

HIV Epidemic and the Rights of Men who Have Sex with Men and Transgender People in Armenia

Developed by Armenian National Representative
Lusine Ghazaryan, lawyer at PINK Armenia (Public Information and Need of Knowledge) non-governmental organization

Content 1. Summary of national legislation related to HIV/AIDS Epidemic and MSM/ LGBT persons, 2. Summary of examples of (un) successful community advocacy, 3. Recommendations on community advocacy and decision-makers.

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I. Summary of national legislation related to HIV/AIDS Epidemic and MSM and/or LGBT persons

This section of the analysis touches upon national legislation and policy with regard to HIV/AIDS Epidemic and sexual behavior and/or orientation issues. Legislation and policy issues with practical situations are separately discussed herein, including HIV- and health-related legislation, anti-discrimination legislation, hate speech and hate crimes legislation, as well as sexual orientation and gender identity and expression related legislation.

In general, the national legislation related to HIV/AIDS Epidemic as well as issues related to vulnerable groups to HIV/AIDS, i.e. men who have sex with men (MSM) and/or lesbian, gay, bisexual and transgender (LGBT) people mostly includes legislation regulating the sphere of healthcare. While legal regulations related to HIV/AIDS issues are also included in branch legislation and other documents, issues related to MSM and/or LGBT people are regulated only to the extent related to HIV/AIDS Epidemic.

That is to say, national legislation does not regulate any other aspects of MSM and/or LGBT related issues than that of related to HIV/AIDS Epidemic, which means that many human rights issues of LGBT people still remain unaddressed.

Language used in the national legislation

The language used to identify LGBT people and/or sexual orientation issues in the existing healthcare acts is important to note separately, as it is, in most circumstances, biased and ethically incorrect. Particularly, the national legislation includes reference to MSM and/or LGBT people and sexual orientation of a person with terms such as “համասեռամուլ”, “արվամուլ”, “համասեռամուլություն” and “հոմոսեքսուալիզմ”, which can be translated to mean “homoaddicted” for homosexual person, “homosexuality” and “homoaddiction” for homosexuality. Use of such terms is unacceptable, as it reinforces the stereotypes and prejudices of identity of LGBT and MSM persons. The term “homoaddiction” (համասեռամուլ) is usually used to describe the negative nature of being homosexual, to emphasize the addiction (-մուլ), the perverted, abnormal and negative nature of the latter.

Besides, it should be noted that there is no language distinction for MSM and LGBT people in terms of vulnerability towards HIV/AIDS and other sexually transmitted infections.

1.1. HIV- and health-related legislation, policies, and practices

The main legislation regulating relations, identifying rights and responsibilities with regard to prevention and treatment of HIV/AIDS is the RA law “On prevention of disease caused by Human Immunodeficiency Virus” adopted and ratified in 1997¹. It defines the main related concepts, as well as legal, economic, financial and organizational fundamentals of HIV prevention nationwide.

¹ RA law “On prevention of disease caused by Human Immunodeficiency Virus”, dated 03.12.1997, available at: <http://www.arlis.am/DocumentView.aspx?DocID=78616>

1.1.1. Travel and immigration bans on people living with HIV (PLHIV)

Armenian legislation defining entry regulations to the country sets certain conditions which can serve a basis of refusal to issue or revoking an entry visa, including in the circumstances when a person suffers from infectious diseases. Particularly, article 8 (1), paragraph D of the Law “On foreigners” of RA states that the issuance (extension of the term) of an entry visa to a foreigner shall be refused, the issued entry visa shall be revoked, or the entry into the Republic of Armenia shall be banned, if: [...] he or she suffers from an infectious disease which threatens the health of population, except for cases when he or she enters the Republic of Armenia for the purpose of treating such a disease [...]². However, the RA Government decision N 49 “On Defining the List of Infectious Diseases Banning the Entry into RA of Foreign Citizens and Stateless Persons” dated 25.01.2008³ does not define HIV/AIDS status as a basis to ban entry into the country⁴.

Thus, there are no legal obstacles for people living with HIV/AIDS to enter into the territory of the Republic of Armenia.

1.1.2. Legal responsibility for HIV transmission

Armenian legislation criminalizes not only HIV transmission, but also the fact of subjecting a person to the danger of infection of HIV/AIDS. Particularly, paragraph 1 of article 123 of RA Criminal Code states that subjecting another person to the obvious danger of infection with HIV, is punished with correctional labor for the term of up to 2 years, or with arrest for the term of up to 2 months, or with imprisonment for the term of up to 1 year⁵.

² RA law “On foreigners”, dated 25.12.2006, available at:
<http://www.arlis.am/DocumentView.aspx?DocID=99037> (language Armenian)

³ RA Government decision N 49 “On Defining the List of Infectious Diseases Banning the Entry into RA of Foreign Citizens and Stateless Persons” dated 25.01.2008, available at:
<http://www.arlis.am/DocumentView.aspx?DocID=69593>

⁴ Originally the Governmental decision was adopted to include HIV status as one of the infectious diseases to ban the entry into Armenia, which was abolished by the Governmental decision N 896, dated 30.07.2011

⁵ Article 123 of the Criminal Code of the Republic of Armenia, available at:
<http://www.arlis.am/DocumentView.aspx?DocID=98865>

The same article also defines punishment with imprisonment for the term of up to 1 year, if the infecting was willfully or self-confidently.

Unfortunately, there is no statistical data to examine the extent to which criminal responsibility was imposed for subjecting a person to obvious danger of infection with HIV as well as for the interpretation of the concepts “willful” or “self confident” infection thereof.

Additionally, article 130 of RA Criminal Code provides for criminal liability for the failure to implement or improper implementation of professional duties by medical and support personnel, which if caused through negligent the patient’s death or HIV infection is punished with imprisonment as well as deprivation of the right to hold certain posts and practice certain activities⁶.

1.1.3. Prohibition on the donation of blood for MSM

Homosexual people are prohibited to donate blood, to be a donor. Order N 06 of RA Ministry of Health, dated 07.02.2013 states that, but the permanent contraindications, people belonging to certain risk categories should be banned to donate blood, including “homoaddicted” people⁷. This categorization of several vulnerable groups, i.e. homoaddicts, prostitutes, persons in detention, medical personnel permanently in contact with human blood its components and medical equipment, people who have hepatitis C and/or HIV/AIDS or their family members, if living together, is conditioned with their inferred vulnerability towards HIV/AIDS.

As already stated above about the language used in national legislation, the wording of the term “homoaddicts”, includes not only the sexual behavior of a person (MSM), but generally relates to sexual orientation (LGBT people), as generally referred to in legal acts.

However, it should be noted that there is no legally regulated procedure of identifying sexual behavior, sexual orientation or gender identity of a person.

⁶ Article 130 of the Criminal Code of the Republic of Armenia, available at: <http://www.arlis.am/DocumentView.aspx?DocID=98865>

⁷ Order N 06 of the Ministry of Health of RA, dated 07.02.2013 bans homosexual people to be a donor, to donate blood, available at: <http://www.arlis.am/DocumentView.aspx?DocID=82261>

1.1.4. Examination to determine homosexuality of a person

MOH Order N 87, dated 24.12.2013 that sets the standards of forensic examination for free of charge healthcare services, states that examinations should be conducted to determine “homoaddiction” of a person (հոմոսեքսուալիզմը /արվամոնուքյունը/)⁸.

There is no information as regard to what this examination is conducted. An inquiry request has been filed to the Ministry of Health of RA: the clarifications will be provided accordingly.

1.2. Anti-discrimination legislation, policies and practices

1.2.1. Legislation on protection from discrimination

There is no specific legislation on prohibition of discrimination in Armenia.

Article 14.1 of the Constitution of the Republic of Armenia states that “[e]veryone shall be equal before the law. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances shall be prohibited⁹.

Sexual orientation and/or gender identity and expression are not included in anti discrimination norms of any other legal acts as well. The grounds based on which discrimination is prohibited in branch laws are, in most cases, open-ended as well, thus it is inferred to be included in “other grounds”. However, the practical implementation of anti discrimination norms have never been applied to LGBT people, thus are practically unavailable.

Generally, the lack of legislation to comprehensively address discrimination issues does not give opportunity to practically be protected against discrimination. There is no legally accepted definition of discrimination; types of discrimination as well as there are

⁸ Order N 87 of the Ministry of Health, dated 24.12.2013, available at: <http://www.arlis.am/DocumentView.aspx?DocID=89056>

⁹ Article 14.1. Constitution of the Republic of Armenia with amendments, dated 27.11.2015, available at: <http://www.arlis.am/DocumentView.aspx?DocID=75780>

no procedural regulations to claim discrimination in national courts as well as in other relevant bodies¹⁰.

As a result, discrimination on the basis of sexual behavior, sexual orientation or gender identity and expression remains unaddressed in any spheres of Armenian society¹¹.

State's assessment of necessity to adopt a standalone anti-discrimination legislation:

Plan of Actions for the National Strategy on Human Rights Protection, which was approved by the Decision N 303 of 27 February 2014 of the Government of the Republic of Armenia, states the plans of the state to study the compatibility of the legislation of the Republic of Armenia with the norms of international law relating to the prohibition of discrimination as well as to discuss the appropriateness of the adoption of a separate law "On the Fight against Discrimination"¹².

Currently, a draft law is being developed by a group of experts, to which RA Ministry of Justice is a participant¹³.

1.2.2. Hate crimes legislation

There is no comprehensive legislation addressing issues of hate crime in Armenia. The national legislation does not provide for the main concepts related to hate crime, does not specify legal responsibility and restitution with regard to hate crime cases.

However, article 63 of RA Criminal Code stipulates for the circumstances aggravating crime and punishment, which, among other things, states that committal of crime by ethnic, racial or religious motives, for religious fanaticism, as revenge for other people's legitimate actions is a circumstance aggravating the crime and punishment¹⁴.

The motives aggravating the liability for the criminal act, according to the above principle of interpretation of the existing criminal law provisions, are limited to those stated in the Criminal Code, thus exclude sexual orientation and gender identity as a

¹⁰ Legal research on "Is it expedient to adopt a separate non-discrimination law", 2015 Yerevan, available at: http://www.epfarmeria.am/wp-content/uploads/2014/06/Research-on-Anti-discrimination_-21.05.15-ENG_Final-1.pdf

¹¹ Human rights situation of LGBT people, Annual Review Armenia 2014, available at: http://www.pinkarmenia.org/publication/2014lgbsitrep_en.pdf

¹² Plan of Actions for the National Strategy on Human Rights Protection, approved by the Decision N 303 of 27 February 2014 of the Government of the Republic of Armenia, available at: http://www.justice.am/storage/uploads/HR_table_Gov_approved_3Apr14_FINAL_Arm-1.pdf

¹³ Draft law on Anti-Discrimination discussed in Armenia, dated 13.11.2015, available at: <http://www.csdialogue.eu/news/draft-law-anti-discrimination-discussed-armenia>

¹⁴ Article 63, Criminal Code of the Republic of Armenia ra criminal code, available at: <http://www.arlis.am/DocumentView.aspx?DocID=98865>

bias motivation. According to the law of RA “On Legal Acts”, which stipulates the principles existing legal acts should be interpreted, criminal law provisions cannot be applied based on analogy and infer wider range of legal relationships than explicitly defined in the criminal legislation, which means that other grounds otherwise stated in the criminal legislation cannot be claimed with regard to criminal cases¹⁵. That is to say, hate crimes do not apply to cases related to sexual orientation and gender identity of a person. As a result the crimes committed on the basis of sexual orientation and/or gender identity of person have never been qualified as hate crimes, which also mean that no effective remedies have ever been available for the victims.

As an example, the attack on a gay-friendly bar in Yerevan in late 2012¹⁶ owned by a lesbian woman was qualified and investigated as damage inflicted on property under the Criminal Code, while excluding any reference to the bias of the crime¹⁷.

Hate crimes against transgender persons, particularly transgender sex workers have been the most widespread form of hate-motivated violence on the basis of gender identity of a person. Battery, torture, inhuman and degrading treatment, including psychological violence are among the human rights abuses against them¹⁸. In a recent case, a transgender women sex worker (from male to female) was severely beaten in the central district of Yerevan and in front of the building of the Prosecutor General’s Office of RA in the presence of its security personnel, who did not take any measures to intervene in the battery¹⁹.

1.2.3. Hate Speech Legislation

Hate speech is not comprehensively regulated in Armenian legislation. The existing legislation does not specify the concept of hate speech, the protected grounds against hate speech, the applicability of the norm to private and/or public sector.

¹⁵ Article 86 and 88 of law “On legal acts” of the Republic of Armenia, available at: <http://www.arlis.am/DocumentView.aspx?DocID=90941>

¹⁶ Arson attack on Gay-Friendly Bar in Yerevan Raises Fears of Nationalist Extremism, available at: <http://araratmagazine.org/2012/05/arson-attack-on-gay-friendly-bar-in-yerevan-raises-fears-of-nationalist-extremism>

¹⁷ INTERIGHTS: The International Centre for the legal protection of human rights. Oganezova v. Armenia, available at: <http://www.interights.org/oganezova-v-armenia/index.html>

¹⁸ OSCE Hate Crime Reports 2012, 2013 and 2014, available at: <http://hatecrime.osce.org/armenia>

¹⁹ Beaten for being gay (video) dated 31.08.2015, available here: <https://www.youtube.com/watch?v=INL5tzhDmGU>

Article 226 of RA Criminal Code defines criminal liability for actions aimed at inciting national, racial or religious hatred, at racial superiority or humiliation of national dignity²⁰. It criminalizes only incitement to hatred based on national, racial or religious grounds thus excluding other grounds on which the incitement of hatred could be based, including sexual orientation and gender identity.

However, even with the existing regulation, in the conditions of the absence of concept of hate speech in legislation it is difficult and almost impossible to argue the existence of hate speech and qualify crimes as such.

The lack of legislation has played its role in promoting, disseminating, and encouraging hate speech both by state representatives and private persons. For example, vice president of the Armenian National Assembly, Mr. Eduard Sharmazanov who publicly stated that the attack carried out on 8 May 2013 on a gay-friendly bar in the capital, Yerevan, was “completely right and justified”, and those who support the human rights of LGBT Armenians “are perverting our society, and defaming the Armenian national identity”²¹. Another parliamentarian, Artsvik Minasyan, stated that the young men who attacked the bar “acted in accordance with our society’s values and national ideology, and in an appropriate manner.” He further called for a fight against the “spreading of homosexuality” as a “threat to national security”²².

Accordingly, one of the Armenian newspapers called “Iravunk” published an anti-gay blacklist of people, with direct incitement to discrimination and intolerance towards them, a ruling political party MP Hayk Babukhanyan, who is also the founding member of that newspaper, publicly supported the article and appeared in the court proceedings to support the respondents²³. Hate speech provisions being inapplicable with regard to sexual orientation and/or gender identity, the applicants initiated civil proceedings with defamation clause, i.e. as expressions damaging their honour and dignity. However, the applicants noted the hate motivation of such expressions and discriminatory nature of them. The Court dismissed the claim stating there is no damage to honour and dignity of the applicants with no referral to the motivation and discriminatory nature of the

²⁰ Article 226 of the Criminal Code of the Republic of Armenia, available at: <http://www.arlis.am/DocumentView.aspx?DocID=98865>

²¹ Armenia’s Homophobic Deputy Speaker Needs a Lesson in Christianity, available at: <http://www.hrc.org/blog/entry/armenias-homophobic-deputy-speaker-needs-a-lesson-in-christianity>

²² Armenia: A Blurry Line in Yerevan Between Hate Crime and Defense of “National Interests”, available at: <http://www.eurasianet.org/node/65436>

²³ Iravunk newspaper continues to preach violence, PINK Armenia available: <http://www.pinkarmenia.org/en/2014/07/iravunknewspaper/>

expressions, stating that it is outside the scope of the proceedings such civil proceedings.

1.3. Sexual orientation and gender identity and expression related legislation, policies and practices

1.3.1. Same-sex sexual activity

Homosexual activities were decriminalized in Armenia when the new RA Criminal Code was introduced in 18 April 2003²⁴. Decriminalization of same-sex sexual activities was imposed by the Parliamentary Assembly of the Council of Europe as a condition for Armenia to become a member of the Council of Europe²⁵.

According to article 141 of RA Criminal Code, the age of consent for sexual activity is 16 (sixteen) and is not different for same-sex sexual activities²⁶, i.e. the criminal legislation does not differentiate between sexual activities when defining the minimum age sexual activities are allowed.

Despite the fact that there is no responsibility for same-sex sexual activities, the prejudice and discrimination remain the main leading issues LGBT people face in their everyday lives²⁷.

1.3.2. Change of legal gender, regulations of gender reassignment procedures

There is no legislation regulating change of legal gender and gender reassignment procedures are not legally available in the country.

Article 4 of the RA law “On Medical Care and Services of the Population” stipulates that everyone has a right to medical care and services without discrimination based on nationality, race, sex, language, religion, age, status of health, political and other opinion,

²⁴ Council of Europe, 12 January 2004. Parliamentary Assembly. Honouring of Obligations and Commitments by Armenia. (Doc. 10027), available at:

<http://www1.umn.edu/humanrts/research/armenia/PACE%20Resolution%201361.pdf>

<http://www1.umn.edu/humanrts/research/armenia/PACE%20Resolution%201304.pdf>

²⁵ See note 24

²⁶ Article 141 of the Criminal Code of the Republic of Armenia, available at:

<http://www.arlis.am/DocumentView.aspx?DocID=98865>

²⁷ See note 11, as well as Amnesty International Report 2014-2015, available at:

<https://www.amnesty.org/en/countries/europe-and-central-asia/armenia/report-armenia/>, Human

Rights Watch World Report 2014 Armenia, available at: <https://www.hrw.org/world-report/2014/country-chapters/armenia>

social origin, property and other status. However, RA Government Decision N 276, dated 27.03.2008, which provides for the types of medical care and services that are conducted for the population of the Republic of Armenia, does not include sex/gender reassignment as a type of healthcare service available in the country²⁸.

The lack of regulation does not allow healthcare professionals to provide for such services. In most cases, transsexual people have to travel to neighboring countries to have access to sex reassignment healthcare services.

There is no specific legislation to allow transgender people to change their documents according to their preferred gender and/or other personal information, e.g. name, picture, etc. However, the existing legislation does not explicitly prohibit LGBT people to do so. The Law “On Citizen’s Passport” provides for an opportunity to change the passport and the details therein. Particularly, article 6 of the law “On Citizen’s Passport” provides for the bases for changing the passport, which among other things, applies in cases, when the passport includes inaccurate data about the holder and/or if the passport holder expresses such a will²⁹. For example, there was a case when a transgender person filed a request according to the legally defined procedures, that she needs to change her name and photo in the passport from male to female and she was successful. The accuracy of her claims she justified with supporting documents that she underwent hormonal therapy, plastic surgeries as well as provided for the psychologist's concluding report that she had symptoms of transsexualism.

However, it is believed that the general regulations in the existing legislation may be problematic, as it may raise issues of discretion the public authority may use when deciding on similar cases.

1.3.3. Ban on homosexual propaganda

Currently no legislation banning homosexual propaganda exists. However, in August 2013 Legal Department of the Police of the Republic of Armenia introduced draft supplements to the Administrative Infringements Code to ban and impose

²⁸ RA Government Decision N 276, dated 27.03.2008, on types of medical care and services that are conducted for the population of the Republic of Armenia, available at: <http://www.arlis.am/DocumentView.aspx?DocID=69784>

²⁹ Law on “Citizen’s passport” of the Republic of Armenia, available at: <http://www.arlis.am/documentview.aspx?docID=73080>

administrative sanctions for “propaganda of non-traditional sexual relations”³⁰. As it was stated by Police, the proposal was a result of numerous complaints received by Armenian intellectuals. The proposed amendment sought to fine individuals, legal entities and officials up to \$4,000 dollars for any public promotion of “non-traditional sexual relationships.”

The draft addenda was soon called back by the head of Police with the reasoning that the draft is not a pressing priority for the Police at the moment, as well as that it has several shortcomings³¹. However, it should be noted that such consideration has not been cancelled but postponed for a while, as stated thereto.

1.4. Same-sex unions/partnerships and marriage. Adoption of children

There is no legal framework for same sex partnership and/or marriage in Armenian legislation. It is not possible to formalize relationships between LGBT people, as same-sex partnerships and marriages are not explicitly recognized. However, It is noteworthy that article 35 of the RA Constitution prescribes that [m]an and woman of marriageable age have the right to marry and found a family according to their free will. This definition of the constitutional right to marry and found a family can be interpreted to include same sex partnership and/or marriage³². However, the RA Family Code narrows the right to marry between men and women.

There is no legal act allowing LGBT people to adopt children as spouses. However, article 116 of Family Code of the Republic of Armenia states that single parents are also eligible to adopt a child. Thus, it is still possible for an LGBT person to adopt a child.³³ This may be the case when the relevant institution, when providing access to adoption does not know a sexual orientation and/or gender identity of a person.

³⁰ Spread of Russian-Style Anti-Propaganda Laws, dated 27.02.2014, available at: <http://www.humanrightsfirst.org/resource/spread-russian-style-anti-propaganda-laws>

³¹ Armenia Withdraws Proposed Anti-LGBT Propaganda Law , dated 09.08.2013, available at: <http://www.hrc.org/blog/armenia-withdraws-proposed-anti-lgbt-propaganda-law>

³² See note 9

³³ Family Code of the Republic of Armenia, dated 09.11.2014, available at: <http://www.arlis.am/DocumentView.aspx?DocID=99927>

II. A summary of examples of (un) successful community advocacy, the process, actors involved, the outcome.

This section will analyze summary of examples of community advocacy work related to HIV/AIDS Epidemic and MSM and/or LGBT human rights issues.

It is worth to note that there is no specific advocacy work that has resulted in legislative, policy change, which had tangible influence on the situation of LGBT people in Armenia. Advocacy actions have so far aimed at mobilization of civil society, creating safe environment for LGBT people, awareness raising and education, as well as attempts to amend the national legislation and/or policy.

There are several reasons that need to be addressed here which are important in terms of advocacy and which have continuously had their influence on the advocacy processes and the outcomes thereof.

2.1. State attitude towards LGBT issues: State-sponsored homophobia

The stance of state representatives towards human rights of LGBT people and towards human rights defenders who are promoting the human rights of LGBT people has played tangible role in the overall advocacy work. In numerous occasions state representatives did not take any measures to counter intolerant and offensive discourse targeting LGBT people. Moreover there is an official stance by the state to encourage and promote such intolerance, as in numerous occasions state representatives publicly expressed their hate against LGBT people³⁴.

For example, as already stated above, vice president of the RA National Assembly, Eduard Sharmazanov publicly stated that the attack carried out on 8 May 2013 on a gay-friendly bar in the capital, Yerevan, was “completely right and justified”, and those who support the rights of LGBT Armenians “are perverting our society, and defaming the Armenian national identity.”³⁵ Another parliamentarian, Artsvik Minasyan, stated that the young men who attacked the bar “acted in accordance with our society’s values and

³⁴ PACE (Parliamentary Assembly of the Council of Europe): Armenian authorities fail to condemn incitement to hatred against LGBT people 28.01.2015, available at:

<http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=21513&Lang=EN>

³⁵ Armenia’s Homophobic Deputy Speaker Needs a Lesson in Christianity, available at:

<http://www.hrc.org/blog/entry/armenias-homophobic-deputy-speaker-needs-a-lesson-in-christianity>

national ideology, and in an appropriate manner.” He further called for a fight against the “spreading of homosexuality” as a “threat to national security”³⁶.

On 17th of May 2014, one of the Armenian newspapers called “Iravunk” published an anti-gay blacklist of people, with direct incitement to discrimination and intolerance towards them. A member of the National Assembly of the Republic of Armenia Hayk Babukhanyan, who is also the founding member of that newspaper, publicly supported the article and appeared in the court proceedings to support the respondents³⁷. He further stated during the court proceedings that they “have united to break and stop that globalist, anti-Christian expansionism”, later in a parliamentary session in the National Assembly expressed his concerns that LGBT issues are raised in the country and specifically targeted human rights organizations that are promoting human rights of LGBT people³⁸.

In a recent occasion, on 17 and 18 October 2015, PINK Armenia NGO organized the first Armenian LGBT forum, called “Rainbow.” The aim of the forum was to build an LGBT movement in Armenia, discuss problems of LGBT people and together develop a strategy and steps to prevent homophobia and promote human rights for all in Armenia³⁹. The publication of this event not only promoted hate speech and intolerance in media online and offline, but also caught attention of state representatives. Namely, Mayor of Vanadzor Samvel Darbinyan publicly stated the following about the organizers and participants of the event “Shame on them. [...] It is really shame that such event was organized. If people in Lori knew about it, it would never happen”. He added to the question as to what steps should be undertaken to ensure that such events are never passed again to which he answered “Let us know, we know the rest what we will do”⁴⁰. Worryingly, there are also other examples that illustrate how advocacy and human rights protection work of LGBT people is perceived and reacted by state authorities⁴¹.

³⁶ Armenia: A Blurry Line in Yerevan Between Hate Crime and Defense of “National Interests”, available at: <http://www.eurasianet.org/node/65436>

³⁷ Iravunk newspaper continues to preach violence, PINK Armenia available: <http://www.pinkarmenia.org/en/2014/07/iravunknewspaper/>, Armenia: Civil Society Activists to condemn Iravunk court ruling, available at: <https://cennetwork.wordpress.com/2014/11/05/armenia-civil-society-activists-join-to-condemn-iravunk-court-ruling/>

³⁸ MP Hayk Babukhanyan spreads hate speech in National Assemble of the Republic of Armenia, dated 24.05.2015, available at: <https://www.youtube.com/watch?v=VcfyTha0nxk>

³⁹ More information on the event available at <http://www.pinkarmenia.org/en/2015/10/lgbt-forum>

⁴⁰ Armenia must hold accountable, those responsible for threatening human rights defenders, available at: humanrightshouse.org/noop/file.php?id=21299

⁴¹ Interviews with members of National Assembly of RA on LGBT issues: available at: <http://www.lgbtnews.am/category/huňg uq ŋnġ j g/>

This situation has created the atmospheres that hate speech and intolerance against LGBT people is an accepted phenomenon, and specific actions should be undertaken to combat their existence. De facto state-sponsored intolerance is one of the main obstacles that LGBT human rights defenders face in the advocacy work.

2.2. Lack of reporting of human rights violations by the victims

One of the other influential factors that had impact on advocacy work is lack of comprehensive, reliable evidential data to support the arguments that human rights of LGBT people are grossly, constantly and institutionally violated. More concretely, persons who are victims of human rights abuses are reluctant to file complaints to relevant institutions. Lack of public visibility of LGBT issues and lack of reports on concrete human rights violation cases contribute to the perception that there are no violations suffered by the latter. Several reasons should be separately noted as influencing factors that result in inactivity of MSM and/or LGBT people to raise specific human rights violation cases:

- **Disclosure of status:** Due to the fact that most of the human rights violations suffered by LGBT and/or MSM people are bias motivated, i.e. related to sexual behavior, sexual orientation and gender identity/expression of a person, victims are reluctant to report any abuse and to start a legal proceeding in a relevant institution, e.g. law-enforcement institutions and/or judicial bodies. Documented cases of human rights abuses by PINK Armenia NGO illustrate that this is the case when a relevant institution will learn about the status of the victims once a report is made. For example, in cases of harassment and threats to damage one's health or destroy property or blackmailing in order to do certain activities in favor of a perpetrator are almost never reported, because either the victim will have to disclose the motivation of a perpetrator (that it is motivated by the sexual behavior, sexual orientation and gender identity/expression of a person) or the relevant investigatory or judicial body will learn about that information during the investigation of the case. (Annex 1)
- **Confidentiality issues:** Despite the legal requirement that use or dissemination of information which is considered to be a personal or family secret without one's consent should be prohibited⁴², sexual behavior, sexual orientation and gender

⁴² Article 144 of the Criminal Code of the Republic of Armenia

identity/expression of a victim is disclosed among third parties, e.g. fellow police officers, family members or relatives or neighbors of a victim, etc. (Annex 2)

- **Fear of victimization:** Another issue, which contributes to lack of officially registered cases, is the possible victimization suffered by the victims when reporting a crime. This is specifically the case, when transgender persons report physical abuse to police stations. The attitude of police officers is usually accompanied by mockery, rudeness, and verbal insult and, in some cases, criminal charges against the victims themselves. Particularly there is a noticeable trend that transgender sex workers are charged for false crimes reporting according to article 333 of Criminal Code of the Republic of Armenia, which, to some extent, is an indicator of differentiated treatment by police. It illustrates the general attitude and stance of law enforcement bodies towards abuse of transgender people. These phenomena being common contributes to crimes go unreported in Armenia because victims believe that they will not be taken seriously or think they may become targets of an investigation themselves. (Annex 3)

- **Fear of further revenge:** Transgender sex workers are the most vulnerable to physical violence and arbitrariness both by private and public persons. Hate crimes against transgender persons and transgender sex workers have been the most widespread form of hate-motivated violence against LGBT people. Battery, torture, inhuman and degrading treatment, including psychological violence are among the human rights abuses against them⁴³. This is due to the fact that they are vulnerable for both being transgender and being sex worker. Sex work is illegal in the Republic of Armenia: RA Code of Administrative Infringements defines being a prostitute as a misdemeanor, amounting to administrative fine defined in the Code, which is mandated and overseen by RA law enforcement bodies⁴⁴. This being so, transgender sex workers are particularly vulnerable, as they have to deal with police institutions quite often, which is a constraining factor to report about the abuse perpetrators of which are police representatives themselves.

⁴³OSCE Hate Crime Reports 2012, 2013 and 2014, available at: <http://hatecrime.osce.org/armenia>

⁴⁴ Article 179¹ of the Code of Administrative Infringements of the Republic of Armenia, available at: <http://www.arlis.am/DocumentView.aspx?DocID=99214>

2.3. Barriers for MSM/LGBT organizations: Lack of cooperation between stakeholders

Organizations that are dealing with MSM and LGBT issues have been targeted not only by relevant state institutions and persons, but they have also met some resistance and intolerance by stakeholders and civil society actors.

As an example, during 2012 PINK Armenia NGO initiated discussions and calls for joint actions for advocating for the necessity to have a standalone legislation to protect from discrimination⁴⁵. Some minority groups, who demanded that the Office of RA Human Rights Defender remove sexual orientation and gender identity as a protected characteristic in the draft legislation, accepted this initiative with swords. Despite the fact that the state institutions were not involved in that process yet, the lack of cooperation and tolerance between different vulnerable groups, and particular intolerance towards LGBT issues by other minority groups and organizations resulted in sexual orientation and gender identity, as a protected characteristic, to be excluded from the draft legislation, resistance of which did not meet support of other stakeholders working in the field of discrimination. That is to say, lack of cooperation between stakeholders created barriers for organizations working in the field of MSM and LGBT issues to effectively advocate for a positive change for LGBT people, as they lacked enough supporters and, in some cases, met homophobic resistance.

In another example, when the Legal Department of RA Police introduced the draft supplements to the Administrative Infringements Code in August 2013 to ban and impose administrative sanctions for “propaganda of non-traditional sexual relations”⁴⁶, LGBT organizations succeeded to reach the withdrawal of the latter. This was conditioned with the fact that the state authorities met huge criticism of international human rights community and alerts to withdraw the draft, which was also a result of advocacy work by LGBT human rights activists, who targeted specific international human rights institutions, organizations and bodies that were specifically interested in the issue and could play a role in withdrawal of the draft. Those are institutions, which were actively engaged in advocating for withdrawal of similar legislation in neighboring

⁴⁵ Anti-Discrimination Legislation advocacy in Armenia, available at: <http://www.pinkarmenia.org/en/2012/11/antidiscriminationlegislation/>

⁴⁶ See note 30

countries, such as Russian Federation and Republic of Belarus. In this case national stakeholders were not active as well.

It should be noted that there are also other factors that have had their influence in advocating for legislative, policy and social change for LGBT people, such as lack of comprehensiveness of national formal education to adequately address sexuality and human rights issues, lack of public awareness on the topic, etc.

III. Recommendations

3.1. Recommendations on community advocacy

Should include suggestions aimed at 1) LGBT-specific awareness raising on national level, with particular attention to potential allies and stakeholders working in the field of discrimination to be active supporters of MSM/LGBT issues, 2) raising right-consciousness of LGBT people to take a human rights specific stand for realization of their human rights, 3) developing reliable tools for LGBT/ MSM human rights organizations to document reliable and representative data of human rights violations suffered by LGBT people for evidence based advocacy, 4) other.

(to be developed with Sergey Gabrielyan)

3.2. Recommendations for decision-makers

Should include suggestions aimed at reviewing legislation, policies and practices with regard to protection of LGBT and MSM persons, particularly aimed at 1) adoption of a standalone legislation to protect from discrimination in accordance with internationally recognized human rights standards, 2) reviewing and amending the existing hate speech and hate crimes legislation in accordance with internationally recognized human rights standards, 3) undertaking necessary measures to reduce de facto intolerance and discrimination towards LGBT people in state institutions specifically and Armenian society generally, 4) adoption of adequate measures to meet the special needs of MSM persons in healthcare services 5) eradication of legislation that is discriminatory and may negatively affect HIV prevention and protection therefrom, 6) eradication of language in legislation that is discriminatory and reinforces the stereotypes and prejudice against LGBT and/or MSM persons, 7) other.

(to be developed with Sergey Gabrielyan)

ANNEX I

Case documented by "PINK Armenia" NGO

Physical attack on a gay person in the street

In March 2013 a homosexual man reported that he was physically attacked two men after he was noticed in one of the streets in Yerevan. As he stated, he did not know the alleged perpetrators and saw them for the first time that evening. The two men followed him while he was walking in the central area in Yerevan, then approached him and started to push and hit him several times while using insulting statements with regard to his appearance and gestures. As the victim stated, he was physically assaulted, because of his look and feminine gestures it was easily noticeable that he was homosexual. The victim did not agree to undertake any legal actions, as he was afraid for his sexual orientation to be disclosed by appropriate public bodies. Although the victim was scared, he stated that this was not the first time he was harassed and assaulted and that he would get better soon.

ANNEX II

Case documented by "PINK Armenia" NGO

Sexual orientation of a soldier disclosed among his parents and relatives

A soldier reported that he was exempted from military service after six months of serving when his sexual orientation became known in the relevant military unit of RA Armed Forces where he was serving. A village elder, who learned about the person's sexual orientation from the military commission, informed the soldier's father about why his son was exempted from the service.

In another case was reported a representative from the military commission informed her neighbor, i.e. the mother of the former soldier that her son is homosexual and was exempted from military service on the ground of his sexual orientation.

ANNEX III

Case documented by "PINK Armenia" NGO

Physical attack on a transgender sex worker

A transgender woman (male to female) was physically attacked by unknown to her men as she was walking down the cruising park area near Zakyan Street in Yerevan, the place known as the main gathering spot for transgender sex workers. The victim, who was sex worker herself, noticed that the men were following her and started to run. The alleged perpetrators ran after the victim and started to verbally insult (scream after) her. They managed to attack and hit her, but she could escape from being seriously injured. As the victim stated, the incident was connected with her gender identity. The appearance, feminine gestures of the victim and the park area where she was at time of the incident made it clear for the perpetrators that she is transgender. As noted, the victim was also verbally abused by the perpetrators and the content (the wording) of that abuse was directly related to the feminine look of the latter. The victim went to the nearest police station to report the abuse. The police officers did not start a case/record testimony but instead responded that she is "suspected" of being a prostitute, based on the feminine appearance of the victim. Subsequently, an administrative offences protocol was formed, according to which the victim had to pay 20.000 AMD (about 40 USD) for prostitution. As already stated above, the police did not address the complaint of the victim and no investigation was initiated. The police turned the complaint against the victim accusing him/her of engaging in prostitution and fined according to administrative procedures.