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# Civil Society, ‘Traditional Values’ and LGBT Resistance to Heteronormative Rights Hegemony: Analysis of the UN Universal Periodic Review in the Russian Federation

PAUL CHANEY

## *Abstract*

This study of lesbian, gay, bisexual and transgender rights in the Russian Federation uses frame analysis of civil society input into the UN Universal Periodic Review. It reveals a stark state–civil society ‘disconnect’ reflecting oppressive government practices, including Law No. 135-FZ on ‘non-traditional sexual relations’. This raises wider questions about the efficacy of the review system, not least because issues of performativity and legitimation can be seen to facilitate authoritarian resilience. This allows the ruling elite to continue to dissemble by espousing universal rights yet strategically framing them as heteronormative, integral to the protection of ‘traditional values’ and inimical to identity-based rights claims.

NOTWITHSTANDING THE KREMLIN’S CONTINUING CLAIMS OF COMPLIANCE with its international human rights treaty obligations, over recent years state practices have come under sustained criticism. Russia is at the same time actively neutering rights agreements across the globe and trying instead to insert language about ‘traditional values’ in international agreements. Increasingly, opposition to the rights of lesbian, gay, bisexual and transgender (LGBT) people is part of the core definition of Russian identity. Against this backdrop the following analysis is concerned with the contemporary response to state oppression and rights violations. Specifically, it uses frame analysis to explore conflict and resistance over human rights implementation for LGBT people in the Russian Federation, as set out in reports submitted by civil society organisations (CSOs) to the Universal Periodic Review (UPR), the cyclical evaluation mechanism of the United Nations. The principal research question asks how state framing compares to that of civil society organisations in the Russian Federation UPR Review.

This matters in a number of key regards. *Inter alia*, it informs an understanding of the role of civil society in promoting rights and democracy, it provides insight into the efficacy of

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international human rights monitoring, and crucially it reveals the issues, patterns and processes of oppression facing LGBT people in Russia today. Moreover, it furthers understanding in relation to how ‘states [that] emerged from communism follow different paths on LGBT rights and attitudes toward LGBT people’. From an international perspective this is significant, for ‘the legacy of communism does not have a uniform grip on the relationship between the state and social perceptions of sexuality’ (Ayoub 2016, p. 16). As will be discussed, the findings show that frame dis-alignment characterises rights implementation in the region. In turn, the endurance of this disconnect over successive UPR cycles raises key questions about performativity, legitimation and poor treaty enforcement.

Attention to LGBT rights in the Russian Federation is an appropriate locus of enquiry for, whilst the fall of the Soviet Union saw a significant transformation, not least with the decriminalisation of homosexuality in 1993, as noted, over recent years there has been a major reversal. Horvath’s seminal study describes this shift:

under the Putin regime, Russia changed direction, setting in train a reverse spiral. Selective acts of repression were followed by the emasculation of democratic institutions, curbs on civil liberties, vilification of rights defenders, and finally a bold assault on international norms. This assault threatens to narrow and weaken the conceptual framework in which human rights is discussed. (Horvath 2016, p. 888)

As Wilkinson (2014) observes, the prevailing political ‘project’ of the Kremlin has been to strategically frame human rights as heteronormative, integral to the protection of ‘traditional values’ and respect for local cultures—and inimical to identity-based LGBT rights claims.<sup>1</sup>

On the international stage this agenda has been advanced in a range of actions, typified by the Russian UN Security Council motion. This ‘affirm[ed] that ... traditional values, [are] shared by all humanity and embodied in universal rights instruments ... [and] note[d] the important role of family, community, society and educational institutions in upholding and transmitting these values, [something] which contributes to promoting respect for human rights and increasing their acceptance at the grass roots’. Accordingly, the Russian motion called ‘upon all States to strengthen this role through appropriate positive measures’.<sup>2</sup>

On the domestic front, the ‘appropriate positive measures’ alluded to in the Resolution include a number of repressive laws. The most notorious is the amendment passed in 2013 to the Code of the Russian Federation on Administrative Offences.<sup>3</sup> Initially aimed at curtailing the ‘promotion of homosexuality’, during its passage through the *Duma* the wording was amended to the broader concept of ‘non-traditional sexual relations’. The resulting enactment is nominally aimed at protecting children from information that ‘promotes the negation of traditional family values’ (henceforth, Federal Law No. 135-FZ).<sup>4</sup> In its wake, reports detail an increase in homophobic

<sup>1</sup>See also Baunov (2013), Feirstein (2013), Stroop (2016).

<sup>2</sup>See, Resolution adopted by the Human Rights Council, ‘Promoting Human Rights and Fundamental Freedoms through a Better Understanding of Traditional Values of Humankind’, A/HRC/RES/16/3, United Nations General Assembly, 8 April 2011, available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/124/92/pdf/G1112492.pdf?OpenElement>, accessed 1 October 2016.

<sup>3</sup>*Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniakh*, available at: <http://www.russian-offences-code.com>, accessed 13 March 2018.

<sup>4</sup>Federal’nyi zakon ot 29 iyunya 2013 g. No. 135-FZ ‘O vnesenii izmenenii v stat’yu 5 Federal’nogo zakona “O zashchite detei ot informatsii, prichinyayushchei vred ikh zdorov’yu i razvitiyu” i otdel’nye zakonodatel’nye akty Rossiiskoi Federatsii v tselyakh zashchity detei ot informatsii, propagandiruyushchei otritsanie traditsionnykh semeinykh tsennostei”, available at: <http://www.threefold.ru/russian-laws-amended-federal-law-no-135-fz-amending-certain-laws-russian-federation-view-protect-children>, accessed 13 March 2018.

hate crimes<sup>5</sup> and a series of crackdowns on associative life and campaigning by LGBT people. As Stella's insightful study explains, contemporary rights suppression

... is particularly true for LGBT communities, as homophobic rhetoric and widely documented episodes of discrimination, intimidation and violence, sometimes endorsed by local authorities and state institutions, indicate that homosexuality is still widely seen as a potential threat to the moral fabric of Russian society. In addition, Russia has no legislation to protect citizens from homophobic violence or discrimination on the grounds of their sexual orientation. (Stella 2012, p. 1822).

This has resulted in state repression, arrests and detentions. Notably, in Ryazan (in 2009) and St Petersburg (in spring 2012)<sup>6</sup>—with heavy fines dealt out for individuals peaceably displaying pro-LGBT placards,<sup>7</sup> as well as those associated with an online community forum for LGBT teenagers (Luhn 2015).

This oppressive rights situation needs to be viewed in the context of extant work that underlines how, 'effective international [human rights] regimes are likely to emerge only where they have deep roots in the functional demands of groups in domestic and transnational society, as represented by the domestic political institutions [such as civil society] that mediate between society and the state' (Moravcsik 1995, p. 158). This validates the present study's focus on civil society and aligns with the 'polity approach' in civil society research. The latter underlines that effective governance is shaped by the links and exchanges between state institutions and different sections of society (Evans 1995). As Cox and Gallai cogently observe, it is concerned with 'examining ways in which political society provides a context and shapes the opportunity structures within which civil society organisations can operate, rather than seeing civil society as a main determinant of democratic consolidation'. A key factor is the extent to which 'groups [a]re also constrained by the changing character of the political settlement that emerged from the post-communist transformation' (Cox & Gallai 2014, p. 53). This may be applied to the former Soviet Union.

Over recent years Russian civil society has become increasingly constrained owing to political management by the state. This is symbolised by the 2012 enactment, Law No. 121-FZ (popularly dubbed the 'Foreign Agent Law').<sup>8</sup> Its purpose is to restrict the activity of non-governmental organisations (NGOs) that receive foreign funding and engage in 'political activities' (legally undefined). It requires them to register with the government as 'foreign agents' (widely seen as a pretext for state harassment and oppression). As Crotty's account observes, in consequence, 'in the future, groups will have to contend with Putin's NGO law and its restrictions and ramifications, in combination with the growing number of Marionette

<sup>5</sup>See for example Luhn (2013).

<sup>6</sup>*'Homosexual Propaganda' Bans in Russia: A UPR Submission by ILGA-Europe*, International Lesbian, Gay, Bisexual, Trans and Intersex Association (Brussels, ILGA, 2012, p. 5).

<sup>7</sup>Nikolai Alexeyev, Russian Gay Rights Activist, Fined Under "Propaganda" Law, *Huffington Post*, 4 May 2012, in *'Homosexual Propaganda' Bans in Russia: A UPR Submission by ILGA-Europe*, International Lesbian, Gay, Bisexual, Trans and Intersex Association (Brussels, ILGA, 2012).

<sup>8</sup>*Lukin pozhalovalsya v Konstitutsionnyi sud na zakon ob NKO*, *BBC Russian Service*, 7 February 2013, available at: <http://refugee.ru/news/my-ne-agenty-odinnadtsat-nko-napravili-zhalobu-v-evropejskij-sud-popravam-cheloveka-na-zakon-ob-inostrannyh-agentah/>, accessed 7 August 2016.

Organisations<sup>9</sup> dominating Russia's civil space. [... it constitutes a shift] to what some have termed a "nationalisation" of Russian civil society' (Crotty 2009, p. 102).

In order to explore how state framing compares to that of civil society organisations in the Russian Federation UPR Review the remainder of this essay is structured thus: after a summary of the rationale for the present study, an outline of the research context and methodology is presented. Attention then moves to the findings: first, with initial summary of the Russian state discourse, followed by analysis of the discourse of CSOs. The conclusion offers theoretically informed reflection on the findings and their implications, as well as recommendations for reform of the international rights regime grounded in the present findings.

### *Rationale for the present study*

It is appropriate to reflect on why the literature needs a study such as this. First, existing studies of LGBT mobilisation have rightly focused on the way that political environments shape the development of gay and lesbian movements (Engel 2001; Barclay *et al.* 2009; Bob 2012; Ayoub 2014), or have examined NGOs' perspectives on transnational activism and struggles for decriminalisation (Keck & Sikkink 1998; Adam *et al.* 1999). The aim here is to complement such work with a transferable discourse-based methodology for studying rights implementation. This is apposite because discourse lies at the heart of the Russian state response to LGBT rights. Fuller understanding of the Kremlin's hegemonic use of language to recast human rights in an exclusive manner is a knowledge gap that needs to be addressed. Second, allied to this, the extant literature suggests that the efficacy of rights regimes depends on civil society engagement (Moravcsik 1995; Tremblay *et al.* 2011). As will be seen, this study aims to make an original contribution by showing how, in contexts where abuses are widespread, civil society organisations use the discursive opportunities provided by UN reviews in order to resist state oppression. By analysing civil society's 'situated knowledge' this tells us what frames and issues are important to those seeking to uphold LGBT claims against state repression. Third, in social theory terms, the findings challenge traditional thinking on transitivity (see below). Instead, they point to how, in the absence of the necessary enforcement mechanisms, CSOs' discursive engagement may actually facilitate authoritarian resilience. And fourth, the foregoing factors underpin policy recommendations for rectifying current failings. In these diverse regards the present analysis addresses key lacunae and responds to the call by Rivkin-Fish and Hartblay: 'we argue that global advocacy for LGBTQ rights has become lost in translation to the Russian context and urge further research into the effects of Western LGBTQ advocacy on Russian society's acceptance of gay rights and human rights' (Rivkin-Fish & Hartblay 2014, p. 96).

The data sources used in the following analysis are the submissions to the UN's Universal Periodic Review. They constitute a rich and under-studied dataset, one that informs understanding of the role of civil society as a site of rights conflict and political space for resistance. In order to operationalise this, the following examines 'framing' in civil society organisations' reports submitted to the UN. 'Framing' is a means of dissecting the language

<sup>9</sup>Defined as CSOs 'closely linked to the operations of the state ... usually endowed with office space and other resources either directly or indirectly by the state. Membership ... was usually drawn from the ranking official's circle of associates .... The primary aim ... was to support the state in its activities, but they were also recognised as official NGOs and represented civil society organisations in this capacity' (Crotty 2009, pp. 91–2).

used by policy actors. It can provide insight into exercising and resisting power by associating ideas and concepts with values and emotions for political ends, as well as imposing limits on deliberation and debate (Snow *et al.* 1986).

In conceptual terms, the application of frame analysis (Alasuutari *et al.* 2008) to the UPR data is supported by various strands of social theory. These include the interpretive school of policy analysis (Yanow 1999) and the literature on social constructivism (Kukla 2000). Both place emphasis on beliefs, values, interpretations and knowledge relevant to addressing a given policy issue (Eden & Ackermann 2004). As noted, the epistemological grounding here is standpoint theory, and specifically, the notion of ‘situated knowledge’ (Stoetzler & Yuval-Davis 2002). This argues that the first-hand accounts from organisations representing LGBT individuals directly affected by oppression and discrimination are a valuable, if hitherto overlooked complement to administrative studies of case law and institutional procedures.

In addition, extant theory also advances the idea of ‘frame (dis-)alignment’ (Snow *et al.* 1986). This underlines the way that the probability of successful rights implementation increases at the point at which the frames of key policy actors (such as government and civil society) are aligned (dubbed ‘frame alignment’ or ‘frame resonance’). Where this is absent, conflict and oppression endure. This provides a further justification for the present locus of enquiry for, whilst existing studies underline the centrality of framing processes to upholding rights across a number of protected characteristics (Keck & Sikkink 1998; Pollack & Hafner-Burton 2000; Barclay *et al.* 2009; Chua 2014), their application to LGBT rights has been limited.

Given the present focus on UPR discourse it should be noted that whilst the Universal Declaration of Human Rights (UDHR) does not explicitly mention sexual orientation or gender identity, following an earlier UNHRC ruling in 1994, laws discriminating on the basis of sexual orientation are held to be in violation of the UDHR.<sup>10</sup> Specifically, references to ‘universal’, ‘other statuses’ or alternatively, ‘sex’, are taken to include LGBT rights (Wintemute 2002; O’Flaherty & Fisher 2008). The same is true of the UN International Covenant on Civil and Political Rights (ICCPR).<sup>11</sup> Notwithstanding this, it is important to note that, from an historical perspective, the United Nations’ past record on LGBT rights is a poor one. Indeed, it was only in 2011 that it passed its first resolution recognising LGBT rights (and published a report detailing violations of the rights of LGBT people, including hate crimes, criminalisation of homosexuality, and discrimination (OCHR 2011a)). Subsequently, further progress has been made with UN Resolution A/HRC/RES/27/32 ‘Human rights, sexual orientation and gender identity’ (adopted 26 September 2014).<sup>12</sup> Yet, as Ibhawoh (2014, p. 621) observes, ‘the strong opposition to the inclusion of LGBT rights protection in the UN human rights corpus is a reminder of the historic tensions between inclusionary and exclusionary

<sup>10</sup>Art. 2. ‘Everyone is entitled to all the rights and freedoms . . . without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’. See ‘Toonen v. Australia, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994)’, 1995, available at: <http://hrlibrary.umn.edu/undocs/html/vws488.htm>, accessed 5 October 2016.

<sup>11</sup>Ratified by Russia in October 1973 and effective from March 1976.

<sup>12</sup>This refers to ‘combating all forms of discrimination and violence exercised due to discrimination of any kind’. ‘Human rights, sexual orientation and gender identity’, Follow-up to and implementation of the Vienna Declaration and Programme of Action Resolution adopted by the Human Rights Council 27/32, UN General Assembly, 2 October 2014, A/HRC/RES/27/32, available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/27/32](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/27/32), accessed 27 February 2018.

impulses in international human rights practice'.<sup>13</sup> From an international perspective, other protections also apply to the present case study. They extend from the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (Articles 8 and 14);<sup>14</sup> although again it should be noted that these do not explicitly provide protections for all categories of LGBT people, with protections stemming from references to 'other statuses'.<sup>15</sup>

### *LGBT rights and civil society in the Russian Federation*

For much of the twentieth century homosexuality in Russia was illegal.<sup>16</sup> It was not only deemed immoral by Stalin's regime, but also viewed as counterrevolutionary, anti-communist and bourgeois (Engelstein 1995; Healey 2002). According to survey data at the time of the fall of the Soviet Union in 1991, 'homosexuals [were] the most hated group in society' (West & Green 2002, p. 233). Here it is germane to note that Soviet reticence toward issues of 'homosexuality' was common in many parts of the world where it was viewed as a specifically Western encroachment. Notwithstanding periodic episodes of greater tolerance, the issue has continued to be politicised in this way over recent decades. Thus, in the Russian case, following its decriminalisation in 1993 there was an initial move to greater acceptance. Yet this was short lived. As Turbine notes: 'rather than witnessing the increasing protection of and access to human rights, the post-Soviet period has more often seen the loss, not only of previously held social and economic rights ... but also the curtailment of civil and political rights as a result of the development of Russia's "managed" democracy' (Turbine 2012, p. 1849). Social attitudes are both a symptom and a cause of the challenges facing LGBT people today. Recent survey data show deeply entrenched homophobic attitudes amongst large sections of the population (Underwood 2011).<sup>17</sup> For some supporters of the Putin regime human rights instruments are Western imports that threaten traditional values. As Storch explains, the prevailing view is that 'the final goal of these encroachments by the West is to impose on Russia a complete set of its "perversions", which it passes off as cultural values [... including] homosexual marriages' (Storch 2013, p. 14).

<sup>13</sup>As evidenced by the cancelling of the ILGA consultative strategy, available at: <http://ilga.org/what-we-do/united-nations/>, accessed 23 April 2017.

<sup>14</sup>The key ECtHR case that determined that 'sexual orientation' is an anti-discrimination ground for the purposes of Article 14 is 'Salgueiro da Silva Mouta v Portugal', available at: <http://www.gddc.pt/direitos-humanos/portugal-dh/acordaos/salgueirodasilva.pdf>, accessed 5 October 2016.

<sup>15</sup>In definitional terms this is an issue that applies to the wider literature. Extant work commonly refers to 'LGBT people' as a single category, yet the prevailing policy discourse and analysis is sometimes confined to sexual orientation/homosexuality, with no applicability to transgender people. The rationale for the present use of LGBT follows that of Sokal and Sutherland who explain: 'while the issues of transgender people are not synonymous with LGB issues, they occupy similarly oppressed social locations in a heterosexist, homophobic culture, and LGB has largely given way to LGBT. Being transgender implies that one's identity violates gender codes, whereas LGB people might be perfectly in sync with every gender norm (apart from same-sex partner choice) that is culturally prescribed for their biological sex. A transgender person might be biologically male but identify as a female in self-concept, behaviour, clothing preferences, and so on; regardless of the sex of her preferred partner, she is so far outside the concept of heterosexuality in our society that she, too, is the target of homophobia and heterosexism' (Sokal & Sutherland 2003, p. 19).

<sup>16</sup>Unlawful since 1934.

<sup>17</sup>For example, in a poll of a sample of 1,600 Russians age 18+ across 130 cities, in July 2010, 74% said 'gays and lesbians are morally dissolute or mentally defective persons' (Underwood 2011, p. 43).

In this context, Federal Law No. 135-FZ nominally claims to protect children from information that promotes the ‘negation of traditional family values’. As Essig cogently observes,

the use [here] of the terms ‘traditional’ and ‘non-traditional’ is no accident but rather the result of a very specific strategy to make Russia not just a straight state, but a particular form of Christian state with complete control over the sexual lives of its citizens. The goal is to thwart not just sex between two men or two women but access to birth control and reproductive rights as well. (Essig 2014, p. 147)

Moreover, Federal Law No. 135-FZ is not the only enactment that has resulted in an increasingly oppressive context for LGBT people. Recent years have seen a series of broadly similar measures enacted across regional jurisdictions in the Russian Federation.<sup>18</sup> In contrast to the Federal Law No. 135-FZ, some of these are more specific in their targeting of LGBT rights. For example, in the Kaliningrad region a ‘homosexual propaganda’ law was passed;<sup>19</sup> whilst in Ryazan *Oblast*’ another included provisions on administrative liability for public actions related to the propaganda of homosexuality.<sup>20</sup>

Accordingly, since 2005 the picture for human rights defenders has become increasingly repressive. As noted, Law No. 121-FZ (popularly dubbed the ‘foreign agent law’) restricts the activity of non-governmental organisations (NGOs) that receive foreign funding and engage in ‘political activities’. In its wake, as the account by Van der Vet and Lyytikäinen describes, human rights repression has expanded in a number of ways, including the imposition of ‘rules that enable authorities to inspect organisations [... and] the criminalisation of participation in public demonstrations’. They continue, ‘due to these repressive measures, human rights and protest activism are often classified as high-risk activism. The potential cost of involvement ... for the activist—and one’s household or family—is potentially higher than the benefits of openly opposing powerholders’ (Van der Vet & Lyytikäinen 2015, p. 983).

All of this points to a clear contrast in the trajectories of Russia and the West. As Kon underlines, in the latter ‘after the processes of decriminalization and depathologization were completed, sexual minorities began to fight to have their human and civil rights recognized .... In Russia, gays ... received no rights or guarantees of safety ... in regard to social concerns it is as if they did not exist’ (Kon 2009, p. 47). Against this oppressive backdrop, the next section provides an outline of the study methodology, followed by a discussion of how such issues play out in the UPR.

### *Methodology*

This study uses frame analysis (Wodak & Krzyżanowski 2008; Alexander 2009; Chenail & Duffy 2011). Framing derives from the work of Erving Goffman (1974, p. 21) and refers to a ‘schemata of interpretation’. Crucially, as Snow *et al.* note, ‘by rendering events or occurrences meaningful, frames function to organize experience and guide action, whether individual or collective’ (Snow

<sup>18</sup>For example: Zakon Krasnodarskogo kraja ot 3 iyulya 2012 g. No. 2535-KZ ‘O vnesenii izmenenii v ot del’nye zakonodatel’nye akty Krasnodarskogo kraja v chasti usileniya zashchity zdorov’ya i dukhovno-nravstvennogo razvitiya detei; Zakon Arkhangel’skoi oblasti ot 30 sentyabrya No. 336-24-OZ ‘O vnesenii izmenenii i dopolneniya v oblastnoi zakon “Ob ot del’nykh merakh po zashchite nravstvennosti i zdorovya detei v Arkhangel’skoi oblasti”’.

<sup>19</sup>Zakon Kaliningradskoi oblasti ot 30 yanvary 2013 g. No. 199 ‘O vnesenii izmenenii i dopolnenii v Zakon Kaliningradskoi oblasti “O zashchite naseleniya Kaliningradskoi oblasti ot informatsionnoi produktsii, nanosyashchei vred dukhovno-nravstvennomu razvitiyu”’.

<sup>20</sup>Zakon Ryazanskoi oblasti ot 4 dekabrya 2008 g.No. 41-OZ ‘Ob administrativnykh pravonarusheniyakh’.

*et al.* 1986, p. 464). Thus, although hitherto this technique has not been applied to comparative state and civil society perspectives on human rights implementation in the Russian Federation, framing is pivotal to understanding rights implementation, particularly as this involves multiple actors working across different domains such as the public and civil spheres.

As noted, here we are concerned with the discourse associated with the second cycle UN UPR, the evaluation process that emerged in the wake of the 2006 UN General Assembly resolution (60/251). It is conducted under the auspices of the Human Rights Council (HRC) (Cochrane & McNeilly 2013). According to its proponents, the UPR is not designed to be an elite or technocratic exercise. It not only provides the opportunity for each state to set out the actions they have taken to advance human rights, it also makes provision for civil society input. This matters for understanding and addressing the multiple and inter-connected issues facing LGBT people communities across Russia. The UN policy guidance is unambiguous in espousing civil society input:

HRC resolution 5/1 of 18 June 2007 provides that the UPR should ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996. (OCHR 2011b)

UPR reports were coded using inductive coding schemata. This consisted of key themes adapted from the Yogyakarta Principles (ICJISHR 2006) (see Table 1): *inter alia*: rights, non-discrimination, hate crimes, freedom of opinion and expression, identity, morality, and freedom of assembly. The latter are suited to capturing the values and themes associated with LGBT rights. Their link to UN human rights instruments is explicit (*inter alia*, Yogyakarta Principles 1–3 set out ‘the universality of human rights and their application to all persons without discrimination, as well as the right of all people to recognition before the law’) (Thoreson 2009).<sup>21</sup>

The coding frame was quantified by drawing upon the notion of ‘issue-salience’. This measures the level of attention to a given frame in the discourse. It is determined by content analysis, or in other words, the frequency of key words, ideas or meanings in policy documents. This was done by adapting a procedure derived from electoral studies, whereby texts are divided into ‘quasi-sentences’ (or, ‘an argument which is the verbal expression of one political idea or issue’ (Volkens 2001, p. 96)). Dividing sentences in this way controls for long sentences that contain multiple policy ideas.

In summary the key data sources in this study are the Russian Federation Ministry of Justice’s report submitted to the United Nations as part of the second cycle UPR,<sup>22</sup> and all 29 civil society organisations’ reports on the implementation of human rights in Russia (see the Appendix). In terms of the latter, over recent decades a burgeoning literature has delineated the emergence of ‘global civil society’. This (albeit contested) term denotes how, in various ways and forms, CSOs increasingly operate across national boundaries. As Ayoub explains, the present attention to the interaction between international and ‘domestic’ CSOs helps to explain: ‘variation in the changed legal status and societal perceptions of sexual minorities. Put most

<sup>21</sup>‘Introduction to the Yogyakarta Principles’, available at: <https://yogyakartaprinciples.org/introduction/>, accessed 19 September 2016.

<sup>22</sup>National report submitted to the Human Rights Council Working Group on the Universal Periodic Review, in furtherance of paragraph 5 of the annex to Human Rights of Council resolution 16/21.

TABLE 1  
 BREAKDOWN OF FRAMING IN STATE AND CIVIL SOCIETY ORGANISATIONS' DISCOURSE—WITH EXAMPLE TEXT ( $N = 381$ )

Frame	State %	CSO %	State example text	CSO example text
LGBT rights (generic)	0.0	28.4	—	'Despite the constitutional prohibition on discrimination, the work of civil society organisations working to protect the rights of sexual minorities remains particularly imperilled in Russia' ( <i>Russia: Submission to the UN Universal Periodic Review 16th Session of the UPR Working Group</i> , Civicus World Alliance for Citizen Participation, NGO in General Consultative Status with ECOSOC and Citizens' Watch and GOLOS Association (Geneva, Civicus World Alliance for Citizen Participation <i>et al.</i> 2012, p. 4))
(Anti)-discrimination	13.0	18.5	'Russian law prohibits restrictions of any kind on citizens' rights on the basis of social, racial, sexual, ethnic, linguistic, religious or any other affiliation; it is thus impossible for a policy of discrimination against individual groups of citizens to emerge. There are administrative and criminal penalties for discrimination' (UN 2013, p. 19, para. 175)	'Administrative bodies refuse to warrant official permits for LGBT-related events justifying their decisions by discriminatory judgments' ( <i>UPR Submission</i> (St Petersburg, Russian LGBT Network, 2012, p. 5))
Hate crimes/'homo'-phobic bullying/violence	0.0	11.0	—	'Often law-enforcement officers resort to unwarranted violence in the absence of any threats to public order on the part of the protesters. General violence and violent detentions often extend to the journalists covering the event and human rights observers' ( <i>UPR Submission</i> , NGO Coalition: Center for the Development of Democracy and Human Rights; 'Golos' Association for the Protection of Voters' Rights, Interregional Human Rights Group; International Youth Human Rights Movement; Foundation for Environmental and Social Justice; Center for the Defence of Media Rights; SOVA Center for Information and Analysis; and 'Memorial' Anti-Discrimination Center (Moscow, NGO Coalition, 2012, p. 3))
Fundamental freedoms/ of opinion and expression	41.3	15.2	'The Constitution guarantees every citizen freedom of speech. No one may be forced to express or renounce his or her opinions and convictions. Everyone has the right freely to seek, obtain, transfer, produce and disseminate information by any legitimate means' (UN 2013, p. 14, para 124)	'The Russian LGBT Network stated that local media had stopped covering its activities because they were afraid of being sued. In many cases, owners of local media would not be in a position to pay fines if found guilty of violating the law' (' <i>Homosexual Propaganda Banned in Russia: A UPR Submission by ILGA-Europe</i> , International Lesbian, Gay, Bisexual, Trans and Intersex Association (Brussels, ILGA, 2012, p. 2))

(Continued)

TABLE 1 (Continued).

Frame	State %	CSO %	State example text	CSO example text
Identity	0.0	7.2	–	‘Russian authorities deny the existence of the problem with discrimination on grounds of sexual orientation and gender identity and take no measures to combat homophobia in the society and prevent hate crimes on grounds of sexual orientation and gender identity’ (UPR Submission, NGO Coalition: Center for Social and Labor Rights; Center ‘Anna’ for the Prevention of Violence against Women; ‘Rights of the Child’ Charitable Foundation; ‘Perspektiva’ Regional NGO of Persons with Disabilities; LGBT Network; and the Center for the Development of Democracy and Human Rights (Moscow, NGO Coalition, 2012, p. 3))
Morality/values	0.0	6.9	‘Preserving ... traditional ways of life and values, by using targeted support from the State’ (UN 2013, p. 20, para 187)	‘These violations are manifested in refusals of registration not only on formal grounds but also using the arguments of morality, traditional family values, etc.’ (UPR Submission, NGO Coalition: Center for Social and Labor Rights; Center ‘Anna’ for the Prevention of Violence against Women; ‘Rights of the Child’ Charitable Foundation; ‘Perspektiva’ Regional NGO of Persons with Disabilities; LGBT Network; and the Center for the Development of Democracy and Human Rights (Moscow, NGO Coalition, 2012, p. 6))
Freedom of assembly	13.0	6.6	‘Under article 30 of the Constitution, everyone has the right to associate, including the right to form trade unions for the protection of their interests. Voluntary associations are guaranteed freedom to act’ (UN 2013, p. 15, para. 139)	‘Such laws run counter to everyone’s right to freedom of expression as well as the closely related rights to freedom of association and to peaceful assembly. They are simply not legitimate restrictions under international law’ (‘Homosexual Propaganda’ Bans in Russia: A UPR Submission by ILGA-Europe, International Lesbian, Gay, Bisexual, Trans and Intersex Association (Brussels, ILGA, 2012, p. 7))

(Continued)

TABLE 1 (*Continued*).

<i>Frame</i>	<i>State %</i>	<i>CSO %</i>	<i>State example text</i>	<i>CSO example text</i>
Health	4.3	3.0	Work is now in progress [to ...] improve levels of health care and education' (UN 2013, p. 20, para. 189)	'The problem with provision of access to specialised medical care for transgender people does not receive proper attention of public health administration authorities' ( <i>UPR Submission</i> , NGO Coalition: Center for Social and Labor Rights; Center 'Anna' for the Prevention of Violence against Women; 'Rights of the Child' Charitable Foundation; 'Perspektiva' Regional NGO of Persons with Disabilities; LGBT Network; and the Center for the Development of Democracy and Human Rights (Moscow, NGO Coalition, 2012, p. 4)
Equality in workplace/ labour market	10.9	2.1	'The Russian Federation is based on the principle that the peoples of the Federation enjoy equal rights' (UN 2013, p. 19, para. 177)	'39.7% (356 persons) experienced difficulties at their work in connection with their sexual orientation ...' ( <i>UPR Submission</i> (St Petersburg, Russian LGBT Network, 2012, p. 5))
Equality in housing, education and social welfare	17.4	1.2	'The most important pointers followed in designing and carrying out national strategy for social security and improving the welfare of the population are the International Covenant on Economic, Social and Cultural Rights and the United Nations Millennium Declaration. By the end of 2011 ... the State was fully assuming all its social obligations' (UN 2013, p. 16, para. 151)	'Prohibiting the dissemination of any information on sexual diversity. This would curtail the activities of organisations that provide information and counselling on sexual and reproductive health, including prevention of sexually transmittable infections' ( <i>'Homosexual Propaganda' Bans in Russia: A UPR Submission</i> by ILGA-Europe, International Lesbian, Gay, Bisexual, Trans and Intersex Association (Brussels, ILGA, 2012, p. 2))

broadly, it explains changing ideas of the state and society in world politics, using the case of norms governing LGBT rights' (Ayoub 2016, p. 6). In other words, it furthers insight into: 'the existential conflict between various actors and the tension between two sets of norms: ideas that are new and international, and ideas that are rooted in the heteronormative nation and local tradition' (Ayoub 2016, p. 6). In definitional terms international CSOs are diverse and 'range from large-scale charities with hundreds of staff to transnational volunteer-run networks with no real expenditures at all ...' (Anheier & Themudo 2002, p. 191). In the present case two thirds of the CSO reports were from international CSOs headquartered in jurisdictions outside Russia (for example, Amnesty International, Article 19, Human Rights First). Indigenous CSOs based in Russia made up the remainder. However, in terms of contributing CSOs, 20 were international and 30 were indigenous. The discrepancy in the two measures is due to the fact that eight of the indigenous reports were joint submissions, co-authored by alliances of different Russian CSOs (for example, the Center for the Development of Democracy and Human Rights, Interregional Human Rights Group, International Youth Human Rights Movement, and the Foundation for Environmental and Social Justice). This lends credence to Ayoub's assertion that 'norm politics are never a one-way street, and many of the most forward-thinking proponents of LGBT rights are domestic actors within target states who champion the issue, often seeking out transnational ties to further their cause'. In sum, this study's attention to the 'interactions between actors ... at both domestic and transnational levels [... exposes a] clash of identities and social systems [... and it is by focusing on this nexus that] we learn how worlds change [and] the LGBT rights revolution provides an ideal platform from which to study such interactions' (Ayoub 2016, p. 6).

To operationalise the mixed methodology, electronic versions of the policy documents were analysed using appropriate software. The incidence of frame use was logged in a database. To increase reliability both phases of coding (frames and policy areas) were repeated by a research assistant. This revealed a limited number of discrepancies. In total, three incidences were identified (under 1%), and these were resolved through discussion between coders.

### *State and civil society discourse on human rights treaty implementation*

#### *State discourse*

Submitted to the UPR in 2013, and in contrast to the practice of other CIS states,<sup>23</sup> the Russian Federation's National report to the UPR (UN 2013),<sup>24</sup> makes no specific reference to LGBT rights. Instead, it advances a discourse of universal rights. This is at once contradictory and paradoxical in nature. In rhetorical terms it can be viewed as a modified and singular version of what Nash describes as the notional pursuit of a 'communitarian "human rights culture" ... [Namely] one in which—for better or worse—an ongoing negotiation of civic solidarity across differences is valued over universal principles of individual freedom' (Nash 2005, p. 336). Thus, according to the Government of the Russian Federation 'fundamental rights are inalienable, belong to all people from birth, and are directly enforceable. Rights and liberties are acknowledged and safeguarded in accordance with the generally recognized principles and standards of international law' (UN 2013, p. 2). In rhetorical terms, the state's UPR

<sup>23</sup>See for example the 2014 report submitted by Kyrgyzstan (UN 2014).

<sup>24</sup>Submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21.

submission highlights the role of civil society in realising this vision. For example, it alludes to ‘the Russian authorities’ policy of expanding the scope for cooperation between civil and State institutions, [and] the creation of an “open government” system ... [and] constructive dialogue between society and those in authority’ (UN 2013, p. 4). Yet the detailed means by which this is to be implemented are often lacking. Instead, the state submission to the UN contains non-specific references—such as to the school curriculum that is purportedly ‘designed to impart knowledge of different cultures’ (UN 2013, p. 14).

A key point here is the highly generalised nature of the language. Heteronormativity is implicit, but there is no reference to, or repetition of, the oppressive language of Federal Law No. 135-FZ with its prescriptions on ‘traditional values’ and ‘respect for local cultures’. Instead, the strategic framing is based on a twin strategy that simultaneously avoids any contradiction of UDHR goals (by ignoring and omitting LGBT issues), whilst making generalised statements that give leeway for further oppressive measures. For example, it alludes to (unspecified) ‘corrections to the Criminal Code’ (UN 2013, p. 18) and the use of ‘compulsory re-education measures’ for offenders (UN 2013, p. 11).

Analysis of the level of attention paid to individual frames provides further illumination. It shows ‘fundamental freedoms/freedom of opinion and expression’ to be the lead frame with 41.3% of quasi-sentences (see Table 1). In contrast to the civil society discourse (see below), this is portrayed as a foundational aspect of state policy and practice.<sup>25</sup> Repeated reference is made to the legal code and constitution, for example, ‘According to article 2 of the Constitution, the individual and individual rights and freedoms are supreme values. The State is required to acknowledge, uphold and protect human and civil rights and freedoms’ (UN 2013, p. 2). Moreover, whilst a burgeoning literature delineates state repression and restrictions on the media and associative life (Lonkila 2011; Greene 2013; Johnson 2014), such concerns are absent from the state report. Instead, repeated reference is made to the right of freedom of speech. For example, ‘no one may be forced to express or renounce his or her opinions and convictions. Everyone has the right freely to seek, obtain, transfer, produce and disseminate information by any legitimate means’ (UN 2013, p. 14). Thus, the prevailing government approach can be seen as one based on ‘an increasing use of administrative and legal procedures for controlling them [NGOs] ... [In turn] these changes are contributing to the “civility of oppression” exerted by the government’ (Daucé 2014, p. 239).

The second-ranked frame is ‘equality in housing, education and social welfare’ with 17.4%, although, once again the state discourse is largely declaratory and unsupported by implementation details (for example, ‘the most important pointers followed in designing and carrying out national strategy for social security and improving the welfare of the population are the International Covenant on Economic, Social and Cultural Rights and the United Nations Millennium Declaration, [b]y the end of 2011 ... the State was fully assuming all its social obligations’ (UN 2013, p. 16)). Notwithstanding prevailing concerns over the democratic pathology of ongoing state denial of freedom of association/assembly,<sup>26</sup> this is

<sup>25</sup>Indeed, attention to the wider political discourse reveals that Russia even claims that it is better at defending human rights than the West. Notably, Putin commented at Sochi that several states in the US continue to criminalise homosexuality (Walker 2014).

<sup>26</sup>Such as ‘free and fair elections are impossible without the instigation of other key aspects of “liberal democracy”, such as ... the instigation of basic human rights: such as, freedom of the press, assembly, and association ... Russia are still a long way from meeting such criteria’ (Ross 2011, p. 461). See also Arps and Golichenko (2014).

the joint third-ranked frame. In turn, and reflecting widespread inequalities facing minorities (Arnold 2015; Pankratova & Pankratov 2016), ‘(anti)-discrimination’ is the other third-ranked frame, both with 13%.

In the case of freedom of association, as noted, the experience of LGBT people forms part of wider concerns about oppressive state practices and rights violations ‘if the government continues to allow police persecution’ (Preston 2001, p. 773). Here the discourse analysis reveals a clear disjuncture between state rhetoric and the experiences of CSOs (reported on below). It is typified by the following government declarations: ‘everyone has the right to associate .... Voluntary associations are guaranteed freedom to act’ (UN 2013, p. 15), and ‘Russian law guarantees the right to assemble peacefully and unarmed, to hold gatherings, political rallies, demonstrations and marches and to picket’ (UN 2013, p. 16).

As Iarskaia-Smirnova and Lyons explain, in its “golden age” (the 1950s and 1960s) the Soviet government built one of the most advanced systems of social assistance in the world in terms of volume and quality of services and access to them .... However, some social problems usually addressed by social professionals were ignored, for example ... discrimination’ (Iarskaia-Smirnova & Lyons 2015, p. 431). Today little has changed for, as Osipov observes, ‘the Putin government seems not to need an agenda related to equality, since it effectively manages diversity using political technologies based on the fight against subversive ideas and activities’ (Osipov 2010, p. 58). It is in this context that a solitary reference appears in the state discourse under the (anti)-discrimination frame that applies directly to LGB people, ‘Russian law prohibits restrictions of any kind on citizens’ rights on the basis of ... sexual affiliation; it is thus impossible for a policy of discrimination against individual groups of citizens to emerge. There are administrative and criminal penalties for discrimination’ (UN 2013, p. 19). Once again, the language is declaratory in nature. It fails to provide substantive details to support the political elite’s assertions. Importantly, the CSO accounts of discrimination (set out in the following section) offer a starkly contrasting assessment.

Overall, in social theory terms the state discourse can be viewed as an example of ‘performativity’ in rights administration. In colloquial parlance, the state is ‘going through the motions’ in order to fulfil its obligations whilst avoiding confrontation with the UNHRC and at the same time concealing underlying heteronormative hegemony. The overall effect is ‘institutional de-coupling’, or the situation in public administration whereby elites pronounce one thing but practice another. In other words, it constitutes a disjuncture between rhetoric, formal rules, informal practices and actual activities (Meyer & Rowan 1991; Dahlström 2004).

### *Civil society discourse*

As Stella (2012, p. 82) notes, local context and collective agency come together in shaping specific forms of resistance to LGBT rights-denial. In this regard, the Russian Federation is no exception. Civil society organisations’ discourse describes a situation clearly at odds with the official state discourse. ‘Rights’ are the principal frame. It accounts for 27.3% of all quasi-sentences (see Table 1). Understandably, resistance under the frame was principally targeted at Federal Law No. 135-FZ. In this respect the present analysis reveals alignment between the contemporary situation in Russia and the international literature on state legitimisation

of exclusion. Notably, Schrover and Schinkel's observation that: 'as state categorizations [effected through enactments] continuously differ, both the historical analysis of their genesis, functioning and transformation and the contemporary analysis of their effectuation in practices are crucial to an understanding of in- and exclusion' (Schrover & Schinkel 2013, p. 1123).

The foregoing is explicit in the CSO discourse. For example, as the representative of one CSO asserts: 'It is clear, however, that by adopting such laws, public authorities inscribe discrimination based on sexual orientation and gender identity in law and thus legitimise social exclusion and stigmatisation of LGBT people'.<sup>27</sup> Another core trope was state failure to evidence the need for measures like Federal Law No. 135-FZ (and its regional variants). For example, 'there is no evidence that public statements concerning same-sex families or relationships or sexual orientation or gender identity pose any kind of threat to the public'.<sup>28</sup>

Extant scholarly work alludes to a dyad, involving a distinction between 'hard' and 'soft' rights (Cole 2009). The former are legally enshrined and enforceable, whilst the latter are discursive and symbolic. Thus, they 'may have no legally binding force but may nevertheless have practical effects ... [constituting part of a] potentially important normative system employ[ing] non-binding objectives and guidelines to bring about change in social policy and other areas' (Trubek & Trubek 2005, p. 343). The mere presence of 'hard' rights in a country's legal code is often seen as preferable to 'soft' rights. However, it is argued that this is over-simplistic and fails to acknowledge two pathologies. Both are identified in the current civil society discourse.

First, effective implementation of rights can have negative consequences and reinforce the exclusion of LGBT people if they are based on heteronormative assumptions (Elman 2000). This is the case with the Federal Law No. 135-FZ. Second, notwithstanding state obligations under universal human rights clauses (see Article 1, UDHR) (and the constitution), their existence does not guarantee protection. Thus, the CSO discourse repeatedly alludes to state implementation failure. For example: 'the Russian authorities often cite the anti-discrimination norms existing in various laws, but in practice these norms prove to be declarative. Using them in courts to protect real people is impossible. This conclusion follows from a nearly complete absence of discrimination cases in the Russian legal practice'.<sup>29</sup>

The second-ranked frame in the CSO discourse was discrimination (17.8% of quasi-sentences). Here the civil society discourse alluded to different modes of discrimination: individual, cultural and institutional (Nelson 2015). A key trope was state denial. For example,

the Russian authorities deny the existence of the problem with discrimination on grounds of sexual orientation and gender identity, take no measures to combat homophobia in society and to prevent hate crimes on grounds of sexual orientation and gender identity in spite of widespread homophobia and transphobia in the Russian society'.<sup>30</sup>

<sup>27</sup> *'Homosexual Propaganda' Bans in Russia: A UPR Submission by ILGA-Europe*, International Lesbian, Gay, Bisexual, Trans and Intersex Association (Brussels, ILGA, 2012, p. 6).

<sup>28</sup> *'Homosexual Propaganda' Bans in Russia: A UPR Submission by ILGA-Europe*, International Lesbian, Gay, Bisexual, Trans and Intersex Association (Brussels, ILGA, 2012, p. 7).

<sup>29</sup> *UPR Submission*, NGO Coalition: Center for the Development of Democracy and Human Rights; 'Golos' Association for the Protection of Voters' Rights, Interregional Human Rights Group; International Youth Human Rights Movement; Foundation for Environmental and Social Justice; Center for the Defence of Media Rights; SOVA Center for Information and Analysis; and 'Memorial' Anti-Discrimination Center (Moscow, NGO Coalition, 2012, p. 3).

<sup>30</sup> *UPR Submission* (St Petersburg, Russian LGBT Network, 2012, p. 2).

Several also alluded to state failure to adhere to constitutional principles. This again underlines the disjuncture between the UPR rights discourse and contemporary state practice. The reasons for the implementation gap offered by the CSOs resonate with the international literature. They include a lack of political will, conflicting political agendas, weak or absent sanctions for non-compliance, and official failure to collect and monitor base data on LGBT rights.<sup>31</sup> The discourse is typified by the following observation,

the Russian Federation is member to multiple international treaties that establish the principle of equal rights of all humans. The Constitution of Russia also contains a general anti-discriminatory norm .... The Constitutional norm forbidding discrimination provides for expanded interpretation in the sense of inadmissibility of discrimination ‘on any physical or social grounds’.<sup>32</sup>

Echoing international work on state-sanctioned discrimination against LGBT people (Strand 2011), the CSOs also made the powerful point that the Federal Law No. 135-FZ has had a wider impact beyond public administration. The following examples are typical. One noted that such enactments have had the effect of ‘legitimising discrimination by employers, service providers, health practitioners, teachers and other stakeholders against people on the basis of their sexual orientation, gender identity or gender expression’.<sup>33</sup> Another observed that: ‘the Russian LGBT Network reported that clubs have refused to rent them premises for events, even when children were clearly not amongst the potential participants’.<sup>34</sup>

Freedom of expression was the third-ranked frame (14.2% of quasi-sentences). Attention here centred on the disjuncture between the state’s espousal of such freedoms and failure to back the rhetoric with action. The CSO discourse is explicit, ‘there is no question that the “homosexual propaganda” laws [Federal Law No. 135-FZ] impermissibly interfere with the exercise of the rights to freedom of expression, association and peaceful assembly, because they do not meet the conditions set forth in the ICCPR or the European Convention for limiting these rights’.<sup>35</sup> The civil society discourse is also caustic in its criticism of the police: for example, the failure of ‘law enforcement bodies to protect participants of peaceful demonstrations in defence of [the] human rights of homosexual, bisexual, and transgender individuals against any attempts to unlawfully obstruct assemblies or to impede the actual enjoyment of the right to freedom of expression’.<sup>36</sup>

The foregoing is significant because, as Orbe (1998a) asserts, LGBT freedom of expression is integral to challenging oppressive norms and practices, not least because it shapes civil

<sup>31</sup>See for example Roper and Barria (2005), Hafner-Burton (2008), Norman-Major and Becker (2013).

<sup>32</sup>UPR Submission, NGO Coalition: Center for the Development of Democracy and Human Rights; ‘Golos’ Association for the Protection of Voters’ Rights, Interregional Human Rights Group; International Youth Human Rights Movement; Foundation for Environmental and Social Justice; Center for the Defence of Media Rights; SOVA Center for Information and Analysis; and ‘Memorial’ Anti-Discrimination Center (Moscow, NGO Coalition, 2012, p. 4).

<sup>33</sup>‘Homosexual Propaganda’ Bans in Russia: A UPR Submission by ILGA-Europe, International Lesbian, Gay, Bisexual, Trans and Intersex Association (Brussels, ILGA, 2012, p. 4).

<sup>34</sup>UPR Submission, NGO Coalition: Center for the Development of Democracy and Human Rights; ‘Golos’ Association for the Protection of Voters’ Rights, Interregional Human Rights Group; International Youth Human Rights Movement; Foundation for Environmental and Social Justice; Center for the Defence of Media Rights; SOVA Center for Information and Analysis; and ‘Memorial’ Anti-Discrimination Center (Moscow, NGO Coalition, 2012, p. 5).

<sup>35</sup>‘Homosexual Propaganda’ Bans in Russia: A UPR Submission by ILGA-Europe, International Lesbian, Gay, Bisexual, Trans and Intersex Association (Brussels, ILGA, 2012, p. 9).

<sup>36</sup>UPR Submission (St Petersburg, Russian LGBT Network, 2012, p. 7).

society groups' action repertoires, modes of communication and networking. As co-cultural theory explains, the choice of specific communicative practices amongst LGBT groups is based on an assessment of the perceived costs and rewards. They are strategically selected and implemented depending upon their degree of assertiveness and level of resistance to state heteronormative hegemony (Orbe 1998b). In turn, such choices affect the political visibility of oppressed groups such as LGBT people, and are pivotal in dispelling stereotypes and challenging misinformation and propaganda.

A further strand of the discourse relates to freedom of the press. In direct contrast to the State UPR Report (*inter alia* 'Freedom of mass information is guaranteed. Censorship is prohibited', Government of the Russian Federation 2012, p. 14, para 129), the CSO discourse repeatedly refers to media harassment in the reporting of LGBT activities. For example, one noted: 'the Russian LGBT Network stated that local media had stopped covering its activities because they were afraid of being sued. In many cases, owners of local media would not be in a position to pay fines if found guilty of violating the law'.<sup>37</sup> This matters because it denies LGBT activists agenda-setting power (Cobb & Ross 1997), and also denies them the basis to garner public support and raise awareness of state oppression (Strand 2011).

In the case of the fourth-ranked frame, hate crimes (10.6% of quasi-sentences), a core strand of the discourse was concerned with the lack of protection by police and judiciary. This resonates with the wider academic literature on the potential for disjuncture between general human rights principles and their application in domestic legal codes (Carozza 2003; Merry 2006). For example, one CSO noted that: 'the Criminal Code of the Russian Federation does not contain any hate motive or preconceived opinion against LGBT individuals as an aggravation of a crime'.<sup>38</sup> Another lamented that 'not a single hate crime against LGBT has been investigated as a hate crime and, of course, no individual has been convicted of a crime on grounds of hatred or preconceived opinion against LGBT individuals'.<sup>39</sup>

Kuhar and Švab (2013, p. 17) allude to how discriminatory norms and practices force LGBT people to conceal their sexual identities. The current civil society discourse provides further evidence of this in the Russian context. In their UPR submissions CSOs allude to victims' reluctance to report hate crimes. For example: 'unfortunately, victims of such crimes are afraid of reporting to the police in most cases as, thereby, they would have to publicly announce their sexual orientation'.<sup>40</sup> A further core trope in the discourse resonates with the

<sup>37</sup>UPR Submission, NGO Coalition: Center for the Development of Democracy and Human Rights; 'Golos' Association for the Protection of Voters' Rights, Interregional Human Rights Group; International Youth Human Rights Movement; Foundation for Environmental and Social Justice; Center for the Defence of Media Rights; SOVA Center for Information and Analysis; and 'Memorial' Anti-Discrimination Center (Moscow, NGO Coalition, 2012, p. 3).

<sup>38</sup>UPR Submission, NGO Coalition: Center for Social and Labor Rights; Center 'Anna' for the Prevention of Violence against Women; 'Rights of the Child' Charitable Foundation; 'Perspektiva' Regional NGO of Persons with Disabilities; LGBT Network; and the Center for the Development of Democracy and Human Rights (Moscow, NGO Coalition, 2012, p. 6).

<sup>39</sup>UPR Submission, NGO Coalition: Center for Social and Labor Rights; Center 'Anna' for the Prevention of Violence against Women; 'Rights of the Child' Charitable Foundation; 'Perspektiva' Regional NGO of Persons with Disabilities; LGBT Network; and the Center for the Development of Democracy and Human Rights (Moscow, NGO Coalition, 2012, p. 6).

<sup>40</sup>UPR Submission, NGO Coalition: Center for the Development of Democracy and Human Rights; 'Golos' Association for the Protection of Voters' Rights, Interregional Human Rights Group; International Youth Human Rights Movement; Foundation for Environmental and Social Justice; Center for the Defence of Media Rights; SOVA Center for Information and Analysis; and 'Memorial' Anti-Discrimination Center (Moscow, NGO Coalition, 2012, p. 1).

wider international literature on the need to tackle homophobic stereotyping and bullying in the school curriculum to prevent pupil suicides and negative psychological consequences (Meyer *et al.* 2011). In the CSO UPR discourse particular reference was made to the state education system: for example, ‘the climate of stigmatisation of LGBT youth, in particular in schools ... homophobic and transphobic bullying ... undermining the mental and physical well-being of many young people’.<sup>41</sup>

Allied to the foregoing, ‘identity’ was the fifth-ranked frame (6.7%). CSOs emphasised the oppression facing transgender people. For example, referring to Federal Law No. 135-FZ one noted, ‘we believe that the adoption of such laws contradicts the stipulations of the Report of the UN High Commissioner for Human Rights on discriminatory laws and practices and acts of violence against individuals on grounds of their sexual orientation and gender identity ...’.<sup>42</sup> CSOs also highlighted how Federal Law No. 135-FZ is being ‘used as means for random detention of ... individuals on grounds of their sexual orientation and gender identity’.<sup>43</sup>

True to the notion of Wald *et al.* (1996) of LGBT activists being drawn into ‘morality politics’, both state and civil society organisations also framed their UPR responses to LGBT identity and denial of it in terms of ‘morals’. On the state side, the text of Federal Law No. 135-FZ itself refers to the unregulated conveyance of information on non-traditional sexual relations ‘by means that make such information publicly accessible and capable of causing harm to health and the moral and spiritual development’. In a similar fashion, the regional enactments also adopt this practice (for example the Law of the Arkhangelsk Region No. 336-24-OZ, 30 September 2011, ‘On Amendments and Addition to the Regional Law “On Some Measures for the Protection of Morals and Health of Children in the Arkhangelsk Region”’).<sup>44</sup> Lawmakers’ framing of the enactment in this way suggests intent to exploit UN Treaty provisions allowing states to make adaptations in rights implementation in the name of public morality. However, it should be noted that previous attempts to do this have been viewed with scepticism by the European Court of Human Rights and the UN Human Rights Committee.<sup>45</sup>

Notwithstanding this, state efforts to frame the debate in terms of ‘traditional’ (that is, heteronormative) morals, are likely to play well with many Russian voters. A recent survey suggested that 81% of Russians view homosexuality as ‘immoral’.<sup>46</sup> In response, the civil society UPR discourse alludes to the authorities’ use of specious ‘moral’ arguments to limit LGBT activities: for example, ‘it also has to be noted that public events by LGBT [people] are

<sup>41</sup> ‘Homosexual Propaganda’ Bans in Russia: A UPR Submission by ILGA-Europe, International Lesbian, Gay, Bisexual, Trans and Intersex Association (Brussels, ILGA, 2012, p. 3).

<sup>42</sup> UPR Submission, NGO Coalition: Center for Social and Labor Rights; Center ‘Anna’ for the Prevention of Violence against Women; ‘Rights of the Child’ Charitable Foundation; ‘Perspektiva’ Regional NGO of Persons with Disabilities; LGBT Network; and the Center for the Development of Democracy and Human Rights (Moscow, NGO Coalition, 2012, p. 8).

<sup>43</sup> UPR Submission (St Petersburg, Russian LGBT Network, 2012, p. 4).

<sup>44</sup> Zakon Arkhangel’skoi oblasti ot 30 sentyabrya No. 336-24-OZ ‘O vnesenii izmenenii i dopolneniya v oblastnoi zakon “Ob otdel’nykh merakh po zashchite нравstvennosti i zdorovya detei v Arkhangel’skoi oblasti”’.

<sup>45</sup> With the former rejecting such a defence in relation to criminalising same-sex sexual relationships (see ‘Dudgeon v. United Kingdom, 1981’, European Court of Human Rights, Application no. 7525/76, Judgment, Strasbourg, 22 October 1981, available at: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-57473"\]}](https://hudoc.echr.coe.int/eng#{)), accessed 27 February 2018; ‘Norris v. Ireland, 1988’, European Court of Human Rights, Application no. 10581/83, Strasbourg, 26 October 1988). For a discussion see McLoughlin (1996).

<sup>46</sup> ‘The Universal Periodic Review’, Russian LGBT Network, 9 October 2012, available at: [https://www.lgbtnet.org/sites/default/files/upr\\_eng.pdf](https://www.lgbtnet.org/sites/default/files/upr_eng.pdf), accessed 27 February 2018.

continued to be refused official permits by administrative authorities both for formal reasons and on such grounds as public anger, [and] moral considerations',<sup>47</sup> and 'there is no evidence that public statements concerning same-sex families or relationships or sexual orientation or gender identity pose any kind of threat to public morals'.<sup>48</sup>

As contemporary application of liberal political theory underlines (Kotef 2015), the nexus between freedom, security and violence leads to different 'regimes of movement'. These impact on different social groups in contrasting ways. In turn, this furthers understanding of patterns and processes of LGBT exclusion in the modern state. This spatial view of governance and social relations is germane to understanding the situation in today's Russia. Thus, 'freedom of movement and assembly' was the seventh-ranked frame (6.1%) in the CSO discourse. The current analysis reveals a direct contradiction between the experience of civil society groups and the state's assertions, for example, that 'Russian law guarantees the right to assemble peacefully and unarmed, to hold gatherings, political rallies, demonstrations and marches and to picket. The right to conduct public events is established in the Constitution ...' (UN 2013, p. 15). Once again, the CSO discourse suggests institutional decoupling in state practices. The civil society discourse repeatedly draws attention to how restriction on movement is used to oppress LGBT people. For example, one CSO alluded to how:

... such laws [i.e. Federal Laws No. 135-FZ and 121-FZ] run counter to everyone's right to ... freedom of association and to peaceful assembly. They are simply not legitimate restrictions under international law for three reasons: they are impermissibly vague; they fail the tests of necessity and proportionality; [and] they discriminate against individuals on the basis of sexual orientation, and, in some instances, gender identity as well.<sup>49</sup>

The discourse under this frame also provides further details of how the state is using bureaucratic means to place limits on LGBT activism: for example,

as regards freedom of association, the ongoing practice of refusals to register LGBT organizations and refusals to officially approve amendments to their incorporation documents need to be noted. Violations are manifested not only in refusals justified by allegedly formal reasons, but also in referring in these decisions to considerations of morality, [and] traditional family values.<sup>50</sup>

'Health' (2.8% of quasi-sentences) was amongst the remaining frames. Discourse under this frame aligned with Lewin and Meyer's observation that, 'institutionalized homophobia and heterosexism within health care may contribute directly to the ill-health of LGBT populations' (Lewin & Meyer 2002 p. 161). CSOs alluded to widespread discriminatory practices. Thus,

<sup>47</sup>UPR Submission (St Petersburg, Russian LGBT Network, 2012, p. 9).

<sup>48</sup>'Homosexual Propaganda' Bans in Russia: A UPR Submission by ILGA-Europe, International Lesbian, Gay, Bisexual, Trans and Intersex Association (Brussels, ILGA, 2012, p. 10).

<sup>49</sup>*Economic and Social Rights. Situation of Vulnerable Groups: Materials of Russian NGOs for the Universal Periodic Review of the Russian Federation in the United Nations Human Rights Council in 2013*, Coalition of Russian NGOs: Centre for Social and Labour Rights; Centre 'Anna' for the Prevention of Violence against Women; 'Rights of the Child' Charitable Foundation; 'Perspektiva' Regional NGO of Persons with Disabilities; LGBT Network; and the Center for the Development of Democracy and Human Rights (New York, NY, UN, 2013, p. 4).

<sup>50</sup>*Materials of Russian NGOs for the Universal Periodic Review of the Russian Federation in the United Nations Human Rights Council in 2013*, Coalition of: Interregional Human Rights Group; International Youth Human Rights Movement; Foundation for Environmental and Social Justice; Center for the Protection of Media Rights; SOVA Center for Information and Analysis; and 'Memorial' Anti-Discrimination Center (New York, NY, UN, 2012, p. 4).

for example, one alluded to how: ‘specialized medical care for transgender people does not receive proper attention of public health administration authorities. A range of medical care services essential to transsexual patients (including psychotherapy, hormone-replacement therapy and surgical operations for sex reassignment ... are not provided as part of the state guarantees to deliver free medical care’.<sup>51</sup>

### *Discussion*

According to regime theory, international agreements like UN human rights treaties are signed with the bona fide intention that signatory countries will implement their provisions in order to benefit their citizens (Hill 2010). Yet, as the present findings underline, a caveat is required in the case of authoritarian regimes such as the Russian Federation. This is because the theory downplays the possibility that ruling elites may sign without intent to comply. Instead, they do so in order ‘to appease [an ...] international constituency’ (Chayes & Handler Chayes, 1995, p. 178). According to this view, signing agreements like the UDHR and ICCPR casts Russia as a responsible member of the international community, whereas, as the UPR discourse attests, the Kremlin selectively interprets its obligation to uphold universal rights and oppresses LGBT citizens.

In addition to state-intent, two additional factors are germane to understanding rights observance in the Russian Federation: civil society strength and international rights enforcement. In the latter regard, it is widely acknowledged that UN treaties have limited sanctions for non-compliance (Bowman 2007; Risse *et al.* 2013). This effectively allows the Russian government to act with impunity with regard to LGBT rights, whilst, in the case of civil society strength, as Neumayer notes, ‘improvement in human rights is typically more likely the more democratic the country, or the more international non-governmental organizations [CSOs] its citizens participate in .... [In short,] ratification [of human rights treaties] is more beneficial the stronger a country’s civil society is’. The troubling upshot of this is, ‘in very autocratic regimes with weak civil society, [human rights treaty] ratification can be expected to have no effect and is even possibly associated with more rights violations’ (Neumayer 2005, p. 921). The civil society discourse confirms that this scenario applies to today’s Russia.

Specifically, it reveals how, over recent years the governing elite has simultaneously espoused universal rights and freedoms whilst framing its discourse in narrower terms of ‘the protection of traditional values of mankind and respect for local cultures’. This has been accompanied by repressive measures like Federal Law No. 135-FZ. In this way the Russian state has promoted heteronormativity whilst at the same time rejecting identity-based LGBT human rights claims. It is thus a powerful example of institutional de-coupling. This does not auger well for LGBT citizenship, not least because it resonates with earlier work by Rauhofer who notes that, ‘gay and lesbian politics that focus on merely sharing rights and privileges that come out of a heterocentric system deny the opportunity to make a difference’ (Rauhofer 1998, p. 74).

<sup>51</sup>UPR Submission (St Petersburg, Russian LGBT Network, 2012, p. 8).

In turn, the foregoing analysis shows how civil society organisations have responded to this malaise by framing a discourse of resistance. Drawing on situated knowledge, it details the oppression facing LGBT people, something that is clearly at odds with the official state discourse. In it ‘rights’ are the leading frame (unsurprisingly, this strand mainly targets Federal Law No. 135-FZ and allied instruments). Yet, CSOs also use their UPR submissions to focus on diverse pathologies including discrimination, hate crimes and restrictions on freedom of expression, movement and the right to gather peaceably. These findings are consistent with the 2012 ruling of the United Nations Human Rights Committee. It too found that contemporary practices in the Russian Federation violate LGBT peoples’ rights, as set out in the UDHR and International Covenant on Civil and Political Rights.<sup>52</sup>

By showing the endurance of a stark state–civil society disconnect over two cycles of the UPR the present study points to the continuing failure of international attempts at control of Russia’s rights regime. In social theory terms, this challenges the ‘Transitology School’ of thought. The latter asserts that increased civil society contention undermines authoritarian rule paving the way for greater rights and freedoms (Wiarda 2001; Petsinis 2010). Instead, the current findings suggest the need for a more sophisticated interpretation, namely, that the repressive Moscow regime’s qualified tolerance of civil society resistance in their UPR submissions actually boosts its own resilience (Nathan 2003, p. 11). As Froissart cogently observes, to the ruling elite the value of such mechanisms lies in ‘showing the way [...] that civil society dissent is] expressed is an integral part of authoritarian governance’ (Froissart 2014, p. 220). In the absence of the necessary rights enforcement, the disjuncture between state and civil society discourse shows performativity and legitimisation have taken the place of legitimacy and accountability.

Specifically, ‘performativity’ here refers to the ‘reiteration of a norm or set of norms, and to the extent that it acquires an act-like status in the present, it conceals or dissimulates the conventions of which it is a repetition’ (Price & Shildrick 1999, p. 147). In other words, through its submission to the UPR, the Russian government appears to embrace the idea of universal rights and civil society scrutiny in a way that advances political legitimacy, whereas, in reality, as the foregoing analysis shows, it is ‘legitimation’ that best describes the situation. This term refers to ‘communicative actions aimed at managing the perception that government actions are effective in promoting their desired ends, whether that is in fact true’ (Moore 2001, p. 272). In the present case this means the Russian state giving the impression that it is serious about engaging with the UN’s official review of UDHR and ICCPR compliance, when in fact, it is failing to uphold LGBT rights. In short, the ruling elite’s approach is founded on the twin ills of instrumentalism and institutional decoupling.

All of this points to the need for revised UN working practices. In response, this study makes four recommendations grounded in the earlier analysis: first, the UN HR Committee must take a more systematic, critical view of the contrasts in the framing of state and civil society submissions to the UPR and require a specific explanation and/or remedial action from state parties; accordingly, second, in future, the UNHRC must ensure that actionable recommendations in light of the UPR are explicitly linked to deliverable and measurable

<sup>52</sup>Notably, Articles 19(2) and 26. See *Irina Fedotova v. Russian Federation*: Communication No. 1932/2010, UN GAOR, Human Rights Committee, 106th Session, UN Doc, CCPR/C/106/D/1932/2010 (2012), available at: <http://hrlibrary.umn.edu/undocs/1932-2010.html>, accessed 30 September 2016. In a similar vein, in relation to a different international rights framework, Russia continues to fail to comply with the European Court of Human Rights judgment (in the case of *Alekseyev v Russia*).

outcomes over a set time period (for example reduction in cases of malicious prosecution, a decrease in alleged illegal detentions and a specified drop in the number of homophobic hate crimes); third, the UN system needs a more robust set of sanctions when state parties are in breach of their UDHR and ICCPR obligations, including suspension of states' right to participate in the General Assembly, punitive financial measures and personal liability for ministers enforced in the International Criminal Court; and fourth, drawing on the earlier Beijing Declaration and Platform for Action, the UN should apply the principles of 'mainstreaming' LGBT rights into its UPR processes and outputs.<sup>53</sup> In other words, there should be systemic attention to LGBT rights at all stages of the UN review process, including Concluding Observations, General Comments and Individual Communications to states' parties. An added benefit here is that the latter action would facilitate better consideration of intersectionality, or the way that LGBT rights intersect with other 'protected characteristics', such as gender, ethnicity, age and disability.

In sum, the present analysis underlines the formidable challenges facing CSOs concerned with LGBT rights in Russia. It also confirms that effective international regimes are likely to emerge only where they have deep roots in civil society. In the case of the Russian Federation, state suppression of the civil sphere means this is absent. CSOs seek to resist state hegemony through their UPR submissions, yet without effective enforcement mechanisms, they are ignored by those in power. At the outset of the twenty-first century, this combination of factors allows the ruling elite to dissemble, simultaneously espousing universal rights yet strategically framing them as heteronormative, integral to the protection of 'traditional values' and inimical to identity-based LGBT rights claims.

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<sup>53</sup>The Beijing Declaration of 1995 is a UN initiative subscribed to by 190 states. It is concerned with the promotion of gender equality and is based upon a holistic, systemic and proactive approach to embedding gender equality concerns in all stages of policy and practice. For a discussion see Schmidt (2005).

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*Appendix. List of CSO submissions to the UPR*

- Russian Federation: Submission to the UN Universal Periodic Review 16th Session of the UPR Working Group* (London, Amnesty International, 2012).
- Universal Periodic Review Working Group Sixteenth Session*, Andrey Rylkov Foundation for Health and Social Justice (ARFHSJ) and Canadian HIV/AIDS Legal Network (CHLN) (Moscow, ARFHSJ and CHLN, 2012).
- Submission to the UN Universal Periodic Review of Russian Federation* (London, Article 19, 2012).
- UPR Submission—Materials of Russian NGOs for the Universal Periodic Review of the Russian Federation in the United Nations Human Rights Council in 2013*, Center for the Development of Democracy and Human Rights, Institute for Human Rights, 'Social Partnership' Foundation, 'Public Verdict' Foundation (Moscow, CDDHR *et al.*, 2012).
- UPR Submission on the Human Rights Violations of Women and Adolescents Living in the Russian Federation*, Center for Reproductive Rights (New York, NY, CRR, 2012).
- UPR Submission*, Center for Social and Labor Rights (Moscow, CSLR, 2012).
- Universal Periodic Review: Submission Regarding the Russian Federation by Church of Scientology International*, Church of Scientology International (Los Angeles, CA, Church of Scientology International, 2013).
- Russia: Submission to the UN Universal Periodic Review 16th Session of the UPR Working Group*, Civicus World Alliance for Citizen Participation, NGO in General Consultative Status with ECOSOC and Citizens' Watch and GOLOS Association (Geneva, Civicus World Alliance for Citizen Participation *et al.*, 2012).
- The Rule of Law. Liberty and Security of the Person. Materials of Russian NGOs for the Universal Periodic Review of the Russian Federation in the United Nations Human Rights Council in 2013*, Coalition of Russian NGOs (CRN): Institute for Human Rights, 'Social Partnership' Foundation; 'Public Verdict' Foundation; Soldiers' Mothers of Saint Petersburg; 'Memorial' Human Rights Center; Interregional Committee against Torture; and the Center for the Development of Democracy and Human Rights (Moscow, CRN, 2012).

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