

Union of Independent LGBT Activists of Russia

Written submission
**related to discrimination and violence against lesbian,
bisexual and transgender women in Russia**

*Submitted for the consideration of the 8th periodic report by the Russian Federation
for the 62nd Session of the Committee on the
Elimination of Discrimination against Women (CEDAW)*

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Summary

The present report is presented to the Committee on the Elimination of Discrimination against Women as part of the examination of the 8th periodic report of the Russian Federation on its implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

This report has been prepared by the Union of Independent LGBT Activists of Russia on the basis of an analysis of data on the work of various LGBT groups, organizations, and activists in Russia and its regions.

The report provides an updated version of the information that was previously presented to the Committee at a pre-session, which took place in March 2015.¹ The bulk of the current report consists of information about the development of cases that were previously described at the pre-session, as well as information about cases that occurred after March 2015. The report also contains additional information relating to the questions posed by the Committee as a result of the pre-session (CEDAW/C/RUS/Q/8).

The current report offers information on four major problems faced by LBT women in Russia:

- hate crimes and hate speech (including corrective rape)
- persecution and dismissal of LBT teachers and teachers who support LGBT rights
- difficulties faced by transgender women who wish to change their documentation (including unlawful surgery requirements and obstacles to making name changes using standard procedures)
- discrimination against LBT women who have children

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1. Hate crimes and hate speech against lesbian, bisexual and transgender women (arts. 1, 2 and 5 of the Convention; GR # 12)

In the list of issues and questions formulated at the pre-session, the Committee pointed to the ‘multiple forms of discrimination and violence in the State party faced by LBT women’ and raised the question of ‘what measures have been taken to protect such women from discrimination and violence, including hate speech and homophobic attacks’.² Unfortunately, these problems were not reflected in the replies offered by the Russian Federation.³

As noted in the report we presented at the pre-session⁴, LBT women in Russia face violence motivated by homophobic and transphobic hatred, as well as hate speech. These crimes and incidents are either not investigated at all or are subject to ineffective investigations—in particular, the possibility of a motive of hatred is not investigated and the case is not classified as a hate crime.

Despite the fact that the Criminal Code of the Russian Federation recognizes the aggravating circumstance of a crime motivated by hatred or hostility towards a social group and that the Constitutional Court of the Russian Federation has stated that ‘groups of individuals of a particular sexual orientation can also be understood’ under the designation of a social group⁵, as well as the fact that in March 2015, the UN Human Rights Committee recommended that Russian authorities view homophobic and transphobic crimes as aggravated in nature⁶, **in Russian national case law, LBT women are not considered to be such a social group.**

In the time that has passed since our submission of materials for the Committee pre-session, these circumstances have only further been proven true by concrete cases of hate speech and aggression, as well as by the reactions of law enforcement authorities and the courts to these incidents.

Case 1.1.

In 2015, efforts by attorneys to secure an effective investigation of the acts of aggression carried out in Saint Petersburg in July and November 2013 against A.P., an openly bisexual woman and LGBT activist, have remained ineffectual.⁷

In particular, on 23 June 2015, yet another decree on the decision not to initiate criminal proceedings in connection with the assault carried out on A.P. at the 2013 gay pride rally was issued by the local police district.⁸ On 3 July 2015, this decree was nullified, and the case was again returned for an additional inquiry.⁹ However, up to the present time, no meaningful actions have been taken by representatives of the law enforcement authorities.

Case 1.2.

In 2015, following a series of refusals to initiate criminal proceedings regarding the assault on a lesbian couple in Saint Petersburg in October 2014,¹⁰ a criminal case was initiated, but law enforcement authorities did not consider hatred as a motive for the crime. Rather, the assault qualified as violence ‘occurring during a conflict resulting from personal hostilities’, and only one of the women was declared as the victim of the crime.¹¹ The victims’ lawyers asked that the case be reclassified and that the motive of hatred be taken into account. However, they were denied by the interrogating officer, who stated that a motive could be established only when the assailants had been identified; in this case they had not been found (*‘there is not enough evidence to show that the crime was committed with a motive of hatred towards lesbian women and LGBT groups’*¹²). And yet in their statements, the women consistently referred to the homophobic cries that accompanied the assault (including ‘Fucking lesbians’, ‘I saw you—you are propagandizing LGBT’, ‘No to LGBT!’).

Case 1.3.

In 2015, the cases regarding hate speech used by Vitaly Milonov, a deputy in the Saint Petersburg Legislative Assembly who is famous for his aggressive homophobic stance, continued in national courts. In particular, on 27 February 2015, the cassation appeal of activist K.K. (female), who had been subject to insults of the deputy in September 2013, was dismissed.¹³ On 26 June 2015, the courts of the first instance dismissed the demands of activist A.P. (female) that deputy Milonov be brought to civil and criminal responsibility for publicly condoning the assault carried out against her.¹⁴ On 17 September 2015, the Saint Petersburg City Court dismissed an appeal against the decision of the district court confirming the decision not to initiate criminal proceedings.¹⁵ Thus, all attempts by LBT activists to defend their rights and hold the deputy liable for his hate speech have far been unsuccessful.

Case 1.4.

On 1 May 2015, a general demonstration took place in downtown Saint Petersburg; among the participants were a group of LGBT activists. Deputy Vitaly Milonov approached the group several times, shouting insults and threats, some of which included prison jargon targeted towards LBT women (words such as ‘perverts’, ‘fingerers’, ‘pigs’, and ‘dykes’, and a statement that ‘They ought to be crushed by tanks. They ought to be crushed by tractors!’).¹⁶ Following the incident, a group of female LGBT activists including O.B., A.B., and Y.P. turned to law enforcement authorities and the district court with demands that the deputy be brought to criminal, administrative, and civil liability. Initiation of criminal and administrative cases was denied¹⁷, and the civil case is currently under examination at a district court.¹⁸

Case 1.5.

On 17 April 2015, LGBT female activist and participant in the Straight Alliance for LGBT equality E.B. held a single-person picket in the centre of Saint Petersburg as a sign of protest against the suppression of the problems faced by LGBT teenagers. Anatoly Artyukh, leader of the ‘People’s Cathedral’ movement, assistant to Deputy Milonov, and figure famous for his intolerance towards LGBT individuals, appeared at the site of the picket. Anatoly Artyukh insulted E.B. several times, attempted to interfere with her picket, tore the sign from her hands and ripped it. Several days later, a video appeared on the Internet showing Anatoly Artyukh burning signs gathered along the picket. In the video, he states: ‘We have our own flash mob, which gives a vivid picture of what will happen to this group and to anyone who supports fags’.¹⁹ E.B. appealed to the police and the prosecutor with a formal request that Anatoly Artyukh be brought to administrative liability for his hindrance of the picket and for discrimination. However, she was refused by the authorities, who claimed that ‘the understanding of a ‘social group’ does not apply to LGBT communities...The offence provided for in art. 5.62 of the Administrative Code of the R[ussian] F[ederation] [‘Discrimination’] cannot be committed against an individual based on her/his belonging to the LGBT social group, as the LGBT community is not a social group.’²⁰

Case 1.6.

On 13 April 2015, a group of unidentified individuals released a pungent poisonous gas into the office of the Murmansk-based non-governmental organization, the ‘Maximum’ Centre for Social-Psychological Aid and Legal Support for Victims of Discrimination and Homophobia. Activist V.G. was inside the office when this happened. As a result, V.G. began to vomit and experience a suffocating cough. She left the building and called the police, who arrived 40 minutes later and did not take any investigative actions. A claim was filed, but the initiation of a criminal proceeding was denied.²¹ After this, notice on the execution of an additional inquiry was submitted, but it is unknown whether a criminal proceeding was initiated based on the results of this additional inquiry.

Corrective rape²²

It is important to highlight corrective rape of homosexual and bisexual women in Russia as a separate, distinct problem within the sphere of hate crimes. At present, we are aware of more than 20 cases of corrective rape.²³

Frequently, the abusers are in fact acquaintances of the survivors of violence. Often the survivors trust these people—sometimes they are male relatives (such as fathers, brothers, or uncles). These cases of rape include acts against girls who have not reached the age of sexual consent (16 years of age).

The abusers justify their actions with the assertion that they want to cure the woman, free her from sin, or punish her.

The individuals who have survived this violence in most cases do not appeal to the police for help, assuming that the authorities will not believe them and that they will be forced to endure degrading medical procedures or face discrimination in connection with their sexual orientation. A portion of these women are afraid to reveal their sexual orientation to the police. In one case, a woman contacted the police and was told in response that ‘she herself wanted this’.

Survivors often blame themselves for not resisting enough, and in some cases consider themselves guilty for what has happened (given that their sexual orientation has been found out).

Case 1.6.

At age 13, S. developed romantic feelings for a girl in her class. She told the girl about this, after which the news of her feelings reached her mother and other relatives. S.'s mother, a believer in the Russian Orthodox faith, took her daughter to a church, where she was explained, *'This is a sin'*, and told that *'she would burn in hell when she died'*. She and her mother were also told that this could be fixed *'if S. has heterosexual relations'*. On her 14th birthday, 28 November 2013, S. was raped by her uncle. He justified this act by saying, *'[S.] is just fooling about, but that can be cured with the help of a "good penis"'*. S. told her mother about the rape, but her mother did not believe her. In S.'s own words, *'When I told her, she just grabbed me by the hair and proceeded to beat my head against a cupboard'*.

S. attempted suicide and was put to hospital. S.'s mother did not contact the police.²⁴

Case 1.7.

Karina Khasanshina, age 22, used to attend vocal lessons at her acquaintance L.'s home. The two had met at a youth meeting at the St. Catherine Church in St. Petersburg. The lessons took place in the evenings at his flat, which was outfitted as a home studio. Karina told L. that she had a girlfriend, Katya, whom she loved. L. told her about *'a woman's intrinsic duty'*, but later apologized and proposed continuing their contact.

This occurred in early January 2013 (before 7 January). At the end of January, Karina went to L.'s home for a lesson, which lasted until late in the evening when the metro had already closed. L. suggested that Karina spend the night in his flat. He allowed her to sleep in his bedroom, while he slept in the kitchen. In Karina's words, *'Once I had fallen asleep, he came back in. He entered me with his fingers and said that surely I liked it. I was petrified.'* When L. fell asleep, Karina collected her things and left.

L. revealed to the church that Karina and Katya were lesbians. The priest at the church told Karina that *'men naturally go after that which is theirs'*, that L. loved her, and that she needed to marry him.

Karina did not contact the police, as she did not think they would believe that she had been raped, given that no serious bodily trauma was left and since she herself had chosen to stay overnight at the home of her rapist.²⁵

Case 1.8.

Katya and her girlfriend K. lived in a multi-room flat with flatmates, one of whom was her male acquaintance, M. Katya trusted M. She, her girlfriend, and M. had planned to rent a flat separately and move there together. According to Katya, *'M. often talked to us about the relationship between sexes, saying that women are created to give, that this is their nature, while men are created to be defenders and hunters. He said that a woman's nature is only revealed in a relationship between a man and a woman, and that if a woman blocks her feminine nature, she will begin to feel pain. We did not listen to this—we just put up with it because we did not want to end up on the street.'*

In August 2013, K. left to go to the shop while Katya waited for her at home. M. entered their room and closed the door. As Katya states, *'He began saying something unintelligible—that I was a lesbian because I didn't know a good man who could give me pleasure. He said that perhaps I had been raped and was therefore afraid of penises. I stood near the window and became uncomfortable. I wanted to leave, but he wouldn't let me. When I tried to leave, he grabbed me. I was scared—for some reason, I thought that without him we could not rent a flat. I was more scared of ending up on the street than of being raped. When it was all over, I got up, got dressed, and went to a woodland park. I decided never to return; I decided to die.'*²⁶

Recommendations:

- 3.1. Guarantee effective investigations of incidents of violence and hate crimes committed against LBT women, including in particular, the investigation and classification of the motives of homophobic and transphobic hate as an aggravating circumstance. In particular, guarantee such investigations in the specific cases:
 - a. cases of hate crimes: assault against A.P. on 29 June 2013 and 3 November 2013 in Saint Petersburg (Case 1.1), and against O.N. and D.P. on 20 October 2014 in Saint Petersburg (Case 1.2); and
 - b. cases of hate speech and homophobic insults made by Deputy Vitaly Milonov on 19 September 2013 (the case of K.K., case 1.3), on 4 November 2013 (the case of A.P., case

1.3), and on 1 May 2015 (the case of O.B., A.B., and Y.P., case 1.4).

- 3.2. In accordance with the interpretations of the Constitutional Court of the Russian Federation and the recommendations of the UN Human Rights Committee, recognize LBT women as a social group, a motive of hatred against or enmity toward which is considered to be an aggravating circumstance by the Criminal Code of the Russian Federation, and discrimination against which is prohibited by Criminal Code of the Russian Federation and the Code of Administrative Offences of the Russian Federation.
- 3.3. Collect statistical data on incidents of hate crimes against LBT women as well as the results of the investigations into these cases.
- 3.4. Create the necessary conditions for effective investigation of corrective rape, including rehabilitation options, the provision of psychological aid, and shelters for the survivors of violence, as well as public condemnation of the actions of the abusers. Spread awareness among girls and women on issues of psychological and physical abuse and sexuality, covering homo- and bisexuality as normal sexual orientations.
- 3.5. Develop a training program for employees of law enforcement agencies on issues related to sexual orientation and gender identity, including on the need for and methods by which to investigate the motives for acts of aggression against LBT women, as well as on the need for proper communication with LBT women who have been the survivors of acts of violence.

2. Persecution and dismissals of lesbian, bisexual and transgender women in education (arts. 1, 2, 5, 10 and 11 of the Convention)

In the report that was presented at the pre-session, we discussed the problem of female employees of educational institutions and organizations being persecuted or dismissed for being LBT or openly supporting LGBT equality. Unfortunately, in the time that has passed, this tendency has not changed.

In the list of issues and questions generated at the pre-session, the Committee noted that *'there are cases of teachers having been dismissed by their employers on account of their sexual orientation'* and requested that the state *'provide information on cases of dismissal of teachers'*.²⁷ The replies provided by the Russian Federation contain information about the dismissal of music teacher A. in Saint Petersburg after her sexual orientation became known. It was also noted that the teacher, with support from the 'Coming Out' LGBT Group, intended to contest the decision of the district court by which her demands to be reinstated at work and paid compensation were dismissed.²⁸ Unfortunately, A. and her lawyers have, up to the present, been unable to achieve recognition of the dismissal as illegal and accompanying measures to redress the violation of the dismissed teacher's rights.

Case 2.1.

A., a music teacher who was dismissed from Saint Petersburg's School No. 565 after her sexual orientation was revealed²⁹, has been unable to obtain justice and defend her rights in the city's courts.

On 21 April 2015, the district court dismissed A.'s case to be reinstated at work and to have her dismissal recognized as discrimination.³⁰ The interests of the school were represented by two lawyers, one of whom is a member of the 'People's Cathedral' movement and was captured in a video showing individuals burning signs taken from LGBT activists (see Case 1.5 above). The second lawyer defended the interests of Vitaly Milonov in the cases regarding his use of homophobic hate speech (see Cases 1.3 and 1.4 above). In its dismissal of A.'s demands, the district court noted, *inter alia*, *'for an individual carrying out a pedagogic role among minors, behavior carried out even in closed circles, but also publicly-demonstrated unethical close relations between individuals of the same sex, as well as the presence of photographs of such behavior on an Internet social network, is immoral and unethical.'*

On 3 September 2015, A.'s appellate complaint was dismissed.³¹ Timur Isaev (Bulatov), a homophobic activist who had collected a 'dossier' on LGBT teachers after tracking them in an attempt to have them dismissed, appeared at the city court hearing. A. had been released from employment at her school specifically as a result of his actions. A.'s attorneys moved to include an interrogation of Timur Isaev (Bulatov) as a witness in the case

(he had been in prison at the time the case was reviewed by the court of the first instance), but the court denied this motion.

In 2015 alone, the 'Coming Out' LGBT Group was contacted by four teachers who had suffered persecution in connection with their sexual orientation and/or support for LGBT rights. Two of these cases included baiting on the part of Timur Isaev (Bulatov). In late 2014, Isaev (Bulatov) was detained for the commission of a financial crime. For this reason, harassment of teachers temporarily waned (although the campaign was continued by Bulatov's 'disciples', activists from the 'People's Cathedral' movement and the so-called Public Commissioner for Children's Rights). However, at present, Bulatov is no longer incarcerated (after being granted amnesty) and has renewed his teacher harassment campaign. Unfortunately, because of the aforementioned, we expect a new wave of persecution and dismissals.

We would also like to emphasize that the majority of dismissals of teachers in connection with their LGBT affiliation or support for LGBT rights have been documented as 'voluntary', since these teachers do not want a record of an employer-sponsored dismissal related to their commission of an 'immoral deed' to appear in their official employment record. The case of A. (case 2.1) is an exception to this tendency—A. was both brave enough and confident enough in the correctness of her position not to file for voluntary resignation (although she has yet been unable to prove the illegality of her dismissal). Nonetheless, many other teachers fear being unable to find other work, and the legal mechanism for protecting their rights has proven to be completely inaccessible to them.

Recommendations:

- 2.1. Guarantee that sexual orientation and gender identity, as well as support for LGBT rights, cannot be a reason for the dismissal of educational workers under any circumstances or conditions—particularly, by applying art. 81(8) of the Labor Code of the Russian Federation providing a possibility to dismiss an employee who is performing pedagogical functions due to committing her/him 'an immoral deed'.
- 2.2. Guarantee reinstatement at work and fair compensation to dismissed LBT teachers and teachers who support LGBT rights, including in the case of A. (Case 2.1).
- 2.3. Implement effective measures to end harassment campaigns against LBT teachers and teachers who support LGBT rights, including through protection of their personal data and prosecution of those who engage in their collection, storage, and transfer (beginning with Timur Isaev (Bulatov)).

3. Difficulties faced by transgender women who wish to change their documentation (arts. 1, 5, 10 and 12 of the Convention)

Medical treatment as a compulsory requirement for legal gender recognition

As noted in the report we presented at the pre-session³², Russian law provides citizens with the right to change their gender markers and names in official documents.³³ In accordance with the law, no medical intervention is required to do so. However, in practice, civil registry agencies and the courts often require surgeries for individuals seeking to change their gender markers, occasionally considering even previously executed surgeries to be insufficient.

Case 3.1.

On 28 May 2015, the Golovkinsky District Court of Moscow refused to make changes to a transgender woman's documentation. This woman had been given a diagnosis of 'transsexualism'; in connection with this diagnosis, orchiectomy was carried out and a change of gender marker from male to female was recommended. Although the court based its refusal on the formal grounds, during the course of the review, a request was sent from the court to the clinic where the surgery had been performed asking whether the surgery was final and whether the petitioner would need to perform further surgeries to definitively transition from male to female. The clinic informed the court that it was not competent to give answers to these questions, after which the court issued a

decision against the petitioner. This allows us to assert that the true motive for the denial was the number of surgeries she had undergone.³⁴

Case 3.2.

On 11 September 2015, the Civil Registry Office of the Vyborgsky District of Saint Petersburg refused to make changes to the birth record of D., a transgender woman who was in possession of a doctor's certificate with a diagnosis of 'transsexualism' and two certificates from endocrinologists indicating that she had undergone irreversible hormonal gender reassignment. The refusal was grounded by the fact that D.'s medical certificates had not mentioned gender reassignment surgery.³⁵

A short time earlier at the Civil Registry Office Committee of the Saint Petersburg City Government, the petitioner had been explained that changes could only be made to official documents through the administrative process (at civil registry office without an appeal in court) following a surgery, and that in her case, changing her documents would only be possible in court.³⁶

Concurrent with these issues, difficulties in changing official documents result in transgender individuals being deprived of the opportunity to exercise their rights (such as the right to work, the right to free movement, etc.), as their external appearance does not correspond to their gender marker indicated in their documentation. These difficulties also prompt some individuals to willfully deprive themselves of the exercise of their rights with the goal of preserving the privacy of their personal lives. According to a survey which received responses from 53 transgender individuals³⁷, in the course of the past five years, as few as eight of the respondents had not encountered problems in exercising their rights because of the incongruity of their external appearance and the gender marker indicated in their documentation, and only two had not denied themselves the opportunity to exercise certain rights because of concerns about revealing private information from their personal lives with the possibility of accompanying issues. More detailed statistics on the issues faced by transgender individuals because of differences between their external appearance and their gender marker as noted in their identification documents are enumerated in tables 3.1 and 3.2 below.

Table 3.1 Problems encountered by transgender individuals in Russia in connection with the non-conformance of their external appearance to the gender marker in their documentation

Problem	Number of surveyed individuals who have encountered this problem
Refused employment	30
Refused a delivery/difficulty receiving mail	20
Refused service in a bank	17
Refused boarding on a train/airplane/international bus	12
Refused access to a state or municipal service	11
Inability to cross state borders/difficulties crossing state borders	8
Refused notary services	4
Have not encountered any problems exercising rights	8

Table 3.2 Opportunities foregone by transgender individuals because of concerns about their personal data becoming known as a result of the non-conformance of their external appearance to the gender marker in documentation

Foregone opportunities	Number of surveyed individuals who have foregone the opportunities
Change of employment, submission of CV to a job vacancy	45
Receipt of international passport	15
Receipt of driver's license	12
Purchase or sale of property	9
Travel by train, airplane, or intercity bus	12
Visa application submission	9
Crossing state borders	10
Use of bank services	16
Education	9
Have not foregone the exercise of their rights	2

Inability to change one's name to coincide with his/her gender identity without changing her gender marker in official documents

Russian law provides citizens with the right to change their names, including surnames, given names, and patronymics.³⁸ The law does not contain any requirements for an individual's chosen name. However, in practice, civil registry agencies and the courts often refuse to allow transgender individuals to change their name in official documents to correspond to their gender identity (without a change of gender marker).

Case 3.3.

On 16 July 2015, the Frunzensky District Court of Saint Petersburg refused a name change to a petitioner who wanted to eliminate her patronymic and change her given name and surname from names that are traditionally male in the Russian language to those that are considered female. The refusal was motivated by the argument that a citizen's name change affects the public interest, meaning that the absence of a ban on name choice cannot be interpreted as the right to use any name. Therefore, an individual with a gender marker of male does not have the right to use a female name. The court also indicated that in order to change her name to a female name, the petitioner must present the court with evidence of gender reassignment.³⁹

Recommendations:

- 3.1. Provide a transparent, accessible, and predictable procedure for changing the gender markers and names of transgender individuals in official documents, particularly:
 - a. guarantee that civil registry agencies and the courts will not require gender reassignment surgery or a particular number of said surgeries as a necessary step for changing transgender persons' documentation—specifically, ensure change of documentation in Cases 3.1 and 3.2; and
 - b. guarantee that any individual can choose any given name regardless of the gender marker indicated in her documents—specifically, ensure change of documentation in Cases 3.1 and 3.3.

4. Stigma associated with the stereotypical understanding of maternity as a social function (art. 5 of the Convention)

Russian law contains a series of norms, the application of which can cause serious negative consequences for families with lesbian, bisexual, and transgender mothers, including even the deprivation or restriction of their parental rights. These norms apply to all citizens of Russia, but they disproportionately affect LBT women in comparison with gay and bisexual men. According to the data from a quantitative survey by the Russian LGBT Network, 80% of LGBT individuals who have been confronted with violations of their parental rights in 2014-2015 were women.⁴⁰

One of the potentially dangerous norms for LBT women who have children is the ban on 'propaganda of non-traditional sexual relations among minors'.⁴¹

In the period from January to September 2015 alone, seven women contacted the legal service of the Russian LGBT Network because their former spouses or relatives had threatened or attempted to restrict their parental rights in court, arguing '*malicious information, which a parent can transfer to a child by living this lifestyle*'.⁴² During this same period, five women came to the lawyers of the 'Coming Out' LGBT Group (operating only in Saint Petersburg) with queries of the same nature.⁴³

Additionally, even LBT parents who have not been restricted in their parental rights but live separately from their children are often denied support from government agencies in the exercise of these parental rights.

Case 4.1.

On 3 August 2015 at the Gagarinsky District Court of Moscow, an examination took place of the case of A.A. against A.V. to restrict A.V.'s parental rights on the grounds that A.V. is a transgender woman, which might negatively impact the development of her child. In winter of 2014, during their divorce, A.A. took their son away and did not allow him to see A.V. for more than a year. The court dismissed the claim (to restrict A.V.'s parental rights), but A.V.'s former spouse continues to prevent her from seeing her son, arguing that she is doing so because A.V. is transgender and is in a same-sex marriage. The decision of the court will be appealed by the plaintiff, A.A., and the procurator is of the opinion that the denial of parental rights exclusively on the basis of the defendant's being transgender is reasonable.⁴⁴

Case 4.2.

In July 2014, Yu., the wife of transgender woman P., decided to end the couple's marriage in connection with the fact that the latter had made the decision about gender reassignment and began undergoing hormone replacement therapy. Yu. left the flat where the two had lived together, taking with her their son Ya., who was five years old at the time. She allowed P. to see her son several times in August 2014, after which she stopped permitting contact between them. Despite P.'s petition, custody and guardianship authorities took no action to help P. exercise her parental rights and regain contact with her son. Yu. applied to the courts with a claim to establish their son's domicile with her. P. approached the court with a counter-claim, asking that their son's domicile lie with her. The court ordered a psychological-psychiatric expert evaluation of P., Yu., and Ya. The experts found that Ya. was under the influence of Yu. and her parents, who had ingrained in him negative ideas about P. The expert evaluation could not establish a genuine relationship between the child and P. The evaluators indicated that this could have been discovered by observing interactions between P. and Ya., but the two could not be brought together because contact would be *'fraught with a high degree of risk of psychological trauma for Ya.'* In addition, the experts claimed that because of P.'s decision about gender reassignment, establishing the child's domicile with P. would negatively impact Ya.'s psychological condition and development. On the basis of these conclusions, the court rejected P.'s claim and established the child's domicile with Yu.⁴⁵ The appellate court upheld the conclusions of the court of the first instance. Thus, although P.'s parental rights have not been restricted, she has not seen her son in over a year, and the custody authorities have failed to provide her assistance in solving this problem.

In addition to the 'propaganda law', another Russian legal norm exists which threatens the security of same-sex families with children. In accordance with art. 146(1) of the Family Code of the Russian Federation, custody of children cannot be awarded to individuals who are part of a same-sex union registered in accordance with the law of a country in which such a union is permitted.⁴⁶ Many same-sex couples who live in Russia have entered into same-sex unions abroad. Many of these couples have children, and this law threatens these families.

Case 4.3.

On 4 March 2015, the Sovietsky District Court of the city of Astrakhan deemed legal the removal of custody from a citizen of the Russian Federation on the basis of a single condition—the petitioner was part of a same-sex union. At the time, the woman had been her child's guardian for three years, and the custody authorities had no grievances with her regarding her fulfillment of guardianship duties. The motivation of the court for depriving the guardian of her right to custody was exclusively her participation in a same-sex union, not her sexual orientation. The decision relied on art. 146(1) of the Family Code of the Russian Federation.⁴⁷

Recommendations:

- 4.1. Enshrine into law the inadmissibility of depriving or restricting parental rights, nullification of adoption, or removal of custody (guardianship) based on the sexual orientation and/or gender identity and/or marital status of parents, adoptive parents, or custodians (guardians). Nullify the provisions of item 13 of article 127(1) and paragraph 6 of article 146(1) of the Family Code of the Russian Federation prohibiting persons in same-sex unions from being adoptive parents and custodians (guardians).
- 4.2. Guarantee that, in cases where LBT parents who live apart from their underage children are prevented from exercising their parental rights, custody and guardianship authorities provide assistance in the realization of such rights.

Notes

¹ *List of issues related to the discrimination and violence against women who use drugs, sex workers, lesbian and bisexual women and transgender people in Russia*: submitted for the consideration of the 8th periodic report by Russian Federation for the 62nd session of the Committee on Elimination of Discrimination Against Women (CEDAW), January 2015, pp. 6–8 [hereinafter List of issues related to discrimination and violence].

² CEDAW Committee, *List of issues and questions in relation to the 8th periodic report of the Russian Federation*, para. 15, U.N. Doc. CEDAW/C/RUS/Q/8 (2015).

³ CEDAW Committee, *Replies of the Russian Federation to the list of issues*, Addendum, List of issues in relation to the eighth periodic report of the Russian Federation, pp. 16–18, U.N. Doc. CEDAW/C/RUS/Q/8/Add.1 (2015).

⁴ *List of issues related to the discrimination and violence*, pp. 6–8.

⁵ Decree No. 24-P of the Constitutional Court of the Russian Federation from 23 September 2014 on the review of the constitutionality of section 1 article 6.21 of the Code of Administrative Offences of the Russian Federation in connection with the complaint of citizens N.A. Alekseev, Y.N. Yevtushenko, and D.A. Isakov.

⁶ Human Rights Committee, *Concluding Observations: Russian Federation*, para. 10(i), U.N. Doc. CCPR/C/RUS/CO/7 (2015) (*'[The State party] should also: ... [t]ake all necessary steps to strengthen the legal framework protecting LGBT individuals from discrimination and violence and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim's sexual orientation or gender identity and apply the provisions of article 63, paragraph 1 (e) of the Criminal Code to such acts.'*).

⁷ Both cases were presented at the CEDAW PSWG, see: *List of issues related to the discrimination and violence*, pp. 6–7.

⁸ Decree of DMIA RF (local police district) 78 for the Central District of the City of Saint Petersburg by Senior Police Lieutenant G.R. Gadjieva from 23 June 2015. The case is being conducted with support from the 'Coming Out' LGBT Group.

⁹ Decree of the deputy of the procurator of the Central District of the City of Saint Petersburg N.I. Vishnyevskaya from 3 July 2015. The case is being conducted with support from the 'Coming Out' LGBT Group.

¹⁰ This case was presented at the CEDAW PSWG, see: *List of issues related to the discrimination and violence*, p. 7.

¹¹ Decree of interrogating officer of the Interrogation Unit of the DMIA (police department) of the Moskovsky District of Saint Petersburg, Senior Police Lieutenant O.V. Pervushina on the initiation and commencement of a criminal proceeding from 2 May 2015. The case is being conducted with support from the 'Coming Out' LGBT Group.

¹² Decree by interrogating officer of the Interrogation Unit of the DMIA (police department) for the Moskovsky District of Saint Petersburg, Police Captain N.N. Prozorov on the refusal of a motion from 20 June 2015. The case is being conducted with support from the 'Coming Out' LGBT Group.

¹³ Saint Petersburg City Court, case No. 4G-547/2015. The case is being conducted with support from the 'Coming Out' LGBT Group. The case was presented at the CEDAW PSWG, see: *List of issues related to the discrimination and violence*, p. 7.

¹⁴ Kirovsky District Court of the City of Saint Petersburg, case No. 2-2341/2015; Kuybyshevsky District Court of the City of Saint Petersburg, case No. 3/10-332/15. Previous stages of the case was described at the CEDAW PSWG, see: *List of issues related to the discrimination and violence*, p. 7. The case is being conducted with support from the 'Coming Out' LGBT Group.

¹⁵ Saint Petersburg City Court, case No. 22K-6133/2015. The case is being conducted with support from the 'Coming Out' LGBT Group.

¹⁶ See, for example, video: <http://www.youtube.com/watch?v=-YAhM0LMNg>.

¹⁷ See, for example, response No. 117-902-15 from the Main Investigative Directorate of the City of Saint Petersburg on 25 June 2015 (*'the actions of [Deputy Milonov] do not constitute a crime, the arguments on the complaint add up to a negative evaluation of the actions of V.V. Milonov, who was expressing his personal opinion about the LGBT community...'*). The case is being conducted with support from the 'Coming Out' LGBT Group.

¹⁸ Kirovsky District Court of the City of Saint Petersburg, case No. 2-4575/2015. The case is being conducted with support from the 'Coming Out' LGBT Group.

¹⁹ Video is available at: http://vk.com/video-38905640_171170528?list=fddd06832b491591aa.

²⁰ See, for example: response No. 1707j15 from the Prosecutor of the Central District of the City of Saint Petersburg from 14 May 2015. The case is being conducted with support from the 'Coming Out' LGBT Group.

²¹ Data from the legal service of the Russian LGBT Network, decree on the decision not to initiate criminal proceedings based on the results of inquiry PRD No. 9493 from 14 April 2015.

²² **Corrective rape**, also known as **curative rape**, is a brutal act of violence in which women and teenagers who are, or are at least assumed to be, lesbians are raped to 'cure' them of their homosexuality. See, e.g.: Andrew Martin et al., *Hate crimes: The rise of 'corrective rape' in South Africa*, ACTIONAID (2009), pp. 1–20 ; Tiffany Wesley, *Classifying 'Corrective' Rape as Hate Crime: A Call for Justice*, BUWA! A JOURNAL ON AFRICAN WOMEN'S EXPERIENCES (2012), p. 76/96, available at: <http://www.osisa.org/sites/default/files/75-81.pdf>.

²³ Cases collected as part of independent research and presented by Hana Kochetkova.

²⁴ Case documented and presented by the 'Children-404' project.

²⁵ Case presented by Hana Kochetkova.

²⁶ Case presented by Hana Kochetkova.

²⁷ CEDAW Committee, *List of issues and questions in relation to the 8th periodic report of the Russian Federation*, para. 15, U.N. Doc. CEDAW/C/RUS/Q/8 (2015).

²⁸ CEDAW Committee, *Replies of the Russian Federation to the list of issues*, Addendum, List of issues in relation to the eighth periodic report of the Russian Federation, pp. 18, U.N. Doc. CEDAW/C/RUS/Q/8/Add.1 (2015).

²⁹ This case was presented at the CEDAW PSWG, see: *List of issues related to the discrimination and violence*, p. 8.

³⁰ Kirovsky District Court of the City of Saint Petersburg, case No. 2-1890/2015. The case is being conducted with support from the 'Coming Out' LGBT Group.

³¹ Saint Petersburg City Court, case No. 33-12750/2015. The case is being conducted with support from the 'Coming Out' LGBT Group.

³² *List of issues related to the discrimination and violence*, p. 9.

³³ CEDAW Committee, *Eighth periodic report of the Russian Federation*, para. 204, U.N. Doc. CEDAW/C/RUS/8 (2014).

³⁴ Golovinsky District Court of the Moscow City, case No. 2-1837/14.

³⁵ Decision of the Civil Registry Office of the Vyborgsky District of the Saint Petersburg Government on changing, amending and correcting civil record of 11 September 2015. Case No. 61 of 11 June 2015; Notice of the Civil Registry Office of the Vyborgsky District of the Civil Registry Committee of the Saint Petersburg Government of 12 September 2015.

³⁶ Case was documented by the Transgender Legal Defense Project.

³⁷ Survey conducted by the Transgender Legal Defense Project (September 2015).

³⁸ Civil Code of the Russian Federation, Federal Law N 143-F3 from 15 November 1997 'On acts of civil status'.

³⁹ Frunzensky District Court, Saint Petersburg, case No. 2-4231/15. The case is being conducted with support from the 'Coming Out' LGBT Group and the Transgender Legal Defense Project.

⁴⁰ Quantitative survey by the Russian LGBT Network, September 2015.

⁴¹ Russian Federation Federal Law No. 135-F3 from 30 June 2013 'On the introduction of changes to article 5 of the Federal Law "On the protection of children from information that harms their health and development" and other laws of the Russian Federation with the goal of protecting children from information that negatively propagandizes traditional family values'.

⁴² According to data from the Legal Aid Program of the Russian LGBT Network from 1 September 2015.

⁴³ According to data from the Legal Assistance Program of the 'Coming Out' LGBT Group from 14 September 2015.

⁴⁴ Collected as part of the monitoring program of the Russian LGBT Network, Gagarinsky District Court, Moscow, case No. 2-4042/2015.

⁴⁵ Lyuberetsky City Court, Moscow Region, case No. 2-25/15.

⁴⁶ Federal Law N 167-F3 from 02 July 2013 (edited 25 November 2013) 'On the introduction of changes to specific laws of the Russian Federation on the question of the accommodation of orphan children and children without parental guardians'.

⁴⁷ Sovietsky District Court, Astrakhan, case No. 2-1001/2015.