

## UN COMMISSION ON HUMAN RIGHTS, 2003

### NGO PANEL PRESENTATION

#### SEXUAL MINORITIES

##### **Presentation by Paul Hunt, UN Special Rapporteur on the Right to Health**

May I warmly welcome the establishment of International Research Council on Social Minorities, which has convened this panel today.

I would like to take this opportunity to talk generally about the right to health of sexual minorities, as well as looking more specifically at the right to health of children in this context. I will draw on my experience as a member of the UN Committee on Economic, Social and Cultural Rights from 1999-2002.

I will confine my remarks to the issue of the right to health. However, the rights of sexual minorities are addressed in numerous human rights provisions, and in the work of several human rights mechanisms, which address human rights violations including torture, violence and the right to privacy and freedom of expression.

##### **The right to health and the prohibition of discrimination on grounds of sexual orientation**

Right to health issues associated with sexual minorities fall directly within one of the two main themes I propose to address over the course of my mandate, namely the impact of stigma and discrimination on the right to health.

Non-discrimination and equality are fundamental principles of human rights law. Non-discrimination provisions are found in all international human rights treaties. Sexual orientation has been recognised as a prohibited ground of discrimination, although it is not mentioned in the text of the treaties themselves.

For example, in General Comment 14 on the Right to Health, CESCR recognised sexual orientation as a prohibited ground of discrimination and, in my preliminary report as Special Rapporteur (E/CN.4/2003/58, 13 February 2003), it is this definition of discrimination that I have expressly adopted.

In a case considered by the Human Rights Committee, *Toonen v Australia*, the Committee held that discrimination on grounds of sexual orientation was part of discrimination on account of sex.

The Committee on the Rights of the Child has also explicitly addressed the need for support of lesbian, gay, bisexual and transgender youth to live their lives free of discrimination.

However, the reality is that sexual minorities face discrimination and stigmatisation. While discrimination and stigma are multifaceted, at the most basic level, same-sex relations are still criminalized in about 70 countries.

Homophobia and related discrimination has a tangible impact on mental health, and this is particularly the case in relation to young people who are, or are perceived to be, gay, lesbian or

transgender. This is manifested in significantly higher suicide rates compared to heterosexual adolescents. There are studies drawing attention to this phenomenon.

However, studies on suicide do not usually disaggregate data beyond the categories of male and female and do not usually take into account sexual orientation, so it is difficult to get a sense of the full picture. I emphasise the importance of disaggregating data on grounds of sexual orientation and gender identity, as well as other grounds of prohibited discrimination, which is essential for a rights-based approach to these issues.

Discrimination also means that sexual minorities frequently do not have adequate information, support or protection to enable them to live their sexual orientation. The Committee on the Rights of the Child noted this as a concern in its Concluding Observations on the UK in 2002. Frequently, the lack of access to information, support and protection has a negative impact on the right to health of sexual minorities.

A further issue related to discrimination is its impact on the right to health of transsexuals. Transsexuality is an illness requiring the provision of specific medical services and necessary protection enabling them to live their gender identity. But non-recognition means that in many cases protection and appropriate treatment is unavailable.

### **Forced medical treatment**

In my preliminary report, I drew attention to the right to be free from non-consensual medical treatment and experimentation. This prohibition is found in the International Covenant on Civil and Political Rights, and the UN Principles on the Protection of Persons with Mental Illnesses and the Improvement of Mental Healthcare, and it is also referred to in General Comment 14 on the Right to Health.

Lesbians and transsexuals are often subjected to psychiatric treatment on account of the misperception that their sexual orientation can or should be treated or cured.

However, medical opinion accepts that psychotherapy to encourage sexual minorities to conform to a heterosexual norm is not effective and is ethically unacceptable. It is also contrary to their human rights. I am deeply concerned about the involvement of health professionals in this practice.

### **Violence, and torture and other inhumane and degrading treatment and punishment**

In some countries, lesbians, gay men and transgender or bisexual people are tortured at the hands of the State on account of their sexual identity. This has been widely documented by human rights organizations, including Amnesty International. This pattern of abuse includes cruel, inhumane and degrading punishment for consensual same-sex relationships or transgender behaviour, and ill-treatment in prisons, state medical institutions and the armed forces.

Torture, and other cruel, inhumane and degrading treatment and punishment is part of a wider pattern of violence against sexual minorities, which is instigated within their homes, workplaces, schools or communities. Sexual minorities are at particular risk of violence on account of the stigma and discrimination associated with the sexual orientation.

Torture and violence are violations of international human rights law. The relationship between torture and violence on the one hand and the right to health on the other is clear.

### **Children's rights and sexual minorities**

I would finally like to pay attention to the right to health of children in relation to their sexual orientation. Children, in particular adolescents who identify themselves, or whom others identify, as lesbian, gay, bisexual or transgender, are subject to many of the same violations of their human rights to health as adult sexual minorities. Their position in society, and stage of mental and physical development, often means that adolescents, and in particular homosexual or transgender adolescents, are particularly vulnerable to violations of their right to health.

I have already drawn attention to the disproportionate suicide rates among sexual minorities during adolescence. Also, children thought to be gay, lesbian or transgender are among the most vulnerable to violence in the school and in their families. The Convention on the Rights of the Child obliges States parties to take "all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence".

### **Conclusion**

The Special Rapporteur on the right to health is a new mechanism established by the UN Commission on Human Rights only last year. While my preliminary report begins to define the scope of the Special Rapporteur, the mandate remains at a formative stage. So today's panel is very timely. I have learnt a lot. May I warmly thank the organisers and all the panellists.

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