



Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Armenia: A Shadow Report

**Submitted for consideration at the 105th Session of the Human
Rights Committee**

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Submitted to the United Nations Human Rights Committee by:

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- The Heartland Alliance for Human Needs & Human Rights
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EXECUTIVE SUMMARY

This report is a joint submission by the Public Information and Need of Knowledge (PINK) NGO, the Heartland Alliance for Human Needs and Human Rights, ILGA-Europe: The European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, and The George Washington University Law School International Human Rights Clinic to the United Nations (UN) Human Rights Committee (“HRC” or “the Committee”) on the occasion of its consideration of the State of Armenia’s implementation of the *International Covenant on Civil and Political Rights* (“the Covenant” or “the ICCPR”) at the 105th session taking place in Geneva, Switzerland, on 9th to 27th July 2012.

The purpose of this report is to highlight the widespread and systematic human rights violations experienced by lesbian, gay, bisexual and transgender (LGBT) individuals in Armenia. These violations have become all the more concerning in light of the recent upsurge in violent attacks against the LGBT community, and speech inciting such attacks in the month of May 2012. In particular, the report draws the attention of the Committee to the following breaches of the Covenant:

- The State of Armenia remains deeply oppressive toward LGBT individuals, as reflected by public officials’ statements against the LGBT community.
- The Armenian State fails to protect LGBT individuals from public stigma and hate speech because it has failed to enact laws that criminalize hate speech, including against LGBT persons.
- Individuals in Armenia are subject to discrimination on the basis of their sexual orientation and/or gender identity by both State and non-State actors, including in access to education, employment opportunities, and healthcare.
- Though inadequate reporting makes exact numbers uncertain, local human rights groups report an alarming number of non-combat deaths in the army each year, including deaths of LGBT individuals. Gay and bisexual men serving in the army may be particularly at risk. The Armenian State fails to adequately prevent, investigate, and/or prosecute incidents of gender and sexual orientation-based killings, including against LGBT individuals.
- Gay and bisexual men in Armenia suffer cruel, inhuman, and degrading treatment while serving in the army or detained in prison. In some instances, the State is responsible for this abuse or fails to adequately prevent, investigate, and/or prosecute incidents of violence toward LGBT individuals.
- The Armenian State refuses to recognize the gender identity of transgender persons. By denying transgender individuals appropriate identity documents, the State withholds from them the status of legal personhood.

I. INTRODUCTION

This shadow report on the human rights situation of LGBT people in Armenia was written and submitted through the collaborative efforts of the Public Information and Need of Knowledge (PINK) NGO, the Heartland Alliance for Human Needs & Human Rights, and The George Washington University Law School International Human Rights Clinic.¹

Armenia became party to the International Covenant on Civil and Political Rights on June 23, 1993.² Armenia submitted its joint second and third periodic report under Article 40 of the ICCPR on November 22, 2010.³ This periodic report did not discuss the human rights situation of LGBT people in Armenia. The ICCPR guarantees protections to individuals that are guaranteed by the State and must be ensured in the form of positive and negative binding legal obligations. These rights are guaranteed to all people within the State territory or subject to the State's jurisdiction, regardless of that person's status under domestic law.⁴

Various UN bodies have recently called for States parties to ensure that their laws prohibit discrimination on the basis of sex, sexual orientation, and gender identity.⁵ These calls to action represent an important step for the augmentation of human rights for LGBT individuals, which the UN Human Rights Council identified as a key concern when it passed Resolution 17/19, *Human rights, sexual orientation, and gender identity*, in June 2011.⁶

Specifically, the Human Rights Committee has demonstrated serious concern for the rights of lesbian, gay, bisexual, and transgender individuals when reviewing compliance with the ICCPR for several countries. In its recent Concluding Observations following its review of Jamaica, the Committee encouraged Jamaica to take steps to protect individuals from discrimination on the basis of sexual orientation and gender identity. It stated that Jamaica "should send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons for their sexual orientation."⁷ Similarly, the Committee recommended that Russia

¹ This report was authored by Casey Arellano (J.D. 2013, The George Washington University Law School) and Jacqueline Powers (J.D. 2013, The George Washington University Law School), under the supervision of Professor Shana Tabak of The George Washington University Law School International Human Rights Clinic. Special thanks to Stefano Fabeni (Heartland Alliance for Human Needs & Human Rights, Director of Global Initiative for Sexuality and Human Rights) and Mamikon Hovsepyan (PINK NGO, Director) for guidance in the drafting of this report, and to the numerous Armenian and international activists and civil society organizations who contributed valuable information, reports, and comments throughout the drafting of this report.

² Status of Ratifications, International Covenant on Civil and Political Rights, *available at*: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

³ Second and Third Periodic Report of Armenia, U.N. Doc. No. CCPR/C/ARM/2-3 (November 22, 2010).

⁴ General Comment 31 of the Human Rights Committee, CCPR/C/21/Rev.1/Add.13, at 4¶ 10, May 26, 2004.

⁵ Concluding Observations: Jamaica, ¶ 8 (2011) UN Doc. CCPR/C/JAM/CO/3.

⁶ U.N. Human Rights Council, Resolution 17/19, Human rights, sexual orientation and gender identity, U.N. Doc. A/HRC/17/L.9/Rev.1 (June 17, 2011).

⁷ Human Rights Committee, Concluding Observations: Jamaica, ¶ 8 (2011) UN Doc. CCPR/C/JAM/CO/3.

provide “effective protection against violence and discrimination based on sexual orientation.”⁸ Additionally, in its Concluding Observations following its review of Moldova, the Committee recommended that the “State party should take measures to combat discrimination based on sexual orientation.”⁹ This should be taken as guidance by the government of Armenia.

Furthermore, during the course of the 2010 Universal Periodic Review Process at the Human Rights Council, the stakeholders’ summary of information prepared by the Office of the High Commissioner of Human Rights noted “discrimination based on sexual orientation or gender identity was pervasive and perpetrated with impunity” and “there is little recourse available for victims of crimes based on sexual orientation or gender identity” in Armenia.¹⁰

Despite the importance of observing and protecting rights on the basis of sexual orientation and gender identity, the State of Armenia makes no mention of issues faced by the LGBT community in its report to the Committee.¹¹ The State has failed to protect numerous rights, and in some instances, has failed to acknowledge these violations are even occurring. These include: violations of the right to protection from nondiscrimination; the right to equal treatment of men and women; the right to life; the right to freedom from torture, cruel, inhuman, and degrading treatment; the right to liberty; the right to security of person; the right to legal personhood; the right to privacy; the right to freedom of expression; and the right to be free from hate speech.

⁸ Human Rights Committee, Concluding Observations: Russia, ¶ 27 (2009) UN Doc. CCPR/C/RUS/CO/6.

⁹ Human Rights Committee, Concluding Observations: Moldova, ¶ 14 (2009) UN Doc. CCPR/C/MDA/CO/2.

¹⁰ U.N. Human Rights Council, *Summary of Stakeholders’ Information for the Universal Periodic Review: Armenia*, pp. 3, 6 (Feb. 5, 2010), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/106/65/PDF/G1010665.pdf>.

¹¹ Second and Third Periodic Report of Armenia, U.N. Doc. No. CCPR/C/ARM/2-3 (November 22, 2010).

II. BACKGROUND

This shadow report discusses the status of the human rights of the gay, lesbian, bisexual, and transgender population in Armenia.

In the shadow of widespread societal and institutional discrimination, gay, lesbian, bisexual, and transgender people in Armenia face tremendous struggles in achieving equality, both at personal and organizational levels. Although the Armenian government has signed and ratified most of the UN, CoE and OSCE covenants, treaties, and other instruments, including a Partnership and Cooperation Agreement with the EU, in practice, those commitments have not been met with regard to human rights pertaining to sexual orientation and gender identity.¹²

In Armenia, homophobia is widespread and deeply ingrained in society. Visibility of the LGBT community is limited. Individuals face discrimination and human rights violations on grounds of their sexual orientation and gender identity in virtually all spheres of society. Most seriously, LGBT individuals are victims of psychological and physical abuse when they serve in the Armenian army. In Armenia, all men must serve two years in the army between the ages of 18 and 27.¹³ According to one report on human rights in Armenia, “the prospect of having to serve in the army is considered worse than a prison sentence for many LGBT people.”¹⁴ In addition, egregious hate speech against the LGBT community is pervasive in large cities.

Armenian society is very traditional and deeply religious. Over 90% of the Armenian population belongs to the Armenian Apostolic Church (hereinafter “the Church”), which condemns homosexuality as immoral.¹⁵ In Armenia, LGBT people are allowed to visit the Church, but cannot receive communion.¹⁶ Father Vahram Melikian, spokesperson for the Mother See of Holy Echmiadzin, the seat of the Armenian Apostolic Church, rejected homosexuality as ‘a sin’ and a ‘negative phenomenon.’¹⁷ The Church organizes public debates regarding addiction, including “homo-addiction;” these debates are then broadcast on national television.¹⁸ In addition to the Church, two religious minority groups in Armenia, Jehovah’s Witness and the Neo Pagan Movement, have publically condemned homosexuality and transsexuality.¹⁹

This report focuses primarily on human rights violations suffered by gay and bisexual men. There are several reasons for the report’s focus. First, the LGBT community is not unified in Armenia. Lesbians, in particular, are not accepted in Armenian society and lesbian activists remain isolated from even gay and bisexual civil society organizations.²⁰ Second, there is no

¹² A. Carrol & S. Quinn, *Forced Out: LGBT People in Armenia* (ILGA Europe, 2009), 24.

¹³ A. Carrol & S. Quinn, *supra* note 12 at 38.

¹⁴ A. Carrol & S. Quinn, *supra* note 12 at 38.

¹⁵ A. Carrol & S. Quinn, *supra* note 12 at 35.

¹⁶ Skype Interview with Mamikon Hovsepyan, Director, Public Information and Need of Knowledge NGO (March 30, 2012), on file with The George Washington University Law School International Human Rights Clinic.

¹⁷ Marianna Grigoryan, *Armenia: Gays Live with Threats of Violence, Abuse*, EURASIANET.ORG (Mar. 30, 2010), <http://www.eurasianet.org/departments/civilsociety/articles/eav033110b.shtml>.

¹⁸ Skype Interview with Mamikon Hovsepyan, Director, Public Information and Need of Knowledge NGO (March 21-22, 2012), on file with The George Washington University Law School International Human Rights Clinic.

¹⁹ *Id.*

²⁰ Skype Interview with Mamikon Hovsepyan, *supra* note 16.

known intersex community in Armenia.²¹ Third, there is a transgender population in Armenia, however, this population is small and concentrated in downtown Yerevan.²² Moreover, there is a lack of accurate statistics on the human rights violations faced by the LGBT community.²³

²¹ Skype Interview with Mamikon Hovsepyan, *supra* note 18.

²² *Id.*

²³ A. Carrol & S. Quinn, *supra* note 12 at 25.

III. SUBSTANTIVE VIOLATIONS

A. Articles 2 (Nondiscrimination) and 26 (Equality before the Law)

Articles 2(1) and 26 of the Covenant provide for the respect, equality, and nondiscrimination of all individuals on the grounds of, *inter alia*, race, color, and sex. In the landmark decision of *Toonen v Australia* in 1994, the Committee found not only that the reference to “sex” in Articles 2(1) and 26 must be taken to include sexual orientation, but also that laws which criminalize consensual homosexual acts expressly violate the privacy protections of Article 17.²⁴ In the past twelve months alone, the Committee has five times called upon States to end the criminalization of sexual conduct between adults of the same sex.²⁵ Furthermore, it has recommended that at least three States take positive steps to end national prejudice and discrimination against LGBT people.²⁶

Although Armenia decriminalized homosexual sodomy in 2003,²⁷ individuals in Armenia still face discrimination and intolerance on grounds of their real or perceived sexual orientation and gender identity both by State and non-State actors.²⁸ Armenian society tends to view homosexuality as an affliction -- when Armenia endorsed a December 9, 2008 UN statement against discrimination on the basis of sexual orientation, the public responded with an outcry and the media observed an increase in the number of negative articles about homosexuals.²⁹ Psychologist Davit Galstian commented on this response, noting the existence of “a real phobia against homosexuals in our society, people consider them beasts.”³⁰ According to PINK’S 2011 survey, 72.1% of individuals in Yerevan, Gyumri, and Vanadzor have negative attitudes toward homosexuals.³¹ Moreover, transgender individuals are not accepted by society because they are

²⁴ *Toonen v. Australia*, CCPR/C/50/D/488/1992, UN Human Rights Committee (HRC), 4 April 1994, Accessed at: <http://www.unhcr.org/refworld/docid/48298b8d2.html> [accessed 28 September 2011].

²⁵ Human Rights Committee, Concluding Observations: Ethiopia, ¶ 12 (2011) UN Doc. CCPR/C/ETH/CO/1; Human Rights Committee, Concluding Observations: Colombia, ¶ 14 (2010) UN Doc. CCPR/C/TGO/CO/4; Human Rights Committee, Concluding Observations: Jamaica, ¶ 8 (2011) UN Doc. CCPR/C/JAM/CO/3; Human Rights Committee, Concluding Observations: Iran, ¶ 10 (2011) UN Doc. CCPR/C/IRN/CO/3; Human Rights Committee, Concluding Observations: Kuwait, ¶ 30 (2011) UN Doc. CCPR/C/KWT/CO/2.

²⁶ Human Rights Committee, Concluding Observations: Guatemala, ¶ 11 (2012) UN Doc CCPR/C/GTM/CO/3 (Advance Edited Version); Mongolia, ¶ 9 (2011) UN Doc CCPR/C/MNG/CO/5; Human Rights Committee, Concluding Observations: Poland, ¶ 8 (2010) UN Doc CCPR/C/POL/CO/6.

²⁷ Article 116 of the Armenian Penal Code (1961) said: “Sexual intercourse of a man with another man (sodomy) is punishable by confinement for up to five years.”

²⁸ Institute for War and Peace Reporting, *Armenian Gays Face Long Walk to Freedom*, 13 March 2009, available at: <http://www.unhcr.org/refworld/docid/49c0ae641e.html> [accessed 3 April 2012]; Gayane Mkrtychyan, *Research: Armenian Public Mostly Intolerant Towards Sexual Minorities*, ARMENIA NOW (Oct. 2011), http://www.armenianow.com/social/human_rights/32494/armenia_lesbian_gay_bisexual_transgender.

²⁹ Institute for War and Peace Reporting, *supra* note 28; Bureau of Democracy, Human Rights, & Labor, U.S. Dep’t of State, 2009 Human Rights Report: Armenia (Mar. 11, 2010), <http://www.state.gov/j/drl/rls/hrrpt/2009/eur/136018.htm>.

³⁰ Institute for War and Peace Reporting, *supra* note 28.

³¹ Public Information and Need of Knowledge NGO, *Public Opinion Toward LGBT People in Yerevan, Gyumri, and Vanadzor Cities* (2011), <http://www.pinkarmenia.org/publication/lgbtsurveyen.pdf>.

viewed as “gay people wearing girls’ clothes” and believed to be typically employed as sex-workers.³²

It is also notable that the principle of non-discrimination against all people is enshrined in the Constitution of the Republic of Armenia, which states in Article 3, “[t]he human being, his or her dignity, fundamental rights and freedoms are the highest values. The State shall ensure the protection of fundamental human and citizen’s rights and freedoms, in conformity with the principles and norms of international law. The State shall be bound by fundamental human and citizen’s rights and freedoms as directly applicable law.”³³ In this Constitution, which was adopted in 1995, the Republic of Armenia committed to uphold international law as an integral part of the legal system in Armenia.³⁴ Yet, although Armenia acceded to the ICCPR in 1993, and in 1994, the HRC held that equality and non-discrimination based on sex includes sexual orientation,³⁵ the country did not guarantee principles of non-discrimination and equality for LGBT people in its 1995 Constitution. Armenia is clearly bound by both international and domestic jurisprudence to guarantee equality and non-discrimination with regard to sexual orientation and in all contexts, yet has failed to do so either de jure or de facto, as demonstrated in this report.

Armenian public officials have spoken out against the LGBT community by making a number of discriminatory statements. Notably, the Secretary of the National Security Council, Arthur Baghdasaryan, announced that LGBT individuals are a “threat” to Armenian national security, because homosexuality is both “extremely dangerous” and “unacceptable” for Armenia.³⁶ Karen Avagyan and Eduard Sharmazanov, both officials of Armenia’s ruling Republic Party, made similar discriminatory statements to the public: Avagyan pledged that “if [I] knew [any homosexuals], I won’t have any relations/contacts with them”³⁷ and Sharmazanov stated that he “doesn’t accept...sexual minorities and strongly object[s]” to their existence.³⁸ Emma Khudabashain, a former member of the Armenian parliament, once encouraged people to “throw stones” at homosexuals.³⁹ Additionally, the Mayor of the City of Yerevan made statements to a local newspaper that he would “clean the city” of transgender sex workers.⁴⁰

³² Skype Interview with Mamikon Hovsepyan, *supra* note 16; Sara Khojoyan, *Armenian Gays Face Intolerance, Discrimination*, INSTITUTE FOR WAR AND PEACE REPORTING (Jul. 5, 2010), <http://iwpr.net/report-news/armenian-gays-face-intolerance-discrimination>.

³³ Constitution of the Republic of Armenia, Article 3, 1995 & 2007.

³⁴ Constitution of the Republic of Armenia, Article 6, 1995 & 2007.

³⁵ *Toonen v. Australia*, CCPR/C/50/D/488/1992, UN Human Rights Committee (HRC), 4 April 1994, Accessed at: <http://www.unhcr.org/refworld/docid/48298b8d2.html> [accessed 28 September 2011]

³⁶ Artmika, *Arthur Baghdasaryan says homosexuality ‘extremely dangerous’ for Armenia*, UNZIPPED: GAY ARMENIA (Dec. 2010), <http://gayarmenia.blogspot.com/2010/12/unnatural-national-security-topbottom.html>.

³⁷ Artmika, *Introducing yet another Armenian bigot – Armenian doctor MP Karen Avagyn*, UNZIPPED: GAY ARMENIA (Feb. 2009), <http://gayarmenia.blogspot.com/2009/02/introducing-yet-another-bigot-armenian.html>.

³⁸ *Id.*

³⁹ Institute for War and Peace Reporting, *supra* note 28.

⁴⁰ Zhamanak, *Yerevan mayor versus homosexuals*, NEWS AM (Dec. 23, 2011), <http://news.am/eng/reviews/2832.html>; Gayane Abrahamyan, *Living in shadow: Armenian homosexuals say they face scorn and embarrassment*, ARMENIA NOW (Oct. 2010), http://www.armenianow.com/social/human_rights/25533/armenian_gays_lesbians_prostitutes_transgenders; Artmika, *How PR reps failed Yerevan mayor with a bouquet of abusive, homophobic language*, UNZIPPED: GAY ARMENIA (Feb. 2012), <http://gayarmenia.blogspot.com/2012/02/how-pr-reps-failed-yerevan-mayor-with.html>;

These statements by Armenian public officials condemning individuals on the basis of their sexual orientation and gender identity foster increased prejudice against the LGBT community that permeates Armenian society. Thus, the Armenian government fails in its obligation under Articles 2 and 26 to ensure that LGBT individuals do not face discrimination on the basis of their sexual orientation and/or gender identity. LGBT individuals regularly face discrimination in their access to four specific areas: (1) healthcare, (2) education, (3) employment, and (4) housing.

1. Discrimination in Access to Healthcare

The realization of access to healthcare is closely related to and dependent upon the principle of non-discrimination enshrined in the ICCPR.⁴¹ LGBT individuals in Armenia continue to face discrimination based on sexual orientation in accessing healthcare.⁴² Many doctors discriminate against LGBT individuals by refusing to treat them because of their actual or perceived sexual orientation or gender identity. In order to access adequate healthcare, LGBT individuals often rely on doctor referrals provided by LGBT-friendly organizations.⁴³ Gay and bisexual men may be discriminated against if they donate blood. In order to donate blood, male patients must inform doctors whether they have sex with men, in which case they are barred from giving blood.⁴⁴ When a man is drafted into the Armenian army, if the examining doctor identifies the recruit as homosexual, under orders from the Minister of Defense, the state medical commission, must find that person unfit for military service and must certify him as having a mental disorder.⁴⁵ This directive and practice by the state medical commission is evidence of the widespread homophobic attitudes that permeate much of the medical community in Armenia.

Additionally, HIV/AIDS remains a serious health concern for a segment of the GBT population in Armenia.⁴⁶ Between 2001 and 2009, Armenia experienced more than a 25% increase in HIV infection.⁴⁷ According to the Armenian Ministry of Health, the government registered 1,204 cases of HIV between 1988 and March 2012, with a total of 182 new cases of HIV registered

Marianna Grigoryan, *Armenia: Gays Live with Threats of Violence, Abuse*, EURASIANET.ORG (Mar. 30, 2010), <http://www.eurasianet.org/departments/civilsociety/articles/eav033110b.shtml>.

⁴¹ See Office of the United Nations High Commissioner for Human Rights and World Health Organization, *Fact Sheet No. 31: The Right to Health*, pp. 7-8, available at <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

⁴² Bureau of Democracy, Human Rights, & Labor, *supra* note 29.

⁴³ Skype Interview with Mamikon Hovsepyan, *supra* note 18.

⁴⁴ *Id.*

⁴⁵ A. Carrol & S. Quinn, *supra* note 12, at 38.

⁴⁶ National Center for AIDS Prevention, Ministry of Health of the Republic of Armenia, http://www.arm aids.am/main/free_code.php?lng=1&parent=3 According to the Ministry of Health, all the individuals affected by drug use were men, and that 98.3% of women were infected through sexual contact. According to PINK, these statistics have been further clarified to indicate that women are affected primarily through heterosexual contact. See email communication between GW International Human Rights Clinic and PINK Armenia, June 9, 2012, on file with GWIHR.

⁴⁷ Nanore Barsoumiane, *From the Shadows: HIV/AIDS in Armenia*, THE ARMENIAN WEEKLY (June 2011), <http://www.armenianweekly.com/2011/06/03/aids-in-armenia/>.

during 2011 alone.⁴⁸ Currently the government estimates up to 3,500 cases of HIV exist in Armenia.⁴⁹

Although the government of Armenia supports NGOs working to prevent HIV and AIDS,⁵⁰ many individuals who live with HIV/AIDS face stigmatization and discrimination throughout Armenia and may often have no choice but to live in isolation, ostracized from their communities.⁵¹ This discrimination may be partially attributed to a serious lack of education, awareness and information on the issue.⁵² Moreover, “[s]tigma, discrimination and violence against LGBT Armenian and other vulnerable groups fuel the spread of HIV and AIDS.”⁵³ Many individuals, including the LGBT community, do not get tested for HIV and AIDS because they fear that they can contract the disease from testing; this in turn results in the unnecessary spread of new cases every year.⁵⁴

The Armenian government has implemented a National HIV and AIDS Prevention Strategy, which established the National HIV/AIDS Monitoring and Evaluation System.⁵⁵ Yet the government can still significantly improve its health and education program. The government must challenge the stigma and discrimination that HIV and AIDS individuals confront on a daily basis and work to prevent the spread of HIV by ensuring that individuals do not fear testing and have access to affordable treatment.

The transgender community, in particular, faces increased discrimination in accessing health care to meet their specific needs. Sexual reassignment surgery is not available for transgender people in Armenia.⁵⁶ According to one journalist, because Armenian doctors do not perform sex reassignment surgery, they instead advise transgender individuals to seek surgery abroad, which requires obtaining funds for travel, accommodations, and visas.⁵⁷ If transgender individuals do undergo sex reassignment surgery abroad, one source indicated they should “forget about returning to Armenia” where they would be unlikely to be accepted by society.⁵⁸

⁴⁸ *HIV/AIDS Epidemic in the Republic of Armenia*, National Center for Aids Prevention, Ministry of Health of the Republic of Armenia, http://www.arm aids.am/main/free_code.php?lng=1&parent=3.

⁴⁹ *Id.*

⁵⁰ Skype Interview with Mamikon Hovsepyan, *supra* note 16.

⁵¹ *Id.*; Nanore Barsoumiane, *supra* note 47.

⁵² A. Carrol & S. Quinn, *supra* note 12, at 38.

⁵³ Liana Aghajanian, *Silence Is Not a Solution: Armenians March Amid Increased HIV/AIDS Infection Rates*, IANYAN (Dec. 2, 2010), <http://www.ianyanmag.com/2010/12/02/armenians-march-increased-hiv-rates/>.

⁵⁴ Nanore Barsoumiane, *supra* note 47.

⁵⁵ *Id.*

⁵⁶ PINK, *We and Our Rights*, 2010, <http://pinkarmenia.org/wp-content/uploads/2010/05/waoren.pdf>, accessed 3 August 2010.

⁵⁷ Artmika, *IWPR roundtable on LGBT Issues: “Transsexual men, women in Armenia advised to go abroad”*, UNZIPPED: GAY ARMENIA (Sep. 2010), <http://gayarmenia.blogspot.com/2010/09/iwpr-roundtable-on-lgbt-issues.html>.

⁵⁸ *Id.*

2. Discrimination in Access to Education

LGBT individuals in Armenia face regular discrimination with respect to access to education.⁵⁹ According to ILGA-Europe and COC Netherlands, who conducted an extensive fact-finding mission regarding LGBT rights in Armenia, primary and secondary schools often exclude sexual education, because schools have discretion to exclude it from their curriculum.⁶⁰ Those studies found that, “[f]rom a very young age children become aware of the taboo attached to LGBT persons.”⁶¹ According to reports of local LGBT advocates, the government’s HIV program in schools is staffed by untrained individuals and has been poorly developed.⁶²

Moreover, LGBT youth regularly suffer mental and emotional abuse in the form of bullying by classmates as well as verbal abuse by their teachers.⁶³ Many of these students fear publicizing their stories, because of the sensitive nature of the abuse. One individual who had experienced bullying, named S.K., was a 19-year-old student attending Yerevan State University when he told his teacher that was interested in writing about the history of sexuality, including homosexuality, in Armenia.⁶⁴ His teacher responded by asking S. if he was gay. She then verbally bullied him to discourage him from writing the paper, telling S. that he lacked the ability to be “objective.”⁶⁵ This type of discrimination is common among university professors, and similar incidents have occurred at Yerevan State University.⁶⁶ Where students choose to write about LGBT-related issues, or to express their sexual identity publicly, their grades may suffer negative consequences.⁶⁷

By failing to ensure that youth are free from discrimination based on sexual orientation and gender identity, including physical and mental abuse by teachers and peers, at the primary, secondary, and university levels, the government of Armenia fails to meet its obligations to protect against discrimination on the basis of sex under Articles 2 and 26.

3. Discrimination in Access to Employment

The LGBT community experiences discrimination based on their sexual orientation in the employment sector.⁶⁸ According to LGBT activists, if an employer learns that an employee is gay, the employer may fire that individual, but cite reasons other than sexual orientation for the

⁵⁹ Bureau of Democracy, Human Rights, & Labor, *supra* note 29; Helsinki Assoc., Report on the Condition of Human Rights in the Republic of Armenia 85 (2011), available at: http://www.hahr.am/files/report2012eng_1.pdf.

⁶⁰ A. Carrol & S. Quinn, *supra* note 12 at 38.

⁶¹ *Id.*

⁶² Skype Interview with Mamikon Hovsepyan, *supra* note 16.

⁶³ Skype Interview with Mamikon Hovsepyan, *supra* note 18; Artmika, *Bullying in Armenia*, UNZIPPED: GAY ARMENIA (Apr. 19, 2012), <http://gayarmenia.blogspot.com/2012/04/bullying-in-armenia.html>.

⁶⁴ Skype Interview with Mamikon Hovsepyan, *supra* note 16.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Skype Interview with Mamikon Hovsepyan, *supra* note 18; Bureau of Democracy, Human Rights, & Labor, *supra* note 29; Helsinki Assoc., Report on the Condition of Human Rights in the Republic of Armenia, *supra* note 59 at 85; Sara Khojoyan, *supra* note 32; Gayane Abrahamyan, *supra* note 40.

termination.⁶⁹ Employers regularly terminate LGBT individuals who work under short-term contracts, which their employers may use as an excuse not to re-hire them.⁷⁰

Once terminated, many LGBT individuals must resort to specific types of employment that are more welcoming to the LGBT community, including food service, hair styling, floral design, and sex work, but these jobs are not easily found.⁷¹ According to one LGBT activist, “most homosexuals get involved in [prostitution] because of financial difficulties.”⁷² Despite the discrimination that the LGBT community faces with respect to employment, individuals do not feel safe reporting these incidents to the police or seeking legal recourse for employment discrimination.⁷³ Without proper action from the state authorities these episodes remain completely hidden and unreported.

4. Discrimination in Access to Housing

The LGBT community in Armenia continues to live in “an atmosphere of intolerance” and faces discrimination in access to housing.⁷⁴ Ostracization by their families and friends forces LGBT individuals to move away from small cities and towns, where discrimination permeates local society, and landlords often refuse to consider LGBT individuals as tenants.⁷⁵ According to LGBT activists based in Yerevan, the LGBT community only feels safe residing in three cities -- Yerevan, Gyumri, and Vanadzor -- where LGBT individuals have a greater chance of accessing healthcare, finding a place to live, and securing a job because of an existing LGBT population.⁷⁶

Despite Article 14.1 of the Constitution of Armenia and Articles 2 and 26 of the Covenant, both of which prohibit discrimination on the basis of sex, the Armenian government has failed to take steps to protect LGBT individuals from discrimination with respect to housing.

B. Article 3 (Equality between Men and Women)

Article 3 provides for the equal treatment of men and women.⁷⁷ Taken together, Article 2 and Article 3 mandate that “[s]tates parties take all necessary steps to enable every person to enjoy” all individual rights recognized in the Covenant.⁷⁸ This means that States must take all steps necessary “to put an end to discriminatory actions, both in the public and the private sector, which impair the equal enjoyment of rights.”⁷⁹

Armenian society places a strong emphasis on women occupying traditional roles of mothers and

⁶⁹ Skype Interview with Mamikon Hovsepyan, Director, *supra* note 18; *see also* Sara Khojoyan, *supra* note 32.

⁷⁰ Skype Interview with Mamikon Hovsepyan, Director, *supra* note 18.

⁷¹ *Id.*; Sara Khojoyan, *supra* note 32; Gayane Abrahamyan, *supra* note 40.

⁷² Sara Khojoyan, *supra* note 32.

⁷³ Skype Interview with Mamikon Hovsepyan, *supra* note 18; Gayane Abrahamyan, *supra* note 40.

⁷⁴ Sara Khojoyan, *supra* note 32.

⁷⁵ Skype Interview with Mamikon Hovsepyan, *supra* note 16.

⁷⁶ *Id.*

⁷⁷ ICCPR, Article 3.

⁷⁸ U.N. Human Rights Comm. [ICCPR], General Comment No. 28: Equality of Rights between men and women (article 3), ¶ 3, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (March 29, 2000) [hereinafter General Comment No. 28].

⁷⁹ General Comment No. 28, *supra* note 78, at ¶ 4.

wives; indeed, single women are often seen as an embodiment of ‘evil and misfortune.’⁸⁰ Thus, women throughout Armenian society experience varying degrees of harmful treatment, including violence against women, particularly domestic violence and spousal abuse, which is widespread in Armenia.⁸¹ Violence is normalized among women, who often do not acknowledge that they suffer from domestic violence, and may be afraid to report such incidents to the police.⁸² The frequency and severity of violence against women -- including against lesbians, bisexual women, and transgender (LBT) women – demonstrates that the State of Armenia has failed to protect women and to ensure the equal treatment of men and women.⁸³

Due to the societal expectation that women occupy traditional roles, women of non-conforming sexual orientation or gender identity remain largely isolated from even gay and bisexual civil society organizations.⁸⁴ These women include lesbian, bisexual, and transgender women. Furthermore, women-to-women sexual relationships were never criminalized under Armenian law, as were relationships between two men. Therefore, when Armenia abolished article 116 of its criminal code, decriminalizing homosexual relationships, these relationships were understood to refer to gay men, rather than to women.⁸⁵ Because of this lack of attention to women who are not heterosexual, and due to the existence of a society in which public affection between women is acceptable and commonplace among heterosexual women, lesbian women may more easily live unmolested by homophobia more than men can.⁸⁶

Despite this, the experiences of LBT women demonstrate increased incidences of harassment, due to their sexual orientation or gender identity. According to a survey conducted by one LGBT group in Armenia among lesbians, 61% of those surveyed had experienced verbal harassment because of their sexual orientation, 31% had been threatened with violence, and 37% had personal property damaged or destroyed. Further, 70% of these women were spat at, while 24% were punched, hit, kicked or beaten because of their sexual orientation. Lesbians also reported high levels of sexual assault: 12% recorded having experienced assault, 20% experienced sexual harassment, and 1.5% had been raped. Importantly, 79% of the women surveyed believed that sexual orientation was the cause of these acts.⁸⁷

Finally, it is noteworthy that lesbians and bisexual women do not appear as a target group in most of the official documents on HIV and AIDS, despite the fact that over 25% of the HIV positive population are women.⁸⁸

C. Article 6 (Right to Life)

⁸⁰ HIV/AIDS in Armenia: A Socio-Cultural Approach’, UNESCO 2005.

⁸¹ Bureau of Democracy, Human Rights, & Labor, *supra* note 29.

⁸² Skype Interview with Mamikon Hovsepyan, *supra* note 18; Bureau of Democracy, Human Rights, & Labor, *supra* note 29.

⁸³ See generally U.N. Committee on the Elimination of all forms of Discrimination against Women (CEDAW), *Concluding Observations*, and U.N. Doc. No. CEDAW/C/GUA/CO7 (Feb. 10, 2009).

⁸⁴ Skype Interview with Mamikon Hovsepyan, *supra* note 16.

⁸⁵ A. Carrol & S. Quinn, *supra* note 12, at 32.

⁸⁶ Skype Interview with an anonymous member of the Queering Yerevan Collective, (May 24, 2012), on file with The George Washington University Law School International Human Rights Clinic.

⁸⁷ A. Carrol & S. Quinn, *supra* note 12, at 32, citing a survey conducted by Armenian NGO *We for Civil Equality*.

⁸⁸ *Id.*, at 44.

Article 6 guarantees the right to life and provides that no person should be arbitrarily deprived of his or her life. The Committee has described Article 6 as “the Supreme right from which no derogation is permitted.”⁸⁹ For example, in its 2011 Concluding Observations on Jamaica, the Committee called upon the State to “closely monitor allegations of extrajudicial killings” and to ensure that all such allegations are “investigated in a prompt and effective manner with a view to eradicating such crimes, bringing perpetrators to justice and hence fighting impunity and providing effective remedies to victims.”⁹⁰ Through its failure to investigate the deaths of gay and bisexual men serving in its army, the government of Armenia fails to meet its obligation under Article 6, as the government fails to ensure that these individuals are not arbitrarily deprived of their lives.

Local human rights groups in Armenia report that there are “an alarming number of non-combat deaths in the army” each year.⁹¹ Despite the lack of official statistics, estimates by Armenian NGOs demonstrate approximately forty deaths each year of men serving in the Armenian army, including battle-related deaths, suicides, non-combat casualties, accidents, and health-related deaths.⁹² While these deaths are typically cited as suicides, local and international human rights groups such as the Helsinki Citizens’ Assembly’s Vanadzor Office and the Helsinki Association for Human Rights report that in many cases, autopsies often reveal that the deceased soldier has been beaten or violated.⁹³ Both fellow soldiers and army personnel are responsible for the beatings and violations.⁹⁴ While it is unclear what percentage of these deaths are of LGBT victims, it has been documented that the harassment and persecution that gay men experience while in the army has led to at least one attempted suicide.⁹⁵

One local NGO reported a case in which a man committed suicide after ten of his comrades in the army raped him.⁹⁶ Additionally, the Helsinki Citizens’ Assembly reported one incident in which Torgom Sarukhanyan, 21, died from an alleged self-inflicted gunshot.⁹⁷ After the Armenian Ministry of Defense investigated the supposed suicide, they arrested three servicemen on charges of incitement to suicide and in 2010 a court sentenced Major Sasun Galstyan to three years of imprisonment for abuse.⁹⁸

While it is unclear whether Sarukhanyan was killed on the basis of his actual or perceived sexual orientation or gender identity, his story is not unique. Without official statistics, it is difficult to know exactly how many of these deaths may be LGBT-related, in particular because there is such extreme pressure for recruits to hide their sexual orientation or gender identity once they are in the army. The Armenian government must take steps to document the causes of these deaths.

⁸⁹ Human Rights Committee, General Comments, General Comment 14, 11th September (1984).

⁹⁰ Human Rights Committee, Concluding Observations: Jamaica, ¶ 16 (2004) UN Doc. CCPR/C/JAM/CO/3.

⁹¹ HUMAN RIGHTS WATCH, *World Report 2012: Armenia* (Jan. 2012), http://www.hrw.org/sites/default/files/related_material/armenia_0.pdf.

⁹² Skype Interview with Mamikon Hovsepian, Director, *supra* note 18.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ A. Carrol & S. Quinn, *supra* note 12 at 38.

⁹⁶ Skype Interview with Mamikon Hovsepian, Director, *supra* note 18.

⁹⁷ HUMAN RIGHTS WATCH, *supra* note 91.

⁹⁸ *Id.* In September 2010, a YouTube video was released that showed Galstyan beating and humiliating two conscripts. *Id.*

In order to ensure individuals' right to life regardless of their sexual orientation or gender identity, Armenia must closely monitor and promptly investigate army deaths. They must also implement safeguards to ensure the end to harassment and threats that occur within the army, in order to prevent further deaths from occurring.⁹⁹ These failures by the government of Armenia to protect the life of LGBT individuals in the army, to fully investigate alleged crimes on the basis of sexual orientation and/or gender identity, and where appropriate, ensure that such crimes are properly prosecuted and punished, constitute a direct violation of the government's responsibility to right to life under Article 6.

D. Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment; Right to Liberty and Security of Persons; and Treatment of Persons Deprived of Liberty (Arts. 7, 9, 10)

Articles 7, 9 and 10(1), recognize the right of every individual to be free from torture; arbitrary arrest; and cruel, inhuman or degrading treatment or punishment. In its General Comments on Article 7, the Committee has noted that States have a positive obligation to provide specific training for law enforcement officers and must hold responsible all those who violate the prohibition on torture.¹⁰⁰ The time and place of all interrogations must be recorded, together with the names of all those present, and this information should be available for purposes of judicial or administrative proceedings. In its General Comments on Article 10, the Committee stated that "treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule...[which] must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."¹⁰¹

In recent Concluding Observations, the Committee called for an end to "enforced disappearances," "arbitrary detention,"¹⁰² "torture" and "forced displacement."¹⁰³ It has reaffirmed that a judge should not admit evidence obtained under torture,¹⁰⁴ and where allegations of mistreatment in detention have been made, the State must put in place the appropriate structures to ensure that all claims are robustly and transparently investigated.¹⁰⁵

The Armenian government fails to meet its obligations under Articles 7, 9, and 10(1) with regard to the LGBT population in two primary areas: 1) the prohibition of torture and cruel, inhuman or degrading treatment or punishment, and 2) the right to liberty and security of persons. Gay and bisexual men suffer from physical and mental abuse, particularly while serving in the army or while detained in prison, and the police routinely arrest transgender individuals on arbitrary charges.

⁹⁹ See Human Rights Committee, Concluding Observations: Jamaica, ¶ 16 (2004) UN Doc. CCPR/C/JAM/CO/3.

¹⁰⁰ Human Rights Committee, General Comment No. 20, 10 March, (1992).

¹⁰¹ Human Rights Committee, General Comment No. 21, ¶ 4, 10 April, (1992).

¹⁰² Human Rights Committee, Concluding Observations, Togo, ¶ 17, UN Doc CCPR /C/TGO/CO/4, 18 April 2011.

¹⁰³ Human Rights Committee, Concluding Observations, Ethiopia, ¶ 16 UN Doc CCPR/C/ETH/CO/1, 25 July 2011.

¹⁰⁴ Human Rights Committee, Concluding Observations, Kazakhstan, ¶ 22, UN Doc CCPR/C/KAZ/CO/1, 21 July 2011.

¹⁰⁵ *Id.*

1. Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment

The prohibition of torture relates not only to physical abuse, but also to “acts that cause mental suffering to the victim,” including intimidation and threats.¹⁰⁶ The Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment noted that a considerable proportion of incidents of torture are carried out against individuals on the basis of their sexual orientation and gender identity.¹⁰⁷ In particular, the Special Rapporteur reported, “[m]embers of sexual minorities have been subjected, *inter alia*, to harassment, humiliation and verbal abuse relating to their real or perceived sexual orientation or gender identity and physical abuse, including rape and sexual assault.”¹⁰⁸

In Armenia, LGBT individuals suffer from both psychological and physical torture, due to a culture that promotes violence and mental abuse against homosexuals.¹⁰⁹ For example, an openly gay Armenian man was abducted by his neighbors, taken to an apartment, forced to remove his clothing, and then was beaten.¹¹⁰ Another man, Armen, was physically beaten by his parents and his brother and subsequently thrown out of his home when they learned that he was gay.¹¹¹ Despite the requirements of the Covenant and Armenia’s Constitutional prohibition against discrimination on the basis of sex, the government has failed to take steps to prevent physical and mental abuse against LGBT individuals and punish those who are accountable.

More specifically, gay and bisexual men are at particular risk of torture while serving in the army. Men who are openly gay in the army suffer psychological and physical abuse, including sexual violations, and are often discharged for having the “homosexuality disease.”¹¹² In general, studies demonstrate that LGBT individuals, including youth, are at particular risk of suicide when they suffer psychological and physical abuse.¹¹³

According to multiple sources, the army is reluctant to recruit LGBT individuals, but if the army learns that its soldiers are openly gay, it sends them to a psychiatric hospital for a psychological evaluation.¹¹⁴ Soldiers can spend anywhere from one day to a few weeks undergoing various evaluations and testing to determine whether they are gay.¹¹⁵ After testing, soldiers commonly

¹⁰⁶ Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, ¶ 3, U.N. Doc. No. A/56/156, (July 3, 2001), *available at*: <http://www.un.org/documents/ga/docs/56/a56156.pdf>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Skype Interview with Mamikon Hovsepyan, *supra* note 18.

¹¹⁰ *Id.*

¹¹¹ Marianna Grigoryan, *supra* note 40.

¹¹² Skype Interview with Mamikon Hovsepyan, *supra* note 18; Bureau of Democracy, Human Rights, & Labor, *supra* note 29.

¹¹³ *See, e.g.*, Suicide Risk and Prevention for Lesbian, Gay, Bisexual, and Transgender Youth (Suicide Prevention Res. Center, 2008).

¹¹⁴ Skype Interview with Mamikon Hovsepyan, *supra* note 18; A. Carrol & S. Quinn, *supra* note 12 at 38; Bureau of Democracy, Human Rights, & Labor, *supra* note 29.

¹¹⁵ A. Carrol & S. Quinn, *supra* note 12 at 38.

receive a certification that they have a psychological or mental disorder for being gay, subsequently may be discharged from service.¹¹⁶

Based on the 2001 Armenian Ministry of Defense Order No. 378, homosexuality is considered an illness and homosexuals, therefore, are considered unfit for service in the army.¹¹⁷ Additionally, the Ministry of Defense is purportedly concerned that gay men “would be abused by fellow servicemen.”¹¹⁸ While these cases are rarely publicized, one case was reported in which a young man serving in the Armenian army was diagnosed and hospitalized with “homosexuality disease.”¹¹⁹

If a gay or bisexual man remains in service, he may be isolated and suffer from mental abuse, including intimidation and bullying by peers and army officials.¹²⁰ Gay soldiers undergo “constant humiliation through actions such as being given a separate set of dishes with a hole in the plate, being given the dirtiest tasks, such as cleaning the toilet (sometimes with his own toothbrush), being assigned to the most distant barrack or the one with the worst conditions.”¹²¹ The situation for gay or bisexual men located in military units in occupied territories, such as in parts of Azerbaijan, may be even worse. For example, while soldiers are housed in homes abandoned by Azerbaijanis, some homosexual servicemen may be required to dwell in separated suburban homes.¹²²

Additionally, other soldiers often commit physical violence and sexual assaults against fellow gay and bisexual servicemen.¹²³ On February 17, 2006, *Armenia Now* reported that an 18-year-old serviceman had been repeatedly raped and beaten by commanding officers.¹²⁴ Additionally, incidents have been reported in which the Armenian army has used “hazing” techniques on gay men, such as “confusing, tricking, and producing fear” in them.¹²⁵ Even if an LGBT individual requires treatment as a result of recurring physical abuse, he may be denied medical attention because of his actual or perceived sexual orientation or gender identity.¹²⁶

The situation for gay and bisexual men in prison is parallel to the army; openly gay prisoners routinely face physical and mental abuse.¹²⁷ Prisoners may view gay and bisexual individuals as

¹¹⁶ *Id.* at 38; Bureau of Democracy, Human Rights, & Labor, *supra* note 29.

¹¹⁷ A. Carrol & S. Quinn, *supra* note 12 at 38.

¹¹⁸ Bureau of Democracy, Human Rights, & Labor, *supra* note 29.

¹¹⁹ *Id.*

¹²⁰ Skype Interview with Mamikon Hovsepyan, *supra* note 18.

¹²¹ A. Carrol & S. Quinn, *supra* note 12 at 38; *see also* Helsinki Assoc., Annual Report on Human Rights in Armenia, *supra* note 59 at 27.

¹²² Helsinki Assoc., Annual Report on Human Rights in Armenia, *supra* note 59 at 27.

¹²³ *Id.*; A. Carrol & S. Quinn, *supra* note 12 at 38; PUBLIC INFORMATION AND NEED OF KNOWLEDGE NGO, *Young guy could be raped at the army* (Mar. 2009), <http://pinkarmenia.blogspot.com/2009/03/young-guy-could-be-raped-at-army.html>; Artmika, *Brutality of Homophobia in Armenia*, UNZIPPED: GAY ARMENIA (Mar. 12, 2009), <http://gayarmenia.blogspot.com/2009/03/brutality-of-homophobia-in-armenia.html>.

¹²⁴ *Violence in the Ranks: Army Conscript Says He Was Raped by Comrades*, ARMENIANOW (Feb. 17, 2006), http://armenianow.com/news/6189/violence_in_the_ranks_army_conscri.

¹²⁵ A. Carrol & S. Quinn, *supra* note 12 at 38.

¹²⁶ Helsinki Assoc., Annual Report on Human Rights in Armenia, *supra* note 59 at 27.

¹²⁷ Skype Interview with Mamikon Hovsepyan, *supra* note 16.

sexual objects and consistently rape them in prison.¹²⁸ Rape of a detained individual is an act that the Committee has interpreted as torture.¹²⁹

Moreover, Armenian prisons are overpopulated,¹³⁰ chaotic, and “particularly cruel places for LGBT people.”¹³¹ LGBT detainees experience humiliating discrimination in prison, because they are “forced to do some of the most degrading jobs,”¹³² and are kept in separate cells because other inmates refuse contact with them.¹³³ Fellow inmates frequently subject LGBT individuals in detention to emotional, physical, and sexual abuse, treatment that prison officials fail to prevent and/or adequately punish.¹³⁴ Additionally, prison officials may deny HIV-positive inmates access to requisite treatment.¹³⁵

In both the army and prison, the perpetrators may be officials themselves, other peers, or other incarcerated individuals. Because the State of Armenia controls all activities within the army and its prisons, the State is responsible for all sexual violence by individuals acting in their official capacity and by individual private actors against LGBT individuals in the army or in prison, under Articles 7, 9, and 10(1).

2. Right to Liberty and Security of Persons

The government of Armenia fails to provide for the right to liberty and security of LGBT individuals, particularly transvestite sex workers. Documented incidents of arbitrary arrest in Armenia, including the arbitrary arrests of transvestite sex workers who congregate in Central Park in Yerevan, constitute violations of Article 9(1). Police threaten transvestite sex workers and arbitrarily take them to police stations where they must submit to both STI and HIV testing.¹³⁶ While submitting to this testing, occasionally the police have held individuals in custody overnight with no explanation. Moreover, transvestite sex workers regularly face physical attacks and beatings and receive no protection from the police.¹³⁷ It has been reported that the police have blacklisted the cell phone numbers of LGBT sex workers from the park so they do not have to respond to their calls for help.¹³⁸ By threatening, and in some cases, illegally detaining transvestites who are engaged in sex work, the police violate the prohibition on arbitrary arrests under Article 9.

E. Articles 16 and 17 (Legal Personhood and Right to Privacy)

¹²⁸ *Id.*

¹²⁹ CCPR/C/JAM/CO/3 (Advance Edited Version) Geneva, 17 October – 4 November 2011, *available at*: <http://www2.ohchr.org/english/bodies/hrc/hrcs103.htm>.

¹³⁰ Skype Interview with Mamikon Hovsepyan, *supra* note 16.

¹³¹ A. Carrol & S. Quinn, *supra* note 12 at 38.

¹³² Bureau of Democracy, Human Rights, & Labor, *supra* note 29.

¹³³ A. Carrol & S. Quinn, *supra* note 12 at 38.

¹³⁴ *Id.*

¹³⁵ Skype Interview with Mamikon Hovsepyan, *supra* note 30.

¹³⁶ *Id.*; Helsinki Assoc., Report on the Condition of Human Rights in the Republic of Armenia, *supra* note 59 at 92-93.

¹³⁷ Helsinki Assoc., Report on the Condition of Human Rights in the Republic of Armenia, *supra* note 59 at 91; Gayane Mkrtychyan, *supra* note 40; Sara Khojoyan, *supra* note 32.

¹³⁸ Helsinki Assoc., Report on the Condition of Human Rights in the Republic of Armenia, *supra* note 59 at 91.

Articles 16 and 17 recognize the rights to legal personhood and privacy respectively. Under Article 16, everyone has the “the right to recognition everywhere as a person before the law.” Article 17(1) states that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.” Article 17(2) further provides that “everyone has the right to the protection of the law against such interference or attacks.” In its General Comment 16, the Committee noted that Article 17 affords “protection to personal honour and reputation and [that] States are under an obligation to provide adequate legislation to that end. Provision must also be made for everyone effectively to be able to protect himself against any unlawful attacks that do occur and to have an effective remedy against those responsible.”¹³⁹ In the landmark decision of *Toonen v Australia* in 1994, the Committee found that laws that criminalize consensual same sex sexual acts expressly between adults violate the privacy protections of Article 17.¹⁴⁰ Read together, Articles 16 and 17 create an obligation for States to recognize the self-identified gender of transgender persons, which Armenia has failed to do.

Legally, transgender individuals in Armenia are unable to receive sex change operations or change their names or legal statuses.¹⁴¹ There are no laws in Armenia with regard to legal recognition of transgender individuals’ new and/or preferred gender.¹⁴² Moreover, there are no documented cases of transgender individuals who have attempted to legally change their sex, name, or status.¹⁴³ In *Goodwin v. UK* (2002), the ECtHR held that the UK government failed to protect Article 8 (right to privacy) and Article 12 (right to marry), in conjunction with Article 14 (non-discrimination), of the Convention by denying a post-operative transsexual’s right to be recognized in her new gender which, as a consequence, would affect the right to formally obtain the status as a woman with her own separate and distinct identity for National Insurance purposes, as well as her fundamental right to marry a person of the opposite sex. Furthermore, according to the judges, “the lack of legal recognition of the change of gender of a post-operative transsexual lies at the heart of the applicant’s complaints under Article 14 of the Convention.”¹⁴⁴ The Court also emphasized the importance of the provisions of Article 8 and their relevance to the case by arguing that “gender identity is one of the most intimate and private aspect of any person’s life”¹⁴⁵.

¹³⁹ U.N. Human Rights Comm, *General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17)*, ¶ 11, (1988), available at <http://www.unhcr.ch/tbs/doc.nsf/0/23378a8724595410c12563ed004aeecd?Opendocument>.

¹⁴⁰ Whatever their manifestation, homophobia and transphobia are often at core a violation of the right to privacy. The consensual sexual acts an LGBT individual engages in as part of her private life is often the justification for a range of human rights violations committed against her. In this way, Article 17 cannot be isolated from those other abuses which LGBT individuals experience. Rather, it must be seen as intersecting with all such rights violations occurring under the Covenant. *Toonen v. Australia*, CCPR/C/50/D/488/1992, UN Human Rights Committee (HRC), 4 April 1994, available at: <http://www.unhcr.org/refworld/docid/48298b8d2.html> [accessed 28 September 2011].

¹⁴¹ Marukyan, Edmon. *Study on Homophobia, Transphobia and Discrimination of Grounds of Sexual Orientation and Gender Identity, Legal Report: Armenia*. The Danish Institute for Human Rights 10 (November, 2010).

¹⁴² *Id.*

¹⁴³ *Id.*; Skype Interview with Mamikon Hovsepyan, Director, *supra* note 16.

¹⁴⁴ *Goodwin v United Kingdom*, application no. 28957/95, 11 July 2002, para. 108.

¹⁴⁵ *Van Kuck v. Germany*, application no. 35968/97, 12 June 2003, para. 12.

Armenia's failure to provide transgender individuals with a mechanism by which society recognizes the self-identified gender of transgender individuals constitutes a violation of Articles 16 and 17 of the Covenant. The jurisprudence of the European Court of Human Rights, which is binding on the State of Armenia, also supports this conclusion. In *L. v. Lithuania*, for example, the European Court noted that States are required "to implement the recognition of the gender change in postoperative transsexuals through, inter alia, amendments to their civil-status data, with its ensuing consequences."¹⁴⁶

F. Articles 19 and 20 (Freedom of Opinion and Expression, and Prohibition on Hate Speech)

Article 19 of the Covenant affirms the rights of free expression and opinion. Article 20 places an obligation on State parties to prohibit hate speech,¹⁴⁷ which the Covenant interprets as an obligation to prohibit "[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." In General Comment No. 34, published in 2011, the Committee stated, "Articles 19 and 20 are compatible with and complement each other. The acts that are addressed in Article 20 are all subject to restriction pursuant to article 19, paragraph 3." With regards to hate speech, in its previous Concluding Observations regarding Poland, the Committee recommended that the State party "legally prohibit of discrimination on the grounds of sexual orientation or gender identity; amend the Penal Code to define hate speech and hate crimes based on sexual orientation or gender identity among the categories of punishable offense; and intensify awareness raising activities aimed at the police force and wider public."¹⁴⁸ The Committee should adopt the same recommendation with respect to Armenia.

Armenia does not have a law that directly prohibits hate speech, and does not criminalize hate speech activities. Indeed, it was one of few countries in the region that did not submit information to the ODIHR report "Hate Crimes in the OSCE Region: Incidents and Responses Annual Report for 2006."¹⁴⁹ Hateful and inflammatory speech against the LGBT community is frequently witnessed in Armenia. Various nationalist groups are the main perpetrators of anti-LGBT speech, however, there have been no reported cases of hate speech or hate crimes against LGBT individuals. The nationalist groups use mass media, including television, newspapers, and the Internet, to spread their anti-LGBT message. In addition, some groups promote hate speech through homophobic and discriminatory posters spread across Yerevan, where they maintain a strong presence.

Mek Azg (One Nation) is a neo-Nazi nationalist movement that openly discriminates against individuals on the basis of their sexual orientation and gender identity. One Nation hangs posters around Yerevan and other major cities in the country that denounce the LGBT community. For

¹⁴⁶ *L. v. Lithuania*, no. 27527/03, ECHR 2008.

¹⁴⁷ Barbora Bukovska, Agnes Callamard, & Sejal Parmar, *Towards an Interpretation of article 20 of the ICCPR: Thresholds for the prohibition of incitement to hatred* 3 (February 2010).

¹⁴⁸ Human Rights Committee, Concluding Observations: Poland, ¶ 16 (2010) UN Doc. CCPR/C/POL/CO/6.

¹⁴⁹ The Danish Institute for Human Rights, COWI, *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Sociological Report: Armenia*, [hereinafter "COWI Study"], p. 8, available at www.coe.int/t/commissioner/source/lgbt/armeniasociological_e.pdf.

example, one poster by One Nation states, “Say no to homosexuality, and to erotic websites.”¹⁵⁰ One Nation has also developed networks and alliances with other Armenian nationalist and patriotic groups in Armenia, thereby fostering widespread discrimination against the LGBT community.¹⁵¹ These networks and alliances distribute anti-gay flyers and posters, target LGBT individuals through social media, and threaten to physically assault members of the LGBT community.¹⁵²

In response to the hateful posters by One Nation, PINK asked the Armenian government to protect the LGBT community’s right to be free from hate speech and discrimination. In March 2012, PINK sent an official letter to the Armenian Ministry of Justice regarding the One Nation posters. In its letter, PINK argued that Armenian Constitution prohibits the dissemination of One Nation’s posters, as Article 14.1 prohibits discrimination and Article 47 prohibits the spread of hate and violence.¹⁵³ The Ministry of Justice responded that the posters were permitted under Article 27 of the Constitution, which allows for freedom of speech.¹⁵⁴ Therefore, the Armenian government has fostered stigma and discrimination against the LGBT community by failing to criminalize hateful speech on the basis of sexual orientation and gender identity.

The Armenian Aryan Order, a neo-Nazi group that has openly campaigned against homosexuality, also promotes hate speech in Armenia. In 2007, the United States nominated career ambassador Richard Hoagland as the Ambassador of Armenia. His nomination was eventually withdrawn for undisclosed reasons, and there were unsubstantiated rumors that Richard Hoagland was gay. When he was not appointed as Ambassador to Armenia, the Armenian Aryan Order stated that it, “expresse[d] its gratitude to all the sons of the Armenian nation, be there in Armenia or in Diaspora, who struggled against the nomination of the homosexual Richard Hoagland as US Ambassador.”¹⁵⁵ Furthermore, the group also claimed that supporters “freed the Armenian nation from the sad perspective of having a sick Ambassador.”¹⁵⁶ It should also be noted that Hoagland’s nomination inspired ire amongst these groups not only because of his supposed sexual orientation, but also because he had not publicly spoken out against the Armenian Genocide.¹⁵⁷ Regardless of the reasons for the response to his nomination, it is clear that the Armenian Aryan Order’s vitriol toward him took on an ardently homophobic character.

The Armenian Government’s lack of response to this hateful speech against the LGBT community, especially when it can be interpreted as incitement to action, is striking. For

¹⁵⁰ *IGLYO Condemns the use of hate speech against LGBTQ people in Armenia*, IGLYO, http://www.iglyo.com/index.php?option=com_content&task=view&id=227&Itemid=34

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Constitution of the Republic of Armenia, *available at*:

<http://www.parliament.am/parliament.php?id=constitution&lang=eng>.

¹⁵⁴ Skype Interview with Mamikon Hovsepyan, *supra* note 16.

¹⁵⁵ Artmika, *Attention seeking bigots say “Thanks” for withdrawal of Hoagland’s nomination as US envoy to Armenia*, UNZIPPED: GAY ARMENIA (Aug. 2007), <http://gayarmenia.blogspot.com/2007/08/attention-seeking-bigots-say-thanks-for.html>.

¹⁵⁶ *Id.*

¹⁵⁷ See Armenian National Committee of America, ANCA Urges Senate to Block Hoagland Nomination, July 18, 2006, http://www.anca.org/press_releases/press_releases.php?prid=976, *see also* Skype Interview with anonymous member of the Queering Yerevan Collective, *supra* note 86.

example, the Chairman of Union of Armenian Aryanship, Armen Avetisyan claimed publicly that some senior officials were homosexual and promised to produce a list of their names. He then sent a list of seven alleged homosexuals occupying senior posts to the President and Prime Minister and urged them to take measures “to cleanse the nation of these diseased persons.”¹⁵⁸ The names were never published nor did the government make any statements or take any measures against these defamatory activities and statements.

Sadly, the most striking examples of hate speech documented by this report are those that have occurred most recently in Armenia. On May 8, 2012 a series of events unfolded that have terrorized the LGBT community, and have brought the question of hate speech and incitement of violence to have everyday relevance for the LGBT community in Armenia. On that date, ultra-nationalists fire-bombed the gay-friendly DIY club in Yerevan. Several days later, extremists vandalized the club with anti-gay graffiti.¹⁵⁹ This incident occurred in the wake of a public outcry against one of the managers of the club, Armine "Tsomak" Oganezova, who had traveled to Turkey to participate in a gay pride parade there. The bombing took place on an important nationalist holiday, and the attack targeted, as demonstrated by the graffiti left in the burned-out club, individuals who were viewed not only as LGBT, but as anti-nationalist because of their association with Turkey.

Not only was this act a high-profile demonstration of the physical danger that ultra-nationalist groups present to the LGBT community, but also of the ongoing incitement to violence that they espouse. The graffiti left on the walls of the club after the attack read: “Tsomak we won’t let you breathe,” and, “no matter how much you renovate, we will come again.”¹⁶⁰ Despite these clear threats against a prominent gay figure in the community, the government has taken no steps to curb this inciteful speech. In fact, although two young men were arrested on suspicion of having committed the attacks, members of the government opposition party, the Armenian Revolutionary Federation (ARF) paid their bail, and one lawmaker defended the action, claiming that the attackers had “acted the right way, in the context of our societal and national ideals.”¹⁶¹

In the wake of these attacks, public conversation has only increased around LGBT issues in Armenia, as Neo-Nazi groups’ opposition to queer lifestyle is framed in within anti-nationalist rhetoric.¹⁶² Two young boys who claim to have committed these violent acts were interviewed on Armenian television, claiming, “[M]y point is that DIY should not exist in Armenia and people like her [Tsomak] should not exist here. For example Tsomak took part in a gay party in Turkey -- she presents DIY as a club for normal free people but every gay is here.”¹⁶³

The government’s response to these attacks and threats against the life of a prominent gay activist in Armenia has demonstrated the lack of seriousness with which the government takes its

¹⁵⁸ COWI Study, *supra* note 148, at 13.

¹⁵⁹ Agence France Press, Armenia Hate Attacks Expose Anti-Gay Hatred, (May 25, 2012) <http://www.france24.com/en/20120525-armenia-hate-attacks-expose-anti-gay-hatred>.

¹⁶⁰ Youtube, “Another attack on DIY Club” (May 25, 2012) <http://www.youtube.com/watch?NR=1&feature=endscreen&v=Q0rGf4FieHQ>.

¹⁶¹ AFP *supra* note 156.

¹⁶² Nancy Agabian, The Armenian Weekly, *Letter: You Cannot Threaten, Condone, or Enact Violence Against LGBT Armenians* (May 21, 2012).

¹⁶³ Youtube, “The Self-Confession of Facists,” (May 20, 2012) <http://www.youtube.com/watch?v=I05XhjSQTh8&feature=relmfu>.

obligations under Article 20 of the ICCPR. Shortly after the bombing, the deputy speaker of Parliament went on record saying, "As an Armenian citizen and member of (the ruling) national-conservative party, I find the rebellion of the two young Armenian people against the homosexuals... completely right and justified."¹⁶⁴ On May 21, 2012, ARF MP Artur Aghabekyan stated that he "welcomes young people who do not simply ring the alarm bell but make practical steps in fighting against those who defame our national values and faith."¹⁶⁵ These statements by government officials are unequivocal calls of action against the LGBT community, in blatant violation of Armenia's obligation under ICCPR Article 20 to prevent hate speech.

Only two weeks after this event, a variety of civil-society groups, including some LGBTI groups, organized a "March for Diversity" in Yerevan to celebrate the United Nations "World Day of Cultural Diversity."¹⁶⁶ Although this event represented a broad cross-section of Armenian civil society, Neo-Nazi groups attacked the marchers, labeling the march as a gay pride parade. They attacked marchers with virulent speech and with physical violence.¹⁶⁷ Police intervened to prevent further violence from occurring, but the civil society groups' right to freedom of expression under Article 19 was severely compromised, as evidenced by their inability to hold a peaceful rally commemorating diversity without it being attacked by angry anti-gay mobs.

The on-going pattern of hate speech as tolerated by the government of Armenia demonstrates that under Article 20 of the Covenant, Armenia has failed its obligation to protect the LGBT community from all hate speech. After years of public hateful speech toward LGBT people, nationalist and/ or neo-Nazi groups finally acted on their threats of violence with the bombing of a gay-friendly club, and have continued since then to speak out regarding the need to cleanse Armenia of LGBT people, considered to be an anti-nationalist threat to the nation. The Armenian government must take every possible measure to stem this rising tide of vitriolic language before it incites any more violence against the LGBT community.

¹⁶⁴ AFP *supra* note 156.

¹⁶⁵ Agabian *supra* note 158.

¹⁶⁶ Nareg Seferian, *A Good Day for Homophobia in Yerevan* Armenian Weekly (May 22, 2012), <http://www.armenianweekly.com/2012/05/22/a-good-day-for-homophobia-in-yerevan/>; Yelena Osipova, *Diversity March in Yerevan Attacked by Ultra-Nationalists*, <http://lena-globalchaos.blogspot.fr/2012/05/diversity-march-in-yerevan-hijacked-by.html>; *Neo-nazi attack Diversity march in Armenia capital Yerevan calling it "gay pride UNZIPPED: GAY ARMENIA* (May, 2012), <http://gayarmenia.blogspot.fr/2012/05/neo-nazi-attack-diversity-march-in.html>.

¹⁶⁷ *Id.*

G. Recommendations

The State of Armenia must adopt legislative, administrative, and judicial measures to ensure respect, protection, and promotion of, and minimize violation of, human rights without any distinction based on an individual's sexual orientation or gender identity. To that end, the Human Rights Committee should recommend:

1. Armenia should adopt anti-discrimination legislation that condemns discrimination based on sexual orientation or gender identity.
2. Armenia should take appropriate measures to end all discrimination against individuals on the basis of their sexual orientation and gender identity by adopting comprehensive anti-discrimination legislation. In particular, the State party should introduce a comprehensive system of laws that criminalize hate speech and discourage statements by public officials that foster discrimination against LGBT people.
3. Armenia should take action to end all violence committed against individuals on the basis of their sexual orientation and/or gender identity in the Armenian army or who are detained in prison. In particular, the State party should protect LGBT persons from discrimination, physical and mental torture, and degrading treatment. The State party should revise the military code and put in place measures to fully investigate alleged crimes on the basis of sexual orientation and/or gender identity, and where appropriate, ensure that such crimes are properly prosecuted and punished.
4. Armenia should take appropriate measures to ensure that all persons have the enjoyment of their rights and are entitled to access basic services, such as education and employment, without discrimination on the basis of their sexual orientation and gender identity. In particular, the State Party should pay special attention to undertake these efforts outside of the capital city of Yerevan.
5. Armenia should take steps to improve its public health campaign to end discrimination against LGBT persons infected with HIV/AIDS.
6. Armenia should adopt appropriate laws that permit transgender persons to legally transition, and to receive identity documents that reflect an individual's identified gender.

H. Question to the State party

1. What is the State party doing to address discrimination on grounds of sexual orientation and gender identity?
2. What is the State party doing to address hate speech and homophobic statements by public officials, which are detrimental to the full exercise of the right to freedom of expression?
3. What is the State party doing to protect individuals from physical and mental torture, and degrading treatment on grounds of their real or perceived sexual orientation or gender identity, particularly in the Armenian army and among detainees?
4. What is the State party doing to legally recognize sex and name that reflect the individual's gender identity in the case of transgender people?