Submission in the UPR review of Ethiopia

Legal and Statutory framework:

Ethiopia maintains **criminal sanctions against sexual activity between consenting adults**:

Ethiopia criminal sanctions against sexual activity between consenting adults:

The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/200428
Article 629.- Homosexual and other Indecent Acts.
"Whoever performs with another person of the same sex a homosexual act, or any other indecent
act, is punishable with simple imprisonment."
Article 630.- General Aggravation to the Crime.
"(1) The punishment shall be simple imprisonment for not less than one year, or, in grave cases, rigorous imprisonment not exceeding ten years, where the criminal:
a) takes unfair advantage of the material or mental distress of another or of the authority he exercises over another by virtue of his position, office or capacity as guardian, tutor, protector, teacher, master or employer, or by virtue of any other like relationship, to cause such other person to perform or to submit to such an act; or
b) makes a profession of such activities within the meaning of the law (Art. 92).
(2) The punishment shall be rigorous imprisonment from three years to fifteen years, where:
a) the criminal uses violence, intimidation or coercion, trickery or fraud, or takes unfair advantage of the victim's inability to offer resistance or to defend himself or of his feeblemindedness
or unconsciousness; or
b) the criminal subjects his victim to acts of cruelty or sadism, or transmits to him a venereal disease with which he knows himself to be infected; or
c) the victim is driven to suicide by distress, shame or despair."

Ethiopia'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 2 of the International Covenant on Civil and Political Rights.[1]

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.[2]

This position is consistent with other **regional and national jurisprudence**, including decisions of the European Court of Human Rights[3] and of the Constitutional Court of South Africa.[4]

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[1] *Toonen* v *Australia*, CCPR/C/50/D/488/1992, April 4, 1994.
[2] 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; BArabdos, CCPR/C/BRB/CO/3, May 11, 2007; Chile, CCPR/C/CHL/CO/5, May 18, 2007.

Ethiopia has acceded to **ICCPR**. In the Concluding observations upon the review of Sudan, the Human Rights Committee found that the death penalty for homosexual acts is incompatible with the ICCPR:
"The imposition in the State party of the death penalty for offences which cannot be characterized as the most serious…as well as practices which should not be criminalised such as committing a third homosexual act and illicit sex, is incompatible with article 6 of the Covenant […] The State party should ensure that the death penalty, if used at all, should be applicable only to the most serious crimes…and should be repealed for all other crimes."[5];

Also the UN **Commission on Human Rights** in 2005 in the Resolution on the death penalty found that the death penalty for homosexual acts is incompatible with human rights principles: "…ensure also that the notion of "most serious crimes" does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as…sexual relations between consenting adults…[6]"

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 Asia-Pacific. 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 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."[7] 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 current **UN High Commissioner for Human Rights**, Mrs. Navanethem Pillay, High Commissioner for Human Rights in an intervention made at the High-level Meeting on Human Rights, Sexual Orientation and Gender Identity, United Nations (New York) Thursday, 18 December 2008 stated: "there are those who argue that because sexual orientation or gender identity are not explicitly mentioned in any of the conventions and covenants, there would be no protection. My response is that such a position is untenable in legal terms, which is confirmed by the evolving jurisprudence. The principle of universality admits no exception. Human rights truly are the birthright of all human beings. (…) Sadly, … there remain too many countries which continue to criminalize sexual relations between consenting adults of the same sex in defiance of established human rights law. Ironically many of these laws, like Apartheid laws that criminalized sexual relations between consenting adults of different races, are relics of the colonial era and are increasingly becoming recognized as anachronistic and as inconsistent both

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[3] *Dudgeon* v *United Kingdom*, *Series A no. 45.,* 1981; *Norris* v *Ireland*, 1991; *Modinos* v *Cyprus*, 1993.
[4] *National Coalition for Gay and Lesbian Equality and another v Minister of Justice and others,* 1998.
[5]Human Rights Committee, Concluding observations of the Human Rights Committee: Sudan, U.N. Doc. CCPR/C/SDN/CO/3/CRP.1, 26 July 2007, para. 19
[6] CHR, Resolution on the death penalty, U.N. Doc. E/CN.4/RES/2005/59, 20 April 2005, para. 7 (f):
[7] Available in all 6 UN languages at: www.yogyakartaprinciples.org.

with international law and with traditional values of dignity, inclusion and respect for all… It is our task and our challenge to move beyond a debate on whether all human beings have rights – for such questions were long ago laid to rest by the Universal Declaration – and instead to secure the climate for implementation… Those who are lesbian, gay or bisexual, those who are transgender, transsexual or intersex, are full and equal members of the human family, and are entitled to be treated as such."

Recommendation:

We therefore recommend that the Human Rights Council, in its upcoming review, urge Ethiopia 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, Gay, Bisexual, Trans and Intersex Association), a global association of over 600 lesbian, gay, bisexual, transgender and intersex ("LGBTI") groups in over 110 countries
- **ILGA-Europe**, an NGO with ECOSOC consultative status that is recognized by the EU, COE and OSCE;
- **Pan Africa ILGA** brings together 41 lesbian, gay, bisexual, trans and intersex groups proceeding from all regions of Africa. It recently elected a board with representatives.
- **International Gay and Lesbian Human Rights Commission**, a non-profit NGO 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.