



**HALF-DAY GENERAL DISCUSSION IN PREPARATION FOR
A GENERAL COMMENT ON ARTICLE 6 (RIGHT TO LIFE) OF THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 14 July 2015**

Oral Submission of ILGA (the International Lesbian, Gay, Bisexual, Trans and Intersex Association)

This submission has been endorsed by the International Commission of Jurists and Kaleidoscope Australia Human Rights Foundation. Both organisations have made written submissions urging the inclusion of the right to life of lesbian, gay, bisexual, trans and intersex persons, which contain more detailed information on the issues we are about to raise.

General Comment 35 marked the first time that the Human Rights Committee included reference to sexual orientation and gender identity in a General Comment.¹ We welcome its inclusion of the State obligation to protect individuals from foreseeable threats to life or bodily integrity, as well as to respond appropriately to patterns of violence, such as violence against persons on the basis of their sexual orientation and gender identity.² We urge the Committee now to build on this and its previous jurisprudence by giving particular attention to the risks to and violations of the right to life of lesbian, gay, bisexual, trans and intersex (LGBTI) persons. We would like to emphasise five areas: non-discrimination; the duty to protect; criminalisation and the death penalty; non-refoulement; and economic and social rights.

Firstly, it is crucial that the General Comment reflect that discrimination lies at the core of violations of the right to life. In its concluding observations, the Committee has frequently referred to the State obligation to combat direct and indirect discrimination against LGBTI persons.³ Thus, we wish to emphasise the importance of including non-discrimination in the enjoyment of all aspects of the right to life throughout the text of the General Comment, making clear reference to sexual orientation, gender identity and expression and intersex status as prohibited grounds. In light of this, LGBTI persons should be included among the populations requiring special protection.

Secondly, States have the duty to protect the right to life by exercising due diligence to prevent, investigate, punish and redress deprivation of life and other acts of violence.⁴ This duty is of

¹ General Comment 35 on Liberty and Security of the Person (Article 9), CCPR/C/GC/35 (16 December 2014).

² CCPR/C/GC/35, para. 9.

³ CCPR/C/PER/CO/5, para. 8, CCPR/C/FIN/CO/6, para. 8, CCPR/C/IRN/CO/3, para. 10, CCPR/C/RUS/CO/6, para. 27(b), CCPR/C/CHL/CO/5, para. 16.

⁴ A/HRC/29/23, para. 11.

ILGA, the world federation of LGBTI organisations
*1200 members from 140 countries committed to equal human rights
for lesbian, gay, bisexual, trans and intersex people*
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particular concern in the context of sexual orientation and gender identity and expression given the shocking statistics. In a report presented last month,⁵ the High Commissioner for Human Rights highlighted that hate-motivated killings of LGBT individuals have been documented in all regions, and that treaty bodies,⁶ special procedures and United Nations agencies have continued to express alarm at such killings and related patterns of violence, which are often particularly brutal. The Trans Murder Monitoring project lists 1,612 murders in 62 countries between 2008 and 2014, equivalent to a killing every two days.⁷ A Europe-wide survey of 93,000 LGBT persons in 2013 found that a quarter of respondents had been attacked or threatened with violence in the previous five years.⁸ The High Commissioner's report identifies that these acts are perpetrated by both State and non-State actors (including "honour" killings by family or community members and homicides by paramilitary groups),⁹ often with total impunity.¹⁰ Furthermore, although data is particularly difficult to obtain in this context, infanticide of intersex children has been highlighted as a problem in a number of regions.¹¹

As this Committee has stated, the right to life must be protected by taking legislative and other measures to prohibit, investigate and prosecute all acts of targeted, hate-motivated violence and incitement to violence directed at persons due to their real or perceived sexual orientation or gender identity and expression, and to provide remedy to victims and protection against reprisals.¹² The Committee has also urged State officials to publically condemn such acts, and to record statistics on such crimes, as well as the outcomes of investigations, prosecutions and remedial measures.¹³ It is crucial that this jurisprudence be reflected in the General Comment.

Thirdly, the continued existence in almost 80 countries of laws used to punish individuals based on their sexual orientation or gender identity, including laws criminalising homosexuality and cross-dressing, as well as those imposing the death penalty, represents a clear risk of a violation of the right to life. Principle 4 of the Yogyakarta Principles states that the right to life requires states to "repeal all forms of crime that have the purpose or effect of prohibiting homosexual activity and, until such provisions are repealed, never impose the death penalty upon any person convicted under them."¹⁴ This view is reflected by the European Court of

⁵ A/HRC/29/23, paras. 26-30. The report also highlights the lack of data available, and the Human Rights Committee itself has called on states to collect relevant data (see, for example, CCPR/C/IRN/CO/3, para.10).

⁶ Including the Human Rights Committee, see CCPR/C/URY/CO/5, para. 12.

⁷ Trans Murder Monitoring results update, November 2014 (available at <http://tgeu.org/tmm/>).

⁸ Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2013, National Coalition of Anti-Violence Programs, New York, 2014 (available at <http://avp.org/resources/avp-resources/315>).

⁹ A/HRC/29/23, paras. 29-30.

¹⁰ A/HRC/29/23, para. 26.

¹¹ See Richter, Ruthann, "In Uganda, offering support for those born with indeterminate sex", Stanford Medicine's Scope Blog, 14 March 2014, available at: <http://scopeblog.stanford.edu/2014/03/04/in-uganda-offering-support-for-those-born-with-indeterminate-sex/>, Jacobsen, Lana, "The Third Sex", The Writer Studio, available at: <http://www.writerstudio.co.za/about-lana-jacobson/feature-writing/105-the-third-sex.html>, last accessed: 13 July 2015, and Warne, Garry L., and Raza, Jamal. "Disorders of Sex Development (DSDs), Their Presentation and Management in Different Cultures", *Reviews in Endocrine and Metabolic Disorders* 9, no. 3 (September 2008), pages 227–36.

¹² CCPR/C/KGZ/CO/2, para. 9, CCPR/C/GTM/CO/3, para. 11, CCPR/C/DOM/CO/5, para. 16, CCPR/JAM/CO/3, para. 8, CCPR/C/GTM/CO/3, para. 11.

¹³ See, for example, CCPR/C/MWI/CO/1, para. 7.

¹⁴ *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, available at: http://www.yogyakartaprinciples.org/principles_en.htm.

Human Rights,¹⁵ and the Committee itself has called on States to repeal such laws.¹⁶ It is essential that the Committee clearly state in the General Comment that these laws violate the right to life.

Fourthly, on a related note, we urge the Committee to refer to its own jurisprudence in the General Comment by highlighting the prohibition of *refoulement* of persons to countries where their life or freedom are at risk as a result of their real or perceived sexual orientation or gender identity and expression, especially in countries where the criminal law has hugely disproportionate impacts on persons due to their sexual orientation and gender identity and expression or intersex status.¹⁷

Finally, we urge the Committee to build on its Concluding Observations condemning discrimination against LGBTI persons in their enjoyment of economic and social rights where this presents a risk to their right to life. In addition to highlighting that discrimination against LGBTI persons in all areas of economic and social rights has an immediate impact on their enjoyment of the right to life,¹⁸ we would like to emphasise the right to health.¹⁹ In particular, we note the need to prevent discrimination in access to life saving health care (such as HIV/AIDS treatment).²⁰ The following also have significant impacts on the right to life: access to safe and legal health treatments for trans persons; preventing unnecessary and coercive medical interventions committed against trans and intersex persons; and taking measures to address mental health and suicide.

In relation to this last point, the Committee has highlighted that the high number of suicides of young women in Ecuador, relating to the prohibition of abortion, was incompatible with the right to life.²¹ A number of studies have revealed that same-sex attracted people are twice as likely to attempt suicide as heterosexual individuals.²² In the UK, a study reported that 84% of trans participants had thought about ending their life at some point.²³ Thus, it is evident that full realisation of the right to life requires that this issue be addressed by the Committee in its General Comment.

Thank you.

¹⁵ Grigolo, Michele, "Sexualities and the ECHR: Introducing the Universal Sexual Legal Subject" (2003) 14 *European Journal of International Law* 1023, 1029.

¹⁶ See, for example, CCPR/C/MRT/CO/1, para. 8.

¹⁷ CCPR/C/108/D/2149/2012, para 2.4, CCPR/C/103/D/1833/2008, para. 9.2, and see also UNHCR, Guidelines on international protection No. 9, HCR/GIP/12/09, 23 October 2012.

¹⁸ See the reference to A/HRC/27/55, paras. 64-66, E/C.12/PER/CO/2-4, para. 5; Lucas Paoli Itaborahy, *LGBT people living in poverty in Rio de Janeiro* (London, Micro Rainbow, 2014); and Gary J. Gates, "Food Insecurity and SNAP (Food Stamps) Participation in LGBT Communities", Williams Institute, February 2014 in A/HRC/29/23, para. 42.

¹⁹ CCPR/C/CHL/CO/5, para. 16, CCPR/C/JPN/CO/5, para. 29, CCPR/C/IRN/CO/3, para. 10, and CCPR/C/TUR/CO/1, para. 10.

²⁰ CCPR/C/JAM/CO/3, para. 9, CCPR/C/CMR/CO/4, para. 12, see also A/57/138, para. 37.

²¹ CCPR/C/79/Add.92.

²² Skerrett, DM, Kólves, K and De Leo, D (2012) "Suicidal behaviours in LGB populations: A literature review of research trends", Brisbane, Australia: Australian Institute for Suicide Research and Prevention.

²³ McNeil J, et al. (2012) *Trans Mental Health Study 2012*. Scottish Transgender Alliance. Edinburgh.