

**APPEAL TO UN SPECIAL PROCEDURES**  
**RE: Recent surge in homophobic and transphobic violence worldwide**

18 September 2013

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**Mr. Christof Heyns**, Special Rapporteur on extrajudicial, summary or arbitrary executions ([eje@ohchr.org](mailto:eje@ohchr.org))

**Mr. Juan Mendez**, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment ([sr-torture@ohchr.org](mailto:sr-torture@ohchr.org))

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**Introduction: recent surge of cases of violence and discrimination against LGBT people**

Over the last 3 months, numerous cases of extreme violence and killings of LGBT people have been documented. The undersigned organisations are concerned that reporting of such cases reflects a surge in violations based on sexual orientation and gender identity worldwide. Meanwhile, some governments continue to deny that the human rights of all persons should be protected, regardless of sexual orientation and gender identity, and indeed, new legislation restricting the human rights of LGBT persons is being passed in some countries.

Examples of recent cases include:

**CASE 1:** During the night and early morning of 21/22 July 2013, 16-year-old Dwayne Jones dressed in traditionally female attire and went to a popular street party in the parish of St. James, in Jamaica. Dwayne was identified by a female partygoer who recognized the teen and told some of the other patrons that Dwayne was male. A man accosted and searched Dwayne and discovered the teen's biological sex. Dwayne was stabbed and shot and dumped in nearby bushes. Police discovered his body at 5 a.m. on the morning of July 22.

**CASE 2:** Eric Ohena Lembembe, an LGBTI human rights activist and journalist was found dead at his home in Yaoundé, Cameroon on the evening of July 15 2013. Lembembe's friends and activist colleagues went to his home on Monday evening after being unable to reach him by telephone for two days, and discovered his body. They found his front door padlocked on the outside, but could see Lembembe's body lying on his bed through the window. Lembembe's friends alerted the police, who broke down the door. According to one friend, Lembembe's neck and feet appeared to have been broken, and his face, hands, and feet had been burned with an iron.

**CASE 3:** Iranti-Org documented the brutal murder of Duduzile Zozo, a 26-year-old gender non-conforming lesbian, who was killed in Thokoza, South Africa, on 29<sup>th</sup> June 2013. Dudzile's body was found on the morning of Sunday, 30 June 2013, in Serema Street, Thokoza, Ekurhuleni in her neighbour's yard. Her pants were down to her ankles, she had one shoe on and the other shoe was further from her body. A toilet brush was forced into her vagina. A large concrete brick was found next to her body. Duduzile was the only breadwinner for her family. The owner of the property where Duduzile's body was found was taken into questioning by the police but has since been released.<sup>1</sup>

**CASE 4:** A 24-year-old trans woman, named Dora, was stabbed to death at her home on 9 July 2013 in the province of Kuşadası in Turkey. Dora was found dead by her housemate. After an investigation, police found Dora's murderer, Serdar Özdemir, and took him into custody. He claimed that he went to Dora's house as a customer and after sex they had an argument and he killed Dora. Local organisations confirmed that Dora was working as a sex worker.

**CASE 5:** On July 23 2013, Gian Carlos Romero Garizabalo (known as Wisin), a 25 year old trans woman was murdered in La Chinita, Barranquilla, Colombia. The incident occurred at 4:00am on 14th Street with 21 Avenue where Wisin was talking to others. At this time two men on a motorcycle fired a gun at her head. Seriously injured, she was taken to the general hospital of Barranquilla where she passed away at 6:20a.m. She is one of 11 murders that have been documented against LGBT people in the region in 2013.

**CASE 6:** Islan Nettles, a 21-year-old transgender woman, died following brutal attacks when she was walking in Harlem, New York on August 17 with a friend. According to police, Nettles and a friend were approached by a group of men who began hurling transphobic insults and throwing punches after realizing the women were transgender. Nettles spent her final days in a coma and died on August 22 after being taken off life support. On August 23, the Medical Examiner's Office ruled the death a homicide caused by "blunt force trauma." The police are investigating the case as a hate crime, and a suspect has been arrested.

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## **State obligations and commitments under international law**

Numerous applicable international human rights instruments affirm:

- The right to life and security;<sup>2</sup>
- The right to be free from torture or cruel, inhuman or degrading treatment;<sup>3</sup> and
- The right to be free from discrimination, including in the enjoyment of all other human rights;<sup>4</sup>

### a) The right to life and security

Articles 6 and 9 of the ICCPR guarantee to all the rights to life and security. The right to security places an obligation upon the state to protect individuals against threats of physical violence. The UN Human Rights Committee has criticized States' failure to protect people from sexual orientation-based violence:

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<sup>1</sup> Video documentation on the murder of Dudzile Zozo by Iranti-Org: <http://www.youtube.com/watch?v=2X8BYIsoubg>

<sup>2</sup> UDHR, Article 3; ICCPR, Articles 6 and 9; CRC, Article 6.

<sup>3</sup> UDHR, Article 5; ICCPR, Article 7; CRC, Article 37; CAT, Article 2(1)

<sup>4</sup> UDHR, Articles 1,2 and 7; ICCPR, Articles 2 and 26; ICESCR, Article 2; CRC, Article 2.

The Committee expresses concern at the incidents of people being attacked, or even killed, on account of their sexual orientation (art. 9), at the small number of investigations mounted into such illegal acts, and at the current provisions (such as the local “contravention orders”) used to discriminate against people on account of their sexual orientation (art. 26). The State Party should provide effective protection against violence and discrimination based on sexual orientation.<sup>5</sup>

#### b) Protection against torture, or cruel, inhuman, or degrading treatment

Article 7 of the ICCPR protects against torture or “cruel, inhuman or degrading treatment or punishment”. The ICCPR and the CAT detail States obligations to enforce the prohibition, including the duty to investigate, prosecute, and provide effective remedies when violations occur.<sup>6</sup> The UN Human Rights Committee has also made clear that the duty to protect people against torture or inhuman treatment extends not only to acts by government officials, such as police, but also to acts inflicted by people in a private capacity.<sup>7</sup>

The UN Human Rights Committee has outlined States obligations regarding article 7:

The Committee is concerned at reports of discrimination, bullying, homicide, ill-treatment, torture, sexual aggression and sexual harassment against persons because of their sexual orientation or gender identity. The Committee also regrets the lack of information on the effective investigation and punishment of such acts (arts. 3, 6, 7 and 26).

The State party should indicate clearly and officially that it shall not tolerate any form of social stigmatization of homosexuality, bisexuality or transsexuality, and harassment, discrimination or violence against persons because of their sexual orientation or gender identity. The State party should ensure that any discriminatory or violent acts motivated by the sexual orientation or gender identity of the victim are investigated, prosecuted and punished.<sup>8</sup>

The UN Committee Against Torture has raised concern about torture, or cruel, inhuman, or degrading treatment against LGBT persons in a number of its Concluding Observations.<sup>9</sup>

#### c) The right to be free from discrimination

Article 2 of the ICCPR requires that a state “ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind.” Article 26 of the ICCPR guarantees that all persons are equal before the law and entitled to equal protection of the law. The UN Human Rights Committee has made clear on several occasions that sexual orientation is a status protected against discrimination under these provisions.<sup>10</sup>

<sup>5</sup> Concluding Observations, CCPR/CO/78/SLV (2003), para.16: El Salvador

<sup>6</sup> See for example Communication no. 322/1988, *Rodriguez v Uruguay*, adopted July 14, 1994; 328/1988, *Blanco v Nicaragua*, adopted July 20, 1994; 1096/2002, *Kurbanov v Tajikistan*, adopted November 6, 2003.

<sup>7</sup> Human Rights Committee, “General Comment 20, Article 7” (Forty-fourth session, 1992), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994).

<sup>8</sup> Concluding Observations, CCPR/C/DOM/CO/5 (2012), para.16: Dominican Republic

<sup>9</sup> See for example Concluding Observations, CAT/C/PER/CO/5-6, 21 January 2013: Peru; Concluding Observations, CAT/C/NOR/CO/6-7, 13 December 2012: Norway; Concluding Observations, CAT/C/RUS/CO/5, 11 December 2012: Russian Federation; Concluding Observations, CAT/C/ARM/CO/3, 16 July 2012: Armenia; Concluding Observations, CAT/C/PRY/CO/4-6, 14 December 2011: Paraguay; Concluding Observations, CAT/C/KWT/CO/2, 28 June 2011: Kuwait.

<sup>10</sup> See *Toonen v Australia*, Communication no. 488/1992, adopted April 4, 1994; *Young v Australia*, Communication no. 941/2000, adopted September 18, 2003. The Human Rights Committee has also urged states to pass anti-discrimination legislation that expressly includes sexual orientation and to prohibit in their constitutions all discrimination based on sexual orientation and gender identity. Human Rights Committee, “Concluding Observations: Slovakia,” CRC/C/SVK/CO/2, June 8, 2007, para. 28; “Concluding Observations: Namibia,” CCPR/CO/81/NAM, July 30, 2004, para. 22; Concluding Observations: Trinidad and Tobago, CCPR/CO/70/TTO, November 3, 2000, para. 11; “Concluding Observations: Poland,” 66th Session, CCPR/C/79/Add.110, para. 23.

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## **Appeal to Special Procedures**

The undersigned non-governmental organizations appeal to the Special Procedures mandate-holders to take the following actions:

1. Issue a joint public statement calling on the United Nations Human Rights Council to openly condemn all killings based on sexual orientation and gender identity;
2. Hold States accountable for failing to take steps to address homophobia and transphobia and to comply with their obligations under international law to promote and protect the human rights of all, regardless of sexual orientation or gender identity.
3. Call States to ensure that prompt, independent and effective investigations are undertaken into all allegations of acts of violence, including those suspected of being motivated on the grounds of sexual orientation or gender identity.
4. Call States to ensure that the investigations result in the identification and prosecution of individuals responsible for such attacks and that any conviction leads to the imposition of appropriate sanctions.
5. Call on States and the relevant UN bodies to work with civil society organizations to undertake comprehensive public awareness-raising and sensitivity campaigns on sexual and gender diversity that condemn anti-LGBT violence and promote respect for the human rights of all people, regardless of sexual orientation or gender identity.

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### **Submitted by:**

AIDS Free World

ARC International

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Caribe Afirmativo

IGLHRC – International Gay and Lesbian Human Rights Commission

ILGA - International Lesbian, Gay, Bisexual, Trans and Intersex Association

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