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Aide-Mémoire

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

In April 2003, the Brazilian delegation to the United Nations Commission on Human Rights introduced an **historic resolution prohibiting discrimination based on sexual orientation**¹. The resolution – which was co-sponsored by the EU and supported by Korea, Japan, some Latin American and Eastern European countries² – elicited strong opposition from a number of countries. After prolonged debate, the UNCHR 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 Islamic Conference (OIC) on Brazil, which decided to suspend the resolution³. The 60th Session also saw the largest and most visible presence of LGBT activists from around the globe at the UN, with LGBT people addressing the plenary in record numbers and several well attended panels on LGBT rights⁴.

To illustrate the issues facing lesbian, gay, bisexual and transgendered people around the world here are just four developments during 2004:

- In **Nepal** the Supreme Court is considering a petition to ban the Blue Diamond Society (BDS) which works on HIV prevention and community building for LGBT communities⁵. The ban would contravene internationally recognized rights to freedom of association. In August 2004 39 Metis (transgendered) members of BDS were released after spending thirteen days in detention solely on the basis of their gender identity⁶.
- In **Jamaica** the founder of the Group J-FLAG, Brian Williamson, was brutally murdered in what human rights organization describe as a likely hate crime⁷ The report by Human

¹ E/CN.4/2003/L.92 "Human Rights and sexual orientation"

² Resolution E/CN.4/2003/L.92 was sponsored by Austria, Belgium, Brazil, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland. Croatia, Cyprus, New Zealand, Poland, Serbia and Montenegro, Slovenia and Switzerland subsequently joined.

³ For further information of the debates in 2003 and 2004: IGLHRC, Sexual Rights & Sexual Orientation at the United Nations Commission of Human Rights Campaign Dossier (Revised 2005 version):

http://www.iglhrc.org/files/iglhrc/UNCHR%20Action_Kit_2005.doc

⁴ Statements of the activists can be found at the ILGA 2004 UNCHR Files:

http://www.ilga.org/files_target.asp?FileCategoryID=44

⁵ http://www.ilga.org/news_results.asp?LanguageID=1&FileCategory=52&ZoneID=3&FileID=272

⁶ http://www.ilga.org/news_results.asp?LanguageID=1&FileCategory=52&ZoneID=3&FileID=298

⁷ http://www.ilga.org/news_results.asp?LanguageID=1&FileCategory=53&ZoneID=5&FileID=184

Rights Watch “Hated to Death: Homophobia, Violence, and Jamaica’s HIV/AIDS Epidemic”⁸ details among other things the role virulently homophobic “Dancehall” lyrics by some artists play in creating an atmosphere where gay men particularly face threats of violence (the lyrics call for the shooting and burning of gay men)⁹.

- In **Poland**, a new EU member state, in 2004 the LGBT pride parade in Krakow was physically attacked by extreme rightwing political groups¹⁰ and the pride in Warsaw was prohibited by the major¹¹. This is in contravention of the right to freedom of assembly in European and UN human rights norms.
- In March 2004 Human Rights Watch published a report on the prosecution of gay men in **Egypt**: “In a Time of Torture: The Assault on Justice In Egypt’s Crackdown on Homosexual Conduct”¹². To this day the entrapment of gay men by the police using the Internet continues, contravening the right to privacy (Toonen vs. Australia) and the right to freedom of expression.

Considering the magnitude of human rights violations against persons on the grounds of their sexual orientation or gender identity, this resolution is a vital tool in **reaffirming LGBT rights as human rights**. Social taboos and criminalisation of same-sex relations as 'sodomy', 'crimes against nature' or 'unnatural acts', 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 families¹³. 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 Zimbabwe¹⁴. Nearly 80 countries continue to have laws that make same-sex consensual sexual relationships between adults a criminal offence (of which approx. half ban such relationships between both women and men¹⁵, while the remainder ban such relationships between men only¹⁶). In at least 7 countries the maximum penalty is death¹⁷. Additionally, some countries treat homosexuality as a “medical or psychological disorder and lesbians and gay

⁸ <http://hrw.org/reports/2004/jamaica1104/>

⁹ <http://hrw.org/english/docs/2004/11/23/jamaic9716.htm>

¹⁰ http://www.ilga.org/news_results.asp?LanguageID=1&FileCategory=58&ZoneID=4&FileID=235

¹¹ http://www.ilga.org/news_results.asp?LanguageID=1&FileCategory=58&ZoneID=4&FileID=231

¹² <http://hrw.org/reports/2004/egypt0304/>

¹³ 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

¹⁴ 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

¹⁵ Algeria, Angola, Benin, Burundi, Cameroon, Cape Verde, Djibouti, Ethiopia, Guinea Conakry, Liberia, Libya, Malawi, Mauritania, Mauritius, Morocco, Senegal, Sudan, Swaziland, Togo, Tunisia, Afghanistan, Bangladesh, Brunei, Pakistan, Solomon Islands, Western Samoa, Chechen Republic, Bahrain, Iran, Lebanon, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen, Barbados, Grenada, Nicaragua, Puerto Rico, Saint Lucia, Trinidad and Tobago

¹⁶ Botswana, Kenya, Mozambique, Namibia, Nigeria, Seychelles, Sierra Leone, Somalia, Tanzania, Uganda, Zambia, Zimbabwe, Bhutan, Burma/Myanmar, Cook Islands, Fiji, India, Kiribati, Malaysia, Maldives, Marshall Islands, Nauru, Nepal, Niue, Papua New Guinea, Singapore, Sri Lanka, Tajikistan, Tokelau, Tonga, Tuvalu, Uzbekistan, Kuwait, Guyana, Jamaica, and certain states of the USA.

¹⁷ Mauritania, Sudan, Afghanistan, Pakistan, Chechen Republic, Iran, Saudi Arabia, Yemen

men have been targeted for medical experimentation and forced psychiatric treatment designed to 'cure' their homosexuality"¹⁸.

The situation is particularly aggravated for **transgender people** due to their exposure and visibility¹⁹. Despite being most at risk of hate-induced violence, abuse and – in some cases – murder, there is no sufficient recognition and protection in the international human rights system to date. What is more, gender identity and sexual orientation are closely interlinked – both with regard to categories of experience and in the context of public perception. Despite similarities in the abuse experienced by lesbians, gays, bisexuals and transgendered people, the term “sexual orientation” is insufficient to protect transgendered people. “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. Extending human rights protection to one element and not the other of an individual’s identity creates an artificial separation that constitutes an unacceptable hierarchization. Non-inclusion of the term “gender identity” is in fact a fundamental contradiction to the underlying principle of the draft resolution, namely the condemnation of all kinds of discrimination and the affirmation of the universality of human rights. It is therefore vitally important to explicitly include gender identity as a ground of protection in the new resolution.

A resolution on human rights, sexual orientation and gender identity would **not define any new rights or define novel standards**. Instead, it would be a means to reaffirm and spell out the principles that have underpinned numerous decisions and reports by the UN human rights mechanism. Most notably are the decisions reached by the UNCHR in March 1994 in *Toonen v Australia*, which confirmed that anti-discrimination provisions in the covenant (ICCPR) should be understood to include sexual orientation as a protected status²⁰, and in September 2003 in *Young v Australia*, the first decision affirming the partnership rights of same-sex couples under the ICCPR²¹. Both created a clear legal basis for UN mechanism to act upon. This has been reconfirmed by numerous contributions of Special Rapporteurs and treaty bodies, who have repeatedly expressed their readiness to transmit individual cases and urgent appeals in this area, within the course of their mandates²². It has been further strengthened by the official recognition of registered partnerships of UN staff in January 2004 by Kofi Annan, who had already affirmed in August 2003 that lesbians and gays are covered by the UDHR.

There is an **increasing awareness** of the pervasiveness of human rights violations against LGBT persons. The urgency and serious nature of human rights violations of LGBT people calls for a strengthened UN mechanism and for particular attention to the issues at the highest level of the UN machinery dealing with human rights, i.e. the UN Commission on Human Rights. A resolution is needed that grants a direct mandate to the Office of the High Commissioner for Human Rights (OHCHR) to react to human rights violations of LGBT people. A UN resolution on human rights, sexual orientation and gender identity would be of great symbolic and practical

¹⁸ *Crimes of hate, conspiracy of silence. Torture and ill-treatment based on sexual orientation*, Amnesty International Publications, 2001

¹⁹ see, inter alia, GA Report 2001 of the UN Special Rapporteur on Torture

²⁰ UNCHR, *CCPR/C/50/D/488/1992*, *Toonen v Australia*, 31 March 1994

²¹ UNCHR, *CCPR/C/78/D/941/2000*, *Young v Australia*, 18 September 2003

²² See Stephanie Schlitt, ‘Sexual Orientation: It’s about Non-Discrimination’, in: *Human Rights Features*, Vol. 6.6, 22-25 April 2003. See also overview over some cases in: ARC International, ‘Government Briefing Kit: UNCHR – Brazilian Resolution on Human Rights and Sexual Orientation’: <http://www.arc-international.net/brief.pdf>. ICJ has put together a list of references on sexual orientation: International Commission of Jurists, ‘International Human Rights References to Non-discrimination on the Grounds of Sexual Orientation’, 2004: http://www.icj.org/IMG/pdf/SO_English_2.pdf

value. It is a unique chance to create the link between the full range of human rights and sexual orientation/ gender identity, thus contributing to a more progressive global understanding of human rights for all.

In addition building on the work on resolution on the **Resolution on Arbitrary, Summary, and Extrajudicial Executions**, which mentions sexual orientation as a ground for protection and was passed with an increased majority during the 60th Session, other resolutions at the 61st Session should also address the situation of LGBT people where relevant: **Education, Freedom of Expression, Health, Human Rights Defenders, Rights of the Child, Torture and Violence Against Women.**

Along with the International Lesbian and Gay Association (ILGA)²³ the Lesbian and Gay Federation in Germany (LSVD) calls on the Commission on Human Rights to:

- Adopt a historic resolution on Human Rights, Sexual Orientation and Gender Identity (“the Brazilian resolution”)
- Include language recognizing the prosecution of individuals on the basis of sexual orientation or gender identity in all relevant resolutions.
- Explicitly extend protection to those discriminated against on grounds of gender identity and sexual orientation
- Directly mandate further work by the Office of the High Commissioner on Human Rights (OHCHR) towards the protection of LGBT people
- Decide to discuss the issue the issue again at its 62nd session in 2006.

LSVD and ILGA urge all members of the Commission to vote in favour of such a resolution, and appeal to all states to co-sponsor it.

- Along with ILGA-Europe²⁴ (the European Region of ILGA) LSVD urges in particular all **European Union** member states to cosponsor and actively contribute to a UN resolution that affirms the universality of human rights and offers protection to those persons most vulnerable to human rights abuses. They urge all EU member states to work towards a strong and clear resolution: do not water down the text until all protections offered are rendered meaningless. They urge all EU member states to seek the support of other states to co-sponsor or vote in favour of this resolution. The principle of non-discrimination and equality form part of the core values defined in the European Charter of Fundamental Rights and in the EC Treaties. This has been reconfirmed by Commission President Barroso and Commissioner Frattini since their election in the Fall of 2004. They also constitute the basis of numerous decisions taken by the European Court of Justice and the European Court of Human Rights.

²³ ILGA is a federation of over 400 groups from about 90 countries fighting for equal human rights for lesbian, gay, bisexual and transgender people.

²⁴ ILGA-Europe brings together 200 LGBT groups from over 40 states within the Council of Europe.