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INTERNATIONAL COMMISSION OF JURISTS WRITTEN STATEMENT

**LEGISLATIVE RESTRICTIONS ON "HOMOSEXUAL PROPAGANDA" AS A THREAT TO
LGBT HUMAN RIGHTS DEFENDERS**

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Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

ICJ Written Statement to the UN Human Rights Council

Legislative restrictions on "homosexual propaganda" as a threat to LGBT human rights defenders

The International Commission of Jurists (ICJ) welcomes the report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya (A/HRC/22/47). The ICJ takes this opportunity to draw the attention of the Special Rapporteur to laws or proposals in a variety of countries that severely threaten the work of lesbian, gay, bisexual and transgender (LGBT) persons and human rights defenders. Legislative restrictions on "homosexual propaganda" undermine the rights to freedom of expression and assembly, activities that are at the core of much human rights work.

The following recent examples from Uganda, the Russian Federation and Ukraine illustrate these concerns.

Uganda

Same-sex sexual activity is already prohibited under domestic law in Uganda. The Anti-Homosexuality Bill, which was first introduced in October 2009 and has been reintroduced in successive sessions of Parliament, would impose the death penalty for certain acts of "aggravated homosexuality". In addition, the Anti-Homosexuality Bill prohibits the "promotion of homosexuality", which is broadly defined in a way that would include almost all human rights advocacy on behalf of LGBT persons and communities. The most recent session of Parliament went into recess without considering the Bill, but activists fear that it will be taken up when Parliament reconvenes. Although the Bill has not yet been adopted into law, its existence has been used to justify a series of repressive measures. For example, in February 2012, the Minister of State for Ethics and Integrity, Simon Lokodo, shut down a capacity-building session for LGBT activists organized by Freedom and Roam Uganda (FARUG) at a hotel in Entebbe and threatened to arrest FARUG's executive director Kasha Jacqueline Nabagasera. In June 2012, police raided a workshop for East African LGBT human rights defenders that had been organized by the East and Horn of Africa Human Rights Defenders Project and they detained participants for several hours. In addition, the Minister for Ethics and Integrity has threatened to close down all civil society organizations that work on LGBT rights.¹

The Russian Federation

Ten regions in the Russian Federation have now adopted laws prohibiting the "promotion of homosexuality among minors". A federal law passed its first reading in the State Duma Council on 25 January 2013. These laws are not only vague, in contravention of the principle of legality, they are blatantly discriminatory in purpose and intent. They have been used to arrest and convict activists holding signs expressing support for equality and affirming LGBT human rights.² Police have even arrested activists trying to unfurl rainbow flags.³

In October 2012, the UN Human Rights Committee adopted Views in the case of *Fedotova v. Russia*. Irina Fedotova had been convicted under a homosexual propaganda law in the region

¹ See 'ICJ Condemns the Reintroduction of the Anti-Homosexuality Bill in Parliament', Press Release, 30 November 2012, available at <http://www.icj.org/uganda-the-icj-condemns-the-reintroduction-of-anti-homosexuality-bill-in-parliament/>.

² 'Discrimination in Russia: Arrests for Violation of St. Petersburg Anti-Gay Law', De Spiegel, 6 April 2012, available at <http://www.spiegel.de/international/world/two-arrested-in-st-petersburg-for-violating-city-s-new-anti-gay-law-a-826199.html>; 'Gay Rights Activists Detained for Gay Propaganda Released', Ria Novosti, 7 April 2012, available at <http://en.rian.ru/russia/20120407/172675045.html>; Valery Sozaev, Legislation on the So-Called "Propaganda of Homosexuality Among Minors": An Overview, in The Situation of Lesbian, Gay, Bisexual and Transgender People in the Russian Federation, available at <http://www.mhg.ru/english/1E11107>.

³ 'Russian police arrest gay rights activists at May Day rally', The Guardian, 1 May 2012, available at <http://www.guardian.co.uk/world/2012/may/01/russia-arrest-gay-rights-activists>.

of Ryazan. The Human Rights Committee found the law to be in violation of article 19 read in conjunction with article 26 of the International Covenant on Civil and Political Rights (ICCPR).⁴

Ukraine

Draft Law 8711 was approved on first reading by the Verkhovna Rada (Parliament) of Ukraine. The bill would introduce sanctions for the import, production and distribution of products that "promote" homosexuality. Homosexuality is defined as sexual relations between persons of the same sex. The explanatory note accompanying the Draft Law provides that its purpose is to "establish liability for actions that promote sexual relations between persons of the same sex." The penalties range from a fine to five years of imprisonment. Although the second reading of the bill has not yet occurred authorities in Kiev banned a public demonstration against the bill. When human rights defenders gathered despite the ban, the police arrested some of the protesters and the leader of the NGO Insight, Olena Shevchenko, was charged and found guilty for organizing an illegal assembly.⁵

Incompatibility with international law

The ICJ has repeatedly stressed, including in submissions to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/20/NGO/13) and to the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/NGO/), that these restrictions are unjustifiable under international law. International law guarantees the enjoyment of all human rights without discrimination. This means both that the freedom of expression of LGBT individuals cannot be restricted and that expression concerning same-sex relationships, sexual orientation and gender identity cannot be restricted in a discriminatory manner. Any restriction on the right to freedom of expression must meet the following conditions: it must be provided by law, must address one of the aims set out in article 19(3) of the ICCPR, and must be necessary to achieve a legitimate purpose. Laws restricting freedom of expression must be compatible with the aims and objectives of the ICCPR and must not violate its non-discrimination provisions.⁶ They may not be imposed for discriminatory purposes or applied in a discriminatory manner.

Furthermore, the laws and even the legislative bills constitute unjustified restrictions on the rights to freedom of association and freedom of peaceful assembly. These are also critical rights to the work of human rights defenders.

Call for action

The ICJ therefore encourages the Special Rapporteur to:

- Follow up all allegations of restrictions on the rights to freedom of expression, freedom of assembly and freedom of association for LGBT individuals;
- Call on governments to protect these rights for everyone and to ensure that any restrictions on such rights comply with the requirements of legality, of necessity and proportionality and of non-discrimination on all grounds;
- In the case of laws or legislative proposals that fail to comply with the latter requirements, take appropriate joint action with other Special Procedures, including the Special Rapporteur on the promotion and protection of the right to freedom of

⁴ *Fedotova v Russian Federation*, Human Rights Committee Communication 1932/2010, UN Doc CCPR/C/106/D/1932/2010 (2012), para 10.8

⁵ Email from Olena Shevchenko, 14 December 2012; Human Rights Watch, 'Investigate Attacks on Peaceful Protest', Press Release, 18 December 2012, available at <http://www.hrw.org/news/2012/12/18/ukraine-investigate-attacks-peaceful-protest>.

⁶ Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1985/4 (1984), Principle 2; Human Rights Committee, General Comment 22 (right to freedom of thought, conscience or religion), UN Doc CCPR/C/21/Rev.1/Add.4, para 8 ("In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26").

- opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and
- Continue to integrate issues of sexual orientation and gender identity in the fact-finding and reporting of her mandate.
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