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Luise Amtsberg, Mitglied des Deutschen Bundestages
Tom Koenigs, Mitglied des Deutschen Bundestages
Barbara Lochbihler, Member of the European Parliament
Karima Delli, Member of the European Parliament
Bas Eickhout, Member of the European Parliament
Jean Lambert, Member of the European Parliament
Ulrike Lunacek, Member of the European Parliament
Tamás Meszerics, Member of the European Parliament
Caroline Lucas, Member of Parliament for Brighton Pavilion

c/o Volker Beck MdB - Platz der Republik 1 - 11011 Berlin

Dimitris Avramopoulos
European Commission
Rue de la Loi 200
1049 Brussels
BELGIUM

Berlin, July 20th, 2015

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Dear Commissioner,

thank you for your letter of June 15th, 2015 (Ref. Ares (2015)2501374), replying to the petition submitted to your services by Mrs. Barbara Lochbihler, Mrs. Luise Amtsberg, Mr. Volker Beck and Mr. Tom Koenigs regarding the designation of Ghana and Senegal as safe countries of origin by the Federal Republic of Germany. We welcome that your services will liaise with the German authorities in order to receive clarifications on this issue. This is a necessary step to ensure that member states fully respect the provisions of the Directive 2013/32/EU of the European Parliament and the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (hereinafter referred to as "Procedures Directive").

We kindly ask you to initiate infringement proceedings not only against the Federal Republic of Germany but also against the Kingdom of Belgium, the Grand Duchy of Luxembourg, the Republic of Malta, the Slovak Republic, the French Republic and the United Kingdom of Great Britain and Northern Ireland. These member states have also designated countries where same-sex sexual activities are criminal offences punishable by imprisonment as safe countries of origin. We believe that they have thus violated the provisions of Article 37 (1) read together with Annex I of the Procedures Directive.

To our knowledge, the legal situation in the aforementioned member states is as follows:

- The Kingdom of Belgium has designated India as a safe country of origin and is considering the designation of Cameroon, Senegal and Tunisia as safe countries of origin.
- The French Republic has designated Ghana, India, Mauritius, Senegal and Tanzania as safe countries of origin.
- The Grand Duchy of Luxembourg has designated Ghana and Senegal as safe countries of origin.
- The Republic of Malta has designated Botswana, Ghana, India, Jamaica and Senegal as safe countries of origin.
- The Slovak Republic has designated Ghana, Kenya, Mauritius and the Seychelles as safe countries of origin.

- The United Kingdom of Great Britain and Northern Ireland has designated Gambia, Ghana, India, Jamaica, Kenya, Liberia, Malawi, Mauritius, Nigeria and Sierra Leone as safe countries of origin.

Same-sex sexual activities are criminalised in the following countries designated as safe countries of origin by at least one member state:

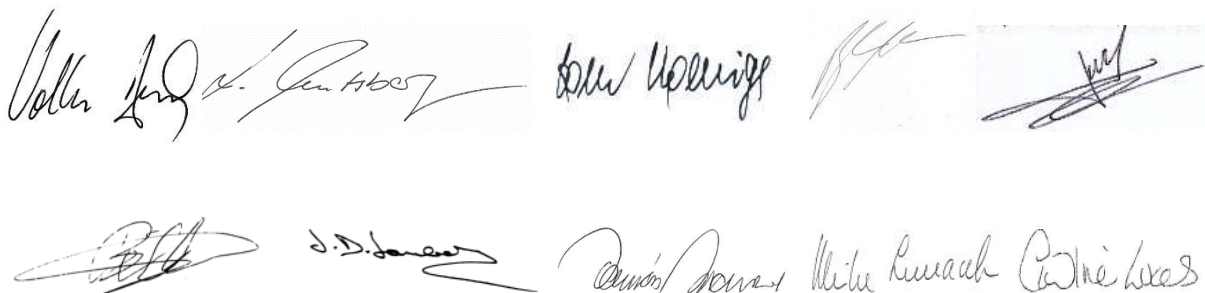
- In Botswana, same-sex sexual activities are punishable by seven years in prison (Penal Code, section 164).
- In Gambia, the sentence applicable to same-sex sexual activities has been aggravated on October 9th, 2014. Gambian law now provides for a life sentence in „particularly serious cases“ (www.theguardian.com/world/2014/sep/09/gambia-passes-bill-life-imprisonment-homosexual-acts; www.amnesty.org.uk/gambia-anti-gay-bill#.VWWmP_mKVvE; www.opendemocracy.net/graeme-reid/gay-in-gambia-not-joke; www.advocate.com/world/2014/11/21/gambia-being-lgbt-now-means-torture-life-jail).
- In India, same-sex sexual activities are punishable by a life sentence (Penal Code, section 377). The High Court of Delhi found that this provision is unconstitutional but this decision has been set aside by the Supreme Court of India on December 11th, 2013. Since then, Indian authorities have arrested more than 600 men and initiated criminal proceedings in more than 750 cases for alleged homosexual conduct (www.deccanherald.com/content/451095/600-homosexuals-arrested-2014.html).
- In Jamaica, same-sex sexual activities are punishable by ten years in prison (Offences Against the Person Act, section 76).
- In Cameroon, same-sex sexual activities are punishable by five years in prison (Penal Code, section 347). For further details, please refer to Amnesty International reports (for example: www.amnesty.de/kurzinfo/2012/1/die-situation-von-homosexuellen-kamerun).
- In Kenya, same-sex sexual activities are punishable by 14 years in prison (Penal Code, section 162).
- In Liberia, same-sex sexual activities are punishable by one year in prison (Penal Law, section 14.74).
- In Malawi, same-sex sexual activities are punishable by 14 years in prison (Penal Code, section 153). The application of this provision has been suspended and the government is considering its abrogation but the constitutionality of the suspension is contested (www.nyasatimes.com/2012/11/07/malawi-law-society-faults-kasambara-on-easing-anti-gay-laws/).
- In Mauritius, same-sex sexual activities are punishable by five years in prison (Penal Code, section 250).
- In Nigeria, same-sex sexual activities are punishable by 14 years in jail (Penal Code, section 214). In some provinces in Northern Nigeria, Islamic criminal law provides for a death sentence by stoning (see Sharia Penal Code Law, section 130: www.sharia-in-africa.net/media/publications/sharia-implementation-in-northern-nigeria/vol_4_4_chapter_4_part_III.pdf).
- In the Seychelles, same-sex sexual activities are punishable by 14 years in prison (Penal Code, section 151).
- In Sierra Leone, same-sex sexual activities are punishable by a life sentence and the sentence may be enforced in jail (Offences Against the Person Act, section 61).
- In Tanzania, same-sex sexual activities are punishable by a life sentence (Penal Code, section 154).
- In Tunisia, same-sex sexual activities are punishable by three years in prison (Penal Code, section 230).

- On the situation in Ghana, Senegal, please refer to the aforementioned petition of April 15th, 2015.

In terms of the Procedures Directive, a country may be designated as a safe country of origin if, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU [hereinafter referred to as "Qualification Directive"], no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict. These conditions are not met because persecution for reasons of sexual orientation or gender identity cannot be ruled out in the aforementioned countries. To amount to persecution in terms of Article 9 (1) of the Qualification Directive, an act must be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights. Article 9 (2) explicitly mentions legal and judicial measures which are in themselves discriminatory as an example for acts of persecution. A prison sentence for same-sex sexual activities is in itself discriminatory because it is solely based on the sexual orientation or gender identity of the concerned person. It is also sufficiently serious to amount to a severe violation of basic human rights, given that the right to liberty is one of the most fundamental rights protected, *inter alia*, by Article 5 of the European Convention on Human Rights, Article 6 of the Charter of Fundamental Rights of the European Union, Article 9 of the International Covenant on Civil and Political Rights and Article 13 of the Universal Declaration of Human Rights.

We believe that it is necessary to initiate infringement proceedings against the aforementioned member states. Countries that impose prison sentences on same-sex sexual activities are not safe for refugees. The European Union is under the obligation to act against discrimination on reasons of sexual orientation and gender identity (see Article 21 of the Charter of Fundamental Rights of the European Union). The European Union is also under the obligation to ensure effective protection for refugees (Article 78 of the Treaty on the Functioning of the European Union, Article 18 of the Charter of Fundamental Rights of the European Union). From this stems a particular responsibility for refugees considered as particularly vulnerable by the United Nations High Commissioner on Refugees, including lesbian, gay, bisexual, trans* and intersexual people.

Yours sincerely,



A collection of handwritten signatures in black ink, arranged in two rows. The top row contains four signatures, and the bottom row contains four signatures. Some signatures are more legible than others, with some appearing to be names like 'Volker', 'J. D.', and 'Mike Rumaah'.