



I G L H R C

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Violations of the Rights to Freedom of Expression, Assembly, and Association Related to Sexual Orientation, Gender Identity, and Gender Expression

A report prepared by the International Gay and Lesbian Human Rights Commission¹ for the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the Special Representative of the Secretary General for Human Rights Defenders.

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Government of Uganda Violates LGBT Freedom of Expression

In August 2007, Deputy Attorney General Fred Ruhinde and Minister of Ethics and Integrity Nsaba Butoro called for the enforcement of criminal law against homosexuals.² This followed a press conference in the country's capital Kampala by the lesbian, gay, bisexual and transgender (LGBT) coalition, Sexual Minorities of Uganda (SMUG), to launch its *Let us Live in Peace* Campaign calling for understanding and respect of sexual minorities. The press conference prompted an anti-gay rally drawing more than one hundred demonstrators, including several government officials who demanded official action against LGBT people. The rally also called for the deportation of an American journalist writing for the Ugandan newspaper, *the Monitor*, which had reported on the experiences of gays and lesbians in the country. The tactic of shutting down public debate on issues of homosexuality is not a new one in Uganda. In October 2004, Radio Simba was fined for broadcasting a show on HIV.³

Introduction

The International Gay and Lesbian Human Rights Commission (IGLHRC) has developed this report to contribute to the information gathered by the Special Rapporteur on Freedom of Opinion and the Special Rapporteur on Human Rights Defenders in preparation of their 2007 annual reports. The report highlights conceptual issues related to the rights to **free expression**, **assembly**, and **association** as they concern **sexual orientation**, **gender identity**, and **gender expression**, and includes information on the status of these rights during the past year.

¹ This report was written and prepared by Adrian Coman, Justin Ellis, and Sarah Tobias at the International Gay and Lesbian Human Rights Commission, www.iglhrc.org

² <http://hrw.org/english/docs/2007/08/22/uganda16726.htm>

³ <http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=777>

In this report, sexual orientation refers to “each person’s capacity for profound emotional, affectional, and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.”⁴ Gender identity refers to “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.”⁵ Unlike sexual orientation and gender identity, gender expression is eminently social in nature. It refers to a person’s “manner of dressing, mannerisms, speech, [and] appearance,” and other social aspects not covered by the term gender identity, which in many places are regulated by law, including by criminal law.⁶

As we show in this report, people are often targeted for human rights abuses on the basis of their sexual orientation, gender identity and gender expression. The information we provide in this report is by no means an exhaustive account of the status of these violations in 2007. It nevertheless illustrates the gravity of many human rights abuses related to sexual orientation, gender identity and gender expression. We believe that the Special Rapporteurs on Freedom of Opinion and Human Rights Defenders could usefully address these issues in their annual reports.

Human Rights Standards

The **rights to free expression, assembly, and association**, are recognized in international human rights law as **universal rights**. Specific populations are not excluded from these rights. The most significant human rights treaties and resolutions, both at the UN level and within regional human rights mechanisms in the Americas, Africa, and Europe recognize these rights and specify that they are intended to be enjoyed by everyone and to be nondiscriminatory in application. Several binding decisions make it clear that LGBT⁷ people are part of this universal vision. For instance, in *Toonen v. Australia* (1994), the Human Rights Committee affirmed that existing protection against discrimination in Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) includes sexual orientation as a protected status. In *Bączkowski and Others v. Poland* (2007), the European Court of Human Rights found Poland to be in violation of the European Convention on Human Rights for not authorizing a LGBT pride march in Warsaw. (Violations of Art. 11 on Freedom of Association and Assembly; Art. 13 on the Right to an Effective Remedy; and Art. 14 on Non-Discrimination.)

⁴*Yogyakarta Principles, Preamble* www.yogyakartaprinciples.org

⁵*Ibid.*

⁶Mauro Cabral and IGLHRC, *Gender Expression and Human Rights*, IGLHRC, April 2007.

⁷ LGBT—lesbian, gay, bisexual, and transgender is a term used predominantly in the West to refer to people with non-conforming sexuality or gender. We are employing this term herein, acknowledging that in some parts of the world people define themselves differently (such as *waria*—male to female transgender people—in Indonesia), and that the state’s obligation to protect people against discrimination and to facilitate the enjoyment of their rights should not be conditioned by the adoption of one identity. We also recognize that human rights abuses are often committed against intersex people—the umbrella term intersexuality refers to all those situations in which an individual’s bioanatomy varies from the male bodily standard and the female bodily standard—but we do not document them in this report.

The **Yogyakarta Principles** on the application of international human rights law in relation to sexual orientation and gender identity explicate the rights to free expression, assembly, and association (Art. 19 and Art. 20), and the related obligations of states.⁸ (See recommendations for further information).

The Obligations of States

International human rights law recognizes the interrelationship of the rights to freedom of expression, assembly, and association. This is very pertinent to LGBT people, whose rights are often violated on multiple dimensions. In many countries, the mere visibility of LGBT people acquires a political dimension (from simply disclosing their non-normative sexual orientation or gender in public to voicing a request for equal rights and non-discrimination) because it exposes them to violence and sometimes death, effectively denying their rights and inhibiting their ability to express themselves publicly. An LGBT event held in public is both an exercise of the right to free assembly and association, and also of the right to free expression, as it makes a silent community visible. When LGBT public events are banned or LGBT organizations are denied registration or closed by the state, LGBT people are not in a position to exercise their rights to free expression, assembly, and association, or to defend their community.

Under these circumstances, the state fails to comply with its obligations to respect, protect, and fulfill the rights to freedom of expression, assembly, and association.

The obligation for states to **respect** the rights to freedom of expression, assembly, and association implies that government officials, or those acting with the authorization of the state, must not commit human rights abuses, such as placing unwarranted restrictions on freedom of expression, assembly, and association. When LGBT human rights defenders are harassed by the government because of their public expression and advocacy, when their requests for peaceful demonstrations are turned down, or their associations denied official registration or threatened with closure, then the state does not respect the rights of *all* its citizens to free expression, assembly, and association.

The obligation to **protect** the rights to freedom of expression, assembly, and association implies that governments should take effective steps to end human rights abuses. They must not only ensure that their agents refrain from violating rights, they must also prevent and punish violations by private actors (such as individuals and private enterprises). For instance, when a state fails to provide sufficient police protection to stop violent opposition to peaceful LGBT demonstrations, then it has failed in its obligation to protect the rights to free expression, assembly and association.

The obligation to **fulfill** the rights to freedom of expression, assembly, and association requires the government to ensure that an infrastructure exists enabling everyone, including

⁸The Yogyakarta Principles affirm binding international legal standards with which all States must comply. The Principles were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, NGOs and others; they were finalized in a meeting held in Yogyakarta, Indonesia, in November 2006. www.yogyakartaprinciples.org

LGBT people, to exercise and enjoy their rights to the fullest extent possible in an environment that is free from discrimination. When the state fails to prevent human rights violations in a persistent and committed fashion, it can itself be held responsible for the violation. This is known as the standard of *due diligence*. While it does not absolve the direct perpetrators from being prosecuted and punished for the crimes they have committed, it holds that complicity, acquiescence and omission by the state constitute another form of responsibility.

The *due diligence* standard requires that states prevent, investigate and punish acts that impair any of the rights recognized under international human rights law. In addition, it must provide access to remedy, attempt to restore the violated rights, and provide reparation or compensation for damages incurred.⁹ A remedial infrastructure needs to take account of the fact that LGBT communities have been (and in many countries still are) targets of the criminal justice system. Many LGBT people also confront discrimination related to multiple factors—including a combination of sexual orientation, gender, race and ethnicity—which further lowers their access to redress. The state should take these factors into account when designing an infrastructure to enable the fulfillment of its citizens' rights to freedom of expression, assembly, and association.

Specific Cases

This section of the report categorizes a variety of human rights abuses that concern freedom of expression, assembly and association, and are related to sexual orientation, gender identity and gender expression.

Governments Suppress LGBT demonstrations, conferences, and meetings

- **Georgia:** An event promoting tolerance and cultural dialogue in Georgia within the framework of the Council of Europe's *All Different All Equal* campaign was cancelled in July 2007 after rumors spread that it was actually a gay parade and organizers feared for the safety of its participants.¹⁰ The organisers, the human rights organisation Century 21, accused the Georgian media of spreading misinformation.
- **Ghana:** In September 2006, the government of Ghana issued a statement banning a lesbian and gay conference and instructing the Ministry of the Interior to locate and arrest the conference's local organizers. However, the government response was prompted entirely by rumours, since no evidence existed to indicate that such a conference had actually been planned.¹¹

⁹ The doctrine of *due diligence* was set out in Velásquez Rodríguez, Judgement of 29 July 1988, Inter-American Court of Human Rights, Series C, no. 4, paras. 174-5. See http://www1.umn.edu/humanrts/iachr/b_11_12d.htm, IGLHRC, *The Situation of Lesbian, Gay, Bisexual, Transgender and Intersex Rights Defenders*, 2005.

¹⁰ "Gay' rally in Georgia cancelled" – BBC News – 24 July 2007, <http://news.bbc.co.uk/2/hi/europe/6914355.stm>

¹¹ <http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=671> and <http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=679>

- **Moldova:** In April 2007, for the third year in a row, the Mayor of Chisinau denied a request by the Moldovan LGBT group GenderDoc-M to organize an LGBT march in the country's capital. The Mayor's decision came despite a 2006 ruling of Moldova's Supreme Court stipulating that by such actions the local authorities were violating the country's law on the freedom of assembly, the Moldovan Constitution, and the European Convention of Human Rights.
- **Russia:** In May 2007, for the second year in a row, local authorities in Moscow refused to authorize a peaceful LGBT demonstration. The police arrested more than twenty people from a group of LGBT advocates attempting to deliver a related complaint to Moscow's City Hall. Dozens of violent opponents, including skinheads, nationalists, and self-identified Orthodox Christians, attacked peaceful LGBT activists as they tried to deliver their complaint. The police refused to stop the violence, allowed the two sides confront each other, and arrested the LGBT activists.¹²
- **Singapore:** In August 2007, Singapore police withdrew a permit for an event at which retired Canadian law professor Douglas Sanders was expected to give a presentation entitled "Sexual Orientation in International Law: The Case of Asia." The immigration authorities canceled Sanders' visa, and the Home Affairs Ministry stated that, "foreigners should refrain from interfering [in] discourse over a domestic issue such as the laws that govern homosexuality in Singapore."¹³

Governments demonstrate unwillingness to curb violence related to authorized LGBT marches

- **Bolivia:** Six activists were wounded after a Molotov cocktail exploded during the La Paz City LGBT march in June 2007. While the mayor and other government officials repudiated the attack, the district prosecutor and other relevant criminal justice authorities did not investigate the incident.¹⁴
- **Croatia:** Violence occurred on the occasion of the local LGBT community's annual march in the country's capital city of Zagreb in June 2007. Several people, including the march's organizers, were subjected to physical violence. One march organizer also received anonymous death threats. While police organized some protection for the march, they failed to adequately protect all participants and did not prevent the violence unleashed after the march was over.¹⁵

Governments prohibit freedom of expression by the media

- **Uganda:** The country's Broadcasting Council suspended Capital One radio presenter Gaetano Kaggwa in August 2007 for broadcasting a show about

¹² <http://hrw.org/english/docs/2007/06/13/russia16174.htm>

¹³ WOCKNER International News #693, August 6, 2007

¹⁴ Draft Bolivia shadow report to CEDAW, 41st session, p. 6-7 and <http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=756>

¹⁵ <http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=767>

lesbianism. The Council decided that a guest on the show had used language that breached “broadcasting ethics.”¹⁶

- **Turkey:** An Ankara prosecutor initiated legal action against Umut Guner, the editor and owner of *Kaos GL*, a magazine published a local LGBT organization. Guner was accused of publishing pornography—a crime punishable by up to three years’ imprisonment. While the Supreme Court acquitted Umut Guner in February 2007, it did so on the basis that the crime had not been committed since the magazine was confiscated and was not sold. The court agreed with the prosecutor that the magazine was pornographic, despite the fact that it critically analyzed the relationship between homosexuality and pornography in articles written by several noted Turkish writers.¹⁷

Government censorship

- **Russia:** In October 2007, Culture minister Alexander Sokolov banned 16 photos when an exhibition at Moscow’s state-owned Tretyakov gallery was in the process of being moved to Paris, declaring one of them to be a “political provocation.” The offending photograph depicted two Russian policemen kissing.¹⁸
- **Singapore:** In July 2007, the Media Development Authority banned an anticipated exhibition comprising of 80 photographs of gay people kissing because it might “promote a homosexual lifestyle.”

Governments deny registration of LGBT groups or close existing organizations

- **Turkey:** Early in 2007, the governor of Istanbul Province initiated legal action to close the LGBT group Lambda Istanbul, claiming that the name and objectives of the group were “against law and morality.” After the local prosecutor’s office rejected the complaint in July 2007, the governor took the case to a higher court.¹⁹ The decision in this case is still pending. The governor’s actions occurred against the backdrop of a similar situation in October 2005, when the LGBT group Kaos won a court case brought against them by the deputy governor of Ankara, who sought to shut the group down.²⁰
- **Argentina:** In November 2006, the Supreme Court ruled that official legal recognition must be given to the Association for the Struggle of the Travesti and Transsexual Identity (ALITTI). The court decision overrules earlier decisions by the General Inspectorate of Justice (a division of the Argentinean Justice Department dealing with the registration of NGOs) and the civil court, which declared that ALITTI’s goals were unacceptable for “going against the common good.”

¹⁶ (newvision.co.ug/D/8/12/583941)

¹⁷ <http://news.kaosgl.com/item/2007/3/12/turkish-gay-editor-has-been-acquitted>

¹⁸ <http://www.guardian.co.uk/france/story/0,,2189441,00.html>

¹⁹ <http://hrw.org/english/docs/2007/10/16/turkey17107.htm>

²⁰ <http://news.kaosgl.com/item/2007/5/21/turkey-hosts-conference-on-anti-gay-attitudes>

Gender Identity and Expression and Freedom of Expression in Indonesia: An Illustrative Case

IGLHRC would like to introduce the Special Rapporteurs to a special issue worth monitoring: human rights violations related to gender identity and expression and freedom of expression. Coming out as a gay, lesbian, bisexual or transgender person is invariably an expressive act. Whether through the words spoken or the clothing chosen, LGBT people's openness directly confronts social norms related to masculinity, femininity and heterosexuality. Freedom of expression is a fundamental human right that is integral to the realization of individual autonomy and self-determination. Unless this right is protected, individuals will inevitably confront impediments preventing them from realizing their full potential. This right, along with the rights to freedom of assembly and association, are affirmed in the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*.²¹ Because these rights are universal, they apply equally to lesbian, gay, bisexual and transgender and intersex (LGBTI) people. They give LGBTI people the protections needed to be public about their lives—a basic necessity for those who confront discrimination and persecution because of their sexual orientation or gender identity. They are especially important for those LGBTI people whose bodies challenge the very idea that gender is fixed and defined only in terms of a binary distinction between men and women.

When individuals in Indonesia express and communicate their gender in ways that deviate from cultural norms, they face an increased risk of police harassment. Feminine-looking men or transgender-identifying men—men whose appearance does not conform to typical perceptions of masculinity—are frequent targets of discrimination. In Indonesia, police regularly harass *waria* (male to female transgender people) as well as people presumed to engage in same-sex relations. According to a member of the Indonesian LGBT group *Arus Pelangi*, the Indonesian police regularly interpret laws concerning prostitution as applying to homosexuality and transgenderism, something that “is not challenged or corrected by the government.”²²

Arbitrary harassment, summary arrest and detention of waria and gay men by the police are also commonplace occurrences. In Indonesia, gay men and waria, in particular, tend to assemble in public areas such as parks and roadsides. Often arrests occur in such places on the pretext of being violations of the Public Disturbance Law. As *Arus Pelangi* staff member Widodo Budi Darmo attests, “Many LGBT people are arrested and detained, often without charges or clear reason, only to be released after a few days.”²³

The experience of Lenny Sugiharto, director of the *Srikandi Sejati Foundation* (an organization for transgender people in Indonesia) is typical of the way in which individuals whose gender expression deviates from the norm encounter human rights abuses related to freedom of expression.

²¹<http://www.ohchr.org/english/law/ccpr.htm>

²²IGLHRC telephone interview with King Oey of *Arus Pelangi*, New York City/Jakarta-Indonesia, March 29, 2007

²³ Ireland, D., Indonesia: Gays fight sharia laws, October 18, 2006, http://direland.typepad.com/direland/2006/10/indonesia_gays_.html

I had finished my HIV/AIDS outreach work and took a taxi from the Srikandi Sejati Foundation office in Grogol, Jakarta to the Jatinegara area. The taxi stopped in front of a small rice stall and I got out to have dinner. As soon as I got out of the taxi I was detained by police from South Jakarta who were looking to arrest sex workers in the area. They detained me on the charge that I was a waria (transgender) even though I rightly protested that being transgender is not against the law. They arrested me even though I showed them a document from the head office of the Jakarta police confirming that I was an NGO worker. While they were arresting me they pulled my jilbab (headscarf) off. In the station I was verbally abused and denied any outside contact. They took my mobile phone from me. All my requests—to go to the toilet, to rest, to eat or drink, were denied. Four hours later and after they had extorted 20.000 (\$2 US)²⁴ rupiah from me, they gave me what I asked for. I was then handed over to the social services. Thankfully I knew the people at the social services and they released me.²⁵

These illegal acts clearly contravene the rights enshrined in Article 21/1 and Article 22/1 of the *International Covenant on Civil and Political Rights (ICCPR)* to which Indonesia is a signatory. IGLHRC will continue to monitor and report on cases concerning human rights abuses related to gender identity and expression.

Recommendations

Governments should follow their obligations to respect, protect, and fulfill the rights to free expression, assembly, and association as explicated in the Yogyakarta principles 19 and 20:

PRINCIPLE 19. The Right to Freedom of Opinion and Expression

Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure full enjoyment of freedom of opinion and expression, while respecting the rights and freedoms of others, without discrimination on the basis of sexual orientation or gender identity, including the receipt and imparting of information and ideas concerning sexual orientation and gender identity, as well as related advocacy for legal rights, publication of materials, broadcasting, organisation of or participation in conferences, and dissemination of and access to safer-sex information;
- b) Ensure that the outputs and the organisation of media that is State-regulated is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender

²⁴ For Indonesians living in poverty \$2USD is often their daily expenditure.

²⁵ Email communication from GAYa NUSANTARA, August 9, 2007

identity and that the personnel recruitment and promotion policies of such organisations are non-discriminatory on the basis of sexual orientation or gender identity;

- c) Take all necessary legislative, administrative and other measures to ensure the full enjoyment of the right to express identity or personhood, including through speech, deportment, dress, bodily characteristics, choice of name or any other means;
- d) Ensure that notions of public order, public morality, public health and public security are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities;
- e) Ensure that the exercise of freedom of opinion and expression does not violate the rights and freedoms of persons of diverse sexual orientations and gender identities;
- f) Ensure that all persons, regardless of sexual orientation or gender identity, enjoy equal access to information and ideas, as well as to participation in public debate.

PRINCIPLE 20. The Right to Freedom of Peaceful Assembly and Association

Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations, regardless of sexual orientation or gender identity. Persons may form and have recognised, without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities.

States shall:

- a) Take all necessary legislative, administrative and other measures to ensure the rights to peacefully organise, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition for such associations and groups, without discrimination on the basis of sexual orientation or gender identity;
- b) Ensure in particular that notions of public order, public morality, public health and public security are not employed to restrict any exercise of the rights to peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities;
- c) Under no circumstances impede the exercise of the rights to peaceful assembly and association on grounds relating to sexual orientation or gender identity, and ensure that adequate police and other physical protection against violence or harassment is afforded to persons exercising these rights;
- d) Provide training and awareness-raising programmes to law enforcement authorities and other relevant officials to enable them to provide such protection;
- e) Ensure that information disclosure rules for voluntary associations and groups do not, in practice, have discriminatory effects for such associations and groups addressing issues of sexual orientation or gender identity, or for their members.