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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 rights to freedom of peaceful assembly and of association; 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 rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning an **alleged attack against lesbian, gay, bisexual and transsexual (LGBT) rights defenders**.

According to the information received:

On 2 October 2012, the Parliament of Ukraine adopted at first reading Draft Law 8711 which criminalizes any reference to homosexuality in the media and public domain. The draft law amends four existing laws, Protection of Public Morals, Print Media, Television and Radio Broadcasting and Publishing, and makes "promoting homosexuality" an administrative offense punishable by a fine. It also amends Article 300 of the Criminal Code by adding the word "homosexuality" to the list of existing crimes which "propagandize violence and cruelty", offenses punishable by a prison sentence up to five years. Draft Law 8711 was the subject of a media release issued by the High Commissioner on 5 October 2012 in which she expressed concern at the discriminatory nature of the Draft Law, including its potential to undermine the rights to freedom of expression and information, as well the rights to health and equality before the law.

On 8 December 2012, approximately one hundred LGBT human rights defenders reportedly took part in a peaceful demonstration in Kiev in order to commemorate International Human Rights Day and to denounce Draft Law 8711 and, if adopted, its infringement on the rights of the LGBT community.

According to the information received, when the demonstration began, police surrounded the protesters and stated that the assembly was illegal. One of the organizers was subsequently given written notification by the police that the demonstration was illegal, despite the fact that the authorities had been reportedly notified of the demonstration's location and time on 7 December 2012, in accordance with Ukrainian law.

Reports further state that during the demonstration, a number of protestors were attacked by members of a radical right-wing group, while an individual also allegedly sprayed an unidentified gas into the crowd. Police reportedly detained the alleged perpetrators of the attack as well as six LGBT rights defenders, who had tried to protect themselves from those attacking them. Sources indicate that the detained were brought to a police station and were released after several hours. Two of the LGBT defenders were reportedly charged with "petty hooliganism" and were issued with a fine, while the organizer of the demonstration was allegedly charged with conducting an illegal assembly, an offence which could reportedly result in a considerable fine.

Concern is expressed at the alleged attacks against peaceful protestors and at the allegation that these acts were related to the individuals' activities as LGBT rights defenders, including their peaceful and legitimate opposition to Draft Law 8711, and their exercise of the right of freedom of peaceful assembly. Concern is also expressed that the alleged attacks on LGBT defenders took place under the presence of police and that the organizer of the protest has been reportedly charged with conducting an illegal assembly, despite having notified the necessary authorities of the event on 7 December.

While we do not wish to prejudge the accuracy of these allegations, 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 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right,

individually and in association with others, at the national and international levels, to meet or assemble peacefully.

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 12 paras 2 and 3 of the Declaration 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 the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, the Special Rapporteur on the situation of human rights defenders has emphasized (A/66/203, para. 56-61 and 112- 114) that the right to develop and discuss new ideas in the field of human rights is an integral part of the Declaration. This includes the right to discuss and promote the recognition of ideas and principles that are not necessarily new, but in some contexts, might be perceived as new or unpopular because they address issues that may challenge tradition and culture. In this regard, the Special Rapporteur encouraged states to take the necessary measures to ensure the principle of pluralism and to recognize the right of human rights to promote new ideas or ideas perceived as new. Furthermore, she encouraged States to take additional measures to ensure the protection of defenders who face a higher risk of being subjected to acts of violence and discrimination because they are perceived as challenging norms, traditions, cultural perceptions and accepted sociocultural stereotypes, including in relation to sexual orientation and gender identity.

We would also like to remind your Excellency's Government of the recommendations of the High Commissioner to Member States in her report of 17 November 2011 (A/HRC/19/41) in relation to discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, in particular paragraph (f): "Ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity". In our opinion, in order for these rights to be respected, Member States must address discriminatory attitudes through the provision of public information and education services, as well as ensuring the protection of those who work for the protection and promotion of these rights.

We would also like to remind your Excellency's Government that Ukraine, as a State Party to the International Covenant on Civil and Political Rights (ICCPR), is obliged to ensure equal protection of the law and to prevent all forms of discrimination. In the case of *Toonen v. Australia*, on which the Committee of Human Rights gave judgment in 1994, it was pronounced that "the reference to "sex" in paragraph 1 of Article 2 and Article 26 shall be considered as including sexual orientation." The Committee has since then urged different States Parties in its concluding observations to guarantee equal rights to all individuals regardless of sexual orientation, as stipulated in the Covenant.

We also wish to remind your Excellency's Government that the Universal Declaration on Human Rights (UDHR) states that "all human beings are born free and equal in dignity and rights". All people, including lesbian, gay, bisexual and transgender persons, are entitled to enjoy the protection provided for by international human rights law, and these rights are in no way limited by the fact that someone is lesbian, gay, bisexual or transgender. Human rights treaty bodies, including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination Against Women, have confirmed that the right to be free from discrimination, as enshrined in the core international human rights treaties, obliges States to protect everyone from discrimination on grounds of sexual orientation or gender identity.

We would further 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 ICCPR, 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."

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the ICCPR, which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in

conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation carried out in relation to this case. If no inquiries have yet taken place, please explain why. Please also provide the full details of any prosecutions which have been undertaken against the alleged perpetrators.
4. Please provide the details of the legal basis of the reported charges brought against three LGBT rights defenders and how these charges can be justified in light of the peaceful nature of the protest and the fact that the relevant authorities were reportedly notified of the demonstration by the organizers on 7 December 2012.
5. Please provide information on measures taken to ensure that LGBT rights defenders in Ukraine can carry out their legitimate and peaceful activities, including the exercise of the right to freedom of peaceful assembly and of freedom of opinion, without fear of violence, threats and intimidation, in accordance with Ukraine’s obligations under international human rights law.

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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