

UNITED KINGDOM:

Time to Repeal Anti-Gay Criminal Laws

Amnesty International calls on the Government of the United Kingdom to equalize the age of consent and to repeal or amend all criminal laws which place discriminatory restrictions on gay male sexual activity. ¹

The Parliament is expected to take a vote in June on equalizing the age of consent for heterosexual and homosexual relations. However, the government has not proposed accompanying legislative changes to repeal provisions which criminalize sexual activity between males which is not illegal if the participants are heterosexual.

The application of these laws may lead to the detention or imprisonment of males, whom Amnesty International would consider prisoners of conscience. Amnesty International includes in its definition of prisoners of conscience people who have been detained or imprisoned solely because of their sexual orientation. This includes people imprisoned for engaging in consensual homosexual activity in private.

Such laws include those which:

- define the age of consent for sexual activity between males at 18, while the age of consent for heterosexual sexual activity and sexual activity between females is 16; ²
- define privacy for sexual activity between males differently than between males and females or just females.

Consensual sexual acts between males in private places (defined as buggery or gross indecency) are illegal under the Sexual Offences Acts 1956 and 1967 if:

- any participant is under 18 years of age; or
- more than two males voluntarily take part or are present in the private place.

These laws violate international standards which prohibit discrimination and arbitrary interference with personal privacy (see box, below). However, these laws continue to be applied to prosecute males who have engaged in consensual sexual relations with other males in private places.

In 1996 a man was convicted of gross indecency as a result of having engaged in consensual sexual relations in his own home, because more than two men, who were over the age of 18, were voluntarily present or taking part.

In January 1998, seven men, including one who was seventeen and a half at the time -- known as the Bolton 7-- were convicted of engaging in consensual sexual activities in private homes. Amnesty International joined religious leaders,

Members of Parliament, other non-governmental organizations and hundreds of individuals in expressing concern about the case. The organization took the position that if any of the men were imprisoned, they would be adopted as prisoners of conscience on the grounds that they were convicted, in effect, solely because of the homosexual nature of their relations. Although not imprisoned, two of them received suspended sentences. The others received sentences involving community service and probation. This included the youngest of the seven, whom age of consent laws would presumably seek to protect from harm, but who was instead convicted and punished as a criminal.

In both cases, all of the acts were consensual. The acts were not visible to people other than those present, and no one was harmed. No one present or participating in either case complained to the authorities. They were "victimless crimes". The men were convicted, in effect, solely because of the homosexual nature of their relations.

Rather than enjoying their rights to privacy and freedom from discrimination, these people and others have been convicted and sentenced and suffered harm to their personal and professional reputations by application of laws in the United Kingdom which violate the government's obligations under international law.

Recommendations

Amnesty International urges the Government of the United Kingdom:

- to equalize the age of consent for homosexual and heterosexual sexual relations;
- at the same time, to take the necessary measures to bring the range of legislation regulating sexual offences between men in the United Kingdom into compliance with its obligations under international law to prohibit discrimination and arbitrary interference with the right to privacy. This would involve repealing provisions which criminalize consensual acts between men in private if more than two people are present or participating.

The Sexual Offences Acts should be reformed so that there is one set of laws that applies consistently and without discrimination on the basis of sex or sexual orientation.

END NOTES

The United Kingdom is a party to the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights (European Convention).

Articles 2(1) of the ICCPR and Article 14 of the European Convention require the United Kingdom to ensure all of the rights recognized in the Convention to all people without discrimination, including on the basis of sex or sexual orientation. Article 2(1) requires the state to ensure that all people are equal before the law without any discrimination including on the basis of sex.

The Human Rights Committee, the body which monitors state compliance with the ICCPR, clarified in the case of *Toonen v. Australia* that there is no discrimination on the basis of sex in Articles 2(1) and 26 of the ICCPR, but that there is discrimination on the basis of sexual orientation.

The Human Rights Committee and the European Court of Human Rights have found that criminalizing sexual activity between consenting men in private constitutes interference with the right to privacy, in violation of Article 17 of the ICCPR and Article 8 of the European Convention.

The European Commission ruled, in the case of *Sutherland and others v. United Kingdom*, that the criminalization of sexual relations between males in the United Kingdom violated the right to privacy and non-discrimination guaranteed by the European Convention.

1. These laws are among a range of others which either discriminate against or deny equal protection or treatment to people on the basis of sexual orientation. Several non-governmental organizations throughout the United Kingdom, including Stonewall, are lobbying to end this unequal treatment.

2. Although sex between females is not explicitly mentioned in the law, females under 16 are not deemed capable of consenting to any sexual act. Therefore if a person over 16, (including a female), has sex with a female under 16, they may be prosecuted for "indecent assault on a girl under 16".

KEYWORDS: HOMOSEXUALS1 / LEGISLATION / ICCPR