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Aide-Mémoire

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Human Rights of Lesbian, Gay, Bisexual and Transgendered (LGBT) People¹

Recent discussion within the United Nations on LGBT rights

Since the Brazilian delegation to the 59th Session of the United Nations Commission on Human Rights (CHR) introduced a **historic resolution on discrimination based on sexual orientation**² in April 2003, **some progress** with regard to the human rights of LGBT people has been achieved within the United Nations³.

At the newly established Human Rights Council (HRC)'s third Session in December 2006, **Norway** made a statement on behalf of **54 UN member states**⁴ (including 18 members of the HRC and all current 27 EU member states) on human rights violations based on sexual orientation and gender identity, calling for a debate on the issue at an upcoming session of the HRC⁵. For the first time "gender identity"⁶ was included in a joint statement at the UN. When "gender identity" was first debated at the UN in the context of the draft resolution on Extra-Judicial, Summary and Arbitrary Executions at the CHR in 2005, "gender identity", however, was dropped again at the last minute.

The statement of Norway was followed by an NGO statement⁷ supported by **19 ECOSOC accredited**

¹ LSVD has special consultative status with ECOSOC since December 2006 and is the largest organisation working for LGBT civil and human rights in Germany. We want to thank Birgit Hardt, former Policy Officer of ILGA-Europe, for contributing to an earlier version of this Aide-Memoire, John Fisher of ARC International for contributions and Kurt Krickler of HOSI Wien for comments.

² E/CN.4/2003/L.92 "Human Rights and sexual orientation. The resolution – which was co-sponsored by the EU and supported by Korea, Japan, some Latin American and Eastern European countries – provoked strong opposition from a number of countries. After prolonged debate, the CHR voted to postpone further discussion on the resolution to the 60th Session in 2004. In 2004, during the 60th Session, the CHR moved to defer consideration of the resolution without discussion or a vote until the Commission's 61st Session in 2005, after a cross-regional consensus to do so was reached. This followed intense pressure by the Vatican and the Organization of The Islamic Conference (OIC) on Brazil, which decided to suspend the resolution.

³ See description of the German Federal Government of this progress in Bundestagsdrucksache 16/2800 "Zur Lage der Menschenrechte von Lesben, Schwulen, Bisexuellen und Transgender" (Answer to questions on „The state of LGBT human rights“): <http://dip.bundestag.de/btd/16/028/1602800.pdf>

⁴ Albania, Andorra, Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montenegro, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, the former Yugoslav republic of Macedonia, the Republic of Korea, the Republic of Moldova, Romania, Serbia, Spain, Slovakia, Slovenia, Sweden, Switzerland, Timor-Leste, Ukraine, the United Kingdom, the United States of America and Uruguay.

⁵ This build on the New Zealand statement in 2005, during the 61st Session of the CHR, under Item 17 on behalf of 32 states (http://www.ilga.org/news_results.asp?LanguageID=1&FileID=533&FileCategory=61&ZoneID=7) and on the twenty seven states that sponsored the Brazilian resolution in 2003.

⁶ "Gender identity" refers to a person's sense of conformity between their biological and psychological gender whilst "sexual orientation" is used to depict a person's sexual and emotional attraction to people of the same or the opposite gender.

⁷ http://www.ilga.org/news_results.asp?LanguageID=1&FileID=944&FileCategory=44&ZoneID=7

NGOs⁸ and a further coalition of 460 NGOs from 69 countries.

In December 2006 the **Economic and Social Council (ECOSOC)**, in a historic decision, voted to grant consultative status to three LGBT NGOs (LSVD from Germany, LBL from Denmark and the European Region of ILGA (ILGA-Europe))⁹ overturning the unfair treatment these NGOs had received in the NGO Committee, treatment that was only based in animus against LGBT people¹⁰. In July 2007 ECOSOC granted consultative status to two additional LGBT NGOs: CGLQ (Canada) and RFSL (Sweden).

Systemic and grave human rights violations on the basis of sexual orientation and gender identity

The following examples illustrate the **systemic and grave human rights violations** lesbian, gay, bisexual and transgendered people are facing around the world; these developments have occurred during 2007/2008 and are reported by Amnesty International, FIDH¹¹, Human Rights Watch and IGLHRC¹²:

- **Africa:** Cameroon: Three men were sentenced to prison for alleged homosexuality¹³14 Morocco: Sentences due to homosexual conduct¹⁵; Nigeria: In Bauchi state eighteen men face charges based on sexual orientation and gender identity¹⁶; Senegal: Ten men were arrested due to alleged sexual orientation¹⁷18; South Africa: Violence targets lesbians¹⁹; Uganda: Attacks on LGBT people by government and media²⁰;
- **Asia-Pacific:** Kuwait: Transgender people targeted by dress codes²¹; Pakistan: Transgender man's marriage challenged by courts and the media; Nepal: Maoists were implicated in abductions of LGBT people²²; South Korea: Government excluded at the last minute sexual orientation and gender identity from planned antidiscrimination law²³; Singapore: The government only decriminalized heterosexual oral and anal sex²⁴
- **Europe:** Russia: Repeated violent attacks on peaceful pride demonstrators²⁵; Turkey: Attempt to close Lambda Istanbul²⁶;

⁸ Action Canada for Population and Development; Amnesty International; Association for the Prevention of Torture; Association for Women's Rights in Development; Canadian HIV/AIDS Legal Network; Center for Women's Global Leadership; Confederazione Generale Italiana del Lavoro (New Rights Section); Development Alternatives with Women for a New Era (DAWN); Fédération Internationale des Droits de l'Homme; Global Rights; Human Rights Watch; International Commission of Jurists; International Planned Parenthood Federation; International Service for Human Rights; International Trade Union Confederation; OMCT - World Organisation Against Torture ; Public Services International and Women for Women's Human Rights - NEW WAYS; World Population Foundation

⁹ <http://www.un.org/News/Press/docs//2006/ecosoc6242.doc.htm>

¹⁰ http://www.ilga.org/news_results.asp?LanguageID=1&FileCategoryID=44&FileID=936&ZoneID=7

¹¹ Fédération Internationale des Droits de l'Homme

¹² International Gay and Lesbian Human Rights Committee

¹³ <http://www.iglhc.org/site/iglhc/section.php?id=5&detail=826>

¹⁴ <http://www.iglhc.org/site/iglhc/section.php?id=5&detail=810>

¹⁵ <http://www.iglhc.org/site/iglhc/section.php?id=5&detail=825>

¹⁶ <http://www.iglhc.org/site/iglhc/section.php?id=5&detail=831>

¹⁷ <http://www.iglhc.org/site/iglhc/section.php?id=5&detail=827>

¹⁸ http://www.ilga.org/news_results.asp?LanguageID=1&FileID=1147&FileCategory=1&ZoneID=2

¹⁹ <http://hrw.org/english/docs/2007/08/08/safric16617.htm>

²⁰ <http://hrw.org/english/docs/2007/10/11/uganda17081.htm>

²¹ <http://hrw.org/english/docs/2008/01/17/kuwait17800.htm>

²² <http://hrw.org/english/docs/2007/04/16/nepal15694.htm>

²³ <http://hrw.org/english/docs/2007/11/05/skorea17234.htm>

²⁴ <http://www.iglhc.org/site/iglhc/section.php?id=5&detail=791>

²⁵ <http://hrw.org/english/docs/2007/06/13/russia16174.htm>

²⁶ <http://hrw.org/english/docs/2007/10/16/turkey17107.htm>

- **Latin America and the Caribbean:** Jamaica: mob violence continues²⁷; Argentina: Unresolved murder of transgender activist²⁸

Social taboos and criminalisation of same-sex relations as 'sodomy', 'crimes against nature' or 'unnatural acts' (see section below), lead to public and private violence and discrimination. LGBT persons throughout the world continue to experience harassment, humiliation, verbal and physical abuse relating to their real or perceived sexual orientation or gender identity, on a regular basis. This ranges from homophobic rhetoric, abuse by state actors, such as the police, to violence and harassment by their own communities and families²⁹. Violating the standard that obliges them to prevent and punish human rights violations committed by private actors, many states connive in the persecution of LGBT activists. Numerous heads of state or other government officials openly incite hatred against lesbians, gay, bisexual and transgendered persons, as happened in recent years in Kenya, Malaysia, Namibia, Peru, Swaziland, Uganda, Zambia and Zimbabwe³⁰. Additionally, some countries treat homosexuality as a "medical or psychological disorder" and lesbians and gay men have been targeted for medical experimentation and forced psychiatric treatment designed to 'cure' their homosexuality³¹.

The **UN High Commissioner for Human Rights**, Ms. Louise Arbour, stated in her speech in Montreal in July 2006 that UN member states have a duty to protect LGBT people from violence³²:

"Neither the existence of national laws, nor the prevalence of custom can ever justify the abuse, attacks, torture and indeed killings that gay, lesbian, bisexual, and transgender persons are subjected to because of who they are or are perceived to be. Because of the stigma attached to issues surrounding sexual orientation and gender identity, violence against LGBT persons is frequently unreported, undocumented and goes ultimately unpunished. Rarely does it provoke public debate and outrage. This shameful silence is the ultimate rejection of the fundamental principle of universality of rights.

Impunity for crimes of violence against LGBT persons suggests that, in many societies, they are seen as less deserving of the protection of the law. In the final analysis, their lives are seen to be worth less, along with the lives of others whom society unjustly rejects because of their faults or flaws, real or imagined. In the face of that reality, the responsibility of the State to extend effective protection is, if anything, heightened.

States have a legal duty to investigate and prosecute all instances of violence and abuse with respect to every single person under their jurisdiction. Excluding LGBT individuals from these protections clearly violates international human rights law as well as the common standards of humanity that define us all."

"Sodomy Laws" and international human rights law

At least 84 UN member states³³ continue to have laws that make same-sex consensual sexual relationships between adults a criminal offence^{34 35}. In at least 8 countries the maximum penalty is death³⁶.

²⁷ <http://hrw.org/english/docs/2008/02/01/jamaic17957.htm>

²⁸ <http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=795>

²⁹ For further information on the Americas, see: *Sexual Orientation and Human Rights in the Americas*, Andrew Reding, World Policy Institute at New School University, New York, 2003

³⁰ For further information on the situation in Southern Africa, see: *More than a name. State-sponsored homophobia and its consequences in Southern Africa*, Human Rights Watch and IGLHRC, USA, 2003

³¹ *Crimes of hate, conspiracy of silence. Torture and ill-treatment based on sexual orientation*, Amnesty International Publications, 2001

³² <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/B91AE52651D33F0DC12571BE002F172C?opendocument>

³³ Afghanistan, Algeria, Angola, Antigua and Barbuda, Bahrain, Bangladesh Barbados, Belize, Benin, Bhutan, Botswana, Brunei, Cameroon, Democratic Republic of the Congo, Dominica, Djibouti, Eritrea, Ethiopia, Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, India, Iran, Jamaica, Kenya, Kiribati, Kuwait, Lebanon, Lesotho, Liberia, Libya, Malawi, Malaysia, Maldives, , Mauritania, Mauritius, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Nigeria, Oman, Pakistan, Palau, Panama, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, São Tomé and Príncipe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Swaziland, Syria, Tanzania, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkmenistan, Tuvalu, Uganda, United Arab Emirates, Uzbekistan, Yemen, Zambia and Zimbabwe. . In Egypt laws on "debauchery" have been used to criminalize gay men. In some

Criminal provisions against consensual same-sex activity have been found to constitute a **clear violation of international human rights law**.

In *Toonen v Australia*, the **UN Human Rights Committee** in March 1994 confirmed that laws criminalizing consensual same-sex activity violate both the right to privacy and the right to equality before the law without any discrimination, contrary to articles 17(1) and 26 of the International Covenant on Civil and Political Rights.³⁷

The Committee further considered that such laws interfere with privacy rights, whether or not they are actively enforced, and “run counter to the implementation of effective education programmes in respect of HIV/AIDS prevention” by driving marginalised communities underground.

The UN Human Rights Committee has affirmed this position on many occasions, either urging States to repeal laws which criminalize consensual same-sex activity or commending them for bringing their legislation into conformity with the Covenant by repealing such provisions.³⁸

This position is consistent with other **regional and national jurisprudence**, including decisions of the European Court of Human Rights³⁹ and of the Constitutional Court of South Africa,⁴⁰ as well as with the core commitments to equality and non-discrimination enshrined in the *African Charter of Human and Peoples’ Rights* and the *American Convention on Human Rights*.

States’ international obligations to respect the human rights of all persons, irrespective of sexual orientation and gender identity, were recently articulated in the “**Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity**”. The Principles were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including Africa. These experts included judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, members of civil society and others.

Principle 2 of the Yogyakarta Principles affirms the right of all persons to equality before the law without discrimination on the basis of sexual orientation or gender identity, and specifically confirms the obligation of States to “repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity.”

Latin American countries like Costa Rica laws on “scandalous” sodomy remain on the books. Three territories in free association with New Zealand (Cook Islands, Niue and Tokelau) still retain such laws. In Egypt laws on “debauchery” have been used to criminalize gay men. In Gaza (Palestinian Authority), the internationally not recognized Turkish Republic of Cyprus and some regions of Indonesia there are also sodomy laws on the books.

³⁴ See “State Homophobia A world survey of laws prohibiting same sex activity between consenting adults.” by Daniel Ottosson, Södertörn University, Stockholm (http://www.ilga.org/statehomophobia/State_sponsored_homophobia_ILGA_07.pdf) and Bundestagsdrucksache 16/3597 „Strafrechtliche Bestimmungen über Homosexualität und ihre Anwendung weltweit“ (official report of the Federal Government of Germany on question concerning legal sanctions on homosexuality):<http://dip.bundestag.de/btd/16/035/1603597.pdf>

³⁵ Of which approx. half ban such relationships between both women and men, while the remainder ban such relationships between men only.

³⁶ Afghanistan, Iran, Mauritania, Nigeria (some states), Saudi Arabia, Sudan, United Arab Emirates and Yemen.

³⁷ *Toonen v Australia*, CCPR/C/50/D/488/1992, April 4, 1994.

³⁸ See Human Rights Committee Concluding Observations: United States of America, A/50/40, October 3, 1995; Cyprus, CCPR/C/79/Add.88, April 6, 1998; Ecuador, CCPR/C/79/Add.92, August 18, 1998; Chile, CCPR/C/79/Add.104, March 30, 1999; Lesotho, CCPR/C/79/Add.106, April 8, 1999; Romania CCPR/C/79/Add.111, July 28, 1999; Australia, A/55/40, July 24, 2000; Egypt, CCPR/CO/76/EGY, November 28, 2002; Kenya, CCPR/CO/83/KEN, March 28, 2005; United States of America, CCPR/C/USA/CO/3, September 15, 2006; Barbados, CCPR/C/BRB/CO/3, May 11, 2007; Chile, CCPR/C/CHL/CO/5, May 18, 2007.

³⁹ *Dudgeon v United Kingdom*, Series A no. 45., 1981; *Norris v Ireland*, 1991; *Modinos v Cyprus*, 1993.

⁴⁰ *National Coalition for Gay and Lesbian Equality and another v Minister of Justice and others*, 1998.

Principle 6 of the Yogyakarta Principles affirms the right of all persons, regardless of sexual orientation or gender identity, to the enjoyment of privacy without arbitrary or unlawful interference, and confirms States' obligation to "repeal all laws that criminalise consensual sexual activity among persons of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity."⁴¹

The **UN High Commissioner for Human Rights** has welcomed the Yogyakarta Principles as a "timely reminder" of the basic tenets of universality and non-discrimination, and noted that "respect for cultural diversity is insufficient to justify the existence of laws that violate the fundamental rights to life, security and privacy by criminalizing harmless private relations between consenting adults."⁴²

Along with the International Lesbian and Gay Association (ILGA)⁴³, the Lesbian and Gay Federation in Germany (LSVD) calls on the Human Rights Council to:

- Urge in the 2008 **Universal Periodic Review** process that **Algeria, Bahrain, Barbados, Benin, Botswana, Ghana, India, Morocco, Pakistan, Sri Lanka, Tonga, Tunisia, Turkmenistan, Tuvalu, United Arab Emirates, Uzbekistan and Zambia** bring their legislation into conformity with their international human rights obligations by repealing all provisions which criminalise consensual same-sex activity.
- Include language recognizing the prosecution of individuals on the basis of sexual orientation or gender identity in all **relevant resolutions**
- Decide to make the issue part of its ongoing **agenda**

LSVD and ILGA urge all members of the Council to support such actions.

⁴¹ Available in all 6 UN languages at: www.yogyakartaprinciples.org

⁴² Statement of UN High Commissioner for Human Rights, Launch of the Yogyakarta Principles, 7 November, 2007, United Nations, New York.

⁴³ ILGA (www.ilga.org) is a federation of over 600 groups from over 90 countries fighting for equal human rights for lesbian, gay, bisexual and transgender people.