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October 12, 2012

His Excellency Viktor Yanukovich  
President of Ukraine  
Administration of the President of Ukraine  
11 Bankova Str., Kyiv 01220  
Ukraine

His Excellency Volodymyr Lytvyn  
Chairman of the Verkhovna Rada of Ukraine  
Vul. M. Hrushevskoho 5  
01008, Kyiv, Ukraine

Dear President Yanukovich and Chairman Lytvyn:

I write on behalf of the Association of the Bar of the City of New York (the "Association") to express our condemnation of Draft Law No. 8711 passed by the Verkhovna Rada on October 2, 2012 (the "Draft Law") and currently scheduled for a second reading on October 16, 2012.<sup>1</sup> In the Association's view, the Draft Law threatens the fundamental rights and freedoms of individuals who are lesbian, gay, bisexual and transgender ("LGBT") and Ukrainian individuals and organizations that support LGBT rights. Moreover, because the explanatory note to the Draft Law claims that the "promotion" of homosexuality is tied to the spread of HIV/AIDS,<sup>2</sup> the Draft Law not only will stigmatize the Ukrainian LGBT community but also will hamper rather than help public health efforts with regard to HIV/AIDS. Furthermore, the Association strongly disagrees with the notion that this law would protect

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<sup>1</sup> See Website of the Verkhovna Rada of Ukraine, "The Verkhovna Rada of Ukraine adopted as a basis the bill to amend several legislative acts of Ukraine (re protection of children's right to safe information space)," available at [http://portal.rada.gov.ua/rada/control/en/publish/article/info\\_left?art\\_id=319722&cat\\_id=105995](http://portal.rada.gov.ua/rada/control/en/publish/article/info_left?art_id=319722&cat_id=105995). See also Kyiv Post, "Rada adopts homophobic law in first reading," available at <http://www.kyivpost.com/content/ukraine/rada-adopts-homophobic-law-in-first-reading-313801.html> (Last visited October 11, 2012).

<sup>2</sup> See Letter from Boris O. Dittrich, Advocacy Director at Human Rights Watch, to Chairman Volodymyr Mykhailovych Lytvyn, dated Oct. 17, 2011, available at <http://www.hrw.org/news/2011/10/16/ukraine-letter-chairman-parliament-volodymyr-lytvyn-regarding-proposal-bill-banning-> (Last visited October 11, 2012).

children. For these reasons, the Association calls on your government to oppose the Draft Law if it is brought up for a second reading and to refuse to sign the law if it is passed.

The Association is an independent non-governmental organization with more than 23,000 members in over fifty countries. Founded in 1870, the Association has a long history of dedication to human rights and to bedrock civil rights and civil liberties, including freedom of speech and freedom of assembly. The Association's Committee on AIDS addresses HIV-related law and policy issues on local, national and international levels. The Association's Committee on European Affairs discusses various matters of public and private law which involve Europe, that are of concern to its members, including human rights questions. The Association's Committee on Lesbian, Gay, Bisexual and Transgender Rights addresses legal and policy issues affecting LGBT individuals. The Association's Council on Children is comprised of representatives of all the City Bar committees dealing with children, education, family, family court, juvenile justice, and the needs of lesbian, gay, bisexual and transgender youth. Also sitting on the Council are representatives of the child welfare, juvenile justice and foster care communities, including attorneys representing parents and children. The Association's International Human Rights Committee addresses, analyzes, and reports on human rights conditions around the world. The Association's United Nations Committee monitors and advises on developments in international law that are of particular importance to the Community of Nations. Each of these committees has expressed strong concern about the Draft Law.

The Draft Law bans the production or publication of products "promoting" homosexuality, the use of media, television or radio broadcasting for the purpose of "promoting" homosexuality, the printing or distribution of publications "promoting" homosexuality, and the import, production or distribution of writings, cinematography, or other video materials "promoting" homosexuality.<sup>3</sup> Its companion bill, Draft Law No. 10290, bans the "promotion" of homosexuality generally, and provides an alarming list of activities that are defined as "promotion," including meetings, parades, demonstrations, and other mass gatherings that provide positive information about homosexuality.<sup>4</sup> The Draft Law imposes criminal punishment for any violation, including fines or a prison term of up to five years.<sup>5</sup>

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<sup>3</sup> See Website of the Verkhovna Rada of Ukraine, "The Verkhovna Rada of Ukraine adopted as a basis the bill to amend several legislative acts of Ukraine (re protection of children's right to safe information space)," available at [http://portal.rada.gov.ua/rada/control/en/publish/article/info\\_left?art\\_id=319722&cat\\_id=105995](http://portal.rada.gov.ua/rada/control/en/publish/article/info_left?art_id=319722&cat_id=105995). See also Statement by Amnesty International and Human Rights Watch, "Ukraine: Reject Discriminatory Laws," available at <http://www.hrw.org/news/2012/06/25/ukraine-reject-discriminatory-laws> (Last visited October 11, 2012).

<sup>4</sup> See Statement by Amnesty International and Human Rights Watch, "Ukraine: Reject Discriminatory Laws," available at <http://www.hrw.org/news/2012/06/25/ukraine-reject-discriminatory-laws> (Last visited October 11, 2012).

<sup>5</sup> See Law Amendments Banning the Promotion of Homosexuality, prepared by the Human Rights & Governance Cluster, HIV/AIDS Group, UNDP New York and UNDP Ukraine Country Office, available at [http://www.undp.org.ua/files/en\\_43498msm\\_eng\\_Ukraine\\_FAQ\\_Law\\_8711\\_-\\_June\\_2012.pdf](http://www.undp.org.ua/files/en_43498msm_eng_Ukraine_FAQ_Law_8711_-_June_2012.pdf) (Last visited October 11, 2012).

Sponsors of the legislation in the Verkhovna Rada state it has two key purposes: to combat the spread of HIV/AIDS and to protect Ukrainian children. On the former, the Draft Law's explanatory note states that the media must be restricted from reporting positively on homosexuality because the "spread of homosexuality is a threat to national security, as it leads to the epidemic of HIV/AIDS"<sup>6</sup> and because, "[b]y promoting the extreme forms of sexual frivolity, the Ukrainian media is creating the conditions for the spread of the AIDS epidemic in Ukraine[.]"<sup>7</sup> On the latter, in addition to naming the bill one for the "protection of children's right to safe information space," its lead sponsor in the Verkhovna Rada claims that "[c]hildren, especially young boys aged 18 and younger whose personality is not formed yet, are being lured in by the gay community. And [their] whole life is ruined and nobody is held responsible for this[.]"<sup>8</sup>

The Association believes that the Draft Law will not achieve either of its expressed purposes; in fact, passing the Draft Law will have the opposite effect. As the United Nations Development Programme's New York and Ukraine Country Office's Human Rights & Governance Cluster, HIV/AIDS Group concluded, the Draft Law's stigma would work "as a deterrent to health care access," and consequently "efforts to prevent new infections and onward transmission . . . would be severely undermined."<sup>9</sup> And as the United Nations Committee on the Rights of the Child has concluded, the promotion of the health and development of adolescents requires states to provide "adequate information" for the discussion of sexuality,<sup>10</sup> to "ensure that adolescents are given a genuine chance to express their views freely on all matters affecting them,"<sup>11</sup> and that adolescents must be protected by the state on the grounds of sexual orientation and health status (including HIV/AIDS).<sup>12</sup> The Committee on the Rights of the Child found that, rather than harming adolescents, these rights and freedoms are necessary to ensure they achieve the "highest attainable standard of health, develop in a well-balanced manner, and are adequately prepared to enter adulthood and assume a constructive role in their communities and

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<sup>6</sup> *Id.*

<sup>7</sup> See The Advocate, "Ukraine Parliament OK's Bill Criminalizing Gay 'Propaganda'," available at <http://www.advocate.com/news/world-news/2012/10/02/ukraine-parliament-oks-bill-criminalizing-gay-propaganda> (October 11, 2012).

<sup>8</sup> Kyiv Post, "Rada adopts homophobic law in first reading," available at <http://www.kyivpost.com/content/ukraine/rada-adopts-homophobic-law-in-first-reading-313801.html> (October 11, 2012).

<sup>9</sup> See Law Amendments Banning the Promotion of Homosexuality, prepared by the Human Rights & Governance Cluster, HIV/AIDS Group, UNDP New York and UNDP Ukraine Country Office, available at [http://www.undp.org.ua/files/en\\_43498msm\\_eng\\_Ukraine\\_FAQ\\_Law\\_8711\\_-\\_June\\_2012.pdf](http://www.undp.org.ua/files/en_43498msm_eng_Ukraine_FAQ_Law_8711_-_June_2012.pdf) (October 11, 2012).

<sup>10</sup> See Committee on the Rights of the Child, General Comment No. 4 (2003), ¶16, available at [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/504f2a64b22940d4c1256e1c0042dd4a/\\$FILE/G0342724.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/504f2a64b22940d4c1256e1c0042dd4a/$FILE/G0342724.pdf) (October 11, 2012).

<sup>11</sup> *Id.* at ¶8.

<sup>12</sup> *Id.* at ¶6.

in society at large.”<sup>13</sup> By contrast, restricting such rights or failing to provide such protections would be harmful because “[a]dolescents who are subject to discrimination [which would include LGBT adolescents and adolescents related to LGBT individuals] are more vulnerable to abuse, other types of violence and exploitation, and their health and development are put at greater risk.”<sup>14</sup>

Thus, instead of achieving its stated goals, the Association believes the Draft Law, if enacted, would bring many harmful effects to Ukrainian society. It would limit the rights of freedom of expression, association and peaceable assembly of countless Ukrainian LGBT individuals and their supporters. A law targeting positive portrayals of LGBT individuals sends a message to society that LGBT individuals are not accepted, and it likely will result in an environment of state-supported hostility, discrimination, and harassment. Most troubling, by further stigmatizing LGBT individuals, it could contribute to anti-LGBT violence.<sup>15</sup> The stigma could also discourage any Ukrainian from seeking testing for HIV/AIDS, and it would likely discourage those living with HIV/AIDS from seeking treatment. Finally, the Draft Law would severely restrict public discourse about homosexuality and broader civil and political rights, thereby violating the rights to freedom of speech, expression and assembly for all Ukrainians, and harming Ukrainian society, including children, by restricting access to information about health and support networks.

Importantly, the Association believes that enacting the Draft Law also would violate Ukraine’s obligations under international, regional, and domestic law. Ukraine has ratified and is legally bound to uphold, among other key political and human rights treaties, the International Covenant on Civil and Political Rights (“ICCPR”), the Convention on the Rights of the Child (“CRC”), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”). The ICCPR, the CRC, the ECHR, and the Ukrainian Constitution enshrine the principles of non-discrimination and equal protection of the law, as well as freedom of speech and expression, and freedom of association.<sup>16</sup> The European Court of Human Rights has recognized that discrimination based on sexual orientation is prohibited by Article 14 of the ECHR.<sup>17</sup> Moreover, Ukraine signed the Joint Statement on the Rights of LGBT Persons at the Human Rights Council on March 22, 2011, wherein it called on other countries to end “criminal sanctions . . . against individuals because of their sexual orientation or gender identity.”<sup>18</sup>

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<sup>13</sup> *Id.* at ¶4.

<sup>14</sup> *Id.* at ¶6.

<sup>15</sup> See, e.g., Radio Free Europe, “Beaten Ukrainian Gay Activist Unbowed,” available at <http://www.rferl.org/content/beaten-ukrainian-gay-activist-unbowed-photo/24591262.html> (October 11, 2012).

<sup>16</sup> The principles of non-discrimination are guaranteed by Article 2(1) of the ICCPR, Article 14 of the ECHR, Article 2 of the CRC, and Articles 21 and 24 of the Constitution of Ukraine. Freedom of expression and freedom of association are guaranteed by Articles 19 and 22 of the ICCPR, Articles 10 and 11 of the ECHR, Articles 12, 13, and 15 of the CRC, and Articles 34, 36, and 39 of the Constitution of Ukraine.

<sup>17</sup> See *Kozak v. Poland*, Case No. 13102/02, ECHR, 02/03/2010 at ¶92.

<sup>18</sup> Available at <http://www.state.gov/r/pa/prs/ps/2011/03/158847.htm> (October 11, 2012).

We call upon the Government of Ukraine to immediately oppose the Draft Law in the Verkhovna Rada and to refuse to sign it if it is passed a second time. We will also ask President Obama and the United States Government to continue to forcefully condemn attempts to criminalize the “promotion” of homosexuality in Ukraine.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carey R. Dunne', followed by a long horizontal line extending to the right.

Carey R. Dunne  
President

cc: Hon. Hillary Clinton  
Secretary of State  
U.S. State Department

Hon. John F. Tefft  
U.S. Ambassador to Ukraine

Hon. Olexander Motsyk  
Ukrainian Ambassador to the United States