



# LESS EQUAL

LGBTI HUMAN RIGHTS DEFENDERS IN ARMENIA, BELARUS,  
KAZAKHSTAN, AND KYRGYZSTAN

AMNESTY  
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# GLOSSARY

| WORD            | DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| BISEXUAL        | A person who is emotionally and sexually attracted to persons of more than one sex <sup>1</sup>                                                                                                                                                                                                                                                                                                     |
| GENDER IDENTITY | Each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms <sup>2</sup>      |
| CISGENDER       | Cisgender people are individuals whose gender expression or gender identity accords with conventional expectations based on the physical sex that they were assigned at birth <sup>3</sup>                                                                                                                                                                                                          |
| DISCRIMINATION  | The different treatment of someone, in law or in practice, in a way that impairs or nullifies the enjoyment of their rights, because of a characteristic such as ethnic origin, religion, sexual orientation or gender identity <sup>4</sup>                                                                                                                                                        |
| GAY             | Refers to a man who is emotionally and/or sexually attracted to other men <sup>5</sup>                                                                                                                                                                                                                                                                                                              |
| GENDER MARKER   | A gender marker is a gendered designator that appears on an official document such as a passport or an identity card. It may be an explicit designation such as "male" or "female", a gendered title such like Ms or Mr, a professional title, a gendered pronoun, or a numerical code which uses particular numbers for men and for women (for example, odd numbers and even numbers) <sup>6</sup> |
| HATE CRIME      | A "bias-motivated" crime committed against a person because of their real or perceived identity, or membership of a group, defined by personal characteristics such as disability, ethnicity, gender identity, race, sexual orientation, or social or economic status. <sup>7</sup>                                                                                                                 |
| HETEROSEXUAL    | Refers to a person who is sexually and emotionally attracted to people of a different gender                                                                                                                                                                                                                                                                                                        |
| HOMOPHOBIA      | Unreasonable anger, intolerance or hatred toward homosexuality <sup>8</sup>                                                                                                                                                                                                                                                                                                                         |
| HOMOSEXUAL      | Refers to a person who is sexually and emotionally attracted to people of the same gender                                                                                                                                                                                                                                                                                                           |

<sup>1</sup> ILGA Europe, "ILGA-Europe Glossary," ILGA Europe, accessed August 25, 2017, <http://old.ilga-europe.org/home/publications/glossary>.

<sup>2</sup> The Yogyakarta Principles, "The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity," 2007, 6, [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm).

<sup>3</sup> Amnesty International, "The State Decides Who I Am: Lack of Gender Recognition for Transgender People in Europe" (London: Amnesty International, 2014), 16.

<sup>4</sup> Amnesty International, "Armenia: No Space for Difference" (London: Amnesty International, 2013), 10.

<sup>5</sup> ILGA Europe, "ILGA-Europe Glossary."

<sup>6</sup> Amnesty International, "The State Decides Who I Am: Lack of Gender Recognition for Transgender People in Europe," 16.

<sup>7</sup> See Amnesty International, "Targeted by Hate, Forgotten by Law: Lack of a Coherent Response to Hate Crimes in Poland" (London: Amnesty International, 2015), 9, for a detailed list of the international standards on hate crimes.

<sup>8</sup> ILGA Europe, "ILGA-Europe Glossary."

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| WORD               | DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| HRD                | Human Rights Defender. Amnesty International considers an HRD to be any person who, individually or in association with others, acts to defend and/or promote human rights at the local, national, regional or international levels, without resorting to or advocating hatred, discrimination or violence                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| INTERSEX           | An umbrella term used to describe a person whose genital, gonadal, chromosomal or hormonal characteristics do not correspond to the given standard for male or female categories of sexual or reproductive anatomy. Intersex variations may take different forms and cover a wide range of traits. The terms intersex bodied, intersexed or intersexuality can also be ways of naming the diversity of sex characteristics <sup>9</sup>                                                                                                                                                                                                                                                                                                                  |
| LESBIAN            | Refers to a woman who is sexually and emotionally attracted to other women <sup>10</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| LGBTI              | Lesbian, gay, bisexual, transgender, intersex                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| MSM                | Men who have sex with men (but don't necessarily identify as gay or bisexual) <sup>11</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| "OUT"              | Being openly lesbian, gay, bisexual, transgender, or intersex. To "come out" is to reveal one's identification as a lesbian, gay, bisexual, trans or intersex person. To be "outed" is when a person's identification as lesbian, gay, bisexual, trans or intersex person is revealed without consent <sup>12</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| QUEER              | An umbrella term that encompasses many identities and roles that do not fit within heteronormative and cisnormative frameworks. Queer theory challenges social norms concerning gender and sexuality, and claims that gender roles are social constructions. <sup>13</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| SEXUAL ORIENTATION | Each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender <sup>14</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| SOGI               | Sexual orientation and gender identity                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| TRANSGENDER        | Transgender, or trans, people are individuals whose gender expression or gender identity differs from conventional expectations based on the physical sex they were assigned at birth. A transgender woman is a woman who was assigned the "male" sex at birth but has a female gender identity; a transgender man is a man who was assigned the "female" sex at birth but has a male gender identity. Not all transgender individuals identify as male or female: "transgender" is a term that includes members of third genders, as well as individuals who identify as more than one gender or no gender at all. Transgender individuals may or may not choose to undergo some, or all, possible forms of gender reassignment treatment <sup>15</sup> |
| TRANSPHOBIA        | Refers to negative cultural and personal beliefs, opinions, attitudes and behaviours based on prejudice, disgust, fear or hatred of transpeople or against variations of gender identity and gender expression <sup>16</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| WSW                | Women who have sex with women (but who don't necessarily identify as lesbian or bisexual) <sup>17</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

<sup>9</sup> Amnesty International, "First, Do No Harm: Ensuring the Rights of Children with Variations of Sex Characteristics in Denmark and Germany" (London: Amnesty International, 2017).

<sup>10</sup> ILGA Europe, "ILGA-Europe Glossary".

<sup>11</sup> ILGA Europe, "ILGA-Europe Glossary".

<sup>12</sup> ILGA Europe, "ILGA-Europe Glossary".

<sup>13</sup> ILGA Europe, "ILGA-Europe Glossary".

<sup>14</sup> The Yogyakarta Principles, "The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity," 6.

<sup>15</sup> Amnesty International, "The State Decides Who I Am: Lack of Gender Recognition for Transgender People in Europe," 17.

<sup>16</sup> ILGA Europe, "ILGA-Europe Glossary".

<sup>17</sup> ILGA Europe, "ILGA-Europe Glossary".

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# 1. EXECUTIVE SUMMARY

Lesbian, gay, bisexual, transgender and intersex (LGBTI) rights have emerged as one of the most contentious human rights issues across Eastern Europe and Central Asia since the break-up of the Soviet Union in the early 1990s. While the gradual establishment of grassroots LGBTI rights groups in the region has resulted in some visibility for LGBTI people, this has led to a fierce backlash from the majority. The introduction of “LGBTI propaganda laws” in Russia and the targeting and forced disappearing of gay men in Chechnya are just two examples of this backlash. While the global spotlight on the plight of LGBTI people in this region has been focussed on Russia, the situation of LGBTI people – and of activism for LGBTI rights – in other countries in Eastern Europe and Central Asia has generally received less attention from the international community.

Amnesty International decided to explore the state of LGBTI movements in Eastern Europe and Central Asia beyond Russia; in particular, in those countries which have joined the Russian-led Eurasian Economic Union: Armenia, Belarus, Kazakhstan and Kyrgyzstan. There Amnesty International found an overspill of homophobic and transphobic rhetoric and practice from Russia, which has exacerbated existing homophobic and transphobic attitudes. One outcome of this is that LGBTI human rights defenders (HRDs) and activists have come to feel “less equal” within the local human rights community dominated by “mainstream” HRDs, who do not primarily work on LGBTI rights.

This report is based on desk research and missions to these four countries, where Amnesty International conducted participatory workshops with LGBTI activists, HRDs and community members, as well as talking to “mainstream” HRDs and international stakeholders.

International human rights law prohibits discrimination – when someone is treated differently, in law or in practice, in a way that impairs or nullifies the enjoyment of their rights – because of a characteristic such as sexual orientation or gender identity. Similarly, international standards do not discriminate between LGBTI HRDs and “mainstream” HRDs, and oblige the state authorities to protect both.

The reality in Eastern Europe and Central Asia is different. LGBTI HRDs and activists face challenges that are not necessarily experienced by “mainstream” HRDs in their work. Social and political homophobia and transphobia contribute to the demonization of LGBTI HRDs and activists. Politicians and media often engage in advocacy of homophobic or transphobic hatred that constitutes incitement to discrimination, hostility, or violence. Russia, which is trying to yield more political influence across the region, attempts to shape social values and laws across its neighbours. This has included pushing for “LGBTI propaganda” laws and advocating for imagined, shared “Eurasian (evraziiskie) values”, presented as opposing “Western values”, including by their hostility towards LGBTI rights. This leads to politicization and de-humanization of LGBTI rights, as they are often discussed in the context of foreign policy considerations in Eurasia: pro-Western vs. pro-Russian.

This status quo contributes to, and is reinforced by, the fact that state authorities in Armenia, Belarus, Kazakhstan and Kyrgyzstan are unwilling to protect LGBTI HRDs and activists: police often fail to prevent and investigate homophobic and transphobic hate crimes against LGBTI HRDs, activists and community members.

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Importantly, many across civil society in Eastern Europe and Central Asia, including some well-established NGOs and prominent HRDs, have proved unwilling to offer public support towards LGBTI HRDs and activists. Some are even outright homophobic. This disempowers LGBTI HRDs and sets them apart as different from “mainstream” HRDs. As LGBTI HRDs and activists do not have many allies inside their countries, they receive support from international donor agencies and embassies. This once again interplays with the narrative that LGBTI rights are an external import designed to undermine the culture and national values of Armenia, Belarus, Kazakhstan and Kyrgyzstan. International human rights standards and mechanisms, along with the political pressure from the “Western” capitals, often remain the only ways for LGBTI HRDs and activists to voice their concerns to the respective national governments and achieve some tangible progress towards their objectives.

On top of these external challenges, LGBTI movements across Eastern Europe and Central Asia are facing internal weaknesses that stifle their work. These include internalized homophobia and transphobia, lack of awareness on LGBTI rights within the community, and “burnout” of activists. The latter, considering the hostile operational environment, is often severe and long-term, with negative consequences for the activists themselves, as well as for the long-term sustainability of LGBTI rights movements in this region.

These challenges weaken the reach and impact of advocacy for LGBTI rights, and threaten the sustainability of work towards realizing the rights of LGBTI people. All relevant human rights stakeholders in Armenia, Belarus, Kazakhstan and Kyrgyzstan must promptly address these challenges.

State authorities in Armenia, Belarus, Kazakhstan and Kyrgyzstan must ensure that LGBTI HRDs can carry out their human rights work in safety without discrimination on grounds of sexual orientation and gender identity. National governments must adopt legislative measures to counter homophobia and transphobia, including: comprehensive anti-discrimination legislation expressly including the grounds of sexual orientation and gender identity; laws that unambiguously cover all bias-motivated crimes based on sexual orientation and gender identity; and legislation explicitly prohibiting advocacy of hatred based on sexual orientation and gender identity that constitutes incitement to discrimination, hostility, or violence. Government officials must publicly condemn homophobia and transphobia.

Local human rights NGOs must work alongside LGBTI rights organizations united by the principle of the universality of human rights, to promote tolerance and non-discrimination, on all grounds, including sexual orientation and gender identity. They must collectively resist efforts by state and non-state groups to intimidate and marginalize LGBTI HRDs and rights activists, and publicly express solidarity and support.

International actors must press national governments to adopt legislation to counter homophobia and transphobia, including a comprehensive anti-discrimination legislation. They must work closely along with LGBTI HRDs and organizations and include them in consultations and other events on HR issues.

# 2. SCOPE AND METHODOLOGY

Amnesty International carried out the in-country research for this report in two phases. In March – July 2016, Amnesty International delegates travelled to Bishkek, Kyrgyzstan and Almaty, Kazakhstan (March – April 2016), Yerevan, Armenia (April 2016) and Minsk, Belarus (July 2016), and worked with LGBTI rights HRDs and activists to carry out a rapid assessment of the current state of LGBTI activist movements in each country. A year later, we returned to Bishkek (May 2017) and Yerevan (July 2017) to collect data for in-depth case studies on these two countries.

## 2.1 SCOPE

The purpose of this research was to assess the state of LGBTI movements in Armenia, Belarus, Kazakhstan, and Kyrgyzstan. These four countries were selected because, while being very diverse, they have a shared recent history (as former Soviet republics). Additionally, they are now all members of the Eurasian Economic Union.

In all four countries, LGBTI rights have gained visibility since the countries became independent (in 1991) and especially since the mid-2000s, thanks to the work of LGBTI rights activists and HRDs. In the last five years, however, this activism has come under attack, with LGBTI rights activists accused of trying to introduce alien, “Western” values that threaten the society. Many analysts – as well as LGBTI HRDs themselves – believe that this backlash is linked to the increased political, cultural, and economic influence of Russia in these countries.<sup>18</sup>

The Eurasian Economic Union was established in 2014. Analysts have argued that the concept of “Eurasia” extends beyond economic union and includes values and political systems which have largely been portrayed to be “in conflict” with LGBTI rights and other “liberal” values in favour of a return to “traditional” values.<sup>19</sup> The influence of homophobic and transphobic debate in Russia has been felt keenly in Armenia, Belarus, Kazakhstan and Kyrgyzstan, countries that have also seen attempts to introduce “LGBTI propaganda” laws in those countries, similar to the law in Russia.<sup>20</sup>

As such, while the country contexts section provides information about LGBTI rights and abuses against LGBTI people in each country, this is not the main focus of the report. Rather, Amnesty International wanted to explore the overall state of LGBTI movements in these countries and specific challenges and threats facing LGBTI HRDs there, including what local and international actors are, or are not doing, to support them. We have not investigated the needs or situation of specific groups within LGBTI communities,

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<sup>18</sup> Orysia Lutsevych, “Agents of the Russian World Proxy Groups in the Contested Neighbourhood” (London: Chatham House, the Royal Institute of International Affairs, 2016); Sappho M. Bonheur, “LGBT in Kyrgyzstan: From Anti-Gay Propaganda Bill to Hate Crime?,” Central Asia Policy Briefs (Bishkek: OSCE Academy, 2016); Cai Wilkinson, “Kyrgyzstan’s Anti-Gay Bill: Just Following in Russia’s Footsteps?,” EurasiaNet, October 30, 2014, <http://www.eurasianet.org/node/70676>; Andrew North, “Kyrgyzstan’s Beacon of Tolerance Under Threat From Manufactured Kremlin Homophobia,” *Eurasianet* (blog), May 4, 2016, <http://www.eurasianet.org/node/78631>.

<sup>19</sup> Lutsevych, “Agents of the Russian World Proxy Groups in the Contested Neighbourhood”; Anna Nikoghosyan, “In Armenia, Gender Is Geopolitical,” *openDemocracy* (blog), April 19, 2016, <https://www.opendemocracy.net/od-russia/anna-nikoghosyan/in-armenia-gender-is-geopolitical>.

<sup>20</sup> These laws are discussed in detail on p. 20 (Armenia), p. 23 (Belarus), p. 28 (Kazakhstan), and p. 31 (Kyrgyzstan).

such as transgender and intersex people, who are often marginalized within LGBTI communities and face challenges of their own across the region.<sup>21</sup>

## 2.2 METHODOLOGY

### 2.2.1 PARTICIPATORY WORKSHOPS

During missions to each of the four countries in 2016, Amnesty International's representatives spoke with people working or volunteering for LGBTI rights NGOs, as well as those involved (or previously involved) in LGBTI rights activism on an individual basis. We also ran workshops with activists and members of LGBTI communities where we facilitated SWOT analysis (analysis of Strengths, Weaknesses, Opportunities, and Threats), and discussion of six different scenarios designed to provide information on the kind of support networks that activists had in place. These two methods were selected as the most time-effective way of collecting as much information as possible on the current state of LGBTI activist movements, without making excessive demands on the time of under-resourced activists. Amnesty International delegates also hoped that the outputs from these workshops would be useful to the activists themselves in their own strategic planning and reflections.<sup>22</sup>

Before travelling to each country, we had contacted representatives of LGBTI rights NGOs or individual activists and discussed the possibility of meeting and of conducting these workshops. The workshops themselves were organized by activists or NGO representatives in each country who extended invitations to employees, volunteers, and others active in the LGBTI rights movement in their country. This meant that the participants were self-selecting, and hence, are not representative of wider LGBTI communities in these countries.

In Armenia, Amnesty International delegates met with employees and volunteers of three NGOs working on LGBTI rights. In Belarus, Amnesty International met with individuals, some of whom had previously been involved with unregistered LGBTI rights groups and some who were currently involved in organizing cultural activities. In Kazakhstan, Amnesty International met with members of two small, informal "initiative groups".<sup>23</sup> In Kyrgyzstan, Amnesty International met with employees and volunteers at three registered LGBTI rights NGOs.

The findings from these participatory workshops are summarized in the section: LGBTI rights movements: Strengths, Weaknesses, Opportunities, Threats.

### 2.2.2 CASE STUDIES

A year later, in May – July 2017,<sup>24</sup> Amnesty International delegates returned to Armenia and Kyrgyzstan, in order to collect data for two case studies on the exclusion of LGBTI rights from mainstream human rights protection, including the issue of marginalization by "mainstream" human rights NGOs. During the first phase of this research, this was identified as one of the key issues impacting on the work of LGBTI rights groups and activists and their capacity to push for the rights of LGBTI persons, as well as being a significant contributor to stress, demoralization and burnout.

Armenia and Kyrgyzstan were selected as case studies, as HRDs there do not face the same level of restrictions on freedom of expression, association, and peaceful assembly that are in place in Belarus and Kazakhstan. This makes it easier to identify and analyse other barriers to their activism, and to "mainstream" human rights organizations speaking out on LGBTI rights that do not necessarily impact human rights groups that are not working on LGBTI rights.

LGBTI rights activists had used the English term "mainstream" in relation to human rights NGOs who do not work on LGBTI rights. However, they also talked about cooperating productively with other types of NGOs that did not work specifically on LGBTI rights, such as feminist, HIV+, and sex worker rights organizations,

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<sup>21</sup> AI delegates did meet with transgender people who were active in the NGOs or initiative groups with whom AI carried out the research, but did not discuss their particular experiences as transgender rights activists.

<sup>22</sup> Feedback received from activists in Belarus, Kazakhstan, and Kyrgyzstan indicated that this was the case.

<sup>23</sup> An "initiative group" is an informal group of people who come together to be active on a common theme. Many initiative groups are active across the countries of the former Soviet Union, and some go on to register as NGOs.

<sup>24</sup> Amnesty International visited Kyrgyzstan between 24 May and 1 June 2017, and Armenia 2 – 7 July 2017.

that they did not consider to be “mainstream” organizations. The term “mainstream NGO” is used uncritically in much literature on NGOs, with no exploration as to what it actually means. In this report, the term “mainstream” human rights NGO is used to refer to NGOs that work on “traditional” civil, political, and economic rights issues. The “mainstream” groups that we met also included representatives from groups working on niche issues or with discrete population groups, but which were not working (primarily) with highly stigmatized groups.

## 2.2.3 FOLLOW UP WORKSHOPS

We conducted follow up workshops with representatives from two LGBTI rights NGOs in Kyrgyzstan, and one in Armenia. Again, the participants for these workshops were self-selecting.

## 2.2.4 SEMI-STRUCTURED INTERVIEWS

In both countries, we also carried out semi-structured interviews with representatives from “mainstream” human rights NGOs, who do not specifically work on LGBTI rights. These interviews were to explore the barriers to working on LGBTI rights, and what might need to change for “mainstream” human rights communities in both countries to be able to openly support LGBTI rights. In both countries, these NGOs were suggested by our LGBTI rights activist contacts, or were organizations that Amnesty International had worked with in the past.

We also conducted semi-structured interviews with representatives of intergovernmental organizations and diplomatic missions to hear their assessment of the barriers to a more inclusive human rights environment in both countries.

In Armenia, we also met with representatives of the Ombudsman’s office. In Kyrgyzstan, we requested meetings with the Ombudsman’s office and with the Ministry of Health (identified by LGBTI rights activists as the government agency most proactively working on LGBTI rights), but never received replies.

## 2.2.5 ANONYMITY

In all four countries covered in this report, the personal, professional, and physical risks associated with being “out”, i.e. openly identifying as lesbian, gay, bisexual, trans, intersex, or as gender nonconforming in some other way, are considerable. This is even the case for LGBTI HRDs. These LGBTI HRDs may work tirelessly on behalf of other LGBTI people, but may be unable to talk openly about their sexual orientation or gender identity with members of their extended family, or even their friends, for their own safety or the safety of others.<sup>25</sup>

For this reason, the names of individual LGBTI HRDs are not provided here. We have also chosen not to provide the names of individual “mainstream” HRDs and the organizations that they are involved with, or the names of representatives of diplomatic missions or international agencies. This is in the interests of encouraging future engagement and debate on how “mainstream” human rights actors could better support and show solidarity with LGBTI HRDs, as well as incorporating LGBTI rights into their work.

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<sup>25</sup> See: Human Rights House Foundation, “The Reality of LGBT+ Activism in Armenia,” *Human Rights House Foundation* (blog), June 27, 2017, <http://humanrightshouse.org/noop/page.php?p=Articles/22563.html&print=1>.

# 3. PROTECTION OF LGBTI RIGHTS UNDER INTERNATIONAL LAW

**“The application of international human rights law is guided by the principles of universality and non-discrimination.... All people, including lesbian, gay, bisexual and transgender (LGBT) persons, are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly.”**

UN High Commissioner for Human Rights, 2011.<sup>26</sup>

As set out in the High Commissioner for Human Rights’ statement above, LGBTI persons have the right to full protection under international human rights law, wherever they are located, on the grounds that human rights are universal and cannot be applied in a discriminatory way. In addition, the Yogyakarta Principles, agreed at an expert meeting of international lawyers in 2006, establish a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity. These principles cover the whole range of human rights, and indicate how states have obligations to protect the rights of LGBTI persons based on their existing international human rights commitments.<sup>27</sup>

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<sup>26</sup> Human Rights Council, “Discriminatory Laws and Practices and Acts of Violence against Individuals Based on Their Sexual Orientation and Gender Identity. Report of the United Nations High Commissioner for Human Rights” (New York: UN General Assembly, 2011), 4.

<sup>27</sup> The Yogyakarta Principles, “The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity.”

### 3.1 PRINCIPLE OF NON-DISCRIMINATION

Armenia, Belarus, Kazakhstan, and Kyrgyzstan have all ratified international human rights treaties that include articles prohibiting discrimination in the enjoyment of the other rights set out in the treaty. In recent decades, these non-discrimination articles have been consistently interpreted as providing protection to LGBTI persons from violence and discrimination on the basis of their sexual orientation or gender identity.<sup>28, 29</sup>

Under the **International Covenant on Civil and Political Rights**, Article 2 upholds the right to protection of the human rights included in the covenant “without distinction of any kind”, while Article 26 provides protection from discrimination “on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Article 2 of the **International Covenant on Economic, Social, and Cultural Rights** also prohibits discrimination on the same list of grounds. While this list does not specify discrimination on the grounds of SOGI, the United Nations treaty bodies have consistently held that sexual orientation and gender identity are prohibited grounds of discrimination under international law.<sup>30</sup> For example, the Committee on Economic, Social and Cultural Rights has affirmed that the non-discrimination guarantee of the ICESCR includes both sexual orientation and gender identity.<sup>31</sup> In addition, the decision of the Human Rights Committee in the case of *Toonen v. Australia* in 1994<sup>32</sup> establishes the obligation of states to protect individuals from discrimination on the basis of their sexual orientation.<sup>33</sup>

The **Convention on the Elimination of All forms of Discrimination Against Women** is also now interpreted as providing specific protection to lesbian, bisexual, and transgender women, in recognition of the intersectional discrimination that they face (Article 2, elimination of discrimination against women “in all its forms”). The Committee on the Elimination of Discrimination against women has stated the following: “The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as ... sexual orientation and gender identity. [...] States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.”<sup>34</sup>

The Committee Against Torture has stated that under the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, states have an obligation to protect “certain minority or marginalized individuals or populations especially at risk of torture”, including people who are marginalized as a result of their sexual orientation or transgender identity.<sup>35</sup>

As a member of the Council of Europe, Armenia is also party to the **European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**. The ECHR prohibits discrimination in the enjoyment of the other rights set out within it on “any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, and association with a national minority, property, birth or other status” (Article 14). Additionally, Protocol No. 12 (to which Armenia is a party) to the Convention also prohibits discrimination. The European Court of Human Rights has consistently applied non-discrimination standards to include sexual orientation and gender identity.<sup>36</sup>

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<sup>28</sup> For a full discussion of states’ human rights obligations in relation to SOGI, see: Human Rights Council, “Discriminatory Laws and Practices and Acts of Violence against Individuals Based on Their Sexual Orientation and Gender Identity.”; Office of the UN High Commissioner for Human Rights, “Born Free and Equal Sexual Orientation and Gender Identity in International Human Rights Law” (Geneva: Office of the High Commissioner for Human Rights – Women’s Rights and Gender Unit, 2012).

<sup>29</sup> For details of the interpretation of the human rights treaties in regard to transgender rights, particularly gender recognition, see: AlmaTQ, Center for International Human Rights, and Global Initiatives for Human Rights, “Violations by Kazakhstan of the Right of Transgender Persons to Legal Recognition of Gender Identity. Submitted for Consideration at the 117th Session of the Human Rights Committee Geneva, June-July 2016,” HRC shadow report (Almaty / Evanston, IL / Chicago, IL: AlmaTQ / Center for International Human Rights of Northwestern Pritzker School of Law, Northwestern University / Heartland Alliance for Human Needs & Human Rights Global Initiatives for Human Rights, 2016), 5–7.

<sup>30</sup> Office of the UN High Commissioner for Human Rights, “Born Free and Equal Sexual Orientation and Gender Identity in International Human Rights Law,” 41.

<sup>31</sup> Office of the UN High Commissioner for Human Rights, “Born Free and Equal”, 42.

<sup>32</sup> UN Human Rights Committee, “Toonen v. Australia, Communication No. 488/1992.” (Geneva: UN Human Rights Committee, 1994).

<sup>33</sup> Human Rights Council, “Discriminatory Laws and Practices and Acts of Violence against Individuals Based on Their Sexual Orientation and Gender Identity,” para. 5–7.

<sup>34</sup> UN Committee on the Elimination of Discrimination Against Women, “General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women” (New York: CEDAW, 2010), para. 18.

<sup>35</sup> UN Committee Against Torture, “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. General Comment No. 2. Implementation of Article 2 by States Parties” (Geneva: UN Committee Against Torture, 2008), para. 21.

<sup>36</sup> See, for instance: Smith and Grady v. the United Kingdom, nos. 33985/96 and 33986/96, §97, ECHR 1999-VI and Salgueiro da Silva Mouta v. Portugal, no. 33290/96, §36, ECHR 1999-IX; Goodwin v. the United Kingdom 28957/95 [2002] ECHR 588; S.L. v. Austria, no. 45330/99, §37, ECHR 2003-I, Identoba and Others v. Georgia, no. 73235/12, ECHR 157 (2015).

## 3.2 FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

The right to freedom of expression is protected by various provisions under international human rights law, including the ICCPR.<sup>37</sup> The UN Human Rights Committee has noted that freedom of expression is key to enabling individuals to exercise their other human rights, is an indispensable condition for the full development of the person, and is essential for any society.<sup>38</sup> It applies to information and ideas of all kinds including those that may be deeply offensive.<sup>39</sup>

The exercise of the right to freedom of expression may be subject to certain restrictions but only if these meet all elements of a stringent three-part test: they must be 1) provided by law (which must be formulated with sufficient precision to enable an individual to regulate their conduct accordingly); 2) demonstrably necessary and proportionate (the least restrictive measure to achieve the specified purpose); and 3) for the purpose of protecting specified public interests (national security, public order, or public health or morals) or the rights or reputations of others. Restrictions within this framework must never jeopardize the right to freedom of expression itself.<sup>40</sup> Furthermore, there must be procedural safeguards against abusive imposition of restrictions, including provision for appeal to an independent body with some form of judicial review. Restrictions which do not comply with this test violate freedom of expression even where no penalty results. They violate not only the right to freedom of expression of those people on whom the restriction is imposed, but also the right of others to receive information and ideas.

Restrictions must also not be discriminatory in their intention or effect, as discrimination is universally banned under international law.<sup>41</sup> Any restrictions that prevent people from seeking, receiving or imparting information key to exercising other human rights (e.g. right to health or sexual or reproductive rights) would likely be a violation of the right to freedom of expression, as well as of those other rights.

So called “LGBTI propaganda” laws, such as that introduced in Russia,<sup>42</sup> and the attempts to introduce such laws in other countries in Europe and Central Asia, undermine the right to freedom of expression, as they represent an arbitrary restriction on freedom of expression, and discriminate on the basis of sexual orientation and gender identity.

“LGBTI propaganda” laws also impact negatively on the rights to freedom of association, as they have the potential to render any activities undertaken by an LGBTI rights organization as illegal, on the grounds that they constitute “propaganda”. The right to freedom of association is protected under international law. Again, “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others” (Article 22 of the ICCPR).

LGBTI HRDs in the four countries covered in this report are already operating in an environment where their freedom of association is compromised, particularly in Belarus and Kazakhstan, both countries where freedom of association is heavily restricted and it is illegal to belong to an unregistered organization. As the

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<sup>37</sup> Article 19 of the Universal Declaration of Human Rights (UDHR), Article 19 of the International Covenant on Civil and Political Rights (ICCPR), Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 3 of the Convention on the Elimination of Discrimination Against Women (CEDAW), Article 13 of the Convention on the Rights of the Child (CRC), Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (1950) (ECHR). Freedom of expression is also the cornerstone of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information that were endorsed by the UN Special Rapporteur on Freedom of Expression in 1996

<sup>38</sup> See Human Rights Committee, General Comment No. 34 para.1; the European Court of Human Rights reiterated this approach and stated that it is one of the basic conditions for the progress of democratic societies and for the development of each individual (see *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A No. 24 § 49)

<sup>39</sup> See: Human Rights Committee, “General Comment No. 34, Article 19: Freedoms of Opinion and Expression” (Geneva: UN Human Rights Committee, 2011), para. 11; see also: European Court of Human Rights, *Handyside v. UK* (1976), para. 49

<sup>40</sup> Human Rights Committee, para. 21.

<sup>41</sup> The UN Human Rights Committee, stated that “non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights” (see Human Rights Committee, “CCPR General Comment No. 18: Non-Discrimination” (Geneva: Office of the High Commissioner for Human Rights – Women’s Rights and Gender Unit, 1989), para. 1). The UN General Assembly adopted resolution 60/251 of 15 March 2006, in which it reaffirmed that the UN Human Rights Council should be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner. The Vienna Declaration and Programme of Action restated that, “it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms” (See: UN General Assembly, “Vienna Declaration and Programme of Action,” July 12, 1993, para. 5, adopted by the World Conference on Human Rights on 25 June 1993).

<sup>42</sup> Federal Law of the Russian Federation of 30 June 2013 № 135-ФЗ “On the introduction of amendments to Article 5 of the Federal Law ‘On the protection of children from information, causing harm to their health and development’ and separate legal acts of the Russian Federation with the aim of protecting children from information promoting the denial of traditional family values”. For details of the impacts of the law in Russia, see: Bonheur, “LGBT in Kyrgyzstan: From Anti-Gay Propaganda Bill to Hate Crime?”.

Special Rapporteur on the rights to freedom of peaceful assembly and association has stated: “Individuals involved in unregistered associations should be free to carry out any lawful activities ... and should not be subject to criminal sanctions”.<sup>43</sup>

“LGBTI propaganda” laws also compromise the right to freedom of peaceful assembly, although it is important to note that, as discussed below, LGBTI HRDs in the four countries included in this report are already operating in environments where their right to peaceful assembly is restricted, either in law, or because the authorities fail to protect the rights of LGBTI people to assemble peacefully.

The right to freedom of peaceful assembly is also guaranteed under international law (for instance, Article 21 of the ICCPR). States are required to respect, protect and fulfil this right without discrimination of any kind. Under the ICCPR, restrictions to this right must be clearly established in law. Restrictions must be necessary and proportionate, and be in place in order to fulfil a legitimate aim: national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The exercise of the right to freedom of peaceful assembly should not be subject to prior authorization and people wishing to assemble peacefully should not be required to obtain permission from the authorities before they can do so.<sup>44</sup> Indeed, states have a positive duty to facilitate and protect the right to peaceful assembly in law and in practice.<sup>45</sup>

### 3.3 HUMAN RIGHTS DEFENDERS

The **UN Declaration on Human Rights Defenders** was adopted by the UN General Assembly in 1998,<sup>46</sup> and includes important protections for HRDs. The Declaration is not legally binding, but it does contain a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding. The High Commissioner for Human Rights has made the important statement regarding HRDs and the universality of human rights: “Human rights defenders must accept the universality of human rights as defined in the Universal Declaration of Human Rights. A person cannot deny some human rights and yet claim to be a human rights defender because he or she is an advocate for others”.<sup>47</sup>

### 3.4 GENDER IDENTITY

Yogyakarta principle 3, the right to recognition before the law, establishes the inviolable right of self-determination in regard to sexual orientation and gender identity: “Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.” For people who identify as transgender or who are in some other way gender-nonconforming, “No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity”.<sup>48</sup>

Central to the respect for the human rights of transgender people is the recognition of gender identity as a prohibited ground of discrimination. This is highlighted by the United Nations Committee on Economic, Social and Cultural Rights (CESCR): “Gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace.”<sup>49</sup> The United Nations Committee on the Elimination of Discrimination against Women has stated: “The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or

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<sup>43</sup> UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, “The Right to Freedom of Association: Best Practices Fact Sheet” (New York: UN OHCHR, 2014).

<sup>44</sup> Organization for Security and Cooperation in Europe (OSCE), *Guidelines on Freedom of Peaceful Assembly*, 2nd ed. (Vienna: OSCE, 2010).

<sup>45</sup> Organization for Security and Cooperation in Europe (OSCE), *Guidelines on Freedom of Peaceful Assembly*, 15.

<sup>46</sup> The Declaration’s full title is: “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”, adopted by General Assembly Resolution A/RES/53/144.

<sup>47</sup> Office of the United Nations High Commissioner for Human Rights, “Human Rights Defenders: Protecting the Right to Defend Human Rights” (Office of the United Nations High Commissioner for Human Rights, 2004), 9.

<sup>48</sup> The Yogyakarta Principles, “The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity,” 11–12.

<sup>49</sup> UN Committee for Economic, Social and Cultural Rights (CESCR), “General Comment No. 20 on-Discrimination in Economic, Social and Cultural Rights (art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights)” (Geneva: CESCR, 2009), para. 32.

belief, health, status, age, class, caste and sexual orientation and gender identity”.<sup>50</sup> Gender expression should equally be considered as a protected ground, included in open-ended lists of grounds of discrimination in human rights treaties such as the ICCPR (Articles 2 and 26) or the ECHR (Article 14).

It is vital that states allow transgender people to change their gender markers and their name on all documents, in order to protect their right to private life. Those states that have not put in place a procedure to ensure legal gender recognition of transgender people, or those where legislative gaps make it impossible for transgender people to obtain documents reflecting their gender identity, violate their right to private life. This right is protected by international and regional human rights standards including the ICCPR (Article 17) and the ECHR (Article 8). The impossibility to obtain documents that reflect gender identity and expression may also constitute a violation of the transgender individuals’ right to recognition before the law, which is protected under international human rights law, including by the ICCPR (Article 16) and the CEDAW (Article 15). The rights to private life and to recognition before the law may also be violated by states where procedures on legal gender recognition exist but are overly lengthy or contain mandatory criteria to be fulfilled that in effect exclude some groups of transgender people. Such exclusion could occur, for example, when the procedures require medical treatments, including surgeries, that some transgender people cannot undergo because of health related problems, and where access to these procedures is contingent on the individual receiving a specific psychiatric diagnosis.

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<sup>50</sup> UN Committee on the Elimination of Discrimination Against Women, “General Recommendation No. 28,” para. 18.

# 4. COUNTRY CONTEXTS

Armenia, Belarus, Kazakhstan and Kyrgyzstan are diverse, and their trajectories since they became independent from the Soviet Union in 1991 have been different, in terms of economic and political development and in terms of realization of human rights. They are also culturally distinct. That said, as former Soviet republics, they have a shared recent history, including inheriting the same Soviet legal framework. In addition, the influence of Russia – politically, economically, and culturally – is very strong, and is evident in these countries’ membership of the Russia-dominated Eurasian Economic Union. Finally, LGBTI rights activism in these four countries has been heavily influenced, and enabled, by support from “Western” donors and human rights organizations, leaving LGBTI rights activists vulnerable to attacks of representing alien, “Western” values.

Consensual sexual relations between men were criminalized in the Soviet Union; consensual sexual relations between women were never criminalized. Official – and societal – attitudes towards homosexuality during the Soviet period were very negative, with homosexuality viewed as a product of capitalist society’s degradation.<sup>51</sup> All four countries decriminalized consensual sexual relations between men following independence, but as one report on equality issues in Belarus notes, this took place in the “recent past” (the very recent past in the case of Armenia, where homosexual relations between men were only decriminalized in 2003). Negative attitudes remain, along with memories of a time when homosexual relations were criminalized.<sup>52</sup>

Since independence, the influence of Russia has remained very strong, and is seen as increasing. Analysts have argued that Russia sees these four countries as falling within its “sphere of influence”, exerting pressure on them to remain in geopolitical alignment and to resist influence from “the West”, namely the European Union and the USA.<sup>53</sup> The four countries are all members of the Eurasian Economic Union, along with Russia. The Eurasian Economic Union came into being in 2014 when Belarus, Kazakhstan, and Russia signed the Treaty on the Eurasian Economic Union; Armenia and Kyrgyzstan acceded in 2015 (two years after Armenia withdrew from signing an association agreement with the European Union [EU]). The Treaty “ensures free movement of goods, services, capital and labour, as well as coordinated, coherent and unified policies in the economic sectors”.<sup>54</sup> However, as mentioned above, being “Eurasian” (*evraziyskiy*), as least as understood in Moscow and in some other capitals across the former Soviet Union, also means not being “Western” or European.<sup>55</sup> In Armenia, Belarus, Kazakhstan and Kyrgyzstan, LGBTI rights activists have been attacked for representing “Western” interests and for trying to “destroy” their own societies. As discussed below, all four countries have seen attempts to introduce “LGBTI propaganda” laws, similar to the law in Russia.<sup>56</sup>

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<sup>51</sup> Aengus Carroll and Sheila Quinn, “Forced Out: LGBT People in Armenia Report on ILGA-Europe/COC Fact-Finding Mission” (Brussels / Amsterdam: ILGA Europe / COC, 2009), 34.

<sup>52</sup> Equal Rights Trust and Belarusian Helsinki Committee, “За полчаса до весны. Доклад о неравенстве и дискриминации в Беларуси [Half an hour til spring. Report on inequality and discrimination in Belarus],” ERT Country Report Series (London: Equal Rights Trust, 2013), 166.

<sup>53</sup> Lutsevych, “Agents of the Russian World Proxy Groups in the Contested Neighbourhood”; Bonheur, “LGBT in Kyrgyzstan: From Anti-Gay Propaganda Bill to Hate Crime?”.

<sup>54</sup> Eurasian Economic Commission, “Eurasian Economic Integration: Facts and Figures” (Moscow: Eurasian Economic Commission, 2015).

<sup>55</sup> Lutsevych, “Agents of the Russian World Proxy Groups in the Contested Neighbourhood”; Nikoghosyan, “In Armenia, Gender Is Geopolitical.”

<sup>56</sup> Federal Law of the Russian Federation of 30 June 2013 № 135-ФЗ “On the introduction of amendments to Article 5 of the Federal Law ‘On the protection of children from information, causing harm to their health and development’ and separate legal acts of the Russian Federation with the aim of protecting children from information promoting the denial of traditional family values”. For details of the impacts of the law in Russia, see: Bonheur, “LGBT in Kyrgyzstan: From Anti-Gay Propaganda Bill to Hate Crime?”.

Cultural influence is significant as well, particular popular culture; Russian state-controlled television stations are broadcast across the region, and play a significant role in upholding homophobic and transphobic attitudes and attacking “Western” influence.<sup>57</sup> That said, LGBTI activists in Armenia, Kyrgyzstan, and Kazakhstan all highlighted the importance of regional activist networks with other former Soviet countries, facilitated by Russian as a shared common language.<sup>58</sup> Exports from Russia have sometimes been more sinister: people affiliated to the Russian homophobic “Occupy Paedophilia” movement have been responsible for hate crimes against LGBTI people in Belarus and Kazakhstan.<sup>59</sup> Overall, HRDs interviewed by Amnesty International felt that the continued influence of Russia has helped shaped a climate of intolerance towards LGBTI people in these four countries.

**Table 1: Legal framework**

|            | DECriminalIZATION OF CONSENSUAL SAME-SEX RELATIONS BETWEEN MEN <sup>60</sup> | “LGBTI PROPAGANDA” LAW                                                                                               | DEFINITION OF MARRIAGE IN CONSTITUTION PRECLUDES SAME-SEX MARRIAGE | COMPREHENSIVE ANTI-DISCRIMINATION LEGISLATION | SOGI-SPECIFIC LEGISLATION ON BIAS-MOTIVATED CRIME AND INCITEMENT TO DISCRIMINATION, HOSTILITY, OR VIOLENCE | LEGISLATION REGULATING CHANGE OF GENDER MARKER ON IDENTITY DOCUMENTS |
|------------|------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|-----------------------------------------------|------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| ARMENIA    | 2003                                                                         | Draft legislation introduced in 2013; withdrawn                                                                      | Yes. Constitution amended by referendum in 2015                    | No                                            | No                                                                                                         | No                                                                   |
| BELARUS    | 1994                                                                         | Yes. Law “On the Protection of Children from Information Harmful to their Health and Development”, 2016              | No                                                                 | No                                            | No                                                                                                         | Yes                                                                  |
| KAZAKHSTAN | 1998                                                                         | Draft legislation introduced in 2015; withdrawn due to legal discrepancies                                           | No                                                                 | No                                            | No                                                                                                         | Yes                                                                  |
| KYRGYZSTAN | 1998                                                                         | Legislation introduced in 2014 and again in 2016; the legislation has not yet passed its final parliamentary reading | Yes. Constitution amended by referendum in 2016                    | No                                            | No                                                                                                         | No                                                                   |

## 4.1 ARMENIA

Homophobia and transphobia are deeply ingrained in the society in Armenia. Research by the Pew Research Center found that 98% of people aged 18-34 felt that homosexuality “should not be accepted by society”.<sup>61</sup> It is very difficult for LGBTI persons to be “out”, and coming out can result in a person being

<sup>57</sup> Adam Hug, ed., *The Information Battle: How Governments in the Former Soviet Union Promote Their Agendas and Attack Their Opponents Abroad*, Exporting Repression Series (London: The Foreign Policy Centre, 2017).

<sup>58</sup> Workshops with LGBTI rights activists in Bishkek (March 2016), Almaty (March 2016), and Yerevan (April 2016).

<sup>59</sup> Article 19, “‘Don’t Provoke, Don’t Challenge’ The Censorship and Self-Censorship of the LGBT Community in Kazakhstan” (London: Article 19, 2015); Feminita and AlmaTQ, “Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kazakhstan,” HRC shadow report (Almaty: Feminita and AlmaTQ, n.d.); Aleksandr Ganzhurov, “Права ЛГБТ в Беларуси январь 2013 — июнь 2016 гг. [The Rights of LGBT in Belarus January 2013 - June 2016]” (Minsk: N/A, 2016).

<sup>60</sup> Consensual same-sex relations between women were never criminalized in any of the countries covered in this report.

<sup>61</sup> Pew Research Center, “Religious Belief and National Belonging in Central and Eastern Europe National and Religious Identities Converge in a Region Once Dominated by Atheist Regimes” (Washington, DC: Pew Research Center, 2017), 106.

### LESS EQUAL

LGBTI HUMAN RIGHTS DEFENDERS IN ARMENIA, BELARUS, KAZAKHSTAN, AND KYRGYZSTAN

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ostracized by their family.<sup>62</sup> In addition, LGBTI individuals face discrimination and human rights violations in virtually all spheres.<sup>63</sup> The Armenian Apostolic Church condemns homosexuality as immoral<sup>64</sup> and has campaigned against LGBTI rights. The Church has protected status under the Constitution and is highly influential in society and politics.<sup>65</sup> Armenian nationalism has largely been interpreted to preclude being “Armenian” and an LGBTI community member at the same time.<sup>66</sup> Incitement to discrimination and hostility on the basis of SOGI by politicians is rife.<sup>67</sup>

## 4.1.1 LEGAL FRAMEWORK<sup>68</sup>

Consensual sexual relations between men were decriminalized in 2003. Consensual sexual relations between women were never criminalized.<sup>69</sup>

An attempt was made in 2013 to introduce an amendment to the Administrative Offences Code to impose fines for “propaganda of non-traditional sexual relations”.<sup>70</sup> The proposed amendment was withdrawn but, according to Armenian activists, could be reintroduced.

The Constitution was altered by referendum in 2015 to state that “A woman and man of marriageable age have the right to marry each other and form a family according to their free will” (Article 34).<sup>71</sup>

While the Constitution theoretically protects all Armenian citizens from discrimination, there is no effective mechanism for redress.<sup>72</sup> There is no specific anti-discrimination legislation that includes discrimination on the basis of SOGI; a study in 2015 determined that clauses in existing laws do not provide adequate protection from discrimination on the grounds of SOGI, or indeed on any other grounds.<sup>73</sup> Anti-discrimination legislation is an important component of the EU’s neighbourhood policy towards Armenia.<sup>74</sup> As discussed elsewhere in this report, activists have been involved in projects to draft anti-discrimination legislation, but have faced obstacles in their advocacy to include reference to SOGI in these drafts. Earlier attempts to draft a comprehensive anti-discrimination law including protection from discrimination on the grounds of SOGI met with a vociferous backlash from religious and conservative groups.<sup>75</sup>

The Criminal Code does not include a specific offence of bias-motivated crimes or incitement to discrimination, hostility or violence on the basis of SOGI. Article 63 of the Criminal Code provides for criminal responsibility and aggravating circumstances when a crime is motivated by “ethnic, racial or religious hatred”, but not on any other protected grounds, including SOGI.<sup>76</sup> The European Commission against Racism and Intolerance notes that in the period 2011-2016, just three cases of “public incitement to hatred” (Article 226 of the Criminal Code) were dealt with by the courts, and none of these were cases involving homophobia or transphobia.<sup>77</sup> As of 2016, the Ministry of Justice was drafting amendments to the Criminal Code, which might introduce SOGI in the list of grounds of aggravating circumstances.<sup>78</sup>

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<sup>62</sup> Carroll and Quinn, “Forced Out: LGBT People in Armenia”; Human Rights House Foundation, “The Reality of LGBT+ Activism in Armenia.”

<sup>63</sup> PINK Armenia et al., “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. July 2012, Geneva,” (Yerevan: PINK Armenia, 2012).

<sup>64</sup> Carroll and Quinn, “Forced Out: LGBT People in Armenia.”

<sup>65</sup> Stepan Danielyan, “The Armenian Apostolic Church: Identity and Influence,” in *Traditional Religion and Political Power: Examining the Role of the Church in Georgia, Armenia, Ukraine and Moldova*, ed. Adam Hug (London: The Foreign Policy Centre, 2015), 29–34.

<sup>66</sup> Interview with LGBTI activists, Yerevan, Armenia, March 2016.

<sup>67</sup> PINK Armenia et al., “Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Armenia: A Shadow Report.”; New Generation, “Manifestations of Attitudes, Hate Speech towards LGBT People and the Violation of Their Rights in the Online Environment of Armenia” (Yerevan: New Generation NGO, 2015).

<sup>68</sup> For a comprehensive overview of the legislative framework relating to LGBTI rights in Armenia, see: Carroll and Quinn, “Forced Out: LGBT People in Armenia,” 53–61.

<sup>69</sup> Carroll and Quinn, “Forced Out: LGBT People in Armenia.”

<sup>70</sup> PINK Armenia, “Annual Review: Human Rights Situation of LGBT People in Armenia, 2013” (Yerevan: PINK Armenia, 2014), 6.

<sup>71</sup> PINK Armenia, “Annual Review: Human Rights Situation of LGBT People in Armenia, 2015” (Yerevan: PINK Armenia, 2016), 21.

<sup>72</sup> PINK Armenia, “From Theory to Reality: Hate Crimes and Other Hate Motivated Incidents against LGBT People in Armenia” (Yerevan: PINK Armenia, 2016).

<sup>73</sup> Ara Ghazaryan and Vahe Grigoryan, “Is It Expedient to Adopt a Separate ‘Non-Discrimination Law?’” (Yerevan: Eurasia Partnership Foundation, 2015).

<sup>74</sup> See: High Representative of The European Union for Foreign Affairs and Security Policy, “Joint Staff Working Document: Implementation of the European Neighbourhood Policy in Armenia - Progress in 2014 and Recommendations for Actions” (Brussels: European Commission, 2015).

<sup>75</sup> Amnesty International, “Armenia: No Space for Difference,” 11.

<sup>76</sup> PINK Armenia, “Hate Crimes and Other Hate Motivated Incidents against LGBT People in Armenia,” 12.

<sup>77</sup> European Commission against Racism and Intolerance, “ECRI Report on Armenia (fifth Monitoring Cycle)” (Strasbourg: ECRI Secretariat, 2016), 19.

<sup>78</sup> European Commission against Racism and Intolerance, “ECRI Report on Armenia (fifth Monitoring Cycle)”, 15.

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## 4.1.2 TRANSGENDER RIGHTS

There is no specific legislation regulating changes to the gender marker on identity documents in Armenia.<sup>79</sup> In practice, an individual can apply to change the record of sex and name in official documents upon presenting a document issued by a medical institution confirming “sex change”.<sup>80</sup> Very few surgeries associated with medical transition are available in Armenia.<sup>81</sup>

## 4.1.3 OPERATIONAL ENVIRONMENT

LGBTI rights activists do not face significant legal restrictions on exercising their rights to freedom of peaceful assembly, association, and expression. However, in practice, LGBTI HRDs face challenges in exercising these rights not experienced by other HRDs in Armenia.

## 4.1.4 FREEDOM OF PEACEFUL ASSEMBLY

Freedom of expression, association and assembly are guaranteed in law,<sup>82</sup> but in practice, the authorities have failed to ensure the right to peaceful assembly of LGBTI Armenians. A “Diversity March” in Yerevan was attacked by ultranationalists in 2012.<sup>83</sup> Since then, LGBTI activists have refrained from public events due to lack of security guarantees by the authorities and on-going threats from far-right groups.

## 4.1.5 FREEDOM OF ASSOCIATION

NGOs who work on LGBTI rights can register and operate openly in Armenia.<sup>84</sup> Three NGOs currently work exclusively or predominantly on LGBTI rights. Following her mission to Armenia in 2010, the Special Rapporteur on the situation of human rights defenders concluded that HRDs working for LGBTI rights were among one of the most vulnerable groups of HRDs in Armenia.<sup>85</sup>

In July 2017, HRDs reported that overall, the situation for civil society was deteriorating in Armenia, with increasing de facto restrictions on their activities, and the increasing influence of GONGOs (government organized NGOs) in processes designed to involve civil society in official consultations and decision-making bodies.<sup>86</sup>

## 4.1.6 FREEDOM OF EXPRESSION AND MEDIA ENVIRONMENT

Broadcast and print media outlets in Armenia tend to report on LGBTI issues in a negative or sensationalist way, which serves to promote harmful and inaccurate stereotypes of LGBTI people, or the idea that homosexuality is a “Western” value that is being forced upon Armenian society.<sup>87</sup> Media monitoring of online content carried out by New Generation NGO from June to November 2015 found that 70% of material on LGBTI issues was negative, inaccurate, sensationalist, or constituted incitement to discrimination or violence.

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<sup>79</sup> PINK Armenia et al., “Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Armenia: A Shadow Report.”

<sup>80</sup> Law of the Republic of Armenia “On Civil Status”, articles 58 and 70. Available at: <http://www.transcoalition.info/law/armeniya-zakon-ob-aktakh-grazhdanskogo-sostoyaniya> (accessed 21 September 2016).

<sup>81</sup> Interview with LGBTI activists, Yerevan, Armenia, March 2016. See also: PINK Armenia et al., “Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Armenia: A Shadow Report.”

<sup>82</sup> For information on the situation in regard to freedom of expression, association and assembly in Armenia in law and in practice, see: Amnesty International, “Armenia: No Space for Difference.”

<sup>83</sup> Onnik Krikorian, “Armenia: Nationalists Disrupt Cultural Diversity March”, *Global Voices*, 22 May 2016, <https://globalvoices.org/2012/05/22/armenia-nationalists-disrupt-cultural-diversity-march/> (accessed 21 September 2016).

<sup>84</sup> See: Amnesty International, “Armenia: No Space for Difference.”

<sup>85</sup> Human Rights Council, “Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya” (New York: UN General Assembly, 2010), A/HRC/16/44/Add.2

<sup>86</sup> Interviews with representatives of human rights NGOs, Yerevan, July 2017

<sup>87</sup> Interviews with LGBTI rights activists, Yerevan, July 2017. See also: Carroll and Quinn, “Forced Out: LGBT People in Armenia”; Danish Institute for Human Rights, “Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity Sociological Report: Armenia,” Council of Europe Country Thematic Studies on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity (Copenhagen: Danish Institute for Human Rights, 2010), <http://www.coe.int/en/web/commissioner/thematic-work/lgbti-country-studies>.

Incitement to homophobic and transphobic violence and discrimination is also widely reported on social media.<sup>88</sup>

LGBTI rights organizations – and other human rights organizations – reported that they do not have any access to the mainstream, broadcast media.<sup>89</sup>

In July 2017, the organizers of the annual “Golden Apricot” film festival withdrew 40 films from the non-competition section of the festival, including two LGBTI-themed films (one of which, a documentary film called *Listen to Me: Untold Stories Beyond Hatred*, features interviews with 10 LGBTI Armenians), after the Union of Armenian Cinematographers refused to allow the festival to use its premises. Activists believed that the real motivation was to censor the two LGBTI-themed films.<sup>90</sup>

## 4.1.7 RIGHTS VIOLATIONS AGAINST LGBTI PEOPLE

LGBTI persons in Armenia face discrimination in all areas of life, including education, housing, employment, and when accessing healthcare.<sup>91</sup> Traditional social perceptions of gender roles and heteronormative assumptions make it very difficult for LGBTI people to live openly.<sup>92</sup> A quantitative survey conducted by PINK Armenia in 2015 found very high levels of hostility towards LGBTI people: 89% of those questioned said that gay men and lesbian women should not be allowed to work with children, and 97.5% of the survey participants said that it was unacceptable for gay and lesbian couples to kiss in public.<sup>93</sup>

Authorities typically fail to respond to discrimination and violence perpetrated on the basis of sexual orientation or gender identity, and even sometimes condone such attacks. Few victims of hate crimes on the basis of SOGI report the crime to the police, for reasons including: the risk of public exposure, and in particular, that their families will find out about their LGBTI identity; lack of trust in the police, and fear of further victimization at the hands of the police.<sup>94</sup> When LGBTI people do report hate crimes to the police, these are not effectively investigated. PINK Armenia recorded 198 cases of hate crime on the basis of SOGI between 2010 and 2015, of which 50% had been recorded in 2015. Many of such cases were not reported to police, largely due to lack of trust in police and a lack of knowledge on how to deal with law enforcement authorities.<sup>95</sup> In addition, there have been cases of police perpetrating hate crimes themselves, including sexual violence, physical violence, and blackmail and extortion.<sup>96</sup> Men who have sex with men (MSM) and trans women are at particular risk of violence at the hands of the police.<sup>97</sup>

Men serving in the army who are identified as gay or otherwise gender nonconforming face ostracism, humiliating treatment, and sexual and physical violence. This can include being forced to eat and sleep separately from other conscripts. When a man is drafted into the army, if the examining doctor identifies the recruit as homosexual (it is unclear what examinations take place), 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 psychiatric disorder.<sup>98</sup> Male prisoners who are identified as gay or gender nonconforming are also at risk of physical and sexual violence, and humiliating treatment.<sup>99</sup>

Lesbians and bisexual women also face harassment, violence, and discrimination, including from state officials including law enforcement officers, as well as family members, employers, and educational

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<sup>88</sup> Workshop with LGBTI activists, Yerevan, April 2016. See also: New Generation, “Manifestations of Attitudes, Hate Speech towards LGBT People and the Violation of Their Rights in the Online Environment of Armenia”; PINK Armenia, “Human Rights Situation of LGBT People: Annual Report Armenia 2016” (Yerevan: PINK Armenia, 2017).

<sup>89</sup> Interviews with LGBTI rights activists, Yerevan, July 2017. Interviews with “mainstream” human rights defenders, Yerevan, July 2017.

<sup>90</sup> Eastern Partnership Civil Society Forum Armenian National Platform, “EaP CSF ARMENIAN NATIONAL PLATFORM STATEMENT,” *Eastern Partnership Newsletter Armenia*, July 19, 2017, <https://eaparmenianews.wordpress.com/2017/07/19/issue-275/>.

<sup>91</sup> PINK Armenia et al., “Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Armenia: A Shadow Report.”

<sup>92</sup> Society Without Violence, “The Human Rights Situation of LGBTI Individuals in Armenia: A Practical Assessment” (Yerevan: Society Without Violence NGO, 2016).

<sup>93</sup> PINK Armenia, “From Prejudice to Equality: Study of Societal Attitudes towards LGBTI People in Armenia” (Yerevan: PINK Armenia, 2016).

<sup>94</sup> Amnesty International, “Armenia: No Space for Difference”; PINK Armenia, “Hate Crimes and Other Hate Motivated Incidents against LGBT People in Armenia.”

<sup>95</sup> PINK Armenia, “Hate Crimes and Other Hate Motivated Incidents against LGBT People in Armenia,” 27.

<sup>96</sup> PINK Armenia, “Hate Crimes and Other Hate Motivated Incidents against LGBT People in Armenia.”

<sup>97</sup> Danish Institute for Human Rights, “Study on Homophobia, Transphobia and Discrimination.”

<sup>98</sup> PINK Armenia et al., “Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Armenia: A Shadow Report,” 10.

<sup>99</sup> Interview with LGBTI activists, April 2016. See also: PINK Armenia et al., “Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Armenia: A Shadow Report.”; New Generation, “Manifestations of Attitudes, Hate Speech towards LGBT People and the Violation of Their Rights in the Online Environment of Armenia”; PINK Armenia, “Human Rights Situation of LGBT People: Annual Report Armenia 2016.”

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institutions. However, because of the dominance of traditional gender roles in Armenia, lesbian and bisexual women are less visible than other LGBTI persons.<sup>100</sup> All cisgender women in Armenia face huge societal pressure to marry men and have children to fulfil their “natural” role of wife and mother and produce sons for the Armenian nation, regardless of their sexual orientation.<sup>101</sup> Domestic violence against women, mostly from male partners, is widespread and rarely reported,<sup>102</sup> and also affects lesbian and bisexual women.<sup>103</sup>

Advocacy of homophobic and transphobic hatred that constitutes incitement to discrimination, hostility, or violence is widely tolerated, including from politicians and other leaders. In 2012, when an LGBTI-friendly pub in Yerevan was firebombed (no-one was hurt),<sup>104</sup> Eduard Sharmanzanov, Deputy Parliamentary Speaker and Spokesperson for the ruling Republican Party condoned the attack, as did other prominent political leaders.<sup>105</sup> In 2014, the newspaper *Iravunk* published a “blacklist” of 60 people that it accused of being “enemies of state and nation” and involved in “international homosexual lobbying”. In 2015, in a civil lawsuit the Court in Yerevan fined the newspaper.<sup>106</sup> A case brought by 16 of the people mentioned in the article is pending before the European Court of Human Rights.<sup>107</sup> A talk show, in February 2016, featured panellists who made openly homophobic remarks, including one, a lawyer, who stated that gay people “must be burnt”.<sup>108</sup>

Transgender people, particularly trans women, are highly marginalized and vulnerable to violence and abuse, from private citizens as well as the police.<sup>109</sup> Trans people also face discrimination in accessing general healthcare.<sup>110</sup> Trans sex workers have faced police harassment and arbitrary arrest.<sup>111</sup> Two transgender sex workers were assaulted by five men at a park in Yerevan in August 2015. The incident was reported to the police, but no-one was charged.<sup>112</sup> Another transgender person was stabbed in a park in Yerevan in 2016; the assailant was subsequently arrested.<sup>113</sup> On 3 July 2017, visitors to the office of Right Side transgender rights NGO were physically attacked by people from a neighbouring apartment.<sup>114</sup>

Discrimination against LGBTI people is an important factor motivating high levels of migration from within the community. A study in 2015 estimated that between 2011 and 2013, almost 6000 LGBTI persons left Armenia, many permanently.<sup>115</sup>

## 4.2 BELARUS

Social attitudes in Belarus are generally less conservative than in the other three countries included in this report, however same-sex relations remain stigmatized, and for the most part, LGBTI communities are hidden.<sup>116</sup> This is compounded by a very difficult environment in regard to freedom of expression,

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<sup>100</sup> Carroll and Quinn, “Forced Out: LGBT People in Armenia”; PINK Armenia et al., “Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Armenia: A Shadow Report.”

<sup>101</sup> Carroll and Quinn, “Forced Out: LGBT People in Armenia”; Nikoghosyan, “In Armenia, Gender Is Geopolitical.”

<sup>102</sup> Amnesty International, “No Pride in Silence: Countering Violence in the Family in Armenia” (London: Amnesty International, 2008).

<sup>103</sup> PINK Armenia et al., “Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Armenia: A Shadow Report.”

<sup>104</sup> PINK Armenia, “Oganezova v Armenia,” accessed August 11, 2017, <http://www.pinkarmenia.org/en/strategiclitigation/oganezova1/>.

<sup>105</sup> Amnesty International, “Armenia: No Space for Difference,” 12. For further examples, see: PINK Armenia et al., “Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Armenia: A Shadow Report.”; New Generation, “Manifestations of Attitudes, Hate Speech towards LGBT People and the Violation of Their Rights in the Online Environment of Armenia”; PINK Armenia, “Human Rights Situation of LGBT People: Annual Report Armenia 2016.”

<sup>106</sup> ILGA Europe, “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2016” (Brussels: ILGA Europe, 2016), 35; Nikoghosyan, “In Armenia, Gender Is Geopolitical.”

<sup>107</sup> PINK Armenia, “Minasyan and Others v Armenia,” accessed August 11, 2017, <http://www.pinkarmenia.org/en/strategiclitigation/caseof16/>.

<sup>108</sup> Nikoghosyan, “In Armenia, Gender Is Geopolitical”; PINK Armenia, “Human Rights Situation of LGBT People: Annual Report Armenia 2016.”

<sup>109</sup> Danish Institute for Human Rights, “Study on Homophobia, Transphobia and Discrimination.”

<sup>110</sup> PINK Armenia, “Human Rights Situation of LGBT People: Annual Report Armenia 2016.”

<sup>111</sup> PINK Armenia et al., “Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Armenia: A Shadow Report.”

<sup>112</sup> ILGA Europe, “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2016,” 35.

<sup>113</sup> PINK Armenia, “Human Rights Situation of LGBT People: Annual Report Armenia 2016.”

<sup>114</sup> Helsinki Citizens’ Assembly Vanadzor Office et al., “Statement about the Fisical [sic] Attack on Right Side NGO and Its Visitors,” July 6, 2017, <http://hcav.am/en/events/statement-about-the-fisical-attack-on-right-side-ngo-and-its-visitors/>; Right Side NGO, “Criminal Case Was Initiated about the Attack on ‘Right Side’ Human Rights Defender NGO and Its Beneficiaries,” July 19, 2017, <http://rightsidengo.com/eng/tour/criminal-case/>.

<sup>115</sup> PINK Armenia and Socioscope, “The Impact of LGBT Emigration on Economic Indicators of Armenia” (Yerevan: PINK Armenia, 2015), 75.

<sup>116</sup> Eurasian Coalition on Male Health (ECOM), “Successes of LGBT Involvement in National HIV Decision Making Processes Case Studies from Six Countries of Eastern Europe and Central Asia” (Tallinn: Eurasian Coalition on Male Health, 2017).

association, and peaceful assembly.<sup>117</sup> Both the Orthodox and the Catholic churches retain significant influence in the society, and both are hostile towards the “homosexual lifestyle”.<sup>118</sup> In 2016, however, courts accepted homophobia as aggravating circumstances in two cases of physical assault (one of which resulted in the victim’s death).<sup>119</sup>

## 4.2.1 LEGAL FRAMEWORK

Consensual sexual relations between men were decriminalized in 1994. Consensual sexual relations between women were never criminalized.<sup>120</sup>

The Law “On the Protection of Children from Information Harmful to their Health and Development” (No. 362-Z29), largely modeled on the Russian “LGBTI propaganda” law, was signed into law by President Lukashenka in May 2016. It does not specifically mention homosexuality but refers to information that “discredits the institution of family and marriage”. LGBTI rights activists fear it will be used against them. The law came into force in July 2017.<sup>121</sup>

The Constitution does not specifically prohibit same-sex marriage. According to Article 32.2 of the Constitution, “On reaching the age of consent, women and men shall have the right to enter into marriage on a voluntary basis and start a family.”<sup>122</sup> The Code on Marriage and Family (1999) defines marriage as a voluntary union between a man and a woman (Article 12).<sup>123</sup>

The Constitution of Belarus prohibits discrimination on any grounds;<sup>124</sup> however, there is no anti-discrimination legislation that would encompass discrimination on the basis of SOGI in Belarus.<sup>125</sup>

There is no specific legislation in place to protect LGBTI people from bias-motivated crimes or incitement to discrimination, hostility, or violence on the basis of SOGI.<sup>126</sup> Articles in the Criminal Code for murder (Article 139), and for grievous bodily harm, do provide for harsher penalties if the motive relates to the victim’s ethnicity or membership of another social group, but SOGI is not specified.<sup>127</sup> In 2016, Article 130 of the Criminal Code was amended to criminalize incitement to hatred on the grounds of “social hatred”, but again, this does not specify SOGI as grounds for “social hatred”.<sup>128</sup>

## 4.2.2 TRANSGENDER RIGHTS

An individual can apply to change the record of sex and name in official documents, and this process is governed by legislation.<sup>129</sup> However, passports issued before 2013 have national identity numbers that include a digit indicating gender, and this national identity number cannot be changed. In addition, when a person changes their identity documents, the reason “change of sex” is entered on the official database for ID documents, to which any police officer has access. Both of these facts put transgender people at further risk of discrimination.<sup>130</sup>

Sterilization is not required for the change of gender in documents, however, a diagnosis of “Gender Identity Disorder” is required, and this is obtained through an in-patient evaluation in a psychiatric hospital. Medical

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<sup>117</sup> Amnesty International, “What Is Not Permitted Is Prohibited: Silencing Civil Society in Belarus” (London: Amnesty International, 2013).

<sup>118</sup> Equal Rights Trust and Belarusian Helsinki Committee, “Half an hour til spring,” 166.

<sup>119</sup> ILGA Europe, “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2017” (Brussels: ILGA Europe, 2017).

<sup>120</sup> Equal Rights Trust and Belarusian Helsinki Committee, “Half an hour til spring.”

<sup>121</sup> Ganzhurov, “The Rights of LGBT in Belarus January 2013 - June 2016.”

<sup>122</sup> Ganzhurov, “The Rights of LGBT in Belarus January 2013 - June 2016,” 4.

<sup>123</sup> Code on Marriage and the Family of the Republic of Belarus of 9 July 1999 № 278-3.

<sup>124</sup> Ganzhurov, “The Rights of LGBT in Belarus January 2013 - June 2016.”

<sup>125</sup> Ganzhurov, “The Rights of LGBT in Belarus January 2013 - June 2016”, 2; Eurasian Coalition on Male Health (ECOM), “Successes of LGBT Involvement in National HIV Decision Making Processes.”

<sup>126</sup> Amnesty International, “What Is Not Permitted Is Prohibited.”

<sup>127</sup> Equal Rights Trust and Belarusian Helsinki Committee, “Half an hour til spring,” 165.

<sup>128</sup> ILGA Europe, “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2017,” 55.

<sup>129</sup> Ganzhurov, “The Rights of LGBT in Belarus January 2013 - June 2016.”

<sup>130</sup> Interviews with LGBTI activists, Minsk, July 2016. See also: Belarusian Helsinki Committee et al., “Answers to the List of Issues and Questions prior to the Submission of the Eighth Periodic Report of Belarus,” CEDAW shadow report (Minsk: Belarusian Helsinki Committee, 2016).

transition surgeries and hormonal therapy are available in Belarus but accessible only after a diagnosis.<sup>131</sup> The entire process takes one year.<sup>132</sup>

## 4.2.3 OPERATIONAL ENVIRONMENT

Freedom of expression, assembly and association are heavily restricted in Belarus, and this has a very negative impact on the capacity of LGBTI and other human rights activists to organize and to speak out on rights abuses.<sup>133</sup>

## 4.2.4 FREEDOM OF PEACEFUL ASSEMBLY

Peaceful demonstrations and other public events can only take place if the organizers first receive official permission from the authorities; this is rarely given, in violation of the right to peaceful assembly. Organizing or participating in an unsanctioned public event can result in a fine or administrative detention.<sup>134</sup> The first ever gay pride march in a former Soviet country was held in Minsk in 2001; 300 people participated, and the event passed without incident. Since then, activists have repeatedly requested official permission to hold Pride marches (for instance, in 2008, 2009, 2010, 2011, 2012, and 2013), but on each occasion, this was refused.<sup>135</sup> In May 2010, LGBTI activists in Minsk defied the authorities and held a peaceful march; twelve demonstrators were detained but subsequently released.<sup>136</sup> Four activists handed out leaflets on LGBTI rights issues on the streets of Minsk for the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT) in 2016; none were detained.<sup>137</sup>

Following a crackdown in 2013 (see below), venues that had previously agreed to host closed events for Pride week suddenly found reasons why these could no longer take place.<sup>138</sup> Prior to 2013, activists reported that the atmosphere in relation to LGBTI rights was apparently less restrictive, and it was easier for activists to organize social events and unofficial public gatherings.<sup>139</sup> There were also several LGBTI-friendly clubs operating, all of which have now closed down.<sup>140</sup>

## 4.2.5 FREEDOM OF ASSOCIATION

Groups working on LGBTI rights in Belarus have not been able to register.<sup>141</sup> Lack of official registration leaves LGBTI rights activists and informal groups at risk of criminal prosecution, as it is illegal for unregistered NGOs to operate.<sup>142</sup>

The group “Gay Belarus” tried to obtain registration from the Ministry of Justice in 2011 and again in 2012 but was refused, first on minor administrative grounds, and later on the grounds that they had attempted to register as a youth group, but that the organization’s statute did not include any activities “supporting social maturity and comprehensive development of the Belarusian youth”.<sup>143</sup> In early 2013, between 60 and 70 of

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<sup>131</sup> Decree on Acts of Civil Status, 14 December 2005, № 1454, Articles 68 and 84. Decree of the Ministry of Health of the Republic of Belarus of 9 December 2010 № 163 “On some issues of gender change and correction”. Available at: <http://www.transcoalition.info/law/belarus-postanovlenie-o-nekotorykh-voprosakh-izmeneniya-i-korreksii-polovoj-prinadlezhnosti> (accessed 21 September 2016).

<sup>132</sup> Ganzhurov, “The Rights of LGBT in Belarus January 2013 - June 2016.”

<sup>133</sup> Amnesty International, “What Is Not Permitted Is Prohibited”; Equal Rights Trust and Belarusian Helsinki Committee, “Half an hour til spring.”

<sup>134</sup> Amnesty International, “What Is Not Permitted Is Prohibited”; Ganzhurov, “The Rights of LGBT in Belarus January 2013 - June 2016.”

<sup>135</sup> Equal Rights Trust and Belarusian Helsinki Committee, “Half an hour til spring,” 169–169; Amnesty International, “What Is Not Permitted Is Prohibited.”

<sup>136</sup> Amnesty International, “What Is Not Permitted Is Prohibited,” 42; Equal Rights Trust and Belarusian Helsinki Committee, “Half an hour til spring,” 172.

<sup>137</sup> TUT.BY, “В Минске раздали листовки против гомофобии и провели пикет у посольства США в поддержку прав реев [In Minsk they handed out leaflets against homophobia and made a picket at the American Embassy in support of gay rights],” *TUT.BY* (blog), May 17, 2016, <http://news.tut.by/society/496704.html>.

<sup>138</sup> ILGA Europe, “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2014” (Brussels: ILGA Europe, 2014), 43.

<sup>139</sup> Amnesty International, “Belarus: Out in the Open,” *Amnesty International* (blog), December 8, 2013, <https://www.amnesty.org/en/latest/news/2013/12/belarusoutopen/>; Interview with former activist, Minsk, 21 July 2016.

<sup>140</sup> Ganzhurov, “The Rights of LGBT in Belarus January 2013 - June 2016.”

<sup>141</sup> Amnesty International, “What Is Not Permitted Is Prohibited”; Eurasian Coalition on Male Health (ECOM), “Successes of LGBT Involvement in National HIV Decision Making Processes.”

<sup>142</sup> Eurasian Coalition on Male Health (ECOM), “Successes of LGBT Involvement in National HIV Decision Making Processes,” 6; Amnesty International, “What Is Not Permitted Is Prohibited,” 13.

<sup>143</sup> Amnesty International, “What Is Not Permitted Is Prohibited,” 43.

the “founding members” of Gay Belarus were brought in by police for interrogation, which included questions on their sex lives and contacts with foreign colleagues; in many cases, police visited people’s workplaces and homes. Around the same time, police raided LGBTI-friendly clubs, on some occasions videoing people and writing down personal details.<sup>144</sup> In 2016, the Identity and Law LGBTI rights initiative group attempted to obtain official registration from the Ministry of Justice five times, but was refused each time. The reasons provided by the Justice department in Minsk were “contradictions to moral and the public interest” and “no indication of a specific field of activity”.<sup>145</sup>

## 4.2.6 FREEDOM OF EXPRESSION AND MEDIA ENVIRONMENT

Coverage of LGBTI related issues tends to be neutral or positive in the independent media, but negative in the state-controlled media that most people in Belarus read and watch.<sup>146</sup> In addition, the Russian media is very widely watched and read in Belarus.<sup>147</sup>

Authorities in Belarus operate in a legal framework that allows them to undertake wide-ranging, secret surveillance of electronic and phone communications with little or no justification. It is nearly impossible for anyone to know for definite if they are under surveillance, exerting a profound chilling effect on HRDs, including LGBTI rights activists, and causing many to self-censor.<sup>148</sup>

## 4.2.7 RIGHTS VIOLATIONS AGAINST LGBTI PEOPLE

Same sex relationships and gender nonconforming identities remain stigmatized in Belarus.<sup>149</sup> Research by the Pew Research Center found that 75% of people aged 18-35, and 87% of people aged over 35 felt that “homosexuality should not be accepted by society”.<sup>150</sup> People who are openly LGBTI in Belarus can face hostility and discrimination, for instance in accessing services or in employment. Many LGBTI people are not “out” as a result.<sup>151</sup> Young LGBTI people participating in a focus group in 2011 reported that they had experienced physical and verbal violence from their families when they came out to them.<sup>152</sup>

Police often fail to respond when LGBTI people are attacked on the street, or fail to follow up and investigate homophobic or transphobic attacks. In some cases, people are reluctant to report attacks for fear of further victimization at the hands of the police, or because they have no faith in the police to investigate.<sup>153</sup> Activists have also reported harassment and violence at the hands of the police.<sup>154</sup>

Mikhail Pishcheuski was attacked leaving a party in May 2014, and badly beaten; the attack was motivated by homophobia. Mikhail Pishcheuski was in a coma for over a year, and died of his injuries in October 2015. His attacker was initially sentenced to two years and eight months for “hooliganism” and serious bodily assault by recklessness, but was released after 11 months; during the court case, no mention was made of the fact that the attack had been motivated by homophobia.<sup>155</sup> The defendant was re-tried for unpremeditated murder following Mikhail Pishcheuski’s death, and this time, the bias motive was considered.<sup>156</sup> The attacker was sentenced to three years imprisonment in July 2016.<sup>157</sup> In another case earlier in 2016, “hatred of a particular social group” was taken into account in the sentencing of a man who

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<sup>144</sup> Amnesty International, “What Is Not Permitted Is Prohibited,” 43; ILGA Europe, “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2014,” 43.

<sup>145</sup> ILGA Europe, “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2017,” 55.

<sup>146</sup> Ganzhurov, “The Rights of LGBT in Belarus January 2013 - June 2016.”

<sup>147</sup> Lutsevych, “Agents of the Russian World Proxy Groups in the Contested Neighbourhood.”

<sup>148</sup> Amnesty International, “‘It’s Enough for People to Feel It Exists’: Civil Society, Secrecy and Surveillance in Belarus” (London: Amnesty International, 2016).

<sup>149</sup> Eurasian Coalition on Male Health (ECOM), “Successes of LGBT Involvement in National HIV Decision Making Processes.”

<sup>150</sup> Pew Research Center, “Religious Belief and National Belonging in Central and Eastern Europe National and Religious Identities Converge in a Region Once Dominated by Atheist Regimes,” 106.

<sup>151</sup> Amnesty International, “Belarus: Out in the Open”; Amnesty International, “What Is Not Permitted Is Prohibited.”

<sup>152</sup> Equal Rights Trust and Belarusian Helsinki Committee, “Half an hour til spring,” 167.

<sup>153</sup> Equal Rights Trust and Belarusian Helsinki Committee, “Half an hour til spring.”

<sup>154</sup> Amnesty International, “Belarus: Out in the Open”; Amnesty International, “What Is Not Permitted Is Prohibited”; Ganzhurov, “The Rights of LGBT in Belarus January 2013 - June 2016.”

<sup>155</sup> Ganzhurov, “The Rights of LGBT in Belarus January 2013 - June 2016.”

<sup>156</sup> RFE/RL, “Пракурор Просіць 3 Гады Пазбаўленьня Волі Для Лукашэвіча, Пасьля Ўдару Якога Памёр Міхаіл Пішчэўскі [Prosecutor Requests 3 Years Restricted Freedom for Lukashевич, after the Blow from Which Mikhail Pischevski Died],” *Радые Свабода*, July 20, 2016, <https://www.svaboda.org/a/sud-zabojcy-piszczenskaha/27870010.html>.

<sup>157</sup> ILGA Europe, “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2017,” 54.

had physically assaulted another man in a homophobic attack. This was the first time that a national court had taken homophobia into consideration in its ruling.<sup>158</sup>

Lesbian and bisexual women are also at risk of societal discrimination, stigmatization, and violence.<sup>159</sup> Official rhetoric around “family values” (including in relation to the new law “On the Protection of Children from Information Harmful to their Health and Development”) emphasises women’s “traditional” roles as wives and mothers.<sup>160</sup> This is in violation of Belarus’ commitments under CEDAW to work to eliminate gender stereotypes (Article 5).

Political figures, including President Lukashenka, have incited hostility or discrimination on the basis of SOGI.<sup>161</sup> The President has made openly homophobic remarks, stating that it is “Better to be a dictator than gay” in 2012, in response to the decision of Germany to withdraw its ambassador from Belarus in protest at human rights abuses.<sup>162</sup> Belarusian representatives at the UN have rejected calls for the country to recognize and protect the rights of LGBTI people, stating that the country will uphold “traditional” and “family” values in the face of “homocentrism”.<sup>163</sup>

Amnesty International understands from conversations with LGBTI rights activists that transgender people in Belarus are highly marginalized and vulnerable to attack, but we were unable to speak to any transgender persons during our short visit. Transgender women are at particular risk of violence and abuse.<sup>164</sup>

State authorities do not engage on LGBTI rights issues, although there has been some cooperation between government health officials and LGBTI activists in regard to ensuring the inclusion of MSM in national HIV-prevention strategies.<sup>165</sup>

## 4.3 KAZAKHSTAN

The visibility of LGBTI persons in Kazakhstan is much lower than in the other three countries, although this is starting to change with the emergence of two informal groups (*initsiativnye gruppy*), who Amnesty International met during the visit to Kazakhstan. Societal attitudes towards LGBTI people are on the whole negative, and same-sex relationships and gender nonconforming identities remain highly stigmatized.<sup>166</sup> This makes it very difficult for LGBTI people to be open about their sexual orientation or gender identity.<sup>167</sup> Political and other government figures have openly rejected LGBTI identities, often on the grounds of protecting the family and “traditional values”, and there have even been calls by some parliamentarians to re-criminalize same-sex relations.<sup>168</sup>

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<sup>158</sup> Ganzhurov, “The Rights of LGBT in Belarus January 2013 - June 2016”; ILGA Europe, “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2017,” 54.

<sup>159</sup> Committee on the Elimination of All forms of Discrimination Against Women, “Concluding Observations on the Eighth Periodic Report of Belarus” (New York: CEDAW, 2016).

<sup>160</sup> Belarusian Helsinki Committee et al., “Answers to the List of Issues and Questions prior to the Submission of the Eighth Periodic Report of Belarus.”

<sup>161</sup> See: Ganzhurov, “The Rights of LGBT in Belarus January 2013 - June 2016”; ILGA Europe, “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2017,” 54.

<sup>162</sup> Ivan Nechepurenko, “Homophobia, Vote Rigging and Posturing - 20 Years of Lukashenko,” October 7, 2014, <http://themoscowtimes.com/articles/homophobia-vote-rigging-and-posturing-20-years-of-lukashenko-37216>. Germany’s Foreign Minister at the time, Guido Westerwelle, is openly gay.

<sup>163</sup> Ministry of Foreign Affairs, Republic of Belarus, “Выступление Министра Иностранных Дел Республики Беларусь В.Макея На Общей Дискуссии 69-Й Сессии Генеральной Ассамблеи ООН, г.Нью-Йорк, 30 Сентября 2014 г. [The Address of the Minister for Foreign Affairs of the Republic of Belarus V Makei at the General Discussion of the 69th Session of the General Assembly of the UN, New York, 30 September 2014],” September 30, 2014, <http://mfa.gov.by/press/statements/a4517a33fb77a500.html>; UN Radio, “Посол Беларуси Пригласил Инопланетян Поучаствовать В Дискуссии О Семейных Ценностях [Ambassador of Belarus Invited Aliens [sic] to Participate in Discussions on Family Values],” January 6, 2015, <http://www.unmultimedia.org/radio/russian/archives/182999/#.WZV9hIqYyLL>.

<sup>164</sup> Belarusian Helsinki Committee et al., “Answers to the List of Issues and Questions prior to the Submission of the Eighth Periodic Report of Belarus.”

<sup>165</sup> Eurasian Coalition on Male Health (ECOM), “Successes of LGBT Involvement in National HIV Decision Making Processes.”

<sup>166</sup> Labrys Kyrgyzstan and Sexual Rights Initiative, “Submission on Kazakhstan [United Nations Human Rights Council Universal Periodic Review 7th Session, 8-19 February 2010],” n.d.

<sup>167</sup> Equal Rights Trust, “In the Name of Unity: Addressing Discrimination and Inequality in Kazakhstan” (London: Equal Rights Trust, 2016).

<sup>168</sup> Article 19, “Don’t Provoke, Don’t Challenge”; Association for Progressive Communication (APC) and HIVOS, “Global Information Society Watch 2015 Sexual Rights and the Internet” (Melville / The Hague: APC / HIVOS, 2015); Equal Rights Trust, “In the Name of Unity.”

## 4.3.1 LEGAL FRAMEWORK

Consensual sexual relations between men were decriminalized in 1998. Consensual sexual relations between women were never criminalized.

In February 2015, the upper house of the Parliament passed amendments to a number of laws to protect children from information “harmful to their health and development”;<sup>169</sup> these included administrative sanctions for providing information “promoting non-traditional sexual orientation” and compulsory registration of all websites. The Constitutional Council of Kazakhstan declared the bills to be inconsistent with the Constitution in May 2015, due to legal discrepancies on a number of provisions, and sent them back Parliament for revision.<sup>170</sup> Since then, there has been no further discussion of the bills.

The Constitution does not include a definition of marriage. Under the law “On Marriage and Family”, marriage is defined as a union between a woman and a man (Article 1).<sup>171</sup>

The Constitution protects against discrimination on any grounds. However, there is no anti-discrimination legislation that would encompass discrimination on the basis of sexual orientation and gender identity in Kazakhstan.<sup>172</sup>

There is no specific legislation in place in Kazakhstan to protect LGBTI people from bias-motivated crimes or incitement to discrimination, hostility, or violence on the basis of SOGI.<sup>173</sup> Article 174 of the Criminal Code prohibits incitement to social, national, ethnic, racial, class or religious hatred, but does not cover SOGI.<sup>174</sup> In addition, Article 174 has more commonly been used by the Kazakhstani authorities to silence dissent, rather than to protect minorities.<sup>175</sup>

## 4.3.2 TRANSGENDER RIGHTS

The legal procedure for changing the name and gender marker on identity documents in Kazakhstan is extremely complex and is a significant barrier to the realization of the rights of transgender persons in Kazakhstan.<sup>176</sup> To be able to have their gender recognized by the state Commission for the Medical Inspection of Persons with Gender Identity Disorders (which is necessary before the gender marker can be changed), a person must be at least 21 years old and undergo sterilization, hormonal therapy and genital surgeries,<sup>177</sup> as well as an in-patient psychiatric evaluation.<sup>178</sup> The process, which involves multiple appearances before the Commission, who must give their permission for the trans person to proceed to the next stage of “treatment” is, in the words of activists, “arduous, humiliating, and expensive”.<sup>179</sup> Genital surgeries are only available at one clinic in Almaty, creating logistical difficulties for people from other parts of this vast country.<sup>180</sup>

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<sup>169</sup> Draft law “On protection of children from information harmful to their health and development” and draft law “On amendments and additions to certain legislative acts aimed at protection of children from information harmful to their health and development”.

<sup>170</sup> CRIN - Child Rights International Network, “CENSORSHIP: Laws Restricting Children’s Access to Information,” accessed August 18, 2017, <https://www.crin.org/en/library/publications/censorship-laws-restricting-childrens-access-information>; Article 19, “Don’t Provoke, Don’t Challenge”; Equal Rights Trust, “In the Name of Unity.”

<sup>171</sup> The Code of the Republic of Kazakhstan on Marriage (Matrimony) and Family, 26 December, 2011. No. 518-IV, amended 2014)

<sup>172</sup> Feminita and AlmaTQ, “Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kazakhstan”; Article 19, “Don’t Provoke, Don’t Challenge”; Equal Rights Trust, “Alternative Report Submitted to the 117th Session of the Human Rights Committee in Relation to the Second Periodic Report Submitted by: Kazakhstan May 2016,” HRC shadow report (London: Equal Rights Trust, 2016).

<sup>173</sup> Feminita and AlmaTQ, “Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kazakhstan.”

<sup>174</sup> Feminita and AlmaTQ, “Alternative report”.

<sup>175</sup> Amnesty International, “Kazakhstan: Submission to the United Nations Human Rights Committee” (London: Amnesty International, 2016); Amnesty International, “Think Before You Post: Closing Down Social Media Space in Kazakhstan” (London: Amnesty International, 2017).

<sup>176</sup> Feminita and AlmaTQ, “Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kazakhstan”; AlmaTQ, Center for International Human Rights, and Global Initiatives for Human Rights, “Violations by Kazakhstan of the Right of Transgender Persons to Legal Recognition of Gender Identity.”

<sup>177</sup> Genital surgeries refer to operations aimed at modifying genital characteristics to accord with a person’s gender identity. See: Amnesty International, “The State Decides Who I Am: Lack of Gender Recognition for Transgender People in Europe,” 16.

<sup>178</sup> Decree No. 187 of the Minister of Health and Social Development of the Republic of Kazakhstan, *Medical Certification and Sex Reassignment Procedure for Persons with Sexual Identification Disorders* (31 Mar. 2015); Code of the Republic of Kazakhstan “On the Health of the Nation and on the Healthcare System”, Article 88; Code of the Republic of Kazakhstan “On Marriage and Family”, Article 257. For a full account of the procedure, see: AlmaTQ, Center for International Human Rights, and Global Initiatives for Human Rights, “Violations by Kazakhstan of the Right of Transgender Persons to Legal Recognition of Gender Identity.”

<sup>179</sup> AlmaTQ, Center for International Human Rights, and Global Initiatives for Human Rights, “Violations by Kazakhstan of the Right of Transgender Persons to Legal Recognition of Gender Identity,” 1.

<sup>180</sup> AlmaTQ, Center for International Human Rights, and Global Initiatives for Human Rights, “Violations by Kazakhstan of the Right of Transgender Persons to Legal Recognition of Gender Identity.”

### LESS EQUAL

LGBTI HUMAN RIGHTS DEFENDERS IN ARMENIA, BELARUS, KAZAKHSTAN, AND KYRGYZSTAN

Amnesty International

### 4.3.3 OPERATIONAL ENVIRONMENT

Extensive restrictions on freedom of expression, peaceful assembly and association limit organizing and advocacy in Kazakhstan, including for LGBTI rights activists.

### 4.3.4 FREEDOM OF PEACEFUL ASSEMBLY

Prides or other public gatherings in support of LGBTI rights have never been organized in Kazakhstan, where organizing or participating in an unsanctioned demonstration can result in administrative or even criminal charges.<sup>181</sup> This is a human rights violation: the exercise of the right to freedom of peaceful assembly should not be subject to prior authorization and people wishing to assemble peacefully should not be required to obtain permission from the authorities before they can do so.<sup>182</sup>

### 4.3.5 FREEDOM OF ASSOCIATION

There is currently no registered NGO with a focus on LGBTI rights, although an NGO working on LGBTI rights, Amulet, was previously registered and active.<sup>183</sup> Obtaining registration for an NGO is a bureaucratically arduous process, and registration is often refused on spurious grounds. Leading or participating in an unregistered organization is an offence under articles in the Criminal and Administrative Offences Codes.<sup>184</sup> This is a human rights violation. As the Special Rapporteur on the rights to freedom of peaceful assembly and association has stated: “Individuals involved in unregistered associations should be free to carry out any lawful activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions”.<sup>185</sup>

### 4.3.6 FREEDOM OF EXPRESSION AND MEDIA ENVIRONMENT

The state-controlled media either censor information on LGBTI issues, or write in a sensationalist and hostile way, helping to cement transphobic and homophobic prejudice in the wider society.<sup>186</sup> While some independent media outlets write on LGBTI issues in a more neutral or positive way, these media outlets have very limited reach.<sup>187</sup> The authorities justify censorship of discussion of LGBTI issues on the grounds of protecting morality and upholding traditions.<sup>188</sup> However, such blanket restrictions are in violation of Article 19 of the ICCPR, under which the right to freedom of expression may be subject to certain restrictions, but only if these are provided by law and are necessary and proportionate for the purpose of protecting a legitimate interest. Combined with sensationalist and hostile coverage in the media, this creates an environment where it is very difficult for people to find accurate information about LGBTI issues.<sup>189</sup>

With some of the highest levels of internet use in the region, social media has emerged as an important space for free expression and for organizing for HRDs and others in Kazakhstan.<sup>190</sup> However, even on social media, LGBTI people self-censor, and talk of facing difficulties speaking openly about LGBTI issues and exchanging information, because they fear harassment and intimidation, or because they have read

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<sup>181</sup> For more information on restrictions on the rights to freedom of expression, association and assembly in Kazakhstan, see: Article 19, “Don’t Provoke, Don’t Challenge”; Amnesty International, “Kazakhstan: Submission to the United Nations Human Rights Committee”; Amnesty International, “Think Before You Post: Closing Down Social Media Space in Kazakhstan.”

<sup>182</sup> Organization for Security and Cooperation in Europe (OSCE), *Guidelines on Freedom of Peaceful Assembly*, 15.

<sup>183</sup> Amulet appears to have been active in the late 2000s and early 2010s. It is unclear what happened to the group.

<sup>184</sup> Amnesty International, “Kazakhstan 2016/2017,” 2017, <https://www.amnesty.org/en/countries/europe-and-central-asia/kazakhstan/report-kazakhstan/>.

<sup>185</sup> UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, “The Right to Freedom of Association: Best Practices Fact Sheet.”

<sup>186</sup> Article 19, “Don’t Provoke, Don’t Challenge”; Association for Progressive Communication (APC) and HIVOS, “Global Information Society Watch 2015 Sexual Rights and the Internet”; Equal Rights Trust, “In the Name of Unity”; KIBHR, “Предварительный обзорный доклад об отдельных аспектах неравенства и дискриминации в Республике Казахстан [Preliminary survey report on various aspects of inequality and discrimination in the Republic of Kazakhstan]” (Almaty: Kazakhstan International Bureau for Human Rights and the Rule of Law, 2015).

<sup>187</sup> Article 19, “Don’t Provoke, Don’t Challenge”; Amnesty International, “Kazakhstan: Submission to the United Nations Human Rights Committee.”

<sup>188</sup> Article 19, “Don’t Provoke, Don’t Challenge,” 17.

<sup>189</sup> Svetlana Glushkova, “«Люди боятся говорить, что среди их друзей есть геи» [People are afraid to say that they have gay people among their friends],” *Radio Azattyq*, January 11, 2016, <http://rus.azattyq.org/articleprintview/27479353.html>.

<sup>190</sup> Amnesty International, “Think Before You Post: Closing Down Social Media Space in Kazakhstan”; Association for Progressive Communication (APC) and HIVOS, “Global Information Society Watch 2015 Sexual Rights and the Internet.”

homophobic or transphobic comments and discussions.<sup>191</sup> In addition, the authorities are increasingly restricting online access to information, as well as using statements made on social media as grounds for administrative and criminal prosecution (for instance, for “organizing or participating in an unsanctioned demonstration” after people used social media sites to disseminate information about protests in 2016, or for “dissemination of information known to be false”). Again, this prompts people to self-censor.<sup>192</sup>

### 4.3.7 RIGHTS VIOLATIONS AGAINST LGBTI PEOPLE

LGBTI people experience harassment and discrimination in employment, access to healthcare, education, and other areas.<sup>193</sup> Families may react very badly to a young person coming out; some LGBTI people have faced domestic violence from their families, or enforced psychiatric treatment to “cure” them.<sup>194</sup> Many LGBTI people self-censor and do not speak openly about their sexual orientation or gender identity, in order to avoid harassment and violence.<sup>195</sup>

LGBTI people in Kazakhstan have been subject to violent attacks, and in many cases, the police response to these attacks has been inadequate or abusive.<sup>196</sup> Police and other state actors also harass and discriminate against LGBTI people, threaten to “out” them to families, and carry out hate crimes towards LGBTI people.<sup>197</sup> This creates a climate of distrust in the police and in their capacity and willingness to investigate and prosecute attacks; as a result, few LGBTI people are prepared to report hate-motivated attacks.<sup>198</sup>

Bias motivation has not been taken into account in the prosecution of violent crimes against LGBTI people. In 2015 in Ust-Kamengorsk, a man was murdered by two friends after he revealed to them that he was gay. The perpetrators stated that they had murdered the victim because they were “insulted” by his sexual orientation, after he had come out to them, but this was not taken into consideration as an aggravating factor by either the prosecutor or the judge.<sup>199</sup>

Lesbian and bisexual women face “double discrimination”: discrimination on the basis of their gender, and homophobic or transphobic discrimination. Recent research with lesbian and bisexual women revealed police harassment (when women attempted to report crimes), pressure to conform to “traditional” gender roles, and violence at home and on the streets, including at least one case of a woman who had been subjected to an attempted “curative” rape.<sup>200</sup>

Some influential public figures are openly homophobic, thus encouraging negative attitudes in the wider society; this incitement to discrimination or hostility on the basis of SOGI goes largely unchecked.<sup>201</sup> For instance, parliamentarians from the ruling Nur Otan party have described homosexuality as “immoral” and a “crime against humanity”,<sup>202</sup> and called for a law that would ban “homosexual relations”.<sup>203</sup>

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<sup>191</sup> Article 19, “Don’t Provoke, Don’t Challenge,” 30; Association for Progressive Communication (APC) and HIVOS, “Global Information Society Watch 2015 Sexual Rights and the Internet.”

<sup>192</sup> Amnesty International, “Think Before You Post: Closing Down Social Media Space in Kazakhstan.”

<sup>193</sup> AlmaTQ, Center for International Human Rights, and Global Initiatives for Human Rights, “Violations by Kazakhstan of the Right of Transgender Persons to Legal Recognition of Gender Identity,” 1; Article 19, “Don’t Provoke, Don’t Challenge”; Equal Rights Trust, “In the Name of Unity”; Feminista and AlmaTQ, “Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kazakhstan”; Human Rights Watch, “‘That’s When I Realized I Was Nobody’: A Climate of Fear for LGBT People in Kazakhstan” (New York: Human Rights Watch, 2015).

<sup>194</sup> Equal Rights Trust, “In the Name of Unity”; Human Rights Watch, “That’s When I Realized I Was Nobody.”

<sup>195</sup> Article 19, “Don’t Provoke, Don’t Challenge.”

<sup>196</sup> AlmaTQ, Center for International Human Rights, and Global Initiatives for Human Rights, “Violations by Kazakhstan of the Right of Transgender Persons to Legal Recognition of Gender Identity,” 1; Article 19, “Don’t Provoke, Don’t Challenge.”

<sup>197</sup> Equal Rights Trust, “In the Name of Unity.”

<sup>198</sup> Association for Progressive Communication (APC) and HIVOS, “Global Information Society Watch 2015 Sexual Rights and the Internet”; Human Rights Watch, “That’s When I Realized I Was Nobody.”

<sup>199</sup> Article 19, “Don’t Provoke, Don’t Challenge,” 12; Feminista and AlmaTQ, “Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kazakhstan.”

<sup>200</sup> Svetlana Glushkova, “Женщины Из ЛБК-Сообщества Подвергаются Двойной Дискриминации [LBQ Women Suffer Double Discrimination],” *Radio Azattyq*, June 2, 2017, <https://rus.azattyq.org/a/lbk-soobshество-v-kazakhstan-zhanar-sekerbayeva-gulzadaserzhan/28518792.html>; Steppe Unicorn, “Портрет в сумерках: Оценка потребностей ЛБК-женщин в Казахстане [Portrait at dusk: Needs assessment of LBQ women in Kazakhstan],” Steppe Unicorn: Центральноазиатский ресурс о недискриминации ЛГБТИК+, May 26, 2017, <https://www.steppeuca.info/single-post/portretvsumerkah>.

<sup>201</sup> Article 19, “Don’t Provoke, Don’t Challenge.”

<sup>202</sup> Joanna Lillis, “Kazakhstan: Parliament Becomes Scene of Homophobic Rants,” *EurasiaNet*, May 28, 2013, <http://www.eurasianet.org/node/67026>.

<sup>203</sup> Joanna Lillis, “Kazakhstan’s Parliament Hears Another Call for Anti-Gay Law,” *EurasiaNet*, October 2, 2013, <http://www.eurasianet.org/node/67576>. For further examples, see: Equal Rights Trust, “In the Name of Unity,” 176–177; KIBHR, “Preliminary survey report on various aspects of inequality and discrimination in the Republic of Kazakhstan,” 105–107.

Transgender people are highly marginalized and are at particular risk of violence and discrimination.<sup>204</sup> A survey by AlmaTQ found that 38 out of 41 respondents had been subjected to discrimination or violence because of their transgender status.<sup>205</sup> In addition, the fact that the procedure for changing the gender marker on identity documents is so burdensome means that very few transgender people have been able to obtain identity documents that match their gender. This means that they are vulnerable to exposure, harassment, and discrimination; for instance, it is very difficult for trans people to find work, when their identity documents do not “match” their gender expression.<sup>206</sup>

Geographically, Kazakhstan is a very large country, with often great distances between centres of population. Isolation, partly resulting from fear of speaking openly about SOGI, is another negative experience for many LGBTI people, particularly those living outside of Almaty, the largest city, and Astana, the capital.<sup>207</sup>

## 4.4 KYRGYZSTAN

The society in Kyrgyzstan is socially conservative, and it is difficult for LGBTI persons to be “out”; those who are out are at very high risk of violence and discrimination.<sup>208</sup> Increased visibility over the past ten years has resulted in a backlash with increased attacks against LGBTI people as well as hostility in the media. The issue of LGBTI rights has become highly politicized, used by nationalist politicians and populists as an example of the threat of “Western” influence on “traditional” Kyrgyz society.<sup>209</sup>

### 4.4.1 LEGAL FRAMEWORK

Consensual sexual relations between men were decriminalized in 1998.<sup>210</sup> Consensual sexual relations between women were never criminalized.

In 2014, a draft law to criminalize “fostering positive attitude” towards “non-traditional sexual relations” (the “LGBTI propaganda” law) was introduced into the Kyrgyzstani parliament.<sup>211</sup> Under the draft law, any positive or neutral reference to “non-traditional sexual relations” in public or in the media would be banned, as would any public assemblies promoting LGBTI rights.<sup>212</sup> This would place significant restrictions on freedom of speech, the freedom to search for and share information on LGBTI issues, and the freedom of peaceful assembly of LGBTI people in Kyrgyzstan.<sup>213</sup> Such restrictions would serve to heighten the marginalization of LGBTI people in Kyrgyzstan and cut off opportunities for alliance building with other civil society groups and state actors, and for encouraging more tolerant attitudes towards LGBTI people. While apparently modelled on the Russian federal law passed in 2013, the Kyrgyzstani version specified harsher penalties, including imprisonment for up to a year, and also restrictions on providing information to anyone of any age (the Russian law restricts access to information to people under 18).<sup>214</sup>

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<sup>204</sup> Zhanar Kanafina, “Почему в Центральной Азии Бьют Трансгендеров? [Why Do They Beat Transgender People in Central Asia?],” *OpenAsia* (blog), August 12, 2016, <http://theopenasia.net/articles/detail/pochemuvsentralnoyaziibytuttransgenderov/>.

<sup>205</sup> AlmaTQ, Center for International Human Rights, and Global Initiatives for Human Rights, “Violations by Kazakhstan of the Right of Transgender Persons to Legal Recognition of Gender Identity,” 3–4.

<sup>206</sup> AlmaTQ, Center for International Human Rights, and Global Initiatives for Human Rights, “Violations by Kazakhstan of the Right of Transgender Persons to Legal Recognition of Gender Identity.”; Human Rights Watch, “That’s When I Realized I Was Nobody”; Kanafina, “Why Do They Beat Transgender People in Central Asia?”.

<sup>207</sup> Glushkova, “People are afraid to say that they have gay people among their friends”; Human Rights Watch, “That’s When I Realized I Was Nobody,” 7; Zhanar Kanafina, “Лесбиянки, геи, бисексуалы и трансгендеры: как им живется в Казахстане? [Lesbians, gays, bisexuals and transgender people: what’s it like for them in Kazakhstan?],” *OpenAsia* (blog), July 12, 2017, <http://theopenasia.net/articles/detail/lesbiyankigeibiseksualyitransgenderykakimzhivetsyavkazakhstane/>.

<sup>208</sup> See: Human Rights Watch, “These Everyday Humiliations: Violence Against Lesbians, Bisexual Women, and Transgender Men in Kyrgyzstan” (New York: Human Rights Watch, 2008); Equal Rights Trust, “Looking for Harmony: Addressing Discrimination and Inequality in Kyrgyzstan,” The Equal Rights Trust Country Report Series (London: Equal Rights Trust, 2016).

<sup>209</sup> Wilkinson, “Kyrgyzstan’s Anti-Gay Bill: Just Following in Russia’s Footsteps?”.

<sup>210</sup> Bonheur, “LGBT in Kyrgyzstan: From Anti-Gay Propaganda Bill to Hate Crime?”.

<sup>211</sup> Draft Law of the Kyrgyz Republic “On Amendments to Certain Legislative Acts of the Kyrgyz Republic”, Registration Number 6-11804/14. For a full overview of the draft law, see: Equal Rights Trust, “Looking for Harmony,” 181–182.

<sup>212</sup> Bonheur, “LGBT in Kyrgyzstan: From Anti-Gay Propaganda Bill to Hate Crime?,” 13.

<sup>213</sup> Labrys Kyrgyzstan, “Discriminatory Laws and Practices, Hate Speech and Hate Crimes against LGBTI Communities of Kyrgyzstan. Submitted for the 60th CEDAW Session, Geneva, Switzerland, 16 February - 6 March 2015,” CEDAW shadow report (Bishkek: Labrys Kyrgyzstan, 2014), 4.

<sup>214</sup> Labrys Kyrgyzstan, “Discriminatory Laws and Practices, Hate Speech and Hate Crimes against LGBTI Communities of Kyrgyzstan.”

The draft law was passed by a large majority in parliament at its first reading in October 2014,<sup>215</sup> and at its second reading in June 2015 (following revision), again by a large majority.<sup>216</sup> The bill was heavily criticized by international actors, including the UN Office of the High Commissioner for Human Rights (OHCHR) and the Organization for Security and Cooperation in Europe (OSCE).<sup>217</sup> Following review by various parliamentary committees, in 2016 the draft law was revised to reclassify certain offences from administrative to criminal.<sup>218</sup> In May 2016, the Parliamentary Committee on Law, Order and Fighting Crime withdrew the draft legislation for further consideration, and to date, it has not been put back before the parliament.<sup>219</sup>

LGBTI rights activists fear that if passed, the proposed “LGBTI propaganda” law could curtail all of their activities (not just any future public assemblies), including health services and safer sex outreach work. Providing support to victims of hate crimes (e.g. legal and psychological consultations, and helping victims to report assaults to the police) could also be judged to constitute “propaganda” and lead to prosecution, as what constitutes “propaganda” is not clearly defined in the draft legislation.<sup>220</sup>

Constitutional amendments approved by referendum in December 2016 included a change to the clause on marriage and family, specifying that marriage is the voluntary union between a man and a woman. Article 2 of the Family Code of Kyrgyzstan defines marriage as a “union between a man and a woman”.

The Constitution protects against discrimination on any grounds (Article 16), but does not specifically mention SOGI as protected grounds.<sup>221</sup> There is no anti-discrimination legislation that would encompass discrimination on the basis of sexual orientation and gender identity in Kyrgyzstan.<sup>222</sup> LGBTI rights activists have been part of an anti-discrimination coalition that has drafted anti-discrimination legislation (although there is little likelihood of this being passed soon); they have faced opposition from other members of the coalition on the inclusion of SOGI as protected grounds, but so far, have managed to resist calls for this to be removed.<sup>223</sup>

SOGI are not considered as aggravating factors or bias motivations for criminal offences.<sup>224</sup> Indeed, the Criminal Code only allows for ethnic, racial, or religious bias motives for the crime of murder.<sup>225</sup> There is also no legislation that protects LGBTI people from incitement to discrimination, hostility, or violence on the basis of SOGI; the Criminal Code only refers to instigating hatred on the basis of nationality, race, or religion.<sup>226</sup>

## 4.4.2 TRANSGENDER RIGHTS

There is no officially approved, transparent and accessible procedure to change the name and gender marker on identity documents in Kyrgyzstan. Under the law “On Civil Status Acts” (Article 72), civil registry offices are able to modify the gender marker on a person’s identity documents if presented with documents from a medical institution relating to gender reassignment “in the prescribed form”.<sup>227</sup> The procedures for medical institutions to issue these official documents are unclear. Different civil registry offices have

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<sup>215</sup> Kloop, “Парламент одобрил «антигейский» закон в первом чтении [Parliament approved anti-gay propaganda bill in first reading],” *Kloop* (blog), October 15, 2014, <http://kloop.kg/blog/2014/10/15/parlament-odobril-antigejskij-zakon-v-pervom-chtenii/>.

<sup>216</sup> Kloop, “Депутаты хотят принять «антигейский» закон до конца февраля [MPs want to adopt anti-gay propaganda law by the end of February],” *Kloop* (blog), January 19, 2016, <https://kloop.kg/blog/2016/01/19/deputaty-hotyat-prinyat-antigejskij-zakon-do-kontsa-fevralya/>.

<sup>217</sup> CRIN - Child Rights International Network, “CENSORSHIP: Laws Restricting Children’s Access to Information.”

<sup>218</sup> Equal Rights Trust, “Looking for Harmony,” 183.

<sup>219</sup> AKIpress, “Жогорку Кенеш Обсудит Законопроект О Запрете Гей-Пропанданды В Режиме Второго Чтения [The Jogorku Kenesh Will Discuss the Draft Law on the Banning of Gay Propaganda at Its Second Reading],” *AKIpress* (blog), May 24, 2016, <http://kg.akipress.org/news:747347>; Labrys Kyrgyzstan, “Заметка О ‘Дискриминационном’ Законопроекте В Кыргызстане [Update on the ‘Discriminatory’ Draft Law in Kyrgyzstan],” *Labrys Kyrgyzstan* (blog), June 22, 2017, <http://www.labrys.kg/ru/news/full/699.html>.

<sup>220</sup> Bonheur, “LGBT in Kyrgyzstan: From Anti-Gay Propaganda Bill to Hate Crime?”.

<sup>221</sup> Equal Rights Trust, “Looking for Harmony,” 36–38.

<sup>222</sup> Labrys Kyrgyzstan, “Discriminatory Laws and Practices, Hate Speech and Hate Crimes against LGBT Communities of Kyrgyzstan”; Kyrgyz Indigo and Labrys Kyrgyzstan, “Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kyrgyzstan. Submitted for Consideration at the 110th Session of the Human Rights Committee March 2014, Geneva” (Bishkek: Kyrgyz Indigo / Labrys Kyrgyzstan, 2014).

<sup>223</sup> Workshop with LGBTI rights activists, Bishkek, 25 May 2017.

<sup>224</sup> Kyrgyz Indigo and Labrys Kyrgyzstan, “Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kyrgyzstan,” 7.

<sup>225</sup> Criminal Code of the Kyrgyz Republic (as amended up to Law No. 62 of April 21, 2014), Article 97 – Murder.

<sup>226</sup> Criminal Code of the Kyrgyz Republic (as amended up to Law No. 62 of April 21, 2014), Article 299 – Incitement of ethnic, racial, religious, or inter-regional hatred.

<sup>227</sup> Law of the Kyrgyz Republic “On Acts of Civil Status”, amended 10 August 2007, No. 148, Articles 60 and 72. Available at: <http://www.transcoalition.info/law/kyrgyzstan-law-on-acts-of-civil-status> (accessed 21 September 2016); Equal Rights Trust, “Looking for Harmony,” 180.

interpreted what is meant by “the prescribed form” in different ways, with some demanding evidence of full gender reassignment surgery and hormonal treatment.<sup>228</sup>

### 4.4.3 OPERATIONAL ENVIRONMENT

Activists in Kyrgyzstan face few legislative restrictions on freedom of expression, assembly, and association, although in practice, these rights are limited, particularly the right to freedom of peaceful assembly.

### 4.4.4 FREEDOM OF PEACEFUL ASSEMBLY

Prides have never taken place in Kyrgyzstan, although local activists have organized smaller scale public events that supported LGBTI rights. However, attacks from nationalist groups in the last couple of years mean that public events are now felt to be too dangerous. Overall, LGBTI HRDs that we spoke to in Kyrgyzstan felt that the environment that they were operating in had deteriorated in recent years, from a “high” point in the early 2010s when public activities and engagement with state authorities had both been possible.<sup>229</sup> By contrast, rallies in support of the proposed “LGBTI propaganda law” have been held in Bishkek.<sup>230</sup>

### 4.4.5 FREEDOM OF ASSOCIATION

NGOs who work on LGBTI rights have been able to register and operate in Kyrgyzstan, and there are several well-established NGOs working openly on LGBTI rights, including one established in 2004 and another in 2009.

Kyrgyzstani parliamentarians rejected a proposed law that would have forced NGOs receiving funding from outside of Kyrgyzstan to identify as “foreign agents”, in May 2016.<sup>231</sup> This followed a concerted campaign against the draft law by civil society organizations, including LGBTI rights groups, in Kyrgyzstan.<sup>232</sup>

### 4.4.6 FREEDOM OF EXPRESSION AND MEDIA ENVIRONMENT

The media generally report on LGBTI rights issues in a sensationalist way that serves to reinforce negative attitudes.<sup>233</sup> This has been particularly true in regard to discussion and coverage of the draft “LGBTI propaganda” law.<sup>234</sup> That said, Kyrgyzstan has a relatively pluralistic media environment, and some independent media outlets include positive and sensitive coverage of LGBTI rights issues, or report on LGBTI

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<sup>228</sup> Labrys Kyrgyzstan and Bishkek Feminist Collective SQ, “Report on Kyrgyzstan: 21st Session of the Universal Periodic Review – June 2014” (Bishkek: Labrys / Bishkek Feminist Collective SQ, 2014), 3; Labrys Kyrgyzstan, “Discriminatory Laws and Practices, Hate Speech and Hate Crimes against LGBTI Communities of Kyrgyzstan,” 4–5.

<sup>229</sup> Interviews with LGBTI activists, Bishkek, Kyrgyzstan, March 2016. See also: Wilkinson, “Kyrgyzstan’s Anti-Gay Bill: Just Following in Russia’s Footsteps?”.

<sup>230</sup> Georgina Rannard, “Kyrgyzstan’s Conservatives Hold Their Anti-LGBT Rally,” *Open Democracy*, June 15, 2015, <https://www.opendemocracy.net/od-russia/georgina-rannard/kyrgyzstan-s-conservatives-hold-their-antilgbt-rally>.

<sup>231</sup> Anna Lelik, “Kyrgyzstan: Foreign Agent Bill Nixed, NGOs Rejoice,” *EurasiaNet*, May 12, 2016, <http://www.eurasianet.org/node/78756>.

<sup>232</sup> Global Philanthropy Project, “The Perfect Storm: The Closing Space for LGBT Civil Society in Kyrgyzstan, Indonesia, Kenya, and Hungary” (New York: Global Philanthropy Project, 2016), 12.

<sup>233</sup> Interviews with LGBTI activists, Bishkek, Kyrgyzstan, March 2016. See also: Global Philanthropy Project, “The Perfect Storm: The Closing Space for LGBT Civil Society in Kyrgyzstan, Indonesia, Kenya, and Hungary”; CA Mediators, “Резюме исследования ‘Язык вражды в СМИ, Интернете и публичном дискурсе - 2015’ [Summary of research on ‘Hate speech in the media, internet, and public discourse - 2015’],” School of Peacebuilding and Media Technologies, December 29, 2015, <http://www.ca-mediators.net/ru/issledovaniya/216-rezyume-issledovaniya-yazyk-vrazhdy-v-smi-internete-i-publicnom-diskurse-2015.html>.

<sup>234</sup> CA Mediators, “Summary of research on ‘Hate speech in the media, internet, and public discourse - 2015.’”

issues using neutral language.<sup>235</sup> Russian media is widely read and watched in Kyrgyzstan, and activists identify this as one factor helping to uphold hostile and discriminatory attitudes towards LGBTI people.<sup>236</sup>

Social media is an important space for LGBTI people to communicate and share information.<sup>237</sup> However, it has also been used as a tool to violate the rights of LGBTI persons. For instance, there have been cases of LGBTI individuals being filmed against their will (in some cases, by people claiming to be police officers), and then blackmailed with threats that the video footage will be circulated on social media.<sup>238</sup>

Each year, the NGO Bir Duino organizes a human rights film festival. In 2012, the documentary film *I'm Gay and Muslim* was due to be included on the programme; however, a district court in Bishkek banned the organizers from showing the film, following an application by the Prosecutor General on behalf of the State Commission on Religious Affairs. The judge's justification was that the film contained "extremist material, arousing intrareligious strife and humiliation directed at Muslims and their inferiority on religious grounds".<sup>239</sup>

## 4.4.7 RIGHTS VIOLATIONS AGAINST LGBTI PEOPLE

Societal attitudes towards LGBTI people are very negative in Kyrgyzstan, with many people seeing homosexuality as "deviant" and a threat to Kyrgyz culture and traditional gender roles.<sup>240</sup> As a result, many LGBTI people do not feel they can be open about their sexual orientation or gender identity.<sup>241</sup> LGBTI people in Kyrgyzstan face harassment and discrimination in employment, access to healthcare, education, and other areas.<sup>242</sup> The legislation on "LGBTI propaganda" has not passed, but its effect has still been noticeable. LGBTI people report that hostile media coverage around the legislation has led to greater visibility, and with that, more discrimination, violence, and aggression towards them.<sup>243</sup> Young LGBTI people who have come out to their parents have faced physical and psychological violence from family members, restrictions on their mobility and contact with people outside the family, enforced psychiatric or medical treatment to "cure" them, and pressure to marry and to hide their sexual orientation or gender identity.<sup>244</sup>

LGBTI people in Kyrgyzstan are highly vulnerable to physical attacks on the basis of SOGI.<sup>245</sup> Research by Kyrgyz Indigo NGO in 2016 found that 84% of LGBTI respondents had experienced physical violence at some point, and 35% had experienced sexual violence.<sup>246</sup> Attacks increased dramatically following the proposal of the draft "LGBTI propaganda" law in 2014.<sup>247</sup> Victims are often reluctant to report hate crimes, or they do not disclose that they are LGBTI. Often they have little faith in the police to investigate, and fear

<sup>235</sup> This includes output by Kloop.kg and Radio Azzatyk. See, for instance: Bektur Iskender, "Бектур Искендер: Почему Антигейский Законопроект Не Должен Быть Принят Никогда [Bektur Iskender: Why the Anti-Gay Draft Law Should Never Be Adopted]," January 21, 2016, <http://kloop.kg/blog/2016/01/21/bekturiskenderpochemuantigayskijzakonoproektnedolzenbytnyatnikogda/>; Eldiar Arykbaev, "Защитники и противники прав ЛГБТ встретились в эфире КТРК [Defenders and opponents of LGBT rights met in a KTRK broadcast]," Kloop (blog), May 13, 2016, <http://kloop.kg/blog/2016/05/13/videoektrkposvyatilefirodnopolymbrakamipravamlgbt/>; Rakhat Asangulova, "Ана, Я Гей... История Азамата [Mother, I'm Gay... Azamat's Story]," Radio Azzatyk, April 19, 2017, [http://rus.azattyk.org/a/kyrgyzstan\\_azamat/28412347.html](http://rus.azattyk.org/a/kyrgyzstan_azamat/28412347.html).

<sup>236</sup> Andrew North, "We'll Cut off Your Head": Open Season for LGBT Attacks in Kyrgyzstan," *The Guardian*, May 4, 2016, <http://www.theguardian.com/world/2016/may/04/kyrgyzstanlgbtcommunityfearattacksrussia>.

<sup>237</sup> Workshop with LGBTI activists, Bishkek, March 2016.

<sup>238</sup> Asteria et al., "Alternative Report On the Situation of Women Who Use Drugs, Sex Workers, and Lesbians, Bisexual Women, and Transgender People Republic of Kyrgyzstan 2014. Joint Submission for the 60th Session of the Convention on the Elimination of Discrimination against Women (CEDAW) Geneva, Switzerland, 16 February – 6 March 2015," CEDAW shadow report (Bishkek: Public Foundation "Asteria", LGBTIQA organization "Labrys", "Podruga", Public Foundation "Tais Plus", Shakh Aiyim, Public Foundation "AIDS Foundation East-West in the Kyrgyz Republic" and The Global Health Research Center of Central Asia, 2014), 10; Equal Rights Trust, "Looking for Harmony," 190; Labrys Kyrgyzstan, "Discriminatory Laws and Practices, Hate Speech and Hate Crimes against LGBTI Communities of Kyrgyzstan."

<sup>239</sup> Kyrgyz Indigo and Labrys Kyrgyzstan, "Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kyrgyzstan," 15; David Trilling, "Kyrgyzstan: Rights Activists Condemn Ban on Gay Muslim Documentary," *EurasiaNet*, October 1, 2012, <http://www.eurasianet.org/node/65986>.

<sup>240</sup> Bonheur, "LGBT in Kyrgyzstan: From Anti-Gay Propaganda Bill to Hate Crime?"

<sup>241</sup> Equal Rights Trust, "Looking for Harmony"; Human Rights Watch, "These Everyday Humiliations"; Human Rights Watch, "They Said We Deserved This". Police Violence Against Gay and Bisexual Men in Kyrgyzstan" (New York: Human Rights Watch, 2014).

<sup>242</sup> Asteria et al., "Alternative Report On the Situation of Women Who Use Drugs, Sex Workers, and Lesbians, Bisexual Women, and Transgender People Republic of Kyrgyzstan 2014."; Kyrgyz Indigo and Labrys Kyrgyzstan, "Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kyrgyzstan."

<sup>243</sup> Bonheur, "LGBT in Kyrgyzstan: From Anti-Gay Propaganda Bill to Hate Crime?"; Katie Arnold, "Curtain Falls on Bishkek's Lone LGBT Club amid Worsening Atmosphere," *Radio Free Europe / Radio Liberty*, June 18, 2017, <https://www.rferl.org/a/kyrgyzstanlgbtclubclosinggayrightshomophobia/28561339.html>; Labrys Kyrgyzstan, "Discriminatory Laws and Practices, Hate Speech and Hate Crimes against LGBTI Communities of Kyrgyzstan."

<sup>244</sup> Asangulova, "Mother, I'm Gay... Azamat's Story"; Human Rights Watch, "These Everyday Humiliations."

<sup>245</sup> Bonheur, "LGBT in Kyrgyzstan: From Anti-Gay Propaganda Bill to Hate Crime?"; Equal Rights Trust, "Looking for Harmony."

<sup>246</sup> Arnold, "Curtain Falls on Bishkek's Lone LGBT Club amid Worsening Atmosphere."

<sup>247</sup> Arnold, "Curtain Falls on Bishkek's Lone LGBT Club amid Worsening Atmosphere."

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that police will disclose their sexual orientation or gender identity to their families and community.<sup>248</sup> Police often refuse to investigate, or further victimize LGBTI people through the use of homophobic or transphobic language.<sup>249</sup> When crimes are registered, bias motive is not taken into consideration.<sup>250</sup> Police have also allegedly committed hate crimes against LGBTI people, including rapes and sexual assaults.<sup>251</sup> A report by Human Rights Watch released in early 2014 detailed police targeting of gay and bisexual men, who they subjected to physical and sexual violence and extortion.<sup>252</sup> Following the release of the report, the Ministry of Internal Affairs rejected its findings as “unfounded”; the report was also condemned by religious leaders.<sup>253</sup>

In April 2015, an LGBTI rights NGO’s offices were firebombed (no-one was hurt), and in May, nationalist groups attacked a private event organized to mark IDAHOT for the LGBTI community. Following the attack on the IDAHOT event, police detained both attackers and IDAHOT participants together in the same cells.<sup>254</sup> There is an ongoing investigation into the attack.

Male and female prisoners identified as gay or lesbian face harassment and violence from other prisoners, and are sometimes forced to eat and live separately from other prisoners.<sup>255</sup>

Lesbian and bisexual women face “double” discrimination in Kyrgyzstan, as women and on the basis of their sexual orientation.<sup>256</sup> Lesbian and bisexual women are seen as threatening “traditional values” because they do not conform to acceptable gender norms.<sup>257</sup> This means that they are at high risk of gender-based violence.<sup>258</sup> During her visit to Kyrgyzstan in 2009, the Special Rapporteur on violence against women reported accounts of women being subjected to “brutal gang rapes, ‘curative’ rapes and family violence owing to their sexual orientation and gender identity”.<sup>259</sup> Lesbian and bisexual women may also be forced into marriage.<sup>260</sup> Many lesbian and bisexual women are also ostracized from their families, meaning they lose the social support networks that families provide in Kyrgyzstan.<sup>261</sup>

Prominent political, nationalist, and religious leaders have incited discrimination, hostility, or violence against LGBTI people, and this has gone unchecked. Political leaders have accused LGBTI activists of demanding “extra” rights for LGBTI people, and of LGBTI rights being a weapon in an “ideological war” against the Kyrgyz nation.<sup>262</sup> One nationalist leader stated that lobbying for LGBTI rights was “immoral”.<sup>263</sup> Incitement to discrimination, hostility, or violence was particularly evident during discussions around the draft “LGBTI propaganda” law. For instance, during parliamentary discussions in 2014, Member of Parliament Narynbek Moldobaev stated: “I myself have a very bad attitude to this phenomenon. If it were up to me, I would shoot them (LGBT) all on the main square”.<sup>264</sup> Arguments in favour of passing the “LGBTI propaganda” law included the need to preserve traditional family values and prevent the “West” from promoting

<sup>248</sup> Bonheur, “LGBT in Kyrgyzstan: From Anti-Gay Propaganda Bill to Hate Crime?”; Equal Rights Trust, “Looking for Harmony”; Human Rights Watch, “These Everyday Humiliations.”

<sup>249</sup> Arnold, “Curtain Falls on Bishkek’s Lone LGBT Club amid Worsening Atmosphere”; Human Rights Watch, “These Everyday Humiliations.”

<sup>250</sup> Labrys Kyrgyzstan, “Discriminatory Laws and Practices, Hate Speech and Hate Crimes against LGBTI Communities of Kyrgyzstan,” 9; Kyrgyz Indigo and Labrys Kyrgyzstan, “Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kyrgyzstan,” 7.

<sup>251</sup> Equal Rights Trust, “Looking for Harmony,” 188–190; Human Rights Watch, “These Everyday Humiliations”; Human Rights Watch, “They Said We Deserved This.”

<sup>252</sup> Human Rights Watch, “They Said We Deserved This.”

<sup>253</sup> Chris Rickleton, “Kyrgyzstan Sees Homophobic Backlash after Report on Gay Abuse,” EurasiaNet.org, March 5, 2014, <http://www.eurasianet.org/node/68107>.

<sup>254</sup> Labrys Kyrgyzstan, “Срыв ЛГБТ-Правозащитного Мероприятия в Бишкеке: Хроника Событий [The Attack on the LGBT-Rights Event in Bishkek: Chronicle of Events],” May 19, 2017, <http://labrys.kg/ru/news/full/685.html>.

<sup>255</sup> Kyrgyz Indigo and Labrys Kyrgyzstan, “Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kyrgyzstan,” 12–13.

<sup>256</sup> Asteria et al., “Alternative Report On the Situation of Women Who Use Drugs, Sex Workers, and Lesbians, Bisexual Women, and Transgender People Republic of Kyrgyzstan 2014.”

<sup>257</sup> Labrys Kyrgyzstan, “Discriminatory Laws and Practices, Hate Speech and Hate Crimes against LGBTI Communities of Kyrgyzstan.”

<sup>258</sup> Asteria et al., “Alternative Report On the Situation of Women Who Use Drugs, Sex Workers, and Lesbians, Bisexual Women, and Transgender People Republic of Kyrgyzstan 2014,” 4; Human Rights Watch, “These Everyday Humiliations.”

<sup>259</sup> UN Human Rights Council, “Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo. Addendum: Mission to Kyrgyzstan” (Geneva: United Nations Human Rights Council, 2010), para. 37. See also: Human Rights Watch, “These Everyday Humiliations.”

<sup>260</sup> Human Rights Watch, “These Everyday Humiliations.”

<sup>261</sup> Asteria et al., “Alternative Report On the Situation of Women Who Use Drugs, Sex Workers, and Lesbians, Bisexual Women, and Transgender People Republic of Kyrgyzstan 2014,” 5.

<sup>262</sup> Arykbaev, “Defenders and opponents of LGBT rights met in a KTRK broadcast.”

<sup>263</sup> Asteria et al., “Alternative Report On the Situation of Women Who Use Drugs, Sex Workers, and Lesbians, Bisexual Women, and Transgender People Republic of Kyrgyzstan 2014,” 5.

<sup>264</sup> Labrys Kyrgyzstan, “Discriminatory Laws and Practices, Hate Speech and Hate Crimes against LGBTI Communities of Kyrgyzstan,” 4. This report includes other examples of hate speech perpetrated by political and religious leaders.

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homosexuality in Kyrgyzstan.<sup>265</sup> In August 2017, a well-known celebrity stated in a Facebook post that she would “Round up all the people of non-traditional orientation and blow them all up on one island”.<sup>266</sup>

Transgender people are often isolated and highly marginalized. Many are unable to find work because their identity documents do not “match” their gender expression, or they are afraid to go out in public for fear of attack;<sup>267</sup> they also face difficulties in accessing healthcare.<sup>268</sup> The absence of an effective, transparent, and accessible procedure to change the gender marker on identity documents means that most transgender people are “unable to use their identity documents without stigma, discrimination, and humiliation”.<sup>269</sup> Transgender people are also highly vulnerable to hate crimes. In a recent case, a transwoman sex worker was abducted by two clients who beat her severely and attempted to drown her, before leaving her for dead.<sup>270</sup> Transgender people who are attacked are often reluctant to report violent attacks, for fear of experiencing further violence at the hands of the police.<sup>271</sup>

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<sup>265</sup> Bonheur, “LGBT in Kyrgyzstan: From Anti-Gay Propaganda Bill to Hate Crime?,” 6.

<sup>266</sup> RFE/RL, “Fashion Doyenne Calls For Kyrgyz To ‘Blow Up’ LGBT Community, Prostitutes,” *Radio Free Europe/Radio Liberty* (blog), August 11, 2017, <https://www.rferl.org/a/kyrgyzstan-yusurova-lgbt-prostitutes-blow-up-/28671897.html>.

<sup>267</sup> Arnold, “Curtain Falls on Bishkek’s Lone LGBT Club amid Worsening Atmosphere.”

<sup>268</sup> Kyrgyz Indigo and Labrys Kyrgyzstan, “Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kyrgyzstan.”

<sup>269</sup> Asteria et al., “Alternative Report On the Situation of Women Who Use Drugs, Sex Workers, and Lesbians, Bisexual Women, and Transgender People Republic of Kyrgyzstan 2014.” 2. See also: Kanafina, “Why Do They Beat Transgender People in Central Asia?” Labrys Kyrgyzstan, “Discriminatory Laws and Practices, Hate Speech and Hate Crimes against LGBTI Communities of Kyrgyzstan.”

<sup>270</sup> Ombudsman of the Kyrgyz Republic, “Report of the Ombudsman of the Kyrgyz Republic for 2016” (Bishkek: Office of the Ombudsman of the Kyrgyz Republic, 2017).

<sup>271</sup> Asteria et al., “Alternative Report On the Situation of Women Who Use Drugs, Sex Workers, and Lesbians, Bisexual Women, and Transgender People Republic of Kyrgyzstan 2014.” 3; Equal Rights Trust, “Looking for Harmony,” 184–186.

## LESS EQUAL

### LGBTI HUMAN RIGHTS DEFENDERS IN ARMENIA, BELARUS, KAZAKHSTAN, AND KYRGYZSTAN

# 5. LGBTI RIGHTS MOVEMENTS: STRENGTHS, WEAKNESSES, OPPORTUNITIES, THREATS

During participatory workshops with activists in Armenia, Belarus, Kazakhstan, and Kyrgyzstan, we asked participants to think about the LGBTI rights movement in their country. What were its strengths and weaknesses? What opportunities did they have, as LGBTI HRDs? What were the threats? In this section we discuss the main findings from these discussions.

## 5.1 STRENGTHS AND OPPORTUNITIES: COMMON TRENDS

### 5.1.1 RESILIENCE OF LGBTI HRDS

Workshop participants identified the diversity, skills, enthusiasm, energy and resilience of LGBTI activists as a source of strength. In Belarus, participants spoke of the diversity of attitudes and values among LGBTI activists and of the important fact that organizing is coming from the grassroots. In Kyrgyzstan and Armenia, participants applauded the resilience of activists, who are “ready for a fight” (Armenia), “no matter what they throw at us” (Kyrgyzstan). In all four countries, participants spoke of the wide range of skills, experiences, and abilities that different people brought to the movement, and of the potential of younger people and those new to activism.

### 5.1.2 INTERNATIONAL SOLIDARITY AND SUPPORT

International solidarity and support were important in all four countries, both in terms of material support and solidarity messages and actions. For participants in Kyrgyzstan, this included support in-country, from international organizations and embassies willing to make public statements in support of LGBTI rights, while in Armenia, support from the Armenian diaspora abroad was also highlighted. Activists in Kyrgyzstan,

however, pointed out that public statements on LGBTI issues from international human rights organizations needed to be carefully coordinated with Kyrgyzstani activists, as a mistimed statement could do more harm than good.

### 5.1.3 INTERNATIONAL HUMAN RIGHTS STANDARDS AND MECHANISMS

International human rights standards and mechanisms were another important opportunity for strengthening the protection of LGBTI rights. Workshop participants in Kazakhstan – who had only begun to organize in the past year – noted that international human rights standards were vital for them in making the case for LGBTI rights protection to the authorities. In Armenia, participants mentioned using international human rights standards for strategic litigation cases, while in Kyrgyzstan activists noted that the UN treaty body reporting systems provided the chance to submit alternative reports and to draw the attention of international institutions to violations of LGBTI rights.

In Armenia and Belarus, activists mentioned the positive impact of state-level dialogue with the EU. In Armenia, this had led to increased funding for work on equality and women's rights (potentially, in their view, positively impacting on LGBTI rights). In Belarus, respondents reported feeling that there was a climate of limited liberalization since the authorities had entered into dialogue with the EU. They felt that a crackdown (similar to the one that took place in 2013) would be unlikely while this dialogue continued, even though restrictions on freedom of expression and assembly remained in place.<sup>272</sup>

### 5.1.4 ANTI-DISCRIMINATION COALITIONS

Co-operation in anti-discrimination coalitions and drafting of proposed anti-discrimination legislation were also important opportunities and sources of strength for participants in Armenia, Belarus and Kyrgyzstan, either currently or in the past. This was both in terms of building alliances with other groups and activists and increasing their awareness of and sensitivity towards LGBTI rights issues, and in terms of inputting into the drafting of proposed legislation. That said, participants in Belarus and Armenia reported their unsuccessful attempts to convince other NGOs involved in anti-discrimination coalitions to accept that specific reference to “sexual orientation or gender identity” (SOGI) should be included in the draft legislation. In Belarus, the anti-discrimination coalition had fallen apart, while in Armenia, activists felt that while anti-discrimination legislation would eventually be passed (without reference to SOGI, but banning discrimination on the grounds of “race, sex, religion... *and membership of any other group*”), it would only exist “on paper”, with no effective implementation. Kyrgyzstani activists, however, were hopeful that if passed, anti-discrimination legislation would make it impossible for openly homophobic laws to be passed in future.

### 5.1.5 SOLIDARITY FROM SOME SECTIONS OF CIVIL SOCIETY

Finally, participants in all four countries highlighted solidarity with some sections of civil society as an important source of strength. In particular, some feminist, gender equality, and women's rights organizations and HIV+ service organizations were identified as important allies.

## 5.2 WEAKNESSES AND THREATS: COMMON TRENDS

### 5.2.1 LACK OF SOLIDARITY AND SUPPORT FROM “MAINSTREAM” HUMAN RIGHTS ORGANIZATIONS

LGBTI HRDs in Armenia, Belarus, Kazakhstan and Kyrgyzstan consistently identified a lack of solidarity and support from “mainstream” human rights organizations. Workshop participants in Armenia and Kyrgyzstan, countries where LGBTI rights organizations are well established, particularly identified lack of solidarity and

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<sup>272</sup> In fact, this optimism was misplaced as March 2017 saw a significant clampdown in Belarus, with the arrest of large numbers of peaceful protestors. See: Amnesty International, “Belarus: Biggest Crackdown in Years as Dozens Detained at Peaceful Protests,” March 13, 2017, <https://www.amnesty.org/en/latest/news/2017/03/belarus-biggest-crackdown-in-years-as-dozens-detained-at-peaceful-protests/>.

support from “mainstream” human rights organizations and wider civil society as a significant challenge. Representatives of LGBTI NGOs in the two countries mentioned that they were often approached by human rights and other NGOs to join statements of support or solidarity actions; while they were usually ready to join these activities, they found that when they asked for public support in return, very few other NGOs were willing. Following a homophobic attack on an event in Kyrgyzstan organized by LGBTI rights groups in May 2015, just one prominent human rights organization issued a statement of support.

Members of one activist group in Armenia stated that the director of an NGO based in a region of Armenia had told his staff not to participate at or attend any training or events that they organized, and that a representative of another NGO had rung up the organization and used homophobic and derogatory language. While LGBTI rights activists in both countries felt that homophobia and transphobia were important factors in the lack of support, they also reported that representatives of other NGOs were often privately supportive, but felt that they could not openly speak out in support of LGBTI rights for fear of how it might negatively impact their own organization’s work.

Activists in Kazakhstan also talked of their feelings of disempowerment when established human rights defenders assumed the right to speak for LGBTI communities in Kazakhstan, but then told LGBTI activists that it was “too soon” to campaign openly on LGBTI rights abuses.<sup>273</sup> In Belarus, one of the two main human rights organizations had been openly supportive and encouraging, although activists still felt that they did not enjoy much support from wider civil society.<sup>274</sup>

## 5.2.2 POLITICIZATION OF LGBTI RIGHTS

Politicization of LGBTI rights was a particularly pressing issue according to Armenian and Kyrgyzstani LGBTI HRDs. LGBTI activists in Kyrgyzstan – where nationalist groups have attacked LGBTI rights as a “Western import” and where there have been long-running discussions about introducing an “LGBTI propaganda law” – spoke of feeling that “we are like a toy” being used in politicians’ games.<sup>275</sup> In Armenia, activists spoke of how the terms “LGBT” and “gender” had become highly politicized and effectively toxic. They had become words used by politicians and public figures to distract attention from other issues. Anyone using them in a positive way was accused of trying to “destroy society”.<sup>276</sup> According to LGBTI HRDs, the politicization of LGBTI rights makes it difficult for allies from within the parliament or the executive to speak out openly in support of LGBTI rights or activists.

In both Armenia and Kyrgyzstan, activists felt that there had been a definite deterioration in the political environment in regard to LGBTI rights over the past two to four years, with more instances of politicians attacking the idea of LGBTI rights, and using derogatory language. This reflected a “backlash” against increased LGBTI visibility achieved in the late 2000s and early 2010s, as a result of the advocacy and campaigning work of the LGBTI rights organizations, but also wider geopolitical developments, namely the increased influence of Russia.

While less pronounced, activists in Belarus and Kazakhstan also felt that LGBTI rights were (mis)used by politicians for their own political gains (such as to stir up support for “traditional values”), as and when it suited them.

## 5.2.3 REPRESSIVE LAWS

Repressive laws or attempts to introduce repressive laws affected activism and its impact in all four countries. Belarus and Kazakhstan both have laws in place that significantly restrict rights to freedom of expression, association, and assembly, limiting the capacity of LGBTI activists to organize and to speak out on rights abuses. For instance, in both countries, a person could potentially face criminal charges for belonging to an unregistered organization, and administrative charges (including up to 15 days in administrative detention) for participating in an unsanctioned demonstration or meeting.<sup>277</sup> Activists in Belarus noted that even though the law on unregistered organizations has not been used recently against anyone involved in an unregistered organization, the fact that it has not been repealed means that it hangs

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<sup>273</sup> Article 19 carried out interviews with “mainstream” HRDs in Kazakhstan, during which a majority said they did not wish to work with LGBTI people. See: Article 19, “Don’t Provoke, Don’t Challenge,” 40.

<sup>274</sup> See also: Equal Rights Trust and Belarusian Helsinki Committee, “Half an hour til spring.”

<sup>275</sup> Meeting the LGBTI activists, Bishkek, 24 March 2016.

<sup>276</sup> Meeting with LGBTI activists, Yerevan, 20 April 2016.

<sup>277</sup> See: Amnesty International, “What Is Not Permitted Is Prohibited”; Amnesty International, “Kazakhstan: Submission to the United Nations Human Rights Committee.”

over them “like the sword of Damocles”. As one respondent put it: “[the law] does not need to be used for it to instil fear”.<sup>278</sup> In both countries, authorities often refuse to register new organizations on spurious grounds.

Laws on unsanctioned demonstrations are used more frequently in both countries. Activists in Belarus recounted how an attempt to hold a Pride march in Minsk in 2013 had led to people who had been involved in organizing the march being brought in to police stations for questioning.<sup>279</sup>

There are fewer legal restrictions on freedom of expression, assembly, and association in Armenia and Kyrgyzstan; however, both countries have seen attempts to introduce homophobic legislation very similar to the “LGBTI propaganda” law in Russia.<sup>280</sup> In Armenia in 2013 an amendment to the Administrative Offences Code was tabled to introduce fines for “propaganda of non-traditional sexual relations”. The proposed amendment was withdrawn, but activists felt the threat that it might be reintroduced in some form was still “hanging around in the shadows”, given the on-going hostile political environment.<sup>281</sup> Changes to the Constitution of Armenia adopted by referendum in 2015 enshrine marriage as a union between a man and a woman, effectively eliminate any possibility of advocating equal marriage legislation in the future, should LGBTI activists decide that this is a priority.

In Kyrgyzstan, a law banning the “promotion of a positive attitude towards non-traditional sexual relations” has been under discussion since 2014. At the time of Amnesty International’s visit to Kyrgyzstan, activists were worried that the bill would soon pass its third and final reading in the parliament and be passed to the President to be signed into law (it has since been sent back for further consideration and appears to have stalled). Even though it had not been passed, the threat of the law was already serving to silence LGBTI rights activists and limit their activities. Representatives of one NGO said that their strategic planning had been put on hold while they awaited the outcome of the final vote. One activist stated that: “it’s hanging over us like a threat and that’s being exploited; it’s a way of keeping us quiet”.<sup>282</sup>

## 5.2.4 NEGATIVE SOCIAL ATTITUDES

Negative social attitudes towards members of LGBTI communities, including high levels of transphobia and homophobia often fuelled by religious and political leaders, were also significant challenges facing LGBTI rights activists.

In Armenia, activists identified homophobia and transphobia in the society as being closely linked to nationalism and the strong influence of the Armenian Apostolic Church, which considers homosexuality to be a sin. LGBTI HRDs felt that many people in Armenia have the attitude that LGBTI identities are against Armenian culture and national identity, that “you can’t be LGBT and be Armenian”, and that homosexuality is destroying the society.<sup>283</sup>

Activists in Kazakhstan and Kyrgyzstan also identified negative social attitudes as being closely linked to nationalism and religion, in this case what they saw as the growing “Islamization” of their societies (whereby religion and religious doctrine appeared to be gaining increasing influence). In Kyrgyzstan, respondents stated that they felt social attitudes towards LGBTI people had significantly worsened in recent years, and that the increased influence of religious leaders was definitely a factor. In Belarus, activists felt that social attitudes towards LGBTI persons were generally negative, but did not link this to nationalism or religion. In all four countries, activists saw the media – especially Russian, state-owned media outlets, which are widely watched and read across this region – as playing a negative role in promoting hostile attitudes toward LGBTI people.

## 5.2.5 FAILURE TO PROSECUTE HATE CRIMES AGAINST LGBTI PEOPLE

In each country, many of the activists that Amnesty International delegates met were involved in documenting hate crimes against LGBTI people and supporting victims. They identified the failure of the

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<sup>278</sup> Meeting with LGBTI activists, Minsk, 20 July 2016

<sup>279</sup> Other accounts of this crackdown indicate that it followed an LGBTI rights NGO’s attempt to register with the authorities, as discussed in the country context section on Belarus. See: Amnesty International, “What Is Not Permitted Is Prohibited,” 43; ILGA Europe, “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2014,” 43.

<sup>280</sup> Federal Law of the Russian Federation of 30 June 2013 № 135-ФЗ “On the introduction of amendments to Article 5 of the Federal Law ‘On the protection of children from information, causing harm to their health and development’ and separate legal acts of the Russian Federation with the aim of protecting children from information promoting the denial of traditional family values”. Adopted by the State Duma March 22, 2013, Federation Council approved March 27, 2013.

<sup>281</sup> Meeting with LGBTI activists, Yerevan, 19 April 2016.

<sup>282</sup> Meeting with LGBTI activists, Bishkek, 24 March 2016.

<sup>283</sup> Meeting with LGBTI activists, Yerevan, 20 April 2016.

state to recognize, investigate, and prosecute hate crimes against LGBTI people as a significant challenge. In the four countries, reporting rates are very low as victims are often frightened to come forward and report what has happened to them to the police, for fear of further victimization at the hands of the police or of being “outed” to their families or at work.

Activists in Kazakhstan had documented hate crimes against trans people, but none of the people concerned had been prepared to go to the police as they felt that the risks were too great. In Armenia, respondents stated that trans sex workers were most at risk of violence, but few would go to the police for fear of being charged and fined or imprisoned under the Administrative Offences Code.<sup>284</sup> When cases are reported to the police, they are not investigated effectively, or are not investigated as hate crimes, even when homophobia or transphobia is clearly a motive.

In Belarus, Amnesty International representatives met with a lawyer who worked on hate crime cases who stated that there had only ever been one case in the entire country where the court had recognized homophobia as a motive.<sup>285</sup> Activists mentioned a recent murder case in Kazakhstan where the perpetrators had stated in court that they had killed the victim because he was gay.<sup>286</sup> The defendants were found guilty of “murder with exceptional cruelty by a group of persons upon prior conspiracy motivated by hooliganism” and sentenced to long prison terms, but the judge did not take the homophobic motive into consideration in sentencing.<sup>287</sup>

## 5.2.6 ACTIVIST BURNOUT

The feeling of not making any progress towards realizing the full human rights of LGBTI persons was a factor contributing to activist burnout, often leading to “brain drain” as key individuals moved to other sectors or left the country. This limits the capacity and reach of the LGBTI rights movements, as skills, experience, and institutional memory are lost. Of course, burnout also negatively impacts on the health and wellbeing of individuals. Given the range of challenges facing LGBTI rights activists discussed above, it is not surprising that activist burnout was identified as a significant factor in these four countries.

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<sup>284</sup> Involvement in sex work is an administrative offence in Armenia, under articles 261 (“Involvement into prostitution”) and 262 (“Maintaining dens of prostitution or pimping”) of the Administrative Offences Code. Given that prosecution under these articles can result in a prison sentence, this amounts to de-facto criminalization.

<sup>285</sup> Later that year, the court recognized homophobia as a motive in a second case, detailed above in the country context section on Belarus. See: ILGA Europe, “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2017.”

<sup>286</sup> [yk.kz, “Усть-Каменогорск Пили Из Одного Стакана \[Ust-Kamenogorsk They Drank from the Same Glass\],” August 25, 2015, http://178.90.222.138/news/show/28657.](http://178.90.222.138/news/show/28657)

<sup>287</sup> Article 19, “Don’t Provoke, Don’t Challenge,” 19.

## THE HUMAN COSTS OF ACTIVISM

Working towards realizing human rights for LGBTI people can be a draining and demoralizing task in Armenia, Belarus, Kazakhstan and Kyrgyzstan, leading to high levels of activist burnout.

Two activists in Kyrgyzstan<sup>288</sup> spoke of how a trio of factors had led to one of the two “burning out” and having to step down from a leadership position:

- Difficult working conditions (too much work; feeling unable to delegate; caring for others but not herself)
- The strain of working on LGBTI rights (documenting rights violations; dealing with tensions and divisions within the LGBTI community, including transphobia; feeling you are making no progress)
- The wider context (the hostile political situation; the draft “LGBTI propaganda” law; lack of solidarity from the wider human rights community).

Documenting cases of hate-motivated violence and abuse against members of LGBTI communities is in itself traumatizing for the person doing the documentation, pointed out another activist in Kyrgyzstan. This is even more so when these cases are not investigated at all, or are not investigated effectively.

In Belarus,<sup>289</sup> a person who had formerly been an influential and active member of an LGBTI rights network spoke of the enormous personal costs that he had endured as a result of his activism, including losing his job on more than one occasion, and being taken in for police questioning. While he was supportive of the initiatives of other activists to try and “revive” LGBTI rights activism in Belarus, he felt that for the time being, he could not get involved; the personal risks were too great.

In Armenia, workshop participants identified “brain drain” as a significant threat to the sustainability and future success of the LGBTI rights movement.<sup>290</sup> Workshop participants in Kazakhstan had only begun to organize in the previous year, and yet they identified one of their strengths as “we haven’t burned out yet”, indicating that they saw activist burnout as inevitable. Discussion of the scenario “What would you do if a member of your group ‘burned out?’” at the workshops indicated that none of the groups had any robust procedures in place for identifying those at risk of burnout or supporting them.

## 5.2.7 “EXCLUDED FROM THE MAINSTREAM” OF HUMAN RIGHTS RHETORIC AND PRACTICE

While the context in which they are working is different, the LGBTI rights activists that Amnesty International met in these four countries are facing similar challenges and pressures that threaten to undermine the sustainability of the LGBTI rights movements.

Operating in difficult political environments is exhausting and limits the impact of organizations’ advocacy efforts. One activist in Kyrgyzstan remarked that in terms of advocacy work, she felt as if “nothing ever changes”. In general, across the four countries activists felt that as soon as they embarked on any public activities, this was seen as antagonizing for the public and authorities.

The lack of solidarity from most other HRDs and NGOs and the failure of much of civil society as well as state actors to treat LGBTI rights within the wider remit of universal human rights severely limits the reach and impact of LGBTI organizations’ work (as it limits their access to audiences beyond existing allies). For activists, the feeling that “no one wants to be associated with us” (according to Kyrgyzstani activists) is demoralizing and isolating, and a source of frustration. LGBTI activists in all four countries felt that their work was often perceived by the larger civil society as excluded from the “mainstream” of human rights. These themes are explored in more detail in the next two case studies.

<sup>288</sup> Meeting with LGBTI activists, Bishkek, 23 March 2016.

<sup>289</sup> Interview with former LGBTI rights activist, Minsk, 21 July 2016.

<sup>290</sup> See: PINK Armenia and Socioscope, “The Impact of LGBT Emigration on Economic Indicators of Armenia.”

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Amnesty International

**Table 2: SWOT analysis of LGBTI HRDs in Armenia, Belarus, Kazakhstan and Kyrgyzstan, March-July 2016**  
(listing the most significant issues identified in each category)

|               | ARMENIA                                                    | BELARUS                                                     | KAZAKHSTAN                                       | KYRGYZSTAN                                                                                      |
|---------------|------------------------------------------------------------|-------------------------------------------------------------|--------------------------------------------------|-------------------------------------------------------------------------------------------------|
| STRENGTHS     | Armenian diaspora / international connections              | Grassroots LGBTI groups                                     | Highly skilled and knowledgeable activists       | International connections                                                                       |
|               | Possible to exercise freedom of expression                 | Activist groups focus on different needs of LGBTI community |                                                  | Cooperation among Kyrgyzstani activists                                                         |
|               | Local LGBTI community centre                               |                                                             |                                                  | Highly skilled and experienced activists                                                        |
|               | Resilient activists                                        |                                                             |                                                  |                                                                                                 |
| OPPORTUNITIES | International solidarity and support                       | International connections                                   | Activists becoming more “professionalized”       | Draft anti-discrimination legislation                                                           |
|               | International human rights frameworks                      | EU engagement process                                       |                                                  | International human rights framework                                                            |
|               | EU engagement process                                      | Making allies in Belarus                                    |                                                  |                                                                                                 |
|               | Making allies in Armenia                                   |                                                             |                                                  |                                                                                                 |
| WEAKNESSES    | Internalized homophobia and transphobia among LGBTI people |                                                             |                                                  | Internalized homophobia and transphobia among LGBTI people                                      |
|               | Lack of sustainable funding (funding is project-based)     | Lack of activism in regions                                 | Community not involved in activism               | Divisions within LGBTI movement                                                                 |
|               | Low skilled community                                      | Lack of advocacy work                                       | Community lacks knowledge on their rights        | Poor communication between different groups of activists                                        |
|               | Lack of activism in regions                                |                                                             |                                                  | No system in place for preventing burnout                                                       |
| THREATS       |                                                            |                                                             |                                                  | Lack of shared goals and objectives                                                             |
|               | Nationalism: LGBTI people are not accepted as “normal”     |                                                             |                                                  | Lack of support from local “mainstream” NGOs                                                    |
|               | Unwillingness of state to support LGBTI movement           | Repressive state apparatus                                  | Homophobic and transphobic social attitudes      | Homophobic and transphobic social attitudes                                                     |
|               | LGBTI rights excluded from “mainstream” human rights       | Burnout                                                     | Homophobia and transphobia in politics and media | Repressive draft legislation: “LGBTI propaganda” bill; the “foreign agents” bill <sup>291</sup> |
|               | Homophobic speech in the media and from politicians        |                                                             |                                                  | Political instability (fears of “another revolution”)                                           |

<sup>291</sup> The draft “foreign agents” law was in the end rejected by the Parliament in Kyrgyzstan in May 2016. If it had been passed, the law would have forced NGOs that receive funding from outside of Kyrgyzstan to declare themselves “foreign agents”, a highly stigmatizing term. See: Lelik, “Kyrgyzstan: Foreign Agent Bill Nixed, NGOs Rejoice.”

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Amnesty International

# 6. CASE STUDY: KYRGYZSTAN “EXCLUDED FROM THE MAINSTREAM”

Our discussions with LGBTI activists in Kyrgyzstan in March 2016, including during SWOT analysis, revealed an activist community under significant strain. Less than a year earlier, in April 2015, the offices of an LGBTI rights NGO were firebombed; no-one was ever charged for the attack.<sup>292</sup> A month later, a private event organized by activists for the LGBTI community to celebrate IDAHOT had been attacked by nationalist groups. Police were called, but arbitrarily detained many participants at the event in the same cells as their attackers, putting them at great risk of further attack.<sup>293</sup>

In addition to these two traumatic events, the following came up as the main challenges facing LGBTI rights activists:

- Regardless of whether or not it will eventually pass, the **draft “LGBTI propaganda” law** is *already* having the desired effect of silencing activists; it is a threat hanging over them
- **Lack of solidarity** from the wider human rights community leaves LGBTI groups feeling abandoned and demoralized
- **Activist burnout** is a significant issue, associated with “brain drain” and the large numbers of activists leaving the country, meaning that training of activists is going to waste
- In regard to **public activity** (e.g. events for IDAHOT, diversity marches) in support of LGBTI rights, *the situation has got more restrictive* and more dangerous in the past two to three years.

The failure of other civil society organizations to campaign against the draft “LGBTI propaganda” law had left LGBTI rights activists feeling abandoned. To them, there were clear links between the draft “LGBTI propaganda” law and the draft “foreign agents” law, which was also under discussion in parliament at that time: both appeared to be attempts by the government to limit freedom of association and expression. But instead, LGBTI activists felt that “mainstream” NGOs were ready to sacrifice the “LGBTI propaganda law” for the sake of pushing for a rejection of the draft “Foreign agents” law. As one LGBTI activist put it: “At the moment there is this idea that if the propaganda law passes then the foreign agents law won’t pass”.<sup>294</sup> Allies within the government were unable or unwilling to speak out, and public figures who did speak out on LGBTI issues did so from a position of hatred, and for their own political gain.

In the absence of support from “mainstream” human rights organizations and in dealing with a government that refused to support LGBTI rights, activists noted how important were solidarity and support from outside the country, and from international actors within Kyrgyzstan (e.g. embassies). In addition, having access to

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<sup>292</sup> Labrys Kyrgyzstan, “Кыргызстан: Безопасность ЛГБТИК-Правозащитников Под Угрозой [Kyrgyzstan: The Safety of LGBTIQ Activists under Threat],” April 10, 2015, <http://labrys.kg/ru/news/full/682.html>.

<sup>293</sup> Labrys Kyrgyzstan, “Срыв ЛГБТ-Правозащитного Мероприятия В Бишкеке: Хроника Событий [The Attack on the LGBT-Rights Event in Bishkek: Chronicle of Events].”

<sup>294</sup> Interview with LGBTI rights activist, 23 March 2016.

the international human rights mechanisms, and being able to hold their government to account against its international human rights commitments was also very important.

On our return mission to Bishkek, we explored these issues of marginalization from the “mainstream” of human rights work in Kyrgyzstan in more detail, at a participatory workshop with LGBTI rights activists, and in interviews with representatives of “mainstream” NGOs and of international missions. We wanted to know what was stopping “mainstream” NGOs and HRDs from supporting LGBTI rights, whether there were any positive examples of solidarity and support, and whether the situation had improved since 2016.

## 6.1 PERSPECTIVES OF LGBTI HRDS

In the first session of our workshop, we asked participants to talk about whether they agreed with the statement **“We are excluded from ‘mainstream’ conversations about human rights”**.

In a more hopeful account than that given the previous year, the main consensus was that LGBTI activists and LGBTI issues were not completely excluded from “mainstream” human rights conversations and process, but that inclusion was often partial or tokenistic. Issues affecting gay men and lesbians might be included in a document or discussion, but not those affecting transgender or bisexual people. One example given was an international development agency that had invited one of the LGBTI rights organizations to take part in a consultation on women’s rights, but seemed to assume that all women are cisgender. Participants also felt that there was little understanding of intersectional identities among “mainstream” human rights actors; for instance, that someone could be a victim of domestic violence, or have a disability, *and* be lesbian, gay, bisexual, transgender, or intersex. Tokenistic inclusion might include an organization or an agency having the issue of LGBTI rights on the agenda for a seminar, but not inviting LGBTI activists to take part.

During the second session, we discussed the statement **“I feel supported by other NGOs and human rights activists”**.

Opinions were divided. One participant felt that it was possible to find common points for cooperation and understanding with other organizations, and that there were “mainstream” HRDs and groups that LGBTI rights activists could turn to. However, few organizations overall work cooperatively. Some non-LGBTI rights organizations share common goals with LGBTI rights organizations, for instance around the need for communications training, or had begun to see LGBTI rights organizations as experts; for instance, around the needs of people living with HIV or AIDS. In other ways, however, support was lacking. One participant mentioned that an NGO forum claimed to include LGBTI rights issues and issues relating to MSM in their calls, but that in reality, did not act as an ally. Participants also again noted the failure of “mainstream” NGOs to protest against the draft “LGBTI propaganda” law, and that representatives of some human rights organizations came across as homophobic and transphobic.

These discussions indicate that LGBTI rights activists and NGOs do have sources of support from within wider civil society, but that this support is not consistent, and may often come from organizations that are themselves working with other excluded and stigmatized groups (e.g., people living with HIV). “Mainstream” human rights organizations and actors appear to include LGBTI rights issues in discussions and recommendations when it suits them, and not necessarily in consultation with LGBTI rights activists. Crucially, at times when LGBTI rights activists feel that they are under threat, for instance, in relation to the draft “LGBTI propaganda” law, they do not feel supported.

In the next session, we asked participants to come up with concrete examples of:

- Being excluded
- Being included
- Feeling that there was no solidarity or support from others
- Feeling that there was solidarity or support from others

For the example of **exclusion**, participants talked about a recent experience with an international development agency, which had drawn up an agenda for action on women’s rights in Kyrgyzstan. Sessions with stakeholders to develop this agenda did not include LBT women, or women sex workers, women intravenous drug users, or women living with HIV. As a result, this women’s rights agenda does not reflect the needs of these groups of women. Participants felt that prejudicial attitudes towards these groups of women lay behind the omission.

For the example of **inclusion**, participants pointed to their success in keeping SOGI as protected grounds in the draft anti-discrimination legislation. An expert group had recommended that SOGI be removed from the draft legislation. LGBTI rights organizations and allies (all members of the “LGBTX” platform in Kyrgyzstan) came together to agree a common position that they would not accept this, and have stood firm on this decision. As a result, the current draft legislation includes SOGI as protected grounds.

As an example of **absence of support and solidarity**, participants talked about how difficult it has been trying to advance draft anti-discrimination legislation through working in a coalition. They pointed to excessive passivity and criticism from within the coalition, making it difficult to “see a way out”.

Finally, participants’ example of **support and solidarity** was the mobilization of support following the attack on the IDAHOT event on 17 May 2015. Media and social media coverage of the attack and the subsequent detention of LGBTI community members along with the nationalists who had attacked them was very sensationalist. However, this had the positive effect of garnering attention. Different actors came out in support of, and showed solidarity with, the LGBTI people caught up in the attack, including international organizations, individual LGBTI community members and allies, and even the state National Centre for the Prevention of Torture. This list did not include, however, other human rights NGOs.

In the final session, we asked participants **what had changed for them since our first visit in 2016**. In general, participants felt that the LGBTI activist community had collectively recovered from the trauma of the attack on the IDAHOT event in May 2015 (and the earlier firebombing of the LGBTI rights NGO’s office). Now, they feel they have good security protocols in place. Also, LGBTI rights organizations are working together more effectively towards one goal (although this goal was not directly defined).

These four examples provided by the participants do not, of course, provide a blueprint for what “inclusion” or “solidarity” should look like. That said, they do suggest some pointers for future best (or better) practice. International agencies could take the lead in Kyrgyzstan in purposefully including the needs of LGBTI people in all discussions on human rights in Kyrgyzstan, as well as in their research and recommendations. Doing so would send a strong message to other human rights organizations, and help to bring LGBTI rights into the “mainstream” of human rights work in Kyrgyzstan.

## 6.2 PERSPECTIVES OF OTHER HRDS

The workshop with LGBTI activists gave us some insight into whether and how LGBTI HRDs feel excluded from the “mainstream” of human rights work in Kyrgyzstan as a result of the failure of “mainstream” NGOs to openly support LGBTI rights. In order to get some perspectives from the other side as to what barriers stand in the way of NGOs adopting a more inclusive approach to human rights work, we spoke to representatives of “mainstream” human rights NGOs or those who had previously worked in the NGO sector. All comments summarized below are taken from interviews with representatives of “mainstream” human rights NGOs, international delegations, or people who had previously been involved in human rights NGOs, which took place in Bishkek, 25-31 May 2017. As discussed above in the section on Scope and Methodology, no information is provided that could identify the respondents in the interests of encouraging future engagement and debate on how “mainstream” human rights actors could better support and show solidarity with LGBTI HRDs, as well as incorporating LGBTI rights into their work.

### 6.2.1 FEAR OF THE CONSEQUENCES

An important factor inhibiting “mainstream” NGOs from working openly on LGBTI rights or showing solidarity with LGBTI rights activists was their fear of what the consequences might be.

A representative of a children’s rights NGO mentioned fear of physical attack from nationalist groups, while one representative of an NGO working on police reform noted that a lot of NGOs specifically do not work on LGBTI rights because they fear being attacked in the homophobic media for “gay propaganda”. As discussed above, even though the draft law on “LGBTI propaganda” has not been passed, LGBTI rights activists believe that it has served to legitimize attacks and hostility, which have increased since the bill was first introduced in 2014. Judging by this comment, it seems that it is also affecting the willingness of “mainstream” HRDs to speak out on LGBTI rights, for fear of being accused of “gay propaganda”. A political scientist who had previously worked in NGOs, noted, however, that at least discussion of the draft law meant

some visibility to LGBTI rights issues, even if that discussion is negative. As he said, “It is becoming normalized as a topic of discussion”.

This political scientist felt that “mainstream” NGOs would face real legitimacy issues if they started working on LGBTI rights, as they would no longer be taken seriously: “If I were an NGO working on torture, for instance, I would think twice about supporting LGBT rights publicly”. Likewise with politicians: they might be supportive in private but will never speak out publicly because the issue would get “stuck” to them and be used by other political actors to undermine their legitimacy.

The representative of the NGO working on police reform noted that his organization had decided not to include recommendations related to LGBTI rights in their most recent report for the specific reason that this might jeopardize their relationship with government agencies. This relationship was still fragile and not very well developed, and at this point, they felt that speaking out on this issue would jeopardize it.

These fears are not unfounded: the director of a “mainstream” human rights NGO that *has* spoken out in support of LGBTI rights recounted how she has been targeted by one particular newspaper, with an article making the deliberately erroneous link between work on LGBTI rights and terrorism. In addition, NGOs are aware that an LGBTI rights organization’s office was firebombed in April 2015.<sup>295</sup> Respondents saw these attacks as being related to the politicization of LGBTI rights and the use of LGBTI issues to attack political opponents in the last few years. The director of the “mainstream” human rights NGO linked this politicization to Kyrgyzstan joining the Eurasian Economic Union, and the increased influence of anti-LGBTI rhetoric from Russia that had accompanied this.<sup>296</sup>

In addition, NGOs in Kyrgyzstan are operating in a very hostile environment; while the “foreign agents” draft law was defeated in parliament, then President Atambayev has made hostile remarks about some prominent “mainstream” HRDs, accusing them of being “saboteurs” and of “diligently earning their foreign grants”.<sup>297</sup> In light of this, NGOs are vulnerable to attacks that might delegitimize them and their activities.

The director and staff member of the “mainstream” human rights NGO that has openly supported LGBTI rights had a slightly different view. They felt that while the environment for NGOs is hostile at the moment, many NGOs have a “comfortable existence” that they do not want to jeopardize by speaking out on a very sensitive topic.

## 6.2.2 LACK OF A UNIVERSAL APPROACH TO HUMAN RIGHTS

A failure to see LGBTI rights as integral to the realization of a wider human rights agenda, or to appreciate the intersectional identities of LGBTI people, may also lie behind some mainstream NGOs’ reluctance to support LGBTI rights publicly.

The director and staff member of the “mainstream” human rights NGO reflected on their experience of trying to encourage other NGOs in a migrants’ rights platform<sup>298</sup> that they were part of to include reference to LGBTI people in their outputs and recommendations. Their partners refused, on the grounds that migrant rights and LGBTI rights were completely separate, and the latter had nothing at all to do with migrants’ rights. To these other NGOs, the idea that a migrant could also be lesbian, gay, bisexual, transgender, or intersex was very difficult to grasp, and they rejected it. This NGO had also encouraged their partners to campaign against the draft “foreign agents” law and the draft “LGBTI propaganda” law together because they were one and the same issue: their partners refused. The director and her staff member put these attitudes down to ignorance: some HRDs really don’t know anything about LGBTI rights or LGBTI people, and see them as completely alien. They “believe the propaganda”.

One respondent, the political scientist who had previously worked in NGOs, linked this failure to espouse an inclusive vision of human rights to the wider issue of the human rights agenda being seen as a “Western import”. He felt that the idea of the universality of human rights was seen as something that has been brought in from outside Kyrgyzstan. He wondered why LGBTI rights are seen as so important now, given that there are so many other human rights issues that need to be resolved in Kyrgyzstan; he understood that it

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<sup>295</sup> Labrys Kyrgyzstan, “Kyrgyzstan: The Safety of LGBTIQ Activists under Threat.”

<sup>296</sup> See: Wilkinson, “Kyrgyzstan’s Anti-Gay Bill: Just Following in Russia’s Footsteps?”; North, “We’ll Cut off Your Head’: Open Season for LGBT Attacks in Kyrgyzstan.”

<sup>297</sup> RFE/RL, “Kyrgyz Court Hears Case Against President,” RFE/RL, March 17, 2016, <https://www.rferl.org/a/kyrgyz-court-starts-hearing-against-atambaev/27785987.html>; EurasiaNet, “Kyrgyzstan: President Trash-Talks Opposition Following Coup Arrests,” *EurasiaNet*, May 15, 2016, <http://www.eurasianet.org/node/78781>.

<sup>298</sup> Up to a million Kyrgyzstani nationals (out of a total population of almost 6 million) are thought to be living and working outside of the country, mainly in Russia. See: Rosalie Laurent, Maroussia Ferry, and Sergei Mikheev, “Women and Children from Kyrgyzstan Affected by Migration: An Exacerbated Vulnerability” (Paris: FIDH, 2016), 4.

was a global trend, that LGBTI rights are a “popular” topic now. But in his view, for most people in Kyrgyzstan, homosexuality or non-conforming gender identities are seen as a choice, or a fashion, and as a threat to family values.

## 6.2.3 DISUNITY IN CIVIL SOCIETY

Some respondents pointed to an issue of a general lack of unity and cooperation between NGOs in Kyrgyzstan. The representative of the NGO working on police reform felt that civil society was on the whole very fragmented now, although even in the past, when this had not been the case, that did not mean that “mainstream” NGOs were prepared to work on LGBTI rights. A representative of an international organization reflected that he didn’t feel that LGBTI rights NGOs managed to cooperate very well with each other, and that didn’t help. The former director of a national NGO thought that there was an element of “self isolation” among LGBTI activists. While this was understandable, in his view, it made it difficult to see how anything would ever change.

## 6.3 STATE ACTORS

During our mission to Kyrgyzstan in July 2017, we were not able to meet with any representatives of the state. Requests for meetings with the Ombudsman’s office and the Ministry of Health (suggested by LGBTI rights activists) went unanswered. As such, we were unable to gain their perspective as to why government officials and other state actors do not speak out publicly on LGBTI rights, despite the fact that, as LGBTI rights activists stated to us, some officials from these and other state ministries and agencies hold supportive and tolerant views on the issue and help behind the scenes, as far as they are able.

Analysts have assessed that LGBTI rights have become highly politicized in Kyrgyzstan, and that internal and external forces – the increased influence of nationalist groups as well as of Russia – have “dragged the LGBT community into a battle for Kyrgyz identity”.<sup>299</sup> In such an environment, speaking up for the rights of LGBTI people leaves political leaders and government actors vulnerable to attacks of being “anti-Kyrgyz” or against “traditional values”.<sup>300</sup>

That said, the director and staff member of the “mainstream” human rights NGO that has openly supported LGBTI rights sounded a note of optimism: they felt that the process of discussing the two laws had led to a greater awareness of LGBT rights, for instance among parliamentarians. Some are starting to say that they see human rights as universal and that you need to protect everyone’s rights.

### 6.3.1 OMBUDSMAN’S REPORT

Significantly, the Ombudsman’s report for 2016 includes information on LGBTI people in Kyrgyzstan, in the section of the report on “Women experiencing intersectional discrimination”. Topics covered include: the negative impact of the draft “LGBTI propaganda” law; police extortion; incitement to discrimination, hostility, or violence in the media; the court case against those accused of instigating the attack on IDAHOT 2015; and an account of an attack on a trans woman.<sup>301</sup> The Ombudsman’s report from the previous year had included a recommendation on withdrawing the draft “LGBTI propaganda” law, but no information on human rights abuses against LGBTI people;<sup>302</sup> prior to this, the Ombudsman’s report had never included any mention of LGBTI issues.<sup>303</sup> The two main LGBTI rights organizations both welcomed this development, hoping it marked the start of better awareness and engagement on LGBTI rights on the part of the Ombudsman’s office.<sup>304</sup>

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<sup>299</sup> Medet Tiulegenov, Chair of International and Comparative Politics at the American University in Bishkek, quoted in: North, “Kyrgyzstan’s Beacon of Tolerance Under Threat From Manufactured Kremlin Homophobia.” See also: Lutsevych, “Agents of the Russian World Proxy Groups in the Contested Neighbourhood.”

<sup>300</sup> North, “We’ll Cut off Your Head’: Open Season for LGBT Attacks in Kyrgyzstan.”

<sup>301</sup> Ombudsman of the Kyrgyz Republic, “Report of the Ombudsman of the Kyrgyz Republic for 2016,” 82–85.

<sup>302</sup> Ombudsman of the Kyrgyz Republic, “Report of the Ombudsman of the Kyrgyz Republic on the Protection of Rights and Freedoms of People and Citizens in the Kyrgyz Republic in 2015” (Bishkek: Office of the Ombudsman of the Kyrgyz Republic, 2016).

<sup>303</sup> Ombudsman of the Kyrgyz Republic, “Report of the Ombudsman of the Kyrgyz Republic for 2014” (Bishkek: Office of the Ombudsman of the Kyrgyz Republic, 2015).

<sup>304</sup> Kyrgyz Indigo, “ЛГБТ включены в Доклад Аппарата Омбудсмента КР за 2016 Год [LGBT Included in the Report of the Ombudsman’s Office for 2016],” *Kyrgyz Indigo* (blog), July 4, 2017, <http://indigo.kg/lgbt-vklyuchenyi-v-doklad-apparata-ombudsmena-kr-za-2016-god.html>; Labrys Kyrgyzstan, “Омбудсмен Кыргызстана Впервые Включил В Ежегодный Доклад Раздел О Правах Женщин

## 6.4 INTERNATIONAL ACTORS

During our visit in July 2017, we met with representatives from various intergovernmental organizations and a diplomatic mission. In the absence of support from other NGOs, LGBTI activists had identified in-country international actors as an important source of support. While clearly important, in practice, the support shown by international actors seems to be very low-key, and these actors appear to be wary of speaking out publicly on what they believe to be a very sensitive issue in Kyrgyzstan.

## 6.5 INTERNATIONAL MECHANISMS

LGBTI rights activists in Kyrgyzstan have made extensive use of the opportunity to submit alternative or “shadow” reports to the international treaty bodies. Indeed, during SWOT analysis in March 2016, workshop participants identified the international treaty mechanisms and the submission of alternative reports as an important opportunity for holding their government to account and for drawing international attention to the situation of LGBTI people in Kyrgyzstan.<sup>305</sup> For instance, LGBTI rights NGOs have submitted alternative reports to the last two sessions of the Committee on the Elimination of Discrimination against Women (2008<sup>306</sup> and 2015<sup>307</sup>), to the most recent session of the Human Rights Committee (2014<sup>308</sup>), and to the Universal Periodic Review (UPR) (2010<sup>309</sup> and 2015<sup>310</sup>).

No doubt reflecting these submissions, the Concluding Observations of the Human Rights Committee included recommendations on LGBTI rights in 2014,<sup>311</sup> while the Committee on the Elimination of Discrimination against Women included recommendations specific to LBT women in 2008<sup>312</sup> and again in 2015.<sup>313</sup> At the first UPR of Kyrgyzstan in 2010, the government accepted both recommendations on LGBTI rights included in the final report.<sup>314</sup> In 2015 at the second UPR, 18 recommendations specific to LGBTI rights were made, of which six were accepted by the Kyrgyzstani government.<sup>315</sup> Of the six that were accepted, all but one related to the principle of non-discrimination and equality; the final accepted recommendation was to “Ensure that allegations of violence, torture, inhuman and degrading treatment of LGBT persons, by government and non-government actors, are investigated promptly and efficiently and that perpetrators are brought to justice”. Recommendations that were not accepted by Kyrgyzstan related to: the adoption of comprehensive anti-discrimination legislation to include SOGI as protected grounds; criminalization of homophobic hate speech; and the abandonment of the draft “LGBTI propaganda” law.<sup>316</sup>

It is promising that the UPR and the treaty body sessions provide an opportunity for LGBTI rights organizations to push the Kyrgyzstani government to protect and respect the rights of LGBTI people, and that, to a limited extent, the government is prepared to engage on the issue of LGBTI rights in these

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С Пересекающимися Формами Дискриминации [The Ombudsman of Kyrgyzstan Included a Section on Women with Intersectional Forms of Discrimination for the First Time in the Annual Report.], July 5, 2017, <http://labrys.kg/ru/news/full/702.html>.

<sup>305</sup> See Annex 2

<sup>306</sup> Labrys Kyrgyzstan, “Shadow Report Discrimination and Violence Against Lesbian and Bisexual Women and Transgender People in Kyrgyz Republic, Submitted for the 42nd CEDAW Session, Geneva, Switzerland, 20 October - 7 November 2008” (Bishkek: Labrys Kyrgyzstan, 2008).

<sup>307</sup> Labrys Kyrgyzstan, “Discriminatory Laws and Practices, Hate Speech and Hate Crimes against LGBT Communities of Kyrgyzstan”; Asteria et al., “Alternative Report On the Situation of Women Who Use Drugs, Sex Workers, and Lesbians, Bisexual Women, and Transgender People Republic of Kyrgyzstan 2014.”

<sup>308</sup> Kyrgyz Indigo and Labrys Kyrgyzstan, “Alternative Report on the Implementation of the Provisions of ICCPR Related to LGBT People in Kyrgyzstan.”

<sup>309</sup> Labrys Kyrgyzstan and Sexual Rights Initiative, “Report on Kyrgyzstan: 8th Round of the Universal Periodic Review - May 2010” (Bishkek: Labrys / Sexual Rights Initiative, 2010).

<sup>310</sup> Labrys Kyrgyzstan and Bishkek Feminist Collective SQ, “Report on Kyrgyzstan: 21st Session of the Universal Periodic Review – June 2014”; Kyrgyz Indigo, Pathfinder, and Yug-Antilopa, “Kyrgyzstan: Human Rights Violations of LGBT: Joint Submission to the United Nations Universal Periodic Review,” UPR shadow report (Bishkek: Kyrgyz Indigo / Pathfinder, 2014).

<sup>311</sup> Human Rights Committee, “Concluding Observations on the Second Periodic Report of Kyrgyzstan” (Geneva: UN Human Rights Committee, 2014), para. 9.

<sup>312</sup> Committee on the Elimination of All forms of Discrimination Against Women, “Concluding Observations of the Committee on the Elimination of Discrimination against Women: Kyrgyzstan” (New York: UN Committee on the Elimination of Discrimination Against Women, 2008), para. 43.

<sup>313</sup> Committee on the Elimination of All forms of Discrimination Against Women, “Concluding Observations on the Fourth Periodic Report of Kyrgyzstan” (Geneva: UN Committee on the Elimination of Discrimination Against Women, 2015), para. 9, 29, 33.

<sup>314</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review Kyrgyzstan” (Geneva: UN General Assembly, 2010), para. 76.62, 77.13.

<sup>315</sup> Human Rights Council, “Report of the Working Group on the Universal Periodic Review: Kyrgyzstan,” A/HRC/ 29 / 4 (Geneva: UN General Assembly, 2015), para. 117.40, 117.41, 117.42, 117.43, 117.106, 119.12. For more detailed analysis of the first and second UPRs for Kyrgyzstan from an LGBTI rights perspective, see: ARC International, “Universal Periodic Review (UPR) SOGIESC Database,” n.d., <http://arc-international.net/global-advocacy/universal-periodic-review/>.

<sup>316</sup> ARC International, “Universal Periodic Review (UPR) SOGIESC Database.”

international arenas. For instance, the Kyrgyzstani authorities made reference to LGBTI persons twice in their submission to the second UPR in 2015.<sup>317</sup>

In practice, though, progress by the Kyrgyzstani government on implementing the recommendations is very limited, again indicating a failure on the part of the state to accept its duty to uphold the rights of LGBTI persons as part of its international human rights commitments. One alternative report to the Committee on the Elimination of Discrimination Against Women in 2014 notes that the Committee had expressed its concern about “reports of discrimination and harassment against women because of their sexuality” (Paragraph 43) and recommended that Kyrgyzstan “take all appropriate measures to ensure the application of the Convention to all women without discrimination and take all necessary steps to protect them from discrimination and violence by public and private individuals” (Paragraph 44). However, the Alternative report notes that: “Violence against women due to their sexuality is not mentioned in the state party report at all. Lesbian and bisexual women, therefore, remain invisible and ignored by the state. LGBT organizations have repeatedly gotten in touch with various government offices about adopting the recommendations, but they have not been given specific answers about what the government has done.”<sup>318</sup>

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<sup>317</sup> Human Rights Council, “National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Kyrgyzstan” (Geneva: UN General Assembly, 2014), para. 134, 157.

<sup>318</sup> Asteria et al., “Alternative Report On the Situation of Women Who Use Drugs, Sex Workers, and Lesbians, Bisexual Women, and Transgender People Republic of Kyrgyzstan 2014.,” 3.

## **LESS EQUAL**

LGBTI HUMAN RIGHTS DEFENDERS IN ARMENIA, BELARUS, KAZAKHSTAN, AND KYRGYZSTAN

Amnesty International

# 7. CASE STUDY: ARMENIA

## “LESS EQUAL”

**“When the current range of legal protections are placed against the standards set out in the Yogyakarta Principles, it is evident that much work needs to be done in Armenia in terms of advocating for the rights of LGBT people in particular as well as for the promotion of human rights in general.”<sup>319</sup>**

The statement above was made in a report written in 2009, but the sentiments expressed within it hold true today. That said, while the absence of an effective legislation environment is an important factor limiting LGBTI rights in Armenia, the hostile environment in which LGBTI rights activists are working is as, if not more important. To put it bluntly, LGBTI people appear to be seen as “less equal” within “mainstream” human rights discourse and practice in Armenia.

During our first mission to Yerevan, including during SWOT analysis, activists identified a range of issues pointing towards a failure on the part of other civil society actors and the state to see LGBTI rights as integral to the realization of human rights overall in Armenia. This was evident in a range of examples, including:

- LGBTI groups **work effectively with feminist and women’s rights organizations** and with **HIV service organizations**, but **other NGOs are less reluctant to be associated with LGBTI rights**, including human rights organizations working on LGBTI rights
- Most victims of **hate crimes** do not report them; hate crimes that are reported are not usually investigated
- Draft **anti-discrimination legislation** does not include reference to SOGI; activists felt that if it is passed, it will be on paper only and will not be implemented effectively
- **Government representatives** say one thing at home and another thing at international meetings. In Armenia, they refuse to speak out in support of LGBTI rights

International actors, including diplomatic missions, were important allies and sources of support; however, they tended to treat LGBTI rights (and LGBTI activists) as a separate issue, for instance arranging separate events for LGBTI activists, rather than integrating them into “mainstream” human rights activities.

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<sup>319</sup> Carroll and Quinn, “Forced Out: LGBT People in Armenia,” 25.

Activists identified the main reasons behind this sense of LGBTI people as being seen as “less equal” as the following:

- The terms **LGBT** and **gender** have become **toxic** and are **highly politicized**. People advocating gender equality and LGBT rights are accused of destroying society<sup>320</sup>
- Social attitudes are very negative and are shaped by nationalism and by the church: people say that **“you can’t be gay and Armenian”**
- The **EU** still has a lot of **influence**, despite the government’s decision not to pursue EU accession in 2013, but **Russia** also has a lot of influence.

During our second mission to Armenia, we explored these issues more deeply with LGBTI activists themselves, as well as with representatives of “mainstream” human rights organizations, the national Ombudsman’s office, and international actors.

## 7.1 PERSPECTIVES OF LGBTI HRDS

We explored these issues in more detail in a participatory workshop with LGBTI activists.<sup>321</sup>

In the first session, we asked participants the extent to which they agreed with the statement: **“I feel supported by other NGOs and human rights activists”**. Participants noted that there was a difference between working with individual HRDs, and with NGOs: an individual HRD might be happy with work with LGBTI rights activists or be supportive, but their organization might refuse. Support might also depend on the nature of the action: for example, someone might be happy to support an online action, but not some form of public action. The particular issue at stake might also be an issue: HRDs might be willing to support an action that was quite uncontroversial (no example was given), but “when there is a difficult situation, they disappear”. One participant felt that there really was no logic or consistency as to when “mainstream” HRDs were supportive, or not.

Participants acknowledged that “mainstream” HRDs do take significant risks when they are openly supportive of LGBTI rights, because the issue is so sensitive in Armenia. They also felt that civil society in Armenia is shrinking, with an ever smaller number of HRDs: people don’t have the resources and time to do more than they are doing because they are overstretched already, and it is the same people involved again and again. It is very hard to reach out beyond the “civil society bubble”, as one activist put it. The high numbers of people who migrate out of Armenia every year is also a factor here. In terms of engagement with the state, that is possible at an individual level, but not an institutional level.

In the second session, we discussed the statement: **“We are excluded from ‘mainstream’ conversations about human rights”**. Participants reflected that “mainstream” conversations about human rights shied away from *any* sensitive topic, not just LGBTI rights. For instance, one participant felt that the current Ombudsman had never really made any statements on any human rights issue apart from children’s rights. Another participant questioned why there was such sensitivity around LGBTI rights, but not other minority issues: they wondered why there was resistance to including SOGI as grounds for discrimination in the draft anti-discrimination legislation, but not national minority status. The participant thought that it was the same discussion as that in relation to whether or not draft domestic violence legislation should use the term “partner” in addition to husband and wife.

With state actors, LGBTI HRDs reported that there were conversations going on at an individual level, but no statements at a public level. On some issues, there is just no engagement at all: for instance, the Ministry of Justice refuses to engage at all on the issue of including SOGI in hate crime legislation. One participant felt that mainstream human rights activists were starting to speak out on LGBTI issues, but that in many cases this was as much to do with wanting to “look good” and secure grants from international organizations as it was to do with raised awareness.

## 7.2 PERSPECTIVES OF OTHER HRDS

As LGBTI rights activists were quick to point out, some prominent “mainstream” human rights (and women’s rights) NGOs do speak out on LGBTI rights issues, and offer support and solidarity. This dates back many

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<sup>320</sup> See: Nikoghosyan, “In Armenia, Gender Is Geopolitical.”

<sup>321</sup> Workshop held in Yerevan, 6 July 2017.

years; the Helsinki Association in 1997 drafted legislation to decriminalize homosexuality, and its director, Mikael Danielyan (who died in 2016), openly advocated LGBTI rights.<sup>322</sup> More recently, the NGOs who are members of Human Rights House Yerevan have been an important source of support.<sup>323</sup> In July 2017, several human rights NGOs signed up to a public statement condemning the attack on the office of Right Side transgender rights NGO, and calling for an immediate investigation.<sup>324</sup>

The “mainstream” HRDs who we interviewed in Yerevan were all from NGOs who have at some point been supportive of LGBTI rights. Respondents identified a range of different factors that stop many other “mainstream” HRDs from speaking out.

Once again, no information has been provided that could identify the respondents. Interviews took place in Yerevan, 3-7 July 2017.

## 7.2.1 HOMOPHOBIA

Sadly, their own prejudice towards LGBTI people was identified as a significant factor in stopping many “mainstream” HRDs from speaking out in support of LGBTI rights. A representative of an international mission noted that “many established NGOs are openly homophobic, it’s very ironic”. This was a view shared by another international representative, who reflected that for many in Armenia, homosexuality is seen as a threat to demography, i.e. to the future survival of the Armenian nation.

The director of a “mainstream” human rights NGO felt that society was really not ready to accept LGBTI people, but that this was “group mentality”: if you talk to people individually, it’s a different story, she felt.

Closely linked to homophobic attitudes was embarrassment about discussing anything to do with homosexuality. The director of a “mainstream” human rights NGO observed that when his organization raises discrimination against LGBTI people at their workshops, participants get very nervous and embarrassed. They don’t know how to talk about this issue, but serious discussion is what is needed, as that’s what will help people change their minds. He stated: “You just have to keep talking”.

These findings echo research carried out by New Generation NGO in 2013, when they surveyed attitudes among human rights NGOs outside of Yerevan. Twenty-one out of 40 respondents believed that homosexuality is “undesirable”, and 29 out of 40 believed that homosexuality is a disease or a mental illness. Respondents accepted that LGBTI people were very vulnerable and faced a range of rights abuses, but that society will never accept “them” and they will always be treated badly, so the only solution would be to “cure” LGBTI people. Representatives from only one organization said LGBT people could turn to them for support, although what this support would entail is unclear.<sup>325</sup>

## 7.2.2 FEAR OF ATTACK

The director of a “mainstream” human rights organization said that fear of being discredited in other areas of work was a factor inhibiting HRDs from speaking out. This was echoed by a representative from an international organization, who observed that it is very difficult for people to “go public” and work on LGBTI rights, because public perceptions are very difficult.

Fear of being discredited or attacked is understandable, given the way that LGBTI rights – indeed, any discussion of anything to do with “gender” – have become so heavily politicized in Armenia. Political and nationalist leaders, as well as other NGOs,<sup>326</sup> who attack NGOs that work on LGBTI rights or on gender equality do so on the grounds that these NGOs are seeking to “destroy the family” and “destroy Armenian society” by introducing “perverted Western values”.<sup>327</sup> Analysts point to a high level of intolerance towards all minorities, including LGBTI people (but also religious and ethnic minorities), with the idea that tolerance for

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<sup>322</sup> Carroll and Quinn, “Forced Out: LGBT People in Armenia”; Human Rights House Network, “Human Rights Houses Pay Tribute to Mikael Danielyan,” August 26, 2016, <http://humanrightshouse.org/Articles/21849.html>.

<sup>323</sup> Human Rights House Foundation, “The Reality of LGBT+ Activism in Armenia.”

<sup>324</sup> Helsinki Citizens’ Assembly Vanadzor Office et al., “Statement about the FISCAL [sic] Attack on Right Side NGO and Its Visitors.”

<sup>325</sup> New Generation, “The Standpoint of Human Rights Defender Organizations about LGBT Issues in Armenia” (Yerevan: New Generation NGO, 2013).

<sup>326</sup> For instance, the “Pan-Armenian Parents Committee”: puts out “anti gender” propaganda and denounces the EU and praises Russia. See: Nikoghosyan, “In Armenia, Gender Is Geopolitical.”

<sup>327</sup> European Commission against Racism and Intolerance, “ECRI Report on Armenia (fifth Monitoring Cycle),” 17; Nikoghosyan, “In Armenia, Gender Is Geopolitical.”

diversity is seen as “a concept forced or dictated by the West, which is directed at uprooting or destroying Armenian national traditions”.<sup>328</sup>

In addition, our conversations with HRDs<sup>329</sup> revealed that overall, independent NGOs who are critical of the authorities are working in an increasingly hostile environment, again leaving them highly vulnerable to attack. They face negative propaganda about NGOs and HRDs in the official media and from political leaders, as well as the threat of a law on “foreign agents”, in addition to already existing legislative restrictions on their activities.<sup>330</sup> Some of these attacks come from other NGOs, although respondents believe that these were for the most part GONGOs (government-organized NGOs) or RONGOs (Russian-organized NGOs).<sup>331</sup> Lack of influence over the mainstream media mean that NGOs have little opportunity to counter these negative messages.

While this hostile environment could explain why most mainstream HRDs and NGOs are reluctant to speak out on LGBTI rights, one respondent (from an LGBTI rights NGO) had a different viewpoint: “NGOs need to realize that there is danger in whatever they do, so I don't accept this argument that they won't work on LGBTI rights because of security issues.”

## 7.2.3 LACK OF A UNIVERSAL APPROACH TO HUMAN RIGHTS

A representative of an international agency and the director of a “mainstream” human rights NGO both observed that on the whole, most human rights NGOs adopt a niche issue, and then refuse to engage on anything else.

## 7.2.4 WHAT ENABLES THOSE WHO *DO* SPEAK OUT?

“Mainstream” human rights NGOs that do speak out on LGBTI rights issues do so at considerable cost: the director of a “mainstream” human rights NGO spoke of how her organization had been verbally attacked by nationalists when they had supported public actions in support of LGBTI rights. Mikayel Danielyan, the former Head of the Helsinki Association and one of the earliest advocates for LGBTI rights in Armenia “reported that some parliamentarians and other human rights defenders [refused] to sit at the same table with him during public events”.<sup>332</sup>

So what lies behind the conviction *to* speak out? The director of one “mainstream” group held the view that as a human rights NGO, they needed to take a universal approach to human rights, and work on “whatever issue comes our way”. She also felt that addressing rights abuses against LGBTI people was very important to wider human rights, and that “you can't be neutral on this matter”. The director of another “mainstream” human rights NGO took a more pragmatic approach: “I don't care anymore. I get accused of everything under the sun, it doesn't make any difference”.

Respondents were wary of attempts by donors to push their grantees into adopting a more inclusive approach to LGBTI rights. The director of one “mainstream” NGO felt that NGOs might behave one way with their donors, to whom they would make statements about tolerance, but behave quite differently when asked to sign up to a letter of support relating to LGBTI rights. Members of Human Rights House felt that many other NGOs are not tolerant. At the moment they are not being openly homophobic, but that doesn't mean they have changed. They are quiet because of pressure from donors and also because they are adhering to informal codes of conduct, not because they have changed their views.

## 7.3 STATE ACTORS

Our conversations with LGBTI activists in 2016 revealed that at an institutional level, state actors were completely unwilling to engage on LGBTI rights issues. On the contrary, the failure of state agencies to investigate hate crimes (and the fact that there have been reports of members of the police force

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<sup>328</sup> Lusine Karamyan and Hovhannes Hovhannisyan, “Tolerance in Armenia Today: The Perspectives of Religious Tolerance,” Occasional Policy Brief (Yerevan: Eurasia Partnership Foundation, 2013), 1. See also: Danielyan, “The Armenian Apostolic Church: Identity and Influence.”

<sup>329</sup> Interviews with LGBTI HRDs, April 2016. Interviews with mainstream and LGBTI HRDs, July 2017.

<sup>330</sup> For instance, NGOs' ability to participate in election monitoring and to represent victims of human rights abuses in court have been curtailed.

<sup>331</sup> See: Lutsevych, “Agents of the Russian World Proxy Groups in the Contested Neighbourhood.”

<sup>332</sup> Carroll and Quinn, “Forced Out: LGBT People in Armenia,” 25.

perpetrating hate crimes and hate-motivated harassment against LGBTI people), and the failure of prominent political leaders to denounce incitement to discrimination, hostility, or violence on the basis of SOGI and to speak out on behalf of LGBTI people, were helping to cement hostile attitudes towards LGBTI people. In the words of the director of one “mainstream” human rights NGO, “The best our politicians can manage is to keep quiet”.

As with “mainstream” HRDs, state actors are no doubt also limited by their own homophobia, fear of being attacked or discredited, and failure to accept the universality of human rights. Other factors, however, are also at play.

Analysts have pointed to the geopolitical influence of Russia on Armenian political life, and the way that the issue of LGBTI rights is politicized and manipulated by pro-Russian political advocates.<sup>333</sup> This would make it very difficult for a political leader to speak out on behalf of LGBTI rights – even just to condemn hate crimes – without also being painted as anti-Russian.

More complex still is the interplay between LGBTI identities, religion, and national identity. The leadership of the Armenian Apostolic Church is closely entwined with the political leadership of the country, and also pushes the idea that Armenian national identity and membership of the Apostolic Church are one and the same.<sup>334</sup> As the Church says that homosexuality is a grave sin, a politician speaking out for LGBTI rights could be portrayed as anti-Church, and by extension, anti-Armenian. Indeed, as LGBTI rights activists pointed out to us in 2016, there is a popular understanding that a person cannot *be* LGBTI *and* Armenian.<sup>335</sup> In the context of the on-going conflict in Nagorno-Karabakh,<sup>336</sup> being seen as “anti-Armenian” would put a politician in a very difficult position.

## 7.4 INTERNATIONAL ACTORS

Some diplomatic missions in Armenia have been active in supporting LGBTI rights activists, for instance attending seminars and events organized by LGBTI rights NGOs and hosting dedicated events for LGBTI activists,<sup>337</sup> or flying the rainbow flag<sup>338</sup> or posting the rainbow flag on the embassy’s official social media page to mark IDAHOT. Embassies have also used small grants programmes to support individual projects. The EU delegation to Armenia has also funded project work; for instance a 2016 study on societal attitudes towards LGBTI people was co-funded by the EU.<sup>339</sup> The EU is also pressing for the adoption of anti-discrimination legislation

Support from diplomatic missions is important to LGBTI activists, but it is often separate from, rather than integrated into, wider human rights work. This serves to uphold the idea that LGBTI rights are somehow separate from, rather than integral to, other human rights.

These missions have also been attacked for their support. Following a speech that he gave at an event organized by New Generation in 2015, the German ambassador was attacked by the All-Armenian Parent Committee for failing to support traditional families, and attempting undermine national security and the Armenian nation itself.<sup>340</sup> Also in 2015, the rainbow flag was burned outside the EU delegation building.<sup>341</sup> Representatives of diplomatic missions did say, however, that they had received no official complaints from the government of Armenia following statements or actions in support of LGBTI rights.<sup>342</sup>

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<sup>333</sup> PINK Armenia and Socioscope, “The Impact of LGBT Emigration on Economic Indicators of Armenia,” 32. See also: Lutsevych, “Agents of the Russian World Proxy Groups in the Contested Neighbourhood.”

<sup>334</sup> Danielyan, “The Armenian Apostolic Church: Identity and Influence”; Yulia Antonyan, “The Armenian Apostolic Church and Political Power in Armenia,” in *Traditional Religion and Political Power: Examining the Role of the Church in Georgia, Armenia, Ukraine and Moldova*, ed. Adam Hug (London: The Foreign Policy Centre, 2015), 35–39.

<sup>335</sup> Interviews and SWOT analysis with LGBTI HRDs and activists, April 2016.

<sup>336</sup> For information on the Nagorno-Karabakh conflict, see: BBC News, “Nagorno-Karabakh Profile,” BBC News, April 6, 2016, <http://www.bbc.co.uk/news/world-europe-18270325>.

<sup>337</sup> New Generation, “Initiatives of Legislative Changes for Protection of Rights of LGBTI People in Armenia #IDAHOT 2016,” Conference report (Yerevan: New Generation NGO, 2016).

<sup>338</sup> The rainbow flag has become a global symbol of LGBTI rights and LGBTI pride. See: ILGA Europe, “ILGA-Europe Glossary.”

<sup>339</sup> PINK Armenia, “Study of Societal Attitudes towards LGBTI People in Armenia.”

<sup>340</sup> New Generation, “Manifestations of Attitudes, Hate Speech towards LGBT People and the Violation of Their Rights in the Online Environment of Armenia,” 8–9.

<sup>341</sup> New Generation, “Manifestations of Attitudes”, 24.

<sup>342</sup> Interviews with representatives of diplomatic missions to Yerevan, July 2017.

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## 7.5 INTERNATIONAL AND REGIONAL MECHANISMS

Armenia is a member of the Council of Europe, and has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The Council of Europe has been increasingly outspoken in its support for LGBTI rights; for instance, in February 2017, the Council's Commissioner for Human Rights released a strong statement in support of marriage equality.<sup>343</sup> In 2015, 23 delegates to the Parliamentary Assembly of the Council of Europe (PACE) signed a call to the Armenian authorities to condemn incitement to discrimination, hostility, or violence on the basis of SOGI and implement the CoE Council of Ministers' recommendation on combatting discrimination.<sup>344</sup> The CoE's equality monitoring body, the European Commission against Racism and Intolerance (ECRI), included information on incitement to discrimination, hostility, or violence on the basis of SOGI and violence against LGBTI people in its five-yearly report on Armenia in 2016.<sup>345</sup> As mentioned above, at least one LGBTI rights NGO has made applications on behalf of LGBTI individuals to the court in relation to discrimination on the grounds of SOGI.<sup>346</sup>

Similar to Kyrgyzstan, the UN UPR mechanism remains an important forum for Armenian LGBTI HRDs to voice their calls internationally by submitting alternative or "shadow" reports. However, the effectiveness of this mechanism in practice has been limited to date. For example, in 2015,<sup>347</sup> Armenia accepted a large number of UPR recommendations, including: adopting and effectively implementing legislation to ensure prohibition of discrimination based on sexual orientation and gender identity; combating hate propaganda and ensuring that appropriate training is provided to officials; and that law enforcement authorities carry out thorough and prompt investigations regarding attacks on LGBTI persons. However, almost none of the UPR recommendations regarding LGBTI rights have been effectively implemented.

This approach is in line with what LGBTI HRDs told Amnesty International in Armenia, that in international forums, the government might support equality for LGBTI people, but not when it comes to actually implementing that equality back home by changing laws, policy and practice.

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<sup>343</sup> Nils Muižnieks, "Access to Registered Same-Sex Partnerships: It's a Question of Equality," *Council of Europe - Commission for Human Rights* (blog), February 2, 2017, <http://www.coe.int/en/web/commissioner//accesstoregisteredsamesexpartnershipsitsaquestionofequality>.

<sup>344</sup> ILGA Europe, "Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2016," 35.

<sup>345</sup> European Commission against Racism and Intolerance, "ECRI Report on Armenia (fifth Monitoring Cycle)."

<sup>346</sup> PINK Armenia, "Oganezova v Armenia"; PINK Armenia, "Minasyan and Others v Armenia."

<sup>347</sup> 29th Regular Session of Human Rights Council, June 25, 2015

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# 8. CONCLUSIONS

In the report following her mission to Armenia in 2010, the Special Rapporteur on the situation of human rights defenders noted that “Intimidation of LGBT defenders is recurrent and it is felt that they are not understood even by some other parts of the civil society. There is a lack of awareness about issues related to LGBT persons in society in general, but also within civil society itself”.<sup>348</sup> This statement could be applied to the situation of LGBTI rights defenders in all four of the countries featured in this report, who are operating in hostile environments with insufficient support from state and non-state actors.

Underlying these challenges and pressures is, in every country, a refusal on the part of the state authorities to recognize that LGBTI persons have the same entitlement as anyone else to have their human rights, and in particular their rights to protection from discrimination and to freedom of expression, association and peaceful assembly, recognized and protected. The state authorities have either incited hostility and discrimination against LGBTI activists, or have simply been reluctant to protect LGBTI activists from hostility or promote equality, failing in their international human rights obligations.

The underlying problems facing LGBTI HRDs go beyond the acts or omissions of state authorities. Interviews with the LGBTI HRDs and activists showed that they face challenges that other human rights defenders might not experience in Armenia, Belarus, Kazakhstan and Kyrgyzstan. To different degrees, LGBTI HRDs face societal homophobia and transphobia. On top of this, LGBTI activists often reluctantly find themselves at the forefront of “geopolitical battles” in the region, as they are portrayed by religious and nationalist leaders as embodying an imported, “Western” concept, threatening the very “identity” of Armenia, Belarus, Kazakhstan and Kyrgyzstan.

Not only are LGBTI people often excluded and looked down upon by their colleagues and families in Armenia, Belarus, Kazakhstan and Kyrgyzstan, but those acting on their behalf (HRDs and activists) are also often treated as second-class human rights defenders within the civil societies in the respective countries. There is still no consensus in civil societies across Eastern Europe and Central Asia that LGBTI rights are an inalienable part of human rights; rather, LGBTI rights are treated as a “special set” of rights that only the LGBTI activists should be preoccupied with, while the more “mainstream” human rights defenders do not have to campaign for them. And yet, realizing the rights of LGBTI people is integral to the realization of human rights for all in these countries. LGBTI rights activists are playing an important role in cementing universal human rights values: “By placing human rights issues in the context of sexual orientation and gender identity, [LGBTI rights] NGOs educate civil society about the reality that discrimination cannot be condoned, regardless of who is the target of discrimination.”<sup>349</sup>

Despite the challenges and hardships, LGBTI movements have survived in the region. They are, however, far from being institutionally strong and self-sufficient. Activist burnout is a pressing issue, negatively impacting on the wellbeing of activists as well as their capacity to advocate on behalf of others, and contributing to high rates of emigration, and LGBTI rights NGOs are highly dependent on foreign funding. The two reasons why LGBTI activists still carry out their work in the region is their resilience and passion, coupled with international assistance, including financial, political and moral support.

It is crucial that LGBTI activists in Armenia, Belarus, Kyrgyzstan and Kazakhstan see enhanced support from the international human rights organizations, foreign states and donors. But it is also important for them to be able to forge local nation-wide partnerships. The LGBTI movements in Armenia, Belarus, Kyrgyzstan and Kazakhstan must feel supported by local civil society, including NGOs, HRDs, journalists or celebrities. Local

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<sup>348</sup> Human Rights Council, “Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya,” 13.

<sup>349</sup> Carroll and Quinn, “Forced Out: LGBT People in Armenia,” 51.

NGOs and HRDs – just like state actors – must realize that one simply cannot pick and choose human rights.

# 9. RECOMMENDATIONS

## TO NATIONAL GOVERNMENTS:

- Ensure that individuals, including LGBTI HRDs, can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity
- Adopt comprehensive anti-discrimination legislation that expressly protects against discrimination on the grounds of sexual orientation and gender identity in employment and education, and when accessing goods and services
- Introduce laws that explicitly cover all bias-motivated crimes based on sexual orientation and gender identity
- Introduce legislation explicitly prohibiting advocacy of hatred based on sexual orientation and gender identity that constitutes incitement to discrimination, hostility, or violence. Such legislation must be formulated precisely and applied in a way that meets the requirements of necessity and proportionality
- Ensure broader public policy measures are undertaken to tackle the root cause of homophobia and transphobia, including by promoting education on diversity and pluralism, and empowerment of LGBTI HRDs and activists to exercise their right to freedom of expression
- Publicly condemn homophobic and transphobic incitement to discrimination, hostility, or violence
- Investigate all reported violent crimes perpetrated against individuals because of their actual or perceived sexual orientation or gender identity

## TO LOCAL HUMAN RIGHTS NGOS:

- Promote human rights for all people, including LGBTI people
- Work alongside LGBTI rights organizations united by the principle of the universality of human rights, to push for legislative change promoting tolerance and non-discrimination, on all grounds, including sexual orientation and gender identity
- Lead on public information and education campaigns aimed at combating negative stereotypes of LGBTI people and promoting and protecting universal human rights
- Undertake monitoring of incidents of violence and discrimination towards LGBTI people
- Collectively resist efforts by state and non-state groups to intimidate and marginalize LGBTI HRDs and rights activists, and publicly express solidarity and support when attacks take place

## TO INTERNATIONAL ACTORS:

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- Press national governments to adopt comprehensive anti-discrimination and hate crime legislation, and laws prohibiting advocacy of hatred based on sexual orientation and gender identity that constitutes incitement to discrimination, hostility, or violence
- Work with LGBTI rights NGOs and activists to develop a policy on how to respond to hate crimes and incitement to discrimination, hostility, or violence on any grounds, including sexual orientation and gender identity
- Actively include LGBTI HRDs and organizations in consultations and other events on HR issues
- Use meetings with authorities on human rights and with “mainstream” human rights defenders to highlight violations on the basis of SOGI

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Since the break-up of the Soviet Union in the early 1990s, the gradual establishment of grassroots lesbian, gay, bisexual, transgender and intersex (LGBTI) rights groups across Eastern Europe and Central Asia has resulted in some visibility for LGBTI people. However, this visibility has led to a fierce backlash from the majority.

Based on participatory research conducted over two years in Armenia, Belarus, Kazakhstan and Kyrgyzstan, Amnesty International found that in those four countries LGBTI human rights defenders (HRDs) face challenges that are not necessarily experienced by “mainstream” HRDs in their work.

Social and political homophobia and transphobia contribute to the demonization of LGBTI HRDs and activists. Politicians and media often engage in advocacy of homophobic or transphobic hatred that constitutes incitement to discrimination, hostility, or violence. The state authorities are unwilling to protect LGBTI HRDs and activists: police often fail to prevent and investigate homophobic and transphobic hate crimes. Importantly, LGBTI HRDs are often left demoralized by the failure of other civil society actors to show solidarity and support, and include the human rights of LGBTI people in their own work.

These challenges weaken the reach and impact of advocacy for LGBTI rights in a region jam-packed with homophobia and transphobia, and threaten the sustainability of work towards realizing the rights of LGBTI people.