



# **LEGISLATIVE ANALYSIS RELATED TO SOGI AND HIV IN ARMENIA**

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ECOM



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## ACRONYMS AND ABBREVIATIONS

<b>EECA</b>	Eastern Europe and Central Asia
<b>HC</b>	Hate crimes
<b>HIV</b>	Human immunodeficiency virus
<b>LGBT</b>	Lesbian, gay, bisexual and trans people
<b>MSM</b>	Men who have sex with men
<b>NGO</b>	Non-governmental organization
<b>PLHIV</b>	People living with HIV
<b>SOGI</b>	Sexual orientation and gender identity
<b>Trans</b>	Describes a person who identifies as transgender, non-binary, or otherwise gender non-conforming, including but not limited to transgender, genderqueer, gender-mutable, agender, third gender, bigender
<b>WHO</b>	World Health Organization



The aim of this comparative country analysis is to identify legal barriers and issues in areas where the necessary legislation already exists, but does not fully ensure the implementation of rights and freedoms for gay men, other MSM and trans people. In order to carry out this analysis, ECOM developed a methodology and questionnaire, which our local partners helped us to fill out. The analysis of legal practice took into account both judicial practice and government statistics, as well as reports of activists, information and statistics of organizations involved in documenting cases of violations and protecting human rights, press reports, and reports of non-governmental organizations to international bodies.

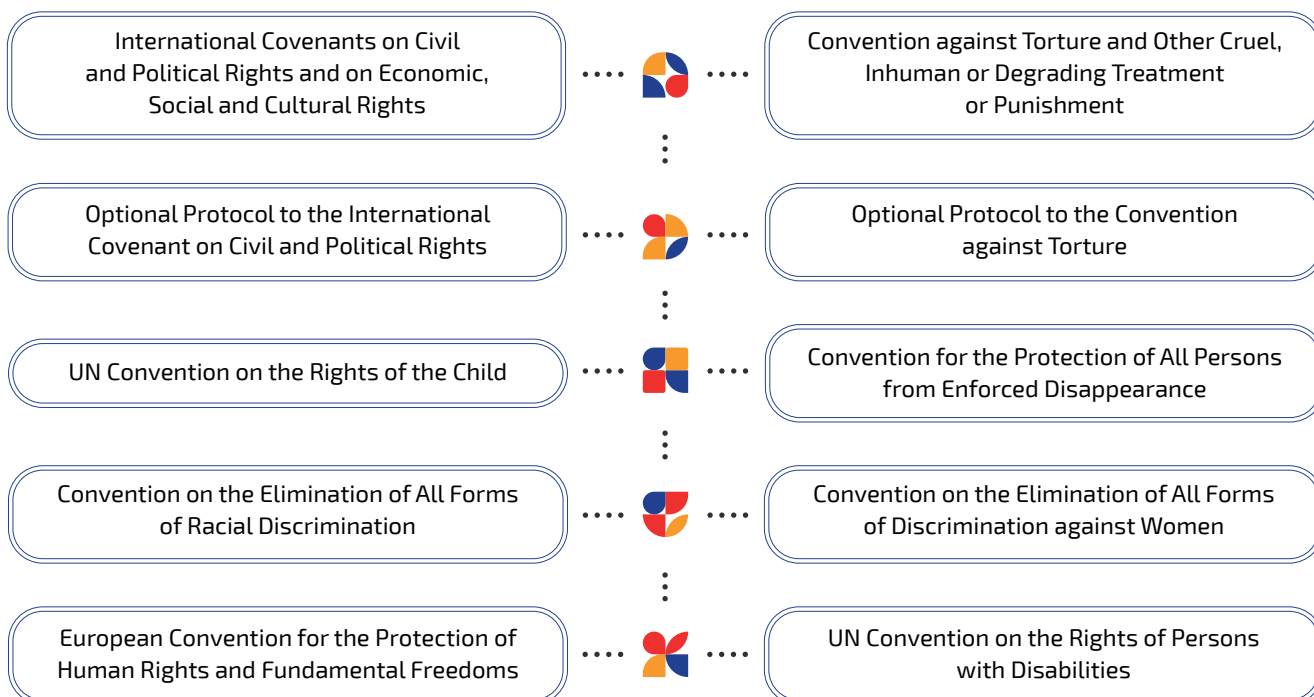
Two dimensions of legislation and law enforcement practice were reviewed. The first is their compliance with international standards of human rights and freedoms. The second is the actual ability of community members to receive protection and realize the rights and freedoms guaranteed under international obligations and national law. A situation where a law exists in a particular country, but a part of the population cannot avail themselves of its protection, indicates that barriers exist in the legal environment.

As part of this analysis, extracts from and references to regulatory legal acts were provided in order to provide information on current legislation. Unfortunately, these are not always correctly formulated and do not always comply with international standards of terminology. In this case, the original formulations are presented to objectively reflect the existing legal framework and the formal terminology adopted in the country regarding the issues under study. All citations from regulatory legal acts are in italics and have references provided.

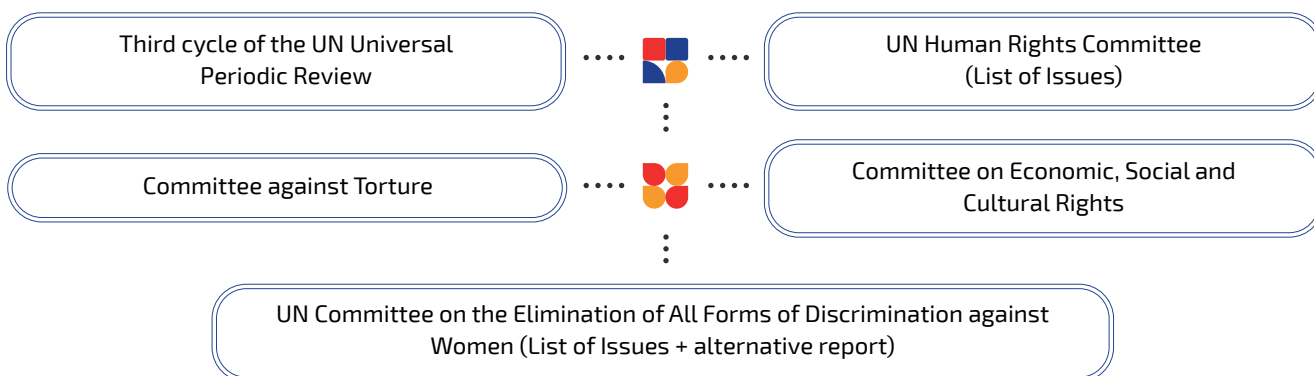
The information presented in this document can be useful for non-governmental organizations, community activists, and government representatives when planning advocacy processes and promoting the rights of PLHIV, gay men and other MSM, and trans people, addressing and eliminating barriers that prevent their access to healthcare services, and for protecting their rights and freedoms.



## INTERNATIONAL HUMAN RIGHTS STANDARDS RATIFIED BY THE COUNTRY



## CIVIL SOCIETY IN THE REPUBLIC OF ARMENIA USES ALTERNATIVE REPORTING MECHANISMS TO UN BODIES





## AT THE NATIONAL LEVEL, INTERNATIONAL HUMAN RIGHTS STANDARDS HAVE BEEN TRANSLATED INTO THE FOLLOWING LAWS

LEGISLATION	YES	NO
 <b>PROTECTION FROM DISCRIMINATION</b>		
Provision on the prohibition of discrimination in the Constitution ,	✓	
separate law defining and prohibiting discrimination (yes), including based on SOGI		✗
Law on the prohibition of domestic violence,	✓	
including based on SOGI		✗
Provision on hate crimes in the Criminal Code (yes, only on the basis of national, racial, or religious hatred)	✓	
 <b>RIGHT TO HEALTH</b>		
Separate law on the rights of people living with HIV	✓	
Provision on the prohibition of discrimination (unequal treatment) in the field of health in relation to PLHIV	✓	
Provision on the prohibition of discrimination in the field of education based on HIV+ status		✗
Prohibitions on immigration or entry into the country for PLHIV		✗
Criminal liability for intentional	✓	
and/or unintentional (no) transmission of HIV		✗
Prohibition on blood donation by MSM	✓	
special screening procedures for MSM donors		✗
 <b>RIGHT TO HEALTH FOR TRANS PEOPLE</b>		
Legislatively enshrined procedure for legal gender recognition	✓	
Mandatory psychological and psychiatric examination		✗
Required surgical procedures for legal gender recognition	✓	
Adopted medical protocol for trans people in accordance with ICD-10		✗
Permission to use international medical protocols for doctors treating trans people	✓	
Normatively enshrined list of contraindications for legal gender recognition		✗

LEGISLATION	YES	NO
 <b>RIGHT TO PRIVATE AND FAMILY LIFE</b>		
Recognition of same-sex partnerships at the legislative level		✗
Recognition by courts of unregistered cohabitation of same-sex couples as a legal marriage		✗
Criminalization of voluntary homosexual relations		✗
Possibility for trans people to enter into a heterosexual marriage following legal gender recognition	✓	
Adoption by same-sex couples		✗
Adoption by single LGBT people	✓	
Adoption by trans people following legal gender recognition	✓	
Adoption by PLHIV	✓	
Age of consent for voluntary heterosexual and homosexual relations (same)	✓	
 <b>RIGHT TO FREEDOM OF SPEECH AND PEACEFUL ASSEMBLY</b>		
Legislation governing peaceful assemblies	✓	
Mandatory authorization from local authorities for holding a peaceful assembly	✓	
Prohibition on peaceful assemblies for LGBT people		✗
Penalties for holding a peaceful assembly without the consent of the authorities	✓	
Law «on the prohibition of gay propaganda»		✗
Attempts to introduce bills limiting the freedom of speech of LGBT people, including bills «on the prohibition of gay propaganda»	✓	
 <b>FREEDOM OF ASSOCIATION AND FUNDING OF NGOS</b>		
Opportunity for NGOs to receive funding from national and/or local budgets	✓	
Actual working mechanisms for the distribution of public funds to NGOs working in the social sector, excluding health, for example in the fields of education, culture, sport, youth, social protection	✓	
Actual working mechanisms for the distribution of public funds to NGOs working in the field of health		✗
State funding of HIV services for LGBT people		✗
Mandatory authorization procedure for registration of a public organization	✓	
Registration of an LGBT public organization	✓	
Possibility of obtaining donor support from international organizations and foundations	✓	



## INTRODUCTION

*Human dignity is inviolable*

*Art. 23 of the Constitution of the Republic of Armenia*

The modern Republic of Armenia (hereinafter — Armenia or the RA) is an independent, legal and democratic state that must comply with international standards in the field of human rights and adhere to the principle of equality in relation to all its citizens, as well as citizens of other countries and stateless persons under the jurisdiction of the country. It is a former Soviet republic with a parliamentary form of government, a small population (about 2.9 million people), a territorial-ethnic conflict with neighboring Azerbaijan over Nagorno-Karabakh (an unrecognized republic), and a strong influence of neighboring states on its domestic and foreign policy<sup>1</sup>.

According to the annual rating «Freedom in the World 2022: Democracy under Siege» by Freedom House<sup>2</sup>, Armenia scored only 55 out of a possible 100 points, including 23 for the observance of political rights, and only 32 for the observance of civil rights and freedoms, of which researchers assess the protection of personal autonomy and the right to privacy as low (2 out of 4 points), including an assessment of the effectiveness of protection against domestic violence. The country has not yet ratified the Istanbul Convention, and with a rather low assessment of compliance with the rule of law and frequent complaints about ineffective investigations, this inattention to the problem of domestic violence, which remains in the shadows, raises concerns, including against the backdrop of the high levels of patriarchal attitudes and a rather high level of religiosity in society<sup>3</sup>. Back in 2011-2013, a local non-governmental organization (NGO) conducted a study<sup>4</sup>, to calculate how many LGBT people were forced to leave the country because of high levels of homophobia. No such studies have been conducted in later years, but individually documented personal stories<sup>5</sup> show that the situation has changed little.

<sup>1</sup> On the one hand, the 102nd Russian military base in Gyumri is located on the territory of Armenia, and there are many companies with Russian capital in the country. On the other hand, the country has established close foreign economic contacts with neighboring Georgia, and since 2009, Armenia is a member of the Eastern Partnership and has concluded an agreement «On a Comprehensive and Enhanced Partnership with the EU».

<sup>2</sup> Report available at: <https://freedomhouse.org/country/armenia/freedom-world/2022>

<sup>3</sup> After the 2018 revolution, during which a «peaceful» transfer of power took place, the old government, among other things, began to express pronounced homophobic and transphobic rhetoric (without any sanctioning by the new government). As a result of this right-wing rhetoric and with the support of the old government, protests began, including by the Armenian Apostolic Church, as a result of which the International Forum of LGBT Christians (which was to be held in November 2018) was cancelled. More information is available at: <https://www.panorama.am/ru/news/2018/11/06/Валерий-Осипян-ЛГБТ-форум/2029241>

<sup>4</sup> From 2011 to 2013 alone, 5,891 LGBT+ people left Armenia. The figure was provided by PINK Armenia in the study «Impact of LGBT emigration on the economic indicators of Armenia». In addition to general factors contributing to the emigration of people from Armenia, in the case of LGBT+ people, there are also specific factors such as discrimination and homophobia, leading to consequences such as the threats to physical safety, lack of protection by the state, everyday problems, psychological pressure, financial blackmail, issues related to gender reassignment, etc.

<sup>5</sup> Available at: <https://www.boell.de/en/2018/03/12/why-lgbt-people-emigrate-armenia-four-stories>



In Reporters Without Borders' (RSF) ranking of press freedom, in 2022 Armenia is in 51st place<sup>6</sup>, having lost two points from last year. The data, which formed the basis of Human Rights Watch's 2022 report, also shows high levels of homophobia, as well as the vulnerability of LGBT+ people to domestic violence. The public debate surrounding the ratification of the Istanbul Convention resulted in hate speech and derogatory remarks against LGBT+ people by some government officials, who mistakenly suggested that the convention was intended to promote LGBT people and legalize same-sex marriage<sup>7</sup>.

The Republic of Armenia has signed and ratified the necessary minimum of international documents in the field of human rights. A small part of these documents has been implemented in national legislation, while a significant part of fundamental international standards is reflected only in the form of general provisions of the Constitution and have not been translated into national law, which creates significant difficulties and inequalities for LGBT+ persons trying to exercise their rights and freedoms.

***Armenia is a party to the following international documents:***

- International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights;
- Optional Protocol to the International Covenant on Civil and Political Rights;
- Optional protocol to International covenant on Economic, Social and Cultural Rights;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- UN Convention on the Rights of the Child;
- Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women;
- UN Convention on the Rights of Persons with Disabilities;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>8</sup>;
- European Convention for the Protection of Human Rights and Fundamental Freedoms.

However, the country has only recognized individual complaint mechanisms for three UN Conventions<sup>9</sup>:

- Optional Protocol to the International Covenant on Civil and Political Rights;
- Convention on the Elimination of All Forms of Discrimination against Women;
- Optional protocol to International covenant on Economic, Social and Cultural Rights;

Citizens of Armenia, including LGBT people, can use the mechanism of the European Court of Human Rights (ECtHR) under the Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>6</sup> Rating available at: <https://rsf.org/en/country/armenia>

<sup>7</sup> Full text of the report on Armenia available at: <https://www.hrw.org/world-report/2022/country-chapters/armenia>

<sup>8</sup> In September 26, 2013 Convention was signed but not yet ratified

<sup>9</sup> List: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=8&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=8&Lang=EN)

<sup>10</sup> Available at: <https://laweuro.com/?p=18599>

10 On May 17, 2022, in the case of «Oganezova v. Armenia»<sup>10</sup>, the ECtHR issued the first judgment regarding hate crime and hate speech in Armenia. According to this judgment the State must adopt legislation which will provide sexual orientation and gender identity as protected grounds. Only the non-exhaustive list of protected grounds cannot be considered as an effective measure.



## PARTICULAR PROBLEMATIC ASPECTS OF LEGISLATION AND LAW ENFORCEMENT PRACTICE

Despite the numerous recommendations that Armenia has received from UN committees and as part of Universal Periodic Review, the country has not yet adopted anti-discrimination legislation, and protection against discrimination and unequal treatment in various areas of public life is limited to a general provision in the Constitution (with an open-ended list of characteristics, but with no mention of SOGI), the 2013 Law «On ensuring equality between men and women», certain provisions on the prohibition of unequal treatment, for example, in the sphere of healthcare, and certain articles of the Criminal Code of the Republic of Armenia. None of these provisions guarantee protection of LGBT+ rights.

In 2019, a draft bill «on ensuring equality»<sup>11</sup>, was drafted, but has still not been passed by Parliament. However, it does not include SOGI in the list of characteristics protected from discrimination, apparently assuming that the open-ended list is sufficient. In the three years since the bill was registered in Parliament, it has never been put to a vote, which demonstrates once again that protection against discrimination is not a priority issue on the agenda of Parliament or the government.

The Criminal Code of Armenia was revised in 2021 and entered into force in 2022. There is an important difference in the new version of the code: the list of protected grounds against hate crimes is open, according to Article 71. Therefore, SOGI can be extrapolated within the framework of the «and other features» formula.

However, lack of legislation clearly defining the prohibition of discrimination against LGBT+ people and provisions containing SOGI as protected characteristics is an indicator for community members not to report violations of their rights. Human rights activists have noted a fairly small number of complaints to law enforcement agencies about rights violations in general and hate crimes in particular<sup>12</sup>. Data on the number of hate crimes is primarily collected by NGOs, while the information provided by the state as part of its reporting to OSCE shows that the number of registered cases of such crimes is 19 and those cases are not separated by protected grounds<sup>13</sup>.

<sup>11</sup> Text in Armenian: «Ընդդեմ կանանց նկատմամբ բռնության կոալիցիա» 34

<sup>12</sup> <https://www.e-draft.am/ru/projects/1801/about>

<sup>13</sup> See the report of Pink Armenia «Hate Crimes and other Hate-Motivated Incidents against LGBT People in Armenia», available in English at: [https://www.pinkarmenia.org/wp-content/uploads/2016/11/hate-crime-monitoring-2016\\_en.pdf](https://www.pinkarmenia.org/wp-content/uploads/2016/11/hate-crime-monitoring-2016_en.pdf), similar information is found in the alternative report «Human Rights Violations Based on Sexual Orientation and Gender Identity in the Republic of Armenia», prepared as part of the third UPR cycle in 2020 by ECOM and New Generation NGO.

<sup>13</sup> Government data for 2020 (19 cases, without segregation based on protected grounds) and NGO data for 2020 (33 cases, 25 of them due to SOGI) available at: <https://hatecrime.osce.org/armenia>

The Criminal Code of the Republic of Armenia contains Article 123<sup>14</sup>, which provides criminal liability for knowingly infecting another person with HIV and knowingly putting another person at risk of infection (punishment ranges from a fine to six years in prison), but there is no data on the number of convictions under this article. In 2022, a new version of the Criminal Code entered into force, which also includes a provision on criminal liability for the unintentional transmission of HIV<sup>15</sup>.

The country still maintains a regulation prohibiting LGBT+ people from being blood donors. The corresponding decree of the Ministry of Health contains a list of persons who are prohibited from being donors, including «persons engaging in homosexual sex» and persons living with HIV.

There are no restrictions on immigration and/or entry into the country due to a person's HIV-positive status, but foreigners staying in the country cannot legally receive free ART on the same basis as Armenian citizens.

The new version of the Criminal Code of Armenia does not contain the outdated term «homosexuality», which was in the previous version.

Neither the Constitution nor the Family Code of the Republic of Armenia provides any opportunities for same-sex couples to exercise equal rights to private and family life. Such relationships are not regulated in any way, as in other countries in the region. There is no direct ban on the adoption of children by LGBT+ people, but according to the norms of the Family Code, people who are not married cannot jointly adopt the same child. As of 2015, the ban on adopting children for people living with HIV was lifted. The issue of the need for divorce and child custody regulations for trans people has also not been addressed.

The country has not yet created a clear and understandable step-by-step procedure for legal gender recognition or medical procedures related to transition. This issue remains an important and urgent part of the advocacy campaign for the LGBT+ movement, and the subject of alternative reports and recommendations by treaty bodies. The procedure for changing one's legal gender marker in documents is tied to the requirement to provide a medical certificate of transition. At the same time, there is no procedure for issuing such certificates or details as to the scope of required medical procedures to obtain such a certificate. Another serious problem is the lack of qualified doctors willing to treat trans patients. Together, these factors put trans people in the most vulnerable position and deprive them of access to many rights ranging from the right to health to the right to dignity. Local human rights organizations regularly register complaints from trans people about violations of their rights by law enforcement agencies and the general population. However, due to the lack of anti-discrimination legislation and the high level of homophobia, such complaints remain within human rights organizations and do not reach the police and/or prosecutors, towards whom the level of trust of the entire LGBT+ community in the country is extremely low.

<sup>14</sup> Text of the Criminal Code of RA available in Russian at:

<http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=rus#16>

<sup>15</sup> Text of the new Criminal Code of RA available in Armenian at

[http://www.parliament.am/draftreading\\_docs/7/K-634\\_DR2.pdf](http://www.parliament.am/draftreading_docs/7/K-634_DR2.pdf)



## LEGAL BARRIERS FOR TRANS PEOPLE

In Armenia, there is no separate law that regulates the procedure for changing the gender marker in documents, but there is a provision for making changes in civil status records if «**a medical organization in the manner prescribed by Armenian legislation has issued a document of the prescribed form about the change of gender**»<sup>16</sup>. A similar norm is duplicated in the instructions on making changes, additions and corrections to civil status records<sup>17</sup>, which provides for the amendment of birth records «**in connection with sex reassignment ... if necessary to correct the sex**». In spite of this, gender confirmation operations are extremely rare in Armenia<sup>18</sup>. 2015 was the first time a trans person in Armenia received a passport with a new name<sup>19</sup>, but the gender marker was not changed.



## FREEDOM OF SPEECH AND FREEDOM OF PEACEFUL ASSEMBLY

In Armenia, the Law «On Freedom of Assembly» is in force, which provides a notification procedure for peaceful assemblies, according to which organizers must notify local authorities no later than 7 days before the planned date of the assembly. The law contains a closed list of reasons for refusing to hold a peaceful assembly (the authority can impose conditions regarding the time, place, or order of the assembly, and apply restrictions on the assembly), and details the authority of the police to disperse a peaceful assembly if they believe that it restricts the constitutional rights of others or public interests, and if there are no other ways to prevent this<sup>20</sup>.

According to local NGOs, there have been no attempts to hold a large and open peaceful assembly in support of LGBT+ rights in Armenia in the past few years, so it is impossible to predict how the authorities might behave. Formally, there are no grounds for banning Pride events in the country.

There is no legislation in Armenia restricting freedom of speech for LGBT+ people or aimed at banning «propaganda» and protecting children from it. However, in previous years there have been several attempts to introduce such draft laws in Parliament by opposition, but those initiatives were rejected by the authorities.

<sup>16</sup> Law of the Republic of Armenia «On Acts of Civil Status», Article 70(1)(C)

<http://www.parliament.am/legislation.php?sel=show&ID=2212&lang=rus>

<sup>17</sup> Instructions on making changes, additions and corrections to the records of civil acts, Appendix No. 7 to the Order «On Approval of Instructions for the Registration of Civil Acts» dated May 14, 2007 No. 97-N <https://www.moj.am/legal/view/article/140/>

<sup>18</sup> Publication «Less Equal: LGBTI Human Rights Defenders in Armenia, Belarus, Kazakhstan and Kyrgyzstan», paragraph 4.1.2. <https://www.amnesty.org/download/Documents/EUR0475742017RUSSIAN.pdf>

<sup>19</sup> First-person information is available at:

<https://www.democracyendowment.eu/ru/our-work/firstpersonstories/721-ru-lilit-martirosyan.html>

<sup>20</sup> This law has been criticized by the Venice Commission.



## STATISTICAL DATA

As in other countries in the region, there are no estimates of the number of LGBT+ people in Armenia. Official statistics on PLHIV fail to include data on gay men, other MSM, and trans people. Public data on the number of domestic violence complaints also does not contain disaggregated information on whether there are complaints of domestic violence related to SOGI-based complainants or female complainants, which shows the invisibility of LGBT+ people in shaping state policy in relevant areas and in evaluating its effectiveness.

There are also no statistics on the number of hate crimes (HC) and/or discrimination complaints, which is due to two unresolved issues by the state: the first is gaps in legislation, the second is the lack of trust in law enforcement and the fear of victims of being re-victimized when seeking help. Data collected by NGOs shows that hate crimes and cases of discrimination against LGBT+ people are widespread and require systemic solutions, from changes in legislation to training of state representatives.

Armenia complies with the deadlines for mandatory reporting to international bodies on progress in observing human rights and freedoms, and submits reports to UN committees, but does not provide desegregated data of hate crimes based on SOGI to the OSCE ODIHR. In addition, in practice, there is no mechanism or political will to implement the recommendations and comments received, especially if they concern public recognition of the rights of the LGBT+ community.



## RECOMMENDATIONS



### FOR THE GOVERNMENT

- 1 Adopt an anti-discrimination law, taking into account protected characteristics such as HIV status, sexual orientation and gender identity.
- 2 Develop and implement protocols for the provision of medical care to trans people, conduct trainings for doctors.
- 3 Develop and implement a transparent and effective procedure for changing the gender marker in official documents.
- 4 Amend the forms for collecting statistical information, and assess the quality and quantity of services received by LGBT+ people as part of assessments of the total quality and quantity of services received by citizens in Armenia.



### FOR CIVIL SOCIETY ORGANIZATIONS

- 1 Join the working group on the development of an anti-discrimination law, and provide the necessary arguments for the inclusion of protected characteristics such as HIV status, sexual orientation and gender identity.
- 2 Collect disaggregated data on the number of complaints of discrimination, including HC, based on various grounds, including SOGI; publish this data together with information on what actions the government is taking to punish such human rights violations and to prevent such violations in the future.

