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

Joint written statement* submitted by International Service for Human Rights, Allied Rainbow Communities International, Amnesty International, Human Rights Watch, International Lesbian and Gay Association, non-governmental organizations 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.

[19 May 2017]

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

LGBTI rights defenders: The international legal framework, key threats and challenges faced, and recommendations to ensure their protection

The International Service for Human Rights makes this submission in collaboration with organisations working to promote and protect human rights on the basis of sexual orientation, gender identity and expression, and sex characteristics (SOGIESC), including ARC International; Amnesty International; Human Rights Watch, International lesbian, gay, bisexual, trans and intersex association; and 10 other organisations¹. We welcome the first report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. The Independent Expert rightly identified the importance of safeguarding defenders working on these issues from ‘incursions and reprisals from various protagonists (whether State or non-State actors) who do not comply with human rights’. This submission outlines the international legal framework underpinning the rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) rights defenders (LGBTI defenders), an overview of the key threats and challenges they face, and recommendations to ensure their protection.

I. International legal framework for the protection of LGBTI defenders

The right to defend human rights and fundamental freedoms for all is clearly recognised in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (HRD Declaration); adopted by consensus in 1998 by UN Member States. With other international human rights instruments, the HRD Declaration ensures the universality of the right to defend human rights. The Yogyakarta Principles affirm this principle, providing that States’ have an obligation to respect, protect and give effect to this right ‘without discrimination on the basis of sexual orientation or gender identity’.² Further, Article 7, HRD Declaration provides that ‘everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and advocate for their acceptance’. This article guarantees the on-going development of human rights, and is particularly important for the protection of LGBTI defenders, since their activities may challenge socio-cultural norms and traditions.³

The right to develop and discuss new human rights ideas can be considered an elaboration of the rights to freedom of expression, freedom of assembly and freedom of association contained in the Universal Declaration of Human Rights (Universal Declaration), the International Covenant on Civil and Political Rights (ICCPR) and other international legal instruments⁴. States have the obligation to

¹ Cambodia Centre for Human Rights; East Africa Trans Health & Advocacy Network; Justiça Global, Brazil; OASIS, Guatemala; OT Watch, Mongolia; PILIPINA Legal Resources Center; Plataforma Internacional contra la Impunidad; Sierra Leone Human Rights Defenders Network; TEAK, Bangkok and Jakarta and Youth For Health, Mongolia.

² Principle 27, Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (Yogyakarta Principles).

³ <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>, p.83f.

⁴ <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>, p.83f.

protect these rights without discrimination on grounds of sexual orientation or gender identity. This includes the duty to refrain from directly interfering with these rights and to protect LGBTI persons exercising these rights from attacks and reprisals through preventive measures and by investigating attacks, prosecuting perpetrators and ensuring remedy for victims.⁵

The principles of non-discrimination and equality are fundamental for LGBTI defenders as they guarantee human rights activities can be carried out safely without discrimination. Article 1 of the Universal Declaration provides that ‘all human beings are born free and equal in dignity and rights’. Equality of rights goes hand in hand with the entitlement to enjoy all human rights without ‘distinction of any kind, such as [...] sex... or other status’, as enshrined in Article 2 of the Universal Declaration, Article 2 of the ICCPR and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights. This includes sexual orientation and gender identity as an impermissible basis for discrimination.⁶ Further, pursuant to Article 7 of the Universal Declaration and Article 26 of the ICCPR, everyone is ‘equal before the law’ and [...] ‘entitled without any discrimination to the equal protection of the law’.

II. Threats faced by LGBTI defenders

LGBTI defenders have been identified as a group of defenders most at risk.⁷ In addition to risks defenders commonly face including: threats, intimidation, harassment, physical attacks and reprisals, LGBTI defenders face greater and more specific challenges. Purely because of their identity and their work that challenges social, religious and cultural norms they are targeted by States, as well as non-State actors, including members of their own community and other defenders.

Stigmatisation

Defenders are harassed and stigmatised by State and non-State actors. An environment in which LGBTI defenders are stigmatised means hate crimes are encouraged.⁸ Further, where cases are reported to the police, often no action is taken, enhancing a culture of impunity.⁹

Lack of recognition and support

LGBTI defenders lack public acknowledgement and social and political support, including in certain countries among the broader defender community. In some countries, NGOs or national human rights institutions do not express solidarity for fear of reprisal.¹⁰ Therefore, LGBTI defenders are at risk of facing multiple forms of discrimination due to their status and lack of recognition.¹¹

⁵ A/HRC/29/23, 4 May 2015.

⁶ Principle 2, Yogyakarta Principles.

⁷ A/HRC/28/63, 29 December 2014.

⁸ A/70/217, 30 July 2015.

⁹ A/HRC/31/55/Add.2, 30 December 2015.

¹⁰ A/70/217, 30 July 2015.

¹¹ A/HRC/31/55/Add.2, 30 December 2015.

Laws criminalising people on the basis of their sexual orientation and gender identity

By criminalising homosexuality and maintaining laws that ban ‘the promotion of non-traditional sexual orientation’,¹² States not only institutionalise discrimination against LGBTI persons and enhance violence against them, but also delegitimize their work.

Legal barriers to the freedom of association

Organisations advocating for the rights of LGBTI persons may face obstacles, including undue delay in registration applications being reviewed¹³ or complete denial of legal personality¹⁴. This can result in difficulties in accessing and cooperating with the UN. In recent years the UN Committee on NGOs has only recommended a small number of organisations working on SOGI issues for UN consultative status.¹⁵ This denial of status often occurs on arbitrary and discriminatory grounds, and results in a underrepresentation of such NGOs at the UN.

Smear campaigns

LGBTI defenders are also targeted by defamatory campaigns, especially on the internet and social media.¹⁶

Arbitrary arrest, detention and killings

Very concerning are cases of assassinations, arbitrary arrest and detention of defenders due to their work on LGBTI rights, as well as their own sexual orientation and gender identity.¹⁷

Further, security forces and judges are not often trained regarding the rights of LGBTI persons or those defending their rights¹⁸. This leads to major deficiencies in the registration of complaints, and the prosecution of perpetrators, so perpetrators are rarely brought to justice.

¹² A/HRC/29/25/Add.3, 27 April 2015; A/HRC/32/36/Add.3, 17 June 2016.

¹³ A/HRC/32/36/Add.3, 17 June 2016.

¹⁴ A/HRC/32/36/Add.2, 15 June 2016.

¹⁵ A/69/365, 1 September 2014.

¹⁶ A/70/217, 30 July 2015 and A/HRC/31/55/Add.1, 22 February 2016; A/HRC/34/52/Add. 1, 20 February 2017; A/HRC/32/36/Add.3, 17 June 2016.

¹⁷ A/HRC/31/55/Add.1, 22 February 2016; A/HRC/34/52/Add. 1, 20 February 2017.

¹⁸ A/70/217, 30 July 2015.

III. Recommendations

The signatories call on States to:

1. Take all necessary legislative, administrative and other measures to ensure a favourable environment for activities directed towards the promotion, protection and realisation of human rights, including rights relevant to sexual orientation and gender identity.
2. Review and repeal all laws and policies which, directly or indirectly, criminalise, stigmatise or discriminate against LGBTI defenders.
3. Take all appropriate measures to combat actions or campaigns targeting human rights defenders working on issues of SOGIESC.
4. Ensure that LGBTI defenders enjoy non-discriminatory access to, participation in, and communication with national, regional and international human rights mechanisms without fear of reprisals.
5. Ensure the protection of human rights defenders working on issues of SOGIESC, against any violence, threat, retaliation, de facto or de jure discrimination, pressure or any other arbitrary action perpetrated by the State or non-State actors, in response to their human rights activities.
6. Remove barriers for the full recognition, registration and/or accreditation of organisation that promote and protect the human rights of persons of diverse SOGIESC at the national, regional and international levels.
7. Ensure that organisations working on issues related to SOGIESC can seek, receive and use funding and other resources from individuals; associations, foundations or other civil society organisations; foreign governments and aid agencies; the private sector; the United Nations and other entities.

We further encourage the Independent Expert to:

1. Continue open and inclusive dialogue with civil society, and ensure that human rights defenders working at the national level have regular opportunities to interact directly with the mandate.
2. Collaborate with other relevant Special Procedures mandate, particularly the Special Rapporteurs on human rights defenders, freedom of opinion and expression, and freedom of peaceful assembly and association, to strengthen the UN responses to cases of violence and discrimination against LGBTI defenders.
3. Work with human rights defenders to outline guidance to States, national human rights institutions and human rights focal points at the national level on the specific protection needs of LGBTI defenders, including specificities related to remedies and redress.

Cambodia Centre for Human Rights; East Africa Trans Health & Advocacy Network; Justiça Global, Brazil; OASIS, Guatemala; OT Watch, Mongolia; PILIPINA Legal Resources Center; Plataforma Internacional contra la Impunidad;

Sierra Leone Human Rights Defenders Network; TEAK, Bangkok and Jakarta; Youth For Health, Mongolia. NGO(s) without consultative status, also share the views expressed in this statement.