

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Working Group on Arbitrary Detention; and the Special Rapporteur on the right to privacy

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Excellency,

We have the honour to address you in our capacities as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Working Group on Arbitrary Detention; and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 41/18, 42/22 and 37/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a current initiative to maintain criminalisation of persons of homosexual orientation despite the opportunity, offered by the adoption of a new Criminal Code, to bring Uzbekistan into conformity with its international human rights obligations.**

According to the information received, article 120 of the Criminal Code of the Republic of Uzbekistan (1994) sets out as follows and criminalises "besoqolbozlik" (homosexuality):

Article 120. Homosexuality

Homosexuality, that is, sexual satisfaction of a man with a man without the use of violence - shall be punishable by restraint of liberty from one to three years or imprisonment for a term of up to three years.

We have received information on the wide-ranging impact of this provision in the enjoyment of human rights by persons who are lesbian, gay, bisexual, trans or gender diverse. This information is consistent with the findings of United Nations human rights mechanisms and agencies, which have frequently called attention to the ways in which criminalisation of consensual same-sex relations legitimises prejudice and exposes people to hate crimes, police abuse, harassment, intimidation, blackmail, torture and family violence, and perpetuates discrimination in the enjoyment of various human rights.¹

In light of these significant human rights concerns, the issue was raised in Uzbekistan's fifth periodic report to the Human Rights Committee during its 128th session held from 2 to 27 March 2020. In its response to the list of issues, the Uzbek Government stated that (CCPR/C/UZB/RQ/5, para. 52):

[t]he question of exceptions to article 120 of the Criminal Code and the decriminalisation of sexual acts between men is under discussion in expert

¹ Joint United Nations statement on ending violence and discrimination against LGBTI persons, 2015, available at www.ohchr.org/EN/Issues/Discrimination/Pages/JointLGBTIstatement.aspx, and Joint United Nations Statement on Ending Discrimination in Health Care Settings, 2017, available at www.unaids.org/sites/default/files/media_asset/endingdiscrimination-healthcare-settings_en.pdf. See also, OHCHR, "Born Free and Equal - Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law (Second Edition)", pp 40 – 51, available at https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf.

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.

On 22 February 2021, the Uzbek Prosecutor General's Office published a new draft Criminal Code for public discussion, which still contains the same provision under the new article 154. Also, while the current article 120 is enshrined under "crimes against sexual freedom", the new article 154 will be placed under the newly created chapter of the Code entitled "crimes against family, youth and morality". Allegedly, no explanation is provided in regard to this change.

The deadline for providing feedback is 9 March 2021 and, while comments regarding the deletion of the new article 154 could be confirmed until 25 February 2021, any comments about repealing it have been disabled and cannot be confirmed anymore.

We wish to convey our concern that article 154 in the draft Criminal Code currently under discussion, which would allegedly maintain the criminalisation of consensual same-sex relations between men, would keep your Excellency's Government in violation of the right to be free from discrimination, equality before the law, equal protection of the law, as well as the rights to be protected against arbitrary detention and unreasonable interference with privacy, as reflected, inter alia, in articles 2, 7, 9, and 12 of the Universal Declaration of Human Rights and codified in articles 2 (1), 9, 17 and 26 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Uzbekistan on 28 September 1995. These rights are of universal nature and apply to everyone, irrespective of sexual orientation or gender identity.

The Human Rights Council, in its resolutions 17/19, 27/32, 32/2 and 41/18, expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity. The Independent Expert on protection from violence and discrimination based on sexual orientation and gender identity has concluded, to this respect, that

[t]he criminalisation of consensual same-sex relations between adults of the same sex violates States' obligations under international law, including the obligation to protect privacy and to guarantee non-discrimination. Such violations occur even when the law is not enforced. As such, arrests and detentions on the basis of sexual orientation, gender identity or expression are to be considered arbitrary. [...] Criminalisation of same-sex relations also fuels stigma, legitimises prejudice and exposes people to family and institutional violence and further human rights abuses such as hate crimes, death threats and torture. All such provisions should be repealed.²

The United Nations human rights mechanisms and the High Commissioner for Human Rights have similarly called on States to repeal discriminatory laws used to punish individuals based on their sexual orientation, including in particular laws criminalising homosexuality (See, for instance, A/72/172, para. 59 (g), A/HRC/38/43, para. 90, A/HRC/31/57, para. 69, A/HRC/29/23, para. 79 (a), A/HRC/19/41, para. 84

² A/72/172, para. 32

(d)). The United Nations human rights mechanisms have also called upon States to fulfil their obligations to protect the rights to privacy, liberty and security of the person and to non-discrimination by repealing such laws and have rejected attempts to justify these laws on the grounds of the protection of public health or morals (See, for instance, CCPR/C/50/D/499/1992, paras. 8.5-8.6). In addition, in its practice, the Working Group on Arbitrary Detention regards deprivation of liberty as arbitrary when it constitutes a violation of international law on the grounds of discrimination based on, inter alia, sexual orientation.

We further deem it pertinent to remind your Excellency's Government of the Concluding Observations of the Committee against Torture of 14 January 2020, and the Concluding Observations of the Human Rights Committee of 1 May 2020, in which these Treaty Bodies respectively expressed the concern that the criminalisation of same-sex sexual relations in article 120 of the Criminal Code renders lesbian, gay, bisexual and transgender persons particularly vulnerable to violence by both law enforcement officials and private persons (CAT/C/UZB/CO/5, para. 63), and the concern that it renders lesbian, gay, bisexual and transgender persons unable to report violence and discrimination against them for fear of prosecution (CCPR/C/UZB/CO/5, para. 10). In light of this, the Committees recommended that Uzbekistan repeal article 120 of the Criminal Code (CAT/C/UZB/CO/5, para. 64 and CCPR/C/UZB/CO/5, para. 11 (C)).

We would also like to specifically draw the attention of your Excellency's Government to article 17 of the ICCPR, which prohibits any "arbitrary or unlawful interference" with the right to privacy. In this regard, the Human Rights Committee stated in *Toonen v. Australia*, Communication No. 488/1992 (CCPR/C/50/D/488/1992) that the criminalisation of same-sex relation was an arbitrary infringement of the victims' right to privacy, and therefore constituted a violation of article 17.

In view of the aforementioned observations, we respectfully urge your Excellency's Government to remove the new article 154 from the Criminal Code completely and bring its legislation, in what concerns this particular aspect, into conformity with international human rights law.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information.
2. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to implement the recommendations by the United Nations human rights mechanisms referred to above, and to bring its legislation into compliance with international human rights law to ensure its citizens are not criminalised and discriminated against based on their sexual orientation or gender identity and to guarantee their legitimate right to privacy.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Victor Madrigal-Borloz
Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Joseph Cannataci
Special Rapporteur on the right to privacy