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PERMANENT MISSION OF
THE REPUBLIC OF ALBANIA
GENEVA

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The Permanent Mission of the Republic of Albania to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honor to transmit therewith Albania contributions to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association in conformity with resolution 24/5.

Furthermore, we would very much appreciate if you could notify the receipt of the present Note Verbal.

The Permanent Mission of the Republic of Albania to the United Nation Office and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



**Office of the United Nations
High Commissioner for Human Rights**

GENEVA

UNSR Thematic Report on Natural Resource Exploitation and the rights to freedom of peaceful assembly and of association

1. What are the particular challenges in your country to respecting individual's rights to freedom of peaceful assembly and of association in the context of natural resource exploitation, while also attracting investment and responsibly maximizing the State's ability to benefit from these resources? For example are all stakeholders affected by projects consulted, with their rights and concerns taken into account? Are peaceful assemblies facilitated? Are companies corporative and understanding of the need to preserve individuals peaceful assembly and association rights?

In general, in handling the discrimination cases the Commissioner of Albanian Constitution has ascertained mainly that:

Unidentified persons have exercised several cases of family violence or verbal and physical violence towards LGBT persons. There have also been submitted complaints to the Commissioner's Office from the community against police officers representatives for not providing the services required or giving assistance to those persons. Due to this fact some challenges and improvement occurred in the Constitution of Albania as it follows:

State obligations under international human rights law

The Amended Law no. 8328 "On the rights and treatment of pre-trial detainees prisoners and detainees" establishes the basic principles of treatment of persons deprived of their liberty, under which pre-trial detainees and detainees are treated without bias and without discrimination based on sex, race, color, ethnicity, language, religion, political opinion, religious or philosophical beliefs, sexual orientation, gender identity, economic status, educational or social, parental affiliation, age, family or marital state, health condition, disability, nationality or affiliation in a particular group or for any other reason constitutes discrimination. Penitentiary legislation is based on international laws that guarantee treatment with dignity and respect of human rights of pre-trial detainees and detainees in the penitentiary system.

According to the article 47 of the Constitution of the Republic of Albania it has been defined:

1. The right of peaceful assembly without weapons as well as of the participation is guaranteed.
2. The peaceful assembly in squares, public places is conducted according to the procedures foreseen by law.

Also according to the law no. 8773, dated 23.4.2001 "For assembly " are implemented the measures:

3. In the Republic of Albania each person has the right to organize and participate in peaceful assemblies and without weapons.
4. This right is limited only in the case that is endangered the national security, the public security, the protection of order and crime prevention, the protection of health and moral, and the protection of human rights and freedom.

In this law there have been defined the duties and the responsibilities of the police regarding assemblies for the implementation of their institutional duties that are dealing with the protection of the right of each person to organize and participate in peaceful assemblies, and without weapons, and that the prohibition and distribution of the assembly is permitted only in cases foreseen by this law. In any case the implementation of measures for prohibiting and distributing peaceful assembly without weapons is conducted in an escalated manner.

In the standard procedures of the Department of Public Security, there have been defined the rules and procedures that have to be followed and implemented by police leaders for planning, organizing and managing the police services to guarantee public order and security during assemblies.

Violence

Killings, rape and other acts of discriminatory violence

Penitentiary legislation prohibits any form of violence that causes deliberate vilification and discrimination of pre-trial detainees and detainees, especially because of sexual orientation or gender identity. Polices in the prison does not use force against prisoners, except where such action is necessary for self defense or in cases of attempted escape, passive or active resistance to a lawful order. Even in these cases, force is used as a last resort. The degree of force used is the minimum possible and used in the shortest time possible.

The personnel who deal directly with prisoners, is trained on the techniques that make it possible to use minimum force to ensure self-control to aggressive prisoners. The pre-trial detainees and detainees who have had experiences of physical, psychological or sexual violence, before or during the stay in the institution, are immediately offered protection measures, support and legal advice, aimed at rehabilitation.

Discrimination on Education

One of the innovations of the Law “*On Pre-University Education in the Republic of Albania*”, adopted in 2012, is that on the grounds is also included “sexual orientation” besides many other causes¹. This article, although it does not include all the protected grounds of discrimination set out in Article 1 of the Law “*On Protection from Discrimination*”. Children and teenagers learn sexual education only in two subjects during 12 school years. School curricula continue to remain very conservative in relation to issues of sexuality as a right, natural state or social issue. Sexual orientation and gender identity are not addressed in the current education system. Numerous reports from the community indicate that, not only students but also teachers are often discriminatory towards LGBT persons. In pre-university education there is not a particular subject orientated on sex education issues. Some subjects as the Biology, Civic Education and Training for Life provide knowledge dealing with attitudes for themselves, issues of gender identity, gender discrimination, sex education, sexual development during the life cycles, etc.

Addressing Issues on Health Care

¹ Article 5/1 of the Law no. 69/2012 “*On Pre-University Education in the Republic of Albania*”

LGBT community, especially transgender orientation people continue to suffer from discrimination and have difficulties in accessing health and social services.² A health condition of LGBT persons (mental and physical) remains unknown because a considerable number of the community refuses to admit publicly their sexual orientation. The only data available are the on the MSM in the framework of fighting against HIV/AIDS. European institutions emphasize the necessity that in the health plans should be included measures on health studies, training curricula and health policy that take into consideration LGBT people and their needs.

4. What is your Government doing to mitigate those challenges?

The Assembly of the Republic of Albania approved Law No. 10221/2010 "*On Protection from Discrimination*" (LPD), which entered into force on 13 March 2010. This law is a concrete step on the protection of human rights in the Albanian legislation, under the spirit of international documents and at the same time, a concrete step to meet European standards. The purpose of this law is to ensure the right of every person for equality before the law and for equal protection from the law, for equal opportunities and possibilities to exercise individual rights and freedoms as well as for effective protection from discrimination.

This law regulates the rights of persons that can not be distinguished through "gender, race, color, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions and disability." (article 1).

On the Constitution of the Republic of Albania article 18/2 on the non-discrimination declares that: "1. All are equal before the law; 2. No one may be unjustly discriminated against for reasons such as gender-race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage. 3. No one may be discriminated against for the reasons mentioned in paragraph 2 without a reasonable and objective justification". This law "*On Protection from Discrimination*" is applicable for all the rights envisaged in the legal and sub-legal acts in force in the Republic of Albania. But mostly it envisages explicitly protection from discrimination in:

- Exercising the right to elect and to be elected
- Exercising the right to the freedom of conscience and religion

The main fields in which this protection is provided are envisaged in three separate chapters and include protection from discrimination in:

- Employment
- Education
- Providing goods and services (which means housing, transport, social and health services, banking services, entertainment, relaxation and refreshment).

² Taken from: Albania 2012 Progress Report *accompanying the document* Communication from the Commission to the European Parliament and the Council.

Based on the "On protection from discrimination" Law, the Assembly of the Republic of Albania approved the following acts for the establishment of the Office of the CPD:

- Decision no. 33, on 22.04.2010 of the Assembly of the Republic of Albania "*On the appointment of the Commissioner for protection from discrimination*"
- Decision no. 34, on 20.05.2010 of the Assembly of the Republic of Albania "*On the approval of the structure, organizational structure and classification of the work positions of the Office of the Commissioner for protection from discrimination*".

The Commissioner for Protection from Discrimination exercises its powers pursuant to the Constitution and legislation in force. The Assembly of Albania for a 5-year mandate that may be renewed once elects the Commissioner. The Commissioner reports at least once a year in the Assembly of Albania.

The powers of the Commissioner for Protection from Discrimination are in accordance with the Directive 2006/54/EC of the European Parliament and of the Council. Article 20 of this Directive, regarding the "Equality Bodies", mentions that all state countries have to establish special nationally based bodies for the promotion, monitoring and fostering of the equal treatment of the individuals. This article also provides for the main powers that these equality bodies are entitled to and specifically:

1. Providing independent assistance to the victims of discrimination following their complaints related to discrimination;
2. Conducting independent surveys related to discrimination;
3. Publishing reports and providing recommendations about every issue that is related to discrimination.

The CPD has the power to receive complaints related not only to the public sector but to the private sector and to individuals as well.

Improvements on Education

It can be noted that in pre-university education, particularly in the basic education there are no specific topics addressing issues related to sexual orientation. During the period of 2012-2013, the Ministry of Education and Sport in cooperation with the Institute of Educational Development (IED) compiled a plan of "*anti-discrimination policies in education*" which consists of several activities in the field of education for the awareness of employees working in the sectors of education, how issues of sexual orientation can be incorporated into education. In 2013, LGBT Association in Tirana, in cooperation with the Ministry of Education and Sport and the IED, have elaborated a training module and have accordingly trained approximately 30 teachers from several high schools in Tirana and school psychologists on the prevention of discriminatory behavior towards the LGBT community. Under the Action Plan for Children of school years 2012-2015 the Ministry of Education and Sport has embarked on several efforts in the area of prevention of violence, non-discrimination and social inclusion through means of education and training, such as promoting early childhood education and care, "comprehensive all-inclusive education", including inclusion of children with disabilities, and non-discrimination for sexual orientation and gender identity.

Improvements on Health Care

Due to this case on February 4, 2010, the Albanian Parliament unanimously adopted a comprehensive anti-discrimination law, which prohibits discrimination based on sexual orientation and gender identity. The law applies to all areas, including health care, employment, provision of goods and services, education, and for asylum. The issues of violence against women and children are part of Primary Health Care Services, which is provided by primary health care services in rural areas and cities. The Ministry of Health has prepared particular health documentation for institutions regarding the detection, diagnosis handling cases of violence, as follows:

- Registration for recording cases of violence (divided by age groups and ages including pediatric)
- Individual Clinical card for persons subject to appear in health institutions.
- Special medical report to the person who has suffered
- The patient form where he/she has agreed for examination / counseling or medical treatment for violence.

In 2011 there was argued on the strategies for the prevention of gender-based violence. This is a unified protocol to capture and allow the treatment and referral of victims of gender-based violence by health care personnel. The guideline is implemented by all health system in addressing violence in the services they provide. In order to improve the capacity of health care workers and support staff are working in health care services related to the prevention and treatment of domestic violence, violence against children, gender and discrimination. For this a number of internships had started in February 2014. There are 4,400 trained health workers. The training program was certified with 10 credits from the National Center of Continuing Education. On March of 2014 there was conducted a study on the impact of the National Intervention upon the health issues in Addressing Gender Based Violence. This study evaluated the impact of such training for medical staff and recommendations for the future

Improvements on Applicable International Standards and Obligations

Individualization of treatment is organized based on an assessment process of the individual psychological and social needs, age, gender, health status, sexual orientation or gender identity, cultural and economic situation, the environment where the pre-trial detainee or detainee live, risk factors and the motivation to involved in the activities organized in the institution.

Employment programs, education and vocational training are provided without discrimination based on social origin, gender, age, health status, sexual orientation or gender identity, as for other categories of pre-trial detainees and detainees.

The health service in penitentiary institutions is organized without discrimination because of the legal status of the person or for any other reason that may serve to discrimination. General Directorate of Prisons takes measures to ensure the provision of necessary medical services in institutions and in their inability, in specialized institutions outside the penitentiary system.

General Directorate of Prisons and the penitentiary institutions take measures to implement the legislation on personal data protection for pre-trial detainees and detainees without discrimination, ensuring a level of full security during processing and storage.

Violence

Killings, rape and other acts of discriminatory violence

In cases of violence in the penitentiary institutions, the authorities of the institution enable immediate commencement of an independent investigation, by the competent structures and organs tasked by law respecting the principle of privacy, protection and personal safety.

GDP provides confidential meetings of pre-trial detainees and detainees, without distinction, with members of the supervisory committee, defender selected or appointed lawyer, representatives of international organizations, representatives of local or foreign NGOs operating for the rights of children, women, youth, LGBT community. The Admission Commission informs the pre-trial detainee and detainee when they have the right to request or complain, in a written or oral form, exclusively addressed to: staff, the General Directorate of Prisons, the Minister of Justice, Ombudsman, international organizations, local and foreign NGOs, district court of enforcement of criminal decision, the prosecutor in the district court, as well as other persons who visit the institution.

The partnership and cooperation are principles that guide the work of the Directorate General of Prisons. In this context, GDP has signed cooperation agreements with organizations that regularly monitor the situation of human rights in the penitentiary system. Also in GDP functions an internal mechanisms of inspection of penitentiary institutions, where an important aspect is monitoring to the treatment of vulnerable categories, particularly of pre-trial detainees and detainees of the LGBT community.

In each penitentiary institution functions the request and complaint mechanism, while maintaining and respecting confidentiality in any case.

Torture and other forms of cruel, inhuman and degrading treatment.

The policy pursued by the GDP for the treatment of categories with specific needs in the penitentiary system aims the prevention of discrimination, violence and abuse for these categories. As regards preventive measures, an important aspect is staff training on communication skills, treatment and non-discrimination of pre-trial detainees and detainees, particularly those that constitute the most vulnerable groups within the categories with specific needs, such as persons belonging to the LGBT community.

5. Please provide any specific case studies illustrating natural resource exploitation projects, which your government believes had a positive or negative impact upon FOAA rights.

Albanian government is committed to respect human rights and this commitment is reflected in the signing and ratification of many international documents of the UN and Council of Europe, and in the drafting and adoption of national legislation in accordance with these important documents, international instruments, but also in concrete steps taken to strengthen the protection of human rights and in effective implementation of anti-discrimination policies. Among the short-term measures envisaged by the Albanian government aiming to fulfill some of the EU priorities and recommendations, the human rights have a specific place –including concrete actions related to strengthening the protection of lesbian, gay, bisexual and transgender (LGBT) community rights. Albania is a country that is working constantly to combat discrimination based on sexual orientation and gender identity and this was shown through a specific number of reports.

According to ILGA-Europe Annual Report on the situation of human rights of LGBT persons in 2013, Albania has made progress in institutional level for the recognition and protection of the rights of LGBT persons. Albania is one the most progressive countries in relation to the advancement of LGBT rights among countries that are not members of the EU. Based on Article 32, paragraph 1, of the Law 10221/2010 "On Protection from Discrimination", which provides that the Commissioner has the power to *publish reports for any kind of issue related to discrimination*. So due to this fact the CPD has prepared a Special Report "For the protection and respect of the rights of LGBTI community in Albania". During the first quarter of 2014, this report would be prepared for publication.

In December 2012, the MLSAEO adopted a "Plan of Measures against Discrimination on Grounds of Sexual Orientation and Gender Identity 2012-2014", setting out five key priorities on the legal and institutional framework, and anti-discriminatory policies in areas such as employment, goods and services, education and local government. The Albanian legislation has considerably improved in this respect. In the most recent changes made to the Criminal Code are included the tightening of sanctions on cases of discrimination on grounds of sexual orientation and gender identity, as well as sanctions with imprisonment sentence of 2 to 10 years for offenses related to incitement of hatred and the reasons for such causes. Furthermore, amendments to the Criminal Code provide for the aggravating circumstances of committing a criminal offense on grounds of gender identity and sexual orientation and "inciting hatred for reasons of sexual orientation".

There was also introduced the concept of sexual orientation and gender identity and living with HIV/AIDS in the Labour Code. MSWY, September 2014. In the framework of the Action Plan "On protection from discrimination based on sexual orientation and gender identity, 2012-2014", in March 2014 have been prepared draft proposals MMSR."On Amendments to the Law No. 9062, dated 05.08.2003 "Family Code, as amended" which was sent to the Ministry of Justice as the responsible institution for changes in the Family Code. Amendments were required to Articles 163 and 164 associated with the institute of coexistence. The Annual Training Plan contains specific training modules for the treatment of pre-trial detainees and detainees belonging to the LGBT community. Women detainees and prisoners, including transgender persons, are treated respecting the fundamental rights and freedoms without discrimination, preventing any act of gender-based violence that causes physical, sexual or psychological damage or any other form of abuse and mistreatment that punishable according to the laws in effect. In cases of violence against women and female juveniles, account is taken of their gender-specific needs.

On May 14, Albania was one of the countries that signed the Declaration of Commitment of governments in respect of the rights of LGBT during IDAHO International Forum held in Malta. Measures of the Plan for LGBT persons will be included in the Policy on Social Inclusion 2015-2020. Recently, was established the Shelter for LGBTI persons. This shelter is the first residential center in Albania that helps the LGBTI community for emergencies in terms of housing. This is a joint project of the organization: "Alliance Against LGBT Discrimination" and "ProLGBT". The shelter is a concrete transitional service for all LGBTI youth aged 18 to 25 years who are faced either with the threat to be taken out in the middle of the road (usually at the stage of coming out) or are threatened with and face domestic violence which makes their

everyday living impossible. MSWY in cooperation with these organizations and with the assistance of foreign Experts has provided trainings to professionals who work directly with the community such as representatives of the Employment, Social Services, and Education.

6. What measures/actions would you recommend that States, businesses and private actors take to enhance the promotion and protection of freedom of peaceful assembly and of association in their policies, projects, goals and other engagements with civil society?

To prevent torture and other forms of cruel, inhuman and degrading treatment among pre-trial detainees and detainees, the General Directorate of Prisons (GDP) has drafted guidelines for the prisons' staff, including measures for accommodation, observation and undertaking of awareness campaigns in institutions to provide an environment of peaceful cohabitation and acceptance for persons belonging to the LGBT community. Measures also include regular contact with pre-trial detainees and detainees of this community in order to identify and address in time every problem and need of this community.

Legislative recommendations proposed by the CPD with regard to raise the level of protection on the rights towards the LGBT community The Commissioner for Protection from Discrimination has identified that should be interfered in the existing legal framework to realize an approximation of the existing legislation with the Law No. 10221/2010 "On Protection from Discrimination", which will increase the legal guarantees for the protection of the LGBTI community right.

Proposed amendments to the Penal Code.

Recommendations proposed by the CPD, included to amendments of the Penal Code

The Commissioner for Protection from Discrimination has sent, through the official letter No. 175 Prot, on 07.03.2013, recommendations on the amendments to the Penal Code of the Republic of Albania related to 5 articles. Two of these recommendations were completely taken into consideration, one partly and two other recommendations have not been included in the amendments. The CPD has resent, through the official letter No. 295 Prot, on 10.03.2014, the non-included recommendations to the Penal Code.

Proposed amendments to the Family Code

The CPD has participated in the working group set up by the Ministry of Social Welfare and Youth (MSWY), in which the CPD has reflected its recommendations for amendments to the Family Code. Within these proposals, MSWY completed the process of drafting the proposals for some amendments to the Family Code related to cohabitation of same-sex partners (Article 163&164).

These amendments have not been approved yet.