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**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]

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

Freedoms of assembly and of association: 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 rights to freedom of peaceful assembly and of association (A/HRC/20/27). Earlier this year, the ICJ submitted a detailed response to the Special Rapporteur's Questionnaire on Best Practices. The ICJ does not duplicate its response here, but raises issues here concerning the continued restriction of the rights to freedom of assembly and association for lesbian, gay, bisexual and transgender (LGBT) individuals and LGBT organizations around the world.

The rights to freedom of peaceful assembly and association are guaranteed by the Universal Declaration of Human Rights (UDHR, article 20) and the International Covenant on Civil and Political Rights (ICCPR, articles 21 and 22), as well as by all general regional human rights instruments.¹ Peaceful assembly and association are “essential components of democracy”, as noted by the Human Rights Council when it adopted the resolution establishing the mandate of the Special Rapporteur.² They are absolutely critical for the work of human rights defenders, as affirmed in the Declaration on Human Rights Defenders, adopted by the General Assembly in 1999.³ Furthermore, the rights to freedom of association and peaceful assembly extend fully to minority groups expressing unpopular views, as emphasized by the Human Rights Committee as well as by national and regional courts interpreting these rights.⁴

Under international law, individuals have the right to come together to form associations and to assemble peacefully to communicate a message. Any interference with those rights must be provided for by law, based on only on the limited legitimate aims set out in relevant international instruments and proportional to those aims, and necessary in a democratic society. The right to form an association or to assemble peacefully extends not only to members of political parties and trade unions, but also to individuals who form groups of almost any composition and purpose, including groups that are formed by minorities and express minority viewpoints. Because the rights to freedom of association and peaceful assembly are closely linked to freedom of expression, and since both are essential components of democracy and pluralism, even associations that espouse ideas not favourably received by the majority or by the government are protected.

Despite these guarantees under international law, in every region of the world, LGBT individuals and organizations face restrictions on their rights to freedom of assembly and association. These restrictions negatively impact their ability to do human rights work. Most often the restrictions are said to promote public order or the protection of public morals, two permissible aims of restrictions on assembly and association under the ICCPR. With regard to LGBT activism and organizations, however, such restrictions are in reality

¹ See also: Arab Charter on Human Rights, article 24; African Charter on Human and Peoples' Rights, articles 10 and 11; American Convention on Human Rights, articles 15 and 16; and (European) Convention for the Protection of Human Rights and Fundamental Freedoms, article 11.

² UN Doc A/HRC/Res/15/21 (2010).

³ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Article 5, UN Doc A/Res/53/144 (1999).

⁴ Viktor Korneenko et al v Belarus, Communication 1274/2004, UN Doc CCPR/C/88/D/1274/2004 (2006), paras 7.3-7.7.

used as a pretext for discrimination on the basis of sexual orientation or gender identity. This runs counter to international human rights law, which provides that restrictions on rights must be for a legitimate purpose and cannot be discriminatory.⁵

Another especially worrisome trend is the use of laws criminalizing same-sex sexual conduct to justify restrictions on advocacy by LGBT organizations and individuals. In Nigeria, for example, the Senate recently adopted a Bill to prohibit not only same-sex relationships, but also gay clubs, societies, organizations, processions or meetings. A person who registers, operates or participates in a gay club, society or organization will be liable to a prison term of ten years. In Uganda this past February, the Minister for Ethics and Integrity led a raid on a workshop hosted by LGBT activists at a hotel in Entebbe and threatened to arrest the organizers for having an illegal meeting. Similarly, in Yaoundé in March 2012, a human rights seminar organized by LGBT groups that had received advance permission was interrupted and ultimately cancelled by authorities. The topic of discussion was declared “taboo”.

Freedom of association

LGBT organizations are in many places denied the right to register as associations, often on vague “public morality” grounds. For example, in Mongolia, the organization LGBT Centre based in Ulaanbaatar was denied permission to register on the ground that the term “LGBT” is itself not moral. After a vigorous letter-writing campaign and the intervention of the national human rights commission, the State Registration Agency reversed course and registered the organization. In Lesotho, the Registrar-General agreed to register the LGBT organization Matrix only after the organization altered its statute. In Turkey, LGBT organizations have had to go to court to enforce their right to register when local public prosecutors deemed their work to be immoral. In the case of Black Pink Triangle Izmir, the court, reversing the prosecutor’s decision, specifically stated that the fact that lesbian, gay, bisexual, transvestite and transsexual people exist is not contrary to public morality and that they, like all other individuals, had the right to form an association.

Simply put, public morals cannot be used as a pretext to justify discrimination on the basis of sexual orientation or gender identity. As the Human Rights Committee has observed in the context of the closely related right of freedom of expression: “the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition... Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination”.⁶

Freedom of assembly

Restrictions on the right to peaceful assembly for LGBT individuals and organizations are often based on public order grounds. States argue that they are unable to permit a pride parade or march because of the presence of potentially hostile counter-demonstrators. This ignores the positive obligation of States to protect the right to peaceful assembly. That includes protecting from violence individuals exercising their rights. In other words, the threats of counter-demonstrators cannot be used as an excuse to limit the right to assemble.

⁵ Human Rights Committee, General Comment 34, para 26. See also Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, Principle 9, UN Doc E/CN.4/1985/4 (1985), Annex.

⁶ Human Rights Committee, General Comment 32, para 32.

For example, in April, Budapest police refused to grant permission for this year's LGBT pride march. Activists and the Hungarian Civil Liberties Union have filed a petition in court to reverse the ban. In February 2011, the Budapest Metropolitan Court overturned a similar police decision. In May 2012, in Kiev, Ukraine, LGBT activists were forced to cancel a planned parade following threats from neo-Nazis and right-wing extremists. Two of the parade organizers were beaten in an attack caught on camera. Also in May, authorities in Split, Croatia, denied the original route requested by gay pride march organizers, citing fear of anti-gay protesters.

In a 2010 case involving the Russian Federation, the European Court of Human Rights rejected the argument that the risk of confrontation between participants in an LGBT pride parade and their opponents could justify a ban on the parade.⁷ The Court emphasized that the exercise of the right to peaceful assembly by a minority group could not be conditioned on it being acceptable to the majority because doing so would undermine the values of democracy and pluralism.

Finally, the ICJ takes note of recent positive developments in Botswana. Although LEGABIBO, an LGBT organisation there, has still not been permitted to register, Gaborone recently witnessed its first LGBT march. Eighty participants walked peacefully through the streets of the city to mark the International Day against Homophobia and Transphobia. The ICJ commends Botswana for respecting its obligation under international law to allow the peaceful assembly of persons at this event without interference.

Call for action

The ICJ encourages the Special Rapporteur to:

- Follow up on all allegations of restrictions on the rights to freedom of peaceful assembly and association imposed on LGBT individuals and organizations;
- Pay particular attention to the misuse of public morality and public order grounds with regard to the restriction of the rights to freedom of peaceful assembly and association;
- Call on governments to protect the rights to freedom of peaceful assembly and association for everyone and to ensure that restrictions on such rights comply with the requirements of non-discrimination on all grounds, including sexual orientation and gender identity; and
- Continue to integrate issues of sexual orientation and gender identity in the fact-finding and reporting activities of the mandate.

⁷ Alekseyev v Russia, App Nos 4916/07, 25924/08 and 14599/09 (21 October 2010).