

# **Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Tajikistan:**

## **A Shadow Report**

**Submitted for consideration at the 108<sup>th</sup> Session of the  
United Nations Human Rights Committee**

**July 2013, Geneva**

Submitted by:

- Heartland Alliance for Human Needs & Human Rights
- Equal Opportunities

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## I. Introduction

This report is a joint submission by the Heartland Alliance for Human Needs & Human Rights (Heartland Alliance) and Equal Opportunities to the United Nations (UN) Human Rights Committee (“HRC” or “the Committee”) on the occasion of its consideration of the State of Tajikistan’s implementation of the International Covenant on Civil and Political Rights (“the Covenant” or “the ICCPR”) in Geneva, Switzerland on July 8 though 26th 2013.

Tajikistan gained its independence from the Soviet Union in 1991, and subsequently underwent a civil war that lasted until 1997, leaving the country in an unstable economic condition.<sup>1</sup> It became a party to the International Covenant on Civil and Political Rights on January 4, 1999.<sup>2</sup> The government of Tajikistan submitted its second periodic report in 2011,<sup>3</sup> which will be reviewed by the Human Rights Committee at its 108<sup>th</sup> session, taking place July 8-26, 2013.

The Secretary-General has repeatedly stressed his commitment to lesbian, gay, bisexual, and transgender (LGBT) rights, describing it this year as “one of the great, neglected human rights challenges of our time,” and urging the UN to “document this problem and share information with States on a regular basis for discussion and action.”<sup>4</sup> In June 2011, The Human Rights Council adopted resolution 17/19 on human rights, sexual orientation and gender identity,<sup>5</sup> which officially recognized violence against LGBT individuals as a violation of the Universal Declaration of Human Rights’ first article. The resolution also expressed the Council’s “grave concern” about violence against LGBT individuals and commissioned a report by the UN High Commissioner, which found discrimination and violence based on sexual orientation and gender identity to be a worldwide phenomenon.<sup>6</sup> This report examines the status of human rights for LGBT persons in Tajikistan.

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<sup>1</sup>See Civil Rights Defenders, *Human Rights in Central Asia*, Jan. 1, 2012, available at <http://www.civilrightsdefenders.org/country-reports/human-rights-in-central-asia/>.

<sup>2</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, 1057 U.N.T.S. 407, [hereinafter ICCPR], available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

<sup>3</sup>See *Second Periodic Report of Tajikistan on Implementation of Obligations under the International Covenant on Civil and Political Rights*, U.N. Doc. CCPR/C/TJK/2 (Sept. 22 2011) [hereinafter *Second Periodic Report of Tajikistan*], available at <http://www2.ohchr.org/english/bodies/hrc/hrcls108.htm>.

<sup>4</sup>U.N. Secretary-General, *Video Message to the Oslo Conference on Human Rights, Sexual Orientation and Gender Identity* (Apr. 15, 2013), available at <http://www.youtube.com/watch?v=7uaHZWCgGss>.

<sup>5</sup>See G.A. Res. 17/19, UN Doc. A/HRC/17/L.9/Rev.1, (June 25, 2011), available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/17/19](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/19).

<sup>6</sup>See *Report of the UN High Commissioner for Human Rights on Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation or Gender Identity*, UN Doc.

## II. Executive Summary

Although Tajikistan has acceded to the ICCPR's guarantee of human rights for all people without discrimination, and has made these same guarantees in its Constitution, LGBT people in the country do not enjoy many of the freedoms and securities to which they are legally entitled.<sup>7</sup> Because of a strong cultural animus toward LGBT people, they are compelled to live secretive double lives, or risk violent retribution. Gay men and women have been victims of public harassment, beatings, and rape due to their sexual orientation, and have virtually no legal recourse for the dehumanizing acts perpetrated against them, since some public officials also hold homophobic attitudes.

Same-sex sexual activity is not officially illegal, but it is still treated as a crime by police officers who target gay men and women for arrest. Once detained, LGBT people are at heightened risk of abuse by officers, and are especially vulnerable to demands for money, fearing that their sexual orientation will be revealed if they do not comply.

Transgender people living in Tajikistan do not have access to the medical procedures they may require. This being the case, they must travel abroad to obtain treatment. The State, however, does not recognize the individual's gender identity, which makes obtaining a passport reflecting a transgender person's gender impossible. At border crossings and in any other situations requiring State documentation, transgender people are therefore vulnerable to humiliating invasions of privacy and other forms of abuses. Because of these and other violations of the rights of LGBT persons, Tajikistan is in violation of Articles 2, 6, 7, 9, 10, 12, 17, and 26 of the Covenant.

## III. Substantive Violations of the Covenant

### A. Article 2 and Article 26 (Non-Discrimination)

#### Relevant Law

Articles 2 and 26 of the ICCPR require that parties to the Covenant protect the human rights of all individuals in their jurisdiction without discrimination.

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A/HRC/19/41, (Dec. 15 2011) [hereinafter *Report of the High Commissioner on Sexual Orientation and Gender Identity*], available at

<http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNReports.aspx>.

<sup>7</sup>Canada, a member of the Human Rights Council Working Group on Human Rights, has already expressed concerns about incidents involving LGBT persons. See UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Tajikistan*, ¶ 53, UN Doc. A/HRC/19/3, (12 December 2011), available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TJSession12.aspx>.

Article 2(1) states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>8</sup>

Article 26 states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>9</sup>

In the landmark case *Toonen v. Australia*, the HRC held that the criminalization of consensual same-sex activity constituted a violation of these articles.<sup>10</sup> The Committee extended this decision in the 2003 case *Young v. Australia*, where it held that “sex,” as used in in Articles 2 and 26, includes sexual orientation, and therefore that discrimination on the basis of sexual orientation is a violation of the Covenant.<sup>11</sup> The Committee has since made specific recommendations to State parties undergoing their UPR that they “should guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation.”

Article 17 of the Tajikistan Constitution declares that “all people shall be equal before the law and the court of law. The state shall guarantee the rights and liberties for every person irrespective of his nationality, race, sex, language, religious beliefs, political persuasion, knowledge, social and property status.”<sup>12</sup> Tajikistan officially decriminalized same-sex conduct in 1998.<sup>13</sup>

## Violations

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<sup>8</sup>ICCPR, art. 2.

<sup>9</sup>ICCPR, art. 26.

<sup>10</sup>See *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994).

<sup>11</sup>See *Edward Young v. Australia*, Communication No. 941/2000: Australia. 18/09/2003. U.N. Doc. CCPR/C/78/D/941/2000 (2003).

<sup>12</sup>Tajikistan Constitution, art. 17.

<sup>13</sup>See Lucas Paoli Itaborahy&Jingshu Zhu, International Lesbian Gay Bisexual Trans and Intersex Association, *State-Sponsored Homophobia: A World Survey of Laws: Criminalisation, Protection and Recognition of Same-Sex Love* 20 (8<sup>th</sup> ed. 2013) ,available at [http://old.ilga.org/Statehomophobia/ILGA\\_State\\_Sponsored\\_Homophobia\\_2013.pdf](http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf).

Tajikistan decriminalized same-sex conduct at the same time as Kyrgyzstan and Kazakhstan, but sexual minorities in these Central Asian states reportedly still face discrimination, with intolerance of LGBT individuals being particularly virulent in Tajikistan.<sup>14</sup> LGBT individuals can become outcasts from their families and communities if they do not marry and have children, and otherwise assume a heterosexual role in society. Parviz is a man who was pressured by his family into marrying at age 20 and now has three children, but travels to Russia to meet up with other gay men.<sup>15</sup> A lawyer for a local LGBT organization says that men such as Parviz lead double lives and “suffer from constant lies,” for fear of losing their families as well as their jobs should they be revealed.<sup>16</sup> In one incident that occurred in January 2011, a gay man was fired from his job at a construction company once his employer discovered he was gay.<sup>17</sup> A man with whom he had been in a relationship for a few months demanded money from him, and revealed his sexual orientation to his employer when he did not pay.<sup>18</sup> His employer then fired him, telling him, “I do not want my organization disgraced by such sinful people like you.”<sup>19</sup> Despite this treatment, the victim did not report the illegal termination to the court, because he was afraid of further disgrace.<sup>20</sup>

In the course of Tajikistan’s UPR, a report was submitted by non-governmental organizations (NGOs) drawing attention to the condition of lesbian and bisexual women in the country, who have little choice in whom they marry, and will be forced into marriages with men.<sup>21</sup> These women can be victims of “beating[s] and psychological pressure” by their families.<sup>22</sup> Women who leave forced marriages are likely to be remarried by their families, potentially as a second wife in a polygamous marriage.<sup>23</sup> The report described the circumstances of one lesbian woman who was married to a man:

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<sup>14</sup>See Antoine Blua, *Central Asia: Gays Say Tolerance Improving, But Still Long Way to Go*, Radio Free Europe/Radio Liberty, Jan. 20, 2005, available at <http://www.rferl.org/content/article/1056994.html>.

<sup>15</sup>*Tajikistan: LGBT Community Stuck in the Shadows*, EurasiaNet.org, Jan. 23, 2012, available at <http://www.eurasianet.org/node/64884>.

<sup>16</sup>Anora Sarkorova, *Human Rights Activists Want to Help Gay People in Central Asia*, BBC Russia, Apr. 5, 2011, available at

[http://www.bbc.co.uk/russian/society/2011/04/110405\\_central\\_asia\\_gays\\_monitoring.shtml](http://www.bbc.co.uk/russian/society/2011/04/110405_central_asia_gays_monitoring.shtml).

<sup>17</sup>Incident documented in Sept. 2011, on file with Heartland Alliance.

<sup>18</sup>*Id.*

<sup>19</sup>*Id.*

<sup>20</sup>*Id.*

<sup>21</sup>See Equal Opportunities, Labrys & the Sexual Rights Initiative, *UPR Submission on Sexual Rights in Tajikistan* (October 2011), ¶ 14 [hereinafter *UPR Submission on Sexual Rights*], available at <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TJ/JS4-JointSubmission4-eng.pdf>.

<sup>22</sup>NGOs Action Canada for Population and Development, the Sexual Rights Initiative, COC Netherlands, Labrys and Equal Opportunities made an oral statement about this issue to the HRC in 2012. See Action Canada et al., *Joint Statement, Item 6: UPR of Tajikistan*, (Mar. 12 2012), available at <http://www.unmultimedia.org/tv/webcast/2012/03/action-canada-joint-statement-item-6-upr-of-tajikistan-37th-meeting-19th-session.html>.

<sup>23</sup>See *UPR Submission on Sexual Rights*, *supra* note 21, ¶ 15.

In December 2010 a 28-year-old lesbian woman was raped by her former husband of three years whom she divorced. The man visited her in an apartment where she lived with her female partner. He offered to remarry her and have her partner as his second wife. When the woman reported the rape, a police officer advised her to keep her mouth shut and be grateful that her former husband did not kill her. The police officer perceived her sexual orientation as a justification for violence.<sup>24</sup>

Lesbian women, as well as gay men, will therefore lead secret double lives.<sup>25</sup> The police will take advantage of this social vulnerability by demanding bribes from LGBT people and threatening to reveal their sexual orientation if they do not pay.<sup>26</sup> This situation can also leave LGBT people without legal recourse for crimes that are committed against them. In one such incident that occurred in October 2011, a gay man had his house robbed by another man who had stayed with night with him.<sup>27</sup> Although he lost items worth hundreds of dollars (including his laptop and mobile phone), he felt he could not report the crime to the police because they would create further problems for him.<sup>28</sup> The victim of the robbery has seen the thief in Dushanbe since the incident occurred, but he has not been able to bring him to justice.<sup>29</sup> Another gay man who reported a robbery to the police told reporters that he was intimidated and insulted by officers and detained at the police station for the day.<sup>30</sup> These men and other LGBT persons living in Tajikistan are systematically being denied equal rights and equal protection under the country's laws.

**B. Article 6 (Right to Life), Article 7 (Right to Be Free from Torture or Cruel, Inhuman or Degrading Treatment or Punishment), Article 9 (Right to Liberty and Freedom from Arbitrary Detention), and Article 10 (Treatment of Individuals Deprived of their Liberty)**

Relevant Law

Article 6 states that “every human being has the inherent right to life. This right shall be protected by law.”<sup>31</sup> The High Commissioner has recommended that States:

Investigate promptly all reported killings and other serious incidents of violence perpetrated against individuals because of their actual or perceived sexual orientation or gender identity, whether carried out in public or in private by State or non-State actors,

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<sup>24</sup>*Id.* at ¶ 16.

<sup>25</sup>*Id.* at ¶ 15.

<sup>26</sup>*Id.* at ¶ 12.

<sup>27</sup>Incident documented in Dec. 2011, on file with Heartland Alliance.

<sup>28</sup>*Id.*

<sup>29</sup>*Id.*

<sup>30</sup>See Yvegenia Kim et al., *Homophobia Endemic in Tajikistan, Kyrgyzstan*, Inst. for War & Peace Reporting, Feb. 2, 2012, available at <http://iwpr.net/report-news/homophobia-endemic-tajikistan-kyrgyzstan>.

<sup>31</sup>ICCPR, art. 6.



and hold perpetrators accountable, and establish systems for the recording and reporting of such incidents.<sup>32</sup>

Article 7 states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>33</sup> The Human Rights Committee has made clear that this article is intended to “protect both the dignity and the physical and mental integrity of the individual,” and comprehends mistreatment performed in both official and private capacities.<sup>34</sup> Article 18 of Tajikistan’s constitution “guarantee[s] the inviolability of a person” and states that “no one shall be subjected to torture, punishment, and inhuman treatment.”<sup>35</sup> In March 2012, Tajikistan introduced Article 143 of the criminal code, which defined torture as a separate offense from other abuses of authority.<sup>36</sup> The members of the Human Rights Committee have, however, made it clear that prohibitions against torture are not sufficient for compliance with Article 7 of the ICCPR, but that victims of torture must have access to legal recourse, of which the Committee should be informed.<sup>37</sup> In particular, “the State party should provide detailed information on safeguards for the special protection of particularly vulnerable persons.”<sup>38</sup> A 2001 report by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment indicated that LGBT persons worldwide are such a group, since they are disproportionately subject to torture.<sup>39</sup> In 2011, The High Commissioner for Human Rights specifically recommended that state parties “take measures to prevent torture and other forms of cruel, inhuman or degrading treatment on grounds of sexual orientation and gender identity.”<sup>40</sup>

Article 9 states that “everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”<sup>41</sup> A draft of the general comment on Article 9 which will be considered at the Committee’s 108<sup>th</sup> session

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<sup>32</sup>*Report of the High Commissioner on Sexual Orientation and Gender Identity*, *supra* note 6, ¶ 84(a).

<sup>33</sup>ICCPR, art. 7.

<sup>34</sup>*See* Human Rights Comm., *General comment No. 20: Article 7 (Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)*, ¶ 2, U.N. Doc HRI/GEN/1/Rev.9 (Vol. I) (Mar. 10 1992), available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

<sup>35</sup>Tajikistan Constitution, art. 18.

<sup>36</sup>*Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on His Mission to Tajikistan*, ¶ 10, U.N. Doc.A/HRC/22/53/Add.1 (Jan 28, 2013), available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add1\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add1_en.pdf).

<sup>37</sup>*See* Human Rights Comm., *General comment No. 20: Article 7 (Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)*, ¶ 8, U.N. Doc HRI/GEN/1/Rev.9 (Vol. I) (Mar. 10 1992), available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

<sup>38</sup>*Id.* at ¶ 11.

<sup>39</sup>*Report of the UN Special Rapporteur on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 17-25, UN Doc. A/56/156, (July 3, 2001).

<sup>40</sup>*Report of the High Commissioner on Sexual Orientation and Gender Identity*, *supra* note 6, ¶ 84(b).

<sup>41</sup>ICCPR, art. 9.



includes the stipulation that “states parties must respond appropriately to patterns of violence against categories of victims such as...sexual minorities.”<sup>42</sup>

Article 10 states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>43</sup> The Committee has explained that Article 7’s prohibitions against torture apply equally to people deprived of their liberty.<sup>44</sup> In addition, “this rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>45</sup>

## Violations

### i. Arbitrary Detention and Torture during Detention

Police in Tajikistan often will still treat homosexuality as a crime, arresting and detaining “suspects” for days.<sup>46</sup> As is the case in many economically depressed countries, some police officers turn to extortion as a form of income, and will threaten to reveal the sexual orientation of gay men and women if the officers are not paid.

The use of torture during detention is a major human rights issue for Tajikistan. In its report adopting the List of Issues prior to Reporting at its 107<sup>th</sup> session, the Human Rights Committee requested that Tajikistan respond to reports that “torture and other ill-treatment remain widespread particularly in pre-trial detention.”<sup>47</sup> The Committee had raised the same concerns during Tajikistan’s previous UPR in 2005.<sup>48</sup> The U.N. Special Rapporteur on Torture visited Tajikistan in May 2012 to investigate such reports, and found that although progress had been in the normative legal framework since 2005, “torture and other forms of ill-treatment by law enforcement officers are believed to be often practiced across Tajikistan and are often used to extract self-incriminating evidence, confession and money.”<sup>49</sup> Testimony to the Special

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<sup>42</sup>Human Rights Comm., *Draft General Comment No. 35*, U.N. Doc. CCPR/C/107/R.3 (Jan. 28, 2013), available at <http://www2.ohchr.org/english/bodies/hrc/hrcs108.htm>.

<sup>43</sup>ICCPR, art. 10.

<sup>44</sup>See Human Rights Comm., *General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)*, U.N. Doc HRI/GEN/1/Rev.9 (Vol. I) (Apr. 10 1992), available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

<sup>45</sup>*Id.*

<sup>46</sup>See Yvegenia Kim et al., *supra* note 30.

<sup>47</sup>Human Rights Comm., *List of Issues to Be Taken Up in Connection with the Consideration of the Second Periodic Report Of Tajikistan*, ¶14, U.N. Doc. CCPR/C/TJK/CO/2 (Mar. 2013), available at <http://www2.ohchr.org/english/bodies/hrc/hrcs108.htm>.

<sup>48</sup>Human Rights Comm., *Concluding Observations of the Human Rights Committee: Tajikistan*, ¶ 10, U.N. Doc. CCPR/CO/84/TJK (July 18, 2005), available at <http://tb.ohchr.org/default.aspx?Symbol=CCPR/CO/84/TJK>.

<sup>49</sup>*Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on His Mission to Tajikistan*, ¶ 31, U.N. Doc. A/HRC/22/53/Add.1 (Jan 28, 2013), available

Rapporteur indicated that only those individuals with influential connections were immune from ill-treatment, and that more socially vulnerable groups were at heightened risk.<sup>50</sup>

In June 2012, the European Commission of the European Union held a seminar in Dushanbe on the use of torture.<sup>51</sup> The report from that seminar details widespread use of torture, with “members of the lesbian, gay, bisexual, and transgender (LGBT) community...in the most latent risk group. There have been cases of torture and ill-treatment of the latter by law enforcement officials, as well as ill-treatment by medical staff.”<sup>52</sup> A July 2012 report by Amnesty International also found gay men and men perceived to be gay at particular risk of torture in Tajikistan.<sup>53</sup> These men are reportedly targeted for detention and beatings, and will only be released in exchange for bribes.<sup>54</sup> One homosexual man is cited as being picked up by police every time there is a crime in his area.<sup>55</sup> A joint submission by NGOs during Tajikistan’s UPR raised similar concerns, stating that gay and bisexual men are subject to physical, verbal, and sexual abuse while being detained, and will not be released without paying a bribe.<sup>56</sup> They may also have their belongings confiscated, and their cell phones used to track other gay men.<sup>57</sup> The NGOs reported thirteen cases of such police abuse in the year leading up to the UPR.<sup>58</sup>

One gay man reported such an incident from March 2011, in which three police officers came to a hotel room that he had checked into with another man a few hours earlier.<sup>59</sup> The officers accused the men of being engaged in prostitution, and took them to the police station for questioning.<sup>60</sup> After an hour, one of the officers told the men that they would be subject to an anal examination and that their parents would be told about their sexual orientation if they did not confess or pay \$200 each.<sup>61</sup> They paid the officers \$100 and gave them a cell phone, and

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at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add1\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add1_en.pdf).

<sup>50</sup>*Id.* at ¶ 34.

<sup>51</sup>See European Instrument for Democracy and Human Rights, European Union-Tajikistan Civil Society Seminar on Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment, Dushanbe, Taj., 12-13 June 2012, available at <http://www.eidhr.eu/files/dmfile/rapport-civilsocietyforum-tajikistan-torture.pdf>.

<sup>52</sup>*Id.* at 16.

<sup>53</sup>See Amnesty Int’l, *Shattered Lives: Torture and Other Ill-Treatment in Tajikistan* 15 (July 12, 2012), available at <http://www.amnesty.org/en/library/info/EUR60/004/2012>.

<sup>54</sup>*Id.*

<sup>55</sup>*Id.*

<sup>56</sup>Action Canada et al., *Joint Statement, Item 6: UPR of Tajikistan*, (Mar. 12 2012), available at <http://www.unmultimedia.org/tv/webcast/2012/03/action-canada-joint-statement-item-6-upr-of-tajikistan-37th-meeting-19th-session.html>.

<sup>57</sup>*Id.*

<sup>58</sup>*Id.*

<sup>59</sup>Incident documented in Feb. 2012, on file with Heartland Alliance.

<sup>60</sup>*Id.*

<sup>61</sup>*Id.*

were taken back to the hotel.<sup>62</sup> The man who reported the incident to a local NGO said that a couple of his friends later told him that they had been involved in similar episodes with the police.<sup>63</sup> In June 2011, for example, police officers entered the hotel room of two gay men while they were having sex and demanded that they come to the police station.<sup>64</sup> The men said that the police officers ridiculed them and asked them intimate questions about being gay men, and punched one of them in the stomach.<sup>65</sup> The officers then said the men would be released if they paid \$500.<sup>66</sup> Since they did not have that much money on them at the time, the officers took their passports and gave them two days to return with the money, threatening to come to their homes and reveal their sexual orientation if they did not come back.<sup>67</sup> The men paid the officers within the two days.<sup>68</sup>

In July 2011, two lesbian women left a nightclub and went to a park in Dushanbe.<sup>69</sup> A police officer saw them kissing, then proceeded to question them and ask them for their papers.<sup>70</sup> He told them that they would have to come to his car because they were drunk and they were lesbians.<sup>71</sup> Another officer then approached them, and the two police officers began to ridiculing the women, accusing them of being prostitutes and saying, “If you do not have enough men, we can help you.”<sup>72</sup> Around 1:00 a.m., they were put in the police car, but instead of going to the police station, the car stopped under a bridge, where the women were told they would have to give the officers money and kiss each other while the officers watched in order to be released and not have their parents told about their sexual orientation.<sup>73</sup> Describing their situation as “hopeless,” the women kissed in front of the officers and paid them 50 Somoni.<sup>74</sup> They were left at the bridge with no money, and had to get home on foot.<sup>75</sup> Although one woman wanted to file a statement with the police about the incident, the other dissuaded her because she was afraid that her parents would discover her orientation and that she would lose her job.<sup>76</sup>

In August 2011, police came to gay man’s home and asked him to come to that police station with him, but he refused.<sup>77</sup> Later that day two officers came to his place of work and again asked

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<sup>62</sup>*Id.*

<sup>63</sup>*Id.*

<sup>64</sup>Incident documented in Feb. 2012, on file with Heartland Alliance.

<sup>65</sup>*Id.*

<sup>66</sup>*Id.*

<sup>67</sup>*Id.*

<sup>68</sup>*Id.*

<sup>69</sup>Incident documented in July 2011, on file with Heartland Alliance.

<sup>70</sup>*Id.*

<sup>71</sup>*Id.*

<sup>72</sup>*Id.*

<sup>73</sup>*Id.*

<sup>74</sup>*Id.*

<sup>75</sup>*Id.*

<sup>76</sup>*Id.*

<sup>77</sup>Incident documented in Dec. 2011, on file with Heartland Alliance.

him to come to the station, and at this point he agreed as to not create a scene.<sup>78</sup> He found that he was one of many gay men who had been brought into the station for questioning about a government official who was having sex with other men; he waited about eight hours before his turn to be questioned.<sup>79</sup> The police told the man that he had to admit that he had sex with the government official or his parents and co-workers would be told about his sexual orientation.<sup>80</sup> The man said he was gay but knew nothing about the government official, and was then hit by a policeman in the stomach and fell to the floor in pain, and was hit several more times thereafter.<sup>81</sup>

Tajikistan has made progress on the prosecution of these kinds of acts of torture by clarifying the definition of torture under Article 143 of the Criminal Code.<sup>82</sup> However, on his mission to Tajikistan, the Special Rapporteur on Torture expressed his concern that the penalty of five years imprisonment or less for a first offense, “are not commensurate with the gravity of the crime of torture,” especially since Parliament is given broad discretion to commute, reduce, or suspend these sentences under amnesty laws.<sup>83</sup>

ii. Public Harassment and Impunity for Hate Crimes

There is open hostility to LGBT individuals in Tajikistan, and they are often victims of public harassment and beatings. In an incident that occurred in 2012, a gay man was beaten near the Philharmonic concert hall in Dushanbe, and another man who was interviewed for a news story responded, “I think those guys [the attackers] did the right thing...If I’d been there, I would have joined in the beating, so that they’d learn.”<sup>84</sup> A blogger wrote about an incident in which a university student was “brutally beaten” by eight of his classmates after he was seen kissing another man; his face and clothes were left covered in blood.<sup>85</sup> Among the comments on his post, a former student of the university wrote, “Constant humiliation and threat of physical violence [are] part of what it means to be gay in Tajikistan.”<sup>86</sup> When one man’s homosexuality was revealed, members of his community taunted him and his relatives, until the abuse became so bad that he hanged himself.<sup>87</sup>

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<sup>78</sup>*Id.*

<sup>79</sup>*Id.*

<sup>80</sup>*Id.*

<sup>81</sup>*Id.*

<sup>82</sup> *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on His Mission to Tajikistan*, ¶ 13, U.N. Doc.A/HRC/22/53/Add.1 (Jan 28, 2013), available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add1\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add1_en.pdf).

<sup>83</sup> *Id.*

<sup>84</sup> See Yvegenia Kim et al., *supra* note 30.

<sup>85</sup> Alexander Sodikov, *Tajikistan Remains ‘Hell for Gays’*, GlobalVoices, Jan. 20, 2013, available at <http://globalvoicesonline.org/2013/01/20/tajikistan-remains-hell-for-gays/>.

<sup>86</sup>*Id.*

<sup>87</sup> See Yvegenia Kim et al., *supra* note 30.

Homosexuality is thought by many people in Tajikistan to be a disease.<sup>88</sup> This position is also held within the Ministry of Health; one official of that body anonymously told a news reporter that “homosexuality is contrary to nature.”<sup>89</sup> A blogger described family members’ and friends’ attempts to “convince you, or convince themselves, that [being gay] is just a disease and that it should be treated as soon as possible,” while another blogger gave his opinion that “homosexuals are neither Tajiks nor Muslims. They are ill people.”<sup>90</sup> There have been reports of doctors administering psychiatric treatment and testosterone-boosting drugs to LGBT persons.<sup>91</sup> One man was the victim of a forcible “cure” by members of his community; he was tied to a radiator and left in the cold with no food for a weekend, while prayers were chanted to expel his “evil spirits.”<sup>92</sup>

Victims of hate crimes are reluctant to go to either family members or public officials to report crimes against them for fear of further retribution. In January 2012, a group of men attacked a couple of gay men outside of a nightclub after having harassed them inside.<sup>93</sup> Everyone involved was taken to the police station, and released that night.<sup>94</sup> When one of the gay men returned to write a statement the next day, he was discouraged by a police officer, who told him, “If you write it, it will be worse for you,” and made other homophobic comments.<sup>95</sup> As a result, the victim did not write a statement.<sup>96</sup>

A 20-year-old gay man was raped, beaten, and robbed by three men, but did not go to authorities because he wanted to avoid further abuse.<sup>97</sup> Most notoriously, a 23-year-old student at Tajik National University who was a representative of the gay community died after being stabbed seven times.<sup>98</sup> The case was labeled as a robbery and closed.<sup>99</sup> None of the student’s belongings, however, had been stolen, and his money and cell phone were still in his possession when he was found by police.<sup>100</sup> A member of a Tajikistan LGBT rights organization stated that in informal conversations, police said that the victim did not have to be gay, implying that the crime was justified on those grounds.<sup>101</sup> The killers remain unpunished.<sup>102</sup>

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<sup>88</sup> See *Tajikistan: LGBT Community Stuck in the Shadows*, *supra* note 15.

<sup>89</sup> *Id.*

<sup>90</sup> See Alexander Sodikov, *supra* note 85.

<sup>91</sup> See *Tajikistan: LGBT Community Stuck in the Shadows*, *supra* note 15.

<sup>92</sup> See Yvegenia Kim et al., *supra* note 30.

<sup>93</sup> Incident documented in Jan. 2011, on file with Heartland Alliance.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> See Anora Sarkorova, *supra* note 16.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

### C. Article 12 (Right to Freedom of Movement) and Article 17 (Right to Respect of Privacy, Home, Family and Correspondence)

#### Relevant Law

Article 12(2) states that, as part of the right to freedom of movement, “everyone shall be free to leave any country, including his own.”<sup>103</sup> General Comment No.27 on this section further stipulates that “since international travel usually requires appropriate documents, in particular a passport, the right to leave a country must include the right to obtain the necessary travel documents.”<sup>104</sup> In 2011, the High Commissioner recommended that State parties “facilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights.”<sup>105</sup> In addition, Principle 22 of the Yogyakarta Principles (principles on the on the application of international human rights law in relation to sexual orientation and gender identity) states that “gender identity may never be invoked to limit or impede a person’s entry, egress or return to or from any State, including that person’s own State.”<sup>106</sup>

Article 17 states: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”<sup>107</sup> The Committee has clarified that “this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.”<sup>108</sup> Yogyakarta Principle 6 adds that “the right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one’s sexual orientation or gender identity.”<sup>109</sup>

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<sup>103</sup> ICCPR, art. 12.

<sup>104</sup> See Human Rights Comm., *General comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, at 223, U.N. Doc HRI/GEN/1/Rev.9 (Vol.I) (Nov. 2 1999), available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

<sup>105</sup> *Report of the High Commissioner on Sexual Orientation and Gender Identity*, supra note 6, ¶ 84(h).

<sup>106</sup> International Commission of Jurists, *Yogyakarta Principle on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, (March 2007), available at [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf).

<sup>107</sup> ICCPR, art. 17.

<sup>108</sup> See Human Rights Comm., *General comment No. 16: Article 17 (The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation)*, at 191, U.N. Doc HRI/GEN/1/Rev.9 (Vol.I) (Nov. 2 1999), available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

<sup>109</sup> *The Yogyakarta Principles*, supra note 106.

## Violations

### i. Instability of Home and Family

As described above, LGBT people will often be forced into marriages with members of the opposite sex, and may suffer from domestic violence inflicted by their spouses.<sup>110</sup> Their family members may also verbally and physically abuse them because of their sexual orientation.<sup>111</sup> In March 2012, a 19-year-old bisexual man described the pain of living with his parents and working their family restaurant while trying to conceal his sexual orientation from them.<sup>112</sup> His father has told him that he would not consider him to be his son if he found out that he was gay, because homosexuality is contrary to his religion and he did not want to be embarrassed.<sup>113</sup> The man argues with father about his sexuality, and was once beaten by him so badly that he could not go to work for almost a week, though had to return prematurely with bruises on his face because he needed the money.<sup>114</sup> In another altercation between them that occurred in December 2011, his father found him working as a dancer at a nightclub, and proceeded to swear at him and beat him in the locker room in front of the other employees.<sup>115</sup> The next day, he was kicked out of his parents' home, and since decided that he needs to "leave everything behind" and live in another town.<sup>116</sup>

Police will also come to LGBT people's homes to harass them.<sup>117</sup> In at least one instance, a gay man decided he had to move after police had come to his house demanding 1000 Somoni and threatening to tell his parents about his sexual orientation.<sup>118</sup>

### ii. Humiliation of Transgender People

Article 74 of Tajikistan's civil code allows for the official change of gender identity, provided that one can obtain an authorized medical form; such a document, however, does not exist.<sup>119</sup> The United States Department of State reports that "this creates internal problems [for transgender people] involving anything requiring government identification."<sup>120</sup> Moreover, every

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<sup>110</sup> *Supra*, p.6.

<sup>111</sup> *Supra*, pp.6, 12-13.

<sup>112</sup> Incident documented in Mar. 2012, on file with Heartland Alliance.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Supra*, p.11.

<sup>118</sup> See *Tajikistan: LGBT Community Stuck in the Shadows*, *supra* note 15.

<sup>119</sup> Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Country Reports on Human Rights Practices for 2012: Tajikistan*, available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dclid=204413>.

<sup>120</sup> *Id.*



time transgender people are asked to produce identification, their privacy is invaded, and they risk humiliation and violence.<sup>121</sup> One implication of this situation is that transgender people cannot obtain passports that correspond to their gender identity, and therefore have difficulty leaving the country.<sup>122</sup> The severity of this issue is compounded by the fact that hormonal therapy and other medical treatments for transgender people are not available in Tajikistan and transgender people must travel abroad to obtain them.<sup>123</sup>

One Tajik woman faced these problems firsthand.<sup>124</sup> She could not obtain a passport reflecting her gender identity, but had to make several trips to Moscow for a sex change operation, since such procedures are not widely available in Tajikistan.<sup>125</sup> She told activists that she was harassed each time she attempted to travel, and was subjected to strip searches under the pretext that she may have been carrying drugs.<sup>126</sup> She described these experiences as “humiliating.”<sup>127</sup>

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<sup>121</sup> See *UPR Submission on Sexual Rights*, *supra* note 21, ¶ 8.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> See Anora Sarkorova, *supra* note 16.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

#### **IV. Concluding Observations and Recommendations**

As demonstrated by this report, Tajikistan has failed to comply with its obligations under the ICCPR to ensure the rights of its LGBT citizens. The Human Rights Council should make the following recommendations to Tajikistan so that it may comply with the Covenant:

1. Introduce measures to report, investigate, and prosecute hate crimes against LGBT persons, and re-open investigation of hate crimes that have previously been reported.
2. Enact legislation prohibiting discrimination on the basis of sexual orientation and gender identity, especially in employment.
3. Embark on a public awareness campaign to educate the public on respecting the human rights of LGBT persons.
4. Introduce measures to independently report, investigate, and prosecute instances of police blackmail, extortion, illegal detention, and torture of LGBT persons.
5. Amend the Criminal Code to include more serious punishments for state officials who participate in blackmail, extortion, illegal detention, and torture.
6. Include training as to the human rights of LGBT persons in the training program of police officers and other public officials.
7. Create an effective legal means of changing one's gender identity on state documents.

## **V. Questions to the State**

1. What does the State of Tajikistan intend to do to eradicate violence against LGBT people perpetrated by state and non-state actors, and to ensure the perpetrators are brought to justice?
2. What does the State intend to do to draft and enact legislation prohibiting discrimination on grounds of sexual orientation and gender identity?
3. What does the State intend to do to establish proper procedures for legal recognition of gender identity that do respect the physical integrity of the individual, as well as to allow the change of legal sex on documents, such as passports with the purpose to guarantee every individual the freedom of movement?