

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**Mandates of the 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**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)  
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Excellency,

We have the honour to address you in our capacity 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 General Assembly resolution 60/251 and to Human Rights Council resolutions 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 the approval of the first reading of a **bill amending the Law on administrative violations** of Saint Petersburg and providing administrative liability for public activities by members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) communities, including those working in the defence and promotion of their rights and fundamental freedoms.

According to the information received:

On 16 November 2011, members of the Legislative Assembly of Saint Petersburg approved the first of three readings of a bill aiming at amending the Law on administrative violations. It is reported that the bill provides administrative liability for public events "promoting homosexuality, lesbianism, bisexuality and transgenderism among minors".

The bill, which was first introduced to the Legislative Assembly on 10 November 2011, was passed by a vote of 27 to one. Under its terms, a fine of up to the equivalent of \$1,600.00 US could be imposed for public actions "aimed at propaganda of sodomy, lesbianism, bisexuality and transgenderism among minors".

It is alleged that, if enacted, the amendments may allow the banning of public actions by members of the LGBTI communities, including those working in the defence and promotion of their rights and fundamental freedoms, in Saint

Petersburg. Activities that could be banned would reportedly include the distribution of information leaflets as well as pride marches where children might be present.

According to information received, the bill comes in the context of widespread discrimination against the LGBTI community and those working for their rights in the Russian Federation. Although homosexuality was decriminalised in 1993, it is alleged that attempts by LGBTI rights groups to hold pride rallies and cultural activities have been repeatedly hampered by police, anti-gay groups and administrative procedures lacking transparency.

It has also been reported that the city of Moscow has planned similar restrictions on “propaganda for homosexuality” and that the regions of Arkhangelsk and Riazan have already introduced such legislation.

Serious concern is expressed that the passing of this bill, together with similar initiatives in other parts of the Russian Federation, may constitute a direct threat to the right to freedom of expression and assembly and may promote discrimination against the LGBTI community. Further concern is expressed that the bill may be used to restrict the peaceful and legitimate work of human rights defenders working for the promotion and protection of the rights and freedoms of the LGBTI communities.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

With regard to the allegations that the bill could ban public actions by members of the LGBTI communities, including the distribution of information leaflets, and under the terms of the bill, a fine of up to the equivalent of \$1,600.00 US could be imposed for public actions “aimed at propaganda of sodomy, lesbianism, bisexuality and transgenderism among minors”, we would like to refer your Excellency’s Government to paragraph 21 and 22 of General Comment No. 34 of the Human Rights Committee, which states that:

"(...) when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. The Committee recalls that the relation between right and restriction and between norm and exception must not be reversed. The Committee also recalls the provisions of article 5, paragraph 1, of the Covenant according to which “nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and

freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant”.

Paragraph 3 lays down specific conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be “provided by law”; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality. Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated."

We would like to call on your Excellency's Government to ensure that the rights to freedom of peaceful assembly and of association, as recognized in articles 21 and 22 of the International Covenant on Civil and Political Rights, are duly respected without discrimination, including on the grounds of gender and sex. In this connection, and with regard to the alleged ban on public events promoting homosexuality, lesbianism, bisexuality and transgenderism among minors; we wish to reiterate the unanimous decision of the European Court of Human Rights of October 2010 in the case of *Alekseyev v. Russia* where the Court found it incompatible with the European Convention's values to invoke the morality of the majority to ban pride marches and condition the exercise of the rights of a minority group.

In connection to the allegations indicating that the mentioned bill may be used to restrict the peaceful and legitimate work of human rights defenders working for the promotion and protection of the rights and freedoms of the LGBTI communities, 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 6, point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to

how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

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

- article 12, paras 2 and 3 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 human rights defenders, the Special Rapporteur on the situation of human rights defenders has stated<sup>1</sup> that the right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This includes the right to discuss and advocate for human rights ideas and principles that are not necessarily new but that, in some contexts, may be perceived as new or unpopular because they address issues that might challenge tradition and culture. In this connection, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) communities, as well as of those working in the defence and promotion of their rights and fundamental freedoms, are respected.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

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

<sup>1</sup> A/66/203, paras. 56-61 and 112-114.

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, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by any party regarding the passing of the first reading of the aforementioned bill?
3. Has there been consultation in any form with relevant stakeholders on the drafting of the referred bill?
4. Please provide the full legal basis for the formulation of the bill and its compatibility with international law and standards.
5. Please indicate the measures taken to ensure that human rights defenders can carry out their legitimate activities in an enabling environment without fear of harassment, intimidation or discrimination, including those working on the defence and promotion of the rights and fundamental freedoms of the LGBTI communities.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

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Special Rapporteur on the promotion and protection of the right to freedom of  
opinion and expression

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Special Rapporteur on the rights to freedom of peaceful assembly and of  
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Margaret Sekaggya  
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