



# **Human Rights Violations Based on Sexual Orientation and Gender Identity in the Republic of Armenia**

Alternative Report  
as a Commentary on the Third Periodic Report CCPR/C/ARM/3  
by the Republic of Armenia

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Review of the Third Periodic Report by the Republic of Armenia

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**Human Rights Violations Based on Sexual Orientation and Gender Identity in the Republic of Armenia.** Alternative report as a commentary on the Third Periodic Report CCPR/C/ARM/3 by the Republic of Armenia. 129<sup>th</sup> Session of the Human Rights Committee Review of the third periodic report by the Republic of Armenia.

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## **I. Introduction**

1. The Republic of Armenia acceded to the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) in 1993 and has a 'State Party' status within the framework of the Covenant. Armenia submitted its third periodic report on 8 July 2019, which included its statements on the status of implementation of the Covenant during the period from 1 January 2010 to 31 December 2017.
2. The current Alternative Report — a commentary on the Periodic Report CCPR/C/ARM/3 (the Report) — is submitted as per the invitation of the Human Rights Committee (HRCtee) that welcomes "alternative reports" from regional NGOs regarding the observation of the Covenant by a State party, in this case, by Armenia.
3. Prior to the Report under review, in its Concluding Observations CCPR/C/ARM/CO/2 (hereinafter, CO), among other issues, the HRCtee presented the Republic of Armenia (RA) with concerns regarding the high level of hate crimes, especially based on race, religion, sexual orientation and gender identity (SOGI) and the total absence of effective punishment of such rights violations, as well as no attempts to proactively address the situation. Notably, the CO (Nº 6) recommended Armenia to ensure that its definition of discrimination covers all forms of discrimination as set out in the Covenant, and to provide protection to minorities, as well as ensure adequate investigation and prosecution of such cases. Also, the CO (Nº10) voices that Armenia "should state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transsexuality, or harassment of, or discrimination or violence against persons because of their sexual orientation or gender identity. The State party should prohibit discrimination based on sexual orientation and gender identity and provide effective protection to LGBT persons." Unfortunately, the State Report has zero address regarding the LGBT persons or any effective measures having been expressly adopted to ensure an all-inclusive non-discrimination legal framework.
4. Before we provide any further commentary on the Third Periodic Report of RA, particularly, when it comes to healthcare of the LGBT, the ECOM - Eurasian Coalition on Health, Rights, Gender and Sexual Diversity (hereinafter, ECOM) and New Generation Humanitarian NGO (hereinafter, NGNGO) would like to state their full comprehension of the current state of transformation that the State party is going through nationally. ECOM and NGNGO are aware of the changes in the form of governance that have occurred as the result of the constitutional amendments adopted during the referendum on 6 December 2015. ECOM and NGNGO are also aware of the complexity of switching to a novel form of governance and of the peaceful non-violent transition of power that took place during April-May 2018 in Armenia. ECOM and NGNGO are fully understanding of the devastating economic and mental strain the COVID-19 pandemic has imposed on the whole world; we are aware of the state of emergency that has been enacted in Armenia in attempts to try and curb the curve. Therefore, we understand the tremendous amount of material, human, and mental resources that are needed to pull through with such changes and the ginormous effort needed to follow its international obligations. However, there is no better time to implement chivalrous, humane, and righteous principles and provisions, championed by the UN and acknowledged by RA, than now. The new government promised its nation a change for the better and many NGOs are willing to assist the government in fulfilling that promise. ECOM is a regional NGO that specializes in working with gay men, other MSM, and trans\* people specifically in the area of ensuring their right to health, which makes it competent in revealing disparities in state healthcare services and offering professional recommendations to amend them, the knowledge about which the general civil servants may lack due to not having the training to work with these marginalised groups. New Generation Humanitarian NGO's activity is aimed at the realisation and protection of human rights, facilitation of access to healthcare services, empowerment of vulnerable groups of the society, non-governmental organizations and non-formal groups, as well as at promotion and support in the implementation of the obligations of the Republic of Armenia under RA constitution and assumed under international legal acts. As such, the following commentary and reports on the LGBT's right to health in Armenia are presented by ECOM and NGNGO in good hopes to invest in alleviating the burden that befalls the gay men and trans\* people in RA due to the absent legal mechanisms that would protect them from being discriminated and would help their better integration and thriving.

5. ECOM and NGNGO welcome Armenia's efforts to narrow the gap between men and women in terms of discrimination based on sex. RA adopted the Law "On Ensuring Equal Rights and Equal Opportunities of Men and Women" in 2013, as well as the Gender Policy Concept Paper that "aims at creating equal conditions, overcoming all forms of discrimination on the grounds of sex, ensuring equal opportunities for men and women in the labour market and employment sector [and] their equal access to economic resources" (Report para 50, 51). It is also commendable that "courses were held for the trainees of the Police Educational Complex [of RA]" and "training courses for the police officers in charge of minors' affairs" (Report para 62). These educational steps were related to equal opportunities for men and women and were meant to enhance the awareness of the police regarding the nuances of discrimination based on sex, how it affects women, and how it can be combatted by ensuring non-discrimination. Unfortunately, considering how many minority groups are being abused in Armenia daily, such small steps in almost ten years amount to virtually nothing.
6. There are various groups in every society, including the Armenian one, that are at an increased risk of getting infected with HIV. Such groups include men having sex with men (MSM) and trans\* people, sex workers, and people who use drugs (PWUD). Sadly, all of them currently constitute marginalised groups and have no adequate coverage for their particular healthcare and legal needs. They live in constant fear of being verbally and physically abused for their sexual orientation and/or gender identity at home, at work, at educational institutions, and, what is the worst, when they come for healthcare aid and/or legal protection based on their constitutional rights. These groups of people are not only ignored by the current legislation, which has no effective mechanisms for them to use to protect themselves, but they are also hunted down and degraded by political figures, medical workers, law-enforcement officers, and the general public.
7. Report CCPR/C/ARM/3 states that it covers the national events that took place only during 1 January 2010 and 31 December 2017. Consequently, the events that transpired in Armenia during 2018-2019 (until the submission of the Report) are not considered in it. The Report provides no status of actual, factual steps that have been taken and that are planned to be undertaken regarding the current absence of an effective and all-encompassing non-discrimination legal framework. The Report does not mention what has been done to enhance the legal situation regarding hate crimes, protection from discrimination on all grounds, including SOGI, and the mitigation of stigmatization of the LGBT that creates adversity for their lives.
8. Article 40 section 1 of the Covenant states that "[t]he State Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights." Having studied the Report, ECOM and NGNGO consider that, within the scope of the **right to equality (article 2 of the Covenant)** and the **right of self-determination (article 1 of the Covenant)**, Armenia's report does not provide the HRCtee with the chance to assess the degrading human rights situation that gay men and trans\* people are experiencing. The given Alternative Report is meant to serve as additional information regarding the non-discrimination of gay men and trans\* people in Armenia, the observation of their rights and as an instrument to advance positive changes to amend the current underwhelming position in which the mentioned persons tend to find themselves in.

## II. Absence of Non-Discrimination Legislative Framework

9. Having analysed the Report, it seems as if the Armenian government does not view the notion of "gender" the way the international community does. The Report (para 34) mentions article 29 of RA's Constitution which states that "[d]iscrimination based on sex, race, skin colour, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited." The Report (para 35, 50, 51, 62) follows up by referring that article 30 of the Armenian Constitution sets the legal equality of men and women, that the Law "On Ensuring Equal Rights and Equal Opportunities of Men and Women" was adopted, and the Gender Policy Concept Paper was drafted — all to ensure gender equality in all spheres of life. But "gender" is not synonymous to "sex." Gender and sex are different legal notions and imply different things, where "sex" refers to a person's biologically assigned sex,

based on their sex characteristics, while “gender” “refers to the roles, behaviours, activities, attributes and opportunities that any society considers appropriate for girls and boys, and women and men. Gender interacts with, but is different from, the binary categories of biological sex.”<sup>1</sup> Neither the Constitution of Armenia, nor its general legislation define the words “gender” or “gender identity” anywhere and as per the HRCtee practice. The list of protected attributes is open, yes, but the absence of effective mechanisms of interpreting them during law enforcement and judicial procedures as such that encompass SOGI, as well as the profound acts of homophobia and transphobia exhibited by law-enforcement officers and medical professionals, renders the presence of this open list irrelevant.

10. It is highly commendable that Armenia has taken many steps towards trying to combat domestic and other violence and discrimination based on sex. The Report (para 56) outlines that health and educational programmes have been implemented within the framework of the Gender Policy Strategic Programme 2011-2015 and 2011-2015 Strategic Action Plan to Combat Gender-based Domestic Violence. Hopefully, these steps and the interagency effort will bring forth solid results that shall mitigate the injustice that befalls women in Armenia simply based on their biological sex. That being said, the Report (para 45-47) states that the draft Law “On Ensuring Equality,” which is meant to expand upon the above-mentioned article 29 of the Armenian Constitution, is currently being considered; the Law is supposedly derived from the Human Rights Action Plan of RA, both of which are to ensure equality and prohibition of discrimination. It is worth stating that the draft<sup>2</sup> of the said Law “On Ensuring Equality” had no mention of “sexual orientation” or “gender”, or “gender identity.” The civil society had also forwarded its recommendations to provide particular steps in the action plan regarding the implementation of the Human Rights Protection National Strategy 2017-2019, but they were rejected by the Ministry of Justice of RA. Among others, these recommendations included the adoption of comprehensive anti-discrimination legislation that would grant effective protection levers to the LGBT.
11. Currently, there is no possibility for gay men or trans\* people to restore their rights that have been violated based on their SOGI. RA’s criminal legislation has no substantial and procedural regulations to prevent, investigate, and punish hate crimes. Hate crimes as such are not even stipulated legislatively the way the international community understands them. The Criminal Code of RA, article 63,<sup>3</sup> provides for criminal responsibility and circumstances aggravating the punishment for the crimes on the grounds of ethnic, racial or religious hatred, fanaticism. There is even no article in the criminal code that would punish for discriminating against others based on the open list of grounds that is enshrined in article 29 of RA’s Constitution. Article 226 of the Criminal Code defines only national, racial, and religious hatred.<sup>4</sup> RA deserves praise for decriminalizing homosexual sexual conduct and related crimes, but Armenia’s material and procedural criminal legislation remains to be out-of-date and should be enhanced and updated as per the best international practices as soon as possible. That being said, the Criminal Code of Armenia, article 139, separates homosexual rape into an individual article, reading: “Homosexuality or other actions of sexual character enacted against the will of the victim [or female victim] with the use of violence or a threat to use to on the victim [or female victim] or on another person, or with the use of the helpless state of the victim [or female victim] is punished by imprisonment for a period of three to six years.”<sup>5</sup> Article 138 called “Rape” criminalizes the same exact actions only for the man being the perpetrator and the woman being the victim. “Homosexuality” is a homophobic term and the existence of this article enforces the public stereotype about homosexuality being wrong, something distorted. The crime of rape should be universalized for every sex and gender in a single, comprehensive article.
12. Hate speech is not commonly defined and regulated by the Armenian law, too. Article 397 of the Criminal Code additionally provides criminal liability for denial, mitigation, approval or justification of genocide and other crimes against peace and humanity on the grounds of race, skin color, national or ethnic origin and religious belief,<sup>6</sup> but, again, the list is closed here and the object of such crimes is the public order and national security rather than the privacy and personal dignity of a private individual. Law-enforcement bodies deny victims in registering

<sup>1</sup> WHO on Gender, <https://www.who.int/health-topics/gender>

<sup>2</sup> <https://www.e-draft.am/projects/1801/about>

<sup>3</sup> Criminal Code of Armenia, <http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=rus>

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.



them being abused as hate-crime victims, which leads to further discrimination and utter ineffectiveness of investigation and punishment. What is more disconcerting is that gay men and trans\* people are frequently denied regular healthcare, HIV-related services, trans\* people-related medical care, and are often degraded by medical workers. These victims cannot redress their abused rights since they fear further discrimination that awaits them at the police station and in court. The current absence of a comprehensive anti-discrimination legislation that would ban discrimination based on all grounds, including SOGI, and express definition of all related notions, like hate speech, hate crimes, and such, leads to gay men and trans\* people having no ability to exercise their right to self-determination, health, privacy, and, eventually, to life.

13. Once again, it is peculiar that the Report only refers to certain events during 2010-2017, obviously, sparingly, as it is impossible to cover everything. However, in response to the recommendations № 6 and 10 in the Concluding Observations CCPR/C/ARM/CO/2, there are a few other things the Republic of Armenia withheld. Since the 2018 revolution, after which the “peaceful” transition of power occurred, the old government, among others, started to express strong homophobic and transphobic rhetoric (without any punishment from the new government), which tries to discredit the current authorities as such that lead Armenia to imminent “danger” that homosexuality poses. Backed by such rightist rhetoric and the support from the old government, protests began, including from the Armenian Apostolic Church, which resulted in the International Forum of LGBT Christians (that was to be held in November 2018) being cancelled. The commentary of the Head of Police, Valery Osipyan, stated: “Given certain risks, such a forum will not take place in Armenia. At the moment I myself find it not appropriate given security conditions. We have made some explanations so that this does not take place on the territory of Armenia. We’ve seen what happened in neighboring Georgia. If such an event was to take place, the police would have ensured the safety of all.”<sup>7</sup> It seems like the media resources that included his direct quotes were taken off of the Internet, but certain mentions are available in Russian. The Supreme Patriarch and Catholicos of all Armenians, His Holiness Garegin II, stated: “God designed the Commandments and the moral norms for the human that He had created. Today, however, there’s an attempt to present moral deviations and their open propaganda as if in the light of human rights and freedoms”<sup>8</sup> — a response to the protests that led to the cancellation of the aforementioned LGBT forum. Having ratified the Covenant, Armenia should be fully aware that derogatory discrimination of human rights, particularly, based on SOGI, has no place within the framework of ICCPR. With the support of the leading religion and rightist politicians, gay men and trans\* people are subjected to public degradation. Notably, the scope of homophobic and transphobic hate speech appears to be widening: a wave of hate speech followed the attack that happened in Shurnukh, Armenia, where 9 young people were severely beaten up and exiled from the village because of their factual or alleged sexual orientation.<sup>9</sup> Local dwellers and government officials took part in the “exile procession,” and these officials continue to propagate and call people to discrimination and violence against the LGBT. The Ombudsman seems to have little power over the government, too, despite the office stating that violence against whomever it is, regardless of their attribute, should not be tolerated.
14. ECOM and NGNGO would also like to use this Alternative Report as a vehicle of appeal, for the HRCtee to remind Armenia about the universality of principles that Armenia took upon itself by ratifying the ICCPR, especially, the ones enshrined in the Preamble, “The States Parties to the present Covenant [r]ecognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.” With this in mind, the Human Rights Council, in its Annual Report to the UNHCR A/HRC/19/41 (para 62) stipulates that “[u]nder the Covenant, States parties may limit enjoyment of these rights only insofar as restrictions are provided for by law and necessary to protect rights of others, national security, or public safety, order, health or morals. Any such restrictions should be compatible with the provisions, aims and objectives of the Covenant and should not be discriminatory.”<sup>10</sup> Therefore, violating the freedom of expression and assembly of the LGBT is concealed under the guise of

<sup>7</sup> “The LGBT Forum Won’t Be Held in Armenia,” <https://www.panorama.am/ru/news/2018/11/06/Валерий-Осипян-ЛГБТ-форум/2029241>

<sup>8</sup> Ibid.

<sup>9</sup> “Ombudsman on the Incident with LGBT in Shurnukh,”

<sup>10</sup> UNHCR A/HRC/19/41, [https://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41\\_English.pdf](https://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf)

actions that are supposedly protecting national morals. Nonetheless, the Armenian Government should note that public morals do not equal religious morals pertaining to any denomination.

15. Morals and traditional values universally appreciated by the international community refer to universal principles of kindness, respect for one another, compassion, and peacefulness. The HRC Advisory Committee's Study A/HRC/22/71 states: "Human rights have moral universality, since human rights are held universally by all persons 'simply because one is a human being', and international normative universality, meaning that human rights are universally accepted by Governments through their commitments and obligations under international human rights law."<sup>11</sup> Armenia recognized the authority and the rights enclosed in the Covenant of its own will. Further, the Study explains that "[n]o one may invoke cultural diversity as an excuse to infringe on human rights guaranteed by international law or limit their scope [...] to seek to sanctify differences that run counter to the universality, indivisibility and interdependence of human rights."<sup>12</sup> Therefore, any appellation to the "traditional values" or "national morals" to limit the rights of the LGBT contradicts the obligations Armenia took upon itself under the Covenant.
16. The discriminatory actions of the police, the government at large, and those that deny LGBT their freedom of expression violate the principles stated in the Covenant and in the Armenian Constitution itself. The resulting situation "privileges the antagonists rather than those claiming rights."<sup>13</sup> Apart from this, as outlined by the said analysis of the Human Rights Council: "Restrictions on information on sexual orientation, including those allegedly intended to protect "public decency", can have a deleterious impact on public health efforts, including in relation to transmission of the HIV virus."<sup>14</sup> Evidence to the last statement will be provided in this Alternative Report in the next chapter. All of the international human rights treaty bodies, without exception, have concluded that "[s]tates have an obligation to everyone from discrimination on grounds of sexual orientation or gender identity. The fact that someone is lesbian, gay, bisexual or transgender does not limit their entitlement to enjoy the full range of human rights."<sup>15</sup> Such a position is fully compatible with what is protected by the Covenant and the Armenian Constitution. Denying the LGBT their right to equality, expression, non-discrimination, privacy, health, and life constitutes frivolous illegal activity of RA that violates its own laws and obligations.
17. Considering the above, the Armenian legislation does not provide gay men and trans\* people with any possibility not only to protect their human rights and freedoms if violations occur, they also cannot realise them in routine life, like their heterosexual counterparts do. Despite the ongoing shifts in the state of government in Armenia and, although a more freedom-loving authority has come to power, there is no effective legal regulation that would, firstly, ban all forms of discrimination, including based on SOGI, that would define "discrimination," "stigmatization," "gender," "gender identity," "sexual orientation," "hate speech," "hate crimes" and other respective notions properly. In addition, although the Report (para 40, 56) states that the government consults with the civil society, namely NGOs, they take little consideration of what the latter propose and most of the truly necessary legislative proposals and programmes are, eventually, discarded by the government. Gay men and trans\* people live in constant fear of abuse by the medical workers, law-enforcement, judiciary, and the general public, while the government positions itself as helpless to either act upon occasion or to adopt the necessary high ground decisions.

### **III. Obstructing the Right to Health of Gay Men and Trans\* People**

18. The current rhetoric of the Armenian government regarding LGBT, degrading them as such that are a "danger" to the Armenian society and national heritage is, frankly, based on non-factual superstition and does not coincide with the international human rights treaties to which RA is a part of, or in relation to its own national legislation. These marginalized groups are denied their fundamental human rights and freedoms in most areas of social life because of the gap in legislation that does not protect people based on SOGI; but the most concerning point is the violation of their right to health. The Constitution of Armenia, article 3, declares: "The person

<sup>11</sup> HRC Advisory Committee's Study A/HRC/22/71, [https://www.ohchr.org/documents/HRBodies/HRCouncil/AdvisoryCom/Session10/A.HRC.22.71\\_en.pdf](https://www.ohchr.org/documents/HRBodies/HRCouncil/AdvisoryCom/Session10/A.HRC.22.71_en.pdf)

<sup>12</sup> Ibid., para 11

<sup>13</sup> UNHCR A/HRC/19/41, [https://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41\\_English.pdf](https://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf), para 64

<sup>14</sup> Ibid., para 65

<sup>15</sup> Ibid., para 16

holds the highest value in the Republic of Armenia. The inalienable dignity of a person is the inalienable foundation of his rights and freedoms. Respect for and protection of the fundamental rights and freedoms of a person and a citizen is the obligation of the public authorities. The public authorities are constrained by the fundamental rights and freedoms of a person and a citizen, which conclude directly acting law.”<sup>16</sup> Going forward, article 85 of the Armenian Constitution defines that “[e]veryone, according to the law, has the right to healthcare.”<sup>17</sup> Sadly, as mentioned above and based on the cases outlined below, gay men and trans\* people are not only denied their right to healthcare, their dignity is frequently and actively offended by public officials, law-enforcement officers, and state medical workers. Once again, ECOM and NGNGO understand the burden that the government faces on its way to becoming a formidable free democratic state following the HRCtee’s CO but considers it necessary to report on the actuality of the right to health of gay men and trans\* persons which is currently being obstructed in Armenia. At present, despite the decriminalization of homosexuality *per se*, homophobia and transphobia are two factors that impede the ability of gay men and trans\* individuals to lead healthy and fulfilled lives in their home country.

19. The right to health is a fundamental right of all people that should be unequivocally protected by every state, including Armenia, regardless of the person’s attributes. Article 25 section 1 of the Universal Declaration of Human Rights states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including [...] medical care and necessary social services [...]”.<sup>18</sup> In combination with the above-mentioned national and international norms, gay men and trans\* people are entitled to an adequate, high standard of life, which includes decent healthcare, in Armenia which should ensure it without discrimination. As outlined in the OHCHR Fact Sheet No. 31, among others, the right to health means that “non-discrimination is a key principle in human rights and is crucial to the enjoyment of the right to the highest attainable standard of health. [...] Non-discrimination and equality further imply that States must recognize and provide for the differences and specific needs of groups that generally face particular health challenges, such as higher mortality rates or vulnerability to specific diseases.”<sup>19</sup> Because of stigmatization and discrimination, gay men and trans\* persons conclude a minority group that is vulnerable to increased health risks, including higher HIV-risks. Apart from this, the perpetual conditions of living in fear of being harassed or physically abused by other citizens, medical workers or law-enforcers already contradicts the Preamble of the Constitution of the World Health Organisation, which outlines that health is “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”<sup>20</sup> Armenia is a part of both frameworks — the Universal Declaration and the World Health Organisation — and should act upon the international obligations it has recognized, which exist, in fact, for the good of its entire nation. The better the minorities are integrated, the higher the level of social and civil society progress, the more effective the democratic mechanisms.
20. Armenia has an obligation before its people, and the international community, to ensure the conditions necessary to lead a healthy, fulfilled life for people who reside within its borders, regardless of their SOGI or health status. Although the Covenant does not expressly include the right to health as the object of protection, there are various other rights that are inalienable from it that are included: the right to non-discrimination (arts 2,3); the right to life (art 6); the right to liberty and security of a person (art 9); the right to privacy (art 17); and others.”<sup>21</sup> Gay men and trans\* people in Armenia meet multiple obstacles in successfully realising their constitutional right to healthcare, which infringes their right to health. Because gay men and trans\* people live in fear of being abused by general population or civil servants, they are reluctant to come for medical or legal protection to government institutions and facilities. Subsequently, the stigma forces them to keep a low profile, and the inability to express their sexuality and identity forces them into unsafe life practices, including unsafe sexual practice. Gay men and trans\* people cannot acquire satisfactory healthcare services because of the danger of the secrecy of their health, including their HIV status, being infringed, or because of them being harassed or blackmailed by medical workers or law-enforcement officers. The Pink Armenia NGO conducted a survey, where participants completed an online anonymous

<sup>16</sup> Constitution of the Republic of Armenia, <http://www.parliament.am/parliament.php?id=constitution&lang=rus>

<sup>17</sup> Ibid.

<sup>18</sup> Universal Declaration of Human Rights, <https://www.un.org/en/universal-declaration-human-rights/>.

<sup>19</sup> OHCHR Fact Sheet No. 31: Right to Health, <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>, pp. 4, 7

<sup>20</sup> Constitution of WHO, [https://www.who.int/governance/eb/who\\_constitution\\_en.pdf](https://www.who.int/governance/eb/who_constitution_en.pdf).

<sup>21</sup> WHO on ICCPR and the Right to Health, [https://www.who.int/hhr/Civil\\_political\\_rights.pdf](https://www.who.int/hhr/Civil_political_rights.pdf)



questionnaire. The LGBT children, being the target of the survey, appear to be subjected to frequent bullying: 82% of the respondents had been subjected to bullying, 35% of which had been subjected to bullying multiple times. The survey reports not only cases of violence but blackmail, too. And that is already at the level of LGBT persons being children. Grown-up gay men and trans\* people are often blackmailed or afraid of blackmail because they can lose their jobs, families or be subjected to public physical and verbal abuse. Apart from this, these minorities (being in any age group) are reluctant to turn to the police or other law-enforcers for protection because of the additional abuse they are afraid of being subjected to after disclosing their sexuality or HIV-positive status. The combination of the mentioned factors creates a danger to the lives of gay men and trans\* people in the short and long run since not only do they not receive regular healthcare and legal protection in case they are harassed, they are also discriminated in receiving adequate sexual and reproductive education, as well as in receiving HIV-related services that the country is obliged to qualitatively provide to everyone.

21. Considering the aforementioned, certain deliberations regarding Armenia's HIV policies are due. Firstly, the Law "On HIV Prevention," article 14, declares that "HIV-positive individuals have the right to a non-discriminatory conduct in relation to themselves."<sup>22</sup> However, the non-specific wording of article 130 of the Criminal Code of Armenia,<sup>23</sup> which criminalizes the infection of the victim with HIV, leads to stigmatization prospects for PLHIV. The mechanism of identifying the intent is not clear. Additionally, PLHIV that know their status will still be punished even if the other person was not, in fact, infected after the intercourse. The said Law "On HIV Prevention" also states that immigrants have to present a medical certificate that, among others, discloses their HIV status. The same law also demands that people that have been abroad (outside of Armenia) for more than 3 months on business or personal trips, are to present a certificate on their HIV status as well (article 11). The Decree of Ministry of Healthcare of the Republic of Armenia N 06-Ն, 7 February 2013, Appendix 2, article 1, section 15, subsection a)<sup>24</sup> includes a list of people at higher risk of getting infected with HIV, and this subsection includes people that have homosexual sexual contacts. The people in the said list are expressly forbidden to donate blood in any cases. The Criminal Code provisions should only punish those people who are aware of their HIV-positive status and had the direct intent to infect the victim. The decriminalization of the threat of infecting the victim and the unintentional infection of the victim contradicts the international recommendations since it invests in increasing the stigma of people living with HIV and those who are at an increased risk of getting infected. It also creates additional reasons for avoiding getting screened for HIV and other STIs and causes more barriers to accessing healthcare. The international recommendations in this regard define that only the cases of intentional infection of the victim with HIV and other STIs should be punished, while excluding the threat of infection or unintentional infection from being criminalized or otherwise punishable.<sup>25</sup>
22. Decriminalization of intentional (without the infection of the victim actually taking place), unintentional infection and the threat of infection of another person with HIV functions as a significant investment in stigmatization of homosexuality. Gay men and trans\* people are afraid of showing at testing sights, are scared of getting screened and receiving a positive result and being persecuted by the public or otherwise, or getting convicted. Instead of combating the HIV epidemic, this situation only aggravates it. The Criminal Code should be altered and only the intentional infection of another person with HIV or other STIs should be punished, and a clear mechanism of establishing the intent should be defined as well. Otherwise, gay men and trans\* people will continue to avoid getting screened for or educated about HIV, and their sexual practices under a low profile will continue to increase the epidemic and enforce the stigma, creating a loop.
23. Another legislative problem that obstructs the right to health of gay men, other MSM, and trans\* people is the unnecessarily rigid and strict procedure for getting a license for conducting blood tests, i.e., express testing for HIV via blood tests. Based on the Law "On Licensing,"<sup>26</sup> NGOs cannot receive a license to conduct HIV tests via the internationally recognized express HIV blood tests. The civil society has raised this issue during the meetings with the government

<sup>22</sup> Law On HIV Prevention, <http://parliament.am/legislation.php?sel=show&ID=1574&lang=rus>

<sup>23</sup> Criminal Code of Armenia, <https://www.wipo.int/edocs/lexdocs/laws/ru/am/am012ru.pdf>

<sup>24</sup> Decree of Ministry of Healthcare of the Republic of Armenia N 06-Ն, 7 February 2013, <https://www.arlis.am/documentview.aspx?docID=82261>

<sup>25</sup> "UNAIDS, Policy Brief: Criminalization of HIV Transmission" (2008), [https://www.unaids.org/en/resources/documents/2008/20081110\\_jc1601\\_policy\\_brief\\_criminalization\\_long\\_en.pdf](https://www.unaids.org/en/resources/documents/2008/20081110_jc1601_policy_brief_criminalization_long_en.pdf)

<sup>26</sup> Law On Licensing, <https://www.arlis.am/documentview.aspx?docid=67471>

many times. As a result of a combination of legal provisions (Decree of the Minister of Healthcare PA No 3010-A,<sup>27</sup> the Law "On Medical Aid and Services to the Population"<sup>28</sup> and others), NGOs would have to register as legal entities, go through an expensive procedure of buying unnecessary equipment, equipping the venues and such, get a license as a medical facility and only then get the license to conduct express HIV blood tests. Currently, only NGOs conduct express HIV saliva tests (that have no governmental licensing per se), and the only facility that conducts all kinds of tests is the Republican Centre for AIDS Prevention. Notably, NGO New Generation, which works with the LGBT, recently won a grant from the Republican Centre and met a series of obstacles at the stage of concluding the grant contract itself. The mandatory terms of the said contract stipulated that if the donor inquires, then the contractor is to provide it with a ciphered list of all the beneficiaries (those who received HIV services at that NGO), which included the latter's contact information (at least a telephone number or an address). Article 6 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data states that personal data that concerns health or sexual life may not be processed automatically unless domestic law provides appropriate safeguards.<sup>29</sup> Armenian national law has no safeguards for LGBTs at all and, moreover, no safeguards for HIV-positive people. The NGO applied to the Ministry of Health and the Agency that governs the conduct with personal data, both of which addressed the issue, obliging the Republican Centre to revise the said terms. Unfortunately, the Centre revised some, but the terms that demand personal contact information about the beneficiaries to be revealed upon request were not discarded.

24. The Armenian legislation that governs the licensing of HIV-services for NGOs is inadequate, rigid, and hinders the development of civil society in the country. In addition, this has a dramatic, negative impact on the HIV epidemic because NGOs that work with the LGBT persons cannot effectively conduct HIV-outreach programmes and cannot create a network of available and accessible HIV-services for its community. The issue of very low financing of LGBT NGOs that conduct HIV-services remains still. Such a situation should not be supported in a contemporary democratic state. NGOs that represent the interests of key population groups are seemingly discriminated against during the drafting of RA's national HIV programmes and legislation. The rigid regulations that are presented to NGOs to acquire multiple unnecessary licenses to conduct the widely accepted express HIV blood tests further supports homophobia and transphobia and obstructs the right to health of the LGBT persons in Armenia.
25. Considering the current crippled approach the Armenian government has established for NGOs that conduct HIV-services, it is worth mentioning the widely distributed and appreciated UNAIDS 90-90-90 Strategy. Firstly, NGOs who work with key population groups (those that are at a higher HIV-infection risk) should be considered during public calls for grants and during their regular work on the same level as NGOs that deal with other health issues and populations. Therefore, a tailored approach on the government's part is necessary to follow the global action plan to fight the HIV epidemic. Consequently, the UNAIDS 90-90-90 Strategy encourages states to follow the principle of community-based HIV-services that should be provided by LGBT NGOs to their respective community directly. Representatives of these communities should be invited by the government when any HIV-related regulations or regulations that may impact the HIV-services distribution are being discussed in order to tailor such laws correctly, avoiding discrimination and reach the community better with respective medical services. In relation to the current system of NGOs receiving grants and conducting their activities, the 90-90-90 Strategy recommends that HIV-services that are provided to key population groups should be decentralized.<sup>30</sup> In other words, the services should be provided by the community for the community, and respective NGOs should be entitled to coordinate their activity directly with their donors and other financing institutions in conformity with their tailored programmes that abide by and fit the national HIV-prevention action plan or programme but without extensive governmental control, bureaucracy, and interference. Since, usually, governmental institutions lack the knowledge, proficiency, and expertise in working with the delicate needs of key population groups, UNAIDS advises them to simplify the granting and operations procedures for such NGOs and encourage their invaluable work with their communities, instead of trying to supervise them and treat them like any other NGOs.

<sup>27</sup> Decree of the Minister of Healthcare PA No 3010-A, [http://www.arm aids.am/images/2012.12.20\\_Order\\_N3010-A\\_Karg\\_HIV\\_TestingCounselling.pdf](http://www.arm aids.am/images/2012.12.20_Order_N3010-A_Karg_HIV_TestingCounselling.pdf)

<sup>28</sup> Law On Medical Aid and Services to the Population, <http://parliament.am/legislation.php?sel=show&ID=1688&lang=rus>

<sup>29</sup> Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, <https://rm.coe.int/1680078b37>

<sup>30</sup> UNAIDS 90-90-90 Strategy, [https://www.unaids.org/sites/default/files/media\\_asset/90-90-90\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/90-90-90_en.pdf)

26. Another, highly concerning event has occurred in Armenia that harbors potential risks and high danger for any key population group, including gay men and trans\* people, is the recent decision to merge the Republican Centre for AIDS Prevention with CJSC "Clinical Hospital for Infections 'Nork'" (ЗАО "Инфекционная клиническая больница "Норк"). This event received widespread general criticism throughout the country. The decision had been published by the ministry of Healthcare on 30 January 2020, and the head of the Centre, Samvel Grigorian, was relieved of his duties on February 26 2020. The head of the Apparatus of the Ministry of Healthcare, Lusinae Kotcharian, stated that the decision had been made because the Centre had no means for hospitalisation. She also said that the Centre had "resisted" integration for long enough and that its services locally were ineffective and that people who need hospitalisation would still have to go to Yerevan. However, PLHIV very rarely reach the condition that requires hospitalisation. The ex-Head for the Disease Control of the Centre, Arshaka Popoyana, stated that the allegations are ungrounded since the predominant majority requires only ambulatory treatment. Many politicians and MPs voiced their concern and disagreement with the decision as this would only further exacerbate the HIV epidemic in the country. It was already stressful and sometimes abusive enough for gay men, trans\* people and other persons to turn to the Centre for testing, but, at least, they were separated with a staff and programme that were focused on those requiring HIV services specifically. Now, people will ultimately lose faith in the fact that the confidentiality of their HIV status, personal data and observation of dignity could be met after this merger with a general hospital. The Centre's staff did a public demonstration on 27 February 2020; 75 out of 107 employees of the staff filed a collective resignation letter, stating that they will not carry the responsibility for such nonobjective and damaging actions of the Ministry of Healthcare. The said decision of merger is unacceptable. All countries should have separate agencies that are dedicated to national HIV prevention specifically. Instead of working towards progressive HIV programmes, the Armenian Government has chosen a setback.
27. The LGBT civil society has records of numerous cases of violation of human rights of LGBT, including cruel, inhuman or degrading treatment. Article 26 of the Armenian Constitution proclaims that "[n]o one can be subjected to torture or inhuman, or degrading treatment or punishment. Corporal punishment is forbidden. Inmates have the right to humane treatment."<sup>31</sup> Unfortunately, the Criminal Code's punishment is extended only to torture (art 309.1),<sup>32</sup> but the crime is located in the crimes against civil service, which are characterised by a specific subject. Subsequently, there is no corresponding criminal norm that would protect the freedoms and rights protected by Article 26 of the Constitution and that would have the punishment for the specific deeds banned by that article. In addition to the above-mentioned assault and exile of young people from a village based on their factual or alleged sexual orientation, a few other cases are worth mentioning.
28. One case happened on 5 June 2017, when a bisexual man met an unknown person near Republic Square. Sexual intercourse between them happened with violent acts of sexual nature. The unknown person behaved in a certain way so as to gain confidence of the bisexual man (the victim). At the same day, the unknown person stalked the bisexual man and used violence against him in a crowded area: brutally hit him on the head and back, took away his phone. The victim turned to neighbours for help who denied him assistance, threatening him with more violence and demanded that he left. The victim applied to the NGO New Generation for help. With the help of the NGO's attorney, the victim was inspected at the police station; the attorney filed for the initiation of a criminal investigation. However, the police, eventually, found and returned the phone but denied disclosing or detaining the perpetrator. The attorney filed a petition to the RA General Prosecutor requesting cancellation of such an outright illegal decision. The investigation continues.
29. Another case involves B.K. being detained by the Police of Yerevan City and brought to the Mashtots Police Department on 11 April 2018 without any explanation what the person was detained for. B.K.'s phone, chain, and belt were taken away. B.K. was tortured and beaten to admit his guilt in committing stealing; no procedural status was granted him. The NGO New Generation, again, was involved in the matter. After its attorney's appeals, the HRD of Armenia let her know that B.K.'s procedural status was "a suspect." After judicial proceedings, the criminal case was dismissed.

<sup>31</sup> Constitution of the Republic of Armenia, <http://www.parliament.am/parliament.php?id=constitution&lang=rus>

<sup>32</sup> Criminal Code of Armenia, <https://www.wipo.int/edocs/lexdocs/laws/ru/am/am012ru.pdf>



30. On 2 November 2018, 2 cars followed the car with the NGO New Generation staff all the way from Aghveran to Yerevan. The staff noticed it and was able to capture the car and the identity of those in it. Sevan Aghajanyan, a publicly known ultra-rightist activist that constantly stages homophobic events and calls people to follow his steps, posted on Facebook the same day: "According to our information, several participants are in Armenia from abroad and will participate in the LGBT Forum. At this moment we are following them." The NGO reported the event as a crime. The Yerevan City Police Department responded that "no evidence of offences or crimes has been identified as a result of the investigation of the facts mentioned in your application." Earlier, on 27 October 2018, while the widespread media and political criticism and hate was happening (that later resulted in it being cancelled), an unknown driver crashed into the KIA car in front of the NGO's office; the car belonged to the NGO as a donation from Mission East Humanitarian AID. The driver then hit another car and left. The NGO provided the case to the RA Traffic Police, enclosing camera footage of the incident when it is seen that the driver deliberately targeted those two cars. The NGO didn't receive information on the case investigation despite the filed inquiries. Then, on 29 January 2019, the NGO applied to the RA police again; no response was provided within the legal timeframes. The NGO still has not received redress or any proper criminal investigation from the police.
31. These are only a tiny portion of the governmental frivolity and attacks that come from the law-enforcement and target the LGBT. Gay men and trans\* persons are not only not receiving qualitative, accessible, and adequate healthcare — their very lives are threatened. The NGO New Generation staff could have been in that car and received damage during the crash. People are detained, beaten up, tortured and degraded for no reason at all. Much is covered by HETQ<sup>33</sup> about gay men being subjected to inhuman and cruel behavior by both penitentiary officers and inmates in prisons. People are denied due medical help, are detained without any justification for inadequate periods of time, put into the worst cells and further degraded either by the officers or not protected from being assaulted by fellow inmates. Gross and outrageous violations of article 6 of the Covenant keep on happening in RA. The right to health and, by extension, the right to life of LGBT in Armenia are threatened every day.

#### IV. Trans\* People Health

32. Trans\* persons in Armenia constitute the most marginalized key population group. The law pays no attention to their delicate needs at all. Again, as defined by the Preamble of the WHO Constitution, health "is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."<sup>34</sup> Every individual is unique in their development, personality, and needs. Some people, as they develop, discover that the heteronormative behavioural axis only along the typically understood female or male behaviour rigidly ascribed to the respective biological sex – woman or man – does not suit their individuality. People develop the way they communicate their "self," and it is not predefined for them explicitly by DNA. In an exemplary case, A.R. Coeriel and M.A.R. Aurik v. The Netherlands, the HRCtee observed that, inter alia, article 17 of the Covenant includes "the notion of privacy [that] refers to the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone."<sup>35</sup> Article 31 of the Constitution protects every person's right to private and family life, dignity and good name.<sup>36</sup> Further on, A.R. Coeriel and M.A.R. Aurik v. The Netherlands mentions that "the HRCtee is of the view that a person's surname constitutes an important component of one's identity and that the protection against arbitrary or unlawful interference with one's privacy includes the protection against arbitrary or unlawful interference with the right to choose and change one's own name." Defining one's name to accommodate one's desire to communicate with the world as effectively as possible, in conformity with one's gender identity and without any express or implied harm to others, is crucial in ensuring the protection of such a person's right to (mental) health and privacy. WHO excluded gender dysphoria from the list of its mental and behavioural disorders; the Global Manual of Diagnoses does not include such a term anymore.<sup>37</sup> The new International Classification of Diseases does not view issues related to gender identity at mental disorders at

<sup>33</sup> LGBT Convicts in Armenia, <https://hetq.am/en/article/102685>

<sup>34</sup> Constitution of WHO, [https://www.who.int/governance/eb/who\\_constitution\\_en.pdf](https://www.who.int/governance/eb/who_constitution_en.pdf)

<sup>35</sup> OHCHR Selected Decisions of the HRCtee Under the Optional Protocol, vol. 5, <https://www.ohchr.org/Documents/Publications/SDecisionsVol5en.pdf>, p. 75

<sup>36</sup> Constitution of the Republic of Armenia, <http://www.parliament.am/parliament.php?id=constitution&lang=rus>

<sup>37</sup> Transgender No Longer Recognised as 'Disorder' by WHO," BBC, <https://www.bbc.com/news/health-48448804>; ICD-11, WHO, <https://icd.who.int/browse11/l-m/en#/http://id.who.int/icd/entity/411470068>



all, and gender incongruence was placed in the chapter "Conditions Related to Sexual Health."<sup>38</sup> Any person, based on the availability of a strong discord between their gender identity that contradicts their birth-assigned sex, should be entitled to opt for another identity that will ensure their healthy development as a human being, and the state – Armenia – should help them in their transition in the spirit of ensuring the equality of all people before the law and should tend to the interests of those who come out as underrepresented.

33. Unlike in other CEECA countries, there is a possibility to alter one's sex and name in official identifying documents in Armenia, but only after the person has undergone the sex reassignment procedure. According to ECOM's Legislative Analysis Related to LGBTQ Rights and HIV in 11 CEECA Countries (2018), there are no legal provisions that regulate the sex reassignment surgery in Armenia. Additionally, the RA Government Decision N 276, 27 March 2008, which outlines the types of medical care and services conducted for the people of Armenia, does not include sex/gender reassignment as a type of healthcare service available in the country. Trans\* people, as a result, face gruesome medical consequences. They either go abroad to perform the surgery and come back and do not have any ability to apply for post-surgery care and hormonal therapy; or they invite doctors to Armenia (or turn to local doctors) and perform the surgery undercover, again, without any guarantee of a follow-up treatment and they are not protected in case the surgery is performed badly. It is a horrible reality to face. The legislation allows people to change their gender marker only after they have undergone the gender reassignment surgery. Even if the person has always wanted to undergo a gender reassignment surgery (and does not want to do it out of desperation of there being no other choice to legally change their gender identity), there are no medical protocols for managing trans\* patients and no doctors qualified to provide medical services to trans\* people. This would leave them at the mercy of unprofessional doctors and discriminatory medical personnel. There is no medical coverage or legislative regulation covering the procedure of gender reassignment, both medically and legally in Armenia. But not all people want to undergo the gender reassignment surgery. There are many successful cases (abroad) when trans\* people stick to hormonal therapy only and find a way to express their desired gender without surgical intrusion. All of this needs to be expressly regulated by the law, so that these people are not subjected to illegal treatment without any guarantees or proper follow-up treatment.
34. Apart from this, trans\* people are highly stigmatized in the labour market. This often forces them to resort to providing sexual services undercover. There, they are left at the mercy (or viciousness) of those who turn for these services. For example, after having used the sexual services of the trans\* person E.A., the visitor burned the former's apartment and left. E.A. was left with severe corporal injuries and burns, not to mention the material damage. E.A. turned to the NGO New Generation. The NGO's attorney filed a criminal lawsuit on 18 October 2018 pleading compensation for damages as a result of the crime. The case is under investigation, psychiatric examination has been assigned. In another case, K.G., a 25 year-old trans\* woman, a sex worker, had her throat slit on June 2018 after the visitor had received sex services from her. He left her bleeding and left. The victim somehow was able to reach the neighbour's door; the ambulance arrived. The medical workers, having identified K.G. as a trans\* woman, exhibited disgust and other inhuman behaviour, stalling the provision of emergency medical services. Other trans\* women and the NGO New Generation interfered and the victim was saved. Another victim of the national transphobia is M.T., aged 30. An unknown man approached the trans\* woman, M.T., on July 2018, asking for her sex services. Then he tried to assault her; she tried to defend herself. The assailant took a nearby-lying bottle and hit M.T. on the head, causing an open bleeding wound. M.T. turned to the Medical Centre after Armianets, the staff denied her emergency aid, saying that the facility was under construction, although the victim saw no construction works being performed. She had to turn to another facility. The victim survived. These and many other registered cases are explicitly transphobic. Due to there being no adequate regulation of self-determining and legalising one's gender identity and there being no protection of people from discrimination based on their SOGI, such horrible violations of human rights keep occurring and go unpunished. Additionally, the medical staff and the police are absolutely uneducated when it comes to dealing with trans\* victims and only subject them to cruel or degrading behaviour further.
35. Another scandalous case happened on 18 August 2018. A citizen turned to an LGBT NGO, saying that an armed person approached 6 trans\* people, in Yerevan, and threatened to cause harm

<sup>38</sup> WHO/Europe Brief on Transgender Health in the Context of ICD-11, <http://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/who-europe-brief-transgender-health-in-the-context-of-icd-11>

to their lives and health. The trans\* people got scared and fled to a nearby hotel to hide; the man followed them. The trans\* people got kicked out of the hotel. They applied to the Kentron Police Station, describing the situation. Two other trans\* people approached them; a conflict erupted between them and nearby flower sellers; the police also joined the conflict. A brawl erupted, both trans\* people and police officers got injured. The RA police brought charges against trans\* people Z.H. and M.K., and published an article on their website titled "Women at first sight, but in reality men in girls' clothes and their supporters broke into the police station." Not only did the police officers exacerbate the conflict, they also disclosed the identity of Z.H., infringing the presumption of innocence, not to mention the police distorting the entire situation. Z.H. was tortured at the Kentron Police Station. Z.H. was detained and her detention was prolonged during pre-trial. The NGO's attorney filed a complaint from Z.H. about being subjected to torture, the court reported to the prosecutor's office. Z.H. was visited by the prosecutor's office and recognized as a victim of battery at the police station, during detention. The torture claim was not considered with full seriousness, the judicial battle continues. These and other trans\* people are subjected to transphobic behaviour on the parts of law-enforcement and medical staff on a regular basis since the latter feel immune to punishment; rightly so, as there are no norms to protect trans\* people. Apart from this, trans\* people are afraid to turn for regular medical services, as well as HIV-services, because they are afraid of being abused there, of their identity or health status being disclosed, or becoming a victim of blackmailing. The Armenian medical workers and law-enforcement officers are vastly uneducated about the nuances related to this minority group and keep exhibiting cruel behaviour towards them.

36. The predominant part of homophobic and transphobic cases remain undocumented or unreported because of the stigma. Developing a comprehensive regulation that would govern the correct definition of gender and gender identity and the procedure of gender confirmation and gender/sex reassignment is a part of the trans\* persons' right to health and privacy. Because of the inability to express themselves, they live in constant stress, anxiety, and misery that distort their lives because of their fragile and strained mental health which is then translated into their declining physiological state. They are subjected to transphobia by the general public, medical workers and law-enforcers because neither of those consider them as healthy, adequate human beings. They are perceived as psychiatrically ill. Trans\* people are victims of double stigmatization since not only are they vulnerable to getting infected with HIV due to the reasons gay men have, but they are also discredited by the medical workers as trans\* people, being exposed to high risks of being abused or denied even the common healthcare services. Currently, trans\* people are far from being equal compared to the heterosexual Armenian population. Their gender identity is ignored by the law; and those who should uphold the law, inter alia, their right to health and privacy, ignore or further degrade them.

## V. Concluding Note

37. Article 1 of the Constitution of Armenia proudly proclaims: "The Republic of Armenia is a sovereign, democratic, social, legal state."<sup>39</sup> Free democratic states act on the basis of pluralism, as it recognizes the power of its people, and its people are diverse. Article 2 of the Armenian Constitution stipulates that "the respect for and protection of the fundamental rights and freedoms of a person and a citizen are the duty of public authorities"<sup>40</sup> Gay men and trans\* people in Armenia do not have the opportunity to enjoy even a decent standard of living, not to mention the highest attainable standard at all. The right to health is a fundamental right of every person; it is the foundation for them to enjoy all of their other rights and fundamental freedoms. Gay men and trans\* people do not enjoy their right to health, right to privacy, right to self-determination, and right to life, as a result, because the state not only does not have a comprehensive anti-discrimination law in action, it seems to bolster homophobia and transphobia further. Gay men and trans\* people are denied a framework of protection of their rights based on sexual orientation and gender identity as attributes that are universally protected by the Covenant, to which Armenia is a State Party. Seeing how many events happened in Armenia because of the desire of the people to live in a democratic, legal, and free state, it is unfortunate and illegal that the government denies LGBT the necessary legal levers needed to protect them from discrimination and stigmatization. If Armenia wants to achieve true positive changes in its form of governance and state affairs, there is no way around denying its marginalized groups their human rights enshrined in the Constitution and the Covenant.

<sup>39</sup> Constitution of the Republic of Armenia, <http://www.parliament.am/parliament.php?id=constitution&lang=rus>

<sup>40</sup> Ibid.

## VI. Recommendations

38. All things considered,  
to uphold the highest attainable standard of health for the LGBT,  
to ensure that the fundamental human rights and freedoms are observed equally for all, and  
in conformity with the International Covenant on Civil and Political Rights, recognized by  
Armenia,

ECOM and NGNGO recommend that the HRCtee uses its authority over the Republic of Armenia and inquires it to follow its international obligations under the Covenant, as well as its national obligations, before its people in a multi-dimensional fashion, and that the Republic of Armenia swiftly undertakes respective activities and steps to secure the rule of law and equality of all people, the LGBT included, before the law on all its territory. With this consideration in mind, ECOM and NGNGO ask the Human Rights Committee to consider the following questions during its 129th Session:

- What actions has the Republic of Armenia done to adopt all-inclusive anti-discrimination legislation, which would ban all forms of discrimination and would protect all people from any discrimination, including from discrimination based on the grounds of gender identity and sexual orientation?
- What endeavors have been undertaken by the Republic of Armenia to separate the crimes committed out of hate based on the victim's sexual orientation and/or gender identity into a distinct, individual category of crimes, as well as acknowledging the perpetration of a crime out of hate based on sexual orientation and/or gender identity of the victim as an aggravating circumstance?
- What measures have been undertaken by the Republic of Armenia to harmonise its criminal law with the UNAIDS policy in terms of considering it to be a crime only if the perpetrator intentionally infects the victim with HIV and decriminalizing the threat of such infection and infecting the victim unintentionally?
- What instruments has the Republic of Armenia implemented to strengthen the confidentiality of personal data and HIV-status of the ones getting tested? What has been done to expunge any legal provisions that could infringe that confidentiality and to rightfully punish those who breach it?
- What governmental healthcare policies and programmes of the Republic of Armenia in the area of HIV-prevention have been adapted to suit the needs of the LGBT community, particularly the key population groups of MSM (men who have sex with men) and trans\* people?
- What steps have been taken by the Republic of Armenia to create a non-discriminatory procedure of performing the gender reassignment surgery, ensuring a successful transition and legalising its aftermaths, i.e. changing the trans\* person's name and gender in their identifying documents?
- What has been done by the Republic of Armenia to create a non-discriminatory procedure for trans\* people to be able to legally change their name and gender markers without performing the gender reassignment procedure?