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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 16/4, 15/22, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the impending first reading of the draft federal law No. 44554-6 introducing amendments to the Code of the Russian Federation on Administrative Offences regarding the "propaganda of homosexuality"**.

According to the information received:

On 19 December 2012, the Russian State Duma is scheduled to consider in first reading a draft law banning the "propaganda of homosexuality" at federal level across the country. The amendment contained in Art. 6.13.1. to the Code of the Russian Federation on Administrative Offences would make the "propaganda of homosexuality among minors" punishable by administrative fine. The amount of the fine foreseen is 4,000-5,000 roubles (\$130 – 160) for citizens; 40,000-50,000 (\$1,300-1,600) roubles for officials and 400,000-500,000 roubles (\$13,000 – 16,000) for legal entities.

The explanatory note submitted with the draft law claims that "propaganda of homosexuality in Russia took a wide sweep" and it is "delivered both through the media and through active social actions that promote homosexuality as a behavioural norm". The note further stresses that family, motherhood and childhood are traditional values and require special protection from the state.

The draft law was introduced following similar legislation adopted by a number of Russian regions. For example, on 29 February 2012, the city parliament of Saint Petersburg adopted a law banning “propaganda of sodomy, lesbianism, bisexuality and transgenderism, and pedophilia to minors”. On 3 October 2012, the Supreme Court considered and subsequently rejected an appeal by the LGBT non-governmental organization Coming Out, finding that the law was consistent with the legal framework of the Russian Federation. Likewise, the Supreme Court had dismissed an appeal by the Russian LGBT Network concerning a similar legislation in Arkhangelsk. In their reasoning the Supreme Court argued that the propaganda ban should not prohibit “open and public debates about the social status of sexual minorities” and does not “limit the right of the child to receive information, including information about homosexuality, conditional to his needs and appropriate to the specifics of his age”.

The first reading of the federal draft law in the State Duma comes in the wake of a decision by the Human Rights Committee (Communication No. 1932/2010) adopted on 19 November 2012 in the Fedotova v Russian Federation case. The author of the communication, Ms. Irina Fedotova, was convicted by the justice of peace of an administrative offence under section 3.10 of the Ryazan Region Law on Administrative Offences (Ryazan Region Law) for having displayed, on 30 March 2009, posters that declared “homosexuality is normal” and “I am proud of my homosexuality”. The referred section of the Ryazan Region Law reads as follows: “Public actions aimed at propaganda of homosexuality (sexual act between men of lesbianism) among minors shall be punished with administrative fine in the amount ranging from 1,500 – 2,000 roubles”. Ms. Fedotova was ordered to pay a fine of 1,500 roubles.

In its consideration of the merits of the case the Human Rights Committee was of the view that the State party has not shown that a restriction on the right to freedom of expression in relation to “propaganda of homosexuality” – as opposed to propaganda of heterosexuality or any sexuality generally – among minors is based on reasonable and objective criteria. Furthermore, the Committee was of the view that, by displaying posters that declared “Homosexuality is normal” and “I am proud of my homosexuality” near a secondary school building, the author has not made any public actions aimed at involving minors in any particular sexual activity or at advocating for any particular sexual orientation. Finally, the Committee concluded that Ms. Fedotova’s conviction of an administrative offence for “propaganda of homosexuality among minors” on the basis of the ambiguous and discriminatory section 3.10 of the Ryazan Region Law amounted to a violation of her rights under article 19 (2), read in conjunction with article 26 of the International Covenant on Civil and Political Rights. Furthermore, the Committee also stressed that the Russian Federation is also under an obligation to prevent similar violations in the future and should ensure that the relevant provisions of the domestic law are made compatible with articles 19 and 26 of the Covenant.

Concern is expressed that the draft law, if adopted, may potentially be used to prohibit the dissemination of information regarding LGBT persons and their human rights and might have a further restrictive effect on the activities of organizations working to defend the rights of LGBT people. Further concern is expressed that the draft law, if adopted, would form part of a series of recent legislation restricting the work on human rights organizations. Additionally, serious concerns are expressed that the draft legislation would further contribute to the already difficult environment that LGBT rights defenders operate in, including intimidation, threats, harassment and physical attacks by extremist organizations.

Furthermore, we are concerned that the draft law's alleged criminalization of "propaganda of homosexuality among minors" will undermine the efforts to promote sexual reproductive health in the Russian Federation, including among LGBT people. We would like to stress the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including the right to sexual and reproductive health, which is reflected, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – ratified by your country on 16 October 1973. This includes an obligation on the part of all States Parties to ensure that measures are taken to promote sexual and reproductive health and that access to health-related education and information, including on sexual and reproductive health, is available to all without discrimination. Furthermore, article 2 of the ICESCR requires States to guarantee that all rights enunciated in the Covenant will be exercised without discrimination of any kind.

Concern is also expressed about the draft law's detrimental impact on combatting the spread of HIV in the Russian Federation, which has seen an increase of 12 per cent in HIV cases in the first ten months in 2012. It has been shown that criminalization of vulnerable populations, including LGBT people, makes HIV and AIDS prevention, treatment and education efforts less accessible to these groups. In addition, criminalization of propaganda of homosexuality means that national health plans and policies will not reflect the specific needs of LGBT persons. On the other hand, decriminalization combined with efforts to address stigma and discrimination against those vulnerable populations constitutes a far more effective approach to HIV prevention.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international standards that are applicable to the issues brought forth by the situation described above.

In this connection, we would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Regarding the fact that the draft law might have a further restrictive effect on the activities of human rights defenders working for the rights of LGBT people, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 7 which states that "Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance";

- article 12 paras 2 and 3 which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regard to article 7 of the Declaration on human rights defenders, the Special Rapporteur on the situation of human rights defenders has stated that the right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This includes the right to discuss and advocate for human rights ideas and principles that are not necessarily new but that, in some contexts, may be perceived as new or unpopular because they address issues that might challenge tradition and culture. In this connection, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater

risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

We would also like to recall resolution 17/19 of the Human Rights Council, where the Council expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would be grateful for your cooperation and your observations on the following matters, in particular in light of the impending first reading of the draft law, scheduled for 19 December 2012 in the State Duma:

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate how the provisions contained in draft federal law No. 44554-6 introducing amendments to the Code of the Russian Federation on Administrative Offences are in compliance with the obligations of the Russian Federation under international human rights law, including the provisions contained in articles 19 and 26 of the International Covenant on Civil and Political Rights; as well as the recent decision of the Human Rights Committee in the *Fedotova v Russian Federation* case.
3. Please indicate any steps taken in order to bring draft federal law No. 44554-6 introducing amendments to the Code of the Russian Federation on Administrative Offences in line with international and regional human rights standards relevant to the right to freedom of opinion and expression and the right to freedom of peaceful assembly.
4. Please kindly indicate what measures have been taken to ensure that human rights defenders, particularly those working for the rights of LGBT people, are able to carry out their legitimate work without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

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freedom of opinion and expression

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