



# General Assembly

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## Human Rights Council

### Twentieth session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the International Commission of Jurists, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[1 June 2012]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Freedom of opinion and expression: The phenomenon of unjustifiable restrictions on LGBT individuals and organizations**

The International Commission of Jurists (ICJ) welcomes the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/20/17). The ICJ takes this opportunity to bring to the Special Rapporteur's attention recently enacted laws or proposed legislation in a variety of countries restricting the freedom of expression of individuals on matters of sexual orientation and gender identity. Such laws are incompatible with international law and standards and States that enact and execute such laws do so in contravention of their obligations under article 19 of the International Covenant on Civil and Political Rights (ICCPR) and/or other international legal obligations.

The ICJ's concern about the global phenomenon of unjustifiable restrictions on the freedom of opinion and expression as such restrictions affect lesbian, gay, bisexual and transgender (LGBT) individuals, is illustrated in the following recent examples:

- In Hungary, three Bills have been introduced in Parliament that would amend both the Constitution and existing laws in order to prohibit the promotion or propagation of “disorders of sexual behavior”, which is defined to include same-sex relationships. Public events, speeches, and media relating to disorders of sexual behavior would thereby all be prohibited. The penalties would range from a fine to up to eight years imprisonment. In related information, the Budapest police have refused to issue a permit for this year's LGBT pride march.
- In Riga, Latvia, a proposed city council regulation would criminalise the propaganda of homosexuality. The Legal Directorate of the Riga City Council, however, has described such a ban as a violation of human rights. No final decision has yet been taken.
- In respect of the Russian Federation, criminal laws have been adopted in Ryazan, Arkhangelsk, St Petersburg, Kostroma, and Siberia. These laws all prohibit public actions or “propaganda” that promote homosexuality, including speech, public demonstrations, displaying posters, and other forms of expression. For example, the St Petersburg law states that: “Public actions aimed at promoting sodomy, lesbianism, bisexuality, and transgenderism toward juveniles are punishable” – namely by fines of up to five hundred thousand rubles (approximately 12 800 Euros). The law defines propaganda as “any uncontrolled and targeted distribution of generally accessible information capable of harming the health and moral and spiritual development of minors”, particularly information that could create “an incorrect perception of social equivalence between traditional and non-traditional conjugal relations”. Activists arrested in Ryazan in March 2009 were convicted. One of them, Irina Fedotova, now has a communication pending before the UN Human Rights Committee. In April 2012, activists in St Petersburg were arrested for violating the law, including ones who marched through town with their mouths taped shut as a form of silent protest. Others had held up posters declaring that “homosexuality is normal.” In addition, a federal law imposing a similar ban has been introduced in the lower house of Parliament.
- In Uganda, the Anti-Homosexuality Bill has been reintroduced in Parliament. While much of the attention has rightly focused on the imposition of the death penalty for consensual adult same-sex sexual conduct, another provision of the Bill criminalizes the “promotion of homosexuality.”

- In the Ukraine, draft law 8711 has been approved for a first reading in Parliament. The draft law, which would modify several existing laws, criminalizes the “propaganda of homosexuality”. Homosexuality is defined as sexual relations between persons of the same sex. The explanatory note accompanying the draft law provides that its purpose is to “establish liability for actions that promote sexual relations between persons of the same sex”. The penalties range from a fine to five years’ imprisonment. In May 2012, a Parliamentary committee issued a recommendation in favor of the Bill’s adoption.

These laws and proposed laws, if adopted and implemented, would violate the right of freedom of expression contained in article 19 of the ICCPR. International law guarantees the enjoyment of all human rights without discrimination. This means that the freedom of expression of LGBT individuals must not be restricted and that expression concerning same-sex relationships, sexual orientation and gender identity must not be restricted in a discriminatory manner. Any restriction on the right to freedom of expression must meet the following conditions: it must be provided by law and it must be necessary to achieve one of the legitimate purposes set out in paragraph 3 of article 19. Laws restricting freedom of expression must furthermore be compatible with the aims and objectives of the ICCPR and must not violate its non-discrimination provisions.<sup>1</sup> They may not be imposed for discriminatory purposes or applied in a discriminatory manner.

Many of the Special Procedures of the Human Rights Council have repeatedly reaffirmed that the right to freedom of expression is a right held by everyone, regardless of sexual orientation or gender identity, and have criticized laws or proposed laws aimed at prohibiting the dissemination of information about sexual orientation or same-sex relationships.<sup>2</sup> By penalizing actions aimed at the propaganda of homosexuality – as opposed to the propaganda of heterosexuality or sexuality generally – laws such as the ones described above impose a difference of treatment that cannot be justified. They single out one particular kind of sexual preference for differential treatment. Because both sexual orientation and gender identity are prohibited grounds, any difference in treatment on these bases constitute discrimination, in violation of human rights law, unless there is a reasonable and objective justification. No such justification exists here.

## Call for Action

The ICJ encourages the Special Rapporteur to:

- Follow up all allegations of restrictions on the right to freedom of expression concerning “homosexuality” and “transgenderism”;

<sup>1</sup> Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1985/4 (1984), Annex at Principle 2; Human Rights Committee, General Comment 22, UN Doc CCPR/C/21/Rev.1/Add.4, at para 8.

<sup>2</sup> See, e.g., Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received, UN Doc A/HRC/4/37/Add.1 (2007), at para 511; Joint Statement from the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 1 March 2010; Report of the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo, Addendum, Mission to Colombia, UN Doc E/CN.4/2005/64/Add.3 (2004), at paras 75 and 76; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Abid Hussain, UN Doc E/CN.4/2001/64 (2011), at para 176; and Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Doc A/HRC/14/23/Add.1 (2010), at para 2511.

- Call on governments to protect the right to freedom of expression for everyone, including the right to receive and impart information on subjects dealing with sexual orientation or gender identity, and to ensure that restrictions on such rights comply with the requirements of necessity, proportionality and non-discrimination on all grounds; and
  - Continue to integrate issues of sexual orientation and gender identity in the fact-finding and reporting activities of the mandate. Freedom of opinion and expression: the phenomenon of unjustifiable restrictions on LGBT individuals and organizations.
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