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Lesbian, gay, bisexual and transgender (LGBT) people at risk in Nicaragua

TAKE ACTION!**AI Index: AMR 43/001/2006**

In spite of positive initiatives across the Americas, Nicaragua continues to criminalise consensual same-sex sexual relations.

Although to Amnesty International's knowledge no one has to date been prosecuted under Article 204 of the Nicaraguan Penal Code, it potentially criminalizes not only gay men, lesbians and bisexual people in same-sex relationships, but is vague enough to permit the prosecution of individuals for activities such as campaigning for LGBT rights or anyone providing sexual health information or services. Anyone imprisoned under this law would be considered by Amnesty International to be a prisoner of conscience.

“Anyone who induces, promotes, propagandizes or practices in scandalous form sexual intercourse between persons of the same sex commits the crime of sodomy and shall incur 1 to 3 years' imprisonment”. Article 204

Amnesty International considers the use of “sodomy” laws to imprison individuals for same-sex relations in private is a grave violation of human rights. Article 204 contradicts numerous provisions in international human rights law. The International Covenant on Civil and Political Rights (ICCPR), to which Nicaragua acceded without reservations in 1980, protects the rights to freedom of expression (article 19), freedom from arbitrary interference with the right to privacy (article 17) and freedom of conscience (article 18). It affirms the equality of all people before the law and the right to freedom from discrimination (articles 2 and 26). In the landmark 1994 case of *Toonen v Australia*, the United Nations Human Rights Committee, which monitors states' compliance with the ICCPR, held that sexual orientation should be understood to be a status protected from discrimination under these articles. States cannot limit the enjoyment of human rights on the basis of sexual orientation. The UN Human Rights Committee has since urged states not only to repeal laws criminalizing homosexuality but also to enshrine the prohibition of discrimination based on sexual orientation into their constitutions or other fundamental laws. Discrimination on the basis of sexual orientation is also prohibited under other international human rights treaties to which Nicaragua is a state party.

Background information

On 11 June 1992 the Nicaraguan National Assembly approved a number of amendments to the Penal Code regarding sexual offences. Article 204 of the Penal Code, in its amended version, established the crime of “sodomy”. The new law came into force in September 1992.

In November 1992 a coalition known as the Campaign for Sexuality without Prejudices, comprising, amongst others, lawyers and lesbian and gay activists, presented an appeal to the Supreme Court of Justice, challenging the law as unconstitutional. The appeal presented detailed arguments stating that Article 204 of the revised Penal Code violated 12 articles of

the Nicaraguan constitution, including the right to privacy, to freedom of expression and to non-discrimination before the law. It also argued that by violating these rights, Article 204 contravened international human rights standards. In March 1994, the Supreme Court rejected the appeal, concluding that Article 204 did not violate any of the rights guaranteed in the Constitution.

Recent reports in the media and from human rights activists in Nicaragua indicate that President Enrique Bolaños has allegedly ordered that a list of all members of his government “suspected” of being part of the “gay-lesbian world” be compiled so he can dismiss them before leaving office in January 2007 following the November 2006 election. Amnesty International believes that such high-level homophobia gives official sanction to acts of violence committed against LGBT people.

WHAT YOU CAN DO

RECOMMENDED ACTION:

Please send letters, in Spanish or your own language:

- State that the majority of countries in the Americas region have decriminalised homosexuality;
- Reminding the authorities that all people are equal before the law and that they are obligated to ensure that the human rights of every individual in Nicaragua are fully respected, regardless of their sexual orientation or gender identity;
- Urging the Nicaraguan government to repeal article 204 of the Penal Code and decriminalize homosexuality, in line with international human rights standards;
- Stating that no-one should be imprisoned or detained solely for their real or perceived sexual orientation or gender identity, including for same-sex sexual relations between consenting adults in private, for advocating LGBT rights, or for their political beliefs or activities under the pretext of charges of homosexuality.
- Call on President Bolaños to retract his homophobic statements and publicly commit to ensuring that national, state and local laws prohibit all forms of discrimination based on sexual orientation or gender identity.

At the end of your letters, ask for their response to the concerns you have raised.

Addresses:

Ing. Enrique Bolaños Geyer
Presidente de la República [President]
Casa Presidencial
Managua
Nicaragua
Email: Presidente@presidencia.gob.ni
Salutation: Estimado Sr. Presidente

Ing. Norman Caldera Cardenal
Ministro de Relaciones Exteriores [Minister of Foreign Affairs]
Address: Del Antiguo Cine González 1 c. al Sur sobre Avenida Bolívar
Managua
Nicaragua
Fax: (505) 228-5102, 228-5103, 222-4025
Salutation: Estimado Sr. Caldera

Eduardo Gómez, Presidente
Asamblea Nacional [Parliament]
Asamblea Nacional de la República de Nicaragua
Avenida Bolívar, Apto. Postal 4659
Managua
Nicaragua 2006.
Email: ejgomez@correo.asamblea.gob.ni
Salutation: Estimado Sr. Gómez

Please also send copies to diplomatic representatives of Nicaragua accredited to your country and the Ambassador of your country to Nicaragua.

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM