

EQUALITY AND DISCRIMINATION - SEXUAL ORIENTATION

II. CONCLUDING OBSERVATIONS

ICCPR

- United States of America, ICCPR, A/50/40 vol. I (1995) 52 at para. 287.

The serious infringement of private life in some states which classify as a criminal offence sexual relations between adult consenting partners of the same sex carried out in private, and the consequences thereof for their enjoyment of other human rights without discrimination is of concern.

- United Kingdom of Great Britain and Northern Ireland (Hong Kong), ICCPR, A/51/40 vol. I (1996) 15 at para. 59.

It is regretted that the Sexual Discrimination Ordinance is not yet in force and that it limits the damages awarded to women who are subject to sexual discrimination and does not give power to direct the reinstatement of women who have lost their jobs because of sexual discrimination. It is also of concern that the Sexual Discrimination Ordinance has significant exemptions and that it is limited in its application to discrimination based on gender and marriage and does not prohibit discrimination on grounds of age, family responsibility or sexual preference.

- Colombia, ICCPR, A/52/40 vol. I (1997) 44 at para. 279.

So-called "social-cleansing" operations, targeting street children, homosexuals, prostitutes and petty delinquents, continue to be carried out. It is deplored that appropriate and effective action is yet to be taken to ensure the full protection of the rights of these groups, especially of their right to life.

- Sudan, ICCPR, A/53/40 vol. I (1998) 23 at para. 119.

The imposition in the State party of the death penalty for offences which cannot be characterized as the most serious, including apostasy, committing a third homosexual act, illicit sex, embezzlement by officials, and theft by force, is incompatible with article 6 of the Covenant. The death penalty, if used at all, should be applicable only to the most serious crimes, in accordance with article 6, and should be repealed for all other crimes.

- Cyprus, ICCPR, A/53/40 vol. I (1998) 34 at para. 190.

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The repeal of discriminatory legal provisions which penalize homosexual acts is urged.

- Zimbabwe, ICCPR, A/53/40 vol. I (1998) 37 at para. 226.

Legislation that subjects homosexuals to discrimination, for example, that aliens deemed to be homosexuals may be defined as "prohibited persons" for immigration purposes and are subject to deportation, should be brought into conformity with the Covenant.

- Ecuador, ICCPR, A/53/40 vol. I (1998) 43 at para. 281.

The information that the Constitutional Court has declared unconstitutional the criminalization of private homosexual relations between consenting adults and the law excluding persons charged under the Narcotics and Psychotropic Substances Act from the application of the new provisions on detention pending trial is welcomed.

- Austria, ICCPR, A/54/40 vol. I (1999) 43 at para. 190.

Existing legislation on the minimum age of consent for sexual relations in respect of male homosexuals is discriminatory on grounds of sex and sexual orientation and should be revised to remove such discriminatory provisions.

- Chile, ICCPR, A/54/40 vol. I (1999) 47 at para. 216.

Legislation that criminalizes homosexual relations between consenting adults involves violation of the right to privacy protected under article 17 of the Covenant and may reinforce attitudes of discrimination between persons on the basis of sexual orientation. Therefore, such laws should be amended so as to abolish the crime of sodomy between adults.

- Lesotho, ICCPR, A/54/40 vol. I (1999) 53 at para. 256.

Laws that make a sexual relationship between consenting adult partners of the same sex punishable under law should be amended.

- Poland, ICCPR, A/54/40 vol. I (1999) 67 at para. 356.

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The exclusion of sexual orientation from non-discrimination clauses of State legislation could lead to violations of articles 17 and 26.

- Romania, ICCPR, A/54/40 vol. I (1999) 70 at para. 375.

Provisions which penalize homosexual relations between consenting adults restrict the right to privacy and should be amended.

- Hong Kong Special Administrative Region (China), ICCPR, A/55/40 vol. I (2000) 40 at paras. 247 and 248.

Paragraph 247

That no legislative remedies are available to individuals in respect of discrimination on the grounds of race or sexual orientation is of concern.

Paragraph 248

Necessary legislation should be enacted to ensure full compliance with article 26 of the Covenant.

- United Kingdom of Great Britain and Northern Ireland (Jersey, Guernsey and the Isle of Man), ICCPR, A/55/40 vol. I (2000) 47 at para. 309.

Discrimination on grounds of sexual orientation should be prohibited.

- Australia, ICCPR, A/55/40 vol. I (2000) 71 at para. 502.

The action taken by the State party to implement the Views of the Committee in the case of communication No. 488/1992 (*Toonen v. Australia*) by enacting the necessary legislation at the federal level is welcomed.

- Trinidad and Tobago, ICCPR, A/56/40 vol. I (2001) 31 at para. 72(11).

Priority should be given to all necessary preparations, so as to bring into force by proclamation at the earliest possible date the Equal Opportunities Act 2000, particularly in respect to the advancement of women. The State party should, thereafter, introduce amending legislation to extend the provisions of the Act to those suffering discrimination on grounds of age, sexual orientation, pregnancy or infection with HIV/AIDS.

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ICESCR

- Kyrgyzstan, ICESCR, E/2001/22 (2000) 62 at paras. 345 and 358.

Paragraph 345

Concern is expressed at the classification of lesbianism as a sexual offence in the Penal Code.

Paragraph 358

The State party should proceed to remove lesbianism from the Penal Code.

- Hong Kong Special Administrative Region (China), ICESCR, E/2002/22 (2001) 39 at paras. 177 and 193.

Paragraph 177

The failure of the Hong Kong Special Administrative Region to prohibit discrimination on the basis of sexual orientation is of concern.

Paragraph 193

The authorities are urged to prohibit discrimination on the basis of sexual orientation.

CEDAW

- Kyrgyzstan, CEDAW, A/54/38/Rev.1 part I (1999) 15 at paras. 127 and 128.

Paragraph 127

Concern is expressed over the fact that lesbianism is classified as a sexual offence in the Penal Code.

Paragraph 128

Lesbianism should be reconceptualized as a sexual orientation and penalties for its practice should be abolished.

- Sweden, CEDAW, A/56/38 part II (2001) 76 at para. 334.

The passing of 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, is commended.

CAT

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- Brazil, CAT, A/56/44 (2001) 49 at para. 119.

Concern is expressed about overcrowding, lack of amenities and poor hygiene in prisons, the lack of basic services and of appropriate medical attention in particular, and violence between prisoners and sexual abuse. There is particular concern about allegations of ill-treatment and discriminatory treatment of certain groups with regard to access to the already limited essential services, notably on the basis of social origin or sexual orientation.

CRC

- United Kingdom of Great Britain and Northern Ireland (Isle of Man), CRC, CRC/C/100 (2000) 31 at paras. 186 and 187.

Paragraph 186

Article 2 (the general principle non-discrimination) of the Convention is not fully taken into account in legislation, administrative and judicial decisions, or in its policies and programmes relevant to children. In this context, insufficient efforts have been made to provide against discrimination based on sexual orientation. While the intention to reduce the legal age for consent to homosexual relations from 21 to 18 years is noted, it remains of concern that a disparity continues to exist between the ages for consent to heterosexual (16 years) and homosexual relations.

Paragraph 187

All appropriate measures should be taken, including of a legislative nature, to prevent discrimination based on the grounds of sexual orientation and to fully comply with article 2 of the Convention.

- United Kingdom of Great Britain and Northern Ireland (Overseas Territories), CRC, CRC/C/100 (2000) 40 at paras. 233 and 234.

Paragraph 233

Insufficient efforts have been made to ensure the full implementation of article 2 of the Convention and discrimination based on gender, sexual orientation and birth status remains apparent in some of the Overseas Territories. The disparity between the ages for sexual consent to heterosexual and homosexual relations in some of the Overseas Territories is noted.

Paragraph 234

Domestic legislation in the Overseas Territories should be reviewed to ensure full compliance with article 2 of the Convention and to prevent and combat discrimination, especially as regards gender, sexual orientation and birth status.