



LAW AMENDMENTS BANNING THE PROMOTION OF HOMOSEXUALITY

*“On introduction of Changes to Certain Legislative Acts
of Ukraine (regarding protection of children’s rights on
the safe information sphere)”*

DRAFT LAW INITIATIVE # 8711

Frequently Asked Questions

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Question 1. What is the epidemiological situation regarding HIV and sex between men in Ukraine and neighboring countries?

- 1.1 Eastern Europe and Central Asia faces the fastest growing HIV epidemics in the world, with the region witnessing a 250% increase in the number of people living with HIV from 2001 to 2010.¹ According to recent reports, Ukraine is experiencing the most severe HIV epidemic in Eastern Europe and the Commonwealth of Independent States.² The prevalence of HIV infection among the general population of adults in 2009 was 1% in the Russian Federation and 1.1% in Ukraine. Together, the Russian Federation and Ukraine account for almost 90% of people newly diagnosed with HIV in the region.³ The rate of newly diagnosed HIV infections in 2010 was 36.4 per 100 000 population in Ukraine, which is the second highest rate in the region after the Russian Federation.⁴
- 1.2 HIV prevalence among men who have sex with men (MSM) in post-soviet region ranges from 5% in Georgia, 6% in the Russian Federation with a large disparity in MSM prevalence in Ukraine ranging 1.4% (in Chernigov) and 20% (in Donetsk).⁵ It is presumed that HIV prevalence among MSM is largely under-reported due to the social stigma associated with sexual relations between men.⁶ However, a recent national seroprevalence study reported a 6.4% HIV prevalence rate among MSM.⁷ Ukrainian surveillance studies suggest that many MSM (around one third) also have sex with women, which highlights the importance of having an effective prevention and treatment for MSM as an essential component of a broader public health strategy.⁸

Question 2. What are the implications for HIV, health and development in Ukraine if this proposed legislation was passed?

- 2.1 While Ukraine was the first former-Soviet Republic to decriminalise consensual sexual relations among adult men in 1991, high levels of stigma and discrimination of people based on their sexual orientation have been reported. Stigma regarding “homosexuality” remains strong in Ukraine, and is increasing

¹ UNAIDS, (2011), *World AIDS Day Report 2011*. Available at:

http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2216_WorldAIDSday_report_2011_en.pdf.

² UNGASS 2012, *Ukraine Harmonized AIDS Response Progress Report, Ministry of Health, Reporting Period Jan. 2010-Dec. 2011*. Available at:

[http://www.unaids.org/en/dataanalysis/monitoringcountryprogress/progressreports/2012countries/ce_UA_Narrative_Report\[1\].pdf](http://www.unaids.org/en/dataanalysis/monitoringcountryprogress/progressreports/2012countries/ce_UA_Narrative_Report[1].pdf)

³ WHO, (2011), *Key facts on HIV epidemic and progress in regions and countries in 2010, Eastern Europe and Central Asia, Progress Report 2011: Global HIV/AIDS Response*. Available at:

http://www.who.int/hiv/pub/progress_report2011/regional_facts/en/index2.html.

⁴ WHO Europe, (2012), *Ukraine HIV/AIDS Country Profile*. Available at:

http://www.euro.who.int/_data/assets/pdf_file/0009/158472/UKR-HIVAIDS-Country-Profile-2011-rev1.pdf.

⁵ UNGASS 2012, *Ukraine Country Report, Sentinel epidemiological study of HIV organized in the framework of integrated bio-behavioural research in 2011 among most at risk populations*. Available at:

[http://www.unaids.org/en/dataanalysis/monitoringcountryprogress/progressreports/2012countries/ce_UA_Narrative_Report\[1\].pdf](http://www.unaids.org/en/dataanalysis/monitoringcountryprogress/progressreports/2012countries/ce_UA_Narrative_Report[1].pdf)

⁶ *Ibid.* See also, Global Commission on HIV and the Law, (2011), *Eastern Europe and Central Asia Regional Issue Brief*, available at: <http://hivlawcommission.org/images/stories/EECA - RIB.pdf>; Beyrer, C., et al, (2011), *The Global HIV Epidemics among Men Who Have Sex with Men (MSM)*, The World Bank, available at:

<http://siteresources.worldbank.org/INTHIVAIDS/Resources/375798-1103037153392/MSMReport.pdf>

⁷ *Supra* Note 5.

⁸ *Supra* Note 5. See also: *Monitoring the Behavior and HIV Infection Prevalence Among Men Who Have Sex With Men as a Component of Second Generation Surveillance*, 2009.

with half (46.7%) of Ukrainians thinking homosexuals should not have the same rights as other citizens.⁹ MSM tend to avoid government healthcare facilities out of fear of being discriminated against by health providers at all levels. Confidentiality is also an issue in Ukraine, with many HIV-positive gay men reluctant to seek out medical care because of concerns that their status will be disclosed without their consent. As a result, many live in complete isolation.¹⁰

- 2.2 To further compound the situation, on 16 May 2012, the Committee on Freedom of Expression and Information of the Ukrainian Parliament recommended to the Parliament to adopt the law initiative # 8711, that would effectively limit the freedom of speech of mass media and criminalise LGBT human rights work in Ukraine.¹¹ More precisely, the proposed legislation is supposedly protecting “the right of children to a safe information environment.” This draft law included “promotion of homosexuality” or “production/distribution of products which promote homosexuality” to (i) an existing list of prohibited activities relating to public morals; (ii) regulation of media publishing; and (iii) the Criminal Code.¹² If adopted, the law would stipulate an imprisonment of up to five years and would criminalise the so-called “cult of homosexuality”.¹³ The proposed legislation # 8711 will worsen prevailing stigma and prejudice, and further restrict the rights of MSM.¹⁴
- 2.3 The success or failure of HIV programming is highly dependent upon the legal framework within the country.¹⁵ Discriminatory legal frameworks encourage discriminatory and homophobic treatment, which drives MSM ‘underground’, further marginalising this vulnerable population and curbing their access to necessary HIV and health services.¹⁶ Evidence collected by UNDP indicates that the greatest challenge

⁹ *Ibid.* See also: ILGA Europe, (2011), *Annual Review of the Human Rights Situation of LGBTI People in Europe*. Available at:

[http://www.ilga-](http://www.ilga-europe.org/media_library/ilga_europe/publications/reports_and_other_publications/annual_review_2011/files/annual_review_2011)

[europe.org/media_library/ilga_europe/publications/reports_and_other_publications/annual_review_2011/files/annual_review_2011](http://www.ilga-europe.org/media_library/ilga_europe/publications/reports_and_other_publications/annual_review_2011/files/annual_review_2011); Nash Mir Center 2010 Survey. Available at:

www.ilga-europe.org/home/guide/country_by_country/ukraine/overview_of_lgbt_human_rights_situation_in_ukraine_in_2010.

¹⁰ amfAR and Johns Hopkins Bloomberg School of Public Health, (2012), *Achieving an AIDS-free Generation for Gay Men and Other MSM*. Available at:

http://www.amfar.org/uploadedFiles/amfar.org/In_The_Community/Publications/MSM-GlobalRept2012.pdf

¹¹ IGLA Europe, *Ukrainian Parliament Discusses Amendments Banning the Promotion of Homosexuality*. Available at:

http://www.ilga-europe.org/home/news/for_media/media_releases/ukrainian_parliament_discusses_law_amendments_banning_the_promotion_of_homosexuality

¹² Original Law Amendments: http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=40734

¹³ ILGA Europe, (2011), *Annual Review of the Human Rights Situation of LGBTI People in Europe*. Available at:

http://www.ilga-europe.org/media_library/ilga_europe/publications/reports_and_other_publications/annual_review_2011/files/annual_review_2011

¹⁴ NASH MIR (Our World) Gay & Lesbian Centre, (2011), *Overview: Situation of LGBT people in Ukraine*. Available at:

<http://www.gay.org.ua/pride/lgbt-ukraine.pdf>; Amnesty International Media Briefing, (2012), *Ukraine Euro 2012 jeopardised by criminal police force*, AI Index: EUR 05/005/2012, April 30 2012. Available at:

<http://www.amnesty.ch/de/laender/europa-zentralasien/ukraine/dok/polizeigewalt-im-austragungsland-der-euro-2012/briefing-ukraine-euro-2012-jeopardised-by-criminal-police-force.-april-2012.-7-seiten>; Beyrer, C., et al,

(2011), *The Global HIV Epidemics among Men Who Have Sex with Men (MSM)*, The World Bank, available at:

<http://siteresources.worldbank.org/INTHIVAIDS/Resources/375798-1103037153392/MSMReport.pdf>.

¹⁵ The Global Commission on HIV and the Law, (2012), *HIV and the Law: Risks, Rights & Health*, Report EMBARGOED until 9 July 2012, and will be made available on the Commission Website: www.hivlawcommission.org.

¹⁶ Global Commission on HIV and the Law, (2011), *Eastern Europe and Central Asia Regional Issue Brief*, available at: <http://hivlawcommission.org/images/stories/EECA - RIB.pdf>. See also: UNDP, (2010), *Report exploring the link*

facing MSM in Eastern European countries is the stigmatisation of their sexual orientation by society and health care providers.¹⁷ MSM consequently delay or refrain from accessing the required health services due to fears of discrimination, humiliation and violence.¹⁸

- 2.4 Consequently, the proposed legislation constitutes state-supported discrimination against MSM and LGBT groups, preventing them from accessing information regarding available prevention and treatment services. With the stigma working as a deterrent to health care access, efforts to prevent new infections and onward transmission among MSM, and the wider population would be severely undermined.

Question 3. How are the concerns regarding Ukrainian public morality, child welfare, and the HIV epidemic addressed in the proposed legislation?

- 3.1 The draft legislation is designed to prohibit homosexual “propaganda” allegedly in order to protect children and families, preserve public morals, and prevent a demographic crisis.¹⁹ The proposed law would ban the distribution of all information through mass media regarding homosexuality, imposing steep fines or imprisonment for engaging in such activities.²⁰ In an explanatory note, Members of Parliament – authors of the draft law attempted to justify the proposed legislation, claiming that “the spread of homosexuality is a threat to national security, as it leads to the epidemic of HIV/AIDS and destroys the institution of the family and can cause a demographic crisis.”²¹
- 3.2 The draft legislation is motivated by the misconception that homosexuality is a perversion or mental disease,²² despite the unequivocal conclusion by national and international sources that homosexuality is not a disorder. In 1990, the World Health Organization removed homosexuality from the International Classification of Diseases (ICD). This was seen as an important step in combating stigma and discrimination against homosexuals.²³ Since 1 January 1999 ICD are fully operational in Ukraine.
- 3.3 The protection of Ukrainian children does not call for the prohibition of free speech regarding same-sex romantic and/or sexual relations. Expert evidence identifies sexual orientation as a natural part of human development occurring prior to or during adolescence.²⁴ The UN Committee on the Rights of the Child has confirmed that the non-discrimination provision in the Convention on the Rights of the Child covers adolescents’ sexual orientation and health status (including HIV/AIDS)²⁵, and mandates access to appropriate information, support, services and necessary protection.²⁶

between MSM with homophobia and HIV/AIDS in countries: Bosnia and Herzegovina, Croatia, Montenegro and Serbia, available at: <http://www.undp.hr/upload/file/266/133038/FILENAME/MSM.pdf>.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Supra Note 11.*

²⁰ *Supra Note 13.*

²¹ *Ibid.*

²² *Ibid.* See also: NASH MIR (Our World) Gay & Lesbian Centre, (2011), *Overview: Situation of LGBT people in Ukraine*. Available at: <http://www.gay.org.ua/pride/lgbt-ukraine.pdf>; Beyrer, C., et al, (2011), *The Global HIV Epidemics among Men Who Have Sex with Men (MSM)*, The World Bank, available at: <http://siteresources.worldbank.org/INTHIVAIDS/Resources/375798-1103037153392/MSMReport.pdf>.

²³ WHO, (2011), *Stop Discrimination Against Homosexual Men and Women*, May 17 2011. Available at: <http://www.euro.who.int/en/what-we-do/health-topics/communicable-diseases/hivaids/news/news/2011/6/stop-discrimination-against-homosexual-men-and-women>

²⁴ Amnesty International, (2008), *Love, Hate and The Law: Decriminalizing Homosexuality*. Available at: <http://www.amnesty.org/en/library/asset/POL30/003/2008/en/d77d0d58-4cd3-11dd-bca2-bb9d43f3e059/pol300032008eng.html#sdendnote91anc>. See for example, *Sutherland v. United Kingdom*, (1997) 24 EHRR CD22 (European Commission of Human Rights).

²⁵ *Committee on the Rights of the Child, General Comment No. 4, para.6*, available at:

- 3.4 Decriminalisation of same-sex sexual relations concerns sexual relations between **consenting adults**. It does not allow for non-consensual relations. All non-consensual or coerced sexual acts, whether committed in the context of heterosexual or homosexual sexual relations, constitute criminal offences and should remain prohibited under criminal law. When any adult has sex with a child, under 16 years old, be it heterosexual sex or homosexual sex, it constitutes “defilement”, a criminal offense. The decriminalisation of same-sex relations does not legalise either pedophilia or defilement.²⁷
- 3.5 Traditional family values are not at risk if freedom of speech is upheld to promote the dissemination of necessary health information. Article 3 of the Family Code of Ukraine defines family as “the primary and basic unit of society...composed of persons that live together, have joint household, mutual rights and responsibilities.”²⁸ According to this definition, homosexual couples, while unable to marry in Ukraine, are not precluded from being recognised as a family unit under Ukraine law.

Question 4. What are the international, regional and national legal standards that are violated by Ukraine’s proposed legislation?

- 4.1 This proposed legislation contravenes a number of international agreements ratified by Ukraine, along with basic human rights principles in national law. These fundamental rights include the right to **equality and dignity, freedom from discrimination and freedom of speech, assembly, and access to information**, embodied in the Universal Declaration of Human Rights²⁹, European Convention on Human Rights³⁰, Convention on the Rights of the Child³¹, International Covenant on Civil and Political Rights³², the United Nations Resolution on Sexual Orientation and Gender Identity³³, and Declaration on Human Rights Defenders³⁴. Ukraine also adopted the UN Human Rights Council resolution and joint statement dedicated towards “ending acts of violence and related human rights violations based on sexual orientation and gender identity,”³⁵ and is required to respect these in its domestic policy.

[http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/504f2a64b22940d4c1256e1c0042dd4a/\\$FILE/G0342724.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/504f2a64b22940d4c1256e1c0042dd4a/$FILE/G0342724.pdf).

²⁶ *Ibid*, para. 23. See also: *Committee on the Rights of the Child, Concluding observations: United Kingdom of Great Britain and Northern Ireland*, CRC/C/15/Add.188, October 9, 2002, para.43. Available at:

<http://www.unhcr.org/refworld/type,CONC/OBSERVATIONS,,GBR,3df58f087,0.html>.

²⁷ Patrice Corriveau, (2011), *A History of Gay Persecution in Quebec and France*; Steven Angelides, (2009), *The Homosexualization of Pedophilia – The Case of Alison Thorne and the Australian Pedophile Support Group*, in *Homophobias: Lust and Loathing Across Time and Space*.

²⁸ Family Code of Ukraine, available at:

http://www.mfa.gov.ua/data/upload/publication/usa/en/7148/family_kideks_engl.pdf

²⁹ *Universal Declaration of Human Rights*, (1948), available at:

http://www.un.org/events/humanrights/2007/hrphotos/declaration%20_eng.pdf

³⁰ *European Convention on Human Rights*, available at: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf

³¹ *Convention on the Rights of the Child*, available at: <http://www2.ohchr.org/english/law/crc.htm>

³² *International Covenant on Civil and Political Rights*, available at: <http://www2.ohchr.org/english/law/ccpr.htm>

³³ A/HRC/17/L.9/Rev. 1, *Res. on Human Rights, Sexual Orientation and Gender Identity*, HRC 17th Sess. May 30-June 17, 2011. Available at: [http://daccess-dds-](http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G11/141/94/PDF/G1114194.pdf?OpenElement)

[ny.un.org/doc/UNDOC/LTD/G11/141/94/PDF/G1114194.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G11/141/94/PDF/G1114194.pdf?OpenElement)

³⁴ *Declaration on Human Rights Defenders*, available at:

<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>

³⁵ *Joint statement on ending acts of violence and related human rights violations based on sexual orientation & gender identity*, available at: <http://www.iglhr.org/binary-data/ATTACHMENT/file/000/000/491-1.pdf>

- 4.2 The European Convention on Human Rights (ECHR), prohibits signatories from restricting freedom of expression and association (Article 10; Article 11), particularly for vulnerable minorities such as LGBT groups, and forbids discrimination on all grounds, including on the basis of sexual orientation.³⁶ For instance, the European Court of Human Rights recently ruled that the ban of LGBT demonstration organised by GENDERDOC-M in Moldova in May 2005 was contradictory to Articles 11, 13 and 14 of the ECHR, and the Republic of Moldova has been condemned to pay GENDERDOC-M 11,000 Euros within three months.³⁷ Therefore, as a State Party to the ECHR, Ukraine could incur the risk of being condemned by the European Court of Human Rights if it passes the drafted law amendments, as the country would violate the LGBT's rights to peaceful assembly and to be free from discrimination as defined in the Convention.³⁸ In addition, Ukraine's adoption of the Committee of Ministers of the Council of Europe recommendations for combatting discrimination based on sexual orientation or gender identity (Article 8; Article 16)³⁹, reflects political will of Ukraine at the international level to protect LGBT people, including men who have sex with men from further subjugation and marginalisation.
- 4.3 The proposed legislation also runs afoul of Ukraine's own Constitution⁴⁰, jeopardising inalienable and inviolable human rights and freedoms guaranteed within it. These include: **equality, dignity and freedom from discrimination**: Articles 21, 24 and 28; **freedom to develop personality**: Article 23; **privacy**: Articles 31 and 32; **freedom of thought, speech and expression**: Article 34; **freedom to collect, store, use and disseminate information**: Article 34; **freedom of association**: Article 36; and the right to **health protection, medical care, and medical insurance**: Article 49.
- 4.4 While Ukraine has taken a progressive initiative with the implementation of the Law of Ukraine on the State AIDS Programme for Prevention, Treatment, Care and Support to HIV-Infected Persons and People Living with AIDS for 2009-2013, further success in combatting the HIV epidemic requires a concerted approach with an emphasis on information distribution, awareness spreading and access to support and treatment services for all.⁴¹ Therefore, the proposed legislation # 8711 would be in total conflict and would negatively impact the implementation of the State AIDS Programme.⁴²

³⁶ Supra Note 33. See Article 14 and Protocol No. 12.

³⁷ European Court of Human Rights, *Genderdoc-M v. Moldova* (Application no. 9106/06), 12 June 2012. Available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=9106/06&sessionid=99356866&skin=hudoc-en>. See also: *European Court: Moldova's ban on LGBT demonstration violated human rights*, (12 June 2012), Joint media release by International Commission of Jurists and ILGA-Europe, available at: http://ilga-europe.org/home/news/for_media/media_releases/european_court_moldova_s_ban_on_lgbt_demonstration_violated_human_rights.

³⁸ The European Convention on Human Rights is applicable at national level. It has been incorporated into the legislation of the States Parties, which have undertaken to protect the rights defined in the Convention. Domestic courts therefore have to apply the Convention. Otherwise, the European Court of Human Rights would find against the State in the event of complaints by individuals about failure to protect their rights. Please see: European Court of Human Rights, (2012), *The ECHR in 50 Questions*, available at: http://www.echr.coe.int/NR/rdonlyres/5C53ADA4-80F8-42CB-B8BD-CBBB781F42C8/0/FAQ_ENG_A4.pdf

³⁹ *Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*, adopted on 31 March 2010. Available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2010\)5&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2010)5&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

⁴⁰ Constitution of Ukraine (1996), available at: http://gska2.rada.gov.ua/site/const_eng/constitution_eng.htm#c2

⁴¹ *Supra Note 2*.

⁴² Andriy Klepikov, Executive Director of the International HIV/AIDS Alliance in Ukraine, Letter to Chairman Lytvyn, October 14, 2011.

Question 5. Although the underlying principle of the proposed legislation is to protect children, preserve public morality, and curtail HIV, are these met under the draft?

- 5.1 The proposed legislation does not contain effective mechanisms to protect children and public morality, but threatens the rights and freedoms enshrined in the Ukrainian Constitution and various international instruments to which Ukraine has committed.⁴³ All Ukrainian citizens, including the children that the Bill is designed to protect, would be: denied access to valuable information required for the protection of health, and prevented from fully exercising and enjoying the right to freedom of speech and expression. As previously mentioned in point 3.3, the UN Committee on the Rights of the Child has stated that adolescents should have access to sexual health information and services, and has urged States to develop effective prevention programs, adopt legislation to combat the marginalisation of adolescents, and take measures to remove all barriers obstructing adolescent access to information and care.⁴⁴
- 5.2 The proposed legislation is also motivated by the assumption that media discussion of same-sex relations creates conditions conducive to the spread of HIV. There is no evidence to support this assumption. On the contrary, it has been asserted that censoring information and HIV/AIDS awareness activities presents a threat to the health and life of men who have sex with men and the wider population, and may only exacerbate the HIV prevalence.⁴⁵ Discrimination on the basis of sexual orientation, as promoted by the proposed legislation, may hamper access to health care information and services, increasing the risk of contracting sexually transmitted infections, including HIV.⁴⁶ The United Nations Human Rights Committee has stated that criminalisation of same-sex sexual practices runs counter to the implementation of effective HIV responses.⁴⁷
- 5.3 The International Guidelines on HIV/AIDS and Human Rights call upon States to enact anti-discrimination and protective laws in order to “reduce human rights violations against men having sex with men, including in the context of HIV, in order, inter alia, to reduce the vulnerability of men who have sex with men to infection by HIV and to the impact of HIV and AIDS.”⁴⁸

Question 6. What are the consequences of passing this proposed legislation vis-à-vis the impact on health services, social structures and donor support for Ukraine’s development agenda?

- 6.1 While the Ukrainian government has made significant strides in addressing the HIV epidemic, MSM are not explicitly mentioned in the text of the law approving the National Programme for the Prevention of HIV Infection, Treatment, Care and Support for People Living with HIV and AIDS Patient 2009-2013. This has forced NGOs funded by international donors to fill the void.⁴⁹ Indeed, all HIV prevention, care and support, and community mobilisation programmes targeting MSM in Ukraine are exclusively funded by

⁴³ *Supra* Note 29 to Note 40.

⁴⁴ *Supra* Note 25; Note 26.

⁴⁵ Human Rights Watch, *Ukraine: Letter to Chairman of Parliament Volodymyr Lytvyn Regarding Proposal for a Bill on Banning “Propaganda of Homosexuality”*, October 17, 2011, available at: <http://www.hrw.org/node/102376>

⁴⁶ *Ibid.* See also *Supra* Note 42; *Infra* note 47 & note 48.

⁴⁷ UN Human Rights Committee, *Communication No. 488/1992: Australia. CCPR/C/50/D/488/1992, 4 April 1994, para. 8.5 (Toonen v. Australia)*. Available at: <http://iilj.org/courses/documents/Toonenv.Australia.pdf>

⁴⁸ International Guidelines on HIV/AIDS and Human Rights, available at: http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf

⁴⁹ Beyrer, C., et al, (2011), *The Global HIV Epidemics among Men Who Have Sex with Men (MSM)*, The World Bank, available at:

<http://siteresources.worldbank.org/INTHIVAIDS/Resources/375798-1103037153392/MSMReport.pdf>

international donors and implemented by NGOs. For example, through the Global Fund Round 6 Programme “Support for HIV and AIDS Prevention, Treatment and Care for Most Vulnerable Populations in Ukraine”, the International HIV/AIDS Alliance in Ukraine is supporting 18 prevention projects aimed at HIV prevention among MSM in 16 out of 27 territorial units. In 2010-2011, the NGO “Fulcrum” has provided care and support programmes for HIV positive MSM in 11 cities.⁵⁰ Where men who have sex with men are receiving HIV services from these NGOs, levels of knowledge regarding HIV-infection prevention and modes of HIV transmission are higher among these MSM clients of NGOs, than the MSM who are not participating in any prevention, care and support programme.⁵¹

6.2 Draft law # 8711 would undermine the efforts of civil society, by proscribing a large proportion of information, outreach and awareness raising activities regarding HIV infection prevention and access to care.⁵² As recognised in the UN Declaration of Commitment on HIV/AIDS which has been signed by Ukraine, the full realisation of human rights and freedoms for all and the prevention of stigma and discrimination against people living with or at risk of HIV are fundamental to a response to the pandemic.⁵³ Furthermore, the 2011 Political Declaration on HIV, also endorsed by Ukraine, in paragraph 39, reaffirms that *“the full realization of all human rights and fundamental freedoms for all is an essential element in the global response to the HIV epidemic, including in the areas of prevention, treatment, care and support, recognize that addressing stigma and discrimination against people living with, presumed to be living with or affected by HIV, including their families, is also a critical element in combating the global HIV epidemic, and recognize also the need, as appropriate, to strengthen national policies and legislation to address such stigma and discrimination.”*⁵⁴

6.3 The proposed legislation could potentially impact donor support for HIV programming in Ukraine, as an increasing number of donors are linking their funding to human rights indicators. For instance the Global Fund Strategy 2012-2016 recognises the promotion and protection of human rights as one of the five strategic objectives to which countries need to comply with in order to receive funding.⁵⁵ In addition, UNAIDS’ action framework for MSM underlines the growing impetus among international technical agencies, and multilateral, bilateral and private donors (including notably the World Bank and the Global Fund to Fight AIDS, Tuberculosis and Malaria) to address the public health and human rights needs of MSM.⁵⁶

Question 7. Is this proposed legislation a priority for Ukraine?

7.1 If this Bill is adopted, Ukraine’s current HIV prevention and treatment programme could be jeopardised, as would efforts to reach Millennium Development Goal 6 to reduce and reverse the spread of HIV in

⁵⁰ *Supra Note 11.*

⁵¹ *Monitoring the Behavior and HIV Infection Prevalence Among Men Who Have Sex With Men as a Component of Second Generation Surveillance, 2009.*

⁵² *Supra Note 2.* See also Andriy Klepikov, Executive Director of the International HIV/AIDS Alliance in Ukraine, Letter to Chairman Lytvyn, October 14, 2011.

⁵³ UN Declaration of Commitment on HIV/AIDS, (2001), available at:

http://data.unaids.org/publications/irc-pub03/aidsdeclaration_en.pdf.

⁵⁴ General Assembly, A/RES/65/277, *Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS*, 8 July 2011. Available at:

http://www.unaids.org/en/media/unaids/contentassets/documents/document/2011/06/20110610_UN_A-RES-65-277_en.pdf

⁵⁵ *Global Fund Strategy 2012-2016: Investing for Impact*, available at:

http://www.theglobalfund.org/documents/core/strategies/Core_GlobalFund_Strategy_en/

⁵⁶ UNAIDS, UNDP, (2009), *UNAIDS Action Framework: Universal Access for Men who have Sex with Men and Transgender People*. Available at:

http://data.unaids.org/pub/report/2009/jc1720_action_framework_msm_en.pdf

Ukraine by 2015.⁵⁷ The proposed legislation has received a negative assessment from the Central Scientific Experts Office of the Verkhovna Rada of Ukraine⁵⁸, and numerous international and national actors and leading public officials have spoken out against it. The European Parliament has expressed its concern regarding the proposed legislation, recently adopting a resolution condemning homophobic and discriminatory laws and calling for state legislation designed to promote equality and freedom of expression with regards to sexual orientation.⁵⁹ In the wake of aggressive violent disruptions at the 'Kyiv Pride 2012' event, Catherine Ashton, the High Representative of the European Union for Foreign Affairs and Security Policy and Vice President of the Commission, has called upon Ukraine to safeguard the rights of LGBT Ukrainians to peaceful assembly and their freedom of expression.⁶⁰

7.2 International⁶¹ and national leaders⁶² are speaking up for equality regardless of sexual orientation, some countries are prohibiting discrimination on the basis of sexual orientation, courts in a number of countries are looking to human rights standards to strike down archaic laws criminalising adult same-sex sexual activity⁶³, in some places where effective legal aid has made justice and equality a reality for men who have sex with men, health outcomes have improved. Evidence shows that in a range of epidemic settings, universal access to HIV services for MSM together with anti-discrimination efforts can significantly reduce infections both among those men and the wider community.⁶⁴ The international community urges the Parliament of Ukraine to reject the proposed legislation as an affront to basic human rights and as a barrier to effective HIV responses.

⁵⁷ Olivier Adam, United Nations Resident Coordinator in Ukraine, *Letter to Chairman Lytvyn*, October 31, 2011, available at: http://www.asylumlaw.org/docs/sexualminorities/Ukraine_LGBT_draft_Law_8711_to_Lytvyn.pdf

⁵⁸ *Supra* Note 2.

⁵⁹ *European Parliament Resolution on the Fight Against Homophobia in Europe*, May 24th, 2012, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+P7-RC-2012-0234+0+DOC+PDF+V0//EN>

⁶⁰ European Union, *Statement by the Spokesperson of the HR Ashton on Homophobic Violence at 'Pride' Events on 19-21 May in Kyiv*, 24 May 2012. Available at:

http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/130404.pdf

⁶¹ *Secretary-General's video message to Human Rights Council meeting on Violence and Discrimination based on Sexual Orientation or Gender Identity*, Geneva, Switzerland, 7 March 2012. Available at:

<http://www.un.org/sg/statements/?nid=5900>; Commission on AIDS in Asia, (2008), *Redefining AIDS in Asia: Crafting an Effective Response*, New Delhi, Oxford University Press, p.203.; Grover, A., (2010), *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Human Rights Council 14th session, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, UN Doc. A/HRC/14/20.

⁶² Hilary Clinton, U.S Secretary of State, in her *Remarks in Recognition of Human Rights Day 2011*, stated: "And that is why gay rights are human rights, and human rights are gay rights."

Available at: <http://www.state.gov/secretary/rm/2011/12/178368.htm>.

⁶³ *Naz Foundation (India) Trust v Government of Delhi & others* (2009) 160 Delhi Law Times 277; Hong Kong Court of Appeal, *Secretary for Justice v. Yau Yuk Lung Zigo and Lee Kam Chuen* (2007) and *Leung T.C. William Roy v. Secretary of Justice* (2006); Fiji High Court, *Nadan and McCoskar v. State* (2005); US Supreme Court, *Romer v. Evans* (1996).

⁶⁴ Beyrer, C., et al, (2011), *The Global HIV Epidemics among Men Who Have Sex with Men (MSM)*, The World Bank. Available at: <http://issuu.com/world.bank.publications/docs/9780821387269>; UNAIDS, UNDP, (2009), *UNAIDS Action Framework: Universal Access for Men who have Sex with Men and Transgender People*. Available at: http://data.unaids.org/pub/report/2009/jc1720_action_framework_msm_en.pdf.