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The LGBT-group STIMUL (Moscow)

For the adoption of

List of Issues

**The International Covenant
on Civil and Political Rights and the Russian Federation:
Sexual Orientation and Gender Identity Questions**

**Submitted to the Human Rights Committee in relation to the consideration of
the 8th ICCPR periodic report of the RF**

2020-05-05

The 129th session of the HRCtte

Introduction

1. The LGBT-group “Stimul” is a Russian civic initiative created in 2015 with the aim of fighting for equal rights and ensuring human dignity regardless of sexual orientation and gender identity. Our main activities are providing legal aid to victims of hate crimes or discrimination and representing their interests in police and courts. We also monitor human rights violations, assist LGBT-refugees, provide legal education and do international advocacy. “Stimul” has a wide geography of partners both at national and international levels. We are a member of ILGA-Europe.

2. Since 2015, we have provided legal aid to 600 applicants. Currently, our lawyers deal with more than 50 legal cases. Last year, we managed to stop criminal activities of several gangs engaged in robbery on fake dates with gays. We helped police to arrest at least six of the perpetrators, later they were convicted by courts. In total, in 2019, we assisted the police to initiate seven criminal cases related to hate crimes against LGBT-people. Earlier, “Stimul” submitted its observations to the UN CAT and the UN CESCR in 2017-2018.

Background information

3. In the *List of issues* in relation to the seventh periodic report of the Russian Federation in 2014 (CCPR/C/RUS/Q/7) the HRCtte inquired about adoption of comprehensive anti-discrimination legislation that contains a comprehensive list of grounds for discrimination, including sexual orientation and gender identity, and provides for effective remedies in judicial and administrative proceedings (para. 2). The RF was also requested to report on measures taken to combat discrimination, intolerance, hate speech, as well as violence against lesbian, gay, bisexual and transgender individuals and activists and to address the prevalent impunity for such acts (para. 4). Besides, the HRCtte demanded the information on measures taken to address the unlawful interference with the freedom of assembly and association of LGBT individuals and activists, including refusals to register LGBT organizations, arbitrary refusals to authorize public events on LGBT issues, disruption of such events when organized, as well as arrest, detention and punishment of demonstrators (para. 25). The laws adopted at regional and federal level banning “promotion of non-traditional sexual relations between minors” and violence emanating from counter-demonstrators during LGBT public events got into the spotlight of the HRCtte too.

4. In the replies (113th session, 16 March – 2 April 2015), the Russian authorities relied heavily on the general prohibition on discrimination on any grounds, stipulated in the Constitution and other national laws. The Government quoted some commonplace trivialities, such as “victims of the above offences have the right to demand that those responsible incur liability in accordance with the law” or “members of sexual minorities are genuinely part of Russian society”. As for the allegedly ineffective investigation into hate crimes, the RF responded that “the law enforcement agencies respond appropriately to all acts of violence, irrespective of whether they are committed against LGBT individuals or members of any other social group”; “all the circumstances of such unlawful acts, including the motive, are elucidated as part of the investigations carried out”.

5. At its 3157th meeting, held on 31 March 2015, the HRCtte adopted the relevant concluding observations (CCPR/C/RUS/CO/7). The Committee, *inter alia*, was concerned that article 63, paragraph 1 (e), of the Criminal Code recognizing as aggravated circumstances the commission of an offence for reasons of “hatred or enmity” or “hate or hostility towards a given social group” did not appear to have ever been applied to cases involving violence against LGBT individuals. In that regard, Russia was requested to 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 and apply the provisions of article 63, paragraph 1 (e), of the Criminal Code to such acts (para. 10).

6. The Committee was equally concerned that access to asylum procedures by asylum seekers who may be in need of international protection was still problematic. In that connection Russia was asked to ensure that asylum seekers who may be in need of international protection were able to access asylum procedures and to introduce mandatory prior verification mechanisms for those authorities adjudicating asylum claims, as an effective instrument to consistently comply with the non-refoulement principle (para. 15).

7. In the *Common core document forming part of the reports of States parties: Russian Federation* (27 July 2017) there is no information about LGBT-related issues. The authorities claimed that “anti-discriminatory measures were included in sectoral legislation governing the protection of human rights in the areas of education, labour, health care, the courts, social protection and culture” (para. 260). According to the Government, several articles of the Criminal Code provide criminal liability for offences of an extremist nature; the indicia for more than 10 offences include the motive of political, ideological, racial, ethnic or religious hatred or

enmity, or of hatred or enmity towards any social group as a criterion significantly aggravating liability (para. 259).

8. According to the *Eighth report submitted by the Russian Federation* (8 April 2019), in Russia, discrimination on the grounds of sexual orientation or gender identity is prohibited, as is any other form of discrimination (para. 370).

9. As to the asylum issues, Russia claimed that work on draft federal legislation on asylum in the Russian Federation has been resumed (para. 214). Regarding the increased penalties for violations of the rules on holding public events, Russia reminded that “such penalties are only applicable to the organizers and participants of protests” (sic!) (para. 306); “the law does not place restrictions on the right to organize or hold public events of persons with a non-traditional sexual orientation” (para. 379).

10. The Report also specifies that in the RF, offences committed for reasons of political, ideological, racial, ethnic or religious hatred or enmity, or for reasons of hatred or enmity directed against any specific social group are prosecuted; these motives are deemed to be aggravating circumstances (para. 352). At the same time, the authorities implanted a controversial phrase that “it must also be recalled that in criminal proceedings the sexual orientation of the victim is of no significance” (para. 373).

11. Regarding the legislation on “non-traditional sexual relations” the RF reminded that “the only acts that can be deemed unlawful are public acts intended to disseminate information promoting non-traditional sexual relations among minors or imposing such relations on them, including as a result of the circumstances in which the act was committed” (para. 375).

Prevailing problems

12. Regrettably, we have to admit that during the reporting period, the situation with the rights and freedoms of the LGBT community in the Russian Federation not only did not improve, but one can witness its deterioration.

13. This document identifies at least five issues that, in our opinion, require pressing clarification from the Russian authorities. **Accordingly, we kindly ask the Committee to include these topics to one degree or another in the forthcoming *List of Issues* and ask the Russian Federation a number of questions in this regard (paras. 73-90).** It must be also emphasized that the problems we have cited were particularly acute in 2018-2019 and their relevance now remains the same. The following are, one after the other, topics that, in our opinion, are worthy of the attention of the Committee.

Prevalent insecurity of LGBT-refugees in the Russian Federation

14. One of the main problems that we, as well as a number of other organizations working with refugees in recent years, have identified is the total mistreatment by the Russian authorities of LGBT-people seeking asylum. We do not know a single legal case when Russia would give asylum to a person because he or she is afraid of returning to their homeland due to their sexual orientation or gender identity.

15. The indicated problem hides several layers at once. We illustrate them with a number of legal cases that our organization continues to follow. In this regard, we are attaching a relevant information note to this document, which briefly sets out the legal situation of our applicants, and describes explanations given by the migration services and courts when refusing to grant asylum. **We kindly draw your attention to the fact that the information offered to**

you, by virtue of its delicacy, is confidential; therefore, please do not publish Annex No. 1 online.

16. In all of the cases we cited, the applicants arrived in the Russian Federation from countries where voluntary homosexual relations between adults are punishable by a prison term, and sometimes (in the case of Sudan or Nigeria) by the death penalty. The relevant provisions are included in the national Criminal Codes and, more importantly, are applied in practice. The applicants in these cases are mainly from Central Asian countries (Uzbekistan, Turkmenistan), as well as from Africa (Sudan, Nigeria, Cameroon). Furthermore, all of the mentioned countries are traditionalist and religious ones, which is why LGBT minorities are persecuted there by society as well; most applicants alleged harassment even within their families. All these risks were clearly underlined by the applicants when they applied to the Russian migration services for asylum. However, in all the cases we have cited in Annex No. 1, the Russian authorities ignored the applicants' allegations, without giving any slightest assessment of the countries' oppressive legislation.

17. It can be seen from the materials that for the Russian authorities there was no difference at what point the migrants applied for asylum. This could be immediately upon arrival in Russia or several years later; it could be at the time of a person's legal stay on the territory of the RF (as there was a valid visa or patent for a job) or it could be when an applicant already violated immigration laws. An applicant could bring his sexual partner for an interview or just limit himself to a general statement of the impossibility of living freely in his native country - the arguments of the Russian authorities for all the applicants, who were so individual and had left so different countries, were the same.

18. The analysis shows that the authorities, as a rule, referred to the following arguments. Firstly, the authorities constantly provide irrelevant country information, in general words citing the achievements of a particular country or quoting the Wikipedia information about its geopolitical particulars; at the same time, the authorities bypass the situation of the LGBT community in the region. Secondly, the authorities always emphasize that nothing threatens the applicants' relatives who remained in the country (although it is strange to say the opposite – as they are not LGBT). Thirdly, the authorities say that the applicants did not participate in their country in military, political or religious organizations, which is also not relevant to LGBT issues. Fourth, the authorities often demand from the applicants some documented evidence of the criminal proceedings instituted against them for sodomy or the corresponding judicial sentences, although it is obvious that in such case the applicants would hardly have successfully reached Russia. Fifth, as can be seen from the case descriptions, the courts, when considering complaints about refusals of the migration services, use the same phrasing, often repeated word for word; unfortunately, Russian judges do not have an individualized approach to human dignity. Sixth, the courts ignore the case law of international bodies - such as the ECHR or the UN CAT / HCRtte.

19. Finally, as a rule, the authorities say that the applicants do not belong to a separate social group that is protected by refugee law, or that such association does not constitute a basis for protective measures. This, in our opinion, is an obvious systemic problem of Russian legislation.

20. In the wording of the Russian Law "On Refugees" (1993), "a refugee is a person who is not a citizen of the Russian Federation and who, due to well-founded fears of becoming a victim of persecution on the grounds of race, religion, citizenship, nationality, association with a particular social group, or political opinion is outside the country of his nationality and cannot use the protection of this country or does not want to use such protection due to such fears; or cannot or does not want to return to it because of such fears".

21. If we interpret the notion of a “particular social group” in favor of LGBT applicants, then undoubtedly this includes LGBT people as a fully formed and self-sufficient social group that, alas, has long been discriminated in many societies. However, the Russian authorities, after more than a quarter of a century after the adoption of the quoted law, are in no hurry to include LGBT people in this definition or use this norm very selectively (although, we repeat, we do not know a single case of successful LGBT asylum in the RF). At the same time, the Russian migration legislation does not have clear criteria by which it would be possible to determine how and in which cases LGBT migrants can count on refugee status, or at least on temporary asylum.

22. “Temporary asylum” is also included in the 1993 Law. According to Article 12, it can be granted to a foreign citizen for a year if the person has no reason to be recognized as a refugee, but cannot be expelled from the territory of the RF for humane (or humanitarian) reasons. However, the Russian authorities equally do not provide temporary asylum for LGBT migrants, not seeing in their cases those “humane incentives” (even if the expelled person is at risk of corporal punishment or the death penalty). While other countries in their migration practices are already moving away from the principle of “criminal prosecution risks”, replacing it with a broader and more democratic test while assessing threats to LGBT migrants¹, we are still - and so far unsuccessfully - trying to connect in the eyes of the authorities repressive and discriminatory LGBT legislation with the need to give asylum because of this, at least temporarily.

23. The refusals of the migration services, supported by the Russian courts, lead to the fact that these applicants remain in the Russian Federation in a semi-underground state, do not have the right to work, receive medical assistance; they can be detained, placed to confinement and finally sent to their hazardous motherland. With great difficulty, some of them manage to move to a country that is more tolerant towards LGBT people, but most of the applicants, specified in Annex No. 1, continue to live in Russia. The current situation requires immediate changes; in this regard, we kindly request the Committee to ask the Russian delegation the questions indicated at the end of this text.

24. In the 8th report (para. 214), the Government relied on draft federal legislation on asylum in the Russian Federation; this embraces the draft Federal Law “On Granting Asylum in the Russian Federation”. However, it would not be superfluous to note that the authorities are silent about the long history of work on this draft law, which, it seems, will never be completed. The draft was prepared in the spring of 2014. According to the open sources, from May 14 to May 29, 2014, the draft was the object of a public discussion on a special government website, from May 29, 2014 to June 4, 2014, it successfully passed an independent anti-corruption expertise. Thus, by the summer of 2014, the relevant text, in fact, was already complete to be submitted to the parliament.

25. However, the competent authorities constantly delay even this first step. It should be noted that for many years the coordinating body formed to ensure synchronized actions of the interested executive bodies for the implementation of the state migration policy has been the

¹ The UK Supreme Court, for example, in its decision in *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department* marked a clear departure from the ‘risk of criminal prosecution’ approach as outlined in this Court’s jurisprudence of ten years ago. In its landmark judgment of 7 July 2010, that Court held, unanimously, that the ‘reasonably tolerable test’ of ‘being discreet’ was objectionable because no heterosexual person would find such constraints on being open about their sexual orientation to be reasonably tolerable. In 2012, the United Nations High Commissioner for Refugees published Guidelines on International Protection in this area. Those Guidelines affirm that sexual orientation and/or gender identity are fundamental aspects of human identity that no person should be required to suppress. The UNHCR notes numerous decisions in multiple jurisdictions that confirm that respect for fundamental human rights cannot be consistent with the requirement that a person conceal an aspect of his or her identity. The Court of Justice of the European Union in *Minister voor Immigratie en Asiel v. X, Y and Z* also endorsed this principle.

Government Commission on Migration Policy. For a long time the discussion of this bill was repetitively ignored at the meetings of this Commission (chaired by Mr. Igor Shuvalov). On October 3, 2018, by directive No. 2123-r of the Prime minister of the RF, Dmitry Medvedev, a new composition of the Commission was adopted (chaired by Mr. Anton Siluanov), but in 2019 no further steps were taken.

26. We stress with regret that the situation with the draft law “On Granting Asylum” remains unresolved. In view of the above, we invite the Committee to note with grave concern this 4-year unmoving situation with the adoption of this law, which is not even submitted to the State Duma, and to strongly request its quick adoption.

Ineffective official investigation into hate crimes via “fake dates” involving LGBT-people

27. One of the most widespread and at the same time most life-threatening categories of violations of the rights of LGBT people in recent years has become crimes organized through so-called “fake dates”. A typical crime pattern is as follows. A group of malefactors, having planned the operation in advance and distributing roles, rents an apartment (usually it is a short-term rent), places ads of the relevant nature on LGBT-thematic forums or in accounts of mobile dating applications (*Hornet, Grindr, Tinder*). The “bait” (a young teenager, sometimes a minor) encounters the victim who is invited to the apartment for sexual intercourse. Usually there is a video recorded in the apartment (through covert surveillance or on mobile phones); attackers can simply blackmail the victim, threatening to send the video to the victim’s relatives or colleagues. Violence can also be used, and sometimes it is very cruel (for example, some gangs cut off a victim’s finger or shot with a traumatic gun). A broken victim would give cash or transfer the said amounts to the bank accounts of the attackers. Sometimes extortion continues even after money transferring, it could be an endless stream of contributions until a person ran out of fortune.

28. At the same time, victims, as a rule, avoid contacting law enforcement bodies. Firstly, they do not trust the police, they are afraid to disclose their sexual orientation, they are afraid of even greater discrimination. Secondly, the victims are frequently afraid of criminal liability (for example, for depraved acts with “minors”, which is what criminals usually use in their blackmail). Thirdly, they doubt that the police will be enthusiastic to investigate such crimes.

29. The said criminal schemes became widely known in Russia around 2012, when the so-called “*Occupy-Pedophily*” movement appeared, the purpose of which was to prosecute gays and bisexuals who meet on the Internet. During the dates, these people were beaten, humiliated, the whole action is recorded on camera and then uploaded to the Internet. The motives of this movement were rather ideological, based on hatred. This movement was organized by radical extremists and nationalists. Nowadays the format of such crimes has not drastically changed, but the main aim of the criminals currently is ultimate extortion of money through blackmailing and robbery. According to the research poll, conducted by “Stimul” in August-October 2018², one of five respondents faced such crimes. Only 10% of the total number of victims went to the police or other organizations to restore their rights. 1 896 people participated in the opinion poll.

30. Stimul’s lawyers are currently conducting at least seven such cases of gangs engaged in fake dates. With our efforts, several of these groups were eliminated, while members of others continue to be at large. Detailed descriptions of the relevant cases can be found in Annex No. 2. **We kindly draw your attention to the fact that the information offered to you, by virtue of its delicacy, is confidential; therefore, please do not publish Annex No. 2 online.**

² The full text of the relevant survey can be found here: <http://www.msk-stimul.eu/library>

31. The analysis of this information shows that the prompt appeal of the victim to law enforcement agencies plays a key role in identifying and catching criminals. As mentioned above, usually applicants are simply afraid to contact the police or consider that they will not be helped there. In this case, the police, as a rule, initiate criminal cases if there is a real opportunity to track the money flows associated with the bank transfers to the accounts of the criminals by the victims (or when the criminals can be identified by the record-keeping of the rental apartment). If the criminals took possession of cash or if the victim was simply beaten, then often the police do not want to take an active position in the case (see cases No. 1 and 2 of Annex No. 2).

32. The third and main problem arising from the analysis of all these cases is **the persistent unwillingness of the Russian authorities to recognize the vulnerability of such a social group as LGBT people from this type of crime**. In other words, the authorities (both the investigating bodies and the courts) **are reluctant to consider** (even at the most superficial level) **the motive for hatred** towards representatives of the LGBT community.

33. We strongly believe that the hatred motive for the crimes committed by the relevant organized groups is not established by the authorities because of the imperfection of the penal legislation of the Russian Federation, as well as the law enforcement practice of the investigating authorities and courts. However, this inadequacy should not be sought in exact Articles of the Criminal Code of the RF (including the Code's Special Part (*Особенная часть*), which itemizes particular crimes); those provisions in themselves provide a prospective opportunity to protect a person against attacks of a discriminatory nature. It is rather a matter of normative regulation of the procedural establishment by the authorities of the motives of the crime at the stages of both pre-trial and courts' investigations, as well as the application - often too selective - of these provisions in practice.

34. In this regard, it should be emphasized that the Russian criminal law system does not apply the doctrine of the *mixed motive* of crime, which exists in many other countries. With regard to hate crimes, this ban, in particular, was enshrined at the normative level in 2011, when the Plenum of the Supreme Court of the RF issued its resolution "On judicial practice in criminal cases of extremist crimes"³.

35. Paragraph 3 of the resolution unquestionably states: "Qualification of crimes against life and health committed on the grounds of political, ideological, racial, national or religious hatred or enmity, or on the basis of hatred or enmity against any social group, under par. "1" of part 2 of article 105, either under par. "e" of part 2 of article 111, or under par. "e" of part 2 of article 112, or under par. "b" of part 2 of article 115, or under par. "b" of part 2 of article 116 of the Criminal Code of the RF excludes the possibility of simultaneous qualification of the deed on other paragraphs of the specified parts of these articles, providing for a different motive or purpose of the crime (for example, hooligan motives (*из хулиганских побуждений*))."

36. It seems that this veto ruling on qualifying a crime as committed with a mixed motive can be easily applied to other crimes, in which one could see a hate motive, regardless of whether this motive is a qualifying attribute in the article, or it is taken into account as a general aggravating circumstance according to article 63 of the RF Criminal Code⁴.

³ Resolution No. 32 "On Amending the Resolution of the Plenum of the Supreme Court of the Russian Federation of June 28, 2011 No. 11" On judicial practice in criminal cases of extremist crimes "" (<http://vsrf.ru/documents/own/27145/>).

⁴ Article 63. Aggravating Circumstances

1. Aggravating circumstances are:

f) commission of a crime motivated by political, ideological, racial, national or religious hatred or enmity, or motivated by hatred or enmity against any social group;

37. Since it is *de facto* impossible to deny that any perpetrator could have a mixed motive, this instruction of the Supreme Court of the RF means that the prosecution and the court are imperatively called upon to single out the dominant, main motive, and qualify the crime solely by it.

38. In the legislative practice of other countries, the question of whether the doctrine of mixed motive is acceptable is treated differently⁵. The position of the Russian legislator is one of the possible ones, although we emphasize that, for example, the OSCE / ODIHR considers it as best practice to take into account the mixed motive⁶. Moreover, the OSCE / ODIHR considers it correct to formulate a suspicion of a hate motive already at the very first moment - upon detection of a victim, upon receiving of a crime report, etc. Of course, drawing such a suspicion does not guarantee future investigation into the existence of a criminal motive for hatred, but it helps to ensure that the inquiry and preliminary investigation do not bypass this issue⁷.

39. It is not clear whether the authorities' repetitive predilection in favor of the "hooligan motive" or "economical motive" (lust for loot) is consistently caused by the circumstances indicated above (in particular, because of the imperative order of the Supreme Court), or whether the authorities decided not to use the homophobic motive for any other reasons (for example, to hide shortcomings of a poorly conducted investigation or do not spoil some statistics). One thing is clear - the LGBT-applicants do not receive adequate protection, they remain the most vulnerable crime targets.

40. Other important consequence of ignoring the motive of hatred is the lack of clear statistics available to the public and the press, which would make it possible to judge whether the Russian Federation battles against homophobic outbreaks. It should be recalled that the collection of data on hate crimes and the provision it to the ODIHR is a political commitment of the OSCE member countries. Unfortunately, in recent years Russia does not provide such information to the OSCE⁸. There are also no such statistics on the website of the Prosecutor General's Office - crimestat.ru. Those records are kept in a much wider category - "extremist crimes", which includes "extremist statements" and participation in extremist organizations and communities. Penal sentences' statistics, which are published by the Judicial Department of the RF Supreme Court, are divided by parts of articles of the Code, but not paragraphs of parts. Thus, it is also impossible to isolate hate crimes in it, since their qualifications are determined precisely according to an exact paragraph of a certain part of a particular article.

41. The failure to recognize the motive for hatred also encourages the false sense of impunity that remains with criminals and pushes them to commit new crimes (as they consider that the Russian state is in no hurry to intervene).

42. Based on the foregoing, we believe that Russian legislation, excluding the doctrine of mixed motive, and the case law based on it does not provide with adequate protection in the situations of homophobic crimes committed against LGBT-people.

43. In this regard, we also ask that the RF be asked a series of questions, which are presented at the end of the document.

2. If an aggravating circumstance is provided for in the relevant article of the Special Part of this Code as a sign of a crime, it alone cannot be re-taken into account when sentencing.

⁵ Legislation against hate crimes. A practical guide. Warsaw: OSCE / ODIHR, 2009. Pages 67-70 (<https://www.osce.org/odihr/36426>).

⁶ Ibid. – page 72.

⁷ See for more details: Hate Crime Monitoring and Data Collection Systems. A practical guide. Warsaw: OSCE / ODIHR, 2015 (<https://www.osce.org/odihr/datacollectionguide>).

⁸ Instead of this, the RF provides summary data on prosecution for extremist crimes, of which, in recent years, hate crimes make up only a small part. See the OSCE / ODIHR website (<https://hatecrime.osce.org/russian-federation>).

State indulgence towards the oppression of LGBT-activists by homophobic and extremist groups

44. The state's transparent assault on the rights of the LGBT community could not but go unnoticed by radically minded elements of Russian society, by various breeds of xenophobes and homophobes. Since the mid-tenths, hate crimes and extremist rhetoric against LGBT people have intensified in Russia. At the same time, the key point in this matter is not so much the presence of such manifestations in society as the question of the authorities' reaction to any attempts to justify discrimination or inequality. Unfortunately, the Russian Federation has not recently been able to boast of effective measures against such offenders.

45. One of the most obvious examples of the state's connivance towards homophobic extremists is the systematic attempts to disrupt the international LGBT film festival "*Side-by-Side*" in Moscow and St. Petersburg⁹.

46. For instance, in Moscow, the film screenings were disrupted in 2016 for three consecutive days, from April 22 to April 24. Police officers, who invaded the venue of the event, stated that they had received a message about an explosive device planted at the indicated address, and evacuated all visitors in order to inspect the premises. As a false report of a terrorist attack is punishable by the Criminal Code of the RF, the festival's organizers submitted the relevant crime reports to law enforcement agencies. The police even identified the phone numbers via which the bombs were reported (as any call to the police is ultimately recorded). However, over the 4 years since the crime, the authorities did not conduct a thorough investigation into any of the three disruptions. The officials responsible for the search for the attackers, in fact, did not take any distinct steps even to establish the owners of the phone numbers in the case from which false reports of the terrorist attack had been carried out. On this basis, in 2018, Stimul's lawyers lodged a relevant complaint before the ECHR; the case is currently pending.

47. Even fiercer attempts to disrupt the *Side-by-Side* festival in Moscow were made in May 2019, when during all four days of the screenings, the event was assaulted by various nationalist groups¹⁰.

48. From May 24 to 26, unknown persons reported to the police about the bombs planted within the festival's premises. The organizers of the event submitted relevant statements about the crime to the police. For a long time, there were no clues about the outcome of the investigation; despite numerous written complaints, the applicants were not notified of the measures taken by the police. Only in September 2019, they received a letter from the Moscow Prosecutor's Office, notifying that, in all three episodes of fake bomb-planting, criminal cases were eventually opened. However, in January 2020, the organizers were informed about the suspension of the investigation in connection with the failure to identify the suspect.

49. The disruptions of the Moscow film festival were accompanied not only by false terrorist attacks, but also by other illicit actions, such as pickets that were not approved by the city administration, spills of poisonous liquids both inside the film premises and at the entrance to the festival, attacks and insults against the guests (including an employee of the Canadian embassy). Both the organizers of the festival and the victims (including the injured security

⁹ *Side-by-Side LGBT International Film Festival* (www.bok-o-bok.ru) examines the topics of LGBT in the context of film art. It declares its desire to create an open cultural space within which Russian society and representatives of the LGBT community can engage in wide discussion, establish a positive dialogue, thereby contributing to the fight against discrimination based on gender, sexual orientation and gender identity. In Moscow, the festival has been held annually since 2012.

¹⁰ <https://theins.ru/news/158361>

guard) filed the corresponding complaints to the state bodies. However, investigations into these allegations are also not effective. No criminal cases were opened. Despite numerous complaints to the prosecutor's office, the court, and higher-ranking officers, the local police did not even notify the victims that some enquires had taken place at all.

50. The described events are in plain correlation with the activities of an infamous hater, residing in St. Petersburg, Mr. Timur Bulatov (Isaev). He is known for scandals and his public calls to fight LGBT-activists. Mr. Bulatov files complaints to the police against teachers, whose homosexual orientation has become public, demanding to dismiss them and bring them to justice¹¹, or against minor LGBT youngsters, asks the prosecutor's office to check LGBT organizations and activists¹², etc. Conversely, complaints submitted by LGBT people themselves requesting an assessment of Mr. Bulatov's extremist and discriminatory steps are left without proper attention of state bodies¹³.

51. Similarly, the authorities did not take any meaningful actions in 2019, when the Russian LGBT community was stunned by the appearance of the so-called *Saw (Пила)* movement, which publicly sent threats to LGBT activists, and offered monetary rewards for executions, kidnappings and harassment of LGBT people¹⁴. Despite the massive amount of complaints lodged before the Federal Security Service, the police and the prosecutor's office by LGBT organizations and activists from all over Russia, the community has no information about who is behind this movement, not to mention the capture of any of the perpetrators.

52. In connection with the above facts, we also ask the Committee to draw the attention of the Russian delegation to the problem we highlighted by asking it a number of questions.

Punishment for LGBT-related rhetoric and images during any public events, even allowed by the authorities

53. In its report, the Russian Federation attempts to present all persons who exercise their right to assembly as rebels or protesters. This narrative, of course, can in no way be connected with public events of LGBT nature, which are characterized as utterly peaceful gatherings of citizens. It should be emphasized that the arguments of the authorities, that the events, at which the LGBT activists are arrested, are inconsistent or otherwise illegal, are also far-fetched. Practice shows a completely different state of affairs. We insist that **Russian authorities at any level do not accept any manifestation of LGBT rhetoric or symbols and penalize people for such interventions.**

54. For instance, in the practice of our organization or according to our monitoring, the authorities arrest participants even at agreed public events, the themes of which do not cause the State's rejection. It is purely enough to show a rainbow flag, scarf or umbrella at such an event to be arrested and reprimanded. Moreover, the penalty, as a rule, does not follow the norms of the legislation on "protecting children from information that promotes the denial of traditional

¹¹ <https://theins.ru/news/174884>

¹² <https://www.sibreal.org/a/30319434.html>

¹³ <https://meduza.io/news/2017/01/20/tomskiy-shkolnik-poprosil-proverit-na-ekstremizm-piterskogo-bortsa-s-lgbt-kotoryy-dobivaetsya-uvolneniya-uchiteley>
<https://meduza.io/news/2019/03/19/pravozaschitnik-napisal-zayavlenie-v-sk-na-bortsa-s-geyami-iz-peterburga-timura-bulatova>

<https://zona.media/news/2019/06/03/bulatov>

¹⁴ <https://www.dw.com/ru/пила-против-лгбт-от-ск-требуют-найти-создателей-гомофобного-проекта/a-49763029>

<https://www.svoboda.org/a/30133801.html>

<https://www.svoboda.org/a/30451558.html>

family values”, but other formal pretexts are sought to punish “perpetrators” (for example, non-compliance of banners with the objectives of the event or inappropriate behavior of the detainee).

55. For example, on 26 August 2017, a civil activist, Maria K., was arrested in Moscow, as she threw a rainbow flag over her shoulders during the annual rally "For Free Internet" approved by the authorities¹⁵. Consequently, she was fined by the court for "violating the rules of the event" (allegedly, the rainbow flag was not related to Internet freedom). Subsequently, in 2018, “Stimul” sent a complaint to the ECHR in this regard, where it is pending.

56. Another example. On 1 May 2018, an eighteen-year-old L. came to the May Day Moscow “monstration”. L. opened a multi-colored umbrella. Further L., the only one of all, at the very end of the procession was snatched out of the stream and taken to the police station. The officers found a pride flag on the Internet, and it turned out that a bright umbrella with more than six colors has nothing to do with LGBT symbols. L. was released from the department after two and a half hours.

57. The authorities also detain single LGBT picketers in the same way, although a solitary picketing does not require the authorities’ preliminary approval under domestic law.

58. For instance, on 11 October 2019, on the International Day of Coming-Out, several people took turns holding single pickets in support of LGBT-people near the building of the Chechen Representative Office in Moscow. One of the posters contained the inscription: “Gays are being killed and tortured in Chechnya. Where are the criminal cases?” Police officers detained a picketer, who distributed several brochures to journalists, and activists who were nearby, as well as two provocateurs who interfered. Subsequently, seven detainees (excluding, of course, provocateurs who spoke as witnesses for the prosecution) were fined as having violated the rules of the public rally¹⁶.

59. In addition, recently the authorities (at least indirectly or involuntarily) have resorted to the assistance of juvenile provocateurs who deliberately appear at the event and successively act as witnesses for the prosecution when penalizing activists who deployed posters with LGBT slogans.

60. For instance, an employee of the LGBT group “Stimul”, who was arrested on an anti-fascist rally in Moscow, was accused of “gay propaganda”¹⁷. On 20 January 2020, psychologist Marina Fadeyeva came to a sanctioned rally of “*in memory of anti-fascist attorney Stanislav Markelov and journalist Anastasia Baburova*”. At the event, Marina held a poster in support of Ms. Tsvetkova (the LGBT-activist, who is currently under investigation into “distributing pornography” and “promoting non-traditional relationships”).

61. In a little while, police officers arrested Marina; she was taken to Arbat police station, where she spent more than six hours. As a result, the police drew up a protocol, concluding that Fadeyeva, carrying posters with LGBT slogans, “had attracted the attention of an unlimited number of citizens”, “had carried out the promotion of non-traditional sexual relations among minors”. Straightaway, there appeared some «minors», who had come to the event with a provocative purpose. They acted as witnesses on whom the “LGBT-propaganda” of Fadeyeva allegedly influenced. Presently, the administrative case has been referred to court.

62. Thus, the Russian authorities make it clear those LGBT topics, albeit related to human rights or other important socio-political issues, must completely excluded from the

¹⁵ <https://ovdinfo.org/express-news/2017/08/26/shesteryh-zaderzhannyh-na-mitinge-v-moskve-privezli-v-ovd-basmanny>

¹⁶ <https://ovdinfo.org/express-news/2019/10/11/v-moskve-u-predstavitelstva-chechni-zaderzhali-10-chelovek-troe-stoyali-v>

¹⁷ <https://takiedela.ru/news/2020/01/21/marina-fadeeva/>

agenda of any public event. The LGBT abbreviation and rainbow coloring *de facto* are illicit, and it is not at all a matter of the protest or rebellious mood of the participants. This is probably about **homophobia, supported at the government level**. In this regard, we also kindly ask the Committee to draw the attention of the Russian Federation to this state of affairs.

Obstacles related to the questions of raising children by LGBT-couples in Russia

63. In Russia, same-sex marriages are illegal. However, *de facto* numerous representatives of the LGBT community raise their biological or adopted children. They sort it out as single parents or formally being married to a person of the opposite sex. What is more, the social care authorities (in case of adoption or guardianship) are often informed about the particulars of one related family. Meanwhile, an unobtrusive life of such families in Russia is impossible; alas, such distress has sharply manifested since the adoption of repressive legislation related to the prohibition of “gay propaganda among minors”.

64. **Same-sex parents raising minor children and having fallen into the eyesight of the Russian authorities run the risk of losing their parental rights, getting the adoption canceled and being held administratively or criminally liable.** Parents are forced to hide the fact of their belonging to the LGBT-community, constantly worry about the fate and integrity of their family, which, as a rule, inevitably leads to moving from Russia to another country, more tolerant of same-sex families and raising the children by them. Although on paper the fact of same-sex relations is not an apparent reason for depriving parents of their rights or abolishing guardianship, nevertheless, the legislation in this area is formulated so broadly¹⁸ that, based on practice, almost any situation can be easily brought under it.

65. It is difficult to judge how many families are now trying to live in Russia this way. For the purposes of this report, we will illustrate the highlighted problem with a very resonant case, which happened in the summer of 2019 in Moscow and is far from complete. The consequences of this case are still felt by the community: LGBT couples raising children, on whom the news of this case made a depressing impact, periodically apply to our organization for support, as this exemplary case file literally pushes other families to emigrate.

66. This is the case of Evgeniy Yerofeyev and Andrey Vaganov¹⁹, to whom the LGBT groups “Stimul” (Moscow) and “Coming-Out” (St. Petersburg) provide legal aid.

67. In the summer of 2019, this same-sex couple with two adopted children of 12 and 14 years old was forced to leave the country, being under pressure from the authorities in connection with the Russian law on “gay propaganda”²⁰.

68. The parents of the boys live together for 11 years; they entered into a marriage in Denmark. They adopted one child nine years ago, the second – seven years ago. Adoption was registered for one of two men, since Russian legislation does not provide for the possibility of

¹⁸ According to Article 29 of the 2008 Law on Guardianship, the guardianship may be terminated due to “improper fulfillment of the duties assigned to the guardians” or “violation of the rights and legal interests” of the child.

According to Article 141 of the Family Code of the RF, “the adoption of a child can be canceled in cases where the adoptive parents evade the fulfillment of the duties assigned to them by the parents, abuse parental rights, and abuse the adopted child”.

According to Article 69 of the Family Code, parents, among other things, may be deprived of parental rights if they evade from fulfilling their duties, including when they maliciously avoid paying child support; abuse their parental rights; in case of cruel treatment, including physical or mental violence against children, violate their sexual integrity; commit an intentional crime against the life or health of their children, another parent of the children, the spouse, including a non-parent of the children, or against the life or health of another family member.

¹⁹ <https://www.hrw.org/ru/news/2019/07/24/332481>

²⁰ <https://www.interfax.ru/russia/669767>

adoption by same-sex spouses. The family lived in Moscow, but their normal life ended on 18 June 2019, after the younger boy was hospitalized with suspected appendicitis. When asked by the doctor about when his mother would come, the boy answered without hesitation that he had two dads. According to the parents, the doctor on the same day informed the Investigative Committee about the allegedly unlawful treatment of the child in connection with the parents of “non-traditional sexual orientation”. The next day, the investigator called the father and invited him “for a conversation”. After talking with the investigator, the family left the country, fearing that the authorities could take the children away.

69. On 17 July, a criminal case into negligence was opened against employees of the district department of social protection²¹. Law enforcers assigned inaction to social workers, referring to the fact that the official adoptive parent “promotes unconventional relationships, forming distorted ideas about family values in children, harming their health, moral and spiritual development”.

70. At the same time, on 19 July, police officers searched the family’s Moscow apartment²², although the couple officially pass only as witnesses; also in Moscow and Magnitogorsk, the police searched the flats of the couple’s relatives.

71. Soon, Andrey Vaganov and Evgeniy Yerofeyev requested asylum in the United States²³, where they are currently located. They are not aware of the results of a criminal investigation related to the named negligence of social workers, as they are not suspects. In addition, no lawsuits from the prosecutor's office have been filed yet with the court regarding the ending of guardianship. However, the whole situation is in limbo.

72. In connection with the obvious precedent importance of this incident, we gently ask the Committee to request from the Russian Federation information on the results of the investigation into the opened criminal case and their official position on this crucial issue.

Suggested Questions to the RF for the List of Issues

Regarding treatment of LGBT refugees and asylum seekers (arts. 2, 7, 9, 10, 12, 13 and 26)

73. With reference to the Committee’s previous concluding observations (CCPR/C/RUS/CO/7, para. 15) and the information provided by the State party (CCPR/C/RUS/8, para. 214), please describe the progress made towards adopting the draft law “On Granting Asylum” (2014). Please inform the Committee whether the relevant draft contains explicit provisions about sexual orientation and gender identity as the cause for protection and non-refoulement of LGBT individuals.

74. Similarly, please comment whether the provisions of the law “On Refugees” (1993), i.e. norms about “a particular social group”, embrace LGBT community. Please also indicate whether the provisions of this law, namely “humane incentives” (*из гуманных побуждений*), permit to grant asylum to an LGBT migrant from a country where is a criminal prosecution for same-sex relations.

²¹ <https://www.bbc.com/russian/news-49019175>

²² <https://zona.media/news/2019/07/19/zamki>

<https://www.dw.com/ru/в-москве-провели-обыск-у-усыновившей-детей-гей-пары/a-49651638>

²³ <https://www.interfax.ru/russia/678007>

75. Please comment on the nonexistence of LGBT migrants who successfully received asylum in the RF. In this respect, please provide information on: (a) the number of applications lodged by LGBT asylum seekers before the Russian migration services; (b) the number of cases where the temporary asylum or refugee status was granted to LGBT applicants. Regarding the cases where the relevant applications were rejected, please report on measures taken to ensure strict compliance with the principle of non-refoulement of LGBT asylum seekers in law and in practice. What guarantees exist, in law and in practice, against possible refoulement of LGBT individuals who may be exposed to a violation of their rights under article 7 of the Covenant in the country of return?

76. Please indicate whether authorities, adjudicating asylum claims, have an effective instrument to consistently comply with the non-refoulement principle. In that regard, please indicate whether there are any written criteria or adopted guidelines for them to deal with the applications lodged by LGBT individuals. Please provide information on the model assessment of risks in those cases, including the assessment of the penal legislation in the countries concerned.

Regarding cases of extortion, harassment and robbery via fake dates with LGBT individuals (non-discrimination and prohibition of advocacy of hatred) (arts. 2, 3, 20 and 26)

77. Please indicate whether steps have been or are being taken to include into anti-discrimination legislation the explicit prohibition of discrimination based on sexual orientation and gender identity. For instance, please indicate whether the State party plans to include sexual orientation and gender identity among the hate-motivation grounds that are recognized as aggravating circumstances in article 63 of the Criminal Code.

78. Additionally, with reference to the Committee's previous concluding observations (CCPR/C/RUS/CO/7, para. 10) and the information provided by the State party (CCPR/C/RUS/8, para. 352, 373), please clarify whether the present-day provisions of article 63, paragraph 1 (e), of the Criminal Code apply to cases involving violence against LGBT individuals, particularly to cases of extortion and robbery via fake dates with homosexuals. Please provide examples of the application of the named provisions by the courts. Please also provide relevant statistics regarding the number of complaints, the investigations and prosecutions initiated, the number of actual criminal convictions, sentences imposed on perpetrators and remedies granted to victims in such type of crime.

79. Please also comment on the limited use of motive of hatred as an aggravating circumstance in the cases involving LGBT victims. Please explain whether this is due to the fact that the Russian penal system, including courts, does not apply the doctrine of the mixed motive of crime. Please respond to reports about a lack of effective, prompt and impartial investigations into past and ongoing cases of extortion, harassment and robbery via fake dates.

80. Please also indicate whether there exists separate state statistics related to "hate crimes" and "homophobic crimes" or they are mechanically included in the group of "extremist crimes", which also embraces "extremist statements".

Regarding hate crimes against LGBT activists (arts. 2, 3, 20 and 26)

81. With reference to the Committee's previous concluding observations (CCPR/C/RUS/CO/7, para. 10) and the information provided by the State party (CCPR/C/RUS/8, para. 352, 373), please report on measures taken to combat discrimination, intolerance, hate speech, as well as violence against LGBT and activists and to address the

prevalent impunity for such acts. Please also indicate the measures taken with a view to promoting a culture of tolerance.

82. More specifically, please comment on reports of harassment, threats, and intimidation related to the activities of so-called “Saw” (*Пила*) movement. Please provide updated information on the number of investigations launched, convictions and penalties imposed on those responsible for such acts.

83. Please also comment on reports of harassment, threats, and intimidation related to the activities of Mr. Bulatov (Isayev) in St. Petersburg.

84. Furthermore, please report on the progress in investigating cases of fake bomb planting during the International film festival “Side-by-Side” (*Бок-о-Бок*) in Moscow in 2016 and 2019. Please also provide information on the investigation and prosecution of alleged cases of spills of poisonous liquids during the International film festival “Side-by-Side” (*Бок-о-Бок*) in Moscow in 2019.

Regarding LGBT-related public events (Freedom of expression and peaceful assembly) (arts. 2, 19, 21 and 26)

85. With reference to the information provided by the State party (CCPR/C/RUS/8, paras. 306, 379), please report on measures taken to address the unlawful interference with the freedom of assembly and association of LGBT individuals and activists.

86. Please comment on reports that the legislation banning “promotion of non-traditional sexual relations between minors” are systematically used to restrict the freedom of expression and peaceful assembly of LGBT individuals, including the arrests during the Moscow anti-fascist rally on 20 January 2020.

87. Please clarify whether single LGBT picketing can be restricted and if so, by what conditions. In this respect, please comment on the case of arrests and harsh fines on 11 October 2019, when several people held single pickets near the building of the Chechen Representative Office in Moscow.

88. Please also explain if displaying of LGBT symbols during a public event is *ipso facto* the basis for arrest or conviction.

Discrimination against same-sex couples raising children (arts. 2, 17, 23 and 26)

89. With reference to the information provided by the State party (CCPR/C/RUS/8, para. 375), please explain whether the legislation banning “promotion of non-traditional sexual relations between minors” applies to LGBT parents raising their biological or adopted children. In this respect, please provide information on any court cases concerning the relevant situations.

90. Please provide information on measures taken to address the violations of Covenant rights of Evgeniy Yerofeyev, Andrey Vaganov and their children. In this respect, please provide information on the investigation and prosecution of the case into “negligence” that was opened against employees of the district department of social protection. Please also clarify the grounds for searches in the family’s Moscow apartment, or in the apartments of the couple’s relatives.