

**The Relationship between Homophobia, Transphobia, and Women's  
Access to Justice for the Forthcoming CEDAW General  
Recommendation on Women's Access to Justice**

**International Gay and Lesbian Human Rights Commission  
ORAL STATEMENT TO:**

**The United Nations Committee for the Elimination of  
All Forms of Discrimination against Women (CEDAW)**

**February 18, 2013**

This statement is presented on behalf of 43 women's rights, human rights, sexual rights, women's health and reproductive rights organizations based in Asia, Africa, Europe and the Americas. We urge the CEDAW Committee to follow its own precedent and include explicit reference to sexual orientation and gender identity in its forthcoming General Recommendation on Women's Access to Justice.

Lesbian, bisexual and transgender (LBT) people face several obstacles in accessing justice. As women, they are subject to the same barriers as all other women, and as people, they are persecuted because of their sexual orientation or gender identity. These barriers multiply the effects of discrimination.<sup>1</sup>

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<sup>1</sup> The parties to this oral statement wish to explain to the Committee our use of the language of "people" rather than "women" in this submission. We hope that the inclusion of women who happen to be lesbian or bisexual is within the scope of CEDAW is patently obvious. We hope that the inclusion of transgender people within the context of the CEDAW Convention is equally

LBT people are subject to formal discrimination due to laws that criminalize same sex relations and cross-dressing.<sup>2</sup> They are unable to rely on State mechanisms for redress<sup>3</sup> because States not only fail to provide basic constitutional protections<sup>4</sup> but, in numerous instances, State authorities are complicit in violent and egregious human rights violations.

Many States that prohibit discrimination on the basis of sex, ethnicity, religion, or disability do not prohibit discrimination on the grounds of sexual orientation or gender identity.<sup>5</sup> Of the 185 States party to the CEDAW Convention<sup>6</sup> that have laws to protect women from domestic or family violence, most do not protect individuals in same-sex relationships.<sup>7</sup>

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apparent, but we offer this explanation to any Committee members who would find a clarification useful. Transgender women must fall within the scope of the Convention because regardless of their sex assigned at birth, they live and identify as women, and therefore are subject to discrimination that specifically targets them as women whilst paired with frequently violent transphobia. Transgender men must fall within the scope of the Convention because even though they live and identify as men, the failure in many instances of society and law to recognize them as men means that they continue to be singled out for discrimination and abuse as women.

<sup>2</sup> Lucas Paoli Itaborahy, *State Sponsored Homophobia: A World Survey of Laws Criminalising Same-Sex Acts Between Consenting Adults*, International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) (2012) available at [http://ilga.org/historic/Statehomophobia/State\\_sponsored\\_homophobia\\_ILGA\\_07.pdf](http://ilga.org/historic/Statehomophobia/State_sponsored_homophobia_ILGA_07.pdf).

<sup>3</sup> See Grace Poore, *Human Rights Abuses in Asia On the Basis of Sexual Orientation, Gender Identity and Gender Expression (2000-2009)*, International Gay and Lesbian Human Rights Commission (IGLHRC) (2009); "Report on Discrimination against Women in Singapore based on Sexual Orientation and Gender Identity," Sayoni (June 20, 2011), available at [https://salsa.democracyinaction.org/o/1870/images/FINAL\\_Sayoni\\_shadow\\_report.pdf](https://salsa.democracyinaction.org/o/1870/images/FINAL_Sayoni_shadow_report.pdf)

<sup>4</sup> *Human Rights Violations of Lesbian, Gay, Bisexual and Transgender (LGBT) People in Turkey: A Shadow Report*, International Gay and Lesbian Human Rights Commission (IGLHRC) (October 2012) available at <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/585-1.pdf>.

<sup>5</sup> Turkey, Honduras, Jamaica, Marshall Islands, Micronesia, Mongolia, Greece, Papua New Guinea, Togo, and Switzerland do not include sexual orientation and gender identity as prohibited grounds in existing anti-discrimination legislation. Comprehensive Analysis of UPR Conclusions by IGLHRC. Information on file at IGLHRC. See also Appendix II.

<sup>6</sup> For reference of number of States party to CEDAW see United Nations Treaty Collection database, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en).

<sup>7</sup> A total 185 states have ratified CEDAW, 122 of which have legislation prohibiting domestic violence. A partial listing of states that exclude domestic violence protections for same-sex couples: Antigua and Barbuda, Barbados, Belize, Grenada, Guatemala, Guyana, Kyrgyzstan, Malawi, Malaysia, and Namibia. A partial listing of states with "ambiguous" language regarding domestic violence protections for same sex couples: Bahamas, Indonesia, Montenegro, Philippines, Romania, Thailand and Vietnam. "The UN Secretary-General's database on violence against women," UN WOMEN, (2011), <http://sgdatabase.unwomen.org/country.action>.

The CEDAW Committee understands that promising equal treatment of women in unequal situations does not ensure justice. For this reason, the Committee insists that equality be measured by access to opportunity and equality of results.<sup>8</sup> To implement this equality, the Committee has repeatedly addressed the disproportionate burdens borne by marginalized and vulnerable women.<sup>9</sup>

In 2010, the Committee issued *General Recommendation 28*, where it recognized that discrimination against women is inextricably linked to factors such as discrimination based on sexual orientation and gender identity.<sup>10</sup> It would be consistent with *General Recommendation 28* for the Committee to recognize and explicitly name the ways intersectional discrimination poses obstacles for LBT people's access to justice.

Those who arrest, beat, rape and otherwise punish lesbian, bisexual and transgender people believe they deserve to be punished. The Committee has stated many times that rejection of gender roles is no excuse for violence and discrimination,<sup>11</sup> and that the principles of equality and non-

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<sup>8</sup> The Committee has explicitly stated that women must enjoy equality of opportunity, equal access to opportunity, and equality in results. "IWRAP Asia Pacific Knowledge Portal," IWRAP Asia Pacific (2009) available at <http://www.iwraw-ap.org/convention/equality.htm>.

<sup>9</sup> Rural women, women with disabilities, elderly women, women with HIV/AIDS, among others. Art. 12(1); Art. 14; GR 19 ¶(24(O); General Recommendation No. 24 - Women and Health (Article 12)

<sup>10</sup> CEDAW, General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. December 16, 2010, Para, 18

<sup>11</sup> See for instance: (1) Bahamas, CEDAW/C/BHS/CO/1-5, July 27, 2012, Para. 19: "The Committee expresses its deep concern at the persistence of adverse cultural norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in the family [...], in the workplace, in politics and in society. The Committee notes that stereotypes contribute to sex-based inequalities in all areas of life and the persistence of

discrimination must prevail over cultural or traditional practices that adversely affect women's lives.<sup>12</sup>

Lesbians, bisexual women and transgender people deserve to be represented in the General Recommendation on Women's Access to Justice. We respectfully request that the Committee include and specifically acknowledge obstacles that LBT people face in accessing justice because of their sexual orientation and gender identity.

### **STATEMENT ENDORSED BY:**

Action Canada for Population and Development (Canada)  
Alternative Law Forum (India)  
ARC International (Canada, Geneva)  
Arus Pelangi (Indonesia)  
CAMFAIDS (Cameroon)  
CEDEP: Centre for the Development of People (Malawi)  
Center for Women's Global Leadership (United States)  
Chinese Lala Alliance (China)  
Closet de Sor Juana (Mexico)  
Colectivo Feminista Indispuestxs (Chile)  
Comité de Servicio Chileno – CoSeCh (Chile)  
Common Language (China)  
Coordinadora Euforia de Género (Chile)  
Diversidad (OTD) (Chile)  
Feministas Feas (Chile)  
Friends of RAINKA (Zambia)  
Fundación Arcoiris por el respeto a la diversidad sexual (Mexico)  
Fundación Justicia y Género of Costa Rica (Costa Rica)  
GALZ: Gays and Lesbians of Zimbabwe (Zimbabwe)  
Gay Japan News (Japan)  
GAYa NUSANTARA (Indonesia)

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violence against women.” (2) CEDAW, Chile, *supra* note. (3) Indonesia, CEDAW/C/GUY/CO/7-8 “The Committee [...] notes that stereotypes contribute to the persistence of violence against women”.

<sup>12</sup> The Committee has said that States are obligated to address cultural obstacles to equality rather than relying on culture as an excuse for lack of progress See for instance, (1) Conc. Obs. Algeria CEDAW/C/DZA/CO/3/4, ¶¶27-28, Art. 5, Art. 10; (2) Congo CEDAW/C/COG/CO/6, ¶¶12, 13; and (3) Sri Lanka CEDAW/C/LKA/CO/7, ¶¶16, 17.

Gender Law and Policy Project (United States)  
Institute for Justice & Democracy in Haiti (Haiti)  
International Federation on Human Rights (France)  
International Gay & Lesbian Human Rights Commission (IGLHRC) (United States)  
International Women's Human Rights Clinic at City University of New York School of Law (United States)  
Knowledge and Rights with Young People through Safer Spaces (Malaysia)  
MADRE (United States)  
Organización de Transexuales por la Dignidad de la Articulación feminista Por la Libertad de Decidir (Chile)  
Rainbow Community Kampuchea (Cambodia)  
Red por los DDHH de la Diversidad Sexual (Chile)  
Russian LGBT Network (Russia)  
Sayoni (Singapore)  
Segundo Patio, agrupación política disidente (Chile)  
Shirkat Gah, Women's Resource Centre, Pakistan (Pakistan)  
Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights (RFSL) (Sweden)  
TGEU Transgender Europe (TGEU) (Austria)  
The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) (Belgium)  
Unión Valdiviana por la Diversidad "Valdiversa" (Chile)  
Women Coalition of HKSAR (Hong Kong)  
Women for Women's Human Rights (WWHR) (Turkey)  
Women's Health and Equal Rights Initiative (WHER Initiative) (Nigeria)  
Women's Support Group (Sri Lanka)