

**Human Rights Violations of Lesbian, Gay, Bisexual,  
and Transgender (LGBT) People in Ukraine:  
A Shadow Report**

**Submitted for consideration at the 108<sup>th</sup> Session of the United  
Nations Human Rights Committee (Ukraine)**

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## **Executive Summary**

This report is a joint submission by Insight and Heartland Alliance for Human Needs & Human Rights (Heartland Alliance) to the United Nations (UN) Human Rights Committee (“HRC” or “the Committee”) on the occasion of its consideration of the State of Ukraine’s implementation of the *International Covenant on Civil and Political Rights* (“the Covenant” or “the ICCPR”) in Geneva, Switzerland on July 8<sup>th</sup> through 26<sup>th</sup> 2013.

The purpose of this report is to highlight the widespread and systematic human rights violations against sexual minorities in Ukraine. In particular, the report draws the attention of the Committee to the following breaches of the ICCPR:

- The State of Ukraine is set to pass discriminatory laws that severely curtail individuals from exercising the ICCPR rights to expression, assembly, and association on the grounds of sexual orientation or gender identity.
- The State of Ukraine has systematically failed to protect freedom of speech, association, and expression of LGBT advocates and human rights defenders.
- The State of Ukraine has failed to implement any public policies or legislation that would rectify the extreme public stigma against LGBT individuals in Ukrainian society, or to counter the homophobic speech and misinformation spread by anti-gay political and social movements.
- LGBT persons suffer from high levels of cruel, inhuman, and degrading treatment, including a constant threat of violence, from both State and non-State actors.
- There is systematic and widespread misconduct against LGBT persons by law enforcement officials, including arbitrary detention, blackmails and threats, cruel, inhuman and degrading treatment, and dangerous conditions in detention facilities.
- The State of Ukraine fails to adequately prevent, investigate, or prosecute violence against sexual minorities.
- The State of Ukraine fails to protect transgender individuals from forced sterilization in order to recognize their new legal gender.

The violations referred to above are each exacerbated by the absence of systematic reporting or recording. The failure to provide concrete, disaggregated statistics in regards to violence and discrimination against LGBT individuals permits Ukrainian authorities to ignore, and often misrepresent, homophobic abuse.

The extent, breadth, and severity of the State of Ukraine’s human rights violations amount to a clear breach of the terms of the Covenant.

## I. Introduction

This shadow report on the human rights situation of Lesbian, Gay, Bisexual, & Transgender (LGBT) people in Ukraine was written and submitted through the collaborative efforts of Insight and Heartland Alliance's Global Initiative for Sexuality and Human Rights.<sup>1</sup>

Six of the eight principal human rights treaty bodies<sup>2</sup> as well as various independent experts working within the Special Procedures<sup>3</sup> have consistently applied international human rights standards to address a myriad of human rights violations that occur on the basis of sexual orientation and gender identity, and have asserted that States must implement protections to combat abuses against LGBT individuals.<sup>4</sup> Significantly, the Human Rights Council adopted Resolution 17/19, *Human rights, sexual orientation, and gender identity* in June of 2011, expressing grave concern about the acts of violence and discrimination against individuals because of their sexual orientation or gender identity, and commissioning a study on the issue from the High Commissioner for Human Rights (OHCHR).<sup>5</sup> Relying on human rights norms and legal instruments, the OHCHR found that the core obligations of States with respect to protecting the human rights of LGBT persons are to: (1) Protect individuals from homophobic and transphobic violence; (2) Prevent torture and cruel, inhuman and degrading treatment; (3) Repeal laws criminalizing homosexuality; (4) Prohibit discrimination based on sexual orientation and gender identity; and (5) Safeguard freedom of expression, association and peaceful assembly for all LGBT people.<sup>6</sup>

Ukraine became a party to the International Covenant on Civil and Political Rights on March 20<sup>th</sup>, 1968.<sup>7</sup> The state is therefore obligated to respect and enforce the rights guaranteed by the ICCPR for all persons within its jurisdiction. This requirement is both negative and positive in

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<sup>1</sup> This report was authored by Melanie Todman J.D., Legal Fellow at Heartland Alliance, with significant contributions from Stefan Vogler, intern at Heartland Alliance, Olena Shevchenko, Director of Insight and Oksana Pokalchuk, Legal Director of Insight, under the direction of Stefano Fabeni, Managing Director of The Global Initiative for Sexuality and Human Rights at Heartland Alliance.

<sup>2</sup> Treaty bodies include: the Human Rights Committee; the Committee on Economic, Social, and Cultural Rights; the Committee on Elimination of Discrimination Against Women; the Committee on Elimination of Racial Discrimination; the Committee on Children's Rights; and the Committee Against Torture.

<sup>3</sup> Special Procedures experts include but are not limited to: Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment; Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions; Special Rapporteur on Violence Against Women, its Causes, and its Consequences; Working Group on Arbitrary Detention.

<sup>4</sup> See generally, International Commission of Jurists, *Sexual Orientation and Gender Identity in Human Rights Law, References to Jurisprudence and Doctrine of the United Nations Human Rights System* (April 2010), available at [http://www.asiapacificforum.net/support/issues/acj/references/sexual-orientation/downloads/Jurisprudence\\_and\\_Doctrine\\_of\\_UN\\_Human\\_Rights\\_System.pdf](http://www.asiapacificforum.net/support/issues/acj/references/sexual-orientation/downloads/Jurisprudence_and_Doctrine_of_UN_Human_Rights_System.pdf) (comprehensive list of human rights bodies and experts applying human rights law to sexual orientation and gender identity).

<sup>5</sup> See G.A. Res. 17/19, UN Doc. A/HRC/17/L.9/Rev.1, (June 25, 2011), available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/17/19](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/19).

<sup>6</sup> See UN Human Rights Council, *Report of the UN High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation or gender identity, delivered to the General Assembly*, UN Doc. UN A/HRC/19/41, (Dec. 15 2011) at ¶¶ 8-19, available at <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNReports.aspx>.

<sup>7</sup> See OHCHR, Status of Ratifications: International Covenant on Civil and Political Rights, available at, <http://www2.ohchr.org/english/law/ccpr-ratify.htm> (last visited 15 April 2013).

nature, and includes the duty to adopt legislative, judicial, administrative, educative, and other appropriate measures that are necessary to fulfill the ICCPR's legal obligations.<sup>8</sup> In applying the ICCPR, the HRC has referred explicitly to sexual orientation in its Concluding Observations on various occasions.<sup>9</sup> Ukraine has not addressed the human rights status of sexual minorities in past country reports submitted to the HRC under Article 40 of the ICCPR. However, in the course of the first cycle of Ukraine's Universal Periodic Review ("UPR") in 2008, members of the Human Rights Council Working Group on Human Rights questioned Ukraine regarding its treatment of sexual minorities, and recommended that the government apply the *Yogyakarta Principles* when formulating public policies and provide human rights trainings that focus persons of minority sexual orientation or gender identity to state authorities and law enforcement officials.<sup>10</sup> During the course of the second cycle of Ukraine's UPR in 2012, the Working Group expressed deep concern regarding the introduction of 'homosexual propaganda'<sup>11</sup> laws currently being advanced within the Ukrainian Parliament.<sup>12</sup> Several countries have made recommendations urging Ukraine to halt the adoption of these laws and expand anti-discrimination measures to protect sexual minorities.<sup>13</sup> Furthermore, the Special Rapporteur on

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<sup>8</sup> See U.N. Human Rights Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* [80], UN Doc. CCPR/C/21Rev.1, (26 May 2004) at ¶¶ 6, 7, 10, 13, available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

<sup>9</sup> See, e.g., *Concluding Observations of the Human Rights Comm.: Barbados*, UN Doc. CCPR/C/BRB/CO/3, (11 May 2007) (requesting repeal of criminalization of same-sex consensual relations); See also *Concluding Observations of the Human RC: El Salvador*, UN Doc. CCPR/CO/78/SLV, (22 Aug. 2003) (requesting effective protection for sexual minorities).

<sup>10</sup> See *UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ukraine*, ¶ 58, UN Doc. A/HRC/8/45, (3 June 2008) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/140/79/PDF/G0814079.pdf?OpenElement>.

<sup>11</sup> Discussed *Infra* Section A.

<sup>12</sup> See, *UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ukraine*, UN Doc. A/HRC/8/45, ¶ 97, (20 Dec. 2012) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/189/10/PDF/G1218910.pdf?OpenElement>.

<sup>13</sup> The list of the Working Group's Recommendations to the Ukraine are as follows: Reject any proposed legislation that would restrict freedom of expression relating to sexual orientation (Slovenia) (Norway); Withdraw its draft legislation criminalising the promotion of homosexuality, and refrain from adopting any other legislation that restricts freedom of expression (Australia); Ensure that legislation, including the proposed Bill 8711, is fully compliant with Ukraine's international commitments, including under the European Convention for Human Rights (United Kingdom of Great Britain and Northern Ireland); Enact legislation that explicitly protects LGBT persons from discrimination and that laws that contain discriminatory provisions against LGBT persons are amended (Ireland); Adopt a comprehensive anti-discrimination law that addresses the worrying trend of incidents based on gender, sexual orientation, racial and ethnic discrimination (Portugal); Remove from the legislation discriminatory provisions based on race, sex or sexual orientation, and adopt comprehensive anti-discrimination legislation (Canada); Step up the efforts to fight against discrimination by refraining from contradictory legislation and by amending the anti-discrimination legislation to include explicit references to sexual orientation and gender identity as possible grounds of discrimination (Finland); Continue its effort to combat discrimination and promote equality in accordance with international treaties establishing guarantees of fundamental human rights and freedoms and equality in the enjoyment of such rights, without privileges or restrictions based on race, colour, political, religious or other belief, gender, sexual orientation, ethnic or social origin, property status, place of residence, language or other grounds (Brazil); Respect its international commitments on fundamental rights related to non-discrimination, prevent the adoption of a law prohibiting freedom of expression with regards to homosexuality and raise awareness of civil society on combating all forms of discrimination, including discrimination based on sexual orientation and gender identity (France); Take an active stance to stop any actions or laws that constitute an infringement of the rights of LGBT persons (Sweden); Implement the recommendation issued in 2010 by the Committee of Ministers of the Council of Europe on measures to combat discrimination based on sexual orientation or gender identity (Switzerland); Adopt legislative and other measures to correct and prevent discrimination based on sexual

the promotion and protection of the right to freedom of opinion and expression,<sup>14</sup> the Special Rapporteur on the situation of human rights defenders,<sup>15</sup> and the Special Rapporteur on rights to freedom of assembly and of association<sup>16</sup> have all expressed deep concern regarding the human rights violations perpetrated against sexual minorities in the Ukraine.

In spite of Ukraine's obligations under the ICCPR, and its stated commitment to protect the "freedom of all persons and their equality in terms of dignity and rights"<sup>17</sup> as required by its Constitution, the Ukrainian government has rejected the UPR recommendations to withdraw pending "homosexual propaganda" legislation that discriminates against sexual minorities, and continues to fail in preventing numerous rights violations that have been perpetrated against LGBT individuals by both state and private actors.

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orientation, and to ensure full respect for freedom of expression and association of LGBT persons (Uruguay); Increase efforts to improve the effective protection of LGBT persons, and abandon legislation work on draft law no. 8711 on so called 'propaganda of homosexuality' and refrain from other legislation infringing on the human rights and fundamental freedoms of LGBT persons (Germany).

<sup>14</sup> See *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, U.N. Doc. No. A/HRC/17/27/Add.1 (27 May 2011) at ¶¶ 2238-2242, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UASession14.aspx>.

<sup>15</sup> See *Report of the Special Rapporteur on the situation of human rights defenders*, U.N. Doc. No. A/HRC/19/55/Add.2 (23 Feb. 2012) at ¶¶ 377-378, available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.55.Add.2\\_EFSonly.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.55.Add.2_EFSonly.pdf).

<sup>16</sup> See *Report of the Special Rapporteur on rights to freedom of assembly and of association*, U.N. Doc. No. A/HRC/23/39/Add.2 (24 April. 2013) at ¶¶ 425-437, available at [http://www.ohchr.org/documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39\\_EN.pdf](http://www.ohchr.org/documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf)

<sup>17</sup> See *Consideration of reports submitted by States parties under article 40 of the Covenant: Ukraine*, UN Doc. CCPR/C/UKR/7 at ¶ 6, available at [http://www.bayefsky.com/reports/ukraine\\_ccpr\\_c\\_ukr\\_7.pdf](http://www.bayefsky.com/reports/ukraine_ccpr_c_ukr_7.pdf).

## II. Background

### A. Sexual Orientation and Gender Identity

Sexual orientation refers to “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.”<sup>18</sup> This term includes lesbian, gay, bisexual, and heterosexual orientations.

A person’s sexual orientation is distinct from a person’s gender identity or gender expression. Gender identity refers to:

a person's innate, deeply felt psychological identification as male or female, which may or may not correspond to the person's body or designated sex at birth (meaning what sex was originally listed on a person's birth certificate).<sup>19</sup>

The external manifestation of a person’s gender identity is called gender expression. Gender expression is typically associated with “masculinity,” “femininity,” or gender-variant behavior.<sup>20</sup>

Gender expression refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions. Social or cultural norms can vary widely and some characteristics that may be accepted as masculine, feminine or neutral in one culture may not be assessed similarly in another.<sup>21</sup>

Transgender is a term for people whose gender identity and/or gender expression and their sex at birth do not match.<sup>22</sup> Transgender people generally seek to make their gender expression match their gender identity, rather than their sex at birth.<sup>23</sup> For instance, a person whose sex at birth is male, but who has an internal sense of being female, will have female gender expression and is considered a transgender woman. Altering one’s birth sex is not a simple or short process, but rather a process that occurs over a long period of time known as “transition.”<sup>24</sup> Steps towards transitioning may include: name and sex change on legal documents, hormone therapy, and medical treatment including surgery.

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<sup>18</sup> International Commission of Jurists, *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, (March 2007), available at [http://www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm).

<sup>19</sup> *Id.*

<sup>20</sup> The Gay & Lesbian Alliance against Defamation (GLAAD), *Media Reference Guide* at 8 (8<sup>th</sup> Edition, May 2010), available at <http://www.glaad.org/reference>.

<sup>21</sup> Human Rights Campaign, *Sexual Orientation and Gender Identity: Terminology and Definitions*, available at <http://www.hrc.org/resources/entry/sexual-orientation-and-gender-identity-terminology-and-definitions> (last visited 1 Feb 2013).

<sup>22</sup> *See Id.*

<sup>23</sup> *See Id.*

<sup>24</sup> *See Id.*

## B. Religious Opposition

Christian religious groups, particularly Orthodox and Catholic churches, are a significant religious, political, and cultural force within Ukraine, and enjoy a high level of trust from citizens relative to other institutions in Ukrainian society.<sup>25</sup> The religious doctrines of Ukrainian churches view homosexuality as contrary to natural law, and thus a sin and a moral deviation. The Religious Information Service of Ukraine (RISU), an association of Orthodox and Catholic Churches in the Ukraine, has stated that “the society has no right to turn a blind eye at promotion of homosexuality by considering it a private matter of those inclined to this sin...we strongly object that homosexual lifestyle and behavior is regarded as normal...and that homosexuality is listed as a human right, that is promoted as a normal variant of sexual life.”<sup>26</sup> Within broader society, those who identify as gay, engage in same-sex relations, or whose gender identity differs from their birth sex are believed to have a disorder<sup>27</sup> despite the Ministry of Health’s statements to the contrary.<sup>28</sup> Though dissent from these official positions does exist, this deep-seated religious and cultural perspective influences the status and treatment of LGBT people within Ukrainian society. These religious values reinforce traditionally held cultural mores of strict biologically-based gender roles. In addition, non-normative gender identification and homosexuality are perceived by many to be unwanted impositions from western countries, and incompatible with traditional values in the Ukraine.<sup>29</sup> Homosexuality continues to be a taboo subject and the status of sexual minorities within Ukrainian society is becoming precarious, with increasing levels of hate speech and violence.

The Church community is a formidable opponent of recognizing human rights for sexual minorities.<sup>30</sup> “Anti-propaganda” bills designed to severely curtail the activities of LGBT groups in the Ukraine - Bills 0945 and 1155 - have been introduced in the Verkhovna Rada of Ukraine.<sup>31</sup> The bills serve as rallying point for groups leading anti-gay religious and social movements within Ukraine. Various church authorities and groups have aggressively campaigned to pass the legislation, pressuring politicians and government institutions to restrict the ability of LGBT

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<sup>25</sup> Democratic Initiatives Foundation, *Public opinion poll Ukraine - June 2007* (12 July 2007), available at [http://dif.org.ua/en/polls/2007\\_polls/gromadska-dumka-naseleennja-ukraini-cherven-2007-roku.htm](http://dif.org.ua/en/polls/2007_polls/gromadska-dumka-naseleennja-ukraini-cherven-2007-roku.htm).

<sup>26</sup> Religion Information Service of Ukraine (RIS), *Declaration of Christian Churches of Ukraine ‘On negative attitude towards the sin of homosexuality, its propagation in society and attempts to legalize so-called same-sex marriage*, available at [http://risu.org.ua/ua/index/resources/church\\_doc/ecumen\\_doc/36168/](http://risu.org.ua/ua/index/resources/church_doc/ecumen_doc/36168/).

<sup>27</sup> A. Zinchenkov & A. Kravchuk, *Overview of LGBT Human Right Situation in Ukraine*, (17 Jan. 2011) available at [http://www.gay.org.ua/publications/gay\\_ukraine\\_2010-e.doc](http://www.gay.org.ua/publications/gay_ukraine_2010-e.doc) (pg 1)

<sup>28</sup> *Id* at 3.

<sup>29</sup> See, for example, Council of LGBT Organisations of Ukraine, *LGBT Vector of Ukraine: the situation of LGBT in Ukraine (November 2011-2012)*, at 17, (2013) available at [http://www.gay.org.ua/publications/lgbt\\_ukraine\\_2012-e.pdf](http://www.gay.org.ua/publications/lgbt_ukraine_2012-e.pdf) (citing Oleh Zarubinskii, leader of the People’s Party and head of the parliamentary Committee on Human Rights who stated “Maybe somebody likes [the] possibility to adopt children by same-sex couples...If it is a Western ideal, then I don’t want such [a] Western ideal...there are good Western ideals and there are those that shall never set foot on my threshold” and Oleh Tiahnybok, leader of the far-right nationalist party Svoboda, who stated “they try to impose on us not the best European values, which we would like to implant in Ukraine some...pseudotolerance...I don’t want such Europe here in Ukraine, when they bring various perversions and tell that this is the largest appearance of Europeaness.”)

<sup>30</sup> See, for example RISU, *Church Against Government’s Protection of Sexual Minorities*, available at [http://risu.org.ua/en/index/all\\_news/state/legislation/51601/](http://risu.org.ua/en/index/all_news/state/legislation/51601/) (declaration describing the Ukrainian church community’s opposition to extending human rights to sexual minorities.)

<sup>31</sup> The Ukrainian Parliament.



groups to campaign, hold peaceful marches and rallies, and distribute information and educational material.<sup>32</sup>

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<sup>32</sup> See, for example, RISU, *Heads of Churches Call on President to Prevent Actions of Propaganda of Homosexuality in Kyiv* (11 April 2012) available at [http://risu.org.ua/en/index/all\\_news/community/religion\\_and\\_society/47724/](http://risu.org.ua/en/index/all_news/community/religion_and_society/47724/) (declaring opposition of Ukrainian church community to public demonstrations by LGBT activists.)

## C. Substantive Violations

### A. Article 2(1) (Nondiscrimination) and Article 26 (Equality before the Law)

#### *Relevant Law and Jurisprudence*

Articles 2(1) and Article 26 of the ICCPR obligate each State party to ensure that all individuals within its jurisdiction enjoy human rights without discrimination and with equal protection under the law.

Article 2(1) states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>33</sup>

Article 26 states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>34</sup>

The principle of non-discrimination, together with the principles of equality before the law and equal protection of the law without any discrimination, constitute the central and guiding principles of human rights.<sup>35</sup> The Covenant's prohibition of discrimination limits States from instituting any distinction, exclusion, restriction or preference that has the *purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise by all persons of all rights and freedoms.<sup>36</sup> Thus, Article 2 ensures that every individual within a State's territory and jurisdiction enjoys each right that is enumerated within the ICCPR. Article 2 also requires States to adopt negative measures, specifically refraining from violation of ICCPR rights, as well as positive legislative, judicial, administrative, educative, and other appropriate measures to protect these rights from governmental and private parties. In a similar vein, Article 26 prohibits discrimination in law or in fact in any field regulated and protected by State authorities.<sup>37</sup> As

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<sup>33</sup> International Covenant on Civil and Political Rights, (New York Dec. 16, 1966), 999 U.N.T.S. 171 and 1057 U.N.T.S. 407, *entered into force* 23 March 1976. [hereinafter ICCPR].

<sup>34</sup> *Id.*

<sup>35</sup> See Human Rights Comm., *General Comment No. 18: Non-Discrimination*, UN Doc. HRI/GEN/1/Rev.1, (11 Nov. 1998) at ¶ 1, *available at* <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

<sup>36</sup> See *Id.* at ¶ 7.

<sup>37</sup> See *Id.* at ¶ 12.

such, States are obligated to ensure that the content of *all* legislation as well as the enforcement of legislation is not discriminatory.<sup>38</sup>

In the landmark HRC decision *Toonen v. Australia* in 1994, the Committee interpreted the reference to “sex” in Articles 2(1) and 26 to include sexual orientation, deeming the criminalization of consensual same-sex activity as a violation of the ICCPR.<sup>39</sup> This ruling was extended to include any distinctions based upon sexual orientation, which amount to a denial of the right to equality before law.<sup>40</sup> Thus, any governmental action or legislation that has the purpose or effect of limiting either the enjoyment of ICCPR rights on the basis of sexual orientation or the right to equal treatment under the law is prohibited, and States are required to enact proactive measures to ensure that the rights of sexual minorities within its jurisdiction are protected.

Furthermore, in *Irina Fedotova v. Russian Federation*, the HRC ruled that Russia’s law prohibiting ‘homosexual propaganda,’<sup>41</sup> which had the aim of suppressing the advocacy activities of and dissemination of information and opinions by LGBT individuals and groups, is a discriminatory restriction of sexual minorities’ ICCPR rights of expression and freedom from discrimination.<sup>42</sup>

Under the Covenant, the government of Ukraine has a legal obligation to refrain from discriminating on the basis of sexual orientation, in law or in practice, and to implement measures to protect the rights of sexual minorities from non-state actors. In Ukraine’s replies to the UPR recommendation that the country end protect discrimination against sexual minorities, it pointed to protections against discrimination for all members of society<sup>43</sup> and the guarantees of equality before the law and equal protection under the law<sup>44</sup> in its own Constitution. However, Ukraine has failed to adequately meet its obligations under the ICCPR.

### ***Violations of Articles 2 and 26(1)***

#### **Anti-Propaganda Laws**

Members of the Verkhovna Rada have introduced two draft laws that discriminate on the grounds of sexual orientation and gender identity, and blatantly violate the right to freedom of expression. Bill Draft No. 1155, entitled “On the prohibition of propaganda of homosexual relations aimed at children,” was introduced in December 2012.<sup>45</sup> The bill defines “propaganda

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<sup>38</sup> See *Id.*

<sup>39</sup> See *Toonen v. Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (1994).

<sup>40</sup> See *Edward Young v. Australia*, Communication No. 941/200, UN Doc. CCPR/C/79/D/941/2000 (2003).

<sup>41</sup> See Ryazan Region Law on Administrative Offences § 3.1 (“Public actions aimed at propaganda of homosexuality (sexual act between men or lesbianism) among minors shall be punished with administrative fine of between one thousand five hundred and two thousand roubles.”)

<sup>42</sup> See *Irina Fedotova v. Russian Federation*, Communication No. 1932/2010, UN Doc. CCPR/C/106/D/1932/2010 (2012).

<sup>43</sup> See Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, UN Doc. A/HRC/22/7/Add.1 (21 Feb. 2013).

<sup>44</sup> See *Id.*

<sup>45</sup> The previous iteration of this bill was Draft Bill No. 10290.

of homosexuality” as “intentional activity, which aims to and is expressed in dissemination of any *positive* information about same-sex relations that could negatively affect....development of the child, including forming a misconception of traditional and non-traditional marriage relations being equal, and in the future impact his or her choice of sexual orientation.”<sup>46</sup> The Bill’s scope is extremely broad, prohibiting activities such as demonstrations, parades, lectures and discussions, literature, and optional classes that contain positive information about homosexuality. It would also ban the media from disseminating positive information about homosexuality.<sup>47</sup> Bill Draft Law no. 0945 on “Introduction of Changes to Certain Legislative Acts of Ukraine (regarding protection of children’s rights in the safe information sphere),” was introduced in June 2011 and passed on Parliament’s first reading in October 2012<sup>48</sup>. It aims to amend several laws, in sum prohibiting the production, publication, or printing of all media content, as well as importation of creative writing, cinematography and video material, that ‘promotes’ homosexuality. Both bills contain criminal sanctions in the form of fines and imprisonment of up to five years for violation.<sup>49</sup>

These sweeping “homosexual propaganda” bills violate Arts. 2 and 26 of the ICCPR as their sole purpose is to single out sexual minorities and LGBT organizations for criminalization, thereby discriminating on the basis of sexual orientation and gender identity, and violating the principle of equal treatment under the law. They also directly violate the ICCPR-mandated rights to association, assembly, and expression.<sup>50</sup> In addition, the introduction of this legislation has the effect of perpetuating discrimination and unequal treatment of LGBT individuals in Ukraine. As will be illustrated throughout this report, the bills serves as a pretext for denying sexual minorities a range of rights to which they are entitled under the ICCPR and other human rights conventions and laws. Additionally, because it is state-sponsored discrimination, the bill also legitimizes the stigma of sexual minorities within Ukrainian society, who face pervasive societal discrimination in employment, housing, health, family affairs, and other matters pertaining to daily life. The introduction of these bills (and earlier iterations) has also occurred in tandem with a surge of anti-gay violence.<sup>51</sup> Though there has been internal condemnation by some Ukrainian officials, these bills have not been revoked as required by the ICCPR and other human rights conventions.

### Discriminatory Rhetoric and Actions by Government Officials

Homophobic attitudes and policies are prevalent within the Ukrainian government, as reflected by the so-called ‘homosexual propaganda’ bills. The introduction of Draft Bills No. 0945 and 1155 has ignited widespread debate within Ukraine regarding the status of LGBT individuals in society. Within this context, there are numerous documented instances of government officials and institutions making inflammatory remarks regarding sexual minorities and spreading

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<sup>46</sup> Council of Europe, Parliamentary Assembly, *Tackling discrimination on the grounds of sexual orientation and gender identity* at ¶ 43-45, (13 May 2013) available at

[http://www.assembly.coe.int/Communication/aega24\\_2013.pdf](http://www.assembly.coe.int/Communication/aega24_2013.pdf)

<sup>47</sup> *Id* at ¶ 43-45.

<sup>48</sup> The previous iteration of this bill was Draft Bill No. 8711.

<sup>49</sup> Human Rights Watch, *Ukraine: Reject discriminatory LGBT Laws*, (16 Oct. 2011), available at <http://www.hrw.org/news/2011/10/16/ukraine-reject-homophobic-law>.

<sup>50</sup> See discussion *infra* Section D.

<sup>51</sup> See Council of LGBT Organizations of Ukraine, *supra* note 30 at 10.

misinformation about homosexuality. For instance, the Explanatory Note accompanying Bill No. 0945 states:

“[t]he spread of homosexuality constitutes a threat to national security as it leads to an HIV/AIDS epidemic, destroys the institution of family and can cause a demographic crisis.”<sup>52</sup>

This spurious linking of sexual minorities, HIV/AIDS, and the demise of family life has no empirical basis, and adds to the circulation of misinformation regarding LGBT people in Ukraine. The Minister of Education, Science, Youth and Sports has stated that “[unless there is a union between Ukraine and Russia] our fate will be sad [with] civilization dying before our eyes, [which] initially arose on the basis of Christianity and ends with...propaganda of sodomy...”<sup>53</sup> The Ministry of Health has approved three medical textbooks, which explicitly characterize homosexuality as a mental disorder or sexual disorder, and prescribe medical interventions.<sup>54</sup> These textbooks are available in the library catalogues of many Ukrainian medical schools. Several members of Parliament have expressed similar feelings, asserting that homosexuality will lead to the end of society,<sup>55</sup> that sexual minorities are perverted,<sup>56</sup> violate all norms of morality,<sup>57</sup> and should be remain hidden.<sup>58</sup> More startling are the comments of PM Leonid Grach, who stated during his tenure as the head of the committee on human rights, national minorities and international relations: “[H]omosexuality is an anomaly, which is caused by the amorality and the depravity of man” and

“Me and my colleagues in the Parliament have to protect the society from infringement upon morality, to prevent penetration into consciousness and souls of people of any age the idea that the state is on the side of people who sow debauchery, promote dissoluteness, sexual permissiveness, bring abomination of corruption of morals into society...the state must protect society from evil, from violence, including such evil as homosexuality, lesbianism and such.”<sup>59</sup>

Such statements by high-ranking officials are unacceptable in a democracy that has formally committed to securing the human rights and equal treatment of all people within its territory.

Official opposition to homosexuality has not been limited to rhetoric, as national and local authorities have acted upon their prejudice against sexual minorities in their official capacities. In adoption of anti-discrimination laws, legislators have purposefully and systematically excluded sexual minorities from protections extended to other groups, including in the areas of housing, protection from hate crimes, and employment. For instance, a draft of the new Labour Code that was submitted to the Verkhovna Rada in 2007 guaranteed equality in labour rights “regardless of

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<sup>52</sup> See *Ukraine parliament votes to outlaw "promotion of homosexuality*, REUTERS (2 Oct. 2012), available at <http://www.reuters.com/article/2012/10/02/ukraine-gay-idUSL6E8L2CSF20121002>.

<sup>53</sup> See Council of LGBT Organizations of Ukraine, *supra* note 30.

<sup>54</sup> See *Id* at 10 (listing textbooks that contain misinformation regarding homosexuality.)

<sup>55</sup> See *Id* at 17 (citing statement by PM Volodymr Stretovych).

<sup>56</sup> See Nash Mir (Our World) Gay and Lesbian Center, *Ukrainian Homosexuals & Society*, at 72 (2007).

<sup>57</sup> See *Id*, page 73

<sup>58</sup> See *Id*.

<sup>59</sup> See *Id*.

his/her...sexual orientation.” The inclusion of sexual orientation was subsequently denounced by the Supreme Court of Ukraine.

Inclusion of protections from discrimination on the grounds of sexual orientation in employment is, in our opinion, unreasonable and cannot be justified. First, this article of the Labour Code of Ukraine confuses natural rights and unnatural actions such as...sexual orientation. [U]se of the term ‘sexual orientation’ in this clause in our opinion provides the so-called ‘sexual minorities’ with additional privileges, which lead to the undermining of public morals and contributes to the disruption of employment relations.<sup>60</sup>

Given the contempt expressed by such as powerful institutional actor, it is not surprising that the mention of sexual orientation was excluded from the final iteration of the Code. LGBT persons have also faced discriminatory attitudes and actions from judges (discussed *infra* Section D), local officials and administrative agencies, (discussed *infra* Section D), and law enforcement officials (discussed *infra* Sections B and C) that have led to violations of ICCPR rights.

LGBT individuals experience discrimination because of their sexual orientation or gender identity on a daily basis. Passage of Bills 0945 and 1155 would institutionalize discrimination, reinforcing homophobia directed towards sexual minorities within Ukrainian society, legitimizing other human rights abuses by governmental and nongovernmental actors, and creating very dangerous conditions for sexual minorities. As it is violent violations are grossly underreported because of the culture of fear and mistrust within the LGBT community towards law enforcement, and the general marginalization of the community within Ukraine. Several studies have found that a majority of Ukrainians view LGBT person negatively, with one 2011 poll conducted by the Gorshenin Institute, finding that 78 percent of Ukrainians have this view.<sup>61</sup> State authorities have done nothing to reverse this trend, and many contribute to and exploit the climate of intolerance.

## **B. Article 6 (Right to Life) and Article 7 (Freedom from Cruel, Inhumane or Degrading Treatment)**

### ***Relevant Law and Jurisprudence***

The HRC has affirmed that the right to life is the supreme right from which no derogation is permitted.<sup>62</sup> Article 6 states that: “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of...life.”<sup>63</sup> Article 7 protects both the inherent dignity and the physical and mental integrity of every human being. It provides that

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<sup>60</sup> Serhiy Ponomaryov, *Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Legal Report Ukraine*, The Danish Institute for Human Rights, at ¶ 138, (27 May 2008) available at [http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011\\_en.pdf](http://www.coe.int/t/Commissioner/Source/LGBT/LGBTStudy2011_en.pdf).

<sup>61</sup> See *supra* note 52.

<sup>62</sup> See Human Rights Comm., *General Comment No. 6: The Right to Life*, UN. Doc. HRI/GEN/1/Rev.1, (30 Apr. 1982) at ¶ 1, available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

<sup>63</sup> ICCPR, § 6.

“[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>64</sup> In addition to refraining from active human rights violations, the State is also required to enact positive measures to ensure that private citizens do not violate these fundamental rights. The HRC notes that parties to the ICCPR must take measures to prevent and punish deprivation of life by enacting and prosecuting under criminal legislation.<sup>65</sup> This duty includes “closely monitor[ing] allegations of extrajudicial killings,” and ensuring that allegations are “investigated in a prompt and effective manner with a view to eradicating such crimes, bringing perpetrators to justice and hence fighting impunity and providing effective remedies to victims.”<sup>66</sup> Similarly, to ensure freedom from cruel, inhuman, and degrading treatment for every person, the State must implement legislative and administrative protections against actions prohibited by Article 7 of the ICCPR.<sup>67</sup> In particular, the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment has noted that members of sexual minorities are “disproportionately subjected to torture and other forms of ill-treatment ... and have been subjected to harassment, humiliation an verbal abuse relating to their real or perceived sexual orientation or gender identity and physical abuse, including rape and sexual assault.”<sup>68</sup>

### *Violations of Articles 6 and 7*

#### Violence and Hate Crimes Against Individuals on the basis of Sexual Orientation or Gender Identity

Sexual minorities in Ukraine live in the midst of increasingly hostile societal conditions, and are frequently victims of violent physical attacks, which are often not reported or investigated by the police. There are no official statistics that track the amount of violence experienced by individuals on grounds of their sexual orientation and gender identity, however many observers have noted that incidences of violence and hate crime against this population have increased substantially in recent years.<sup>69</sup>

There are several documented incidents of homophobic violence in Ukraine. Furthermore, law enforcement officials have failed to protect sexual minorities from foreseen violent situations or pursue investigations of hate crimes committed against LGBT individuals, and the judiciary has failed to adequately punish perpetrators. For instance, on May 20<sup>th</sup>, 2012, Karasiichuk and Sheremet, two members of a Pride committee, were attacked by a group of 10 masked men. The attacked followed a news conference to announce the committee’s decision to cancel the planned Kiev Pride parade because police could not guarantee protection for parade participants due to the large numbers of anti-gay protesters, including neo-Nazi groups, arriving to disrupt the

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<sup>64</sup> ICCPR, § 7.

<sup>65</sup> *See Id.*

<sup>66</sup> Human Rights Comm., *Concluding Observations: Jamaica*, UN Doc. CCPR/C/JAM/CO/3 (2004) at ¶ 16.

<sup>67</sup> *See General Comment No. 20*, at, *supra* note 39, at ¶ 2.

<sup>68</sup> *Report of the Special Rapporteur on the question of torture ad other cruel, inhuman, or degrading treatment or punishment*, U.N. Doc. No. A/56/156 (3 July 2001) at ¶ 3, available at <http://www.un.org/documents/ga/docs/56/a56156.pdf>.

<sup>69</sup> *See, for example*, Council of LGBT Organizations of Ukraine, *supra* note 30 at 19.

parade.<sup>70</sup> Sheremet was doused with pepper spray and then kicked in the head, arms, and legs by a group of masked men.<sup>71</sup> Karasiichuk was a victim of another violent assault within six weeks of the first assault because of his sexual orientation. On June 22, 2012, Karasiichuk was approached by an unidentified man as he walked to his apartment from the subway.<sup>72</sup> The man, who had been waiting for Karasiichuk, asked him “are you a fag?” and proceeded to kick him in the head and jaw. Karasiichuk suffered a concussion and a fractured jaw, which had to be wired shut. Though Karasiichuk’s family contacted the police to report the incident, and the medical staff treating him reported to the police that the patient presented injuries consistent with a beating, the police did not respond or investigate until they were pressured by an LGBT rights organization two days later.<sup>73</sup>

On December 8<sup>th</sup>, 2012, The Kyiv Post reported that LGBT and human rights activists were attacked by activists from Svoboda, Ukraine’s ultra-nationalist party, during a gathering to recognize Human Rights day and protest the introduction of the homophobic bills described above. Attackers sprayed teargas on the activists and initiated a fight. Police detained six protesters but only two Svoboda members, who were quickly released.<sup>74</sup> The protesters were held for three hours, and charged with ‘hooliganism.’ There were reports that the police were making homophobic and transphobic comments during the protest.<sup>75</sup>

In October 2009, militants from a nationalist organization physically assaulted participants at a gay poetry presentation. When a complaint was filed by an LGBT organization, the police refused to follow-up with an investigation.<sup>76</sup>

On November 20, 2010, a NGO organized events to commemorate the International Transgender Day of Remembrance. At movie screening that was part of these events, approximately ten masked individuals violently attempted to break into the viewing hall and sprayed tear gas at movie attendants. Police did not file a complaint or launch an investigation.<sup>77</sup> The ultra-right organization, National Union, claimed responsibility for the attack, stating that it appeared to be perpetrated by “unknown patriots resembling activities of the National Union.”<sup>78</sup>

On December 11, 2010 in Kyiv, activists convened to protest the social policies of Ukrainian authorities. The protest was disrupted when members of the neo-Nazi party, Svoboda, attacked

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<sup>70</sup> See *Violence against gays in Ukraine captured for whole world to see*, KYIV POST, (24 May 2012), available at <http://www.kyivpost.com/content/ukraine/violence-against-gays-in-ukraine-captured-for-whol-1-128231.html>.

<sup>71</sup> See *Id.*

<sup>72</sup> See Council of LGBT Organisations of Ukraine, *supra* note 30 at 9.

<sup>73</sup> See Human Rights Watch, *Ukraine: Investigate Violence Against LGBT Activists*, (31 May 2013), available at <http://www.hrw.org/news/2013/05/30/ukraine-investigate-violence-against-lgbt-activists>.

<sup>74</sup> Interview by Stefan Vogler with Olena Shevchenko, 28 Jan. 2013 (notes on file with author).

<sup>75</sup> See *Id.*

<sup>76</sup> See *Id.*

<sup>77</sup> Nash Mir (Our World) Gay and Lesbian Center, *Situation of LGBT People in Ukraine* at ¶ 6, available at [http://www.stiftung-](http://www.stiftung-evz.de/fileadmin/user_upload/EVZ_Uploads/Handlungsfelder/Handeln_fuer_Menschenrechte/Stop_Hate_Crime/Pr)

[evz.de/fileadmin/user\\_upload/EVZ\\_Uploads/Handlungsfelder/Handeln\\_fuer\\_Menschenrechte/Stop\\_Hate\\_Crime/Pr](http://www.stiftung-evz.de/fileadmin/user_upload/EVZ_Uploads/Handlungsfelder/Handeln_fuer_Menschenrechte/Stop_Hate_Crime/Pr)  
[ojekte/situation-of-lgbt-people-in-ukraine.pdf](http://www.stiftung-evz.de/fileadmin/user_upload/EVZ_Uploads/Handlungsfelder/Handeln_fuer_Menschenrechte/Stop_Hate_Crime/Pr).

<sup>78</sup> See Zinchenkov & A Kravchuk, *supra* note 28 at 6-7.



action participants, while screaming out homophobic slurs and proclaiming themselves as ‘Christian youth.’<sup>79</sup>

In January of 2012 in Kremenchuk, a 24 year-old gay man was severely beaten by his stepfather because of his sexual orientation. The perpetrator was only sentenced with a fine of 51 Ukrainian hryvnias (approximately US \$5) and 40 hours of community service.<sup>80</sup>

A man was beaten and robbed by four assailants in Kyiv. Their apparent reason for committing the act was the “gay” appearance of the victim.<sup>81</sup>

In June of 2011 in Kyiv, a woman was raped by a taxi driver taking her home after he witnessed her saying goodbye to her girlfriend.<sup>82</sup>

A twenty-nine year old gay man living in a village the Cherkasy district was attacked by three young men in July of 2007. Upon dragging him into a house, they proceeded to beat and rape him. He was able to escape the house, and his mother called the medics and the police. The police only arrived to assess the crime when they were called by the hospital. They refused to initiate a criminal case, citing lack of proof against the assaulter and blaming the victim for provoking the assault. It later became apparent that one of the reasons for the lack of investigation and criminal charges was that the assaulters were relatives of the district hospital’s head physician and the deputy chief of police.<sup>83</sup>

Many victims of attacks similar to those listed above do not report the incidents or seek recourse for fear of their sexual orientation becoming public and the resulting reprisal and general societal hostility towards them. Those that do report these incidents are often ignored by state authorities or ridiculed with more anti-gay hostility. The true extent of violence against LGBT individuals in Ukrainian society is difficult to ascertain due to the lack of reporting through official government channels. Therefore, these homophobic incidents against the LGBT population are woefully underreported. These individuals are being denied their right to effective remedies and recourse by Ukraine because of its failure to investigate these crimes, and hold the perpetrators accountable. Additionally, government has not provided police trainings or instituted policies that would address high incidents of violence against sexual minorities.

#### Involuntary sterilization for transgender individuals

On February 25, 2011 the Ukrainian Ministry of Health issued the Order No. 60 “On the improvement of medical care to persons requiring a change (correction) of sex,”<sup>84</sup> seeking to regulate medical procedures with regard to gender reassignment and provide “medical, psychological, legal and social assistance to persons requiring a change (correction) sex.”

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<sup>79</sup> *Id.*

<sup>80</sup> *See*, Council of LGBT Organisations of Ukraine, *supra* note 30 at pg 20.

<sup>81</sup> *See Id.*

<sup>82</sup> *See Id* at 23.

<sup>83</sup> *Nash Mir*, *supra* note 56 at 84.

<sup>84</sup> Ministry of Health of Ukraine, Order 03.02.2011 No. 60, “*On the improvement of medical care to persons requiring a change (correction) of sex*,” registered with the Ministry of Justice of Ukraine on February 25, 2011, No. 239/18977.

According to the provisions, compulsory sterilization is a pre-requisite for the legal change of gender of the transgender individual. Order No. 60 establishes that any disagreement of the transgender individual with the recommendation on therapeutic measures prescribed by the Commission on the change (correction) of sexual affiliation, including compulsory sterilization, constitute an impediment to the procedure for gender reassignment.

Such practice contravenes the prohibition of torture and other cruel, inhuman and degrading treatments as recognized by article 7 of the ICCPR. As indicated in 2013 by the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment forced sterilization amount to a violation of the right to freedom from torture or cruel, inhuman or degrading treatment, calling on states to outlaw forced genital-normalizing surgery, involuntary sterilization, *inter alia*.<sup>85</sup>

## **C. Article 9 (Right to Liberty and Freedom from Arbitrary Detention) and Article 10 (Treatment of Individuals Deprived of Their Liberty)**

### ***Relevant Law and Jurisprudence***

Article 9 of the ICCPR enumerates the right of every individual to liberty and freedom from arbitrary detention<sup>86</sup>. In addition, the HRC asserts that Article 10, which states that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person,”<sup>87</sup> is also a fundamental and universally applicable rule.<sup>88</sup> In accordance with Article 9, State parties must ensure that all detentions and deprivations of liberty result from legitimate suspicion or evidence that a violation of a legal statute has occurred and not in retaliation for exercising rights guaranteed under the ICCPR.<sup>89</sup> Furthermore, States must implement effective remedies for individuals that claim that they have been deprived of their liberty in violation of the Covenant.<sup>90</sup> Article 10 imposes a positive obligation on States to protect people who are particularly vulnerable in detention facilities, complementing the ban on torture or other cruel, inhuman or degrading treatment contained in Article 7. The right must be respected without regard to distinctions of any kind, including race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status. These principles should form an integral part of the instruction and training of personnel who have authority over persons deprived of their liberty. Due to the fundamental nature of this right, the

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<sup>85</sup> See *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. No. A/HRC/22/53 (1 February 2013) at ¶¶ 78 and 88, available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf).

<sup>86</sup> ICCPR, § 9.

<sup>87</sup> *Id* at § 10.

<sup>88</sup> Human Rights Comm., *General Comment No. 21: Replaces general comment 9 concerning humane treatment of persons deprived of liberty*, UN Doc. HRI/GEN/1/Rev.6, (4 Nov. 1992) at ¶ 1, available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

<sup>89</sup> See UN Human Rights Council, *Report of the Working Group on Arbitrary Detention: addendum*, UN Doc. A/HRC/16/47/Add.1, (2 March 2011) available at <http://www.unhcr.org/refworld/docid/4e8d525a2.html>

<sup>90</sup> See Human Rights Comm., *General Comment 8: Right to liberty and security of persons*, UN Doc.

CCPR/C/21/Rev.1, (30 June 1982) at ¶ 1, available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

HRC has noted that it cannot be dependent on the material resources available to the State party.<sup>91</sup>

### ***Violations of Articles 9 and 10***

#### **Arbitrary Detention and Conditions of Detention**

Sexual minorities have been subject to systematic arbitrary detention by state law authorities based on their sexual orientation or gender identity. Detention is often accompanied by mental and physical abuse while in police custody. There are consistent reports of disregard for legal procedures, including the unjustified collection and dissemination of personal information, such as sexual orientation and fingerprints, has also been reported, a troubling occurrence given that blackmail is also frequent during interactions between police and sexual minorities.

In November of 2010, a gay man began correspondence with another man on a gay dating website. He invited this man to his home. At the time of the arranged meeting time, two police officers burst into the apartment, initiating a warrantless search without any witnesses in violation of the law. Though the officers' internet provocation was illegal, the man was charged with placing pornographic profile pictures on the dating website. He was arrested in February of 2012 for allegedly evading investigation, despite his acquiescence to all of the investigator's demands. He was placed in pre-trial detention for three months, a month longer than his eventual sentence by the court. During the course of this ordeal, the police threatened and eventually proceeded to reveal his sexual orientation to his employers, resulting in termination of his job.<sup>92</sup>

During an evening in January of 2007, a man and his friend were waiting for public transportation in Zaporizhia. They were approached law enforcement officials who requested to see their identification documents, which the men did not have on their person. They were taken to the police district station. In the victim's words: "having got us into the premises of the police station, the officer loudly declared that he has brought "faggots." After that, from the bull-pen came shouts: 'Bring them here! We'll fuck them'...I claimed to the officer on duty that I will complain to the office of public Prosecutor. After that we were taken to another room where the same officer took out from the table drawer a package with white powder. He showed it to us and told us that there will also be witnesses...Before releasing us he reminded us that if we write a complaint, then we'll become arrested as drug-sellers." The victim declined to press charges after this incident for fear of entering a conflict with the police.<sup>93</sup>

On May 17<sup>th</sup>, 2007, four lesbian women in Lviv joined a civil action in commemoration of the International Day against Homophobia. As part of the action, they affixed leaflets about tolerance to objects on the street. They were subsequently detained by a police patrol. The police, who refused to identify themselves, brought them to the Galitsky district police where upon arrival they were subjected to insults and sneers by police officers, many of whom were

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<sup>91</sup> See Human Rights Comm., *General Comment 21: Replaces general comment 9 concerning humane treatment of persons deprived of liberty*, UN Doc. A/47/40, (10 Apr. 1992), available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

<sup>92</sup> See Council of LGBT Organisations of Ukraine, *supra* note 30 at 21.

<sup>93</sup> Nash Mir, *supra* note 56 at 80.

inebriated. They were detained in the station for several hours, and only released with the assistance of a lawyer and a bribe to the officers. They declined to press charges for fear of drawing attention to their sexual orientation.<sup>94</sup>

In a regional center of Ukraine, a gay man frequently organized discos for gay and lesbian patrons. His telephone number was listed on an announcement for one of his events, which was posted on a website. On January 2<sup>nd</sup>, 2006 a woman who identified herself as lesbian contacted him to get a ticket to the event. They agreed to meet in a park the following day so that she could retrieve her ticket. The next day, accompanied by a female friend, the man arrived at the agreed upon meeting place and found a young woman waiting. Upon arrival, two men approached them and identified themselves as Security Service of Ukraine (SBU) agents. They detained them and took them to the SBU division. The two friends were then separated and led into two different rooms. The agents began to interrogate the man, engaging in mental abuse during the session and using insulting and humiliating homophobic language. During the interrogation, the agents made statements such as “gays don’t have the right to live on Earth” and “they should all be sent to Siberia.” After the interrogation, the agents requested that he collaborate with them on future investigations, which he declined to do. The agents in turn subjected him to more threats and insults, asserting that they would break up all of his events. He was finally released after five hours. His female companion was intimidated by the agents’ threats that they would spread rumors about her sexual orientation at her university, so she stopped communicating with her LGBT friends after the incident.<sup>95</sup>

During July 2007 in Mykolaev, three men broke into the apartment of a gay couple. The attackers spewed homophobic language, threatened them with weapons, and subjected them to a vicious physical assault. The couple eventually escaped and the police were contacted to investigate the incident. During the course of the investigation, police questioned another gay man. They apprehended him in connection with the break-in and he spent the night in the police station, where he was subjected to insults and humiliation. He was eventually released after it was clear that he did not commit the crime.<sup>96</sup>

In February 2009, police were investigating the murder of a gay man in Lviv. During the course of the investigation, police in the Galitsky rayon police station questioned up to three hundred gay men between February and May of 2009. The victims reported being subjected to blackmail, with police officers threatening to inform employers of their sexual orientation, as well as physical and mental abuse, with ten men having to seek medical attention after their detention. While these men were held, officers collected detailed personal information, including fingerprints. Before being released, each man was forced to sign a statement claiming that they did not have any complaints regarding the police action.<sup>97</sup>

A similar incident occurring during the night of April 10<sup>th</sup>, 2009 when police officers from the same station detained over 80 people patronizing a popular gay nightclub “Androgen” in Kiev and transported them to the local police station. The mass detention was allegedly conducted as

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<sup>94</sup> *See Id.*

<sup>95</sup> *See Id* at 81.

<sup>96</sup> *See Id.*

<sup>97</sup> *See Ponomaryov, supra note 60 at ¶¶ 203-205.*

part of an murder investigation, despite the officers' possession of the suspect's photograph. At the police station the police officers, without following due process procedures, took photographs and fingerprints of the detained. The officers then forced everyone to sign statements that they did not have any complaints against the police. During the course of this incident, the club patrons were subjected to insults and abusive physical treatment.<sup>98</sup> It is clear that the goal of this raid was to intimidate LGBT persons and collection the personal information of the club's visitors. A collective complaint was submitted to the Ministry of Internal Affairs, which includes the General Prosecutor of Ukraine. In response the allegations, the Ministry released a written statement asserting that the actions of the police did not rise to any violations. Further attempts by LGBT organizations to address the incident in front of the Public Board under the Ministry of Internal Affairs were denied.<sup>99</sup>

The widespread violation of LGBT persons human rights may become even more frequent with the adoption of Draft Bills 0945 and 1155. The Bills will provide pretext for unscrupulous state authorities to blackmail sexual minorities with threats of arrest, outing, and harrassment.

#### **D. Article 19 (Freedom of Expression), Article 21 (Freedom of Assembly), and Article 22 (Freedom of Association)**

##### ***Relevant Law and Jurisprudence***

Article 19 of the Covenant affirms the rights of free expression and opinion.<sup>100</sup> The HRC has stated that this article represents the "foundation stone for every free and democratic society."<sup>101</sup> The right extends to expression of "information and ideas of all kind, as well as the freedom to 'seek' and 'receive' them 'regardless of frontiers' and in *whatever medium*, 'either orally, in writing or in print, in the form of art, or through any other media of his choice.'"<sup>102</sup> The Committee has used broad language to illustrate that freedom of expression embraces every form of idea and opinion capable of transmission to others.<sup>103</sup> Expressions of identity through speech and appearance, including those that indicate sexual orientation or gender identity, fit comfortably within this broad right. Article 21 protects the right to freedom of assembly and Article 22 protects the right to freedom of association. These rights protect an individual's ability to convene with others who have common interests so that each may engage in the collective pursuit, promotion and defense those interests. Thus, they are crucial in ensuring democracy and empowering individuals to exercise civil, cultural, economic, political and social rights. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has noted that, given the nature of these rights, they are a valuable indicator of a State's respect for the

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<sup>98</sup> Pink News, *LGBT groups say police are harassing gays in Ukraine*, (23 April 2009), available at <http://www.pinknews.co.uk/2009/04/23/lgbt-groups-claim-police-are-harassing-gays-in-ukraine/>

<sup>99</sup> See Ponomaryov, *supra* note 60 at ¶ 206.

<sup>100</sup> See ICCPR, § 19.

<sup>101</sup> See Human Rights Comm., *General Comment No 34: Article 19: Freedom of opinion and expression*, UN Doc. CCPR/C/GC/34, (12 Sept. 2011), at ¶ 2.

<sup>102</sup> Human Rights Comm., *General Comment 10: Freedom of Expression*, UN Doc. CCPR/C/GC/10, (29 June 1983) at ¶ 2.

<sup>103</sup> See *General Comment No. 34*, *supra* note 87, at ¶ 11.

enjoyment of many other human rights. Any restrictions based on security, public order or the protection of public health or morals, must be proportional and out of absolute necessity.<sup>104</sup> As such, states must not place unreasonable burdens on the exercise of these rights, such as long delays in the processing of association registration applications or unreasonable restrictions on the time, place and numbers of demonstrators.<sup>105</sup> Furthermore, the HRC has asserted that States must protect individuals from intimidation and harassment when they are exercising the rights to expression, assembly, and association in order for the rights to be realized.<sup>106</sup>

### ***Violations of Article 19***

There are numerous documented violations of the rights to expression, assembly, and association. As described above in Section A, Draft Bills No. 0945 and 1155 are alarming violations of these rights, codifying discrimination against sexual minorities and limiting their ability to exercise the freedoms available to other Ukrainians. The sweeping restrictions affect the right to expression, by severely limiting speech across a vast array of mediums protected by the ICCPR - demonstrations, parades, lectures and discussions, literature, classes, creative writings, cinematography and video material, newspapers, magazine, etc - and the rights to assembly and association, by making it illegal for anyone to advocate on behalf of LGBT individuals in a public forum. The law is so broad that the mere expression of a sympathetic opinion or portrayal of sexual minorities in public could result in a criminal penalty, a dangerous precedent to set in a democracy.

### **Restrictions in Media**

In addition, government officials have already engaged in restrictions of freedom of expression, which contravene the ICCPR. For instance, the Public Prosecutor's Office of Kyiv brought legal action against the editorial staff of *Gay.Ua*, a legally registered newspaper publication that contains informational, entertainment, and erotic materials targeted towards gay men. The newspaper is distributed to subscribers and is not intended for or available to the broader public. It was delivered in an opaque envelope that concealed its contents. This suit, which contended that the publication violated the 'public morality,' was initiated despite the high visibility of erotic materials depicting heterosexual people, which are available public venues such as newsstands.<sup>107</sup>

On another occasion, in response to an airing of 'Brokeback Mountain',<sup>108</sup> on Studia 1+1 (the national television channel), the National Television and Radio Broadcasting Council Of Ukraine requested the National Expert Commission of Ukraine on Public Moral Protection to produce an

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<sup>104</sup> [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf)

<sup>105</sup> Kaavya Asoka & Andrea Rocca, *Right to Freedom of Assembly*, International Service for Human Rights at 209, (2009).

<sup>106</sup> See Human Rights Comm., *Concluding Observations on Nicaragua*, CCPR/C/NIC/CO/3 at §19 (12 Dec. 2008); see also Human Rights Comm., *Concluding Observations on Tunisia*, CCPR/C/TUN/CO/5 at §20 (23 April 2008).

<sup>107</sup> See Ponomaryov, *supra* note 56 at ¶¶ 68-72.

<sup>108</sup> A movie that depicts the romantic and sexual relationship between two men.

expert opinion on the telecasting's legality. The Expert Commission stated that the broadcasting violated the law "On Protection of Public Morals," and thus the Broadcasting council prohibited airing of the movie except between 11pm and 6am.<sup>109</sup>

### Violence Against Activists Advocating on behalf of Sexual Minorities

The rights of expression, assembly and association have been curtailed on numerous occasions by anti-gay protestors and neo-Nazi/nationalist groups that target LGBT groups with violence and intimidation. As outlined in Section B virtually all public gatherings of or on behalf of sexual minorities are met with physical aggression by detractors. Law enforcement officials have frequently failed to provide protection, often blaming the victims of violence for causing a disturbance.<sup>110</sup>

A similar incident to those described above occurred in 2003, during the United Nation's sponsored event "Race for Life," an annual charity run/walk to aid HIV/AIDS research and awareness. LGBT community members participated in the event, intending to display an AIDS memorial quilt as they walked the three-kilometer route. During the event, neo-Nazi demonstrators destroyed the stand of a prominent LGBT group, and attacked its representatives as onlookers shouted homophobic slurs. Before the walk began, a group of thirty people in black shirts confronted a group of forty LGBT activists and tried to prevent them from participating. In the absence of police protection, the activists concealed all indications of their sexual orientation and gender identity and dispersed in order to prevent further violence. Again, on May 16<sup>th</sup> 2009, extremists attacked another peaceful campaign during the annual International Day Against Homophobia and Transphobia. Participants of the event were verbally harassed and attacked with eggs. The police only intervened when groups of people began to approach the campaigners with metal rods.<sup>111</sup>

### Local Authorities

Local governments and courts have frequently restricted the rights to expression, assembly, and association for sexual minorities. The Ukrainian Constitution guarantees these rights, circumscribing them only if it is necessary in the interests of ensuring national security and public order, preventing disturbances or crimes, protecting the health of the population, or protecting the rights and freedoms of other persons.<sup>112</sup> There are no legislative acts or binding court interpretations that define or standardize the breadth of these limitations, or that describe the conditions under which they may be invoked. These subjective restrictions are abused by local officials, who systematically deny LGBT groups the ability to exercise their rights in response to political pressure from prominent anti-gay groups or because of deeply ingrained institutional biases.<sup>113</sup> Authorities consistently justify these prohibitions by claiming they are necessary to protect public order, emphasizing that LGBT groups provoke violent behavior by

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<sup>109</sup> Nash Mir, *Human Rights Violations Based on Sexual Orientation* at ¶ 1 (2008).

<sup>110</sup> See Ponomaryov, *supra* note 56 at ¶ 50.

<sup>111</sup> See Ponomaryov, *supra* note 56 at ¶ 56

<sup>112</sup> *Id* at ¶ ¶ 47-48.

<sup>113</sup> *Id* at ¶ 49.

merely being visible rather than addressing and condemning the actual violent and illegal behavior being committed by anti-gay militant groups.

For instance, preceding the aforementioned “Race for Life,” the city of Kiev prohibited LGBT activists from walking with a rainbow flag during the walk following pressure from religious groups. According to the city, “usage of a big rainbow flag and informational materials with gay symbols can create unpredictable situations and thus violate the rights of other citizens. This is why we ask you to refrain from your declared actions.” In a similar situation, in May of 2008, the Mykolayiv Association for Gays, Lesbians and Bisexuals (LiGA) tried to organization an informational event intended to combat prejudice and homophobia. In a letter informing them that these activities were prohibited, the Mykolayiv City Council stated “there was an appeal from leaders of several religious denominations...that represent almost 10,000 parishioners demanding that the local authorities prohibit this public event, organized by the representatives of sexual minorities...Such public events represent a threat to civil order, may result in disturbance of public peace, and of incitement to mass riots and conflicts.”<sup>114</sup> The same justification was used to prohibit the event a year later, with officials claiming that they need to “prevent conflicts [that may arise] because of moral and religious sentiments of the townspeople.” LiGA held a close photo exhibition instead. The group was later informed that the organization had broken the law and issued a warning that it would be dissolved if such violations reoccurred.<sup>115</sup>

Local authorities have also stymied the ability of sexual minorities to create organizations that represent their interests and advocate on their behalf. Various organizations have reported that the process of registering their groups with local Departments of Justice is unnecessarily arduous and long, hindered by unwarranted delays, arbitrary conditions, and outright refusals to register.<sup>116</sup> For instance, administrative officials conditioned the registration of one LGBT group on the deletion of the phrase ‘sexual orientation’ in their mission statement, forcing them to replace it with “gender orientation.”<sup>117</sup> Another organization reports that they were instructed to change their name and modify their statutes so that they did not refer to LGBT people, which was their target audience. After these changes, they were forced to reattempt the registration process as a new entity.<sup>118</sup>

Efforts to seek redress blatant discrimination towards LGBT groups are unsuccessful in the courts. When LiGA appealed the prohibition of its events by the city council, the Central District Court dismissed the case arguing that because the complaint was filed by the event’s organizer and not LiGA’s executive director, who was the only person to ‘ha[ve] the necessary administrative and procedural capacity” in the organization. Two subsequent filings, which corrected this supposed procedural error, were disregarded and the case was subsequently closed. LiGA tried to appeal the issue to the State Judicial Administration of Ukraine, the High Counsel of Justice, the Minister of Justice, and the Chairman of the Supreme Court of Ukraine, all to no avail. On 28<sup>th</sup> of 2009, more than a year after the initial complaint, the Central District Court

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<sup>114</sup> *Id* at ¶ 55.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at ¶¶ 62-63.

<sup>117</sup> *Id.* at ¶ 61.

<sup>118</sup> *Id.* at ¶ 62.



refused to accept another appeal, asserting that “as regards the rightness of the mentioned actions, the court determines, organized peaceful actions of citizens are only actions, right to the conduct of which is not guaranteed either by the Constitution of Ukraine nor other norms of current legislation. So, the Applicant does not have a right to conduct the action, so the prohibition of mentioned action objectively does not violate the rights of the applicant.”

LGBT people have been systematically denied the ability to express and advocate for themselves, in clear violation of the ICCPR. Progress is not completely elusive; the LGBT community recently held the first Gay Pride Parade in Ukraine, which was successfully protected by police from the violent crowds that counter-protested. However, the combination of targeted violence, law enforcement ambivalence, and prejudice exhibited by government officials has resulted in recurring violations of the rights to expression, assembly, and association for individuals and groups advocating on behalf of sexual minorities.

### **III. Final Recommendations**

As a State Party to the ICCPR, Ukraine is bound to uphold the rights contained within the Covenant for all of its citizens, regardless of sexual orientation or gender identity. Yet, as illustrated in this report, Ukraine is currently failing to comply with its obligations under the ICCPR with respect to sexual minorities. In order to comply with the Covenant, Ukraine must adopt legislative, administrative and judicial measures to ensure protection and promotion of human rights. To that end, the Human Rights Committee should recommend to be Ukraine that it should:

1. Withdraw and reject Draft Bills 0945 and 1155, the so-called “homosexual propaganda” bills.
2. Ensure adequate protection of peaceful demonstrations by activists advocating on behalf of sexual minorities.
3. Take immediate action to end all violence committed against individuals on the basis of their actual or perceived sexual orientation or gender identity. In particular, Ukraine should introduce a comprehensive system of laws that criminalize hate crimes and provide protections and remedies for vulnerable populations, including LGBT individuals.
4. Take action to end impunity for individuals that violate the human rights of LGBT individuals. Ukraine should institute comprehensive measures to fully investigate violent threats and acts committed because of the sexual orientation or gender identity and, where appropriate, such crimes should be prosecuted and punished.
5. Adopt comprehensive legislation that prohibits discrimination on the basis of sexual orientation and gender identity in all realms including employment, housing, education, and access to health services.
6. Provide equality and human rights training, particularly in regards to vulnerable populations including LGBT persons, for governmental officials and law enforcement officers.
7. Embark on public awareness campaigns to educate the public on the necessity of protecting the human rights of all citizens, including sexual minorities.
8. Publicly condemn hate speech, calls for discrimination, hostility, and violence against LGBT individuals and other discriminated groups.
9. Amend Order No. 60 of 2011 to respect the rights of transgender individuals and allow gender reassignment without forced sterilization or any other unnecessary or unwanted surgical procedure.

#### **IV. Questions to the State**

1. What measures does the State intend to take to ensure that Draft Bills 0945 and 1155, the so-called “homosexual propaganda” bills, are withdrawn or rejected?
2. What measures does the State intend to take to prevent human rights violations and violence on grounds of sexual orientation and gender identity committed by state and non-state actors, and to end impunity for perpetrators of such crimes?
3. What measures does the State intend to take to ensure that LGBT individuals or groups can exercise their rights to freedom of peaceful assembly and to expression without interferences from state authorities or violence by state and non-state actors?
4. What measures does the State intend to take to amend Order No. 60 of 2011 to recognize the right to gender identity of transgender individuals without forcing them into compulsory sterilization or other unwanted and unnecessary medical procedures?