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PROTECTION VS. EMPOWERMENT: THE STATE OF THE LGBT CHILD IN RUSSIA

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ABSTRACT

Children are often conceptualized as asexual and in need of protection and surveillance to protect this attribute. Their sexual desires and human development are restricted by laws that are supposedly designed to protect children, such as the age of consent for sex, marriage, access to pornography, etc. In recent history, we have seen a multitude of restrictions on sexual rights (mostly in the realm of LGBT rights) instituted in favor of protecting children, insisting that the moral and physical development of minors requires omitting propagation of information regarding homosexuality and gender nonconformity.

One of the most fundamental challenges of working from a rights-based perspective in protecting children's sexual rights is finding the balance between children's rights to be protected and their right to participate in decisions regarding their lives. Resistance to recognizing children's sexual agency makes the realization of their sexual rights more challenging. Because everyone develops at their own rate, there is no universal age at which sexual rights become important. Children's sexual rights should follow suit with the "evolving capacities" clause of the CRC to find the right balance between protection and autonomy for each individual child, taking account of their ethnic, cultural and sexual diversities. This article examines the history of children as sexual beings in international human rights law and domestic legislation (using Russia as a case study). It examines whether the conception of children as asexual is used as a tactic for states to support homophobic agendas. Since children are viewed as in need of protection, governments are able to draw more support for homophobic laws under the guise that they exist to protect children.

INTRODUCTION

According to the provisions of the Convention on the Rights of the Child (CRC), “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or *other* status.”¹ Although the CRC does not directly refer to discrimination on the grounds of sexual orientation and gender identity, those drafting the resolution had intended the term “other” to include sexual orientation and gender identity.² In Russia, however, LGBT youth and children raised in same-sex families face real violence and discrimination. While much has been made of the amendment to Federal Law “On Protecting Children from Information Harmful to their Health and Development” (Article 6.21 of Russian Federal Law No. 135-FZ, hereinafter ‘Article 6.21’) law targeting the adult LGBTQ population, Russian legislation and the social norms that support it have harmed LGBT children as well. For example, legislation bars children’s access to reliable and accurate information regarding sexual orientation and gender identity, guaranteed by the CRC. For many of Russia’s LGBT youth, this ban restricts access to their only source of support: the internet. It carries implications of higher rates of bullying and harassment of LGBT teens in schools, punishment by their parents, detention in mental institutions for treatment, homelessness and ultimately, suicide.

This thesis will explore how child protection rhetoric used by the Russian government to justify the introduction of anti-homopropaganda laws ultimately hurts the very subject it is intended to protect (children). In Chapter 1, I will situate efforts to stifle the human rights of LGBT persons within the longstanding historical pedigree of Russia, dating back to the 1600s.

Chapter 2 will examine the regulation of sexuality under President Putin, paying particular attention to the dissolution of the church-state divide with the Russian Orthodox Church's introduction of "traditional values" into the human rights framework. In Chapter 3, I will explore how the tension purported between protecting children and respecting sexual rights became firmly entrenched in human rights jurisprudence by looking at recent decisions by the European Court of Human Rights and the U.N. Human Rights Committee. Ultimately, I will argue that children's rights and sexual rights are not mutually exclusive concepts, especially when discussing children that identify as LGBT, and to fully embrace children's rights is to respect children's sexual orientation and gender identity. This will be explored in Chapter 4 with the case study of Children 404, an online group of Russian LGBT children, using their own narratives to describe the effects of the anti-homopropaganda laws on their lives. Finally, Chapter 5 will show how the anti-homopropaganda laws violate Russia's obligations under human rights law to protect the human rights of LGBT persons to live free from violence, to uphold nondiscrimination, and to provide effective judicial remedies.

CHAPTER 1: THE HISTORY OF SEXUAL RIGHTS IN RUSSIA: FROM SODOMY TO MUZHELOZHSTVO

Historical accounts demonstrate how the policing of sexuality in Russia has often played a symbolic role.³ Like other Christian denominations, the Russian Orthodox Church defined same-sex love as a mortal sin. The first Russian ruler known to address the issue of sodomy was Ivan the Terrible. In his appeal to the clergy in *The Stoglavyy Sobor*, he commanded the prohibition of adultery and the “evil sin of Sodom.” Ivan defined the sin of Sodom as any of the following: adultery, sodomy, masturbation (“boyish sin”), and promiscuous sexual relationships (“whoredom”).⁴ The definition of sodomy was vague and included any deviations from the required licit (procreative) sex between designated gender roles and partners. It was then subdivided into major (anal penetration, bestiality) and minor (female homosexuality, intercrural homosexual intercourse) offenses. The severity of the punishment depended on the defendant’s age, marital status, frequency of the crime, and extent of active involvement (penalties for married men were more severe than for juveniles). The Orthodox Church was mostly concerned with the spread of homosexuality within the monasteries, less so than the civilian population.

Subsequently, Tsar Peter the Great introduced penalties for homosexual practices in the military. Peter the Great, considered a secular leader, was intent on modernizing and professionalizing the army by emulating European nations and reducing religious overtones in policies. At the time, the amateur army was made up of mostly villagers. Peter implemented uniformity throughout the regime through trainings, elite leadership, and discipline. The 1716 military statutes (modeled after the Swedish laws) punished *muzhelozhstvo* (literally translating to “man lying with man”) by burning at the stake:

Article 166. If anyone defiles a young lad, or if a man lies with a man, they must be punished as mentioned in the previous article. If it was done by force, those men must be killed or sent to the galleys forever.⁵

The vagueness of the law left ample room for interpretation. Even the meaning of the term *muzhelozhstvo* was open to debate. Though the label seemed to designate the activity of men (given the prefix *muzhe*), the statute did not define whether the prohibition was intended to cover only sex between men or anal sex with a woman, too. Ten years later, the sentence for consensual sex between men was lessened to corporal punishment while the law reserved the death penalty or hard labor for life for rape or other uses of violence. These regulations only applied to military personnel.

By the close of the eighteenth century, with the adoption of Western European elite social mores and closer contacts with Europe, genteel society began to feel uneasy about homosexuality. A new criminal code, based on the German model, introduced in 1832 by Nicolas I declared *muzhelozhstvo*, which had been interpreted as “anal contact,” criminalized homosexuality for all social strata. *Muzhelozhstvo* was punishable by up to five years exile in Siberia. These punishments were more severe in cases of rape, pedophilia, sexual abuse, or gang violence.

Article 99. A person, caught performing the unnatural vice of *muzhelozhstvo*, shall be deprived of all his status rights and sent to Siberia for life, and if, in accordance with the law, corporal punishment can be applied to him, then it shall be applied by executioners to the extent indicated in article 22 of this Code, second degree of punishments of this kind. Moreover, if he is a Christian, then he shall perform the penance which his confessor specifies.⁶

This article, number 1293 in the 1845 edition, was later modified and remained as number 995 until 1917. There is little evidence that Article 99 was strictly enforced between the period of 1832 and 1917 but it undoubtedly provoked discussion about homosexuality and personal autonomy. The liberal point of view argued for the protection of privacy and individual

autonomy and advocated the decriminalization of homosexuality on these bases, while conservatives confronted this point of view with the contention that *muzhelozhstvo* constituted a public offense and contradicted commonly accepted religious doctrine.⁷

Decriminalized

By the time of the Soviet revolution of 1917, Russian law had failed to introduce respect for privacy and personal autonomy into its texts. The Criminal Code of the Russian Empire still provided punishment for *muzhelozhstvo* but the revolutionaries decriminalized it in 1917 as part of their efforts to liberate the body from antiquated bourgeois restrictions.⁸ Vladimir Lenin repealed the Tsarist laws in Soviet Russia, decriminalizing divorce, abortion, and homosexuality. The Soviet Union sent delegates to the sexology research institute in Germany and expressed support for the legalization of adult, private, and consensual homosexual relationships. Yet, the legislation of private adult and consensual homosexual relations only applied to Russia itself. Homosexuality or sodomy remained a crime in Azerbaijan, Uzbekistan, Turkmenistan, as well as in the Transcaucasian and Central Asian Soviet Republics. Communists generally believed that sexual questions were superstructural matters that would resolve themselves once collectivist economic and social foundations were laid. Medical science was enlisted by the State to define the “healthy” citizen on a materialist basis. The discursive vacuum between these expectations and the deliberate deletions of homosexuality from the criminal code created a plurality of approaches to sex and gender dissent. There was no single or official position on homosexuality during the period of *muzhelozhstvo* decriminalization. Sociologist Laurie Essig marks this time as followed by a “flowering of sexual possibilities.”⁹ Male homosexuality was decriminalized and homosexual discourse flourished in poetry (especially lesbian poetry).

While homosexuality was decriminalized, it continued to be pathologized, and this pathologization promoted a general homophobic atmosphere. The official stance of Soviet medicine and law in the 1920s treated homosexuality as a disease rather than a crime. This position could be summarized in the article of the *Great Soviet Encyclopedia* of 1930 written by medical expert Mark Sereisky:

Soviet legislation does not recognize so-called crimes against morality. Our laws proceed from the principle of protection of society and therefore countenance punishment only in those instances when juveniles and minors are the objects of homosexual interest ... while recognizing the incorrectness of homosexual development ... our society combines prophylactic and other therapeutic measures with all the necessary conditions for making the conflicts that afflict homosexuals as painless as possible and for resolving their typical estrangement from society within the collective.¹⁰

This pathologizing discourse was soon to be replaced by a criminalizing approach.

Criminalized again

With the growth of authoritarian tendencies, the state's intervention into people's private lives also grew tremendously. In 1934, clause 154a was included in the RSFSR Criminal Code, which punished consensual "sexual intercourse of man with a man (*muzhelozhstvo*)" with imprisonment for up to five years.¹¹ The intentions of its enactment are clearly stated in a report by the chief of police to Stalin, G.G. Iagoda, in which he sought a means of combating male prostitution and public displays of homosexual intercourse as a "matter of state security."¹² Iagoda reported that raids on Moscow and Leningrad "organizations of pederasts" resulted in the arrests of 130 persons guilty of establishing hidden homosexual networks that would turn into Western espionage cells and had demoralized young men, including young workers, and even members of the military and navy.¹³

Under Stalin, queer sexual practices were reformulated by the Soviets as crimes against the state. Cultural spokesman Maksim Gor'kii provided the regime's first explanation of the recriminalization of male homosexuality, within the terms of the propaganda war between

Fascism and Communism, “Eliminate homosexuality and you will make fascism disappear.”¹⁴

The themes of this war were the moral degradation and seduction of a nation’s youth and, particularly, the nation’s labor and war force, by the opposing political system. Among the

“hundreds of facts speaking of the destructive, demoralizing influence of Fascism,”

homosexuality was but one of the most “revolting” features. At stake was not only the purity and health of a population but that of its culture.¹⁵ In addition, Stalin feared that hidden

homosexual networks would turn into Western espionage cells. All-Union Code 121.1 made homosexual acts between men punishable with hard labor for up to five years in prison.

Homosexuality was seen as a crime against the great workers’ state. The number of individuals who were convicted homosexuals remains unknown, because of the inaccessibility of the

records, but Western observers believed that between 800 to 1,000 men were imprisoned each year under Article 121 in the formation of a compulsory Stalinist heterosexuality.¹⁶ While same-

sex relationships between women were not criminalized, lesbians faced forced psychiatric hospitalization.¹⁷

De-Stalinization

From 1934 to the mid-1950s the People’s Commissariat for International Affairs of the USSR (NKVD) operated the Gulag system, an archipelago of camps, colonies, prisons, and labor settlements across the Soviet Union. By the time of Stalin’s death in 1953, the population of the Gulag was estimated to be around 2.47 million.¹⁸ The years after 1953 saw de-Stalinization as attempts were made to restrict the power of the security police. The Gulag was eliminated as was the economic empire based on convict labor; formerly incarcerated Soviet citizens were rehabilitated and amnestied, and returned to society. However, men who had been convicted of *muzhelozhstvo* between 1934 and 1954 were regarded as common criminals and were not

amnestied. Likewise, little effort was made to withdraw or reform the antihomosexuality law. In fact, rates of convictions for *muzhelozhstvo* climbed by 40% from the 1960s to the 1970s, as the medico-legal partnership of police and forensic medical specialists created, sustained, and increased the incidence of “homosexuality” in Soviet society.¹⁹

During the period of de-Stalinization new union republic criminal codes were drafted, including ones that decriminalized abortion and others that generally reduced prescribed sentences. However, the antihomosexuality law was retained, with a slight modification of the elimination of the prescribed minimum sentences. The retention of the antihomosexuality law rested on a continuing consensus that at least male homosexuality was a moral failing that ought to be suppressed and eliminated from society. The decision to retain the Stalinist prohibition against homosexuality in the de-Stalinized criminal codes could be attributed to the fear that returnees from the Gulag could carry “mental infection” to society, spreading the “perversions” of the Gulag existence.²⁰

The changes within Soviet society in the 1980s, including the war in Afghanistan, the decline of the economy, Chernobyl disaster, Gorbachev's glasnost and perestroika reforms, which ultimately led to the collapse of the Soviet Union in 1991, contributed to the medical and legal regulation of homosexuality in Russian life. Despite the conviction of hundreds of men per year on charges of *muzhelozhstvo*, Russia's homosexual subcultures proliferated. Dissident movements were mostly political, yet police and KGB regarded all nonconformity with suspicion and considered homosexuality a form of “sexual dissidence.”²¹ Two significant strands of dissent contributed to Russia's second decriminalization of consensual *muzhelozhstvo* in 1993. One strand came in the form of individual protest against the injustice of Soviet antihomosexual legislation and policing, and in the uprising of groups of gay men and lesbians in

response to the global AIDS/ HIV epidemic. The second strand came as experts in law and medicine pressured government authorities to acknowledge the futility of the legacy of Soviet policing of homosexuals and to respond to the AIDS/HIV epidemic with realistic strategies of education and treatment. The movement was strengthened by European and U.S. examples and encouragement.

Decriminalized again

At first, as with the early Soviet period, the early post-Soviet period seemed to open up sexual and gender diversity. Following the dissolution of the Soviet Union, some republics (Ukraine, Estonia, Latvia, Moldova, and Armenia) revoked their antihomosexual legislation. Under strong pressure from Western public opinion and in order to secure a position in the Council of Europe, Russian President Boris Yeltsin also followed this line, and Article 121.1 was annulled by presidential decree, signed April 29 and published May 27, 1993.²² Thus, homosexual sex between consenting adults was decriminalized. However, no enabling legislation followed the decree to facilitate an amnesty of the seventy-three men reported to be serving time for consensual *muzhelozhstvo* at this time, and most evidently served out their sentences.²³ Article 121.2 remained in force, but the maximum punishment was reduced from 8 to 7 years imprisonment. Incorporating these changes into the new Criminal Code was a long and painful process. Drafters argued about the severity of rape, which was believed to be a more serious offense for women victims than for men, and the inclusion of lesbianism as a sexual perversion. After prolonged discussion a compromise version was accepted and the new Criminal Code was accepted by the State Duma in June 1996. It defined a new offense of male homosexual and lesbian sexual assault, and mentioned lesbianism for the first time in any Russian legislation. The new Criminal Code included the terms *muzhelozhstvo* and *lesbiianstvo*

(“lesbianism”) in its language as specific, but still undefined, sexual acts. The law marked an important symbolic tribute to the principle of gender equality in that, with the exception of rape, which only applies to female victims, all other criminal sexual actions, such as violence, compulsion, or coercion, can be directed against persons of any gender. The elaboration of a specific article for homosexual acts as potential sex offenses reaffirmed the Stalinist view that the sex of perpetrators and victims in sexual assaults continued to be of significance to the state.²⁴

The history of the regulation of sexuality in Russia has been marked by reactions to modernization and Westernization: both progressive and repressive laws have been represented as markers of Russia’s relation to Western modernity.²⁵ Importantly, the increased public visibility of homosexuality in the mid-2000s coincided with a stronger anti-Western narrative, which would turn out to have dire consequences for LGBT rights.²⁶

CHAPTER 2: THE REGULATION OF SEXUALITY UNDER PUTIN

Adults

Negative opinions towards homosexuals have drastically increased in the last decade: in 2005, 23% of those surveyed supported prosecution of homosexuality. That figure doubled to 42% in 2013.²⁷ Similar to the Stalinist-era, the percent of those surveyed that believe “state and society should not interfere” in “nontraditional sexuality” rather than honor the “privacy of each person” has decreased from 34% (2005) to 15% (2013).²⁸ This trend coincides with the increased spread of antihomosexual rhetoric used by public officials and the promulgation of homophobic “propaganda” laws under the guise of promoting “traditional values.” The time

period also saw a blurring of the church-state divide as the Russian Orthodox Church gained influence in domestic policy.

One of the first indications that attitudes towards homosexuality were becoming less tolerant came in 2002, when four Duma deputies attempted to recriminalize homosexuality. Although the bill failed, hostility towards the normalization of homosexuality among officials continued to build. The development of “traditional values” as a concept parallels the rise of the anti-gay propaganda laws.²⁹ “Traditional values” began emerging in 2006 following President Putin designating Russia’s demographic crisis a key threat to national security in his address to the Federal Assembly. The “traditional values” discourse was introduced at the international human rights level in October 2009, when the United Nations Human Rights Council (UNHRC) resolved that the UN High Commissioner for Human Rights was to “convene, in 2010, a workshop for an exchange of views on how a better understanding of traditional values of humankind underpinning international human rights norms and standards can contribute to the promotion and protection of human rights and fundamental freedoms.”³⁰ This resolution, adopted by twenty-six to fifteen votes with six abstentions, marked the beginning of Russia’s campaign to gain recognition of “traditional values” as a practical and legitimate consideration in the formation and implementation of human rights norms, despite concerns that “the term ‘traditional values’ has not been clearly defined and understood, and was therefore so vague and open-ended that it could be used to legitimize human rights abuses,” and that “traditional values” were being narrowly interpreted as religious traditions.”³¹

The line between church and state has been blurred as Putin aligned with the Russian Orthodox Church for political motives. For the first time in history, the Patriarch’s Commission on the Family of the Russian Orthodox Church released a statement condemning UNICEF’s

position paper that urges countries to protect LGBT rights because it is in the “best interests of children.”³² The Commission turns the tables on UNICEF and says: “Placing children to be raised by same-sex couples is a gross violation of the rights and interests of a child.”³³

Additionally, the Commission condemns UNICEF for “arbitrarily and illegitimately” introducing the “artificially constructed categories” of “sexual orientation” and “gender identity,” “which do not enjoy international recognition and are not defined in any global fundamental international treaties,” all the while referencing the family as a “natural and fundamental group unit of society” (as defined in the Universal Declaration of Human Rights) “vital to the survival of mankind and of each individual nation.”³⁴ The Commission calls upon member states to hold UNICEF, UNCRC, and other international bodies accountable for abusing their power to introduce developments that are “immoral and contrary” to universally acknowledged human rights.³⁵ In the position paper, UNICEF calls to countries to repeal laws that criminalize the promotion of homosexuality to minors or that prohibit the association of children with LGBT adults, such as the anti-homosexual propaganda ban that Russia passed, and then “equalize the age of consent for both heterosexual and homosexual conduct.” It also recommends providing “LGBT couples and their children with the legal recognition of their family ties.” On this the Patriarch’s Commission had a few choice words: “UNICEF should know that children are born of a union of a man and a woman, not of a same-sex union. It is in the best interests of a child to be born into and raised by family, so that he can know his loving and caring father and mother” the statement reads.³⁶

In addition to leading efforts for the recognition of “traditional values” in international human rights law, Russia has directly put them into practice domestically. The Russian LGBT Network highlighted the impact of “traditional values” rhetoric into the human rights framework:

“Traditional values” in Russia are not just discourse. They are part of the political and social reality. The use of traditional values rhetoric has served to justify a crackdown on dissent and the imposition of severe restrictions on the LGBT community. An alliance of ultra nationalists, conservatives, Christian Orthodox and Protestant fundamentalists are seeking to impose an ideological monopoly... There are many statements of the representatives of the Russian Orthodox Church, including official statements, where the commitment to "traditional values" is opposed to human rights, including human rights for LGBT people.³⁷

However, “tradition” remained implicit and undefined until 2012, when Putin’s speeches and articles “directly linked the rebirth of Russian society’s ‘spiritual bonds’ to the preservation of Russia’s collective identity.’³⁸ Therefore, maintaining “traditional values” became imperative for the survival of the Russian nation. This has depended on stimulating moral panic over homosexuality as a source of societal corruption, including demographic decline, living standards, Russia’s international status, and ultimate defeat to Western values. This message has been reinforced by using antihomosexual laws to violate other fundamental human rights under the guise of protecting “traditional values.” As Graeme Reid of Human Rights Watch argues, “traditional values” mean:

intimidating non-governmental organizations, labeling them “foreign agents” and by implication enemies of the state. It means clamping down on political opposition. It means stifling a free press. And it means riding roughshod over the rights of migrants for political ends.³⁹

And now in a populist move designed to strengthen his domestic political standing and divert attention from other topics, Vladimir Putin has supported the publicly endorsed assault on LGBT rights (88% in favor of ban on gay propaganda).⁴⁰

As Putin consolidated power, a series of local laws linked homosexual desire with the corruption of minors. These laws include (1) prohibition of “propaganda of sodomy, lesbianism, bisexualism, transgenderism among the underage” in St. Petersburg; (2) prohibition of adoption of Russian children by same-sex couples and homosexual persons from countries where same-sex marriage is legal; (3) draft federal law on termination of parental rights of parents of

“nontraditional sexual orientation;” and (4) banning gay pride parades and denying registration to groups that promote nondiscrimination. Between 2006 and 2013, ten out of eighty five Russian regions adopted anti-gay laws aimed at “prohibition of non-traditional sexual relations among minors,” including Ryazan Oblast (2006), Arkhangelsk Oblast (2011), Saint Petersburg (2012), Kostroma Oblast (2012), Magadan Oblast (2012), Novosibirsk Oblast (2012), Krasnodar Krai (2012), Samara Oblast (2012), Bashkortostan (2012), and Kaliningrad Oblast (February 2013).⁴¹ (See Appendix A)

By June 2013, the amendment to Federal Law “On Protecting Children from Information Harmful to their Health and Development” (Article 6.21 of Russian Federal Law No. 135-FZ) was unanimously passed by the Russian parliament, despite international condemnation and fierce opposition from local activists.⁴² On June 26, 2013, Vladimir Putin signed the bill into law. Article 6.21 of Russian Federal Law No. 135-FZ builds on years of regional anti-gay laws to prohibit the distribution of information among minors which:

- 1) aims to the create nontraditional sexual attitudes,
- 2) makes nontraditional sexual relations attractive,
- 3) equates the social value of traditional and nontraditional sexual relations, or
- 4) creates an interest in nontraditional sexual relations.

The amendment bans “propaganda of nontraditional sexual relationships” among minors, including disseminating information promoting the “attractiveness of nontraditional sexual relationships” and providing a “distorted conception of the social equivalence of traditional and nontraditional sexual relationships” to minors. The law, in effect, makes it illegal to equate heterosexual and homosexual relationships, as well to distribute materials on LGBT rights. One

of the Duma deputies interviewed simply stated, “We are saving children from homosexuality.”⁴³

The justification for introducing these laws is the protection of young people’s health and spiritual and moral development, which it is asserted can be harmed by being subjected to unregulated information about sexual and gender diversity. In addition, the laws are designed to ensure that “nontraditional” (that is, nonheterosexual and nonheteronormative) sexual relationships are understood to be socially inferior, reflecting the state’s increasingly active support for pronatalist and paternalist policies to promote “traditional family values” since 2006. As such, the adoption and enforcement of anti-homopropaganda laws has become a key feature of the traditional values agenda in Russia.⁴⁴

Problematically, the law’s use of the phrases “nontraditional sexual relations” is not clearly defined. It is left purposefully vague in part because earlier versions of the law that used the word “homosexual” did not pass the Duma. The continued persecution of gays and lesbians in Russia by local governments, however, left little doubt about who would be prosecuted under it.⁴⁵ Article 6.21 of Russian Federal Law No. 135-FZ immediately resulted in several changes to the Code of Administrative Offenses. According to the Code, any Russian citizen or business can be fined and any media suspended if they “promote nontraditional sexual relations among minors” or present nontraditional relationships as “socially equivalent” to traditional ones.⁴⁶

In the federal law, propaganda is defined as: “distribution of information that is aimed at the formation among minors of nontraditional sexual attitudes, attractiveness of non-traditional sexual relations, misperceptions of the social equivalence of traditional and non-traditional sexual relations, or enforcing information about non-traditional sexual relations that evokes interest to such relations.”⁴⁷ Although the law does not define “nontraditional,” it is widely

understood to mean lesbian, gay, and bisexual relationships. The law is also vague in defining what may be considered propaganda, including information that is “aimed at the formation...of attitudes,” “misperceptions of social equivalence,” or which “invoke interest.”

The new law sets administrative fines for LGBT propaganda at 4,000 to 5,000 rubles for individuals (about \$120 - \$150 U.S. dollars) and up to 800,000 to 1 million rubles for NGOs, corporations or other legal entities (about \$24,000 - \$30,000 U.S. dollars). More severe administrative fines are allowed for propaganda transmitted via the internet or other media networks or by a foreign citizen. Foreigners are also subject to 15 days of prison and deportation from Russia.

Because of the vagueness of the ban on the dissemination of “propaganda of nontraditional relationships,” some believe it may be used as a tool to limit access to information, including tolerance and non-discrimination of LGBT people in schools, professional support and objective information related to sexual orientation and gender identity, guaranteed to children by the CRC. The Special Rapporteur on the Right to Education expressed concern that the ban may be an attempt to prevent the dissemination of educational materials that promote universal human rights, tolerance and respect for diversity.⁴⁸ It would subsequently prevent access to pertinent sexual health information that affects the gay community such as HIV/AIDS. The Committee on the Rights of the Child has emphasized the importance of children having access to information about sexuality as they acquire the skills and knowledge to protect themselves as they begin to express their sexuality.⁴⁹ As per the law, in public schools, teachers and staff openly expressing their support of homosexual relationships or LGBT students are subject to harassment and forced to resign from public service posts. In some cases, this extends beyond the classroom and into the personal lives of teachers. For example, O., a teacher from

Magnitogorsk, was forced to resign after complaints were made regarding her advocacy of LGBT rights on her personal social media page.⁵⁰

Children and Youth

For Russia's children who identify as lesbian, gay, bisexual or transgender, the new laws demarcate them as "abnormal" and Russia will not tolerate them. One student replied in a survey:

The only thing that scared me was a homophobic community... I envy heterosexual people. They don't have to hide their love as if it is sick, abnormal, crippled or a big shame. ... Meantime, we have to hide like chicken thieves as if we are doing something horrible and shameful, while in fact we just love each other. ... Why did they adopt that idiotic law? What have we done to the government? ... Gays don't become gays just in a matter of their wish, because they feel bored or idle. If you have a desire to kiss someone of your own sex, then you have such inclination, and if so, you may propagandize or not, once they will come to the light. [...] When I think about it, I feel sad, depressive and pain. [...] I was torn between my desire to open up and my fear of possible aftermath.⁵¹

According to an online survey, 73% of respondents felt the laws "deteriorate the lives of LGBT adolescents" because the law is "discriminatory on itself."⁵² Studies reveal LGBT children are disproportionately victim to harassment and discrimination in schools and other public spaces compared to their heterosexual peers.

Many studies have identified LGBT youth having higher rates of suicidal thoughts and attempts: a recent study found that 22% of sexual minority youth in the 11th grade attempted suicide in the past 12 months, compared to 4% of heterosexual youth.⁵³ In the same survey, as many as 75% of Russian LGBT teens admit to having thought about suicide. Russia currently ranks third in the world in terms of the number of suicides committed by adolescents, with this average suicide rate among the adolescent population being more than three higher than the world's average.⁵⁴ For the past decade, around 1,500 teenagers between the ages of 15 and 19 in

Russia take their own lives each year, which is three times the world average. A 2011 UNICEF study rooted 92% of suicides in their disadvantaged family situation (parental alcoholism, conflicts in the family, abusive treatment), but politicians, mass media, and parents in Russia blame the internet for promoting youth suicide. Russian Senator Anton Belyakov has proposed legislation that criminalizes the distribution of “information that forms an attractive perception of suicide” with a sentence of five years for encouraging an adult to commit suicide and one of eight years for encouraging a minor to commit suicide.⁵⁵ “A lot of closed groups on social networks literally lure students into their communities by making them believe in their worthlessness and unworthiness to exist in the outside world, and in the meaninglessness of their continued existence,” he argued.⁵⁶ Paranoia and suspicion around children’s use of the internet and closed groups has in turn paralyzed children’s only access to support and protection on the internet.

These laws, coupled with political instability, a lack of available resources, and homophobic parents and peers, will likely cause the severity of problems of suicide, depression, homelessness, drug abuse and other social ills among gay youth in Russia.

Sources of Information

Sex education in Russia

Intense media discussion of sex education started in 1996, the year of the first pilot project on sex education in public schools in Russia, developed by the UNFPA-UNESCO.⁵⁷ Almost immediately, these initiatives came under attack by communist government authorities, Pro-Life activists, and the Russian Orthodox Church. Several pilot projects were implemented in the period between 1997-2000, while the battle between proponents and opponents of sex education continued to play out in the public arena. Opponents fought for causes including a ban

on universal sex education in public schools, ban on pornography, recriminalizing homosexuality, to name a few. In 1997 the government formally declared that ‘Russia does not need any sex education.’⁵⁸ Ultimately, opponents of the ‘universal sex education’ project in public schools campaign won as the project failed and shut down by the Ministry of Education. Meylakhs argues this victory was not a sign of the returning ‘totalitarianism’ of the Russian state or a part of the repressive legislation of morality,’ but rather a victory of the Russian civil society and democracy, attributing it to the numerous parental committees, Christian committees for the defense of the family, and civil society organizations that filed lawsuits, organized demonstrations, made petitions, and wrote to newspapers.⁵⁹ Nevertheless, it was a defeat for Russian society’s public health.

The internet

For many of Russia’s LGBT youth, this ban restricts access to their only source of information: the internet. Studies have shown LGBT young people use the internet differently from their heterosexual peers.⁶⁰ The internet provides a sense of identity and community to queer youth who might not otherwise have access to such in real life. Vikki Fraser theorizes the internet as an alternate closet, a fundamentally important space for queer persons in the formation of their identities.⁶¹ For many, the internet serves as a hub for friendships, relationships, romance, sexual exploration and health information. The design of the internet allows users to maintain a cloak of anonymity, without revealing their physical appearance, age, name, or gender, while at the same time taking part in an intimate space. Websites designed by and for queer youth have been regarded as important social networks because they provide a safe space. An internet study by Hiller revealed LGBT youth felt people on the internet were less judgmental and felt comfortable and safe to express their thoughts and feelings without

disapproval.⁶² “[The internet] has allowed me to embrace my homosexuality even though I am not ‘out’...become unrepressed...[and] accept and like the person that I am” (Will 17 years in Hillier).⁶³ Many reported feeling a sense of community in which their contributions were valued and validated.

Apart from a safe space, the internet can serve as a political tool. For marginalized groups, in particular, the internet carries political potential to reduce or remove barriers associated with geography, age, class, race and disability. For LGBT youth, whose reality is often homophobic and hostile, cyberspace provides a solution to societal problems of fragmentation, alienation and despair. Addison and Comstock suggest that queer youth websites should be viewed as important spaces of “resistance, reproduction, and pleasure.”⁶⁴ In particular, they argue queer youth sites provide powerful opportunities for resistance and political organization.⁶⁵ For example, the authors examine Youth Action Online (YAO) and describe the site as a “safe space” that assists youth in “‘accept[ing]’ their own sexuality.”⁶⁶ As such, YAO’s work is both “political” and “personal” in its resistance to homophobia and ageism.

CHAPTER 3: CHILDREN'S RIGHTS VS. SEXUAL RIGHTS

*The binary power relationship between adult and child...has underpinned the construction of certain knowledge as 'adults only'. Sexuality is considered an 'adults only' site of knowledge, from which children, perceived to be 'too young' to understand such knowledge, should be protected through the denial of access.*⁶⁷

Childhood should be a period of transition, self-awareness, and growth. Instead, for many children, it is a period of imprisonment, denial of access to information and privacy at the hands of their parents, legal guardians, schools and government. While understandings of childhood vary from culture to culture, the framework of childhood as a natural, universal, and biological period of human development experienced by all humans in the same way has dominated the landscape. Psychological discourses of childhood (founded on fixed, adult centric, white, Eurocentric, heteronormative, gendered, middle-class values) perpetuate a view of a “universal child,” defined by a biologically predetermined set of linear cognitive developments, which correlate with chronological age, to reach the ultimate goal of “adulthood.”⁶⁸ These discourses propagate a cultural binary opposition between adult and child, defined by arbitrary age restrictions, with children serving at the whims of their legal guardians, and the government itself. This hegemonic definition of childhood has recently become the focus of critique by educational and socio-cultural theorists who redefine “childhood” as a social construction experienced in a multitude of ways across different historical time periods, places, cultures, and identities.⁶⁹ But outside academia, the traditional framework remains dominant.

Childhood has been defined by adults, for adults, who subsequently determine what a child is, how a child should behave, and what a child should know, because a child is deemed to

not be able to make decisions on their own behalf. Thus, the defining boundary between adults and children, and the ultimate signifier of the child, is “childhood innocence.”⁷⁰ The concept of childhood innocence is deeply embedded within traditional theories of human development. The same theories have also defined human sexuality. Louise Jackson argues, “The concepts of childhood, youth, and adolescence have underpinned the construction of modern sexualities: through their positioning as formative stages in the *growth of sexual and self-awareness* as well as their construction as *periods of susceptibility to sexual danger*.”⁷¹

According to hegemonic discourses of sexuality, physiological sexual maturity is constructed as a distinguishing point between adulthood and childhood. Children’s sexuality within this standpoint is read as nonexistent. Their sexual desires and human development are restricted by laws that are supposedly designed to protect children, such as the age of consent for sex and marriage, access to pornography, etc. Consequently, sexuality becomes the exclusive domain of adults. Children’s sexual rights are further complicated by adults’ role to protect children from harm. Conceptualizing childhood sexuality within the discourse of protection creates a framework that “pathologizes the sexual subjectivity of children.”⁷²

The growth of children’s rights jurisprudence has increased dramatically since the 1970s, in parallel with the emergence of sexual rights. Sexual rights include the rights of all persons, free of coercion, discrimination and violence, to the highest attainable standard of sexual health, including access to sexual and reproductive health care services; seek, receive and impart information related to sexuality; sexuality education; respect for bodily integrity; choose their partner; decide to be sexually active or not; consensual sexual relations; consensual marriage; decide whether or not, and when, to have children; and pursue a satisfying, safe, and pleasurable sexual life.⁷³ One of the most fundamental challenges of working from a rights-based

perspective in protecting children's sexual rights is finding the balance between children's rights to be protected (via adults making decisions on their behalf in their "best interests") and their right to participate in decisions regarding their lives. Resistance to recognizing children's sexual agency makes the realization of their sexual rights more challenging. Because everyone develops at their own rate, there is no universal age at which sexual rights become important. Children's sexual rights should follow suit with the "evolving capacities" clause of the CRC to find the right balance between protection and autonomy for each individual child, taking account of their ethnic, cultural and sexual diversities.⁷⁴

In history, we have seen a multitude of restrictions on sexual rights (mostly in the realm of LGBT rights) instituted in favor of protecting children, insisting that the moral and physical development of minors requires omitting propagation of information regarding homosexuality and gender nonconformity. These laws originated in the United Kingdom, United States, and recently, in Russia and sub-Saharan Africa. Opponents have portrayed these laws as "thinly veiled assaults" on LGBT rights.⁷⁵

One of the earliest cases on the protection of children's morals was *Handyside v. United Kingdom*, decided by the European Court of Human Rights (ECtHR) in 1976. In *Handyside*, the Court considered the legality of the United Kingdom's seizure of a textbook for children, which included text regarding homosexuality, sex, and drug use. The ECtHR ultimately deferred to the United Kingdom's regulatory powers in the realm of "morality." The Court found the aim of the judgment ("the protection of the morals of the young") was legitimate, as well as the measures used (seizures of the books) to be sufficiently "necessary" to pursue that aim. Ultimately, ECtHR concluded that no violation of the European Convention had taken place.⁷⁶

Six years later, the Human Rights Commission reached a similar conclusion in the case *Hertzberg v. Finland*. The complainants had produced or appeared in television or radio programs related to homosexuality, which were censored by State-controlled Finnish Broadcasting Company. In its ruling, the HCR stated:

public morals differ widely. There is no universally applicable common standard. Consequently, in this respect, a certain margin of discretion must be accorded to the responsible national authorities.

The Committee finds that it cannot question the decision of the responsible organs of the Finnish Broadcasting Corporation that radio and TV are not the appropriate forums to discuss issues related to homosexuality, as far as a programme could be judged as encouraging homosexual behaviour. . . . *In particular, harmful effects on minors cannot be excluded* [italics mine].⁷⁷

In both *Hertzberg* and *Handyside*, human rights bodies recognized the States' duty to protect children and determined this role outweighed the rights of adults with regards to public information about sex and sexuality. The tension between protecting children and recognizing sexual rights has generated conflicts in domestic and transnational legal systems—and yet, supranational bodies have not expressed an all-encompassing principle to resolve these competing assertions of rights.⁷⁸ The debate over child-protective laws and sexual rights tends to situate the State against the individual rights of LGBT persons. Few advocates—on either side—have foregrounded the rights of children, which are codified domestically in constitutions and statutes and enshrined internationally in supranational agreements.⁷⁹ The recent re-emergence of homosexual propaganda bans in favor of child protection allow us to revisit these historic cases with a new appreciation of sexual rights and children's rights.

CHAPTER 4: A CASE STUDY OF “CHILDREN 404”

In response to the anti-homopropaganda ban, Russian teens have set up online groups to foster community and information sharing in the digital age. The most popular of these is the group “Children 404” hosted by social networks *Vkontakte* and *Facebook*.⁸⁰ The name was chosen based on an analogy to the “Error 404 Page Not Found” default error message displayed after requesting a nonexistent web page. This is in direct response to the popular claim that gay and transgender children do not exist in Russian society. The group’s tagline is “We exist!” The project description states:

Our society believes that gay teenagers do not exist in nature, as if gay, lesbian, bisexual and transgender people arrive from Mars as adults. Meanwhile, one family in twenty has an LGBT-child in it, and those children are society’s invisible “Children-404”.⁸¹

The project consists of two parts: a private “closed” group, to provide emotional support to LGBT teens, where they can share their problems and receive help from adult participants; and “open” pages on *Facebook* and *Vkontakte*, where teens can publish original letters and post pictures of themselves and political signs. The page mandates children under 18 cover their face in their photos.

The project was started by a young (then-closeted) bisexual journalist, Lina Klimova, who set out to write a story about LGBT teenagers at the time of the passing of the “homosexual propaganda ban.” She published a series of articles in Russian newspapers criticizing Russian parliamentary laws as homophobic. Fifteen year old Nadya responded to Klimova’s articles. She complained of bullying in school and harassment by her parents and was debating suicide, but attributed Klimova’s articles to saving her life. Klimova received hundreds of letters like Nadya’s from children praising her for speaking out. She knew she had to do something. This spurred her to create Children-404 as a platform for LGBT teenagers to share their stories and

access online psychological assistance from peers and allies. She created an online survey to further investigate the lives of LGBT teens in Russia. Klimova found a pattern among the respondents of a lack of a support system and a place to tell their narratives: isolation and lack of acceptance among family and peers. “[Children 404] has already helped with the first, but transforming parents will take years. You have to change the whole society,” she said.⁸²

The grassroots project that started with one girl’s letter has led to an international community. At the moment, the project page has over a thousand letters published. It has received international acclaim from the world’s largest publications, including *The Washington Post*, *The New York Times* and *The Guardian*. A short documentary has been made to describe the purpose and success of the project. In December 2013 the American project “It Gets Better” partnered with “Children 404” to launch the campaign “You are beautiful!” on its website in support of Russian LGBT Teens. Given its success and popularity, one would hope “Children 404” has saved many more lives. In a recent post, Alya writes, “LGBT is the biggest family out there, that isn’t bound by blood. And Children 404 is part of this family. A family, where they will always help you. A family which will always show you how to make the right decision. A family where they will always understand you, love you and comfort you.”

Three months after the start of “Children 404,” the Russian parliament passed the aforementioned ban on the distribution of homosexual propaganda to minors. As a result, Klimova has been targeted twice. Klimova was first charged in January 2014 with the accusation that her page was in violation of the nationwide ban on the promotion of “propaganda of nontraditional sexual relations” to minors. If she had been convicted, she would have been forced to shut down “Children 404.”⁸³ Klimova pleaded that she be jailed so long as the pages remain open given its positive influence on the Russian LGBT youth community. Charges

against Klimova were dropped in February. In her defense, Klimova argued that she shared the children's stories, did not promote homosexuality outright, and the group itself was a closed one, therefore not disseminating information. The support group was also permitted to keep running. The verdict was appealed by St. Petersburg MP Vitaly Milonov who is credited with creating a citywide ban on "LGBT propaganda" which the national law is modeled after. Ten months later, however, Russian authorities again filed charges, targeting Klimova for the group's presence on the Russian social media network, *Vkontankte*.⁸⁴ Klimova was found guilty of violating Russia's anti-gay propaganda law, despite being prevented access to legal counsel, due to her lawyer's illness, the day of the court's decision. She was forced to pay a fine of 50,000 rubles.⁸⁵ Klimova is not the only person to be tried under the new law. In April 2014, Pavel Durov, founder and CEO of *VKontakte* (the equivalent of *Facebook* in Russia), lost his job and fled Russia, citing his refusal to comply with demands by authorities to block controversial users and groups, like "Children 404."

Children in Russia are fully aware of the effects these bans have on their lives. A blogger on "Children 404" posted this text (translated) below:

The Constitution of the Russian Federation is supposed to guarantee freedom of thought and expression, but we – LGBT people – aren't allowed to talk about our sexual orientation and gender. Isn't this a contradiction? Or do they not consider us to be people?

I'm a teenager. No one ever 'propagandized' homosexuality to me. I figured everything out by myself. I discovered it and found people who thought the same way. I'm sure that across the world there are millions of these kinds of teenagers. Of course, in Russia there are much fewer of them; but the environment around them has a large effect. They can end up withdrawing from the world or even committing suicide. And we can blame this on the laws, public opinion, fear and shame. Why do they have to scare us?⁸⁶

Another blogger wrote of the impact of "Children 404" on their life:

I cannot even find the words to express my gratitude.

As I have been brought up in a homophobic family and surrounded by people with xenophobic mentality, I've resisted my own self trying not to accept my homosexuality. The only reminder of that time are the words 'Why me?' smudged with tears in old diaries. 'Not to be myself' had been my main desire during those severe four years. It didn't matter at all what was happening those days as every one of us, children-404 has their own story.

Then, the project of Lena Klimova appeared like a ray of sunshine in pitch black darkness – along with those first letters that gave feeling of hope, little by little. The heart-lifting hope that everything would be fine with me, that things were the exact way they had to be, that I have the right to be happy. I started smiling – with every line of the support from the others, with every warm word. I smiled to the most beautiful thing in this world: to love that I had tried to trample when having been led by the public opinion and my own fear of it.

Thank you, that you stay close. Thank you that you saved my life and helped me to accept myself.

I want to hug every one who reads these lines, with all my soul.

I would like to express special gratitude to parents who wrote the letters. They were the exact reason for my mom to understand that every word and action supposed to “save” me, pushed me further to the “edge of a platform”, the reason for her to chance for the sake of her love to me.

Lena and the project team, now it is my turn to support you with the words that I write so clumsily. That's not because I have nothing to say – quite the opposite, actually. There are so many words congested inside my heart that it's difficult not to dwell on silly details.

I just want you to know that through your work somewhere there on the Earth, there's a girl that learned to smile all anew, and a mother that has realized her mistakes. The most beautiful part of all this is the fact that this is not my story only, and there are a lot of people out here, from whom you are yet to hear another sincere “Thank you!”.

I love you,
Thank you, again

Sasha⁸⁷

The Russian government has extended its reach to control all forms of expression. “Today, the internet is the last island of free expression in Russia and these draconian regulations are clearly

aimed at putting it under government control,” said Hugh Williamson, Europe and Central Asia director at Human Rights Watch.

CHAPTER 5: RUSSIA’S INTERNATIONAL AND DOMESTIC HUMAN RIGHTS OBLIGATIONS

Right to Freedom of Expression

The United Nations has recently acknowledged access to the internet as a basic human right. The recent international NETmundial initiative, an important international effort on internet governance, observed that the “rights that people have offline must also be protected online,” in particular the freedom of expression covered under Article 19 of the Universal Declaration of Human Rights.⁸⁸ In a 2011 report, Frank La Rue, Special Rapporteur to the United Nations on the promotion and protection of the right to freedom of opinion and expression, proclaimed, "Given that the internet has become an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress, ensuring universal access to the internet should be a priority for all states."⁸⁹ La Rue calls upon States to promote or facilitate the enjoyment of the right to freedom of expression and the means to implement this right, including securing access to the internet. Access to the internet is particularly important during times of political unrest, as the internet increases transparency, provides access to information, and facilitates active citizen participation to hold governments accountable. La Rue describes the internet as "revolutionary" and unlike any other communication medium such as radio, television or printed publications, which are based on one-way transmission of information. It facilitates discussion that is promised in a democratic state. Putin, meanwhile, referred to the internet as a “special C.I.A. project” and thanked Edward

J. Snowden for revealing how efficient the U.S. National Security Agency was at collecting information.⁹⁰

Building on the UN's previous stance on digital rights, the Human Rights Council recently passed a non-binding resolution condemning countries that intentionally disrupt citizens' internet access.⁹¹ Though the resolution was adopted by consensus, it faced opposition from a minority of states, including Russia, which aimed to delete calls for states to adopt a "human rights based approach" for providing and expanding access to the internet, and remove key references to the UDHR and language on freedom of expression from the International Covenant on Civil and Political Rights (ICCPR).

Russia has continued its crackdown on the internet, suppressing free expression and forcing independent sites and social networks to close groups and ban individuals. A new law adopted in August 2014 requires bloggers with more than 3,000 visitors a day to register sites with the state media authority, *Roskomnadzor*. Once registered, bloggers will be held to the same legal constraints as mass media outlets, including fact checking, indicating minimal age for users, protecting information pertaining to people's privacy, and being subject to restrictions on propaganda in support of electoral candidates, without providing them the same level of protection and privilege. The new requirements contradict La Rue's recommendations to refrain from requiring internet users to register with their legal names, so that "individuals [can] express themselves freely without fear of retribution or condemnation."⁹² Russia's ombudsman and the presidential human rights council strongly criticized the law as incompatible with freedom of expression and for its potential for selective, punitive use. The Representative on Freedom of the Media for the Organization for Security and Co-operation in Europe, Dunja Mijatovic, criticized the new restrictions infringe on freedom of expression and freedom of social media and "the

right of citizens to freely receive and disseminate alternative information and express critical views.”⁹³

Yet, over the past decade, the distinctive rights and needs of children as a substantial group of internet users (estimated 1 in 3, or 300 million) have been missing from the discussion of internet governance in international law.⁹⁴ Livingstone, Carr, and Byrne argue internet governance organizations have sought an age-blind approach to ‘users,’ embedding assumptions about them being adults.⁹⁵ Despite growing calls from international child rights organizations to address their rights in the digital age, internet governance bodies have given little consideration to children’s rights. Even when specific provisions are made for children, they are rooted in child protection ideology (i.e. child abuse material or illegal contact by child sex offenders). While this is important, this must be balanced against children’s rights to participation, since prioritizing one risks the unintended consequence of infringing on the other. La Rue, for example, in his final statement in 2014, criticized overly protectionist policies that focus exclusively on risks and neglect the potential of the internet to empower and benefit children, since the internet is “an important vehicle for children to exercise their right to freedom of expression and can serve as a tool to help children claim their other rights, including the right to education, freedom of association and full participation in social, cultural and political life. It is also essential for the evolution of an open and democratic society, which requires the engagement of all citizens, including children.”⁹⁶ Indeed, such a narrow lens positions children solely as vulnerable victims, neglecting their agency and rights to access, information, privacy and participation.⁹⁷

The ban on “propaganda of nontraditional relationships” is in violation of special protection afforded to children under the Convention on the Rights of the Child. The right of

children to express their views freely is governed by Article 12 of the CRC.⁹⁸ Similarly, Article 13 provides children with the right to freedom of expression, including “the right 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 the child’s choice.”⁹⁹ A 14 year old girl from Bryansk region was the first minor charged with “promoting homosexuality” under the new law after posting a *Facebook* status on her personal social media page announcing she was gay. The schoolgirl was charged with “systematically promot[ing] non-traditional sexual relations among minors, expressed in openly admitting herself as a person of non-traditional sexual orientation, disseminating information aimed at developing distorted notions of social equivalence of traditional and non-traditional sexual relations in minors.”¹⁰⁰ Criminal proceedings were dropped after the student received a “preventive talk,” though she was placed under the supervision of the Juvenile Affairs Commission (KDN).¹⁰¹

Right to Education

Under Article 28 of the Convention on the Rights of the Child, all children have the right to primary education, on the basis of equal opportunity. In addition, school discipline should be administered in a manner consistent with the child's human dignity and in conformity with the present Convention. However, many anecdotes exist of LGBT children that have been punished or expelled under the anti-homosexuality propaganda ban simply for being themselves:

Next week I will be officially kicked out of school. For the second year in a row my school’s administration has been trying to find a reason to expel “the criminal involved in propaganda of tolerance and homosexuality.” This is because whenever the question of LGBT acceptance is raised (not by me, but by the teachers), I am never silent and I always speak my mind, even though they often try to silence me.

Recently my school’s administration found precisely the incident they had been looking for. I took part in our school’s concert with a speech about how homosexuality is normal

and how all people should be equal. I talked about the fact that dozens of LGBT teens choose to commit suicide and how I believe that hate will never be a more moral response than love. As the school's administration informed me, that was an "inappropriate platform" for "such declarations, especially criminal ones" (I should add that Russia has no appropriate platforms for calling people to equality). The administration also accused me of "spoiling the festivities," though the concert did continue despite the shouts from the audience like "Get him off the stage!" "Cut off his microphone!" and "Stop that f**!"

Lots of things changed in my city after this incident. Everyone kept talking about it. People pointed at me, refused me service in stores, threw dirt at me, and even tried to lure me into a "meeting" several times. Thankfully, it has been over a month since I was last physically attacked.

As for the school...you can't even imagine what started happening there. The students tried to find new and creative ways to insult me, some teachers called me a pervert during classes while others called for physical violence against LGBT people. The school's administration along with my class's curator started gathering signatures at the parent-teacher conferences in order to send a petition to the Ministry of Education and expel me on the grounds of "propaganda of tolerance and homosexuality."

They were successful. Now they also want to sue me for the moral damage I inflicted to the religious 9th graders, who, as they say, were susceptible to evil ideas. My class's curator along with several parents gathered the signatures for that. Some people want to send me to a psychiatric ward permanently. The school's principal told my parents about that. Ironically, yesterday I went through a psychological exam with our school's psychologist and was told that I'm fully healthy. That was unfortunate for the people whose religious beliefs I managed to damage. Just like it was unfortunate for the people whose moral boundaries I managed to cross in a criminal fashion. However, it wouldn't be fair to not mention that there is one teacher who has supported me and helped me deal with the worst days of my life.

I should also mention that despite the colossal lack of understanding between my parents and myself, I do feel sorry for them. The school's administration started a full-blown war and invited them for a "talk" numerous times. During one of such "talks" the school's vice-principal started questioning me: "Have you had sex with a man? Who made you get on that stage and say all of that? What was your goal? What are your political views? Maybe you visit some clubs? Why do you want to be some man's wife?" That last question killed me! How can you even come up with that? All of those questions, actually...just think about them! Also, the principal denies any LGBT discrimination in our school. In response to the examples I gave her not only about me but other LGBT teens, the principal responded by calling us "dumb perverts" and advised us to seclude ourselves and live in our own little worlds.

In conclusion, I don't think I can handle all of this anymore. I wrote a letter to Russia's president, asking him to stop the homophobic law. I received a response from the Justice

ministry. It was 5 pages long and all it said was that the law will continue to be in effect and that I shouldn't "infringe upon the freedom of others."

I tried going to the police. Laughing, they grabbed me by the collar and kicked me out of the station. They said that's not in their jurisdiction and that "a man should be able to stand up for himself, if you're a man at all." They should say that to the people who stalk me, abuse me both verbally and physically, and even threaten to kill me.

Bad thoughts are slowly crawling into my head, but this project helps me. I read the letters and realize that I am not alone. Another person who continues to help me is Pavel, the hero of the film "Children-404". Thank you for your existence.

A. R., Cheboksary, The Chuvash Republic¹⁰²

While exact numbers of children suspended or punished under the anti-homosexual propaganda law does not exist, the sheer number of examples like the one above are enough to know this is a systemic failing.

Right to Life; Protection from all forms of violence and nondiscrimination

The propaganda laws foster an environment of antagonism toward LGBT youth in schools and the general public by their peers, teachers and even parents. Rather than protecting children, the adoption of the ban of "propaganda of nontraditional relationships" has led to an escalation of homophobic attitudes and stigmatization of LGBT persons, children of LGBT families, and LGBT youth. In a survey conducted by the Russian LGBT Network in August 2013, 63% of respondents polled under the age of 18 expressed that they had faced cases of psychological violence, 33% noted they had faced it on numerous occasions.¹⁰³ Example of anecdotal evidence from respondents in the survey includes:

- (1) "There is not a single day without flaks at school. Generally, they just said rude words, but at times they go far beyond and beat me."
- (2) "Bullying at school, hacking of their [Facebook] pages. Teachers tried to persuade me that I have to change my orientation."
- (3) "I will have to endure attacks on the part of my classmates: their stupid hateful jokes about gays and so on up until I leave for the university."¹⁰⁴

In another case, when two young men, aged 16 and 17, reported bullying and verbal abuse by their peers and schools to the school administrators, the school administration did not take any measures to prevent and protect the young men. Instead, after assuming their sexual orientation based on their social media profiles, the administration lowered students' grades, in violation of Article 16 of the CRC, which bans "arbitrary or unlawful interference" of the privacy of the child and unlawful attacks on their reputation.¹⁰⁵ In public schools, teachers and staff openly expressing their support of homosexual relationships or LGBT students are subject to harassment and forced to resign from public service posts. Thus, advocates for LGBT children are replaced by legislators and administrators who endorse and enforce an atmosphere of bullying and intolerance towards homosexuals, especially in schools. The Committee on the Rights of the Child expressed concern about the levels of violence and bullying in schools against children belonging to LGBT groups, in regards to Articles 28, 29 and 31 of the Convention (pertaining to education) and urged the Russian Federation to take urgent measures to prevent bullying of LGBT children in schools by educating children and school staff and punishing the perpetrators.¹⁰⁶

Activists say the legislation indirectly legitimizes violence against the gay community and has emboldened rightwing groups, such as Occupy Gerontophilia, which uses social media to target homosexual youth. The group led a nationwide "gay hunt" using the "Children 404" page to identify all children who self-identified as gay. The group targeted children after school, later posting videos of the brutal violent attacks on their own social media page. While the internet in Russia is used by anti-gay groups to terrorize children, for most LGBT youth around the world the internet provides a safe space. The largest vigilante group, called *Occupy Pedophilia*, founded by neo-Nazi Maxim Martisinkevich, kidnap, detain, sexually abuse, and

humiliate gay men and teenagers for the purpose of exposing them through videos that are posted on YouTube.¹⁰⁷ A third group, *Parents of Russia*, “expose” gay people on the internet, with banners across their faces to have them fired from their jobs. Their particular focus is lesbian and gay teachers, and their supporters, who they do not want near children. One victim of a vigilante group said that “[t]hey [vigilantes] think they have the right to treat us like this. I feel as if I’m not protected by law. All these criminals have been given impunity.”¹⁰⁸ Despite the fact that Russian law prosecutes these crimes as hate crimes, the majority of these cases do not go through the system because of the vagueness of the law and the indifference of the Russian criminal legal system to LGBT persons where they are victims, not perpetrators.

Buist and Lenning consider the “looming contemporary dilemma” in regards to the criminalization of “queerness” is the unwillingness of many States to uphold their own domestic laws and a disjuncture between the domestic laws of States and their obligations under international law.¹⁰⁹ Under international law, every person has the right to protection from physical and mental violence and discrimination, right to education, and freedom of expression, association, and peaceful assembly. Russia ratified the International Covenant on Civil and Political Rights (ICCPR) in 1973, which requires all state parties “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹¹⁰ The ICCPR includes guarantees to the right to life (Article 6) and security of person (Article 9), as well as equal protection of the law without any discrimination (Article 26). The ICCPR also affirms the right to be free to lead an intimate life peacefully (Article 17: the right to privacy), the right to freedom to express oneself, including one’s gender identity, through clothes or comportment

(Article 19, the right to freedom of expression), and the freedom to move and meet in public without fear of harassment or attack (Article 21: the freedom of assembly). The Human Rights Committee, which interprets the ICCPR and monitors the countries' compliance with it, has defined sexual orientation as a status protected against discrimination under these provisions.¹¹¹

Principle 5 of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity provides that “everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.”¹¹² The Principles also call on states to take all necessary measures to “prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity”¹¹³

The protection of children from violence, whether committed by state agents or at the hands of private individuals, is a key component of the principal object and purpose of the CRC. Article 19 of the Convention requires states to “take all appropriate... measures to protect the child from all forms of physical or mental violence.”¹¹⁴ The Committee on the Rights of the Child expressed concern that the ban on “propaganda of unconventional sexual relationships,” intended to protect children, actually “encourages the stigmatization of and discrimination against LGBTI persons, including children, and children from LGBTI families. The Committee is particularly concerned that the vague definitions of propaganda used lead to the targeting and ongoing persecution of the country’s LGBTI community, including through abuse and violence, in particular against underage LGBTI-rights activists.”¹¹⁵ To date there exist no laws outlawing harassment based on discrimination of homosexuals in the Russian Federation. In violation of its obligations under international law, the Russian federal government has failed to enact measures

that would explicitly provide protection from violence and discrimination based on sexual orientation and gender identity.

The obligation to protect requires not only outlawing harassment, assault and child abuse but subsequent promotion of children's "physical and psychological recovery." Even more troubling, there exist no protective or legislative measures to help victims get justice after an attack takes place. School psychologists and other counselors report that due to risks of administrative penalties, they are afraid to provide counseling on issues of sexual orientation or to LGBT adolescents. In a survey conducted by the Russian LGBT Network, more than half (59%) of respondents replied they were not aware of resources to redress complaints or medical and psychological services, while 5% expressed total distrust of authorities and would not seek out such services.¹¹⁶

In March 2010, the Committee of Ministers of the Council of Europe issued a recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity.¹¹⁷ The recommendation calls member states to act to eliminate discrimination and ensure respect for the rights of LGBT people, specifically, it urges states to "ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator."¹¹⁸ In November 2012 the UN Committee Against Torture expressed concern at the Russian police's failure to "promptly react to, or to carry out effective investigations and bring charges against all those responsible for violent attacks against lesbian, gay, bisexual and transgender (LGBT) persons."¹¹⁹ The Committee urged Russia to "take effective measures to ensure the protection of all persons at risk, including ... LGBT persons ..., including through enhanced monitoring. All acts of violence and discrimination

against [LGBT people] should be promptly, impartially and effectively investigated, the perpetrators brought to justice, and redress provided to the victims.”¹²⁰ Similarly, Principle 5 of the Yogyakarta Principles calls on states to “impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation or gender identity of any person or group of persons, in all spheres of life, including the family; ...ensure that the sexual orientation or gender identity of the victim may not be advanced to justify, excuse or mitigate such violence; ...ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation.”¹²¹

RECOMMENDATIONS

First, the State must repeal the law prohibiting “propaganda of nontraditional relationships” promoting alternative ways of life. The law does not comply with international human rights standards. It introduces illegitimate restrictions on the freedom of expression and assembly. The Russian Federation is a democratic state; in a democracy, the voices of all citizens including those with dissenting opinion deserve to be heard. Pressure must be put on Russian authorities by the international community to repeal laws that limit free speech and enforce Russia's obligations under ICCPR Article 19 to respect freedom of opinion, expression and belief of all its citizens, even minors, and to commit itself to creating an environment in which all citizens can experience the benefit of the free exchange of information.

Focus should be on the dissemination of accurate and reliable information regarding sexuality and to increase public awareness of equality and non-discrimination on the basis of gender identity and sexual orientation, as per Article 17 of the CRC. The Russian Federation

should sponsor nationwide awareness-raising campaigns for tolerance and respect of alternative lifestyles (such as the practice of homosexuality and same-sex families raising children). Instead of penalizing persons who express their opinion and beliefs, Russia should set up laws to prohibit hate speech or speech that hurts the dignity and freedoms of others. It must hold responsible individuals who threaten the freedoms of other individuals, as is promised in international law. This includes individuals who commit or threaten to commit violent acts targeted towards homosexual children.

The state should enforce a zero-tolerance policy of hate crimes, including those based on discrimination of gender identity or sexual orientation committed by state officials or at the hands of private individuals. These individuals should be penalized and prosecuted to the furthest extent of the law. Instead, the State should develop legislative mechanisms that allow and recognize homosexual relationships, gay marriage and children to be raised in same-sex families. Specialists who work with children (i.e. teachers, social workers, psychologists, lawyers) should be trained in equality of different structures of families. Academic research should be promoted that reinforces the equality of homosexual and heterosexual relationships in the socio-psychological fields. To make up for years of abuse, the State should issue a formal apology for any effects of their legislation and provide compensation for those persons whose dignity and respect was threatened because of existing laws.

Children should have (unlimited) access to reliable information on sexual orientation and gender identity without their parents' or legal guardians' consent, as outlined in Article 13 of the CRC. Subsequently, NGOs and other organizations should be given authority to disseminate such information via the internet and print without the risk of administrative penalties, in the spirit of Article 17 of the CRC. More importantly, "coming out" is an important part of self-

acceptance for homosexuals – especially children. Children should have the right to freedom of expression, to announce their sexuality without fear of persecution by the state, their families and their peers but in a safe and welcoming environment. The State should provide counseling programs to help teens in the process of coming to terms with their sexual orientation and gender identity, including transitioning genders. The State should ban any coercive treatments of homosexuals currently imposed on homosexual teens by their parents. Similarly, the classification of transsexuality as a mental illness or pathology should be removed to prevent discrimination and punishment of transsexual teens.

In recent years, Russian authorities have targeted homosexuals, falsely equating homosexuality with pedophilia in the press, leading public campaigns promoting homophobia and violent attacks against homosexuals. Russian authorities claim they are in compliance with the CRC because they are “saving Russia’s children from the disease of homosexuality.” Activists argue such laws encourage the stigmatization of and discrimination against LGBT persons, including children, and children from LGBT families. These laws have led to increasing the vulnerable position of LGBT children in Russian society. They are now, more than ever, prone to bullying and violence at schools and public places, being homeless, forced into coercive treatment to cure their “mental disease,” and ultimately suicide. Until now, the only form of support and information LGBT children in Russia could rely on was the formation of international online communities. However, the new “propaganda of nontraditional sexual relations” laws threaten the formation and existence of such online communities and the lives of Russia’s LGBT teens.

CONCLUSION

In Russia, the restrictions on LGBT rights instituted in the name of protecting children suggests that moral and physical development of minors requires censorship and criminalization of information regarding homosexuality and gender nonconformity. This “logic” sets up the rights of children and the recognition of LGBT sexual rights as competing, even antithetical, assertions of rights. Russia’s anti-homo propaganda laws offers a unique opportunity for human rights defenders to articulate the proper relationship between the state’s interest in protecting children and the human rights of LGBT persons. Ultimately, we must acknowledge that children’s rights and sexual rights are not mutually exclusive—as the case of children who identify as LGBT proves-- and that to fully embrace children’s rights is to respect children’s sexual orientation and gender identity.

APPENDIX A

Region	Year	What's Banned	History of Use
Ryazan Oblast	2006	- Public actions aimed at “propaganda” of homosexuality (sodomy and lesbianism) among minors	- Administrative Offences Code Updated (Article 3.10) - Activist fined
Kostroma Oblast	2011	- “Propaganda” of homosexuality (sodomy and lesbianism), bisexuality, and transgenderism among minors; - “Propaganda” of pedophilia	- Administrative Offences Code Updated (Articles 20.1 & 20.2) - Charges dropped - Public event banned
Arkhangelsk Oblast	2011	- Public actions aimed at “propaganda” of homosexuality among minors; repeat offenders face higher fines	- Administrative Offences Code Updated (Article 2.13) - Activist fined - Public event banned
City of Saint Petersburg	2011	- Public actions aimed at “propaganda” of sodomy, lesbianism, bisexuality, transgenderism among minors; - Public actions aimed at “propaganda” of pedophilia	- Administrative Offences Code Updated (Articles 7.1 & 7.2) - Charges dropped - Activist fined - Public event banned
Novosibirsk Oblast	2012	- “Propaganda” of homosexuality among minors	- Administrative Offences Code Updated (Article 4.11)
Magadan Oblast	2012	- Public actions aimed at popularizing sodomy, lesbianism, bisexuality among minors; public actions are defined as activities aimed at inflicting moral and spiritual harm to minors’ development, including through formulating skewed understanding about social equivalence of traditional and nontraditional marriage.	- Administrative Offences Code Updated (Article 3.16)
Samara Oblast	2012	- Public actions aimed at “propaganda” of homosexuality, bisexuality, and transgenderism among minors; Public actions are defined as activities aimed at “purposeful and uncontrolled” dissemination of information that can harm health, moral, or spiritual development of minors; - “Propaganda” of pedophilia	- Administrative Offences Code Updated (Articles 2.28 & 2.29)
Krasnodar Krai	2012	- Actions aimed at disseminating information that can harm health, moral, or spiritual development of	- Administrative Offences Code Updated (Article 2.9.1)

		minors, including through formulating skewed understanding about the social equivalence of nontraditional sexual relations (homosexuality or pedophilia)	
Bashkortostan Republic	2012	- Public actions aimed at “propaganda” of homosexuality, bisexuality, and transgenderism among minors	- No sanctions defined, Law on the Rights of the Child Updated (Article 14.4)
Kaliningrad Oblast	2013	- “Propaganda” of pedophilia, sexual relations with minors, sodomy, lesbianism, bisexuality among anyone (not just minors); repeat offenders face higher fines	- Administrative Offenses Code Updated (Article 26)

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¹²⁰ Ibid, paras 15(a) and (b).

¹²¹ Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, March 2007, principle 5.