

**HUMAN RIGHTS COMMITTEE**

**Written comments of the International Service for Human Rights**

**Complainant: Sasha Maimi Krikerik**

**Communication number: 2992/2017**

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## 1. THE INTEREST OF THE INTERNATIONAL SERVICE FOR HUMAN RIGHTS

1. The International Service for Human Rights (**ISHR**) is an independent, non-governmental organisation dedicated to promoting and protecting human rights. The ISHR achieves this by supporting human rights defenders, strengthening human rights systems, and leading and participating in coalitions for human rights change.
2. Promoting and protecting unhindered access to and communication with international human rights mechanisms and bodies is of great concern to ISHR. ISHR has a mandate to assist human rights defenders to access and communicate with international bodies and mechanisms, including the UN. Where appropriate, ISHR participates in strategic litigation at international, regional and national levels in an effort to ensure that human rights defenders have the freedom to effectively and safely protect and promote human rights.
3. ISHR on behalf of the Complainant, Sasha Maimi Krikkerik, respectfully submits these written comments to the Human Rights Committee (**HRCtee**) in connection with Communication number 2992/2017 dated 31 March 2016, filed on behalf of the Complainant (the **Communication**).
4. These comments address the approach we respectfully submit the HRCtee should take to the Communication and the regard which should be had to the 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms' (the **Declaration**) and the 'Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity' (**YPs**).<sup>1</sup>

## 2. THE CONTEXT OF THE COMMUNICATION

5. We submit that the HRCtee should consider the Communication in light of:
  - (a) the current situation with regard to discrimination based on sexual orientation and gender identity (SOGI) in Russia;
  - (b) the international community's efforts to address discrimination based on SOGI; and
  - (c) the status and treatment of human rights defenders who advocate for the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in Russia.

### 2.1 Discrimination based on SOGI in Russia

6. The HRCtee should approach the Communication in the context of an increase in discrimination based on SOGI and systemic and repeated violations of the rights of LGBTI persons in Russia, including the right to peaceful assembly.
7. In 2015 the HRCtee expressed a number of specific concerns about the treatment of lesbian, gay, bisexual and transsexual (**LGBT**) persons in Russia, including:
  - (a) discrimination, hate speech and violence;
  - (b) violations of their rights to freedom of expression and assembly;

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<sup>1</sup> The Yogyakarta Principles can be accessed at [yogyakartaprinciples.org](http://yogyakartaprinciples.org) (available in all six UN languages).

- (c) the existence of a number of legislative and policy measures which exacerbate the negative stereotypes against LGBT individuals and represent a disproportionate restriction of their rights; and
  - (d) harassment, violence and killing of human rights defenders.<sup>2</sup>
8. The HRCtee noted that laws banning 'promotion of non-traditional sexual relations to minors' exacerbate the negative stereotypes against LGBT individuals.<sup>3</sup> Similarly, there are reports that such laws have legitimised violence against LGBT persons and have led to increased rates of harassment and violence against LGBT persons, especially teenagers.<sup>4</sup> Surveys indicate rates of homophobia are high – in 2013, three quarters of Russians surveyed indicated that homosexuality should not be accepted by society.<sup>5</sup> There is a direct causal link between the high rates of homophobia and the rates of violence against LGBTI persons and, in the last few years in particular, homophobia has been identified as the motivating factor for attacks against LGBTI individuals and groups.<sup>6</sup> As noted in the Communication, Russian criminal law does not recognise discrimination based on SOGI as an aggravating factor in such crimes.
9. In 2011 the European Court of Human Rights found that Russia contravened the Convention for the Protection of Human Rights and Fundamental Freedoms by banning Gay Pride Marches in 2006, 2007 and 2008. Specifically, the Court found that Russia had contravened the Complainant's right to freedom of peaceful assembly and the right to enjoy that right without discrimination.<sup>7</sup>

## 2.2 International effort to address discrimination based on SOGI

10. The HRCtee should approach the Communication in the context of the growing momentum behind the international community's push to address discrimination based on SOGI. There have been many recent notable developments, including:
- (a) the United Nations (**UN**) Human Rights Council's (**HRC**) 2011 study into discrimination based on SOGI, which found a pattern of violence and discrimination based on SOGI that 'demands a response',<sup>8</sup> and the subsequent update to the report issued in May 2015 which found that whilst there had been advances made in efforts to reduce the

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<sup>2</sup> Concluding observations on the seventh periodic report of the Russian Federation (CCPR/C/RUS/CO/7, 28 April 2015).

See also: Civil Society Organizations (for LOIs), "Violations of the civil and political rights of minorities, including ethnic groups, migrants, and LGBT activists; women and children in vulnerable positions; the illegal restriction of the right to express a critical opinion" by ADC-Memorial (with the support of FIDH and the Platform "Central Asia on the Move"); and "Coming Out," Russian LGBT Network, and Transgender Legal Defense Project (Rainbow Foundation), 24 Apr 2014.

<sup>3</sup> Concluding observations on the seventh periodic report of the Russian Federation (CCPR/C/RUS/CO/7, 28 April 2015).

<sup>4</sup> '[Russian anti-gay law prompts rise in homophobic violence](#)', The Guardian, 25 September 2013; '[LGBT website founder fined under Russia's gay propaganda laws](#)', The Guardian, 30 July 2015.

<sup>5</sup> A 2013 survey found that 74% of Russians said homosexuality should not be accepted by society: '[The global divide on homosexuality: greater acceptance in more secular and affluent countries](#)', Pew Research Global Attitudes Project, 4 June 2013.

<sup>6</sup> In May 2013 the body of a man was found in his burned out car, having been beaten and stabbed the previous day; the three males convicted stated anti-homosexual motivations: '[Russia: 3 Jailed in Anti-Gay Case](#)', The New York Times, 3 February 2014; From October 2013 – February 2014, anti-gay attacks targeting the LGBT community in took place in Moscow, including attacks on Russia's largest gay nightclub Central Station: '[Moscow's Largest Gay Club Comes Under Attack, Director Says](#)', The Moscow Times, 15 August 2016.

<sup>7</sup> *Alekseyev v. Russia*, European Court of Human Rights, Applications nos. 4916/07, 25924/08 and 14599/09.

<sup>8</sup> *Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity*, Report of the High Commissioner of United Nations on Human Rights (November 2011).

level of violence and discrimination based on SOGI, 'they are overshadowed by continuing, serious and widespread human rights violations perpetrated, too often with impunity, against individuals based on their [SOGI]';<sup>9</sup>

- (b) a Joint Statement by UN entities in 2015, which stated that, in order to protect LGBTI persons from violence and ill-treatment, States must properly investigate and prosecute crimes, strengthen efforts to prevent, monitor and report crimes and incorporate homophobia as an aggravating factor in laws targeting hate crime. The statement noted that homosexual women are at particular risk of physical, psychological and sexual violence, and that human rights defenders combatting these violations are frequently persecuted and face discriminatory restrictions on their activities;<sup>10</sup>
- (c) in May 2015, a group of UN and regional human rights experts, made a joint statement urging Governments to end violence and discrimination against LGBTI people and children;<sup>11</sup>
- (d) the adoption of numerous resolutions by the HRC which aim to prevent discrimination on the basis of SOGI, including the HRC resolution on 'protection against violence and discrimination based on [SOGI]' (adopted 30 June 2016);<sup>12</sup> and
- (e) the HRC's creation and appointment of an UN independent expert on protection against violence and discrimination based on SOGI, who is mandated to: highlight instances of violence and discrimination based on SOGI; address underlying causes of such discrimination at an international and national level; and help States find more effective ways to safeguard individuals from such discrimination. This appointment reflects the HRC's stance on the severity of discrimination based on SOGI.<sup>13</sup>

### 2.3 Defenders working on LGBTI rights in Russia

11. Defending the human rights of LGBTI persons necessarily involves the right to freedom of public assembly and the ability to advocate for such rights freely and without harm or hindrance through mainstream and/or social media. The risk of discrimination for defenders of the rights of LGBTI persons is compounded because these defenders are usually LGBTI themselves and therefore face discrimination on a political level in relation to their activities and on a personal level in relation to their being LGBTI.<sup>14</sup>
12. Discrimination against human rights defenders, including defenders of the rights of LGBTI persons, is increasing in Russia. The precarious situation for defenders of the rights of LGBTI persons in Russia has been highlighted by:

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<sup>9</sup> *Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity*, Report of the High Commissioner of United Nations on Human Rights (May 2015); HRC Res 27/32, 32<sup>nd</sup> sess, Agenda Item 8, UN Doc A/HRC/RES/27/32 (26 September 2014), para 3.

<sup>10</sup> 'Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People', UNAIDS <[http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2015/september/20150929\\_LGBTI](http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2015/september/20150929_LGBTI)>

<sup>11</sup> Joint Statement, 'Discriminated And Made Vulnerable: Young LGBT And Intersex People Need Recognition And Protection Of Their Rights' <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15941&LangID=E>.

<sup>12</sup> HRC Res 32/2, 27<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/RES/32/2 (30 June 2016).

<sup>13</sup> HRC Res 32/2, 27<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/RES/32/2 (30 June 2016).

<sup>14</sup> Report of the Special Rapporteur on the Situation of Human Rights Defenders, UNGA, 70<sup>th</sup> sess, Agenda Item 73 (b), UN Doc A/70/217 (30 July 2015).

- (a) recent laws enacted regulating public assemblies, freedom of expression, and freedom of association, which have been systematically used by Russian authorities to restrict the activities of human rights defenders.<sup>15</sup> For example, information shared online by defenders of the rights of LGBTI persons has been censored by Russian media regulator Roskomnadzor and a growing number of individuals have faced criminal prosecution for online postings under anti-extremism legislation;<sup>16</sup>
- (b) the HRCtee expressing concern about the number of reports of discrimination, hate speech, and violence against LGBT individuals and activists in Russia.<sup>17</sup> Such reports are based on, *inter alia*, communications regarding other human rights defenders who have had charges brought against them by Russia with respect to their LGBT rights advocacy activities;<sup>18</sup>
- (c) the HRCtee finding that the administrative conviction of an LGBT activist, Irina Fedotova, was based on an ambiguous and discriminatory provision of the Ryazan Region Law. The HRCtee concluded that Russia failed to demonstrate why it was necessary to restrict her right to freely express her sexual identity in violation of her right to freedom of expression enshrined in Article 19 of the ICCPR and the right to be free from discrimination on the basis of sexual orientation enshrined in Article 26 of the ICCPR.<sup>19</sup>
- (d) the HRCtee finding that the denial of a permit to LGBT activists to hold a picket in front of the Iranian Embassy was solely based on the subject of the demonstration, which was to express concern over the execution of homosexuals and minors. The HRCtee held that the denial of the permit was in violation of the right to freedom of assembly enshrined in Article 21 of the ICCPR;<sup>20</sup> and
- (e) the UN Special Rapporteur on the situation of human rights defenders requesting an invitation from Russia to conduct an official visit to examine the role and situation of human rights defenders (including defenders of the rights of LGBTI persons) in Russia. This request has been issued three times: in 2004; 2011 and 2015.<sup>21</sup> As at December 2016, that invitation has not been forthcoming.<sup>22</sup>

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<sup>15</sup> Amnesty International Report 2015/16: The State of the World's Human Rights, Amnesty International, 23 February 2016, Index number: POL 10/2552/2016, 'Russian Federation'.

<sup>16</sup> *Ibid.*

<sup>17</sup> Human Rights HRCtee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, CCPR/C/RUS/CO/7 (28 April 2015).

<sup>18</sup> See for example the *communication to the High Commissioner for Human Rights from the Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders*, AL RUS 3/2015 (24 July 2015).

<sup>19</sup> Human Rights HRCtee, Communication No. 1932/2010, Irina Fedotova v. Russian Federation (30 November 2012) para. 10.8.

<sup>20</sup> Human Rights HRCtee, Communication No. 1873/2009, Nikolai Alekseev v. Russia Federation (2 December 2013) para. 9.6.

<sup>21</sup> *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, UNGA, 70<sup>th</sup> sess, Agenda Item 73 (b), UN Doc A/70/217 (30 July 2015).

<sup>22</sup> United Nations Human Rights Office of the High Commissioner, *Country Visits* (8 September 2016) <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/CountryVisits.aspx>.

### 3. THE INTERPRETATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

13. The International Covenant on Civil and Political Rights (*ICCPR*) should be read in light of the Declaration and the YPs. Such an approach is consistent with established principles of interpretation in international law and existing jurisprudence on the ICCPR.

#### 3.1 The relevance of soft law instruments

14. Soft law instruments should inform a State's obligations under a convention.

15. Non-treaty declarations have been used in the interpretation of articles of the ICCPR, for example:

- (a) when interpreting Article 18 of the ICCPR the HRCtee considered the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief following the complainant's submission that Article 6 of that declaration should be used as 'a guide' to the interpretation of the ICCPR;<sup>23</sup>
- (b) the HRCtee read Article 16 of the ICCPR in light of the Declaration on the Protection of All Persons from Enforced Disappearance noting that under the Declaration, enforced disappearance constitutes a violation of the right to recognition as a person before the law;<sup>24</sup>
- (c) the HRCtee read Article 7 of the ICCPR in light of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in inferring a purposive element into the meaning of torture;<sup>25</sup>
- (d) the HRCtee relied on the *Standard Minimum Rules for the Treatment of Prisoners* in determining the scope and application of Article 10 of the ICCPR<sup>26</sup>, commenting that the Rules 'constitute valuable guidelines for the interpretation of the Covenant';<sup>27</sup> and
- (e) the HRCtee recommended that States integrate the Istanbul Protocol of 1999 'Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' in training programmes for law enforcement officials, in response to reports of ill-treatment of detainees by law enforcement officials.<sup>28</sup>

#### 3.2 Russia's obligations under the ICCPR interpreted in light of the Declaration

16. The Declaration was adopted by a unanimous resolution of the UN General Assembly in 1998.<sup>29</sup>

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<sup>23</sup> *Sister Immaculate Joseph and 80 Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka v Sri Lanka* (1249/2004), paras 3.3 and 7.1.

<sup>24</sup> *Grioua v Algeria* (1236/2004), para 7.8; *Madoui v Algeria* (1495/2006), para 7.7.

<sup>25</sup> *Giri v Nepal* (1761/2008).

<sup>26</sup> Human Rights Committee General Comment No 21, para 5; *Mukong v Cameroon* (458/91), para 9.3.

<sup>27</sup> *Potter v New Zealand* (632/95), para 6.3.

<sup>28</sup> Human Rights HRCtee, Concluding observations of the Human Rights Committee Slovakia CCPR/C/SVK/CO/3, (29 March 2011) para 14.

<sup>29</sup> GA Res 53/144, 53<sup>rd</sup> sess, Agenda Item 110 (b), UN Doc A/RES/53/144 (8 March 1999).

17. While the Declaration is not, in itself, a legally binding instrument, it articulates existing rights enshrined in international human rights treaties, including the ICCPR, in a way that clearly outlines the relationship between those rights and the practical role and situation of human rights defenders.<sup>30</sup>
18. Other bodies such as the Committee on Economic, Social and Cultural Rights and the Inter-American Court of Human Rights have accepted that the Declaration should inform the interpretation of obligations under a convention:
- (a) The Committee on Economic, Social and Cultural Rights recently stated that ‘all acts and decisions’ in relation to human rights defenders ‘should be in compliance with the Charter of the United Nations and 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’.<sup>31</sup>
  - (b) In interpreting the American Convention on Human Rights, the Inter-American Court of Human Rights referred to the Declaration in cases involving human rights defenders.<sup>32</sup> The Court relied on the Declaration to find that human rights defenders are in a ‘situation of special vulnerability’ and that the ‘State’s obligation to guarantee the rights to life and personal integrity of an individual is increased in the case of a human rights defender.’<sup>33</sup> The Court further held, in line with the Declaration, that a State ‘should provide the necessary means for persons who are defenders of human rights...so that when they encounter threats or situations of risk or report human rights violations, they can freely carry out their activities; protect them when they receive threats so as to prevent attacks on their lives and integrity; create conditions to eradicate violations by State agents or private individuals; refrain from hindering their work, and thoroughly and effectively investigating violations committed against them, combating impunity.’<sup>34</sup>
19. As outlined in the Communication, **the Complainant submits that her rights under Articles 2, 7, 17 and 26 of the ICCPR have been violated. In addition, we submit that her rights under Article 21 of the ICCPR have been violated.**<sup>35</sup> The Declaration articulates several rights reflected in the ICCPR in a manner that underscores how these rights ought to be understood and protected with respect to human rights defenders. Articles of the Declaration relevant to the Communication, and which we submit should inform the HRCtee’s interpretation of the relevant Articles of the ICCPR, are examined in turn below.
- (a) Article 2 (Duty to protect human rights defenders and provide an enabling environment for their work) of the Declaration informs Articles 2 & 26 of the ICCPR
    - (i) Article 2 of the ICCPR requires State Parties to take the necessary steps to adopt such laws and other measures as necessary to give effect to, and respect and ensure, the rights enunciated in the ICCPR.

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<sup>30</sup> United Nations Human Rights Office of the High Commissioner, *Declaration* (8 September 2016) <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

<sup>31</sup> Statement by the Committee on Economic, Social and Cultural Rights, E/C.12/2016/2 (7 October 2016).

<sup>32</sup> Human Rights Defender vs. Guatemala, Inter-American Court of Human Rights (2014), Luna Lopez vs. Honduras, Inter-American Court of Human Rights (2013).

<sup>33</sup> Human Rights Defender vs. Guatemala, Inter-American Court of Human Rights (2014), paras 142 and 153.

<sup>34</sup> Human Rights Defender vs. Guatemala, Inter-American Court of Human Rights (2014), para142.

<sup>35</sup> See Part 4 ‘Violation of Additional Rights’.

- (ii) Article 2 of the Declaration echoes this obligation in terms of the rights within the Declaration, and provides guidance as to what 'other measures' may be necessary to give effect to the rights in the Declaration, and thereby the ICCPR, and what State Parties must do to foster respect for these rights. Article 2 of the Declaration provides that each State has a primary responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as required 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.
  - (iii) Article 26 of the ICCPR provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Article 2 of the Declaration confirms that such protection involves the legal guarantees required to ensure that all persons under a State's jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.
  - (iv) Russia failed to enact comprehensive anti-discrimination legislation that prohibits discrimination on the basis of SOGI. The systemic failure of Russia's legislative system resulted in the State's failure to create conditions where all persons are able to enjoy fundamental freedoms and rights in practice. This, together with the State's other shortcomings outlined in the Communication<sup>36</sup>, deprived the Complainant of an effective remedy and therefore denied the Complainant the protection of the law.
- (b) Article 5 (Right to meet, assemble, form and communicate) of the Declaration informs Articles 21 of the ICCPR
- (i) Article 21 of the ICCPR provides that everyone has the right to peaceful assembly.
  - (ii) Article 5 of the Declaration informs this right, by providing that everyone has - for the purposes of promoting and protecting human rights and fundamental freedoms - the right to, *inter alia*, meet or assemble peacefully and to form, join and participate in non-governmental organisations, associations or groups.
  - (iii) The Complainant participated in a peaceful assembly and a private meeting for the purposes of promoting and protecting human rights and fundamental freedoms of LGBTI persons. The attacks suffered by the Complainant during these events, and the failure of the Russian authorities to protect the Complainant from those attacks, contravened her right to peaceful assembly under Article 21 of the ICCPR, and her right to assemble peacefully for the purpose of promoting and protecting human rights under Article 5 of the Declaration.

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<sup>36</sup> Communication no 2992/2017 (31 March 2016), para 56.

- (c) Article 9 (Duty to investigate attacks against human rights defenders and provide an effective remedy) of the Declaration informs articles 2 & 7 of the ICCPR
- (i) Article 2 of the ICCPR imposes a duty on State Parties to ensure that anyone whose rights under the ICCPR have been violated has access to an effective remedy, and that any claim for such a remedy be determined by competent judicial, administrative or legislative authorities.
  - (ii) Article 7 of the ICCPR provides that no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.
  - (iii) Article 9 of the Declaration provides that everyone has the right to complain about Government policies and actions with regard to violations of human rights and fundamental freedoms. It confers a right to benefit from an effective remedy, complain and have that complaint promptly reviewed before an independent, impartial and competent judicial or other authority established by law. In granting these rights, Article 9 requires State's to conduct a prompt and impartial investigation or ensure an inquiry takes place whenever there are reasonable grounds to believe a human right violation has occurred within its jurisdiction.
  - (iv) Article 2 of the ICCPR confers the right to an effective remedy in circumstances where one's rights under Article 7 of the ICCPR have been violated. Article 9 of the Declaration, extends this to the specific circumstances of a human rights defender; providing guidance on human rights defenders' rights and States' duties where Article 7 of the ICCPR has been violated.
  - (v) Russia failed to fulfil its obligations to ensure the Complainant's right not to be subject to torture, or to cruel, inhuman or degrading treatment, to ensure that any violation of that right be investigated in accordance with Article 9 of the Declaration, and to ensure that the Complainant have access an effective remedy according to Article 2 of the ICCPR and Article 9 of the Declaration. The Complainant, in the midst of the first case of violence, felt a sense of helplessness and humiliation as she was attacked physically and verbally. Furthermore, the Complainant claims she has been suffering from serious psychological trauma as a result of the two acts of violence described in the Communication, and as a result of her inability to access an effective remedy due to the lack of a prompt and impartial investigation.
- (d) Article 12 (Right to participate in peaceful activities against violations of human rights) of the Declaration informs Articles 2, 17, 21 & 26 of the ICCPR
- (i) Article 17 of the ICCPR provides that everyone has the right to benefit from the protection of the law from unlawful attacks on ones' honour and reputation, Article 21 of the ICCPR provides that everyone has the right to peaceful assembly, Article 26 of the ICCPR provides that everyone has the right to equal protection before the law, and Article 2 of the ICCPR sets out the State's duty to respect and ensure the rights recognised in the ICCPR.
  - (ii) Article 12 of the Declaration states that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms. States are required to take all necessary measures to ensure the protection by competent authorities of everyone, individually and in association with others, against any violence

threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights articulated in the Declaration. Article 12 also requires protection under national laws for human rights defenders 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.

- (iii) The rights of LGBTI people protected under Articles 2, 17, 21 and 26 of the ICCPR are systematically violated in Russia. Pursuant to Article 12 of the Declaration the Complainant had the right to participate in peaceful activities against those violations of rights. Russia was required to take all necessary measures to ensure the protection of the Complainant against any violence threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights articulated in the Declaration. This is particularly the case in circumstances where human rights defenders are in a 'situation of special vulnerability' which imposes an increased obligation on State Parties to guarantee such human rights and fundamental freedoms to human rights defenders.<sup>37</sup>
- (iv) In failing to protect the Complainant from the attacks, the Russian authorities were in breach of Articles 2, 17, 21 and 26 of the ICCPR, as well as Article 12 of the Declaration.

### **3.3 Russia's obligations under the ICCPR interpreted in light of the Yogyakarta Principles**

- 20. The YPs are a series of 29 principles that apply existing human rights standards to the specific and unique issues relating to SOGI. The YPs were drafted in 2006 by an international panel of experts in international human rights law and on SOGI, including a former UN High Commissioner for Human Rights and 13 current or former UN Human Rights experts.
- 21. Like the Declaration, the YPs are not a binding international treaty, but a restatement of international law, 'reflect[ing] the existing state of international human rights law' and 'affirm[ing] binding international legal standards with which all States must comply'.<sup>38</sup> The status of the YPs has been reiterated by the European Court of Justice as 'reflect[ing] established principles of international law'.<sup>39</sup>
- 22. The YPs have been referred to by a range of UN bodies and mechanisms, as well as domestic law judgments:
  - (a) they have been cited in a General Comment of the Committee on Economic, Social and Cultural Rights;<sup>40</sup>

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<sup>37</sup> *Human Rights Defender vs. Guatemala*, Inter-American Court of Human Rights (2014), paras 142 and 153.

<sup>38</sup> Introduction to the Yogyakarta Principles.

<sup>39</sup> Opinion of Advocate General Sharpston delivered on 17 July 2014. A, B and C. Joined Cases C-148/13, C-149/13 and C-150/13, at par (37) footnote 47.

<sup>40</sup> General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, 2 July 2009, 10.

- (b) they have been included in reports of Special Rapporteurs, with some reports referencing them as guiding principles or statements of international law;<sup>41</sup>
- (c) a guidance note issued by the UN High Commissioner for Human Rights (UNHCR) states that the YPs 'reflect binding international legal standards with regard to sexual orientation which are derived from key human rights instruments',<sup>42</sup>
- (d) guidelines issued by the UNHCR reference the importance of the Yogyakarta Principles in applying rights, and adopt the terminology of sexual orientation and gender identity in the YPs;<sup>43</sup>
- (e) many recommendations made and accepted as part of a State's Universal Periodic Review have made reference to the YPs;<sup>44</sup>
- (f) they have been referred to in a case before the Inter-American Court of Human Rights which affirmed the right to access social security benefits without discrimination based on sexual orientation;<sup>45</sup>
- (g) the Delhi High Court discussed the YPs in its judgment in *Naz Foundation v Govt. of NCT of Delhi*, finding that criminalisation of homosexual sex violated the rights protected by India's Constitution;<sup>46</sup>
- (h) the Supreme Court of India referred to the YPs in *National Legal Services Authority v Union of India WP*, which affirmed the rights of transgender people, and formally recognised a third gender for the purposes of safeguarding and appropriately enforcing their rights under India's Constitution;<sup>47</sup>
- (i) an Australian court and tribunal cited the YPs;<sup>48</sup>
- (j) the Supreme Court of Nepal requested an amicus brief on the YPs and went on to find that its citizens had rights broadly consistent with the YPs;<sup>49</sup>
- (k) the YPs have been suggested to have had a second-order influence on a decision of the Supreme Court of Pakistan relating to the rights of transgender persons;<sup>50</sup> and

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<sup>41</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/64/272, 10 August 2009, 13; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/64/211, 3 August 2009, 16 and 20.

<sup>42</sup> UNCHR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, 21 November 2008, 7.

<sup>43</sup> see for example 'Guidelines on International Protection No. 9', UNHCR, available at <http://www.unhcr.org/509136ca9.pdf>.

<sup>44</sup> See David Brown, *Making Room for Sexual Orientation and Gender Identity in International human Rights Law: An Introduction to the Yogyakarta Principles* (2010) 31 Michigan Journal of international Law 821, 843 and 878; see also Paula Ettlbrick and Alia Trabucco Zerán, [The Impact of the Yogyakarta Principles on International Human Rights Law Development: A Study of November 2007 – June 2010](#) (10 September 2010); ARC International, *YP in Action: Universal Periodic Review Documents* (viewed 19 August 2016) <[http://www.ypinaction.org/content/universal\\_periodic\\_review\\_docume](http://www.ypinaction.org/content/universal_periodic_review_docume)>.

<sup>45</sup> *Duque v Colombia*, Inter-American Court of Human Rights (2015), para. 110 and 138.

<sup>46</sup> *Naz Foundation v. Govt. of NCT of Delhi*, 160 Delhi Law Times 277 (Delhi High Court 2009) at par 43 (Note: this decision was later overturned by the Supreme Court of India).

<sup>47</sup> *National Legal Services Authority v Union of India WP (Civil) No 604 of 2013*.

<sup>48</sup> *Re Alex* [2009] FamCA 1292, [183]; 071263822 [2007] RRTA 115.

<sup>49</sup> *Pant v Nepal*, Writ No. 917 of the Year 2064 BS (2007 AD) (Nepal).

<sup>50</sup> David Brown, *Making Room for Sexual Orientation and Gender Identity in International human Rights Law: An Introduction to the Yogyakarta Principles* (2010) 31 Michigan Journal of international Law 821, 873.

- (l) the 9th Circuit Court of Appeals in the United States considered an amicus brief which relied heavily on the YPs.<sup>51</sup>

23. The principles in the YPs relevant to the Communication are set out below.

- (a) Principle 2 (The rights to equality and non-discrimination) informs Article 26 of the ICCPR
  - (i) Article 26 of the ICCPR provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.
  - (ii) YP 2 provides that everyone is entitled to enjoy all human rights without discrimination on the basis of SOGI. Discrimination based on SOGI includes any distinction, exclusion, restriction or preference based on SOGI which has the purpose of nullifying or impairing equality before the law or the equal protection of the law.<sup>52</sup>
  - (iii) In *Toonan v Australia* the HRCtee noted that the reference to 'sex' in Article 26 of the ICCPR includes sexual orientation.<sup>53</sup>
  - (iv) The Russian authorities were in contravention of their obligations under Article 26 of the ICCPR and YP 2 in failing to develop and implement legislation prohibiting discrimination based on SOGI; failing to provide police protection during the attacks which were clearly carried out as a result of hate towards LGBT people; and failing to conduct a proper investigation of the attacks, including by failing to classify the attacks as hate crimes.
- (b) Principle 5 and 10 (The Right to Security of the Person) informs Article 7 of the ICCPR
  - (i) Article 7 of the ICCPR sets out the right to be free from being subject to cruel, inhumane or degrading treatment or punishment.
  - (ii) YP 10 echoes this right; while YP 5 further informs this right by providing that all persons have the right to security of persons and that States have an obligation to protect its citizens, regardless of SOGI, against harm, whether inflicted by agents of the State or by private individuals or groups. In order to do this the State must take legislative, policing and other measures to prevent and provide protection from violence and harassment; vigorously investigate and prosecute perpetrators; and undertake awareness-raising campaigns in order to combat the prejudices underlying the violence.<sup>54</sup>
  - (iii) Russia was in breach of its obligations under Article 7 of the ICCPR and YP 5 in failing to protect the Complainant from violence and harassment at both events. Moreover, Russia failed to take legislative and policing measures to ensure such protection, and to vigorously investigate and persecute the perpetrators.
- (c) Principles 20 (The Right to Freedom of Peaceful Assembly and Association) and 27 (The Right to Promote Human Rights) inform Article 21 of the ICCPR

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<sup>51</sup> Brief of ICJUR and Ctr. for Constitutional Rights as Amicus Curiae, *Witt v. Dep't of the Air Force*, 527 F.3d 806, 806 n.2 (9th Cir. 2008), 802.

<sup>52</sup> Yogyakarta Principle 2.

<sup>53</sup> *Toonen v. Australia*, Comm. No. 488/1992, U.N. GAOR Hum. Rts. Comm., 49th Sess., Supp. No. 40, vol. II, at 235, U.N. Doc. A/49/40 (Mar. 31, 1994).

<sup>54</sup> Yogyakarta Principle 5.

- (i) Article 21 of the ICCPR provides that the right of peaceful assembly shall be recognized.
  - (ii) The rights set out in YP Principle 19 and 20 inform these rights, requiring States to ensure that adequate police and other physical protection against violence or harassment is afforded to persons exercising the right to peaceful assembly and association, regardless of SOGI and provide training and awareness-raising programmes to law enforcement authorities and other relevant officials to enable them to provide such protection.
  - (iii) YP 27 also informs Article 19 and 20 of the ICCPR. YP 27 requires States to combat actions targeting human rights defenders working on issues of SOGI, including protecting rights defenders against violence. The European Court of Human Rights touched on this issue of promoting human rights in the case of *Alekseyev v Russia* (discussed above at par 9 above). In this case the Court noted that there is consensus on some SOGI issues – for example the abolition of criminal liability for homosexual relations - but not others – such as same sex marriage. The Court noted that ‘conferring substantive rights on homosexual persons is fundamentally different from recognising their right to campaign for such rights.’<sup>55</sup> In this sense, even if the State disagrees with the rights being petitioned for, it must protect the right of human rights defenders to petition.
  - (iv) In attending the Pride assembly and private meeting at the LaSky offices, the Complainant was exercising her legitimate right to peaceful assembly, association and freedom of expression. In failing to provide the Complainant, a human rights defender working on SOGI, with adequate police and other physical protection against violence and harassment during these events, Russia contravened Articles 19 and 20 of the ICCPR, as well as YPs 19, 20 and 27.
- (d) Principle 28 (The Right to Effective Remedies and Redress) informs Article 2 of the ICCPR
- (i) Article 2 of the ICCPR imposes a duty on State Parties to ensure that anyone whose rights under the ICCPR have been violated has access to an effective remedy, and that any claim for such a remedy be determined by competent judicial, administrative or legislative authorities.
  - (ii) YP 28 informs Article 2 of the ICCPR, requiring States to ensure that victims of human rights violations on the basis of SOGI have access to appropriate redress, including satisfaction and guarantee of non-repetition. An obligation is imposed on States to, not simply investigate crimes, but to educate authorities and civilians.
  - (iii) Russia contravened its obligations under Article 2 of the ICCPR and YP 28 in failing to ensure that the Complainant, a victim of human rights violations on the basis of SOGI, had access to an effective remedy, or received guarantee of non-repetition.

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<sup>55</sup> [Alekseyev v. Russia](#), European Court of Human Rights, Applications nos. 4916/07, 25924/08 and 14599/09 at para 84.

### 3.4 Russia's obligation under the ICCPR to adequately investigate violation of rights

24. Article 2(3) of the ICCPR establishes the fundamental obligation of States to adequately investigate alleged violations of the rights enshrined in the ICCPR, to have the alleged violations determined by competent judicial, administrative or legislative authorities and to provide victims with an effective remedy.<sup>56</sup> A State will not be considered to have provided an effective remedy where the remedies provided by the State have been unduly prolonged without any valid reason or justification.<sup>57</sup>
25. As Articles 7, 17, 21 and 26 have been violated the Complainant is entitled to an effective remedy under Article 2(3) of the ICCPR. Articles 7, 17, 21 and 26 of the ICCPR are discussed in in conjunction with Article 2(3) below.
- (a) Right to be free from torture and cruel, inhuman or degrading treatment or punishment (Article 7)
- (i) The right of individuals to be free from torture and cruel, inhuman or degrading treatment or punishment under Article 7, must be examined in conjunction with Article 2(3), which establishes the obligation of States to adequately investigate allegations of ill-treatment and provide victims with an effective remedy. Article 7 provides that State Parties must ensure that individuals receive protection through legislative measures and other means as may be necessary.<sup>58</sup> This protection extends to acts of torture and ill-treatment carried out by persons in an official or private capacity, and also to acts of physical pain and mental suffering.<sup>59</sup>
- (ii) State Parties are required to investigate alleged violations of Article 7 thoroughly and effectively through independent and impartial bodies.<sup>60</sup> In *Eshonov v Uzbekistan*, the HRCtee commented that, 'once a complaint about ill-treatment contrary to Article 7 has been filed, a State party must investigate it promptly and impartially', in order to 'ensure that those responsible are brought to justice'.<sup>61</sup>
- (iii) Article 2(3) requires State Parties to conduct criminal investigations in an expeditious and effective manner.<sup>62</sup> In *Alzery v Sweden*, the HRCtee found that the Swedish authorities failed to meet its obligations under Article 7 of the ICCPR, read in conjunction with Article 2 of the ICCPR. In that case, the Swedish authorities waited over two years for a private criminal complaint before initiating criminal process into criminal conduct whose character was plain and known to authorities.<sup>63</sup> The HRCtee noted that a State party has an obligation to ensure its investigative apparatus preserves the capacity to investigate, as far as

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<sup>56</sup> International Covenant on Civil and Political Rights, Article 2(3).

<sup>57</sup> *Gunaratna v Sri Lanka* (1432/05), para 8.3.

<sup>58</sup> General Comment 20 (Adopted by the Human Rights Committee at the Forty-fourth Session, A/44/40, 10 March 1992), para 2.

<sup>59</sup> General Comment 20 (Adopted by the Human Rights Committee at the Forty-fourth Session, A/44/40, 10 March 1992), para 2.

<sup>60</sup> General Comment 31 (Adopted on 29 March 2004), par 15; *Zheikov v Russian Federation* (889/99).

<sup>61</sup> *Eshonov v Uzbekistan* (1225/03), para 9.8.

<sup>62</sup> *Kalamiotis v Cyprus* (1486/06), para 7.3; *Halimi-Nedzibi v Australia* (CAT 8/91).

<sup>63</sup> *Alzery v Sweden* (1416/05), para 11.7.

possible, the criminal responsibility of all relevant officials for conduct in breach of Article 7, and to bring the appropriate charges in consequence.

- (iv) Russian authorities failed to adequately investigate and provide the Complainant with a remedy for ill-treatment. Between July 2013 and June 2015, there was no investigation into the attacks. On seven occasions the Russian authorities issued decisions not to initiate criminal proceedings in relation to the assault of the Complainant at the public assembly. Instead, authorities told the Complainant to pursue private criminal proceedings – not a practical means of redress, given that the attackers were unknown to the Complainant, and were masked during the attack on the LaSky office. Russian authorities therefore breached Article 2(3) in refusing to investigate the attacks against the Complainant, failing to identify the perpetrators, and depriving the Complainant of an effective remedy.
- (b) Right to respect of privacy, home and honour (Article 17)
- (i) Article 17 of the ICCPR guarantees the right of an individual to be free from arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and to unlawful attacks on his or her honour and reputation. States have an obligation to protect individuals against arbitrary or unlawful interference or attacks, regardless of whether such attacks emanate from public authorities or natural or legal persons.<sup>64</sup>
  - (ii) Underpinning Article 17 is the recognition that an individual's private life warrants protection. Privacy is notoriously difficult to define. Privacy has been variously defined as the right to be let alone,<sup>65</sup> the right to limit access to oneself<sup>66</sup> and to control personal information.<sup>67</sup> It has also been defined as a form of secrecy, seclusion, autonomy<sup>68</sup> or personhood<sup>69</sup>. While the meaning of privacy under Article 17 has not been comprehensively defined in General Comment No. 16,<sup>70</sup> the HRCtee has acknowledged that some delineation between an individual's private and public life is necessary to safeguard an individual's identity and personality.<sup>71</sup>
  - (iii) In *Coeriel and Aurik v The Netherlands*, the HRCtee considered that the notion of privacy 'refers to the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone'<sup>72</sup> and the right to protect those aspects of an individual's life, or relationships with others, which the individual chooses to 'keep from the public

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<sup>64</sup> General Comment No. 16 (Adopted by the Human Rights Committee at the Thirty-second Session of the Human Rights Committee, on 8 April 1988), para 1.

<sup>65</sup> Samuel Warren and Louis Brandeis, "The Right to Privacy", *Harvard Law Review* 4, no. 5 (1890), 193.

<sup>66</sup> Daniel J Solove, "Conceptualizing Privacy", *California Law Review* 90, no.4 (2002), 1103.

<sup>67</sup> Solove, "Conceptualizing Privacy", 1111.

<sup>68</sup> Ruth Gavison, "Privacy and the Limits of Law", *The Yale Law Journal* 89, no.3 (1980), 421, 28, 69.

<sup>69</sup> Solove, "Conceptualizing Privacy", 1092.

<sup>70</sup> Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford University Press: 2013), 534.

<sup>71</sup> General Comment No. 16 (Adopted by the Human Rights Committee at the Thirty-second Session of the Human Rights Committee, on 8 April 1988).

<sup>72</sup> *Coeriel and Aurik v The Netherlands* (453/91), par 10.2.

eye, or from outside intrusion.<sup>73</sup> The reference to 'home' in Article 17 includes the place where a person resides or carries out his or her usual occupation.<sup>74</sup>

- (iv) In *Toonen v Australia*, the HRCtee considered that laws criminalising homosexual sex were in breach of Australia's obligations under the ICCPR, including the right to privacy under Article 17.<sup>75</sup>
  - (v) Accordingly, Article 17 safeguards the right of LGBT people to identify themselves as gay, lesbian, bisexual or transgender and to express this identity freely from outside intrusion, whether through relationships with others or through gatherings or meetings. Read in conjunction with Article 2(3), Article 17 prohibits States from interfering with individuals' private lives, while also requiring States to undertake proactive actions to ensure individuals' private lives are not violated. States must adopt legislative and other measures to give effect to the prohibition against unlawful and arbitrary interferences and attacks, and to effectively safeguard this right.<sup>76</sup>
  - (vi) The Russian authorities failed to guarantee the Complainant's right to freedom from interference with her privacy, home and honour. The attack of the Rainbow Tea Party at the LaSky office represented a clear violation of the participants' rights under Article 17 to identify as gay, lesbian, bisexual or transgender, and to freely express this identity at private gatherings, free from intrusion and intimidation. The attack was clearly motivated by hatred for LGBT people and targeted LGBT individuals as a method of intimidation. The attackers shouted derogatory homophobic insults while carrying out physical violence on participants. After the attack, the Complainant learned that a notorious homophobic group "VOLK-homophob" had posted the following message on social media, "We promise you the second piece of news about St. Petersburg in the evening. We ask Petersburgers to stay alert and be ready to repost the information". This indicates that the assault on the tea party participants was pre-arranged and intended to intimidate LGBT groups.
  - (vii) The failure of Russian authorities to investigate the attack and to erroneously classify the attack as 'hooliganism', rather than a hate crime, was in violation of the State's obligations under Article 2(3) of the ICCPR.
- (c) Right to peaceful assembly (Article 21)
- (i) Article 21 of the ICCPR guarantees the right of peaceful assembly. This right has been acknowledged as an important conduit for minority groups to express, celebrate and maintain both their individual and group identities.<sup>77</sup> Freedom to

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<sup>73</sup> *Hopu and Bessert v France* (549/93), par 6. This reference is from the Individual opinion by HRCtee members David Kretzmer and Thomas Buergenthal, cosigned by Nisuke Ando and Lord Colville.

<sup>74</sup> General Comment No. 16 (Adopted by the Human Rights Committee at the Thirty-second Session of the Human Rights Committee, on 8 April 1988), para. 5.

<sup>75</sup> *Toonen v. Australia*, Comm. No. 488/1992, U.N. GAOR Hum. Rts. Comm., 49th Sess., Supp. No. 40, vol. II, at 235, U.N. Doc. A/49/40 (Mar. 31, 1994).

<sup>76</sup> General Comment No. 16 (Adopted by the Human Rights Committee at the Thirty-second Session of the Human Rights Committee, on 8 April 1988).

<sup>77</sup> OSCE, Guidelines on Freedom of Peaceful Assembly (2<sup>nd</sup> ed.) 2010, para. 1.1.

organise and participate in public assemblies is guaranteed to all.<sup>78</sup> The right to peaceful assembly has been recognised as essential to fostering a tolerant society, where groups with diverse beliefs and practices can co-exist and live peacefully together.<sup>79</sup> In circumstances where the right to peaceful assembly under Article 21 has been breached, State Parties must provide individuals with an effective remedy under Article 2(3) of the ICCPR.

- (ii) A State's duties to facilitate assemblies include taking measures to protect those exercising their rights from violence or interference.<sup>80</sup> The HRCtee emphasized that States 'must put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression by means of an assembly'.<sup>81</sup>
- (iii) Moreover, the HRCtee has stated that 'freedom of assembly protects demonstrations promoting ideas that may be seen as annoying or offensive by others and that, in such cases, State parties have a duty to protect the participants in a demonstration in the exercise of their rights against violence by others'.<sup>82</sup> This also extends to counter-demonstrations that should 'be facilitated to take place within sight and sound of their target'.<sup>83</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and of association established that 'the proper management of assemblies requires the protection and enjoyment of a broad range of rights by all the parties involved'.<sup>84</sup>
- (iv) The Russian authorities failed to facilitate the peaceful assembly of LGBT activists. The purpose of the pride assembly was to highlight discrimination against LGBT people. It was also a public expression of LGBT activists' opinions and views regarding the issue of discrimination against LGBT persons. Authorities were notified in advance of the date, time, place and purpose of the event. The event was attended by police officers and 'OMON' (federal riot police), however these measures were wholly inadequate to control the over 200 counter-demonstrators.
- (v) Throughout the assembly, the LGBT activists were subjected to slurs, intimidation and physical assaults. The opponents threw stones, smoke bombs and eggs at the assembly participants. The police took no action to stop the counter-demonstrator's aggression. As a result of inadequate police protection,

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<sup>78</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/26/29 14 April, 2014, para. 22.

<sup>79</sup> OSCE, Guidelines on Freedom of Peaceful Assembly (2<sup>nd</sup> ed.) 2010, par 1.1.

<sup>80</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies A/HRC/31/66 4 February, 2016, para 24-25.

<sup>81</sup> Nikolai Alekseev v. Russian Federation, Communication No. 1873/2009, U.N. Doc. CCPR/C/109/D/1873/2009 (2013) para. 9.6.

<sup>82</sup> Nikolai Alekseev v. Russian Federation, Communication No. 1873/2009, U.N. Doc. CCPR/C/109/D/1873/2009 (2013) para. 9.6.

<sup>83</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies A/HRC/31/66 4 February, 2016, para. 24-25.

<sup>84</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies.

A/HRC/31/66 4 February, 2016, para. 8.

the Complainant and her friends were also subjected to physical assault by a group of 30 unknown men. The Complainant was pushed, kicked, spat on and whipped with a lash on various parts of her body. The attackers shouted insults and obscenities such as "kill the fagots!", "sodomites", "burn in hell" during the assault.

- (vi) In failing to provide adequate security and police officers, the Russian authorities contravened their obligations under Article 21 of the ICCPR to safeguard the Complainant and fellow LGBT rights defenders' right to peacefully assemble and provide the LGBT activists with a safe environment to participate in a peaceful rally. Further, the Russian authorities refused to conduct an investigation into the attacks and provide the Complainant with a remedy, thereby violating their obligations under Article 2(3) of the ICCPR.
- (d) Right to be free from discrimination (Article 26)
- (i) Article 26 of the ICCPR guarantees the right to be free from discrimination; that all persons shall be equal before the law and receive equal protection of the law.<sup>85</sup> Discrimination has been defined in the HRCtee as 'any distinction, exclusion or preference which is based on any ground, including sexual orientation, opinion or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms'.<sup>86</sup>
  - (ii) In *Young v. Australia* and *X v. Colombia*, the Committee considered that the prohibition under Article 26 also comprises prohibition of discrimination based on sexual orientation.<sup>87</sup>
  - (iii) State Parties are required to take 'affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant'.<sup>88</sup> Implicit in Articles 26 and Articles 2(3) is the duty of States parties to investigate allegations of discrimination and to provide effective remedies to redress discriminatory acts and conduct. LGBT persons are a minority group in Russian society subject to violent attacks and discrimination. In circumstances where the right to non-discrimination under Article 26 has been breached, State Parties must provide individuals with an effective remedy under Article 2(3).
  - (iv) The Russian authorities failed to identify the assaults as hate crime. As set out at paragraph 25(a)(iv), on seven occasions similar decisions were issued by the Russian authorities not to initiate criminal proceedings in relation to the assault of the Complainant in June 2013. The relevant police officers acknowledged the motive of hate towards LGBT people in relation to the assault, but did not classify the assault as a hate crime. Instead, they classified it as battering without aggravating circumstances. In failing to treat the assaults as a hate crime against LGBT individuals, the authorities refused to acknowledge the targeted

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<sup>85</sup> General Comment 18 (Adopted at the Thirty-seventh Session of the Human Rights Committee, on 10 November 1989), par 3.

<sup>86</sup> General Comment 18 (Adopted at the Thirty-seventh Session of the Human Rights Committee, on 10 November 1989), par 7.

<sup>87</sup> *Young v. Australia* (941/2000), para. 10.4; *X v. Colombia* (1361/2005), para 7.2.

<sup>88</sup> General Comment 18 (Adopted at the Thirty-seventh Session of the Human Rights Committee, on 10 November 1989), par 10.

and discriminatory nature of the attacks in breach of Article 26 of the ICCPR. Further, in refusing to conduct a proper investigation into the attacks and bringing the perpetrators to justice, authorities denied the Complainant an effective remedy thereby violating Article 2(3).

#### 4. CONCLUSION

26. This intervention is designed to assist the HRCtee by providing an extended analysis of the scope of the rights under the ICCPR, and demonstrate that in the current circumstances the ICCPR should be read in conjunction with the Declaration and the YPs.

27. As set out in this intervention, Russia has violated its obligations pursuant to the ICCPR to:

- (a) Ensure and respect the Complainant's rights enunciated in the ICCPR;
- (b) Ensure the Complainant's right not to be subject to torture or cruel, inhuman or degrading treatment or punishment;
- (c) Ensure the Complainant was free from arbitrary or unlawful interference with her privacy, family, home and correspondence;
- (d) Ensure the Complainant's right to peaceful assembly;
- (e) Ensure all citizens are equal before the law; and
- (f) Adopt laws to protect the Complainant's rights under the ICCPR, provide an effective remedy for a violation of those rights, and ensure any claim for such a remedy is determined by a competent judicial, administrative or legislative authority.

Read in conjunction with the Declaration and YPs, Russia has also violated its obligations to:

- (g) Ensure and respect the Complainant's human rights and fundamental freedoms, including those enunciated in the Declaration;
- (h) Take policing and other measures to prevent and provide protection from all forms of discrimination, violence and harassment on the basis of SOGI;
- (i) Ensure the Complainant's right to be free from attacks against her honour and reputation;
- (j) Ensure the Complainant's right to participate in organisations and groups for the purpose of promoting and protecting human rights;
- (k) Ensure the Complainant's right to participate in peaceful activities against violations of human rights, and ensure her protection against threats, attacks, or discrimination as a consequence of the exercise of those rights; and
- (l) Conduct a prompt and thorough investigation of the violation of the Complainant's human rights.

28. We request that the HRCtee make a finding that Russia has violated its obligations under Article 2, 7, 17, 21 and 26 of the ICCPR, read in conjunction with Articles 2, 5, 9, 12 of the Declaration and Principles 2, 5, 10, 27 and 28 of the YPs.

29. We request that the HRCtee set forward strong statements that:

- (a) In circumstances involving human rights defenders the obligations under the ICCPR be read in light of the Declaration; and

- (b) In circumstances involving human rights defenders working to promote and protect the rights of LGBTI people, the obligations under the ICCPR be read in light of the Declaration and the YPs.

30. We further request that the HRCtee recommend that Russia:

- (a) Review and repeal laws and policies that restrict or discriminate against human rights defenders;
- (b) Enact and implement laws and policies that enable human rights defenders to carry out their work and ensure human rights defenders are protected and not discriminated against; and
- (c) Take additional steps and implement special measures to protect human rights defenders and enable them to fully exercise their rights under the ICCPR, the Declaration and the YPs.