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*PROTECTION FOR
PERSECUTED LGBT PEOPLE
IN CHECHNYA*

An analysis of mechanisms for human rights accountability

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Dedication and Acknowledgements

This major research paper is dedicated to Professor David Petrasek. David was well known in the human rights community for his successful career as an international human rights lawyer. I was fortunate to learn from David as both a student in his class and as one of his MRP mentees. In his capacity as a professor at the Graduate School of Public and International Affairs at the University of Ottawa, David offered the skills and expertise necessary to complete this major research project. An additional thank you to Dr. Christina Clark-Kazak for agreeing to supervise this paper on short notice.

Abstract

Reports in 2017 and 2018 from various sources including civil society organizations (CSOs)¹ and multilateral institutions² suggest that the Chechen government of Ramzan Kadyrov has been systematically violating the human rights of lesbian, gay, bisexual and transgendered (LGBT) within the Republic. This paper will provide an analysis of the evolving situation in Chechnya and consider potential levers for action. To do so, this analysis begins with outlining the crimes that have been committed and how they fit within international legal frameworks as per treaties within the context of the United Nations (UN) and Council of Europe (CoE). Next, I detail the relevance of NGOs and their role evolving role in responding to the situation. Finally, various bilateral and multilateral human rights mechanisms are reviewed in terms of their merits and limitations and their applicability to the current situation. In closing, I conclude that the best way forward is a blended approach between both multilateral and bilateral mechanisms while distinguishing between immediate needs and longer-term goals.

Key words: LGBT, Chechnya, United Nations, Council of Europe, human rights, intervention

¹ Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

² OSCE. Rep. *Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation*, 21 December 2018. <https://www.osce.org/odihr/407402>.

List of Key Acronyms and Abbreviations

- ACHPR** = African Commission on Human and Peoples' Rights
CAT = Convention against Torture
CEDAW = Convention on the Elimination of All Forms of Discrimination Against Women
CSO(s) = Civil society organization
ECHR = European Convention on Human Rights
IACHR = Inter-American Commission on Human Rights
ICC = International Criminal Court
ICCPR = International Covenant on Civil and Political Rights
ICESCR = International Covenant on Economic, Social and Cultural Rights
ILGA = International Lesbian, Gay, Bisexual, Trans, Intersex Association
LGBT = Lesbian, Gay, Bisexual and Transgender
OHCHR = United Nations Human Rights Council
OSCE = Organization for Security and Cooperation in Europe
SOGI = Sexual orientation and gender identity
UN = United Nations
UDHR = Universal Declaration of Human Rights
UPR = Universal Periodic Review

Introduction

Protection based on “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”³ have been codified in the Universal Declaration of Human Rights⁴ and the International Covenant on Civil and Political Rights⁵. Other identities have only recently been recognized as requiring human rights protection. Sexual orientation, as a protected identity, only began to receive significant attention by the United Nations Human Rights Council (OHCHR) in 2011⁶ and, by the Organisation for Security and Co-operation in Europe (OSCE), along with all other “bias motivated crimes”, in 2009⁷. Various international legal and diplomatic tools have evolved during the 20th and 21st century both bilaterally and multilaterally at institutions like the United Nations (UN) and OSCE.

Alongside this recognition widespread reports have permeated the media highlighting the violation of civil liberties and rights (e.g. torture, arbitrary detention) of lesbian, gay, bisexual and trans (LGBT) people worldwide. Recent examples include forced gender transition on gay men in Iran⁸, arbitrary detention and torture in Egypt⁹ and most notably for this MRP, the

³ United Nations, *Universal Declaration of Human Rights*, 10 December 1948. <https://www.un.org/en/universal-declaration-human-rights/>.

⁴ Note that the Universal Declaration of Human Rights is not legally binding

⁵ United Nations, *International Covenant on Civil and Political Rights*, 19 December 1966. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁶ United Nations, *HRC: Seventeenth session 8 – Agenda Item 8*, 14 July 2011. <https://www.right-docs.org/doc/a-hrc-res-17-19/>.

⁷ OSCE, *Decision No. 9/09 on combating hate crimes*, 04 December 2009. <https://www.osce.org/files/f/documents/d/9/40695.pdf>.

⁸ The Economist, “Pressure from above: Why Iran is a hub for sex-reassignment surgery”. The Economist, 4 April 2019. <https://www.economist.com/middle-east-and-africa/2019/04/04/why-iran-is-a-hub-for-sex-reassignment-surgery>.

⁹ Bernstein, Alyssa. “2017 was a bad year for Egypt’s LGBT community, 2018 could be even worse”. Foreign Policy, 28 December 2017. <https://foreignpolicy.com/2017/12/28/2017-was-a-bad-year-for-egypts-lgbt-community-2018-could-be-even-worse/>.

reported state sponsored discrimination of lesbian, gay, bisexual, and transgendered (LGBT) people in the Chechen Autonomous Oblast in the Russia Federation.¹⁰

The Chechen Oblast has had a very tumultuous and conflict ridden past. While a comprehensive history is beyond the scope of this major research paper, a brief overview is necessary to understand the context for current LGBT violations. Chechnya was first amalgamated into Russia as part of Alexander II's empire in 1859.¹¹ In the Soviet Union, sexual activity between men was criminalized in 1934. Women who had sex with other woman or identified as lesbians were subject to a psychiatric diagnosis.¹² In the 1980s, with the introduction of the liberalization policies of *perestroika* and *glasnost*, information on sexuality and sexual health became increasingly available. Despite these changes, the demonization that came along with the HIV/AIDS crisis meant that these gains were largely undermined; during this period, gay men were perceived as 'diseased' with deviant sexualities. Greater inclusion of LGBT people in the public sphere with the HIV/AIDS crisis angered many Russians, which translated to an increased incidence of physical violence.¹³ The collapse of the Soviet Union meant greater liberalization, sodomy was decriminalized in 1993 and was no longer considered a mental illness after 1999. Attitudes at the turn of the century illustrated this change as opinion polls illustrated growing support for gay and be men and lesbians.¹⁴ During this time, several key LGBT civil society organizations (CSOs) were created, including the Russian LGBT Network

¹⁰ BBC News, "Chechnya LGBT: Dozens 'detained in new gay purge'". BBC News, 14 January 2019. <https://www.bbc.com/news/world-europe-46871801>.

¹¹ Kondakov, Alexander. "Chechnya, Detention Camps In." Global Encyclopedia of Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) History, February 2019. <https://researchportal.helsinki.fi/en/publications/chechnya-detention-camps-in>.

¹² Wilkinson, Cai. "LGBT Rights in the Former Soviet Union: The Evolution of Hypervisibility." Essay. In The Oxford Handbook of Global LGBT and Sexual Diversity Politics, edited by Michael J. Bosia, Sandra M. McEvoy, and Momin Rahman, 1–18. New York, NY: Oxford University Press, 2020.

¹³ Ibid.

¹⁴ Ibid.

(analyzed in more detail in chapter 2) .¹⁵ Concurrently, Chechnya was in the middle of two gruesome wars between separatists and the Russian state from 1994-97 and 1999-2009. After the end of the Second Chechen War in 2009, the current leader of Chechnya, Ramzan Kadyrov made a deal with Vladimir Putin’s government. This exchange involved Kadyrov providing allegiance to the administration in the Kremlin, including limiting any other form of insurgency, in exchange for increased autonomy in governing Chechnya. This consolidation of power has been marked by a move towards an extremist version of Sharia Law including public killings of people accused of drug related offenses.¹⁶ More recently, the Kremlin has begun a traditionalist push while aligning itself strongly with the values of the Russian Orthodox church.¹⁷ This shift in policy has contributed to anti-LGBT legislation including the legislation titled “for the Purpose of Protecting Children from Information Advocating for a Denial of Traditional Family Values”¹⁸ which limits the visibility of LGBT people in the media and in public spaces.¹⁹ Recently the Kremlin has also stated that it is looking to adopt constitutional amendments to limit marriage to heterosexual couples.²⁰ In this context, and given that Chechnya is part of the Russian Federation, offensive actions have been taken against human rights defenders, journalists, LGBT people, among others within Chechnya.

¹⁵ Wilkinson, Cai. “LGBT Rights in the Former Soviet Union: The Evolution of Hypervisibility.” Essay. In *The Oxford Handbook of Global LGBT and Sexual Diversity Politics*, edited by Michael J. Bosia, Sandra M. McEvoy, and Momin Rahman, 1–18. New York, NY: Oxford University Press, 2020.

¹⁶ Scicchitano, Dominic. “The ‘real’ Chechen man: Conceptions of religion, nature, and gender and the persecution of sexual minorities in postwar Chechnya.” *Journal of Homosexuality*, 2019: 1–18. <https://doi.org/10.1080/00918369.2019.1701336>.

¹⁷ Brock, Maria & Edenborg, Emil, “You cannot oppress those who do not exist”: Gay persecution in Chechnya and the politics of in/visibility”. *GLQ: A Journal of Lesbian and Gay Studies* 1, 2020.

¹⁸ Commonly known as the “Russian gay propaganda law”

¹⁹ Kramer, Andrew, “Russia Passes Bill Targeting Some Discussions of Homosexuality”. *The New York Times*. 11 June 2013. <https://www.nytimes.com/2013/06/12/world/europe/russia-passes-bill-targeting-some-discussions-of-homosexuality.html>.

²⁰ Kramer, Andrew. “Putin Proposes Constitutional Ban on Gay Marriage”. *The New York Times*. 3 March 2020. <https://www.nytimes.com/2020/03/03/world/europe/putin-proposes-constitutional-ban-on-gay-marriage.html>.

Mistreatment of LGBT people is well documented within the Chechen Republic. Although homophobia and anti-LGBT sentiment has been on the rise since the fall of the Soviet Union, the conditions in Chechnya are much more severe; there have been several attempted purges directly aimed at LGBT people in the Republic. Initial reports of the first purge were made by Novaya Gazeta in April 2017.²¹ These reports indicated that gay men were being actively tortured, arbitrarily detained, harassed and intimidated in the Republic since February 2017. It is alleged that the purge began when Chechen officials discovered a man they had detained for a drug offense was having sex with other men based on content on his phone. Upon discovering this content, the authorities used this individual's phone to contact other men while pretending to be the confined individual; these men eventually became future victims of this purge. After apprehending these men, torture was used to gather further contacts of gay men within the Republic. Torture involved beatings, electric shocks, lack of food and water and sleep deprivation. Individual reports also suggest that in some cases particularly gruesome tactics were used to force these men into providing information including maiming them with barbed wire. Various reports confirm the involvement of state officials in these acts of torture including the Speaker of the Parliament of the Chechen Republic, Magomed Daudov and the Minister of Internal Affairs of the Russian Federation in Argun, Aiub Kataev.²² Upon releasing some of the detained LGBT men, officials frequently made their family members aware of their sexual history, encouraging them to kill their family members and telling them that the state will not charge them if they choose to do so.²³ According to various reports including from the original

²¹ Council of Europe. Rep. *Persecution of LGBTI people in the Chechen Republic (Russian Federation)*, 2018. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24962&lang=en>.

²² Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

²³ Ibid.

reporting newspaper, Novaya Gazeta, 27 men either went missing or were killed during this initial wave.²⁴ While multiple sources confirm the reports against gay men, significantly less information has been released on the treatment of lesbian and transgendered people. The Russian LGBT network has noted that these cases have largely been minimized by states actors during the first raid against LGBT people in the republic. A 2018 report from the Council of Europe suggests that upwards of 12 women had been detained by Chechen state officials in 2017.²⁵ Several of these women have been victims of sexual assault, and forced marriages. Personal accounts suggest that transgendered Chechens face grave risks in everyday life including assault, and harassment.²⁶ A second wave of purges against gay men was also reported in December 2018. During this purge, the Russian LGBT network has reported that around 40 people have been targeted and two of them have died due to the torture.²⁷

Overall there has been no constructive response from either the Chechen Republic or the Russian Federation. Calls for the extermination of gay men were issued by the highest level of government. Ramzan Kadyrov infamously said in a 2017 interview with the television network HBO that, “gay men do not exist in the republic” and has openly called for the extermination of gay men in Chechnya.²⁸ His officials have also openly denied the raid against LGBT Chechens. In 2017 the Russian LGBT Network and Novaya Gazeta submitted evidence of state sponsored discrimination against gay men to the Investigative Committee and the Prosecutor’s General

²⁴ OSCE. Rep. *Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation*, 21 December 2018. <https://www.osce.org/odihr/407402>.

²⁵ Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

²⁶ Taylor, Adam, “How a transgender Chechen escaped Russia and found asylum in the United States”. Washington Post, 2017. https://www.washingtonpost.com/world/europe/a-transgender-chechen-woman-and-her-plea-for-asylum-in-america/2017/09/01/0edc5bd6-8916-11e7-96a7-d178cf3524eb_story.html.

²⁷ BBC News, “Chechnya LGBT: Dozens 'detained in new gay purge’”. BBC News, 14 January 2019. <https://www.bbc.com/news/world-europe-46871801>.

²⁸ OSCE. Rep. *Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation*, 21 December 2018. <https://www.osce.org/odihr/407402>.

Office of the Russian Federation. After no response was provided to Novaya Gazeta and the Russian LGBT Network, they submitted a request to the Basmanny Court of Moscow City, which was denied. This was done in collaboration with the only victim to press forward with a legal response against the Russian Federation, Maxim Lapunov. Upon witnessing this stalemate, the Human Rights Ombudsperson of the Russian Federation, Tatiana Moskalkova submitted the evidence herself to the Investigative Committee of the Russian Federation. Once a North Caucasus court reviewed the information provided in 2018, it supported the Investigative Committee's decision to withhold an investigation. As this situation illustrates, the power of the Human Rights Ombudsperson of the Russian Federation is mostly limited to bringing awareness to issues;²⁹ any mention of their powers was not included in the criminal code. The OSCE has released a report in support of Novaya Gazeta, the Russian LGBT Network and Mr. Lapunov's claims.³⁰ Mr. Lapunov is currently pursuing his case with the European Court of Human Rights.³¹

Several calls from within Russia, from multilateral bodies and individual states have pressured the Russian Federation to order the Chechen government to cease and desist these activities. Several multilateral forums have investigated and have encouraged the Russian Federation to conduct a thorough investigation including the OSCE³², UN Treaty-based bodies

²⁹ Schreck, Carl and Khazov-Cassia, Sergei. "His name was Andrei". Radio Free Europe, 2019.

<https://www.rferl.org/a/chechnya-missing-gay-purge-andrei-kobyshev-mobile-phone-kadyrov/29993363.html>

³⁰ OSCE. Rep. *Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation*, 21 December 2018. <https://www.osce.org/odihr/407402>.

³¹ Rahmim, Zamira. "Gay man takes Russia to Europe's rights court over Chechnya LGBT+ attacks". The Independent, 2019. <https://www.independent.co.uk/news/world/europe/chechnya-gay-torture-rights-russia-lgbt-court-maxim-lapunov-a8929826.html>.

³² OSCE. Rep. *Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation*, 21 December 2018. <https://www.osce.org/odihr/407402>.

and UN Charter-based bodies. France³³, United Kingdom³⁴, Canada³⁵, United States³⁶ and Germany³⁷ have also made calls for the Russian Federation to intervene.

This paper will outline the various pathways to ensure the protection of LGBT Chechens from discrimination by the state. In order to do so, it will consider various bilateral and multilateral mechanisms for action. Based on this analysis, I will argue that, while a blended approach would be most effective, to date provisions of asylum and supporting human rights defenders on the ground in Chechnya have been the most effective. This paper will be organized in five chapters.

The first chapter will begin by offering a description of the paper's theoretical framework: a human rights-based approach. In addition, relevant key definitions will be reviewed. Next, the various human rights violations identified in reports by CSOs and multilateral institutions will be reflected upon. In particular, this section will consider the various human rights violations in terms of the treaties to which the Russian Federation is a state party. Discrimination, torture, forcible confinement of LGBT Chechens will be defined through obligations under international treaties and obligations including the International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention against Torture and Other Cruel, Inhuman or Degrading

³³ Burrows, Emma. "French president calls on Putin to protect gay Chechens". CNN News, 2017. <https://www.cnn.com/2017/05/29/europe/macron-putin-russia/index.html>.

³⁴ Government of the United Kingdom. "Minister for Europe calls for investigation into persecution of LGBT community in Chechnya". Government of United Kingdom, 2019. <https://www.gov.uk/government/news/minister-for-europe-calls-for-investigation-into-persecution-of-lgbt-community-in-chechnya/>.

³⁵ Government of Canada. "Canada calls persecution of LGBTQ2 people in Chechnya reprehensible". Government of Canada, 2017. <https://www.canada.ca/en/global-affairs/news/2017/04/>.

³⁶ Tuakli, Foluké. "Senate condemns persecution of gay men in Chechnya". NBC News, 2017. <https://www.nbcnews.com/feature/nbc-out/senate-condemns-persecution-gay-men-chechnya-n816496/>.

³⁷ Kate Connolly, "Merkel presses Putin over anti-gay purge in Chechnya". The Guardian, 2017. <https://www.theguardian.com/world/2017/may/02/angela-merkel-vladimir-putin-russia-investigate-lgbt-torture-claims-chechnya>.

Treatment or Punishment. The Russian Federation's obligations as a member of the Council of Europe and the OSCE will also be reviewed.

The second chapter will review the important work that Civil society organizations have played and continue to play in defending LGBT men and women in Chechnya. I have included this chapter in order to recognize the important work that occurs within the context of this crisis that is driven by non-state actors. Specifically, this chapter will consider the role that key human rights defenders play and continue to play including Novaya Gazeta, the Russian LGBT Network and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) as whistleblowers, in protecting the rights of LGBT Chechens and in advocating for future change.

In the third chapter, I will review some of the multilateral policy tools available to ensure that the human rights of LGBT people in Chechnya are respected. In this section, I will focus on mechanisms at the UN and OSCE that could be or have been used in order to secure human rights for these individuals. At the UN mechanisms that will be reviewed include both Treaty and Charter bodies, special procedures, Universal Periodic Review and Human Rights Council resolutions.³⁸ With regards to the OSCE, the focus will remain in the invocation of the Vienna and Moscow mechanisms, both of which have had important consequences for the rights of LGBT Chechens.

In order to illustrate the importance of a holistic response I will also review bilateral mechanisms in the fourth chapter. The bilateral mechanisms that will be analyzed in this paper include diplomacy, provisions of asylum, support for human rights defenders and sanctions. These mechanisms will be considered in terms of their historical successes (and failures) and their applicability to the current situation.

³⁸ Most recent reviewed of Russian Federation completed in 2018.

The final chapter will consolidate this information and provide recommendations based on the analysis made in the proceeding chapters. In collating the evidence from previous chapters, I will argue that a blended multilateral and bilateral response would be most efficient to support the protection of human rights in Chechnya. In addition, I will distinguish between short term, urgent objectives (e.g. safety), from longer term ones (e.g. social change). Although a blended approach is necessary, success of bilateral mechanisms including supporting human rights defenders and the provision of asylum will be emphasized given their proven success in supporting LGBT Chechens.

Chapter 1: Defining the Problem

This chapter has a number of goals. Firstly, I will define my theoretical framework and key definitions. Secondly, I provide a working definition of each of the human rights violations identified and provide reference to their application in the Chechen context from an international law perspective. Thirdly, I will review key obligations as per international law based on legal agreements, of which the Russian Federation is a party. Given their prominence, this chapter will focus on conventions, and obligations as per membership in United Nations (UN), the European Commission (EC) and the Organization, Security, Co-operation in Europe (OSCE). Importantly, not all of the obligations that will be explored here are binding. The United Nations is responsible for governing the vast majority of international conventions and obligations that will be considered in this chapter. To appreciate the nature of these different mechanisms, it is helpful to distinguish treaties and conventions from resolutions from charter-based bodies (e.g. OHCHR). Obligations under the conventions explored in this chapter including the International

Covenant on Civil and Political Rights (ICCPR)³⁹, Convention against Torture (CAT)⁴⁰, and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)⁴¹ are binding on state parties who have ratified them. Conversely, the UN Declaration of Human Rights is non-binding⁴². The Helsinki Accords, which forms the legal framework for the OSCE is also non-binding⁴³ on member states, including the Russian Federation. The obligations as part of the Council of Europe are predominantly outlined in the European Convention on Human Rights and European Social Charter; the former being binding⁴⁴ on state parties, and the latter being binding for ratified articles⁴⁵.

1.1 Theoretical Framework

This analysis will apply a rights-based framework to reflect upon the best modalities to address the discrimination of lesbian, gay, bisexual and transgendered (LGBT) people in Chechnya. According to the United Nations Children's Fund (UNICEF) a human rights based approach describes "a conceptual framework... that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights."⁴⁶ Adding

³⁹ UN Human Rights Office of the High Commissioner, "International Covenant on Civil and Political Rights". United Nations, 1966. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx/>.

⁴⁰ UN Human Rights Office of the High Commissioner, "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". United Nations, 1984. <https://www.ohchr.org/en/professionalinterest/pages>.

⁴¹ UN Human Rights Office of the High Commissioner. "Convention on the Elimination of All Forms of Discrimination against Women". United Nations, 1979. <https://www.ohchr.org/EN/ProfessionalInterest/>.

⁴² UN Human Rights Office of the High Commissioner. "Declaration on Human Rights Defenders". United Nations, 1999. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>.

⁴³ The Editors of Encyclopaedia Britannica. "Helsinki Accords – International Relations". Encyclopaedia Britannica, 2019. <https://www.britannica.com/event/Helsinki-Accords>.

⁴⁴ Council of Europe. "Article 1 – European Convention on Human Rights". Council of Europe, 1950. https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁴⁵ Council of Europe. "The Charter in four steps". Council of Europe, n.d. <https://www.coe.int/en/web/european-social-charter/about-the-charter>.

⁴⁶ UNICEF. "Human Rights based Approach to Programming". United Nations, 2016. https://www.unicef.org/policyanalysis/rights/index_62012.html.

to this definition, the Government of Canada⁴⁷ describes a human rights approach based as reflecting on inequalities through the lens of obligations made through the ratification of human rights treaties. In application to the discrimination against LGBT people in Chechnya, this framework seeks to apply international law to conceptualize the issues (as described below in the legal definitions) and then provide a set of potential solutions in chapters 3 and 4. In order to conduct this analysis, I will draw on formal reports produced by civil society organizations (CSOs) and multilateral institutions, academic literature and newspapers.

1.1.2. Key Terms

For purposes of this analysis, LGBT will be used to describe the population experiencing discrimination within the Chechen Republic. As mentioned previously, LGBT is an acronym to describe lesbian, gay, bisexual and transgendered people. This acronym was selected as it most accurately represents the population represented in reports provided by CSOs and other stakeholders⁴⁸. Although reports predominantly focus on gay men, reports from NGOs and multilateral organizations suggest that lesbian women and trans people also faced discrimination⁴⁹. The United Nations applies the definitions of sexual orientation and gender identity as per the Yogyakarta Principles. According to these principles, *sexual orientation* is defined as “profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender, or more than one gender”⁵⁰. Conversely, *gender identity* refers to an individual’s subjective “experience of gender, which

⁴⁷ Government of Canada. “Human rights-based approach”. Government of Canada, 2017. https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/priorities-priorites/human_rights-droits_personne.aspx?lang=eng.

⁴⁸ OSCE. Rep. *Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation*. OSCE, 2018. <https://www.osce.org/odihr/407402>.

⁴⁹ The identities of ‘queer’ or ‘two-spirited’ was not used in any of the research integrated into this report and therefore will not be used exclusively.

⁵⁰ UNHCR. Rep. *UNHCR guidance note on refugee claims relating to sexual orientation and gender identity*. United Nations, 2008, 5. <https://www.refworld.org/docid/>.

may or may not correspond with the sex assigned at birth, including the personal sense of the body, and other expressions of gender, including dress, speech and mannerisms,”⁵¹

Multilateral and bilateral mechanisms to support the implementation of international and regional human rights treaties are essential to this analysis. For the purposes of this analysis, multilateralism will refer to collaboration between several states, typically through an institution, to establish mutual goals and norms of behavior. Conversely, bilateralism will refer to the relationship between an individual state and the Russian Federation and therefore bilateral mechanisms are those that can be applied by an individual state. Note that some mechanisms can be exclusively bilateral or multilateral, or alternatively, both. For example, although asylum will be considered as a bilateral mechanism to offer immediate protection to LGBT Chechens, several efforts, including the Global Compacts on Refugees⁵², illustrate that provisions of asylum may also work multilaterally.

As will be discussed in Chapter 2, human rights defenders, including CSOs are also essential stakeholders in the violation of LGBT rights in the Chechen Republic. For the purposes of this analysis, I will apply the Government of Canada’s definition of human rights defenders which describes them as “people who, individually or with others, act to promote or protect human rights through peaceful means, such as by documenting and calling attention to violations or abuses by governments, businesses, individuals or groups.”⁵³ This definition defines human rights defenders based on their actions and is strategically broad to encompass all of the individuals and civil society organizations supporting the rights of LGBT Chechens.

⁵¹ Ibid, 5.

⁵² UNHCR. “The Global Compact on Refugees” .United Nations, n.d. <https://www.unhcr.org/ph/the-global-compact-on-refugees>.

⁵³ Global Affairs Canada. “Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders ”. Government of Canada, 2019. https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng.

1.2 Legal Definitions

1.2.1 Discrimination. Discrimination is a significant concern in Chechnya as the authorities specifically target LGBT men and women. Within the context of the UN Universal Declaration on Human Rights (UDHR), discrimination is defined in Article 2 as:

...distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [or]...the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty⁵⁴.

Although sexual orientation is not explicitly mentioned in Article 2, there have been reaffirmations by UN member states of sexual orientation being read into the UDHR. Firstly, in December 2008, 66 members of the General Assembly endorsed a statement which reconfirmed that “the principle of non-discrimination, which requires that human rights apply equally to every human being regardless of sexual orientation or gender identity”⁵⁵ and expressed their concern regarding human rights violations against LGBT people.⁵⁶ Secondly, the UN Human Rights Council adopted a resolution in June 2016, which outlined reinforced the position of the Council in terms of LGBT rights. Specific to discrimination, the Council highlighted their position against discrimination towards LGBT people and appointed the Special Rapporteur on LGBT issues to address reported occurrences of discrimination.⁵⁷ The nature of the actions taken by the Chechen government falls within this definition of discrimination. Reports from civil society organizations (CSOs) suggest that officials from the Chechen Republic are discriminating

⁵⁴ United Nations. “Universal Declaration of Human Rights”. United Nations, 1948. <https://www.un.org/en/>

⁵⁵ Human Rights Watch, “UN: General Assembly statement affirms rights for all”. Human Rights Watch, 2008. <https://www.hrw.org/news/2008/12/18/un-general-assembly-statement-affirms-rights-all>.

⁵⁶ Ibid.

⁵⁷ United Nations. Rep. *Resolution adopted by the Human Rights Council on 30 June 2016 32/2. Protection against violence and discrimination based on sexual orientation and gender identity*, 2016. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/154/15/PDF/G1615415.pdf?OpenElement>.

against LGBT people based on their sexual orientation⁵⁸, their gender identity⁵⁹ or both; as noted in the introduction, several victims were targeted by either being identified by other victims or through content on their mobile phone indicating they had sexual relations with members of the same sex.⁶⁰

By engaging in discriminatory practices as described above, the Russian Federation is violating several articles of international law as per of UN treaties and mechanisms. Some of these articles are binding, while others are not. As mentioned in the previous paragraph, the UN UDHR covers non-discrimination in Article 2. Perhaps more interesting given the limited scope of the UDHR are binding treaties. The Russian Federation has ratified several binding conventions that explicitly forbid discrimination. Although many articles do not specifically mention sexual orientation or gender identity, several respective treaty bodies have clarified them as grounds for discrimination. For example, one of the most relevant UN conventions with regards to the situation in Chechnya is the International Convention on Civil and Political Rights (ICCPR). Article 26 of the ICCPR describes the necessity of ensuring the rule of law, and that all individuals must receive equal protection under the law from discrimination on the basis of “as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.⁶¹ Article 2 (1) also indicates that all of the other articles within the ICCPR apply without discrimination. Indeed, although sexual orientation also is not explicitly mentioned in Article 2 (1) one of the results of *Toonen v. Australia* (1994) was that the Human Rights Committee interpreted that sexual orientation was included under sex as part of the grounds

⁵⁸ Council of Europe. Rep. *Persecution of LGBTI people in the Chechen Republic (Russian Federation)*, 2018. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24962&lang=en>.

⁵⁹ Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

⁶⁰ Ibid.

⁶¹ UN Human Rights Office of the High Commissioner. “Article 26 - International Covenant on Civil and Political Rights”. United Nations, 1966. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

described earlier. Similar provisions against discrimination exist under Article 2 (2) of International Covenant on Civil, Economic and Social Rights (ICESCR). The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) includes provisions against discrimination towards women. Under Article 2 any form of discrimination of prohibited and subsections b, c, e, f, g indicate that the state must take active measures in order to address pre-existing discrimination against women.⁶² Similarly, although sexual orientation and gender identity was not explicitly mentioned, the CEDAW treaty body has clarified that is also included.⁶³

As a member state of the Council of Europe, the Russian Federation is also a party to several other pieces of international law. Most notably, the Council of Europe is responsible for implementing and monitoring the implementation of the binding European Convention on Human Rights. Article 14 of the Convention prohibits discrimination on the basis of “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.”⁶⁴ Protocol number 12 of the European Convention on Human Rights also covers discrimination but in a broader sense, since it is not limited to restricting discrimination on the basis of the rights directly included in the Charter. Similar to the articles of the UN conventions described above, Article 14 and Protocol number 12 were clarified, in *Smith and Grady v. the United Kingdom*⁶⁵ (1990) to include sexual

⁶² UN, ACHPR & IACHR. *Rep. Joint Thematic Dialogue on Sexual Orientation, Gender Identity and Intersex Related Issues*, 2018. <https://www.ohchr.org/Documents/>.

⁶³ Council of Europe. *Rep. Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe (2nd Edition)*, 2014. <https://rm.coe.int/discrimination-on-grounds-of-sexual-orientation-and-gender-identity-in/16809079e2>.

⁶⁴ Equality and Human Rights Commission. “Article 14: Protection from discrimination”. Equality and Human Rights Commission, 2018. <https://www.equalityhumanrights.com/en/human-rights-act/article-14-protection-discrimination>.

⁶⁵ European Court of Human Rights. “Case of *Smith and Grady v. The United Kingdom*”. HUDOC – European Court of Human Rights, 2000. [https://hudoc.echr.coe.int/tur#{"itemid":\["001-59023"\]}](https://hudoc.echr.coe.int/tur#{)

orientation. Although *Smith and Grady v. the United Kingdom* (1990) dealt with discrimination against LGBT people within the context of the United Kingdom's military, its decision meant that Article 14 and Protocol number 12 also applied to sexual orientation. Furthermore, in *Identoba and Others v. Georgia*, the European Court of Human Rights clarified that gender identity is also covered by Article 14.⁶⁶ In addition, the European Social Charter also includes a provision, Article E, on the prohibition of discrimination with regards to the other rights present in the Charter.⁶⁷ The European Social Charter is considered to be an expansion of the basic rights present in the European Convention on Human Rights. Although all states are required to endorse Article E, unlike the European Convention on Human Rights, not all of the Articles under the European Social Charter are universally legally binding.⁶⁸

1.2.2. Arbitrary detention. Arbitrary detention is another of the major human rights violations occurring as a result of Chechnya's campaign against LGBT people. As per Article 9 of the UDHR, "no one shall be subjected to arbitrary detention, or exile".⁶⁹ Unlike with Article 2 with discrimination, this Article provides little information on a working definition of arbitrary detention. The United Nations Working Group on Arbitrary Detention has clarified the definition of arbitrary detention through adoption of Commission Resolution No. 1997/50. As per this definition, arbitrary was described in relation to an unjustified deprivation of liberty. Deprivation of liberty becomes arbitrary when it is outside of the realm of domestic or international law.⁷⁰ In the case of the actions taken against gay men in the Chechen Republic, it is clear that actions

⁶⁶ European Court of Human Rights. "Case of *Identoba and Others*". HUDOC – European Court of Human Rights, 2015. [https://hudoc.echr.coe.int/fre#{"itemid":\["001-154400"\]}](https://hudoc.echr.coe.int/fre#{).

⁶⁷ Council of Europe. "The Charter in four steps". Council of Europe, n.d. <https://www.coe.int/en/web/european-social-charter/about-the-charter>.

⁶⁸ Ibid.

⁶⁹ United Nations. "Universal Declaration of Human Rights". United Nations, 1948. <https://www.un.org/en/>

⁷⁰ UNHCR. "Fact Sheet No. 26 - The Working Group on Arbitrary Detention". United Nations, n.d. <https://www.refworld.org/docid/479477440.html>.

taken by the authorities constitute arbitrary detention under this definition. As reported by the Russian LGBT Network, numerous reports from victims suggest that the authorities justify random searches in to prevent terrorism. Given the lack of accountability for actions of law enforcement officials in the Chechen Republic, victims have reported that there they have little ability to decline these searches. Upon the completion of these searches, some victims reported that they were often detained and were openly accused of homosexuality while others reported never being formally charged.⁷¹

As with discrimination, there are various pieces of international law. As described, arbitrary detention is covered in Article 9 in UDHR, but as noted previously, it is non-binding. One of the binding treaties which outlines prohibitions against arbitrary detention is Article 9 of the ICCPR. Article 9 has 5 sub articles which cover various aspects of arbitrary detention, which are relevant to the situation in Chechnya. Sub-article 9(1) covers the basic prohibition of arbitrary detention and its relation to deprivation of liberty as described above. Sub article 9(2) describes that all individuals who are detained must be made aware of the reason of their arrest. As described above many victims report not being made aware of the reasons of their arrest and detention upon their arrest.⁷² Sub article 9(3) describes the efficiency of justice, by ensuring that they are “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.”⁷³ Sub article 9 (4) describes that if a deprivation of liberty should occur, that the detained individuals must be brought before a judge to determine the lawfulness of their detention. Sub article 9(5) describes

⁷¹ Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

⁷² Ibid.

⁷³ UNHCR. “International Covenant on Civil and Political Rights”. United Nations, 1976. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx/>

the right to compensation that people who have arbitrarily detained have in the case that it is found to be unlawful. Victims did not have access to a trial to determine the lawfulness of their detention or the charges brought against them. No reparations were given to those detained.⁷⁴ Previous decisions made by the Working Group on Arbitrary Detention illustrate that arbitrary detention and arrests on the basis of sexual orientation have been confirmed as unlawful from an international law perspective.^{75,76} Furthermore, the Human Rights Council has also rendered decisions indicating that states are obligated under international law to abstain from arresting or detaining individuals on the basis of their sexual orientation or gender identity.^{77,78} The European Convention on Human Rights also offers protections against arbitrary arrest and detention. Article 5 of the ECHR has five different sub articles which mirror the language present in various sub articles of Article 9 of the ICCPR. The one significant difference is that sub article 1 of Article 5 of the ECHR indicates various reasons where a deprivation of liberty could be justified. All of these instances indicate “lawful detention” which does not appear prima facie to be the case in any of the circumstances described by victims.^{79,80}

⁷⁴ Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

⁷⁵ Working Group on Arbitrary Detention. Rep. No. 7/2002 (Egypt) (E/CN.4/2003/8/Add.1). UN Human Rights Documents. UN Human Rihts Documents, 2003. <https://documents-dds-ny.un.org/doc/UNDOC/>.

⁷⁶ Working Group on Arbitrary Detention. Rep. *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council” - Opinions adopted by the Working Group on Arbitrary Detention*. UN Human Rights Documents, 2007. <https://documents-dds-ny.un.org/doc/>.

⁷⁷ Human Rights Council. Rep. *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council” – Opinion adopted by the Working Group on Arbitrary Detention*. UN Human Rights Documents, 2006. <https://documents-dds-ny.un.org/doc/>.

⁷⁸ Human Rights Council. Rep. *General Comment No.35 – Article 9 (Liberty and security of the person)*. UN Human Rights Documents, 2014. <https://undocs.org/en/CCPR/C/GC/35>.

⁷⁹ Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

⁸⁰ OSCE. Rep. *Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation*. OSCE, 2018. <https://www.osce.org/odihr/407402>.

1.2.3 Privacy violations. Violations of privacy are also relevant to the situation in the Chechnya. Although the right to privacy is entrenched in various international and supranational frameworks, privacy, in itself has not been given a distinct definition. A definition put forth by researchers from the Haifa Center of Law and Technology suggests that we have a domain around us, which includes... “the body, the home, the thoughts, the feelings, the secrets and the identity” which allows individuals to “choose which parts of this domain can be accessed by others, and control the extent, manner and timing of the use of that domain we choose to disclose.”⁸¹ With Chechen gay men it is clear that privacy rights are being violated by state officials in two ways; although trans and lesbian Chechens would face a similar threat *prima facie*, unfortunately it remains largely undocumented. Firstly, as detailed in the introduction of this paper, upon being arbitrarily detained many victims had their phones confiscated by the authorities. The authorities used their phones to see if they could find evidence of the victim’s sexual involvement with others of the same sex. Indeed, this is breaking both privacies of both the victim and their contacts. The authorities would then use this information to detain other gay men, highlighting the gravity of these offenses. Secondly, reports from both gay men and lesbian women suggest that the authorities disclosed their sexual activities to their families in order to encourage honour killings.^{82,83} Both of these egregious privacy violations have grave implications for those experiencing the violation.

Similarly, to the other violations discussed thus far, both the United Nations and the Council of Europe have put forth international and supranational law that prohibit violations of

⁸¹ Interdisciplinary Law & Technology Workshop Faculty of Law at University of Haifa. Rep. *Privacy in the Digital Environment*, 2005. https://law.haifa.ac.il/images/Publications/Privacy_eng.pdf.

⁸² Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

⁸³ Council of Europe. Rep. *Persecution of LGBTI people in the Chechen Republic (Russian Federation)*, 2018. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24962&lang=en>.

privacy. Article 17 (1) of the ICCPR includes a right to privacy: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”⁸⁴ Furthermore, the Human Rights Council has reinforced that states have a responsibility to protect the privacy of their most vulnerable.⁸⁵ The right to privacy is also covered by the European Convention on Human Rights. As per Article 8 (1) of the European Convention on Human Rights, “everyone has the right to respect for his private and family life, his home and his correspondence.”⁸⁶ Article 8 (2) describes that this right may only be revoked under lawful circumstances. In the case of the arrests in Chechnya it is clear that respect for correspondence and private life were not maintained. The European Court of Human Rights has clarified that this Article also covers LGBT people.⁸⁷

1.2.4. Torture. Torture is perhaps one of the most gruesome aspects of the offenses being taken against LGBT Chechens. Torture is most clearly defined by Article 1 of the UN Convention against Torture:

The term "torture" means 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 information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for 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 person acting in an official capacity.⁸⁸

⁸⁴ United Nations, *International Covenant on Civil and Political Rights*, 19 December 1966.

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁸⁵ UN Human Rights Council. Rep. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*. UN Human Rights Documents, 2005. <https://ap.ohchr.org/documents/dp>

⁸⁶ Council of Europe. “European Convention on Human Rights”. Council of Europe, 1950.

https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁸⁷ Council of Europe. Rep. *Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe (2nd Edition)*, 2014. <https://rm.coe.int/discrimination-on-grounds-of-sexual-orientation-and-gender-identity-in/16809079e2>.

⁸⁸ UN Human Rights Office of the High Commissioner. “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”. United Nations, 1987. <https://www.ohchr.org/en/professionalinterest/>.

This definition fits very clearly with the actions taken by the authorities in Chechnya. Certainly the actions of the Chechen authorities qualify as torture under this Article. Firstly, it is clear as per multiple accounts from victims and witnesses that authorities used torture as a method to get information from the victims on their contacts in order to arrest them as well. Various methods of torture were described by the victims including being beaten, malnutrition, sleep deprivation, mutilation and electric shocks. It should also be noted that even in cases where the individuals provided names of their contacts, the torture did not often stop.^{89,90}

The Russian Federation has committed to several non-binding and binding international norms to protect against torture. In terms of the UDHR the most relevant section to torture is Article 5 which refers directly to the prevention of torture. The most relevant binding piece of international law is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In addition to providing a substantive definition of torture, this Convention covers state responsibilities in preventing and addressing torture occurring within their jurisdiction. Also relevant is Article 6 the ICCPR. Article 6 of the ICCPR covers the inherent dignity to life and includes six sub articles.

The Council of Europe also has created a series of accountability mechanisms for member states. Most notably, Article 3 of the ECHR indicates that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment.”⁹¹ The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment applies this article as a basis for the European Committee for the Prevention of Torture (CPT). This Committee

⁸⁹ Council of Europe. Rep. *Persecution of LGBTI people in the Chechen Republic (Russian Federation)*, 2018. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24962&lang=en>.

⁹⁰ Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

⁹¹ Council of Europe. “European Convention on Human Rights”. Council of Europe, 1950. https://www.echr.coe.int/Documents/Convention_ENG.pdf.

continuously monitors incidences of torture and seeks to ensure that member states are respecting relevant articles.⁹²

1.2.5. Restricted access to justice. Another significant barrier is a restricted access to justice both during and after the victims had been apprehended. Restricted access to justice in this case means the ability to seek legal remedies in response to the violation of an individual's human rights guaranteed under national or international law. As previously described throughout this chapter, the Chechen state is culpable under international law in violating articles protecting individuals from discrimination, arbitrary detention, violations of privacy, and torture. Despite these violations, it is clear that victims are not provided with any legal recourse. None of the victims reported having access to a lawyer or being subject to official convictions.⁹³ Furthermore, the case of Maxim Lapunov further illustrates the gravity of these restrictions to justice. The failure of the Investigative Committee and the Prosecutor's General Office of the Russian Federation and the Basmany Court of Moscow City to address Lapunov's case highlight the nature of these restrictions.⁹⁴

Both the United Nations and the Council of Europe have developed provisions to ensure that all individuals have access to justice. Under Article 2 (3a) of the UN ICCPR, a state is responsible for ensuring that if an individual's rights are violated they "shall have an effective remedy."⁹⁵ Furthermore, Article 2 (3b) indicate that individuals making these claims must have a decision by "competent judicial, administrative or legislative authorities, or by any other any

⁹² Council of Europe. "European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment". Council of Europe, 1987. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/126>.

⁹³ Council of Europe. Rep. *Persecution of LGBTI people in the Chechen Republic (Russian Federation)*, 2018. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24962&lang=en>.

⁹⁴ Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

⁹⁵ United Nations, *International Covenant on Civil and Political Rights*, 19 December 1966. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

other competent authority.”⁹⁶ The Council of Europe also has relevant provisions under Article 5 of the ECHR. As per Article 5(4) and 5(5) individuals are entitled to legal proceedings after arrest and if their actions are viewed as a contravention against this convention the individual is entitled to proper compensation.⁹⁷

Chapter 2: The Role of Human Rights Defenders

The purpose of this chapter is to explore the essential role that human rights defenders played and continue to play in Chechnya with regards to the purges. As described in Chapter 1, human rights defenders are as “people who, individually or with others, act to promote or protect human rights through peaceful means, such as by documenting and calling attention to violations or abuses by governments, businesses, individuals or groups”⁹⁸. I will conduct an overview three distinct areas. The first part of this chapter will review how human rights defenders, including CSOs and journalists, served a whistleblowing function both during the initial stages and through continuous monitoring of the situation. The second section of this chapter will focus on the role that human rights defenders played in facilitating formal protection for LGBT people in Chechnya who are facing mistreatment. For example, this includes access to food, shelter and facilitating an escape from Chechnya. Lastly, this chapter will consider how human rights defenders have been involved in the advocacy for justice for the victims of these purges.

2.1. Whistleblower

Human rights defenders were essential in bringing awareness to the initial purges and have continuously documented the experiences of victims with the Chechen state. The initial

⁹⁶ Ibid.

⁹⁷ Council of Europe. “European Convention on Human Rights”. Council of Europe, 1950. https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁹⁸ Global Affairs Canada. “Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders”. Government of Canada, 2019. https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng.

reports of the purges were brought to light by the newspaper Novaya Gazeta on 1 April 2017⁹⁹. This news article is largely recognized as bringing the initial awareness of the unfolding purges in Chechnya to the international community. In addition to preparing this article, organizations including, but not limited to, Human Rights Watch, Amnesty International, Novaya Gazeta and the Russian LGBT Network have been involved in gathering and documenting the experiences of each of the victims coming forward. Notably, Human Rights Watch and the Russian LGBT Network have both documented and collated key testimonies from victims and witnesses. Amnesty International has contributed to raising awareness of the issues by publishing reports and petitions to the Russian government on the purges.^{100,101} This information has been key in allowing multilateral bodies to create official documentation and reports. For example, both the OSCE and Council of Europe have reported that this information has been essential to their investigations and the production of reports.^{102,103} Furthermore, the Russian LGBT Network has also continued to play a whistleblower function by trying to hold the Russian state accountable for the ongoing discrimination against LGBT people in Chechnya. For example, in 2018 the Russian LGBT Network was able to get access to documents on the various cases from the

⁹⁹ Council of Europe. Rep. *Persecution of LGBTI people in the Chechen Republic (Russian Federation)*, 2018. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24962&lang=en>.

¹⁰⁰ Amnesty International. "Russia: End the persecution of LGBTI people in Chechnya". Amnesty International, n.d. <https://www.amnesty.org/en/get-involved/take-action/test-take-action/>.

¹⁰¹ Amnesty International UK. "Urgent Action Men Suspected Gay Abducted, Tortured or Killed". Amnesty International, 2017. <https://www.amnesty.org.uk/resources/urgent-action-men-suspected-gay-abducted-tortured-or-killed-russian-federation>.

¹⁰² Council of Europe. Rep. *Persecution of LGBTI people in the Chechen Republic (Russian Federation)*, 2018. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24962&lang=en>.

¹⁰³ OSCE. Rep. *Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation*, 21 December 2018. <https://www.osce.org/odihr/407402>.

Chechen purge, including those that indicate the Russian state did not intervene given a lack of evidence.^{104,105}

2.2. Facilitating Protection

Human rights defenders have also played a key role in facilitating the protection of LGBT Chechens. In particular, the Russian LGBT Network has put forth significant supports for LGBT Chechens experiencing discrimination. One of the key actions taken by the Russian LGBT Network was the development of a 24/7 phone line for LGBT people to contact in case they were experiencing discrimination in Chechnya. This phone line could be used to facilitate the safety of individuals, in addition to reporting witness testimonies. From March 2017 to later that year, after the first purge, 130 individuals reported submitting requests for safety.¹⁰⁶ As of late 2018, the Russian LGBT Network was able to secure safety for 114 people.¹⁰⁷ In addition to facilitating LGBT Chechen's safety, the Russian LGBT Network and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), also jointly played an important role in accessing essential services for relocated LGBT people including access to housing, food and psychological services in addition to assistance with travel costs.

2.3. Advocacy for Justice

Human rights defenders also continue to play an essential role in the advocacy for justice for the victims of the LGBT purge in Chechnya. As mentioned earlier in this paper, the Russian

¹⁰⁴ Council of Europe. Rep. *Persecution of LGBTI people in the Chechen Republic (Russian Federation)*, 2018. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24962&lang=en>.

¹⁰⁵ Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

¹⁰⁶ Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

¹⁰⁷ Radio Free Europe. "Russian gay-rights group says it helped 114 people free Chechnya". Radio Free Europe, 2018. <https://www.refworld.org/docid/5b20dda2a.html>.

LGBT Network and Novaya Gazeta had filed the initial complaint with the Investigative Committee and Prosecutor General's Office of the Russian Federation. In addition, Novaya Gazeta also proceeded to follow up with the Basmanny City Court of Moscow after the Investigate Committee and Prosecutor's General office did not conduct proper follow up on the case. Again, as discussed earlier at this point the Ombudsperson for Human Rights in the Russian Federation began to investigate the treatment of LGBT people in Chechnya. This occurred given pressure and documentation put forth by organizations including Human Rights Watch, Amnesty International and the Russian LGBT Network. This documentation also illustrated how top Chechen government officials were directly involved in the purge (e.g. Speaker of the Chechen House, Magomed Daudov). Both Novaya Gazeta and the Russian LGBT Network have provided legal support in the case of the only victim to come forward publicly, Maxim Lapunov. The Russian LGBT Network is also currently supporting Lapunov's case at the European Court of Human Rights, including by providing him with appropriate legal counsel. In addition, other organizations including Comité IDAHO, and Stop Homophobia had also reported the actions of Chechen authorities to the International Criminal Court (ICC) in 2017. Unfortunately, these actions had little tangible effect as the Russian Federation completely removed its commitment to the Rome Statute in 2017. Several other organizations have also lead protests. The most notable protests include a storming of the Russian Consulate in New York City and the placing of a flag with roses at the Embassy of Russia to the United Kingdom, both of which took place in 2019.

2.4 Conclusion

In conclusion, human rights defenders have played and continue to play a key role in advocating for the human rights of LGBT people in Chechnya. As described, the role of human

rights defenders in Chechnya can be best described as whistleblowers, facilitating protection and advocacy for justice. As illustrated above, these roles vary depending on the type of organization, their mandate and capability. CSOs such as Amnesty International may play more of a whistleblower role given their international presence whereas CSOs within the Russian Federation, including the Russian LGBT Network have also facilitated safety through working directly with LGBT Chechens. Understanding the role of human rights defenders will be relevant for Chapter 4.3 where I consider the importance of bilateral funding for civil society organizations.

Chapter 3: Multilateral Mechanisms

The purpose of this chapter is to provide an in-depth overview of the multilateral mechanisms available which could be used to address LGBT discrimination in Chechnya, through the United Nations, the Council of Europe and the Organisation for Security and Cooperation in Europe. The primary purpose of this chapter is to introduce the various mechanisms and the corresponding pros and cons of each. The efficacy of each mechanism as applied to the situation in Chechnya will be considered in Chapter 5. The specific UN mechanisms for human rights that will be outlined include charter-based and treaty-based bodies. More specifically, the charter-based bodies that will be considered include Human Rights Council, specifically council resolutions and the Universal Periodic Review (UPR), and Special Rapporteurs function. These bodies are referred to as charter-based as they are delegated their powers by the Charter of the United Nations.¹⁰⁸ The treaty bodies will be considered more generally as they all have similar functions but rely on specific treaties for their powers instead. The treaty bodies most relevant to this analysis are those responsible for monitoring the

¹⁰⁸ United Nations. "UN Documentation: Human Rights". United Nations, n.d. <https://research.un.org/en/>.

implementation of the treaties outlined in Chapter 1; this includes the Committee on Economic, Social and Cultural Rights, Human Rights Committee, Committee on the Elimination of Discrimination against Women, and the Committee against Torture. The Council of Europe's main tools include The Europe Court of Human Rights (ECHR), the European Committee of Social Rights (ECSR), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the European Commission against Racism and Intolerance (ECRI). Lastly, mechanisms as per the Organisation for Security and Cooperation in Europe will be considered. These mechanisms will include OSCE's Office for Democratic Institutions and Human Rights, and the Moscow and Vienna mechanisms.

3.1. United Nations

3.1.1. Charter bodies. This section will outline the key charter body mechanisms as part of the UN system on human rights including the Human Rights Council, the Universal Periodic Review and Special Procedures function.

The Human Rights Council is a UN human rights instrument that has a mandate that is two-fold. The Council is “responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner”¹⁰⁹ and it must also address violations of human rights while also ensuring that its efforts remain aligned within the context of the UN system.¹¹⁰ To prevent and address violations, the Council is mandated to play a whistleblower function and pass corresponding resolutions to address them. This function allows it to consider any human rights complaint brought forth to it.¹¹¹

¹⁰⁹ United Nations. “Resolution adopted by the General Assembly on 15 March 2006”. United Nations, 2006. <https://undocs.org/en/A/RES/60/251>.

¹¹⁰ Ibid.

¹¹¹ OHCHR. “United Nations Human Rights Council Briefing Note”. United Nations, 2020. <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Documents/HRCBasicFacts.pdf>

On 28 March 2019, 32 countries at the Human Rights Council expressed concern that, based on the 1993 Vienna Declaration and Programme of Action, every person is guaranteed the same rights regardless of their sexual orientation. The statement highlighted the need for proper accountability and releasing any LGBT individuals who remained in custody in the Chechen Republic.¹¹² The Council is made up of 47 nations, divided between regions, who remain on the council for 3 years.¹¹³ Importantly, the Human Rights Council was developed to replace the Commission of Human Rights on 15 March 2006 as per a resolution brought forth by the General Assembly.¹¹⁴ The failure of the Commission was largely due to politicization and regionalism.¹¹⁵ Unfortunately, critics suggest that the Council faces similar politicization, as evidenced by the vast majority of country specific requests made from 2006-09 against Israel.¹¹⁶ A second issue with the Council is that its resolutions are non-binding, granted its decisions do apply political pressure.¹¹⁷ In recent years, the Council has come under criticism for allowing countries with egregious human rights records to serve as members, including Venezuela and the Philippines.¹¹⁸ Despite the downfalls of the Council, it has passed several notable resolutions on LGBT rights. Most notably, in July 2011 the Council supported a resolution (23 to 19, 3 abstentions) that put forth a request to the United Nations High Commissioner for Human Rights

¹¹² Government of the United Kingdom. “Human Rights Council 40: Joint Statement Item 8 General Debate on LGBTI persons in Chechnya”. Government of the United Kingdom, 2019. <https://www.gov.uk/government/news/human-rights-council-40-joint-statement-item-8-general-debate-on-lgbti-persons-in-chechnya>.

¹¹³ UN Human Rights Council. “Membership of the Human Rights Council”. United Nations, n.d. <https://www.ohchr.org/EN/hrbodies/hrc/pages/membership.aspx>.

¹¹⁴ Cox, Eric. “State Interests and the Creation and Functioning of the United Nations Human Rights Council”. *Journal of International Law and International Relations* 6, no.1 Summer 2010

¹¹⁵ Freedman, Rosa. *The United Nations Human Rights Council: a Critique and Early Assessment*. Milton Park, Abingdon, Oxfordshire: Routledge, 2014.

¹¹⁶ Cox, Eric. “State Interests and the Creation and Functioning of the United Nations Human Rights Council”. *Journal of International Law and International Relations* 6, no.1 Summer 2010

¹¹⁷ Freedman, Rosa. “Why the US left the UN Human Rights Council – and why it matters”. *The Conversation*, 2018. <https://theconversation.com/why-the-us-left-the-un-human-rights-council-and-why-it-matters-98644>

¹¹⁸ Calamur, Krishnadev. “The UN Human Rights Council Is a Deeply Flawed Body”. *The Atlantic*, 2018. <https://www.theatlantic.com/international/archive/2018/06/us-un-human-rights/563276/>

to conduct research on the status of LGBT people around the world and how the UN human rights system could be used to protect their rights. This resolution also stated the LGBT rights should remain a priority of the Council.¹¹⁹ The report highlighted the various violations of human rights of LGBT people and the corresponding international treaties that protect LGBT people and prohibit the violations of their rights. In 2014, the Council passed a second resolution asking the High Commissioner to update this report.¹²⁰

The second UN charter-based process that will be discussed is the Universal Periodic Review (UPR). The purpose of the UPR is to have a regular review of how each member state is meeting its human rights commitments every four and a half years. A UPR consists of a country report written by the government being evaluated, a stakeholder report (often provided by CSOs) which are both summarized into a final report. Once this report is completed, three members of the HRC meet with officials from the state being examined; during this session, representatives from other states may also submit questions for the review. At the end of the session, a final list of recommendations is provided to the state and they are provided with an opportunity to provide a rebuttal. Given the public nature of the process, the UPR does bring about awareness of key human rights issues within member states. Secondly, the UPR also has soft power potential where states could be pressured by either internal or international actors to address the issues being presented. For example, David Petrasek described witnessing tension at a UPR for a small nation between mostly older generation bureaucrats looking to maintain the status quo in that nation and younger generation bureaucrats looking to make changes.¹²¹ One of the factors

¹¹⁹ United Nations. “Agenda item 8 – Follow up and implementation of the Vienna Declaration and Program of Action.” United Nations, 2011. <https://daccess-ods.un.org/TMP/2280624.80688095.html>

¹²⁰ United Nations. “Agenda item 8 – Follow up and implementation of the Vienna Declaration and Program of Action.” United Nations, 2014. <https://documents-dds-ny.un.org/>.

¹²¹ David Petrasek, Universal Periodic Review, <https://saeatlss.ca/karine/ECH/wp-content/uploads/2018/01/M5-UniversalPeriodicReview.pdf> n.d.

leveraging these younger public servants against claims of foreign interference was the fact that the process was universal. Despite these benefits, the UPR faces some limitations worth consideration. Firstly, similar to the Human Rights Council, the UPR has also been criticized for being easily manipulated. For example, Cox (2010) describes that “states have been able to manipulate the speakers' list for the three-hour review session to limit the ability of those critical of their regime to speak, while highlighting those speakers who will praise them”¹²².

Interestingly, other researchers have commented that when questions come from allied states they are more likely to be considered as legitimate.¹²³ Russia received its most recent UPR evaluation in 2018. The final report indicated that Brazil, Denmark, Montenegro, The Netherlands, Chile, Lithuania, United States of America, Luxembourg, Iceland, United Kingdom, Ireland, Canada New Zealand, and Norway all supported recommendations regarding the treatment of LGBT people within the Russian Federation, and several were specific to Chechnya.¹²⁴ The International Bar Association’s Human Rights Institute submitted evidence in support of widespread discrimination against LGBT people in the republic. In addition, multiple anonymized sources confirmed this especially with regards to treatment by police officials and the “Federal Law 135-FZ” (anti-propaganda law).¹²⁵ Despite this information, the Russian Federation claimed that:

139. As for the recommendations that had been made on protecting the rights of lesbian, gay, bisexual, transgender and intersex persons, especially in the Chechen Republic, investigations had revealed that there had been no incidents of discrimination against those persons¹²⁶

¹²² Cox, Eric. “State Interests and the Creation and Functioning of the United Nations Human Rights Council”. *Journal of International Law and International Relations* 6, no.1,114, 2010.

¹²³ Terman, Rochelle & Voeten, Erik. “The Relational Politics of Shame: Evidence from the Universal Periodic Review”. *The Review of International Organizations* 13, iss.1, 1-23, 2018.

¹²⁴ United Nations. Rep. *Report of the Working Group on the universal periodic review - Russian Federation*. United Nations, 2018. <https://undocs.org/A/HRC/39/13/>.

¹²⁵ United Nations. “Summary of Stakeholders’ submissions on Russian Federation”. United Nations, 2018. <https://undocs.org/en/A/HRC/WG.6/30/RUS/3/>

¹²⁶ Ibid.

This quote illustrates that although the UPR can serve as an awareness raising tool, recommendations are non-binding and the Russian Federation, and other states, are able to circumvent them by dismissing the evidence brought forth. As indicated by the UN, ultimately the decision to implement the recommendations is up to the state itself.¹²⁷

As one of the subsidiary functions of the Human Rights Council, the special procedures include independent experts who provide reporting and analysis either on a specific region or a specific issue (e.g. LGBT people). In order to gather their research, special rapporteurs conduct country visits and communicate their findings to other UN member states at the Human Rights Council; previous to 2006 this happened at the Human Rights Commission. Other functions of special rapporteurs include conducting consultations, disseminate their research to the public and advocate for changes in accordance with their research, and also provide consultation on technical assistance. There are a total of 56 special rapporteurs, 12 who report on specific countries, and 44 who report on specific themes. Some of the most relevant rapporteur portfolios to the discrimination of LGBT people in Chechnya include: The Independent Expert on sexual orientation and gender identity; the Special Rapporteur on torture, and cruel, inhuman or degrading treatment or punishment; and, the Special Rapporteur on violence against women, its causes and consequences.¹²⁸ Special rapporteurs are appointed through special procedures and can be nominated by governments, or other groups within the United Nations.¹²⁹ Relevant special rapporteurs (listed above) have supported the investigation into the claims regarding the

¹²⁷ UN Human Rights Council. “Basic facts about the UPR”. United Nations, n.d. <https://www.ohchr.org/en/hrbodies/>.

¹²⁸ OHCHR. “Chechnya: UN experts urge action after reports of renewed persecution of lesbian, gay and bisexual people”. United Nations, 2019. <https://www.ohchr.org/EN/NewsEvents/>.

¹²⁹ OHCHR. “Special Procedures of the Human Rights Council”. United Nations, n.d. <https://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>.

extrajudicial killings of gay men in Chechnya in April 2017¹³⁰ and February 2019.¹³¹ These letters both urge the government of the Russian Federation to conduct an impartial investigation into the reports of human rights violations in Chechnya and rectify the situation in accordance with international law. In the February 2019 letter, the special rapporteurs note the denial made by the Russian Federation towards the evidence they provided to the state's last UPR in 2018 (see above). One of the largest weaknesses of the special rapporteur system is a lack of continuous follow up after a series of observations and corresponding recommendations are made. Secondly, recommendations of the special rapporteur may be accepted or rejected based on political motives, which means that they do not always come to fruition. Finally, special rapporteurs also lack resources to confirm information they receive from various sources given restrictions placed on their entry by the state being examined.¹³²

Overall, charter bodies do have some potential to apply soft power against the Russian Federation to mitigate the situation in Chechnya. The UPR might be the most applicable tool in this specific situation, at least prima facie. Although homosexuality has long been represented as “western decadence”¹³³ in Russian politics, this rhetoric continues today. For example, Canada and other western nations were accused by the Russian government by interfering in the country's June 2020 constitutional vote, which includes banning gay marriage.¹³⁴ Given this context, the universality of the UPR might leverage advocacy by other UN member states and

¹³⁰ OHCHR. “End abuse and detention of gay men in Chechnya, UN human rights experts tell Russia”. United Nations, 2017. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21501>.

¹³¹ OHCHR. “Chechnya: UN experts urge action after reports of renewed persecution of lesbian, gay and bisexual people”. United Nations, 2019. <https://www.ohchr.org/EN/NewsEvents/>.

¹³² Subedi, Surya. “Protection of Human Rights through the Mechanism of UN Special Rapporteurs”. *Human Rights Quarterly* 33, iss.211, 2011. <https://www.jstor.org/stable/23015986>.

¹³³ Wilkinson, Cai. “LGBT Rights in the Former Soviet Union: The Evolution of Hypervisibility.” Essay. In *The Oxford Handbook of Global LGBT and Sexual Diversity Politics*, edited by Michael J. Bosia, Sandra M. McEvoy, and Momin Rahman, 1–18. New York, NY: Oxford University Press, 2020.

¹³⁴ Brown, Chris. “Putin allies accuse Canada of interfering with Russia's gay marriage vote”. CBC News, 2020. <https://www.cbc.ca/news/world/russia-gay-marriage-referendum-canada-1.5631879>.

human rights defenders. Given the political nature of the Human Rights Council, an argument by the Russian government of Western interference might hold more leverage. Much of the investigative work done by special rapporteurs relies on investigative work done in the state being examined. Given past refusals by the Russian Federation, including towards the OSCE's investigation,¹³⁵ the admittance of special rapporteurs into the country appears unlikely.

3.1.2. Treaty bodies. Treaty bodies at the United Nations are delegated powers on the basis of a corresponding treaty, convention or covenant. As mentioned in Chapter 1, as part of binding treaties, states are responsible to enforce the articles of treaties they have ratified. Generally speaking, it is the relevant treaty body's responsibility to monitor and enforce the articles of the treaty among signatory states. As per the analysis on defining the issues in Chapter 1, the relevant treaty bodies include the Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Discrimination against Women (CEDAW), Committee against Torture (CAT) and the Subcommittee on the Prevention of Torture (SPT). Given that the Russian Federation has not ratified the Optional Protocol to the Convention against Torture, the Subcommittee on the Prevention of Torture does not have jurisdiction.¹³⁶ Members of each treaty body are individuals with an expertise in a related human rights field and are independent of states, although they are nominated by states. Treaty bodies have three functions: reviewing reports provided by states; providing consultation on how the state might successfully ratify the respective treaty; and, providing legal interpretations of the treaty itself. Other functions of treaty bodies may include

¹³⁵ OSCE. Rep. *Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation*, 21 December 2018. <https://www.osce.org/odhr/407402>.

¹³⁶ United Nations. "9. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". United Nations, n.d. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&clang=en.

reviewing submissions from individuals, reviewing claims made by states, initiating an examination of state, or partaking in visits to a region or state of concern.¹³⁷

There appears to be several avenues to address the situation in Chechnya through mechanisms as part of treaty bodies, *prima facie*. Treaty bodies may address concerns as a result of the reports provided by countries, claims made by individuals or as a result of claims made by other states. Firstly, as part of their responsibilities in ratifying each of the respective treaties, states are required to submit a report every 2 to 5 years (depending on the body itself). In response to the reports produced by the state members, the treaty body may ask follow up questions regarding the contents of the report. Treaty bodies also receive information from CSOs, other multilateral and supranational institutions.¹³⁸

Russia provided its latest report to CAT in 2016. Upon responding to the report in 2018, members of CAT expressed concerns over the treatment of LGBT people in the Chechen Republic. In particular, Claude Heller-Rouassant, Committee Vice-Chairperson and Co-Rapporteur for the Russian Federation requested that the Russian Federation “better monitor the situation of human rights in the Northern Caucasus, and to conduct an independent review of the criminal proceedings against individuals based on questionable evidence.”¹³⁹ In response, the Russian Federation stated that they have conducted the necessary investigation and that the Human Rights Ombudsperson’s Office had not been able to verify the accusations. Finally, in their concluding observations, CAT reinforced their concerns surrounding LGBT people in Chechnya. CAT proposed various remedies presented in Article 33 in their final report which

¹³⁷ International Service for Human Rights. Rep. *Simple Guide to the UN Treaty Bodies*. International Service for Human Rights, 2015. http://www.ishr.ch/sites/default/files/documents/ishr_simpleguide_eng_final_final_dec15.pdf.

¹³⁸ International Service for Human Rights. Rep. *Simple Guide to the UN Treaty Bodies*. International Service for Human Rights, 2015. http://www.ishr.ch/sites/default/files/documents/ishr_simpleguide_eng_final_final_dec15.pdf.

¹³⁹ OHCHR. “Committee against Torture examines Russian Federation's report”. United Nations, 2018. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23412&LangID=E>.

included ensuring accountability for the crimes committed in the Chechen Republic in March 2017, repeal Federal Law 135 (anti-gay propaganda law) and ensure law enforcement officials receive the proper training.¹⁴⁰

The Russian's Federation last report to the Human Rights Committee (HRC) regarding its obligations as part of ICCPR was provided in 2014/15 and its next review is due this year. In preparation for this review the state has provided its initial party report, which does not reference the human rights of LGBT people in the Chechnya.¹⁴¹ Despite the Russian Federation's omission of LGBT rights in Chechnya, several CSOs have submitted evidence for this review to encourage the HRC to probe this issue.^{142,143} Russian Federation's review by CEDAW occurred last in 2015, and therefore preceded the incidents in Chechnya; its next review is due in 2021. The country's review by CESCR also just finished in 2017 and their next review is not due until 2022.¹⁴⁴

Claims made by individuals are another method to address the treatment of LGBT people in Chechnya. The claim must go through multiple steps to be successful including initial submission, determination of admissibility, review by the committee, and then lastly, a verdict is issued by the committee. If the verdict indicates that articles within the treaty have been violated, the state is provided with a copy of the report collated by the committee and must then respond.

¹⁴⁰ UN Committee against Torture. "Concluding observations on the sixth periodic report of the Russian Federation". United Nations, 2018. <https://undocs.org/en/CAT/C/RUS/CO/6>.

¹⁴¹ United Nations. Rep. *Eighth report submitted by the Russian Federation under article 40 of the Covenant, due in 2019*. United Nations, 2019. <https://undocs.org/ccpr/c/rus/8>.

¹⁴² Eurasian Coalition on Health, Rights, Gender and Sexual Diversity & "Coming Out" LGBT Group. Rep. *Human Rights Violations Based on Sexual Orientation and Gender Identity in the Russian Federation*. UN Treaty Database, 2020. https://tbinternet.ohchr.org/_layout.

¹⁴³ The Advocates of Human Rights. Rep. *Russian Federation's Compliance with International Covenant on Civil and Political Rights Treaty - Suggested List of Issues Relating to Discrimination Based on Sexual orientation, Gender Identity, and Gender Expression*. UN Treaty Database, 2020. <https://www.theadvocatesforhumanrights.org/uploads/>.

¹⁴⁴ United Nations. "UN Treaty Database – Reporting Status for the Russian Federation". United Nations, n.d. https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=RUS&Lang=EN.

Individual complaints to a treaty body are very rarely effective. Firstly, submissions by individuals are often considered inadmissible. For example, for their claim to be admissible an individual must have attempted all interstate remedies and cannot be currently in the process of having their claim evaluated by another supranational or multilateral body. Secondly, a treaty body may only hear a case after an extended period of time has passed. Thirdly, committees have only very limited abilities to follow up to ensure that a country has properly integrated its recommendations on the basis of individual complaints. Methods may include dialogue with the state, sending reminders, and bringing forth the issues again during the state's next report.¹⁴⁵ Lastly, the Russian Federation has only ratified articles and optional protocols for a select number of international treaties. This leaves only the Committee against Torture (CAT), Committee on the Elimination of Discrimination against Women (CEDAW) and the Human Rights Committee (HRC) as potential avenues for individual claims.¹⁴⁶ In addition, states may also lodge a complaint against another state who has ratified the Convention against Torture within the context of the Committee against Torture. This is also possible at the ICESR but requires the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Russian Federation has not done so. Importantly, this mechanism has never been used, largely given the diplomatic implications of this type of action.¹⁴⁷ Furthermore, CSOs can also submit information to trigger an investigation within the context of CEDAW and CAT. Notably, a claim was submitted to CAT by the CSO Human Rights Watch

¹⁴⁵ ¹⁴⁵ International Service for Human Rights. Rep. *Simple Guide to the UN Treaty Bodies*. International Service for Human Rights, 2015. http://www.ishr.ch/sites/default/files/documents/ishr_simpleguide_eng_final_final_dec15.pdf.

¹⁴⁶ See UN database <https://juris.ohchr.org>

¹⁴⁷ Ibid.

regarding the torture of gay men in July 2018¹⁴⁸, but a decision by CAT has yet to be published.¹⁴⁹

Treaty bodies appear to have the greatest potential to address the situation in Chechnya given the binding nature of the treaties that they represent. As mentioned, the most relevant treaty bodies include Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Discrimination against Women (CEDAW), and the Committee against Torture (CAT) given the treaties that Russia had ratified. Given the restraints for individual claims mentioned above, the mandatory reviews seem to have the most promise to address the Russian Federation on the situation in Chechnya. The greatest barrier at this point appears to be time, given that several of the Russian Federation's reviews by various treaty body committees have not yet occurred since the beginning of the purges in Chechnya. In this sense, although treaty body mechanisms are slower, they are the most powerful given their binding and regular nature.

3.2. Council of Europe

This section will provide an overview of the European Court of Human Rights (ECtHR) as a mechanism within the context of the Council of Europe to address human rights complaints. As the most prominent and arguably the most powerful mechanism available to the Council of Europe the European Court of Human Rights (ECtHR) plays a crucial role as part of the European human rights system. Established in 1959, the ECtHR was developed as a mechanism to provide individuals with a legal recourse in the circumstance that their government has failed

¹⁴⁸ Human Rights Watch. "Human Rights Watch Submission to the United Nations Committee Against Torture on Russia". Human Rights Watch, 2018. <https://www.hrw.org/news/2018/07/06/human-rights-watch-submission-united-nations-committee-against-torture-russia>.

¹⁴⁹ See UN database <https://juris.ohchr.org>

to provide them with human rights guaranteed in the European Convention on Human Rights. States may also serve as the plaintiff and accuse other states of violating the human rights of their citizens as guaranteed in the ECHR. The judges of the ECtHR are non-political in nature and solely represent their own personal judgement capacity when making decisions.¹⁵⁰ In order to file a claim for assessment by the ECtHR, the submission must be considered admissible. A claim may be deemed inadmissible if the individual has not attempted all pathways of legal remedy within their country of origin. In addition, the ECtHR can only acknowledge a claim that has been submitted within 6 months of the last domestic ruling.¹⁵¹

As of present, only one individual has lodged a case against the Russian Federation on the basis of the LGBT purge in Chechnya. As noted earlier, a gay man from Chechnya, Maxim Lapunov, is currently having his case assessed by the ECtHR. The latest update indicates that the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) submitted a report to support his case in April 2020.¹⁵² This report outlined the legal framework for Lapunov's case including jurisprudence regarding previous decisions made regarding Article 3¹⁵³ of the ECHR.

Pursuing human rights complaints at the ECtHR has several benefits and limitations. One of the largest benefits is the court's jurisprudence regarding decisions on LGBT rights; the European Court of Human Rights is widely recognized for furthering the rights of LGBT people. Notable cases furthering LGBT rights include *Smith and Grady v. United Kingdom*¹⁵⁴ and more

¹⁵⁰ Council of Europe. "Council of Europe independent human rights mechanisms and institutions (F-67075)". Council of Europe, 2006. <https://www.un.org/esa/socdev/enable/rights/ahc7docs/ahc7council.eu1.pdf>.

¹⁵¹ European Court of Human Rights. "Practical Guide on Admissibility Criteria". European Court of Human Rights, 2019. https://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf.

¹⁵² ILGA. "Rainbow Digest - April 2020 No.295". ILGA, 2020. <https://www.ilga-europe.org/resources/rainbow-digest/april-2020>.

¹⁵³ Article 3 – Prohibition of torture No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

¹⁵⁴ Amnesty International UK. "Five ways the European Court of Human Rights makes us safer". Amnesty International, 2020. <https://www.amnesty.org.uk/five-ways-european-court-human-rights-makes-us-safer-echr>.

recently, *Alekseyev v. Russia (2010)*;¹⁵⁵ of course, these are just two examples of several rulings that have furthered LGBT rights in Europe.¹⁵⁶ Furthermore, European human rights case law also has shown to drive positive legislative change within various European country's legal systems.¹⁵⁷ The largest limitations to accessing the court are the admissibility criteria listed above (i.e. time period, exhaustion of domestic legal channels). Another significant limitation, given the court's popularity, is its continuing administrative backlog. On December 31, 2019, the ECtHR reported that there were 59,800 "applications pending before a judicial formation."¹⁵⁸

3.3 Organisation for Security and Cooperation in Europe (OSCE)

This section will provide a brief overview of mechanisms for supporting the development of human rights as per the OSCE. The mandate of the OSCE is based on the Helsinki Accords. The decisions made by the OSCE are not legally binding, strictly defined.¹⁵⁹ Instead, parties have politically committed to engage with each other for the benefit of all.¹⁶⁰ The OSCE has two prominent avenues that could support the human rights of LGBT people in Chechnya. Firstly, the institution participates in awareness raising with regards to human rights abuses. For example, the Vienna and Moscow mechanisms allow member states of the OSCE to probe human rights concerns further. The Vienna Mechanism facilitates information sharing (e.g. meetings, reports) between states to investigate a human rights issue in further detail; the accused state is required

¹⁵⁵ European Court of Human Rights. Rep. *Case of Alekseyev v. Russia*. HUDOC, 2001. [https://hudoc.echr.coe.int/tur#{"itemid":\["001-101257"\]}](https://hudoc.echr.coe.int/tur#{).

¹⁵⁶ Council of Europe. "Human rights of lesbian, gay, bisexual, transgender and intersex people (LGBTI)". Council of Europe, n.d. <https://www.coe.int/en/web/commissioner/thematic-work/LGBTi>.

¹⁵⁷ Ananostou, Dia. "Does European human rights law matter? Implementation and domestic impact of Strasbourg Court judgments on minority-related policies". *The International Journal of Human Rights* 14, iss.5, 2010.

¹⁵⁸ European Court of Human Rights. Rep. "Analysis of statistics 2019". European Court of Human Rights, 2020. https://www.echr.coe.int/Documents/Stats_analysis_2019_ENG.pdf.

¹⁵⁹ OSCE. "Address by Mr. Jaap de Hoop Scheffer, Minister of Foreign Affairs of the Kingdom of the Netherlands and Chairman-in-Office of the OSCE "The OSCE: a unique organization with distinctive added value". OSCE, 2003. <https://www.osce.org/files/f/documents/5/1/42489.pdf>.

¹⁶⁰ Pourchot, Georgeta. "The OSCE: A Pan-European Society in the Making?". *European Integration* 33, iss.2, 2011, p. 179-195.

to provide the requested information.¹⁶¹ The Moscow Mechanism entails an enhanced response by sending experts to investigate human rights abuses.¹⁶² Secondly, the OSCE also offers consultation through its Office for Democratic Institutions and Human Rights including on tolerance and non-discrimination and human rights and fundamental freedoms. Indeed, this assumes that the regime or state facing the accusation of human rights violations is willing to accept the results of such consultation. Thirdly, there are various political instruments available to OSCE members including frequent dialogue on achieving human rights obligations and the ability of states to bring forth human rights complaints against other states. This includes potential intervention by the Chairman in Office who can also intervene in certain situations and trigger the Moscow Mechanism themselves.¹⁶³

The OSCE has been able to take a number of actions to address the purges in the Chechnya. Firstly, in December 2018, the OSCE released a comprehensive report on the purges. Despite this report being initiated by the Moscow Mechanism, the Russian Federation denied the entry of the team of experts from the OSCE meaning that this report had to rely on secondary sources of information. This report collated key evidence and information on the nature of the crimes committed in the Chechen Republic. Suggestions were made to the Russian Federation and the Chechen Republic including the release of reports made by observations of the European Committee for the Prevention of Torture.¹⁶⁴ In May 2020, 14 OSCE members further pressed the Russian Federation regarding answers towards the LGBT purges in Chechnya given that the first OSCE investigation was completed nearly two years earlier and no information had been

¹⁶¹ OSCE. “The Vienna Mechanism”. OSCE, 1989. <https://www.osce.org/odihr/20064>.

¹⁶² OSCE, “The Moscow Mechanism”. OSCE, 1991. <https://www.osce.org/odihr/200661>.

¹⁶³ OSCE “Individual Human Rights Complaints: a Handbook for OSCE Field Personnel”. OSCE, 2003. <https://www.osce.org/odihr/20437>.

¹⁶⁴ OSCE. Rep. *Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation*, 21 December 2018. <https://www.osce.org/odihr/407402>.

provided by the Russian Federation.¹⁶⁵ These actions illustrate how the OSCE can harness its political power to pressure the Russian Federation into addressing the purges. Despite these avenues, it should be noted that the OSCE has largely existed in a reporting capacity in response to human rights violations in the Russian Federation. For example, during the Chechen wars and the 2008 Russia-Georgia war, the OSCE did little more than “report from the sidelines”¹⁶⁶ on the human rights violations. As will be discussed in Chapter 4.1, although reporting, also known as naming and shaming can bring awareness, these may not be the most effective in addressing human rights violations.

Chapter 4: Bilateral Mechanisms

In this section, several bilateral mechanisms will be reviewed. Unlike multilateral mechanisms, these pertain specifically to the relationship between the Russian Federation and other states. Importantly, some of the mechanisms described below may also function in a multilateral context, as multilateral and bilateral responses are often interrelated. Despite this overlap, the purpose of this chapter is to describe these mechanisms within the bilateral context. In section 4.1, diplomacy and sanctions will both be reviewed. More specifically, a definition of each will be provided, followed by the manifestation of each in response to the situation in Chechnya thus far and a reflection of the benefits and limitations of each. In section 4.2. the provision of asylum will be reviewed as a potential response. This chapter will include a definition of asylum and LGBT (or SOGI) refugees, the provision of asylum granted to LGBT

¹⁶⁵ Radio Free Europe. “OSCE member blast Russia’s lack of response to rights violations in Chechnya”. Radio Free Europe, 2020. <https://www.rferl.org/a/osce-members-blast-russia-s-lack-of-response-to-rights-violations-in-chechnya/30635992.html>.

¹⁶⁶ Pourchot, Georgeta. “The OSCE: A Pan-European Society in the Making?”. *European Integration* 33, iss.2, 2011, p. 179-195.

refugees from Chechnya as it stands at the present time and the benefits and limitations of this approach. The largest limitations of this approach surround the settlement of these refugees in Europe and North America. Lastly, in section 4.3 support for human rights defenders will be considered. Similar to the previous sections, the meaning of human rights defenders and its tangible application will be considered. Additionally, the benefits and limitations of providing support to human rights defenders will be considered.

4.1 Diplomacy and Sanctions

Human rights diplomacy is perhaps one of the more common methods of addressing human rights violations in the context of the 21st century. Human rights diplomacy can be considered as “negotiating, bargaining, and advocating process associated with the promotion and protection of international human rights.”¹⁶⁷ In this section, the aspect of human rights diplomacy I would like to focus on is the advocating process, more specifically what international relations scholars have referred to as ‘naming and shaming’¹⁶⁸ human rights diplomacy. Naming can be defined as an identification of an actor (often a government) whom has evidence against them suggesting that they have violated human rights norms. Shaming describes the strategic move to manipulate the actor in a certain way, most often to promote accountability or to have them stop their actions.¹⁶⁹

Various Western governments have exercised this form of human rights diplomacy as a response to Chechnya. Emmanuel Macron, the current President of French, announced that he

¹⁶⁷ Pease, Kelly-Kate & McBride, Kelly. “Human Rights and Humanitarian Diplomacy (1856-)”. Oxford Bibliographies. Oxford Press, 2015. <https://www.oxfordbibliographies.com/view/document/obo-9780199743292/obo-9780199743292-0126.xml>.

¹⁶⁸ Petrusek, David. “New powers, new approaches? Human rights diplomacy in the 21st century”. *International Journal on Human Rights* 10, iss. 19, 2013.

¹⁶⁹ Friman, H. Richard, and James Franklin. “Human Rights Naming and Shaming: International and Domestic Processes .” Essay. In *The Politics of Leverage in International Relations: Name, Shame, and Sanction*, 43–60. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2015.

had spoken to Russian president, Vladimir Putin and emphasized the importance of protecting LGBT people in Chechnya.¹⁷⁰ Although Prime Minister Justin Trudeau had not issued a public statement, Global Affairs Canada released a statement on 15 April 2017 quoting former Minister of Foreign Affairs, Chrystia Freeland referring the purge in Chechnya as “reprehensible”.¹⁷¹ Former UK Foreign and Commonwealth Office Minister Sir Alan Duncan commented that “the discrimination of LGBT people in Chechnya is utterly appalling... the Russian authorities must protect their people from these human rights abuses and conduct a credible investigation into these reports immediately.”¹⁷² Of course, these are just a few examples as the governments of the United States of America¹⁷³, Germany¹⁷⁴ and Australia¹⁷⁵ have all issued statements naming and shaming the Russian Federation and the government of Chechnya for their actions (or lack thereof).

Before discussing advantages and disadvantages, it is important to highlight the conditions in which naming and shaming human rights diplomacy may work successfully. According to James Franklin, there are three conditions that must exist for these measures to be successful. He argues that the initiating state must have be resourceful, well connected in the international community and global economy, should have a strong diplomatic presence (e.g. permanent Security Council member) and should be close in proximity to the accused regime. Of

¹⁷⁰ Burrows, Emma. “French president calls on Putin to protect gay Chechens”. CNN News, 2017. <https://www.cnn.com/2017/05/29/europe/macron-putin-russia/index.html>.

¹⁷¹ Global Affairs Canada. “Canada calls persecution of LGBTQ2 people in Chechnya reprehensible”. Government of Canada, 2017. https://www.canada.ca/en/global-affairs/news/2017/04/canada_calls_persecutionoflgbtq2peopleinchechnyareprehensible.html.

¹⁷² Duffy, Nick. “US State Department condemns Chechnya gay purge reports”. Pink News, 2019. <https://www.pinknews.co.uk/2019/01/19/chechnya-gay-purge-us/>.

¹⁷³ Ibid.

¹⁷⁴ Connolly, Kate. “Merkel presses Putin over anti-gay purge in Chechnya”. The Guardian, 2017. <https://www.theguardian.com/world/2017/may/02/angela-merkel-vladimir-putin-russia-investigate-lgbt-torture-claims-chechnya>.

¹⁷⁵ Koziol, Michael. “Julie Bishop reproaches Russia over ‘mass arrests’ of gay men in Chechnya”. The Sydney Morning Herald, 2017. <https://www.smh.com.au/politics/federal/julie-bishop-reproaches-russia-over-mass-arrests-of-gay-men-in-chechnya-20170413-gvk5hv.html/>.

course, this puts a country like the United States or France in a fairly good position to negotiate with the Russian Federation. Under the conditions listed above, advantages of this naming and shaming approach may include access to a vast number of resources for sanctioning, publicity of the issue through various modes of communication (e.g. internet, television), and safety of the accusing state (compared to smaller states). From the point of view of the accusing state, a potential disadvantage is that it may be accused of hypocrisy; providing that it has also been accused of committing its own human rights violations. Notably, although powerful states may have more to offer in terms of a response to the regime committing the human rights violation, they may also have more to lose (e.g. economic and security arrangements).¹⁷⁶ Limitations of the approach more broadly speaking include giving attention to the groups committing the violations, and the real potential of the regime itself leveraging these claims to support nationalist sentiment; indeed, evidence suggests that this appears to be the case in Chechnya.¹⁷⁷ Several authors suggest that the empirical evidence for this approach is mixed and depends on the context surrounding the violation.^{178,179}

Alternatively, to the soft power of ‘naming and shaming’ human rights diplomacy, sanctions have a tangible impact towards the countries on the receiving end. According to the Council of Foreign Relations, a sanction may be best described as measures taken by one state (or multilateral institution) towards an accused state to “alter the strategic decisions of state and

¹⁷⁶ Friman, H. Richard, and James Franklin. “Human Rights Naming and Shaming: International and Domestic Processes.” Essay. In *The Politics of Leverage in International Relations: Name, Shame, and Sanction*, 43–60. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2015.

¹⁷⁷ Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

¹⁷⁸ Hafner-Burton, Emilie. “Sticks and stones: Naming and shaming the human rights enforcement problem”. *Journal of International Organization* 62, iss. 4, 2008.

¹⁷⁹ Petrusek, David. “New powers, new approaches? Human rights diplomacy in the 21st century”. *International Journal on Human Rights* 10, iss. 19, 2013.

non-state actors that threaten their interests or violate international norms of behavior.”¹⁸⁰

According to Global Affairs Canada, some of these measures may include “restricting or prohibiting trade, financial transactions or other economic activity between Canada and the target state; or seizure of property situated in Canada.”¹⁸¹ In relation to the human rights regime, several countries have enacted laws allowing them to place sanctions on countries whom they have deemed to have committed a violation against human rights. Most commonly, these laws allowing these sanctions refer to a Russian tax auditor, Sergei Magnitsky. Magnitsky was arrested upon discovering tax evasion among government authorities totaling approximately 230 million USD (~312 million CAD); he later died in prison after experiencing severe torture at the hands of Russian authorities, and although an investigation had been commissioned, it was eventually dropped as the Russian authorities asserted that he had been detained in accordance with Russian law.¹⁸² In 2019, the European Court of Human Rights ruled that many of Magnitsky’s rights were in fact violated during his time in prison.¹⁸³ Laws that provide for these kinds of human rights-based sanctions include Canada’s Justice for Victims of Corrupt Officials Act (S.C. 2017, c.21)¹⁸⁴, the United States of America’s Global Magnitsky Act (2016) and commitments by the United Kingdom¹⁸⁵ and the European Union to develop a similar regime.¹⁸⁶ The United States of America is the only country to have used such laws in response to the

¹⁸⁰ Masters, Johnathan. “What are economic sanctions?” Council on Foreign Relations, 2019.

<https://www.cfr.org/backgrounder/what-are-economic-sanctions>.

¹⁸¹ Global Affairs Canada. “Types of Sanctions”. Government of Canada, 2020. <https://www.international.gc.ca/>.

¹⁸² BBC News. “Q&A: The Magnitsky affair”. BBC News, 2013. <https://www.bbc.com/news/world-europe-20626960>.

¹⁸³ BBC News. “Magnitsky wins Russian rights battle 10 years after his death”. BBC News, 2019.

<https://www.bbc.com/news/world-europe-49481471>.

¹⁸⁴ Government of Canada. “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) (S.C. 2017, c. 21)”. Justice Laws Website, 2017. <https://laws.justice.gc.ca/eng/acts/J-2.3/FullText.html>.

¹⁸⁵ Thomson Reuters. “Britain to introduce a Magnitsky law after Brexit: foreign minister”. Thomson Reuters, 2019. <https://www.reuters.com/article/us-britain-eu-raab/britain-to-introduce-a-magnitsky-law-after-brexit-foreign-minister-idUSKBN1WE0IT>.

¹⁸⁶ Chan, Helen. “Human rights sanction laws bring uncertainty and challenges to business community”. Thomson Reuters, 2020. <https://blogs.thomsonreuters.com/answerson/human-rights-sanction-laws/>.

LGBT purges in Chechnya. More specifically, the United States had placed Ramzan Kadyrov and several key officials under the asset control portion of the law in 2017;¹⁸⁷ in 2019, three more officials and the Chechen Terek Special Forces were sanctioned as further action against the LGBT purges.¹⁸⁸

There are several advantages and disadvantages to the use of sanctions based on human rights violations. The largest advantage of this type of sanction is that it provides an avenue for human rights advocates with an avenue closest to achieving forced compliance with human rights norms and treaties. This is especially true for states like the US, which remains relevant to the economic interests of many individuals (e.g. foreign investment) and has a plethora of resources available to enforce the sanctions.¹⁸⁹ Although the application of the Global Magnitsky Law, among others, may seem like an easy solution, a number of consequences follow such an approach. Firstly, the Global Magnitsky Law has created anxiety among firms conducting business internationally. More specifically, US and international firms report fearing sanctions for doing business with a specially designated national (a designation under Global Magnitsky Law).¹⁹⁰ Secondly, this system circumvents the international human rights regime and therefore contributes to decreasing its significance *prima facie*. Thirdly, countries face considerable diplomatic risk by putting forth human rights sanctions. As illustrated by the division between

¹⁸⁷ United States Department of the Treasury. “Publication of the Magnitsky Act Sanctions Regulations; Magnitsky Act-Related Designations”. US Department of the Treasury, 2017. [https://www.treasury.gov/resource-center/sanctions/OFAC Enforcement/Pages/20171220_33.aspx](https://www.treasury.gov/resource-center/sanctions/OFAC%20Enforcement/Pages/20171220_33.aspx).

¹⁸⁸ United States Department of the Treasury. Treasury Targets Additional Individuals Involved in the Sergei Magnitsky Case and Gross Violations of Human Rights in Russia. United States Department of Treasury, 2019. <https://home.treasury.gov/news/press-releases/sm691>.

¹⁸⁹ Friman, H. Richard, and James Franklin. “Human Rights Naming and Shaming: International and Domestic Processes.” Essay. In *The Politics of Leverage in International Relations: Name, Shame, and Sanction*, 43–60. Houndmills, Basingstoke, Hampshire: Palgrave Macmillan, 2015.

¹⁹⁰ Firestone, Tom and Contini, Kerry. “The Global Magnitsky Act”. *Journal of Criminal Law Forum* 29, 2018.

UN member states on LGBT human rights resolutions,¹⁹¹ LGBT rights remain rejected by several countries.

4.2 Asylum

Asylum is one of the most prominent bilateral tools used to address the implications of human rights abuses internationally. The focus of this section is on asylum as a bilateral mechanism between countries within a foreign policy framework. In spite of this focus, it is important to provide a brief description of the international legal framework at the level of the United Nations. Critically, Article 1A(2) of the Convention on the Status of Refugees indicates that refugee status may be claimed based on:

well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹⁹²

Evidently, sexual orientation or gender identity are not explicitly mentioned in the Article 1A (2). Notably, several states including Canada, France, Germany, New Zealand, the United Kingdom and the United States have affirmed sexual orientation and gender as grounds for asylum¹⁹³. Of note, the term LGBT refugees may also be referred to as sexual orientation and gender identity (SOGI) refugees. For international legal purposes, the definitions of sexual orientation and gender identity are outlined by the Yogyakarta Principles¹⁹⁴. Several states have

¹⁹¹ United Nations. “Sexual Orientation and Gender Identity”. United Nations, n.d.

<https://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNResolutions.aspx>.

¹⁹² UNHCR. “Convention and Protocol relating to the Status of Refugees”. United Nations, 1951.

<https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>.

¹⁹³ UN, ACHPR & IACHR. *Rep. Joint Thematic Dialogue on Sexual Orientation, Gender Identity and Intersex Related Issues*, 2018. <https://www.ohchr.org/Documents/>.

¹⁹⁴ UNHCR. “UNHCR guidance note on refugee claims relating to sexual orientation and gender identity”. United Nations, 2008. <https://www.refworld.org/docid/48abd5660.html>.

accepted LGBT refugees from Chechnya to date. Germany¹⁹⁵, Lithuania¹⁹⁶, the Netherlands¹⁹⁷, France¹⁹⁸, and Canada¹⁹⁹ have all been recognized as accepting LGBT refugees from Chechnya. Notably, the Government of Canada had collaborated with the CSO, Rainbow Railroad in 2017 discretely, to ensure that refugees were brought to Canada safely.²⁰⁰ Importantly, governments have resettled Chechen refugees as part of their responsibilities under the Convention of the Status of Refugees, and therefore they do not typically make in-land asylum claims. For example, in Canada, these refugees could be sponsored by an organization, the government itself or a mix of both.²⁰¹

Although the provision of asylum has little impact upon the human rights violations in the country of origin itself, it does entail safety of the refugees themselves, at least prima facie. Settlement of refugees in countries where they claim asylum poses many challenges, both specific to the Chechen LGBT refugees and more general barriers faced by LGBT refugees collectively. Multiple reports out of the Netherlands and Germany suggest that LGBT refugees who escaped conditions in Chechnya fell victims of attacks while living in the countries where they have claimed asylum. Although a confirmation has yet to be made, these attackers are

¹⁹⁵ Shimer, David, “Gay Chechens, Attacked at Home, Find Doors Opening in Europe”. The New York Times, 2017. <https://www.nytimes.com/2017/06/09/world/europe/chechnya-gays-refugees.html>.

¹⁹⁶ Gramer, Robbie. “Lithuania Opens Door to Gay Chechens Fleeing Persecution, While U.S. Slams It Shut”. Foreign Policy, 2017. <https://foreignpolicy.com/2017/05/18/lithuania-opens-door-to-gay-chechens-fleeing-persecution-while-u-s-slams-it-shut-lgbt-lgbti-rights-russia-persecution-asylum-refugee/>.

¹⁹⁷ Kakissis, Joanna. “Chechnya's LGBT Muslim Refugees Struggle to Cope In Exile”. NPR, 2018. <https://www.npr.org/sections/parallels/2018/01/05/572985673/chechnyas-lgbt-muslim-refugees-struggle-to-cope-in-exile>.

¹⁹⁸ The Local France. “France announces arrival of first gay refugee from Chechnya just as Putin is in town”. The Local France, 2017. <https://www.thelocal.fr/20170530/france-takes-in-refugee-from-chechnya-as-macron-presses-putin-on-gay-rights>.

¹⁹⁹ Keating, Fiona. “Canada quietly gives asylum to gay people fleeing persecution in Russia”. The Independent, 2017. <https://www.independent.co.uk/news/world/americas/canada-lgbt-gay-asylum-russia-chechnya-homophobia-chrystia-freeland-ramzan-kadyrov-a7926971.html>.

²⁰⁰ Ibid.

²⁰¹ Government of Canada. “Resettle in Canada as a Refugee”. Government of Canada, 2019. <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-outside-canada.html>

allegedly either loyal subjects of the Kadyrov regime in Chechnya or state officials.²⁰² Secondly, testimony from LGBT refugees in both the Netherlands²⁰³ (interview with Chechen refugee), in Canada²⁰⁴ and other European Union countries²⁰⁵, suggest that inquiries made by immigration services often force the refugee to relive their trauma. The psychological impact may also be worse among refugees who identify with cultures where homosexuality and non-cisgender gender identity are viewed as taboo. Thirdly, given their traumatic experiences, widespread mental illness has been noted among refugees in Europe and North America²⁰⁶, which is often aggravated by loneliness.^{207,208,209} Furthermore, racialized refugees may also face discrimination and classism within LGBT communities in western countries. Additionally, they may find that services within the LGBT community do not meet their needs.^{210,211} Accepting these refugees can have a number of consequences for the receiving countries as well. In terms of positive consequences, the receiving country may benefit from international recognition (e.g. Canada²¹²)

²⁰² Shuster, Simon. ‘They tell me demons live inside me’ a young man targeted in Chechnya for being gay discovers Europe offers no safe haven from his tormentors’, Time Magazine, n.d. <https://time.com/chechnya-movsar/>.

²⁰³ Kakissis, Joanna. “Chechnya's LGBT Muslim Refugees Struggle to Cope In Exile”. NPR, 2018. <https://www.npr.org/sections/parallels/2018/01/05/572985673/chechnyas-lgbt-muslim-refugees-struggle-to-cope-in-exile>.

²⁰⁴ Kahn, Sarilee & Alessi, Edward. “Coming out under the gun: Exploring the psychological dimensions of seeking refugee status for LGBT claimants in Canada”. *Journal of Refugee Studies* 31, iss. 1, 2017.

²⁰⁵ Alessi, Edward, Kahn, Sarilee, Woolner, Leah and Van Der Horn, Rebecca, “Traumatic Stress Among Sexual and Gender Minority Refugees From the Middle East, North Africa, and Asia Who Fled to the European Union”. *Journal of Traumatic Stress* 31, 2018.

²⁰⁶ Kamkar, Katy. “Refugee Mental Health”. Canadian Association of Mental Health, 2015. <https://www.camh.ca/en/camh-news-and-stories/refugee-mental-health>.

²⁰⁷ Dennis et al. “Challenges Faced by Refugee New Parents from Africa”. *Journal of Immigrant and Minority Health* 17, 2014.

²⁰⁸ Hynie, Michaela. “The social determinants of refugee mental health in the post migration context: a critical review”. *The Canadian Journal of Psychiatry* 63, iss.5, 2018.

²⁰⁹ Sijbrandij, Marit et al. “Strengthening mental health care systems for Syrian refugees in Europe and the Middle East: integrating scalable psychological interventions in eight countries” *European Journal of Psychotraumatology* 8, 2017.

²¹⁰ Zappulla, Antonio. Forgotten twice: the untold story of LGBT refugees. World Economic Forum, 2018. <https://www.weforum.org/agenda/2018/01/forgotten-twice-lgbt-refugees/>.

²¹¹ Ying Yee, June, Marshall, Zack and Vo, Tess. “Challenging Neo-Colonialism and Essentialism: Incorporating Hybridity into New Conceptualizations of Settlement Service Delivery with Lesbian, Gay, Bisexual, Trans, and Queer Immigrant Young People”. *Critical Social Work* 15, iss.1, 2014

²¹² Murphy, Jessica. Canada has quietly granted asylum to LGBT Chechens. BBC News, 2017. <https://www.bbc.com/news/world-us-canada-41075528>.

and could further increase the credibility of the claims by providing refugees with a safe space to share their experiences. Conversely, the receiving country may also face greater tension with Chechnya, and by association, the Russian Federation.

4.3 Support for Human Rights Defenders

A third bilateral mechanism may be to support human rights defenders. The OHCHR argues that human rights defenders are best defined by their composition and goals including supporting a universal vision of human rights, internationally placed, supporting education in human rights, contributing to the adequacy of government policy, among many other tasks.²¹³ Supporting human rights defenders has been integrated by Western governments into a 21st international development programs. This is true of both international development programs, as per the Sustainable Development Goals (SDGs)²¹⁴ and national development programs (e.g. Canada).²¹⁵ As part of Canada's Voices at Risk guidelines to support human rights defenders, tangible actions for diplomatic missions are provided. For example, Canadian missions are to work with human rights defenders in 12 ways outlined in the Voices at Risk guidelines including gathering information on human rights issues, having discussions with local and international officials and ensuring the prominence of human rights defenders. This may also include the provision of asylum to human rights defenders being threatened.²¹⁶

Support for CSOs and human rights defenders can either address short-term goals or longer-term ones within an international development context. In terms of short-term goals, one

²¹³ OHCHR. "Who is a defender?". United Nations, n.d.

<https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx>.

²¹⁴ Rattray, Sarah. Human rights and the SDGs – two sides of the same coin. United Nations Development Program, 2019. <https://www.undp.org/content/undp/en/home/blog/2019/human-rights-and-the-sdgs---two-sides-of-the-same-coin.html>.

²¹⁵ Global Affairs Canada. "Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders". Government of Canada, 2019. https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng

²¹⁶ Ibid.

example that has occurred as a result of the purges in Chechnya is the collaboration between the Canadian government and Rainbow Railroad to facilitate the arrival of refugees in Canada. To support the efforts of CSOs assisting LGBT refugees, the Federal Government of Canada provided organizations supporting LGBT people with \$30 million dollars CAD over a period of five years and then \$10 million per year afterwards²¹⁷. Certainly this is one of many examples. Canada has a dedicated policy detailing the various ways that the Canadian government can interact with civil society organizations (CSOs)²¹⁸. Within this policy, the protection of human rights is listed as a key guiding principle and the protection of women and vulnerable minority groups is at the forefront of the policy itself.

Chapter 5: Recommendations for the Future

Based on the evidence presented in this paper, several key findings indicate several potential ways forward to protect LGBT rights in Chechnya. The next three paragraphs will outline these ways forward. The first section will provide a brief overview of the multilateral mechanisms discussed and provide final comments. The section will provide similar information for the discussed bilateral mechanisms. The final section will provide a final recommendation based on the collation of comments in the first two sections.

5.1 Recommendations for Multilateral Mechanisms

Recall that the multilateral mechanisms explored in this paper to address the discrimination against LGBT people in Chechnya included those provided by the United Nations (UN), Council of Europe (CoE) and the Organisation for Security and Co-operation in Europe

²¹⁷ Newswire. “Rainbow Railroad welcomes new government funding for global LGBTQI human rights groups”. Newswire, 2019. <https://www.newswire.ca/news-releases/rainbow-railroad-welcomes-new-government-funding-for-global-LGBTqi-human-rights-groups-862609307.html>.

²¹⁸ Global Affairs Canada. “Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders”. Government of Canada, 2019. https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng.

(OSCE). The UN mechanisms discussed in this paper included both charter and treaty bodies. Generally speaking, the political nature of the charter bodies, particularly the Human Rights Council falls prey to politics. Similarly, the Special Rapporteur mechanism has little ability to follow up on their reports and require the state being investigated to allow them to perform a country visit. Indeed, this is also true of the Universal Periodic Review, as evidence suggest that governments are able to discredit the claims made by other governments (e.g. Russian Federation and anti-gay propaganda law²¹⁹). This indicates that these mechanisms may best be used in their awareness raising capacity. Treaty bodies at the United Nations appear to have more merit in this specific case. In terms of treaty bodies, the most relevant bodies to the state sponsored discrimination of LGBT people in Chechnya include Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Discrimination against Women (CEDAW), Committee against Torture (CAT) and the Subcommittee on the Prevention of Torture (SPT). Recall that the treaty bodies require countries to provide reports to prove their adherence to the treaty the body is responsible for and that claims regarding human rights abuses can be made to these treaty bodies by individuals. Both of these may serve as potential avenues to encourage accountability and justice for the LGBT purges in Chechnya. Many of the Russian Federation's reports including CEDAW, CESCR, and HRC (ICCPR) are due within the next 3 years; Russia's last reports to these treaty bodies occurred prior to the initial reports of purges in Chechnya. Given the Russian Federation's lack of ratification of the individual complaints procedures as entailed by several treaty bodies, these complaints can only be made under the Committee against Torture (CAT), Committee on the Elimination of Discrimination against Women (CEDAW) and the Human Rights Committee

²¹⁹ UN Committee against Torture. "Concluding observations on the sixth periodic report of the

(HRC). Secondly, many cases are found inadmissible based on the failure to exhaust all of the legal mechanisms within the country of origin and the requirement of a passage of time. Thirdly, there are major stakes at coming forward publicly with allegations against Chechnya, which include being perused by the state. Lastly, the research surrounding the purges in Chechnya often highlight the experiences of gay men. The Russian LGBT Network²²⁰ highlights that the cases levied against LGBT women are less reported. Although the reason is not immediately clear, this may make an individual claim under the CEDAW much less likely. The European Court of Human Rights (ECtHR), a Council of Europe regional mechanism, is much more plausible for a number of reasons. Most notably, Maxim Lapunov's case is in the process of being assessed by the court, giving this option a tangible chance at succeeding. This is especially true given several key judgements by the ECtHR reaffirming LGBT rights as they related to the European Convention on Human Rights (ECHR). Lastly, various OSCE mechanisms provide a softer power approach towards addressing the situation. This includes triggering the Moscow Mechanism (an extended version of the Vienna Mechanism), awareness raising and providing support the Russian Federation to develop its human rights infrastructure should the state be interested. Importantly, although the OSCE has the ability to apply significant political pressure, many of their decisions are non-binding. With regards to multilateral mechanisms, the best way forward includes supporting Maxim Lapunov's case at the ECtHR, continuing political pressure particularly at the United Nations charter bodies and supporting those wishing to make a claim to the Committee against Torture (CAT), Committee on the Elimination of Discrimination against Women (CEDAW) and the Human Rights Committee (HRC) to come forward.

5.2 Recommendations for Bilateral Mechanisms

²²⁰ Russian LGBT Network. Rep. *LGBT Persecution in the North Caucasus: A Report*, 2017. https://www.ilga-europe.org/sites/default/files/chechnya_report_by_rus_lgbt_n_31_july_2017.pdf.

In the context of this paper, various bilateral mechanisms were explored. These mechanisms included diplomacy and sanctions, provision of asylum and support for human rights defenders. The success of these bilateral mechanisms largely depends on their specific context but most notably, the timeline of the goal they are looking to achieve. In this sense, to meet the immediate needs of LGBT Chechens, I suggest that asylum is used. More specifically, I suggest that highly developed nations, outside of Europe particularly, accept more SOGI refugees and asylum claims from the Russian Federation. Despite the potential barriers associated with resettlement, asylum does protect the immediate safety needs of LGBT refugees from a Maslowian perspective. Financial and logistical support must also be provided to human rights defenders. As illustrated in Chapters 2 and 4, human rights defenders played a key role in whistleblowing, facilitating safety, and promoting justice and accountability in response to the Chechen LGBT purges. In the longer term, supporting human rights defenders may also facilitate advocacy and greater respect for LGBT rights within the Russian Federation.

5.3 Final Recommendation: A Blended Approach

My final recommendation is that states take a blended approach between multilateral and bilateral mechanisms to address the situation in Chechnya. Regarding the final recommendation towards an approach to addressing the human rights situation in Chechnya, as mentioned previously, it is necessary to distinguish between immediate needs for protection and safety and longer-term goals which may include accountability for the crimes committed. To meet the immediate needs of LGBT people in Chechnya, I recommend that Western states provide asylum to individuals at risk. Furthermore, I recommend that states in North America and Oceania accept more of these refugees as it appears that the network of the Chechen government is less present in these states; recall that LGBT Chechen refugees have been attacked in Germany by

Chechens loyal to the Kadyrov regime.²²¹ I also suggest that states supportive of LGBT rights offer continued support to human rights defenders, including civil society organizations, who support LGBT rights. As illustrated in the case of Rainbow Railroad, support to CSOs can facilitate protection of LGBT people in the immediate term. Secondly, states should support the civil society organizations involved in Maxim Lapunov's case, as from a multilateral perspective, it appears to have the largest potential. Over the longer term, states should ensure continued support to CSOs and human rights defenders, working on LGBT issues within the Russian Federation also press for further action bilaterally and multilaterally to pressure the Russian Federation to investigate the state sponsored discrimination of LGBT people in Chechnya.

Conclusion

Given the severity of the human rights violations of LGBT people in Chechnya, urgent action is needed. Although no reports of state sponsored discrimination have been reported since last 2018, it is imperative that the international community work multilaterally and bilaterally to prevent further purges of LGBT people in the Chechen state and ensure accountability for those who have been impacted. In response to this urgency, I sought to collate information on multilateral and bilateral human rights mechanisms that could address both the immediate concerns and long-term goals.

In Chapters 1 and 2, I provided the necessary context for the analysis of mechanisms in Chapters 3 and 4. In Chapter 1, I provided a description of the international legal framework to define the specific human rights violations occurring in Chechnya according to reports provided by CSOs. The specific violations included discrimination, arbitrary detention, torture, privacy

²²¹ Shuster, Simon. 'They tell me demons live inside me' a young man targeted in Chechnya for being gay discovers Europe offers no safe haven from his tormentors', Time Magazine, n.d. <https://time.com/chechnya-movsar/>.

violations and restricted access to justice. This chapter also highlighted which legal framework would apply depending on the specific crime and included Council of Europe and United Nations treaties. In Chapter 2, I reviewed the role of NGOs in responding to the purge of LGBT people in Chechnya. My conclusions from this chapter suggest that NGOs have played three essential roles in response to the purges in the Chechen Republic including whistleblowers, facilitating protection and advocacy for justice. Chapters 3 and 4 provided reviewed various bilateral and multilateral mechanisms for action. In Chapter 3, Multilateral mechanisms of the United Nations, Council of Europe and Organisation for Cooperation and Security in Europe were explored. The findings from this chapter indicate that the Universal Periodic Review (UPR), and treaty body state reviews of the Russian Federation offer some potential gateways for addressing the purges of LGBT people in Chechnya. Additionally, Maxim Lapunov's case at the European Court of Human Rights also has potential to require the Russian Federation to address the situation. The bilateral mechanisms explored in Chapter 4 included diplomacy and sanctions, provision of asylum and support for human rights defenders. In this chapter, it was concluded that although all mechanisms have potential merits, the provision of asylum and support for human rights defenders may offer both short term and long term solutions to the LGBT purges in Chechnya. Finally, in Chapter 5, I provided my final recommendation of a blended multilateral and bilateral approach to protect the rights of LGBT people in Chechnya. In Chapter 5, I distinguished between meeting short term immediate needs and ensuring longer term goals including accountability. I suggested that to meet immediate needs for protection, states should consider facilitating the safety of LGBT refugees through provisions of asylum. Although this method comes with its own complications, particularly with regards to settlement, this appears to be the best way to enable immediate safety of LGBT Chechens, *prima facie*. In the longer term, I

suggested that states should support human rights defenders and CSOs and engage multilaterally to use soft power against the Russian Federation to comply with international legal norms and treaties.

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