

## Legal Environment Assessment for HIV Services for gay men, other MSM and Trans Populations in CEECA

### Protocol for Compiling of Country Profiles & Measuring:

Collection of data for measuring current legislative barriers for gay men, other MSM and trans people accessing HIV and general health services in EECA region

May 2018

#### Summary

This protocol is developed as part of the ECOM's Regional Program 'Right to Health' and project 'Together for Our Rights' to produce country profiles to measure current legislative barriers for gay men, other MSM and trans people accessing HIV and other general health services in EECA region.

The protocol is comprised of the following parts:

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Annex 1: Country table

## 1. Purpose and use

### Regional Program “Right to Health”

The ECOM runs the Regional Program ‘Right to Health’ in 2017-2019 in five countries: Armenia, Belarus, Georgia, Kyrgyzstan, and Macedonia.

During the Rights to Health baseline assessment in 2017, ECOM reviewed data on legal environment related to HIV and human rights for LGBT in each of the target countries. Unfortunately, collected information consists of qualitative data, so it will not be possible to make a quick overview of the situation in the region using GIS-technologies and to see whether there is some progress in human rights promotion per each country and in the region as a whole.

### “Together for our rights” project

ECOM implements “Together for our rights” project, which is designed to support the global efforts to alleviate the impact of HIV and AIDS among gay men and other MSM and trans populations around the world and to enable gay men and MSM and trans people to safely seek HIV care and services.

Few of the objectives of the projects are to study stigma and discrimination, and monitor human rights violations in healthcare settings, in particular in HIV services and to advocate for addressing related barriers in access to health, including HIV services for gay men and other MSM and trans people.

The instruments – the guidance for compiling a country table and the instrument for measuring country score – are designed specifically for the ECOM’s Regional Program ‘Right to Health’ and project ‘Together for Our Rights’ for measuring progress on removing legal barriers for gay men, other MSM and trans people in their daily life and when accessing HIV and other healthcare services. However, they can be adapted for other purposes and other populations.

If applied outside the ECOM’s programs, the instrument methodology should be adapted accordingly depending on the purpose and context of the country, possible factors that might affect the scope of information collected and methodological approach including feasibility of methods used.

### Resources needed for application

The application of the instrument requires a lead person and support from partners in the country. The lead person should be an objective individual or a group of them, either local or international consultant or ECOM staff who is knowledgeable of the legal barriers gay men and other MSM and trans people face in their daily life and when accessing HIV and other healthcare services, has access to literature needed and experts in community and government officials, and has a legitimacy for producing objective data, with access and support by local partners. The local partners should be able to provide access to local published and unpublished data, including citations of legal acts, case studies, reports and national HIV programs etc.

## 2. Instruments

## 2.1. Measuring legislative barriers for gay men, other MSM and trans people

The instrument consists of 2 big areas for measuring – one is called “**Legal barriers**” and the other is “**Protection of LGBT rights**”. Each area consists of major questions that should be answered “yes” or “no” scored with 1 or 0.

Each of the areas is to be measured through multiple elements that increase objectivity of addressing various aspects and measure the deep of existing legal barriers or its practical application in the relevant area. Each answer should be backed with relevant legislation (link and quotation) and some are to be proved with case studies.

*We are aware that no country is ideal and many have reached very little progress in some areas. Still make sure that you answer only “yes” and “no” in Annex 1. You also can you only score 1 and 0. If you are not sure how to score – fill cells with all proofs and links and please leave a comment in the last Column G (sheet “country table”). In no case, please do not score “0,5” or any other number. Please do not try to change cells or delete questions – table is locked and one can only fill cells designed for answers.*

In the first area in the table called “Legal barriers” and highlighted with yellow color one should first answer the column B with “yes” or “no”. After that column C should be filled with score, where “yes” scores for 1 and the answer “no” – scores for 0. One should only answer questions, titles for each topic marked with light blue should not be answered.

Answer “Yes” in this section means there is a legal barrier (law or bylaw prohibiting or implicating something for gay men, other MSM and trans people compared to same activity or right for heterosexual people);

Answer “No” in this section means there is same legal order for all people despite their sexual orientation and gender identity and gay men, MSM and trans people can enjoy the same right as heterosexual people.

Please see example – model country “Pardes” sheet filled with answers. This is not a real country but one we imagined very close to the ideal situation, when “Legal barriers” are almost no existent and “Protection” is very advanced. Such ideal country can score as little as 3 for legal barriers and as much as 12 for protections measures. This sheet and explanations are for example purpose only.

1	Sphere/type of violation	Put "yes" or "no"	Score 1 or 0	Source of proof (name of the legal act)	Link to the legal act is compulsory	Abstract of the law (quotation) - could be in original language or translation into English/Russian
2	<b>Legal Barriers (law and practice)</b>					
3	<b>1. Prohibition on travel and immigration for people living with HIV</b>					
4	1.1 Does your country have regulations that require immigrants to provide information about their health status (and/or HIV status) when applying for long term visa or stay permit?	no	0	law about immigration	link	every one has a right to apply for immigrant permit, documents needed are passport and bank statement
5	<b>2. Criminalization of HIV transmission</b>					
6	2.1 Does your country Criminal Code (or other legislation) specifically sets responsibility for intentional HIV transmission during relations?	yes	1	criminal code	link	no relevant provision in the criminal code
7	2.2 Does your country Criminal Code (or other regulations) set responsibility for unintentional HIV transmission?	no	0	criminal code	link	no relevant provision in the criminal code
8	<b>3. Prohibition for MSM to be blood donors</b>					
9	3.1 Does your country healthcare rules set limitations for gay men, other MSM and/or trans* people to become blood donors?	no	0	law about blood donation	link	everyone can be a donor
10	3.2 Does your country donor screening procedures and/or forms that donors have to fill require donors to answer questions about their SOGI (It could be also questions about "risky sexual behavior, sex life, etc.)?	no	0	donor screening forms (interview questions) other regulations	link (screenshot, photo)	everyone can be a donor
11	<b>4. Access to the state funding to provide social and health services in open calls for NGOs working with MSM or LGBTIQ people</b>					
12	4.1 Is there legal limitation for NGOs providing HIV-services to gay men, MSM or trans* people?	no	0	rules about state funding	link	set of criteria for NGOs to receive state funding
13	4.2 Is there legal limitation for NGOs representing LGBTIQ people (human rights, services, community groups, etc.) to get state funding (at the national or local level)?	no	0	rules about state funding	link	set of criteria for NGOs to receive state funding
14	<b>5. Prohibiting freedom of assemble and freedom of speech for LGBTIQ people</b>					
15	5.1 Is there a law specifically prohibiting freedom of assemble and freedom of speech for LGBTIQ people?	no	0	law	link	add cases to the sheet "case studies"
16	5.2 Are national and/or local authorities banning Pride marches?	no	0	cases	reference to case study sheet or link	add cases to the sheet "case studies"
17	5.3 Are there reports about uninvestigated by the police attacks on LGBTIQ people and other participants of Pride marches after the march is over?	yes	1	cases	reference to case study sheet or link	add cases to the sheet "case studies"
18	<b>6. "Propaganda of homosexuality"</b>					
19	6.1 Is there active law about the prohibition of propaganda?	no	0	law about prohibition of propaganda	link	text of the law or regulation
20	6.2 Is there draft laws submitted to the Parliament about the prohibition of propaganda?	no	0	draft law	link	text of the law or regulation

For the second area called in the table “**Protection**” and highlighted in red, scoring system is different:

Each question should be also answered with “yes” or “no” but in this section answer “yes” gets 0 and answer “no” – gets 1.

One should not calculate the results, table already contains formulas and it is locked (no possibility to change).

The less score the country makes at the end – the better situation for gay men, other MSM and trans people.

Column with comments (name of the legal act, link to the legal act and quotation) are compulsory to explain the rating and confirm the information. This instrument can be used for comparing countries and for measuring progress in each country with baseline.

Case studies are collected for each area highlighted in the country table (1-2 per area per country). There are two main reasons to collect case studies – to illustrate systemic abuse of gay men, other MSM and trans people rights in particular area where there is no legal protection.

The other important reason is to illustrate practical complications that arise despite the fact that there is legal protection. For example, there is law prohibiting discrimination, but gay men, other MSM and trans people do not use this law because of the fear of outing and additional victimisation. Cases studies should be collected in the same Excel file as country table – see for sheet 2 called “Case studies”.

The instrument is attached in Annex 1 – this is country table in EXCEL format with three sheets – two of them (sheet 1 “country table” and sheet 2 “case studies”) should be filled to fullest

possible extent – all columns and rows. There is additional space for comments in sheet 1 called “country table”. Sheet 2 called “case studies” is for case studies. Table should be filled in English or Russian. Links to national legislations in column E (sheet 1) are compulsory. Sheet 3 “model country Pardes” is for example only, you should not fill or modify this sheet, it only shows how the table should be filled, how ideal situation might look like.

### **3. Methodology and process of application**

### 3.1. Key methods

The minimum set of sources of information for filling the instrument will be as follows:

- a) desk review and filling the table;
- b) links to all mentioned laws and regulations plus citation of the law in appropriate part of the table. Consultant has to copy and paste the text of the law translated into Russian or English (only the article needed to understand its application) to the relevant column of the country table;
- c) at least 3-4 case studies to illustrate either the systematic abuses of gay men, other MSM and trans people rights in particular sphere or outstanding cases of legal protection failures;
- d) filling the gaps in tables through individual requests via email;
- e) validation of the product and final comparative report on the state of legal barriers for gay men, other MSM and trans people in 11 countries of EECA region.

### 3.2. Rationale of methods

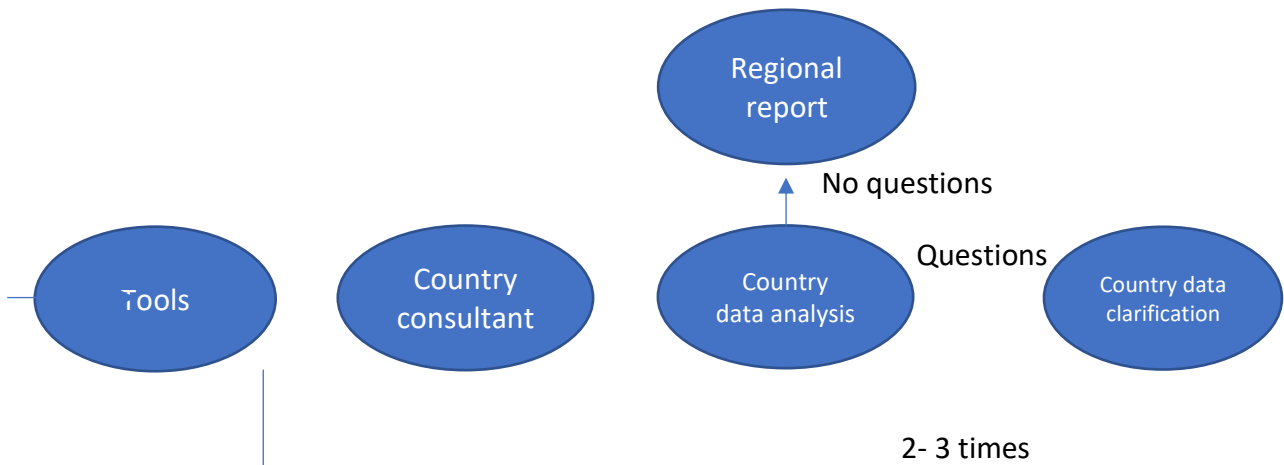
The proposed methods and reasoning of their use is provided below:

1. **Desk review** will provide answers to a number of questions outlined in the country table to measure current number and character of legal barriers and their practical implications on the life of gay men, other MSM and trans people in 11 countries of EECA regions. Based on answers to structured questions on each country, measure of country development and number of legal barriers will be counted by project team. Desk review includes spheres from immigration rules for HIV positive people to general health care services for gay men, other MSM and trans people. Questions also include section on legal protection from discrimination and country response to hate crimes and their persecution.
2. **To make sure all laws** are correctly interpreted and understood, as well as to analyze the consequences of current laws on the lives of gay men, other MSM and trans people in 11 countries, collection of references and links and citation of the legal acts in country table is essential. This also will help for further advocacy activities of ECOM and its partners.
3. **Structured case studies** are the most valuable ways to receive information on legal norms application and to illustrate either systemic abuses or exceptional cases when applicable law is not protecting the rights of gay men, other MSM and trans people due to its local understanding or other reasons. We plan to use case studies to illustrate general pictures in all 11 countries. Case studies will also be used to illustrate progress where applicable.

Given the simplicity of the assessment, there is no attempt to receive an ethical approval from Ethics committees. Additionally, the instruments provided are focused on the product and the

user of the tools might need to utilize his/her own techniques for preparing/recording results of desk review, interviews etc.

### 3.3. Process



Steps for the application of the instruments:

#### **Step 1: establishing key resources and support – 2 weeks**

Key outputs:

- ✓ Methodology and instruments discussion and finalization
- ✓ Language decided for the country (English or Russian)
- ✓ List of resource organizations and individuals – 1 consultant per country
- ✓ Email to partners with methodology and instrument

Key activities:

1. Choosing and contracting local consultants:
  - Open call for local consultants,
  - Choosing one consultant per country,
  - Defining the language of the research in each country (Russian or English),
  - Explaining the methodology and table instrument to local consultants,
  - Timeline for the fieldwork.

#### **Step 2: Desk review, filling the tables for each country and collection of case studies – 2 weeks**

Key outputs:

- ✓ Country tables based on Annex 1 and identifying the gaps
- ✓ First draft of the measuring of legal barriers based on Annex 1 and identifying the gaps
- ✓ List of case studies per country
- ✓ Individual requests for gaps of information for Annex 1.

Key activities:

1. Conducting desk review (tables and case studies) per country;

2. Checking collected data;
3. Sending out specific written information requests for the gaps of information

### **Step 3: Filling gaps and preparing draft report – 2 weeks**

Key outputs:

- ✓ Updated draft of the country tables (Annex 1)
- ✓ List of case studies (highlights for each country)
- ✓ Preliminary results of the survey (Annex 1)

Key activities:

1. Survey and clarifications for filling the Annex 1; if needed extension of the inputs from partners;
2. Finalizing the country tables and list of case studies (to be confirmed with country consultants);
3. Drafting final report.

### **Step 4: Validated profiles – 2 weeks**

Key outputs:

- ✓ Comments from the local validators
- ✓ Final edited product

Key activities:

1. Finalizing the report; editing including the list of resources
2. Translation of the report.