



Human Rights Violations Based on Sexual Orientation and Gender Identity in the Russian Federation

Alternative Report
as a Commentary on the Eights Periodic Report CCPR/C/RUS/8
by the Russian Federation

129th Session of the Human Rights Committee
Review of the Eights Periodic Report by the Russian Federation

May 2020

Human Rights Violations Based on Sexual Orientation and Gender Identity in the Russian Federation. Alternative report as a commentary on the Eighth Periodic Report CCPR/C/RUS/8 by the Russian Federation. 129th Session of the Human Rights Committee Review of the eighth periodic report by the Russian Federation.

ECOM - Eurasian Coalition on Health, Rights,
Gender and Sexual Diversity
www.ecom.ngo
Pärnu mnt 142, Room 13502,
Tallinn, Estonia, 11317
Contact: **Yuri Yoursky**
(yuri@ecom.ngo)

NGO "**Phoenix PLUS**"
www.orelaids.ru
Moscow, Russian Federation

"Coming Out" LGBT group
<https://comingoutspb.com/eng/>
Saint Petersburg, Russian Federation
contact@comingoutspb.ru

Anonymous trans*group
Siberia, Russian Federation

I. Introduction

1. The Russian Federation acceded to the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) in 1974 and has a 'State Party' status within the framework of the Covenant. Russia submitted its eighth periodic report on 8 April 2019, which included its statements on the status of implementation of the Covenant during the latest reporting period.

2. The current Alternative Report — a commentary on the Periodic Report CCPR/C/RUS/8 (the Report) — is submitted as per the invitation of the Human Rights Committee (HRCtee) that welcomes "alternative reports" from NGOs regarding the observation of the Covenant by a State party, in this case, by Russia.

3. Before putting the Report to scrutiny, the framework of the analysis and current alternative reporting should be outlined. In its Concluding Observations CCPR/C/RUS/CO/7 (the CO), HRCtee emphasised the alarming concern it had regarding the high level of hate crimes, especially based on race, religion, sexual orientation, gender identity, and gender expression (SOGIGE) and the total absence of any effective means that people with such attributes could use to try and amend the inequality. HRCtee also condemned the so-called laws on the prohibition of "propaganda of homosexuality," which, judging by the reports of the civil society, were frequently used and abused by the Russian government to oppress the human rights and freedoms of LGBT on its state territory. Most notably, the CO demanded that the Russian Federation "take all the steps necessary to strengthen the legal framework protecting LGBT individuals from discrimination and violence and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim's sexual orientation or gender identity." The CO also indicated that Russia should "[r]epeal laws banning the 'promotion of non-traditional sexual relations to minors' adopted at the regional and federal levels. Exclude transgender identity, bi-gender identity, asexuality and cross-dressing from the list of medical conditions constituting contraindications to driving. Guarantee the exercise in practice of the rights to freedom of expression and assembly of LGBT individuals and their supporters." In its address of the said concluding observations, the Russian Federation claims (Report para 372) that article 3 of the Labour Code of the Russian Federation has a "non-exhaustive list of protected grounds [that] implies that discrimination is prohibited not only on the listed grounds but on any other basis, including that of sexual orientation and gender identity." Considering the frequent reports in mass media and by the civil society regarding the violation of freedom of self-determination, freedom of expression, and the right to assembly of the LGBT in Russia, such official statements of the Russian government before the Human Rights Committee seem, at the very least, premature, if not audacious.

4. Prior to providing any further commentary on the Eighth Periodic Report of Russia, specifically, in relation to healthcare, the "ECOM—Eurasian Coalition on Health, Rights, Gender and Sexual Diversity" from Estonia (hereinafter, ECOM), "Coming Out" LGBT group (Saint Petersburg, Russia), NGO "Phoenix PLUS" (Moscow, Russia) and Anonymous trans*group from Siberia would like to state their full comprehension of the current economic, political, and philanthropic challenges that the State Party faces. We are fully aware of the economic and psychological challenges the COVID-19 pandemic continues to impose on the whole world. We are understanding of all the difficult and sometimes radical decisions the Russian government must adopt to try and flatten the curve and keep its country afloat after the said healthcare crisis ends. ECOM, as a regional civil society representative of a certain marginalised group, knows the tremendous amount of resources needed for the state to deal with the crisis. Nevertheless, the situation of disadvantaged groups cannot be perceived as something that can be dealt with as an aftermath. The LGBT suffer from severe inequality during peaceful and stable times in Russia and, now, during the period of uncertainty and significant economic strain, they require adequate support from the government to help them overcome the imbalance of social powers. ECOM is a regional NGO that works with gay men and transgender people, specifically in the area of ensuring their right to health.

Thus, ECOM has profound experience and competence in revealing disparities in state healthcare services and developing professional recommendations to amend them, as well as knowledge that the general civil servants may lack due to not having the appropriate training to work with these marginalised groups. Therefore, the following commentary and reports on the right to health in Russia are presented by ECOM to highlight the absence of legal mechanisms that would protect LGBT persons from discrimination and assist their social integration.

5. Russia harbors systemic discrimination of various minority groups, but those that are at a significantly increased risk of getting infected with HIV than the general population are subjected to particular discriminatory conduct. Such groups include men who have sex with men (MSM), and transgender people. The other, even more vulnerable group consists of people who live with HIV (PLHIV): they are subjected to additional stigmatisation for their sexual orientation and/or gender identity on top of their adverse medical condition. These marginalised groups have no support from the Russian government regarding their healthcare and legal needs. They live in constant fear of being verbally and physically abused for their sexual orientation and/or gender identity at home, at work, at educational institutions. Moreover, when they recourse to healthcare aid and/or legal protection, they often meet further hostility. Gay men and transgender people are not only ignored by the current legislation, which has no effective anti-discrimination mechanisms for their protection, but also includes official provisions that create and promote a damaging image of these people as being immoral and destructive to the national "family values."¹ They are also hunted down and degraded by political figures, medical workers, law-enforcement officers, and the general public.² Coming Out, an LGBT initiative group, conducted a wide-scale social survey research, surveying 1313 people online and 100 in-person at 3 local gay clubs in St. Petersburg. Among others, the results revealed that, in addition to regular monitoring activities of Coming Out, there appeared to be 1020 cases of discrimination and violence on the grounds of SOGIGE committed in 2018 in this city alone. Which means that there are thousands more in other cities across Russia. International human rights institutions, drawing Russia's attention to the systematic violations of the human rights of LGBT persons, establish a direct link between the homophobic legislation and the growing amount of violent crimes against LGBT people in Russia.³ In 2018, Russian authorities reported in the framework of the third cycle of the Universal Periodic Review on the implementation of international human rights obligations. Upon receiving recommendations from 18 states to repeal the homophobic law and adopt anti-discrimination legislation, the Russian delegation announced its intention to combat discrimination based on sexual orientation and gender identity, including "promptly, thoroughly and impartially investigating instances of hate-base violence."⁴ With this in mind, 149 cases of physical attacks, motivated by homophobia and/or transphobia, were revealed by Coming Out in St. Petersburg in 2018 alone; 235 people reported facing threats or threatening actions that pointed at potential physical violence motivated by the same hate.⁵ However, up to this date, Russian law enforcement officials show their unwillingness to provide swift and impartial investigations of homophobia-motivated crimes, determine the nature of hate crimes correctly and take the hate motive into account as an aggravating circumstance, while the number of such crimes continues to grow.

6. The Report includes no status of actual, factual or formal steps that have been taken or that are planned regarding the current absence of effective and all-encompassing non-discrimination laws. In fact, the response of Russia regarding the unambiguous demands of the HRCtee to repeal the laws that bolster discrimination of

¹ Article 6.21 of the Code of Administrative Offenses of the Russian Federation was introduced by Article 3 of Federal Law No. 135-FZ of June 29, 2013, "On Amending Article 5 of the Federal Law 'On Protection of Children from Information Harmful to Their Health and Development'" and Certain Legislative Acts of the Russian Federation in Order to Protect Children from Information That Promotes the Denial of Traditional Family Values".

² *Report on the Situation of the LGBT Community in Saint Petersburg 2018*, <https://comingoutspb.com/upload/iblock/39f/39faf24cb8574357bcdd6483c0a1ab79.pdf>, p. 6

³ E.g. CAT/C/RUS/CO/6, para 32; A/HRC/38/43.

⁴ The Russian Federation rejected the recommendations of Denmark and Norway, set out in paragraphs 147.70, 147.100, A/HRC/39/13.

⁵ *Report on the Situation of the LGBT Community in Saint Petersburg 2018*, <https://comingoutspb.com/upload/iblock/39f/39faf24cb8574357bcdd6483c0a1ab79.pdf>, p.10

the LGBT seems to undermine the HRCtee's capacity to perceive and interpret the said legal provisions and the ways they affect the social-legal relations within the Russian society. The Report (para 370) proclaims that "[i]n Russia, discrimination on the grounds of sexual orientation or gender identity is prohibited, as is any other form of discrimination." However, it should be remembered that the Russian Federation conforms to the Romano-Germanic law system and nothing has legal power on its territory, except for material law. Such levity in addressing the state of observation of the Convention, particularly in relation to the rights of LGBT, before the official periodic session within the framework of the HRCtee, as well as the cases, analyses, and reports that shall be outlined below, create uncertainty about the seriousness and dignity with which the Russian government treats its international obligations, constitutional obligations and the obligations within the ICCPR framework, specifically.

7. Article 40 section 1 of the Covenant states that "[t]he State Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights." Article 40 section 2 of the Covenant stipulates that "[r]eports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant." Having studied the Report, ECOM and partners consider that, within the scope of the right to equality (article 2 of the Covenant) and the right of self-determination (article 1 of the Covenant), Russia's report does not provide the HRCtee with the chance to assess the degrading human rights situation that gay men and transgender people are experiencing within the State Party's borders. The given Alternative Report is meant to serve as additional information regarding the wider non-discrimination of the LGBT people in Russia, the observation of their right to health and as an instrument to advance positive changes to amend the current adversities.

II. Absence of Non-Discrimination Legislative Framework

8. To begin with, Russian law does not contain a specific definition of discrimination. There are no definitions of gender, gender identity, sexual orientation, and so forth. The main problem is that discrimination based on certain grounds, like SOGIGE⁶ or sex characteristics, as well as age or ethnicity, forms a specific set of social and legal relations characterised by particular levels of subjective adversity, which further create bias. What the State Party's Report seems to consciously omit is the fact that any type of minority groups are a "minority" for a reason, and such a situation calls for additional, tailored laws that would amend the imbalance. The said imbalance results in overt, covert, and systemic discrimination, which results in the minority group, such as gay men and transgender people, being deprived of certain human rights and freedoms as compared to the majority, despite them being no different from each other as human beings. Yet, the social attributes (and the ignorance thereof) create disparities that, eventually, endanger the health and life of a minority — in our case, of gay men and transgender persons. The Constitution of the Russian Federation proclaims that "[t]he state guarantees the equality of rights and freedoms of the person and the citizen irrespective of their sex, race, nationality, language, origin, material or occupational status, place of residence, relation to religion, beliefs, affiliation with public associations, and other circumstances. Any forms of restriction of rights of the citizens based on the grounds of social, racial, national, language or religious affiliation are prohibited."⁷ The list of protected attributes is non-exhaustive and may include SOGIGE, however. In 2014, the Constitutional Court of Russia ruled, in relation to the federal ban on "propaganda of non-traditional sexual relationships among minors," that "...the State is obligated to take measures aimed to prevent eventual violation of the rights and lawful interests of individuals on the basis of their sexual orientation, as well as to provide an effective remedy for the protection and restoration of their violated rights according to the principle of equality of all people before the law and court, enshrined in the article 19 (part 1) of the Constitution of the Russian Federation. The said Constitutional principle, implying, inter alia, that the rights and freedoms of no-one may be restricted, and that no advantage may be introduced on the basis of belonging to any social group,

⁶ Sexual orientation, gender identity and gender expression.

⁷ *Constitution of Russia*, Article 19, section 2: <https://wipolex.wipo.int/fr/text/440595>

a group of people of a certain sexual orientation may be understood as such, is defined concretely in sector-specific legislation (art. 3 of the Labour Code of the Russian Federation and others). State legal protection against discrimination, including discrimination on grounds of belonging or not belonging to a social group, is also ensured by application of measures of administrative (art. 5.62 of the Code of the Russian Federation on Administrative Offenses) and criminal ("f", art. 63 and art. 136 of the Criminal code of the Russian Federation) liability."⁸

9. Gay men and transgender persons make up a disadvantaged group that suffers from systemic discrimination as a result of the rigid and stigmatising patriarchal rhetoric that goes against the idea of social and political pluralism. Therefore, by using this report as a vehicle for dialogue, ECOM and partners hope that the Russian government can see how a vast percentile of their people suffer from injustice for no reason but prejudice only. At present, there are no effective legal instruments that would allow gay men or transgender people to restore their human rights that have been violated as a result of homophobic or transphobic bias. Russia's criminal legislation lags behind the contemporary hate crime practices of other developed states. The Criminal Code of Russia does not define what a hate crime is exactly, which makes it both difficult to identify criminal actions as hate and easy to discard the victim's allegations about the perpetrator's criminal actions being committed out of homophobia or transphobia. The Criminal Code of Russia, article 63,⁹ lists the aggravating circumstances and section 1 subsection e) includes "committing a crime on the grounds of political, ideological, racial, national or religious hate or enmity on the grounds of hate or enmity in relation to any other social group." The non-exhaustive reference to "any other social group" does not provide for effective investigation and remediation of the violated human rights of gay or transgender people that have become victims of homophobia or transphobia. "Any other social group" does not have a corresponding article in Russia's Criminal Code which would protect the specific social-legal relations (as they should), as all of the other articles that define individual crimes do. Article 282 of the Russian Criminal Code states: "Actions that are directed to incite hate or enmity or to degrade an individual's dignity or the dignity of a group of people on the grounds of sex, race, nationality, language, origin, relation to religion, or being affiliated with any social group, that have been committed publicly or with the use of mass media or information-communication wires, including the Internet" is punished by a respective sanction.¹⁰ The problem is that this crime is located in the chapter called "Crimes Against State Power." If the perpetrator has violated the victim's rights out of hate individually and out of hate based on their sexual orientation and/or gender identity, even if the victim would prove their affiliation with the LGBT social group under the "any social group" clause, it would still not constitute *corpus delicti* of this crime because the article protects a set of totally different social-legal relations. Defining a crime committed out of homophobia or transphobia as hooliganism, battery, assault or another regular crime is a violation of the victim's right to justice. That being said, indeed, Russia deserves praise for decriminalising same-sex sexual conduct and related crimes, but it was back in 1993 — 27 years ago — and nothing else positive happened in terms of criminal legislation which would address the needs of the LGBT, as a minority groups. Russia's material and procedural criminal legislation remains to be out-of-date and should be enhanced and updated as per best international practices as soon as possible.

10. Notably, the Criminal Code of Russia, article 132 "Sexual Misconduct," separates homosexual rape into an individual article, reading: "Sodomy, lesbianism or other actions of sexual character with the use of violence or a threat of using violence in relation to the victim [male] ([female victim]) or to other individuals or with the use of a helpless state of the victim [male] ([female victim]) is punished by imprisonment for a period of three to six years."¹¹ Article 131 called "Rape" criminalizes the same exact actions only for the man being the perpetrator and the woman being the victim. Article 133 "Coercion to Sexual Misconduct": "Coercing the individual to commit intercourse,

⁸ Judgment of the Constitutional Court of the Russian Federation, issued on 23 September 2014 No. 24-П in a constitutional petition case regarding pt. 1 art. 6.21 of the Code of the Russian Federation on Administrative Offenses.

⁹ *Criminal Code of Russia*, <https://www.wipo.int/edocs/lexdocs/laws/ru/ru241ru.pdf>

¹⁰ Ibid.

¹¹ Ibid.

sodomy, lesbianism, or into commission of other sexual misconduct by means of blackmail, threat to destroy, damage or seize property or with the use of the material or other dependency of the victim [male] ([female victim]) [sanction]." Homosexual sexual misconduct where the victim has not yet reached the age of 16 is considered to be a higher-degree sexual misconduct as it is stipulated in section 2 of article 134 of the Russian Criminal Code.¹² "Sodomy" and "lesbianism" are crude, degrading, and discriminatory homophobic terms and their existence in official Russian legislation, criminal legislation at that, enforces the public stereotype about homosexuality being wrong, something distorted, something that deserves punishment. Considering this, gay men and transgender persons become victims of sexual violence motivated by hate, including "corrective rape": coercion to sex in order to "correct" the sexual orientation or gender identity of the victim. In total, Coming Out was able to reveal 49 cases of such hate-based instances of sexual violence in 2018 in St. Petersburg.¹³ There is no ability to identify such criminal actions correctly and investigate them effectively since Russian criminal legislation lacks the necessary provisions. The crimes of rape and other sexual misconduct should be universalised for every gender in respective comprehensive articles and the homophobic terms and diversification should be struck out from the Criminal Code of the Russian Federation.

11. Hate speech is not commonly defined or regulated by the Russian law as well. The law-enforcement has no legal regulation or the capacity to register such actions being committed as hate crimes, which leads to further discrimination and utter ineffectiveness of investigation and punishment of such deeds. What is more alarming is that gay men and transgender people are frequently denied regular healthcare, HIV-related services, transgender-people-related medical care, and are often degraded by medical workers. For example, in a survey conducted in 2018 only Coming Out LGBT group¹⁴, 377 respondents (26.7% of the total) have experienced discriminatory actions based on homophobia or transphobia on the part of medical specialists. Usually, discrimination appears in forms of mocking and bullying of LGBT patients (252 cases) and of drawing false connections between the patients' SOGIGE and their medical condition (144 cases), but also such grave violations as revealing information about the person's transgender status or sexual orientation without their consent (48 cases), denial of medical care on grounds of SOGIGE (30 cases) and forcefully keeping a patient in a medical facility or treating them without informed consent (17 cases). Among LGBT people affected by discriminatory denials in healthcare, half are transgender people. We must note that these numbers refer to Saint Petersburg, a city known as the most progressive and liberal in Russia in terms of acceptance of LGBT persons. As a result of there being no crime to define such actions as hate actions against a person based on the victim's SOGI attribute, there is no possibility for the victim to seek adequate justice and restoration of their violated rights. These victims cannot redress their abused rights since they fear further discrimination that awaits them at the police station and in court. For example, in St. Petersburg, 43 people experienced homophobic/transphobic abuse by the police in 2018; 22 people were threatened by police officers and 8 were physically abused by them.¹⁵ Notably, 15 survey participants reported that during homo/transphobic attacks, police officers that witnessed it and had the chance to prevent it, did nothing. Only 8 (out of dozens of victims) filed a report to the police in 2018.¹⁶ The current absence of a comprehensive anti-discrimination legislation that would ban discrimination based on all grounds, including SOGI, and express definition of all related notions, like hate speech, hate crimes, hate and such, leads to gay men and transgender people having no ability to exercise their right to self-determination, health, privacy, and, eventually, to life.

12. It is peculiar that the Russian government states that all discrimination on any grounds is prohibited in Russia (Report para 370), when the Report itself and the provisions it discloses imply otherwise. CO CCPR/C/RUS/CO/7 voiced the HRCtee's

¹² Ibid.

¹³ Report On The Situation of the LGBT Community in Saint Petersburg in 2018 — St. Petersburg: Coming Out, 2019: <https://comingoutspb.com/upload/iblock/39f/39faf24cb8574357bcdd6483c0a1ab79.pdf>

¹⁴ Ibid.

¹⁵ Report On The Situation of the LGBT Community in Saint Petersburg in 2018 — St. Petersburg: Coming Out, 2019: <https://comingoutspb.com/upload/iblock/39f/39faf24cb8574357bcdd6483c0a1ab79.pdf>.

¹⁶ Ibid.

demands that Russia repeals "laws banning the 'promotion of non-traditional sexual relations to minors' adopted at the regional and federal levels," and that it should officially state "that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transsexuality, or hate speech, discrimination or violence against persons based on their sexual orientation or gender identity." This means adopting the necessary anti-discrimination legislation and repealing the current discriminatory legislation that severely exacerbates the life of LGBT. In response, the Report (para 371, 372) indicates that "Labour law prohibits discrimination on any grounds or circumstances unrelated to the person's professional competencies. Under article 3 of the Labour Code of the Russian Federation, no person's labour rights and freedoms may be restricted, nor may any person enjoy any advantages, on the basis of sex, race, colour, ethnicity, language, origin, financial status, official capacity, age, place of residence, attitude to religion, beliefs, membership or non-membership of voluntary associations or *any social groups, or other considerations unrelated to the person's professional competencies*. This non-exhaustive list of protected grounds implies that discrimination is prohibited not only on the listed grounds but on any other basis, including that of sexual orientation and gender identity." But this, and with a significant stretch at that, can be attempted to apply *only* when it comes to labour relations. This article does not cover all of the other areas of a person's life and has no power of legal analogy as Russia's law system does not foresee that.

13. Meanwhile, employers in Russia freely use labour laws for their own needs when it comes to hiring and firing LGBT people. The latter often causes violations of their labour rights due to the lack of comprehensive anti-discrimination legislation. At the same time, difficulties in proving the fact of discrimination often lead to the fact that victims of such cases cannot restore their rights: as a result, many LGBT people who have faced discrimination are too afraid to go to court. LGBT people often face pressure, constructive dismissal, and violation of labour rights at the workplace because of their appearance, mismatch between their documents and gender identity/expression, wearing rainbow symbols, etc. Usually, employers do not directly name the real reason for firing LGBT workers, thus harassing LGBT people to force them to quit on their own initiative, as a result of unbearable working conditions, or at the employer's initiative (e.g., a sharply increased workload, homophobic/transphobic insults, and other forms of pressure, artificial reduction of staff members, a sharp decrease in wages for the same job). Thus, it looks as if no laws were broken, but as a fact LGBT people end up being cut off their labor rights, and cannot safely stay at workplaces and fulfill their labor duties in equal conditions with heterosexual cisgender people.

14. The Report (para 373) says that "in criminal proceedings the sexual orientation of the victim is of no significance." But there is no significance to consider at all since the criminal proceedings have no material hate crime provisions based on homophobia/transphobia to act upon. Such a statement has zero weight or significance. What really stipulates a contradiction within the Report (claiming that discrimination based on SOGI is prohibited in Russia), is the commentary regarding the existing "gay propaganda" laws. The Report (para 374) states: "On 23 September 2014, the Constitutional Court adopted Decision No. 24-P, in which it found that the provision of the Code of Administrative Offences prohibiting the promotion of non-traditional sexual relations to minors was not unconstitutional. Its constitutional and legal intent is to defend constitutionally significant values such as the family and childhood and to prevent harm to the health of minors and their moral and spiritual development. It does not entail interference in individual autonomy, including sexual self-determination. The purpose of the provision is not to prohibit or officially stigmatize non-traditional sexual relations and it does not hinder public discussion on the legal status of sexual minorities or the use by their representatives of all legal means of expressing their opinion on these issues and defending their rights and interests, including by organizing and holding public events." The aforementioned statement itself overtly implies that homosexuality poses harm to the health of minors and their moral and spiritual development. Considering that the said laws, as per the Report and the Constitutional Court, are to "defend constitutionally significant values such as the family and childhood" from the harm that non-heterosexuality poses, it implies that the country's official position, its political stance, laws and procedural judgement consider non-heterosexuality to be a

threat to the entirety of whatever the government tends to internally define as family values, traditional values, or traditional views are. It is unheard of for a contemporary democratic state, such as Russia claims itself to be,¹⁷ to consider “transgender identity, bi-gender identity, asexuality and cross-dressing in the list of medical conditions constituting contraindications to driving,” or to any other social or legal capacity for that matter. The Report (para 376) stating that these degrading homophobic laws “allowed for a balance to be reached between the rights of sexual minorities and the rights of minors” borders on the verge of mockery of the international obligations before the international community and, in fact, the constitutional obligations the Russian government has before the entirety of its citizens and non-citizens who are located on its territory — “The person, his rights and freedoms are deemed to be the highest value. Acknowledgement, observation, and protection of the rights and freedoms of a person and a citizen are the duty of the state.”¹⁸ LGBT people’s sexual orientation and gender identity constitute their right to self-determination, right to equality, right to health, freedom of expression, beliefs, freedom of association, and right to peaceful assembly which do not harm anybody.

15. Having ratified the Covenant, Russia should be fully aware that discrimination of human rights, particularly, based on SOGIGE, has no place within the framework of ICCPR. With the support of the leading religious and rightist politicians, the LGBT continue to be subjected to public degradation. Considering the above-mentioned statements, the Report (para 47) indicates that Russia, as a sovereign state, has the right to choose how the Committee’s Views as well as other obligations are fulfilled: “This is also implied by article 2 of the Covenant, which provides that States are to take the necessary legislative and other steps to give effect to the relevant rights in accordance with their constitutional processes and the provisions of the Covenant.” This is indeed true, however, article 15 section 4 of the Russian Constitution defines that the “universally acknowledged principles and norms of international law and international treaties of the Russian Federation constitute a part of its legal system. If the international treaty of the Russian Federation defines rules that are different from those established by the law, the rules established by the international treaty are applied.”¹⁹ The HRCtee’s Views, the ICCPR framework, as well as the Universal Declaration of Human Rights and a series of other international treaties and their frameworks all ban discrimination based on sexual orientation and gender identity, as well as any other practices that violate the right to privacy, and dignity, and health.

16. ECOM and partners would like to remind Russia about the universality of principles that Russia took upon itself by ratifying the ICCPR, especially, the ones enshrined in the Preamble, “The States Parties to the present Covenant Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.” With this in mind, the Human Rights Council, in its Annual Report to the UNHCR A/HRC/19/41 (para 62) stipulates that “[u]nder the Covenant, States parties may limit enjoyment of these rights only insofar as restrictions are provided for by law and necessary to protect rights of others, national security, or public safety, order, health or morals. Any such restrictions should be compatible with the provisions, aims and objectives of the Covenant and should not be discriminatory.”²⁰ Therefore, violating the freedom of expression and assembly of LGBT people is concealed under the guise of actions that are supposedly protecting family values, morals, the rights of minors, and so forth. Nonetheless, the Russian Government should note that family values are not something to be defined by the government, limited or as something that comes out of a place of hate, disrespect, and degradation. Meanwhile, obstruction of freedom of assembly, freedom of association and freedom of speech in regards to the LGBT-community is manifested in the authorities’ systematic ban on public events in support of LGBT people’s rights, regular detention of participants of such public events (under the pretext of the ban on propaganda of non-traditional sexual

¹⁷ Constitution of the Russian Federation article 1, <https://wipolex.wipo.int/fr/text/440595>

¹⁸ Ibid.

¹⁹ *Constitution of the Russian Federation*, <https://wipolex.wipo.int/fr/text/440595>

²⁰ UNHCR A/HRC/19/41, https://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf

relationships among minors), police inaction in case of attempts of homophobic activists to interfere with LGBT-themed cultural or educational events, as well as in direct pressure on the LGBT initiatives by the authorities.

17. Morals, family and traditional values universally appreciated by the international community refer to universal principles of kindness, respect for one another, compassion, and peacefulness. The HRC Advisory Committee's Study A/HRC/22/71 states that "[h]uman rights have moral universality, since human rights are held universally by all persons 'simply because one is a human being', and international normative universality, meaning that human rights are universally accepted by Governments through their commitments and obligations under international human rights law."²¹ Russia recognized the authority and the rights enclosed in the Covenant of its own free will. Further, the Study explains that "[n]o one may invoke cultural diversity as an excuse to infringe on human rights guaranteed by international law or limit their scope [...to] seek to sanctify differences that run counter to the universality, indivisibility and interdependence of human rights."²² Therefore, any appellation to the "traditional values" or "family values" to limit the rights of the LGBT contradicts the obligations Russia took upon itself under the Covenant and its other international human rights treaties.

18. Russia does not acknowledge same-sex marriages or any forms of legal same-sex unions at all. Andrey Vaganov and Yevgeniy Yerofeyev have been in a stable romantic relationship for over 10 years; a relationship that has no recognition within the framework of Russian legislation. They have been raising two adopted sons (now 13 and 14 years old) since 2010; both children were adopted by Yevgeniy Yerofeyev in Moscow. On 18 June 2019, they sought medical help with a doctor, concerning their son's appendicitis. The child told the doctor that he was living with two fathers. The doctor filed a report about this with the Russian law-enforcement. On 20 June 2019, both of the parents were questioned by Investigative Committee of the Russian Federation.²³ The prosecution commenced investigation. On 17 July 2019, based on the "gay propaganda" law, a criminal investigation was launched against the government children's services, charging them with dereliction of duty that they had committed during issuing the decision to let those two children live with a same-sex couple.²⁴ The prosecution began a full-blown investigation of Andrey Vaganov and Yevgeniy Yerofeyev with the aim to take the children away from them and leave them with no parents. On 19 July 2019, searches were conducted in the private apartments of Andrey Vaganov and Yevgeniy Yerofeyev and their families in Moscow and Magnitogorsk.²⁵ The family fled the country the same day and filed for asylum with the United States of America²⁶. This case is being litigated by the LGBT-Group "Coming Out" (Saint Petersburg) and the LGBT-Group "Incentive" (Moscow)". This resonant and outrageous case provides an ongoing terrorizing effect on the existing LGBT-families in Russia that have children, biological or adopted; they are afraid that because of the "gay propaganda" law, their children will be taken away. Among others, this Alternative Report is seeking the HRCtee's assistance and authority over Russia on such a matter. The Russian Government's activities in this regard have absolutely zero rational validation at all.

19. The discriminatory actions of the police, the government at large, and those that defy the LGBT their human rights in full legal capacity violate the principles stated in the Covenant and in the Russian Constitution itself, "which privileges the antagonists rather than those claiming rights."²⁷ Apart from this, "[r]estrictions on information on sexual orientation, including those allegedly intended to protect 'public decency', can have a deleterious impact on public health efforts, including in relation to transmission

²¹ HRC Advisory Committee's Study A/HRC/22/71, https://www.ohchr.org/documents/HRBodies/HRCouncil/AdvisoryCom/Session10/A.HRC.22.71_en.pdf

²² Ibid., para 11

²³ <https://www.bbc.com/russian/news-49019175>

²⁴ <https://www.interfax.ru/moscow/669487>

²⁵ <https://www.hrw.org/ru/news/2019/07/24/332481>

²⁶ <https://www.interfax.ru/russia/669767>

²⁷ UNHCR A/HRC/19/41, https://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf, para 64

of the HIV virus.”²⁸ All of the international human rights treaty bodies, without exception, have concluded that “[s]tates have an obligation to everyone from discrimination on grounds of sexual orientation or gender identity. The fact that someone is lesbian, gay, bisexual or transgender does not limit their entitlement to enjoy the full range of human rights.”²⁹ Such a position is fully compatible with what is protected by the Covenant. Denying the LGBT their right to equality, expression, non-discrimination, privacy, health, and life constitutes frivolous illegal activity of the Russian Government that violates its own laws and obligations.

20. Taking the above into consideration, the Russian legislation does not provide the LGBT with any possibility not only to protect their human rights and freedoms if violations occur, they also cannot realise them in routine life, like their heterosexual counterparts do. Despite the advances Russia makes in relation to other minority groups, there is no effective legal regulation that would, firstly, ban all forms of discrimination, including based on SOGI, laws that would define “discrimination,” “stigmatization,” “gender,” “gender identity,” “sexual orientation,” “hate speech,” “hate crimes” and other respective notions properly. The government also has little consideration for the civil society when national anti-discrimination and healthcare programmes are drafted. LGBT people live in constant fear of abuse by the medical workers, law-enforcement, judiciary, and the general public, while the government turns a blind eye on to the necessary high ground decisions that should be adopted and tries to present clearly homophobic laws as those that pertain no discrimination.

III. Obstructing the Right to Health of Gay Men, Other MSM, and Transgender People

21. The present-day position of the Russian government regarding LGBT, including the adoption of “gay propaganda” laws, denying the LGBT their right to assembly and expression under the guise that the display of homosexuality is harmful to the health and moral upbringing of minors, i.e., the national progeny, frankly, is based on non-factual superstition, does not coincide with Russia's international human rights treaties or the contemporary medical research. LGBT are factually denied their fundamental human rights and freedoms in most areas of life, particularly, when it comes to their right to health. There can be no regard for the Report saying that discrimination on grounds of SOGIGE is prohibited in Russia when evidently homophobic laws are passed and discrimination ensues on different levels of social life of the LGBT. The Constitution of Russia, article 41, declares: “Everyone has the right to healthcare and medical aid. Concealment of facts and circumstances that create a threat to the life and health of people by public officers ensues liability as pertained by the federal law.”³⁰ Unfortunately, as mentioned above and based on the cases that will be presented below, gay men and transgender people are not only denied their right to healthcare, their dignity is frequently offended. ECOM considers the Report's response to the HRCtee's demands regarding the situation with the discrimination of the LGBT in Russia to be vastly uninformative.

22. The right to health is a fundamental right of all humans that should be unequivocally protected by every state regardless of the person's social attributes. Article 25 section 1 of the Universal Declaration of Human Rights states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including [...] medical care and necessary social services [...]”³¹ In combination with the above-mentioned national and international norms, gay men and transgender people are entitled to an adequate standard of life, which includes decent healthcare. As outlined in the OHCHR Fact Sheet No. 31, among others, the right to health means that “non-discrimination is a key principle in human rights and is crucial to the enjoyment of the right to the highest attainable standard of health. [...] Non-discrimination and equality further imply that States must recognize and provide for the differences and specific needs of groups that generally face particular health challenges,

²⁸ *Ibid.*, para 65

²⁹ *Ibid.*, para 16

³⁰ *Constitution of the Russian Federation*, <https://wipolex.wipo.int/fr/text/440595>

³¹ *Universal Declaration of Human Rights*, <https://www.un.org/en/universal-declaration-human-rights/>.

such as higher mortality rates or vulnerability to specific diseases.”³² Because of stigmatisation and discrimination, gay men and transgender persons conclude a minority group that is vulnerable to increased health risks, including higher HIV-risks.³³ Apart from this, the perpetual conditions of living in fear of being harassed or physically abused by the general public, medical workers or law-enforcers already contradict the Preamble of the Constitution of the World Health Organisation, which outlines that health is “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”³⁴ Russia is a part of both frameworks, of the Universal Declaration and the World Health Organisation, and should act upon the international obligations it has recognised, which are, in fact, for the good of its entire nation. The better the minorities are integrated, the higher the level of social and civil society progress, the more effective the democratic mechanisms.

23. Russia has an obligation before the people residing within its borders to ensure proper healthcare for everyone regardless of their SOGIGE or health status. Although the Covenant does not expressly include the right to health as the object of protection, there are various other rights which are non-separable from it that are included: the right to non-discrimination (arts 2,3); the right to life (art 6); the right to liberty and security of a person (art 9); the right to privacy (art 17); and others.³⁵ Gay men and transgender people in Russia meet many hindrances in realising their constitutional right to healthcare, which, in turn, infringes their right to health. Because gay men and transgender people live in fear of being abused, they are afraid to turn for medical or legal aid to government institutions. Subsequently, the stigma forces them to keep a low profile, and the inability to express their sexuality and identity forces them into unsafe life practices and unsafe sexual practice. As a result of the existing stigma, gay men and transgender people cannot acquire satisfactory healthcare services because of the danger to the secrecy of their health, including their HIV status, being infringed, or them being harassed or blackmailed by medical workers or law enforcement officers, which is a very alarming in the context of the HIV epidemic in Russia.

24. With the right to health of the LGBT in mind, considerations regarding Russia’s HIV legislation is due. Firstly, the Law “On Prevention of the Spreading of HIV in the Russian Federation,” article 5, declares that HIV-positive citizens of Russia have the rights, freedoms and obligations as prescribed by the Constitution and laws of the Russian Federation on its territory and on the territory of its subjects; the rights and freedoms of citizens of the Russian Federation may be limited because of their HIV-positive status.³⁶ Article 10 of the same law indicates that foreign citizens and stateless persons who apply for a Russian visa to stay within Russia’s border for a period longer than 3 months are to provide a certificate about them being HIV-negative.³⁷ Article 11 section two of the HIV Prevention Law stipulates that “in case HIV is detected in a foreign citizen or a stateless person who are present on the territory of the Russian Federation, they are to be subjected to deportation outside the borders of the Russian Federation based on the procedure defined by the law.”³⁸ Such a situation invests in further developing stigma around HIV and PLHIV, demonizing them so far as to deem them worthy of deportation simply because of their HIV status. In a case reported by a St. Petersburg LGBT NGO, a gay man (an Uzbekistan immigrant) found out about his HIV-positive status in the beginning of 2019; the man is not seeking HIV-services in the local polyclinic because he is afraid of getting deported and then prosecuted in his home country because being homosexual is a crime in Uzbekistan. Therefore, the mentioned legal provisions and governmental position bolster public misconception about HIV, which is then layered as double stigmatisation if the person happens to be LGBT. It also creates additional reasons for avoiding getting tested for HIV and other STIs, receiving respective treatment and care, which creates more barriers to accessing healthcare and

³² OHCHR Fact Sheet No. 31: Right to Health, <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>, pp. 4, 7

³³ “HIV Prevention, Diagnosis, Treatment and Care for Key Populations,” <https://apps.who.int/iris/bitstream/handle/10665/258967/WHO-HIV-2017.05-eng.pdf;jsessionid=0820526977250B4F83EB63B26DDFF2C2?sequence=1>

³⁴ Constitution of WHO, https://www.who.int/governance/eb/who_constitution_en.pdf.

³⁵ WHO on ICCPR and the Right to Health, https://www.who.int/hhr/Civil_political_rights.pdf

³⁶ Law On Prevention of the Spreading of HIV in the Russian Federation, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102034858>

³⁷ Ibid.

³⁸ Ibid.

infringing the LGBT people's right to health and life. Seeing how Russia treats HIV-positive non-citizens, the citizens of Russia are ill-advised and mis-educated regarding their own health and HIV status. Such laws do no good to anyone and only invest in the HIV epidemic.

25. Another legislative problem that obstructs the right to health of gay men and transgender people is the persistent activity of the Russian government to limit their freedom of association and assembly. While the CO already voiced its concerns regarding the matter, the Report (para 378) states that "[i]n the Russian Federation, Federal Act No. 54-FZ of 19 June 2004 on Meetings, Rallies, Demonstrations, Marches and Picketing provides for a notification-based system for holding public events." However, in practice, that is not true. The Legislative Analysis Related to LGBTQ Rights and HIV in 11 CEECA Countries by ECOM shows that the "gay propaganda" law, the public opinion, in particular taking the form of petitions to the President as well as other authorities with "classic" requirements to ban "gay propaganda" and prohibit LGBT, result in this notification-based system for holding public events dysfunctional. Local authorities present responses to such notifications in the form of denying them holding the event. Then, if the people hold the peaceful assembly, they are subjected to public abuse and violence, police resort to violence and arrests, and the LGBT are punished for holding "illegal" rallies *and* for promoting "non-traditional" sexuality. There are many instances of the Russian authorities resorting to such bans and punishment, even recognised by the European Court of Human Rights.³⁹ Human Rights Watch reveals that a recent poll shows that 1 in 5 Russians considers that the LGBT community should be "eliminated" from existence.⁴⁰ Human Rights Watch also reports that, in 2019, St. Petersburg court ruled that two social media LGBT groups violated "gay propaganda" law, which then gave green light to banning all LGBT online groups.⁴¹ The Barents Observers, an independent Norwegian newspaper, also had its online presence in Russia blocked after an aggressive lash out of some Russian parliamentarians and state prosecution in court; the entire premise was based, again, on the alleged propaganda of homosexuality on their website.⁴² Russian feminist and LGBT activist Yuliya Tsvetkova is currently under bogus house arrest for allegedly distributing pornography and is now facing charges for allegedly breaching the "gay propaganda" law, saying she violated the law because she posted a drawing on her social media showing two same-sex couples with children and the caption "Family is where love is. Support LGBT+ Families!"⁴³ Just recently, in March, the President of the Russian Federation proposed a constitutional amendment that defines marriage as a "union of a man and woman," ruling out gay marriage on the constitutional level.⁴⁴ One of the other amendments is proposed precedence of the Russian Constitution over international law, including human rights law.

26. In addition to the mentioned cases, the LGBT community's ability to develop their civil society is grossly impeded by the Russian legislation. Notably, Federal Law N 121-FZ dated 20 June 2012 "On introducing amendments to certain legislative acts of the Russian Federation regulating the activities of non-commercial organizations performing the functions of foreign agents" sets strict requirements for all organisations, irrespective of their beneficiaries, and used by the authorities to censor and restrict the activities of NGOs. The changes were introduced into the Law "On Public Associations" N 82-FZ of 19 May 1995.⁴⁵ Now, any NGO that wants to acquire funding from donors outside the Russian Federation, has to be registered as a "foreign agent."⁴⁶ These provisions

³⁹ "Russia Violated Basic Human Rights with LGBT Rally Bans," <https://www.rferl.org/a/russia-violated-basic-rights-with-lgbt-rally-bans-european-court-rules/29623965.html>

⁴⁰ "1 in 5 Russians Advocate 'Eliminating' LGBT Community," <https://www.themoscowtimes.com/2020/04/20/1-in-5-russians-advocate-eliminating-lgbt-community-poll-a70047>

⁴¹ "Russia Censors LGBT Online Groups," <https://www.hrw.org/news/2019/10/08/russia-censors-lgbt-online-groups>

⁴² "The Barents Observer Is Now Blocked in Russia," <https://thebarentsobserver.com/en/civil-society-and-media/2019/02/barents-observer-now-blocked-russia>

⁴³ "Russian LGBT Activist Under House Arrest," <https://www.hrw.org/news/2020/01/22/russian-lgbt-activist-under-house-arrest-facing-new-charges>

⁴⁴ "Putin Proposes Constitutional Ban on Gay Marriage," <https://www.nytimes.com/2020/03/03/world/europe/putin-proposes-constitutional-ban-on-gay-marriage.html>

⁴⁵ *Law On Public Associations*, <http://www.consultant.ru/cons/cgi/online.cgi?from=115872-0&rnd=DF905311284809725461AD880D1D5FEC&req=doc&base=LAW&n=339215&REFDOC=115872&REFBASE=LAW#cz9ydl2qlq0>

⁴⁶ *Ibid.*, articles 29, 38

seemingly target the protection of national security but, in reality, they significantly hinder the activity of the entire NGO sector. In addition to being obliged to be registered as a foreign agent, the NGO that wishes to receive funding outside Russia is subject to being registered as a legal entity and to providing extensive documentation and reporting on a short-term basis. For example, in December 2018, the Center for Social and Information Initiatives "Action", aimed at fighting HIV/AIDS epidemic and protection of the health of socially vulnerable groups, was recognized by the Russian Ministry of Justice as a "foreign agent NGO" because of a charity donation it received from the Russian foundation Open Health Institute (OHI). Since OHI received its funding from the Global Fund to fight AIDS, Malaria, and Tuberculosis, the Center for Social and Information Initiatives "Action" was recognized as the one receiving "foreign funding" indirectly. Assistance from OHI, which was recognized as "foreign funding," was donated for conducting two National Conferences of HIV Service Organizations and the LGBT Movement (2016 and 2017). At these conferences representatives of various Russian regions shared their experience in how to prevent the spread of HIV infection and help people living with HIV among gay, bisexual and transgender people. This situation directly contradicts the position of the Ministry of Health, which advocates strengthening HIV prevention among gay and bisexual people. On June 29, 2018, an NGO, Center "Action", was brought to administrative responsibility and faced a fine of 300 thousand Rubles (appr. 4265 Euro). In early 2019, the Center "Action" announced the liquidation of its legal entity. That being said, more than 10 HIV-services NGOs have been recognized as "foreign agents" by the government and the unnecessarily stringent requirements of operation and reporting have resulted in many of them commencing liquidation proceedings.

27. In addition to seemingly consciously creating the mentioned barriers for NGOs to receive funding outside of Russia so as to impose more control on their agenda and activities, the Russian government seems to discriminate against funding LGBT NGOs that apply for HIV-prevention funding for MSM and transgender people. Notably, the ITPCru NGO with the support from the Public Group for the Prevention of Social Diseases and Upholding Healthcare (a part of the Ministry of Economic Development of the Russian Federation) conducted a study. The research⁴⁷ targeted governmental auctions for HIV-prevention funding during May-July 2017; 19 subjects of the Russian Federation and the Ministry of Healthcare were the objects of the study. Among others, 65% of these auctions were placed by regional AIDS Centres while the rest were placed by other healthcare departments, committees, etc. Only 21% of these auctions had advantageous terms for small businesses and socially oriented NGOs. It was found that 79% of the target audience of these auctions were focused on the general public; 27% of the auctions themselves placed orders for HIV-prevention creating audio and video materials for the general public that would be run on radio and regular TV. The division of allocated funds between the activities, social groups, medium of popularization and the actual HIV-services is, frankly, absolutely ineffective: the focus is on the general public, printing information or using other media to display it to the said category. The study found that, as a result of these HIV-prevention auctions during those 3 months, 34 044 785.48 RUB (!) were provided to the general public applications and programmes while only 2 208 101.00 were awarded to HIV-prevention programmes targeting key population groups. With that said, the study shows that the focus of governmental funding does not correlate with the tendency of the HIV epidemic progression at all. Moreover, only 4 "direct" auctions were announced that targeted key populations (sex workers and PWUD); these two groups were slightly targeted in the HIV-testing auctions. MSM and PLHIV were not targeted by any of these governmental HIV-prevention auctions for funding, nor do any national programmes target them. In addition, in April 2020, local authorities in the city of Voronezh declined an NGO's appeal to question MSM in order to enhance the local HIV-prevention services; the rejection was based on abnormal mass media attention that criticized the local authorities' attempts to study MSM and include cater to their needs better to make HIV-prevention

⁴⁷ "Report on the Monitoring of Auctions in the Area of HIV Prevention," <https://itpcru.org/2017/08/17/otchet-po-monitoringu-auksionov-v-sfere-profilaktiki-vich-infektsii-v-rf-v-period-s-01-maya-po-31-iyulya-2017-goda/>

in the region more effective.⁴⁸ Therefore, it becomes clear that Russia overtly discriminates and consciously turns a blind eye on supporting the key population groups (and their representative NGOs) that need coverage along the HIV-services spectrum the most.

28. The aforementioned legal analysis was necessary because it reveals what LGBT NGOs that would like to offer HIV-prevention services have to face. Considering the current overkill approach the Russian government has established for NGOs that conduct its activities, it is worth mentioning the widely distributed and appreciated UNAIDS 90-90-90 Strategy. Firstly, NGOs who work with key population groups (those that are at a higher HIV-infection risk) should be considered during public calls for grants and during their regular work on the same level as NGOs that deal with other health issues and populations. Therefore, a tailored approach on the government's part is necessary to follow the global action plan to fight the HIV epidemic. Consequently, the UNAIDS 90-90-90 Strategy encourages states to follow the principle of community-based HIV-services that should be provided by LGBTQ+ NGOs to their respective community directly. Representatives of these communities should be invited by the government when any HIV-related regulations or regulations that may impact the HIV-services distribution are being discussed in order to tailor such laws correctly, avoiding discrimination and reach the community better with respective medical services. In relation to the current system of NGOs receiving grants and conducting their activities, the 90-90-90 Strategy recommends that HIV-services that are provided to key population groups should be decentralized.⁴⁹ In other words, the services should be provided by the community for the community, and respective NGOs should be entitled to coordinate their activity directly with their donors and other financing institutions in conformity with their tailored programmes that abide by and fit the national HIV-prevention action plan or programme but without extensive governmental control, bureaucracy, and interference. Since, usually, governmental institutions lack the knowledge, proficiency, and expertise in working with the delicate needs of key population groups, UNAIDS advises them to simplify the granting and operations procedures for such NGOs and encourage their invaluable work with their communities, instead of trying to supervise them and treat them like any other NGOs. For some reason, Russia seems to adopt decisions that are totally opposite to those recommendations, further exacerbating the HIV epidemic in its countries by its own actions.

29. As the Report indicates, there is no official ban for LGBT to register their NGOs and try to apply for governmental funding, but the factuality of the publicly exercised homophobia and transphobia that is pertinent to local and federal authorities stalls their resolve. Notably, all of the LGBT NGOs that were registered as such were labeled as "foreign agents" by the government; all of them were forced to disband because of the above-mentioned irrational requirements and governmental hindrance to their activity. There are now no officially registered LGBT NGOs in Russia at all. The LGBT are scared of being persecuted and violated for their attempts to conduct civic activity and attempts to provide HIV-services to its community by stating themselves as LGBT NGOs. Considering that the Head of the State is overtly expressing his enmity towards the LGBT, the latter have no faith in them meeting successfully completing the registration or grant application procedures. As a result, MSM and transgender people are virtually not covered by the state HIV prevention programme (as they are not studied or mentioned there anywhere), and they cannot receive community-based HIV-services as well. Considering how posts about pro-LGBT posts are now hunted down and punished, people are afraid and discouraged to apply for national funding for HIV-services for the LGBT or register as LGBT NGOs.

30. The LGBT civil society has records of numerous cases of violation of human rights of the LGBT, including cruel, inhuman or degrading treatment. Article 21 of the Russian Constitution proclaims that "[n]o one should be subjected to torture, violence, other

⁴⁸ "Mass Media Hype Damages HIV-Prevention in the Region," <http://zdrav36.ru/novosti/2020-04-22-hayp-v-smi-nanes-uron-borbe-s-rasprostraneniem-vich-infektsii>; "Status of Government Purchases," <https://zakupki.gov.ru/epz/order/notice/ea44/view/common-info.html?reqNumber=0131200001020003565>

⁴⁹ UNAIDS 90-90-90 Strategy, https://www.unaids.org/sites/default/files/media_asset/90-90-90_en.pdf

cruel or degrading treatment or punishment.”⁵⁰ Article 117 of the Russian Criminal Code “Torment” reads: “Infliction of physical or psychological suffering by means of systematic battery or other violent actions, if it did not result in the outcomes indicated in article 111 and 112 of the present Code [sanction]”.⁵¹ “With the use of torture” is used as an aggravating circumstance in section 2 of article 117. With that being said, NGOs reported to ECOM and to mass media that about 40 people were imprisoned throughout 2019 in Chechnya for being LGBT — two of whom died.⁵² NGOs report LGBT people being illegally detained in Chechnya, subjected to degrading and inhuman treatment, which even tends to result in deaths. The government continues to deny the statements and has conducted no formal investigation or reporting on the matter. The mentioned situation is outrageous and results in the LGBT not only being afraid of getting screened for HIV and searching other HIV-services or setting up an NGO, they are afraid to turn for regular healthcare, to police if they are discriminated against, and they are scared for their very lives.

31. Again, in Novosibirsk, another case involved a woman who turned to a gynecologist. During clinical observation, the gynecologist asked about the woman’s sex partners, their quantity and her sexual orientation. The woman reported that the gynecologist said she looked as a person of homosexual sexual orientation. The gynecologist emphasized that the woman was already old enough to have children and should give it serious thought. The gynecologist said that she would keep a very close eye on the woman and, if she finds the latter to be gay, she will disclose it to the entire polyclinic and beyond, as the gynecologist said the woman should become more serious and lead a “normal” way of life.

32. Meanwhile, in St. Petersburg, on 22 February 2019, a case involved Artyom Langenburg, a gay man, who ended up in the hospital after he had appeared after a fight with his friends at 6:30 a.m. Artyom was on the street with no phone or other belongings when he experienced a panic attack, and a bypassing woman helped him call an ambulance. At the moment of calling the ambulance, the man was under the influence of alcohol. Although Artyom significantly sobered up by the time he was shown to the doctor, the medical workers still placed him in a ward for sobering. There were another 3-4 patients there besides the man and they were tied up. The male nurses ordered Artyom to undress, except for his underwear, and tied him to the bed. The doctors did not conduct any clinical inspection of Artyom or the state of his skin, or other standard procedures during an ambulance call. The male nurses left and some other male medical worker came in and started to verbally abuse Artyom in question, “So you’re a fag, yeah, faggot?” The gay man told the abuser to behave properly and to introduce himself, as he did not have a name badge. In his response, the doctor threatened with an injection of strong antipsychotic medication. The doctor left for the man’s rucksack, which should have been in a safety camera. Then, the doctor threw all that was inside the rucksack on Artyom’s body, saying “All faggots should be burned!” Then, the doctor grabbed Artyom by the hair, set on his arm and asked, “Why do you even live, scum?” Further, by the order of this abuser, a nurse inserted the urethral catheter so that it was intentionally very painful for the Artyom. At 8:00 a.m., another shift came, saw the client, carefully extracted the catheter and untied the man. They gathered his belongings, gave him a phone to contact his friends and let them pick him up. Three weeks after the incident, Artyom sent complaints on the actions of this doctor to the Federal Service for Surveillance in Healthcare and Social Development in St. Petersburg and the Leningrad Region, to the Chairman of the St. Petersburg Health Committee and also to the prosecutor of the district where the incident took place, with a request to take measures to establish the identity of this doctor and bring him to justice. No reaction was received from all three agencies.

IV. Transgender Health

⁵⁰ *Constitution of the Russian Federation*, <https://wipo.lex.wipo.int/fr/text/440595>

⁵¹ *Criminal Code of the Russian Federation*, <https://www.wipo.int/edocs/lexdocs/laws/ru/ru/ru241ru.pdf>

⁵² “Chechnya LGBT,” <https://www.bbc.com/news/world-europe-46871801>

33. Transgender persons continue to be the most vulnerable out of all key population groups. Russia disregards their needs entirely and they continue to be subjected to transphobia in all areas of their lives. Again, as defined by the Preamble of the WHO Constitution, health “is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”⁵³ Transgender persons are those whose gender identity does not fully align with their sex assigned at birth. Some transgender people, progressing toward a gender role that differs from the one associated with their sex assigned at birth, undergo a so-called medical transition (e.g., hormone therapy, surgery, and/or other interventions) and legal gender reassignment (change of name and/or gender marked in their official ID). In an exemplary case, *A.R. Coeriel and M.A.R. Aurik v. The Netherlands*, the HRCtee observed that, *inter alia*, article 17 of the Covenant includes “the notion of privacy [that] refers to the sphere of a person’s life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone.”⁵⁴ Article 7 of the Constitution protects every person’s right to dignity and free development.⁵⁵ Article 23 proclaims that “Everyone has the right to inviolability of privacy, personal or family secrecy, protection of their dignity and good name.”⁵⁶ Apart from this, *A.R. Coeriel and M.A.R. Aurik v. The Netherlands* mentions that “the HRCtee is of the view that a person’s surname constitutes an important component of one’s identity and that the protection against arbitrary or unlawful interference with one’s privacy includes the protection against arbitrary or unlawful interference with the right to choose and change one’s own name.” Defining one’s name to accommodate one’s desire to communicate with the world as effectively as possible, in conformity with one’s gender identity and without any express or implied harm to others, is crucial in ensuring the protection of such a person’s right to (mental) health and privacy. WHO excluded “Transsexualism” from the list of its mental and behavioural disorders; the International Classification of Diseases does not include such a term anymore.⁵⁷ The new version of ICD does not view issues related to gender identity as mental disorders at all, and gender incongruence was placed in the chapter “Conditions Related to Sexual Health.”⁵⁸ Any person who experiences a strong discord between their gender identity that contradicts their sex assigned at birth, should be entitled to opt for legal gender reassignment that will ensure their healthy development as a human being, and the state – Russia – should help them in their transition in the spirit of ensuring the equality of all people before the law.

34. In Russia, gender-affirmative medical interventions are not included as a type of healthcare services available in the country under compulsory medical insurance. Surgery is expensive; while the services of endocrinologists in state-run medical clinics are often outdated: a vast majority of medical specialists have no knowledge and experience of treating transgender patients. This applies not only to transition-related medical needs, but also to any healthcare services: it is typical for transgender people to receive denials of treatment and transphobic insults from doctors. Many transgender people, as a result, face gruesome medical consequences. Among other things, the medical commissions that issue the certificate, necessary for the person to be able to commence their sex reassignment journey, are literally out of reach. Most people would have to travel across half the country to undergo such commission, usually, privately and for-pay since the state-run commissions are mostly transphobic and there is real danger of receiving a certificate with a “schizophrenia” diagnosis instead of “transsexualism”. That said, any psychiatrist should be able to diagnose one with “transsexualism” to begin their transition, but the current provisions demand the commission to be the one to validate the diagnosis and issue the document. The entire experience demands time, effort, and a lot of money for transgender people to travel across various distant parts of Russia, which is an additional strain to the already absent pool of qualified professionals and established procedures that can ensure a safe

⁵³ *Constitution of WHO*, https://www.who.int/governance/eb/who_constitution_en.pdf

⁵⁴ *OHCHR Selected Decisions of the HRCtee Under the Optional Protocol*, vol. 5, <https://www.ohchr.org/Documents/Publications/SDecisionsVol5en.pdf>, p. 75

⁵⁵ *Constitution of the Russian Federation*, <https://wipo.lex.wipo.int/fr/text/440595>

⁵⁶ *Ibid.*

⁵⁷ Transgender No Longer Recognised as ‘Disorder’ by WHO,” *BBC*, <https://www.bbc.com/news/health-48448804>; ICD-11, WHO, <https://icd.who.int/browse11/l-m/en#/http://id.who.int/icd/entity/411470068>

⁵⁸ WHO/Europe Brief on Transgender Health in the Context of ICD-11, <http://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/who-europe-brief-transgender-health-in-the-context-of-icd-11>

transition. Apart from this, even if the person has been lucky in finding the “right” doctors and paying through the entire medical transition, there is the question of confirming the new identity. Whether the person has undergone medical transition or wants to change their name without changing the gender marker or otherwise confirming their chosen gender identity without medical intervention, such a person can only do that at the place of their official registration of residency. People usually move to other cities and rent out. Thus, one has to acquire a lot of costs to travel and pay off additional incurring costs, not to mention the anxiety of facing possible discrimination. It takes much unnecessarily excessive effort for people to transition, surgery or no surgery. It would be more helpful and rational for them to be able to confirm their new identity, change one’s gender marker, in any chosen civil registrar office. In any case, medical transition as well as legal gender recognition is not fully accessible across Russia due to the absent clear procedures and specialised medical professionals and the additional strain put forth by the necessity to travel great distances to accomplish different stages of the transition.

35. As a result of such a governmental “blind-eye,” transgender people face various abuse in different essential areas of their lives. As reported by an LGBT NGO in Novosibirsk, a trans man turned to a regular polyclinic because he was not feeling well. The trans man did not have his gender marker changed in his passport and looked differently from their photo there. After presenting their passport and disclosing their gender identity, he was subjected to discriminated by the physician that was to inspect him. She stated that not only should “such people” not be entitled to free state healthcare, they should not be treated for anything at all. She continued to say that such people should be deprived of all goods and that they were the ones to blame for the spreading of such diseases as HIV, syphilis, hepatitis, and others. The physician raised her voice, continued to misgender and used crude language.

36. In St. Petersburg, as reported by another NGO, a trans man came to see an endocrinologist at his place of registered residence. The trans man had a F-64.0 certificate (“Transsexualism”). Upon presenting the endocrinologist with it, the latter was supposed to assign the necessary hormonal therapy for the trans man. The endocrinologist denied providing the services, stating that she did not work with “such” people and directed the trans man to a private clinic. This case is a typical situation that transgender people face when applying for transition-related healthcare services in state-run clinics.

37. Another case that happened in Novosibirsk is worth mentioning. On 6 November 2019, a trans man was seeing a medical board at a commissariat. In Russia, every man (up to 27 years old) is to undergo medical screening for asserting the fact of their military aptitude. The trans man showed up with a certificate that validated his transition and their passport with the changed gender marker. While seeing the psychotherapist during the screening, the latter said that such certificates held no power in a military commissariat and to pass the medical screening he would have to be hospitalised to a psychiatric ward of a medical facility. The said therapist emphasized multiple times that the transgender man obviously suffered from numerous mental disorders; “Yeah, it is a problem of your psyche. Normal people would never do such things.” Similar cases have been reported in Saint Petersburg.

38. The predominant part of both homophobic and transphobic cases remains undocumented because of the stigma. Army conscription commissions are internally ordered to distrust certificates on “transsexualism” issued by private psychiatrists, forcing transgender people to go through the degrading state medical commissions and suffer through the above-mentioned issues. Access to medical transition and legal gender recognition is a part of a transgender person’s right to health, self-determination, and privacy. Transgender people are often subjected to double stigmatisation since not only are they vulnerable to getting infected with HIV due to the same reasons gay men have, but they are also discredited by medical workers due to the latter’s bias and lack of knowledge, exposed to high risks of being abused or denied even common healthcare services. Currently, transgender people are far from enjoying equal rights and opportunities as the general cisgender population of Russia.

V. Concluding Note

39. The Constitution of the Russian Federation proclaims: "The Russian Federation is a secular state. Russia is a democratic federal legal state. The person, his rights and freedoms are of the highest value."⁵⁹ Secular democratic states design their policies based on the principle of pluralism, especially in a federal state that encompasses so many cultures, ethnicities, religions, and views. Secular democratic states recognise the power of its people, and Russia's people are as diverse as they come, which means that they cannot conform to a rigid politically dictated narrow set of imposed values, views and needs. At present, the overwhelming majority of LGBT in Russia do not have the opportunity to enjoy even a decent standard of living, not to mention the highest attainable standard. The right to health is a fundamental right of every person; it is the foundation that allows them to enjoy all of their other rights and fundamental freedoms. The HRCtee's practice and the framework of the Covenant define that the LGBT are to have their human rights protected and observed in the same way the state would treat any other person, considering their needs as a minority group to avoid disproportion in power in relation to the majority. Gay men and trans people do not enjoy their right to health, right to privacy, right to self-determination, and right to life in the capacity defined by ICCPR and Russian Constitution because the state not only does not have a comprehensive anti-discrimination law in action, and, instead, it acts to bolster homophobia and transphobia further. Gay men and trans people are denied a framework of protection of their rights based on sexual orientation and gender identity as attributes that are universally protected by the Covenant, to which Russia is a State Party. It is unfortunate and illegal that the government denies the LGBT the necessary legal levers needed to protect them from discrimination and stigmatisation. It is long overdue that the Russian Federation stops treating its nation as uniform and acknowledges the vast and organic diversity that is pertinent to its peoples. Without catering to the healthcare and development needs of the LGBT and other marginalized groups, Russia will never achieve the high ideals of a free democratic secular state.

VI. Recommendations

ECOM, "Coming Out" LGBT group, NGO "Phoenix PLUS" and Anonymous trans*group from Siberia ask the Human Rights Committee to consider the following questions during its 129th Session:

- What actions has the Russian Federation done to adopt an all-inclusive anti-discrimination legislation, which would expressly ban all forms of discrimination and would protect all people from any discrimination, including from discrimination based on the grounds of gender identity and sexual orientation? What has been done to repeal the discriminatory "gay propaganda" law?
- What endeavors have been undertaken by the Russian Federation to separate the crimes committed out of hate based on the victim's sexual orientation and/or gender identity into a distinct, individual category of crimes, as well as acknowledging the perpetration of a crime out of hate based on sexual orientation and/or gender identity of the victim as an aggravating circumstance? How many convictions have been made that correctly identified the crime as being a hate crime committed out of discrimination based on SOGIGE, acknowledging the victim as being a part of a social group — the LGBT group?
- Is there a federal programme that focuses on educating the law-enforcement about effective investigation of hate crimes based on hate for the LGBT and which special measures exist or are being undertaken to adopt such a programme?
- What measures have been undertaken by the Russian Federation to harmonise its legislation with the UNAIDS policy in terms of decreasing the stigma of people living with HIV?
- What instruments has the Russian Federation implemented to strengthen the confidentiality of personal data and HIV-status of those getting tested? What has

⁵⁹ *Constitution of the Russian Federation*, articles 14, 1, 2, <https://wipo.lex.wipo.int/fr/text/440595>

been done to expunge any legal provisions that could infringe that confidentiality and to rightfully punish those who breach it?

- What governmental healthcare policies and programmes of the Russian Federation in the area of HIV-prevention have been adapted to suit the needs of the LGBT community, particularly the key population groups of MSM (men who have sex with men) and transgender people?
- What steps have been taken by the Russian Federation to enable access for transgender people to healthcare, and specifically to safe gender-affirming medical procedures (hormone replacement therapy and surgeries)?
- What has been done by the Russian Federation to create a non-discriminatory clearly stipulated procedure for transgender people to be able to change their name and gender markers without getting diagnosed with alleged psychiatric disorders?
- What measures are being taken by the Russian Federation to assure that the LGBT can safely and actually realise their freedom of association and freedom of assembly, especially in regards that the "propaganda law" is often used as a pretext ban LGBT-related public rallies, as well as to detain activists who carry LGBT-themed flags, symbols, posters etc?
- Based on the cases in mass media, social media, and reports by the civil society, on what grounds does the Russian Federation commence proceedings against same-sex couples with the aim to deprive them of parental rights and take away their children? Does the Russian Federation use the "gay propaganda" law as a means to take away children (biological or adopted) from same-sex couples that are in stable relationships factually, albeit not recognized by the Russian legislation? Is there a direct legal ban for adopting children by same-sex couples? Inquire that the Russian Government provides their response in the form of links to existing legislation *and* court decisions in relation to such cases.
- What measures are being taken by the Russian Federation to acknowledge same-sex families, including their ability to legalize their relationships and raise children?
- What has the Russian Federation done exactly to redress the violated rights of Andrey Vaganov and Yevgeniy Yerofeyev, the rights of whom were violated by numerous acts of unjustified governmental intrusion into their private family life solely based on them being two gay men who were raising legally adopted children?