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Item 6 Universal Periodic Review Outcomes

Oral Statement by the International Commission of Jurists (ICJ)
on the Universal Periodic Review Outcome for India

**India: Decriminalise Same-Sex Conduct, Abolish the Death
Penalty, and Combat Impunity**

21 September 2017

Mr. President,

The International Commission of Jurists (ICJ) regrets that India has not supported recommendations related to decriminalizing consensual same-sex relations, abolishing the death penalty, and combatting impunity for serious human rights violations.

The ICJ has documented how by allowing the criminalization of consensual same-sex relations, section 377 of the Indian Penal Code has facilitated numerous human rights violations, including violations of the principle of non-discrimination and the rights to equality before the law and equal protection of the law, liberty and security of person, freedom of expression, health, and privacy. Section 377 has also perpetuated homophobic and transphobic attitudes in India, leading to discrimination and violence against LGBT individuals.

The Government has also failed to take steps to combat impunity for serious human rights violations such as extrajudicial killings, enforced disappearances, and torture and other ill treatment, which are facilitated by laws such as the Armed Forces Special Powers Act (AFSPA) and other national security and public safety legislation. Despite repeated commitments to do so, India has also not enacted legislation to recognize torture as a distinct, autonomous offence in its penal code.

The ICJ therefore urges the Government to reconsider, accept and implement UPR recommendations to:

1. Decriminalize consensual same-sex sexual relations (161.71, 161.76, 161.77, 161.78, 161.79);
2. Enact legislation consistent with the Supreme Court's recognition of the rights of transgender persons and international human rights standards (161.80);
3. Repeal AFSPA and other state and central level laws that similarly violate international human rights law (161.97, 161.248, 161.249);
4. Become a party to the CAT; OPCAT; the Second OP to the ICCPR; the ICPPED and other international instruments (161.13, 161.15, 161.29, 161.30, 161.31); and
5. Establish a moratorium on the use of the death penalty, with a view towards its abolishment (161.104 – 161.115).