



International Bar Association's Human Rights Institute

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Stakeholder Submission to the UN Human Rights Council's Universal Periodic Review

Russia: 30th Session

About the IBAHRI:

Established in 1947, the International Bar Association (IBA) is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law and shapes the future of the legal profession throughout the world. It has a membership of over 55,000 individual lawyers and 206 bar associations and law societies spanning all continents and has considerable experience in providing assistance to the global legal community.

The IBAHRI was established in 1995 and works across the IBA helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and legal profession worldwide. The IBAHRI holds that lawyers and judges play a fundamental role in facilitating access to justice, ensuring accountability of the state and upholding the rule of law and human rights.

1. Methodology

- 1.1.** In November 2016, the IBAHRI published a report assessing the role of the UPR in advancing the protection of human rights, including the protection of sexual orientation, gender identity

and expression and sex characteristics (SOGIESC). The report identified certain measures, which could improve the quality and impact of the SOGIESC related recommendations provided by recommending states within the UPR process.ⁱ

- 1.2. In September 2017, the IBAHRI took part in the wider discussions at the HDIM platform in Warsaw on the situation of the LGBTI persons in Chechnya (Russia), discussing possible legal and political avenues, including the possibilities provided in the framework of UPR before the Human Rights Council in order to protect the rights of LGBT persons in Russia.
- 1.3. The information and recommendations in this submission are based on the consultations with local stakeholders – civil society organisations, lawyers and journalists; as well as on the findings of the 2016 report on SOGIESC.

2. Normative Framework

Scope of international obligations

- 2.1. Russia is a party to all of the main United Nations (UN) human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Russia has also recognised the competence of the UN Committee against Torture to undertake inquiries under Article 20 of the Convention.
- 2.2. Russia underwent its 2nd cycle UPR in 2013, where it received recommendations to protect the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people. It accepted recommendations to prevent arbitrary use of regulations to discriminate against LGBTI people, prevent discrimination including through the media, ensure the rights of LGBTI people to freedom of expression and peaceful assembly; as well as to investigate acts of homophobic violence.ⁱⁱ It partially accepted a similar recommendation from Uruguay,ⁱⁱⁱ but rejected seven other recommendations related to the repeal, amendment or enactment of laws impacting on LGBTI rights.^{iv}

Scope of national obligations

- 2.3. The Constitution of the Russian Federation states that all people shall be equal before the law and court. The State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of limitations of human rights on social, racial, national, linguistic or religious grounds shall be banned.^v The Constitutional Court has held that this includes sexual orientation.^{vi} However, there is no law in Russia explicitly prohibiting discrimination regarding sexual orientation and gender identity or expression.
- 2.4. Article 21 of the Constitution provides that human dignity shall be protected by the State. Nothing may serve as a basis for its derogation. No one shall be subject to torture, violence or other severe or humiliating treatment or punishment. Article 22 further reiterates that everyone shall have the right to freedom and personal immunity. Arrest, detention and remanding in custody shall be allowed only by court decision.

- 2.5. The Criminal Code provides for criminal responsibility for violation of the equality of human and civil rights and freedoms.^{vii} Furthermore, under the Criminal Code of the Russian Federation, criminal responsibility is higher for crimes such as murder, intentional health injuries, torment, threat of murder or severe health injuries, if they are motivated by hate towards specific social groups.^{viii}
- 2.6. The Criminal Procedure Code lists the statement of a crime, or report about a crime committed or to be committed, as the grounds to open a criminal investigation.^{ix} State authorities have an obligation to check the information received and to make a decision within 3 days, to either open a criminal investigation or refuse to do so.^x Pre-trial investigation of the criminal case must be finished within 2 months from the day of opening the investigation.^{xi}

3. Discrimination against LGBTI society in Russia

- 3.1. Homophobia is a widespread phenomenon in Russia. A survey conducted in 2013, showed that 74% of Russians believe that homosexuality should not be accepted by society.^{xii} Furthermore, the Russian President,^{xiii} members of parliament, other state institutions and high-ranking officials,^{xiv} as well as national media have made homophobic statements or comments, thus further contributing to widespread and ongoing intolerance towards the LGBT community in the country.
- 3.2. In 2010, the Human Rights Committee found that the Ryazan Region Law in Russia prohibiting “public actions aimed at the propaganda of homosexuality” violated the right to freedom of expression and equality before the law.^{xv} Despite this, a federal *Law on protection of children from information advocating for a denial of traditional family values* was adopted in June 2013 and is still in force. The law makes illegal the distribution of materials among minors in support of “non-traditional” sexual relationships. An overwhelming 88 percent of Russians support the gay propaganda ban, according to a survey conducted in June 2013.^{xvi} Since the adoption of the law, homophobic propaganda, violence, and even hate crimes have surged in Russia, using this law as justification.
- 3.3. Discrimination on the ground of sexual orientation or gender identity, as well as hate motivated crimes committed against the LGBT community do not attract an adequate reaction from state authorities and often result in no, or insufficient, investigations.
- 3.4. Furthermore, in traditional Chechen society homosexuality is a huge taboo. Many fear not only reprisals from Chechen authorities, but also from their own families. Homophobia is not only widespread but also as extreme as to allow or justify “honour killings”.

4. Events in Chechnya in May 2017

- 4.1. According to reports from April 2017, approximately 100 men were detained and tortured in secret detention facilities in Chechnya, around February 2017, on account of their real or suspected sexual orientation. At least three men are reported to have been killed.

- 4.2. The allegations of human rights violations against gay men were rebutted by the Chechen officials, who claimed that LGBT people do not exist in Chechnya.^{xvii} This remark defies accepted understanding of the existence of same-sex orientation all around the world.
- 4.3. Noting the seriousness of the alleged violations carried out in the territory of the Russian Federation, the IBAHRI submits that to date no real and effective investigation has been carried out in Russia to identify and bring to justice persons responsible for such crimes.

Recommendation 1

Engaging in active cooperation with the international human rights monitoring mechanisms, including by extending a standing invitation to treaty bodies and special procedures of the Human Rights Council^{xviii} to undertake fact-finding country visits and inquiry procedures where applicable, with respect to the allegations of massive detentions and torture and other forms of ill-treatment of men in Chechnya

Recommendation 2

Expediting impartial and effective national criminal investigations into allegations of detentions and torture and other forms of torture and ill-treatment of gay men in Chechnya in order to bring perpetrators to justice

Recommendation 3

Ending the use of arbitrary detention, torture, other forms of ill-treatment and excessive force by law enforcement officials in Chechnya

Recommendation 4

Ensuring Russia's national legislation aligns with its international obligations to protect individuals from discrimination on the ground of sexual orientation and gender identity, including by adopting a relevant provision explicitly prohibiting discrimination on the ground of sexual orientation and gender identity

Recommendation 5

Providing adequate legal training for law enforcement authorities, investigative bodies, lawyers and judges in the field of non-discrimination and hate crimes.

Recommendation 6

Adopting rules and procedures to ensure that national media does not engage in homophobic, discriminatory or other derogatory narrative that may promote disrespect and discrimination against persons based on their sexual orientation and gender identity

Recommendation 7

Encouraging high-level state officials and politicians to clearly take a position against homophobic political discourse

Recommendation 8

Repealing the provision of the *Law on protection of children from information advocating for a denial of traditional family values* and related laws prohibiting distribution among minors of

information promoting "non-traditional" sexual relationships

Recommendation 9

Ensuring that law enforcement authorities and other state institutions carry out effective and adequate investigations into claims of discrimination on sexual orientation and gender identity grounds, as well as into claims on hate crimes towards LGBTI community

Recommendation 10

Ensuring that victims of hate crimes receive adequate support and remedies for the violation of their rights

i IBAHRI, Report 'Sexual Orientation, Gender Identity and Expression, and Sex Characteristics at the Universal Periodic Review', November 2016, <https://www.ibanet.org/Document/Default.aspx?DocumentUId=E8D97988-D9DA-47F7-AF80-2D41FCE1FA5F>

ii Russian Federation, Outcome of the review, Addendum 1, A/HRC/24/14/Add.1, paragraphs 16 and 18. Recommendations made by Switzerland, Denmark, Norway and Argentina. For specific recommendations see Report of the Working Group on the Universal Periodic Review, Russian Federation, A /HRC/24/14

iii Uruguay recommended Russia, "Step up measures of protection against violence and discrimination on the grounds of sexual orientation, particularly by enacting laws that prohibit such discrimination, and take measures to ensure the effective exercise of the rights to peaceful association and assembly of the LGBT community."

iv See Report of the Working Group on the Universal Periodic Review, Russian Federation, recommendations 140.86 – 140.92 made by the Netherlands, Canada, Belgium, Denmark, Slovenia, Sweden and Spain. Also Addendum 1, A/HRC/24/14/Add.1, paragraph 20

v *Constitution of the Russian Federation*, 25 December 1993, Article 19

vi See In the Name of the Russian Federation, The Constitutional Court of the Russian Federation Judgment of 23rd September, 2014 No. 24-П/2014, <http://www.ksrf.ru/en/Decision/Judgments/Documents/2014%20September%2023%2024-P.pdf> (accessed 04 October 2017)

vii *Criminal Code of the Russian Federation No. 63-FZ*, 13 June 1996, Article 136

viii Ibid. Articles 105, 111, 112, 115, 117, 119

ix *Criminal Procedural Code of the Russian Federation No. 174-FZ*, 18 December 2001, Article 140

x Ibid. Articles 144, 145

xi Ibid. Article 162

xii Pew Research Center, 'The Global Divide on Homosexuality', 4 June 2013, <http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/>

xiii Lukas I. Alpert, 'Russia Passes Bill Banning Gay 'Propaganda'', 11 June 2013, <https://www.wsj.com/articles/SB10001424127887323495604578539220032220406>

xiv RT Channel 'Anti-gay law controversy 'invented by media' – Russia's sports minister', 19 August 2013, <https://www.rt.com/news/mutko-gay-propaganda-law-comment-666/>

xv See Irina Fedotova v Russian Federation, Communication No. 1932/2010, [http://www.equalrightstrust.org/ertdocumentbank/Case%20Summary%20Irina%20Fedotova%20v%20Russian%20Federation%20\(HRC%20Communication\)-%20Final.pdf?utm_content](http://www.equalrightstrust.org/ertdocumentbank/Case%20Summary%20Irina%20Fedotova%20v%20Russian%20Federation%20(HRC%20Communication)-%20Final.pdf?utm_content) (accessed 04 October 2017)

xvi David M. Herszenhorn 'Gays In Russia Find No Haven, Despite Support From the West', 11 August 2013, <http://www.nytimes.com/2013/08/12/world/europe/gays-in-russia-find-no-haven-despite-support-from-the-west.html?pagewanted=all>

xvii Shaun Walker 'Chechen police 'have rounded up more than 100 suspected gay men'', 2 April 2017, <https://www.theguardian.com/world/2017/apr/02/chechen-police-rounded-up-100-gay-men-report-russian-newspaper-chechnya>

xviii In particular, the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Independent Expert on sexual orientation and gender identity; and the Committee against Torture