



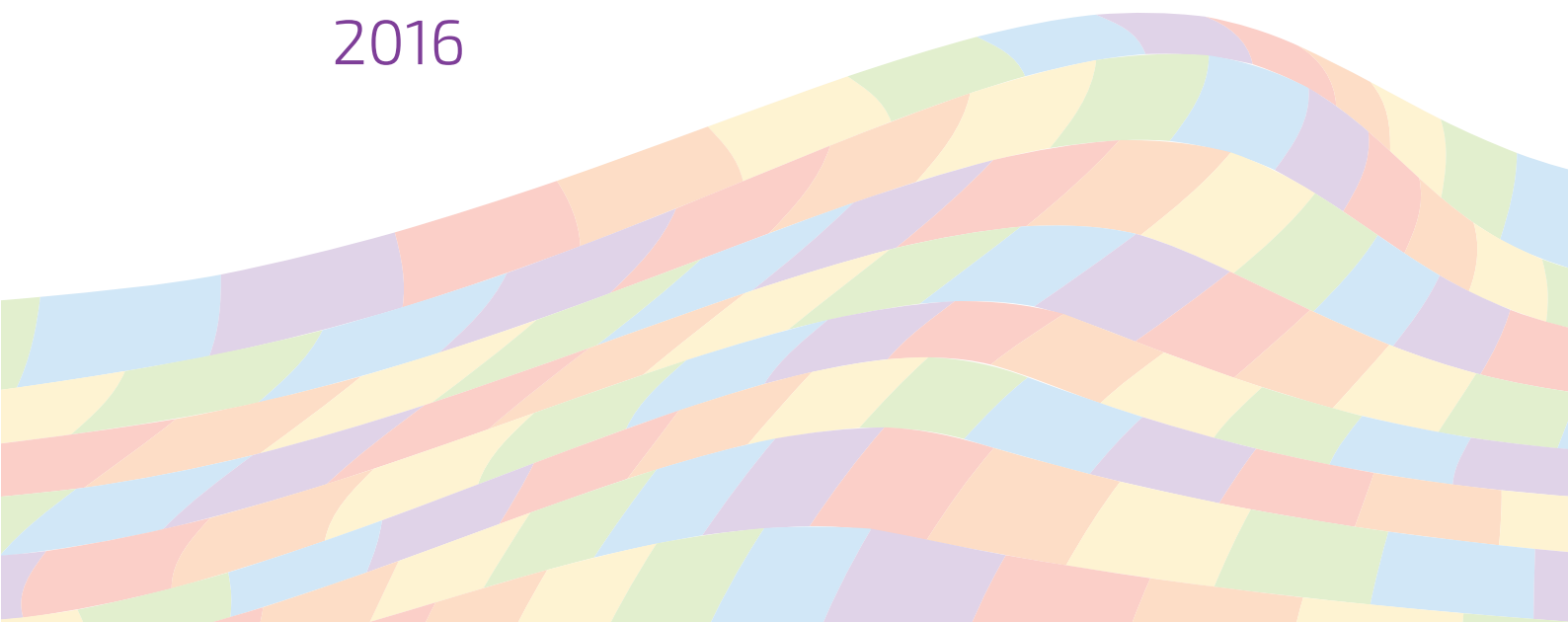
*Eurasian Coalition on Male Health*

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# Analysis of Legislation

*Related to LGBT Rights and HIV in  
Eastern Europe and Central Asia*

Tallinn, Estonia  
2016



This document was produced by ECOM—Eurasian Coalition on Male Health, a network of organizations and activists working in the region of Eastern Europe and Central Asia. We aim to create favorable conditions to ensure that men who have sex with men and transgender people have access to human rights oriented and evidence based services in the field of sexual and reproductive health, including HIV.

The following report seeks to analyze legislative and regulatory acts and documents, as well as international human rights obligations related to HIV and the rights of MSM and trans\* people in EECA. It offers an overview of the legislative situation in 9 countries of the EECA region: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, and Ukraine.

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## List of Abbreviations and Acronyms

AIDS	Acquired Immune Deficiency Syndrome
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
ECHR	European Court of Human Rights
ECOM	Eurasian Coalition on Male Health
EECA	Eastern Europe and Central Asia
Guidelines	The International Guidelines on HIV/AIDS and Human Rights
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTY	International Criminal Tribunal for the Former Yugoslavia
LGBT	Lesbian, Gay, Bisexual, and Transgender People
MSM	Men Who Have Sex with Men
NGO	Non-Governmental Organization
OHCHR	United Nations Office of the High Commissioner for Human Rights
PLWH	People Living with HIV
STI	Sexually Transmitted Infection
Trans*	Describing a person who identifies as transgender, non-binary, or otherwise gender nonconforming, including (but not limited to) transsexual, genderqueer, genderfluid, non-binary, agender, third gender, two-spirit, bigender
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNHRC	United Nations Human Rights Committee
WHO	World Health Organization
WISG	Women's Initiatives Support Group

# Executive Summary

This report offers an analysis of legislation and other regulatory acts and documents, as well as international human rights obligations related to HIV and the rights of MSM and trans\* people in nine countries of Eastern Europe and Central Asia (EECA): Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, and Ukraine. The EECA region is one of two regions in the world where HIV prevalence and AIDS-related deaths are increasing. Men who have sex with men (MSM) and trans\* people in the region are disproportionately affected by the HIV epidemic and very often lack access to the necessary health services.

In addition to an increased risk of HIV infection, MSM and trans\* people in the region are subject to discrimination, stigma, violence, and other human rights abuses on a daily basis. Social stigma, discriminatory legislation, and homo- or transphobic violence are pervasive in countries of the region. Despite these problems, governments have refused to implement greater human rights protections for these vulnerable populations. As a result, MSM and trans\* people suffer from high rates of depression, suicide, and HIV and STI infection, and, in many cases, are unable to fulfill their potential and live productive lives.

All of the countries of the region are party to key human rights conventions, such as the Universal Declaration of Human Rights (UDHR). These conventions impose human rights obligations on states-parties. Human rights norms, such as the prohibition on discrimination, the freedoms of expression, assembly, and association, the protection of one's private life, and the prohibition on torture and other forms of degrading treatment play important roles within the context of the rights of LGBT people and people living with HIV (PLWH). The countries analyzed in this report are bound by their international human rights obligations to ensure these rights for all citizens.

National legislation also affects the lives of LGBT people and PLWH in countries of the region. Travel and immigration bans on PLWH or the criminalization of HIV transmission may unfairly discriminate against PLWH. Laws related to antidiscrimination, changing one's legal gender, or bans on "homosexual propaganda" also have a negative impact on the lives of LGBT people in EECA countries.

In addition, these laws contribute to the difficult climate for community-led advocacy in the region. Civil society organizations and other community groups face significant barriers to implementing successful advocacy initiatives aimed at bringing about legislative change.

This report examines these issues and makes recommendations to governments and civil society organizations, aimed at improving the legislative situation in the region. Individual country reports and factsheets are provided in annexes to this report.

## I. Introduction

The countries of Eastern Europe and Central Asia (EECA) represent a geographically, culturally, and economically diverse group of nations. Ranging from Estonia to Ukraine to Tajikistan, the countries of EECA have a population of over 285 million and are home to numerous ethnic, linguistic, and religious groups. Despite their differences, they share a common history

of Russian Imperial and Soviet rule, and have developed similar political and social climates with respect to the HIV epidemic and LGBT rights.

The region of Eastern Europe and Central Asia (EECA) is one of two regions in the world where HIV prevalence and AIDS-related deaths are increasing.<sup>1</sup> Men who have sex with men (MSM) and trans\* people, in particular, are at high risk of contracting the virus and form a significant percentage of people living with HIV (PLWH) in the region. Despite the growing epidemic among these populations and the increasing international and national efforts to fight the HIV epidemic in the EECA region, MSM and trans\* people remain largely ignored in the HIV response. The reasons for the disparate access of MSM and trans\* people to HIV services in the region are numerous and diverse. Nevertheless, the disproportionately low access of these populations to HIV services can be said to stem in large part from the worrying political and social climate with respect to LGBT rights in the region.

Throughout the region, LGBT populations face a range of human rights violations, which results in significant adverse effects on their health and social well-being. Many countries of the region have enacted discriminatory and violence-provoking legislation and policies that create structural barriers to accessing healthcare services and to the fulfillment of other rights. In addition, social stigma and discrimination continue to be pervasive. Many LGBT individuals are faced with stigma and discrimination in their private life or when dealing with medical service providers, law enforcement officials, or employees of other government and social institutions. Despite the existence of anti-discrimination laws in most EECA countries, virtually no legal provisions exist that adequately protect against discrimination based on sexual orientation and gender identity. At the same time, there are worrying trends towards the adoption of homophobic and transphobic laws that purport to protect minors against "homosexual propaganda" or the "propaganda of non-traditional sexual relations". Calls for enacting such laws have been heard in many countries of the EECA region. Acts of violence against members of LGBT populations are frequently reported in all EECA countries. Nevertheless, most countries of the region do not have adequate hate crimes protections for members of sexual minorities. In addition, national standards and guidelines for HIV and STI prevention and treatment do not adequately reflect the specificity of the needs of MSM and trans\* people. As a result, these populations receive inadequate sexual health services, which has increased their risk of contracting HIV and other STIs. .

The growing HIV epidemic among MSM and trans\* populations, the current discriminatory legislative and political climates, as well as increasingly homophobic rhetoric have all contributed to the worrying situation in the EECA region. In order to reverse the HIV epidemic among these populations and increase the access of MSM and trans\* people to HIV and other sexual health services, it is essential that human rights obligations are respected and that stigma and discrimination towards LGBT people are reduced.

The following report seeks to analyze legislative and regulatory acts and documents, as well as international human rights obligations related to HIV and the rights of MSM and trans\* people in EECA. It offers an overview of the legislative situation in 9 countries of the EECA region: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, and Ukraine. The report considers issues, such as travel and immigration bans on

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1 UNAIDS, Gap Report, Geneva, 2014.

PLWH, criminalization of HIV transmission, policies on changing one's legal gender, antidiscrimination laws, bans on "homosexual propaganda", and other related areas of legislation. The analysis identifies existing gaps and problematic points in legislation that complicate advocacy initiatives and create barriers to the implementation of rights at the regulatory and legal levels. The report also discusses community-led advocacy initiatives aimed at bringing about legislative change.

## II. International Human Rights Obligations

International law imposes human rights obligations on countries in the form of conventions, treaties, and customary practice. In addition, resolutions or other decisions by bodies, such as the United Nations General Assembly or human rights committees, or regional human rights courts can bind countries and clarify areas of human rights law.

The countries examined in this report have signed on to a number of key human rights conventions, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Each of these conventions contains provisions that have been interpreted as protecting the rights of LGBT people, as well as PLWH.

Within the context of LGBT rights, several groups of norms are particularly important and are guaranteed under international human rights law: the prohibition on discrimination, the freedoms of expression, assembly, and association, the protection of one's private life, and the prohibition on torture and other forms of degrading treatment.

The UDHR provides that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex [...] or other status."<sup>2</sup> The ICCPR and ICESCR have almost identical provisions, prohibiting discrimination in the fulfillment of the rights contained in the conventions.<sup>3</sup> Although sexual orientation and gender identity are not specifically enumerated as protected statuses in the text of these articles, they most certainly fall under the term "other status." In fact, as early as 1994, the UN Human Rights Committee (UNHRC) held in *Toonen v. Australia* that the term "sex" under Article 26 of the ICCPR should be considered as including sexual orientation.<sup>4</sup> More recently, the UNHRC passed a number of resolutions affirming that discrimination on the basis of sexual orientation and gender identity is prohibited under international human rights standards.<sup>5</sup> Thus, any rights protected under international human rights law should apply to all people equally, regardless of their sexual orientation or gender identity.

The freedoms of expression and assembly are also guaranteed under international human rights law and are especially important in the context of EECA. The UDHR establishes that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold

<sup>2</sup> Universal Declaration on Human Rights, Art. 2.

<sup>3</sup> International Covenant on Civil and Political Rights, Art. 26; International Convention on Economic, Social, and Cultural Rights, Art. 2.2.

<sup>4</sup> UNHRC, *Toonen v. Australia*, Communication No. 488/1992, CCPR/C/50/D/488/1992, 1994.

<sup>5</sup> UNHRC, Resolution 27/32, A/HRC/RES/27/32, 2014; UNHRC, Resolution 17/19, A/HRC/RES/17/19, 2011.

opinions without interference and to seek, receive and impart information and ideas through any media [...]" and that "Everyone has the right to freedom of peaceful assembly and association."<sup>6</sup> The ICCPR contains similar provisions in Articles 19, 21, and 22.<sup>7</sup> Recent legislation, such as Russia's ban on "homosexual propaganda" infringe upon these freedoms and represent clear violations of international human rights laws. These laws prevent individuals and civil society organizations from imparting information on safer-sex practices and HIV to minors, organizing gay pride parades or other LGBT-friendly events, and from providing support services to LGBT youth. The effect of such laws and the violation of the freedoms of expression, assembly, and association will be examined more thoroughly in subsequent sections.

The UDHR and ICCPR also guarantee the right to privacy and family life, including marriage.<sup>8</sup> Under these rights, it has been established that private, consensual sexual activity between adults is protected, thus prohibiting any bans on homosexual behavior.<sup>9</sup> Provisions guaranteeing the right to marriage neither mandate nor prohibit same-sex marriage; therefore, it cannot yet be said that there is an internationally recognized right to same-sex marriage. Nevertheless, more and more states are legalizing same-sex marriage and other forms of civil partnerships, evidencing a trend towards the acceptance of same-sex unions. In addition, the European Court of Human Rights (ECHR), to whose judgments a number of ECA countries are subject, has previously recognized that same-sex relationships constitute a form of "family life."<sup>10</sup> Rulings of the ECHR, although not binding on non-member states, continue the trend towards greater recognition of same-sex unions.

Finally, the prohibition on torture and other forms of degrading treatment is guaranteed by a number of human rights instruments, most notably the UDHR and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The prohibition on torture is generally considered to be *jus cogens* or a peremptory norm, accepted by all states and from which no derogation is permitted.<sup>11</sup> Within the context of LGBT rights, forced sterilization or other medical procedures required for changing one's legal gender, non-consensual examinations to "prove" someone's homosexuality, and other degrading medical interventions have been condemned by the United Nations as constituting torture or other cruel and degrading punishment.<sup>12</sup>

The previously-discussed international human rights conventions and their provisions also apply to PLWH and key populations at high risk of HIV infection in the same manner as all others. A 1995 Resolution of the UN HRC affirms that "discrimination on the basis of AIDS or HIV status, actual or presumed, is prohibited by existing international human rights standards, and that the term "or other status" in non-discrimination provisions in international human rights texts can be interpreted to cover health status, including HIV/AIDS."<sup>13</sup>

6 Universal Declaration on Human Rights, Arts. 19-20.

7 International Covenant on Civil and Political Rights, Arts. 19, 21, 22.

8 Universal Declaration on Human Rights, Arts. 12, 16; International Covenant on Civil and Political Rights, Arts. 17, 23.

9 UNHRC, *Toonen v. Australia*, Communication No. 488/1992, CCPR/C/50/D/488/1992, 1994.

10 ECHR, *Schalk and Kopf v Austria*, 30141/04, 2010.

11 ICTY, *Prosecutor v Furundžija*, 121 International Law Reports 213, 2002.

12 UNHRC, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53, 2013, p. 19.

13 UNHRC, Resolution 995/44: The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS), E/CN.4/1995/176, 1995.



Thus, governments cannot discriminate against people based on their HIV status in the fulfillment of their rights, including the specific rights discussed above.

The International Guidelines on HIV/AIDS and Human Rights (hereinafter "the Guidelines"), published jointly by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Joint United Nations Programme on HIV/AIDS (UNAIDS), is a key document in determining the rights of PLWH and key populations at high risk of HIV infection under international law. The Guidelines provide an overview of rights, such as anti-discrimination, the right to private life, and the prohibition on torture and other degrading treatment, with respect to PLWH and key populations.

Guideline 5, in reliance on existing antidiscrimination provisions under international human rights law, calls upon states to "enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV [...] from discrimination in both the public and private sectors."<sup>14</sup>

The Guidelines also elaborate on the right to privacy in the context of PLWH. According to the Guidelines, the right to private life imposes obligations to respect the privacy of the physical well-being of a person, including information regarding a person's HIV status. In addition, this right requires informed consent before subjecting a person to an HIV test.<sup>15</sup>

The Guidelines also make reference to international prohibitions on torture and other inhuman or degrading treatment or punishment. The Guidelines establish that failure by state prison authorities to provide prisoners with access to information and knowledge about HIV, prevention methods, voluntary testing and counseling, and other HIV services could constitute cruel, inhuman, or degrading treatment or punishment.<sup>16</sup>

The analysis above is intended to provide a general overview of the way in which international human rights law is applicable to LGBT people, PLWH, and other key populations. The examples listed establish some concrete ways in which international human rights law applies to LGBT people and PLWH. However, the rights enumerated above should not be considered exhaustive. The countries examined in this analysis are bound by their obligations under international human rights law and related treaties. As such, they are obligated to ensure that all rights enumerated in these conventions are protected for all citizens, including LGBT people, PLWH, and other members of key populations. Unfortunately, LGBT people and PLWH in EECA are unable to exercise many of these rights, which often leads to reduced access to HIV services. These issues will be examined in the following sections.

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14 UNAIDS, OHCHR, International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version, 2006.

15 *Id.*

16 *Id.*

## III. HIV- & Sexual Health-Related Legislation in EECA Countries

### A. Travel and Immigration Bans on PLWH

As explained in the previous section, all states are bound under international human rights law to ensure non-discrimination and equality before the law for all citizens, including PLWH, unless there are compelling reasons, such as the protection of public health. A number of countries in the EECA region continue to impose travel and immigration bans on PLWH under the guise of protecting public health. However, key international stakeholders have established that HIV does not pose a threat to public health in relation to travel or mobility, since HIV is not transmitted simply by a person's presence or contact with other people.<sup>17</sup> Therefore, such restrictions not only infringe upon the freedom of movement of PLWH, but may also affect their health and development, and restrict other human rights.<sup>18</sup>

Currently, the legislation of Azerbaijan, Georgia, and Russia continue to impose restrictions on PLWH wishing to travel or immigrate to these countries. Russia requires anyone wishing to remain longer than 90 days in the country to obtain a certificate attesting that he or she is not infected with HIV. Failure to produce such a certificate may be grounds for deportation from Russian territory.<sup>19</sup> However, a recent decision of the Constitutional Court of Russia held that deporting PLWH, legally residing in Russia, and whose family members are Russian citizens is unlawful.<sup>20</sup> This ruling, however, does not apply to PLWH without family members that are Russian citizens.

Azerbaijan requires foreigners applying for a residence permit or citizenship to present a number of documents, including a certificate stating that they are not infected with a number of "dangerous diseases." The list of these diseases is determined by relevant government officials and currently includes HIV.<sup>21</sup> Georgia imposes similar requirements and has established that one basis for refusal to issue a residence permit is if the applicant has "an infection or any other disease, the severity, longevity and nature of which may threaten the population."<sup>22</sup> The list of such diseases is established by the Ministry of Labour, Health and Social Affairs and currently includes HIV.

The other six countries do not restrict travel or immigration based on a person's HIV status. However, there is quite a wide range of practices and policies regarding HIV+ immigrants

17 WHO, Report of the Consultation on International Travel and HIV Infection, Geneva, 1987.

18 UNAIDS, Entry Denied: Denying Entry, Stay and Residence Due to HIV Status, Geneva, 2009.

19 Pisemskiy, E., Анализ законодательных и нормативных документов и актов в сфере ВИЧ-эпидемии и прав МСМ и трансгендеров в России (*Analysis of legislative and normative documents and acts related to the HIV epidemic and the rights of MSM and trans\* people in Russia*), 2015, (hereinafter *Country Report Russia-Pisemskiy*).

20 The Moscow Times, *Constitutional Court: Expelling HIV-Positive Foreigners With Russian Families Is Unlawful*, Mar. 16, 2015, available at: [www.themoscowtimes.com/news/article/constitutional-court-expelling-hiv-positive-foreigners-with-russian-families-is-unlawful/517506.html](http://www.themoscowtimes.com/news/article/constitutional-court-expelling-hiv-positive-foreigners-with-russian-families-is-unlawful/517506.html).

21 Миграционный Кодекс Республики Азербайджан (*Migration Code of the Republic of Azerbaijan*), Art. 46.1.5).

22 Bitsadze, K., Kvashilava, K., *Legislative Analysis-Georgia*, Tbilisi, 2015 (hereinafter *Country Report Georgia*), p. 6.

among this group of countries. For instance, Moldova may require medical observation or HIV tests for immigrants depending on the epidemiological situation of their country of origin.<sup>23</sup> Ukraine has allowed PLWH to legally immigrate to the country since 2015, however, people diagnosed with AIDS may be refused entry.<sup>24</sup> Meanwhile, the laws of Belarus ensure that any foreigner legally holding a residence permit is granted equal access to Belarusian health services, including antiretroviral therapy and other necessary HIV services.<sup>25</sup> Thus, aside from Russia, legislation concerning travel and immigration of PLWH largely conforms to international standards in the countries surveyed.

## B. Criminalization of HIV Transmission

Guideline 4 of the International Guidelines on HIV/AIDS and Human Rights calls upon states to “review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV or targeted against vulnerable groups.”<sup>26</sup> Nevertheless, all countries in the EECA region continue to criminalize the transmission of HIV in a number of different contexts. The criminal codes of the 9 countries reviewed in this analysis impose administrative fines or prison sentences of up to 10 years for “knowingly placing another person at risk of contracting HIV/AIDS,” “infecting another person with HIV/AIDS,” or for “infecting another person with HIV/AIDS as a result of the improper fulfillment of one’s obligations as a medical professional.”<sup>27</sup> In the first two instances, a person will generally be free of criminal responsibility if the individual informs their partner about their HIV status prior to sexual contact.<sup>28</sup>

Such laws criminalizing HIV transmission do not conform to international standards, such as the Guidelines, and are problematic for a number of reasons. In practice, such laws are rarely enforced, as many people are reluctant to bring such cases to law enforcement authorities, as they do not want to disclose their HIV diagnosis. In addition, prosecuting such cases is extremely challenging; given the intimate nature of such cases, securing evidence is often not possible.<sup>29</sup> For instance, determining whether one partner disclosed his or her HIV status to the other often results in he-said-she-said arguments and is nearly impossible to prove in a court of law.

When such cases are brought to the attention of law enforcement officials, such legislation is sometimes used as a means of revenge against one’s partner after an argument or an

23 Mular, V., Villhovaia, J, Анализ законодательства Республики Молдова (Analysis of the Legislation of the Republic of Moldova), Chisinau, 2015, (hereinafter Country Report Moldova), p. 4-5.

24 Bordunis, T., Sheremet-Sheremetiev, S., Анализ законодательных и нормативных документов в сфере борьбы с эпидемией ВИЧ/СПИД в Украине (Analysis of legislative and normative documents related to the fight with the HIV/AIDS epidemic in Ukraine), Kyiv, 2015, (hereinafter Country Report Ukraine), p. 4.

25 Statkevich, I., Анализ законодательства законодательных и нормативных документов и актов в сфере ВИЧ-эпидемии и прав МСМ и трансгендеров в Беларуси (Legislative Analysis of legislative and normative documents and acts related to the HIV epidemic and the rights of MSM and trans\* people in Belarus), Minsk, 2015, (hereinafter Country Report Belarus-LE), p. 1.

26 UNAIDS, OHCHR, International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version, 2006.

27 See e.g., Уголовный кодекс Республики Молдова (Criminal Code of the Republic of Moldova), Article 212; Уголовный кодекс Республики Беларусь (Criminal Code of the Republic of Belarus), Article 157; Уголовный кодекс Республики Казахстан (Criminal Code of the Republic of Kazakhstan), Article 116.

28 Country Report Moldova, p. 5-6.

29 *Id.*

act of infidelity.<sup>30</sup> Similarly, the threat of prosecution under such laws can be used as a way to blackmail PLWH.<sup>31</sup>

From a policy point of view, such legislation is problematic as it disincentives people from getting tested for HIV. These laws generally criminalize HIV transmission or putting someone at risk of contracting HIV, only if the accused was aware of his or her HIV status. Thus, many people consciously avoid getting an HIV test in order to absolve themselves of any criminal responsibility associated with risky sexual practices.<sup>32</sup> Secondly, criminalizing HIV transmission, in lieu of taking more positive prevention measures, often gives people a false sense of security. Doing so sends the message that imposing criminal responsibility on individuals will reduce HIV prevalence, but does nothing to deter people from engaging in risky sexual behavior.<sup>33</sup>

It is also important to note that the text of some of these laws use medically or scientifically incorrect terminology or language. For instance, the text of the relevant article in the Criminal Code of Moldova prohibits "the infection of another person with the AIDS disease," when it is actually the HIV virus that is being transmitted.<sup>34</sup> Such inaccurate terminology only increases the ineffectiveness of these laws. Furthermore, it underscores the fact that ill-informed politicians, rather than those with experience working to combat the HIV epidemic, are often responsible for drafting such laws.

### C. Bans on Blood Donation by MSM

Men who have sex with men (MSM) are banned from donating blood in many countries of the world. Proponents of such bans cite the fact that HIV prevalence is statistically higher among MSM than the general population and that false negative test results may result in contaminated blood supplies. Some such bans may be a carryover from before the development of reliable HIV detection tests. Opponents of such bans claim that they are inherently homophobic and discriminate against MSM on the basis of stereotypes. Many medical professionals assert that screening should focus on sexual behavior and safe sex practices, rather than simply a person's sexual orientation or preferred gender of sexual partner.<sup>35</sup> Similarly, the European Court of Human Rights (ECHR) ruled in a 2015 decision that prohibiting homosexuals from donating blood is unacceptable when there are effective detection techniques for ensuring a high level of health protection for recipients.<sup>36</sup>

Currently, Armenia, Georgia, and Ukraine officially prohibit MSM from donating blood. Armenia's restriction is particularly worrying, as the relevant order from the Ministry of Health bans so-called "homoadicted people" from donating blood.<sup>37</sup> This order discriminates

30 *Id.*

31 Country Report Ukraine, p. 4.

32 Country Report Moldova, p. 6.

33 *Id.*

34 Уголовный кодекс Республики Молдова (Criminal Code of the Republic of Moldova), Article 212(2).

35 Winston Berkman, R.T., Zhou, L., Ban the ban: A scientific and cultural analysis of the FDA's ban on blood donations from men who have sex with men, *Columbia Medical Review*, New York, 2015.

36 European Court of Human Rights, *Geoffrey Léger v Ministre des Affaires sociales, de la Santé et des Droits des femmes and Établissement français du sang*, C-528/13, 2015.

37 Ghazaryan, L., HIV Epidemic and the Rights of Men who Have Sex with Men and Transgender People in Armenia, Yerevan, 2015, (*hereinafter* Country Report Armenia), p. 4; Ministry of Health of the Republic of Armenia, Order No. 06, Feb. 2, 2013, available at: [www.arlis.am/DocumentView.aspx?DocID=82261](http://www.arlis.am/DocumentView.aspx?DocID=82261).

against LGBT people on the basis of their sexual orientation, rather than focusing on the sexual behavior of a person (for instance, men who have sex with men). Georgia previously had a similar policy in force, however, the Constitutional Court of Georgia found that prohibiting a person from donating blood on the basis of their sexual orientation was discriminatory and thus unconstitutional. However, the Court simply replaced the word "homosexuality" with the term "MSM". Thus MSM continue to be banned from donating blood in Georgia.<sup>38</sup>

Ukraine prohibits LGBT people and other MSM from donating blood on the basis that homosexual relations comprise a form of risky behavior. The prohibition applies to both men and women engaging in same-sex sexual activity.<sup>39</sup> Like Georgia's law, the Ukrainian prohibition focuses on sexual behavior rather than sexual orientation.

Moldova does not directly prohibit MSM from donating blood. However, those wishing to donate blood must fill out a form where they must indicate whether they have been involved in risky sexual behavior, such as sex "with homosexuals." Engaging in such behavior may serve as a basis for prohibiting the person from donating blood.<sup>40</sup>

Notably, these four countries are all members of the Council of Europe and are therefore subject to decisions by the ECHR. Provided that effective methods to detect HIV in blood samples exist in these countries, Armenia, Georgia, Moldova, and Ukraine may be required to enact changes to their current legislation or practices on the basis of the ECHR's 2015 decision.

## D. Forced Medical Procedures

In some EECA countries, PLWH and/or LGBT people are forced to undergo medical procedures often without their consent. Requiring a person to undergo medical procedures infringes upon their rights to physical integrity and to private and family life. Furthermore, forced medical procedures may amount to inhuman and degrading treatment, contravening existing prohibitions under international human rights law.<sup>41</sup>

The Ministry of Health of Armenia has implemented troubling standards regarding examinations for free healthcare services, according to which an examination must be conducted to determine the "homoaddiction" of a person. The order requiring these examinations was issued in December 2013 by the Ministry of Health, however, it provides no details on what such an examination entails.<sup>42</sup> Homosexuals serving in the Armenian armed forces have been made to spend time in a mental hospital before being discharged with the diagnosis of

38 Country Report Georgia, p. 8-9; Constitutional Court of Georgia, *Asatiani, Vacaharadze, Berianidze, et al v Ministry of Labour, Health and Social Welfare of Georgia*, #2/1/536, 2014.

39 Ministry of Healthcare of Ukraine, Order N 385 "on the infectious safety of blood and its components", June 1, 2005.

40 Рекомендации по обеспечению качества крови и ее компонентов пересмотрены и утверждены Приказом Министерства Здравоохранения Республики Молдова от 12.02.2015 г. № 94 (Recommendations on ensuring the quality of blood and its components reviewed and approved by Order No. 94 of the Ministry of Health of the Republic of Moldova from 12.02.2015), available at: [cnts.md/legislatie/2015%20ordinul%20ms%20actualizarea%20ghidului%20producere%20produse%20sanguine.pdf](http://cnts.md/legislatie/2015%20ordinul%20ms%20actualizarea%20ghidului%20producere%20produse%20sanguine.pdf).

41 UNHRC, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53, 2013.

42 Ministry of Health of the Republic of Armenia, Order N. 87, Dec. 24, 2013, available at: [www.arlis.am/DocumentView.aspx?DocID=89056](http://www.arlis.am/DocumentView.aspx?DocID=89056).

a "personality disorder."<sup>43</sup> In Azerbaijan, it is reported that LGBT people are forced to undergo testing for HIV and other STIs following police raids of gay bars or clubs. Other members of key populations, such as sex workers, have also been subjected to similar treatment.<sup>44</sup>

A number of EECA countries require trans\* people to undergo medical or surgical interventions in order to change the legal gender indicated in their identity documents. Requiring such procedures infringes upon the rights of trans\* people to self-determination, the enjoyment of the highest attainable standard of physical and mental health, and to physical integrity. A following section is dedicated to a more detailed discussion of this issue.

## IV. Legislation Related to Sexual Orientation and Gender Identity in EECA Countries

This section offers an analysis of legislation, regulatory acts, and other policies that relate to sexual orientation and gender identity in the countries of EECA. This includes the regulation of same-sex sexual activity, recognition of same-sex unions, laws limiting the freedom of expression or assembly of LGBT people, laws and procedures regarding changing one's legal gender, as well as antidiscrimination measures.

### A. Criminalization of Same-Sex Sexual Activity

Currently, none of the 9 countries included in this analysis criminalize consensual same-sex sexual activity between adults. Homosexual activity was long criminalized in these countries during the Soviet era. *Muzhelozhstvo* or sex between men was prohibited by the criminal codes of the Soviet Union.<sup>45</sup> Following the collapse of the Soviet Union, these laws were largely repealed in the 1990s or early 2000s, often as a precondition for joining the Council of Europe. Today, none of the 9 countries included in this report continue to criminalize same-sex sexual behavior.

### B. Same-Sex Unions and Adoption by Same-Sex Partners

None of the 9 countries provide a legal framework for formalizing relationships between people of the same sex. Same-sex marriages, civil unions, or any other form of legal partnership are not given legal recognition. The constitutions of a number of these countries,

43 Grigoryan, M., *Armenia: Gays Live with Threats of Violence, Abuse*, Mar. 30, 2010, available at: [www.eur-asianet.org/departments/civilsociety/articles/eav033110b.shtml](http://www.eur-asianet.org/departments/civilsociety/articles/eav033110b.shtml).

44 Mustafayeva, Z., *Анализ законодательства и нормативных документов в сфере ВИЧ эпидемии и прав МСМ и трансгендеров в Азербайджане (Analysis of Legislation and Normative Documents Related to the HIV Epidemic and the Rights of MSM and Transgender People in Azerbaijan)*, Baku, 2015, (hereinafter *Country Report Azerbaijan*), p. 8; *Gender & Development, The Violations of the Rights of Lesbian, Gay, Bisexual, Transgender Persons in Azerbaijan*, 2009.

45 Уголовный кодекс РСФСР 1960 года (Criminal Code of the Russian Soviet Federative Socialist Republic of 1960), Article 121.

including Belarus, Ukraine, and Moldova, clearly provide that marriage is a union between a man and a woman, complicating any future legislative initiatives to broaden the definition of marriage.<sup>46</sup> The constitutions of Armenia or Georgia do not expressly define marriage as a union between a man and a woman.<sup>47</sup> However, current practice in these countries limits marriage to opposite-sex couples. Nevertheless, the constitutional language may leave open the possibility to amend the definition of marriage as attitudes change in the future.<sup>48</sup> In addition, one country included in this analysis, Ukraine has stated the intention to enact a gender-neutral civil partnership law by 2018.<sup>49</sup>

As none of the 9 countries recognize any form of same-sex unions, it follows that same-sex couples are unable to jointly adopt a child. None of the 9 countries expressly prohibit single persons or LGBT people in general from adopting children. Therefore, the adoption of children by an LGBT parent is possible. However, no parental rights or additional protections will be afforded to the same-sex partner of an adoptive parent.

### *C. Infringements on the Freedoms of Expression and Assembly of LGBT People*

Beginning in 2006, ten Russian regions passed laws banning the "propaganda of homosexuality" among minors. In 2013, the Russian State Duma unanimously adopted a similar law, which prohibits the promotion of "non-traditional sexual relationships" among minors. These laws prescribe administrative sanctions and fines of up to 1 million rubles. While the Russian federal law does not ban homosexuality *per se*, it serves to greatly limit the freedoms of expression, assembly, and association of LGBT people in Russia. Under the law, activities such as gay pride parades or other LGBT-friendly events, speaking in favor of gay rights, distributing information about safer-sex practices, or providing support services to LGBT youth are effectively made illegal. In addition, the vague wording of the bill means that it can easily be applied to many situations, placing LGBT people at constant risk of violating the law.

In practice, this law has already had repercussions in many spheres of Russian society. LGBT-related events that are open to minors, such as gay pride parades or screenings of LGBT films, have been prohibited under the law. Books, films, plays, music, and even video games have been banned or censored. The gay propaganda law has also resulted in an increase in emigration from Russia of LGBT people, many of whom fear violence, discrimination, or loss of employment due to the anti-LGBT social climate the law has fostered. Indeed, a number of teachers have been fired from their positions, due to their actual or perceived homosexuality.<sup>50</sup> Meanwhile, more and more LGBT Russians are gaining asylum abroad, due to the hostile environment in Russia.<sup>51</sup>

46 Country Report Belarus, p. 9-10; Country Report Ukraine, p. 18-9; Country Report Moldova, p. 22-3.

47 Country Report Armenia, p. 11; Country Report Georgia, p. 18-20.

48 *Id.*

49 From-UA.com, *Лидер Гей-Форума рассказал о тонкостях легализации однополых браков в Украине (The Leader of the Gay-Forum [of Ukraine] talks about the intricacies of legalizing same-sex marriages in Ukraine)*, Mar. 11, 2016, available at: [from-ua.com/news/372539-lider-gei-foruma-rasskazal-o-tonkostyah-legalizacii-odnopolih-brakov-v-ukraine.html](http://from-ua.com/news/372539-lider-gei-foruma-rasskazal-o-tonkostyah-legalizacii-odnopolih-brakov-v-ukraine.html).

50 *Country Report Russia-Pisemskiy*, p. 20-3.

51 Immigration Equality, *Russia is getting worse for LGBT people*, Jan. 21, 2015, available at: [www.immigrationequality.org/russia-is-getting-worse-for-lgbt-people](http://www.immigrationequality.org/russia-is-getting-worse-for-lgbt-people).

In addition, many critics of the law have asserted that it promotes violence and hate speech against LGBT people. A number of prominent media figures, such as Ivan Okhlobystin or Dmitriy Kiselyov, as well as Russian politicians, have been portrayed in the media expressing negative and hostile attitudes towards LGBT people. Such behavior and the willingness of the media to give a voice to hate speech serves to further stigmatize LGBT people in Russia and put them at risk of violence or discrimination.

Equally worrying is the fact that Russia's gay propaganda bill has acted as a model for similar legislative initiatives in neighboring countries. As the political, linguistic, and cultural powerhouse of the region, Russia continues to exert enormous influence on many of its neighbors. In 2015, a bill was introduced in the Kyrgyz Parliament that would impose criminal and administrative penalties for the propaganda of "non-traditional sexual relations." The proposed bill would ban any mention of "non-traditional sexual relations", including information about LGBT rights, in the media, as well as any public demonstrations related to such issues. The Kyrgyz bill is even more draconian in nature than Russia's existing law, as it imposes not only administrative penalties, but also criminal sanctions. The bill was approved in the first and second readings. A third reading is expected to take place soon, after which the bill can be signed into law.<sup>52</sup>

Similar laws have also been proposed in other countries of the region. In 2013, Armenian officials introduced a law banning the public promotion of "non-traditional sexual relations." However, the bill was removed from consideration shortly after its introduction.<sup>53</sup> Similarly, the Parliament of Kazakhstan enacted a law "On the protection of children from information harmful to their health and development." This law was widely seen as an imitation of Russia's law, as it would have introduced a ban on the promotion of "non-traditional sexual orientation."<sup>54</sup> Fortunately, the Constitutional Court of Kazakhstan overturned the bill shortly after its enactment. A number of similar bills also purporting to ban "homosexual propaganda" have been introduced in Ukraine in recent years, however, none of them have passed the required three readings before the Ukrainian Parliament.<sup>55</sup> Despite failures to pass gay propaganda bills in countries such as Armenia, Kazakhstan or Ukraine, the hostile attitude towards LGBT people in the region, as well as the influence of Russia's politics on neighboring countries is clear.

Even in countries of the region where no such bills have been formally considered and where LGBT people are able to more readily exercise their freedoms of expression and assembly, they still encounter hostile attitudes and barriers to the full enjoyment of these rights. For instance, the Constitution of Georgia protects the rights of assembly and manifestation for all citizens without discrimination. Under international law, it is a state's positive obligation to ensure that citizens are able to exercise these rights.<sup>56</sup> However, in recent years, participants at LGBT demonstrations or pride festivals in Georgia have been brutally attacked

52 Kim, R., Yanchinov, D., Обзор законодательных и нормативно-правовых документов и актов в сфере ВИЧ-эпидемии и прав МСМ/ГБ и трансгендеров (Overview of legislative and normative-legal documents and acts related to the HIV epidemic and the rights of MSM/GB and transgender people), Bishkek, 2015 (hereinafter Country Report Kyrgyzstan), p. 7.

53 Human Rights First, *Spread of Russian-Style Propaganda Laws*, Feb. 27, 2014, available at [www.human-rightsfirst.org/resource/spread-russian-style-propaganda-laws](http://www.human-rightsfirst.org/resource/spread-russian-style-propaganda-laws).

54 *Id.*

55 *Id.*

56 Council of Europe, *Positive obligations under the European Convention on Human Rights*, Strasbourg, 2007.



by counter-demonstrators. LGBT organizations have accused the state of failing in its duties to ensure the freedom of assembly by failing to take the proper measures to protect the demonstrators from attack. In addition, observers of these events have remarked that some police officers have expressed sympathy for the counter-demonstrators, while some politicians have accused LGBT activists of inciting the violence. These incidents underline the pervasive homophobia and negative attitudes towards LGBT people that exist in the region, as well as the de facto failure to protect the freedoms of expression and assembly of LGBT people, even where such freedoms are guaranteed in law.

The example of Moldova offers a more nuanced view of how even the more progressive countries of the region have attempted to limit the freedoms of expression and assembly of LGBT people. Although no bill directly targeting the rights of LGBT people has been introduced in Moldova, Moldovan lawmakers enacted a bill banning the promotion of "relationships other than those linked to marriage and the family" in 2013.<sup>57</sup> The wording of this bill, although less direct than that of Russia's law, nevertheless serves to stigmatize homosexual relationships and infringe upon the rights of LGBT citizens. This bill was later repealed, likely due to pressure from the European Union. However, LGBT citizens of Moldova continue to encounter de facto discrimination, stigma, or rights violations under the guise of "societal morals" or "traditional family values."<sup>58</sup>

It is clear that the freedoms of expression, association, and assembly of LGBT citizens in EECA are under threat. In some cases, this threat arises directly from discriminatory laws, such as Russia's ban on "homosexual propaganda." In other cases, the violation of these rights stem from state failure to positively protect them or from homophobic attitudes disguised as the promotion of "traditional values." In all cases, LGBT people in these countries are directly affected by the negative repercussions of these laws and are unable to enjoy the same rights afforded non-LGBT citizens.

#### *D. Policies and Procedures for Changing One's Legal Gender*

For trans\* people, changing the legal gender indicated on official documents, such as passports, identity cards, driver's licenses, birth certificates, or other documents, is of great importance. The procedure allows trans\* people to exercise their right of self-determination, and often reduces incidents of discrimination or violence in cases where their physical appearance does not match the gender originally indicated on their identity documents. Unfortunately, the policies and procedures for changing one's legal gender in EECA countries are often complicated or unclear at best and, in some cases, are completely unavailable.

Armenia and Azerbaijan have the least trans\*-friendly policies, as neither country has implemented legislation regulating the change of one's legal gender nor are gender reassignment procedures legally available. Trans\* people in Armenia and Azerbaijan are not prohibited from undergoing gender reassignment procedures. However, as such procedures are not legally available in either country, they must travel abroad, often at great expense

57 Human Rights First, *Spread of Russian-Style Propaganda Laws*, Feb. 27, 2014, available at [www.human-rightsfirst.org/resource/spread-russian-style-propaganda-laws](http://www.human-rightsfirst.org/resource/spread-russian-style-propaganda-laws).

58 *Id.*, Country Report Moldova, p. 10-11.

or hardship, in order to find qualified medical professionals to perform such procedures.<sup>59</sup> Moreover, even once a person has undergone gender reassignment surgery, they may not be able to change the legal gender indicated on identity documents, as policies regulating this process do not exist in either country. In Armenia, there is a successful example of a trans\* person who filed a court case in order to have her name and photo changed in her passport. However, such cases are extremely rare and depend on the discretion of the public authority responsible for the decision.<sup>60</sup>

The other 7 countries officially allow trans\* people to make amendments to their legal gender in official documents. However, in practice, exercising this right is often extremely difficult for various reasons. In theory, Russia and Kyrgyzstan's policies regarding changing one's legal gender are the most human rights-friendly in the region. In both countries, changing one's legal gender is possible upon providing a standardized form from a medical institution attesting to the need to change one's legal gender. However, in both countries, the relevant authorities have not yet developed such a form. As a result, trans\* people wishing to change the legal gender in their identity documents are often required to submit proof of having undergone surgical interventions, even though such interventions are not required under existing legislation.<sup>61</sup> While surgical and medical interventions related to gender reassignment are available in both countries, they are not covered by national health insurance schemes and are therefore unavailable to many trans\* people due to the costs involved.<sup>62</sup> Moreover, the inconsistent implementation of legislation and policies related to changing one's legal gender means that it is often left to the discretion of relevant officials to determine what documents a person must provide or whether it is necessary to undergo surgical or medical interventions.

In both Georgia and Ukraine, a person can change their legal gender according to existing legislation, however, in both cases, surgical interventions are required. Under existing practices, a person must undergo irreversible sterilization, hormonal treatment, and surgical procedures in order to receive new identification documents.<sup>63</sup> In both cases, "transsexualism" continues to be classified as a disorder, so trans\* people wishing to change their legal gender must also receive a diagnosis attesting to the fact that they have a medical disorder.<sup>64</sup> Kazakhstan also requires a person to undergo surgical interventions before they can legally change their gender. Requiring a person to undergo medical or surgical interventions in order to change their legal gender and exercise their right to self-determination infringes upon their rights to the enjoyment of the highest attainable standard of physical and mental health, to physical integrity, and to private and family life. Furthermore, such forced medical procedures amount to inhuman and degrading treatment, contravening existing prohibitions under international human rights law.<sup>65</sup> From a practical standpoint, such procedures are

59 Country Report Azerbaijan, p. 11; Country Report Armenia, p. 9-10.

60 Country Report Armenia, p. 10.

61 Country Report Kyrgyzstan, p. 9; Vins, L., *Анализ законодательства Российской Федерации (Legislative Analysis of the Russian Federation)*, 2015, (*hereinafter Country Report Russia-Vins*), p. 19-20.

62 *Id.*

63 Country Report Georgia, p. 10; Country Report Ukraine, p. 10.

64 *Id.*

65 Human Rights Watch, *Allegation letter regarding gender recognition procedures in Ukraine, as specified in Order No. 60 of the Ministry of Health of Ukraine*, Apr. 27, 2015, available at: <https://www.hrw.org/news/2015/04/27/allegation-letter-regarding-legal-gender-recognition-procedure-ukraine-specified>.

expensive and inaccessible to many trans\* people in EECA, which often puts the possibility of changing their legal gender out of reach.<sup>66</sup>

More generally, the lack of awareness and knowledge of trans\* issues that is pervasive in the region only serves to further complicate the process of changing one's legal gender in EECA countries. In many instances, relevant government officials, medical service providers, and members of the judiciary receive little or no training or sensitization on trans\* issues. Moreover, clinical guidelines for trans\*-specific healthcare services are often nonexistent or not used. As a result, trans\* people are denied services or do not receive adequate care or attention when dealing with doctors, judges, or other government officials involved in the process.<sup>67</sup>

Throughout the EECA region, trans\* people face a number of barriers and obstacles when trying to change their legal gender in official documents. Such barriers include the absence of relevant legislation, requirements necessitating surgical and medical interventions, the limited availability of such procedures, low awareness and knowledge of trans\* issues on the part of government officials and healthcare providers, as well as pervasive discrimination and stigma towards trans\* people. Unfortunately, when trans\* people are unable to change their legal gender in official documents, it often leads to further rights violations, as they may more frequently encounter acts of discrimination or violence.

## E. Antidiscrimination Protections for LGBT People

The prohibition on all forms of discrimination is enshrined in a number of key human rights conventions, including the UDHR, the ICCPR, and the ICESCR. These conventions provide that everyone is entitled to all rights and freedoms without discrimination and on an equal basis with everyone else. The antidiscrimination provisions of these conventions oblige states to ensure that the principle of non-discrimination is upheld within their borders. A number of human rights bodies, including the UNHRC and the ECHR, have determined that the prohibition on discrimination extends to discrimination on the basis of sexual orientation and gender identity.<sup>68</sup>

To date, Georgia, Moldova, and Ukraine are the only EECA countries to specifically prohibit discrimination on the basis of sexual orientation and/or gender identity. Georgia currently has the most far-reaching non-discrimination law. Enacted in 2014, the law "on the Elimination of All Forms of Discrimination" makes it illegal for public agencies, organizations, and natural and legal persons to discriminate on the basis of sexual orientation or gender identity in all domains of public life.<sup>69</sup> The law was adopted prior to the signing of an association agreement between the European Union and Georgia and represents an important step forward in the

66 Pak, A., *Анализ законодательства в Республики Казахстан в сфере ВИЧ-эпидемии и прав МСМ и трансгендеров (Legislative analysis of the Republic of Kazakhstan related to the HIV epidemic and the rights of MSM and transgender people)*, 2015 (hereinafter Country Report Kazakhstan-Pak), p. 6.

67 Country Report Georgia, p. 11; OHCHR, *Information Series on Sexual and Reproductive Health and Rights: Lesbian, Gay, Bisexual and Transgender and Intersex People*, Geneva, 2015.

68 OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, New York & Geneva, 2012.

69 Republic of Georgia, Law "On the Elimination of All Forms of Discrimination," No. 2391-III, May 2, 2014.

liberalization of Georgia's legal environment. In theory, the law provides LGBT people with important legal protections from discrimination. Nevertheless, human rights and other civil society organizations have criticized the bill due to its lack of an enforcement mechanism. Although the bill prohibits discrimination on paper, in practice, actual enforcement of the law remains ineffective. Procedures for bringing cases pursuant to the law are vague, and many law enforcement and judicial officials lack the proper training to adequately handle cases of discrimination, particularly when they concern sexual minorities.<sup>70</sup>

The Constitution of Moldova prohibits discrimination, however, the list of bases on which discrimination is outlawed is closed and does not include sexual orientation or gender identity.<sup>71</sup> Nevertheless, a separate law "On ensuring equality" came into force in 2013 and regulates issues related to preventing and fighting discrimination. The primary non-discrimination provision of this law prohibits discrimination in all areas of public life regardless of one's "race, skin color, nationality, sex, age [...] or any other similar characteristic."<sup>72</sup> Thus, the list of protected classes is left open, but does not explicitly include sexual orientation or gender identity. However, Article 7 of the same law expressly prohibits discrimination on the basis of sexual orientation in the field of employment.<sup>73</sup>

Unlike Georgia's discrimination law, the Moldovan bill includes a provision for the creation of a body to ensure enforcement of the law. The Council to Prevent and Eliminate Discrimination and Ensure Equality (Romanian: *Consiliul pentru prevenirea și eliminarea discriminării și asigurarea egalității*) is an independent body responsible for monitoring the implementation of antidiscrimination legislation, reviewing complaints from victims of discrimination, ensuring that victims receive compensation, and for making recommendations on how to prevent future cases of discrimination.<sup>74</sup> According to the Council, homosexuals account for 19.90% of all discrimination cases.<sup>75</sup> The Council has heard a number of cases of anti-LGBT discrimination in areas extending beyond employment.<sup>76</sup> Although, Moldova's antidiscrimination legislation is not as far-reaching or inclusive as Georgia's law, thanks to practical enforcement mechanisms, the availability and effectiveness of antidiscrimination protections are higher than in Georgia.

Ukraine is the most recent EECA country to enact legislation that expressly prohibits discrimination on the basis of sexual orientation and gender identity. In November 2015, the Ukrainian Parliament approved a bill that prohibits discrimination on the basis of sexual orientation or gender identity in the field of labor.<sup>77</sup> In other areas of public life, discrimination is prohibited by the Constitution of Ukraine, which contains an open-ended list of protected classes, but does not expressly include sexual orientation or gender identity.<sup>78</sup> Despite these protections, MSM, trans\* people, and other LGBT people continue to face human rights

70 Human Rights House, *Georgia passes antidiscrimination law*, May 6, 2014, available at: [humanrightshouse.org/Articles/20133.html](http://humanrightshouse.org/Articles/20133.html); Country Report Georgia, p. 15-6.

71 Constitution of the Republic of Moldova, Article 16.

72 Republic of Moldova, Law No. 121 "On Ensuring Equality," May 5, 2012, Article 1.

73 *Id.*, Article 7.

74 Country Report Moldova, p. 18-9.

75 Consiliul pentru prevenirea și eliminarea discriminării și asigurarea egalității, Raport privind activitatea realizată în anul 2014 (Report on the work carried out in 2014), Chisinau, 2014, available at: [egalitate.md/index.php?pag=page&id=850&tl=ro](http://egalitate.md/index.php?pag=page&id=850&tl=ro).

76 Country Report Moldova, p. 19.

77 Кодекс законов о труде Украины (Code of Labor Laws of Ukraine), Article 2.1.

78 Конституція України (Constitution of Ukraine), Article 24.

violations, in particular with regards to the freedoms of expression, assembly, and association.<sup>79</sup>

The other 6 countries surveyed in this analysis have not enacted special legislation prohibiting discrimination on the basis of sexual orientation and/or gender identity. The constitutions of some countries, such as Armenia, Belarus, and Kazakhstan, include antidiscrimination provisions with an open-ended list of protected classes. Generally, such provisions prohibit discrimination on the basis of race, sex, nationality, religion, "or of any other circumstance."<sup>80</sup> In theory, "any other circumstance" could include sexual orientation and/or gender identity. In practice, however, these provisions are not applied to protect sexual minorities from discrimination. Since, LGBT people are not recognized as a social group for purposes of antidiscrimination provisions, they are unable to pursue discrimination claims in court when they are victims of rights violations on the basis of their sexual orientation and/or gender identity. Moreover, in some countries, such as Kazakhstan, antidiscrimination provisions lack sufficient institutional and procedural guarantees to effectively protect LGBT and non-LGBT citizens alike in cases of discrimination.<sup>81</sup>

Such practices and the denial of antidiscrimination protections to LGBT people veil the pervasive problem of anti-LGBT discrimination and violence in EECA countries. For instance, in Kyrgyzstan, there are currently no officially registered cases of anti-LGBT discrimination and/or violence. As a result, representatives of the Kyrgyz government are able to claim that there are no problems related to anti-LGBT discrimination and/or violence in the country. Similar situations arise in other countries of the region and allow representatives of EECA governments to sidestep international criticisms of their policies regarding LGBT rights. In addition, the absence of official statistics on anti-LGBT discrimination makes it difficult for LGBT community organizations and activists to advocate for greater protections for members of this population.

Within the region, there is a great disparity with respect to antidiscrimination measures protecting sexual minorities. Moldova can be seen as a leader in the region, as it has implemented not only legislation to protect sexual minorities from discrimination, but has also created a mechanism to enforce this legislation. At the same time, specific prohibitions on discrimination based on sexual orientation and gender identity apply only in the field of labor. Even where a country has adopted more far-reaching legislation, such as Georgia, the practical implementation of these laws is generally ineffective. Meanwhile, the majority of the EECA countries surveyed do not provide any antidiscrimination protections for sexual minorities, ensuring that the pervasive problems of anti-LGBT discrimination and violence remain hidden.

## *F. Legislation on Hate Crimes*

79 Country Report Ukraine, p. 16.

80 Конституция Российской Федерации (Constitution of the Russian Federation), Article 19; Конституция Республики Армения (Constitution of the Republic of Armenia), Article 14.1; Конституция Республики Казахстан (Constitution of the Republic of Kazakhstan), Article 14.

81 Vinogradov, V., Правовое регулирование положения лиц группы ЛГБТ согласно международному законодательству и национальному законодательству РК (Legal regulation of the position of LGBT people under international law and national legislation of the Republic of Kazakhstan), 2015, (hereinafter Country Report Kazakhstan-Vinogradov), p. 7.

In 2012, Georgia amended its criminal code to prohibit crimes committed on the basis of the victim's actual or perceived sexual orientation or gender identity. Under the amended provision, such a motive would be considered as an aggravating circumstance for all relevant offenses under the criminal code.<sup>82</sup> To date, Georgia remains the only EECA country that has specific hate crime provisions protecting LGBT people.

In practice, Georgia's hate crime laws remain ineffective. Although, the international community lauded Georgia for being the first country in the region to adopt such protections into law, the necessary measures to equip law enforcement agencies and the judiciary with the knowledge and skills to identify hate crimes and support victims and witnesses have not yet been implemented.<sup>83</sup>

A recent study by the Women's Initiatives Support Group (WISG) in Tbilisi, Georgia found that of approximately 150 representatives of the LGBT community, nearly one-third had been subjected to physical violence. Nearly 90% of respondents reported experiencing psychological abuse during the past two years. Yet only 30% of respondents made complaints to police in cases of homo- or transphobic violence. Reasons cited for this low level of reporting include the ineffectiveness of police (21.62%) and fear of a homophobic reaction from law enforcement officials (29.72%).<sup>84</sup> Additionally, many LGBT people fear that they will be outed to friends and family and will suffer additional attacks if they report hate crime incidents to law enforcement officials. A similar study conducted by the Georgian NGO "Identoba" found that 75% of the victims of LGBT-related violence did not report the crimes to the police.<sup>85</sup>

As a result, according to official records, no hate crimes based on the sexual orientation or gender identity of the victim occurred during 2012-2014. The lack of any record of such crimes allows the government to affirm that there is no significant problem with LGBT-related violence within its borders.

The Criminal Codes of Belarus and Russia both include a list of aggravating circumstances for relevant offenses under the criminal code. The relevant article from each respective criminal code provides that aggravating criminal circumstances arise when a crime is committed on the basis of the victim's race, nationality, religion, or membership in "any other social group."<sup>86</sup> Sexual orientation or gender identity would seem to fall under the term "any other social group." However, in practice, sexual minorities have not been found to constitute a distinct "social group."<sup>87</sup>

The failure to include sexual minorities under the label "any other social group" may stem from improper training and knowledge or homophobic attitudes of law enforcement officials or members of the judiciary. In addition, governments may be reluctant to recognize LGBT people as a defined social group for purposes of hate crimes, for fear of having to apply this definition to other areas of the law. Conversely, the current wording of these provisions may allow governments to claim that LGBT people are sufficiently protected by existing laws, as they could theoretically fall under the category of "other social groups," even though the

82 Country Report Georgia, p. 16-8.

83 Women's Initiatives Support Group, Situation of LGBT people in Georgia, Tbilisi, 2012.

84 *Id.*

85 Identoba, Social being of gay, bisexual and transgender men, Tbilisi, 2013.

86 Уголовный кодекс Республики Беларусь (Criminal Code of the Republic of Belarus), Art. 64.1.9; Уголовный кодекс Российской Федерации (Criminal Code of the Russian Federation), Art. 63.1.e.

87 Country Report Belarus, p. 8.

provisions are not applied as such in practice.

The other countries surveyed also include provisions in their criminal codes under which aggravating criminal circumstances arise when a crime is committed on the basis of either nationality, race, or religion.<sup>88</sup> Sexual orientation and gender identity or the term "any other social group" is not included in these provisions. Therefore LGBT people in these countries do not benefit from any additional protections when they are a victim of a hate crime.

## V. Community Advocacy

Community advocacy refers to campaigns, initiatives, or other actions taken by community organizations, activists, and other members of civil society, aimed at protecting the rights and interests of a particular social group. The goals of advocacy activities may include enacting structural changes, such as changing laws or policies, raising awareness of certain issues, promoting tolerance and combatting stigma towards a certain social group, or otherwise protecting the interests and rights of this group.

National representatives from each of the 9 countries analyzed in this report were tasked with providing successful examples of community advocacy initiatives aimed at bringing about change to legislation related to LGBT and HIV issues. Successful examples were found in only 3 countries, Kyrgyzstan, Moldova and Ukraine. This section will provide an overview of the few successful examples of community advocacy and also discuss the barriers and obstacles to community advocacy initiatives in the region.

### A. Successful Examples of Community Advocacy

The following three examples represent successful community advocacy initiatives from Kyrgyzstan, Moldova, and Ukraine.

*1. Kyrgyzstan: Law on the Reproductive Rights of Citizens and Guarantees for Their Implementation.* In June 2015, following extensive community advocacy efforts, the law "on the reproductive rights of citizens and guarantees for their implementation" was enacted by the Parliament of Kyrgyzstan. Experts, civil society representatives, activists, human rights organizations, and other stakeholders took part in developing analyses of then current Kyrgyz legislation and its discriminatory effects with respect to reproductive rights. According to those involved in the advocacy efforts, the success of this initiative turned on the cooperation between various stakeholders, as well as a strong reliance on international human rights law to support the adoption of the proposed bill.<sup>89</sup>

88 See e.g., Уголовный кодекс Республики Казахстан (Criminal Code of the Republic of Kazakhstan), Art. 54.

89 Country Report Kyrgyzstan, p. 14-5.

*2. Moldova: Law on Ensuring Equality.* A coalition of civil society organizations representing various groups and interests was involved in lobbying activities, public demonstrations, consultations, and in working with the media to support a nondiscrimination bill in Moldova. The coalition also consulted with international partners to bolster support for the bill. The bill was finally enacted in 2012. Those involved in the advocacy efforts cite the strong cooperation and collaboration between civil society organizations, the formation of a coalition to develop a coherent advocacy strategy in support of the bill, as well as significant external support from the EU as the main reasons for the success of this initiative.<sup>90</sup>

*3. Ukraine: Amendment of the Law on the Prevention of AIDS and the Social Protection of the Population.* The Ukrainian NGOs, "All-Ukrainian Network of PLWH" and the "International HIV/AIDS Alliance in Ukraine" spearheaded a community advocacy initiative to introduce amendments to the law "on the prevention of AIDS and the social protection of the population" that would reduce stigma and discrimination towards members of key populations. Through lobbying activities and media attention, the NGOs were able to convince the Ministry of Health to develop a working group dedicated to drafting a new version of the law. The draft law was based on the International HIV/AIDS Guidelines and was eventually adopted in 2010. The new version of the law implemented a number of positive changes regarding the HIV/AIDS policy in Ukraine and offered greater protections to key populations and PLWH.<sup>91</sup> Thanks to cooperation between NGOs and reliance on international standards regarding HIV/AIDS, the advocacy initiatives were effective.<sup>92</sup>

In all three cases, similar factors played a role in ensuring that the community advocacy initiatives were successful. Collaboration between NGOs allowed them to develop a coherent advocacy strategy and increase the effectiveness of their actions. Consulting a wide range of stakeholders, including the media, government officials, and other experts, assisted the NGOs in widening their support base and increasing their credibility on the issues. Finally, a reliance on external sources of support, ranging from the European Union to international human rights law, also played a key role in the success of these initiatives.

## B. Barriers and Obstacles to Community Advocacy

A number of factors, common across the entire EECA region, constitute significant barriers to community advocacy and prevent successful advocacy initiatives. These factors include the low capacity of MSM-service and LGBT organizations, state-sponsored homophobia, the lack of reliable data and statistics, a fear of stigma, violence, and/or discrimination, and a lack of cooperation between stakeholders.

Across the EECA region, MSM-service and LGBT organizations often lack the capacity

90 Country Report Moldova, p. 25-6.

91 Ukraine, Закон «О предупреждении заболевания синдромом приобретенного иммунодефицита (СПИД) и социальной защите населения» (Law "on the prevention of AIDS and the social protection of the population), Jan. 9, 1992.

92 Country Report Ukraine, p. 20-21.



needed to conduct impactful advocacy activities, carry out research, develop or implement programs, or raise the necessary funds for their activities. This problem stems in many ways from the other factors listed above that hamper advocacy initiatives. In many instances, MSM-service or LGBT organizations lack sufficient funding or technical knowledge to develop their operations in a comprehensive or strategic way. In some cases, such organizations may not even be officially registered, often due to discriminatory state policies, and are unable to receive funding from international or domestic donors.<sup>93</sup> As a result, many relevant organizations in the region are still focused on internal development and do not have the technical or financial capacity to conduct effective advocacy campaigns.

State-sponsored homophobia also poses a significant barrier towards community advocacy in EECA countries. In cases like Russia, official legislation places severe limitations on the kinds of activities MSM-service or LGBT organizations can carry out. The ban on "homosexual propaganda" makes it difficult for these organizations to disseminate information about LGBT rights or sexual health for MSM, organize demonstrations, or otherwise participate in any sort of advocacy activities.<sup>94</sup> In addition, Russia's "foreign agent law" has placed added limitations on NGOs and has served to demonize and marginalize any efforts by civil society organizations.<sup>95</sup>

Even in countries where there are no such legislative limitations in place, state failure to combat intolerance towards LGBT people in society, as well as the homophobic attitudes publicly espoused by official state representatives, contributes to an increasingly hostile climate for community advocacy work. In countries such as Armenia, for instance, government representatives have publically condemned pro-LGBT demonstrations or other related events, and have called upon people to fight the "spread of homosexuality."<sup>96</sup> Such actions foster hate speech and intolerance towards LGBT people and lessens public support for community advocacy initiatives.

Many EECA countries lack comprehensive and reliable data on MSM, LGBT people, or PLWH. In the EECA region, almost all data relating to MSM, trans\*, and other LGBT people, as well as on the HIV epidemic in these populations are unreliable and of low quality. Population size estimates, HIV prevalence, HIV service coverage, as well as statistics on hate crimes or LGBT-related discrimination and violence are lacking in most EECA countries. As a result, the absence of such data makes it difficult for LGBT or MSM-service organizations to support arguments that LGBT rights are being violated or that groups such as MSM or trans\* people are denied access to HIV services. The absence of statistics on incidents of anti-LGBT violence or hate crimes does not mean that such crimes are not occurring. However, as discussed earlier, it allows governments to counteract advocacy initiatives aimed at combating the problem by claiming, for instance, that anti-LGBT hate crimes do not occur in their country.

Fear of stigma, discrimination, and/or violence also greatly contributes to the lack of successful advocacy initiatives in EECA countries. Homo- or transphobia, as well as stigma towards PLWH, is pervasive in the EECA region. Many people belonging to these groups are

93 Country Report Belarus, p. 12.

94 Country Report Russia-Pisemskiy, p. 20-4.

95 Human Rights Watch, *Russia: Government against Rights Groups*, Feb. 1, 2016, available at: <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>.

96 Country Report Armenia, p. 13-5; Abrahamyan, G., *Armenia: A Blurry Line in Yerevan Between Hate Crime and Defense of "National Interests"*, May 21, 2012, available at: [www.eurasianet.org/node/65436](http://www.eurasianet.org/node/65436).

reluctant to become involved with LGBT or MSM-service organizations or to take part in demonstrations or other advocacy campaigns for fear of being outed to friends or family members. This issue also compounds the previous issue, regarding the lack of reliable data on LGBT populations and the HIV epidemic. Many people belonging to these groups are unwilling to take part in surveys or do not provide truthful information to medical service providers.

Finally, a lack of cooperation and collaboration between stakeholders at the national and regional levels poses a barrier to successful community advocacy. In some of the examples of successful community advocacy initiatives, it was shown that cooperation between civil society organizations played a key role in ensuring the success of the advocacy activities. Unfortunately, in many countries different LGBT and/or HIV-service organizations do not sufficiently cooperate and consult with each other, despite often advocating for the same causes.<sup>97</sup> Furthermore, MSM-service and LGBT organizations have not only been targeted by state institutions, but have also been met with resistance and intolerance from other civil society organizations. The intolerance of other minority groups and organizations towards LGBT issues has in some instances created additional barriers to LGBT community advocacy.<sup>98</sup>

It is clear that these factors impose significant obstacles to community advocacy initiatives in the EECA region. Each of these barriers is linked to the others, creating a vicious cycle, in which the existence of one barrier creates many more. In order to promote community advocacy in the region, governments must ensure that the human rights of LGBT people are protected. In addition, LGBT and MSM-service organizations must receive adequate funding and technical assistance in order to increase their capacity and carry out effective activities.

## VI. Conclusion

The 9 countries analyzed in this report serve as an excellent overview on legislation related to HIV, sexual health rights, and LGBT rights in the wider EECA region. Unfortunately, the legislative environment in these countries fails to provide LGBT people and PLWH with ample protections with respect to human rights and access to health services. Meanwhile, some countries have adopted or are in the process of adopting laws that directly discriminate against these groups of people. As a result, LGBT people and PLWH often face discrimination, violence, stigma, and other rights violations in their daily lives. The hostile legislative and political environment fosters homo- and transphobic attitudes at all level of society in EECA countries. The combination of these factors has resulted in increased rates of depression, suicide, HIV infection, and other social problems in these populations.

At the same time, LGBT and MSM-service organizations are unable to effectively advocate for their interests in many EECA countries. Discriminatory legislation coupled with hostile social environments means that many LGBT and MSM-service organizations lack the necessary capacity, funding, and support to bring about legislative change. The absence of reliable data on populations of LGBT, MSM, and PLWH, as well as a lack of cooperation between civil society organizations also contribute to the low level of successful community

97 ECOM, *The Global Fund New Funding Model and Country Dialogue: Involvement of MSM and Transgender People in Eastern Europe and Central Asia*, Tallinn, 2015.

98 *Country Report Armenia*, p. 16.

advocacy initiatives in the region.

The following recommendations have been developed by the Eurasian Coalition on Male Health, as well as by the legal experts and national representatives who contributed to this report. They are aimed at ensuring that the rights of LGBT people, other MSM, and PLWH are protected and that these groups have equal access to HIV services.

## Recommendations for Decision-makers:

- Comply with international agreements on human rights and protect the human rights of all citizens, without exception;
- Implement effective provisions that explicitly protect LGBT people from hate crimes and hate speech;
- Enact antidiscrimination legislation protecting LGBT citizens or recognize sexual minorities as a distinct social group where antidiscrimination and hate crimes measures already exist;
- Remove legal and administrative barriers to the creation and operation of LGBT community organizations;
- Conduct campaigns aimed at increasing awareness among the staff of health care systems, police, and other government agencies in order to decrease discrimination and stigma towards MSM, trans\* people, and PLWH;
- Adopt adequate measures to ensure that the special needs of MSM and trans\* people are met in the provision of healthcare services;
- Ensure that trans\* people are able to have their gender identity recognized in legal and identification documents without the requirement of medical procedures

## Recommendations for LGBT and MSM-service organizations:

- Demand protections from discrimination based on sexual orientation or gender identity;
- Raise awareness and knowledge about human rights among populations of MSM, LGBT people, and PLWH;
- Identify and document cases of discrimination, stigma, and violence towards gay and bisexual men and other MSM, and trans\* people;
- Work to empower members of LGBT communities to advocate for their rights and ensure their needs are met;
- Support and collaborate with other civil society organizations, particularly human rights and legal organizations.

## Recommendations for Civil Society:

- Support the work of and collaborate with LGBT and MSM-service organizations to ensure that the needs of all vulnerable communities are met;
- Hold governments accountable to their international and regional human rights commitments.