

Human Rights and Sexual Orientation and Gender Identity

Amnesty International maintains that all people, regardless of their sexual orientation or gender identity, should have access to all human rights described in the Universal Declaration of Human Rights. Everyone has a sexual orientation¹ and a gender identity². When someone's sexual orientation or gender identity does not conform to the majority they are often seen as a legitimate target for discrimination or abuse. Not only are millions of people across the globe facing execution, imprisonment, torture, violence and discrimination because of their sexual orientation or gender identity, but the very consideration of the issue is seen by many states as a threat to the core principle of the universality of human rights.³

Laws criminalising homosexuality encourage the dehumanisation of lesbians, gay men, bisexual people and transgender people (LGBT) as their very identity is criminalised. Amnesty International considers the use of "sodomy" laws to imprison (usually) men for same-sex relations in private is a grave violation of human rights, including the rights to privacy, to freedom from discrimination, to freedom of expression and association, which are protected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights⁴ and the International Covenant on Economic, Social and Cultural Rights⁵. Amnesty International includes in its definition of prisoners of conscience people who have been detained or imprisoned solely because of their sexual orientation.

Paul Hunt, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, notes in his report to the 60th session of the Commission of Human Rights:

¹ Sexual orientation refers to a person's sexual and emotional attraction to people of the same gender (homosexual orientation), another gender (heterosexual orientation) or both genders (bisexual orientation).

² Gender identity refers to a person's experience of self-expression in relation to social constructions of masculinity or femininity (gender). A person may have a male or female gender identity, with the physiological characteristics of the opposite sex.

³ See Amnesty International, *UN Commission on Human Rights: Universality under threat over sexual orientation resolution*, AI index: IOR 41/013/2003, 22 April 2003.

⁴ In *Toonen v. Australia*, the Human Rights Committee clearly stated that: "...in its view, the reference to "sex" in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation." CCPR/C/50/D/488/1992 (Australia), 4 April 1992, para.8.7

⁵ The Committee on Economic, Social and Cultural Rights has repeatedly addressed the impact of sexual orientation discrimination on the enjoyment of economic, social and cultural rights. This has usually been done in consideration of Article 2 of the ICESCR, indicating that this Committee, like the Human Rights Committee, considers that "sexual orientation" can be read into the Covenant's non-discrimination provisions. The Committee was also the first Treaty Body to include explicit reference to sexual orientation in its General Comment 14 on the right to the highest attainable standard of health. (E/C.12/2000/4, para 18).

“...sexuality is a characteristic of all human beings. It is a fundamental aspect of an individual’s identity. It helps to define who a person is. The Special Rapporteur notes the abiding principles that have shaped international human rights law since 1945, including privacy, equality, and the integrity, autonomy, dignity and well-being of the individual. ...In these circumstances, the Special Rapporteur has no doubt that the correct understanding of fundamental human rights principles, as well as existing human rights norms, leads ineluctably to the recognition of sexual rights as human rights. Sexual rights include the right of all persons to express their sexual orientation, with due regard for the well-being and rights of others, without fear of persecution, denial of liberty or social interference.”⁶

The oppression of LGBT people and the stigma attributed by some to LGBT people is such that homophobia often motivates other allegations. Politically-motivated allegations of homosexuality are used to suppress criticism, shut down organizing and to silence political opponents.⁷

Gender identity is closely linked to sexual orientation as a category of experience and as a reason for abuse. Non-governmental organizations, including Amnesty International, have documented how law enforcement officers or members of the public who target LGBT people do not make distinctions between whether their victims are (or are perceived to be) lesbian, gay, bisexual or transgender. They aim their violence not so much at *categories* as at *conduct*. People are targeted if they do not appear to conform to gender “norms”, who are marked as different by their behaviour, dress, or appearance. Transgender people may be targeted because their abusers infer sexual conduct from their gender nonconformity.

The 60th Session of the Commission on Human Rights: an opportunity to reaffirm rights firmly established in international standards

In April 2003, at the 59th session of the Commission on Human Rights, Brazil introduced a draft resolution titled “Human Rights and Sexual Orientation”,⁸ which expressed concern at the occurrence of human rights violations against persons because of their sexual orientation, called upon states to promote and protect the human rights of all persons and asked the High Commissioner for Human Rights and the UN special procedures to pay attention to the issue. The draft resolution did not attempt to create a new body of rights, but sought to reaffirm existing non-discrimination principles established under international human rights law. However, the draft text proved to be one of the most fiercely contested issues of the session. Pakistan, on behalf of the Organisation of Islamic Conference (OIC), proposed a motion that

⁶ E/CN.4/2004/49, 16 February 2004, para.54

⁷ For example, Malaysian opposition figure Anwar Ibrahim is still imprisoned on politically-motivated "sodomy" charges after his appeal was rejected. See: Amnesty International, *Malaysia: Double injustice heaped on Anwar Ibrahim*, AI index: ASA 28/015/2003, 18 April 2003.

⁸ E/CN.4/2003/L.92

the Commission take “no action” on the draft resolution which was narrowly defeated.⁹ On the final day of the session, the Chair’s proposal to postpone consideration of this draft resolution to the 60th session was adopted by roll-call vote.¹⁰

Amnesty International has been researching and documenting abuses based on sexual orientation or gender identity for more than a decade. These violations cover the range of rights enshrined in international agenda – violations which have long been at the core of the agenda of United Nations’ human rights bodies. The stigma and prejudice surrounding sexual orientation and gender identity means that such cases are rarely documented or denounced. Where official complaints are made, they are frequently met with official indifference. In this document, we describe a range of cases Amnesty International has documented or taken up over recent years of egregious human rights violations against lesbians, gay men, bisexuals and transgender people. This selection of cases demonstrates the need for the Commission on Human Rights to take the opportunity at the 60th Session¹¹ to reaffirm the *universality* of human rights and the principle of *the right to be free from discrimination* on which human rights law is grounded.

Human rights violations based on sexual orientation and gender identity.

Death penalty

At the 2003 session of the Commission on Human Rights, the resolution on the question of the death penalty was adopted by a recorded vote of 24 votes to 18, with 10 abstentions.¹² The resolution urged all States that still maintain the death penalty: “To ensure that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, non-violent religious practice or expression of conscience and sexual relations between consenting adults.”¹³

- On 1 January 2002, ‘Ali bin Hittan bin Sa’id, Muhammad bin Suleyman bin Muhammad and Muhammad bin Khalil bin ‘Abdullah, all Saudi Arabian nationals, were executed in Abha, Asir province, Saudi Arabia, possibly solely for their sexual orientation. The Saudi

⁹ 24 in favour, 22 against, with 6 abstentions, see E/2003/23,E/CN.4/2003/135, 1 October 2003, for details, see [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.2003.23.E.CN.4.2003.135.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.2003.23.E.CN.4.2003.135.En?Opendocument)

¹⁰ 24 in favour, 17 against, with 10 abstentions, see E/2003/23,E/CN.4/2003/135, 1 October 2003, (details as above).

¹¹ 15 March to 23 April 2004

¹² Commission on Human Rights, Report on the 59th Session. (17 March-24 April 2003) Economic And Social Council. Official Records, 2003. Supplement No.3. E/2003/23,E/CN.4/2003/135, 1 October 2003. 2003/67. The question of the death penalty.

¹³ *Ibid.*, para.4(d), emphasis added.

Arabian Ministry of Interior issued a statement announcing that the three were convicted of homosexual acts, adding vaguely-worded charges of “luring children and harming others” without providing any further details. The trial proceedings of the three men remain shrouded in secrecy.

- Jay Wesley Neill was executed in Oklahoma, USA, on 12 November 2002 for the murder of four people committed during a bank robbery in 1984. Upon Appeal, dissenting Judge Carlos Lucero recognised “the prosecutor’s blatant homophobic hatemongering at sentencing...” was “susceptible of only one possible interpretation: among other facts, Neill should be put to death because he is gay...”

Extrajudicial, summary or arbitrary executions

- In 2003, the reference to “sexual orientation” was contested in the resolution on Extrajudicial, summary or arbitrary executions¹⁴, which was forced to a vote. The resolution explicitly acknowledged that persons should not be killed for any discriminatory reason including their sexual orientation. As in previous years, the issue of “sexual orientation” proved to be a fiercely opposed human rights issue.
- Ericka (legal name: Erick David Yáñez), a transgender member of the non-governmental organization *Comunidad Gay Sampedrana* (San Pedro Sula’s Gay Community),¹⁵ was murdered on 15 July 2003 in the city of San Pedro Sula. This was the latest in a series of attacks against LGBT members that have occurred in the city in recent years. The shooting took place in the area where Ericka and others work as sex workers. Nineteen-year-old Ericka was attacked by two policemen after they realized that Ericka was a transvestite, which led to one of them shooting Ericka with his service weapon. Some days later, following investigations by the Attorney General’s Office, the two policemen were arrested and charged, one with homicide and the other as an accomplice. Amnesty International is concerned at the lack of progress in the investigation and judicial proceedings in the case of the killing of Ericka (Erick David Yáñez), on 15 July 2003.¹⁶

Torture and ill-treatment

- On and around 11 May 2001 some 60 men, alleged to be gay, were arrested in various locations in Cairo, Egypt, the majority from the Queen Boat nightclub. While in police custody, the men were reportedly subjected to torture and ill-treatment. Some of the detainees reported having been subjected to the *falaka*-treatment (beating on the soles of

¹⁴ Resolution 2003/53, tabled by Sweden, was adopted 37-0-16 at the 2003 Commission on Human Rights

¹⁵ Established in 1992, the *Comunidad Gay Sampedrana* is a non-governmental organization based in San Pedro Sula covering the city and surrounding areas, to defend the rights of LGBT people.

¹⁶ See: Amnesty International. 2003. *Honduras: Human rights violations against lesbian, gay, bisexual and transgender people*. AI Index: AMR 37/014/2003.

the feet), others were beaten and verbally abused. In March 2003 21 of the defendants were sentenced to three years' imprisonment on the charge of "habitual debauchery". This case has also been taken up by the UN Human Rights Committee¹⁷, the UN Committee against Torture¹⁸, the UN Working Group on Arbitrary Detention¹⁹, the UN Special Rapporteur on the independence of judges and lawyers²⁰ and the European Parliament²¹. As a continuation of the appeals process, which began in June 2003, the sentences of a further 10 men were reduced on appeal in July 2003 from three years' to one year's imprisonment, a period they had already served. This brings the total of the defendants in this case who have had their sentences reduced on appeal to 14 men. The men are currently serving an additional part of their sentence, which requires them to be under police supervision during the hours of darkness. In spite of this international attention and concern, men in Egypt continue to be persecuted on the basis of the actual or perceived sexual orientation²².

- On 25 November 2000 in Chicago, USA, Jeffrey Lyons, a 39-year-old heterosexual man, was allegedly assaulted by a group of between eight and 10 off-duty police officers after they witnessed him embracing a male friend outside a bar. The assault left him with severe injuries including a broken nose, fractured cheekbone and neurological damage. During the assault an unidentified officer reportedly taunted him by saying "Get this through your head, you faggots will never win".

Arbitrary Detention

- As mentioned above, the UN Working Group on Arbitrary Detention adopted the Egypt Queen Boat case and clearly stated that the detention of people on the grounds "that by their sexual orientation, they incited 'social dissention' constitutes or has constituted arbitrary deprivation of liberty" (Opinion No. 7/2002).

Violence against women

The Special Rapporteur on violence against women, its causes and consequences, has commented that "[u]nless women come to be seen as individual beings with rights to

¹⁷ CCPR/CO/76/EGY, 28 November 2002

¹⁸ CAT/C/XXIX/Misc.4, 20 November 2002

¹⁹ Opinion No. 7/2002, adopted on 21 June 2002

²⁰ E/CN.4/2002/72, 11 February 2002, para.57

²¹ European Parliament Resolution 29 November 2001, B5-0740/2001; European Parliament Resolution 4 July 2002, P5_TA-PROV(2002)0378, Human rights: Persecution of homosexuals in Egypt.

²² See for example, *Egypt: Torture and imprisonment for actual or perceived sexual orientation* (AI Index MDE 12/033/02, DATE) *The Giza 14 – imprisonment for actual or perceived sexual orientation* (AI Index MDE 12/028/2003, June 2003, and *Egypt - Imprisonment for actual or perceived sexual orientation in Agouza* (AI Index MDE 12/031/2003, August 2003).

determine their sexuality, their inferior social position will continue to permit violence against them.”²³ Yet, the prevalence in society of sexism and homophobia creates a climate where lesbians and bisexual women are at grave risk of abuse.

- A young Zimbabwean lesbian described how her family locked her up and forced her to submit to being raped by an older man, in order to “correct” her sexual orientation: “They locked me in a room and brought him every day to rape me so I would fall pregnant and be forced to marry him. They did this to me until I was pregnant.”²⁴
- In February 2001 a young Burmese lesbian living and working in a factory in Mae Sod, Thailand, went shopping with a male friend. Returning home at night, they were joined by several other men who worked at the same factory. Blocking her way, one of the men told her that she was beautiful, and said that it was a waste for her to be a lesbian. He urged his friends to take her to the paddy field and change her sexuality to be ‘normal.’ He grabbed her and told his friends to “cure this abnormal lesbian so she can enter womanhood.” All six men raped her. The next day, the whole factory knew about the rape, but no one came to her defence. In tears, she asked why the community allowed these rapists to go unpunished, and blamed only her.²⁵
- Narda del Rocío Torres Arboleda and her partner, Adriana Chávez, have been subjected to a number of attacks by unidentified men, on the basis of their sexual orientation. In the early evening of 12 June 2001, Narda Torres was returning home in Quito, Ecuador, when she was intercepted at the front of her home by two men who grabbed her hair and pushed her to the ground beating her and shouting: “bitch we are going to rape you ... [we are] going to give you dick and you will like it ... filthy lesbian if you don’t like the way we fuck you, [we are] going to kill you so we can get rid of you ... doesn’t it make you sick to be like that?” The police ignored her complaint, particularly when the couple informed them that the motive of the harassment was Narda’s sexual orientation.

Narda Torres was attacked again on the evening of 5 September 2002, during which she was verbally abused and beaten. Although the attackers tried to avoid being identified by covering her eyes with their hands, Narda Torres believes that the attackers looked like those involved in previous harassment against her and Adriana Chávez.

The Ministry of Interior’s Human Rights National Director informed Amnesty International that the police have informed the ministry that “after having carried out an investigation into the allegations of discrimination the police concluded that no “discriminatory” acts took place against her but that nonetheless police officers have been given a manual on dealing appropriately with vulnerable groups”. Amnesty International

²³ Report of the Special Rapporteur on violence against women, 2000. Addendum on Economic and Social Policy, and its impact on violence against women. (E/CN.4/2000/68/Add.5) 24 February 2000, section A. See also A/CONF. 177/20, 15 September 1995, para.96, reaffirmed in the UN Declaration of Commitment on HIV/AIDS, A/S-26/L.2, New York, 2001, para.59.

²⁴ Cited in an interview in December 1994 by Bev Clark, author of *Lesbian Activism in Zimbabwe*.

²⁵ Anonymous source in the lesbian and gay community, interviewed by Amnesty International.

has replied, requesting a copy of the outcome of the investigation and of the manual provided to police officers. According to Amnesty International's information, there has not, to date, been an impartial and independent investigation into the complaints filed by Narda Torres.

Discrimination

In a submission to the UN Human Rights Committee on Trinidad and Tobago in October 2000, Amnesty International stated that the retention of laws which treat homosexuals as criminals lends support to a climate of prejudice which increases the risk of attacks and other abuses against people believed to be gay or lesbian. Although laws proscribing homosexual relations are defended in the name of local cultural values, such laws in many Caribbean countries and others are in fact a legacy of the colonial past.

- A young lesbian²⁶ had to flee a Caribbean country as a direct result of violence and intimidation inflicted upon her due to her sexual orientation. When her community became aware of her sexuality in 2000, her home was attacked by groups armed with knives throwing bottles and stones and she was ostracised from her family and community. The victim was too scared to report the incident to the police, fearing retaliation from the gang or further victimisation by the police. Shortly afterwards, she was abducted and threatened with rape by a local gang and later ordered to carry drugs. The gang imprisoned her for two weeks and she was told that her mother's house would be burnt down if she did not carry the drugs. During this period she was sexually and physically assaulted.

Human rights defenders

Those defending sexual rights are at particular risk of repression and marginalisation, as has been noted by the Special Representative to the Secretary General on Human Rights Defenders, Ms Hina Jilani: "Of special importance will be women's human rights groups and those who are active on issues of sexuality, especially sexual orientation and reproductive rights. These groups are often very vulnerable to prejudice, to marginalization and public repudiation, not only by State forces but by other social actors."²⁷

- Nadia Echazú, an Argentinian transvestite, was arrested on 7 October 2001 by members of Police station No. 25 in Buenos Aires, whilst she carried out a street campaign for the prevention of HIV/AIDS. One of three police officers asked for her identity documents and then spat at her. He also threatened to "break her" if she was found in the area again. He held her by the hair, beat her around the stomach, pushed her to the ground and kicked her as she lay there. The police officer handcuffed her, sprayed tear gas in her face and

²⁶ Name known to Amnesty International

²⁷ Report of the Special Representative of the Secretary General on Human Rights Defenders, E/CN.4/2001/94, para.89(g)

reportedly insulted her, saying “I am going to give you [human] rights, degenerate faggot” “*yo te voy a dar derechos a vos puto degenerado*”. He put her in a police car and threatened her with a gun on the way to the police station. Nadia Echazú was detained for four days and later filed a complaint with the Buenos Aires Ombudsperson.

- In September 1999, following demands by a newly formed gay and lesbian organization for formal registration, Zambian Vice-President Lieutenant-General Christon Tembo told parliament that homosexuals and homosexual rights activists would be arrested. He also banned the publication of information about “gay activities”.
- In Uzbekistan, journalist and human rights activist Ruslan Sharipov is serving a four year sentence on charges including homosexuality and sexual relations with minors, following an unfair trial in August 2003. He had reportedly confessed to the charges under duress. Ruslan Sharipov maintains that the case was fabricated in order to punish him for his critical reporting and his human rights activities. Amnesty International fears he is at risk of torture or ill-treatment by both law enforcement officers and other prisoners.

Human rights of refugees

Many people who claim asylum on the basis of fearing abuse for reasons of their sexual orientation face serious obstacles in the countries where they seek protection.

In some countries of asylum, people risk facing the same or similar persecution that they fled if their sexual orientation were to become known. In other countries of asylum, their claims are often wrongly denied. In cases where they may not have expressed their sexual orientation openly in the past, decision-makers say that they should be able to keep their sexual orientation from the attention of those authorities and private individuals from whom they otherwise would be at risk. This interpretation of whether or not someone has a well-founded fear of persecution contradicts a well-established principle of interpretation of the 1951 Convention relating to the Status of Refugees. In cases where someone claims a well-founded fear of persecution because of their political opinion or religious beliefs they would not be required to refrain from expressing their opinions or beliefs in the future. The same principle should be upheld to protect the rights of people to express their sexual orientation.

- In 2001, a gay couple from Bangladesh were denied refugee status in Australia. The Refugee Review Tribunal held that homosexuality was unacceptable in Bangladesh, and could lead to human rights abuse, but nonetheless found that the men would not be at risk of harm if they conducted themselves discreetly. In December 2003, the High Court of Australia allowed the couple’s appeal and found that the Refugee Review Tribunal had made an error of law when it divided Bangladeshi homosexuals into two groups, the discreet and the non-discreet.²⁸

²⁸ Appellant S395/2002 v Minister for Immigration and Multicultural Affairs and Appellant S396/2002 v Minister for Immigration and Multicultural Affairs, [2003] HCA 71, 9 December 2003.

Right to the enjoyment of the highest attainable standard of physical and mental health

- According to a non-governmental organization in India, women have reported being given powerful drugs by psychiatrists after being “diagnosed” as lesbian, while others report undergoing “aversion” therapy.²⁹
- Irina,³⁰ a Russian lesbian, was threatened with forced psychiatric treatment to “cure” her of her lesbianism and relatives demanded that she give up custody for her son. Irina’s parents hired two investigators to probe into her lifestyle. The investigators claimed to have a video tape of Irina having sex with her partner and threatened to report her to the police unless she paid a large sum of money. Irina and her lover went to the police to report this attempt to blackmail them; the officer responded by sexually harassing them. One day, the investigators abducted her at knife point and took her to an apartment. Together with another man, they raped Irina to “teach her a lesson” and “reorientate” her sexual identity. Irina decided not to report the rape to the police because of her past experience at their hands.³¹

Rights of the child

Often LGBT rights are pitted against children’s rights. Such homophobia hides a failure to protect other rights, such as when homosexuality is conflated with paedophilia. Amnesty International rejects the prejudiced association of consensual same-sex sexual relations and sexual abuse. Amnesty International recognizes that states have an obligation to regulate any sexual activity – whether heterosexual or homosexual – which infringes the rights of others, for example, coercive sex or sexual abuse of children. In some states, anti-sodomy laws may be the only legislation against child sex abuse. Conflating child sexual abuse with homosexuality is a failure of the state to protect adequately children from violence and points to the homophobia in the legal system.

The legal obligation to act “in the best interests of the child”³² needs to include respecting the child’s right to be free from discrimination, including that based on sexual orientation.³³

- In 2002 the Committee on the Rights of the Child recommended that the UK government: “Provide adequate information and support to homosexual and transsexual young people,

²⁹ Sangini (India) Trust, 2003. *Human Rights Report*, June 2003.

³⁰ Not her real name.

³¹ Lesbian and Gay Immigration Rights Task Force, New York, USA: interview with Irina, February 2000. Irina claimed asylum in the USA on the grounds that she had been tortured or ill-treated by a range of people, including police, private investigators and her own family members. Irina’s claim was denied because of a procedural technicality.

³² Convention on the Rights of the Child, article 3

³³ Committee on the Rights of the Child (2003), General Comment 3 on HIV/AIDS and the Rights of the Child, para.8 and General Comment 4 on Adolescent Health and Development in the Context of the Convention on the Rights of the Child, para.6.

and encourages the State party, further to the statement of intent made by its delegation to repeal section 28 of the Local Government Act 1988, where it applies”³⁴. Section 28 was a notorious piece of legislation that stated that local authorities in England and Wales may not “intentionally promote homosexuality” or “promote the teaching of... the acceptability of homosexuality as a pretend family relationship”. Following campaigning by Amnesty International and other organizations, the section was finally taken off the statute books in September 2003.

Right to freedom of opinion and expression

- In July 2001, Amnesty International criticised the authorities in the Federal Republic of Yugoslavia (now Serbia and Montenegro) for the failure of the Belgrade police to protect the participants in Serbia’s first Gay Pride Celebration from assault by right-wing and homophobic individuals and organizations. Boško Buha, Belgrade’s then chief of police, and the then Serbian Prime minister Zoran Djindjić, both said that Serbia was not ready to tolerate homosexuality.

Amnesty International recommends that the police and judicial authorities should act with due diligence to protect lesbian, gay, bisexual and transgender (LGBT) people against violence from the wider community. The authorities should also make clear that such violence is a criminal offence and will not be tolerated. Specific directives and training should be given to law enforcement officials on their duty to protect the human rights of all individuals, regardless of their sexuality, and on how to identify and investigate homophobic crimes.

Amnesty International calls on the 60th session of the Commission on Human Rights³⁵ to:

- To take a stand on the application of the principle of the universality of human rights to all persons regardless of their sexual orientation or gender identity. If the Commission fails to uphold the principle of the universality of human rights, fails even to debate discrimination on the basis of sexual orientation or gender identity, it will fail millions of people around the world. It will fail in its duty to uphold core principles of human rights.
- To speak out and reaffirm that exceptions to the universality of rights protections are unacceptable; to condemn human rights violations on the basis of sexual orientation and gender identity; and to respect, protect, and fulfil the human rights of all persons, without discrimination of any kind.

³⁴ CRC/C/15/Add.188, 9 October 2002, para.44(d)

³⁵ See: Amnesty International. *2004 UN Commission on Human Rights. Mission: to promote and protect human rights*. AI Index: IOR 41/001/2004, January 2004.