www.notabene.tj/Doc/Kaz/compl/CAT-NAP-Russ%20(2%20(1).pdf)

This is also confirmed by a statement of the Tajik Ombudsman Zair Alizoda, who stated that the authorities of the Republic of Tajikistan cannot follow the recommendations of international organizations on the rights of representatives of the LGBT community. According to him, the whole issue is «*in the norms of morality and the ethics of relations between people in the country*», «*but this does not mean that people with a non-traditional sexual orientation are persecuted in the Republic of Tajikistan*»⁹.

Another significant problem in terms of assessing the current state of affairs in relation to human rights is the almost complete lack of statistics that would show how certain provisions of international law and corresponding national guarantees are actually applied in practice. The information collected in this document is primarily based on data from public organizations and international structures. Such disregard for the collection and analysis of government statistics also attests to the disregard for human rights and freedoms.

Researchers estimate the total population of the country to be 8.7 million people¹⁰. However, there is no data on the number of LGBT people in the country; official statistics regarding PLHIV are also not reliable and may indicate attempts to diminish the problem and hide the real number of people in need of HIV services¹¹.

It is important to note that despite the declared secular and democratic nature of the country, a large part of the population of the Republic of Tajikistan is Muslim¹², and the influence of religious leaders on public discourse on human rights and on the daily life of the people is quite strong. On the other hand, researchers, in particular the authors of the annual US Department of State Report on International Religious Freedoms¹³, have noted serious restrictions on and violations of the freedom of religion by the state in relation to both religious minorities¹⁴, as well as in relation to the religious majority (restrictions on the registration of religious organizations, regulations on the permitted dress code for believers, and permission for believers to meet).

The country also remains very patriarchal, and the high level of religiosity combined with patriarchal traditions leads to the fact that people, especially young people, are essentially unable to freely choose and declare their own lifestyle, which may differ from the conventional «normal» lifestyle approved by the majority. Combined with other factors, such as the high level of corruption and violence on the part of law enforcement officials, there remains a significant threat of forced disclosure of the SOGI of LGBT people and room for intimidation, extortion, and violence by both government officials as well as family members.

⁹ More information available in Russian at: <https://rus.ozodi.org/a/29744170.html>

¹⁰ The US government estimates the total population to be 8.7 million people (as of mid-2019). Data from the US Department of State's Annual Report on International Religious Freedoms.

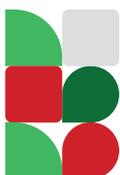
¹¹ Data of the Republican Center for the Prevention and Control of AIDS as of 31 March 2020: Number of people living with HIV and who know their status was 9,072 people. The number of people living with HIV who receive antiretroviral therapy was 7,354 people. The number of people living with HIV and receiving ART who have a suppressed viral load (less than 1,000 copies/ml in accordance with WHO recommendations) was 5,707 people.

¹² According to local scholars, 90% of the country's citizens are Muslim, the majority of which adhere to the Hanafi School of Sunni Islam. Approximately 4% of Muslims are Ismaili Shiites, the majority of which live in the Gorno-Badakhshan Autonomous Region located in the eastern part of the country.

¹³ The full text of the report for 2019 is available in English at: <https://www.state.gov/reports/2019-report-on-international-religious-freedom/tajikistan/>

¹⁴ Religious minorities are considered to be everyone except Muslims, including Shiites and Sufis.

In some EECA countries, including the Republic of Tajikistan, researchers still find it difficult to unequivocally answer the question of what the primary and most significant problem is for people living in these countries – the lack of certain guarantees at the legislative level (including those corresponding to international human rights standards) or the ineffectiveness of existing protection instruments, which were often enshrined in national law against the wishes of the authorities. It is precisely this difficulty that informed the design of the methodology used by ECOM for several years in a row to assess the status and progress, and sometimes regression, of the right to health and other human rights of gay men, other MSM and trans* people in the countries of EECA. In the next section, we will examine in more detail how individual human rights standards for LGBT people are reflected in national legislation and implemented in practice.



PROBLEMATIC ASPECTS OF THE LEGISLATION AND LAW ENFORCEMENT PRACTICES OF THE TAJIKISTAN

At the constitutional level, the Republic of Tajikistan enshrines the principles of equality before the courts and the law, and guarantees the rights and freedoms of every person regardless of nationality, race, gender, language, religion, political beliefs, education, and social or property status.

There is still no separate normative act on the prohibition of discrimination in the Republic of Tajikistan, although a working group was established in 2018 to develop a special antidiscrimination law and to improve legislation to combat discrimination. Unfortunately, during 2018—2019, this group was only able to develop the text of the draft bill, which is on the agenda for discussion in 2020¹⁵. In analyzing national legislation, it can be said that the concept of «*discrimination*» and a prohibition on discrimination in labor relations are enshrined in a number of normative documents¹⁶. In current legislation¹⁷ terms such as «*gender*», «*gender policy*», «*equal opportunities*», and «*gender equality*» can be found. The use of such terms, even just in the text of laws, is quite rare for EECA countries

The Republic of Tajikistan, joining the «Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030», adopted by the UN General Assembly on 8 June 2016¹⁸, has undertaken, among other things, a commitment to eliminating HIV-related stigma and discrimination by 2020.

The extent to which the country has fulfilled these obligations is rather superficial. On the one hand, discrimination against PLHIV is prohibited by legislation, including in the context of access to treatment¹⁹. On the other hand, a confirmed HIV+ status remains as a direct ban on obtaining medical education in the specialties of «General Medicine», «Pediatrics», «Epidemiology, Hygiene, and Public Health», «Dentistry», «Pharmacology», «Medical Diagnostics», «Midwifery», «Nursing», etc.²⁰

In addition, «*infection with the human immunodeficiency virus*»²¹, is still criminalized in the Republic of Tajikistan despite the recommendations of the Committee on the Elimination of Discrimination against Women received in 2018²², including the decriminalization of HIV transmission. Moreover, at the beginning of 2019, the President of the Republic of Tajikistan signed a law, which amended the Criminal Code to increase liability for intentionally infecting another person with HIV²³.

¹⁵ <http://www.notabene.tj/news/146/>

¹⁶ Labor Code of the Republic of Tajikistan, Articles 4, 5, 6.

¹⁷ <https://www.legislationline.org/ru/documents/id/14967>

¹⁸ https://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_ru.pdf

¹⁹ Health Code of the Republic of Tajikistan of 30 May 2017 1413, Articles 163, 165, 167.

²⁰ Order of the Government of the Republic of Tajikistan of 25 September 2018 N 475 «On the list of diseases, which does not give the right to persons with these diseases to study in academic medical institutions».

²¹ Criminal Code of the Republic of Tajikistan of 21 May 1998 N574, Article 125.

²² http://www.ewna.org/wp-content/uploads/2018/11/CEDAW_C_TJK_CO_6_29757_E.pdf

²³ http://www.adlia.tj/show_doc.fwx?Rgn=135526

Despite the fact that there is the possibility to receive free legal aid in the Republic of Tajikistan, PLH can only rely on this if they are included in the list provided for in Article 32 of the Law «On the bar and legal practice»²⁴.

The definition of a hate crime (HC) is not fixed in the criminal legislation of the Republic of Tajikistan, although there are norms that allow us to state in practice that such crimes take place. Thus, the list of aggravating circumstances²⁵ mentions the commission «**of a crime motivated by regional, national, racial or religious hatred, religious fanaticism, revenge for the lawful actions of others...**». The commission of a crime «**on the basis of national, racial, religious, regional hatred or hostility, or blood feud**» is also mentioned in some articles of a special part of the Criminal Code²⁶.

Despite the fact that homosexuality was removed from the International Classification of Diseases by the WHO on 17 May 1990, the Republic of Tajikistan only decriminalized voluntary homosexual relationships in 1998. After more than 20 years, the Criminal Code of the Republic of Tajikistan still contains terms such as «**sodomy (muzhelozhestvo)**» and «**lesbianism**» in articles²⁷, which criminalize «**Violent acts of a sexual nature**», «**Compulsion to acts of a sexual nature**» and «**Sexual intercourse and other acts of a sexual nature with a person under the age of sixteen**».

This is perhaps the reason that the LGBT community has not become more open during this time, and is not willing to publicly defend its rights. As a result, crimes committed against these groups are not investigated as hate crimes. Victims who reveal their status and the real motive for the crime risk being accused.



PRIVATE AND FAMILY LIFE

The Family Code of the Republic of Tajikistan does not explicitly prohibit same-sex marriage. Thus, in the list of circumstances that would prevent a marriage from taking place²⁸, there is no mention of people of the same sex being unable to enter into a marriage. However, if «**the mutual consent of a man and a woman entering into marriage**»²⁹ is taken into account as a condition for marriage, it can be argued that same-sex marriage is not possible.

LGBT people are deprived of the possibility of exercising their right to parenthood. Concepts such as «**motherhood**» and «**fatherhood**» are mentioned in the Family Code of the Republic of Tajikistan twice: «**Family, marriage, motherhood, fatherhood and childhood in the Republic of Tajikistan are under the protection of the state**»³⁰ and «**Issues of fatherhood, motherhood, education, and the upbringing of children and other issues of family life are decided jointly by spouses, based on the principle of equality between spouses**»³¹.

²⁴ https://www.legislationline.org/download/id/7515/file/Tajikistan_Law_on_Advocate_2015_am2016_ru.pdf

²⁵ Criminal Code of the Republic of Tajikistan of 21 May 1998 N574, Article 62.

²⁶ Id., Articles 104, 110, 111, 117, 195(2).

²⁷ Id., Articles 139, 140, 141.

²⁸ Family Code of the Republic of Tajikistan of 13 November 1998 N 682, Article 14.

²⁹ Id., Article 12.

³⁰ Id., Article 1.

³¹ Id., Article 32.

Issues of fatherhood and motherhood in relation to LGBT people (the right to parenthood) are not regulated, including in cases where trans* people change their gender in their documents and have children at the time of doing so. At the same time, representatives of the LGBT community have an opportunity to become parents (single mothers and/or fathers) through the adoption procedure or through the use of assisted reproductive technologies, provided that their sexual orientation and gender identity are not disclosed

Article 91 of the Health Code³² establishes the right of every adult woman (married or unmarried) of child-bearing age to artificial insemination or embryo implantation. At the same time, single women should take into account possible difficulties due to their religious environment. In 2013, the ulema of the Islamic Center of the Republic of Tajikistan issued a fatwa (decision) regarding artificial insemination for Muslims according to which **«women can only use the sperm of their husband, and men can only use the eggs of their wives. If these rules are violated, the procedure of artificial conception will be considered sinful»**³³.

A difficult situation is also arising in relation to the adoption of children by representatives of the LGBT community, even when all other conditions required of adopted parents are met, including that unmarried persons cannot be the adoptive parents of the same child³⁴. In such cases, it must be noted that the adoption of a child can still be refused, if, among other things, the court establishes the grounds for such a refusal taking into account the interests and opinion of the child.

It should be noted that PLHIV are deprived of the possibility of adopting children, since the list of diseases that preclude a person from adopting a child or taking a child under guardianship³⁵, establishes a direct prohibition on the adoption of a child or taking a child under guardianship if the potential adoptive parent has HIV, which deprives PLHIV of their right to fatherhood or motherhood.



LEGAL GENDER RECOGNITION

There is no legal gender recognition mechanism for trans* people in the Republic of Tajikistan. The scope of medical interventions and the procedure for their implementation are not established, and no procedures for changing legal documents have been developed. These circumstances lead to the fact that trans* people must leave the country for surgery and for post-operative hormone therapy. Unable to amend their documents, trans* people are forced to disclose the details of their private life every time they present their passport or other identity documents, for instance, for employment purposes, in government agencies, when crossing the border, etc.

³² Кодекс здравоохранения Республики Таджикистан от 30 мая 2017 года N 1413.

³³ <http://tj.mir24.tv/news/29523>

³⁴ Семейный кодекс Республики Таджикистан от 13 ноября 1998 года N 682, статья 127.

³⁵ http://continent-online.com/Document/?doc_id=30578143#pos=0;146



FREEDOM OF PEACEFUL ASSEMBLY AND MOVEMENT

The Constitution of the Republic of Tajikistan enshrines the right of citizens to participate in meetings, rallies, demonstrations, and peaceful processions as established by law³⁶. The Law «On assemblies, rallies, demonstrations, and street processions» establishes that the organizer of the event must submit an application to the local executive authorities no later than fifteen days before the date of the event, indicating the purpose, type, location, and other information related to the event. Based on the results of the consideration of the application, the following decisions can be made: allow the mass event; propose to the organizer of the mass event to change the time, place, or route of the participants; or prohibit the mass event³⁷.

In practice, the procedure for obtaining mandatory permission to hold a mass event, organized by the LGBT community, can lead not only to a prohibition on holding the event, but also to repressive measures by the government. It is perhaps these factors that have led to the fact that the LGBT community in the Republic of Tajikistan has not yet used this opportunity.

These norms, along with administrative liability for «*the violation of the legislation on assemblies, rallies, demonstrations, and peaceful processions*»³⁸, the norms of the Law of the Republic of Tajikistan «On combating extremism» and criminal liability for «*public calls to carry out extremist activities and public justification of extremism*»³⁹, may have a strong impact on the civil rights of LGBT people.



FREEDOM OF ASSOCIATION FOR LGBT PEOPLE AND PLHIV

The Law of the Republic of Tajikistan «On public associations» requires the mandatory registration of civil associations. The registration of NGOs is carried out by the Ministry of Justice. Even registered NGOs can be shut down for the slightest technical violation. They are required to disclose information about funding from foreign sources, which continues to be the main source of funding for the civil sector in the country. All foreign funds must be registered in a separate government registry, before organizations can gain access to them, and the government monitors the activities supported by these funds⁴⁰.

In 2019, legislative amendments came into force requiring NGOs to maintain websites and openly publish all financial reporting, allegedly to ensure transparency and avoid accusations of «*financial terrorism*» or «money laundering». According to the World Organization Against Torture (OMCT) and the International Federation for Human Rights (FIDH), these amendments and the fact that many authorities now have the power to conduct frequent inspections of NGOs severely restrict human rights defenders⁴¹.

³⁶ https://mewr.tj/wp-content/uploads/files/Konst_RT.pdf

³⁷ Law of the Republic of Tajikistan «On assemblies, rallies, demonstrations, and street processions», Articles 12, 13.

³⁸ Code of the Republic of Tajikistan on Administrative Offenses, Article 106.

³⁹ Criminal Code of the Republic of Tajikistan of 21 May 1998 N 574, Article 307(1).

⁴⁰ Based on data from Freedom House: <https://freedomhouse.org/country/tajikistan/freedom-world/2020>

⁴¹ More information at: <https://www.fidh.org/ru/regiony/evropa-i-central-naya-aziya/tadzhikistan/tadzhikistan-kak-vy-tesnyayut-pravozaschitnikov-iz-tadzhikistana>

Another barrier is the tightening of control over the activities of lawyers in the country. New legislation imposes unreasonably strict criteria for admission to the bar and instructs the body, headed by the Deputy Minister of Justice, to conduct certification and periodic re-certification of lawyers. This provides the executive authorities with additional opportunities to unjustifiably deprive lawyers of their status⁴², which, together with the high level of stigma and homophobia in society as a whole, significantly affects both the number of lawyers and their willingness to work with marginalized groups, including LGBT people. In addition, there have been reports of harassment of human rights defenders and lawyers who provide assistance and support to victims of human rights violations⁴³.

According to local activists, there is not a single LGBT organization registered in the country. There are organizations providing HIV services, including to LGBT people. One of these organizations working with women living with HIV even managed to get funding from the national budget for its work⁴⁴. However, this is an exception rather than a real opportunity for HIV-services projects to rely on systematic support for their work from national or local authorities.



STATISTICAL DATA

At the official level, the amount of data collected is insufficient for the systematic monitoring of human rights violations, or to acquire an understanding as to which groups are vulnerable. In the field of health, data on the number of PLHIV is collected and published by the Ministry of Health (AIDS Center⁴⁵), but this data is not disaggregated, and does not provide a breakdown of all registered cases into subcategories. Therefore, it is not possible to see how many PLHIV belong to the LGBT community, and how many belong to other vulnerable communities. Accordingly, state programs «do not see» and do not take into account the needs of these vulnerable groups. On the other hand, the AIDS Center indicates that the main route of HIV transmission is sexual, primarily through heterosexual contacts (84%), but does not provide data on how HIV is transmitted in the remaining 16% of cases, and where these other cases of non-heterosexual contacts fall among PLH, since there is no further breakdown of LGBT people:

The main route (significantly progressing in recent years) of transmission in new cases of HIV infection is sexual – around 84% (primarily heterosexual contacts).

The situation is even worse in relation to data on the number of complaints of domestic violence — there is no such official data even in relation to women, let alone for LGBT people and PLHIV. There are no statistics on the number of hate crimes or complaints of discrimination.

⁴² Id.

⁴³ More information at: <https://www.dw.com/ru/наргис-закирова-в-таджикистане-правозащитники-нуждаются-в-защите/a-16681410>

⁴⁴ The Committee on Women and Youth Affairs supported an NGO working with women living with HIV. This NGO opened an embroidery workshop in the city of Tursunzade.

⁴⁵ Official statistics on the website of the AIDS Center raises questions about the veracity of the data. More at: <http://www.nc-aids.tj>

These figures are only collected by NGOs, but they do not reflect the full scale of the problem and do not clearly show how the state is involved in solving these issues. In summarizing the findings above, it should be noted that the Republic of Tajikistan is gradually adapting its national legislation, while taking into account international practices in the field of human rights. This has resulted in criminal liability for voluntary homosexual relations being removed from the Criminal Code and to the initiation of the development of an antidiscrimination law. At the same time, a number of issues that are crucial for improving the quality of life of representatives of the LGBT community and PLHIV remain unresolved. Among other things, it is worth highlighting issues related to the lack of proper investigation of hate crimes, the ban on the adoption of children by those infected with HIV, and the lack of a legal gender recognition procedures. To resolve these issues and others as quickly as possible, closer cooperation between the government of the Republic of Tajikistan and NGOs is required.



RECOMMENDATIONS



FOR THE GOVERNMENT OF THE REPUBLIC OF TAJIKISTAN

- 1 Amend Article 17 of the Constitution of the Republic of Tajikistan, expanding the list of grounds protected from discrimination and adding HIV status, sexual orientation, and gender identity.
- 2 Amend Article 62 of the Criminal Code of the Republic of Tajikistan, adding a new item to the list of aggravating circumstances: **«committing a hate crime (hostile attitude) based on the victim's HIV status and/or his sexual orientation and gender identity»**.
- 3 Adopt a law protecting against discrimination that provides for protected characteristics such as HIV status, sexual orientation, and gender identity.
- 4 Remove HIV infection from the List of diseases, which removes the right of PLHIV to study in academic medical institutions.
- 5 Remove HIV infection from the List of diseases that prevent a person from adopting a child or taking a child under guardianship.
- 6 Develop accessible and transparent mechanisms for legal gender recognition for trans* people and provide them with appropriate medical care.
- 7 Simplify and make accessible the procedure for registering and monitoring the work of NGOs, including NGOs providing services to PLH and LGBT people, and guarantee their access to competitions for funding from national and local budgets on an equal basis with other NGOs.



FOR CIVIL SOCIETY ORGANIZATIONS

- 1 Join the working group on the development of the law protecting against discrimination and provide the necessary argumentation for the inclusion of protected characteristics, such as HIV status, sexual orientation and gender identity.
- 2 Analyze the situation in the country in relation to the prohibition on adoption and on obtaining a medical education by PLHIV, develop proposals to the Government of Tajikistan to eliminate these bans.
- 3 Initiate the development of a procedure for legal gender recognition, having preliminary prepared draft proposals that take into account the transparency and accessibility of the procedure.
- 4 Collect data on the number of complaints of discrimination, including hate crimes, disaggregated according to various grounds, including SOGI, and publish such data together with information about what government actions are taken to punish and prevent such human rights violations.

