

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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Ukraine: Proposed laws discriminate against LGBTI people and violate children's rights

Amnesty International and Human Rights Watch have today written to the Chair of the Ukrainian parliament, Volodymyr Litvin, to call on parliament to reject two draft laws which would directly contravene Ukraine's obligations under European and international human rights treaties to protect the right to non-discrimination, including on the ground of sexual orientation, to equality before the law, and to freedom of expression, association and peaceful assembly.

Draft Law No.10290 proposes measures to protect the rights of children, to ensure the "healthy moral, spiritual and psychological development of children, to promote the idea that a family consists of a union between a man and a woman", and "to overcome the demographic crisis". It bans the "promotion" of homosexuality, and provides an exhaustive list of activities that are defined as promotion, including: meetings, parades, actions, pickets, demonstrations and other mass gatherings aimed at disseminating positive information about homosexuality. The law supposes that such information may adversely affect the physical and mental health of children. The law also bans any educational activities on homosexuality, or, presumably, the lives of lesbian, gay, bisexual and transgender individuals, and it bans any messages, articles or appeals in the mass media.

Draft Law No. 8711 proposes to ban any production or publication of products promoting homosexuality, the use of media, TV or radio broadcasting for homosexuality "promotion", the printing or distribution publications "promoting" homosexuality, the import, production or distribution of creative writings, cinematography or video materials "promoting" homosexuality. If adopted, the laws will introduce fines or prison sentences of up to five years.

DISCRIMINATION

If enacted, this legislation would have the effect of discriminating against lesbian, gay and bisexual individuals in their exercise of several human rights, including the rights to freedom of expression, association and assembly. Article 2 of the International Covenant on Civil and Political Rights (ICCPR) and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) require states parties to ensure that everybody can enjoy the rights and freedoms set forth in those treaties "without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status," as Article 14 of the ECHR puts it. Moreover, the proposed legislation would contravene article 26 of the ICCPR, which provides for equality before the law and equal protection of the law, as well as Protocol 12 to the ECHR, ratified by Ukraine in 2006, which encompasses a general prohibition of discrimination in respect of all legal rights.

Although discrimination on the grounds of sexual orientation is not specifically mentioned in the non-discrimination provisions of the ICCPR and the ECHR, the European Court of Human Rights has interpreted the list of prohibited grounds included in Article 14 of the ECHR as covering sexual orientation.

FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

All persons enjoy the rights to freedom of expression, association, and peaceful assembly, as provided in Articles 19, 21 and 22 of the ICCPR and articles 10 and 11 of the ECHR. The right to freedom of expression includes freedom to hold opinions and to receive and impart information and ideas of all kinds without interference by a public authority and regardless of frontiers.

Any restriction on these rights should be demonstrably proportionate and necessary to achieve a legitimate aim such as the protection of public safety, order, health or morals or the fundamental rights of the others. The European Court of Human Rights and the Human Rights Committee have clarified that the right to freedom of expression guarantees the expression of ideas or thoughts which might offend, shock or disturb some sections of the population (see *Handyside v. United Kingdom*, judgment of 7 December 1976; *Ross v. Canada*, Communication No. 736/97).

The restrictions that would be imposed on these rights by these two laws is not necessary to achieve the principal stated purpose of the proposed legislation - to protect children. Nor are these restrictions proportionate, particularly when they are balanced against the right to freedom from discrimination. The other stated purposes of these proposals - to promote particular definitions of "family," "to overcome the demographic crisis" - also fail the tests of necessity and proportionality.

Instead, by banning all forms of public activity that are "aimed at disseminating positive information about homosexuality which may adversely affect the physical and mental health of children" this legislation would limit the rights of lesbian, gay, bisexual, and transgender individuals to freedom of expression, association and peaceful assembly. By restricting the publication and dissemination of materials related to sexual orientation and gender identity, this bill would severely restrict access to information about health, support networks or social activities for countless young people.

RIGHTS OF THE CHILD

The draft Laws aim at "protecting the rights of children". Article 3 of the Convention on the Rights of the Child clarifies that children's best interest shall be a primary consideration in all actions concerning them. This principle is intertwined with the right of children to express views in all matters concerning them (article 12). The Committee on the Rights of the Child has clarified in its General Comment No. 12 that the respect of the best interest of the child cannot be ensured if children are not given the opportunity to express their views in all matters concerning them.

The draft laws appear to be the outcome of stereotypical views on homosexuality rather than the result of a thorough process aimed at seeking the views of children and ensuring their best interest.

The draft laws assume that protecting children from information relating to homosexuality is conducive to the attainment of their healthy morals, spiritual and psychological development. However, having information about homosexuality is not per se detrimental to children, and the principle of best interests of the child does not require that children be shielded from such information. In fact the European Court of Human Rights has affirmed in numerous decisions that the desire to "protect" children from information about homosexuality is not justified by the principle of best interests of the child; instead, such measures are discriminatory.

Moreover, children as well as adults have the right to seek, receive and impart information and ideas of all kinds. This right is enjoyed by everyone, as provided in Article 19 of the ICCPR. This right is also explicitly guaranteed under Article 13 of the Convention on the Rights of the Child, to which Ukraine is a State-party. The Committee on the Rights of the Child has interpreted this to include information about sexuality and sexual behaviour. The Committee has also held that the non-discrimination provision of the Convention on the Rights of the Child includes sexual orientation.

CONCLUSION

If it is to live up to European and international human rights standards, the Ukrainian government must strive to create a society in which diversity is viewed not as a threat, but as a source of enrichment for society as a whole. Therefore, Amnesty International urges the members of the Verkhovna Rada to reject the adoption of Draft Law No. 10290 and Draft Law No. 8711 on the grounds that these laws would restrict the rights of children to seek, receive and impart information and ideas of all kinds and result in discriminatory treatment of lesbian, gay, bisexual and transgender people including by violating their right to freedom of expression, association and peaceful assembly, and to equality before the law.

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