

LIVING ILLEGAL: BEING LGBT IN RUSSIA

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ABSTRACT

As lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ) rights around the world continue a wave of progress, it is hard to imagine that the advances are being erased at the same pace. It is even harder to imagine this happening in a democratic society in a developed country. Finally, it is even more astounding that this is happening in a country that is considered a super power. However, it is happening, and has been happening since 2006.

For many reasons, the LGBTQ community has become a target of the Russian government; both the federal government and localized governments. One main reason for the oppression and discrimination is religion. Between the predominately Muslim Northern Caucasus region and the Russian Orthodox Church throughout the rest of the Russian Federation, the LGBTQ community is being oppressed. This oppression has led to individuals losing rights, being detained and tortured, and being victims of violent acts—including victims of extrajudicial killings.

This Article will look at the current crises in Russia. It will discuss the Chechnya concentration camps, the Russian “gay propaganda” law, and the ongoing violations of the freedom of expression, association, assembly, and the press. This Article will look at the domestic laws of Russia, and the international obligations of Russia. The goal of this Article is to bring awareness to the ongoing situation in Russia, the international obligations of Russia to the UN and the Council of Europe, and recommendations for change in Russia.

I. INTRODUCTION

The plight of the lesbian, gay, bisexual, transgender, and queer or questioning (“LGBTQ”) community has been well documented and there appears to be wave of change. Over the more recent years, the LGBTQ equality movement has made major strides. Marriage equality has become the law in over twenty countries.¹ Adoption by same-sex couples, a second parent, or an individual LGBTQ individual is allowed in approximately twenty countries.² Over seventy countries allow—to some degree of difficulty—a transgender individual to change their name on legal documents.³ However, the plight continues in several areas of the world, and in a few facets of life.

The goal of this Article is to bring awareness to the current situation in Chechnya. It is to educate the public of the ongoing human rights violations the “gay propaganda” law (“GPL”) has brought, including the oppression of the LGBTQ community and non-governmental organizations (NGOs). Finally, this Article seeks to bring attention to the Constitution of the Russian Federation and what the document says versus what is being applied, in addition to the international obligations of Russia. The final goal is to propose recommendations for change and future research.

This Article will discuss the current human rights crises the LGBTQ community is facing in Russia. This Article will address the four main conditions in Russia: (1) the Chechnya concentration camps for gay men; (2) the federal GPLs and other regional laws; and (3) the other violations

¹ Elisa Tang, *Here Are the 27 Countries Where Same-Sex Marriage is Officially Legal*, ABC NEWS (Jun. 22, 2018 2:41 AM), <https://abcnews.go.com/culture/story/27-countries-sex-marriage-officially-legal-56041136>.

² Narjas Zatat, *Where Adoption is Illegal for LGBT+ Couples*, INDY 100 (Mar. 6, 2018 2:00 PM), <https://www.indy100.com/article/map-where-adoption-illegal-for-lgbt-couples-8242266>.

³ Riley D. Champine et al., *The Legality of Gender Change*, NATIONAL GEOGRAPHIC MAGAZINE (Jan. 2017), <https://www.nationalgeographic.com/magazine/2017/01/gender-identity-map-where-you-can-change-your-gender-on-legal-documents/>.

of rights—such as the rights to assembly, association, and the press—that are impacting the LGBTQ community and its allies; and (4) the treatment of non-governmental organizations (“NGOs”). The Article will analyze the current domestic laws in Russia and the international obligations of Russia and will conclude with recommendations for change and possible future research.

II. HUMAN RIGHTS CRISES IN RUSSIA

A. Concentration Camps in Chechnya

There is a crisis brewing in Russia. “Human rights groups have confirmed that gay men are being arrested and killed in a terrifying anti-gay purge in Chechnya.”⁴ Early reports stated that three men had been killed and over one hundred were detained, but failed to mention the horrors the detainees experienced, along with failing to mention that they were held in concentration camps.⁵ Those detained are reported to be males between sixteen and fifty years old.⁶ This detention of gay men came after a gay rights group sought to hold gay pride parades.⁷ Social media is being used by governmental authorities to target the victims of the mass arrests.⁸ Some of those detained are television personalities and religious leaders.⁹ The predominately Muslim region in the Northern Caucasus area of Russia is known for the governmental authorities disregarding the killing and violence of members of the LGBTQ community.¹⁰ Additionally, “Chechen leader Ramzan Kadyrov has

⁴ Joshua Haigh, *Human Rights Group Confirm Reports Gay Men in Chechnya Are Being Detained in Anti-Gay Purge*, ATTITUDE (Apr. 6, 2017), <https://attitude.co.uk/article/human-rights-group-confirm-reports-gay-men-in-chechnya-are-being-detained-in-anti-gay-purge/14092>; see also Loulla-Mae Eleftheriou-Smith, *More Than 100 Gay Men ‘Sent to Prison Camps’ in Chechnya*, INDEPENDENT (Apr. 12, 2017, 10:34 AM), <http://www.independent.co.uk/news/world/europe/chechnya-gay-men-concentration-camps-torture-detain-nazi-ramzan-kadyrov-chechen-russia-region-a7677901.html>; Kathy Armstrong, *Over 100 People Allegedly Sent to ‘Concentration Camps’ for Gay Men in Chechnya*, IRISH INDEPENDENT (Apr. 15, 2017, 6:12 PM), <http://www.independent.ie/world-news/europe/over-100-people-allegedly-sent-to-concentration-camps-for-gay-men-in-chechnya-35610969.html>; *Report: Chechnya Police Arrest 100 Alleged Gays, 3 Killed*, AP NEWS (Apr. 2, 2017), <https://www.apnews.com/2656af03a358459a984fd90461c7b09a>.

⁵ See Haigh, *supra* note 4.

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.*

previously said he approves of honour killings.”¹¹ This is only the beginning of the developing crisis.

News reports began surfacing about the use of concentration camps in Chechnya. A Russian newspaper, *Novaya Gazeta*, opened an investigation and found that Ramzan Kadyrov “not only sponsored direct attacks on members of the LGBT community in his republic but also adopted a plan for ‘the final solution of gay issues’ and opened the first concentration camp in the world for sexual minorities since Hitler.”¹² The goal of the concentration camps is to purge men that do not identify as heterosexual by either killing them or forcing them to leave the country.¹³ Reports from the camps have alleged that governmental forces are using physical force to persuade inmates to report to the government what other community members are gay.¹⁴ However, Chechnya is refuting this news, “not because the violence is wrong, but because they say gays do not exist in Chechnya.”¹⁵

The Western World (the “West”) and the United Nations (“U.N.”) have taken notice of these human rights atrocities. Both “the U.S. State Department and the United Nations High Commissioner for Human Rights [are] calling on Moscow to put an end to any persecution.”¹⁶ However, these calls may not be enough. One of the original reporters, Elena Milashina, has had to flee her home due to threats of violence.¹⁷ Threats are coming in against Milashina and the rest of the staff at *Novaya Gazeta*, but it is not for the report of the concentration camps.¹⁸ Instead, the threats are centered on the fact that Milashina reported that there are gay people in Chechnya.¹⁹ However, Milashina feels that there is also outrage because “there are a lot of people who are under repression, being

¹¹ *Id.*

¹² Paul Goble, *Kadyrov Opens First Concentration Camp for Gays Since Hitler's Times*, UPNORTH (Apr. 6, 2017), <https://upnorth.eu/kadyrov-opens-first-concentration-camp-gays-since-hitlers-times>.

¹³ *See id.*

¹⁴ *See id.*

¹⁵ Adam Taylor, *She Broke the Story of Chechnya's Anti-Gay Purge. Now, She Says She Has to Flee Russia*, WASH. POST (Apr. 15, 2017), <https://www.washingtonpost.com/news/worldviews/wp/2017/04/15/she-broke-the-story-of-chechnyas-anti-gay-purge-now-she-says-she-has-to-flee-russia>.

¹⁶ *Id.*

¹⁷ *See id.*; *see also* *Chechnya Anti-Gay Violence: Newspaper Fears 'Retribution' For Reports*, BBC NEWS (Apr. 14, 2017), <http://www.bbc.com/news/world-europe-39600124> [hereinafter BBC NEWS, *Chechnya Anti-Gay Violence*].

¹⁸ *See* Taylor, *supra* note 15; BBC NEWS, *Chechnya Anti-Gay Violence*, *supra* note 17.

¹⁹ *See* Taylor, *supra* note 15.

detained, tortured, and killed.”²⁰ Although the situation in Chechnya is an atrocity that cannot continue, it is not the only form of oppression in Russia against the LGBTQ community.

B. Living Under a “Gay Propaganda” Law

On June 30, 2013, President Vladimir Putin signed into law a GPL banning “gay propaganda.”²¹ The West was outraged over this law, which was passed less than a year before the Winter Olympics in Sochi.²² This GPL, often criticized as vague and overly intrusive, outlaws “any suggestion to children that homosexuality is normal.”²³ It has created an environment where there is no longer any information available to the LGBTQ community, as websites and organizations were shut down due to this law.²⁴ This GPL has also given rise to violence against the LGBTQ community, as it has emboldened the people of Russia to accept intolerance.²⁵ However, the West appears to have forgotten that this law was enacted.²⁶

While depression and isolation are already common among LGBTQ youth, GPLs are increasing their prevalence in the Russian community.²⁷ One twenty-three year-old, Artem Kolesov, explained his struggles growing up in Russia as a LGBTQ youth, in a YouTube video that he posted when not living in Russia.²⁸ He spoke of how there were “years he spent praying that God would take his homosexuality away, the depression he suffered, the five attempts to kill himself” while growing

²⁰ *Id.*

²¹ See *Russia Passes Anti-Gay Law*, THE GUARDIAN (June 30, 2013, 12:38 PM), <https://www.theguardian.com/world/2013/jun/30/russia-passes-anti-gay-law>.

²² See, e.g., Laura Smith-Spark & Phil Black, *Protests, Boycott Calls as Anger Grows over Russia Anti-Gay Propaganda Laws*, CNN (Aug. 4, 2013, 6:10 PM), <https://edition.cnn.com/2013/08/01/world/europe/russia-gay-rights-controversy/index.html>; Owen Gibson & Shaun Walker, *Olympians Urge Russia to Reconsider ‘Gay Propaganda’ Laws*, THE GUARDIAN (Jan. 30, 2014, 9:12 AM), <https://www.theguardian.com/sport/2014/jan/30/olympic-athletes-russia-repeal-anti-gay-laws>.

²³ Patrick Strudwick, *This is What Happened when a Young Russian Came Out as Gay on YouTube*, BUZZFEED NEWS (Apr. 14, 2017, 5:07 AM), <https://www.buzzfeed.com/patrickstrudwick/this-is-what-happened-when-a-young-russian-came-out-as-gay>.

²⁴ See *id.*

²⁵ See *id.*

²⁶ *Id.* (“People in the West too easily forget what life is like for LGBT people in countries where they are criminalized . . .”).

²⁷ See Michael Garcia Bochenek & Kyle Knight, *Russia: ‘Gay Propaganda’ Law Endangers Children*, HUM. RTS. WATCH (Dec. 11, 2018, 11:00 PM), <https://www.hrw.org/news/2018/12/12/russia-gay-propaganda-law-endangers-children>.

²⁸ See Strudwick, *supra* note 23.

up in Russia.²⁹ Raised in a family of devout Christians, Kolesov believed homosexuality was a sin.³⁰ He recalled signing a petition to ban a gay pride parade out of fear he would be outed.³¹ He also recounted a friend telling him that another friend had come out to her parents as lesbian, and because of their reaction, she committed suicide.³² After going to Canada for music school, Artem realized that he can in fact be accepted for who he is.³³

Artem has a message for the LGBTQ youth of Russia. He and others are now coming out to tell LGBTQ youth in Russia that they are not alone in their struggles.³⁴ Artem is spreading this message because he feels that Russia has facilitated state-sponsored suicide amongst the LGBTQ community because of this GPL.³⁵ However, Artem was afraid to return to Russia as he believes the video could be deemed propaganda and could result in his detainment.³⁶

This GPL, among others, has alienated the LGBTQ community and silenced allies. A teenager was arrested in Russia because he joined a support group that was created for the LGBTQ community.³⁷ In 2012, Pussy Riot, a Russian feminine protest band, was arrested for “hooliganism” after publicly protesting President Putin’s leadership in a Moscow cathedral.³⁸ This was followed by warnings from Russia to other artists that visas could be revoked and/or fines be levied against them for similar behavior.³⁹ Of these artists were most notably Madonna and Lady Gaga, which are known for being vocal about their support of the LGBTQ community.⁴⁰ Russia has attempted to chip away at any voice of support for the LGBTQ community, thus cutting off critical support for the community—in any form.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Pussy Riot Members Jailed for Two Years for Hooliganism*, BBC NEWS (Aug. 17, 2012), <https://www.bbc.com/news/world-europe-19297373>.

³⁹ See Kirit Radia, *Lady Gaga, Madonna Facing Punishment in Russia*, ABC NEWS (Aug. 4, 2013), <http://abcnews.go.com/blogs/entertainment/2013/08/lady-gaga-madonna-facing-punishment-in-russia>.

⁴⁰ See *id.*

C. Oppression of Other Rights

Russia has a history of human rights violations in contradiction to the Constitution of the Russian Federation (the “Constitution”), the U.N. Charter, Russia’s other U.N. obligations, and Russia’s obligations to the Council of Europe. This Article explores such violations below. This Article explores the oppression of the freedom of association, freedom of expression, and threats against journalists and other dissenters in Chechnya. However, there are several other violations that could, and should, be explored.

The freedom of association was the focus of a report by the Human Rights Watch (“HRW”).⁴¹ The laws requiring NGOs to register as “foreign agents” and to predominately display this designation on publications targeted over one hundred different organizations.⁴² This caused some of these vital organizations to cease operations.⁴³ Additionally, one of the more predominate NGOs in Russia was been threatened with criminal charges under the “foreign agents” law.⁴⁴ There is a relatively new law allowing for the designation of NGOs as an “undesirable foreign organization.”⁴⁵ This has led to closure of other organizations, most of which have funding from outside of Russia, and include political groups.⁴⁶

The freedom of expression is also infringed upon by anti-LGBTQ laws such as the GPL. Russia outlawed and blocked several independent websites, including LGBTQ sites.⁴⁷ There appears to be new laws that are being enacted that further this oppression.⁴⁸ While the HRW report focuses mainly on websites that include military information—such as those pertaining to the Ukraine and the storage of personal information by non-Russians⁴⁹—the oppression of the freedom of expression is a direct consequence of the GPL.

It is widely believed that Russia targets anti-Putin journalists.⁵⁰ Chechnya has initiated oppressive behavior towards journalists and other

⁴¹ *World Report 2016: Russia*, HUM. RTS. WATCH (Jan. 2016), https://www.hrw.org/sites/default/files/russia_0.pdf.

⁴² *See id.* at 1.

⁴³ *See id.*

⁴⁴ *See id.*

⁴⁵ *See id.*

⁴⁶ *See id.* at 1-2.

⁴⁷ *See id.* at 2.

⁴⁸ *See id.*

⁴⁹ *See generally id.*

⁵⁰ *See, e.g., The Post’s View: Journalists Are Being Imprisoned and Killed to Smother Vital Truths*, WASH. POST: OPINION (Sept. 2, 2018),

persons reporting the activities of the government, and those who vocalize dissent regarding such oppressive behavior.⁵¹ The government has failed to investigate situations where victims claim they were assaulted by private individuals, such as when a human rights attorney was attacked.⁵² This oppressive governmental behavior is what led to a journalist going into hiding after sharing the news of the concentration camps in Chechnya.⁵³

D. Non-Governmental Organizations

Some NGOs in Russia are no longer able to legally operate due to restrictive registration laws.⁵⁴ For instance, Rainbow House “was repeatedly prevented from being registered because its goal of defending the rights of LGBT people would allegedly undermine spiritual public values.”⁵⁵ The group was denied registration through Russia’s anti-terrorism laws.⁵⁶

In 2009, one NGO was able to receive government approval in St. Petersburg.⁵⁷ Coming Out is a non-profit organization with the goal “to work for ‘universal recognition of human dignity and equal rights of all regardless of sexual orientation or gender identity.’”⁵⁸ This group documented the 2016 mass arrest in St. Petersburg during a May Day

https://www.washingtonpost.com/opinions/journalists-are-being-imprisoned-and-killed-to-smother-vital-truths/2018/09/02/95457e34-a0bf-11e8-8e87-c869fe70a721_story.html; Oren Dorell, *Mysterious Rash of Russian Deaths Casts Suspicion on Vladimir Putin*, USA Today (May 2, 2017, 5:04 AM), <https://www.usatoday.com/story/news/world/2017/05/02/dozens-russian-deaths-cast-suspicion-vladimir-putin/100480734>.

⁵¹ See *World Report 2016: Russia*, *supra* note 41, at 4.

⁵² See *id.*

⁵³ Adam Taylor, *She Broke the Story of Chechnya’s Anti-Gay Purge. Now, She Says She Has to Flee Russia*, WASHINGTON POST (Apr. 15, 2017), https://www.washingtonpost.com/news/worldviews/wp/2017/04/15/she-broke-the-story-of-chechnyas-anti-gay-purge-now-she-says-she-has-to-flee-russia/?utm_term=.7c87c0ed44c9; Lizzie Dearden, *Russian Reporter Who Exposed Chechen ‘Detention and Torture of Gay Men’ Goes into Hiding as Allegations Widen*, INDEPENDENT (Apr. 26, 2017 2:34 PM), <https://www.independent.co.uk/news/world/europe/chechnya-gay-men-russian-reporter-hiding-detention-torture-elena-milashina-novaya-gazeta-100-men-a7703471.html>.

⁵⁴ *Russia: Government vs. Rights Groups*, HUMAN RIGHTS WATCH (June 18, 2018 05:30 AM), <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>.

⁵⁵ Matthew Schaaf, *Advocating for Equality: A Brief History of LGBT Rights in Russia*, HARRIMAN MAG., Winter 2014, at 23, 25.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Rights Group of the Week: Coming Out*, RIGHTS IN RUSSIA (May 9, 2016, 7:55 AM), <http://www.rightsinrussia.info/home/rights-group-of-the-week/comingout>; see also *About Us, COMING OUT*, <http://comingoutspb.com/eng/our-comming-out/about-us> (last visited Mar. 10, 2019).

parade.⁵⁹ During the parade, a rainbow LGBTQ flag was unveiled and police arrested approximately 20 people.⁶⁰

In 2012, Russia enacted a law designating Coming Out as a foreign agent.⁶¹ This law “forced foreign-funded NGOs involved in activities deemed ‘political in nature’ to register as ‘foreign agents’ in Russia.”⁶² This was followed by the enactment of a law in 2015 that would allow “‘destructive organizations’ that operate with foreign backing and threaten ‘the security of the state’” to be targeted by the Russian government.⁶³ The law does not provide for a mandatory judicial review of the ban, instead “the country’s prosecutor general and Foreign Affairs Ministry . . . have the power to flag ‘undesirable’ NGOs and ban them from operating.”⁶⁴ A victim of the government’s unilateral power under this law, Maximum, ceased operations in October 2015 and the director was charged under the GPL.⁶⁵

III. DOMESTIC LAWS

A. History of LGBTQ Laws in Russia

Homophobia and violence are not new to the LGBTQ community in Russia. During the 1990s and early 2000s, violence against the LGBTQ community became commonplace.⁶⁶ “As bars with unmarked doors hidden in courtyards began opening in some cities, discretion ruled the day, and many gays and lesbians were content to stay in the closet—flying below the radar was the safest option.”⁶⁷

Like most other nations, there is a history of anti-LGBTQ laws in Russia. Prior to 1993, the same year the Constitution of the Russian Federation was enacted, there was a law that criminalized sexual relationships between two men (“muzhelozhstvo”).⁶⁸ One found guilty of

⁵⁹ *Id.*

⁶⁰ *See id.*

⁶¹ *See* Matthieu Jublin, *New Law Allows Russia to Ban ‘Undesirable’ Human Rights Groups and Other NGOs*, VICE NEWS (May 25, 2015), <https://news.vice.com/article/new-law-allows-russia-to-ban-undesirable-human-rights-groups-and-other-ngos>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *See Russia: Court Rules Against LGBT Activist*, HUM. RTS. WATCH (Feb. 3, 2016, 12:00 AM), <https://www.hrw.org/news/2016/02/03/russia-court-rules-against-lgbt-activist>.

⁶⁶ Schaaf, *supra* note 55, at 25.

⁶⁷ *Id.*

⁶⁸ *See id.* at 24.

muzhelozhstvo could be jailed for a significant period of time.⁶⁹ Between 1960 and 1990, there were anywhere from five hundred to one thousand men that had been imprisoned.⁷⁰ In 1993, there were approximately seventy-five men alone that were jailed.⁷¹ Even after the law was repealed, there was still a fight to release those that had been imprisoned.⁷²

After Russia joined the Council of Europe in 1996, there was not much change with the anti-LGBTQ laws until 2006.⁷³ This was when the GPL was enacted, but it did not catch the attention of the West until eight years later as the Sochi Winter Olympics brought them into the spotlight.⁷⁴

Russia has hate crime laws,⁷⁵ but they are only effective if enforced. The HRW noted in a review that there were no cases of hate crimes that had been successfully investigated—either the crime was not investigated, or there were other factors including blaming the victim.⁷⁶ Without the government backing the LGBTQ community through abolishing anti-LGBTQ laws and enforcing hate crimes laws when members of the LGBTQ community are persecuted, the way of life for those in the Russian LGBTQ community has and will continue to grow increasingly dire.

There has been some minor movement in laws regarding transgender persons. In 1997, a law passed that allowed Russians identifying as transgender to legally change their gender on legal documents.⁷⁷ While this is an important step, there are laws that negatively target the transgender community, as they pose “obstacles to the process [of changing one’s gender on legal documents] and invasive surgical requirements remain in place.”⁷⁸ The progress for transgender

⁶⁹ See *id.*

⁷⁰ See *id.*

⁷¹ See *id.*

⁷² *Id.*

⁷³ See *id.* at 25.

⁷⁴ Laura Smith-Spark, *Why Russia’s Sochi Olympics Are Now A Battleground for Gay Rights*, CNN (Aug. 10, 2013), <https://edition.cnn.com/2013/08/10/world/europe/russia-gay-rights-controversy/index.html>.

⁷⁵ See *Russia: Impunity for Anti-LGBT Violence*, HUM. RTS. WATCH (Dec. 15, 2014, 3:45 AM), <https://www.hrw.org/news/2014/12/15/russia-impunity-anti-lgbt-violence>.

⁷⁶ See *id.*

⁷⁷ See *The Facts on LGBT Rights in Russia*, COUNCIL FOR GLOBAL EQUALITY, <http://www.globalequality.org/component/content/article/1-in-the-news/186-the-facts-on-lgbt-rights-in-russia> (last visited Mar. 10, 2019).

⁷⁸ *Id.*

rights on a global scale appears to be slow, but they are relevant when discussing LGBTQ rights as a whole.

B. The Constitution of the Russian Federation

The Constitution of the Russian Federation (the “Constitution”) was adopted through a national vote on December 12, 1993.⁷⁹ The Constitution entered into force on December 25, 1993 upon publication in *Rossiyskaya Gazeta*.⁸⁰ It consists of a preamble and two sections that are further broken down into chapters and articles.⁸¹ Chapter 1 is titled “The Fundamentals of the Constitutional System.”⁸² Chapter 2 is titled “Rights and Freedoms of Man and Citizen.”⁸³ The following discussion explains the Constitution and its application to the current crises in Russia.

The preamble to the Russian Constitution is explicit in its goal. This goal includes “establishing human rights and freedoms,” recognizing the history of “the universally recognized principles of equality and self-determination,” establishing a “belief in the good and justice,” while “asserting the firmness of its democratic basic.”⁸⁴

1. The Fundamentals of the Constitutional System: Chapter 1

For the purposes of this Article, I will focus on a selection of Articles 2, 4, 5, 6, 13, and 15 under Chapter 1 of the Constitution. Article 2 charges the Russian State with the responsibility of ensuring the rights of an individual.⁸⁵ These “rights and freedoms are the supreme value.”⁸⁶ With this article following the Preamble, declaring the goals of the establishing rights may lead one to believe that the freedoms and rights of individuals are of high priority to the Russian federal government. However, actions of Russia do not always support this theory.

Article 5 extends the Constitution to the entire Russian Federation.⁸⁷ Russia recognizes the Federation as “consist[ing] of Republics, territories, regions, cities of federal importance, an autonomous region

⁷⁹ See *Constitution of the Russian Federation*, STATE DUMA (Oct. 17, 2018, 6:56 PM), <http://duma.gov.ru/en/news/28429>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² KONSTITUTSIYA ROSSIYSKOI FEDERATSII [KONST. RF] [CONSTITUTION] ch. 1 (Russ.).

⁸³ *Id.* ch. 2.

⁸⁴ *Id.* pmb1.

⁸⁵ *Id.* art. 2.

⁸⁶ *Id.*

⁸⁷ *Id.* art. 5.

and autonomous area.”⁸⁸ This would include the Republic of Chechnya. This may be read in conjunction with Article 4, which states that the Constitution, along with federal laws, are the supreme laws of the federation.⁸⁹ Therefore, not only would the Constitution apply to Chechnya, but the Constitution and federal laws would supersede any laws or actions of Chechnya.

Article 6 of the Constitution outlines citizenship.⁹⁰ Citizenship is granted to individuals in accordance with federal law.⁹¹ Since citizenship is granted in accordance with federal law, all citizens of Russia are guaranteed the same rights under the Constitution.⁹² Finally, no citizen of Russia can be forced to renounce their citizenship.⁹³ Detainees of the concentration camps in Chechnya have been released if they promised to leave the country.⁹⁴ This is a government action forcing citizens of Russia to flee and most likely renounce their Russian citizenship for the citizenship of another country. Additionally, the governmental acts of Chechnya treat gay men differently, and are not in accordance with the rights of the Constitution. Furthermore, I argue that the GPL is usurping the rights of Russian citizens under the Constitution.

Article 13 is a double-edged sword for the LGBTQ community and activists. The Constitution guarantees public associations,⁹⁵ however, there is a provision that allows for restrictions. These restrictions allow a prohibition on associations that “are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation,” in addition to a prohibition on associations related to “instigating social, racial, national, and religious strife.”⁹⁶ Article 13 could be used to support an argument that the LGBTQ community and activists are creating associations which would undermine the federal laws of Russia. In addition, it could be used to support an argument that the associations could cause social conflict and religious conflict as the Russian Orthodox Church and predominately

⁸⁸ *Id.* art. 5(1).

⁸⁹ *Id.* art. 4(2).

⁹⁰ *Id.* art. 6.

⁹¹ *Id.* art. 6(1).

⁹² *Id.* art. 6(2).

⁹³ *Id.* art. 6(3).

⁹⁴ Paul Goble, *Kadyrov Opens First Concentration Camp For Gays Since Hitler's Times*, EUROMAIDAN PRESS (Apr. 7, 2017), <http://euromaidanpress.com/2017/04/07/kadyrov-opens-first-concentration-camp-for-gays-since-hitlers-times/#arvlbdata>.

⁹⁵ *Id.* art. 13(4).

⁹⁶ *Id.* art. 13(5).

Muslim areas of Russia hold a visceral hatred against the LGBTQ community. Thus, there could be social and religious discord.

Article 15 provides one of the strongest arguments for why the Russian federal government needs to act in Chechnya. The Constitution is the supreme law in Russia and applies to all of the Federation.⁹⁷ All of the citizens in Russia and the local authorities and governments must abide by the Constitution.⁹⁸ Additionally, only laws that are published are to be enforced, and more specifically, “legal acts concerning human rights, freedoms and duties of man and citizen may not be used, if they are not officially published for general knowledge.”⁹⁹ While Chechnya at one time imposed the death penalty on gay men, it is unclear whether there are any local laws regarding homosexuality. Recently, there was a proclamation by the government in Chechnya that there are not any gay men in Chechnya, and if there were, the family of a gay man would “have sent them to where they could return return[.]”, i.e. commit an honor killing.¹⁰⁰ State sponsored capital punishment for anything other than “grave crimes against life” have been eliminated by the Constitution, but the statement appears to indicate state sponsored honor killings.¹⁰¹ As such, it does not appear that there are published laws or at least none that included death as the penalty for homosexuality, and Chechnya may be in violation of the Constitution.

Finally, Article 15 integrates international law and treaties into the Constitution and the laws in Russia.¹⁰² If the treaty or agreement fills in the areas not addressed by the envisioned application of a law, then the treaty or agreement will be the ruling law.¹⁰³ Therefore, there may be additional protections of LGBTQ individuals found in international obligations, as discussed later in this Article.

2. Rights and Freedoms of Man and Citizen: Chapter 2

For the purposes of the discussion in this Article, I will be focusing only on the pertinent articles of Chapter 2, which consists of 48 articles

⁹⁷ *Id.* art. 15(1).

⁹⁸ *Id.* art. 15(2).

⁹⁹ *Id.* art. 15(4).

¹⁰⁰ *The Anti-Gay Purge in Chechnya Must Be Stopped*, BOSTON GLOBE (Apr. 23, 2017), <https://www.bostonglobe.com/opinion/editorials/2017/04/22/the-anti-gay-purge-chechnya-must-stopped/dq0WH7QdHklwVppOWgFgVP/story.html>. The family would most likely perform an “honor killing” of the family member, which is allowed under Sharia law. *See id.*

¹⁰¹ KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 20(2) (Russ.).

¹⁰² *Id.* art. 15(4).

¹⁰³ *Id.* art. 15(4).

that focus on the rights and freedoms of Russian citizens.¹⁰⁴ This Article will focus on Articles 17, 19-23, 27, 29-31, 45-48, 52, 53, and 55. Some of these articles are being violated in Chechnya, and some include violations caused by the gay propaganda law. Additionally, some of these rights that are being violated are due to the inaction of the Russian government regarding the Chechnya concentration camps.

Article 17 sets the tone for the Constitution regarding human rights. The Constitution recognizes and grants all individuals the rights and freedoms “according to the universally recognized principles and norms of international law and according to the present Constitution.”¹⁰⁵ It recognizes that the rights and freedoms are gained at birth, and that the rights of others cannot infringe on the rights of any other individual.¹⁰⁶ This means that international human rights laws apply to Russia. However, this is not the same in practice given the laws and treatment of LGBTQ people.

Article 19 requires equality among persons under the law and in the court systems.¹⁰⁷ Additionally, it sets out the requirement that the government will “guarantee the equality of rights and freedoms of man and citizen, regardless of sex . . . membership of public associations, and also of other circumstances.”¹⁰⁸ This would encompass members of the LGBTQ community and NGOs. Again, the writing is different from actual practice.

Article 20 of the Constitution is currently being violated in Chechnya. Article 20 guarantees a right to life.¹⁰⁹ A person must be given a trial by jury, and the only time capital punishment is allowed is if there is a “grave crime against life.”¹¹⁰ Additionally, the Constitution lays the groundwork for the elimination of capital punishment entirely. The government-led killings of gay men at concentration camps in Chechnya are extrajudicial killings and thus are in direct violation of Article 20.

The next three articles go hand in hand. The Constitution grants the right to being secure in one’s own life and secrets, and also to privacy in communication unless a court orders a limitation.¹¹¹ In granting the right to freedom, the Constitution requires a court order for a person to be

¹⁰⁴ *Id.* ch. 2.

¹⁰⁵ *Id.* art. 17(1).

¹⁰⁶ *Id.* art. 17(2)-(3).

¹⁰⁷ *Id.* art. 19(1).

¹⁰⁸ *Id.* art. 19(2).

¹⁰⁹ *Id.* art. 20(1).

¹¹⁰ *Id.* art. 20(2).

¹¹¹ *Id.* art. 23(1).

arrested and remain in custody.¹¹² Finally, the government, without exception, cannot torture or use “violence or other severe or humiliating treatment or punishment.”¹¹³ The current events in Chechnya violate all three of these articles. People are being detained without court order, and they are being held in concentration camps without a judicial hearing.¹¹⁴ Furthermore, they are being tortured.¹¹⁵

Article 27 gives Russian citizens the right to return to the Federation.¹¹⁶ Additionally, Article 27 gives citizens the right to freely choose where they want to live within the Russian Federation.¹¹⁷ The goal in Chechnya is to eliminate the gay men from society there, and one of the methods is forcing them to leave. Chechnya is once again violating the Constitution by forcing people to leave their home.

Article 29 is a grant of the freedom to speech.¹¹⁸ It mirrors the language of Article 13, which could be considered a way to counter the GPL.¹¹⁹ Article 29 does provides for the right to distribute information and a freedom of uncensored mass communication.¹²⁰ This would be in contradiction to the propaganda laws and the laws aimed at silencing NGOs.

Articles 30 and 31 are violated by the propaganda laws throughout Russia. Article 30 allows for the right to freedom of association,¹²¹ and Article 31 provides citizens with the right to peaceful assembly.¹²² The right to peaceful assembly specifically names demonstrations, rallies, and marches.¹²³ However, the laws and the municipalities in Russia have kept LGBTQ groups from holding rallies and pride parades.

¹¹² *Id.* art. 22(1)-(2).

¹¹³ *Id.* art. 21(1)-(2).

¹¹⁴ *World Report 2018: Russia*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2018/country-chapters/russia#c0a558>; *Russian Federation 2017/2018*, AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/countries/europe-and-central-asia/russian-federation/report-russian-federation/>.

¹¹⁵ *Chechnya Anti-Gay Violence*, *supra* note 17; Andrew E. Kramer, ‘*They Starve You. They Shock You*’: *Inside the Anti-Gay Pogrom in Chechnya*, N.Y. TIMES (Apr. 21, 2017), <https://www.nytimes.com/2017/04/21/world/europe/chechnya-russia-attacks-gays.html>.

¹¹⁶ KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 27(2).

¹¹⁷ *Id.* art. 27(1).

¹¹⁸ *Id.* art. 29(1).

¹¹⁹ *Id.* art. 29(2).

¹²⁰ *Id.* art. 29(4)-(5).

¹²¹ *Id.* art. 30(1).

¹²² *Id.* art. 31.

¹²³ *Id.*

Articles 45 through 48 grant rights to judicial proceedings and guarantee that the state will protect citizen's rights.¹²⁴ The state has a duty to protect individuals from the deprivation of individual rights.¹²⁵ Today, the Russian federal government is not only failing to protect the rights of gay men in the Northern Caucasus, but the government itself is infringing upon the rights of the LGBTQ community through GPLs. These rights have been further infringed upon through the lack of judicial proceedings for those being detained in Chechnya.

The inaction of police officers to protect victims of hate crimes is a violation of Article 52.¹²⁶ It should protect the LGBTQ community, but in actuality it does not. "The rights of victims of crimes and of abuse of office shall be protected by law. The State shall provide access to justice for them and a compensation for sustained damages."¹²⁷ Individuals that have not received proper protection from the government under Article 52 have a right to seek compensation.¹²⁸ The Russian government has a duty to ensure that government officials act in accordance with applicable laws to protect the LGBTQ community. Furthermore, they have a duty to compensate those that were injured at the hands of governmental inaction.

Article 55 provides that other universally accepted rights are not abrogated by the Constitution.¹²⁹ Additionally, the Constitution states that no law can be used to violate human rights.¹³⁰ Thus, the aforementioned GPL would be in direct violation of this Article. However, the government may use a particular exception to argue that the discriminatory laws are permissible under the Constitution. Rights and freedoms can be curtailed if "necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State."¹³¹

C. The "Gay Propaganda" Law and its Adoption

The GPL was adopted in regions across Russia between 2006 and 2013. The last of these adoptions followed a moratorium on gay pride

124 *Id.* art. 45-48.

125 *Id.* art. 45.

126 *Id.* art. 52.

127 *Id.*

128 *Id.* art. 53.

129 *Id.* art. 55(1).

130 *Id.* art. 55(2).

131 *Id.* art. 55(3).

parades that will last one hundred years and started in June 2012.¹³² The first was the Ryazan region, which adopted the GPL in 2006.¹³³ The next was in 2011 when the region of Arkhangelsk adopted the GPL.¹³⁴ Finally, St. Petersburg, which known as the “unofficial ‘cultural capital,’” adopted the GPL in 2012.¹³⁵ Around the same time that St. Petersburg passed the law, there were six different regions in Russia also adopting the law.¹³⁶

In response to the 2006 adoption of the GPL in Ryazan, LGBTQ activists attempted to organize a gay pride parade in Moscow.¹³⁷ The government refused to grant permission for the parade and street festivities, but the organizers nonetheless held the parade.¹³⁸ During the march, anti-LGBTQ nationalist groups attacked the marchers, and the police stood by and watched.¹³⁹ Others sought “to tackle homophobia and discrimination in the courts, through engagement with the government, and broad efforts to educate the public.”¹⁴⁰ In 2007, another attempted demonstration was held.¹⁴¹ The results mirrored the 2006 efforts, however this time the protestors were arrested, but not the anti-LGBTQ nationalists attacking the demonstrators.¹⁴² In 2010, the European Court of Human Rights held that the GPL is unconstitutional and constitutes a method of encouraging threats and violence.¹⁴³ The Court also stated that these laws and actions violated the freedom of assembly.¹⁴⁴

The GPL has furthered homophobia in Russia. A 2012 poll of the LGBTQ community revealed that, “15.3 percent of respondents were physically assaulted during a ten-month period in 2011-2012, and nearly 3 percent had been attacked more than once.”¹⁴⁵

The GPL is extremely vague and leaves a lot of question as to what falls under propaganda.¹⁴⁶ However, some items were specifically banned, including “any public speeches, writing or demonstrations which

132 See Schaaf, *supra* note 55, at 26.

133 See *id.* at 25.

134 See *id.*

135 *Id.* at 26.

136 See *id.*

137 See *id.* at 25.

138 See *id.*

139 See *id.*

140 *Id.*

141 See *id.*

142 See *id.*

143 See *id.*

144 See *id.*

145 *Id.* at 26.

146 *Id.*

equates gay relationships to straight ones because it may ‘influence children.’”¹⁴⁷ This clearly raises concern over the application of the law. Furthermore, it has led to consequences, such as the removal of necessary LGBTQ websites that engage isolated minors, and even disallow pride parades and demonstrations.

There have been several proposed laws that continue to threaten the rights of LGBTQ persons. In January 2016, the Duma considered a law banning public displays of affection.¹⁴⁸ One bill suggested that parents in a same-sex relationship should have different parental rights than that of heterosexual couples.¹⁴⁹ Just as the GPL is, these laws are also in direct violation of the Constitution.

Courts in Russia have upheld the GPL as recently as January 18, 2016.¹⁵⁰ This is one of the few cases that has challenged the legality of the GPL. An LGBTQ activist was found guilty of violating the law and received a fine.¹⁵¹ The activist was found guilty for “certain items posted on the Maximum’s website [which] violated the law banning the dissemination of positive information about LGBT relationships to children.”¹⁵² The director of Maximum is one of five persons that was charged under this crime as of February 2016.¹⁵³

In addition to Russian citizens, the law also penalizes NGOs, foreigners, corporations, and other legal entities.¹⁵⁴ There is a greater penalty for NGOs, corporations, and other legal versus private individuals.¹⁵⁵ The penalty for foreigners includes a fine, a maximum of fifteen days in prison, and deportation.¹⁵⁶

¹⁴⁷ Caroline Mortimer, *Russia to Debate Banning All Public Displays of Affection Between Gay People*, INDEPENDENT (Jan. 17, 2016, 12:42 PM), <http://www.independent.co.uk/news/world/europe/russian-duma-to-debate-banning-all-public-displays-of-affection-between-gay-people-a6817196.html>.

¹⁴⁸ *See id.*

¹⁴⁹ *See The Facts on LGBT Rights in Russia*, *supra* note 77.

¹⁵⁰ *See Russia: Court Rules Against LGBT Activist*, *supra* note 65.

¹⁵¹ *See id.*

¹⁵² *Id.*

¹⁵³ *See id.*

¹⁵⁴ *See The Facts on LGBT Rights in Russia*, *supra* note 77.

¹⁵⁵ *See id.*

¹⁵⁶ *See id.*

IV. INTERNATIONAL OBLIGATIONS

A. United Nations Obligations

Russia has certain obligations in connection with its membership with the U.N., pursuant to the U.N. Charter and: (1) the Universal Declaration of Human Rights; (2) the International Covenant on Economic, Social and Cultural Rights; (3) the International Covenant on Civil and Political Rights; and (4) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁵⁷

1. United Nations Charter

The U.N. Charter, signed on June 26, 1945, imposes obligations and rights upon the member states.¹⁵⁸ As a member state, Russia owes a duty to the international community to uphold the Charter. It begins with affirmative principles, including to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and nations large and small.”¹⁵⁹ There is a stated goal “to promote social progress and better standards of life in larger freedom,” and a mechanism for enforcing the treaties and agreements between nations.¹⁶⁰

One chapter of the Charter addresses human rights and fundamental freedoms that are afforded to individuals.¹⁶¹ These rights and freedoms are prescribed to promote peaceful relations based on human rights.¹⁶² However, to have peaceful relations, a country must not engage in human rights violations, in order to prevent discord between nations who react to such a limitation on or violation of necessary rights and freedoms. The U.N. has a duty to step in when “universal respect for, and observance of, human rights and fundamental freedoms” are not being honored by member states.¹⁶³ Other member states have a duty to hold other member

¹⁵⁷ The “International Convention for The Protection of All Persons from Enforced Disappearance” is not included in this article because the Russian Federation is among the ninety-two members that have not acted on the Convention. See International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, 2716 U.N.T.S 3.

¹⁵⁸ *Introductory Note: Charter of the United Nations*, UNITED NATIONS, <http://www.un.org/en/charter-united-nations/introductory-note/index.html> (last visited Mar. 10, 2019).

¹⁵⁹ U.N. Charter pmb1.

¹⁶⁰ *Id.*

¹⁶¹ U.N. Charter art. 55.

¹⁶² *Id.*

¹⁶³ *Id.* art. 55(c).

states accountable when the rights and freedoms of its citizens are being violated, such as they are in Russia.¹⁶⁴ However, there has been limited involvement by the U.N. and its member states since the recent crisis in Chechnya has surfaced.

2. Universal Declaration of Human Rights

The U.N. Universal Declaration of Human Rights (“UDHR”) was developed as a guideline for the rights that governments should aspire to grant to citizens.¹⁶⁵ Born out of the atrocities of World War II, the UDHR is a declaration of the member states of the U.N. to achieve a minimum standard of human rights and respect.¹⁶⁶ While the UDHR was never ratified by the member states, most of the regional organizations and recent constitutions have integrated parts of the UDHR.¹⁶⁷

The UDHR provides for equal status for all individuals, “born free and equal in dignity and rights.”¹⁶⁸ Individuals have the rights enumerated in the UDHR regardless of status or other classes that are generally protected.¹⁶⁹ The UDHR declares that all individuals have “the right to life, liberty and security of person”¹⁷⁰ in addition to the rights to privacy and reputation.¹⁷¹ Pursuant to the UDHR, U.N. member states should strive to not impose cruel and inhumane punishment, and must treat individuals with dignity.¹⁷² In addition, all individuals are entitled to equal protection of the law, without discrimination.¹⁷³ Individuals should be free from unlawful detention or arrest, and afforded a judicial adjudication regarding the deprivation of any rights.¹⁷⁴ Individuals have the right to return to their own country, and not be forced to leave.¹⁷⁵ The UDHR contains additional basic rights that are characteristic of a democracy. Individuals have the right to the freedom of expression,¹⁷⁶

¹⁶⁴ *Id.* art. 56.

¹⁶⁵ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

¹⁶⁶ *Id.* pmb1.

¹⁶⁷ *Human Rights Law*, UNITED NATIONS, <http://www.un.org/en/sections/universal-declaration/human-rights-law/index.html>.

¹⁶⁸ *Id.* art. 1.

¹⁶⁹ *Id.* art. 2.

¹⁷⁰ *Id.* art. 3.

¹⁷¹ *Id.* art. 12.

¹⁷² *Id.* art. 5.

¹⁷³ *Id.* art. 7.

¹⁷⁴ *Id.* art. 9, 10.

¹⁷⁵ *Id.* art. 9, 10, 13, 15.

¹⁷⁶ *Id.* art. 19.

and the right to assemble peacefully and to associate.¹⁷⁷ Finally, the UDHR closes by prohibiting the use of the UDHR to limit the enumerated freedoms.¹⁷⁸

This Article argues that while Russia is not obligated to abide by UDHR principles, it should nonetheless join the other member states of the U.N. in meeting the minimum standards outlined in the UDHR. This Article will further discuss the necessary integration of the UDHR into other obligations that Russia owes the international community, including the Council of Europe. As described in the upcoming discussion, the UDHR is integrated into other obligations that Russia has under its U.N. obligations. Finally, the Constitution already includes many of these rights. With the acknowledgment of these rights, Russia is derelict in its duties when it comes to protecting the LGBTQ community.

3. International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (“ICESCR”) was ratified by the U.N. General Assembly on December 16, 1966 and came into force on March 23, 1976.¹⁷⁹ Russia signed the ICESCR in 1968 and ratified it in 1973.¹⁸⁰ During the Forty-Sixth Session of the Committee on Economic, Social and Cultural Rights, the Committee applied ICESCR Article 2, paragraph 2 to LGBTQ rights.¹⁸¹ ICESCR Article 2, paragraph 2 states: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals . . . 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.”¹⁸²

The Committee requested that Russia provide “information concerning the extent of the practice of discrimination against lesbian, gay, bisexual and transgender persons.”¹⁸³ However, the focus of this

¹⁷⁷ *Id.* art. 20(1).

¹⁷⁸ *Id.* art. 30.

¹⁷⁹ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

¹⁸⁰ *Status of Ratification Interactive Dashboard*, U.N. HUM. RTS. OFF. OF THE HIGH COMMISSIONER, <http://indicators.ohchr.org> (last visited Mar. 10, 2019) (information accessible under the “Select a treaty” dropdown menu).

¹⁸¹ U.N. Econ. & Soc. Council, Comm. on Econ., Soc. and Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations: Russian Federation, U.N. Doc. E/C.12/RUS/CO/5 (June 1, 2011) [hereinafter CESCR Concluding Observations: Russian Federation].

¹⁸² ICESCR, *supra* note 179, art. 2.

¹⁸³ CESCR Concluding Observations: Russian Federation, *supra* note 181, ¶ 36.

request was in the areas of “employment, health care and education in the state party,” not in general.¹⁸⁴ It is important to note that there is an extension of ICESCR to include the LGBTQ community, and that there is concern regarding the discrimination against the LGBTQ community in any facet of life.

4. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (“ICCPR”) was ratified by the U.N. General Assembly on December 16, 1966 and came into force on March 23, 1976.¹⁸⁵ Russia signed the ICCPR in 1968 and ratified it in 1973.¹⁸⁶ As with the ICESCR, Russia made declarations on the ICCPR when it was ratified, however these declarations do not pertain to this article.¹⁸⁷ The ICCPR has several articles that relate to the current crises in Russia.

Article 2 of the ICCPR provides that parties will give all individuals under the party’s control the rights recognized by the ICCPR.¹⁸⁸ These rights are given without distinction of individuals.¹⁸⁹ The parties were to align their laws with the rights afforded by the ICCPR.¹⁹⁰ Finally, Article 2 recognizes a right for redress for people who have their rights or freedoms violated, and includes an enforcement arm of the government for the remedy.¹⁹¹

Article 26 goes together with Article 2 of the ICCPR. Article 26 grants all individuals equality before and in protection of the law.¹⁹² It provides that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination.”¹⁹³ The GPLs in Russia are in direct contrast to this article.

Articles 7, 9, and 10 all pertain to the freedom of an individual from punishment, from arbitrary arrest or detention, and right to dignity.¹⁹⁴ Article 7 provides that parties will not subject individuals to “torture or

184 *Id.*

185 International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

186 *See Status of Ratification Interactive Dashboard*, *supra* note 180.

187 *See id.*

188 ICCPR, *supra* note 185, art. 2(1).

189 *Id.*

190 *Id.* art. 2(2).

191 *Id.* art. 2(3).

192 *Id.* art. 26.

193 *Id.* art. 26.

194 *Id.* art. 7, 9, 10.

to cruel, inhuman or degrading treatment or punishment.”¹⁹⁵ Article 9 pertains to liberty of the individual. “No one shall be subjected to arbitrary arrest or detention.”¹⁹⁶ If an individual is arrested, the individual must be given the reason and the charges.¹⁹⁷ The individual “shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”¹⁹⁸ Finally, Article 10 provides that individuals who are “deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹⁹⁹ Given the reports of the detentions in the Northern Caucasus Region of Russia, the Russian Federation is currently in violation of Articles 7, 9, and 10 of the ICCPR.

Article 16 provides that each individual has “the right to recognition everywhere as a person before the law.”²⁰⁰ Article 17 provides that there should not be interferences with a person’s “privacy, family, home or correspondence” and there should not be defamation or attacks on one’s character.²⁰¹ Additionally, there are legal protections for the individual against any interferences.²⁰² I would argue that the concentration camps, in addition to the violation above, are in violation of these articles as they are unlawfully interfering with an individual’s privacy, family and home. Also, there appear to be no legal or state protection against these interferences, as the state is the one interfering.

The GPLs are in direct violation of Article 19 of the ICCPR. Article 19 provides that there is a right to the freedom of expression, and this freedom is without interference unless there is a national security, public health and morals, or for public order.²⁰³ While the argument can, and has been made, that the laws are for the public health and morals, these laws do not have any correlation to public health and morals. Instead, the laws are an oppression of the minority.

Article 21 is also being violated by the GPL in Russia. “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society” which are in the realms of “national security or public safety, public order (ordre public),

¹⁹⁵ *Id.* art. 7.

¹⁹⁶ *Id.* art. 9(1).

¹⁹⁷ *Id.* art. 9(2).

¹⁹⁸ *Id.* art. 9(3).

¹⁹⁹ *Id.* art. 10(1).

²⁰⁰ *Id.* art. 16.

²⁰¹ *Id.* art. 17(1).

²⁰² *Id.* art. 17(2).

²⁰³ *Id.* art. 19(1)-(3).

the protection of public health or morals or the protection of the rights and freedoms of others.”²⁰⁴ Article 22 protects the freedom of association.²⁰⁵ The argument presented by Russia and supporters of the law is the same argument as to why the law does not violate Article 19 of the ICCPR. However, the counter is still the same: the law is meant to oppress the minority, and that is the sole reason for the law.

Article 23 of the ICCPR may give the right to marriage equality to LGBTQ communities. Under Article 23, there is a “right of men and women of marriageable age to marry and . . . a family shall be recognized.”²⁰⁶ However, the way Article 23(2) is written, it can be argued that it is written to protect the right of a man and a woman to be married. Additionally, Article 23 states that “family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”²⁰⁷ Again, a conservative view of the world may read this to mean a “traditional” family.²⁰⁸ Although, when reading the language of the rest of Article 23, there could be an argument that the protections are gender neutral as Article 23(3) and Article 23(4) both refer only to “spouses” instead of “man and woman” or “husband and wife.”²⁰⁹ This more liberal interpretation may not be accepted by Russia as it appears to be more of a Western interpretation.

5. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified on December 10, 1984 by the U.N. General Assembly.²¹⁰ Russia signed the Convention in 1985 and ratified it in 1987.²¹¹ Russia gave two declarations, however, neither of them applies to the topic of this Article.²¹²

The convention defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person

²⁰⁴ *Id.* art. 21.

²⁰⁵ *Id.* art. 22.

²⁰⁶ *Id.* art. 23(2).

²⁰⁷ *Id.* art. 23(1).

²⁰⁸ The phrase “traditional family” is often meant to refer to a mother, father, and child or children.

²⁰⁹ ICCPR, *supra* note 185, art. 23(3)-(4).

²¹⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT].

²¹¹ See *Status of Ratification Interactive Dashboard*, *supra* note 180.

²¹² *Id.*

information or a confession.”²¹³ Torture also includes “any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other acting in an official capacity.”²¹⁴ As mentioned, government officials in Chechnya have used physical force and intimidation in order to gain information from detainees on other gay men in the region.²¹⁵ Additionally, the government is inflicting physical pain and suffering solely based on the men’s sexual orientation.²¹⁶

Article 2 of the convention charges each party to enact measures to prevent torture in any of its jurisdictions.²¹⁷ The convention does not allow for exceptional circumstances to engage in torture.²¹⁸ Article 4 requires parties to have laws that make torture illegal,²¹⁹ and Article 5 requires the parties to take actions as necessary when the offense is committed within its territory.²²⁰ In the case of Chechnya, the Russian Federation has jurisdiction over the Northern Caucasus region. Therefore, the federal government of Russia has a duty to prevent the torture that is being allowed in Chechnya.

Even if the actions were not considered torture under Article 1, there are additional protections. Article 16 requires the parties to

undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment . . . when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.²²¹

Again, the Russian federal government has a duty to stop and prosecute the officials in Chechnya for these acts, even if it were deemed that the acts are not torture as they are cruel and inhuman.

213 CAT, *supra* note 210, art. 1.

214 *Id.*

215 Kramer, *supra* note 115; *Chechnya Anti-Gay Violence*, *supra* note 17.

216 *Id.*

217 CAT, *supra* note 210, art. 2(1).

218 *Id.* art. 2(2).

219 *Id.* art. 4.

220 *Id.* art. 5(1)(a).

221 *Id.* art. 16.

6. Findings by the United Nations Human Rights Committee

There were many concerns raised by U.N. Human Rights Committee (“UNHRC”) in April 2015 during the seventh periodic report of Russia. Some of these concerns were related to the Northern Caucasus Region, where at the time, the region was conducting fierce counter-terrorism. The UNHRC was aware of the troubled region two years before reports of concentration camps in the Northern Caucasus Region were released.²²² Moreover, “the Committee remains concerned about the limited progress in investigating serious past and ongoing human rights violations, including unlawful and extrajudicial killings, abductions, torture and ill-treatment, secret detention and enforced disappearance” of those suspected of being or supporting terrorists.²²³ I believe that the government in the Northern Caucasus Region is using this same tactics against the LGBTQ community, which is what led to the creation of concentration camps.

The UNHRC also had several concerns and requests regarding Russia’s treatment of the LGBTQ community. These concerns arose out of the laws and actions, or inactions, of the government. One concern was that the government was not using their criminal code—which allows for a heightened charge for hate crimes—when it comes to the LGBTQ community.²²⁴ For example, the UNHRC revealed that, “article 63, paragraph 1(e)[] of the Criminal Code recognizing as aggravated circumstances the commission of an offence for reasons of . . . ‘hatred or enmity’ or ‘hate or hostility towards a given social group’ does not appear to have ever been applied to cases involving violence against LGBT individuals.”²²⁵

The UNHRC also mentioned the GPL and that it was created to “exacerbate the negative stereotypes against LGBT individuals and represent a disproportionate restriction of their rights under the Convention.”²²⁶ They acknowledged that the Russian Constitutional Court upheld the GPL.²²⁷ Additionally, the UNHRC referred to the lack of “explicit protection against discrimination on the grounds of sexual orientation and gender identity” in addition to reports that there is “discrimination, hate speech, violence against [the LGBTQ community]

222 Human Rights Comm., Concluding Observations on the Seventh Periodic Report of the Russian Federation, U.N. Doc. CCPR/C/RUS/CO/7 (Apr. 28, 2015).

223 *Id.* ¶ 7.

224 *Id.* ¶ 10.

225 *Id.*

226 *Id.*

227 *Id.*

and activists and violations of their rights to freedom of expression and assembly.”²²⁸

Finally, the UNHRC noted that in 2014, Prime Minister Dmitry Medvedev signed a decree that labeled the following as a medical condition which would inhibit the person from being able to drive: “transgender identity, bi-gender identity, asexuality, and cross-dressing.”²²⁹ While this initially prompted outcry from the West, it has since been forgotten.

The UNHRC requested that the Russian government take an official stance that it would not tolerate discrimination, stigmatization, violence, or hate speech against the LGBTQ community.²³⁰ They asked that Article 63 of the Criminal Code be applied to crimes targeted at members of the LGBTQ community,²³¹ and that the GPL be revoked through the legislative process.²³² They further requested that activists and the LGBTQ community be given the rights to assembly and freedom of expression.²³³ Finally, the Committee requested that Prime Minister Medvedev’s decree be rescinded.²³⁴

Next, the UNHRC addressed retribution toward journalists and human rights defenders. As aforementioned, there was retribution toward the journalist that shared the news of concentration camps in Chechnya. There was also retaliation against and killing of human rights defenders.²³⁵ There is a pattern of retaliation against those in opposition of the Russian government, with dissidents being threatened, harassed, suffering violence, and even dying.²³⁶ The UNHRC cited the events taking place in the Northern Caucasus at the time, and the slow response by the government.²³⁷ The UNHRC requested that the government refrain from this practice, and that the government make efforts to investigate such human rights violations.²³⁸ New cases of human rights violations must be documented and the UNHRC must investigate them.

The UNHRC raised concerns over infringements of the freedom of expression in Russia. One concern was related to the legal proceedings

228 *Id.*

229 *Id.*

230 *Id.*

231 *Id.*

232 *Id.*

233 *Id.*

234 *Id.*

235 *Id.* ¶ 18.

236 *Id.*

237 *Id.*

238 *Id.*

against the punk band, Pussy Riot.²³⁹ As aforementioned, this was the start of the government's crackdown of those opposed to the LGBTQ policies in Russia, and led to threats against other artists with similar views.²⁴⁰ Another measure taken by Russia was a federal law that gave prosecutors the unilateral power to block access to online news outlets and to websites that advertised any public gathering that appeared to involve government opposition.²⁴¹ These sites included those that organized LGBTQ events.²⁴²

B. Council of Europe Obligation: Convention for the Protection of Human Rights and Fundamental Freedoms

Russia has international obligations to a regional organization called the Council of Europe, which is different than the European Union.²⁴³ According to its website, "the Council of Europe brings together governments from across Europe . . . to agree minimum legal standards in a wide range of areas."²⁴⁴ Additionally, the Council "monitors how well countries apply the standards that they have chosen to sign up to."²⁴⁵ On February 28, 1996, Russia joined the Council of Europe as the thirty-ninth member state out of forty-seven.²⁴⁶

The Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention")²⁴⁷ was signed by the Russian Federation on February 28, 1996.²⁴⁸ Russia ratified the Convention on May 5, 1998 and it went into force on the same day.²⁴⁹

²³⁹ Human Rights Comm., *supra* note 222, ¶ 19.

²⁴⁰ Kirit Radia, *Lady Gaga, Madonna Facing Punishment in Russia*, ABC NEWS (Aug. 4, 2013), <http://abcnews.go.com/blogs/entertainment/2013/08/lady-gaga-madonna-facing-punishment-in-russia/>.

²⁴¹ Human Rights Comm., *supra* note 222, ¶ 19.

²⁴² *Id.*

²⁴³ See *The Council of Europe and the European Union: Different Roles, Shared Values*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/portal/european-union> (last visited Mar. 2, 2019).

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ See *Russian Federation – 47 States, One Europe*, COUNCIL OF EUROPE, <http://www.coe.int/en/web/portal/russian-federation> (last visited Mar. 2, 2019).

²⁴⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR].

²⁴⁸ *Chart of Signatures and Ratifications of Treaty 005*, COUNCIL OF EUROPE, <http://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/005/signatures> (last visited Mar. 10, 2019).

²⁴⁹ *Id.*

The Convention is based on the U.N. Declaration of Human Rights (the “Declaration”) and appears to embody the Declaration in a Convention signed by its members.²⁵⁰ The signing parties agreed that they “shall secure to everyone within their jurisdiction the rights and freedoms”²⁵¹ which include, among other things, the right to: (1) life;²⁵² (2) be free of torture;²⁵³ (3) liberty;²⁵⁴ (4) a fair trial and no punishment without such;²⁵⁵ (5) privacy;²⁵⁶ (6) expression;²⁵⁷ (7) assembly/association;²⁵⁸ (8) be free of discrimination;²⁵⁹ (9) be free of the abuse of the individual’s rights;²⁶⁰ and (10) protection of human rights already in existence.²⁶¹ Russia has issued reservations to Article 5, such that parts of Article 5 of the Convention do not apply to Russia.²⁶² The following will be a brief discussion of the different articles and will include the reservations.

1. Obligation to the Right to Life: Article 2

Article 2 of the Convention protects an individual’s right to life through the law.²⁶³ This right may only be subverted through a court sentence for a crime punishable by the death penalty.²⁶⁴ This allowance may exist to appease states allowing for the death penalty, while attempting to get some recognition for human rights. Other exceptions to Article 2 include self-defense, defense of others, lawful detention by an officer, or in the event of “riot or insurrection.”²⁶⁵ As previously noted, Russia did not issue a reservation on this Article. Thus, the extrajudicial killings in Chechnya is in contradiction with this obligation, as the deaths did not come from a court-ordered sentencing.

²⁵⁰ See *What is the European Convention on Human Rights?*, EQUAL. & HUM. RTS. COMM’N, <https://www.equalityhumanrights.com/en/what-european-convention-human-rights> (last updated Apr. 19, 2017).

²⁵¹ ECHR, *supra* note 247, art. 1.

²⁵² *Id.* art. 2.

²⁵³ *Id.* art. 3.

²⁵⁴ *Id.* art. 5.

²⁵⁵ *Id.* art. 6-7.

²⁵⁶ *Id.* art. 8.

²⁵⁷ *Id.* art. 10.

²⁵⁸ *Id.* art. 11.

²⁵⁹ *Id.* art. 14.

²⁶⁰ *Id.* art. 17.

²⁶¹ *Id.* art. 53.

²⁶² *Chart of Signatures and Ratifications of Treaty 005*, *supra* note 248.

²⁶³ ECHR, *supra* note 247, art. 2(1).

²⁶⁴ *Id.*

²⁶⁵ *Id.* art. 2(2)(a)-(c).

2. Obligation to the Prohibition of Torture: Article 3

The protection against torture is embedded in Article 3 of the Convention, stating that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.”²⁶⁶ Since Russia did not claim a reservation to this Article, Russia must abide by it. The on-going crisis in Chechnya is in direct violation of Article 3, and thus, Russia has an international obligation to end its human rights violations in Chechnya.

3. Obligation to Protect the Right to Liberty and Security: Article 5

Article 5 of the Convention protects an individual’s right to liberty. This is one of the two articles within the Convention (that are mentioned in this Article) that Russia has issued a reservation for when ratifying the Convention.

There are certain paragraphs of Article 5 that do not have an attached reservation. The right to liberty is not absolute. One does not have the right to liberty if they have been lawfully arrested or detained after a competent court has issued an order.²⁶⁷ Additionally, a person does not have the right to liberty in the name of national security when they have unlawfully entered into the country.²⁶⁸ However, the more troubling lack of protection of liberty, and the one most likely cited by Russia, is the lack of protection when it is “the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants.”²⁶⁹ This provision is troubling as homosexuality and transgender have historically been classified as mental illnesses.²⁷⁰ If the state recognizes this as true, then it would exempt those identifying with the LGBTQ community from the right to liberty. Furthermore, the HIV and AIDS epidemic hit the LGBTQ community in a disproportionate rate. HIV/AIDS is considered an

²⁶⁶ *Id.* art. 3.

²⁶⁷ *Id.* art. 5(1)(a)-(d).

²⁶⁸ *Id.* art. 5(1)(f).

²⁶⁹ *Id.* art. 5(1)(e).

²⁷⁰ See Neel Burton, *When Homosexuality Stopped Being a Mental Disorder*, PSYCHOLOGY TODAY (Sep. 18, 2015), <https://www.psychologytoday.com/us/blog/hide-and-peek/201509/when-homosexuality-stopped-being-mental-disorder>; see also *Sexual Orientation & Homosexuality*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <https://www.apa.org/topics/lgbt/orientation>; see also *Transgender People, Gender Identity and Gender Expression*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <https://www.apa.org/topics/lgbt/transgender>; see also Caroline Simon, *Being Transgender No Longer Classified as Mental Illness. Here’s Why*, USA TODAY (June 20, 2018 7:46 PM), <https://www.usatoday.com/story/news/2018/06/20/transgender-not-mental-illness-world-health-organization/717758002/>.

infectious disease. Thus, those in the LGBTQ community with HIV/AIDS may also be exempt from the guaranteed freedom of liberty.

Article 5 provides circumstances for when the right to freedom is enforced. It states that detainees have the right to know what the charges are that led to the individual's arrest.²⁷¹ This information must be given to an individual in the person's native language, or any other language that an individual understands.²⁷² Anyone that has this right violated has the right to receive compensation.²⁷³

There are two provisions which Russia has made reservations on under Article 5, which gives an individual the right to be heard before a judicial body within a reasonable amount of time.²⁷⁴ This provision also allows for release from detention pending trial.²⁷⁵ It also allows an individual to bring an unlawful detainment action such as a violation of the Convention, and have a judicial ruling on the lawfulness of their detention.²⁷⁶ Russia made a reservation based on "the second paragraph of point 6 of Section Two of the 1993 Constitution of the Russian Federation" which is the procedure for arrest and detention for criminal matters.²⁷⁷ Russia cited "Articles 51-53 and 62 of the Disciplinary Regulations of the Armed Forces of the Russian Federation," which allow and proscribe the procedures for "arrest and detention in the guard-house as a disciplinary measure imposed under extra-judicial procedure on servicemen[.]"²⁷⁸ These reservations were enacted temporarily, while new laws were being considered to ensure the laws of Russia aligned with their international obligations. The Constitution has been amended since this time.

4. Right to A Fair Trial: Article 6; Right to No Punishment Without Law: Article 7

Articles 6 and 7 of the Convention go hand in hand. While Article 6 provides that everyone has the right to a fair trial, the public is not always entitled to view the trial.²⁷⁹ However, the judgment must be made

271 ECHR, *supra* note 247, art. 5(2).

272 *Id.*

273 *Id.* art. 5(5).

274 *Id.* art. 5(3).

275 *Id.*

276 *Id.* art. 5(4).

277 *Chart of Signatures and Ratifications of Treaty 005*, *supra* note 248.

278 *Id.*

279 ECHR, *supra* note 247, art. 6(1).

available for publication in the press.²⁸⁰ This applies to any “determination of his civil rights and obligations or of any criminal charge. . .”²⁸¹ Additionally, there is a presumption of innocence, and there are five minimum rights that are made available to a defendant.²⁸² The government in Chechnya has disregarded this right to a fair trial through its unlawful detentions of LGBTQ persons.

Article 7 provides that an individual not be punished without there being a law proscribing such a punishment. “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.”²⁸³ Chechnya is currently holding gay men in detention solely on the basis of their sexual orientation.²⁸⁴ While Russia has the GPL, there has been no statute explicitly illegalizing homosexual acts in Russia since 1993.²⁸⁵ Chechnya’s detention of gay men is in contravention of Article 7.

5. Right to Respect for Private and Family Life: Article 8

Russia has violated Article 8 of the Convention through its oppressive acts in Chechnya. Article 8 guarantees an individual the “right to respect for his private and family life, his home and his correspondence.”²⁸⁶ The only exception to this rule is for the protection of the “democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”²⁸⁷ In Chechnya, the violations of the right to a private life is not being done in the interest of a democratic society, but instead its purpose is to target a minority.

280 *Id.*

281 *Id.*

282 *Id.* art. 6(1).

283 *Id.* art. 7(1).

284 *End Abuse and Detention of Gay Men in Chechnya, UN Human Rights Experts Tell Russia*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (Apr. 13, 2017), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21501>.

285 See Schaaf, *supra* note 55, at 24.

286 ECHR, *supra* note 247, art. 8(1).

287 *Id.* art. 8(2).

6. Freedom of Expression: Article 10; Freedom of Assembly and Association: Article 11

Russia has also violated Articles 10 and 11 of the Convention by enacting and enforcing the GPL. Article 10 of the Convention provides the right of freedom of expression.²⁸⁸ “This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”²⁸⁹ While these rights “may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society,” the laws outlawing anything that the Russian government deems as gay propaganda that is subjecting minors to the LGBTQ community are unnecessary for a democratic society. A democratic society is one with freedom of information and movement. By silencing the freedoms of expression, Russia has violated the rights of the people and organizations in expressing necessary information to and regarding the LGBTQ community.

Article 11 grants “the right to freedom of peaceful assembly and to freedom of association with others”²⁹⁰ The only permissible restrictions that may be placed on this right are those that “are necessary in a democratic society” and those that “are prescribed by law”²⁹¹ While Russia has since enacted legislation that oppresses the freedom of peaceful assembly and association through the GPL, these laws were enacted after signing and ratifying the Convention. This would make such laws at odds with the international obligations. However, in 2015 Russia’s Supreme Court ruled that the Russian national sovereignty has precedent over the international obligations.²⁹² Therefore, under Russian law, both Article 10 and Article 11 may be subordinated to the GPL and other international laws that would require that Russia stop this type of oppression.

7. Prohibition of Discrimination: Article 14

Article 14 is an important article to human rights, even though it is slightly buried in the Convention. Article 14 guarantees all the rights in

²⁸⁸ *Id.* art. 10.

²⁸⁹ *Id.* art. 10(1).

²⁹⁰ *Id.* art. 11(1).

²⁹¹ *Id.* art. 11(2).

²⁹² See *Russian Constitutional Court Gets Priority Over International Courts in New Bill*, RT (Nov. 18, 2015, 1:11 PM), <https://www.rt.com/politics/322560-mps-draft-bill-setting-russian>.

the Convention to every individual.²⁹³ This guarantee is made regardless of several typically protected statuses, such as sex, religion, and race.²⁹⁴ This guarantee to any “other status” indicates that the drafters intended for it to include all discrimination. Russia has violated of this article by discriminating against the LGBTQ community in violation of the aforementioned articles.

8. Prohibition of Abuse of Rights: Article 17

Article 17 is relevant in refuting the claim that Article 5 allows for discrimination. Article 17 states that the Convention does not give the state “any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein . . . makes reference.”²⁹⁵ This article may be invoked for any claim that the discrimination is necessary to protect a democratic society, but does not require proof that a democratic society would be at risk by allowing the LGBTQ community to enjoy the rights set forth in the Convention. This argument is implausible given that several other democratic societies allow the LGBTQ community to have these protections without a threat. Furthermore, the Council of Europe would be encouraged to take this stance.

9. Safeguard for Existing Human Rights: Article 53

Article 53 explicitly states that the Convention does not subvert any other human rights that may be given by law or other international agreement.²⁹⁶ This means that the Convention does not limit the international obligations of Russia under the U.N. Charter and the treaties that Russia has signed and ratified.

C. Council of Europe Obligation: European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Russia is obligated under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or

²⁹³ ECHR, *supra* note 247, art. 14.

²⁹⁴ *Id.*

²⁹⁵ *Id.* art. 17.

²⁹⁶ *Id.* art. 53.

Punishment.²⁹⁷ Russia signed the instrument on February 28, 1996,²⁹⁸ and ratified the document on May 5, 1998.²⁹⁹ This convention came into effect on September 1, 1998,³⁰⁰ and Russia signed it without reservations.³⁰¹

This convention establishes and authorizes entry by a committee into the sovereign places of a member State.³⁰² This committee is granted the authority to investigate areas where there is a deprivation of rights.³⁰³ This committee “by means of visits, examine[s] the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.”³⁰⁴ This committee should use their rights to enter the Northern Caucasus region of Russia to investigate the ongoing crisis in Chechnya.

VI. PROPOSALS FOR CHANGE AND FUTURE RESEARCH

Russia must investigate and shut down the concentration camps in Chechnya. The U.N. and the Council of Europe must take affirmative steps to investigate this situation and to sanction these discriminatory practices. These steps must be taken immediately, as lives are at stake. Russia must give the U.N. and the Council of Europe unfettered access to Chechnya and to the victims of the crisis.

Russia needs to re-evaluate the GPL and its legality, by repealing the law, and creating a system in order to avoid the creation of any future discriminatory laws that target minority groups in Russia. Furthermore, Russia must take immediate action to denounce the homophobic attacks. Hate crimes should be investigated as they were meant to be under the law. The practice of victim blaming must end. This change will require a cultural shift within the government, specifically with the police force. The U.N. and the Council of Europe must step up to the plate and challenge Russia on this law, and the atrocities toward the LGBTQ

²⁹⁷ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Nov. 26, 1987, 1561 U.N.T.S. 363 [hereinafter CPT].

²⁹⁸ See *Chart of Signatures and Ratifications of Treaty 126*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/126/signatures> (last visited Mar. 10, 2019).

²⁹⁹ See *id.*

³⁰⁰ See *id.*

³⁰¹ See *id.*

³⁰² CPT, *supra* note 297, art. 1.

³⁰³ *Id.*

³⁰⁴ *Id.*

community. Both bodies must act, act soon, and do so without hesitation as the atrocities continue as Russia goes largely unchecked.

Russia must reverse and rewrite the laws that are disguised as national security laws, but instead target NGOs. The laws can be reworked to achieve the goal of national security without wrongfully targeting NGOs. Here as well, the U.N. and the Council of Europe have a duty to act and must do so soon to avoid further closing of NGOs, especially those important NGOs that are focused on human and LGBTQ rights.

There is room for future research into the human rights violations in Russia. This includes specific research into the impact of the GPL and the discrimination at large on the LGBTQ community. Research should be conducted on the rights of those living with HIV/AIDS in Russia. There may be discrimination against those living with HIV/AIDS that is in tandem with the discrimination against the LGBTQ community. This includes any indication that Article 5(1)(e) of the Convention for the Protection of Human Rights and Fundamental Freedoms is being used as a tool to allow for the lack of protections. There may be additional violations against those with HIV/AIDS that are separate from the violations against the LGBTQ community.

Another area of research that this Article did explore is the freedom of marriage. While this is an evolving area of law across the globe, there seems to be no movement forward in Russia. As this article discussed, other aspects of the lives of members of the LGBTQ community have been impacted by other human rights violations and discrimination. The history of marriage equality, the current state of marriage equality, and the future of marriage equality in Russia warrant their own articles.

Furthermore, there should be an extensive review and discussion of transgender rights in Russia. While transgender rights around the world continue to develop, they often develop separately and at a different pace than the rest of the LGBTQ community's rights. This area of the law should be brought to the attention of the international community, both in Russia and in other nations. While I do not condone such a separation of transgender rights from LGBTQ rights, I support an individualized and extensive look at these rights which should not be overshadowed by other violations of human rights.

Finally, there should be a more extensive review of other human rights violations in Russia which are in contradiction to the Constitution and international obligations, including the rights of the disabled and sick, and the oppression of political rights.

VII. CONCLUSION

While there are numerous human rights violations around the world, many of these violations concern the LGBTQ community. In Russia, the LGBTQ community has not only been targeted by laws, but also by the government for internment and even death. Russia owes the LGBTQ and international community the duty of ensuring the human rights of the LGBTQ community. However, the international community has a duty to step in and protect the LGBTQ community of Russia, as they have the legal ability to do so. With the discriminatory laws such as the GPL and oppressive government acts, NGOs are unable to protect and support the LGBTQ community. It is time for the international community to fill the void left by both inaction of Russia and the international community, and the wrongful actions on behalf of the Russian government.

In addition, Russia is in violation of its own constitution. The violations are numerous and blatant. The Constitutional Court has turned a blind eye and effectively signed off on such widespread discrimination. The people of Russia have a civic duty to correct these wrongs through the democratic process. However, if Russia is not willing to make these necessary changes domestically, the international community must pressure on Russia to change the discriminatory laws and end the discriminatory practices. Many nations, in addition to the U.N. and the Council of Europe, have the opportunity to influence Russia in this way, and must take action quickly to prevent further detriment to the LGBTQ community.