

# **List of issues related to the situation of lesbian, gay, bisexual and transgender persons and men who have sex with men in Russia**

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for the 62d Session of the Committee on Economic, Social and Cultural Rights  
(CESCR)

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Prepared by a coalition of civil society organizations, including:

- Moscow LGBT-Initiative group “Stimul”
- NGO “Phoenix PLUS”
- Russian LGBT Network
- Transgender Legal Defense Project
- “Coming Out” LGBT Group

## SUMMARY

The present submission is prepared by five Russian Non-Governmental Organizations: Moscow LGBT-Initiative group "Stimul", NGO "Phoenix PLUS", Russian LGBT Network, Transgender Legal Defense Project and "Coming Out" LGBT Group for the consideration of the UN Committee on Economic, Social and Cultural Rights as an additional source of information to the sixth periodic report of the Russian Federation (E/C.12/RUS/6).

The submission covers the following issues: the situation of LGBT persons and MSM in Russia in general, (2) discrimination of LGBT persons in employment, (3) the lack of reliable data on HIV incidence rates amid MSM and transgender persons by the State party bodies, (4) the situation of transgender persons in the Russian Federation.

Most of the data presented in the List of issues was obtained by the reporting organizations in course of their legal and monitoring activities in Russia.

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## SECTION 1. General description of the situation of lesbian, gay, bisexual and transgender persons and men who have sex with men (MSM) in Russia (Article 2 of the Covenant, General Comment No. 20)

In its concluding observations from June 1, 2011,<sup>1</sup> the Committee requested information concerning the extent of the practice of discrimination against lesbian, gay, bisexual and transgender persons in particular in employment, healthcare and education in the State party.

Unfortunately, the Russian Federation has not provided any concrete information about such discrimination, limiting itself instead to citing that 'the Russian Constitution guarantees the equality of human and civil rights and freedoms regardless of sex, race, ethnic background, language, origin, wealth, official status, place of residence, attitude to religion, beliefs, membership of voluntary associations or other circumstances. In the Russian Federation there may be no discrimination on any grounds, including sexual orientation. The qualifications and occupational skills of employees are the main criterion employed in hiring them for jobs. All citizens have equal access to health services and education'<sup>2</sup>.

Discrimination against LGBT individuals in Russia is systematic in nature. Its sources include existing legislation and administrative practices, as well as a stigma which has become rooted in public attitude and is fueled by the state authorities. The review provided below elucidates the major problems faced by the LGBT community in Russia today.

### *1. Lack of legal protection for LGBT individuals against discrimination, hate crimes, and hate speech*

Not a single piece of legislation valid in the Russian Federation directly establishes the prohibition of discrimination on the basis of sexual orientation or gender identity. Article 136 of the Criminal Code of the Russian Federation<sup>3</sup> and Article 5.62 of the Code of Administrative Offences of the Russian Federation<sup>4</sup> establish liability for discrimination based, inter alia, on belonging to a particular 'social group'. In 2014, the Constitutional Court of the Russian Federation found<sup>5</sup> that the category of 'social group' can apply to 'groups of individuals with a particular sexual orientation'. However, this reading of the indicated norm has not received widespread application in the practice of courts of general jurisdiction<sup>6</sup>.

A similar situation has come about in the arena of penalties for hate crimes. The motive of hatred based on sexual orientation or gender identity is not directly mentioned in Russian legislation as an aggravating circumstance. However, according to Section 1, Point 'e' of Article 63 of the Criminal Code of the Russian Federation, commission of a crime with a motive, inter alia, of 'hatred or enmity towards a particular social group' is considered to be an aggravating circumstance. Having said that, as the Human Rights Committee noted in its concluding observations from April 28, 2015,<sup>7</sup> this point 'does not appear to have ever been applied to cases involving violence against LGBT individuals'. At the same time, according to data collected by Russian LGBT Network between 2012 and 2015, no fewer than 139 hate crimes against LGBT persons were committed in Russia<sup>8</sup>.

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<sup>1</sup> CESCR. Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant. E/C.12/RUS/CO/5. 1 June 2011. Para 36.

<sup>2</sup> Sixth periodic reports of States parties due in 2016. Russian Federation. E/C.12/RUS/6. 16 September 2016. Para 491.

<sup>3</sup> Criminal Code of the Russian Federation No. 63-FZ of June 13, 1996.

<sup>4</sup> Code of Administrative Offences of the Russian Federation No. 195-FZ of December 30, 2001.

<sup>5</sup> Judgment of the Constitutional Court of the Russian Federation No. 24-P of September 23, 2014.

<sup>6</sup> Report On Incidents of Discrimination and Violence on Grounds of Sexual Orientation and Gender Identity in 2015 in Saint Petersburg, Russia. Coming Out LGBT Initiative Group. 2015. Pp. 36-38, 42-44. <http://comingoutspb.com/upload/2015-doklad-comingoutspb.pdf>

<sup>7</sup> CCPR. Concluding observations on the seventh periodic report of the Russian Federation. CCPR/C/RUS/CO/7. 28 April 2015. Para. 10(c).

<sup>8</sup> Reports on hate crimes based on homophobia and transphobia submitted by Russian LGBT Network and Coming Out LGBT Initiative Group to the Office for Democratic Institutions and Human Rights (ODIHR): [https://www.lgbtnet.org/sites/default/files/prestupleniya\\_nenavisti\\_2012\\_0.pdf](https://www.lgbtnet.org/sites/default/files/prestupleniya_nenavisti_2012_0.pdf), [https://www.lgbtnet.org/sites/default/files/prestupleniya\\_nenavisti\\_sovershennye\\_v\\_svyazi\\_s\\_seksualnoy\\_orientatsiyey\\_iili\\_gendernoy\\_identichnostyu\\_zhertvy\\_v\\_2013\\_godu\\_v\\_rossiyskoy\\_federacii\\_0.pdf](https://www.lgbtnet.org/sites/default/files/prestupleniya_nenavisti_sovershennye_v_svyazi_s_seksualnoy_orientatsiyey_iili_gendernoy_identichnostyu_zhertvy_v_2013_godu_v_rossiyskoy_federacii_0.pdf), [https://www.lgbtnet.org/sites/default/files/sluchai\\_0.pdf](https://www.lgbtnet.org/sites/default/files/sluchai_0.pdf), [https://www.lgbtnet.org/sites/default/files/doklad\\_v\\_obse.pdf](https://www.lgbtnet.org/sites/default/files/doklad_v_obse.pdf)

Crimes against MSM founded on the preconception that members of this group will report on them to the police, have become particularly widespread. These crimes are often committed according to the same script: the attackers become acquainted with the victim over the Internet and invite him on a date, where they extort money from him and threaten him with harassment, 'outing' (forced disclosure of information about his sexual orientation to family members, friends, or coworkers), and initiation of a legal case based on the commission of "sodomy" with an individual under sixteen years of age.<sup>9</sup> Generally, these threats are accompanied with violence and verbal abuse. In 2015-2016, no fewer than 23 crimes of this nature were recorded in Russia<sup>10</sup>.

Since 2011, Russia has experienced a growth in public discussions of questions of sexual orientation and gender identity. This is connected particularly with debates around the regional and federal laws banning so-called "propaganda of homosexuality" or "propaganda of non-traditional sexual relations" and legislative initiatives which prohibit blood donation by LGBT people and deprive transgender persons of the right to marry.

At the same time, hate speech delivered by opinion leaders, politicians, law-enforcement officials and religious leaders remains unpunished. The police and the prosecutors not only do not respond to hate speech on their initiative, but also refuse to consider complaints submitted by LGBT activists or organizations. Attempts by activists to protect themselves from hate speech in civil proceedings or through administrative mechanisms also prove useless.

In particular, in 2012, on the "Russia-1" state TV channel, presenter Dmitry Kiselev stated during a program about the need to ban so-called "homosexual propaganda": "I believe that fining gays for homosexual propaganda among minors is not enough. They should be banned from making blood and sperm donations, and in the case of a car accident their hearts ought to be buried or burned as unfit to continue someone's life"<sup>11</sup>.

Vitaly Milonov, who until recently was a deputy in the Legislative Assembly of Saint Petersburg, known for his public calls for discrimination and violence against the LGBT community and numerous attempts to disrupt peaceful protests, festivals, and meetings of LGBT activists,<sup>12</sup> was not only never held responsible for his actions despite applications to law enforcement authorities by LGBT rights defenders, but has also become a deputy in the State Duma of the Russian Federation.

## 2. *Law banning "propaganda of non-traditional sexual relations"*

In 2013, amendments were introduced to the federal law 'On Protecting Children from Information Harmful to their Health and Development'<sup>13</sup> and to the Administrative Offence Code of the Russian Federation, which established liability for "propaganda of non-traditional sexual relations among minors," i.e. "the dissemination of information aimed at developing unconventional sexual juvenile facilities, attractiveness of unconventional sexual relationships, distorted notions of social equivalence of traditional and non-traditional sexual relations, or the imposition of information on non-traditional sexual relationships, causing interest in such relations". This law has had a severe impact on the life of LGBT persons in Russia, namely:

a. Adoption of this law led to a de facto complete ban on LGBT activists' realization of their right to peaceful assembly. The authorities deny their requests to hold public demonstrations, and in situations when LGBT activists participate in general civil demonstrations, they are arrested by the police and brought to administrative liability. It is not uncommon for representatives of law enforcement agencies to interfere in private events (seminars, film screenings, etc.).<sup>14</sup>

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<sup>9</sup> Criminal Code of the Russian Federation No. 63-FZ of June 13, 1996. Article 134, Section 2.

<sup>10</sup> According to data from the Monitoring and International Advocacy Program of Russian LGBT Network from 20 January 2016.

<sup>11</sup> Case documented by Russian LGBT Network.

<sup>12</sup> Report On Incidents of Discrimination and Violence on Grounds of Sexual Orientation and Gender Identity in 2015 in Saint Petersburg, Russia. Coming Out LGBT Initiative Group. 2015. Pp. 36-38. <http://comingoutspb.com/upload/2015-doklad-comingoutspb.pdf>

<sup>13</sup> Federal Law of the Russian Federation No. 436-FZ of December 23, 2010.

<sup>14</sup> Report On Incidents of Discrimination and Violence on Grounds of Sexual Orientation and Gender Identity in 2015 in Saint Petersburg, Russia. Coming Out LGBT Initiative Group. 2015. Pp. 42-54. <http://comingoutspb.com/upload/2015-doklad-comingoutspb.pdf>. Monitoring of discrimination and violence based on SOGI in Russia in 2015. Russian LGBT Network. 2016. [https://www.lgbtnet.org/sites/default/files/monitoring\\_of\\_discrimination.pdf](https://www.lgbtnet.org/sites/default/files/monitoring_of_discrimination.pdf)

b. The law made it impossible to discuss issues connected to sexual orientation and gender identity with adolescents under the threat of heavy fines. This includes impossibility to (i) establish tolerance programs for adolescents, (ii) provide adolescents with adequate information about sexuality and gender identity, as well as methods of STIs and HIV prevention, to LGBT youth, and (iii) provide psychological and legal aid to LGBT adolescents.

c. This law provoked a wave of persecutions against LGBT individuals and LGBT activists working in schools and universities (see further detail in the Section 2 of this report).

d. Although this law has never been applied in respect of LGBT parents, it has instilled in this group an atmosphere of fear and made its members vulnerable to threats from former spouses and other relatives to revoke or limit their parental rights, insofar as they subject children to “the influence of information which causes harm to their health and development”. Over the course of 2015-2016, 10 LGBT parents reported to Russian LGBT Network that they had experienced such threats<sup>15</sup>. During this same period two transgender women with queries of the same nature<sup>16</sup>.

e. Additionally, LGBT parents who have not been restricted in their parental rights but live separately from their children are often denied support from government agencies in the exercise of these parental rights.

### *3. Worsening of attitudes towards the LGBT community in society*

The legislative entrenchment of the stigmatization of the LGBT community and manifestations of intolerance and prejudice in the media has inevitably increased the level of intolerance in society.

According to data from research conducted by the Levada Center in 2015,<sup>17</sup> more than one-third of residents of Russia (37%) believe that homosexuality is 'a disease that needs to be treated'. Only 25% of the country's residents believe that gays and lesbians should be 'left in peace' (in 2013, this figure was 31%). 18% of those polled insist that homosexuals must be 'prosecuted under the law' (in 2013, only 13% of respondents held this belief).

Two-thirds of respondents (65%) indicated that they have negative feelings towards gays and lesbians: disgust and fear (24%), aggression (22%), and wariness (19%). Consequently, they would not want to have a same-sex couple as a neighbor (66%), do not want to work with gays or lesbians (66%), and are not ready to have a homosexual individual among their friends (68%). Only 26% of those polled indicated that they relate to homosexuals 'comfortably, without emotion'. Transsexual persons are also perceived negatively by the majority of the population (66%).

Such a high level of intolerance in society allows for internal stigma to develop amongst LGBT individuals, which in turn forces people to forego applying to government authorities for legal protection of their rights (see sections 2, 4 of this report) and to hide their sexual orientation and gender identity when receiving medical assistance (see section 3 of this report).

### *4. Lack of legal recognition of same-sex partnerships*

Russian legislation does not provide any legal protection for same-sex unions. Property acquired in a same-sex partnership is not considered to be joint property; after the death of one partner, the other has no right to legal inheritance, nor to survivor benefits; same-sex partners do not have the right to joint custody of children. Meanwhile, the need for legal recognition of same-sex partnerships among the Russian LGBT community is extremely high. In the period from 2013 to 2016, one-fourth of the requests made to the legal protection service of the Russian LGBT Network dealt with possible legal protection for these types of partnerships<sup>18</sup>.

In accordance with Section 1, Point 13 of Article 127 and Section 1 of Article 146 of the Family Code of the Russian Federation<sup>19</sup>, individuals belonging to same-sex partnerships registered abroad

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<sup>15</sup> According to data from the Legal Aid Program of the Russian LGBT Network from 20 January 2016.

<sup>16</sup> According to data from Transgender Legal Defense Project from 20 January 2016.

<sup>17</sup> The invisible minority: on the problem of homophobia in Russia: <http://www.levada.ru/2015/05/05/nevidimoe-menshinstvo-k-probleme-gomofobii-v-rossii/>

<sup>18</sup> According to data from the Legal Aid Program of the Russian LGBT Network from 20 January 2016.

<sup>19</sup> Federal Law of the Russian Federation No. 167-FZ of July 2, 2013 'On the introduction of changes to specific laws of the Russian Federation on the question of the accommodation of orphan children and children without parental guardians'

cannot become adoptive parents or guardians. Many Russian same-sex couples have registered their marriages abroad, and, in doing so, are denied the right to be adoptive parents or guardians.

#### *5. Persecution of LGBT- and HIV-service organizations under the “foreign agents law”*

In 2012, amendments requiring NGOs receiving foreign funding and engaging in “political activities” to register as “foreign agents” were introduced to Federal Law No. 121-FZ “On Non-Commercial Organizations”. Since 2014, the Ministry of Justice can register NGOs as “foreign agents” without their consent or a court decision. NGOs registered as “foreign agents” are required to submit additional reports on their activities and funding to the state bodies and to label their materials and publications as having been produced by a “foreign agent”.

The definition of “political activity” in the law is vague and permits authorities to register NGOs conducting diverse activities related to public life, including NGOs working on LGBT rights and providing HIV-related services, as “foreign agents”. For example, an NGO which operates in Omsk and provides HIV-related services to MSM and transgender individuals was forced to register as a “foreign agent” for publishing and disseminating a brochure entitled “LGBT. Human Rights in Russia”, which criticized the law banning “propaganda of non-traditional sexual relations among minors”.<sup>20</sup>

Apart from increasing the administrative burden for reporting, the “foreign agent” label also carries a heavy social stigma, as in Russia the term “foreign agent” can only be interpreted as “spy” or “traitor”. It sends a clear signal to state bodies not to cooperate with NGOs bearing this label. This impacts the work of HIV-service NGOs especially significantly, insofar as it impedes their collaboration with state AIDS centers.

To date, five LGBT organizations and at least two HIV-service NGOs have been persecuted under this law. Four of these LGBT organizations had to shut down in order to escape the “foreign agent” label.

#### **Recommended questions:**

- Please provide examples of the court judgments or decisions of other state bodies in which discrimination on the basis of belonging to a ‘social group’ due to sexual orientation or gender identity is indicated on the record.
- Please explain how the restrictive amendments included in 2012 into the Federal Law 'On Non-commercial Organizations', in accordance with which non-commercial organizations which receive financing from abroad and which participate in 'political activities' must register as 'foreign agents' and must publish their materials with the corresponding designation, impact the work of LGBT- and HIV-service organizations, including their ability to implement programs aimed at prevention the spread of the HIV infection among men who have sex with men and transgender individuals.
- How does the 2009 Committee’s General Comment No. 20 “Non-discrimination in economic, social and cultural rights”, which provides that states parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor’s pension rights, relate to the statement about “social inequality between traditional and nontraditional marital relations” contained in the Federal law banning “propaganda of non-traditional sexual relations” and the judgment of the Constitutional Court of the Russian Federation?

## **SECTION 2. Discrimination of LGBT persons in employment (Articles 2, 6 of the Covenant)**

Due to a long history of discrimination, the LGBT community and in some cases individuals associated with the community (e.g. heterosexual cisgender LGBT activists) are vulnerable to abuse in employment on the part of employers, as well as coworkers and clients. This section highlights not only the issue of the general vulnerability of LGBT individuals to illegal actions in employment, but also

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<sup>20</sup> Open letter by the Centre “SIBALT” Board.

questions of the increased susceptibility of specific groups, such as LGBT teachers and transgender individuals, to discrimination.

Labor discrimination against LGBT persons can take the form of insults, humiliation, regulation of an employee's appearance, harassment, threats, refusals to hire LGBT individuals, withholding of bonuses, illegal dismissals, or forced resignations. In several cases, this negative treatment results in subsequent intentional outings (disclosure of information about sexual orientation, gender identity, or transgender status) by a current employer to a potential employer.<sup>21</sup>

These negative consequences and risks affect LGBT persons regardless of whether they are open about their sexual orientation and gender identity or not. In either case, regardless of the tactic chosen by LGBT individuals, there always remains the risk of outing – the collection of information about a person's sexual orientation or gender identity and disclosure of this information by someone to a third party or to an employer without the person's consent. Particularly high is the likelihood of these kinds of actions against workers in the education sphere.

Today in Russia, organized homophobic groups collect information on such teachers on social networks, websites, and forums, including information about their private lives and civic positions, and then forward this information to school administrations and educational authorities with the demand that teachers who "promote perversion" be banned. One such activist alleges that he has caused the dismissal of 29 LGBT teachers across Russia<sup>22</sup>. Human Rights Watch has documented seven cases where LGBT people or their supporters were threatened with dismissal or forced to leave their teaching jobs at universities, schools, and educational centers for children<sup>23</sup>. Typically, victims resign of their own accord, but some are dismissed by the employer. In its concluding remarks on the 8th periodic report of the Russian Federation, the Committee on the Elimination of All Forms of Discrimination against Women noted the particular vulnerability of LBT women who work in education to employment discrimination.<sup>24</sup>

Discrimination in labor and employment against transgender persons is of a distinctive nature due to the additional vulnerability emerging from the discrepancy between documents and appearance of transgender persons, as well as difficulties in accessing the procedure legal gender recognition. Increased vulnerability, together with a lack in most organizations of a clear and unambiguous internal policy prohibiting discrimination on the basis of SOGI, leads to serious dependence of transgender individuals on the will of their employers. It also increases their visibility and makes them stand out among other coworkers, which makes them more susceptible to abuse from both employers and colleagues. The issue of discrimination against transgender people in employment is elaborated upon in greater detail in section 4 of this report.

The problem of access to means of legal protection is worth to be noted separately. In the vast majority of cases, LGBT individuals who have faced discrimination in employment voluntarily refuse to use legal means of protection due to psychological trauma or desire to avoid further disclosure of information about their sexual orientation or gender identity. In order to guarantee that LGBT individuals have access to means of legal protection in cases when their labor rights have been violated, it is necessary to take into account the specific discriminatory nature of these violations and provide mechanisms of legal protection that are as transparent and direct as possible.

The Labor Code of the Russian Federation<sup>25</sup> contains a prohibition of discrimination in labor. According to Article 3 of the Code, no one's labor rights or freedoms or the right to receive benefits can be restricted on the basis of sex; race; skin color; nationality; language; origin; financial situation; family, social or official status; age; place of residence; religious beliefs; belonging or not belonging to associations or social groups; or other circumstances unrelated to professional qualities of the employee. Belonging to a so-called 'social group' as a protected ground of discrimination was included via Federal

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<sup>21</sup> Report On Incidents of Discrimination and Violence on Grounds of Sexual Orientation and Gender Identity in 2015 in Saint Petersburg, Russia. Coming Out LGBT Initiative Group. 2015. Pp. 54-65; Monitoring of Discrimination and Violence Based on SOGI in Russia in 2015. Russian LGBT Network. 2016.

[https://www.lgbtnet.org/sites/default/files/monitoring\\_of\\_discrimination.pdf](https://www.lgbtnet.org/sites/default/files/monitoring_of_discrimination.pdf)

<sup>22</sup> My orientation – is immoral? <https://meduza.io/feature/2014/12/12/moya-orientatsiya-eto-amoralno>

<sup>23</sup> License to Harm – Violence and Harassment against LGBT People and Activists in Russia.

<https://www.hrw.org/reports/2014/12/15/license-harm-0>.

<sup>24</sup> CEDAW. Concluding observations on the eighth periodic report of the Russian Federation. CEDAW/C/RUS/CO/8. 20 November 2015. Paras. 41-42.

<sup>25</sup> Federal Law of the Russian Federation No. 197-FZ of December 31, 2001.

Law 'On the introduction of amendments to Federal Law of the Russian Federation "On employment in the Russian Federation" and to certain legislative acts'<sup>26</sup>. In view of the practice of the Constitutional Court of Russia, which has ruled that the category of 'social group' can apply to 'groups of individuals with a particular sexual orientation',<sup>27</sup> this amendment without a doubt can be considered a positive development.

However, as indicated in section 1 of the present List of issues, this reading of the norm is not widespread in judicial practice at the present time. As the term 'social group' is vague, the authorities take great liberty in their discretion and judgement of whether a particular group of people can be considered a 'social group'. In cases regarding observance of the right to equality and non-discrimination of members of the vulnerable LGBT group, sexual orientation and gender identity must be directly mentioned in labor legislation as protected grounds of discrimination. Only in this case LGBT persons will have access necessary protection.

#### **Recommended questions:**

- Please provide examples of the court judgments or decisions of other state bodies in which the dismissal of an employee was declared discriminatory in connection with his or her sexual orientation or gender identity, including decisions in which a direct violation of Article 3 of the Labor Code with the application of the concept of belonging to a 'social group' is indicated. Please also provide information on whether these decisions assist the employee in reassuming his or her post and in receiving compensation for the moral damages and financial losses, and to what degree these decisions have a preventative effect on the further practice of organizations involved in their policies and treatment of employees.
- Please provide information on legislative or other measures taken in order to establish of an effective mechanism for filing and examining complaints in cases of discrimination based on SOGI.

### **SECTION 3. The lack of reliable data on HIV incidence rates amid men who have sex with men and transgender persons by the State party bodies (Article 12 of the Covenant)**

The stigma which is formally set by law and promoted through mass media channels (see Section 1 of the present List of issues) encourages homophobic attitude of the society and effects men who have sex with men (MSM) and transgender persons, forcing them to hide their identity and live a stealth life. HIV-positive MSM and transgender persons face double stigma derived from both sexual orientation/gender identity and their HIV-positive status. As a result, the number of MSM and transgender persons who seek prevention services and medical care is significantly reduced; HIV-positive persons are hesitant to disclose their sexual orientation and gender identity to healthcare workers. This section points out the difference between official and unofficial HIV incidence rates among MSM and transgender persons.

According to a joint research conducted by "AIDS Infoshare" foundation and John Hopkins Bloomberg School of Public Health in 2012-2013, HIV prevalence among MSM residents of Moscow was 12.0%<sup>28</sup>. Another research conducted by Saint-Petersburg AIDS Center in partnership with non-governmental organizations in 2014 revealed that 13,6% of MSM of Saint Petersburg live with HIV<sup>29</sup>.

According to the data collected in 2015 in Saint-Petersburg, Moscow, Krasnoyarsk, Krasnodar, Ekaterinburg and Nizhny Novgorod, HIV prevalence among MSM was 11,4%. The highest rate of HIV-positive MSM was detected in Moscow and amounts to 21,8%<sup>30</sup>.

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<sup>26</sup> Federal Law of the Russian Federation No. 162-FZ of July 2, 2013.

<sup>27</sup> Judgment of the Constitutional Court of the Russian Federation No. 24-P of September 23, 2014.

<sup>28</sup> High prevalence of undiagnosed HIV infection despite high levels of reported history of HIV testing among men who have sex with men (MSM) in Moscow, Russia. C.E. Zelaya, A.L. Wirtz, N. Galai, A. Peryshkina, K. Dyakonov, C. Beyrer. <http://pag.aids2012.org/abstracts.aspx?aid=18637>

<sup>29</sup> The epidemiological situation in Saint Petersburg: the HIV epidemic among MSM? T. Vinogradova, Deputy Medical Director of Saint Petersburg AIDS Center. 2016. <http://center-action.org/wp-content/uploads/2016/07/02.-Vinogradova.pptx>

<sup>30</sup> Survey conducted by NGO "Phoenix PLUS".

An online survey conducted in December 2016<sup>31</sup> verifies the data discovered by NGOs. Among a total of 1100 participants of the survey, 76% identify as gay, 18% as bisexual, about 4% as heterosexual men who have sex with men. 17,2% of respondents marked their HIV-positive status.

However, according to the official data released by Federal Scientific-Methodic Center for AIDS Prevention, among persons whose HIV-positive status became known in 2014, only 1,2% incident cases refer to MSM (1,0% in 2013)<sup>32</sup>. Thus, the scale of HIV incidence among MSM and transgender persons which the healthcare institutions are aware of is several times lower than the actual one.

The lack of accurate data on the scale of the epidemic among the abovementioned groups hinders the incorporation of relevant action aimed at HIV prevention among MSM and transgender persons into the State Strategy to combat the spread of HIV in Russia through 2020 and beyond<sup>33</sup>. The State Strategy fails to even mention the notions of “men who have sex with men” and “transgender persons” (once only, reference is made to “people having non-traditional sexual intercourse”). The State Strategy does not include any concrete actions to prevent the spread of HIV among these groups.

#### **Recommended questions:**

- Please provide information on measures taken by the State party to collect data on HIV incidence among MSM and transgender persons and to prevent HIV epidemic among these groups.

#### **SECTION 4. The situation of transgender persons in the Russian Federation (Articles 2, 6, 9, 12, 14 of the Covenant, General Comments Nos. 19, 20)**

Traditionally, transgender persons are one of the most vulnerable groups within the LGBT community. The reason for this is their high visibility, which is connected to their need for specific medical services and change of gender marker in their legal documents. This section focuses on the main problems connected to access to transition-related medical services for transgender persons, access to legal gender recognition (change of documents), and discrimination towards transgender people.

##### *1. Access to transition-related medical services*

###### *a. Access to mental health care*

Transgender persons in Russia are required to undergo psychiatric evaluation in order to receive an F64.0 diagnosis ('transsexualism', according to ICD-10), insofar as the presence of this diagnosis serves as an authorization for both hormonal treatment and for sex reassignment surgeries. In addition, without first establishing this diagnosis, it is impossible to change one's gender marker in official documents.

Existing legislation<sup>34</sup> affords transgender individuals the opportunity to undergo psychiatric evaluation for free as part of the state-provided health insurance system (the mandatory medical insurance system). However, according to a survey of 244 transgender individuals, <sup>35</sup> only 23% of respondents reported that they had sought psychiatric assistance through the mandatory medical insurance system.

This is connected to the low level of trust among transgender people towards psychiatrists who work at state psychoneurological hospitals. 30% of respondents who have not sought psychiatric assistance in the past five years reported that they would not want to see a specialist working in such a hospital. Another 23% of respondents noted that there are no specialists of the appropriate field in their region; that is, state psychiatrists are not considered to be specialists in the field of transition-related mental health care.

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<sup>31</sup> Survey conducted by Centre “Action”.

<sup>32</sup> Factsheet: HIV infection in the Russian Federation as of December 31, 2014. <http://www.hivrussia.ru/files/spravkaHIV2014.pdf>

<sup>33</sup> Government Decree No. 2203-r of 20 October 2016.

<sup>34</sup> Ministry of Health Order No. 1221n of December 20, 2012.

<sup>35</sup> All data presented in this section have been acquired from a research conducted by the Transgender Legal Defense Project in December 2016-January 2017. The study is focused on interactions between transgender individuals and medical specialists across the past five years.

These concerns have validity, as 25% of respondents who had sought psychiatric assistance in the past five years reported that the services provided were substandard or that they were denied help entirely.

b. Access to endocrinological services

Transgender people also have the opportunity to receive the assistance of an endocrinologist at no cost as part of the mandatory state medical insurance system. However, only 25% of those who had sought endocrinologist assistance over the past five years made use of free medical services. This is also connected to a low level of trust in these specialists. This mistrust is based on experience, insofar as 50% of those who sought endocrinological help as part of the mandatory medical insurance system were dissatisfied with the quality of the assistance they received.

Medication that is taken as part of hormone replacement therapy (which is usually prescribed to transgender people for the life term) is not covered by mandatory state medical insurance. 60% of surveyed transgender individuals indicated that hormone treatments are quite expensive for them and are included in their budgeting. Another 10% of respondents stated that they are unable to regularly purchase their hormone medication because of the high cost.

c. Access to sex reassignment surgeries

Sex reassignment surgeries can only be acquired if a transgender person has been diagnosed with F64.0 ('transsexualism').

Sex reassignment surgeries are the most expensive part of a transgender transition, but they are not included in the mandatory state medical insurance program. 62% of respondents reported that they were forced to or plan to take out a loan in order to make the surgical changes, as they cannot pay for them without doing so.

2. Access to legal gender recognition

According to Russian legislation, it is possible to change one's legal gender marker. However, the existing procedure is neither swift, nor accessible nor transparent.

In accordance with Article 70 of Federal Law 'On Acts of Civil Status'<sup>36</sup>, in order to change their gender marker in legal documents, a transgender individual must submit a medical certificate issued by a medical organization and confirming a sex change to the Civil Registry Office. The Ministry of Health was charged to develop and approve a form of such a certificate in 1998, but no such document has been approved so far.

In the absence of an approved form of a certificate confirming a sex change, in the majority of cases, the only possibility for transgender individuals to change their legal gender marker is through court proceedings. Court proceedings are complicated and lengthy, as a result of which the legal gender recognition procedure does not meet the criteria of swiftness.

Legal gender recognition procedure and the requirements that the transgender individual should meet in order to be able to change their legal gender marker vary from region to region and even from court to court, which fails to make the procedure transparent.

The procedure is also not accessible, since participation in court proceedings requires specialized knowledge in the field of law. Moreover, despite the fact that according to Russian legislation, no medical interventions are required prior to legal gender recognition, in practice, civil registry offices and courts often require that sex reassignment surgeries be performed. Between 2013 and 2016 Transgender Legal Defense Project documented 9 cases in which the courts dismissed applications for legal gender recognition having ruled that sex reassignment surgeries must precede the change of the applicants' legal gender marker<sup>37</sup>. In 4 more cases the courts have ruled that surgeries that were already carried out were not sufficient for a change of one's legal gender marker<sup>38</sup>. This requirement significantly decreases the accessibility of legal gender recognition. Not all transgender people choose to undergo gender

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<sup>36</sup> Federal Law of the Russian Federation No. 143-FZ of November 15, 1997.

<sup>37</sup> According to data from Transgender Legal Defense Project from 20 January 2016.

<sup>38</sup> According to data from Transgender Legal Defense Project from 20 January 2016.

reassignment surgery; some cannot afford it, while for others surgery is contraindicated for reasons such as health or age.

### 3. *Discrimination against transgender people in healthcare, employment, and education*

Difficulties in legal gender recognition result in transgender people being stripped of the ability to realize their rights (including the right to work, to education, and to a highest attainable standard of physical and mental health) because of the mismatch between their appearance and their legal gender. In some cases, individuals voluntarily forego the realization of these rights in order to maintain secrecy about their private lives.

#### a. Discrimination in healthcare

Transgender individuals often encounter discrimination in their attempts to receive medical assistance that is unrelated to their transgender transition. This discrimination can take the form of refusals to provide emergency or planned medical assistance, insults uttered by medical personnel, failure to hospitalize patients in the ward in which patients of a transgender individual's identified gender reside, and refusal to allow individuals to become blood donors.<sup>39</sup> Denial of medical assistance or non-timely provision of assistance, as well as forced self-treatment can negatively affect a person's health or create a serious threat to one's life.

17% of respondents to an online survey conducted by Transgender Legal Defense Project as part of a discrimination monitoring project reported that they were denied medical care because of the discrepancy between their appearance and the gender marker in their passports<sup>40</sup>. 41% indicated that they had had to voluntarily forego medical assistance<sup>41</sup>.

#### b. Discrimination in employment

Discriminatory activities towards transgender people are manifested in repeated refusals of employment, often without an explanation as to why; abuse in the form of a refusal to use a person's chosen name and pronouns; requirements to change legal documents; offensive comments and recommendations for changes to appearance; humiliating and degrading treatment; insistence during work that individuals identify themselves in accordance with the sex listed in their passports; in some cases, harassment and dismissal; physical aggression or disclosure of personal information to third parties; or withholding of bonuses<sup>42</sup>.

The abuse faced by transgender individuals leads to negative psychological consequences, a lack of stable work and consistent wages, and long-term inability to find employment. All of this forces transgender people to agree to 'unofficial' employment arrangements, significant decreases in position, or a choice of unskilled work. In several situations, this results in a need to resort to sex work in order to survive or to voluntary abandonment of a further job search in order to escape future abuse and discriminatory acts.

The survey results showed that 50% of transgender respondents have been denied employment in the past five years; 62% willingly forewent changing their place of employment or sending their resume out to an interesting job opening. 29 cases of rights violations against transgender people in the labor sphere were recorded; of them, 15 were directly related to finding employment, 5 cases were connected with a dismissal, and 9 with pressure or harassment at the workplace. Some of those surveyed have repeatedly and over a long period of time faced refusals of employment and were unable to remember the names of all the companies with which they had had contact<sup>43</sup>.

#### c. Discrimination in education

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<sup>39</sup> Violation of transgender people's rights in Russia: research results. Transgender Legal Defense Project. 2016. Pp. 30-36. [http://pravo-trans.eu/files/violation\\_of\\_the\\_rights\\_of\\_transgender\\_people\\_in\\_Russia-en.pdf](http://pravo-trans.eu/files/violation_of_the_rights_of_transgender_people_in_Russia-en.pdf)

<sup>40</sup> Ibid. P. 30.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid. Pp. 13-29.

<sup>43</sup> Ibid.

Discrimination against transgender individuals in the education sphere takes the form of outing (disclosure of information about a person's transgender status to third parties), refusals to offer practical training, and offensive speech.<sup>44</sup>

According to the results of an online survey, 34% of respondents voluntarily forewent receiving an education until they were able to legally change their documents in order to avoid conflictual or discriminatory situations<sup>45</sup>. Inability to or voluntary refusal to receive an education or vocational development affects transgender people's competitiveness on the labour market and ultimately does not allow them to fully realize their ability to work.

#### **Recommended questions:**

- Please provide information on measures taken by the State party to improve access for transgender people to transition-related medical services and directed towards, inter alia, the inclusion of sex reassignment surgical operations into the mandatory medical insurance system and an increase in the level of knowledge of medical specialists regarding issues concerning transgender transition and the ethics of communicating with transgender persons.
- Please provide information on measures taken in order to decrease the level of discrimination against transgender people in employment, health care, and education.
- What factors (legislative, administrative, institutional, financial, etc.) have prevented the Russian Federation from developing and adopting a form of a medical certificate confirming a sex change, as required by the Federal Law 'On Acts of Civil Status', for more than 18 years? When will the Russian Federation develop this form, and who will be involved in this process? What are the requirements for legal gender recognition for transgender people wishing to change their legal gender marker? Why are transgender people who have not had any gender reassignment surgery or who have had only one such surgery denied legal gender recognition? In what way is the Russian Government planning to address the problem of gender reassignment surgery requirement prior to legal gender recognition?

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<sup>44</sup> Ibid. Pp. 56-58.

<sup>45</sup> Ibid.