



**CONSIDERATION OF REQUESTS FOR THE
INCLUSION OF AN EMERGENCY ITEM IN THE ASSEMBLY AGENDA**

**Request for the inclusion of an emergency item
in the agenda of the 128th Assembly of the Inter-Parliamentary Union
submitted by the delegation of New Zealand**

On 26 February 2013, the Secretary General received from the delegation of New Zealand a request for the inclusion in the agenda of the 128th Assembly of an emergency item entitled:

"That homosexuals are entitled to full rights of citizenship. It is the role of parliaments to pass legislation that decriminalizes homosexuality and homosexual acts between consenting adults".

Delegates to the 128th Assembly will find attached the text of the communication submitting the request (Annex I), as well as an explanatory memorandum (Annex II) and a draft resolution (Annex III) in support thereof.

The 128th Assembly will be required to take a decision on the request of the delegation of New Zealand on Saturday, 23 March 2013.

Under the terms of Assembly Rule 11.1, any Member of the IPU may request the inclusion of an emergency item in the Assembly agenda. Such a request must be accompanied by a brief explanatory memorandum and a draft resolution which clearly define the scope of the subject covered by the request. The Secretariat shall communicate the request and any such documents immediately to all Members.

Furthermore, Assembly Rule 11.2 stipulates that:

- (a) A request for the inclusion of an emergency item must relate to a major event of international concern on which it appears necessary for the IPU to express its opinion. Such a request must receive a two-thirds majority of the votes cast in order to be accepted;
- (b) The Assembly may place only one emergency item on its agenda. Should several requests obtain the requisite majority, the one having received the largest number of positive votes shall be accepted;
- (c) The authors of two or more requests for the inclusion of an emergency item may combine their proposals to present a joint one, provided that each of the original proposals relates to the same subject;
- (d) The subject of a proposal that has been withdrawn by its authors or rejected by the Assembly cannot be included in the draft resolution submitted on the emergency item, unless it is clearly referred to in the request and title of the subject adopted by the Assembly.

**COMMUNICATION ADDRESSED TO THE SECRETARY GENERAL BY
THE LEADER OF THE NEW ZEALAND DELEGATION**

Auckland, 22 February 2013

Dear Mr. Secretary General,

In accordance with the relevant rules of the Inter-Parliamentary Union, specifically Assembly Rule 11.1, the New Zealand delegation wishes to submit a request for the inclusion of an emergency item in the agenda of the 128th IPU Assembly, which will take place in Quito (Ecuador) from 22 to 27 March 2013, entitled:

"That homosexuals are entitled to full rights of citizenship. It is the role of parliaments to pass legislation that decriminalizes homosexuality and homosexual acts between consenting adults".

Please find attached an explanatory memorandum and draft resolution in support of this request.

Yours sincerely,

(signed)

Hon. Tau HENARE
Leader of the New Zealand delegation

THAT HOMOSEXUALS ARE ENTITLED TO FULL RIGHTS OF CITIZENSHIP. IT IS THE ROLE OF PARLIAMENTS TO PASS LEGISLATION THAT DECRIMINALIZES HOMOSEXUALITY AND HOMOSEXUAL ACTS BETWEEN CONSENTING ADULTS

Explanatory Memorandum submitted by the delegation of New Zealand

On 26 October 2012, the 127th IPU Assembly unanimously adopted the Québec City Declaration, which states:

- "1. We, members of parliament gathering in Québec City on the occasion of the 127th Assembly of the Inter-Parliamentary Union, firmly uphold cultural, linguistic, ethnic, racial, political and religious diversity as a global value which should be celebrated, respected, encouraged and protected within and among all societies and civilizations.
2. We are convinced that a diversity of ideas, values, beliefs, languages and cultural expressions among peoples and civilizations enriches our outlook and experiences at the national, regional and international levels.
3. We affirm our aspiration to attain harmony and unity in our diversity and the reconciliation of human cultures. We believe that a world where people with their differences co-exist is possible, one where there is awareness of differential solidarity and where a dialogue of civilizations is encouraged. Such a world, which depends on our mutual understanding and acceptance, would be a source of progress for humanity and would lead to the well-being of our global society.
4. All individuals must be allowed the full enjoyment of their equal and inalienable rights recognized in the Universal Declaration of Human Rights and other international human rights and humanitarian law treaties and standards. Limitations or restrictions on any of these rights must be consistent with international law, necessary and proportionate. They should not lead to any discrimination whatsoever based on culture, race, colour, language, ethnicity, religion, sex, sexual orientation or political affiliation."

We wish to highlight in particular the commitment to ensuring that legislative limitations or restrictions should not lead to any discrimination based on sex or sexual orientation.

In addition, the justification for this emergency item is contained in the publication, *Born Free and Equal: Sexual Orientation of Gender Identity in International Human Rights Law*.¹ This report draws on documented violations of the human rights of lesbian, gay, bisexual, transgender and intersex people, analyses State compliance with international human rights law and recognizes that passing laws that decriminalize homosexuality should be a priority.

¹ UN Office of the High Commissioner for Human Rights, September 2012, HR/PUB/12/06, available at: <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf> [accessed 13 February 2013].

The five priorities identified through the recommendations arising from the report, *Born Free and Equal*, are as follows:²

1. Protect people from homophobic and transphobic violence;
2. Prevent the torture and cruel, inhuman and degrading treatment of LGBT persons in detention by prohibiting and punishing such acts and ensuring that victims are provided with redress;
3. Repeal laws criminalizing homosexuality, including all laws that prohibit private sexual conduct between consenting adults of the same sex;
4. Prohibit discrimination on the basis of sexual orientation and gender identity;
5. Safeguard freedom of expression, association and peaceful assembly for LGBT and intersex people.

Laws that criminalize homosexuality give rise to a number of separate but interrelated violations of an individual's right to be free from discrimination. Enshrined in Article 2 of the Universal Declaration of Human Rights³ and other core international human rights treaties is a person's right to be free from discrimination. These treaties and human rights instruments also protect a person against unreasonable interference with their privacy⁴ and arbitrary detention.⁵ On 18 December 2008, the United Nations General Assembly issued a Statement on Human Rights, Sexual Orientation and Gender Identity urging all States to take necessary measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties, in particular executions, arrests or detention.

Furthermore, laws that impose the death penalty for sexual conduct violate a person's right to life, as guaranteed by Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Such laws, even if they are never enforced, breach State obligations under international human rights law.

There are at least 76 countries that have laws which, in effect, are used to criminalize consensual sex between adults of the same sex. Furthermore, the criminalization of private, consensual sex between adults of the same sex breaches a State's obligation to protect individual privacy and guarantee non-discrimination as set out in international law. This has been the consistent position of United Nations human rights experts since 1994, when views regarding the *Toonen v Australia* case were adopted by the United Nations Human Rights Committee.⁶

The *Toonen v Australia* case concerned a challenge to laws in the Australian State of Tasmania criminalizing consensual same-sex sexual conduct. The UN Human Rights Committee found that adult consensual sexual activity in private is covered by Article 17 of the ICCPR and that the mere existence of that criminal law "continuously and directly 'interferes' with [Mr Toonen's] privacy".⁷ The Committee further concluded that Tasmania's laws did not

² Ibid, page 13.

³ Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁴ Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights.

⁵ Article 9 of the Universal Declaration of Human Rights and Article 9 of the International Covenant on Civil and Political Rights.

⁶ *Toonen v Australia*, Communication No. 488/1992/U.N. Doc CCPR/C/50/D/488/1992 [1994].

⁷ Ibid, paragraph 8.2.

achieve the aim of protecting public health and were not necessary to protect public morals⁸, and noted that all laws criminalizing homosexuality had been repealed throughout Australia and that Tasmanian law “arbitrarily interfered with Mr Toonen’s rights”.⁹

Since the Toonen vs Australia ruling, UN human rights treaty bodies have repeatedly urged States to reform laws criminalizing homosexuality or sexual conduct between same-sex partners. They have also welcomed legislative or judicial repeal of such laws.

There is concern that in five countries,¹⁰ as well as some regions of at least two other countries, the death penalty may be applied for homosexuality-related offences.¹¹ The imposition of the death penalty gives rise to a separate violation under Article 6 of the ICCPR and Article 3 of the Universal Declaration of Human Rights, which provides that in countries which have not abolished the death penalty, this provision can only be applied for the most serious crimes. We contend that consensual same-sex sexual conduct does not meet any test or definition of serious crimes.

For almost two decades, human rights treaty bodies, special rapporteurs and other experts appointed by the Human Rights Council have documented widespread violations of the human rights of lesbian, gay, bisexual, transgender and intersex people. Reported violations include killings, rape and physical attacks, torture, arbitrary detention, denial of the right to freedom of assembly, expression and information, and discrimination in employment, health, education and access to goods and services. In each case, the victims were targeted because they are, or are assumed to be, lesbian, gay, bisexual, transgender and intersex people. Often, the mere perception of homosexuality or transgender identity is enough to place people’s lives and well-being at risk of injury or death.

In recent years, many countries have made a determined effort to either strengthen or implement legislation to recognize the rights and protect the lives and well-being of lesbian, gay, bisexual, transgender and intersex people. This includes the adoption of laws banning discrimination, penalizing homophobic hate crimes, granting recognition of same-sex relationships and removing procedural barriers so transgender individuals can obtain official documents that reflect their preferred gender identity. In addition, training programmes have been developed for police, prison staff, teachers, social workers and other personnel, and anti-bullying initiatives have been implemented in many schools.

Despite international efforts more needs to be done urgently to deal with the prejudice, and address the humanitarian situation of violence and discrimination affecting lesbian, gay, bisexual, transgender and intersex people around the world. There are important international principles at stake, including our collective responsibility to protect all of our citizens, including lesbian, gay, bisexual, transgender and intersex people, and to prevent the continuation of human rights violations perpetrated against them on a daily basis.

There is some concern that the recent introduction of proposed anti-homosexual legislation by some IPU Members¹², which includes the death penalty, directly contravenes the rights of lesbian, gay, bisexual, transgender and intersex people. We all made a commitment to

⁸ Ibid, paragraph 8.6.

⁹ Ibid, paragraph 8.6.

¹⁰ Islamic Republic of Iran, Mauritania, Saudi Arabia, Sudan and Yemen.

¹¹ See Ottosson D. State-sponsored Homophobia: A world survey of laws prohibiting same sex activity between consenting adults. ILGA: Brussels, April 2007.

¹² Nigeria, Liberia and Uganda.

contribute to the defence and promotion of human rights – an essential factor of parliamentary democracy and development, when our respective governments joined the IPU.

Current legislation, as well as bills that are being developed or considered by governments, represent a significant breach of human rights. Furthermore, these laws challenge the fundamental principles of equality and non-discrimination enshrined in human rights instruments such as the United Nations Declaration of Human Rights. The entire membership of the IPU has an obligation and primary role to provide the context for constructive dialogue and to support the continued development of a comprehensive process for global homosexual law reform.

The New Zealand IPU delegation therefore requests that an emergency item entitled "That homosexuals are entitled to full rights of citizenship. It is the role of parliaments to pass legislation that decriminalizes homosexuality and homosexual acts between consenting adults" be included in the agenda of the 128th IPU Assembly.

THAT HOMOSEXUALS ARE ENTITLED TO FULL RIGHTS OF CITIZENSHIP. IT IS THE ROLE OF PARLIAMENTS TO PASS LEGISLATION THAT DECRIMINALIZES HOMOSEXUALITY AND HOMOSEXUAL ACTS BETWEEN CONSENTING ADULTS

Draft resolution submitted by the delegation of NEW ZEALAND

The 128th Assembly of the Inter-Parliamentary Union,

- (1) Deeply concerned at the recent legislative developments in Nigeria and Liberia, and in Uganda, where consideration is being given to legislation relating to homosexuals, which originally included the death penalty,
- (2) Noting the five priorities identified in the recommendations of the United Nations Commissioner for Human Rights in her 2012 report *Born Free and Equal: Sexual Orientation of Gender Identity in International Human Rights Law*, including her statement that passing of laws that decriminalize homosexuality [be made] a priority,
- (3) Recognizing that the United Nations Declaration of Human Rights stipulates that all human beings are entitled to be born free and equal in dignity and human rights and that the implementation and administration of the International Covenant on Civil and Political Rights has recognised those rights without distinction on the grounds of sexual orientation and gender identity,
- (4) Recalling the statement of the United Nations General Assembly on 18 December 2008, "urging all States to take necessary measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties, in particular executions, arrests or detention",
- (5) Noting that laws that impose the death penalty and/or criminalize same-sex consensual sexual conduct violate the rights contained in human rights treaties, including the United Nations Declaration of Human Rights and the International Covenant on Civil and Political Rights,
- (6) Considering the United Nations Human Rights Committee's decision in the *Toonen v Australia* case further confirming that the criminalization of private, consensual sex between adults arbitrarily interferes with a citizen's rights,
- (7) Aware that in recent years, many IPU Members have made a determined effort to recognize the rights and protect the lives and well-being of lesbian, gay, bisexual, transgender and intersex people,
- (8) Considering the Québec City Declaration, unanimously adopted by the 127th IPU Assembly on 26 October 2012, entitled *Citizenship, Identity and Linguistic and Cultural Diversity in a Globalized World* in which the Assembly confirmed: all individuals must be allowed the full enjoyment of their equal and inalienable rights recognized in the Universal Declaration of Human Rights and other international human rights and humanitarian law treaties and standards. Limitations or restrictions on any of these rights must be consistent with international law, necessary and proportionate. They should not lead to any discrimination whatsoever based on culture, race, colour, language, ethnicity, religion, sex, sexual orientation or political affiliation,
 1. Urges parliaments to pass laws that decriminalize homosexuality and homosexual acts between consenting adults as a first step towards stopping discrimination against members of the lesbian, gay, bisexual, transgender and intersex community;
 2. Entrusts the IPU with conveying this resolution to all its Members, Associate Members and Observers and other international organizations.