



Ms Dubravka Simonovic
Chairperson, Committee on the Elimination of Discrimination against Women
C/- Office of the High Commissioner for Human Rights
United Nations, Geneva 1211
Geneva 10
Switzerland

Dear Chairperson,

Re: Discrimination on the basis of sexual orientation and gender identity

30 July 2008

We write to you in response to the meeting of the Committee on the Elimination of Discrimination against Women (the Committee) held on 16 July 2008 for NGOs and other stakeholders on the development of a General Recommendation on Article 2 of the *Convention on the Elimination of Discrimination against Women* (CEDAW). ...

The undersigned NGOs draw the following points to the Committee's attention:

1. Discrimination on the grounds of sexual orientation and gender identity is recognised in international law.

International law provides that all human beings are entitled to the universal enjoyment of human rights. To this end, it imposes an absolute prohibition on all forms of discrimination. In the 1994 case of *Toonen v Australia*, the United Nations Human Rights Committee expressly found that sexual orientation should be understood to be a status protected by discrimination under the provisions of the *International Covenant on Civil and Political Rights*. The absolute prohibition of discrimination is also reflected in Article 2 of CEDAW.

Since 1994, the Committee has explicitly referred to sexual orientation in several concluding observations, on a range of topics including asylum, criminalisation of consensual sexual relations between women, and anti-discrimination legislation. In 2001 for example, the Committee commended the Government of Sweden for passing legislation that provides residence permits to individuals who have a well-founded fear of persecution on the basis of sexual orientation or gender, particularly in cases that involve discrimination against women.

In addition, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee against Torture and the Committee on the Elimination of All Forms of Racial Discrimination have all made explicit references to sexual orientation or gender identity in their concluding observations, communications and reports.

Further, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have explicitly referred to sexual orientation in their general comments.

2. We support the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity.

The Yogyakarta Principles were developed by human rights experts and reflect State obligations under international law to address human rights violations based on sexual orientation and gender identity. They include a recommendation that the UN treaty bodies ‘vigorously integrate these principles into the implementation of their mandates, including ...general comments or other interpretive texts on the application of human rights law to persons of diverse sexual orientations and gender identities.’

At the time of their launch in New York in November 2007, the then High Commissioner for Human Rights, Ms Louise Arbour issued the following statement:

‘...just as it would be unthinkable to deny anyone their human rights because of their race, religion or social status, we must also reject any attempt to do so on the basis of sexual orientation or gender identity. The Principles are a timely reminder of these basic tenets. States have a legal obligation to investigate and prosecute all instances of violence and abuse with respect to every person under their jurisdiction. Respect for cultural diversity is insufficient to justify the existence of laws that violate the fundamental right to life, security and privacy by criminalising harmless private relations between consenting adults.’

3. We recommend that a non-exhaustive list of forms of discrimination against women be incorporated in the general recommendation, including explicit reference to discrimination on the grounds of gender identity and sexual orientation.

This is necessary to ensure that current, emerging and as yet unknown forms of discrimination against women can be addressed by the Committee. Only in this way will the Committee be able to provide States parties with a clear set of authoritative guidelines regarding the legislative and practical measures they must take to realise women’s human rights, as required by Article 2.

We are conscious that tackling discrimination on the basis of sexual orientation and gender identity may be perceived as a politically and culturally sensitive issue, and is one that requires bodies like the CEDAW Committee to take a leadership role. We are confident, however, that the Committee will assume such a role as it has before, and will build on its achievements to date to ensure that States parties take action to end discrimination against women on the basis of their sexual orientation or gender identity.

We thank you in advance for circulating this letter to all Committee members.

Yours respectfully,

Renzo Pomi Amnesty International Representative at the United Nations

Charlotte Bunch Executive Director: Center for Women's Global Leadership

Tad Stahnke Director: Fighting Discrimination Program Human Rights First

Scott Long Director: Lesbian, Gay, Bisexual and Transgender Rights Program Human Rights Watch

Isabelle Scherer Director: International Service for Human Rights