



**SOCIETY
WITHOUT
VIOLENCE**

THE HUMAN RIGHTS SITUATION OF LGBTI INDIVIDUALS IN ARMENIA

A PRACTICAL ASSESSMENT



The Human Rights Situation of LGBTI Individuals in Armenia: A Practical Assessment

Society Without Violence NGO
SWV
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LIST OF ACRONYMS

Action Plan - RA Action Plan for the National Strategy on Human Rights Protection

CSOs - Civil Society Organisations

ECHR - European Convention of Human Rights

ECtHR - European Court of Human Rights

LGBTI - Lesbian, gay, bisexual, trans-person, intersex

MoJ - Ministry of Justice

PINK Armenia- Public Information and Need of Knowledge NGO

RA - Republic of Armenia

SOGI - sexual orientation and gender identity

UNHCR Armenia - United Nations High Commissioner for Refugees, Armenia Office

UNHRC Report - United Nations Human Rights Council Report issued by the UN Office of the High Commissioner for Human Rights, entitled “Discrimination and violence against individuals based on their sexual orientation and gender identity”

GLOSSARY

The terms specific to the topic of sexual orientation and gender identity which are used in this report are standard terms found in the Glossary of ILGA Europe¹.

Bisexual: a person who is emotionally and/or sexually attracted to persons of more than one gender.

Civil union: see *registered partnership*

Coming out: the process of revealing the identification of a lesbian, gay, bisexual, trans or intersex person.

Council of Europe (CoE): Europe's oldest political organisation, founded in 1949. It groups together 47 countries. Its headquarters are in Strasbourg, France.

European Convention on Human Rights (ECHR): international treaty to protect human rights and fundamental freedoms in Europe.

European Court of Human Rights (ECtHR): a court composed of one judge from each of the 47 member states. It makes judgments in respect of possible violations of the European Convention on Human Rights. Where the Court finds that a particular member state has violated the Convention, the government is obliged to take corrective action.

Discrimination: unequal or unfair treatment which can be based on a range of grounds, such as age, ethnic background, disability, sexual orientation or gender identity. Can be divided into four different types of discrimination, which all can lead to victimisation and harassment:

European Union (EU): an economic and political union of European countries. There are currently 28 EU Member States.

Freedom of association: the right to form groups, to organise and to assemble together with the aim of addressing issues of common concern.

Freedom of expression: the right of all to express their views and opinions freely without any form of censorship.

Gay: a man who is sexually and/or emotionally attracted to men. Gay is sometimes also used as a blanket term to cover lesbian women and bisexual people as well as gay men. However, this usage has been disputed by a large part of the LGBTI community and gay is therefore only used here when referring to men who are emotionally and/or sexually attracted to men.

Gender: people's internal perception and experience of maleness and femaleness, and the social construction that allocates certain behaviours into male and female roles.

Gender expression: people's manifestation of their gender identity. Typically, people seek to make their gender expression or presentation match their gender identity/identities, irrespective of the sex that they were assigned at birth.

Gender identity: each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex they were assigned at birth.

Gender reassignment: the process through which people re-define the gender in which they live in order to better express their gender identity. This process may, but does not have to, involve medical assistance including hormone therapies and any surgical procedures that trans people undergo to align their body with their gender.

Gender Reassignment Surgery (GRS): medical term for what trans people often call gender-confirmation surgery: surgery to bring the primary and secondary sex characteristics of a trans person's body into alignment with his or her internal self-perception.

Gender variant: can refer to someone whose gender identity differs from normative gender identity and the gender roles/norms assigned at birth.

Hate crime: offences that are motivated by hate or by bias against a particular group of people. This could be based on gender, gender identity, sexual orientation, ethnicity, religion, age or disability. It is also called bias crime.

¹The European Region of the International Lesbian, Gay, Bisexual Trans and Intersex Association (ILGA- Europe).2015.Glossary. Retrieved from:http://www.ilga-europe.org/sites/default/files/glossary_october_2015_edition.pdf

Hate speech: public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards minorities.

Heteronormativity: cultural and social practices where men and women are led to believe that heterosexuality is the only conceivable sexuality. It implies that heterosexuality is the only way of being “normal”.

Homophobia: fear, unreasonable anger, intolerance or/and hatred directed towards homosexuality.

Homosexual: People are classified as homosexual on the basis of their gender and the gender of their sexual partner(s). When the partner’s gender is the same as the individual’s, then the person is categorised as homosexual. It is recommended to use the terms lesbian and gay men instead of homosexual people. The terms lesbian and gay are being considered neutral and positive, and the focus is on the identity instead of being sexualised or pathologised.

Intersex²: a term that relates to a range of physical traits or variations that lie between stereotypical ideals of male and female. Intersex people are born with physical, hormonal or genetic features that are neither wholly female nor wholly male; or a combination of female and male; or neither female nor male. Many forms of intersex exist; it is a spectrum or umbrella term, rather than a single category.

LGBTI: acronym for lesbian, gay, bisexual, trans and intersex people. This is the acronym that ILGA-Europe use to reflect its advocacy priorities; other organisations may use different formulations to more accurately describe their own work, for example LGBT*, LGBTQ.

Marriage equality: where national marriage legislation also includes same-sex couples – e.g. gender neutral reference to the spouses. Sometimes media outlets and decision makers incorrectly refer to the extension of existing marriage legislation to same-sex couples as ‘gay marriage’. What they really mean is marriage equality; no country has created a marriage law specifically for same-sex couples

OSCE: The Organisation for Security and Co-operation in Europe is the largest regional security organisation in the world with 56 participating states from Europe, Central Asia and North America.

Office for Democratic Institutions and Human Rights (ODIHR): the OSCE institution which deals with elections, human rights and democratisation.

Rainbow flag: a symbol celebrating the uniqueness and diversity within the LGBTI community. The flag has six stripes, each a different colour, ranging from purple to red.

Registered partnership: a legal recognition of relationships; not always with the same rights and/or benefits as marriage - synonymous with a civil union or civil partnership.

Sex: refers to biological makeup such as primary and secondary sexual characteristics, genes, and hormones. The legal sex is usually assigned at birth and has traditionally been understood as consisting of two mutually exclusive groups, namely men and women. However, "the Court of Justice has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person." (This language comes from the preamble of the Gender Recast Directive 2006). In addition to the above, the legal definition of sex should also include intersex people.

Sexual orientation: each person’s capacity for profound affection, emotional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

Transsexual: people, who identify entirely with the gender role opposite to the sex assigned to at birth and seek to live permanently in the preferred gender role. This often goes along with strong rejection of their physical primary and secondary sex characteristics and wish to align their body with their preferred gender. Transsexual people might intend to undergo, are undergoing or have undergone gender reassignment treatment (which may or may not involve hormone therapy or surgery).

Trans person/people/man/woman: an inclusive umbrella term referring to those people whose gender identity and/or a gender expression differs from the sex they were assigned at birth. It includes, but is not limited to: men and women with transsexual pasts, and people who identify as transsexual, transgender, transvestite/cross-dressing, androgyne, polygender, genderqueer, agender, gender variant or with any other gender identity and/or expression which is not standard male or female and express their gender through their choice of clothes, presentation or body modifications, including undergoing multiple surgical procedures.

Transphobia: negative cultural and personal beliefs, opinions, attitudes and behaviours based on prejudice, disgust, fear and/or hatred of trans-people or against variations of gender identity and gender expression.

²The RA legislation uses the Armenian term for “hermaphrodite” although this term in English is no longer accepted and deemed derogatory.

Foreword

As historically traditional societies, Georgia and Armenia have come a long way since the fall of the Soviet Union in terms of certain aspects of development. However, numerous challenges persist in the context of human rights, foretelling a long, arduous, obstacle-ridden road towards the achievement of equal rights for all groups. Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons represent one of the most marginalised, least visible and discriminated against groups in Armenia and Georgia. Despite a degree of success achieved in recent years, especially in Georgia with the adoption of the Law on the Elimination of All Forms of Discrimination in 2014, members of the group continue to face violence, oppression, and harassment from the general public, as well as specific institutions, including medical facilities and the workplace. Bias-motivated violence based on sexual orientation and gender identity (SOGI) frequently goes unreported and, hence, remain without proper investigation and retribution. Deep-rooted homo/bi/transphobia permeating virtually all segments of society is reinforced by traditional values, as well as binary, heteronormative gender roles, which, in turn, fuel the discriminatory culture prevalent in these two countries and prevent LGBTI persons from fully enjoying their rights and freedoms. A flawed understanding of democratic values and minority rights has also largely been inherited from the Soviet Union, and has been symptomatic of small nations with a collective memory of unresolved conflict and survivalist ideology, where LGBTI persons are seen as a threat to local customs and religion.³

In order to comprehensively combat discrimination against LGBTI people in the two countries, the South Caucasus Regional Office of the Heinrich Boell Foundation has been implementing the EU-funded action *Solidarity Network for LGBTI in Armenia and Georgia*, in partnership with the Women's Initiatives Supporting Group (WISG) and Human Rights Education and Monitoring Centre (EMC) in Georgia; and Society Without Violence (SWV) and Public Information and Need of Knowledge (PINK) in Armenia. The overall objectives of the action are to enhance the protection of and respect for LGBTI people's rights, combat homophobia and support LGBTI people's inclusion in Georgia's and Armenia's respective societies, while the specific objectives are to support LGBTI people in the full scale realisation of their rights through the enhancement of an LGBTI-friendly environment and to stimulate a higher cohesion of civil society actors on SOGI issues in Georgia and Armenia.

The present publication is the result of a year-long coordinated effort by the project partners, which envisioned the development and implementation of two comprehensive studies: a full-scale research of homo/bi/transphobic societal attitudes, and a situational assessment of the legal and physical conditions of LGBTI persons in the two countries.

The large-scale in-depth study of homo/bi/transphobic societal attitudes includes a thorough examination of social prejudices and stereotypes that would facilitate the investigation of the scale and specific nature of homo/bi/transphobia in Armenia and Georgia. Although, several studies to measure attitudes towards homosexuals have been previously conducted in both countries (the 2011 CRRC Caucasus Barometer⁴ being one example), the scope and scale of the present study is unprecedented, affording an integrated perspective on prevalent attitudes towards and knowledge about LGBTI persons. An almost identical methodology for Georgia and Armenia allows for effective comparison of the data in the future.

The situational assessment depicting particular legal and physical conditions of LGBTI people in Armenia and Georgia provides an in-depth analysis of legal standards, existing international and local legislation, cases of discrimination in various spheres, levels of state responsibility towards LGBTI persons and their accessibility to relevant services (health care, education, etc.).

The findings of the two studies and the specific areas of focus identified therein will serve as the basis for the development of country-specific evidence-based long-term advocacy strategies on the advancement of LGBTI issues, as well as a set of recommendations for specific actors. The advocacy strategy and the findings of the two studies will also be used as groundwork for a multifaceted awareness-raising campaign, as well as capacity-building activities for CSOs, LGBTI organisations, activists and initiative groups within the framework of the action.

3 Silvia Stöber, *LGBT Rights in the South Caucasus*, Heinrich Boell South Caucasus Regional Office, LGBTI Web-dossier: <https://ge.boell.org/en/2013/05/30/lgbt-rights-south-caucasus>

4 Caucasus Research Resource Centers (CRRC), *Attitudes towards Homosexuality in the South Caucasus* <http://crrc-caucasus.blogspot.com/2013/07/attitudes-towards-homosexuality-in.html>

The Heinrich Boell Foundation is particularly grateful to the four project partners mentioned above for their meticulous work and coordinated efforts in developing the methodologies, designing the study tools, producing in-depth analytical reports and ensuring the publication of the two studies; the Institute of Social Studies and Analysis (ISSA) in Georgia and the Caucasus Research Resource Centers (CRRC) Armenia Foundation for the comprehensive field work, data collection and analysis; and experts, Ms Ekaterine Aghdgomelashvili, who has almost single-handedly ensured the validity of every single correlation and invested countless hours and sustained effort in producing a high-quality, comprehensive and well-rounded report, as well as Ms Elmira Bakhshinyan, Mr Jack Vahan Bournazian, and Ms Mariam Osipyan for their invaluable and exhaustive work. Heinrich Boell Foundation's own Eka Tsereteli also deserves high commendation for her work on the graphic design of the homophobic attitudes study, as do Anne Nemsitsveridze-Daniels for their contribution to the translation and editing efforts of the study and situational assessment, and Hasmik Hayrapetyan, for her assistance in the translation of the quantitative tools.

It is our hope that the two detailed studies will provide a better understanding of LGBTI rights in both Armenia and Georgia and pave the way for a long-term strategy that would ensure their protection and inclusion in all aspects of life, which would consequently strengthen democratic development and lead to inclusive and tolerant societies free from discrimination.

Tbilisi, 23 March 2016

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INTRODUCTION

This report seeks to assess the human rights situation of lesbian, gay, bisexual, trans and intersex (LGBTI) individuals in Armenia in order to assist with developing strategies to protect and promote the human rights of this historically vulnerable group. For strategy development it is essential not only to understand what infringements of rights and acts of discrimination predominate, but to also seek to understand why. In exploring the why, it is also noteworthy that because the universality of human rights dictates that all individuals are inherently equal in both dignity and rights, infringements on or violations of the rights of LGBTI individuals because of their sexual orientation or gender identity (SOGI) — meaning because of who they are — also amounts to discrimination, e.g. unequal treatment, based on an immutable characteristic, and prejudicial to the equal dignity and rights of such individuals. Consequently, combating discrimination is part and parcel to protecting and promoting equality in dignity and rights for LGBTI individuals, and by countering discrimination and better securing rights to LGBTI individuals, society will also secure each right itself to a greater degree, which in turn assures that all members of society are more secure in their human rights.

However, as explained below, in the Armenian context combating discrimination and achieving greater degrees of equality and equal treatment for LGBTI individuals is perceived to conflict with traditional conceptions of Armenian identity, and this is a stumbling block to the protection and promotion of rights for LGBTI individuals. From a legal perspective, this conundrum is also frustrated by low levels of rule of law. From a political and economic perspective, Armenia's integration to the Eurasian Economic Union, and not the European Union (EU), also influence the discourse about rights. Thus, human rights and anti-discrimination advocacy focused on demands for greater legal protections and conformity with EU standards will be insufficient in creating greater equality in rights and dignity for LGBTI individuals in Armenia. Although expanding legal protections may provide some degree of difference, perhaps what would be most valuable would be reason-based, public discourse on how such legal protections and the resulting greater levels of equality for each and every individual, both LGBTI and others, spurs social and economic development for society as a whole, as per accepted development theory and Amartya Sen's work entitled *Development as Freedom*. Thus, based on this research and accepted development theory, all stakeholders — whether domestic, regional, or international, and whether from civil society or government — must engage with each other around a common premise of creating greater degrees of equality, equal treatment and rights for all, including the most vulnerable groups such as LGBTI individuals. Only this will secure greater degrees of social and economic prosperity for Armenia and Armenians as a whole.

As for issues and recommendations specific to law and international human rights obligations, it is also important to note that in response to a request from the UN Human Rights Council a report has recently been issued by the UN Office of the High Commissioner for Human Rights, entitled "Discrimination and violence against individuals based on their sexual orientation and gender identity" (UNHRC Report).⁵ The recommendations from that report are addressed to all states and carry the weight of the UN Human Rights Council. Based on a review of the issues relevant to Armenia as per this study, it appears that many of the recommendations made in the UNHRC Report are relevant and applicable to Armenia, and the recommendations of this report mirror the UN recommendations to a large degree.

Lastly, in order to provide a comprehensive "what and why" perspective of value to both civil society actors and government as both pursue the mutual human rights goal to secure greater equality in dignity and rights for all, and to combat discrimination against vulnerable groups such as the LGBTI community in particular, this report represents research conducted on issues of history and social context, legislation and institutional framework, as well as an assessment of the degrees of compliance, or the lack thereof, relative to the state's international human rights obligation to protect and promote the rights of LGBTI individuals in Armenian society.

GOALS AND OBJECTIVES

The purpose of the report is to provide an in-depth study of the human rights situation for lesbian, gay, bisexual, trans and intersex persons, to analyse the existing legal, institutional or practical problems, and to present relevant recommendations for the state and civil society actors, in order to support the protection of human rights of LGBTI persons. The objective of the report is to serve as a working tool and as a basis for the development of a long-term Advocacy Strategy/Action Plan to counter discrimination on the grounds of sexual orientation/gender identity and to protect and promote human rights.

⁵ A/HRC/29/23. "Discrimination and violence against individuals based on their sexual orientation and gender identity," May 4, 2015 Retrieved from: <http://bit.ly/1MNCTnR>

METHODOLOGY, STRUCTURE AND DATA COLLECTION

This assessment seeks to analyse the existing legal standards and legislation relevant to the enjoyment by LGBTI individuals of their rights and freedoms, as well as to highlight cases of infringements and violations of such rights, including cases of discrimination, often with regard to accessing public and private services. As one objective in preparation for strategy planning, is to assess the state's level of compliance with its obligations to promote, protect and fulfil human rights as relevant to LGBTI individuals in Armenia, an attempt was made to make this assessment with regard to the three levels of state responsibility: 1) the state's duty not to infringe upon a right, 2) the state's duty to prevent third persons from infringing upon a right, and 3) the state's duty to create an environment within which a right can be exercised and enjoyed. These three levels of state responsibility are a useful and practical interpretation of the responsibility to promote, protect and fulfil.⁶ Also, this assessment primarily relates to events and conditions as between May, 2012 and May, 2015.

Although the focus of this report is an assessment of human rights issues, understanding failures in compliance with human rights norms necessitates review of the Armenian historical and social context. Additionally, understanding political and economic context, specifically that Armenia — unlike Georgia — is not seeking EU integration but rather has integrated with the Eurasian Economic Union, is also necessary when considering social and political motivations connected to the protection and promotion of human rights as per LGBTI individuals. For these reasons, sociological research and interviews with sociologists were conducted and political assessments are reported in the section on History and Social Context.

Similarly, a review of legislation and the institutional framework was conducted so as to evaluate the degree to which the state complies domestically with its international obligations on rights and non-discrimination. However, because there is no stand-alone anti-discrimination law in Armenia, because anti-discrimination provisions are scattered through different legislative codes, and because such anti-discrimination provisions are only declaratory in nature (meaning that there is no legal mechanism to obtain a remedy for discrimination based on such provisions), it was deemed more valuable to assess the legislative and institutional framework as a whole, rather than in its separate pieces. In order to pursue such an analysis, the following questions are asked and answered with regard to Armenian legislation and the institutional framework:

- To what extent does the constitution and legislation of the Republic of Armenia (RA) protect equality and prohibit discrimination under SOGI and in the context of LGBTI rights protection?
- To what extent can judicial decisions of the European Court of Human Rights (ECtHR) protect against discrimination in the context of LGBTI rights protection in the domestic sphere?
- To what extent does the RA Action Plan for the National Strategy on Human Rights Protection (Action Plan) protect against discrimination in the context of LGBTI rights?
- Considering rule of law issues, to what extent can social change be expected based on recommendations related to legal norms and institutional frameworks?

As for assessing the protection of rights of LGBTI persons today, fact-finding was conducted by interviewing experts employed at civil society organisations which serve LGBTI individuals, as well as other professionals such as sociologists, journalists, sexologists, and others⁷. Rather than being interviewed, the representative of the Human Rights Defender's Office chose to respond to questions in writing, as did one journalist based outside of Yerevan. In addition to reviewing the human rights reports of local civil society organisations, as well as regional and international actors, other resources consulted for this report included books and articles on homosexuality in post-Soviet space and values and culture in Armenia, as reflected in the bibliography.

Most important to the fact-finding were focus groups, which were organised in order to engage LGBTI individuals in discourse about identity, discrimination and rights. One focus group was organised for gay/bisexual men⁸ and another for lesbian/bisexual women.⁹ Participants lived in Yerevan but some were originally from other regions of Armenia. Although a focus group had originally been planned for trans persons, due to logistical complications the focus group

6 See generally, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms Adopted by General Assembly resolution 53/144 of 9 December 1998, Retrieved from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>;

See specifically, Walter Kalin, Lars Muller, Judith Wyttenbach, *The Face of Human Rights*, Baden, Switzerland: Lars Muller Publishers, 2004, p. 12.

7 In the framework of this research, fourteen experts were interviewed from various professional spheres (see the Bibliography for the full list of interviews).

8 A focus group with participation of eight gay/bisexual men was held on 7 August, 2015. Moreover, in-depth interviews with four gay men with potential refugee claims and three gay men retired from military service were held in October, 2015.

9 A focus group with the lesbian/bisexual women was held on 1 October 2015 with the involvement of 8 participants.

did not materialise and instead individuals were interviewed separately.¹⁰ Anonymity was ensured for participants who granted an informed consent to have their discourse recorded.

Also, as research progressed it became apparent that with regard to asylum/refugee issues, Iranian citizens living in Armenia who had potential refugee claims based on sexual orientation should be consulted; interviews with four such persons were conducted along with a follow up consultation with the Armenia Office of the United Nations High Commissioner for Refugees (UNHCR Armenia). It was also warranted to interview gay men, who had completed military service, but it was only possible to conduct three interviews for periods of service relevant to the May 2012 - 2015 time frame. For this reason this report relies instead on expert testimony with regard to military service. Anonymity and informed consent was upheld in all cases.

Through this described process the report seeks to give an overarching and comprehensive perspective on the issues of human rights for LGBTI individuals in the specific context of Armenia. It is hoped that such a perspective will be beneficial to all stakeholders, whether domestic, regional or international, and whether from civil society or government, as creating a more inclusive society for all is both the international human rights obligation of the state and the attested path to development for the society as a whole. It is important to note that without long-term monitoring and due to the fact that the vast majority of individuals do not report abuses based on SOGI out of fear of reprisal, it is difficult to estimate the prevalence of the discrimination and abuse of rights which is described in the findings of this report.

HISTORY AND SOCIAL CONTEXT

On Friday, 6 November 2015, a group of nationalist protesters burned a rainbow flag in front of the EU Offices in Yerevan. They were specifically protesting the US Ambassador and his statement of support for LGBTI individuals in the wake of threats of violence against LGBTI persons for participation in “Rainbow Forum”, an LGBTI forum organised by PINK Armenia NGO the month before. It is revealing that the protestors demonstrated against the US Ambassador in front of the EU Offices, probably to express the idea that Western states are all the same, and to invoke the idea of culture-war between East and West over acceptance of LGBTI individuals. But what is more revealing is that one of the principal protestors who burned the rainbow flag at the demonstration is also someone who is known to seek gay sex on an Internet dating site. Worse still, the pressing issue is not only whether it would be unethical to expose him, but also whether exposing him would bring a social backlash for intervening in, and making public, another’s private life, no matter the degree of hypocrisy his public behaviour reveals. This example encapsulates the most significant barrier to the development of LGBTI rights in Armenia: the strict distinction between public and private identity, and the accepted and expected divergence between the two spheres of public and private life.

The distinction and dichotomy between public and private is connected with the construction of identity in the Armenian context. Research in sociology has shown that, whereas in a Western framework identity is more a function of independent self-construal, in an Eastern framework identity is more a function of interdependent self-construal, whereby one’s family and other relationships exert greater influence due to a co-dependency on others.¹¹ That Armenian culture corresponds more closely to such an Eastern framework is supported by a recent study which shows that Armenians appear to prioritise a collective self, or value more collectivism, in contrast to individualism.

In last year’s study of values in Armenian culture, surveyed individuals prioritised as most important values of conformity and security. Such values correspond to a perceived need to maintain social order and to ensure stable relationships, especially through compliance with social norms and expectations. A related value, framed as benevolence toward the group (i.e. meaning benevolence toward Armenians as a whole), was also highly prioritised by respondents. Together these three values dictate stability, order and harmony via prioritizing and valuing the collective over the individual. In comparison, values which highlight the individual, such as achievement of tangible results in the public sphere, self-direction via new experiences, and universalism (which recognises equality and justice), only received medium level recognition in the survey. Other individual oriented values received even less recognition. Overall, the regulation of relationships as a response to external threats emphasises the collective-self (ethnic/national identity) over individualism.¹²

Considering Armenian history, the prioritisation of conformity and security is not surprising. After the end of the Armenian Empire of Tigran the Great, approximately 66 B.C., Armenia was often divided between competing foreign

¹⁰ Four in-depth interviews with trans persons were held on August 8, 2015.

¹¹ Khachatryan, Manusyan, et. al. 2014. “Culture, values, beliefs: behavior guidelines in changing Armenian society, p. 27, citing to Markus, Hazel & Shinobu Kitayama 1991. Culture and the self: Implications for cognition, emotion, and motivation. Psychological Review, 98, 224-253.

¹² Khachatryan, Manusyan, 2014, pp. 46 - 47 and 27.

empires.¹³ Without political unity, cultural unity was achieved through the institution of the Armenian Apostolic Church, following its establishment in approximately 301 A.D.¹⁴ Throughout the centuries of political division, Armenian national identity merged with adherence to the Church, which often carried out state functions, including record keeping, education and even administration of justice (i.e. community dispute resolution).¹⁵ Also, at the beginning of the last century Armenians experienced a genocide followed by the forceful incorporation of the First Armenian Republic into the Soviet Union;¹⁶ both events again raised fears of destruction of national identity. Such fears were renewed again at the end of the Soviet Union as Armenia experienced armed conflict with its neighbour and severe instability and deprivation.¹⁷

It is not surprising, therefore, that Armenian culture is imbued to some extent with a “survivor” mentality. In the Diaspora, one is inculcated with the duty to remain Armenian considering the long history, obligation to ancestors and constant threat to national survival. Thus, there is an expected duty of benevolence to the group. Moreover, in Armenia today, periodic skirmishes on the border reinforce the idea of threat to national identity, and the chaos of transition along with current economic woes reinforce desperation to “hold-on” to what one has. In this “hold-on” environment, change is often perceived of as a threat. Stasis is what is valued.

Thus, the public presence of LGBTI Armenians may well be perceived as a threat because a public existence represents change, and because it challenges the social norms and expectations which define the collective identity. As one post-Soviet scholar has noted, decriminalisation of homosexual relations in the post-Soviet space made what was once forbidden, legal — and thus suddenly real: after decriminalisation gay people exist in a public sense and no longer as a secret, and this fosters intolerance toward what was once banned.¹⁸ As expected, decriminalisation of homosexuality between men in Armenia in 2003 did incite intolerance. But surprisingly, many recall that during the Soviet period people in Armenia knew that gay individuals existed, and people suspected who might be privately gay; in fact, some say that Yerevan was known as the “pink city”, not only because of its buildings of pinkish, volcanic rock, but because of its tolerance for private homosexuality as compared to other Soviet cities.¹⁹ The difference in today’s social dynamic in Armenia is the public presence of LGBTI persons.

Decriminalisation and the emergence of homosexuality in public discourse and in the public sphere also challenges the social norms and expectations valued under conformity and security — through which collective identity is constructed. As one interviewee reported, “Armenian identity is inherited.”²⁰ An individual’s identity is a function of ancestry, religion, gender roles and family relationships. Even Armenian women who challenge patriarchy accept certain limitations because, as they say, “in the end we’re Armenian.”²¹ As to the question of sexuality, some Armenians simply state that “an Armenian cannot be gay.”²² In other words, the collectively-imposed individual identity that one inherits excludes this possibility, and this impossibility is reinforced through social and economic inter-dependence: family relations are expressed as moral obligations and economic difficulties preclude individual self-sufficiency, which in turn heightens dependence on family and personal networks to access resources for survival and prosperity. As one interviewee noted, the public realm itself is like a family wherein strangers often invoke a familiar relationship by addressing each other as brother, sister, aunt or uncle — depending on age and gender — when engaged in simple public exchanges of information or goods.²³ In this sense, the basic unit of society is more the family than the individual, and one’s public identity conforms to preconceived roles to which one conforms to belong.

The construction of Armenian identity as heterosexual is also based, in part, on the merger of ethnic identity and religion and the Armenian Apostolic Church. As an institution the Church has yet to clarify its religious dogma in light of modern times and medical discourse on homosexuality: when it was publicised that two gay Armenians had exchanged rings in Etchmiadzin, the cathedral of the Holy See of the Church in 2006,²⁴ the only response from the Church was that marriages in general are not performed at Etchmiadzin. Although some specific priests advocate against modern definitions of sexuality and gender identity and invoke a traditional interpretation of Scripture, the institution itself makes no clear dogmatic pronouncement, and instead it allows the inertia of the past to continue to dictate conservative gender roles and expectations.²⁵ While there is a valid question as to the influence and authority of

13 See generally, Richard Hovhannisian, editor, *The Armenian People from Ancient to Modern Times*, 2 vols. New York: St. Martin’s Press, 1997

14 Encyclopedia of Law and Religion Online. Retrieved from <http://www.brill.com/products/online-resources/encyclopedia-law-and-religion-online>

15 Ibid.

16 See generally, Richard Hovhannisian, editor, *The Republic of Armenia*, Vol. I (1971), Vol. II (1982), Vols. III & IV (1996) Berkeley: University of California Press.

17 Human Rights Watch World Report 1994, Retrieved from: <https://www.hrw.org/reports/1994/WR94/Helsinki-01.htm>

18 Daniel Schluter, *Gay Life in the Former USSR: Fraternity Without Community*, p. 158.

19 Socioscope Interview, Oct. 2015.

20 Lusine Saghumyan, Sociologist and Researcher, Interview Oct. 2015.

21 Ibid.

22 Ibid.

23 Socioscope Interview, Oct. 2015.

24 Vahan Ishkhanyan, *Armenia Now*, Retrieved from <http://www.network54.com/Forum/84302/message/1156017164/ARMENIAN+CULTURE>

25 Homosexuality is not addressed on the Church web site.

the Church in the lives and minds of people, there is also reliance on religion and history as dictating sexuality and gender in the context of Armenian identity.

Also, the inherited, collectively-imposed identity, which is reinforced by, and likewise demands conformity, leaves little room for reflection on self or exploration of identity — at least in the public realm. But freedom is discovered and exercised in private. Internet dating websites are the mythical “Ring of Gyges” from Plato’s Republic,²⁶ allowing the secret exploration of a separate individuality. What is more contradictory is that individuals with the means to explore and live secret lives may not even recognise that they are denied full equality. In one conversation, despite being in a secret relationship with another man, a respondent could not conceive that the required secrecy surrounding his relationship impinged on his personal freedom, principally because his conception of inequality was limited to the public realm only: his answer to broad questions about the inability to share openly with others his relationship was that he faces no disadvantage in terms of his relationship or orientation because he is “not out”.²⁷ Thus, he fulfils his duty to family and nation publicly, and finds personal freedom in private; but he does not consider that freedom in secret is not real freedom.

Moreover, because of the conformist aspect of public life, many expect that everyone else has a secret, private life, too. One respondent recalled the story of a shopkeeper insinuating to his customer that the young man must be buying alcohol while on his way to a romantic rendezvous; this was interpreted as an attempt to invoke camaraderie and familiarity by invoking the private in a public exchange.²⁸ This story also affirms the generally accepted notion that men are expected to have extramarital affairs but that sex is private. Thus, open and public discourse on homosexuality violates the norm that sex is private and violates the patriarchal definition of man as acting upon others but never acted upon.

Also relative to the issue of public and private were responses from some interviewees that LGBTI individuals have no problem in Armenia because they are free to live their lives as they will — in private. Another response was that instead of challenging society by making demands, LGBTI persons should “integrate” and show that they are concerned with all social issues, not only “their own”, and that in this way they will be accepted.²⁹ One contradiction here is that LGBTI individuals are already integrated and do participate in various issues other than “their own”, but unless these individuals are “out”, no one knows they are LGBTI, too. Conversely, being “out” is interpreted as challenging society to accept you and being focused on your “own” social issues. The other contradiction is that LGBTI people should somehow earn acceptance by integrating. This last perspective denies the foundation of human rights, which is that each individual is born equal in dignity and rights: straight people do not have to earn acceptance, and in a human rights framework one claims an inherent right rather than seeking for acceptance from the majority by proving one’s worth. Thus, these perspectives invoke the distinction between public and private and once again prioritise the value of conformity, although voiced here as “integration”.

Lastly, the stress of safeguarding one’s public persona in a small society where individuals are more interdependent than self-sufficient intersects with the concept that Armenia is a shame-based society. Even Armenian language prioritises shame; the most common refrains for criticism is “it’s shameful”, “isn’t it shameful?”, or “shame on you”. The slogan for a winning campaign against increased fares for public transportation (called the “100 dram protest”) was: “it’s shameful to pay 150 dram [the new fare] when the person at your side doesn’t have it.”³⁰ Ultimately, the shaming phenomena exacerbates the dichotomy between public and private because it heightens the need to safeguard the public reputation such that exploring sexual freedom is pushed underground into the realm of secrecy.

As to issues of politics and political motives, several respondents confirmed that the question of sexual orientation and gender identity is manipulated by authorities to distract the public from more pressing problems (e.g. corruption), to offer an internal enemy from whom the authorities can claim that they protect the Armenian nation, and to distance people from the West and make the Eurasian Economic Union and association with Russia more desirable.³¹ Thus, LGBTI activists must be wary of how their activism may be misaligned and manipulated by other public actors in such a political environment.

Moreover, it is worthwhile to explore the public vs. private dynamic in the context of decision making of public consequence. For the most part, Armenia’s transition from a post-Soviet society has largely been an inorganic process driven by outside actors and values, resulting in a legal, institutional, and technical compliance with democratic and

26 Benjamin Jowett, translator, *The Republic*, By Plato, Book II.
Retrieved from <http://classics.mit.edu/Plato/republic.3.ii.html>

27 Confidential interviews with “closeted” gay men, Oct. 2015.

28 Socioscope Interview, Oct. 2015.

29 Interviews with journalists, Oct. 2015.

30 «Ամոթեկճարել 150, երբկողքինդ չունիս 50-ը», Azatutyun Media, <http://www.azatutyun.am/media/video/25055919.html>

31 Socioscope Interview, Oct. 2015; Lusine Saghmryan Interview, Oct. 2015; Lusine Ghazaryan, Attorney PINK Armenia, Interview Oct. 2015.

human rights principles, but due to private decision-making of public consequence, such compliance is largely a façade that fails to sufficiently reflect or impact the ways in which people relate to each other, or the ways in which decisions of social and political consequence are made. For example, in 2013 after a private meeting with the Russian President, the Armenian President unilaterally decided that Armenia would join the Eurasian Economic Union, ending years of work toward European integration, and making a change in policy that even shocked those in government.³² There was no public discourse.

After centuries of occupation by foreign powers, perhaps Armenians have mastered living in a dual reality wherein public compliance with laws and standards is distinct from private relations, social norms and expectations, and often the private predominates over the public. For example, in 2013 there seemed to be no end to a public stand-off between activists and Yerevan's municipal government over the building of boutique stores in a park until the Armenian president visited the site right before presidential elections and told the mayor that the scene was "not pretty".³³ The mayor agreed to remove the stores. The underlying legal issue, that rezoning to allow for such stores required a public forum and public discourse, which the municipality had never held, was dismissed. The public staging of the solution invokes the personal and familiar, as if the president were a father-figure for the Armenian people, with the power to decide for them through his benevolence. The solution was hierarchical and decided via publicly viewed, private discourse between the president and mayor, on behalf of a non-participatory public.³⁴ Law and democratic process were rendered immaterial to the issue — the public forum for rezoning was never held. The private overruled the public.

Because a human rights framework typically functions in the public realm through law and public discourse — during which individuals articulate and claim inherent rights, such a public process seems insufficient to create tangible change in Armenia. For example, in 2013 a law on the equality of men and women was passed,³⁵ but because it contained the term "gender", proponents of conservative "family-values" characterised the law as an affront to Armenian identity and thereby succeeded in thwarting its implementation;³⁶ in other words, public efforts to regulate the private realm were considered a threat to identity and demonised, and nationalist discourse overruled law. Today the law languishes unimplemented.

This is not to say that there is no public space whatsoever, but successful actions have invoked collectivist, rather than individualist, values. For example, during the "100 dram protest" mentioned above, the slogan "it is shameful to pay 150 dram when the person at your side does not have it" invoked the inter-personal and familiarity of the "the person at your side." In this way the movement called on the value of benevolence to the group, which was highly prioritised in the survey of Armenian values discussed above. In other words it called for the protection of collective values and consideration for fellow citizens. The protest also invoked shame: "it's shameful". As discussed above, Armenia is a shame-based society, and shame is a powerful tool for scripting public behaviour, but not private behaviour: the solution is to conform in public and to seek freedom in private.

Considering these examples and the discussion above, an anti-discrimination law alone, especially one imposed as a precondition by Europe for a visa-free regime, will do little to change the reality for LGBTI individuals in Armenia. Also, as a rule, it takes a lengthy period of time and much effort for a case to reach the European Court of Human Rights. The solution, it seems, is not law, or not law alone, but rather to combine advocacy approaches with the underlying values prioritised by Armenians: how can the value of benevolence toward the group, appealed to in the "100 dram" protest above, be leveraged to advocate for the inclusion of LGBTI individuals? Also, connected to this query is the fact that most Armenians accept LGBTI individuals so long as they live their difference in private: how can advocacy ameliorate the fear that public acceptance of LGBTI individuals may be an affront to national identity? Perhaps, part of the problem is that without such a collectively-imposed, clear-cut public identity dictated for all, people will be obliged to think independently and reconcile with their individual identities, something that requires maturity and critical thinking. Considering this, it must be recognised that anything that is perceived to undermine the dictated identity is a direct threat to those who hold power over individuals (e.g. the Church and national authorities) via their control of the Armenian identity and nationalism.

Therefore, because of the social and political dynamics as described here, publicly claiming equality in dignity and rights through a human rights framework is perceived as challenging social norms and thus as a threat to national identity and national security, both of which are built on conformity. Thus, pursuing equality for LGBTI persons should

32 "Armenia To Join Russian-Led Customs Union" Radio Free Europe Radio Liberty, 3 Sep. 2013. Retrieved from: <http://www.rferl.org/content/armenia-customs-union/25094560.html>

33 Socioscope Interview, Oct. 2015

34 Ibid.

35 RA Law on Equal Rights and Equal Opportunities for Men and Women, Draft 1259. Retrieved from: <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=28173>

36 "The 'Gender Equality Law' Hysteria in Armenia", The Armenian Weekly, 20 Sep. 2013. Retrieved from: <http://armenianweekly.com/2013/09/20/the-gender-equality-law-hysteria-in-armenia/>

be coupled with a more expansive discourse on individual identity and the value of individualism, not only for the individual, but also for the benefit of society as a whole. Supporting a broader understanding of human rights and individual development as a foundation for social development may help prove the value of a move from staunch collectivism to more balanced individualism.

LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

For the most part, the Armenian Constitutional and legislative framework complies with international standards as to individual human rights. For example, Art. 3 of the RA Constitution states that:

“The human being, his/her dignity and the fundamental human rights and freedoms are an ultimate value.

The state shall ensure the protection of fundamental human and civil rights in conformity with the principles and norms of the international law.

The state shall be limited by fundamental human and civil rights as a directly applicable right.”³⁷

In addition, all of Chapter 2 of the RA Constitution is dedicated to individual human rights and freedoms. Although a referendum to amend the Constitution was recently approved, the amendments do not change the Constitutional analysis on the issue of rights as presented in this report.

Despite the Constitutional and legislative affirmation of individual human rights, there is no stand-alone anti-discrimination law in Armenia. While there is a constitutional provision dedicated to ensuring individual equality and there are legislative anti-discrimination provisions spread out across different legislative codes, such provisions are merely declaratory in nature, meaning that there are no legal mechanisms to obtain a remedy for discrimination based on such provisions.³⁸ Therefore, instead of a piece by piece review of such a scattered anti-discrimination framework, it was deemed more valuable to assess the legislative and institutional framework as a whole. In order to pursue such an analysis, the following questions are posed and answered with regard to Armenian legislation and the institutional framework:

- To what extent does the constitution and legislation of the Republic of Armenia (RA) protect equality in dignity and rights and prohibit discrimination in the context of LGBTI rights protection?
- To what extent do ECtHR judicial decisions protect against discrimination in the context of LGBTI rights protection?
- To what extent does the RA Action Plan for the National Strategy on Human Rights Protection (Action Plan) protect against discrimination in the context of LGBTI rights?
- Considering rule of law issues, to what extent can social change be expected based on recommendations related to legal norms and institutional frameworks?

Lastly, some assessment of rule of law in Armenia is required because the purpose of this work is to assist with strategies to combat discrimination and secure rights to LGBTI individuals, and in this context the degree to which law can be responsive to the discrimination and violations of rights faced by LGBTI individuals is a valid question.

It was in the context of these questions that the following relevant, legal acts were scrutinised:

- Constitution of RA, adopted in 1995, amended in 2005, amended 2015;
- RA Law on Human Rights Defender, Article 8;
- RA Law on medical care and population servicing, Article 4;
- RA Law on Education, Article 6(1);
- RA Law on Donation of Human Blood and Blood Components and Transfusion Medicine, Article 14(6);
- RA Law on Child’s Rights, Article 4;
- RA Law on Citizenship, Article 3(2);
- RA Law on Equal Rights and Equal Opportunities for Men and Women
- RA Law on Foreigners, Articles 22 & 32;
- RA Law on Police, Article 5;
- RA Law on Police Service, Article 11(1);
- RA Law on Custody of Detainees and Arrested Persons, Article 2;
- RA Law on Civil Service, Article 11;
- RA Law on Non-governmental Organisations, Article 3(2);
- RA Law on the Fundamentals of Cultural Legislation, Article 9;

³⁷ RA Constitution, 27 Nov. 2005. Retrieved from: <http://www.president.am/en/constitution/>

³⁸ Lusine Ghazaryan, Attorney, PINK Armenia.

- RA Law on Service within National Security Authorities, Article 14;
- RA Law on Service for Compulsory Enforcement of the Court Decrees, Article 9(1);
- RA Law on Community Service, Article 11;
- RA Law on State Service in the Staff of the National Assembly, Article 11;
- RA Law on Public Service, Article 11;
- RA Law on Advocacy, Article 29(3);
- The Labour Code of RA, adopted in 2004;
- RA Judicial Code, Article 15;
- European Convention of Human Rights, Protocol 12;
- International Covenant on Civil and Political Rights, adopted in 1966;
- Action Plan for the National Strategy on Human Rights Protection (Action Plan), adopted in 2014.

Anti-Discrimination Pursuant to Legislative Provisions

As to the first question regarding the next to which the RA constitution and legislation protect equality in dignity and rights and prohibit discrimination in the context of LGBTI rights, Armenia's Constitution and international obligations were reviewed as well as RA domestic legislation.

RA Constitution

The RA Constitution ensures general equality irrespective of any specific grounds. Although there is an anti-discrimination provision in the Constitution, it does not include any prohibition of discrimination based on the sexual orientation or gender identity (SOGI) specifically. More precisely, according to the Art. 14.1:

"Everyone shall be equal before the law.

"Any discrimination based on any ground such as sex, race, colour of skin, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances shall be prohibited."³⁹

In addition to the broad provisions in Art. 3 cited above, constitutional provision Art. 6 (para. 4) also stipulates that:

"The international treaties shall come into force only after being ratified or approved. The international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. The international treaties not complying with the Constitution cannot be ratified."⁴⁰

Art. 47 of the Constitution also prohibits infringing on another's rights by inciting national, racial and religious hatred. However, this is an exclusive list of grounds and does not include SOGI. Thus, no Constitutional provisions specifically protect LGBTI individuals, a vulnerable group in Armenian society, however, as per the Constitution, international obligations are directly applicable in the domestic context as per Art. 6.

International and Regional Framework

Considering that international and regional obligations are a "constituent part" of the Armenian domestic legal framework, it is worthwhile to consider the international instruments to which Armenia has become a state party. For the most part, Armenia is a party to the core international human rights instruments, but in the context of anti-discrimination, perhaps the International Covenant on Civil and Political Rights (ICCPR) is the most relevant. Armenia acceded to the ICCPR on June 23, 1993.

Pursuant to Art. 2 of the ICCPR state parties are prohibited from discriminating based on a list of grounds which includes, amongst others, "sex" and "other status." Although the Human Rights Committee, charged with interpreting the treaty and empowered to render decisions on individual complaints, has on one occasion interpreted "sex" to include sexual orientation (*Toonen vs. Australia*)⁴¹, later decisions on relevant SOGI complaints did not follow the same reasoning. Still, "other status" means that the listed grounds are not exclusive. Also relevant is Art. 26, which states that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law." The list of grounds of discrimination is the same as in Art. 2. Of additional consequence in the context of the rights of LGBTI individuals is Art. 16 of the ICCPR, which stipulates that "everyone shall have the right to recognition everywhere as a person before the law", as well as Art. 17 regarding a prohibition on interference with one's "privacy, family, home

³⁹ RA Constitution, 27 Nov. 2005. Retrieved from: <http://www.president.am/en/constitution/>

⁴⁰ Art. 6(4), RA Constitution, 27 Nov. 2005. Retrieved from: <http://www.president.am/en/constitution/>

⁴¹ CCPR/C/50/D/488/1992, *Toonen vs. Australia*. Retrieved from: <http://juris.ohchr.org/Search/Details/702>

or correspondence” as well as honour and reputation. So far as these obligations may have been interpreted to protect the equality in dignity and rights of LGBTI individuals, they also apply in the Armenian domestic context.

Armenia is also a member state of the Council of Europe and a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Pursuant to Art. 14:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The text of ECHR Art. 14 suggests that discrimination is an objective matter. But in the seminal *Belgian Linguistics* case the ECtHR defined discrimination as a difference between categories of person in the exercise of ECHR rights which has “no reasonable and objective justification”.⁴² This has given rise to a distinction between “different” treatment, which can be justified under the ECHR, and “discrimination”, which would violate Art. 14.⁴³ In a series of decisions four factors have emerged as guidelines for drawing the line.⁴⁴

First, it must be shown that the treatment in question was less favourable than that received by other comparable groups, the identity of which will usually be determined objectively by the complaint itself. For example, if the alleged discrimination is based on gender, the comparison will be with members of the opposite sex not suffering the same alleged disadvantage.⁴⁵ Secondly, it is for the state to show that, as a matter of fact supported by evidence, the practice is reasonable and rational. This will require reference to the policy goals which it is said to facilitate.⁴⁶ Thirdly, the effects of the treatment must be disproportionate in relation to the pursuit of the policy objective and must fail to strike “a fair balance between the protection of the interests of the community and respect for the rights and freedoms safeguarded by the Convention”.⁴⁷

The second and third factors have provided the basis for variable margins of appreciation, and a fourth factor – whether the practice in question is regarded as non-discriminatory in other democratic states – has been “of major relevance” in determining their scope.⁴⁸ Since drawing the line between difference and discrimination involves matters of social policy, the width of the margin of appreciation “will vary according to the circumstance, the subject-matter and its background”.⁴⁹ The policy issue can, however, cut both ways. As Schokkenbroek points out, the ECtHR has assumed certain kinds of differential treatment to be *prima facie* discriminatory – for example those based on sex⁵⁰, religion⁵¹, illegitimacy⁵², nationality⁵³ – on the express or implicit grounds that they run counter to 12 major priorities of European social policy. The same is arguably true of race but the matter has yet to be fully litigated.⁵⁴ Less thoroughly discussed in the literature is the fact that state discretion arises at a number of different levels in this context, and is constrained by a variety of factors not found in relation to other provisions of the ECHR. Since a breach of Art. 14 can only be pleaded in respect of other rights and freedoms in the ECHR, but even if none of these has been violated in any other way⁵⁵, it, therefore, accommodates whatever kinds of discretion are associated with these other provisions.⁵⁶

42 *Belgian Linguistic Case*, judgment of 23 July 1968, A 6, paragraph 10.

43 See, for example, *Swedish Engine Drivers Union v. Sweden*, judgment of 6 February 1976, A 20, paragraph 47.

44 “THE MARGIN OF APPRECIATION: INTERPRETATION AND DISCRETION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS” by Steven Greer Reader in Law, University of Bristol, United Kingdom, Council of Europe Publishing F-67075 Strasbourg Cedex, July, 2000, page 11

45 *Abdulaziz, Cabales, Balkandali v. the United Kingdom*, judgment of 28 May 1985, A 94, paragraph 74.

46 *Ibid.* paragraphs 74-83.

47 *Belgian Linguistics Case*, *op. cit.*, pp. 34-35. 50

48 J. Schokkenbroek, “The Prohibition of Discrimination in Article 14 of the Convention and the Margin of Appreciation” (1998) 19 *Human Rights Law Journal* 20, 21.

49 *Rasmussen v. Denmark*, judgment of 28 November 1984, A 87, paragraph 40.

50 *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment, *op. cit.*, paragraph 78; *Schuler-Zraggen v. Switzerland*, judgment of 24 June 1993, A 263, paragraph 67; *Burghartz v. Switzerland*, judgment of 22 February 1994, A 280-B, paragraph 27; *Karlheinz Schmidt v. Germany*, judgment of 18 July 1994, A 291-B, paragraph 24; *Van Ralte v. the Netherlands*, judgment of 21 February 1997, Reports of Judgments and Decisions 1997-I, 173, paragraph 39. However, a difference in treatment between the sexes in the time-limits for bringing paternity proceedings was not regarded as discriminatory in *Rasmussen*, because such differences were common throughout member states at the time and expressed a legitimate policy objective related to the protection of the interests of the child (*Ibid.*, paragraph 41).

51 See, for example, *Hoffman v. Austria*, judgment of 23 June 1993, A 255-C, paragraph 36; *Canea Catholic Church v. Greece*, judgment of 16 December 1997, Reports of Judgments and Decisions 1997-VIII, 2843, paragraph 47.

52 *Marckx v. Belgium*, judgment of 13 June 1979, A 31, *op. cit.*, paragraphs 48, 62 and 65; *Inze v. Austria*, judgment of 28 October 1987, A 126, paragraph 41.

53 *Gaygusuz v. Austria*, judgment of 16 September 1996, Reports of Judgments and Decisions, 1996-IV, 1129, paragraph 42. A distinction is, however, drawn between citizens of the European Union and those from outside (*Moustaquim v. Belgium*, judgment of 18 February 1991, A 193, paragraph 49; *C v. Belgium*, judgment of 7 August 1996, Reports of Judgments and Decisions 1996-III, 915, paragraph 38).

54 See *Schokkenbroek*, *op. cit.*, p. 22.

55 *Belgian Linguistics Case*, *Com. Rep.*, (1965) B.3, paragraph 400; *Inze v. Austria*, *op. cit.*, paragraphs 43-47. Where it has decided that the applicant's rights under other provisions of the Convention have been violated, the Court will only consider whether Article 14 has been breached if “a clear inequality of

Additionally, where Art. 14 offers only limited protection because it only prohibits discrimination in the enjoyment of the other rights guaranteed by the ECHR, Protocol No. 12 of ECHR removes this limitation and provides for a general prohibition of discrimination by any public authority.⁵⁷ Protocol No. 12 of ECHR stipulates:

“1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

“2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.”

Furthermore, the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity articulates the states’ obligation to examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity.⁵⁸ Thus, there is a well-founded argument that prohibitions on discrimination under ECHR includes discrimination on the grounds of SOGI as per the recommendation, and that Armenia is obligated to combat SOGI discrimination in the domestic context.

Domestic Legislation

As for domestic legislation, and as referenced above, while there is no stand-alone anti-discrimination law in Armenia, there are anti-discrimination provisions scattered across several legislative acts. For example, the following is a list of legislative codes with their accompanying anti-discriminatory articles.

Overview of non-discrimination provisions in Armenian law:

	Legal Act	Article
1	Constitution	14.1
2	Criminal Code	6
3	Criminal Procedure Code	8(2)
4	Labour Code	3(3), 114(4)(4), 180(3)
5	Family Code	1(5)
6	Law on Right of the Child	4
7	Law on Education	6 (1)
8	Law on Television and Radio	22(1)(2)
9	Law on Protection of Economic Competition	7(2)(u)
10	Code on Administrative Violations	248

treatment in the enjoyment of the right in question is a fundamental aspect of the case” (Airey v. Ireland, judgment of 9 October 1979, A. 32, paragraph 30; Dudgeon, judgment, op. cit., paragraph 67.) 51

56“THE MARGIN OF APPRECIATION: INTERPRETATION AND DISCRETION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS” by Steven Greer Reader in Law, University of Bristol, United Kingdom, Council of Europe Publishing F-67075 Strasbourg Cedex, July, 2000, page 12

57 European Convention on Human Rights (ECHR) Art. 14 and Protocol 12. Retrieved from: http://www.echr.coe.int/Documents/Convention_ENG.pdf

58 See Point 1 at Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Retrieved from: [http://www.coe.int/t/dg4/lgbt/Documents/Final%20Case%20Law%20of%20the%20ECHR%20SOGI_EN%20\(2\).pdf](http://www.coe.int/t/dg4/lgbt/Documents/Final%20Case%20Law%20of%20the%20ECHR%20SOGI_EN%20(2).pdf)

11	RA Law on Social Benefits	5
12	Law on Social Protection of Persons with Disabilities	17(2)
13	Law on Procurement	3(2)(1)
14	Law on Medical Assistance and Services to the Population	4
15	Law on Donation of Human Blood and Blood Components and Blood Transfusion	14(6)
16	Code on Penitentiaries	8
17	Law on Penitentiary Service	14
18	Judicial Code	15(2), 89(9), 90(3)(6)
19	Electoral Code	3(3)
20	Law on Human Rights Defender	8
21	RA Law on Equal Rights and Equal Opportunities for Men and Women	Not Implemented

As for the institutional process with regard to anti-discrimination, it should be noted that the Law on Human Rights Defender, particularly Art. 5(1) explicitly states that the Human Rights Defender acts on the basis of Constitution and laws as well as universally recognised norms and principles of international law.⁵⁹ Moreover, the Human Rights Defender reviews complaints regarding infringement of human rights ensured not only in the national legislation, but also by universally recognised norms and principles of international law (Art. 7, Law on Human Rights Defender). According to the Art. 8 of the Law on the Human Rights Defender everyone is entitled to apply to the Human Rights Defender irrespective of national origin, nationality, place of residence, sex, race, age, political or other views or legal capacity.

Some other laws also address the issue of prohibiting discrimination and ensuring equality on various grounds. For instance, the Criminal Procedure Code, Art. 8(2), precisely repeats the grounds of discrimination listed in the Constitution. Also, the Code on Administrative Violations (particularly, Art. 248) articulates the equality of citizens regardless of their origin, social and property status, racial or national belonging, sex, education, language, attitude towards religion, type and nature of occupation, place of residence, and other circumstances. An anti-discriminative provision also exists in Art. 4 of the Law on Medical Assistance and Services to the Population which ensures the right to medical assistance irrespective of national origin, race, sex, language, belief, age, health condition, political or other views, social origin, property or other situation.

Likewise, the RA Law on Education Art. 6(1) ensures the right to education irrespective of national origin, race, sex, language, belief, political or other views, social origin, property status or other circumstances.⁶⁰ Moreover, Art. 4 of the RA Law on the Right of Child ensures equality of the rights of the child irrespective to his or her and their parents'/guardians' national origin, race, sex, language, belief, social origin, property or other status, education, place of residence, circumstances of birth of the child, health condition or other circumstances.⁶¹ Finally, Art. 3 of the RA Labour Code contains an equality provision ensuring equal treatment irrespective of sex, race, national origin, language, origin, nationality, social status, belief, marital and family status, age, views, and membership in political parties, trade unions or non-governmental organisations and other circumstances not related to work skills.⁶²

As to potential legal action for discriminatory acts, Art. 143 of the Criminal Code classifies the infringement of human and citizens' equality as a crime. It envisages criminal punishment for direct or indirect violation of human and citizens' rights based on sex, race, skin colour, ethnic or social origin, genetic features, language, religion, worldview, political or other views, belonging to national minorities, property status, birth, disability, age or other circumstances of personal or

⁵⁹RA Law on Human Rights Defender, Art. 5(1). Retrieved from <http://www.ombuds.am/en/library/browse/page/103>

⁶⁰RA Law on Education, Art. 6(1)

⁶¹RA Law on the Right of Child, Art. 4

⁶²RA Labour Code, Art. 3

social nature, which infringe on rights and legitimate interests. The same article envisages "use of official capacity" as an aggravating circumstance for the direct or indirect violation of human and citizens' rights based on sex, race, skin colour, ethnic or social origin, genetic features, language, religion, worldview, political or other views, belonging to national minorities, property status, birth, disability, age or other circumstances of personal or social nature, which resulted in damage to human and citizens' rights and legitimate interests. In conjunction with this it should be noted that according to the Art. 5(1) of the RA Law on Police, the police are charged with the protection of human life and health, other human rights, freedoms and legitimate interests, ownership of everyone, irrespective of national origin, race, sex, language, belief, political or other views, social origin, property or other status.⁶³

Analysis

As is clear from the various lists of grounds of discrimination expressed above, SOGI⁶⁴ is not specifically listed even though international and regional frameworks call for this: both the recent report for the Human Rights Council⁶⁵ and the recommendation of the Council of Europe's Committee of Ministers cited above call for exactly this. Moreover, there is no precise anti-discrimination provision in RA legislation which creates remedies or recovery of rights for victims of discrimination, especially considering that the definition of discrimination is the milestone that serves as the ground for such remedies.⁶⁶

As for the definition of discrimination, as per ECHR case law, "discrimination is a demonstration of different treatment of persons appearing in relevantly similar circumstances, without objective reasons or any reasonable explanation to act so."⁶⁷ This definition of discrimination is largely accepted in European human rights law. Under an anti-discrimination framework, the first step that the alleged victim of discrimination takes when claiming discriminatory treatment, is the incremental justification that, first: he/she had been subjected to marginalisation, compared to the others (interference); second: that such a marginalisation was based upon one of the prohibited grounds, third: that he/she had been under relevantly similar circumstances (comparator), fourth: that the mentioned distinctive approach had no objective basis (reasonable link between the means and the purpose) and/or that there was no reasonable explanation by the authorised agencies or persons for such distinction. Hence, the aforementioned legal definition⁶⁸ sets out those criteria which help in deciding whether the given treatment (decision, action or inaction) is discriminatory in its nature. Moreover, the definition above pronounces the concept of 'treatment' in certain cases, according to which it can be any 'differentiation', 'exclusion', 'restriction' or 'prejudice'.⁶⁹ However, there is no such formulation in the legal framework and law enforcement practice of Armenia. The absence of the above mentioned description in RA legislation is the reason that both the legislators and the law enforcement bodies fail to consider any differentiated treatment as expression of discrimination.⁷⁰

As a member state of the Council of Europe, Armenia is obliged to follow the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. Based on the mentioned Recommendation, Armenia adopted the National Action Plan for the National Strategy on Human Rights Protection (Action Plan). According to Point 8 of the current Action Plan, Armenia must study the compatibility of the legislation of the Republic of Armenia with the norms of international law relating to the prohibition of discrimination and to discuss the appropriateness of the adoption of a separate law "On the Fight against Discrimination". The responsible body for that action is the Ministry of Justice. The latest information is that the Ministry has formed a working group to draft an anti-discrimination law, most likely to fulfil a precondition set by Europe for negotiating a visa-free regime.

Concerning the domestic legislation which contains equality and anti-discrimination clauses in some way, it is notable to mention that not all domestic legislative acts address the issue of non-discrimination or ensure equality. In the acts that do contain such clauses, the listed grounds differ from and are not necessarily synchronised with the grounds listed in the Constitution. Hence, despite the fact that pursuant to the Law on the Human Rights Defender, the Human Rights Defender reviews complaints regarding infringement of human rights ensured not only in the national legislation, but also by universally recognised norms and principles of international law, there may still be a question as to the extent

63 RA Law on Police, Art. 5(1)

64 See: The official web-page of the Council of Europe: Retrieved from: http://www.coe.int/t/dg4/lgbt/CoELGBTIssues/LGBTIssuesCourt_EN.asp

65 For example in the Report of the Office of the United Nations High Commissioner for Human Rights, 4 May 2015, inter alia, it is stated that states should do actions for ensuring that anti-discrimination legislation includes sexual orientation and gender identity among prohibited grounds, and also protects intersex persons from discrimination (Point 79 (c)).

66 Legal research: "Is it expedient to adopt a separate 'non-discrimination law'?", conducted by attorneys Ara Ghazaryan, Vahe Grigoryan with the support of the Government of the Netherlands and Eurasia Partnership Foundation, 2015

67 Virabyan v. Armenia, #40094/05, 02/10/2012, §199

68 Ibid.

69 See Anti-Discrimination Law of Moldova, Art. 2.

70 Legal research: "Is it expedient to adopt a separate 'non-discrimination law'?", conducted by attorneys Ara Ghazaryan, Vahe Grigoryan with the support of the Government of the Netherlands and Eurasia Partnership Foundation, 2015

the so called, "international interpretation" affects the legal scope of application of norms of equality and non-discrimination: implementing bodies will most likely stick to the non-discrimination categories listed in the legislation that applies to the case in question.

In conclusion, the current legislative and institutional framework based on the constitutional and legislative provisions cited to above does not guarantee the protection of rights of LGBTI persons, and although the international and regional framework, as an integral part of the Armenian legislation, technically serves to fill the gaps in RA legislation, a lack of a precise definition for discrimination, the absence of the classification of its types in the domestic legislation, and practical problems associated with implementing international and regional legal acts in the national courts results in excessive discretion in a low level rule of law state and consequently failures in the protection of LGBTI individuals from discrimination.

Implementing ECHR Case Law Domestically

The Armenian judicial framework is unique in that Art. 15 of the RA Judicial Code states that, for purposes of uniform judicial interpretation, ECHR judicial decisions are a quotable source of law in domestic proceedings.⁷¹ For this reason it is valid to ask to what extent ECHR judicial decisions protect against discrimination in the context of LGBTI rights protection.

According to Art. 15 (entitled "Equality before the Law and Court") of the RA Judicial Code:

"1. Everyone shall be equal before the law and court.

"2. Discrimination in rights, freedoms, and duties on the ground of sex, race, skin colour, ethnic or social origin, genetic features, language, religion, world view, political or other views, ethnic minority status, property status, birth, disability, age, or other personal or social circumstances is prohibited.

"3. In the hearing of one's case, everyone has the right to invoke, as legal argument, the reasoning of a final judicial act (including the construal of the law) of a Republic of Armenia court in another case with identical/similar factual circumstances.

"4. The reasoning of a judicial act of the Court of Cassation or the European Court of Human Rights in a case with certain factual circumstances (including the construal of the law) is binding on a court in the examination of a case with identical/similar factual circumstances, unless the latter court, by indicating solid arguments, justifies that such reasoning is not applicable to the factual circumstances at hand."⁷² (Emphasis added).

With regard to this article and the application of ECHR obligations in the domestic sphere, the Armenian Constitutional Court has stated that:

"To ensure application of the norms contained in it complying with their constitutional legal content and international obligations undertaken by the Republic of Armenia in the judicial practice of the Republic of Armenia one must follow also the requirement set out in Part 4 of Art. 15 of the RA Judicial Code:

"On this issue Republic of Armenia international obligations in respect of the recognition of the jurisdiction of the European Court of Human Rights proceeding from the requirement of Article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms are seen as central...."⁷³

Thus, ECHR case law is directly binding on domestic courts.

Considering this, it is valid to explore how ECHR case law could protect the equality and rights of LGBTI individuals. With regard to discrimination based on sexual orientation, the ECHR Court has employed the following reasoning:

"... inciting to hatred does not necessarily entail a call for an act of violence, or other criminal acts. Attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating racist speech in the face of freedom of expression exercised in an irresponsible manner (see *Féret v. Belgium*, no. 15615/07, § 73, 16 July 2009). In this regard, the Court stresses that discrimination based on sexual orientation is as serious as discrimination based on "race, origin or colour" (see, inter alia, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 97, ECHR 1999VI)."⁷⁴

Thus, as ECHR case law is binding domestically in Armenia, and as some Armenian anti-discrimination provisions contain an "other status" designation, legal reasoning in ECHR decisions like the one above may be used to argue that

⁷¹RA Judicial Code, Art. 15.

⁷²RA Judicial Code, Art. 15, accessed December, 2015.

<http://www.court.am/upload/file/Judicial%20Code%20Eng%20final%20-%20290607.pdf>

⁷³ The Decision of the Constitutional Court, No. ՄՂՈ-997, Nov 15, 2011

⁷⁴*Vejdeland and others vs. Sweden*, application No. 1813/07, §55, ECHR, 09/05/2012

sexual orientation is a protected ground in Armenia. Unfortunately, however, the absence of legal provisions for claiming a remedy for discrimination still remains a stumbling block for real change via a legal action.

The Human Rights National Action Plan

As Armenia adopted a National Action Plan on human rights it is valid to ask to what extent the National Action Plan protects against discrimination in the context of LGBTI rights.

According to Point 8 of the Action Plan,⁷⁵ one planned activity is to study the compatibility of the legislation of the Republic of Armenia with the norms of international law relating to the prohibition of discrimination and to discuss the appropriateness of the adoption of a separate law "On the Fight against Discrimination". The deadline for this activity was the third quarter of 2014 and the responsible state authority was the Ministry of Justice of the Republic of Armenia, which was to submit the study to the Government. Thus, the plan anticipated very little in terms of combating discrimination and it was not specific as to SOGI. The plan does not contain any other items relevant to the promotion and protection of rights of LGBTI individuals.

Regardless of the study to be conducted by the Ministry of Justice or its results, what is important today is that the Ministry of Justice has recently formed a working group to develop a proposal for a new anti-discrimination law.⁷⁶ Also relevant are informal indications that during the coming year Armenia will be seeking a visa-free regime with Europe and that one of the preconditions for such an arrangement would be the adoption of an anti-discrimination law.⁷⁷ Also, it is understood from one confidential source, but needs to be confirmed, that the European precondition for an anti-discrimination law includes an expectation that such an anti-discrimination law includes SOGI as a ground of protection.

Thus, in the end the National Action Plan is of little consequence in terms of protecting and promoting the rights of LGBTI individuals, but the opportunity for a visa-free regime with Europe and the precondition of an anti-discrimination law will be of value to the goal of human rights protection for LGBTI individuals.

Rule of Law

Due to chronic issues of corruption in government administration, questionable election results, and a lack of independence and transparency in the judiciary, Armenia continues to struggle to achieve acceptable rule of law standards. Issues of bribery and nepotism persist, and during a 2014 visit to Armenia the UN High Commissioner for Human Rights highlighted judicial corruption and a lack of public trust. Related issues include a history of police misconduct, including arbitrary arrests and torture to extract confessions.⁷⁸

With regard to LGBTI individuals there is a history of victimisation with impunity for perpetrators. Civil society organisations report that police often fail to investigate crimes against LGBTI persons. Additionally, Freedom House reports that:

"In August 2013, law enforcement supported a bill that would ban all "non-traditional sexual relationships." The bill was withdrawn the same month after human rights groups criticised the proposal, likening it to anti-LGBT laws recently passed in Russia. Although a number of NGOs advocate for LGBT rights with public campaigns and appeals to officials, the government is generally unresponsive."⁷⁹

Interestingly enough, even though a law was passed in 2014 to foster gender equality, the public outrage against the law, spurred on by conservative elements, has resulted in the government abandoning any implementation of the legislation.

In light of such rule of law issues as these, and considering the current legal framework described above, legislative actions to combat discrimination and to promote and protect rights will be insufficient measures, and both government and civil society actors will need to do much more, including engaging society in public discourse on values and the benefits of rights for all, if real change is to be secured.⁸⁰

75 Appendix of Decision N of 27 February 2014 of the Government of the Republic of Armenia

76 Interview Lusine Ghazaryan, Lawyer, PINK Armenia NGO, Oct. 2015.

77 "Recommendations on Forming and Implementing the Road Map to the Symmetrical Visa-Free Regime between the EU and Armenia" Open Society Foundation Armenia. Retrieved from: <http://www.osf.am/2015/09/recommendations-on-forming-and-implementing-the-road-map-to-the-symmetrical-visa-free-regime-between-the-eu-and-armenia/>

78 Freedom House Report - Armenia, 2015, accessed Dec. 2015, <https://freedomhouse.org/report/freedom-world/2015/armenia>

79 Ibid.

80 See in general, Moore, "In the Shadow of Law: An Examination of Corruption and Rule of Law in Armenia," Boston International Law Journal, 2013, accessed Dec. 2015, http://www.bu.edu/ilj/files/2014/05/Moore_JCI3.pdf

HUMAN RIGHTS FINDINGS

For greater clarity, the findings reported here are categorised as per typically recognised rights. At the same time, some issues which are particularly relevant to the articulated rights are also presented in this framework. For example, hate crimes and domestic abuse are treated as a subset of the right to life and personal security. Also, to the extent possible, conclusions are made as to how the findings are relevant to the three levels of state responsibility: the duty not to violate the right, the duty to prevent others from violating the right, and the duty to create an environment wherein the right can be enjoyed.⁸¹ Evidence was compiled from human rights reports and focus group discussions. The prevalence of discrimination or violations of rights is difficult to estimate without additional study considering that most cases go unreported and an estimate of the number of LGBTI individuals in Armenia is difficult to assess.

Right to Equality and Non-Discrimination

As presented in the section above on the Legislative and Institutional Framework, Armenia's international obligations, Constitution and, to some extent, legislation, expresses guarantees of equality for individuals. While there is no stand-alone, anti-discrimination legislation at this time, there are anti-discrimination provisions in several thematic codes. However, SOGI is not a ground of protection in any anti-discrimination provision. Moreover, considering the socio-political context and climate as articulated in the section on History and Social Context, it is highly unlikely that any provision which might also contain "other status" as a ground of protection would be interpreted to include SOGI. Most importantly, all anti-discrimination provisions are only declarative in nature because no provision provides for the restitution of rights or a right to sue or remedy to individuals; therefore, in general, there is no legal consequence for discriminatory acts. Lastly, although there is a working group drafting a stand-alone anti-discrimination draft law, there is still a question as to whether SOGI will be explicitly stated as a ground of protection therein.⁸² Confirming that the European precondition for a visa-free regime with Armenia includes not only an anti-discrimination law, but a law that includes SOGI as a ground of protection will help to answer this question.⁸³ An anti-discrimination law in Armenia which includes SOGI as well as an effective enforcement mechanism will be instrumental in advancing equality for LGBTI Armenians.

As explained above in the section on History and Social Context, a collectively dictated public identity forces most LGBTI individuals in Armenia to remain "closeted"; conformist values also invite intolerance towards those who are perceived to challenge the definition of "an Armenian" by openly diverting from expected social norms. This environment is a recipe for discrimination in the public sphere, as well as an invitation to remain "closeted" and private. Focus group participants reported instances of discrimination based on SOGI in employment, education, and in provisions of goods and services. Participants also reported public harassment and physical abuse by third parties as well as inaction by police to address such crimes. Such intolerance demands individuals to keep an essential aspect of their identity secret and focus group participants reported fears of losing employment and jeopardizing family relations should they be open as to their SOGI.⁸⁴

But there are those who cannot remain invisible, and, perhaps, those who are most visible, e.g. trans persons, are those who are most frequently singled out for physical abuse in public. Also, when trans persons report having been subjected to violence to the police, they are ignored, or threatened with charges of falsely reporting a crime; the failure of the police to investigate crimes against trans persons is itself an act of discrimination because the reason why the crime is not investigated is because the victim is a trans person.⁸⁵ Additionally, charging or threatening to charge trans persons for allegedly falsely reporting a crime is also inherently discriminatory. More detailed information on this issue is provided in the section below on Issues of Particular Importance.

As discrimination is a denial of equality, and as the denial of equality impacts on many different rights as it plays out in different contexts, it is worthwhile to present discrimination in Armenia in the context of the rights and social relations that follow below. Also, without long term monitoring, it is too difficult to assess the extent to which such discrimination regularly occurs in Armenia, just as it is too difficult to estimate the number of LGBTI individuals who suffer from discrimination in private. At the same time, it is worthwhile to point out that in regard to the broad theme of equality

81 See *Generally*, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms Adopted by General Assembly resolution 53/144 of 9 December 1998. Retrieved from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>; See specifically Walter Kalin, Lars Muller, Judith Wyttenbach, *The Face of Human Rights*, Baden, Switzerland: Lars Muller Publishers, 2004, p. 12.

82 Lusine Ghazaryan, Attorney, PINK Armenia NGO

83 The stumbling block to Ukraine's visa-free regime with Europe last year was an anti-discrimination law that included SOGI. See "Ukraine Chooses Homophobia Over Europe," *The Foreign Policy Group*, November 10, 2015. Retrieved from: <http://foreignpolicy.com/2015/11/10/ukraine-homophobia-over-europe-eu-visa-free-travel-rada/>

84 Focus Group with Gay and Bisexual Men, August 2015; Lusine Ghazaryan, Attorney PINK Armenia.

85 Ibid.

and non-discrimination, it is apparent that Armenia fails with regard to all three levels of state obligations inasmuch as LGBTI individuals are discriminated against by police in terms of investigating crimes; third parties who use violence against trans persons face no legal consequences due to police inaction; and Armenia's failure to pass a stand-alone anti-discrimination law reduces the equality that LGBTI individuals may expect to enjoy in Armenian society.

Right to Equality and Non-Discrimination in Goods and Services and Housing

Because there is no stand-alone anti-discrimination law, private parties face no consequences for discriminating against LGBTI individuals in terms of denying the provision of goods and services, especially housing. Those persons experiencing the most discrimination in this context are trans persons who often find it difficult to rent apartments.⁸⁶ Also, on one occasion, trans persons were "chased out" of a medical centre which they had approached seeking information on sex reassignment therapy.⁸⁷ Cases have also been reported when identified trans persons have been excluded from shopping in stores.⁸⁸ These issues are explored in more detail in the section below entitled Issues of Particular Importance.

Additionally, when LGBTI persons are identified in cafes or other establishments, they may be denied service, either tacitly or openly. During the focus group with gay men, it was reported that upon noticing or suspecting gay couples, cafe managers will ask the couple to leave the establishment. Only one or two gay-friendly establishments exist in Yerevan and most likely none in the regions. But even in gay-friendly establishments, individuals do not feel free to openly express their sexual orientation and/or gender identity.⁸⁹

Based on these findings, it appears that Armenia has failed in terms of state obligations two and three because without an anti-discrimination law, third parties discriminate against LGBTI persons as to the provision of goods and services with impunity, and the environment fails to guarantee a basic level of equality.

Right to Life and Personal Security

Armenian legislation generally provides guarantees for right to life and personal security by criminalizing homicide and physical violence.⁹⁰ Also, state execution of convicted persons is prohibited.⁹¹ However, issues of right to life and personal security are of particular concern in closed institutions such as the military and penitentiaries, and these issues are specifically addressed in the section below on Special Protection Issues.

Within the last three years, there have been no known homicides specifically connected to LGBTI status. However, there have been instances in which gay men have been subjected to violence. Moreover, patterns of violence against trans persons are a serious concern and are specifically addressed below. Also, threats of violence against LGBTI individuals principally occur in the context of hate speech and are addressed in a separate section below. Issues of hate crimes and domestic violence follow in separate sections below.

In general, crimes infringing on the right to life and personal security in the context of LGBTI are generally not reported to the police or other entities (e.g. the Office of the Human Rights Defender or civil society organisations) as relating to LGBTI status.⁹² In Armenia, individuals often try to solve their conflicts through private means, and due to fears of discrimination, victims remain "closeted" and would not report a suspected SOGI-based motivation of a crime. The exception is trans persons who are more visible and therefore targeted; further discussion on this issue is presented below.

During focus group discussions participants reported two specific cases of violence. Firstly, after verbal insults based on SOGI an altercation ensued wherein a gay man was injured by assailants with a knife. In another case, after parting with his gay companion, a gay man was followed and harassed and threatened by unknown assailants. Although reported to the police, the police failed to investigate.⁹³

As to the issue of minors, some focus group participants reported that as minors themselves, even prior to their own recognition of their SOGI, they were bullied in school environments because they were singled out as different.⁹⁴

86 Interviews with Trans Persons, August 2015.

87 Being Transsexual in Armenia: Lilit's Experience, accessed Dec. 2015. Retrieved from: <https://youtu.be/rtNZwly8TU>

88 Interviews with Trans Persons, August 2015.

89 Focus Group with Gay and bisexual Men, August 2015.

90 RA Criminal Code, Chapter 16, Crimes Against Life and Health.

91 Armenia is a state party to ECHR Protocol No. 13 abolishing the death penalty. See also RA Criminal Code, Chapter 9, Notion of Punishment, Purposes and Types.

92 Human Rights Defender Response, Sep. 2015; Lusine Ghazaryan, Lawyer PINK Armenia NGO, Oct. 2015.

93 Focus Group with Gay Men, August 2015.

94 Ibid.

According to the RA Constitution and international obligations, the state must treat all persons equally before the law. That most if not all crimes of violence reported by LGBTI persons are not sufficiently investigated constitutes a first-level violation of state obligations as regards this norm. Additionally, the state once again appears to fail in terms of its level two and three obligations as it has failed to prevent violence by third parties against LGBTI persons and has failed to create an environment where LGBTI persons are generally free from violence, especially in the case of trans persons, as well as minors in school environments.

Right to Life and Personal Security: Hate Crimes

Armenian legislation provides for enhanced sentences when the motive for a crime is related to ethnicity, race or religion.⁹⁵ This is an exclusive list of motives and cannot be extended to cover SOGI without specific legislative amendment. Although the OSCE is active in promoting development of the hate crime framework, the OSCE framework requires consensus of all states and for this reason SOGI is not a required ground for hate crime legislation.

However, hate crime in Armenia is principally SOGI related. In May, 2012 two nationalists fire-bombed a LGBTI friendly bar, putting in jeopardy the lives of families asleep in the apartment building above. Due to their political affiliation to Dashnaktsutyun Party (Armenian Revolutionary Federation Party) they were bailed out and defended by a Dashnak parliamentarian who characterised their actions as in defence of the nation.⁹⁶ Also, as reported by civil society sources, for 2014 the OSCE/ODIHR hate crime database documents four violent attacks and one case of threats based on SOGI; in contrast there is only reported case of hate crime based on race.⁹⁷ Additionally, according to civil society records, the number of hate crimes reported to civil society organisations based on SOGI is eight (8) for the time frame of this research, but all have been reported as of January of 2015. Moreover, most of these crimes were not reported to police, and for those that were reported, the police discontinued the investigations on the grounds of insufficient evidence.⁹⁸

Again, this evidence suggests that the state fails to protect LGBTI individuals from the harmful acts of third parties and that it fails to create a safe environment for LGBTI individuals, reflective of a lack of compliance with levels two and three of state responsibility. However, that the state dismisses investigations of these crimes may also indicate a level one violation if police are not pursuing the investigation because the victims are LGBTI persons, as all individuals must be treated equally under law.

Right to Life and Personal Security: Domestic Violence

Due to a culture of privacy, right to life and personal security in the home environment is not sufficiently protected under law: no stand-alone domestic violence law exists and there is no effective legal provision for temporary restraining orders. Also, police are usually not motivated to intrude into the family realm even when violence is an issue. For this reason, even though some legislative provisions apply to safeguard children, and even though general legislative provisions criminalise violence in general (e.g. RA Criminal Code, Chapter 16), the right to life and personal security is generally under-protected in the context of the family.⁹⁹

Fear of exclusion, abuse and/or violence from family members upon coming out or being discovered is a common theme for all LGBTI Armenians.¹⁰⁰ Although there have been past cases of physical violence by family members due to the discovery of one's sexual orientation/gender identity, during the last three years no cases of physical violence have been reported in this context. However, psychological abuse sometimes occurs when LGBTI individuals reveal, or information is discovered about, their sexual orientation or gender identity. Such abuse typically results in individuals leaving their homes and becoming homeless. Individuals may seek assistance from civil society organisations which respond on an ad hoc basis finding interim housing. Such arrangements are very temporary, however, and individuals must create alternative solutions for themselves, which usually means staying with friends or renting with roommates. Focus group participants suggested a shelter be created to address this issue.¹⁰¹

95 RA Criminal Code, Art. 63.

96 "Armenia: A Blurry Line in Yerevan Between Hate Crime and Defense of 'National Interests'", Eurasianet.org, May 12, 2012. Retrieved from: <http://www.eurasianet.org/node/65436>

97 Lusine Ghazaryan, Attorney, PINK Armenia; OSCE ODIHR Hate Crime Reporting website includes a database of hate crimes against LGBT persons, see: <http://hatecrime.osce.org/armenia>

However, information given here is provided solely by civil society, no official records for Armenia are available.

98 Lusine Ghazaryan, Attorney, PINK Armenia; nine (9) crimes qualifying as hate crimes based on SOGI have been reported from January to October of 2015 alone.

99 Lusine Ghazaryan, Attorney, PINK Armenia.

100 Focus Groups with Gay Men and with Lesbians and Bisexuals, August, September, 2015.

101 Lusine Ghazaryan, Attorney, PINK Armenia; Focus Group with Gay Men, August, 2015.

Interestingly, law provides that an individual who is registered at an address has a legal right to an interest in, and use of, said property.¹⁰² However, there is no legal means of enforcing that property use in terms of residence, and few would choose to remain when facing psychological abuse from family members.

Thus, while no clear cut first-level violation by the state is apparent in this context, failure to regulate domestic violence by law, as well as the hesitation of police to intervene in the private sphere of the home, constitutes both a second and third level violation of one's right to life and personal security in this context.

Freedom of Information and the Media

In the domestic context, the Armenian Law on the Freedom of Information obligates the state entities to provide information to the public and to individuals upon request.¹⁰³ But, of course, the principal source of information for the public is the media, which in Armenia consists of both state and private entities. In considering the role of the media and civil society, it can be affirmed that the public right to information obliges the former to provide "accurate and unbiased information".¹⁰⁴

With regard to LGBTI issues, one important piece of information is that the current International Statistical Classification of Diseases and Related Health Problems (ICD) of the World Health Organisation (WHO), reflecting the professional opinion of the medical community worldwide, explicitly states that "sexual orientation by itself is not to be considered a disorder".¹⁰⁵

"Moreover, recent surveys demonstrate that homosexual behaviour is a widely prevalent aspect of human sexuality. Over the last half century, several classification systems, including the ICD, have gradually removed diagnoses that once the need homosexuality per se as a mental disorder. These changes reflect both emerging human rights standards and the lack of empirical evidence supporting the pathologisation and medicalisation of variations in sexual orientation expression."¹⁰⁶

Unfortunately, such accurate and unbiased information is rarely communicated in the Armenian media and a perception of homosexuality as a disorder remains in public discourse, and repeated in the media.¹⁰⁷ In fact, during one interview for this research, one journalist used anecdotal evidence to contest the WHO position (e.g. stating that former lesbians have married men), and then indicated that while some portion of the population may be inherently gay, others have chosen this lifestyle; the journalist relied on these notions to reaffirm the idea that individuals may be "recruited" as LGBT. Another journalist simply claimed that the media has already presented the WHO information before, and then went on to say that most people do not care what individuals do with their personal or private life. However, the reality is that both state and private media continue to present LGBTI identities in a negative context, with language that denotes intolerance. Additionally, one media outlet actually edited the speech of an activist discussing gender issues in such a way that the meaning of what was said was presented as the opposite.¹⁰⁸ Such low media ethics, as well as the absence of a code of ethics for journalists, undermines the right to information. Also, even more egregious ethical violations by the media may well amount to hate speech and are addressed in the relevant section below.

Considering that state-run media engages in an untruthful portrayal of homosexuality, the state has violated its level one obligation with regard to the right to information. Also, that private media also provide biased and inaccurate information on homosexuality means that level two and level three of state obligations are also violated with regard to this right.

Freedom of Expression

The RA Constitution guarantees freedom of expression,¹⁰⁹ but there are no mechanisms in legislation or regulation for restitution of rights or legal actions by individuals in this regard. Media experts report that media outlets allow for commentary on online articles and also accept editorial articles from private persons for publication. One media expert mentioned that although articles related to gender identity and sexual orientation are published from time to time,

102 RA Law on State Registration on Rights to Property, Art. 41(b). Retrieved from: http://www.parliament.am/law_docs/300499HO295eng.pdf

103 RA Law on Freedom of Information, Articles 6, 7, 9 and 12, et. al.. Retrieved from: http://www.foi.am/u_files/file/legislation/FOLeng.pdf

104 Zhanna Aleksanyan, Journalist, Journalists for Rights NGO

105 "Proposed declassification of disease categories related to sexual orientation in the International Statistical Classification of Diseases and Related Health Problems (ICD-11)" WHO. Retrieved from: <http://www.who.int/bulletin/volumes/92/9/14-135541.pdf>

106 Ibid.

107 Lusine Ghazaryan, Attorney, PINK Armenia

108 Ibid.

109 RA Constitution, Art. 27.

publishing of these topics may be limited considering other pressing themes and because of the aggressive reaction from certain elements of the population when such articles appear; media sources are cautious about being pegged by others as catering to a certain element of society.¹¹⁰

Often a concern of activists is how their message is conveyed to the public by the media. In one case, the editing of a press conference by AR TV, a private entity, completely reversed the intended meaning of the speech of an activist about gender issues.¹¹¹ Considering this reality, PINK Armenia has started its own Internet radio and other civil society organisations are seeking out their own platforms for communication. Still, even if different communities have their own media, this will only facilitate divergent discourse within the community, and Armenia will fail to develop a comprehensive discourse on gender and sexuality that can reach all members of society.

In general, Armenian authorities have a tarnished record with regard to licensing of the media and diversity in media ownership. Whether this has affected discourse on gender and sexuality is not clear. If it has, it would constitute a level one violation of freedom of expression. However, in the context of level two and three violations of freedom of expression, the state should definitely do more to engender an environment wherein gender and sexuality could be discussed respectfully and openly.

Hate Speech

Prohibitions against hate speech generally preclude speech which incites hatred, insults a specific group, or relates to specific historic facts.¹¹² While Armenia lacks any specific provision related to hate speech, any incitement to criminal act is generally prohibited. Additionally, the human rights framework itself guarantees equality in dignity and rights for all, such that any negation of the rights of a specific group or individual is counter to the framework. Despite this, denigrating speech which incites intolerance towards LGBTI individuals continues unabated in Armenia.

For example, after the fire-bombing of a gay-friendly bar in May, 2012, by nationalists, several parliamentarians defended the perpetrators and the crime as being in defence of the Armenian nation and its values, based on the premise that homosexuality conflicts with such values.¹¹³ Most recently, on 17 May 2014, the editor-in-chief of the Armenian newspaper Iravunq published an article on the newspaper's website (www.iravunk.com) entitled "They serve the interests of international homo-addicted lobbying: the blacklist of enemies of state and nation".¹¹⁴ In the article, the author presents a "blacklist" containing hyperlinks to the Facebook profiles of 60 individuals. The article publicly calls for these persons to be fired from their jobs and generally ostracised from society. Most likely, as a result, at least one of the named persons' property was damaged by vandals. Another named individual is an Iranian citizen by birth and after the article was published he was called to the Iranian Embassy for discussions. He did not report to the Embassy and now fears ever returning to Iran to visit family or otherwise.¹¹⁵ Besides the personal risks raised for these individuals, designating defenders of LGBTI rights as enemies of the state and nation would certainly constitute inciting hatred and insulting a minority group, and thus constitute hate speech.

Without a hate speech provision to rely on, some of the individuals named in the Iravunq article sought legal action against the article's author and the newspaper via an action for defamation: 16 persons sued together in one action, 1 person sued individually in another action and 3 persons sued together in a third action. While the case of the sole individual is still pending, the first case was dismissed at each level of appeal on the grounds that no defamatory harm was proven by plaintiffs, and applicants are now preparing to appeal to the European Court of Human Rights. As regards the third case, the claim was satisfied, but not based on defamation in regard to being blacklisted as "homo-addicted lobbyists and enemies to the state and nation," but rather based on another obscure factual charge raised in the article — that the applicants had insulted two Armenian singers who had on a prior occasion criticised Conchita Wurst¹¹⁶ — and that such allegation was not true.¹¹⁷ The point is that in none of the cases was there any legal consequence for the hate speech, e.g. the blacklisting of individuals as enemies of the state and nation and for calling for persons to be ostracised by society and dismissed from their jobs. In fact, rather than face legal consequences, in the fall

110 Edik Baghdasaryan, Editor In Chief, Hetq.am

111 Lusine Ghazaryan, Attorney, PINK Armenia

112 Hate Crime Laws, A Practical Guide, OSCE/ODHIR 2014, p. 25.

113 "Armenia: A Blurry Line in Yerevan Between Hate Crime and Defense of 'National Interests'", Eurasianet.org, May 12, 2012. Retrieved from: <http://www.eurasianet.org/node/65436>

114 See *The Human Rights Situation of LGBT People, Annual Review, Armenia 2014*, PINK Armenia, NGO, May, 2015, p. 13. See also, "Iravunq newspaper continues to preach violence", PINK Armenia NGO. Retrieved from: <http://www.pinkarmenia.org/en/tag/lgbt/page/2/>.

See also, World Report 2015 - Armenia, Human Rights Watch. Retrieved from: <https://www.hrw.org/world-report/2015/country-chapters/armenia>

115 Interviews with Four Gay Iranian Citizens Residing in Armenia, Oct. 2015.

116 Conchita Wurst (also mononymously known as Conchita) is an Austrian pop recording artist and drag queen portrayed by Thomas "Tom" Neuirth (born 6 November 1988). Wurst came to international attention for winning the Eurovision Song Contest 2014 as Austria's entrant.

117 Lusine Ghazaryan, Attorney, PINK Armenia

of 2014, the author of this article and the chair of the board of the newspaper received an honorary award from the Armenian President for their service to society.

Unfortunately, hate speech also predominates online social media in Armenia. A monitoring project conducted by PINK Armenia between January and September, 2014, documented 45 incidents of hate speech.¹¹⁸

Considering that the Armenian President awarded the chair of the board of the Iravunq newspaper (who is a member of the Armenian Parliament),¹¹⁹ as well as the author of the blacklist article, it can be concluded that state authorities show support for scapegoating and hate speech, and thus tacitly approve incitement of hate against others in violation of the state's first level of responsibility to protect equality in dignity and rights of all. Likewise, the failure of the law and the courts to address the issue of hate speech constitutes a second and third level violation as it creates impunity for scapegoating and fails to secure an environment wherein LGBTI individuals are equal in dignity and rights.

Freedom of Association and Assembly

According to Art. 28 of the Constitution of RA, everyone shall have the right to freedom of association with others, including the right to form and to join trade unions. The activities of associations can be suspended or prohibited only through judicial procedure and in cases prescribed by law. Considering the law, LGBTI individuals and organisations should be able to gather for forums and other activities unhindered.

Unfortunately, civil society actors have routinely faced problems in engaging in public events and in acquiring public venues for events related to LGBTI issues.¹²⁰ In 2012 nationalists aggressively intervened and prevented a planned public march in support of diversity. In 2013 the German Embassy was unable to procure a venue to screen a LGBTI themed film. Most recently, during September, 2015 Ani Plaza Hotel refused to provide venue space which had already been agreed upon when the LGBTI topic of the forum was discovered by the hotel administration. Additionally, after a most recent LGBTI forum held in October, 2015, Iravunq Newspaper discovered and published that the forum had been held in Vanadzor, Armenia and then sought assurances from the Mayor that this would not be allowed again. The Mayor publicly stated that he would "know what to do" should LGBTI interests return to Vanadzor in the future.¹²¹

Considering these events, it is obvious that the state must do more to secure the right of association and assembly for LGBTI individuals by preventing threats and discrimination by third parties and by creating an environment wherein all may enjoy these rights.

Respect for Private and Family Life

According to Art. 23 of the Constitution of RA, everyone shall have the right to respect for private and family life. The obligation to respect private and family life is also stipulated in domestic legislation and in international treaties acceded to by Armenia. However, in the LGBTI context there are no provisions for same-sex civil unions and the mere mention by the Venice Commission that such unions cannot be prohibited by pending constitutional amendments drew public outrage. Additionally, Art. 116 of the RA Family Code prohibits the joint adoption of a child by two unmarried persons. Thus, LGBTI persons are clearly excluded from legal recognition for certain family relations.

One of the important components of respect for private and family life is sexual freedom, which can be expressed in different ways and is an inherent component of individual identity, yet suppressed in Armenian society as per the discussion above on History and Social Context. During focus group discussions participants reported a general lack of respect for their private life. Gay men reported constant pressure and questioning from family, friends, colleagues and others about when they would marry. Many lesbians expressed fear when observed by strangers as they were seated in cafes and other public spaces with their partners, especially when their partners are well-known or "out" persons. All of the participants of focus groups claim that they cannot act openly with their partners in public, not even by holding hands. Additionally, LGBTI couples are often asked to leave public establishments as it is claimed that the couple's presence might antagonise other clients.¹²²

Considering the failures in legislative framework, the state fails to provide equality in dignity and rights as to adoption and civil union, a first level violation of rights. Considering the lack of any anti-discrimination legislation and the social environment described herein, the state also fails in its second and third level obligations to LGBTI individuals.

¹¹⁸ Ibid.

¹¹⁹ *The Human Rights Situation of LGBT People, Annual Review*, Armenia 2014, PINK Armenia, NGO, May, 2015, p. 13.

¹²⁰ Lusine Ghazaryan, Attorney, PINK Armenia NGO.

¹²¹ Ibid.

¹²² Focus Group Discussions, August and September, 2015.

Right to Employment

Although labour legislation includes an anti-discrimination and equality clause, there are still practical issues concerning employment of LGBTI persons.¹²³ The main issue stems from the intolerance of employers and society in general. Because the anti-discrimination law lacks enforcement measures, many employers prefer to dismiss their employees rather than to be criticised by the public and they do not face legal consequences for such action.

One participant in the gay focus group felt pressured to leave his job after his supervisor continued to ask questions about his participation in and support for in a movement against homophobia. Another participant of the focus group reported that one of his friends who worked as a waiter was dismissed on the basis of his sexual orientation.¹²⁴ It was also reported that when the sexual orientation of a gay cook was discovered by his employer he was physically beaten and dismissed; he was accused of deceit for hiding his identity and because, according to the employer, it was offensive that “his hands had prepared food for others”.¹²⁵ Considering this environment, it is no wonder that trans persons have such great difficulty in the sphere of employment, which forces them into other practices for survival.

Obviously, without an anti-discrimination law and considering the social environment, the state must do more to secure the right to employment without discrimination for LGBTI individuals.

Right to Education

Legislation in the field of education contains legal norms guaranteeing equality and non-discrimination.¹²⁶ In practice, however, there are numerous cases where individuals are discriminated against and subjected to unequal treatment due to their orientation and/or identity.

Specifically, one participant of the gay focus group stated that he feels bullied at the university because of his sexual orientation. Another participant stated that his gay relative also has problems at university, including receiving lower than deserved grades, because the instructor knew about his sexual orientation. Other participants remarked that although not fully aware of their sexual orientations as minors, while in school they were bullied for being different.¹²⁷ Considering evidence of discrimination against women and girls in education, strict gender roles and expectations and the social context discussed above, intolerance towards those who are different as compared to expected cultural norms do not surprise, especially in the sphere of education. As a result of unequal treatment at educational institutions, many representatives of the LGBTI community prefer not to reveal their SOGI status in order to evade discrimination.

Thus, as public education is provided by the state, and as victims experience discrimination from both instructors and fellow students, the state is failing at all three levels of state obligation to secure equality in dignity and rights to LGBTI individuals.

Right to Health Care

Armenia practices socialised medicine making the state the principal purveyor of medical services. The RA Law on Medical Care and Services to the Population, Art. 4, guarantees medical care and services without regard to “nationality, race, sex, language, religion, age, health status, political or other views, social origin, property ownership, or other status.” As per the legislative framework discussion above, it is doubtful that SOGI would be included in “other status” and there are no mechanisms for restoration of rights. Notably, there are also specific legal acts governing healthcare for marginalised groups like HIV positive persons, but nothing specific as per SOGI.¹²⁸

Unfortunately, however, “pervasive stigma against people living with HIV/AIDS—who total approximately 3,500 in Armenia—results in their being denied medical treatment even in the specialised hospitals they require for ongoing treatment.”¹²⁹ HIV/AIDS patients also experience frequent breaches to their right to confidentiality; for example a patient’s HIV positive status was revealed to other medical professionals and other patients in the waiting area.¹³⁰ According to official statistics only 2% of HIV cases are connected to men having sex with men (MSM), but at least one

¹²³ See section above on Legislation and Institutional Framework.

¹²⁴ Focus Group with Gay Men, August, 2015.

¹²⁵ Socioscope Interview, September, 2015.

¹²⁶ RA Law on Education, Art. 6(1); RA Law on Right of the Child, Art. 4.

¹²⁷ Focus Group with Gay Men, August, 2015.

¹²⁸ Zopunyan, Krmoyan, Quinn, “Identifying the gaps: Armenian health care legislation and human rights in patient care protections,” *Health and Human Rights Journal*, Dec. 2013. Retrieved from: <http://www.hhrjournal.org/2013/12/identifying-the-gaps-armenian-health-care-legislation-and-human-rights-in-patient-care-protections/>

¹²⁹ Ibid, citing to National Center for AIDS Prevention, Ministry of Health of the Republic of Armenia, “Statistics: HIV/AIDS epidemic in the Republic of Armenia.” Retrieved from: http://armaids.am/main/free_code.php?lng=1&parent=3.

¹³⁰ Ibid, and Hovhannes Madoyan, *Real World Real People*.

expert estimates that in reality the number is much higher and that there may be a “hidden epidemic” among gay men and trans persons.¹³¹

Equally disturbing are the antiquated perspectives of some medical professionals offering services to persons questioning their sexuality. Upon consulting a sexologist one young man was told that he was not gay and was only experiencing such feelings because of his overbearing mother.¹³² In an interview one sexologist stated that, while accepting that homosexuality is not an illness as per the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, her approach is to help individuals understand themselves so as to choose the orientation they prefer, and after understanding what is right, become that person. This professional was also concerned that anti-discrimination laws could be used by some to justify “eccentric sexual behaviour”. Another sexologist confirmed that LGBTI patients have usually had negative experiences with medical professionals and that one must earn their trust. But he also considered that, in terms of sexual orientation, those who wish to be “cured” could be, and those who did not, should be respected for their “chosen life-style”. Such perspectives do not match current scientific standards as to sexual orientation and gender identity.

Moreover, one medical professional and head of a medical association recently stated on social media that gays in Armenia should be burned to death.¹³³

Considering that the state is the principal provider of medical services and considering the high level of animosity, stigma and discrimination towards LGBTI individuals, Armenia is clearly in breach of its international human rights obligations at all three levels.

Right to Social Security

The first article of the RA Constitution declares Armenia to be a social state and Art. 37 guarantees social security to everyone. Additionally, Armenia is a state party to the International Covenant on Economic, Social and Cultural Rights as well as to the Revised European Social Charter. Although discrimination in the provision of benefits is prohibited,¹³⁴ there is no mechanism to enforce rights without a stand-alone, anti-discrimination law.

Moreover, there is structural discrimination. As focus group participants noted, certain social benefits based on marriage are not accessible to partners of LGBTI unions as neither marriage nor civil unions are available to LGBTI couples in Armenia. While this exclusion includes many different benefits, a few for example are the “ill family member benefit” (a benefit provided in the case of temporary unemployment of a family member due to injury or disease) as well as other family benefits associated with child birth, child care and death of a family member.¹³⁵

De jure exclusion of LGBTI persons from benefits amounts to a first level violation by the state of international human rights obligations.

ISSUES OF PARTICULAR IMPORTANCE

Legal Recognition of Gender

In contrast to the traditional conception wherein gender and sexual orientation are both static and binary, i.e. either male or female, and either heterosexual or homosexual, the latest science shows that gender and sexual orientation are better understood as a fluid continuum wherein individuals may fall anywhere along a broad spectrum of identities.¹³⁶ Thus, it is valid to ask to what extent domestic legislation recognises such a continuum in gender or sexual orientation and allows for sex reassignment?

As to Armenian reality, there is no statistical information about intersex individuals. The RA Ministry of Health has no protocol for doctors to follow with regard to the birth of intersex individuals. The topic is addressed, however, in the official textbook for the course Clinical Sexology at the Yerevan State University. Pursuant to the textbook intersex

131 Hovhannes Madoyan, Real World Real People

132 Interviews with Discreet or “Closeted” Gay Men, Oct. 2015.

133 Lusine Ghazaryan, Attorney, PINK Armenia.

134 RA Law on Social Benefits, Art. 5.

135 Law of the Republic of Armenia on State Pensions, Adopted in 2003, www.sif.am, accessed 1 October 2010, and www.social.am, accessed 1 October 2010.

136 Robert Sapolsky, “Caitlyn Jenner and our Cognitive Dissonance,” Nautilus, September 3, 2015, accessed September, 2015. Retrieved from: <http://nautil.us/issue/28/2050/caitlyn-jenner-and-our-cognitive-dissonance>

conditions are presented as a disorder of the differentiation of biological determinants of sex. Some specialists consider intersex conditions as similar to disorders of sex development.¹³⁷

In any case, practical issues remain unresolved as to registering the birth of intersex children. Birth registration in the Republic of Armenia is regulated in accord with the Law on the Registration of Civil Status Acts and pursuant to the Decree of the RA Minister of Justice No. 97-N on the Adoption of the Instructive Indications Concerning the Registration of Civil Status Acts. According to these instruments the legal basis for registration of birth is one of the following documents:

- birth document issued by the medical institution where the birth took place,
- birth document issued by the medical institution which has provided medical assistance during the birth of a child,
- birth document issued by the person licensed for medical activities in cases when the birth has taken place outside of any medical institution,
- an announcement about the birth issued by a person who was present during the birth and a certificate on the health condition of the child.

Thus, designation of sex is at the discretion of the medical institution or doctor. However, a change of said designation may become necessary upon maturity.

As to the change of sex designation, Art. 70 (q) of the Law on the Registration of Civil Status Acts, a determination to correct, amend or change a legal act of civil status is prepared in cases when a medical institution has granted a formal stipulated document about the change of sex in a way prescribed by the legislation of the Republic of Armenia. Also, according to Point 2, Subsection (dq) of Appendix N7 of the Decree of the RA Minister of Justice on the Adoption of Instructive Indications Concerning the Registration of Civil Status Acts:

“The changes, amendments and corrections to the registration of civil status acts are made in case (dq) if a need has emerged to change the name and sex marker in the birth registration certificate or other types of registrations in cases of change of sex (hermaphrodites).”¹³⁸

Although the language of the regulation appears broad at first, by including the term “hermaphrodites” in the decree, the regulation will be interpreted to narrow the scope of application of change of the sex marker in civil status documents to intersex individuals only; this interpretation would preclude surgical sex reassignment as a basis for amending a civil status document. Attempts by at least one trans person to change their sex registration have proven unsuccessful.¹³⁹

Considering this issue in terms of both law and practice, it is apparent that the Armenian legislative framework is overly restrictive and fails to correspond to broader international standards and practices and with the more comprehensive scientific understanding of gender identity and sexual orientation.

Of additional significance with regard to gender is that on May 20, 2014, the Armenian National Assembly adopted the Law on Equal Rights and Equal Opportunities for Men and Women. However, some traditionalist groups manipulated public discourse by demonizing the term “gender”, which was misunderstood by the public and gender equality became associated with homosexuality and paedophilia:

“[w]omen’s rights defenders were labelled ‘traitors of the nation,’ ‘destroyers of families,’ and a ‘threat to Armenian values.’ Some materials reportedly called for violence and destruction of property, targeting women’s organisations and LGBT persons.”¹⁴⁰

As a result, the law now languishes unimplemented for lack of regulations and inaction on the part of the government.

Considering these issues, compliance with international human rights obligations requires legislative amendment as well as informed medical and public discourse on sexual orientation and gender identity.

¹³⁷VrezhShahramanyan, medical sexologist and professor, interviewed September, 2015.

¹³⁸ Decree of RA MoJ No. 97-N on the adoption of the instructive indications concerning the registration of the Civil Status Acts, 14.05.2007, see original text in Armenian at <http://www.arlis.am/DocumentView.aspx?docid=36335>. The legislation uses the Armenian term for “hermaphrodite” although this term in English is no longer accepted and deemed derogatory.

¹³⁹ During interviews conducted with trans persons the participants commented on this issue and one of them in particular has attempted to register a change of gender but without success.

¹⁴⁰ 2013 Country Reports on Human Rights Practices - Armenia, refworld, UNHCR. Retrieved from: <http://www.refworld.org/docid/53284b653.html>

TransPersons

Trans persons are perhaps the most visible of LGBTI individuals, and those whose identity most challenges traditional conceptions of sex and gender. Thus, trans persons experience the greatest amount of discrimination and victimisation. Of the four trans persons interviewed for this study, all stated that the biggest obstacle to their exercise of individual freedom was public intolerance. One commented that public intolerance was based on fear. Another commented that discrimination against trans persons is also exhibited within the LGBTI community. Two respondents stated that an absence of qualified medical professionals and a lack of legal protection measures were also detrimental to their exercise of freedom. Although three said that living freely and openly was a legitimate goal, one said that they have adjusted to intolerance and hide their identity during the day, only to manifest their true self at night. All stated that the most important objective is to change the attitude of the public towards trans persons.¹⁴¹

All four trans persons reported having been physically assaulted in public on more than one occasion due to their orientation/identity. All four reported that the police were not responsive to the crimes. One reported being charged by police for allegedly falsely reporting a crime after seeking police assistance after an assault. This respondent also stated that the police failed to investigate a theft perpetrated against them even when the respondent could identify the thief and their habitual whereabouts. This respondent also reported being told by police that an assailant in a verbal assault was “un-punishable.”¹⁴²

With regard to discrimination by persons other than state authorities, all four trans persons reported difficulties with employment. Two stated that due to harassment at work they were forced to abandon their places of employment, and being unable to find jobs, had no other option but to engage in sex work. Another respondent reported discrimination in grading at university and denial of goods and services. Other issues of importance raised by trans respondents included being ostracised by family once their identity was discovered and the resulting homelessness. As for services needed by trans persons, respondents noted a need for both medical and legal services.¹⁴³ Lastly, as to housing, one trans person has stated that their neighbours set fire to their door in an attempt to make them vacate.¹⁴⁴

In addition to revealing the degree of violence commonly experienced by trans persons in Armenia, these statements also reveal the general impunity enjoyed by perpetrators and the de facto discrimination by the state via the police and other institutions for failing to assist trans citizens. Based on this and the evidence of discrimination and general intolerance, it is clear that the state has failed in all three levels of state responsibility.

LGBTI Individuals and Penitentiaries

LGBTI rights protection issues in Armenia are especially poignant in such closed institutions as penitentiaries. Often persons may be labelled as homosexuals whether or not they truly identify as such.¹⁴⁵ It is very common at penitentiaries for men to be raped by other men and for the victims to then be labelled as gay. In this situation, most often, the administration advises these victims to file a request to be transferred to a special cell or confinement section for “the men-addicted” (in Armenian, the derogatory term «արվամոլ» — “arvamol”).¹⁴⁶

Generally, recognition of diverse sexual orientation and gender identity as natural is not realistic considering the current culture at closed institutions like penitentiaries in Armenia.¹⁴⁷ Persons who are considered or labelled as homosexuals in penitentiaries find themselves at the lowest level in a highly hierarchical social structure. They are denied even the most basic of social interactions as others will refuse to even shake their hand.¹⁴⁸ They are assigned work that is regarded as most demeaning, such as cleaning toilets. They are housed separately in detrimental conditions creating a ghetto environment which reaffirms stereotypes and negative stigma. Thus, the administrative response to homosexuality in penitentiaries is de facto discrimination. Most crucially, such discrimination jeopardises inmates' lives and health.¹⁴⁹

141 Interviews with Trans Persons, August, 2015.

142 Ibid.

143 Ibid.

144 Being Transsexual in Armenia: Lilit's Experience, accessed Dec. 2015. Retrieved from: <https://youtu.be/rtnZrwy8TU>

145 Anna Melikyan, human rights officer, Civil Society Institute NGO

146 Anna Melikyan, s/a and Artak Kirakosyan (chairman of Civil Society Institute NGO)

147 Anna Melikyan, human rights officer, Civil Society Institute NGO

148 Arthur Sakunc, human rights defender, head of Helsinki Citizens' Assembly-Vanadzor

149 Considering the level of discrimination, the distinct conception of trans persons and intersex persons as opposed to homosexuality is not afforded in the realm of closed institutions such as penitentiaries.

LGBTI Individuals and Military Service

Military service in Armenia is mandatory, unless exempted through continued study at higher education institutions, and it is generally regarded as an especially difficult and trying ordeal.¹⁵⁰ Apart from real threats to the lives of all soldiers in potential border skirmishes that occasionally occur, gay soldiers also face potential discrimination, ill treatment, violence and threats to life from fellow soldiers or officers.

First, the military today recognises that the lives of gay soldiers may be at risk from fellow soldiers and officers, and it is under this pretence that gay recruits are excused from service and gay soldiers are discharged. However, there is no legal provision to excuse or discharge gay recruits or soldiers. Instead, the military applies a legal provision that excuses persons with mental disabilities from service. Although no legal regulation equates homosexuality with mental disability, the military practice is to treat homosexual persons as qualifying for exclusion from service under the mental disability exception. Recruits admitting to homosexuality are sent to a psychiatric clinic for a three-day period of observation and then discharged. The soldiers whose homosexuality is discovered during military service are immediately separated and isolated from the rest of the troops. Eventually, they are sent to a military hospital at Vardenis, Sevan, where they are assigned the most degrading tasks (such as cleaning the toilets) and are isolated from others until their eventual discharge.¹⁵¹

The fact that gay recruits are excused from service and gay soldiers are discharged, in and of itself, constitutes discrimination. It also reinforces the antiquated and incorrect idea that homosexuality is an illness. But in addition to these issues, and as the legal provision used to exclude or discharge a person from service is the categorisation for mental disability, the service records of gay persons excused or discharged reflect that there has been a legal determination that they are mentally disabled. This legal labelling makes them ineligible for driving licenses and may impact on their ability to obtain employment in the private sector. Moreover, such discharge will prohibit employment in the public sector where all personnel are expected to have fully completed military service.¹⁵²

Refugees and the Right to Seek Asylum

At the time of independence, Armenia experienced an influx of ethnic-Armenian refugees from Azerbaijan. During the following years of conflict and instability, Armenia also experienced emigration, including persons seeking asylum outside the country. But within the most recent years, Armenia again experienced an influx of ethnic-Armenians from Iraq and later from Syria. While seeking protection is the principal factor why these persons come to Armenia, many apply for and receive special residency permits or citizenship rather than applying for refugee status. This complicates statistics on the number of refugees per se.

Armenian legislation largely complies with international standards for asylum / refugee status.¹⁵³ One ground for asylum is membership in a particular social group, and the international standard recognises that SOGI qualifies as a ground for protection under this social group rubric. Realizing that there remains a general tendency to consider SOGI as a choice rather than an innate characteristic, the United Nations High Commissioner for Refugees (UNHCR) has developed extensive guidelines, covering both substantive and procedural issues, to help governments comply with their obligations. Locally, UNHCR Armenia has ensured translation of these guidelines into Armenian and has provided extensive training to staff at the State Migration Service. This training included an effort to personalise the issue by introducing LGBTI persons who engaged with staff during the training. Additionally, the asylum / refugee intake form used by the State Migration Service includes questions which are meant to determine whether the applicant has a claim based on SOGI.¹⁵⁴

Nevertheless, a traditional “family values”-oriented culture persists in Armenia and it is foreseeable that some examiners may not pose the SOGI questions on the intake form in earnest fashion and that applicants may not be made comfortable enough to freely raise this ground in making an application. When UNHCR Armenia became aware that some LGBTI Syrian Armenians had not felt comfortable enough to broach this topic with them, training was organised to sensitise the staff of the State Migration Service and other steps were taken to reassure individuals that they could confide about their identities.¹⁵⁵ However, considering the cultural context in Armenia, other grounds for asylum/refugee status and/or other means of legalizing status will often be pursued by applicants before considering SOGI as a ground for asylum.

150 See generally, RA Constitution, Art. 46 and RA Law on Military Service.

151 Lusine Ghazaryan, Attorney, PINK Armenia

152 Ibid.

153 See generally, RA Law on Refugees and Asylum. Retrieved from: http://www.carim-east.eu/media/legal%20module/natfr/AM_2.2%20Law%20on%20Refugees%20and%20Asylum-Eng.pdf

154 Interview with the UNHCR Armenia, 28 Oct. 2015

155 Et al.

In interviewing four gay men from Iran for this research, none realised that they had a claim to asylum / refugee status under SOGI. Although four interviews are insufficient in number to represent a reliable pattern, the cases are telling. Two of the four respondents principally came to Armenia from Iran due to their sexual orientation seeking greater personal security or personal freedom. For the other two interviewees, sexual orientation, personal security and freedom were secondary motivations, but they still claimed to experience fear and lack of security in Iran due to these reasons. Three respondents used a student visa for legal residence, at least initially, and one has obtained Armenian citizenship. One respondent who was “outed” in Armenia in the “blacklisting” incident described above, was summoned to the Iranian Embassy but did not report, and currently refuses to return to Iran. All four respondents stated that, while not perfect, living as a gay man in Armenia was better than in Iran. All suggested that it would be worthwhile for civil society to help potential SOGI refugees come to Armenia if arriving from more dangerous locations.¹⁵⁶

¹⁵⁶ Interviews of Gay Men with Potential Refugee Claims, Oct. 2015

CONCLUSIONS AND RECOMMENDATIONS

Because of the social and political dynamics as described above in the History and Social Context section, actively demanding equality in dignity and rights in the public sphere through a human rights framework is perceived as challenging traditional social norms, and thus as a threat to national identity, which is built on conformity. Thus, pursuing equality for LGBTI persons should be coupled with a more expansive discourse on individual identity and the value of individualism, not only for LGBTI individuals and not only for individuals in general, but also for the benefit of society as a whole. Supporting a broader understanding of human rights and individual development as a foundation for social development may help prove the benefits of moving from staunch collectivism to more balanced individualism.¹⁵⁷ Based on this, recommendations specific to civil society organisations and actors are made below.

Additionally, the state has specific international human rights obligations to uphold. A review of the findings shows failures at all three levels of state obligation. Such failures mirror those of other states as reported in the UNHRC Report. For these reasons, many of the recommendations from the UNHRC Report apply to Armenia and are adopted and incorporated below.

Recommendations

• Recommendations to Civil Society Organisations (CSOs):

- Continue to Challenge the Perception that “It’s a choice”: It appears that one of the underlying grounds of discrimination against LGBTI individuals is the idea that LGBTI persons choose a sexual orientation or gender identity which is an affront to Armenian identity. This is why traditionalists label and scapegoat LGBTI persons as “traitors to state and nation.” Although it appears that many people afford LGBTI persons the right to be who they are in private, many still reject recognition of sexual and gender difference in the public realm. Continuing education on the issue of “choice versus nature” may help to dismantle the perceived conflict between public expectations of what an Armenian is and what allowances are granted individuals in private.
- Challenge the Church on its Exclusion of LGBTI: At the moment, the weakest link in the affirmation of Armenian identity as exclusively heterosexual may be the Church because the religious arguments for the exclusion of LGBTI persons based on Scripture are disintegrating worldwide. The religious conception of SOGI as a chosen behaviour from which one can abstain is defeated by the scientific explanation of individual identity and sexuality. Other Christian churches have become inclusive of LGBTI individuals. Most recently there is an evangelical movement called the Reformation Project developing in the United States which argues for a reinterpretation of Scripture to render it inclusive of LGBTI. As Armenian identity is interwoven with Christianity, this is a promising ground for change. Although publicly challenging the role of the Church in society may or may not be counterproductive, working to change the Church’s position on LGBTI exclusion, both privately and publicly, could render positive results for the public inclusion of LGBTI individuals in society. At a minimum, outspoken religious conservatives opposed to LGBTI inclusion could be silenced.
- Ensure Inclusion of SOGI in the Anti-Discrimination Law as a Precondition to a Visa-Free Regime between Europe and Armenia: Armenia is seeking a visa-free regime with Europe and one precondition is the adoption of anti-discrimination legislation. Advocates must ensure that SOGI is part and parcel to the European precondition on what constitutes an anti-discrimination law for the visa-free regime.
- Study How to Invoke ECHR Case Law through Art. 15 of the RA Judicial Code: Considering that Art. 15 requires Armenian courts to abide by ECHR case law, and considering that the general perception is that this legal mechanism is under-utilised in Armenian jurisprudence, it is worthwhile to study how Art. 15 could be used to invoke anti-discrimination standards in Armenian courts.
- Work with media to develop a Code of Ethics for Journalists and Media Sources with special emphasize on SOGI related outreach.
- Continue to Engage with Regional and International Actors on Inclusion of SOGI in Legal Frameworks:
 - ECHR Protocol 12 on anti-discrimination does not include SOGI. If case law incorporates SOGI in this regional obligation, ways toward greater enforcement and publicity of this incorporation must be developed.
 - OSCE/OHDIR promotes the legislative prohibition against hate crimes and hate speech, but SOGI is not advocated as a ground of protection. Ways to address this issue must be elaborated.

¹⁵⁷ Nobel Prize-winner Amartya Sen and his book *Development as Freedom* serves as a model of combining rights and development and explaining how individual freedom benefits society as a whole.

- o Engagement with UN treaty bodies, special procedures and UPR to pressure for more clear articulations of international obligations in terms of SOGI and equality must be continued.
- Advocate an End to Voicing “European Values” Rhetoric Inside Armenia: Equality is a universal value. Equality for LGBTI individuals is not because they are different, but because, universally, each and every individual is equal in dignity and rights. However, European institutions often frame certain articulations of universal values (like SOGI as grounds for anti-discrimination protection) as particularly “European.” While this may be aimed at the creation of a sense of unity within the EU, it is counterproductive outside of the EU because the “European Values” rhetoric feeds into the culture-war rhetoric of East vs. West, which is used by conservative elements in post-Soviet space to reinforce a distinction between people and nations in a game of divide and rule. “European Values” and the culture-war undermine advocacy for the acceptance of LGBTI individuals outside of the EU. After all, the value of equality is universal, and even if the scope of application under law is broader in the EU context, that does not negate the universality of the value of equality.
- The Human Rights Defender's Office should address violence and discrimination against LGBTI individuals, including keeping statistics, to promote and monitor effective implementation of international human rights standards at the national level.
- RA Courts should apply the international and regional standards when interpreting national legislative guarantees while examining cases which invoke SOGI.
- Government of the Republic of Armenia¹⁵⁸:
 - The RA Ministry of Justice:
 - Work transparently on the adoption of stand-alone anti-discrimination legislation while involving community-based civil society organisations working in the respective fields;
 - Ensure that anti-discrimination legislation includes SOGI among the prohibited grounds, and also protects intersex persons from discrimination;
 - Propose amendment of the RA Criminal Code by enacting hate crime laws that establish homophobia and transphobia as aggravating factors;
 - Integrate analysis of violations based on sexual orientation and gender identity in national action plans and follow up with the implementation of such plans;
 - Issue legal identity documents, upon request, that reflect preferred sex markers.
 - The RA Police:
 - Conduct prompt, thorough investigations of incidents of hate motivated violence against LGBTI persons, holding perpetrators to account, and providing redress to victims;
 - Collect and publish data on the number and types of incidents, while providing for the security of those reporting;
 - Ensure that police and prison officers are trained to protect the safety of LGBTI detainees.
 - The RA Academy of Justice:
 - Develop a module for trainings of law enforcement personnel and judges in gender-sensitive approaches to address violations related to sexual orientation and gender identity and eliminate discrimination of victims based on sexual orientation and gender identity;
 - Include that module in the curricula of the RA Academy of Justice.
 - Training to treat all crime victims as equals, regardless of their SOGI status.
 - The RA Ministry of Education:
 - Support public education campaigns to counter homophobic and trans-phobic attitudes establishing national standards on non-discrimination in education;
 - Develop anti-bullying programs and establishing help-lines and other services to support LGBT and gender-non-conforming youth;

¹⁵⁸ All the recommendations to the Government of the Republic of Armenia (except the ones to the Academy of Justice and the RA National Commission on Television and Radio) are based on the recommendations stipulated in the “Discrimination and violence against individuals based on their sexual orientation and gender identity” report of the Office of the United Nations High Commissioner for Human Rights, 4 May 2015

- Take appropriate measures to equip school psychologists and social workers with knowledge and skills on gender-sensitive approaches when addressing issues related to sexual orientation and gender identity;
- Provide comprehensive, age appropriate education on sexuality.

The RA National Commission on Television and Radio

- Establish gender-sensitivity criteria for TV and radio stations licensing procedures.

RA Ministry of Culture

- Support cultural campaigns addressing negative, stereotypical portrayals of LGBT persons in the media and public at large.

• International Organisations

- Incorporate the requirement to protect human rights as one of the bases/prerequisites in financing Armenian State programs and projects;
- Stimulate diplomatic missions in Armenia to encourage more CSOs to include LGBTI issues in their agenda and work closely with the appropriate state bodies becoming a bridge between the national governments and CSOs;
- Have a more preventive and bold stand when addressing hate speech/hate crime issues especially as related to SOGI.

• Recommendations to EU institutions and Member State Delegations

- Encourage the State to integrate more stakeholders sensitive to LGBTI-rights into the Human Rights Dialogue with the EU Institutions;
- Foster the involvement of activities in the ENP Action Plan, which promote human rights and anti-discrimination values;
- Include human rights at their core, with a clear and particular focus on human rights of LGBTI people in cooperation with the Armenian State both within the frames of the ENP, as well as in other platforms of cooperation;
- Follow the mechanisms stipulated on pages 8-10 of the “Guidelines to Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons”¹⁵⁹ more closely in EU relations with Armenia.

¹⁵⁹Guidelines To Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons.
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- Interviews with Four Gay Iranian Citizens Residing in Armenia
- Interviews with Discreet or “Closeted” Gay Men

Appendix

Human rights Violations October 2012 - October 2014, compiled by PINK Armenia NGO

Right	Number of violations cases
Right to Equality and Non-Discrimination	24
Right to Equality and Non-Discrimination in Goods & Services & Housing	3
Right to Life and Personal Safety	13
Hate Crimes	13
Domestic Violence	3
Hate speech	21
Hate speech by public officials	12
Hate speech in media	see hate speech cases
Freedom of Expression, Association and Assembly	19
Right to Respect for Private and Family Life	24
Right to Employment	8
Right to Health	5
Right to Social Security	0

“Society Without Violence” is a women’s human rights defenders’ organization the mission of which is to educate and empower women and girls, increase their participation in decision making and peace building processes, contribute to the elimination of gender based discrimination and violence, increase the responsibility and accountability of duty bearers to protect and fulfil women’s human rights.