



Human Rights Watch Concerns and Recommendations on Ukraine Submitted to the UN Human Rights Committee in advance of its Review of Ukraine June 2013

This submission provides an overview of Human Rights Watch’s principal concerns with respect to the human rights situation of lesbian, gay, bisexual and transgender people in Ukraine, submitted to the Human Rights Committee in advance of its review of that country. We hope it will inform the Committee’s consideration of the Ukrainian government’s compliance with the International Covenant on Civil and Political Rights.

This submission covers recent developments in Ukraine regarding the rights of lesbian, gay, bisexual and transgender persons (LGBT). Despite protections enshrined in the Ukrainian Constitution, LGBT people remain a discriminated and stigmatized group in Ukrainian society. Ukraine has not only failed to adopt anti-discrimination legislation that includes sexual orientation and gender identity as protected grounds, but laws discriminating against LGBT people are currently pending before the Ukrainian parliament. This submission provides details on these laws and outlines other violations of LGBT rights in Ukraine, including discrimination and violence against LGBT people and forced medical procedures required for transgender people to have their preferred gender recognized by the Ukrainian government.

Discrimination and Violence on the Basis of Sexual Orientation and Gender Identity (Covenant articles 2, 7, 9, 17, 26)

Homophobic Bills Pending in the Ukrainian Parliament

Bill No. 1155 “On the prohibition of propaganda of homosexual relations aimed at children,” currently pending before the Ukrainian parliament, defines “propaganda of homosexuality” as “intentional activity, which aims to and is expressed in dissemination of any positive information about same-sex sexual relations that could negatively affect ... development of

the child.” Bill No. 1155 would also ban the media from disseminating positive information about homosexuality. The bill provides that violations of the law may be administrative offenses subject to a fine of up to US\$3,200 or a criminal offense punishable by a prison term of up to six years for “offenses repeated within a year.” Bill No. 1155 was introduced in parliament in December 2012 and is an expanded version of a similar bill, No. 10290, introduced in June 2102 but never voted on.

Bill No. 0945 (formerly No. 8711), “On amendments to legislative acts concerning the protection of children’s rights to a safe information space,” was first introduced in June 2011 and was passed in a first reading in October 2012. The bill proposes to ban any production or publication of content “promoting” homosexuality; the use of media, television, or radio broadcasting for homosexual “propaganda”; the printing or distribution of publications “propagating” homosexuality; and the import, production, or distribution of creative writings, cinematography, or video materials “propagating” homosexuality. If adopted, the bill will introduce fines or prison sentences of up to five years for the aforementioned acts.

A final vote on both bills is expected by the end of the current legislative session, in July 2013.

As cautioned by the European Parliament in a December 2012 resolution on Ukraine, the bills would violate fundamental human rights, including the rights to freedom of expression, association, and peaceful assembly, and are deeply discriminatory towards LGBT people in Ukraine. They would create an unacceptable environment of state-promoted discrimination against LGBT people, including those under 18 years of age. The bills would also endanger the ability of human rights defenders and others to engage in work protecting the rights of LGBT people.

Another law proposal pending before parliament, initiated by members of the far-right Svoboda party, concerns the right to adoption. Bill No. 2133 “On amendments to some legislative acts (about non-admittance of adoption of Ukrainian citizens by individuals who are in same-sex marriages)” would ban adoption by same-sex couples. This law also discriminates against LGBT people in their rights to private and family life.

Pending Antidiscrimination Legislation is Limited to the Labor Code and Excludes Gender Identity

On May 14, 2013 the Ukrainian Parliament shelved a vote on amendments to the Labor Code that would have broadened the legislation to include “sexual orientation” in the list of grounds protected from employment discrimination, following opposition by the Svoboda political party and other groups. This Bill is scheduled for a vote during the first week of July 2013. Many members of Parliament expressed their lack of support for this bill. This bill was proposed by the Ukrainian Cabinet of Ministers in February 2013 and was a positive step. However, the bill does not include “gender identity” as a protected category and is not applicable to discrimination of LGBT people in areas other than employment.

Violence and Threats of Violence Before, During, and After the 2013 Kyiv Pride Equality March

Ukraine held its first ever Pride Equality March in Kyiv on May 25, 2013, with approximately 50 participants, protected by several hundred Ukrainian police. However, the event was marred by calls for violence, including through violent counter-protests, and pressure from public officials and others to prevent the march from taking place.

In the weeks before the Equality March, various groups threatened violence against march participants and called for city authorities to ban the march. In one example, the leader of a nationalist group posted photos from 2012 showing beatings of LGBT activists and wrote, “What kind of day May 25 will be in Kyiv will depend on the activism and courageous, deliberate actions by each of us!” No investigations have been carried out into this or other threats.

Following a Kyiv district court ban on all events in the city center on May 25, 2013, including the Kyiv Equality March and numerous proposed counter-protests, the Equality March ultimately took place seven kilometers outside of the city center. Over 500 riot police protected the demonstrators, who arrived and left by buses escorted by the police. Counter-protesters shouted slurs, tried to attack the participants and blocked traffic on nearby streets. Police arrested 21 counter-demonstrators, charged 12 with hooliganism, and issued warnings to the others. No one was injured.

However, later that evening, a member of the ultra-right Svoboda political party and others attacked LGBT activist Olena Shevchenko and her friend outside a club in central Kyiv by pouring sour cream on them. Shevchenko filed a complaint with the Ukrainian police about this incident. Unidentified people also posted photographs of several Equality March organizers and human rights activists who support LGBT rights on social networking sites, accompanied by calls for violence against them. One of the organizers received threatening text messages from an unidentified sender, including one that read, “If I see you in Kyiv, I will beat you with a bat. [Signed] Hitler.”

Protests against the Equality March were held in Kyiv and in Luhansk, Mykolayiv, Simferopol, Kherson, Luhansk, Odessa and Zaporizzhya in the weeks before the march. The protesters called for violence against LGBT people and encouraged participants to come to Kyiv to obstruct the Equality March. The day after one such protest in Mykolayiv, a group of unidentified men went to the home of a gay man involved with a local LGBT organization, shouted homophobic slurs at him, punched and kicked him, and threatened to kill him if he reported the incident to the police. The police arrived quickly after the attack and immediately opened an investigation.

Other Attacks against LGBT Activists

Human Rights Watch also documented a number of attacks on LGBT activists and others in 2012. For example, on May 20, five men beat Kyiv Pride organizers Svyatoslav Sheremet and Maksim Kasyanchuk, just after a press conference announcing the cancellation of the Pride march due to the potential for violence. The authorities opened a criminal investigation but failed to identify the suspects despite the existence of video recordings of the attack, and did not record the attacks as hate crimes motivated by the victims’ sexual orientation and LGBT activism.

In June 2012, an unidentified man approached Kyiv Pride head Taras Karasiichuk near his home, asked him about his sexual orientation, and beat him, breaking his jaw and giving him a concussion. Investigators were unable to identify the attacker. In December 2012 and February 2013 Karasiichuk was approached by groups of men who warned him against organizing the Kyiv Pride and threatened to beat him. The authorities opened criminal

investigations but did not consider the activist's sexual orientation or activism as a motivating factor. There have been no arrests made in either case.

In July and December 2012 neo-Nazis and nationalists verbally attacked LGBT rights protesters and tore their posters. In a statement published on December 8, 2012, the Svoboda Party claimed responsibility for ripping the demonstrators' posters and attempting to disrupt the protest.

Recommendations for steps the Committee Should Urge the Government of Ukraine to take:

- Ensure effective investigations into all statements that are designed to incite violence and provide adequate protection for organizers of LGBT-related events and their participants;
- Condemn, at the highest levels, rhetoric likely to incite violence or hostility against LGBT people and make clear such expressions have no place in Ukrainian society;
- Drop homophobic draft laws currently pending before the Ukrainian parliament, making clear that they breach Ukraine's international obligations;
- Ensure effective investigations into acts and threats of violence against members of the LGBT community and LGBT human rights defenders and hold accountable those responsible for such actions;
- Include sexual orientation and gender identity as nondiscrimination grounds in all antidiscrimination legislation.

**Discrimination of transgender people including involuntary sterilization.
(Covenant articles 2 and 7)**

In February 2011 the Ukrainian Ministry of Health Protection issued Order No.60 on "Improving medical support for people who need a change (correction) of their sex.". This order stipulates that for a transgender person to legally change his or her gender, he or she must fulfill a number of requirements. These requirements are extremely burdensome and violate transgender peoples' rights.

According to the Ukrainian Ministry of Health Protection, in order for a transgender person to legally change his or her gender, he or she must undergo surgeries to remove all sexual organs, as well as mammary glands for transgender men, and possibly other surgeries, as

determined by a state medical commission. This requirement is based on an outdated medical classification and effectively requires transgender people to undergo involuntary sterilization.

In addition, the Ukrainian government requires a minimum of one month stay in a psychiatric institution as part of seeking legal gender recognition, a procedure that is not medically necessary, and places an undue burden on the person seeking the legal gender recognition. Finally, in order for a transgender person to receive legal gender recognition he or she may not have had children.

The requirements violate transgender people's rights to private and family life, and to personal autonomy and physical integrity, and deny them the ability to define their own gender identity. With regard to obligatory surgeries and psychiatric treatment, human rights norms require that medical treatment should be subject to the best interest of the individual, and tailored to the specific needs and situation of the person in question. The Special Rapporteur on Torture has called upon all States "to repeal any law allowing intrusive and irreversible treatments, including forced genital -normalizing surgery, involuntary sterilization, unethical experimentation [...] when enforced or administered without the free and informed consent of the person concerned". He also called upon states "to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups".

| In addition, principle 3 of Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity notes that:

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. *No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity.* No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a

person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.

Additionally, transgender people in Ukraine often must wait for extended periods of time to be able to access medical and legal procedures for their gender identity to be recognized, at least in part because the Ministry of Health Protection's evaluating committee last met in the summer of 2012 and has made no decisions since then. By law this Committee is the only Ukrainian body allowed to process applications for legal gender recognition. It is based in Kyiv and meets infrequently, forcing transgender people to wait for long periods before securing an appointment with the committee. People must also pay their own costs to travel to Kyiv for the appointment.

While waiting for their legal gender identity to be changed, transgender people encounter difficulties with the police, employers, during travel and in other situations which require review of state-issued identity documents. For example, the Ukrainian LGBT-Rights NGO Insight documented cases of transgender people being denied employment when employers discovered the "mismatch" in their employee's passport gender and their appearance. In a 2012 study Insight also documented numerous cases in which transgender people were employed unofficially and without proper identification because they were afraid to show their identity documents. In this study some transgender people also reported that they decided not to seek to change their gender as specified on government-issued identity documents out of fears of negative reaction from their employer.

Recommendations for steps the Committee should Urge the Government of Ukraine to take:

- Take all necessary legislative, administrative and other measures to fully respect and legally recognize each person's self-defined gender identity.
- Amend Ministry of Health Order No. 60 to respect transgender people's human rights by separating medical and legal questions for transgender people.
- Remove sterilization and other surgical intervention requirements from legal gender recognition provisions.
- Allow individuals to decide which medical interventions they wish to undergo as part of their gender confirmation procedure. Facilitate access by those seeking

body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support.

- Recognize transgender people's rights to found a family.
- Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person's self-defined gender identity.