**Submission to the high commissioner**

**for the report on human rights in the context of HIV/AIDS**

**(to be presented to the human rights council at its fiftieth session)**

**21 February 2022**

ECOM is a regional non-governmental organization that is working with gay men, other men having sex with men (MSM), and trans people specifically in the area of their right to health in Eastern Europe and Central Asia (EECA), which makes it competent in revealing disparities in state healthcare services and offering professional recommendations to amend them, which the general civil servants may lack due to not having the necessary training to work with these groups. We are convinced that in Eastern Europe and Central Asia countries, both the authorities and civil society organizations must take significant steps to implement the principles of the Political Declaration on HIV and AIDS adopted by the General Assembly in 2021 and the Human Rights Council resolution 47/14. Below are the main points of our concern.

**1. Strong commitment to the Global AIDS Strategy 2021-2026**

Progress towards achieving theSustainable Development Goals[[1]](#footnote-1), particularly the goal to end the AIDS epidemic by 2030, hasslowed dramatically[[2]](#footnote-2). This is primarily due to another new pandemic, COVID-19, which is drawing off many resources and threatens to reverse gains made in the global HIV response.

In EECA, for example, the number of new HIV cases continues to grow. According to UNAIDS, the number of new infections in 2021 increased by 43% compared to 2010. This is the highest increase of any region in the world. 16% of new cases in EECA are among MSM and 1% among trans women. HIV prevalence among MSMaverages[[3]](#footnote-3) 5.4% in the region and almost 2% among trans people. At the same time, ART coverage in EECA remains among the lowest in the world — only about half of PLHIV receive ART. It is not surprising that the number of AIDS-related deaths has increased by 32% compared to 2010.

COVID-19 has severely reduced the availability of HIV services[[4]](#footnote-4), especially for key populations. The diversion of financial, human and technical resources from health systems to combat COVID-19, the overburdening and repurposing of health facilities, shortages of health workers, and quarantine restrictions, including travel bans, all present new barriers to achieving the goal of ending the AIDS epidemic.

Members of LGBT communities are among those most affected in this regard. HIV prevention and testing services have become much less accessible since they are not classified as critical infrastructure elements in response to COVID-19. Domestic and gender-based violence have increased pervasively during times of forced isolation, which has affected cisgender and trans women to a great extent.

Eliminating all forms of inequality should help overcome the burden of the dual pandemic and give a new impetus to achieving the goals of eradicating AIDS by 2030. The new Global AIDS Strategy 2021-2026 “End Inequality. End AIDS”[[5]](#footnote-5) aims to do just that and places human rights, gender equality and dignity, and the elimination of all forms of stigma and discrimination at the core of the fight against HIV.

The three main priorities of the Strategy are to maximize equitable and equal access to comprehensive, people-centered HIV services, to overcome legal and social barriers to achieving HIV outcomes, to invest resources and sustain HIV responses, and fully integrate them into health, social protection, and humanitarian assistance systems.

It is crucial to consider the needs and demands of LGBT people in planning, implementing, providing access to, and evaluating national and regional HIV programs. We call on expanding and maintaining comprehensive HIV services even during the ongoing COVID-19 pandemic and provide other necessary health services for LGBT people most affected by the pandemic (trans people, sex workers, refugees and migrants). We call on expanding assistance programs for LGBT people in crisis and/or facing violence, including shelters/safe spaces for gay and trans people, crisis counseling, legal assistance, provision of necessities (food, medical supplies, personal protective equipment) for those without adequate means of subsistence) and employment assistance.

**2. Legislative barriers to accessing HIV services in the EECA region.**

There are still legal gaps and outdated regulations, which prevent gay men, other MSM and trans people in EECA from fully exercising their rights to health[[6]](#footnote-6).

One of the challenges is the requirement to submit HIV status certificates for migrants and the exclusion of non-residents from the list of people who can have regular access to ART. Migrants with HIV are the vaguest group in terms of statistics. Only the number officially examined and identified is precisely known. Most of the migrants take tests anonymously, some avoid testing. We are concerned that the legislation in this area, on the contrary, is being tightened. For instance, in Russia, from December 2021, all migrants are required to regularly (once every three months) undergo HIV testing[[7]](#footnote-7), and if they fail or receive a positive diagnosis, such persons are at risk of deportation or annulling of residence permit. We strongly recommend canceling the regulations, which require that immigrants submit HIV status certificates, to change the rules of providing ART to non-residents and ensure access to treatment for all people on the country's territory for uninterrupted treatment.

Another important legislation gap, which is typical for the whole region, except Georgia, Moldova and Ukraine, is the lack of anti-discrimination laws. In Georgia and Moldova, only sexual orientation is contained in such laws, with no mention of gender identity. In this regard, we recommend adopting separate anti-discrimination laws in line with the minimum standards set forth by the international treaty bodies – open list of protected grounds, including SOGI, the definition of various forms of discrimination, mechanism of control over the enforcement of such laws and responsibility for discrimination (apart from the EECA countries where such laws already exist). In countries with separate anti-discrimination laws, SOGI should be included in the lists of protected grounds.

In Uzbekistan and Turkmenistan, the threat of criminal prosecution based on sexual orientation and voluntary same-sex contacts between men is added to the general trend of intimidation and blackmail with threats of disclosing one's HIV status. These countries have retained the Soviet-era article of the Criminal Code penalizing voluntary same-sex contacts between adult men.

Another barrier in a number of countries is the legal restriction of information related to same-sex relationships and the life of the LGBT community. For instance, in Russia, amendments to the law "On protection of children from information harmful to their health and development" (2013) as well as changes introduced to the Code of Administrative Offenses are the basis of what may be called the governmental policy of restricting the freedom of expression for the LGBT community. Lack or absence of adequate information about LGBT among young people is the main reason for self-rejection, which can seriously ruin a life. Possible consequences are thoughts about oneself as an abnormal person, guilt, suicidal thoughts, abandoning same-sex relationships, or, on the contrary, promiscuity (including unprotected sex and, as a result, the risk of HIV). We call to revoke such restrictive laws, including the Russian law on the so-called "gay propaganda."

Another unresolved issue characteristic of the EECA region is the criminalization of HIV transmission. The existence of criminal liability, even in the absence of any actual application of this punishment, leaves room for the stigmatization of PLHIV, as well as for abuse of power, blackmail, and intimidation of LGBT people. The UN principles strongly recommend that such laws be applied only in cases of intentional transmission of the virus. We recall the Oslo Declaration[[8]](#footnote-8) on HIV criminalization, adopted by international civil society on 13 February 2012, and urge the States to abolish criminal liability for unintentional HIV transmissions.

Barring doctors from places of deprivation of liberty, as well as prisoners with a confirmed HIV diagnosis from receiving ART, is unfortunately widespread. We recommend reforming the penitentiary system, amending the internal regulations of all institutions of the system in terms of access for people in custody to professional medical care, and receiving ART in accordance with doctors' prescriptions.

The elimination of discriminatory legal barriers is the key to the effectiveness and sustainability of HIV programs in the EECA region.

**3. Flaws in law enforcement practice. Violations of the rights of LGBT in the EECA region.**

Public attitudes in the EECA countries are characterized by a high level of homophobia and transphobia, which, together with legal barriers, seclude LGBT from active social life and isolation. A high level of homophobia in society may be a reason for delays in seeking medical care and/or avoiding seeking medical altogether due to fears of disclosing one's status (both SOGI and HIV) and fears of harassment and insults.

The growing number of cases of blackmail, threats of disclosure of status, harassment and violence by law enforcement agencies confirms the hypothesis that impunity for the actions of government officials, as well as the lack of effective remedies, have as much of an effect on the mission to end the AIDS epidemic[[9]](#footnote-9).

In particular, the repetitive facts of disclosure of personal data (medical data and/or SOGI) cause great concern. In 2020, we recorded 13 such cases, most in Tajikistan — 8. Perpetrators include both medical workers (doctors and laboratory technicians) and other government representatives who have access to personal information, for instance, law enforcement officers[[10]](#footnote-10).

The tendency to not seek medical help due to fear of disclosing one's HIV status and/or refusing further assistance after disclosing one's status and insults from medical workers has not changed either. Most people only report such facts to NGOs but do not agree to lodge official complaints.

We recommend enforcing the procedures to ensure non-disclosure of HIV status and SOGI of all gay men, other MSM and trans people who seek health care. It is vital to develop effective mechanisms for registering and investigating complaints against the actions of both medical workers and law enforcement officials.

It is also crucial to conduct ongoing training for government representatives on the ethics of providing services to reduce homophobia among law enforcement officials, medical workers, and representatives of other government agencies providing services to citizens. The states should train the police, representatives of prosecutor's offices and judges to effectively document, investigate, qualify and handle reports on hate crimes on the grounds of homophobia and transphobia. We also urge the authorities to conduct an effective public investigation of all the recent cases of hate crimes and data leaks involving LGBT.

**4. HIV programs funding**

Without sustainable financing, the AIDS responsewill fail[[11]](#footnote-11). The resources, from the point of view of UNAIDS and the Global Fund, should be invested in financing the response to the HIV epidemicat the community level[[12]](#footnote-12) (ascommunities deliver[[13]](#footnote-13) andmake the difference[[14]](#footnote-14)). As a best practice, UNAIDS suggests the models where [governments fund communities](https://www.unaids.org/sites/default/files/media_asset/JC2836_Governments-fund-communities_en.pdf))[[15]](#footnote-15).

However, governments hesitate to allocate money to HIV programs for homosexual and trans people almost everywhere in the region. Same-sex relations in several EECA countries remain a political issue, a matter of “preserving national sovereignty and territorial integrity.” For example, in Russia, while singling out “high-risk population groups,” the Ministry of Health does not recognize the epidemic among homosexuals, bisexuals and MSM. Recognizing the epidemic in these communities means recognizing them as social groups whose interests must be considered, not just “groups with deviant behavior,” that is, as citizens whose rights and needs can be neglected.

In some countries, there are legal restrictions on implementing such HIV programs for the community at the expense of donor funds (repressive legislation on “foreign agents” in Russia, the impossibility of registering an LGBT organization in Kazakhstan, Tajikistan, or Azerbaijan).

Often, donor organizations are not interested in financing service projects exclusively. Transfer of support for HIV-service NGOs to state funding means the involvement of organizations in advocacy, i.e., protecting the public interests of the groups they represent working with the authorities. In Russia, for example, such activities are readily regarded by the State as “political activities,” with the following status of a “foreign agent.” This “foreign agent” law should be revoked.

At the general level of the EECA countries, we recommend that the authorities should improve the procedure for State social contracting for financing programs to combat the HIV epidemic, making it more accessible to NGOs working with key populations; secure dispensing to clients ARV medications sufficient for several months, as recommended by WHO; establish systematic cooperation with the community-led organizations on informing people living with HIV and on delivery of the medications, and allocate funding, transportation and personal protection equipment for this.

At the same time, we urge the call to increase the access to PrEP for all key populations in EECA. Unfortunately, not every country in our region has a state-supported PrEP program for MSM and trans\*people. And the very limited number of people have access in countries where PrEP is available.

We also call on the authorities to recognize the importance and to financially support the work of community-led organizations including through social contracting, through introducing positions of peer consultants based at the AIDS centers and other government-owned institutions; to stimulate the work of community-led organizations by providing lease discounts for premises, cooperation in securing the unrestricted movement of employees (access permits) during the lockdowns and providing personal protection equipment.

For donors, we recommend funding financial/technical aid projects to support the community’s participation in the delivery of the medications to provide funding for establishing “ART banks” for migrant women.

**5. Disregard for trans people.**

We regret to state the following gaps: non-inclusion (non-selection) of trans people as a separate group in national legislation and programs, lack of estimation of the number of the representatives in the region, lack of analysis of the HIV cascade among trans people, and, as a result, lack of specific HIV programs for trans people and their funding.

Access to health services for carrying out and maintaining transgender transition (including hormone replacement therapy) has been categorized as «secondary» since COVID-19, severely limiting the right of trans people to receive needed qualified care. Socioeconomic inequality has become more acute. Isolation and travel restrictions prevent trans people from earning money to meet basic needs. It is no secret that a large proportion of trans women are involved in sex work, which was hit hard during the pandemic, depriving sex workers of even a minimal income.

A particular unresolved problem remains the lack of specific and highly specialized medical services for trans people. In countries with no protocols for providing medical services to trans people and, accordingly, no trained specialists, the trans community remains in a vacuum and is especially vulnerable. In 2020, such cases were also supplemented by cases of refusals to issue and/or amend documents.

We recommend developing procedures and protocols for the provision of medical care to trans people; to define the national bodies responsible for the quality of medical services provided to trans people; to include health services for trans people within sex reassignment/correction procedure into the list of services covered from the state budget; to develop and implement training programs for medical workers on the provision of services to trans people.

1. https://www.un.org/sustainabledevelopment/ru/health/ [↑](#footnote-ref-1)
2. https://www.theglobalfund.org/media/11123/partnershipforum\_global-progress-challenges-priorities-eeca-lac\_report\_en.pdf [↑](#footnote-ref-2)
3. https://aidsinfo.unaids.org/ [↑](#footnote-ref-3)
4. https://tgeu.org/wp-content/uploads/2021/01/impact-assessment-covid19-and-trans-people-in-europe-and-central-asia.pdf [↑](#footnote-ref-4)
5. https://www.unaids.org/en/resources/documents/2021/2021-2026-global-AIDS-strategy [↑](#footnote-ref-5)
6. https://ecom.ngo/wp-content/uploads/2020/04/Legislative-Analysis-2018-eng-fin.pdf [↑](#footnote-ref-6)
7. http://publication.pravo.gov.ru/Document/View/0001202107010039?index=1&rangeSize=1 [↑](#footnote-ref-7)
8. https://www.hivjustice.net/oslo/oslo-declaration/ [↑](#footnote-ref-8)
9. https://ecom.ngo/wp-content/uploads/2020/03/ECOM\_regional\_2019\_en.pdf [↑](#footnote-ref-9)
10. https://ecom.ngo/news-ecom/hrreport2020-en [↑](#footnote-ref-10)
11. https://www.unaids.org/en/resources/presscentre/featurestories/2019/september/20190926\_finance [↑](#footnote-ref-11)
12. https://www.unaids.org/ru/resources/presscentre/featurestories/2016/july/20160701\_PCB38\_communities [↑](#footnote-ref-12)
13. https://www.unaids.org/sites/default/files/media\_asset/UNAIDS\_JC2725\_CommunitiesDeliver\_ru.pdf [↑](#footnote-ref-13)
14. https://www.unaids.org/sites/default/files/media\_asset/world-aids-day-2019-communities-make-the-difference\_ru.pdf [↑](#footnote-ref-14)
15. https://www.unaids.org/sites/default/files/media\_asset/JC2836\_Governments-fund-communities\_en.pdf) [↑](#footnote-ref-15)