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LGBT RIGHTS IN RUSSIA: THE 'GAY PROPOGANDA' LAW AND ITS CONSEQUENCES IN CHECHNYA

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Abstract: Russia's anti-LGBT Mizulina Law, named after its author, Elena Mizulina, was signed into law on June 29, 2013 by President Vladimir Putin. The law, which has since been dubbed the 'gay propaganda law' is aimed at "protecting children from information promoting the denial of traditional family values" and bans "promotion of nontraditional sexual relations to minors," thus prohibiting children from accessing information about the LGBT community through the press, television, and internet.² Those found to be disobeying this law can face fines of \$\mathbb{P}\$5,000. and organizations can face up to \$\P1,000,000\$ in penalties or even a temporary suspension of their activities.³ Though these fines may seem quite large, even harsher repercussions can be faced if the law is defied through mass media, like the internet, and tourists can face deportation. While this hostility towards LGBT Russians is not uncommon, the law also affects the accessibility of educational and other social support services to LGBT youth. As a result, both children and adults have faced tremendous harm, and horrific treatment of LGBT Russians has notably increased. Most devastatingly, however, secret detention camps for homosexual men in Chechnya have been created, serving as another means through which the Russian government can perpetuate injustice. In its investigation of Russian and Chechnyan history, this Article demystifies the atmosphere that led to the passage of the gay propaganda law and its harsh implementation.

History: Russian Homophobia and Chechnya's Complicity

Anti-LGBT sentiment is prominent in Russian history: Peter the Great banned sodomy in the army and navy in 1716, Nicholas I criminalized same-sex sexual relations in 1835,⁴ and even

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¹ Kathleen E. Feyh. "LGBTQ Oppression and Activism in Russia: An Interview with Igor Iasine." *QED: A Journal in GLBTQ Worldmaking* 2, no. 1 (2015): 100-08. Accessed April 28, 2020. doi:10.14321/qed.2.1.0100.

² Human Rights Watch. "No Support: Russia's "Gay Propaganda" Law Imperils LGBT Youth," accessed April 28, 2020, https://www.hrw.org/report/2018/12/11/no-support/russias-gay-propaganda-law-imperils-lgbt-youth#page

³ Human Rights Watch. "No Support: Russia's "Gay Propaganda" Law Imperils LGBT Youth."

⁴ Ibid.

though the Bolshevik's decriminalized homosexuality in 1917, Stalin reinstated it in 1933.⁵ In fact, during Stalin's reign, men found guilty of sexual relations could face prison time of up to five years of hard labor.⁶ As a result of this policy, thousands of men in the Soviet Union were convicted of sodomy and ordered to labor camps and psychiatric institutions. Although women in same-sex relationships were not criminalized, they could also face forced psychiatric hospitalization.

The collapse of the Soviet Union brought hope to the Russian LGBT community that a new era of freedom from persecution awaited them, leading to the emergence of many LGBT organizations. Indeed, in 1993, after the collapse of the USSR, same-sex relationships between men were decriminalized, and by 1999, the Russian Ministry of Health removed the diagnosis of homosexuality from the International Classification of Diseases (ICD).⁷

Russian public opinion surveys displayed a decrease of homophobia in the 1990s, but now also show an increase during the presidency of Vladimir Putin.⁸ Moreover, the European Court of Human Rights saw an increase in Russian LGBT litigation from 2.1% in 2002 to 22.5% in 2007.⁹ By 2017, the Levada Center, a Russian polling organization, also found that 81% of the Russian public disapproved of same-sex relationships.¹⁰ Furthermore, 63% of respondents in a 2018 government-run poll believed that the spread of "gay propaganda" was destroying the traditional Russian values.¹¹

This apparent near-uniformity in public opinion is the Russian government's typical defense of the gay propaganda law, thus claiming that the State protects the traditional values of Russia through its legal enforcement. Supported by domestic conservatives, Putin's implementation of the gay propaganda law beginning in 2013 led to a shutdown of LGBT spaces such as websites and support groups that offered information and services to many LGBT

⁵ Kathleen E. Feyh. "LGBTQ Oppression and Activism in Russia: An Interview with Igor Iasine," pg. 100

⁶ Human Rights Watch. "No Support: Russia's "Gay Propaganda" Law Imperils LGBT Youth."

⁷ Ibid.

⁸ Kathleen E. Feyh. "LGBTQ Oppression and Activism in Russia: An Interview with Igor Iasine," pg. 101

⁹ Stephan Polsdofer. "Pride And Prejudiced: Russia's Anti-Gay Propaganda Law Violates The European Convention On Human Rights." *American University International Law Review* 29 (Kondakov 2019): 1069-1096. https://proxy.bc.edu/login?qurl=https%3A%2F%2Fsearch.proquest.com%2Fdocview%2F1613593144%3Faccountid%3D9673.

¹⁰ Human Rights Watch. "No Support: Russia's "Gay Propaganda" Law Imperils LGBT Youth."

¹¹ Ibid.

youth.¹² Consequently, the government has been able to frame the law as protecting Russian traditions, including family structures, that are seemingly threatened by homosexuals. Considering the fact that this law's defense of Russian tradition is central to the Russian conservative movement, President Putin has been able to apply this law lethally in the Chechen area.

After the fall of the USSR, there was conflict between Chechnya and Russia, especially in terms of militarization: Chechnya attempted to claim independence from 1991 to 2000, but by February 2000, rebels in Chechnya had lost Grozny, the capital, to insurgent Russian forces. As a result, President Putin effectively implemented direct control from Moscow only three months later. This conflict led to militarized public life, poverty, poor education, and lawlessness in Chechnya, contributing to the presence of a strong patriarchal order, or a "war generation," that lacked education and proper socialization. 15

One member of this generation, Akhmad Kadyrov, was the Kremlin-backed leader of Chechnya and promoted a Sufist version of Islamization. In return for Kadyrov keeping the region under control (after two wars for independence in the 1990s into the early 2000s), Kadyrov was granted more freedom to rule as he saw fit. Thus, his promotion of strict Islamic rule in the predominately Muslim region disfavored the gay population, a policy that continued to be enforced by his son, Ramzan Kadyrov, after Kadyrov's assassination in 2004. In fact, once Ramzan became Prime Minister in 2006, he implemented official policies in support of vigilante groups that monitored the gender expression of the public. This permitted homophobia to become widespread in the highly conservative, and predominantly Muslim, Russian republic of Chechnya.

¹² Ibid.

¹³ Alexander Kondakov. "Chechnya, Detention Camps in." In *Global Encyclopedia of Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) History*, edited by Howard Chiang et al. 315-318. Vol. 1. Farmington Hills, MI: Charles Scribner's Sons, 2019. *Gale eBooks* (accessed April 28, 2020). https://link-galecom.proxy.bc.edu/apps/doc/CX3662300080/GVRL?u=mlin_m_bostcoll&sid=GVRL&xid=c06f95cc.

¹⁴ BBC. "Chechnya profile- Timeline," last modified January 17, 2018. https://www.bbc.com/news/world-europe-18190473

¹⁵ Alexander Kondakov. "Chechnya, Detention Camps in," pg. 317.

¹⁶ Andrew E. Kramer. "Chechnya Renews Crackdown on Gay People, Rights Group Say," accessed May 2, 2020. https://www.nytimes.com/2019/01/14/world/europe/chechnya-gay-people-russia.html

¹⁷ Alexander Kondakov. "Chechnya, Detention Camps in," pg. 317.

¹⁸ BBC. "Chechnya LGBT: Dozens 'detained in new gay purge," accessed April 28, 2020. https://www.bbc.com/news/world-europe-46871801

Chechnya: The 2017 Anti-Gay Purge

Russian newspaper *Novaya Gazeta* first highlighted the unlawful detainment and killing of gay men in Chechnya in early July 2017: the newspaper cited two high-level Chechen sources that reported that unannounced raids against this minority group actually began in mid-December of 2016. *Novaya Gazeta* also reported that twenty-seven people had been killed by security forces on the night of January 26, 2017 without formal arrests. ¹⁹ In April 2017, they also uncovered detention camps that held men suspected of being homosexual; investigations later revealed that one hundred men were incarcerated for homosexuality in two prisons near the capital of Chechnya, at least three of who were killed during their detainment. ²⁰

Throughout this reporting, it became clear that Chechen security officials, as early as 2017, engaged in a systematic campaign to detain dozens of men alleged to be homosexuals. These men were held for numerous days in secret locations and were subjected to starvation and torture, all for the purposes of collecting further information on other homosexual men.²¹ According to non-governmental watchdog groups, this campaign was organized and executed by law enforcement officials and promoted by top-level Chechen authorities.²² Thus, without a doubt, these crimes were both systematic and institutionalized by the state.

Victims have anonymously shared their stories and confirmed these allegations of detainment and torturous practices, including electric shocks and physical beatings, sometimes lasting from several weeks to several months.²³Moreover, they have confirmed that data and other information from their phone contacts were investigated in pursuit of other gay men.²⁴ This information was later used as blackmail to advance investigations, causing a level of positive reinforcement beneficial to the state's campaign against homosexuality. Although detention centers were largely limited to men in Chechnya, lesbians in the same area also faced hostile conditions, rape, honor killing, and forced marriages.²⁵

¹⁹ Amnesty International. "Russian authorities must investigate new allegations of extrajudicial executions in Chechnya," accessed April 28, 2020, https://www.amnesty.org/en/latest/news/2017/07/russian-authorities-must-investigate-new-allegations-of-extrajudicial-executions-in-chechnya

²⁰ Alexander Kondakov. "Chechnya, Detention Camps in," pg. 315.

²¹ Human Rights Watch. "No Support: Russia's "Gay Propaganda" Law Imperils LGBT Youth."

²² Katy Steinmetz. "A Victim of the Anti-Gay Purge in Chechnya Speaks Out: 'The Truth Exist,'" accessed April 30, 2020. https://time.com/5633588/anti-gay-purge-chechnya-victim/

²³ BBC. "Chechnya LGBT: Dozens 'detained in new gay pruge.""

²⁴ Alexander Kondakov. "Chechnya, Detention Camps in," pg. 315.

²⁵ Ibid., 316.

Unfortunately, the infamous 2017 gay purge in Chechnya was not the final chapter; in fact, multiple human rights organizations still declare that these conditions exist and might even be extending to other anti-gay campaigns.²⁶ More recent allegations that new instances of persecution and arose just a few weeks into 2019, some of which claim that upwards of forty people were been detained and still have no sign of release.²⁷ While Igor Kochetkov, the leader of the Russian LGBT Network, has stated that they have helped about 140 people escape the region, he maintains that there is evidence and witnesses of torture and deaths that remain.²⁸

International Accountability: The Status of Courts and Third-Party Actors

Russia has been found in violation of human rights, especially discrimination, by both international courts and third-party actors. Unlike the Russian Constitutional Court, which has accepted²⁹ the Russian government's claim that the gay propaganda law serves to protect "family and childhood" values, in 2017, European Court of Human Rights (ECHR) declared the law to reflect and reinforce "predisposed bias, unambiguously highlighted by its domestic interpretation and enforcement." ³⁰

In its decision, the ECHR found the gay propaganda law in violation of Article 14 of the court's prohibition on discrimination due to sexual orientation. Especially as a result of the law's implementation, the ECHR felt bound by Article 14 to express that Russia had violated its international commitments.³¹ By this token, although the ECHR noted that the Russian Constitution does not protect the freedom of assembly or freedom to be free from discrimination, it held that the Russian government, under previously-signed international agreements, had an obligation to protect those rights.³² Furthermore a 2018 report from the Organization for Security and Cooperation in Europe argued that the 2017 gay purge was a "very serious human rights violations."³³ In evidencing its claim, the report included testimonies from survivors and allegations of LGBT persecution, torture, harassment, arbitrary arrest, and extrajudicial killing.

²⁶ Katv Steinmetz. "A Victim of the Anti-Gay Purge in Chechnya Speaks Out: 'The Truth Exist.""

²⁷ BBC. "Chechnya LGBT: Dozens 'detained in new gay pruge."

²⁸ Ibid

²⁹ Human Rights Watch. "No Support: Russia's "Gay Propaganda" Law Imperils LGBT Youth."

³⁰ Ibid.

³¹ Stephan Polsdofer. "Pride And Prejudiced: Russia's Anti-Gay Propaganda Law Violates The European Convention On Human Rights," pg. 1080.

³² Ibid., 1074.

³³ BBC. "Chechnya LGBT: Dozens 'detained in new gay pruge.""

Furthermore, they characterized the situation as facilitating a "climate of impunity," demanding Russia to investigate the recorded human rights abuses.³⁴

The United Nations Human Rights Committee, under the International Covenant on Civil and Political Rights, proclaims that the freedom of expression as "indispensable . . . for the full development of the person," and is thus "essential for any society."³⁵ In light of this proclamation, it is clear that while the gay propaganda law claims to protect the health and morals of minors, freedom of expression is very important for developing adolescents, especially as they explore their identities and transition into adulthood. Indeed, reports have shown that adolescents and adults who hid their sexual orientation had low relationship satisfaction, faster progression for HIV, less job promotion, a negative association to their job, and higher levels of stress and suicide.³⁶ As such, it is unsurprising that the ECHR dismissed the Russian government's claims of protection and health.³⁷

Despite the ECHR's ruling, other international organizations, such as the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, have continued to accuse Chechen officials of unlawful detention and mistreatment of homosexual individuals, especially considering their failure to improve or mend the situation in any substantial way.³⁸ However, even beyond the Russian LGBT community, the report aptly notes that drug users, suspected terrorists, and journalists are also at risk because of Russian abuses of international human rights law. Consequently, other international actors, such as the Canadian Rainbow Railroad have worked with LGBT-supporting Russian groups to resettle Chechen men, victims of the anti-gay purge, and others with a genuine fear of being targeted, to Belgium, the Netherlands, Canada, and other countries. ³⁹

Even in spite of the compelling evidence of torture and abuse that has become all-themore clear in recent year, Chechen officials have denied these violations and even claimed that gay people do not exist in Chechnya because their relatives would send LGBT away in shame.⁴⁰

³⁴ Ibid.

³⁵ Human Rights Watch. "No Support: Russia's "Gay Propaganda" Law Imperils LGBT Youth."

³⁶ Nicole Legate et al. "Is Coming Out Always a "Good Thing"? Exploring the Relations of Autonomy Support, Outness, and Wellness for Lesbian Gay, and Bisexual Individuals." *Social Psychology and Personality Science*3(2) 145-152. DOI: 10.1177/1948550611411929

³⁷ Human Rights Watch. "No Support: Russia's "Gay Propaganda" Law Imperils LGBT Youth."

³⁸ Katy Steinmetz. "A Victim of the Anti-Gay Purge in Chechnya Speaks Out: 'The Truth Exist."

³⁹ Ibid.

⁴⁰ Ibid.

In response to reports of abuse, Kadyrov has erroneously claimed that allegations of the vicious crackdown on LGBT Chechens were invented by foreign agents or fabricated by activists.⁴¹ Nevertheless, from the judgments and statements of international courts and organizations to which Russia is a party, enforcement of the gay propaganda law a violation of Russia's international agreements, harming the state's reputation on the international stage.

The Long Road of Justice

Amnesty International, a respected human rights watchdog group, has documented extrajudicial executions in Chechnya for many years, repeatedly naming and shaming the Russian government in the hopes of one day delivering justice for the LGBT community through the investigation of allegations of the anti-gay purge and for prosecution of those alleged to have violated international law.⁴² Furthermore, they frequently condemn the Russian government for allowing perpetrators⁴³ to enjoy impunity from human rights prosecutions and for failing to provide protections to LGBT activists like Igor Kochetkov, the leader of the Russian LGBT Network, who has even received death threats.⁴⁴

As Amnesty International argues, Russia's international agreements demand that the state protect its population against discrimination. Under ECHR precedent, states must take action to ensure individuals can live "without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." Similarly, Universal Declaration of Human Rights demands that because that every person is equal under the law, each person is entitled to equal protection from discrimination. Although the Russian government continues to justify its gay

⁴¹ BBC. "Chechnya LGBT: Dozens 'detained in new gay pruge.""

⁴² Amnesty International. "Russian authorities must investigate new allegations of extrajudicial executions in Chechnya."

⁴³ Amnesty International. "Russia: Two years after Chechnya's gay purge victims still seek justice as LGBTI defender receives death threats," accessed May 2, 2020. https://www.amnesty.org/en/latest/news/2019/04/russia-two-years-after-chechnyas-gay-purge-victims-still-seek-justice-as-lgbti-defender-receives-death-threats/

⁴⁴ Amnesty International "Puscio: Two years after Chechnya's gay purge victims still seek justice as LGBTI.

⁴⁴ Amnesty International. "Russia: Two years after Chechnya's gay purge victims still seek justice as LGBTI defender receives death threats."

⁴⁵ Stephan Polsdofer. "Pride And Prejudiced: Russia's Anti-Gay Propaganda Law Violates The European Convention On Human Rights," pg. 1080.
⁴⁶ Ibid., 1076.

propaganda law under the veil that it is acting as the majority of the Russian populace expect, a democratic society still has the responsibility to protect minority groups.⁴⁷

If the Russian government does change course willfully, or through international pressure, the state should provide education and support for the LGBT community to protect the interests and health of minors. Moreover, it should allow LGBT groups to exercise their rights to assembly and live free from discrimination, benefiting Russia financially as they would no longer need to carry out strict monitoring and enforcement of anti-LGBT laws on these groups. By protecting its citizens from violence, Russia would also help to rebuild its own international reputation, demonstrating to the global community that discrimination against LGBT people is antithetical to international human rights law.⁴⁸

Analysis: Encarnación's Model and Key Factors for Accountability

The gay propaganda law, along with Chechnya's long history of societal homophobia, has created a devastating formula for the Chechen LGBT population. Indeed, Chechen use of the Russian government's pseudo-legal justification for the gay propaganda law has allowed torment of its LGBT population, nearly all of which has no legal recourse. This issue has only been magnified by Chechnya's strict implementation of the gay propaganda law and its 2017 anti-gay purge, just another demonstration of how punitive measures (i.e. detention camps and torture) inhumanely target the Russian LGBT community.⁴⁹

In "Gay Rights: Why Democracy Matters," Omar Encarnación highlights three important domestic factors that can explain the expansion or regression of LGBT rights: wealth, religiosity, and the state's type of regime. He explains that the richer and more secular the state, the more accepting it is of homosexuality, but the poorer and more religiously devoted the state, the less accepting it is of homosexuality. Considering the fact that Chechnya is largely composed of practicing members of the Sufist Islam faith, it is unsurprising that Encarnación notes that 84% of the Russian public disapproves of homosexuality. Moreover, he writes that Russia's

⁴⁷ Ibid., 1084.

⁴⁸ Ibid., 1094.

⁴⁹ Alexander Kondakov. "Chechnya, Detention Camps in," pg. 316.

⁵⁰ Omar G. Encarnación "Gay Rights: Why Democracy Matters." *Journal of Democracy* 25(3) 90-104, doi:10.1353/jod.2014.0044.

⁵¹ Ibid., 96.

religious atmosphere is a setback for improving public sentiment on homosexuality: Russians who claimed to be at least somewhat religious increased from 11% in 1991 to 54% in 2008.⁵² Furthermore, Russia's GDP was about \$2.3 trillion USD in 2013, while in 2017, it was only about \$1.5 trillion USD.⁵³ Similarly, Russia's GDP per capita in 2013 was about \$16,007 USD, while in 2019 it was \$10,750 US dollars.⁵⁴

This combination of increased religiosity and decreased wealth coincides with the passage of the gay propaganda law in 2013 and the vicious 2017 crackdowns in Chechnya. Moreover, as the Russian state features few truly democratic features, Encarnación evidences his secondary claim that although LGBT rights are not protected in all democracies, they are almost non-existent in nondemocratic regimes.⁵⁵ Although there was hope after the USSR's collapse in 1991 for a less vicious approach to homosexuality, democratic backsliding in Russia has halted LGBT progress, and even worsened during Vladimir Putin's presidency.⁵⁶ In other words, Russia (at the time of the Chechen LGBT crackdown), was a combination of all the factors that fit Encarnación's rights-regression model: highly religious, poor, and lacking democratic values.

The four key factors established in "Overcoming Impunity: Pathways to Accountability in Latin America;" civil society, absence of veto powers, domestic judicial leadership, and international pressure; can also explain the lack of accountability and justice in Chechnya for its 2017 anti-gay purge. As shown in the Chechen context, calls for justice and accountability were not met,⁵⁷ the absence of veto powers allowed strong state figures to avoid accountability through military or political status,⁵⁸ domestic judicial leadership would not take a controversial stance in challenging impunity and state amnesty laws,⁵⁹ and international pressure from foreign courts and organizations to follow obligations and international norms was not respected and thus ineffective.⁶⁰

⁵² Ibid., 96-97.

⁵³ The World Bank. "GDP (current US\$)- Russian Federation," accessed May 9, 2020. https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=RU

⁵⁴ Ibid.

⁵⁵ Omar G. Encarnación "Gay Rights: Why Democracy Matters," pg. 91.

⁵⁶ Ibid., 99.

⁵⁷ Francesca Lessa et al. "Overcoming Impunity: Pathways to Accountability in Latin America." *International Journal of Transitional Justice*, Volume 8, Issue 1, March 2014, Pages 75–98, https://doiorg.proxy.bc.edu/10.1093/ijtj/ijt031

⁵⁸ Francesca Lessa et al. "Overcoming Impunity: Pathways to Accountability in Latin America," pg. 78.

⁵⁹ Ibid., 80.

⁶⁰ Ibid., 82.

The dominant Chechen religious teachings against homosexuality also precipitated a weak demand from civil society for true justice. Even in areas where other LGBT leaders, like Igor Kochetkov, might have spoken up where the religious population did not, lack of protection from threats and violence limited activists from making public demands and influencing policy. There are also strong veto players in Chechnya: the Organization for Security and Co-operations in Europe, a regional security organization, identified issues of total impunity for the security forces engaged in human rights abuses, making those involved the anti-gay purge immune to state-enforced justice.

Domestic judicial leadership did not challenge this impunity, instead upholding the gay propaganda law under the veil of constitutional "family and childhood" protections. On the international front, even though Russia has ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the UN Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the UN International Convention on the Elimination of All Forms of Racial Discrimination, and the UN International Covenant on Civil and Political Rights, there has been insufficient international pressure on Russia to enforce the legal obligations made through international agreements.

Conclusion

Chechnya's implementation of the gay propaganda law and its 2017 gay purge is a reflection of the historic religious markers of the region, in addition to the four key factors of accountability absent in the region. Indeed, weak demands from civil society, strong veto players, weak domestic judicial leadership, and a lack of strong international pressure has all but eliminated the compliance that Russia might otherwise have with human rights agreements. While Russia has not attempted to bring reparation, restorative, nor retributive justice to Chechnya or its LGBT population in particular, this is not surprising: Russia has denied the anti-

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⁶¹ Amnesty International. "Russia: Two years after Chechnya's gay purge victims still seek justice as LGBTI defender receives death threats."

⁶² Human Rights Watch. "No Support: Russia's "Gay Propaganda" Law Imperils LGBT Youth."

 ⁶³ Council of Europe. "Chart of signatures and ratification of Treaty 126," last modified November 11 2020.
 https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/126/signatures?p_auth=xVBsrdw4
 ⁶⁴ The United Nations. "View the ratification status by country or by treaty," accessed May 11, 2020.
 https://tbinternet.ohchr.org/layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=144&Lang=EN

gay purge even occurring and Chechnya continues to claims that no gay people exist in their region.⁶⁵

For justice to prevail, there must be to be stronger domestic demand and greater pressure from international partners for justice, truth, and healing for the devastated victims. Without investigating allegations of wrongdoing, making the results of such investigations public, and prosecuting the perpetrators of abuses on the Russian LGBT community, this region will continue to be a blemish on the international order's movement towards equity and inclusion.

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⁶⁵ Katy Steinmetz. "A Victim of the Anti-Gay Purge in Chechnya Speaks Out: 'The Truth Exist."

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