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Strengthening access to justice through non-judiciary redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries

## Armenia's hate crime, hate speech and discrimination data collection system

### *Recommendations for improvement and for adopting a joint approach and national situational analysis*

September 2020

This document has been produced as part of the project co-funded by the European Union and the Council of Europe "Strengthening access to justice through non-judiciary redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries" in the framework of the Partnership for Good Governance II. The views expressed herein can in no way be taken to reflect the official opinion of either party.

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## Introduction

The project “Strengthening access to justice through non-judicial redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries” is part of the Partnership for Good Governance Programme.<sup>1</sup> Funded by the European Union and the Council of Europe and implemented by the Council of Europe, the programme aims to strengthen governance in the Eastern Partnership region. Among its objectives, the project has a priority focus on researching, analysing and improving national data collection systems relating to hate crime, hate speech and discrimination, in particular in Armenia, the Republic of Moldova and Ukraine. The purpose of this report is to present the national situation in Armenia and to make practical recommendations for improvement, for the consideration of national stakeholders.

This document has two parts.

**Part one is the Recommendations Report**, which draws on the Situational Analysis (see part two), relevant reports by the European Commission Against Racial Intolerance (ECRI), and other data to propose steps that the relevant authorities can take to improve data collection on hate crime, hate speech and discrimination, in line with international standards and good practice.

**Part two is the Situational Analysis** which presents a detailed picture of the current national situation (up to July 2020), based on a review of national data, and on interviews with key stakeholders.

Both reports propose complementary recommendations that aim to support national stakeholders to:

- have a shared understanding of the strengths and limitations of the current system
- agree on shared priority actions for improvement
- agree how the Council of Europe, within the mandate of the project, is best able to assist stakeholders in achieving their identified priorities.

The recommendations presented in the Recommendations Report build on the findings and recommendations set out in the Situational Analysis. The connections between the two reports are highlighted in the Recommendations Report, where relevant.

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<sup>1</sup> See <https://pjp-eu.coe.int/en/web/pgg2/home>

# Part I: Recommendations report

## Executive summary

Compiled and produced within the framework of the Council of Europe cooperation project “Strengthening access to justice for victims of discrimination, hate crime and hate speech in the Eastern Partnership countries”, this report draws on international norms and standards, practice and research, to make recommendations on improving Armenia’s recording and data collection systems on discrimination, hate speech and hate crimes.

Armenia is at an early stage in its journey to establish a comprehensive recording, reporting and data collection system on hate crime, hate speech and discrimination. Its hate crime and hate speech laws are somewhat limited in their scope and ability to protect all vulnerable and marginalised groups in Armenia. Armenia’s hate crime and hate speech laws exclude grounds other than race, nationality and religion,<sup>2</sup> and there is no comprehensive law on discrimination.<sup>3</sup> No national agency collects disaggregated data on these three harms. Like many countries, there is no accurate or reliable data on the number of hate crimes reported, investigated or sentenced. A recent report of the visit of the Human Rights Commissioner of the Council of Europe highlights, ‘Homophobia remains widespread in Armenian society’. She expressed concern about the lack of legislation recognizing anti-LGBT hate crime, hate speech and discrimination.<sup>4</sup> There is an opportunity to significantly improve Armenia’s approach with the proposed introduction of amended hate crime legislation as part of the Draft Criminal Code and Draft Criminal Procedure Code, which have recently progressed to the National Assembly for consideration.

This report makes recommendations targeted at the main institutions with responsibilities for recording and monitoring in the key areas covered by the project. First, a framework of principles on which to develop Armenia’s efforts is proposed. They highlight the need for any recording and data collection system to be victim focused, transparent, inclusive, comprehensive and aligned with international norms and standards. Second, Armenia’s current relevant laws are mapped according to established international standards (including from ECRI, OSCE-ODIHR, FRA, European Commission, etc) on hate crime, hate speech and discrimination in order to propose alignments on data collection to international norms.

While the regional project focuses on the three harms of hate crime, hate speech and discrimination, our research, analysis and consultation pointed to the need for a narrower focus on securing an effective hate crime recording and disaggregated data collection system. A main aim of the report is to make practical recommendations that serve as a useful basis

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<sup>2</sup> As explained in the situational analysis, part II of this report, ‘The current draft suggests ideology, ethnicity, nationality, racial and religious hate, intolerance and hostility, including such wide grounds as “*motives of hate, intolerance, or hostility or religious fanaticism towards other social group*”. It can be assumed that the broad definition of “other social group” is meant to cover, *inter alia*, the sexual and religious minority groups as ECRI recommended to reform the criminal code so to include the grounds of sexual orientation and gender identity in the list of prohibited grounds’.

<sup>3</sup> See situational analysis for more information about the proposed legislative framework on discrimination.

<sup>4</sup> Council of Europe (2019)

for the next stages of the work: the development of guidelines and training, specifically on hate crime.

A step-by-step guide and monitoring spreadsheet are offered to connect the key institutions and integrate their data. The foundation for this set of recommendations is an agreement to adopt a shared definition of hate crime for monitoring purposes, based on ECRI's General Policy Recommendation (GPR) No. 11 perception-based definition of hate incidents. Proposals are offered on practical ways to monitor the diverse range of protected characteristics contained in Armenia's law, while avoiding an onerous and unworkable burden on the police and other agencies.

The main audience of the report is the police, prosecution service, the courts and their relevant ministries, however success in these areas requires working closely with civil society organisations, especially those that provide direct support to victims and communities. A key aim of this report is to be most useful to the next stages of the project, namely the development of guidelines and training relating to hate crime, hate speech and discrimination recording and data collection across the main institutions.

## Methodology

This report is based on a close reading of:

- the situational analysis, which is Part II of this report
- notes from the 'Assessment meeting on disaggregated data collections on discrimination, hate speech and hate crime' held in Yerevan on 3 July 2019, in the framework of this project
- the national baseline study for this project
- relevant reports by ECRI related to Armenia.

This report also incorporates comments from the Council of Europe as well as feedback from a national working group meeting, attended by key stakeholders on 6 February 2020 in Yerevan.

## Overview of gaps and opportunities in Armenia's hate crime, hate speech and discrimination recording and data collection system

At the moment, very limited, incomparable, un-disaggregated, data is collected across Armenia's system, using different methods and concepts. For hate crime cases, this means that it is difficult to track cases across the system and key information about victims' needs and evidence that is central to the application of hate crime and other laws is missed or 'falls between the cracks'.<sup>5</sup> It is not currently possible to record the full breadth of hate crimes in Armenia. The most commonly missed are likely to be crimes that are not specific offences within the Criminal Code, but which could fall within the Article 63 sentencing provision. There is also very limited information about hate crime and the government's efforts to address the problem in the public domain, leaving the Armenian public uninformed about the problem of hate crime and the government's plans to address it.

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<sup>5</sup> See the expert situational analysis and the appendix for information about current gaps in Armenia's hate crime recording and data collection system.

In terms of hate speech and discrimination, current recording and monitoring frameworks are also patchy, and it is unclear which bodies or agencies are or should be responsible for identifying, recording and responding to these phenomena. As explained in the executive summary, this report is focusing on steps to revise and improve disaggregated recording and data collection systems on hate crime only. The situational analysis in part two of this document gives a fuller review of current hate speech and discrimination law and data.

There are several positive aspects to Armenia's efforts including the openness and willingness of the Armenian authorities to take part in this project; existing mechanisms and frameworks to build upon in terms of implementing hate crime recording and disaggregation across the criminal justice system; efforts to positively reform its criminal code, and the significant national expertise about the problem, especially from civil society organisations.

As important context, in its latest monitoring report of 2016, ECRI made several recommendations for Armenia. These included:

- to bring Armenia's criminal law, in general, into line with GPR No. 7 on national legislation to combat racism and racial discrimination;
- to adopt comprehensive civil and administrative legislation against discrimination;
- to stipulate a shared burden of proof in discrimination cases;
- for sexual orientation and gender identity to be expressly added to the prohibited grounds in Article 226 of the Criminal Code and that a provision be added to that Code explicitly stipulating that homo/transphobic motivation constitutes an aggravating circumstance for any ordinary offence;
- that a law should be adopted on facilitating access to higher education for ethnic-minority secondary-school graduates;
- that evidence of specific bias motivations must be captured and recorded as early as possible to increase the chance that the criminal law is effectively applied in cases of racist violence.<sup>6</sup>

This report:

- reframes Armenia's current approach to be more aligned with international norms and standards relating to the concepts of hate crime, hate speech and discrimination;
- draws on good practice to suggest practical steps to improve existing and to consider new ways of recording;
- suggests a cross-government working group to oversee implementation.

## Six principles for hate crime, hate speech and discrimination recording and data collection systems

Although this report mainly focuses on hate crime, several importance principles span efforts to set up or improve recording and data collection systems on hate crime, hate speech and discrimination. When considering this topic, it can be easy to get lost in the technical details.

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<sup>6</sup> 'ECRI Report on Armenia, fifth monitoring cycle', paragraph 64, [www.coe.int/ecri](http://www.coe.int/ecri)

It is therefore recommended that relevant and useful guiding principles are adopted by stakeholders.

Recording and data collection systems should:

1. have a victim focus;
2. take a comprehensive approach to understanding and addressing hate crime, hate speech and discrimination;
3. seek international alignment with international norms and standards;
4. produce accurate data that is easily understood and accessible to the public (transparency);
5. be based on a commitment to understand the 'dark figure' of the phenomena;
6. be implemented in the context of a strong commitment to cooperation across criminal justice agencies, relevant government ministries, with relevant civil society organisations and researchers with relevant expertise.

*Figure one: a victim and outcome-focused approach to recording and data collection<sup>7</sup>*



**Principle 1, A victim focus:** as set out in figure one, hate crime, discrimination and hate speech recording and data collection systems should contribute to the following outcomes for victims and affected communities:

- a reduction in risk of occurrence and seriousness of re-victimisation, and/or social breakdown escalation;
- an increase in support;
- an increase in access to justice and the effective application of relevant laws;
- an increase in accurate and available data for decision makers and policy makers.<sup>8</sup>

Within this principle should be the commitment to avoid unnecessary bureaucratic burdens on operational police and prosecution staff. As far as possible, these recording systems should be integrated into existing systems.

**Principle 2, a comprehensive approach:** effective recording and data collection systems are one part of a comprehensive approach to addressing hate crimes, hate speech and

<sup>7</sup> This image is from the Facing all the Facts project (Perry, 2019)

<sup>8</sup> Perry, J. (forthcoming), Facing all the Facts European Report



discrimination.<sup>9</sup> High quality training, investigation and prosecution guidelines, and an inclusive legal framework are each equally important pieces of the puzzle.

**Principle 3, international alignment:** hate crime, hate speech and discrimination recording and data collection, training, policy and law are supported by a relatively comprehensive international framework of norms and standards. National laws, policy and training should be aligned with this framework as far as possible.<sup>10</sup> Specifically, the concepts of hate crime, hate speech and discrimination should be clearly delineated and data collected and reported separately. At the practical level, this ensures that the resulting data is more easily submitted to regular requests from intergovernmental organisations (see ODIHR annual hate crime reporting requirements in particular) and that the correct application of the law is effectively operationalised in investigation and prosecution approaches.<sup>11</sup>

**Principle 4, transparency:** at the moment, the lead agency on crime data, the Police Information Centre does not publish crime data. Hate crime data and hate crime statistics are relayed to the public only through annual reports of the Prosecutor General to the National Assembly. This data is not disaggregated from other crime statistics. It is essential that data on hate crime investigations, prosecutions and sentencing as well as information about the steps that the authorities are taking to address the problem, including training and guidelines, are easily available and accessible.<sup>12</sup>

**Principle 5, understanding prevalence and context:** Evidence suggests that only a small percentage of hate crimes and incidents of discrimination and hate speech are reported to, and recorded by the authorities.<sup>13</sup> Various actions can be taken to understand the ‘dark figure’ or the actual prevalence of hate crime and discrimination including organising national surveys and reviewing data collected by relevant civil society organisations.<sup>14</sup> Further, in

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<sup>9</sup> See Hate Crime Data Collection and Monitoring Mechanisms: A practical guide, (2014), OSCE, <https://www.osce.org/odihr/datacollectionguide?download=true>

<sup>10</sup> See bibliography for references on key norms and standards; see also this interactive timeline of the development of a normative framework on hate crime reporting: <https://www.facingfacts.eu>

<sup>11</sup> See for example Hate Crime Laws, A Practical Guide, ODIHR (2009), which builds on the OSCE Ministerial Council Decision 9/09 to define hate crimes as ‘criminal offences committed with a bias motivation’ (as distinct from hate speech and discrimination) and the recent Guidance Note, European Commission (2018), which defines the separate concepts of hate crime and hate speech and recommends these are adopted at the national level to support the effective application of relevant law and procedure.

<sup>12</sup> See FRA Opinion, ‘Collecting and publishing disaggregated hate crime data’, which states, ‘As FRA’s reports repeatedly highlight, the collection of detailed and disaggregated data on hate crime – at minimum, by bias motivation and by type of crime – is necessary to monitor the effectiveness of the police response to the phenomenon, and to prepare effective and targeted policies. Publication and dissemination of, and easy access to, the data all help to assure victims and communities that hate crime is taken seriously and sends a message to the public that hate crime is monitored, addressed and not tolerated.’, FRA (2018), p. 11; see also OSCE/ODIHR’s Key Observation for Armenia for 2018: ‘ODIHR observes that the law enforcement agencies of Armenia have not recorded the bias motivations of hate crimes.’ In addition, no data was included in OSCE-ODIHR’s 2018 hate crime reporting. <http://hatecrime.osce.org/armenia?year=2018>. See also ODIHR’s publication, Hate Crime Data collection and Monitoring Mechanisms, A practical guide (2014) p. 43. See also relevant ECRI GPRs and OSCE Ministerial Commitments.

<sup>13</sup> See FRA (2018)

<sup>14</sup> See victimization surveys, including EU-MIDIS I and EU-MIDIS II; see also FRA Opinion, ‘Designing and carrying out crime victimisation surveys that include hate crime-specific questions’ in which FRA states, ‘Designing crime victimisation surveys that include hate crime-specific questions would allow authorities to shed light on the ‘dark figure’ of crime – that is, the number of crimes that are not reported to the police – and to understand victim experiences, trends and emerging issues.’

*Identoba v Georgia* the European Court of Human Rights found that, based on available civil society data, the police should have known that LGBT people were particularly at risk of violence during activities planned to mark the International Day Against Homophobia and taken due steps to protect them, based on this information. Of course, this judgment applies to all member states of the Council of Europe.

**Principle 6, commitment to cooperation:** the success of a joint approach is based on a commitment to cooperation across criminal justice agencies, government ministries and with relevant civil society organisations. Securing effective police recording system will only be of limited success if there is no connection with prosecution and judicial approaches. Likewise, failing to cooperate with civil society organisations that are expert in hate crime, hate speech and/or discrimination, supporting victims with their practical and legal needs, will result in failing to both access crucial information and to ensure that victims have the support that they need. Such cooperation is more likely to succeed if it is underpinned by cross-government protocols and frameworks with clearly set out roles and responsibilities.<sup>15</sup> Concerning hate speech specifically, ECRI's GPR No 15 on combating hate speech<sup>16</sup> recommends state authorities to 'support the monitoring of hate speech by civil society, equality bodies and national human rights institutions and promote co-operation in undertaking this task between them and public authorities'.

### Securing a joint data collection system in line with European standards and best practices<sup>17</sup>

Securing a successful joint data collection system relies on speaking a 'common language' and sharing a joint *approach* on hate crime, hate speech and discrimination across Armenia's criminal justice, civil and administrative systems. Several specific steps need to be taken to get to this position.

Armenia's current framework of hate crime recording, and its criminal, administrative and civil offences are not fully aligned or developed in accordance with international concepts of 'hate crime', 'hate speech' and 'discrimination'.<sup>18</sup> To support stakeholders to fulfil recommendation 3: 'international alignment', Appendix 1 maps Armenia's framework against international concepts. Taking this approach will facilitate the sharing of information with international agencies and clarify stakeholders' role in successfully implementing a joint hate crime, hate speech and discrimination recording and monitoring framework nationally.

### **Recommendation 1: adopt and develop the framework set out in Appendix 1 as the national 'map' of hate crime, hate speech and discrimination provisions.**

The report is then focused on achieving an internationally aligned concept of hate crime, and the steps that need to be taken to 'operationalise' this new framework and allow effective

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p. 12, FRA (2018); see also ODIHR's recommendations 20-24, which detail how victimization surveys can be carried out and what they should cover, in 'Hate Crime Data Collection and Monitoring Mechanisms: A practical guide', (2014), pp. 33-39.

<sup>15</sup> See FRA (2018) on cooperating with civil society, and ODIHR (2014) on setting up cross government frameworks. In this context 'relevant civil society organisations' includes those organisations that have a track record in robust and transparent recording and data collection on hate crime/hate speech and/or discrimination.

<sup>16</sup> <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

<sup>17</sup> It is recommended to read appendix one for a comprehensive review of current law and recording practice in Armenia in the context of international norms and standards.

<sup>18</sup> This report incorporates and builds upon recommendations from the Situational Analysis.

cooperation across the system. A shared definition of hate crime is proposed to be adopted by the relevant agencies with responsibility to record and collect data on the phenomenon, followed by practical recommendations on the type, form and timing of coordination.

## Hate Crime

Armenia's current hate crime legislative framework consists of a combination of general and specific penalty-enhancement provisions.<sup>19</sup> There are several problematic issues with Armenia's current hate crime laws:

- the protected characteristics are narrow and exclude disability, sex, sexual orientation and gender identity<sup>20</sup>
- the meaning of 'religious fanaticism' within the context of a hate crime provision or bias motive is unclear and would benefit from further explanation or guidance.<sup>21</sup>

The strengths and weaknesses of Armenia's data collection methodology are detailed below. This section considers the idea and implications of adopting and implementing a shared definition of hate crime across the criminal justice system.

### Adopting a definition of hate crime for recording and monitoring purposes

Adopting and implementing a definition of hate crime for monitoring purposes is one of the most significant steps that can be taken to generate reliable data and, more importantly, to ensure access to justice, safety and security for victims. Being 'on the same page' across the police, prosecution service and courts ensures that vital evidence that a crime might be a hate crime and information about victims' safety and support needs is passed from one agency to another, allowing the highest quality, most detailed evidence to be presented to the court for its consideration.

Following feedback from national stakeholders, the recommendations have been revised to prioritise the adoption of a common definition by law enforcement. As a next step and in light of the draft criminal code and criminal procedure codes that are currently being considered by the National Assembly (information as of July 2020), it will be important to pursue a common approach across law enforcement, the prosecution service and the courts.

Of course, it is important to remember that effective training, leadership and joint work with relevant civil society organisations are essential to ensure that this vital information is actually acted upon.

### **Recommendation 2: adopt a common monitoring definition of hate crime**

In light of the future likely changes to the criminal code, it is recommended that an inclusive but specific approach is taken to the inclusion of protected characteristics and that a clear but low threshold to defining 'bias' is applied. This will allow for a 'wide net' to capture potential

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<sup>19</sup> See ODIHR (2009) and Appendix One

<sup>20</sup> For example, in her recent report, the Human Rights Commissioner of the Council of Europe expressed concern about the lack of legislation recognising SOGI-motivated hate as an aggravating circumstance in the context of other crimes, Council of Europe (2019)

<sup>21</sup> According to the Situational Analysis the new draft criminal code proposes ideology, ethnicity, nationality, racial and religious hate, intolerance and hostility, including such wide grounds as "*motives of hate, intolerance, or hostility or religious fanaticism towards other social group.*"<sup>21</sup> This construction also arguably introduces some confusion about the threshold of bias that will be required to prove the bias element of a hate crime in Armenia.

hate offences and encourage the production of clear and consistent data across the relevant agencies and institutions.

The following joint definition of ‘hate crime’ should be adopted by the relevant criminal justice agencies in Armenia, including but not limited to the police, prosecution service, the courts, the Human Rights Defender’s Office and relevant ministries:

‘Any crime in the Criminal Code of Armenia that is committed due to bias, in whole or in part, towards actual or perceived race, religion, sexual orientation, gender identity, sex, ideology, disability, or other social group’<sup>22</sup>

This definition and the institution-specific definitions proposed below incorporate offences motivated ‘in whole or in part’ by bias and that are based on ‘actual or perceived’ membership of a protected group. This is in line with international standards and recent ECRI recommendations.<sup>23</sup>

The next step is to ‘operationalise’ this definition in the work of the police, prosecutions service and the courts. It is recommended that a priority focus is on the police, the Investigative Committee and the Special Investigation Service. As implementation progresses, and subject to the adoption of revised criminal code, the prosecution and courts services should consider recommendations 4 and 5 respectively. Specific monitoring definitions are proposed below.<sup>24</sup>

**Recommendation 3: any offence where bias indicators<sup>25</sup>, including the perception of the victims, suggest that it is committed due to bias, in whole or in part, against actual or perceived: ‘race,’ religion, sexual orientation, gender identity, sex, ideology, disability, or another social group, must be recorded as a ‘potential hate crime’.**

This definition is based on ECRI’s GPR 11 to incorporate the perception of the victim and any other person into the recording of hate incidents. In order to ensure equality and consistency, the definition proposed in this paper extends beyond ‘race’ to all protected characteristics. Further, the term ‘potential hate crime’ is introduced to allow for the fact that most police

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<sup>22</sup> This proposed definition is adapted from a translation of the proposed draft of the new Armenian Criminal Code and from an interpretation provided in the situational analysis. Although the proposed new criminal code does not explicitly mention sexual orientation, gender identity, disability or sex, it could be inferred by the proposed wording ‘other social group’. It is also influenced by the hate crime definition recently adopted by Georgia and by ‘Hate Crime Laws: a practical guide’, ODIHR (2009) and European Commission, 2018. .

<sup>23</sup> See Hate Crime Laws: a practical guide, ODIHR (2009), See for example, ECRI (2020) Report on Albania (sixth monitoring cycle), page 14, available online at <https://rm.coe.int/report-on-albania-6th-monitoring-cycle-/16809e8241>.

<sup>24</sup> It is also recommended that the police record sub criminal hate incidents, in other words, any incident that is due to ‘bias towards’ the listed protected characteristics but that does not reach the threshold of a criminal offence. This approach has the following benefits: it allows the authorities, and the police in particular to monitor patterns before they escalate in seriousness, it also allows closer cooperation with relevant civil society groups that are also monitoring such incidents. This point is referred to again in Part IV.

<sup>25</sup> Bias indicators are objective facts, circumstances or patterns connected to a criminal act that, alone or in conjunction with other indicators, suggest that the offender’s actions were motivated in whole or in part by bias, prejudice or hostility. For example, if a perpetrator uses racial slurs while attacking a member of a racial minority, this could indicate a bias motive and be sufficient for the responding officer to classify a crime as a likely hate crime. By the same token, the desecration of a cemetery or an attack on a gay pride parade may be bias indicators of anti-religious or anti-LGBT motivation (p. 15, Hate Crime Data Collection and Monitoring Mechanisms: A practical Guide, ODIHR, 2014).

services are reluctant to automatically record a crime as a 'hate crime' based on the perception of the victim/any other person alone.<sup>26</sup>

However, this is an important discussion point for stakeholders. It is recommended that relevant stakeholders should discuss and agree which of the three options presented under recommendations 10 below should be adopted.

All recorded 'potential hate crimes' should trigger existing and planned guidelines for the investigation of hate crime cases and relevant evidence and information about victim support and safety needs passed onto the prosecution service. If the incident is confirmed to be a hate crime, then it should be included in crime statistics under that classification.

It is important to note that whichever option is adopted, evidence of victim perception alone is not sufficient for a hate crime **prosecution** to be taken forward, and normal rules of evidence apply. As a result, any existing and relevant prosecutor guidelines should be reviewed or developed to ensure that they clearly specify the range of bias indicators that, taken together, can serve as evidence that a crime is committed due to bias towards a protected characteristic. It is always for the courts to decide if the relevant hate crime provision applies on a case by case basis.

#### **Recommendation 4, for the prosecution service**

**Any offence that reaches the evidential test for prosecution and was committed due to bias in whole or in part, against actual or perceived 'race,' religion, sexual orientation, gender identity, sex, ideology, disability, or other social group, must be recorded as a 'hate crime prosecution'.**

It is recommended that the Prosecutor's Office to also record the number of cases received from investigators marked as 'potential hate crimes' as this could provide useful comparative data to consider the gap between the victim's perception and those cases with tangible evidence to proceed to court. The data for 'Hate Crime Prosecutions' should be provided by the National Point of Contact, to International Government Organisations such as the Organisation for Security and Cooperation in Europe, ECRI and relevant UN bodies on request.

#### **Recommendation 5 for the courts**

**Any offence where it has been proven that it was committed due to bias towards, 'race,' religion, sexual orientation, gender identity, sex, ideology, disability, or other social group, must be recorded as a 'sentenced hate crime'.**

These definitions, alongside the mapping in Appendix, provide a conceptual framework to allow cases to be traced across the criminal justice process and incorporated into existing and planned electronic crime recording systems. The following section considers the practical steps that should be taken to implement a joint approach.

#### **Recommendation 6**

**Retrieve and analyse cases where each type of sentencing provision has been applied. Especially cases where the court has considered the meaning of 'hatred', 'motives of racial,**

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<sup>26</sup> The United Kingdom is currently the only country in the world that has fully adopted a perception-based policy for hate crime recording.

religious...’, ‘religious fanaticism’. This can assist stakeholders to get a baseline understanding of how cases are currently being handled, to identify strengths and weaknesses in current practice and to inform future recording, investigation and prosecution guidelines.

### Implementing a joint definition of hate crime<sup>27</sup>

There are a number of issues to consider when deciding how to implement a joint definition of hate crime, which are set out below. They are followed by a proposed step by step framework bringing together the actions for each stakeholder.

### Disaggregation

International norms and standards guide States to ensure that hate crime data can be disaggregated by bias motivation and crime types.<sup>28,29</sup> Currently, data is collected according to the overall categories of the Criminal Code without specifying the subcategories of the articles that define crimes committed by hate and bias motives.

The basis for disaggregation could be as follows:

- Crime type: any criminal offence in the Armenian Criminal Code and any specified offence in Appendix 1. These could be further grouped under more general crime categories, including homicide, serious assault, property damage, etc.<sup>30</sup>
- Bias motivation: all bias motivations set out in the above proposed hate crime definition, which is based on the draft criminal code.

**Recommendation 7 for all stakeholders, and for law enforcement as a priority**  
**Introduce the following meta categories for monitoring purposes. The existing coding system used by the courts could offer a strong basis for this work.**

Category set out in proposed hate crime definition	Characteristics included and definition, where available.
‘Race’	Race, skin colour, language, citizenship, national, ethnic or social affiliation, origin
sex	(includes gender as male or female but excludes Transgender which is recorded separately)
sexual orientation	Lesbian, gay, bisexual, heterosexual
gender identity	Transgender people

<sup>27</sup> This section takes into account recommendations from the baseline study and situational analysis commissioned by the Council of Europe in preparation for this project to identify the steps that need to be taken to implement this approach. It should be read in conjunction with those reports.

<sup>28</sup> See relevant OSCE Ministerial Council Decisions, ECRI GPRs, and FRA (2018)

<sup>29</sup> Crime types should mirror existing categories used to distinguish crimes particularly identifying levels of violence, homicide etc.

<sup>30</sup> In determining crime categories, stakeholders should follow established crime categories already established in Armenia’s general crime recording system.

religion	Christians (all denominations, including Jehovah's witnesses), Jewish people, Muslims, etc. This should be 'universal' protecting the religious views of all including no faith/ atheism.
ideology <sup>31</sup>	Definition and/or examples needed from national level
disability	'any physical or mental impairment'
other discriminatory ground	Definition and/or examples needed from the national level.

It is further recommended that the National Point of Contact to the OSCE agrees with the Office of Democratic Institutions and Human Rights which meta-categories should be reported as part of Armenia's annual data return and which excluded categories should be recorded nationally, but not to the OSCE.

Following the implementation of a recording methodology by law enforcement, it is recommended that the 'Hate Crime Strategic Group' (as recommended below) agree with the relevant bodies, the adoption of a 'Memorandum of Understanding' to agree consistent reporting schedules from relevant state actors and the agreed timing and method of publication of the data to provide transparency.

#### Prioritising reporting, recording and data collection

It is important that the policies have a human rights framework that seeks to protect everyone from abuse. It is also vital that authorities have the information needed in order to protect the most vulnerable sections of society and that policies encourage proactive efforts to prioritise prominent hostilities at any time whether they be long or short-term hostilities.

#### **Recommendation 8 for all stakeholders**

**Armenian authorities should currently prioritise improvements to their responses to specific types of hate crime, including homophobic and transphobic hate crime as evidenced by the reports of Pink Armenia and others.<sup>32</sup> It is also recommended that national stakeholders identify, discuss and agree other groups that should be current monitoring priorities. These could include Jehovah's Witnesses and people with disabilities.**

#### Review and amend recording and reporting forms

#### **Recommendation 9, for all stakeholders**

**With a priority focus on law enforcement, current recording and reporting should be modified and updated to reflect the above operational definitions and bias motivation categories.**

In addition, police recording forms should record:

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<sup>31</sup> It is important to note that the protected characteristic 'ideology' needs careful definition. Similar provisions have been misused in other states to oppress legitimate political opposition, academia and the free media. It would be important to ensure guidance would always discourage such use to protect Armenia's democratic freedoms and to ensure that this entire policy is seen as a driver of human rights and not a tool to restrict legitimate democratic freedoms and debate.

<sup>3232</sup> See Pink Armenia (2018)

- the type of base or ordinary criminal offence based on Armenia’s criminal code (e.g. assault, property damage, etc.),
- the bias motivation (referring to the above ‘meta’ categories),
- a brief description about what happened, including reference to specific bias indicators and the perception of the victim or any other person.
- risk indicators and relevant action,
- victim needs, including whether they have been or need to be referred to support<sup>33</sup>
- the connection between the victim/witness and alleged perpetrator,
- location of crime,
- age, and other related data.

It is important that, where possible, the hate crime recording systems are embedded into existing recording processes to create the least possible bureaucratic demands on operational staff. Recommendations from the situational analysis make indicate which policies, guidelines and codes need to be reviewed.<sup>34</sup> Appendix 2 presents an example recording form, developed for the Armenian context, which, following consultation and revision, can be used as a basis for a joint manual or electronic system, to be incorporated within existing or proposed crime recording systems.

Stakeholders should consider any necessary revisions to the forms and guidelines listed in the table below, and discussed in the situational analysis, including Decree No. 1225-N of 23 October 2008 on the “Unified Forms and the Manner of Filling and Reporting Statistical Data of Pre-Trial Proceedings”.

In setting up new mechanisms, stakeholders should draw upon the Decree No. 1381 on the Regulation of Centralised Data Recording of Cases of Domestic Violence.<sup>35</sup> While the method is multi-agency, the data it produces is narrative as opposed to statistical.

It is recommended that Armenia also considers drawing on the practice in Georgia of setting up a human rights unit in the police and prosecution service which are tasked, inter alia, to review cases that are registered as hate crime cases and to advise on case handling.

#### Guidance and guidelines

#### **Recommendation 10 for all stakeholders**

**With a priority focus on law enforcement, develop guidance on recording, reviewing and compiling information on hate crimes, including:**

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<sup>33</sup> See appendix two - first draft of a model recording form.

<sup>34</sup> ‘in addition, stakeholder could build on the work to implement Decree No. 1381 on the Regulation of Centralised Data Recording of Cases of Domestic Violence,<sup>34</sup> which provides a unified data collection mechanism, involving the police, prosecutor’s office and other relevant bodies. While the mechanism currently provides narrative data that cannot currently be subjected to quantitative analysis, its multi-agency method and structure provides a promising basis for further development.

<sup>35</sup> The text in Armenian is available at: [https://www.e-gov.am/u\\_files/file/decrees/kar/2019/10/19-1381.pdf](https://www.e-gov.am/u_files/file/decrees/kar/2019/10/19-1381.pdf)



- specific examples of hate crimes based on bias motives relating to all protected characteristic set out above, co-developed with relevant civil society organisations and based on relevant judgements of the European Court of Human Rights. This will help ensure that police officers and prosecutors are clear about what type of cases can be considered within a criminal code article, when the new criminal code is implemented, and increases the accuracy of recording and the chance that the courts will accurately apply this provision.
- future discussions with the police, ministries and where necessary, with prosecutors, should agree whether monitoring should include all categories or whether specific ‘monitored’ categories that have the greatest impact on communities, should be prioritised, in line with recommendations above. At a minimum, there should be a particular focus on developing comprehensive case examples and bias indicator sets relating to these groups.
- clearly designated responsibilities at each level (see the proposed guidelines and table two below, which sets out the current and proposed recording and monitoring framework).
- a list of bias indicators to identify and record hate crimes, and that can be used as evidence to prove that a crime was committed based on ‘bias motives’ on the grounds of protected characteristic, based on existing case law, where available;<sup>36</sup>
- specific definition of legal and other technical terms, in particular ‘ideology’ and ‘other social groups’ to be incorporated into relevant guidance, guidelines and training;<sup>37</sup>
- language and guidance that specifically address evidenced incorrect recording practice;

In developing recording and data collection guidelines, current examples of good practice can be drawn upon, for example:

- ‘Hate Crime Data Collection Guidelines and Training Manual’, prepared by the Law Enforcement Support Section and the Crime Statistics Management Unit of the US Federal Bureau of Investigation.<sup>38</sup> This document sets out proposed roles and responsibilities for all law enforcement agencies in the US on hate crime recording and data collection, it includes specific examples of each type of monitored hate crime to support law enforcement to identify the diverse range of hate crimes covered by legislation and proposed a ‘two tier’ review system. Frontline law enforcement is

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<sup>36</sup> See also FRA (2018)

<sup>37</sup> Take into account current approach recommended in PAHCT and in ODIHR’s Hate Crime Laws, a Practical Guide (2009).

<sup>38</sup> <https://ucr.fbi.gov/hate-crime-data-collection-guidelines-and-training-manual.pdf>

responsible for identifying potential hate crimes and crime management personnel are responsible for reviewing and confirming or revising the initial classification.

- the United Kingdom’s College of Policing guidance for the police explains hate crime recording policy, which takes a perception-based approach, in line with ECRI’s GPR 11. It also includes illustrative examples of all hate crimes covered by UK law to aid the police in identifying potential hate crimes.<sup>39</sup>
- ‘Categorising and investigating hate crimes in Ukraine: a practical guide’, ODIHR (2019)<sup>40</sup> is a strong regional example of guidance for police in this area.

## Training

### **Recommendation 11 for all stakeholders**

**Successful implementation of Armenia’s hate crime recording system depends on having fully skilled police officers who are capable of identifying, recording and responding to each type of hate crime, data entry staff of the Information Center of the Police, and having prosecutors and judges with the relevant skills and knowledge to do the same within their mandate.** The importance of capturing evidence of specific bias motivations as early as possible was particularly emphasised in ECRI’s most recent report to increase the chance that the criminal law is effectively applied in cases of racist violence and homophobic and transphobic crimes.<sup>41</sup>

A successful system also requires skilled and trained civil society actors that play a key role in identifying hate crimes and supporting victims.

In line with the general principles set out above, training – including case studies - should be fully aligned with existing and planned police, prosecutors and judicial guidelines and policy. The importance of training was emphasized in multi-stakeholder meetings in Yerevan in 2019 and 2020 and in written stakeholder feedback in March 2020.

## Cross government cooperation

### **Recommendation 12 for all stakeholders**

**Set up a cross government working group to oversee the implementation of a joint approach to hate crime recording and data collection as well as other elements of a comprehensive approach to understanding and addressing hate crime.**

It is recommended that the group has membership from all relevant government agencies, departments, the Human Rights Defender, as well as civil society representatives.<sup>42,43</sup>

In agreeing the work and composition of the group, it is recommended that stakeholders review a recently established working group and inter-agency agreement in Greece.<sup>44</sup>

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<sup>39</sup> <https://www.college.police.uk/What-we-do/Support/Equality/Documents/Hate-Crime-Operational-Guidance.pdf>; see appendix four: draft guidance on recording hate crimes

<sup>40</sup> <https://www.osce.org/odihr/419891?download=true> ODIHR Ukraine manual -

<sup>41</sup> ‘ECRI Report on Armenia, fifth monitoring cycle’, paragraph 64, <https://rm.coe.int/fourth-report-on-armenia/16808b5539>

<sup>42</sup> Based on the baseline and situational analysis reports, it is recommended that the recently established Greece protocol can be drawn as a reference - <https://www.osce.org/odihr/402260?download=true>

<sup>43</sup> This recommendation was suggested by participants of the Disaggregated data meeting on 3 July 2019

<sup>44</sup> <https://www.osce.org/odihr/402260>

The following points of the Greece agreement can be incorporated into Armenia's approach:

- The agreed definition of hate crime is included in the cross-government Memorandum (Article 1)
- All stakeholders are named in the Memorandum, including civil society representatives in the form of a national network of NGOs (Article 2)
- The Memorandum covers many elements of a comprehensive approach to understanding and addressing hate crime, including recording and data collection
- Specific commitments on improving recording and data collection are made by all signatories (Article 3)
- Commitments to publication and victimization surveys on hate crime are included (see recommendations below)
- Roles and responsibilities on hate crime recording and data collection are specified (Articles 4, 5, 6, 9, 10, 11, 12)
- Responsibility for sharing information and data, organizing meetings, agendas and meeting costs are specified (Articles 13, 14).

Stakeholders should also consider nominating one body to lead on organising meetings and agendas. The Prosecutors Office or the Human Rights Defender's Office could be a good starting point.<sup>45</sup>

Stakeholders might also consider agreeing a rotating chair for the group. This means that stakeholders would take turns in chairing the meetings and working with the coordinator on the agenda and any follow up. This ensures that accountability is shared, and political leadership is engaged across government departments and agencies.

To address these areas, we would further recommend that the Cross-Government Working Group should establish a number of, possibly time-limited, working sub-groups to develop specific areas of this policy including but not limited to:

1. Data systems and reporting procedures
2. Cooperation with civil society
3. Relationships with academia and the development of research around hate crime
4. Procedures relating to the recording or research about hate speech (including online) and non-crime hate incidents. This subgroup could include the potential for the development of data from non-criminal justice actors such as civil society partners, education establishments and penitentiaries
5. A training Sub-Group to consider the extent and methods of training for key individuals and general front-line professionals.

As a first step it is recommended that a common definition of hate crime is adopted by the police, the investigative committee, the Information Centre of the Police and the Ministry of Justice. It is recommended that the assistance of the Council of Europe is sought to support the adoption of a common definition of a hate crime, revise the relevant recording forms and

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<sup>45</sup> For example, in Spain, the national human rights institution, OBERAXE plays this function.

systems and to develop hate crime recording and data collection guidelines. Sample forms are attached at appendix two.

### **Recommendation 13 for all stakeholders**

**When considering the form and structure of a national working group and inter-agency agreement, stakeholders should consider learning from other contexts. For example, an example could be Georgia, which has set up a police human rights unit to record and monitor hate crimes.**

### Cooperation with relevant civil society organisations

#### **Recommendation 14 for all stakeholders**

**Seek and implement opportunities for effective cooperation with civil society organisations that monitor and record hate crimes.**

Recent research found that civil society data is and should be understood as an integral part of any national hate crime recording and data collection system.<sup>46</sup> This has been given effect at the national level in *Identoba and others v Georgia* when the European Court of Human Rights held that the Georgian authorities should have been alert to the threat posed to LGBT+ communities based on available civil society data. As a result, those civil society organisations that record and monitor hate crime based on clear, transparent and robust methodologies should be treated as equal partners to the police, prosecution service and judiciary in Armenia's efforts to understand and address hate crime, discrimination and hate speech. Stakeholders should consider ways to deepen cooperation in the area of hate crime recording and data collection. In addition to the benefit of accessing civil society data (in accordance with relevant protections for victim data and confidentiality), this cooperation can increase the quality and depth of relationships, which, in turn can increase the chance that victims will remain engaged in the criminal justice process and develop confidence in the authorities. It is also necessary to work closely with relevant civil society organisations to review, develop and adopt specific awareness-raising and victim-outreach strategies that also address evidenced barriers to reporting including poor police responses and lengthy delays in investigations.<sup>47</sup>

On other occasions, ECRI has recommended that specialised hate-crime liaison focal points or units are set up in police forces. These should be specifically trained on the issue and reach out to relevant vulnerable communities in order to build positive relationships and enable victims of hate crime to come forward because they have a trusted contact person to report incidents to.<sup>48</sup> However, this approach requires resources and the commitment to develop the capacity of civil society organisations that are currently not able to conduct monitoring and victim support to a sufficiently high standard.

The EU Fundamental Rights Agency identifies four types of cooperation with civil society, which are built on by the recommendations in this report:

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<sup>46</sup> Perry, J. (forthcoming)

<sup>47</sup> See also opinions from FRA in and specific section on cooperation with civil society, p17 and p. 27.

See Hate Crime Data Collection and Monitoring Mechanisms: A practical guide, (2014), OSCE, <https://www.osce.org/odihr/datacollectionguide?download=true>; see also ECRI GPR No. 11 in relation to the police, 'To establish frameworks for dialogue and co-operation between the police and members of minority groups'.

<sup>48</sup> See for example: ECRI 5<sup>th</sup> report on Georgia, 2016, priority recommendation contained in § 68.

- exchanging relevant data and information;
- working together to uncover the ‘dark’ figure of hate crime;
- setting up working groups;
- and co-developing guidelines on, for example, recognising key bias indicators.<sup>49</sup>

### Other considerations

Stakeholders will need to acknowledge that a measure of successful implementation will be a significant increase in recorded hate crimes. It takes leadership to welcome this development as an indicator of improvements in recording by the police and other authorities and an increase in confidence of victims and communities to report them. Adopting this approach should be part of a wider strategy to improve transparency, including regularly publishing data and information about the steps that the authorities are taking to understand and address the problem. This issue should be acknowledged and fully discussed as early as possible.<sup>50</sup>

## Appendix 1: Relevant law and information about recording and data collection practices in Armenia in the context of international norms and standards

The tables below map Armenia’s legal provisions against internationally agreed definitions. This should help Armenia’s legal framework to better integrate with international conceptual definitions. The main document builds on this and proposes specific definitions for Armenia and the various criminal justice agencies and government ministries.

This appendix sets out relevant provisions in Armenia’s criminal code, as well as relevant administrative and civil code provisions according to internationally agreed definitions of the hate crime, hate speech and discrimination concepts. The fit is awkward in places, splitting single criminal code provisions and there is room for discussion across stakeholders on the best approach. The aim is to illustrate how legal provisions might be organised in Armenia’s proposed recording and data collection system in a way that meets international norms and standards.

Table one: Integrating Armenia’s national hate crime provisions with the internationally agreed definition of hate crime

<b>Hate crime defined as,  <i>A criminal act committed with a bias motivation (list of crime types and protected characteristics)</i></b>	<b>Comments</b>
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<sup>49</sup> See FRA, 2018.

<sup>50</sup> Draw on the work of the UK in this regard. This can involve reviewing examples of press releases from senior leaders explicitly welcoming increases in recorded hate crime.

<p><b>Criminal Code of Armenia (excerpts)</b></p> <p><b>Article 63. Circumstances aggravating liability and punishment</b></p> <p>1. Circumstances aggravating the liability and punishment are as follows: (...)</p> <p><b>(6) committal of crime by ethnic, racial or religious hatred, for religious fanaticism, as revenge for other people's legitimate actions;</b> (...)</p> <p>2. Based on the nature of the crime, the court may consider the circumstances mentioned in points 10 and 14 of part 1 of this Article not aggravating.</p> <p>3. When assigning punishment the court cannot take into account other circumstances not mentioned in part 1 of this Article.</p> <p>4. If the circumstance mentioned in part 1 of this Article, is envisaged in the appropriate article of the Special Part of this Code as an element of a crime, then it cannot be repeatedly taken into account as a circumstance aggravating the liability and the punishment.</p>	<p>This is a general sentencing provision.</p> <p>It doesn't cover grounds other than ethnic, racial or religious motives.</p>
<p><b>Article 104. Murder</b></p> <p>1. Murder is illegal willful deprivation of one's life punished with imprisonment for 6 to 12 years.</p> <p>2. Murder: (...)</p> <p><b>(13) out of motives of national, racial or religious hatred or religious fanaticism; is punished with 8-15 years of imprisonment or for life.</b> (...)</p>	<p>This is a specific sentencing provision.</p> <p>Again 'motives' restricted to national, racial or religious</p> <p>This provision mentioned 'hatred' whereas article 63 does not.</p>
<p><b>Article 112. Infliction of wilful heavy damage to health.</b></p> <p>1. Infliction of wilful bodily damage which is dangerous for life or caused loss of eye-sight, speech, hearing or any organ, loss of functions of the organ, or was manifested in irreversible ugliness on face, as well as caused other damage dangerous for life or caused disorder, accompanied with the stable loss of no less than one third of the capacity for work, or with complete loss of the professional capacity for work obvious for the perpetrator, or caused</p>	<p>This is a specific sentencing provision. Similar to a serious physical assault.</p> <p>How is religious 'fanaticism' defined as opposed to 'motives of religious hatred'?</p> <p>Again, 'hatred' is mentioned.</p>

<p>disruption of pregnancy, mental illness, drug or toxic addiction, is punished with imprisonment for the term of 3 to 7 years.</p> <p>2. The same act, committed: (...) <b>(12) with motives of national, racial or religious hatred or religious fanaticism; is punished with imprisonment for the term of 5 to 10 years.</b></p>	
<p><b>Article 113. Infliction of willful medium-gravity damage to health.</b></p> <p>1. Infliction of willful bodily injure or any other damage to health which is dangerous for life and did not cause consequences envisaged in Article 114 of this Code, but caused protracted health disorder or significant stable loss of no less than one third of the capacity to work, is punished with arrest for the term of 3 to 6 months or imprisonment for the term of up to 3 years.</p> <p>2. The same act, if committed: (...) <b>(7) with motives of national, racial or religious hatred or religious fanaticism, is punished with imprisonment for the term of up to 5 years</b> (...)</p>	<p>This is a specific sentencing provision. Similar to a relatively serious physical assault.</p> <p>How is religious ‘fanaticism’ defined as opposed to ‘motives of religious hatred’?</p> <p>Again, ‘hatred’ is mentioned.</p>
<p><b>Article 185. Wilful destruction or spoilage of property.</b></p> <p>1. Wilful destruction or spoilage of somebody’s property, which caused significant damage, is punished with a fine in the amount of 50 to 100 minimal salaries, or correctional labour for up to 1 year, or with arrest for the term of up to 2 months, or with imprisonment for the term of up to 2 years.</p> <p>2. Same action which: (...) <b>(4) was committed for motives of national, racial or religious hatred or religious fanaticism, is punished with imprisonment for the term of up to 4 years.</b></p> <p>3. Actions envisaged in parts 1 or 2 of this Article, which: (...) <b>(3) caused destruction of items of historical, scientific or cultural value,</b></p>	<p>This is a specific sentencing provision. Example of criminal damage.</p> <p>Again, ‘hatred’ is mentioned.</p> <p>How is religious ‘fanaticism’ defined as opposed to ‘motives of religious hatred’?</p>

<p>is punished with imprisonment for the term of 2 to 6 years. (...)</p>	
<p><b>Article 265. Outrageous treatment of dead bodies or burial places.</b> 1. Outrageous treatment of a dead body or a burial place, destruction, damage or desecration of cemetery facilities or items, or places allocated for memorial ceremonies, is punished with a fine in the amount of 300 to 500 minimal salaries, or with arrest for the term up to 2 months. 2. The same actions which were committed: (...) <b>(2) by motives of national, racial or religious hatred; are punished with a fine in the amount of 400 to 800 minimal salaries, or with arrest for 1 to 3 months or with arrest up to 3 years</b></p>	<p>This is a specific offence, which also has a sentence enhancement element.  Again, 'hatred' is mentioned.  How is religious 'fanaticism' defined as opposed to 'motives of religious hatred'?</p>
<p><b>Article 119. Intentionally causing severe bodily or emotional suffering</b> 1. Intentionally causing strong pain or bodily or mental suffering to a person, if this did not cause consequences envisaged in Articles 112 and 113, and if the elements under Article 309.1 are absent, is punished with imprisonment for the term up to 3 years. 2. The same actions, committed: (...) <b>(7) with motives of national, racial or religious hatred or religious fanaticism, is punished with imprisonment for the term of 3 to 7 years.</b> (...)</p>	<p>This is a specific sentencing provision. Similar to a relatively serious physical assault.  Again, 'hatred' is mentioned.  How is religious 'fanaticism' defined as opposed to 'motives of religious hatred'?  'Torture' is a difficult concept to define.</p>

Table two: Hate speech

It is assumed that the recording and data collection process for criminal hate speech is broadly the same as for hate crime above.



<p><b>Monitoring definition of hate speech defined as:</b>  Hate speech ... entails the use of one or more particular forms of expression - namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression - that is based on a non-exhaustive list of personal characteristics or status that includes "race", colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation.</p>	<p><b>Comments/  recommendations</b></p>
<p><b>Legal provisions</b></p>	
<p>RA Constitution  Article 77. Prohibition of Abuse of Basic Rights and Freedoms  The use of basic rights and freedoms for the purpose of violent overthrow of the constitutional order, incitement of national, racial or religious hatred or propaganda of violence or war shall be prohibited.</p>	
<p><b>Article 226. Inciting national, racial or religious enmity.</b></p> <ol style="list-style-type: none"> <li>1. Actions aimed at the incitement of national, racial or religious enmity, at racial superiority or humiliation of national dignity, are punished with a fine in the amount of 200 to 500 (200.000-500.000) times minimal salaries, or with imprisonment for the term of 2-4 years.</li> <li>2. The actions envisaged in part 1 of this Article committed: <ol style="list-style-type: none"> <li>1) publicly or by use of mass media,</li> <li>2) with violence or threat of violence;</li> <li>3) by abuse of official position;</li> <li>4) by an organized group,</li> </ol> are punished with imprisonment for the term of 3 to 6 years.  (unofficial translation)</li> </ol>	<p>According to the situational analysis, 'The criminal investigation and prosecutorial bodies in turn rarely institute proceedings under article 226 of the Criminal Code'.</p>

<p><b>Article 226.1 Public calls for terrorism, financing terrorism and international terrorism, publicly justifying or advocating for these crimes</b></p> <p>Public calls for committing the crimes enshrined under Articles 217, 217.1 or 389 of this Code, publicly justifying or advocating for committal of such crimes, if there was a real risk for the committal of the mentioned crimes are punished with a fine in the amount of 500 to 1000 times minimal salaries (500.000-100.000.000), or with detention for 2- 3 months or with imprisonment for up to 3 years. (unofficial translation)</p>	
<p><b>Article 226.2. Public calls for violence, publicly justifying or advocating violence</b></p> <p>1. Public calls for violence against a person or a group of persons based on sex, race, color, ethnic or social origin, genetic characteristics, language, religion, ideology, political or other views, affiliation to national minority, property status, origin, disability, age or other personal or social ground, publicly justifying or advocating such violence, in the absence of elements of crimes under the Articles 225 part 4 (Active disobedience to the legal requirements of the representative of authorities during mass disorder, or calls for violence against people or for mass disorder), 226 (Inciting national, racial or religious enmity), 226.1 (Public calls for terrorism, financing of terrorism and international terrorism, publicly justifying or advocating the commission of these crimes), 301 (Public calls to seize the power, violate the territorial integrity or to violently overthrow the constitutional order), 385 (Public calls for aggressive war), 397.1 (Denying, mitigating, approving or justifying genocide and other crimes against peace and human security) of this Code.</p> <p>are punished with a fine in the amount of 50 to 150 times minimal salaries (50.000-150.000), or</p>	

<p>with detention for up to 2 months or with imprisonment for up to 1 year.</p> <p>2. The actions envisaged in part 1 of this Article committed:</p> <p>1) by a group of persons with a prior consent or by an organized group</p> <p>2) by abuse of official position</p> <p>are punished with a fine in the amount of 150 to 350 times minimal salaries (150.000-350.000), or with detention for the term of 2-3 months or with imprisonment for the term of 1-3 years with or without deprivation of the right to hold certain positions or to engage in certain activities for the term of 1-3 years.</p> <p>(unofficial translation)</p>	
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Table three: Discrimination

Armenia's constitution prohibits discrimination on a range of grounds and provides for remedies. There is no specific anti-discrimination law (situational analysis).

<p><b>Monitoring definition of discrimination (adapted from ECRI GPR No. 6 to cover all forms of discrimination):</b>  "discrimination" shall mean any differential treatment, direct or indirect based on actual or perceived sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances, which has no objective and reasonable justification.</p>	<p><b>Comments/ recommendations</b></p>
<p><b>CONSTITUTION OF THE REPUBLIC OF ARMENIA</b></p> <p>(...)</p> <p><i>Article 23. Human Dignity</i>  Human dignity is inviolable.</p> <p><i>Article 28. General Equality before the Law</i>  Everyone shall be equal before the law.</p> <p><i>Article 29. Prohibition of Discrimination</i>  Discrimination based on sex, race, skin colour, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited.</p> <p><i>Article 30. Legal Equality of Women and Men</i></p>	<p>These are constitutional provisions</p>

<p><i>Women and men shall enjoy legal equality.</i></p>	
<p><b>CONSTITUTION OF THE REPUBLIC OF ARMENIA</b></p> <p><i>Article 52. Right to Apply to the Human Rights Defender Everyone shall have the right to receive the assistance of the Human Rights Defender in the event of violation of his or her rights and freedoms, enshrined by the Constitution and laws, on the part of state and local self-government bodies and officials, whereas in the cases prescribed by the Law on the Human Rights Defender — also on the part of organisations. Details shall be prescribed by law.</i></p> <p><i>Article 61. Right to Judicial Protection and the Right to Apply to International Bodies for the Protection of Human Rights</i></p> <p><i>1. Everyone shall have the right to effective judicial protection of his or her rights and freedoms.</i></p> <p><i>2. Everyone shall, in accordance with the international treaties of the Republic of Armenia, have the right to apply to international bodies for the protection of human rights and freedoms with regard to the protection of his or her rights and freedoms.</i></p>	
<p>The fundamental right to non-discrimination is provided in the article 29 of Constitution with such grounds as race, colour of skin, age, property status, language, ethnic or social origin, religious belief, etc. In the end, the list of substantive grounds is finalised by a widely defined concept of “<i>other circumstances of personal or social nature</i>”. Given that the constitutional provision does not set such grounds as gender identity or sexual orientation, the above wide provision may embrace the above grounds in order to have it reflected in the statutory laws. It is to be noted that Armenia ratified the Protocol 12 of the European Convention of Human Rights which supplements the above constitutional concept of general prohibition of discrimination.</p>	
<p>‘general article 143 by which any direct or indirect violation of basic human rights and freedoms based on such characteristics as race, colour of skin, ethnic origin, age, sex, political or other views, etc. is defined as a crime.’ From Situational analysis.</p>	<p>This is a criminal offence. It is not included within hate crime law because it is a provision relating to discrimination. Relevant observation from the situational analysis – ‘in practice this article has been rarely used given its obscurity and vagueness’.</p>

<p>Article 1087.1 of the Civil Code provides a separate article and a comprehensive framework on insult and defamation</p>	<p>According to the situational analysis, 'This provision, which was incorporated in the law in May 2010 gave rise to many civil disputes and court cases forming a stable and well-elaborated body of law on defamation. Often, this framework is used to challenge hate speech in civil disputes. However, there is also an uncertainty as to dimensions of hate speech involving civil rather than criminal responsibility. The Civil Code and the civil law in general lacks clear definitions and court practice as to the hate speech.'</p>
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[Table three: other including genocide and crimes against humanity](#)

It is recommended that these provisions are listed as separate from hate crime provisions in line with international norms, to allow for clearer distinctions. In its publication, 'Hate Crime Laws, A Practical Guide', ODIHR recommends these provisions are considered separately from hate crime:

'The international crime of genocide is sometimes included within discussions of hate crime laws. Although national law may prohibit genocide and other related crimes, such as crimes against humanity, they are not, in this context, described as hate crime laws. Genocide requires an intention to destroy — in whole or in part — a national, ethnic, racial or religious group. This is qualitatively and quantitatively different from hate crimes, as are all crimes under international law that require widespread, systematic acts of violence. The legislative, investigative and prosecutorial issues arising from such international crimes are very different from those which arise in hate crimes.'<sup>51</sup>

In practice it is very unlikely that these provisions will be engaged.

<p>392 (deportation, illegal arrest, enslavement, mass and regular execution without trial, etc.), 393 (committal of genocide), 397<sup>1</sup>          article 390 (serious violation of international humanitarian law norms during armed conflicts and committed with motives of apartheid, racial discrimination, degrading person's dignity and other non-humanitarian or humiliating actions).</p>	
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<sup>51</sup> ODIHR (2009), p. 24



## Appendix two: Draft reporting forms

Form xx (confidential when completed)

### Potential hate crime reporting form

#### Part One for police

Unique reference number	... /year
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#### 1. Crime details

A. Main offence type (use existing crime recording categories):

B. Date of offence/incident:

a. reported at ....

b. time of offence from ..... to .....

C. Location of offence: *complete address*

D. Description of the crime: Briefly describe the incident including the timing, number of offenders, location, whether any bias indicators were present (e.g. language such as racist slurs or symbols) and any other relevant information.

#### 2. Officer recording the potential hate crime

A. Rank/name:

B. ID No.

C. Work location:

D. Telephone No.:

E. Email address:

#### 3. Type of hate crime (*mark all the answers that apply with an X*)

A. Race

Which racial group: .....

B. Sex

Male          Female          Other

C. Sexual orientation

Heterosexual    Lesbian                  Gay    Bisexual

D. Gender Identity

E. Age

Specify age range:

F. Religion

Specify which religion:

G. Political or other opinion

Which opinion?

H. Disability

Specify which type:

I. Property, social status of residence

J. Other discriminatory grounds:

#### 4. Victim details

A. Name:

B. Date of birth:

C. Address:

D. Telephone No.:

E. Email address:

F. Self-defined ethnicity:

F. Sex:

G. Communicates in the national language: (Y/N)

If not, indicate language:

H. Name, relationship to victim and contact details of parent/carer/representative (when appropriate)

I. How does the victim wish to be communicated with? Any method Through  
carer/representative Other

*Some victims may need sensitivity if they are to trust authorities to report crimes. Examples would include, but are not limited to;*

- *A gay victim who has not disclosed his sexual orientation to family or work colleagues.*
- *A victim of racism from neighbours who may face further hostility if the police are seen to visit their address.*

J. Specific needs of victim

*Record here any needs the victim may have in order to give evidence. This could include, but is not limited to that they fear they will be intimidated by the perpetrator, have communication needs such as interpreters or have physical limitations to access courts etc.*

K. Injuries received (including psychological harm)

L. Statement obtained YES/NO and date: .....

#### **5. Bias indicators**

A. Which Bias Indicators have been noted by the recording officer? *(include all the numbers from the list below that apply and explain if there are also others)*

B. Evidence attached to file? (Y/N)

C. The victim perceived the crime was, in part, at least motivated by hostility or bias towards a protected characteristic: (Y/N)

D. A police officer perceived it to be so: (Y/N)

F. Another person perceived it to be so (specify who):

#### **Guidance on bias indicators: non-exhaustive list**

##### **Comments, Written Statements, Gestures or Graffiti**

1. Did the suspect make comments, written statements or gestures regarding the victim's community?
2. Were drawings, markings, symbols or graffiti left at the scene of the incident?
3. If the target was property, was it an object or place with religious or cultural significance, such as a historical monument or a cemetery?

##### **Racial, Ethnic, Gender, and Cultural Differences**

4. Do the suspect and victim differ in terms of their racial, religious or ethnic/national background or sexual orientation?
5. Is there a history of animosity between the victim's group and the suspect's group?
6. Is the victim a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred?
7. Was the victim engaged in activities promoting his/her group at the time of the incident?



8. Did the incident occur on a date of particular significance (e.g. a religious holiday or national day?)

**Organized Hate Groups**

9. Were objects or items left at the scene that suggest the crime was the work of a paramilitary or extremist nationalist organization?

10. Is there evidence that such a group is active in the neighborhood (e.g., posters, graffiti or leaflets?)

**Previous Bias Crimes/Incidents**

11. Have there been similar incidents in the same area? Who were the victims?

12. Has the victim received harassing mail or phone calls or been the victim of verbal abuse based on his/her affiliation or membership of a targeted group?

13. Was the victim in or near an area or place commonly associated with or frequented by a particular group (e.g., a community centre or mosque, church or other place of worship).

**6. Suspect details**

A. Has one or more suspects been identified? (*If YES, move to section 7*) (Y/N)

B. If all enquiries are complete and no suspect is identified, the victims was notified by .....

*If enquiries are completed without a suspect being identified, there is no need to send a copy to the Prosecutor's Office, but a copy must be sent to the police investigative centre and relevant coordinating ministry.*

C. Complete the below if no suspect known

C.1 Is the ethnicity of the offender known from witnesses? (Y/N)

Provide details:

C.2 Is the sex of the offender known from witnesses? (Y/N)

Provide details:

C. 3 Is the religion of the offender known from witnesses? (Y/N)

Provide details:

**Name, date:**

**7. Suspect details**

*Add the below information for each suspect.*

A. Name:

B. Date of birth:

C. Address:

D. Self-defined ethnicity:

E. Sex:

F. Communicates in the national language: (Y/N). If not, specify which language.

G. Criminal records identity:

**8. Completion**

Signature of the officer completing the enquiry

Name and date

*Append copy of this form to the file sent to the Prosecutor's office. Also a copy must be sent to the Ministry of Internal Affairs at the relevant contact point.*

Form xx (confidential when completed)

**Potential hate crime reporting form**

**Part 2 for prosecutors**

Unique reference number	... /year
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**1. Reviewing Lawyer for the potential hate crime**

- A. Name:
- B. Work address:
- C. Telephone No.
- D. Email:

**2. Review of investigators**

- A. Date of the first review:
- B. Did the review find sufficient evidence to pass the evidence threshold test? Yes / No / Returned for further enquiring
- C. Date of final review (if more than one review of file):
- D. Did the file meet the evidence threshold test to prosecute: (Y/N)  
*If not, then proceed to the Courts section*
- E. Did the file meet the public interest test to prosecute? (Y/N)
- F. Is there sufficient evidence to ask the Court to consider Article 63 sentencing powers? (Y/N)
- G. If not, provide the reason here:
- H. Approved charges:

**3. Completion**

- A. Victim informed of prosecution decision on:
- B. Investigating officer informed on:

Signature and name of lawyer completing case and date:

*Note to completing lawyer: send completed copy to the Courts Administration at this email and send copy of this completed form to the relevant Ministry.*

Form xx (confidential when completed)

**Potential hate crime reporting form**

**Part 3 / Court Section**

Courts Office Reference Number	... /year
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**1. Court results**

- A. Support for Victim: were any measures taken to support the victims' specific needs?  
(for example, an interpreter)
- B. Was the case heard by a Court? (Y/N)
- C. If not, provide reason:
- D. Date to final Court hearing:
- E. Finalising Court:
- F. Court result:
- G. Did the Court consider article 63 applied? (Y/N)
- H. If not considered and/or applied, provide reason:
- I. Sentencing details:

**2. Completion**

- A. Victim informed of outcome on:

Signature and name of official recording completion and date

Note to completing official: send the completed copy to the .....

## Appendix three: Current and proposed hate crime recording and data collection process and roles and responsibilities

This section summarises Armenia’s current approach to hate crime recording and data collection<sup>52</sup> and brings together recommendations in this section to propose draft recording forms and guidelines (see Appendix 2). It aims to serve as a basis for discussion across stakeholders who should consider the extent to which the proposed approach can be incorporated into current and proposed crime recording processes and procedures (see recommendation 1).

### Overview of approach

The Information Centre of the Police, the Prosecutor’s General Office, the Courts and the Human Rights Defender, provide periodic reports of crimes and violations of human rights. However, none of them gather and process disaggregated data on hate crime.

Step of Hate crime case recording and disaggregated data collection	Gaps
<b>POLICE</b>	
<p>Step 1 Police record incident using a registration card (see annex 2, Situational Analysis)</p>	
<p>Step 2 Police investigators record crimes using the Statistical Card on Crime Reports. Police have ten days to examine a case and decide if it reaches the threshold of a recordable crime. If the case is recordable, the Statistical card is completed, reviewed by a supervising officer and sent to the Police Information Centre. The card comprises 39 questions and is completed according to ‘Guideline 15’. Incidents are recorded by the name of the suspect/perpetrator rather than article or nature of the crime as indicated in the Criminal Code. Thus, the nature of crime or article of the Criminal Code are not primary data on the basis of which the data collection and processing is performed.</p>	<p>Step 2 There is no common definition or operational definitions of hate crimes. Several data points of the statistical card allow for the capturing of data on hate crimes and incidents. Point 25 allows additional data, based on hate motives to be captured and recorded. Point 13 provides the option to add free text, which could be used to record bias indicators or other related information. Point 30 allows police to capture ‘characteristics of victims’, which could be a proxy indicator of hate crimes or incidents. This data points provide a policy basis on which to develop and further implement hate crime recording and data collection in light of the propose recording form at Appendix Two.</p>
<p>Step 3 Data received and processed by the Police Information Centre. The Police Information Centre collects data from law enforcement, investigative and</p>	<p>Step 3 The final statistics do not provide data by specific motive. The Centre produces semi-annual or annual statistics.</p>

<sup>52</sup> See the situational analysis report for a detailed overview.

<p>prosecutorial bodies, as well as from courts and penitentiary facilities. The Information Centre collects and processes crime data per types of crimes as classified under the Criminal Code. Namely, information on crime is entered in the database per article of the Criminal Code and the subsection that indicates specific aspect of the crime such as the aggravating ground. If the aggravating ground concerns a hate motive, further clarification should be entered as to which specific hate motive the crime concerned (national, ethnic or religious only).</p>	
<p>Step 4 Police Information Center guidelines provide 28 detailed data classification grounds with specific codes. Guideline no. 14 provides the list of motives of crimes among which it defines five hate motives which are prescribed as “racial”, “national”, “religious”, “other personal” and “other motives” and which are coded by figures 90, 91, 92, 95 and 99 accordingly. Thus, when a crime is entered in the paper-based or electronic database, not only the article of the Criminal Code is indicated but also the code corresponding to the above motive of crime.</p>	<p>Step 4 However, this disaggregation practice is not consistently followed. This might be because guidelines were elaborated as complementary rather than binding tools of crime classification. Observation: the guidelines allow for the inclusion of other hate motives, even if the law doesn't. This provides a hopeful precedent for including bias motives in crime recording standards that are not currently included in the criminal code.<sup>53</sup> Recommend that existing guidelines form the basis of finally agreed guidelines. If so, a translated copy of these guidelines will be needed.</p>
<p>Step 5 Under article 5(5) of the Law on Prosecution, the investigative bodies each year until February 1 submit to the Prosecutor General's Office information and statistics on the number of completed investigations during the previous year. The procedure is regulated by the Government Decision 1225-N dated 23 October 2008 which provides also sample forms gathering and processing of statistical data. The decision sets out forms for monthly, semi-annual and</p>	<p>Step 5 There is a clear mechanism to share statistical data between the police and prosecution service, which is positive. It appears that there is not a mechanism to share data about bias indicators or victim safety in ‘real time’ between the two bodies. If shared definition is agreed, it should be possible to disaggregated data according to bias motivation and crime type.</p>

<sup>53</sup> This practice has been followed in England and Wales, Ireland and Italy.

<p>annual reports on the number of investigations carried out and completed. The data is classified per articles under the Criminal Code.</p>	
<b>PROSECUTION OFFICE</b>	
<p>Step 6 The prosecutor’s office does not use the category of ‘hate crime’ in their current system.</p>	<p>Step 6 Prosecution office do not have a mechanism of hate crime data disaggregation. Incidents recorded as hate crimes are examined as regular cases.</p> <p>This issue should be addressed with the adoption of a shared monitoring definition of hate crime across the system.</p>
<b>COURTS</b>	
<p>Step 7 The judicial department collects hate crime data using a relatively advanced method that use statistical codes for criminal law provisions, and grouping them according to particular harms, e.g. ‘Crimes directed against life and health of citizens’ Under each index and corresponding article of the Criminal Code statistical data is provided which shows the number of verdicts delivered, the number of appealed cases, the number of court decisions entered into force, the number of court decisions delivered during the reporting period, etc.</p>	<p>Step 7 The Courts do not have a mechanism of hate crime data disaggregation. Only aggregated data per each article of the Criminal Code is provided, without specifying whether the data concerns the crime committed by aggravating grounds or, as stipulated in the national law, by qualifying objective aspects of the crime. As already said above, hate motive is one of such aggravating grounds under general article 63 of the Criminal Code. In the subject report, the aggregated method of data processing data fails to demonstrate whether the given information covered the crime committed by aggravating ground such as hate motive which is one of the constituent elements of the crime under the given general article. Judiciary could consider creating a statistical group: ‘hate crime’ and ensure disaggregation within criminal code provision and by Article 63.</p>
<b>FINAL STAGE</b>	
<p>The National Statistical Service collects, processes and publishes general statistical crime data on crimes. The Service receives data of crime periodically from Information Center of Police which is regulated by the Government Decree 11-N “On Approval of</p>	<p>Clear mechanisms for data sharing are in place. This suggests that adding ‘hate crime’ as a data category, according to a cross-government definition would be possible.</p>

<p>Procedure of Providing Statistical Information” of the State Council on Statistics of the Republic of Armenia (October 3, 2003).<sup>54</sup> Relevant report is submitted to the National Statistical Service before the tenth of the month, following the reporting period. The crime statistics is grouped into six groups.</p>	<p>The National Statistical Survey does not provide distinct data on hate crimes in Armenia.</p>
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Several civil society organisations also monitor hate crime cases and publish data and information. These include PINK Armenia, New Generation, the Helsinki Committee, and the Non-discrimination coalition, which collects data from its member organisations. There is however a lack of consistent approach among them, and a lack of quantitative data. Most information is presented in the form of case studies.

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<sup>54</sup> See the text of Decision 11-N here: <http://www.arlis.am/DocumentView.aspx?docID=47765>

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### **Documents supplied by the Council of Europe and the national consultant within the framework of the project**

'The Statistical Card on Crime Reports Filled' – form filled by the police when establishing if an incident should be registered as a criminal offence. (translated)

Government Decision 1225-N dated 23 October 2008, which provides also sample forms gathering and processing of statistical data; relevant spreadsheet setting out data collated in accordance with this Decision.

Baseline study of Armenia (available for the Council of Europe)

## Part 2: Situational Analysis

### Introduction

The aim of this situational analysis is to study the current situation of hate crime and hate speech data collection and processing legal frameworks and mechanisms in Armenia. Armenia as a Member State of the Council of Europe has an international obligation of establishing effective legal frameworks and remedial mechanisms against discriminatory practices. One aspect of that obligation is to have effective hate speech, hate crime and discrimination data collection and processing mechanisms capable of detecting not only the number, but also the trends of discriminatory practices involving hate crimes. In order to reach that goal, it is necessary to have disaggregated data collection and processing mechanisms in place as otherwise, where information is collected by aggregated form, crimes committed with motives of hate or other discriminatory motives remain undetected and therefore unpunished.

Armenia has not taken effective measures to reform its anti-discrimination laws and practices in order to bring them in line with European standards. Despite past efforts, it has not yet adopted a distinct anti-discrimination law. The law on equal rights of men and women (gender law) was not effectively put in practice as there are still deeply rooted stereotypes in the society, as well as among legal practitioners, about many aspects of equality and non-discrimination. This includes also the lack of practice and knowledge among legal practitioners of handling cases with bias motivations and of detecting bias indicators in order to ensure effective redress. The Criminal Code lacks basic substantive grounds to tackle offenses committed with bias motivations. It stipulates overly narrow grounds of discrimination as aspects of hate motives. The investigators, prosecutors and judges who decide on criminal matters often lack basic knowledge about key aspects of non-discrimination. Nonetheless, it should be noted that currently the criminal code and the criminal procedure code are under the process of revision and new drafts of the codes have already been put forward for public discussion. Moreover, on 21 May 2020 the Government approved the proposed drafts of the codes<sup>55</sup>. In the beginning of June, both draft codes were forwarded to the National Assembly.

The above shortcomings in the system of criminal justice have negative influence on the system of collecting and processing of data on discrimination, hate crime and hate speech. The major shortcoming identified is that all data frameworks are designed per major provisions of the Criminal Code without specifying the subcategories of the articles that define crimes committed by hate and bias motives. Such aggregated method of data collection leaves undetected the crimes committed by hate. In order to eliminate this systemic problem, a complex approach is suggested. Namely, given the fact that the authorities intend to adopt new criminal procedure code and criminal code by which effective structural and substantive changes are expected to be made in the criminal justice system, it

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<sup>55</sup> See, <http://moj.am/article/2718>

is suggested to use this momentum in order to incorporate all necessary principles, substantive law grounds and procedures of disaggregated data collection in the criminal and administrative frameworks. In particular, it is suggested to follow the practice designed by the Judicial Department and work out codes for all types of offenses constituting hate crime and hate speech. Once complete set of the codes are elaborated, it is suggested to incorporate them in the already existing frameworks under Police, investigative bodies and the judiciary. Along with this process, all relevant officers responsible for data entry need to be trained on the basic principles of non-discrimination, hate crime and hate speech. Wide activities may also be envisaged such as designing training programs for legal practitioners.

## Methodology

This situational analysis was conducted from October 2019 until May 2020 and was compiled through desk research as well as in person interviews. The desk research included the research and analysis of legislative acts, statistical reports and periodic reviews of the Police Information Center, the Prosecutor's office, Judicial Department, Human rights NGOs and the Human Rights Defender's office. The documents of the Council of Europe, such as the findings of ECRI, PACE and the Committee of Ministers, were reviewed to tackle the systemic problems raised by these bodies. Special consideration was given to the statistics of OSCE/ODIHR and the hate crime country reported conducted a few years ago in which data collection mechanisms were also studied.

In person interviews were conducted with several officials such as Mr. Arman Abovyan, deputy head of Police Information Center, Ms. Nina Pirumyan, representative of the Human Rights Defender's office, leading attorneys prosecutors and other legal professionals, such as Ruben Melikyan, attorney, co-founder of "Path of law" NGO and co-author of the current draft criminal procedure code, Anna Margaryan, co-author of the draft criminal code. These interviews alongside with the desk research and review helped the researcher to represent the comprehensive situational analysis on data collection and analysis in Armenia.

## Legislative framework

The fundamental right to non-discrimination is provided in the article 29 of the Constitution with such grounds as race, colour of skin, age, property status, language, ethnic or social origin, religious belief, etc. In the end, the list of substantive grounds is finalised by a widely defined concept of *"other circumstances of personal or social nature"*. Given that the constitutional provision does not set such grounds as gender identity or sexual orientation, the above wide provision may embrace these grounds in order to have it reflected in the statutory laws. It is to be noted that Armenia ratified the Protocol 12 of the European Convention of Human Rights which supplements the above constitutional concept of general prohibition of discrimination.

Furthermore, Article 77 of the Constitution provides the principle of abuse of basic rights and freedoms which is in fact equivalent to the principle enshrined in the Article 17 of the

European Convention of Human Rights. It prohibits the use of fundamental rights and freedoms with the aim of violent overturn of constitutional order, incitement of national, ethnic, racial hate and propaganda of violence and war. This is in fact the constitutional principle of prohibition of hate crime and hate speech.

The Criminal Code of Armenia provides the general Article 143 by which any direct or indirect violation of basic human rights and freedoms based on such characteristics as race, colour of skin, ethnic origin, age, sex, political or other views, etc. is defined as a crime. However, in practice this article has been rarely used given its vagueness. In general, the Criminal Code provides two types of approach in defining hate crime and hate speech. With the first approach, certain specific acts are defined as distinct hate crime. These are the crimes defined by article 226 (incitement of racial, ethnic or religious hatred), article 392 (crimes directed against security of mankind), article 393 (genocide), article 397<sup>1</sup> (denial, derogation of genocide and other crimes against peace and human security, their approval or justification) and some provisions of the article 390 (serious violation of international humanitarian law norms during armed conflicts and committed with motives of apartheid, racial discrimination, degrading the person's dignity and other non-humanitarian or humiliating actions). It is worth noting that recently an amendment to the criminal code was made and the new Article 226.2 was added<sup>56</sup>. The article enshrines the crime of "Public calls for violence, publicly justifying or advocating violence". Particularly, it criminalizes the acts of public calls for violence against a person or a group of persons and publicly justifying or advocating such violence. The noteworthy characteristics of the article is the wide range of protected grounds enlisted. The Article 226.2 suggested "*sex, race, color, ethnic or social origin, genetic characteristics, language, religion, ideology, political or other views, affiliation to national minority, property status, origin, disability, age or other personal or social ground*" as non-exhaustive protected characteristics for the envisaged hate crime. It is to be noted that the wording used in already added Article 226.2 concerning the protected grounds is similar to the approach adopted in the draft criminal code which was sent to the Parliament for adoption. Hence, it can be assumed that any amendments made to current criminal code, such as Article 226.2, is ought to be in line with the proposed draft code.

With the second approach, the Code defines *religious, ethnic* and *nationality* hatred as aggravating elements to the crimes defined in the Code. In this sense, the general article 63(1()) provides that any criminal act motivated by national, racial or religious hatred shall be defined as elements aggravating the criminal liability and the measure of punishment. Further, several criminal acts in the Code are defined both with basic constituent elements (e.g. article 104 – murder) and with aggravating grounds (section 13 of part 2 to article 104 – murder committed by motive of religious, national or ethnic hatred). Another example is the article 112 (wilful infliction of heavy damage to health) the section 12 of part 2 of which aggravates the liability if it is committed by motive of religious, national or ethnic hate.

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<sup>56</sup> See <https://www.arlis.am/DocumentView.aspx?docid=141919>

One specific aspect of the Criminal Code, which is open to criticism, is that it provides only three grounds of hate motives – ethnic, nationality and religious – whereas the prohibited grounds of discrimination and the motives of hate crime are much wider to the extent that they embrace the concept of general prohibition of discrimination. This gap in the law leaves undetected and unpunished several crimes committed by hate motives. For example, if an LGBT person is taken to police and ill-treated by police officers for their sexual orientation or gender identity, even if charges are brought against police officers for ill-treatment, they will not be sentenced for hate crime as the general article 63 or the specific article 112 of the Criminal Code, cited above, do not define sexual orientation or gender identity as distinct elements of hate aggravating criminal liability or punishment. The same approach is rendered in the Code with respect to other crimes defined with aggravating grounds (e.g. article 113 (infliction of medium gravity damage to health), 119 (infliction of grave physical pain or psychological anguish), article 185 (wilful destruction of property), article 265 (mutilation of bodies or burial places), etc.

The above shortcoming in the Criminal Law will disappear if the government adopts the draft criminal code. As mentioned above, the draft envisages wider and, in fact, unlimited grounds for claiming violation of discrimination under criminal law. The authors of the draft took into account the recommendations of ECRI.<sup>57</sup> The draft provides a wider scope of prohibited grounds of discrimination and it envisages the concept of general prohibition of discrimination. If the present code envisages only race, ethnicity and religious beliefs as aspects of hate crime, hate speech and discrimination, the current draft suggests ideology, ethnicity, nationality, racial and religious hate, intolerance and hostility, including such wide grounds as *“motives of hate, intolerance, or hostility or religious fanaticism towards other social group.”*<sup>58</sup> It can be assumed that the broad definition of “other social group” meant to cover, *inter alia*, the sexual and religious minority groups as ECRI recommended to reform the criminal code so to include the grounds of sexual orientation and gender identity in the list of prohibited grounds.<sup>59</sup> The above language stipulating aggravating grounds appears also in the general part of the draft law which provides that the above prohibited grounds of discrimination can be used to claim that the offense is committed with hate motive and therefore it shall be classified as a crime committed with aggravating grounds.<sup>60</sup> Moreover, the draft criminal code envisages discrimination as a separate crime. Particularly the Article 198<sup>61</sup> of the current draft attempts to give a definition of discrimination, establishing that *“Discrimination - the differentiated treatment that violates person’s honor and dignity or rights and freedoms or gives the person privilege without an objective basis or reasonable explanation”*. It is worth mentioning that this is the first ever domestic legal act that tries to define “discrimination”. Further, the article lists a non-exhaustive protected ground providing

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<sup>57</sup> ECRI report on Armenia (fifth monitoring cycle), Adopted on 28 June 2016, pp. 35-36

<sup>58</sup> See, for example, articles 156(2)(13), 167(2)(12), 168(2)(12) and several other articles of the draft Criminal Code.

<sup>59</sup> ECRI Report on Armenia (fifth monitoring cycle), Adopted on 28 June 2016, paragraph 1, p. 35

<sup>60</sup> Article 71(1)(7), Draft Criminal Code

<sup>61</sup> See here: [http://parliament.am/draft\\_docs7/K-634.pdf](http://parliament.am/draft_docs7/K-634.pdf)

a wider scope of characteristics. Specifically, the draft article suggests “*sex, race, color, ethnic or social origin, genetic characteristics, language, religion, ideology, political or other views, affiliation to national minority, property status, origin, health condition, disability, age or other personal or social ground*”. Thus, the draft criminal law will potentially put the criminal law in line with European standards with respect to the classification of hate crime. As such, it will effectively contribute or even serve as a platform in the formation of disaggregated data collection framework in the future.

Provisions on non-discrimination are defined in several statutory laws. The Appendix 1 provides the list of the statutory laws with indication of relevant non-discrimination provisions. It is to be noted that none of the laws in the list provide a legal framework on non-discrimination. The mentioned articles appear in the statutory laws as sole grounds without other elements of non-discrimination such as types of discrimination, exclusions to non-discrimination, the concept of a comparator, standards and forms of proof, definition of discrimination, etc. Therefore, despite to availability of standard non-discrimination clauses in laws, the legislation as a whole does not provide a comprehensive non-discrimination legal framework. In addition to this, such central statutory laws as the Civil Code and the Law on Fundamentals of Administrative Action and Administrative Proceedings do not have a non-discrimination clause at all which, raises an issue of a fundamental gap in the law.

Moreover, none of the laws mentioned in the list provide any definition of hate speech. The Civil Code defines the concept and framework of insult and defamation (article 1087.1). This provision, which was incorporated in the law in May 2010 gave rise to many civil disputes and court cases forming a stable and well-elaborated body of law on defamation. Often, this framework is used to challenge hate speech in civil disputes. However, there is also an uncertainty as to the dimensions of hate speech involving civil rather than criminal responsibility. The Civil Code lacks a clear definition of hate speech. The criminal investigation and prosecutorial bodies in turn rarely institute proceedings under article 226 of the Criminal Code.

With the adoption of the law on domestic violence in 2017<sup>62</sup> the government initiated the reform of setting a unified domestic violence data recording framework. On 10 October 2019 the government adopted the Decree No. 1381 on the Regulation of Centralised Data Recording of Cases of Domestic Violence.<sup>63</sup> It provides a unified data collection mechanism where data is collected and processed by a regulatory body and where data is received from different bodies such as the Police, the Prosecutor General’s Office, investigative bodies, the Judicial Department, the territorial or municipal custodian and guardianship bodies, the Ministry of Health and other bodies involved in domestic violence cases. The resolution provides annexed forms designed for each of the above stakeholders in order to fill data and forward them to the regulatory body. The study of the forms shows that they do not provide a disaggregated form of data collection mechanism. Instead, the forms provide narrative

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<sup>62</sup> Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family.

<sup>63</sup> The text in Armenian is available at: [https://www.e-gov.am/u\\_files/file/decrees/kar/2019/10/19-1381.pdf](https://www.e-gov.am/u_files/file/decrees/kar/2019/10/19-1381.pdf)

questions about circumstances and types of violence which in general may disclose the motive of hate but not in the form of data for which further processing is needed. It is believed that the regulatory body may substantially contribute in the future formation of unified or centralized disaggregated data collection system.

Finally, it is to be noted that Armenia does not have a distinct non-discrimination law. Currently, as of July 2020, the draft law on Ensuring Legal Equality as the main and comprehensive anti-discrimination law is under review, although it is still unclear when it will be adopted. The absence of non-discrimination law is a major gap in the legislation which substantially weakens redress mechanisms against discrimination, hate speech and hate crime, including the process of forming a disaggregated data collection mechanism. In sum, legislation lacks a comprehensive legal framework and redress frameworks against discrimination, hate crime and hate speech which includes also the absence of unified disaggregated data collection and processing framework.

### Available data at the national level

In 2016 the government of Armenia reported to OSCE/ODIHR 3 prosecuted hate crime cases. In 2017 the government reported 14 recorded and 1 prosecuted hate crime case<sup>64</sup>. No similar information was provided to OSCE before or after these dates. In the past years, the government officials used to respond that there was no hate crime in Armenia. However, it is still unclear how the above figures were received as there is not disaggregated data collection framework and practice in the country. The webpage then refers to government decrees no. 1495-N and 1225-N as the sources of the above information. However, as indicated below, data collected by these regulations is not detailed and is not disaggregated per motives of crimes. Therefore, the above figure cannot be accepted as a reliable and accurate data on hate crime cases. Information provided by NGOs is more reliable. However, such information mostly demonstrates the figure of reported cases whereas no data is available as to the outcome of proceedings which is also very important in order to understand the trends of investigation of hate crime cases.

Several government bodies, such as the Police, the Prosecutor General Office, the investigative bodies and the Human Rights Defender, provide periodic reports of crimes and violations of human rights. However, none of them gather and process disaggregated data on any crime. All the above agencies exercise a common practice of data processing by which the type of crime is defined per general article of the Criminal Code without further specifying sections or subsections of the articles that often define aggravating aspects of *corpus delicti* such as hate motives. The result of this approach is that crime statistics do not provide detailed data on crimes committed by hate. They refer usually the principle aspects of crimes (e.g. murder) without indicating the aggravating aspects which are usually defined in the subsections (e.g. with motive of national hate).

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<sup>64</sup> The information is available here: <http://hatecrime.osce.org/armenia>

Therefore, there is no accurate and reliable data on the number of hate crimes reported, investigated, acquitted, forwarded to courts for trial and tried. It is due to the lack of a comprehensive data processing system that the information provided to ODIHR is incomplete as it does not show the outcome of the reported cases and the trends of investigation and trial of the reported crimes.

Where the given type of hate crime is defined as the main aspect of crime in the Criminal Code, the annual statistics of the Judicial Department will show accurate number of judgments delivered with regard to that crime. For example, in the article 226 the *corpus delicti* of hate crime is defined as the main aspect or the main constituent element of crime. Therefore, the article 226 will appear in the reports as a separate and a distinct category which as such will be detected easily. A quick search through annual reports of the Judicial Department will show that there has not been a single reported judgment delivered under article 226 since 2015. It appears that no hate speech cases have been investigated in the recent years as otherwise some data would still be available about the number of cases transferred to court for trial. As to other forms of hate crimes, data cannot be searched and detected in the reports of the Judicial Department.

Furthermore, it is not possible to receive data on hate crime cases investigated by investigative bodies because such data, even if collected and processed, are forwarded to the Information Center of Police on semi-annual and annual basis without reporting them to the public. These reports are not published and they are used by investigative and prosecutorial bodies solely for their operative needs. Data collected in these reports is relayed to the public only through annual reports of the Prosecutor General to the National Assembly. However, as indicated in detail below, crime data for this stage of criminal proceedings is collected and processed in an aggregated form without sorting out data per aggravating aspect of crimes such as hate motive. Therefore, information on, for example, the number of murder cases will not reveal the number of murders committed by hate motives.

In order to receive more or less reliable information of specific areas of discriminatory practices, one may refer to NGO statistics which are more reliable. However, often they present only narrowly tailored data concerning very specific areas of discrimination or hate crime. For example, the PINK NGO reported 25 cases of hate crime for the year 2018. Given that PINK is specialised in protecting the victims of discrimination based on sexual orientation and gender identity, this information can be accepted as reliable.

#### [The current recording and data collection framework, roles and responsibilities](#)

Currently, there is no centralised body and a mechanism of collection of disaggregated data on hate crime, hate speech and discrimination in Armenia. Therefore, it is not possible to obtain a comprehensive data in order to form a general picture of the practice of discrimination in Armenia. No comprehensive and disaggregated statistical data on crimes motivated by hate is available due to outdated data collection and processing methodology and mechanisms.



There are several state agencies that collect and process crime data in Armenia, including the Human Rights Defender's Office (Ombudsman) and some NGOs specialized in the sphere of non-discrimination. The central crime data collection and processing body is the Information Center of the Police of Armenia.

#### Data collection by Information Center of Police

The Information Center (hereafter referred to also as Center) maintains the most comprehensive and centralized database of crimes in Armenia. The forms used by the Center are presented in the Appendix 2. Data collection and data elaboration are done by the procedures prescribed by Government Decree N933-N. The following information of crime is entered in the database:

- Data on citizens of Armenia and on foreign citizens charged and convicted for crimes committed on the territory of Armenia,
- data on citizens of Armenia convicted or sentenced in other countries who were later extradited to Armenia for serving the sentence,
- data on persons searched for committal of crime,
- data on persons accused of committal of crime who were later acquitted on non-acquittal grounds (e.g. application of limitation period of crime)
- data on persons on the wanted list,
- data on minors, exempted from criminal liability in relation to whom compulsory disciplinary measures were applied,
- data on the persons who committed crime envisaged by the Criminal Code in relation to whom compulsory medical measures were applied by decision of court,
- data on convicted persons who were pardoned before the verdict entered into force,
- data on persons in relation to whom institution of criminal proceeding was rejected on non-acquittal grounds (e.g. limitation period, immunity, etc.),
- data on persons released from arrest on the ground of lack of crime.

The Center receives data from law enforcement, investigative and prosecutorial bodies, as well as from courts and penitentiary facilities.

The data is kept upon the person reaches the age of 80 with the exception of cases when a person was convicted for a heavy crime, or died at the place of detention, or the criminal prosecution was terminated on acquittal grounds.

Data entry is done per name, second name, patronymic name, day/month/year of birth and place of birth. The personal data is followed by information regarding nationality, place of work and residence, date of arrest or detention and data on the nature of the crime and the specific article of the crime in the Criminal Code. The data entry mechanism suggests that the data is entered, and search is conducted per person's name rather than per type of crime under the Criminal Code. Thus, the type of the crime or the article of the Criminal Code are not primary data per which data collection and processing is performed.

The Center operates by the principle of confidentiality and as such does not publish statistics. It provides data upon request by designated state agencies and by individuals. The state

agencies request information for their operational needs and goals. The individuals may request and get information only if the information concerns them. The only exception are the requests coming from lawyers (defence attorneys) who may request information about a third party based on the Access to Information Law and the Law on Advocates in connection with the legal representation that they carry out. Thus, data collected by the Information Center is of operative nature and as such information may be provided by the Center only upon the request by state bodies or individuals where such information is requested for specific purposes. The Information Center does not process and publish statistical data for general use.

Moreover, the Information Center collects and processes crime data per types of crimes as classified under the Criminal Code. Namely, information on crime is entered in the database per article of the Criminal Code and the subsection that indicates the specific aspect of the crime such as aggravating ground. If the aggravating ground concerns the hate motive, so further clarification data is entered as to which specific hate motive the crime concerned (national, ethnic or religious). Moreover, given that the law provides the above three limited grounds of hate motive, there is no option that other grounds of discrimination, constituting hate motives, be entered in the database. Therefore, the information of crime is entered in an aggregated manner and the final output, the database information, does not provide by which specific motive of hate the crime was committed.

Given the limited scope of data disaggregation, the officers of the Information Center elaborated guidebooks which provide 28 more detailed data classification grounds each of which are coded by specific figure. The Guidebook no. 14 provides the list of motives of crimes among which it defines five hate motives such as “racial”, “national”, “religious”, “other personal” and “other motives”. These grounds are coded by figures 90, 91, 92, 95 and 99 accordingly. Thus, when data of crime is entered in the paper-based or electronic database, not only the article of the Criminal Code is indicated but also the code corresponding the above motive of crime. However, this practice is not consistently followed as the guidebooks are used as complementary rather than binding tools for crime classification.

#### Data collection by investigative bodies

The investigative bodies of Armenia conduct criminal investigation which is comprised of two stages - preliminary inquiry and pre-trial investigation. These two stages together comprise investigation stage of criminal proceedings before trial court proceedings. These bodies do major data collection activity and report data to the Information Center and the General Prosecutor’s Office. The preliminary investigation bodies are located mainly within police. The investigative bodies are divided between four agencies currently – the Investigative Committee, the Special Investigative Service, the Investigative Department of the National Security Service and the Investigative Department of the Central Revenue Service. All the above bodies, comprising major investigative framework, must collect on monthly basis and report semi-annually or annually detailed statistical data about the number and types of crimes investigated by them. This activity is regulated by the Government Decree No. 1225-

N of 23 October 2008 on the “Unified Forms and the Manner of Filling and Reporting Statistical Data of Pre-Trial Proceedings”. In addition, police officers who receive reports on incidents, crimes or misdemeanour (administrative offense) must file period reports which is regulated by Government Decree no. 1495-N of 23 November 2017.

Under Decree no. 1225-N, investigative bodies and bodies conducting preliminary inquiry of crime are bound to collect on a monthly basis wide number of statistical data such as, for example, on the number of criminal cases investigated and forwarded to courts, on the number of acquitted or suspended cases, on the number of juvenile crime cases, the types of crimes investigated (categorized per article of the Criminal Code), the number of preventive measures applied and terminated, data on property damage inflicted and compensated and many other statistics. For the subject of this analysis, the most relevant section of the Decree is the one which instructs how to categorize data on the types of crimes. The types of crimes are categorized per provision of the Criminal Law without specifying the subsections which set the aggravating grounds of crime such as national, ethnic or racial hatred. It is therefore not clear how the authorities tackle hate crimes where the *corpus delicti* is defined in the aggravating aspect of the crime. Where the *corpus delicti* of the hate crime is defined by the main aspect of the crime, such as the article 226 of the Code (hate speech – incitement to violence), the statistical data is easily detected but where the hate crime is defined as an aggravating ground the data does not reflect it because aggravating grounds are usually defined in the subsections of the provisions which the statistical forms usually do not define as a separate category of crime. The forms usually refer to the norms in an aggregated rather than disaggregated form. Therefore, the reporting system of pre-trial investigation data has the same defect as the one conducted by the Information Center – data is processed by an aggregated manner which as such does not display detailed statistical data and most of the hate crimes fall out of the statistical reports. It is therefore unclear how the government reported to ODIHR 17 hate crime statistical data by reference to the Government Decree no. 1225-N if the methodology of this decree does not allow to detect and collect detailed data on hate crime.

#### [Annual reports of the Prosecutor General’s office](#)

The Prosecutor General is bound by Constitution to provide annual reports of crime to the National Assembly. The report includes both narrative and statistical analyses about trends of crimes in Armenia. There is no prescribed methodology of drafting the annual report. In describing the trends of crimes, the report refers to statistical data collected and processed per gravity (gross, medium and low gravity), nature (property, directed against human, committed by public officers, etc.,) and types (defined per provisions of the Criminal Code) of crimes. Main emphasis is put in the report on such crimes as murder, physical assault, crimes committed by use of arms, property crimes, house theft, hooliganism, traffic road crimes, juvenile crime. No specific reference is made on hate crimes, hate speech or in general crimes committed by discriminatory motives. Motives of crimes such as national, ethnic or religious

hatred are included in the report at all.<sup>65</sup> For example, if the data refers to crimes such as murder, assault, property damage, mutilation of body, the report does not provide further data on whether these crimes were committed with aggravating motives of hate.

As a summary, the annual reports of the Prosecutor General are published and widely disseminated to the public. However, they do not provide disaggregated data of hate crimes or, in general, crimes committed by discriminatory motives.

### Annual reports of the Judiciary

The Judiciary publishes semi-annual and annual court practice reports in which it provides the number and types of court decisions issued by civil, criminal and administrative courts.<sup>66</sup> The actual data gathering and processing is done by the Judicial Department which is a judicial administrative body taking care of all organizational, logistical and administrative matters within the Judiciary. The experts of the Judicial Department sort out data by special indexes (codes) elaborated several years ago where each index represents given statutory law provision. For example, more than 300 indexes were elaborated to cover data concerning court decisions rendered by criminal courts. Each code represents one article of the Criminal Law. These codes are divided into 18 groups (Appendix 3). Both the groups and the indexes are designed per sections and articles of the Criminal Code.<sup>67</sup> For example, the first group titled “Crimes directed against life and health of citizens” includes 28 indexes each corresponding with one specific article of the Criminal Code: code 1.1. - article 104 – murder, code 1.9. – article 112 – infliction of wilful heavy damage to health, code 1.16 – article 119 - torture, etc. The group “Crimes against public security” includes 37 indexes among which article 226 – inciting national, racial or religious hatred; 222 – banditry; 236 – illegal manufacture of weapons. Under each index and corresponding article of the Criminal Code statistical data is provided which shows the number of verdicts delivered, the number of appealed cases, the number of court decisions entered into force, the number of court decisions delivered during the reporting period, etc. The negative aspect of this method of data collection is in that it provides aggregated data per each article of the Criminal Code without specifying whether the data concerns the crime committed by aggravating grounds or, as stipulated in the national law, by qualifying objective aspects of the crime. As already said above, hate motive is one of such aggravating grounds under general article 63 of the Criminal Code. In the subject report, the aggregated method of data processing data fails to demonstrate whether the given information covered the crime committed by aggravating ground such as hate motive which is although one of the constituent elements of the crime under the given general article, but the data does not reflect it. Even so, the positive aspect of this method of data collection is that, unlike the data by the Information Center and the

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<sup>65</sup> See Report of the activity of Prosecutor’s Office of the Republic of Armenia in 2014. Annual reports can be seen on the following page of the website of the Prosecutor’s Office: <http://prosecutor.am/am/messages-to-the-president-and-the-national-assembly/>

<sup>66</sup> All reports are published in the online website of the Judicial power [www.court.am](http://www.court.am)

<sup>67</sup> Annual summary of the practice of criminal courts of general jurisdiction in 2014 can be seen on page <http://court.am/?l=lo&id=50>

annual reports of the Prosecutor General Office, data processing of the Judicial Department is carried out by use of codes which is a more elaborated method. It allows to engage in disaggregated data processing of hate crimes in the future if necessary, changes are done in the regulations, as well as in the statutory laws. The use of codes allows to shift data processing easily from manual/paper-based platform (used currently by the Information Center) into a digital platform. Given the current reforms of transforming criminal justice into digital, electronic case processing infrastructure, the use of codes by the Judicial Department could serve as a good example to fulfil that goal.

#### Data of the National Statistical Service

The National Statistical Service collects, processes and publishes statistical data on some specific legal sphere including crimes. Collection, classification and publication of crimes-related statistical data is performed in conformity with the Directive and according to the enclosed form, set up by Decision 05-N (February 23, 2004) of the Government of Armenia (Appendix 4).<sup>68</sup> The Service receives data of crime periodically from Information Center of Police which is regulated by the Government Decree 11-N “On Approval of Procedure of Providing Statistical Information” of the State Council on Statistics of the Republic of Armenia (October 3, 2003).<sup>69</sup> The relevant report is submitted to the National Statistical Service before the tenth of the month, following the reporting period. The crime statistics is grouped into the following six groups:

- *crimes against human,*
- *crimes against public security, public order and public health,*
- *crimes against property,*
- *crimes against economic activity,*
- *crimes against state power, state service and procedure of governance.*
- *other crimes.*

The data is further elaborated and displayed per gravity (less gravity crimes, medium gravity crimes and grave or especially grave crimes). No further disaggregation of data is done by the Information Center or the Statistical Service when information is processed. Each of the six groups may contain data on hate crimes, however, they are not processed and displayed as the data processing is done in an aggregated format – like all other remaining agencies mentioned above. Therefore, the National Statistical Survey does not provide distinct data on hate crimes in Armenia.

#### Annual reports of the Ombudsman

The office of the Human Rights Defender does not maintain a database of hate crime, hate speech or discrimination. Based on its mandate, it processes applications from legal and

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<sup>68</sup> Examples of the Directive and Form can be seen at the following page of the website of the National Statistical Service: <http://www.armstat.am/am/?nid=302>

<sup>69</sup> See the text of Decision 11-N here: <http://www.arlis.am/DocumentView.aspx?docID=47765>

physical persons concerning human rights violations that may include also cases of discrimination, hate crime or hate speech. The office processes them in the general order and no separate procedure is envisaged for handling such requests. The Ombudsman issues periodic reports of different human rights violations in which references are done also on various discriminatory practices. Occasionally, references are made to certain statistical data in these reports, however, such references or data collection are not systemized but are done mostly on a case by case basis. The draft law on non-discrimination envisages for the Ombudsman to become the national regulatory body on non-discrimination. If so, the office will possibly conduct data processing activity and by such activity it will help other bodies involved in that sphere.

#### Data collection by human rights NGOs

Human rights NGOs specialised in different aspects of discrimination gather statistical data for specific areas of discriminatory practice. For example, PINK Armenia which defends the rights of sexual minorities provides periodic reports of *Human Rights Situation of LGBT People in Armenia*.<sup>70</sup> It provides both narrative and statistical data. For the year 2018, it reported 25 assaults of discriminatory nature based on sexual orientation and/or gender identity.<sup>71</sup> A similar report, but oriented mostly on the case by case approach, is provided by the “New Generation” human rights NGO on the rights of sexual minorities. These NGOs are an important source of receiving elaborated information on the nature and types of hate crimes. In its interim report on Monitoring of hate speech for the period of July-December 2018, the Helsinki Committee of Armenia dedicated a chapter to the statistics of the observed cases<sup>72</sup>. The latter concerned the cases of hate speech by various online and print media outlets and TV channels and the statistics on the instances of hate speech and harmful speech spread by these media. Based on this monitoring most of the hateful and harmful speech was directed towards persons in the view of their religious beliefs and sexual orientation.

The Coalition to Stop violence against women in its 2016-2017 report entitled “Silenced voices: Femicide in Armenia”<sup>73</sup> devoted a section to the quantitative aspects of femicide, which was defined as the homicide of women based on misogyny. This report analysed the overall framework of the concept of femicide and included the comprehensive analysis of the trials of ongoing domestic violence cases in Armenia.

In 2017 the New Generation Humanitarian NGO published a national report on violations of the rights of LGBTQ+ persons in Armenia<sup>74</sup>. The report discussed the legislative framework as well as analysed several case studies on breaches of such rights as right to adequate medical care, right to dignity, right to privacy, right to effective remedy, etc.

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<sup>70</sup> See here for the latest report: [https://www.pinkarmenia.org/wp-content/uploads/2019/05/2018annualreview\\_en.pdf](https://www.pinkarmenia.org/wp-content/uploads/2019/05/2018annualreview_en.pdf)

<sup>71</sup> At page 1 of the above report.

<sup>72</sup> See the full report here in Armenian: <http://armhels.com/publications/atelutyan-xosqi-mshtaditarkum/>

<sup>73</sup> See the full report here: <http://coalitionagainstviolence.org/wp-content/uploads/2019/07/femicide2018en.pdf?x24321>

<sup>74</sup> See the full report available in Russian here: <https://ngngo.net/files/pdf/1/15337385748058.pdf>

As a conclusion, human rights NGOs conduct research and publish reports that are mostly of a narrative nature and contain very little statistical data that does not cover the whole area of hate crimes, hate speech and discrimination.

## Recommendations to state institutions

- I. Elaborate data codes for hate crime and hate speech offenses per different types of protected grounds of discrimination and hate motives such as race, colour of skin, age, sex, gender identity, profession, views, etc. including the concept of general prohibition of discrimination. As a reference and guide, refer to the grounds of discrimination proposed in the draft criminal code when elaborating the codes. The draft criminal code provides a comprehensive body of substantive grounds and types and discrimination – including the concept of general prohibition of discrimination.
- II. Incorporate the codes in the paper-based and/or electronic forms used by the Information Center of Police. For that purpose, it would be necessary to make effective changes in the Government Decree no. N933-N.
- III. Incorporate the codes in the paper-based and electronic forms used by the relevant data processing specialists of preliminary investigation and pre-trial investigation bodies. It would be necessary to substantially amend the government Decree no. 1225-N in order to incorporate the codes in this infrastructure.
- IV. Elaborate additional codes for the reporting system of the Judicial Department and add them in the already existing framework of codes. It would be necessary to amend the regulatory papers used by the Judicial Department to add new codes.
- V. As an alternative to the above 4 points, it would be ideal to work out unified codes for hate crime and hate speech offenses for the entire criminal justice system. Given the fact that the Criminal Code and the Criminal Procedure Code will be replaced by new codes in this or in the coming year, which also suggests wide infrastructural reforms, it is recommended to use this momentum and incorporate the new codes in the criminal justice system. This will enable the law enforcement bodies and investigative bodies to assign codes to cases from the very outset of the criminal proceedings (from the moment of receiving crime report) which will enable to monitor the flow of cases within the entire criminal justice framework, including courts, to identify general trends of investigation of hate crime and hate speech cases.
- VI. Design a comprehensive guidebook of codes to be used as a reference document for the specialists of the Information Center, the Judicial Department and the Investigative bodies who do data processing and data entry activity in the relevant databases. As a guidance or as a reference paper, use the guidebooks developed by the Information Center (for example, see the Guidebook no. 14).
- VII. Design non-discrimination, hate speech and hate crime training programs oriented on such key concepts as protected grounds of discrimination, types of discrimination,

international definition of hate crime and hate speech, concept of bias indicators, specifics of investigating hate crime and hate speech cases.

- VIII. Conduct capacity development trainings for legal practitioners such as investigators, prosecutors and judges on the basic aspects of discrimination, hate crime and hate speech with special emphasis on bias indicators and specifics of investigating hate crime and hate speech cases.
- IX. Conduct capacity development trainings for data collection, data processing and data entry specialists of the Information Center of Police, Judicial Department and Investigative bodies on the basic aspects of the concept of non-discrimination, hate speech and hate crime with special emphasis made on protected grounds of discrimination, OSCE definition of hate crime and hate speech and the concept of bias indicators.
- X. Design and conduct capacity development trainings for human rights NGOs, aimed at enhancing their capacities in data collection and analysis that they come across during their NGO activities.



## Appendix 1. References

National International reports, Government decrees, guidelines:

1. ECRI report on Armenia (fifth monitoring cycle), Adopted on 28 June 2016
2. OSCE/ODIHR, Hate crime reporting: <http://hatecrime.osce.org/armenia>
3. Decree No. 1381 on the Regulation of Centralised Data Recording of Cases of Domestic Violence of 10 October 2019
4. Government Decree No. 1225-N of 23 October 2008 on the “Unified Forms and the Manner of Filling and Reporting Statistical Data of Pre-Trial Proceedings”
5. Government Decree 11-N “On Approval of Procedure of Providing Statistical Information” of the State Council on Statistics of the Republic of Armenia (October 3, 2003).
6. Report of the activity of Prosecutor’s Office of the Republic of Armenia in 2014. Annual reports can be seen on the following page of the website of the Prosecutor’s Office: <http://prosecutor.am/am/messages-to-the-president-and-the-national-assembly/>
7. Annual summary of the practice of criminal courts of general jurisdiction in 2014
8. Human rights situation of LGBT people, Annual review, Armenia, 2018, Pink Armenia: [https://www.pinkarmenia.org/wp-content/uploads/2019/05/2018annualreview\\_en.pdf](https://www.pinkarmenia.org/wp-content/uploads/2019/05/2018annualreview_en.pdf)
9. Monitoring of Hate Speech, Interim Report (July-December 2018), Helsinki Committee of Armenia : <http://armhels.com/publications/atelutyan-xosqi-mshtaditarkum/>
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## Appendix 2. List of legal acts

	<b>The Legal Act</b> (according to alphabetical order (Armenian alphabet))	<b>Article</b>
1.	Law on Service in National Security Bodies	14(1)
2.	Law on Public Service in the Staff of the National Assembly	11
3.	Labour Code	3(1)(3) 114(4)(4) 180(3)
4.	Law on Health Care and Medical Services for the Population	4
5.	Law on purchases	3(2)(1)
6.	Law on Libraries and Librarianship	18(1)
7.	Law on Advertising	8(b)
8.	Judicial Code	10(2) 141(2)
9.	The Judicial Acts Compulsory Enforcement Service Act	9(1)
10.	Law on the Child Rights	4
11.	Family Code	1(5)
12.	Electoral code	3(3)
13.	Law on Education	6(1)
14.	Law on Political Parties	4(2)
15.	Law on Community Services	11
16.	Law on Non-Governmental Organizations	4(1)(2)
17.	Law on Television and Radio	22(1)(2)
18.	Law on Arrested and Detained Persons	2(3)
19.	Law on Medical Support for Human Blood and its Components Donation and Transfusion	14(6)
20.	Law on the Basics of Legislation on Culture	9
21.	Law on Police	5
22.	Law on Police Service	11(1)
23.	Law on the Use and Protection of Historical and Cultural Monuments and Historical Environment	7
24.	Law on Remuneration of State Officials and State Servants	4(1)(7)
25.	Administrative Offences Code	248

26	Law on ensuring equal rights and equal opportunities for men and women	3 (1)(9)
27	Law on Protection of Competition	7(2)(a)
28.	Law on Advocacy	29(3)
29.	Law on Citizenship	3(2)
30.	Criminal Code	6
31.	Criminal Execution Code	8
32.	Law on Criminal Execution Service	14(1)
33.	Criminal Procedure Code	8(2)
34.	Law on Foreigners	22(1) 32

## Appendix 3. Registration card

### Registration Card

Form 1

Family name _____	_____
Name _____	(who has arrested,
Patronymic _____	_____
Birth date «__» _____р.	without abbreviations)
Birth Place _____	_____
_____	_____
Address _____	Case NN
_____	Investigator _____
Place of work _____	Archive _____
(position, occupation)	
_____	Fingerprint formula _____
Citizenship _____	
Arrested on (the date) «__» _____	The fingerprint of the right hand
The nature of crime _____	forefinger
_____	
The article of the Criminal Code _____	
_____	
The card was compiled by _____	<input type="text"/>
(the name of the body)	
_____	
«__» _____ (the date).	
_____	
(The name of the serviceman who has compiled the card)	

(Size 95 x 140)

### Opposite side of the card

Had been sentenced by _____
_____
When «__» _____ (the date)
(Number of article of the Criminal Code)
_____
Term _____
(please, mention in full the main and additional penalties)
_____
The court sentence had entered into legal force on «__» _____ (the date)
_____
Changes
of the sentence
and notes
on the movements
_____
_____
_____
_____

of the sentenced	_____	_____
	_____	_____
	_____	_____
	_____	_____

**Form 2**

Search card

Family name _____ name _____
Patronymic _____ " " _____ (date)
Birthplace _____
Address _____
Sex _____ Nationality _____ Passport _____
Had fled (was lost) _____ (date).
Reason for search _____
The type of the crime, No. of the article of the Criminal Code _____
Preventive measure _____
Criminal case No. _____ Search case No. _____
Search case was compiled « » _____ (date).

(Size 95 x 140)

Opposite side of the card

Shall be filled for the delinquents, evading from the payment of the means for livelihood
_____ court (marz, city, village)
200__ year. _____ No _____ writ obligatory (month) (date)
_____ is obliged to pay livelihood (compensated for damage pursuant to the claim)
for the benefit of
claimant _____ (name, family name, patronymic, legal entity)
_____ (name)
Address _____

\_\_\_\_\_

The card was filled by \_\_\_\_\_  
(position, rank, family name)

\_\_\_\_\_ Head of the Police Department \_\_\_\_\_  
(rank, family name, signature)

\_\_\_\_\_ 200 year.

**Form 3**

**REGISTRATION CARD**

On subjecting to criminal liability of the RA citizen in foreign states

Family name \_\_\_\_\_ name \_\_\_\_\_

Patronymic \_\_\_\_\_ was born \_\_\_\_\_ 19 \_\_\_\_ year

\_\_\_\_\_ (state, province, city, village )

Address \_\_\_\_\_

Had subjected to criminal liability \_\_\_\_\_ 200 year.

Nature of the crime \_\_\_\_\_

Article of the Criminal Code \_\_\_\_\_ preventive measure \_\_\_\_\_

\_\_\_\_\_ the name of the state \_\_\_\_\_

The card was filled by \_\_\_\_\_ 200 year.  
(the name of the serviceman of law enforcement structure)

Based on which documents \_\_\_\_\_

## Appendix 4. Available statistics

	Verification formulas 1+3=7+8+10 , 7=4+5+6, 14=12+13, 17=15+16	Articles of the RA Criminal Code	In the beginning of reporting period	Total of cases received in the	Total number of cases completed during the reporting period				Total number of	The number of the appealed judicial acts			The number of the annulled judicial acts		
					Examined on merits and judgements	A decision on criminal case was	A decision on	Total of the		Including the acts on merits	Including interim	Total	Including the acts on merits	Including interim acts	Total
			1	3	4	5	6	7	10	12	13	14	15	16	17
1.	Total number of the crimes committed against life and health		310	188	116	54	17	187	308	35	17	51	4	0	4
1.1	Murder	104													
1.2	Murder in the state of strong temporary insanity	105													
1.3	Murder of a newly born child by the mother	106													
1.4	Murder of a criminal through the use of excessive measures when capturing the latter	107													
1.5	Murder by exceeding the necessary defense	108													

1.6	Causing death by negligence	109												
1.7	Making somebody to commit suicide	110												
1.8	Abetment of suicide	111												
1.9	Infliction of willful serious damage to health	112												
1.10	Infliction of willful medium damage to health	113												
1.11	Infliction of serious or medium damage to health in the state of strong temporary insanity	114												
1.12	Infliction of serious or medium damage to a criminal when capturing the latter, through the use of excessive measures.	115												
1.13	Inflicting serious or medium damage by exceeding the limits of	116												



	necessary defense.														
1.1 4	Infliction of willful light damage to health	117													
1.1 5	Battery	118													
1.1 6	Causing severe physical pain or mental distress	119													
1.1 7	Inflicting serious damage to health through negligence.	120													
1.1 8	Inflicting medium damage to health through negligence.	121													
1.1 9	Illegal abortion	122													
1.2 0	Infecting with AIDS virus.	123													
1.2 1	Infecting with venereal or other sexually transmitted diseases.	124													
1.2 2	Breach of rules for transplantat ion operations.	125													
1.2 4	Subjecting a person to medical or	127													

	scientific experiment without the consent of the latter.													
1.25	Abandonment in danger.	128												
1.26	Failure to help the patient.	129												
1.27	Failure to implement or improper implementation of professional duties by medical and support personnel.	130												
1.28	Other crimes													
2	Total crimes against freedom, honor and dignity of the person													
2.1	Kidnapping	131												
2.2	Trafficking or human exploitation	132												
2.2.2	Trafficking or exploitation of a child or a person who is deprived of the ability to understand or direct the nature and significance of his or her	132.2												

	behavior as a result of mental disorder													
2.2 .3	Using the service of a person in exploitation	132 .3												
2.3	Illegal deprivation of liberty	133												
2.4	Illegal placing or keeping in the psychiatric hospital	134												
2.7	The threat to murder, to inflict serious damage to health or destroy property	137												
2.8	Other crimes													
3	Total number of crimes against sexual immunity and sexual freedom													
3.1	Rape	138												
3.2	Violent sexual actions	139												
3.3	Forcing to sexual intercourse or sexual acts	140												
3.4	Sexual intercourse with a	141												

	person under the age of sixteen or committing sexual acts with a person under the age of sixteen														
3.5	Harassment	142													
3.6	Other crimes														