

# International Lesbian and Gay Association (ILGA) et al

## Submission in the UPR review of: Tunisia

### Legal and Statutory framework:

Tunisia maintains **criminal sanctions against sexual activity between consenting adults**. Article 230 of Tunisia's *Penal Code, 1913* provides:

"La sodomie, si elle ne rentre dans aucun des cas prévus aux articles précédents, est punie de l'emprisonnement pendant trois ans."

(Translation: "An act of sodomy which is not covered by any of the previous articles is punishable by imprisonment for three years").

### Tunisia's international human rights obligations:

Provisions against sexual activity between consenting adults have been found to constitute a **clear violation of international human rights law**.

In *Toonen v Australia*, the **UN Human Rights Committee** in March 1994 confirmed that laws criminalizing consensual same-sex activity violate both the right to privacy and the right to equality before the law without any discrimination, contrary to articles 17(1) and 26 of the International Covenant on Civil and Political Rights.<sup>1</sup>

The Committee further considered that such laws interfere with privacy rights, whether or not they are actively enforced, and "run counter to the implementation of effective education programmes in respect of HIV/AIDS prevention" by driving marginalised communities underground.

The UN Human Rights Committee has affirmed this position on many occasions, either urging States to repeal laws which criminalize consensual same-sex activity or commending them for bringing their legislation into conformity with the Covenant by repealing such provisions.<sup>2</sup>

This position is consistent with other **regional and national jurisprudence**, including decisions of the European Court of Human Rights<sup>3</sup> and of the Constitutional Court of South Africa,<sup>4</sup> as well as with the core commitments to equality and non-discrimination enshrined in the *African Charter of Human and Peoples' Rights*.

States' international obligations to respect the human rights of all persons, irrespective of sexual orientation and gender identity, were recently articulated in the "**Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity**". The Principles were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including Africa. These experts included judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, members of civil society and others.

Principle 2 of the Yogyakarta Principles affirms the right of all persons to equality before the law without discrimination on the basis of sexual orientation or gender identity, and specifically

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<sup>1</sup> *Toonen v Australia*, CCPR/C/50/D/488/1992, April 4, 1994.

<sup>2</sup> See Human Rights Committee Concluding Observations: United States of America, A/50/40, October 3, 1995; Cyprus, CCPR/C/79/Add.88, April 6, 1998; Ecuador, CCPR/C/79/Add.92, August 18, 1998; Chile, CCPR/C/79/Add.104, March 30, 1999; Lesotho, CCPR/C/79/Add.106, April 8, 1999; Romania CCPR/C/79/Add.111, July 28, 1999; Australia, A/55/40, July 24, 2000; Egypt, CCPR/CO/76/EGY, November 28, 2002; Kenya, CCPR/CO/83/KEN, March 28, 2005; United States of America, CCPR/C/USA/CO/3, September 15, 2006; Barbados, CCPR/C/BRB/CO/3, May 11, 2007; Chile, CCPR/C/CHL/CO/5, May 18, 2007.

<sup>3</sup> *Dudgeon v United Kingdom*, Series A no. 45., 1981; *Norris v Ireland*, 1991; *Modinos v Cyprus*, 1993.

<sup>4</sup> *National Coalition for Gay and Lesbian Equality and another v Minister of Justice and others*, 1998.

confirms the obligation of States to “repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity.”

Principle 6 of the Yogyakarta Principles affirms the right of all persons, regardless of sexual orientation or gender identity, to the enjoyment of privacy without arbitrary or unlawful interference, and confirms States’ obligation to “repeal all laws that criminalise consensual sexual activity among persons of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity.”<sup>5</sup> The Principles also call on States to “ensure that criminal and other legal provisions of general application are not applied to *de facto* criminalise consensual sexual activity among persons of the same sex who are over the age of consent.”

The **UN High Commissioner for Human Rights** has welcomed the Yogyakarta Principles as a “timely reminder” of the basic tenets of universality and non-discrimination, and noted that “respect for cultural diversity is insufficient to justify the existence of laws that violate the fundamental rights to life, security and privacy by criminalizing harmless private relations between consenting adults.”<sup>6</sup>

**Recommendation:**

We therefore recommend that the Human Rights Council, in its upcoming review, urge Tunisia to bring its legislation into conformity with its international human rights obligations by repealing all provisions which criminalise sodomy or other sexual activity between consenting adults.

**This information is submitted jointly by:**

- **ILGA** (International Lesbian and Gay Association), a global federation of over 600 lesbian, gay, bisexual, transgender and intersex (“LGBTI”) groups in over 90 countries;
- **ILGA-Europe**, an NGO with ECOSOC consultative status that is recognized by the EU, COE and OSCE;
- **Pan African ILGA**, which brings together LGBTI activists from 16 countries in Africa and recently elected a board with representatives from all five African regions (Northern, Western, Central, Eastern and Southern): Algeria, Morocco, Senegal, Nigeria, Cameroon, Rwanda, Uganda, Kenya, Namibia, Mozambique and South Africa;
- **Coalition of African Lesbians**, an independent, non-profit organisation with a membership comprising organisations in Africa that work to support the struggle of lesbian women for equality;
- **the rainbow project (trp)**, the national LGBTI organisation in Namibia which advocates for full and equal opportunities for LGBTI people;
- **International Gay and Lesbian Human Rights Commission**, a non-profit NGO with an African regional office which seeks to secure the full enjoyment of the human rights of all people and communities subject to discrimination or abuse on the basis of sexual orientation or expression, gender identity or expression, and/or HIV status;
- **ARC International**, an NGO with a full-time presence in Geneva which engages with the UN Human Rights Council and related mechanisms to advance respect for human rights, including on the grounds of sexual orientation and gender identity.

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<sup>5</sup> Available in all 6 UN languages at: [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org)

<sup>6</sup> Statement of UN High Commissioner for Human Rights, Launch of the Yogyakarta Principles, 7 November, 2007, United Nations, New York.