



REPUBLIC OF SOUTH AFRICA



NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS

International Conference on Human Rights, Sexual Orientation and Gender Identity, Oslo 15–16 April 2013

- Summary and Toolkit



Table of Contents

| | |
|---|----|
| Introduction | 3 |
| Co-chairs' Summary..... | 4 |
| Report from the Oslo Conference | 7 |
| Invitation | 12 |
| Programme overview | 14 |
| Reports from the regional seminars..... | 15 |
| Speeches..... | 32 |
| UN Secretary General, Mr Ban Ki-moon | 32 |
| UN High Commissioner for Human Rights, Ms Navi Pillay | 34 |
| UN ASG for Human Rights, Mr Ivan Šimonović..... | 36 |
| Resolution 17/19 on Human rights, sexual orientation and gender identity..... | 40 |
| Report from the High Commissioner for Human Rights..... | 42 |
| Relevant resources | 67 |

Introduction

15 and 16 April 2013, South Africa and Norway co-chaired an international conference on *Human Rights, Sexual Orientation and Gender Identity* in Oslo, Norway. The Conference gathered more than 200 participants from 84 countries of all regions of the world.

The Conference was the result of a cross-regional process, initiated by South Africa and supported by Norway and other friends of the UN Human Rights Council resolution 17/19 on Human Rights, Sexual Orientation and Gender Identity, which was adopted in June 2011.

In all countries of the world, individuals are subjected to discrimination and violence based on sexual orientation and gender identity. In order to gather information from all regions, the Oslo conference was preceded by regional seminars in Kathmandu, Paris and Brasilia, in addition to several civil society events in the African region.

Drawing upon these regional seminars, the concluding international conference in Oslo identified key challenges and implementation gaps and summed up lessons learnt, best practices and possible solutions to addressing these human rights violations in a more coherent and systematic manner.

Through bringing together representatives from UN member states, UN staff, representatives of regional and international human rights mechanisms, members of national human rights institutions and civil society, as well as individual human rights defenders, the conference generated new ideas and established a common platform for future action to protect the human rights of lesbian, gay, bisexual and transgender (LGBT) persons.

Our efforts to combat discrimination and violence based on sexual orientation and gender identity must continue uninterrupted. There is a pressing need for follow-up of resolution 17/19. The regional seminars and the Oslo conference show the way forward.

Sincerely,



Halvor Sætre
Director for Human Rights and Democracy,
Norwegian Ministry of Foreign Affairs





CO-CHAIRS' SUMMARY OF CONCLUSIONS

Testimonies at the Oslo Conference on Human Rights, Sexual Orientation and Gender Identity (15-16 April 2013), including the regional inputs, have confirmed that persons in all regions are subject to violence and discrimination based on sexual orientation and gender identity. They face multiple barriers in their everyday lives, systematically denying their enjoyment of the fundamental rights to which all human beings are entitled. This is unacceptable.

Based on the conclusions of the report entitled 'Discriminatory Laws and Practices and Acts of Violence against Individuals based on their Sexual Orientation and Gender Identity' by the UN High Commissioner on Human Rights, the outcomes of the regional seminars recently held in Kathmandu, Paris and Brasilia, regional inputs from Africa, and the global dialogue in Oslo, which brought together more than 200 participants from 84 countries, we present the following summary of conclusions:

1. We recall the UN Human Rights Council resolution 17/19, and we welcome the report by the UN High Commissioner on Human Rights and the ensuing panel discussion that took place in Geneva in March 2012, which have provided a solid foundation on which to build a framework for addressing discrimination and violence based on sexual orientation and gender identity;
2. We further welcome the regional seminars and express appreciation to the host Governments, and to the States and stakeholders from all regions who have participated constructively in these discussions. We underline the essential role played by civil society in all regions, including human rights defenders working to counter discrimination and violence based on sexual orientation and gender identity;
3. We acknowledge that the issues addressed are sensitive for many. Other struggles, such as for racial and gender equality, have been equally controversial in their time, and these objectives are now universally recognized. Lesbians, gays, bisexuals and transgender people are part of all our societies, and on this 20th anniversary of the Vienna Declaration and Program of Action, we recall that while "various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms";
4. We applaud the positive steps taken in all regions to address acts of violence and discriminatory laws and practices based on sexual orientation and gender identity, such as public awareness and sensitivity campaigns, including for public officials, law enforcement personnel, policy-makers, and health care and education providers, removing barriers to access to equal health care, providing documentation that reflects each person's gender identity, and legal reforms, including measures to repeal criminal

provisions against same-sex conduct, and inclusion of sexual orientation and gender identity in antidiscrimination legislation, as well as the provision of support for activities aimed at protecting and promoting human rights on these grounds;

5. While welcoming such progress, we join with participants in expressing grave concern at continued and systemic acts of violence and discriminatory laws and practices based on sexual orientation and gender identity in all regions of the world, such as hate crimes, torture, sexual violence, killings, denials of freedom of expression, association, and peaceful assembly, arbitrary detentions, criminal sanctions, police misconduct and abuse as well as denial of transgender identity, and discrimination in accessing economic, social and cultural rights;

6. We solemnly affirm that human rights and fundamental freedoms should be guaranteed for all. No one should face violence or discrimination on any ground, including on the basis of sexual orientation or gender identity;

7. On the national level, we emphasize the obligations of States under international human rights law, and we call upon States to gather data more systematically and give domestic effect to the action-oriented recommendations put forward by the High Commissioner on Human Rights in her report, and we encourage continued engagement and efforts by national human rights institutions and civil society, as well as UN agencies, in support thereof;

8. On the regional level, the Conference welcomed the measures undertaken to address these issues, including a series of relevant resolutions by the Organization of American States and the work done by the Inter-American Commission on Human Rights, the recommendations by the Council of Europe and the jurisprudence of the European Court of Human Rights, the work done by the European Union, the increasing attention paid to the issues by the African Commission on Human and Peoples' Rights as well as in the Asia-Pacific region, and encouraged continued and enhanced engagement in this field;

9. On the global level, we reaffirm the responsibility of the UN Human Rights Council to address human rights violations against all persons, including on the basis of sexual orientation and gender identity. We recognize the ongoing work of treaty bodies, special procedures and under the Universal Periodic Review, and encourage continued and strengthened efforts in this area. The identified gaps and challenges are pervasive in all regions and require systemic solutions. Against this background, there is a need to integrate the issues systematically in the work of the United Nations, through the establishment of a relevant mechanism, at the appropriate time, in order to:

- a) study and document in a comprehensive and recurrent manner trends, developments, challenges and opportunities in relation to human rights, sexual orientation and gender identity;
- b) recommend concrete and effective strategies to better protect human rights in relation to sexual orientation and gender identity, including by encouraging good practices, enhancing understanding of the application of international human rights law in this area, and promoting constructive and informed dialogue;
- c) work collaboratively with other UN bodies and encourage mainstreaming of these issues throughout the UN system;
- d) present reports to the Human Rights Council and engage its members in interactive dialogue;
- e) offer technical assistance to States to assist them in strengthening human rights protection on these grounds;

10. It is often tempting to focus on what divides us, rather than on what unites us. We all share the goal of working together towards a world where no-one faces violence or discrimination on any ground. We commend the willingness of States and stakeholders from all regions to participate in the discussions to this end. As the UN Secretary General has noted, “the time has come”, and we look forward to working with all parties to take concrete and practical steps to address violence and discrimination based on sexual orientation and gender identity, and to help ensure that those who face violations on these grounds are treated with equal dignity and with the fundamental respect to which all human beings are entitled.

Oslo, 16 April 2013



Report from the Oslo Conference

INTRODUCTION

In June 2011, under the leadership of South Africa, the UN Human Rights Council adopted resolution 17/19 – the first United Nations resolution on human rights, sexual orientation and gender identity. This resolution mandated a report from the High Commissioner for Human Rights addressing the responsibility of States to end violence and discriminatory laws and practices based on sexual orientation and gender identity. A panel discussion was held at the Human Rights Council to discuss this report in March 2012.

As a follow-up to resolution 17/19, and to ensure continued attention to human rights violations based on sexual orientation and gender identity, South Africa, together with supporters of the resolution, decided to reach out cross-regionally, through dialogue and engagement in a series of regional seminars, as a prelude to the 23rd session of the Human Rights Council.

The main purpose of the seminars was to gain a better understanding of the specific human rights challenges relating to violence and discrimination based on sexual orientation and gender identity in each region, and to discuss how these challenges may best be addressed. The regional seminars took place in Nepal, France and Brazil in March and April 2013, and additional inputs were gathered through a number of civil society processes in Africa. South Africa and Norway agreed to co-host a concluding conference in Oslo on 15-16 April 2013. Drawing on the preceding regional consultations, the objectives of the Oslo Conference were to:

- Discuss the OHCHR report mandated by HRC resolution 17/19, including consideration of its recommendations.
- Summarise the outcome of the regional seminars and identify common and distinctive themes and trends.
- Identify gaps and implementation challenges from each region, and gather information on emerging policy responses and good practices.
- Make recommendations on the way forward and possible mechanisms to advance the issue more systematically in the Human Rights Council, as a prelude to its 23rd session.

- To achieve these objectives, more than 200 representatives from States, UN agencies, regional and international human rights mechanisms, national human rights institutions, and civil society were brought together from 84 countries in all regions of the world.

OPENING & PRESENTATION OF HIGH COMMISSIONER'S REPORT

At the Opening Ceremonies, the Norwegian Minister of Foreign Affairs, together with conference Co-Chairs Mr. Jerry Matjila, Director-General of the Department of International Relations and Cooperation of South Africa, and Ms. Bente Angell-Hansen, Secretary-General of the Norwegian Ministry of Foreign Affairs, highlighted the shared commitment to addressing human rights violations based on sexual orientation and gender identity, closing protection gaps, and ensuring application of the international human rights framework to all human beings, without discrimination of any kind.

"We should all be outraged when people suffer discrimination, assault and even murder simply because they are lesbian, gay, bisexual or transgender. We should all speak out when someone is arrested and imprisoned because of who they love or how they look. This is one of the great neglected human rights challenges of our time. We must right these wrongs."

UN Secretary General Ban Ki-moon

In a video message, UN Secretary General Ban Ki-moon affirmed that "governments have a legal duty to protect everyone, but far too many still refuse to acknowledge the injustice of homophobic violence and discrimination. We need to document this problem and share information with States on a regular basis for discussion and action. We must institutionalize our efforts to address discrimination based on sexual orientation and gender identity."

UN Assistant Secretary-General for Human Rights Ivan Šimonović of the Office of the High Commissioner for Human

Rights presented the High Commissioner's report, underlining the brutality of many anti-LGBTI hate crimes, and noting that transgender persons, especially those involved in sex work or in detention, face an especially high risk of cruel and deadly violence. While welcoming progress, the Assistant Secretary-General noted that the United Nations reporting on violence and discrimination against LGBTI people has been "piecemeal, sporadic and ad hoc", and highlighted the need to address these abuses systematically.

"With the support of the international community, with political leaders taking a strong stand on these issues and of course with inter-governmental organizations such as the UN providing better more clear mechanisms for protecting LGBTI rights, we are pretty optimistic in Russia that we will be able to continue this work and eventually reach respect for diversity and dignity."

Human rights defender from Eastern Europe

SUMMARY OF REGIONAL INPUTS

Inputs from Asia and the Pacific

The UN Asia-Pacific Regional Seminar on Human Rights, Sexual Orientation and Gender Identity took place on 22-23 March, 2013 in Kathmandu, Nepal, and brought together 150 delegates from 24 countries, including government representatives, UN staff, civil society experts and LGBTI human rights defenders. The Rapporteur noted challenges including colonial laws that criminalize people with non-conforming sexual orientations, as well as public offence, impersonation and morality laws used to stigmatize and harass LGBTI people. It was noted that lesbians additionally are subjected to forced marriage, physical violence in the home and aggravated rape including so-called "corrective" rape. Intersex participants talked about genital surgeries conducted without informed consent, and transgender participants highlighted struggles to be legally recognized as well as many incidents of harassment and discrimination. Other obstacles identified included discriminatory health services, the prohibitive cost of gender re-assignment surgeries particularly for those who are already living in poverty, bullying, stigmatization and lack of counseling support, contributing to high rates of LGBTI youth suicide.

"This conference in Kathmandu proves that the common assertion that LGBTI rights are incompatible with Asian values is false."

Riddhi Baba Pradham, Nepal's Minister of Women, Children and Social Welfare

The Rapporteur noted that States in the region often appeal to culture, religion or tradition to justify LGBTI-related violations, or assert a homogeneous view of "Asian values", overlooking the inclusive traditions in indigenous cultures and communities, and the many diverse societies in Asia and the Pacific, whose values encompass pluralism and inclusion. Identified priorities included amending or removing laws that discriminate, participation of the LGBTI communities in decision-making, measures to ensure transgender access to identity documentation, resources and support to LGBTI NGOs and to NHRIs, and a UN mechanism on sexual orientation and gender identity to help strengthen compliance by States with their international human rights obligations.

Inputs from Europe

The Conference on Lesbian, Gay, Bisexual and Transgender Rights in Europe took place in Paris on 26 March, 2013 and was organised by the French Ministries for Women's Rights and Foreign Affairs, in conjunction with the European Commission and in partnership with Poland. The conference was attended by close to 200 participants from over 40 different countries from a broad range of States in Western and Eastern Europe and Central Asia. Key issues raised included denial of transgender recognition, more consistent inclusion of both sexual orientation and gender identity as grounds of non-discrimination, concerns about new and emerging laws in Eastern Europe restricting freedom of expression and peaceful assembly under the pretext of prohibiting "homosexual propaganda", and the need for more systematic responses at each of the national, regional and international levels. Homophobic and transphobic bullying in schools was identified as a serious problem, as was violence and hate speech. A need for greater political leadership in speaking out strongly against discrimination and stereotyping, and for more reliable, comparable and consistent data collection, was identified.

At the European level, participants stressed the need for strategic political commitment and a comprehensive policy framework. Participants welcomed recommendations of the Committee of Ministers of the Council of Europe but also acknowledged the need for indicators and benchmarks in

order to monitor progress towards implementation of the recommendations. At the international level, participants stressed that the UN Human Rights Council should systematically address human rights violations based on sexual orientation and gender identity, for example through the creation of a mechanism to better document and address human rights violations based on sexual orientation and gender identity.

“Specific problems faced by intersex and transgender people were seriously debated in all of the working groups. This particularly relates to medical interventions without informed consent for intersex people and sterilization as a requirement for legal gender recognition for transgender people. Many transgender people face barriers to having their gender identity legally recognized including changing gender markers in official documents. Many European countries are in the process of changing their legislation on gender recognition however a significant number of states have no effective legislation on gender recognition in place and even some states have laws in place in this regard which are in violation of basic human rights principles.”

Rapporteur, European conference

Inputs from the Americas

The Brazil Regional Seminar on Sexual Orientation and Gender Identity took place in Brasilia on 4-5 April, 2013 at the Secretariat of Human Rights of the Presidency of the Republic. The seminar was attended by government and civil society participants from across Latin America and the Caribbean. Discussions centred around the realities faced by LGBTI persons in Latin America and the Caribbean, with civil society participants highlighting the prevalence of hate crimes and violence, the rights of transgender and intersex persons, the persistence of colonial laws in the Caribbean criminalising same-sex conduct, the importance of ensuring that appeals to “traditional values” are consistent with human rights, and the responsibility of political leaders to speak out against these violations. Positive developments were also highlighted, including an Argentinian law providing transgender persons with identity documentation in accordance with a simple administrative procedure, the adoption by the OAS by consensus of a series of resolutions on human rights, sexual orientation and gender identity, and the creation of an LGBTI Unit which has done significant work to monitor and document human rights violations based on sexual orientation and gender identity.

A variety of proposals for next steps were discussed, inclu-

ding the need for more regular monitoring of human rights violations based on sexual orientation and gender identity, data gathering, comprehensive national action plans against discrimination, training of law enforcement and other public officials, and more sustained attention to the issues at the international level, including through further reporting, consideration of good practices, continued attention to the issues by existing mechanisms, such as Special Procedures, the possibility of creation of a further mechanism to address the rights of LGBTI persons, technical assistance and support to strengthen the capacity of States to address human rights violations on these grounds, and joint initiatives and development of spaces for dialogue, including with civil society, to strengthen support for the issues.

Inputs from the Africa region

Inputs from human rights defenders were gathered through a number of civil society processes in Africa including interviews, questionnaires, and documentation by African organisations across the region. It was noted that human rights defenders in many countries are under attack, harassed by police, and facing violations such as arbitrary arrest and detention, unfair trial, extortion, physical and sexual violence, rape and murder, which is often reinforced by resistance to the issues on the part of law enforcement and judicial authorities. Denial of the right to health, right to development and the deepening of poverty and economic inequality faced by LGBTI persons were also identified as serious concerns.

Some progress was also noted, including progressive employment legislation in Botswana, Zimbabwe, Mozambique and South Africa, impartial judicial hearings in Uganda on LGBTI civil cases, withdrawal of criminal legislation against same-sex relations in Rwanda, and inclusion of men who have sex with men in national HIV plans and consultation processes.

“The Commission denounces violence committed against individuals based on their sexual orientation as part of its mandate to protect individuals from all forms of violence. Violence is not justified under any circumstance or ground.”

Chairperson, African Commission on Human and Peoples’ Rights.

Participants from the region urged States to speak out against violence based on sexual orientation and gender identity, decriminalise same-sex relations, gender identity and expression, suspend arrests of persons based on their

sexual orientation and gender identity, enable registration of NGOs working on these issues and protect the rights of human rights defenders, develop policies and practices to ensure access to health care, education, safety and security, address social, political and economic marginalization of LGBTI people, and foster informed dialogue in partnership with human rights defenders on sexuality, reproductive and sexual rights. At the international level, a need was identified for the recommendations in the High Commissioner's report to be systematically addressed, implemented and monitored, for relevant Special Procedures to jointly address and report on the issues, for experts meetings and technical guidance by the OHCHR, for treaty bodies to address the issues within their mandates, and for UN agencies to integrate sexual orientation and gender identity issues throughout their work, including through policy and institutional indicators.

KEY HUMAN RIGHTS CHALLENGES AND RESPONSES IDENTIFIED IN THE CONCLUDING CONFERENCE IN OSLO

Acts of violence

Discussions showed that there was no region of the world where LGBTI persons are safe from acts of violence, including killings, physical attacks, mob attacks, sexual violence, including "corrective" or "punitive" rape, harassment and hate speech, all on the basis of actual or perceived sexual orientation or gender identity and expression. Perpetrators included State and non-State actors, police and law enforcement officers, organised hate groups, individual aggressors, and even family-members. LGBTI persons who were arbitrarily arrested, or those reporting hate crimes and harassment, were often subject to further abuse at the hands of police, including sexual abuse, beatings, and invasion of privacy. Arbitrary arrests, followed by violence in custody, were reported in all regions, with transgender persons particularly at risk.

Forced or coercive medical interventions were also reported, such as reparative therapy, surgical interventions committed against intersex persons without informed consent or sterilisation of transgender persons as a prerequisite to obtaining identity documentation. It was noted that human rights defenders working on these issues were particularly vulnerable to threats and attacks. The overall climate of violence and discrimination against individuals based on sexual orientation and gender identity resulted in increased risk of suicide.

Discriminatory laws

A primary concern was the prevalence of criminal laws, including colonial-era provisions in the penal codes of many Commonwealth countries, which were used to penalize

same-sex conduct. Public offence, impersonation and morality statutes were also used to stigmatize and harass LGBTI people. In countries where homosexuality was criminalized or where laws prohibiting "propaganda of homosexualism" were under consideration, violence and discrimination were found to be particularly systemic and structural in nature. Furthermore, such laws were used to justify restriction of discussion of LGBTI issues, impede the work of NGOs, and undermine effective HIV/AIDS education and prevention, in violation of human rights standards. The right to freedom of association was violated in a number of countries, where NGOs working on these issues were denied registration. Transgender people were denied the right to assert their self-defined identity in legal documents including citizenship and travel documents. The need for WHO to depathologise gender identity while maintaining access to needed medical treatments was consistently underscored.

Discriminatory practices

Discrimination based on sexual orientation and gender identity was reportedly widespread and systemic in all regions. LGBTI children and youth faced discrimination in accessing education, and homophobic and transphobic bullying in schools was commonplace. Many individuals were further ostracized and rejected by their families, communities and places of worship because of their sexual orientation or gender identity, resulting in marginalization, homelessness and poverty. LGBTI persons were more likely to face discrimination in accessing employment, thereby further reducing prospects of economic independence. Discrimination in accessing healthcare was also found to be widespread, and health care professionals often did not recognize or understand the specific needs of LGBTI persons. Individuals were deterred from seeking health care for fear of discrimination and stigma. In addition, many individuals faced restrictions on their right to access information on issues relating to sexuality, including on sexual orientation and gender identity. There was discrimination based on sexual orientation and gender identity in accessing justice, including legal services, and LGBTI persons were susceptible to arbitrary detention and maltreatment by law enforcement officials. Impunity for attacks against LGBTI people was systemic, and individuals were likely to face blackmail and extortion at the hands of State and non-State actors. Victims of violence, harassment and other human rights violations were deterred from seeking justice for fear of re-victimization by police and other law enforcement.

Participants underlined that multiple and intersecting forms of discrimination affected LGBTI people, including on the basis of gender, sexual orientation, gender identity, age,

ethnicity, disability, economic status, religion, and/or other status.

It was noted that patriarchal religious and traditional values were often used to justify discrimination and violence, and attention was drawn to the increasing involvement of fundamentalist religious and conservative ideological groups in political decision-making on human rights, particularly those related to gender and sexual and reproductive rights. Attempts to impose singular ideologies through laws and regulations undermined principles of pluralism and respect for diversity, and overlooked the social reality that LGBTI persons are an integral part of families, cultures and communities in regions around the world.

Responses

Numerous good practices in combating stigma, discrimination and violence were identified through the discussions. These included public awareness and sensitization campaigns and training, including for public officials, law enforcement personnel, policy-makers, and health care and education providers; involving trade unions in combating employment discrimination; simplified procedures to facilitate gender recognition; documentation and data collection on hate crimes, including by NGOs; and strengthening the role of national human rights institutions.

Recognition of LGBTI rights by the State and amendment of discriminatory laws were among the priorities identified. It was felt that States should include LGBTI communities and civil society in consultations as part of the process of amending laws, and should also recognize transgender identities and ensure implementation of measures to legally recognize changed gender status on all documents, without infringement on other rights. Activities to sensitize the public and State institutions, including law enforcement agencies, health care and education providers, about LGBTI concerns were essential. Participants from diverse regions urged more systematic attention to these issues at the national, regional and international levels, and called on the United Nations to play a more proactive role in addressing violence and discrimination based on sexual orientation and gender identity.

CONCLUSION:

At the conclusion of the conference, the Co-Chairs presented a Summary of Conclusions, welcoming the constructive participation in the regional seminars, affirming that LGBT people are part of all societies and that, as the Vienna Declaration and Program of Action reminds us, States have a duty to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems, and applauding the progress made in

all regions to address violence and discriminatory laws and practices based on sexual orientation and gender identity.

At the same time, grave concern was expressed at continued and systemic violations on these grounds. States at the national level were urged to give effect to the recommendations in the High Commissioners report, in collaboration with other stakeholders, progress at the regional level was welcomed and continued and enhanced engagement encouraged, and the responsibility of the Human Rights Council at the global level to address human rights violations against all persons, including on the basis of sexual orientation and gender identity, was reaffirmed.

The importance of continued and strengthened attention to the issues by existing human rights mechanisms was underscored, while also noting that the identified gaps and challenges are pervasive in all regions and require systemic solutions. A need was identified to integrate the issues systematically in the work of the United Nations, through the establishment of a relevant mechanism, at the appropriate time, to: (i) study and document trends, developments, challenges and opportunities relating to human rights, sexual orientation and gender identity; (ii) recommend concrete and effective strategies to better protect human rights on these grounds, including by encouraging good practices, enhancing understanding of the application of international human rights law in this area, and promoting constructive and informed dialogue; (iii) work collaboratively with other UN bodies and encourage mainstreaming of the issues throughout the UN system; (iv) present reports to the Council and engage its members in interactive dialogue; and (v) offer technical assistance to States to assist them in strengthening human rights protection on these grounds.

See www.hrsogi.org for the Co-Chairs' Summary of Conclusions, together with the regional reports, statements and videos.



INVITATION

International Conference on Human Rights, Sexual Orientation and Gender Identity, Oslo 15–16 April 2013

On behalf of South Africa and Norway, I am pleased to invite you to an international conference on *Human Rights, Sexual Orientation and Gender Identity* in Oslo, 15–16 April 2013. The conference will be co-chaired by South Africa and Norway.

Background

In June 2011, under the leadership of South Africa, the UN Human Rights Council adopted resolution 17/19 – the first United Nations resolution on human rights, sexual orientation and gender identity. This historic resolution was followed by a report from the High Commissioner for Human Rights addressing the responsibility of states to end violence and discriminatory laws and practices based on sexual orientation and gender identity, and a panel discussion was held in the Human Rights Council in March 2012.

There is now a need for further follow-up of resolution 17/19 to ensure continued Human Rights Council attention to human rights violations based on sexual orientation and gender identity. South Africa, Norway, Brazil and other friends of the resolution have therefore decided to reach out cross-regionally, through dialogue and engagement in a series of regional seminars, as a prelude to the 23rd session of the Human Rights Council.

The regional seminars are scheduled to take place in France, Brazil and Nepal in March and April, and we are planning a similar event in the African region. The main purpose of these seminars is to gain better understanding of the specific human rights challenges for sexual minorities in each region, and to discuss how these challenges may best be overcome. Drawing on the preceding regional seminars, the objective of the Oslo Conference is to:

- Discuss the OHCHR report mandated by HRC resolution 17/19, including consideration of its recommendations.
- Summarise the outcome of the regional seminars and identify common and distinctive themes and trends.

- Identify gaps and implementation challenges from each region, and gather information on emerging policy responses and good practices.
- Summarise the findings in a Co-Chair's Summary with recommendations on the way forward and possible mechanisms to advance the issue more systematically in the Human Rights Council, as a prelude to the 23rd HRC session.

To achieve these objectives, we will bring together representatives from UN member states, UN staff, representatives of regional and international human rights mechanisms, members of national human rights institutions, civil society and individual victims of these violent scourges which are also an affront on human dignity, from all regions.

Practical information

I hope that you will be able to participate in the conference, which will take place in the historical surroundings of Holmenkollen Park Hotel Rica in Oslo. For more information about the hotel, visit: www.holmenkollenparkhotel.no/en.html.

Attached you will find the preliminary programme for both days. Further information on the conference agenda, registration form, and practical details, etc. is available on www.hrsogi.org. We would be grateful if you would confirm your attendance by submitting the registration form by 10 April 2013.

Hoping for your positive response, I very much look forward to welcoming you in Oslo in April.

Yours sincerely



Espen Barth Eide
Minister of Foreign Affairs

Programme overview

Upon arrival – Sunday 16 April

| | |
|---------------|--|
| 13:00 – 14:00 | <i>Lunch</i> |
| 14:00 – 18:00 | Pre-conference for civil society |
| 20:00 | Informal reception/buffet dinner for all participants at Holmenkollen Park Hotel Rica (optional) |

DAY 1 – Monday 15 April

| | |
|---------------|---|
| 09:00 - 11:00 | Visit to the National Knowledge Centre on LGBT (optional) |
| 11:15 – 12:15 | <i>Informal buffet lunch</i> |

Official programme

| | |
|---------------|---|
| 12:30 – 13:30 | Opening session - Official welcome and Introductions |
| 13:30 – 15:00 | Session I: Presentation of the outcome from the regional seminars |
| 15:00 – 15:30 | <i>Coffee Break</i> |
| 15:30 – 16:30 | Session II: Introductory panel debate |
| 16:30 – 17:00 | Discussion and wrap-up Day 1 |
| 19:30 | <i>Dinner at Holmenkollen Park Hotel Rica</i> |

DAY 2 – Tuesday 16 April

| | |
|---------------|---|
| 09:00 – 09:15 | Opening session – Welcoming remarks Day 2 |
| 09:15 – 09:30 | Introductions to parallel roundtables |
| 09:30 – 12:00 | Parallel roundtables <ol style="list-style-type: none">1) Violence against LGBT persons2) Legal and policy measures to protect LGBT persons from discrimination3) Overcoming the obstacles to addressing SOGI-related violence and discrimination |
| 12:00 – 13:00 | <i>Lunch</i> |
| 13:00 – 14:30 | Session III: Recommendations from the roundtables |
| 14:30 – 15:00 | <i>Coffee break</i> |
| 15:00 – 15:30 | Session IV: Ways Forward and Closing Remarks |



CONFERENCE REPORT

Introduction

The conference was organised by the French Ministry for Women's Rights and the French Ministry of Foreign Affairs, in co-operation with the European Commission and in partnership with Poland. The conference was attended by approximately 200 participants, including Ministers and Secretaries of State, governmental representatives, representatives of the European Commission, the Office for the UN High Commissioner of Human Rights, the Council of Europe, the Organization for Security and Cooperation in Europe and civil society representatives from over 40 different countries from a broad range of States in Western and Eastern Europe and Central Asia. The conference programme included two plenary sessions, titled: "Winning Strategies" and "The Need for Coordination in Europe and the world", and three workshop sessions: "Liberties – fighting discrimination against LGBT persons," "Violence – Fighting violence against LGBT," "Governance – National, regional and international mechanisms for defending LGBT people's rights". This report summarises the outcome of these discussions.

Summary of discussions & key issues arising

From the outset, it was stressed that the **existing body** of national, regional and international human rights **standards** is universally applicable for lesbian, gay, bisexual, transgender and intersex ("LGBTI") people. Participants noted legislative and non-legislative progress made in most countries in the European region over the last two decades. However, participants reported **weaknesses in the monitoring mechanisms** on the national,

regional and international levels to address violations of LGBTI people's human rights, while also recognising that some States and national human rights structures have stepped up efforts to address these weaknesses. Concerns were raised about the **tone of public debates regarding LGBTI issues** in some countries and the **lack of political leadership** in speaking out against prejudice and stereotypes. In some cases, participants reported that politicians were among those making negative comments about LGBTI people.

Data collected by intergovernmental organisations, national authorities, NGOs, national human rights institutions (NHRIs) and equality bodies (EBs) as well as academics show that stigmatisation, violence and discrimination against LGBTI people are widespread. Examples of data collected include socio/legal research and the *EU LGBT survey* by the European Union Agency for Fundamental Rights (FRA), reports by the Council of Europe's Commissioner for Human Rights and the *Trans Murder Monitoring Project* by TGEU. However, participants pointed out that data collection and monitoring are not always done on a regular and repeated base and that there are still many gaps in data collection, which is often conducted by NGOs. The latter frequently lack the financial means to carry out relevant research and monitoring, while many national authorities do not have solid data collection systems in place, creating a cycle in which "the lack of knowing" leads to a "lack of doing".

Homophobic and transphobic bullying in schools is a concern across the region. Tackling this problem is likely to have a wide-ranging and long-

term impact in terms of changing mentalities and behaviours.

As one participant said:

"If you want to tackle homophobic violence in society, start dealing with homophobic bullying in schools."

Homophobic and transphobic violence occurs across the European region. Participants indicated that violence tends to be particularly systematic and structural in countries where laws prohibiting "homosexual propaganda" are being proposed or have been introduced. Homophobic or transphobic laws as well as speech inciting and promoting hatred, discrimination and intolerance, fuelled by extremist or religious beliefs, is also reported to perpetuate intolerance and violence. Participants reported that violence can also include the use of so-called "corrective rape" against lesbian, bisexual and transgender women, as well as domestic violence and honour killings of LGBTI persons. Positively, an increasing number of States have recognised homophobic and transphobic bias in their national hate crime legislation.

Participants highlighted that medical interventions without informed consent (particularly with reference to intersex people, see below) and sterilisation as a requirement for legal gender recognition (for transgender persons, see next paragraph) should be considered in the light of the right to control one's own body including one's sexual and reproductive freedom. In particular, participants indicated that **intersex people** are subject to 'normalising' practices in many countries, including genital surgeries, psychological and other medical treatments, usually without their free and informed consent.

It was reported that many **transgender people face barriers to having their gender identity legally recognised**, including by changing gender markers in official documents. Such barriers may take various forms, ranging from the non-availability of a legislative or functioning framework on legal gender recognition to legislation in force prescribing surgery leading to sterilisation which is medically often unnecessary and in the absence of the trans person's wish.

Discussions highlighted that without official documentation corresponding to their gender identity, transgender people are at risk of being considered "non-persons", facing stigma and discrimination when seeking to access employment, education, healthcare and other services.

A participant reported:

"If like me, for example, you look clearly male and your passport shows a female picture and a female person, you can imagine how hard it is to get some money from your bank account or to even cross borders or take a plane. This is a constant stress you have in your daily life, not only once a day but several times a day."

Participants pointed out that these practices are inconsistent with long-established human rights principles such as the rights to respect for private life, the highest attainable standard of health, equality, non-discrimination, and physical integrity. Encouragingly, many European countries are in the process of changing their legislation on gender recognition while it was also reported that a significant number of States have no (effective) legislation on gender recognition in place or laws in conflict with the principles just outlined.

European States were encouraged by many participants to consider as a model the Argentinian law on gender recognition, which allows individuals to obtain recognition of their gender identity through a simple administrative procedure.

Participants reiterated that LGBTI people often face **multiple discrimination** prompted by the intersection of their sexual orientation or gender identity with other characteristics such as their age, ethnicity, economic status and country or place of residence.

Many participants expressed their concern at the introduction of legislation prohibiting "**homosexual propaganda**" in some countries in the region. Such laws may violate international human rights standards on freedom of expression and can result in restrictions on discussion of LGBTI issues, impediments to the work of NGOs, and the undermining of effective education, including on HIV/AIDS prevention.

As one participant from Eastern Europe noted:

"We see how legislative initiatives on prohibition of so-called 'propaganda of homosexuality' influence basic freedoms. It means censorship of course. And we see on the streets, for example, during our public assemblies, many ultra-right wings attack LGBT people and the police do nothing, actually. There will be no possibility, no possibility to register LGBT organizations. So we will go to the shadows. But we will still work of course. It's getting worse. And it's not just about LGBTI rights. It's about human rights, freedom of speech, freedom of assembly. We see this situation getting worse and worse every year."

Numerous good practices in the areas of data collection, anti-bullying approaches, and measures to combat stigma, discrimination and violence were mentioned during the discussions. These included involving trade unions in combating employment discrimination; third party reporting for victims of hate crime; training for public officials and policy-makers; public awareness and sensitisation campaigns; strengthening the role of NHRIs; and cooperation between civil society and government in designing LGBT action plans. Various States highlighted the need to exchange such good practices and to share technical expertise to help build the capacity of institutions to address the human rights of LGBTI people. The **LGBT governmental network** as well as the Council of Europe's **Cooperation and Assistance project** could serve as opportunities for governments to work together in advancing the human rights of LGBTI persons.

Summary of Outcomes and Key Conclusions

The conference discussed ways to improve the realisation of the human rights of LGBTI persons in Europe. **Political leadership** is key in making progress, as demonstrated by the presence of numerous ministers, governmental and institutional representatives at the event.

Data collection and monitoring of human rights violations by public authorities on national, regional and international level needs to be extended and improved. Data collected by the EU Fundamental Rights Agency, the Commissioner for

Human Rights of the Council of Europe as well as OSCE/ODIHR were cited as leading examples, including for other regions. Data should be disaggregated to identify violent crimes and hate speech targeted at specific groups. It should also be publicly available to enable civil society organisations and other relevant actors to respond effectively.

Participants acknowledged the need for **transgender and intersex issues** to receive more attention, including through **education of policy-makers, empowerment** of transgender and intersex activists and **strengthening of collaborations** with civil society organisations working on these issues. Facilitating the exchange of good practices and the provision of technical support between countries, institutions and NGOs was mentioned as a tool to drive progress.

National governance:

Legal protection of LGBTI persons is a key priority: participants reiterated that both sexual orientation and gender identity should be included as grounds in national **non-discrimination legislation**. In addition, laws facilitating the recognition of transgender identities that respect international human rights principles and appropriate legislation to address the human rights of intersex people were identified as urgent needs. Legal reform should also focus on the repeal of laws banning "homosexual propaganda". Such legislative measures should be taken in accordance with existing EU directives, Council of Europe standards, OSCE commitments, UN conventions and other guidelines, such as the **EU's Employment Equality Directive, Recommendation 2010(5) of the Committee of Ministers of the Council of Europe**. The *Yogyakarta Principles* also provide relevant guidance in key areas. A **multi-sectoral approach** is helpful to integrate these issues across relevant government ministries.

Non-legislative measures, including **education and awareness-raising activities** are equally important, to address negative attitudes, stereotypes and social climates which may give rise to human rights violations.

Ensuring independent **national human rights institutions** in compliance with the Paris Principles, as well as the proper functioning of

equality bodies with a mandate to address discrimination on the grounds of both sexual orientation and gender identity, is important for promoting effective responses to human rights violations and facilitating public education.

Public authorities have a crucial role to play in **countering homophobic and transphobic bullying**, including by raising awareness and providing training. Programs need to be comprehensive and include anti-bullying measures, teacher training, review of school curriculums, inclusion in school inspection reviews and protection of teachers who are themselves bullied.

Regional governance:

At the European level, participants expressed the need for a **strategic political commitment and policy framework**. Participants recognised the positive contribution the EU Employment Equality Directive has made to combatting discrimination on the labour market while also pointing out **remaining gaps in EU non-discrimination legislation** beyond employment. The support of many **Members of European Parliament (MEPs)** for LGBT rights has been constant and consistent. Participants reinforced the need for an **EU roadmap** which would bring together in a single document policy and legislative actions to counter discrimination, violence and hate crimes on the grounds of sexual orientation and gender identity.

Participants welcomed **Recommendation 2010(5) of the Committee of Ministers of the Council of Europe**, but acknowledged the need for indicators, benchmarks and mechanisms (e.g. through a periodic review) to monitor progress towards its implementation. The increasing attention given to sexual orientation and gender identity issues by the **European Commission against Racism and Intolerance** was appreciated, and it was felt to be important that this work continue with adequate resources.

International governance:

Participants acknowledged the **significant progress** made in recent years, particularly the leadership of the **UN Secretary General**, the **UN High Commissioner for Human Rights**, and the adoption of **Human Rights Council resolution 17/19** on human rights, sexual orientation and gender identity in 2011 with support from all regional groups. The role of the **Special**

Procedures, treaty bodies, and engagement in other fora such as the **Commission on the Status of Women** were also highlighted as positive steps.

Increasing the **cross-regional base of support** for human rights related to sexual orientation and gender identity was felt to be an important priority. In this regard, participants highlighted the role of EU Member States, particularly through constructive **bilateral diplomacy**, to strengthen engagement and leadership by States from diverse regions, especially in the Global South.

The UN High Commissioner's report and the subsequent panel in the Human Rights Council were felt to have provided valuable contributions to the discussion. Nevertheless, it was acknowledged that there is a need for the Human Rights Council to address human rights violations based on sexual orientation and gender identity in a **systematic way**, for example through the **creation of a mechanism** to better document human rights violations based on sexual orientation and gender identity, engage with States and human rights defenders, raise awareness of the issues and engage UN human rights bodies in regular discussions.

The **Universal Periodic Review (UPR)** has served as a valuable tool for engaging with States on human rights concerns linked to sexual orientation and gender identity. Participants felt it would be helpful to strengthen scrutiny of the human rights situation in States within the European region, including by using the UPR to bring increased and **systematic attention to the rights of transgender and intersex persons**.

UN agencies such as UNESCO and UNICEF have also played a valuable role. One priority identified by participants was referred to as the '**depathologisation** of transgender identities' which refers to the review process of current international and national medical classifications defining transsexuality as a mental disorder, notably the WHO's ICD. The allocation of a senior staff member within the Office of the High Commissioner for Human Rights focussing on LGBTI issues was welcomed as a very positive development, while there was felt to be a need for more systematised integration of sexual orientation and gender identity throughout the UN secretariat and agencies, as well as increased **inter-agency cooperation** and sharing of good practices.



Asia-Pacific Regional Seminar on

Human Rights, Sexual Orientation and Gender Identity

22nd - 23rd March 2013 | Kathmandu, Nepal

INTRODUCTION

Let's discuss this ... The first ever United Nations (UN) resolution on 'Human Rights, Sexual Orientation and Gender Identity (SOGI)' presented by South Africa in June 2011 built upon more than a decade of efforts by civil society organizations, human rights defenders, state and UN actors to promote awareness and respect for the rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons. In order to ensure renewed and ongoing support for the UN (specifically, the Human Rights Council's) resolution on sexual orientation and gender identity, a series of cross-regional dialogues were organized. The Asia-Pacific Regional Seminar on Human Rights, Sexual Orientation and Gender Identity brought together 150 delegates from 24 countries, including representatives from governments, the United Nations, civil society organizations, and LGBTI groups. The seminar, held in Kathmandu, Nepal on March 22nd and 23rd 2013 was a state level convening that provided an opportunity to sensitize various actors on LGBTI issues, document LGBTI voices for an educational video and strengthen local and regional LGBTI networks through cross-country exchanges about challenges, progress and successful initiatives to advance understanding of LGBTI issues.

DISCUSSION HIGHLIGHTS

There are human rights violations at different levels...

LGBTI people are susceptible to a wide gamut of human rights violations. In testimonial after testimonial as well as panel presentation and breakout groups, we heard that law enforcement agencies, the general public, conservative religious groups, even immediate family members are violating LGBTI people's rights to security, privacy, non-discrimination, freedom of expression, freedom of peaceful assembly, access to health, housing, work and education and in essence, to a life of dignity and respect.

"An animal might get some love, but a third gender person doesn't get any love. Don't I have the right to live a normal life? Who will look after us if we are excluded by our families, societies and even states? I want to live." -
Anik Rana Magar, third gender activist, Blue Diamond Society, Nepal

Discriminatory laws and law enforcement practices:

Discriminatory laws, such as British-era colonial provisions penalizing acts "against the order of nature", criminalize people with non-conforming sexual orientation and gender identity or gender expression across much of the Asia Pacific region. Public offence, impersonation, and morality statutes are also used to stigmatize and harass LGBTI people. The presence of these laws makes LGBTI people vulnerable to frequent physical, mental and sexual harassment and assaults, including custodial rape by the police. Throughout the region, there have been innumerable cases of LGBTI people being arbitrarily detained by police. Participants also reported cases where police deliberately misuse anti-trafficking laws to charge partners of LGBTI people with human trafficking because the partner's families object to their relationships. Many existing anti-rape laws have narrow definitions of rape and do not redress the violations that LGBTI people suffer – from "corrective" rape by men purportedly seeking to change lesbians into heterosexual women or punitive rape against LGBTI people. Reporting rape is out of the question for many LGBTI people since it involves revealing sexual orientation or gender identity, which could result in family recriminations, criminalization for being lesbian, gay, bisexual or transgender, or negative media publicity and sensationalization that end up re-victimizing people who have turned to the legal system for help. Transgender people in many Asia Pacific countries are still struggling to be legally recognized, and are denied the right to assert their identity in legal documents including citizenship documents (inducing them to live like aliens in their own home countries) and travel documents (which makes them even more susceptible to harassment during travel).

"These provisions cause many LGBTI people to live in fear of the law, rather than under its protection." -Tripti Tandon, Lawyers Collective, India

Denied access to health, education and work, reducing prospects of betterment: Accessing non-discriminatory health services is a major challenge for the LGBTI community in most countries in this region, primarily because health professionals do not recognize the specific and unique health care issues related to the sexual and reproductive health of the LGBTI community. In addition, services such as sex reassignment surgery are extremely expensive and beyond the reach of many transgender people, particularly for those who already

live in poverty due to multiple discrimination and the cross-cutting nature of exclusion by society. Non-acceptance of LGBTI people denies many LGBTI people access to education while those who are in school often have to endure bullying, stigmatization and also violent disciplining, in some instances causing young LGBTI persons to take their own lives. Participants also reported many incidents of being fired from their jobs or denied employment because of their sexual orientation and gender identity, creating a vicious cycle of discrimination, poverty, violence, and criminalization. This has barred LGBTI groups from owning and inheriting property as well.

Patriarchal society and misuse of culture and religion resulting in family and society-induced violence: Germaine Leonin from the Philippines addressed the root cause of discrimination: "Part of this discrimination comes from religious beliefs, cultural practices and the patriarchal nature of our society... [homosexuality] is predominantly seen as a western issue." Homosexuality, cross-dressing and any non-conforming sexual orientation or gender expression are often preached as deviant, sinful, immoral, and against religious teachings. Due to this, LGBTI people are not only prevented from practicing their religion, but are also subjected to violence and hate crimes by religious fundamentalist groups, some of whom have state endorsement and the support of politically conservative government officials. Elizabeth Kerekere from New Zealand underlines: "It is not about being able to live in our culture in spite of our sexual orientation, it is about being able to live in our culture in accordance with our sexual orientation." In addition, lesbian women are subjected to violence in the home such as forced marriages, physical violence and even 'corrective rape'. Participants recalled false allegations of theft and robbery filed against them by their own family members and family members of their partners. As a result, many LGBTI people, especially the younger generation, experience depression and other mental health issues. Intersex people talked about 'corrective' surgery based on parental consent without intersex individuals themselves being allowed the opportunity to affirm their own identities.

And the challenges to overcome these violations are as tall as the mountains ...

Discriminatory institutional structures and legal frameworks and the failure to understand the complexity of sexual orientations and gender identities has further added fuel to the fire of societal exclusion of LGBTI peoples. Lack of sensitivity for LGBTI concerns, whether by family or state actors, and the concentration of LGBTI support services and advocacy in urban centers posed overarching challenges, specifically when there are human rights violations. Of particular concern were:

Ensuring compliance with international human rights law at the national and local levels – which is a challenge for three reasons. First, national and state level agencies often lack capacity – they are unaware, do not

understand, or are resistant to LGBTI issues. Second, there is lack of coordination amongst various agencies within the state such that although the treaty signatories are supportive of LGBTI issues, the law enforcement agencies may not be aware of the treaties or the issues. Third, most states lack independent agencies that can truly assess the successful compliance with and implementation of international human rights treaties and UN resolutions relating to sexual orientation and gender identity. This makes it difficult to hold states accountable.

Contextualizing LGBTI community within religion, culture and tradition at the local level is another severe challenge that echoed across sub regions. Joey from Tonga reiterated this sentiment, "We have a right to claim the culture we are born into. How come we are 'other'?" Gender, unfortunately, is largely interpreted as a binary concept with only two genders -- male and female despite the fact that transgender, cross-dressing, and gender non-conforming people have always been an integral part of Asia-Pacific histories and cultures. Many Asian and Pacific government leaders inaccurately label homosexuality as a 'western' concept, overlooking inclusive traditions in indigenous cultures and communities. Colonization and the wave of Christianity that followed also played a significant role in the stigmatization of homosexuality and transgenderism. Some Asia Pacific governments have marginalized LGBTI communities by promoting a narrow conception of 'Asian Values' emphasizing homogenous not diverse societies where the only acceptable norm is heterosexuality.

Diversity within the LGBTI community and a multiple identity environment resulting in multiple levels of discrimination was identified as another significant challenge.

***We have multiple identities. We are not just LGBTI people in a vacuum but also defined by our culture, ethnicity, age, economic background, and so on... and we experience multiple, intersecting discrimination. Our issues are crosscutting issues."** - Grace Poore, IGLHRC*

LGBTI people are often lumped together under a single umbrella term, as if one-size fits all. Terminology such as 'transgender' is insufficient to describe the uniqueness and diversity of gender identities. However, as participants pointed out, each sub group has unique issues. This diversity raises challenges on two levels - first, there is an imposed "unity" from the outside and failure to recognize differences within the community, which further exacerbates the impact of discriminatory practices. Second, policies that try to address the community as a whole often overshadow the particular priorities, challenges and needs of each group. In addition, LGBTI people in the Asia Pacific belong to different ethnic, racial or economic groups or have different social class. This multiple identity environment brings multiple levels of discrimination.

Lack of international mechanisms dedicated to LGBTI issues was identified as another challenge where

participants specifically pointed out the lack of a Special Procedure or other mechanism within the UN that is dedicated to sexual orientation and gender identity. Discrimination operates within the UN, such as partners of LGBTI UN staff not getting the same benefits as partners of heterosexual UN staff. Several participants highlighted a “disconnect” between debates at the UN and realities on the ground.

In addition, participants raised concerns about the sustainability of LGBTI movements due to **lack of fund-raising opportunities** since the community still faces social exclusion in the region. Similarly, there are countries in the region like Myanmar and Bhutan, which have only recently recognized the human rights of its citizens, and deny the existence of LGBTI communities in their countries, often labeling them as 'problems'.

Yet there has been some progress ...

Participants discussed the progress that has taken place in the last decade. In a number of countries across the region, participants reported that the **ACCEPTANCE** of the LGBTI community has increased significantly in the past decade. Countries like Nepal, Mongolia and Tonga reported that the existence of LGBTI movements contributed largely to successful awareness-raising and increased level of acceptance of LGBTI people. Some countries reported success in terms of **LEGAL REFORMS**. In Nepal, the Supreme Court decision of 2007 allowed the issuance of identification documents based on SOGI, and an order to the legislature that discriminatory laws be repealed. In India, the Delhi High Court decision struck down the discriminatory application of section 377 of the Penal Code. The decision is now on appeal to the Supreme Court of India, but the government is no longer defending the provision. Similarly in Mongolia the registration of an LGBTI organization was one of the first achievements after a long legal battle. In Australia, the issuance of identification documents based on gender identity was an example of successful legal reform of the past decade. In some countries like Bangladesh, Nepal and Tonga, participants reported **BUDGETARY ALLOCATIONS** to the LGBTI community. In Tonga and Nepal, LGBTI issues were included in the school curriculum. In Nepal, the **LGBTI MOVEMENT HAS GROWN** to 39 Community Based Organizations (CBOs) and 53 support groups. Similarly, there was representation of the community in the parliament. LGBTI is now recognized in the national census. Suicide cases have gone down drastically in Nepal in the last decade. The New Zealand Human Rights Commission has brought specific attention to transgender issues through a community survey and report, titled “To be who I am”. Similarly, in Mongolia a supportive National Human Rights Institution (NHRI) has helped fund research and also runs an educational television program on LGBTI issues.

The struggle in Mongolia is common to that in this region. We need to support each other in unity and solidarity. - Otgonbaatar Tsedendemberel, Mongolia.

"This conference in Kathmandu proves that the common assertion that LGBT rights are incompatible with Asian values is false." - Riddhi Baba Pradhan, Nepal's Minister of Women, Children and Social Welfare

And there is hope...

Using the Yogyakarta Principles to highlight LGBTI inclusion was discussed as a solution to the sensitization problem. The 29 principles are already in use in some Asia Pacific countries. Ideas were also shared about giving awards to 29 non-LGBTI people who have contributed to promoting LGBTI issues, running a television and newspaper campaign about the Principles to spread the message of acceptance and respect for all people, including LGBTI people. Special emphasis was laid on using mass media for this purpose.

Researching and highlighting indigenous cultures, history and traditions on LGBTI community existence would create indigenous knowledge and defense of LGBTI community such that their cultural ownership and traditional acceptance can be increased. Much of the resistance and exclusion of the community currently stems from misreported cultural practices. Nonetheless, participants emphasized that in a region as vast as the Asia-Pacific, “Asian values” must encompass respect for diversity, pluralism and inclusion.

Creating LGBTI liaison officers in state structures would enhance LGBTI participation in decision-making and also protect them from harassment. These liaison officers could be members of the LGBTI community, which would increase the understanding of LGBTI issues, and help to frame better government policies geared towards addressing LGBTI issues.

Creating a dedicated fund for LGBTI at the state level for engaging communities through advocacy and outreach would help sensitize communities to the issues of LGBTI rights. Local organizations that understand the site-specific cultural nuances and challenges are best for this type of engagement. The state mandates and funding should reach the often-discounted rural areas where the LGBTI communities typically encounter much discrimination.

Joining hands with related issues and increasing community involvement to strengthen acceptance of LGBTI issues. Alliances with the women's movement, anti-domestic violence movement, HIV/AIDS prevention movement, and others, help to build mainstream support and demonstrate the engagement of the LGBTI community in a broad range of human rights issues.

Positive role of National Human Rights Institutions (NHRIs) in creating a supportive environment for LGBTI activists was highlighted as a best practice. NHRIs can play a positive role in carrying out independent assessments about human rights violations against LGBTI people, bringing attention to the realities of LGBTIs through existing mechanisms like the Universal

Periodic Review (UPR), encouraging states to respond to LGBTI concerns, and strengthening partnerships with LGBTI organisations.

State level support structures to ensure access to health and education would enable LGBTIs to participate more actively in national development. This could include training to health professionals on LGBTI issues, and development of inclusive curricula, in consultation with civil society. This responsibility largely lies with the state but if states are hostile then participants suggest stronger advocacy measures. NGOs could create pilot programs on good practices to demonstrate the positive outcomes to States.

A UN mechanism on SOGI would help bring attention to LGBTI issues, strengthen protection, engage with governments, including around implementation of commitments made during the UPR, work with human rights defenders, and enhance systematic attention to the issues by the UN.

CONCLUSION

For the creation of an inclusive society...

It's not just about demanding rights, it's about fulfilling the vision of a truly inclusive society that is a manifestation of the political set up that we have chosen in the country we live in. - Arvind Narrain, India

Recognition of LGBTI rights by the state and amendment of discriminatory laws were among the priorities identified by participants. Participants also want governments to include LGBTI communities in consultations as part of the process of amending laws. Governments should recognize third gender as an identity and ensure implementation of measures to legally recognize changed gender status on all documents. Activities to sensitize the public and state institutions, including law enforcement agencies, about LGBTI concerns are a priority. Participants suggested that the UN should play a more proactive role on LGBTI issues. Participants also suggested that governments violating the human rights of LGBTI people should be held accountable.

Summary of Key Recommendations for Various Actors

States

- Repeal all discriminatory laws and raise awareness of public officials and law enforcers on LGBTI rights. Fulfill commitments by translating international resolutions on SOGI, and recommendations in the High Commissioner's report, into national and local laws.
- Institutionalize LGBTI issues in laws and government structures and ensure representation and participation of LGBTI people in policy making.
- Set up LGBTI liaison persons in government offices.

- Provide allocations in national budgets to address LGBTI issues especially to ensure access to health and education of the LGBTI community.
- Provide ID documents that reflect one's self-defined gender identity.

Regional human rights mechanisms

- Investigate the condition of LGBTI human rights. Produce independent reports on findings.
- Institute regional mechanism to address SOGI issues and create opportunities to strengthen LGBTI network within the region through regional programs.
- Lobby for state level SOGI-inclusive laws on health care and education.
- Regionally invest in research that helps mainstream LGBTI rights and challenge the idea that sexual orientation and gender identity is a western issue.
- Leverage LGBTI friendly states to engage with "silent" states and proactively counter hate campaigns against LGBTI people.

United Nations

- Appoint a mechanism such as a Special Procedure on SOGI.
- Strengthen cooperation and sharing of best practices on SOGI issues by UN agencies, including training at the field level.
- Improve ways to enhance states' reporting on LGBTI conditions, better ways to ensure implementation and follow-up and increased accountability.
- Include SOGI in 'post MDG 2015 and beyond' agenda.

Other Stakeholders

- CBOs and NGOs: - Work on sensitizing different community members including family members, media/journalists, parliamentarians and bureaucrats, law enforcement agency members on LGBTI issues and rights through various training programs, counseling facilities etc.
 - Work on establishing LGBTI networks and explore common grounds with other existing human rights networks to strengthen the LGBTI movement further.
 - Develop indigenous cultural information on how LGBTI people belong in local culture.
- NHRIs - Monitor states and hold them accountable
 - Receive, investigate and resolve violations
 - Raise awareness and provide Human Rights education especially to state agencies.
- Courts: Act as a bridge between international human rights law and national laws, helping states to translate and domesticate international law.
- Private Sector: Introduce LGBTI friendly job application forms, procedures and workplace facilities.
- Media (new and traditional media): Reduce LGBTI stereotypes. Use affirming language and positive portrayals of LGBTI people. Initiate awareness campaigns and promote the Yogyakarta Principles.
- Schools: Include accurate, affirming information about LGBTI people in the curriculum.



The situation of LGBTI people in Africa is in a state of crisis: Violence and a wide range of violations are faced daily by LGBTI people in every sphere of life from the household to the community, workplace, educational institutions, social, religious and spiritual spaces.

This report has been prepared as a collective effort on the part of African organisations in North, West, East, Central and Southern Africa and coalitions through three main sources: interviews, the completion of questionnaires by LGBTI human rights defenders and their organisations and documentation collected and collated since December 2011. The report highlights rights violations and proposes actions that governments and the United Nations can and should take to address these violations and to protect and fulfil the human rights of LGBTI people in Africa.

Some African states are starting to recognise these issues as human rights violations. They are starting to demonstrate a political commitment to the recognition and protection of the rights of LGBTI people and the responsibility of the state in this regard.

As we meet in Oslo, human rights defenders, activists and LGBTI people in many countries are under attack, being hunted down, harassed and arrested by police. They continue to face arbitrary arrests and detention, unfair trials, extortions and physical and sexual violence, rape and murders.

The justice system continues to show high levels of homophobia and transphobia, thus denying their right to social justice. High levels of ignorance by the police and the judiciary reinforce institutional measures that deny access to justice.

There is also widespread denial of the right to health, Privacy Act, 2002, amended October 2003].

the right to development and the deepening of poverty and economic inequality in the lives of LGBTI people as a result of the violations and social, political and economic exclusions that they face.

There is a need for governments to acknowledge and recognise issues of sexual orientation and gender identity as a human right. All citizens have the right to be protected all citizens, irrespective of their sexual orientation and gender identity.

Recognition of the crises and urgent measures to address these by states is required. This is long overdue.

We do recognise that many countries in Africa are showing little progress in terms of recognising and protecting the human rights of LGBTI people, some promising interventions have been emerging even in states with hostile laws, policies and practices.

These are some examples:

- Botswana, Zimbabwe, Mozambique and South Africa have progressive employment acts which set standards for nonU discrimination on the basis of sexual orientation;
- In Uganda the judiciary has demonstrated impartiality in hearing civil cases;
- In Zimbabwe, sexual orientation is listed as a ground for protection of the right to privacy, although it has not been used¹;
- In Rwanda, after initially considering the introduction of legislation to criminalise sexual orientation, the government after

¹ [GN493A/2003 : Access to Information and Protection of

consultation with society and experts decided to withdraw the legislation.

- In Malawi, arrests of people on the basis of sexual orientation and gender identity and expression has been suspended, until the Malawi Law Commission completes its review.
- The most significant and widespread progress by governments has been the inclusion of men who have sex with men in National HIV plans and consultation processes to strengthen the response and effectiveness of national HIV responses.

WE RECOMMEND THAT STATES:

- Publically denounce statements against violence, torture and other forms of violations against LGBTI people.
- Be part of an immediate global suspension of arrests and other actions against people on the grounds of sexual orientation and gender identity and expression.
- Comply with their commitments to the UN General Assembly Resolution A/RES/53/144 of 8 March 1999 and abide by the Declaration on Human Rights Defenders',² which enables all those who defend human rights, including LGBTI people, women human rights defenders and those who work on sexuality and gender to do their work unhindered. The Declaration promotes the rights to freedom of expression, assembly and association. It urges states to end arrest of and attacks on human rights defenders while doing their work; enables human rights defenders to register their organisations with formal state institutions whose responsibility it is to approve such organising. Governments must take action to be in compliance with these provisions.

- Develop coherent policies and practices that integrate sexual orientation and gender identity thus ensuring that LGBTI persons have access to informed and sensitive health care, education, safety and security.
- Should create the conditions for ongoing national dialogue and debate on sexuality, reproductive and sexual rights, including sexual orientation and gender identity and expression in partnership with human rights defenders.
- Take measures to address social, political and economic exclusion of LGBTI persons.
- Decriminalise same sex relations, gender identity and expression. Stop legislative initiatives aimed at criminalising and morally encoding sexualities between consenting adults.

WE RECOMMEND THAT THE UNITED NATIONS:

- Ensure that the substance and recommendations of the Report of the Office of the High Commissioner on Human Rights on Sexual Orientation and Gender Identity (Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, Ref NO: A/HRC/19/41, 17 November 2011) and are systematically addressed , implemented and monitored;
- Mandate a joint report on the situation of persons with diverse sexual orientation and gender identity worldwide by a group of Special Rapporteurs on; rights to health, right to development, on torture, violence against women and others, to cooperate in this study.
- Be inclusive of all voices in the dialogues and consultations, on traditional and religious values and ensure that it is in line with human rights standards.
- Human Rights Council should mandate the Office of High Commissioner on Human Rights to convene, within existing resources,

²<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Translation.aspx>

in cooperation with other relevant entities of the United Nations system, an expert workshop, to prepare concise Technical Guidance that address the very high levels of violence and violations against persons on the grounds of sexual orientation and gender identity;

- Sustain the application of the indivisibility and universality of human rights through, amongst others, the high level of political commitment to address issues related to sexual orientation and gender identity flowing from the Resolution A/RES/67/168 adopted on 15 March by the General Assembly on Extrajudicial, Summary or Arbitrary Executions.
- Treaty Bodies should integrate sexual orientation and gender identity in their monitoring of the implementation of human rights treaties;
- All Agencies in particular, UNAIDS, UNDP and UN Women must fulfil their mandate by being inclusive of LGBTI persons in all programming and at all levels of public participation. Ensure that meaningful participation is measured in policy and institutional indicators.

- WHO should publish the findings on the negative health impacts of criminalisation of sexuality and sex between consenting adults, completed in 2012 by the Department of Reproductive Health and Research.
- WHO should urgently provide policy guidelines that are rights based on the rights of children born as Intersex by recognising Intersex as a gender affirming identity. Intersex persons, have the right to consent and make decisions on their identity. Any other practice must be regarded as a human rights violation and not permitted in the medical health practitioners guidelines.
- WHO should urgently address in policy and practice the barriers that prevent full access to comprehensive health services for transgender persons.
- WHO should recognise and address psychosocial and physical health challenges faced by lesbian women

People in same sex relations and people who are gender non-conforming, including transgender and transdiverse people, live in fear of and face the daily lived realities of violence, including rape and physical violence, torture, murder, stigma and discrimination perpetrated by both state and non-state actors. This crisis must end.

Seminario Regional sobre la Orientación Sexual e Identidad de Género.

América Latina y el Caribe

Brasília, 4 y 5 de abril de 2013.



**Regional Seminar on Sexual Orientation and Gender Identity
- Latin America and the Caribbean.**

Introduction

The historic resolution 17/19 (“Human Rights, Sexual Orientation and Gender Identity”), presented by the government of South Africa, and adopted by the UN Human Rights Council in June 2011, gave voice to and alerted the world about the conditions of discrimination and risks that LGBTI people face in countries around the world.

The resolution responded to the long-standing struggle of social organizations, human rights defenders, academic bodies, States, and mechanisms of the international human rights system against the violence and discrimination that people face based on their sexual orientation and gender identity.

The need for strengthening and follow-up of the work of the Human Rights Council around these issues gave rise to the proposal to organize various regional seminars, in an attempt to strengthen mobilization for the adoption of a new resolution on these issues at the 23th Session of the Human Rights Council next June.

As part of these efforts, the Government of Brazil hosted the Latin American and Caribbean Regional Seminar on Sexual Orientation and Gender Identity, in the city of Brasilia, on April 4-5, 2013, together with the Brazil-European Union Seminar on Fighting Homophobic Violence.

The seminars brought together representatives of different Latin American and Caribbean governments, representatives of the European Union, of the Regional Office of

the UN High Commissioner on Human Rights, and of the Unit on the Rights of LGBTI people of the Inter-American Commission on Human Rights.

There were also representatives of 25 social organizations from throughout the Latin American and Caribbean Region, who had gathered previously in Brasilia, on April 2-3, to discuss the main challenges that impact the rights of LGBTI people in the region, and possible strategies for the UN Human Rights Council to address these issues.

The Brazil-European Union Seminar on Fighting Homophobic Violence included an analysis of the situation of LGBTI people and of successful actions taken against homophobia and transphobia by experts from Brazil and from European Union countries including Portugal, Spain, and Sweden.

In the Regional Seminar on Sexual Orientation and Gender Identity, the outcomes of the regional seminars held in Paris and Amsterdam were shared. The participants then discussed perspectives regarding the International Seminar that would take place in Oslo, on April 15-16. Civil society organizations shared the outcomes of their own conference that had taken place on April 2-3.

Besides discussing possibilities for countering violence and discrimination against LGBTI people within the framework of the Human Rights Council, the Regional Seminar offered an opportunity to coordinate efforts and share experiences and good practices, as well as to promote dialogue on the progress and challenges in LGBTI rights advocacy in the region.

The event unfolded amidst a constructive, positive environment, in a spirit of open discussion between government officials and civil society organizations.

Presentations and discussions offered a broad view of: the history of the struggle against homophobia and transphobia, and in favor of the protection of LGBTI rights in the region and the world; the main initiatives advanced by the participating countries; and relevant progress in multilateral bodies. The seminar also identified the main current obstacles and challenges that put LGBTI people in a position of greater vulnerability to suffer violations of their right to life, to physical integrity, to non-discrimination, including in relation to the rights to health, education and employment, and to their own well-being. Furthermore, it was emphasized that such vulnerability calls for the development of articulated strategies, spaces for dialogue, and administrative tools and for data production against violence and discrimination, by the different national bodies and institutions.

There was a clear rejection of State initiatives that criminalize LGBTI persons, and that promote actions which are homophobic in substance or effect. The need to protect LGBTI people from violence was acknowledged.

Participation of civil society organizations

Colin Robinson, from Trinidad and Tobago, and Belissa Andia Perez, from Peru, presented the outcomes of the conference that brought together representatives of 30 civil society organizations from 20 countries within the region, and that took place two days before the regional seminar.

The presenters highlighted with concern that in at least eleven countries of this region, homosexuality and cross-dressing are still criminalized. They also expressed concern for what they classed as leniency by the authorities for violent police practices inflicted on LGBTI people in all countries of the region. They condemned the fact that such leniency would result in the police in some countries not opening an investigation into the murders of LGBTI people, and simply classifying them as “crimes of passion”, thus promoting impunity and homophobia.

They brought attention to the situation of indigenous LGBTI people, against whom traditional values are sometimes invoked to try to justify practices against their human rights. They urged the attending States to restrain the use of “traditions” and “customs” that violate the rights of LGBTI people, and, on the other hand, to acknowledge the existence of different sexualities as part of their social fabric and values.

They cautioned participants about the negative impact of discrimination on the rights of LGBTIs to their own life goals. They condemned the performance of “corrective surgeries and mutilations” without the previous informed consent of intersex people in an attempt to impose certain gender stereotypes upon them, in violation of their freedom of choice.

They suggested that relevant Special Rapporteurs produce a report on the human rights situation of LGBTI people in the world, mentioning that the report would be part of a wider strategy intended to bring visibility to the situation of LGBTI people, and to lay the groundwork for the future creation of a Special Procedure on LGBTI rights.

Main topics discussed during the Regional Seminar

Among the main topics discussed by the participants of the Regional Seminar, the key themes were:

- The creation and strengthening of fora for political discussion between governments, civil society organizations, and academics;
- Rejection of the criminalization of LGBTI persons, and the promotion of campaigns against homophobic violence and in favor of strengthening the citizenship of LGBTI people;

- analysis and monitoring of, and impact on, the rights of LGBTI people by state bodies and by the bodies and mechanisms of the regional and international human rights systems;
- the work and contributions of regional bodies and mechanisms and the need to strengthen them, so that they can build upon and give continuity to the progress already achieved;
- the role of the Human Rights Council as a possible vehicle for facilitating the actions of UN bodies, agencies, funds and programs dedicated to addressing violence and discrimination against LGBTI people;
- the use of regional and international bodies to develop parallel activities that contribute to understanding and sensitization around LGBTI issues, including issuing of joint declarations on matters of concern;
- setting up mechanisms for dialogue and cooperation, including south-south and triangular, according to the needs of the countries to allow for the sharing of good practices relating to legal reform, public policies and tools for evaluation and administration;
- the national experiences of countering violence and discrimination faced by LGBTI people, as well as combating impunity;
- the possibility of creating a mechanism for monitoring the rights of LGBTI people by the Human Rights Council; distribution and awareness-raising of the outcomes of this Regional Seminar by States and civil society organizations, in order to make a deeper analysis and to further advance joint initiatives.

Main conclusions and recommendations of the Regional Seminar on Sexual Orientation and Gender Identity

The representatives of Argentina, Brazil, Bolivia, Chile, Cuba, Costa Rica, El Salvador, Guatemala, Mexico and the Dominican Republic engaged in a “Discussion of the international strategy”, which was the last segment of the seminar. Representatives of civil society organizations also partook in this discussion.

Government participants agreed to support the efforts of the core group countries in relation to the human rights of LGBTI people, and in favor of the reintroduction of the resolution against violence and discrimination based on sexual orientation and gender identity at the Human Rights Council.

Furthermore, they deemed important for such support to reflect the progress achieved in countries of the region, bearing in mind the following:

- a. the inclusion of LGBTI issues in the final documents of the Regional Conferences in Santiago (2001) and Brasilia (2008), which were preparatory to both the Durban Conference (2002) and the Durban Review Conference (2009);
- b. the adoption (by consensus) by the General Assembly of the OAS, since 2008, of the resolutions on “Human Rights, Sexual Orientation and Gender Identity”, that have progressively enhanced the States’ level of acknowledgement of their obligations in this matter;
- c. the inclusion of the struggle against discrimination based on sexual orientation and gender identity in the draft Regional Convention that is being negotiated within the OAS; and
- d. the efforts towards regional dialogue and cooperation in this matter, as recorded in the MERCOSUR’s Meeting of High-Level Authorities in Human Rights and Chancelleries.

In accordance with the approach given to this topic at the OAS, government participants felt it appropriate that the resolution to be adopted by the Human Rights Council seek to progressively increase the number of countries that support this initiative with the eventual object of strengthening protection offered to LGBTI people.

They acknowledged, as has been pointed out by the High Commissioner on Human Rights in her report A/HRC/19/41, “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity”, the need for production and discussion of further HRC reports on the subject of the human rights of LGBTI people.

They suggested that, in order to ensure sustained attention to these issues, the resolution to be adopted at the Human Rights Council could mandate the preparation of a new report by the High Commissioner where examples of good practices, such as national plans, legislation and tools for the production of data towards combating violence and discrimination faced by such groups, would be compiled.

Participants deemed appropriate that such a report form the base of an inventory of experiences in order to promote technical support and capacity development in this area.

They recommended that the report also include the activities of the regional human rights systems, and the assessment of actions that have contributed to the strengthening of the capacities of States to promote and protect the rights of LGBTI persons.

Participants suggested that the resolution to be adopted at the HRC records and supports the treatment given by the different mechanisms of the international human rights system to addressing violence and discrimination against LGBTI people, as illustrated in the report *“Born Free and Equal”*, published by the UN Office of the High Commissioner of Human Rights, and the A/HRC/19/41 report of the High Commissioner.

Participants highlighted the importance of extending this recognition and support to the activities of the aforementioned regional protection systems, and of the different organizations, bodies, funds, programs, and specialized agencies of the UN that have supported actions with a positive impact on the rights of LGBTI people.

Furthermore, they acknowledged the importance of creating, maintaining and enhancing forums for dialogue and political participation of civil society organizations, as a key condition to confer greater legitimacy and effectiveness to actions for the promotion and protection of LGBTI rights.

Brasilia, April 5th, 2013

UNITED NATIONS



NATIONS UNIES

THE SECRETARY-GENERAL

--

**VIDEO MESSAGE TO THE OSLO CONFERENCE ON HUMAN RIGHTS, SEXUAL
ORIENTATION AND GENDER IDENTITY**

Oslo, 15 April 2013

Your Excellency, Espen Barth Eide, Foreign Minister of Norway,
Your Excellency, Minister for Women's Rights of the French Republic, Najat
Vallaud-Belkacem,
Excellencies,
Distinguished friends,

I am pleased to greet the participants in this important conference.

We should all be outraged when people suffer discrimination, assault and even murder – simply because they are lesbian, gay, bisexual or transgender.

We should all speak out when someone is arrested and imprisoned because of who they love or how they look. This is one of the great, neglected human rights challenges of our time. We must right these wrongs.

Governments have a legal duty to protect everyone. But far too many still refuse to acknowledge the injustice of homophobic violence and discrimination.

We need to document this problem and share information with States on a regular basis for discussion and action.

We must institutionalize our efforts to address discrimination based on sexual orientation and gender identity. We need public education to change popular attitudes.

Some will oppose change. They may invoke culture, tradition or religion to defend the status quo.

Such arguments have been used to try to justify slavery, child marriage, rape in marriage and female genital mutilation.

I respect culture, tradition and religion – but they can never justify the denial of basic rights.

My promise to the lesbian, gay, bisexual and transgender members of the human family is this: I am with you. I promise that as Secretary-General of the United Nations, I will denounce attacks against you and I will keep pressing leaders for progress.

I am committed to leading a global campaign in partnership with the United Nations human rights office. I count on others to join us.

Together, we can make the world safer, freer and more equal for everyone.

Thank you.



**Oslo Conference on Human Rights
Sexual Orientation and Gender Identity
Oslo, 15-16 April 2013**

**Video Message
by UN High Commissioner for Human Rights Navi Pillay**

In recent years, awareness has grown of the scale and gravity of human rights abuses committed against people because of their sexual orientation and gender identity.

More States than ever now recognize that their legal duty to protect everyone from violence and discrimination extends also to those who are lesbian, gay, bisexual, transgender and intersex.

Reflecting a shift, in 2011 the Human Rights Council adopted the first United Nations resolution on the issue. Since then, we have had the first official UN report on the issue, produced by my Office, and the first formal intergovernmental debate.

The report I presented to the Council painted a picture of intolerable physical violence and discriminatory practices.

When people suffer violent attacks and discrimination, whatever the so-called rationale, we must act. The question is not whether to respond, but how.

The steps needed at a national level are well-established – from decriminalization of same-sex relationships to comprehensive anti-discrimination measures. Public education is also required, to tackle homophobia at its roots.

For my part, I can and will continue to advocate for these kinds of measures, and to highlight particular areas of concern.

But we need to make sure that the issue is addressed properly at an intergovernmental level as well.

The first step in overcoming divisions among States is dialogue. But to have an effect, dialogue must be sustained ... and, equally important, it must be informed.

Our immediate challenge is to overcome two critical gaps.

The first is an information gap. Out of thousands of human rights related reports presented to the General Assembly and Human Rights Council over the years, just one – my own one-off report to the Council at the end of 2011 – has addressed homophobic violence and discrimination head-on.

This must change. Violations should be systematically monitored, documented and reported. Evidence should be laid before States on a regular basis – providing a solid foundation for discussion.

This is the way to convince more States to commit themselves to action at a national level. It will take time, but ultimately, faced with an accumulation of evidence, denial will no longer be an option.

This brings us to a second, related gap ... which is institutional.

Up to now, information has been collected in passing by existing human rights mechanisms, on an *ad hoc* basis. And the only discussion we have had among States has been last year's one-off panel debate. This falls far short of what is needed.

Violence and discrimination against LGBT people is systematic; our response must be too.

In future, both reporting of these violations and discussion of State responses should be institutionalized.

It is of course for you, as Member States, to decide how best to achieve this.

As you consider your decision, please listen to the voices of the victims. Many of their stories will break your heart.

All too often, their own Governments have abdicated their responsibilities towards them. They are looking to the United Nations for protection.

They expect us to live up to our ideals of equal rights for all. No distinctions. No exceptions.

We must not betray them.

**Oslo Conference on Human Rights, Sexual Orientation and Gender Identity
Oslo, 15-16 April 2013**

**Statement by Ivan Šimonović
United Nations Assistant Secretary-General for Human Rights**

Excellencies,
Distinguished delegates,

It is a privilege to be part of this, may I say, historic gathering here in Oslo.

We are here – as the Secretary-General put it a moment ago – to right some wrongs. Wrongs that have been perpetrated – often with impunity and sometimes even licensed by State authorities – against millions of people all over the world just because they are lesbian, gay, bisexual, transgender and intersex.

Just over a year ago, at the request of the Human Rights Council, the Office of the High Commissioner for Human Rights (OHCHR) produced a report documenting violence and discriminatory laws and practices affecting individuals based on their sexual orientation and gender identity. That slim, 25-page report, based on empirical evidence, made it clear beyond doubt that violence and discrimination against LGBT people are so serious and so widespread that they warrant the active attention of the United Nations, and that they fall within the framework of States' legal responsibilities.

Affirming that existing treaties obligate States to protect the rights of everyone – LGBT people included – the report catalogued a pattern of appalling human rights violations directed at individuals specifically because of their sexual orientation and gender identity. At the request of the organizers, I am going to focus on the report's principal findings, before saying a few words about how we can best respond.

The report's first finding was that hate-motivated violence against LGBT people is taking place in all regions of the world. It ranges from aggressive, sustained psychological bullying through to physical assault, torture, kidnapping and targeted killings. Sexual violence has also been widely reported—including the phenomenon of so-called "corrective" or "punitive" rape, in which men rape women assumed to be lesbian on the pretext of trying to "cure" their victims' lesbianism.

Reported incidents take place in a variety of settings: on the street, in public parks, in schools, in private homes, in prisons and police cells. It may be spontaneous or organized, perpetrated by individual strangers or by extremist groups. A common characteristic of many anti-LGBT hate crimes is their brutality: murder victims, for example, are often found mutilated, severely burnt,

groups. A common characteristic of many anti-LGBT hate crimes is their brutality: murder victims, for example, are often found mutilated, severely burnt, castrated, showing signs of sexual assault. Transgender persons, especially those involved in sex work or in detention, face an especially high risk of deadly and extremely cruel violence.

At its core, this violence is gender-based. Victims are targeted because they are seen as transgressing established gender norms. I will never forget the words of a mother whose 10-year old son committed suicide after being repeatedly beaten and called “gay” by his peers. She said, “He was just a child. He didn’t even know if he was gay. But they bullied him anyway because they thought he didn’t act enough like a boy.”

Our report found that far too few countries have adequate systems in place for recording incidents of homophobic violence, let alone preventing or responding to them. Police officers are often insensitive and lack training and victims and their families are typically reluctant to come forward in case they have to suffer further verbal abuse from the police. So the problem is submerged: the statistics we do have point to widespread violence and intimidation but we know that official figures represent just the tip of a larger iceberg.

The report’s second finding concerned criminalization. It is nearly two decades since the UN Human Rights Committee first established that criminalizing consensual, same-sex relationships violates people’s rights to privacy and non-discrimination. In that time, more than 30 States have taken steps to remove homosexuality-related offences from their legal systems. But in at least 76 countries, the criminal law is still used to punish people just because their partner is someone of the same sex, not a different sex.

Millions of lesbian, gay and bisexual people living in these countries wake up every day in the knowledge that they are considered outlaws. They are forced to hide themselves, their identity, their love, their lives, for fear of arrest and prosecution. And that fear hangs over them every day. Penalties range from short-term to life imprisonment, sometimes with hard labour. In at least five countries, national law provides for the death penalty to be applied for consensual, adult same-sex conduct.

The wording of these laws varies. Sometimes, same-sex conduct is referred to explicitly; in other cases, the language used is more vague, with references to “crimes against the order of nature” or to “debauchery” or “immorality”. Application can be alarmingly broad-brush and applied not only to same-sex couples but transgender people as well. We have reports of individuals rounded up and detained in police cells simply for appearing homosexual or transgender in public. In a recent case, for example, a couple was charged with homosexual conduct on the basis of their manner of dress and speech. One of the points of proof offered by the prosecution was the fact that they had been seen drinking Bailey’s Irish Cream. The two were convicted but later won their case on appeal.

Aside from violating basic rights, criminalization of same-sex relationships has a wider, negative effect, legitimizing homophobic attitudes in society at large and feeding violence. As the World Health Organization and UNAIDS have shown, it also has a dire effect on public health, especially on efforts to prevent the spread of HIV.

The third key finding of our report concerned the prevalence of discriminatory practices affecting LGBT people, and the lack of legal protection available under national laws. That lack of effective protection is what makes it possible for employers to fire their workers, school administrators to expel students, healthcare workers to deny essential services to patients and parents to disown their own children, or force them into marriage or pregnancy, or into psychiatric institutions, in each case just because they are lesbian, gay, bisexual, transgender or intersex.

In some instances, States are not just passively enabling such discrimination to take place but actively contributing to it, through laws and policies that are themselves discriminatory in either intent or effect. Examples include imposing discriminatory restrictions on LGBT public gatherings, such as pride marches, or banning public discussion of homosexuality-related issues, both of which we have seen recently in Eastern Europe. Many Western countries still force transgender people to undergo unwanted sterilization in order to obtain identity papers that reflect their preferred gender, without which they cannot work, travel, open a bank account or access essential services. The lack of any kind of legal recognition of same-sex relationships is another source of discrimination, hardship and insecurity for many lesbian, gay and bisexual people and their families, including their children.

Distinguished delegates,

In recent years, many States have made a determined effort to improve the human rights situation of LGBT people. Measures include banning discrimination, penalizing homophobic hate crimes, granting recognition of same-sex relationships, and making it easier for transgender individuals to obtain official documents that reflect their preferred gender. In many cases, training programmes have also been developed for police, prison staff, teachers, social workers and other personnel, and anti-bullying initiatives have been implemented in many schools.

But while there is much to welcome, there is also much that remains to be done. Far too many States still retain laws that criminalize same-sex relationships. Far too few have laws that offer comprehensive protection from discrimination. Even less have efficient systems for combating, or even recording, homophobic hate crimes.

As the Secretary-General and the High Commissioner have both said repeatedly, there is an urgent need to challenge homophobia at its roots – through public education, training and information.

Should we back off and wait until we have consensus among States or at least a broader acceptance that LGBT rights violations require a response? Or should we press on in spite of the controversy, laying out the facts, drawing attention to the suffering, the violence and the discrimination that continues day after day?

I am very much in favour of the second approach. Our fundamental responsibility is to the victims and to protecting the principles of equality and non-discrimination. The continued opposition on the part of some is regrettable, but it is no reason to abandon these principles, nor can it ever be an excuse for abandoning the victims of human rights violations.

Dear colleagues,

Until now, United Nations reporting of violence and discrimination against LGBT people has been piece-meal and ad hoc. If we want to address these abuses systematically we need the proper tools to do so. That means an appropriate mechanism, dedicated to the issue, tasked with tracking violations and reporting them to States.

We can of course only move in this direction if Member States so decide. The moment of decision is approaching. Let us not miss the opportunity.

Thank you.



General Assembly

Distr.: General
14 July 2011

Original: English

Human Rights Council

Seventeenth session

Agenda item 8

Follow-up and implementation of the Vienna Declaration and Programme of Action

Resolution adopted by the Human Rights Council*

17/19 Human rights, sexual orientation and gender identity

The Human Rights Council,

Recalling the universality, interdependence, indivisibility and interrelatedness of human rights as enshrined in the Universal Declaration of Human Rights and consequently elaborated in other human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and other relevant core human rights instruments,

Recalling also that the Universal Declaration of Human Rights affirms that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

Recalling further General Assembly resolution 60/251 of 15 March 2006, in which the Assembly stated that the Human Rights Council should be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner,

Expressing grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity,

1. *Requests* the United Nations High Commissioner for Human Rights to commission a study, to be finalized by December 2011, documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, in all regions of the world, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity;

* The resolutions and decisions adopted by the Human Rights Council will be contained in the report of the Council on its seventeenth session (A/HRC/17/2), chap. I.

2. *Decides* to convene a panel discussion during the nineteenth session of the Human Rights Council, informed by the facts contained in the study commissioned by the High Commissioner and to have constructive, informed and transparent dialogue on the issue of discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity;

3. *Also decides* that the panel will also discuss the appropriate follow-up to the recommendations of the study commissioned by the High Commissioner;

4. *Further decides* to remain seized of this priority issue.

*34th meeting
17 June 2011*

[Adopted by a recorded vote of 23 to 19, with 3 abstentions. The voting was as follows:

In favour:

Argentina, Belgium, Brazil, Chile, Cuba, Ecuador, France, Guatemala, Hungary, Japan, Mauritius, Mexico, Norway, Poland, Republic of Korea, Slovakia, Spain, Switzerland, Thailand, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay

Against:

Angola, Bahrain, Bangladesh, Cameroon, Djibouti, Gabon, Ghana, Jordan, Malaysia, Maldives, Mauritania, Nigeria, Pakistan, Qatar, Republic of Moldova, Russian Federation, Saudi Arabia, Senegal, Uganda

Abstaining:

Burkina Faso, China, Zambia]



General Assembly

Distr.: General
17 November 2011

Original: English

Human Rights Council

Nineteenth session

Agenda items 2 and 8

Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Follow-up and implementation of the Vienna Declaration and Programme of Action

Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted to the Human Rights Council pursuant to its resolution 17/19, in which the Council requested the United Nations High Commissioner for Human Rights to commission a study documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity.

* Owing to the length of the present report, the footnotes thereto are reproduced in the language of submission only.

Contents

| | <i>Paragraphs</i> | <i>Page</i> |
|--|-------------------|-------------|
| I. Introduction | 1–4 | 3 |
| II. Applicable international standards and obligations | 5–19 | 4 |
| A. Universality, equality and non-discrimination | 5–7 | 4 |
| B. State obligations under international human rights law | 8–19 | 5 |
| III. Violence | 20–39 | 8 |
| A. Killings, rape and other acts of discriminatory violence | 20–33 | 8 |
| B. Torture and other forms of cruel, inhuman and degrading treatment | 34–37 | 12 |
| C. Right of asylum for those persecuted because of sexual orientation or gender identity | 38–39 | 13 |
| IV. Discriminatory laws | 40–47 | 13 |
| A. Laws criminalizing same-sex sexual relations between consenting adults and other laws used to penalize individuals because of sexual orientation or gender identity | 40–44 | 13 |
| B. Death penalty | 45–46 | 15 |
| C. Arbitrary arrest and detention | 47 | 15 |
| V. Discriminatory practices | 48–73 | 16 |
| A. Discrimination in employment | 51–53 | 16 |
| B. Discrimination in health care | 54–57 | 17 |
| C. Discrimination in education | 58–61 | 18 |
| D. Restrictions on freedom of expression, association and assembly | 62–65 | 20 |
| E. Discriminatory practices in the family and community | 66–67 | 21 |
| F. Denial of recognition of relationships and related access to State and other benefits | 68–70 | 22 |
| G. Gender recognition and related issues | 71–73 | 22 |
| VI. Emerging responses | 74–80 | 23 |
| VII. Conclusions and recommendations | 81–85 | 24 |

I. Introduction

1. In all regions, people experience violence and discrimination because of their sexual orientation or gender identity. In many cases, even the perception of homosexuality or transgender identity puts people at risk. Violations include – but are not limited to – killings, rape and physical attacks, torture, arbitrary detention, the denial of rights to assembly, expression and information, and discrimination in employment, health and education. United Nations mechanisms, including human rights treaty bodies and the special procedures of the Human Rights Council, have documented such violations for close to two decades.

2. The Secretary-General expressed his concern in a speech on Human Rights Day 2010, when he stated:

As men and women of conscience, we reject discrimination in general, and in particular discrimination based on sexual orientation and gender identity ... Where there is a tension between cultural attitudes and universal human rights, rights must carry the day. Together, we seek the repeal of laws that criminalize homosexuality, that permit discrimination on the basis of sexual orientation or gender identity, that encourage violence.

3. United Nations entities¹ have integrated issues of sexual orientation and gender identity into their work, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Labour Organization (ILO), the World Health Organization (WHO), the United Nations Population Fund (UNFPA) and the Joint United Nations Programme on HIV/AIDS (UNAIDS).

4. While not addressing all violations perpetrated in relation to sexual orientation or gender identity, the present report highlights critical human rights concerns that States have an obligation to address, and highlights emerging responses. It draws on United Nations sources, and includes data and findings from regional organizations, some national authorities and non-governmental organizations.

¹ See, for example, “The United Nations Speaks Out: Tackling Discrimination on Grounds of Sexual Orientation and Gender Identity”, OHCHR, WHO and UNAIDS, April 2011; the statements made by the United Nations High Commissioner for Human Rights at a side event of the fifteenth session of the Human Rights Council, on the theme, “Ending violence and criminal sanctions based on sexual orientation and gender identity”, 17 September 2010; remarks made at the conclusion of the interactive dialogue with the High Commissioner at the sixteenth session of the Human Rights Council, 3 March 2011; “Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific: an agenda for action”, UNDP, July 2010; “Protecting children from violence in sport: a review with a focus on industrialized countries”, UNICEF, July, 2010; “International technical guidance on sexuality education”, UNESCO with UNAIDS, UNFPA, UNICEF and WHO, December 2009; UNHCR, Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, UNHCR, November 2008; Report of the Director-General: Equality at Work, ILO, 2007; Report on prevention and treatment of HIV and other sexually-transmitted infections among men who have sex with men and transgender populations, WHO, June 2011; “Experiencias de estigma y discriminación en personas homosexuales/gays, bisexuales y trans”, UNFPA, July 2010; International Guidelines on HIV/AIDS and Human Rights, UNAIDS and OHCHR, July 2006.

II. Applicable international standards and obligations

A. Universality, equality and non-discrimination

5. The application of international human rights law is guided by the principles of universality and non-discrimination enshrined in article 1 of the Universal Declaration of Human Rights, which states that “all human beings are born free and equal in dignity and rights”. All people, including lesbian, gay, bisexual and transgender (LGBT)² persons, are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly. The Vienna Declaration and Programme of Action confirms that, “while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”³

6. Non-discrimination is a core human rights principle embodied in the Charter of the United Nations, the Universal Declaration of Human Rights and core human rights treaties. Non-discrimination clauses in international instruments typically require that the rights set forth be made available to everyone without discrimination, and States ensure that their laws, policies and programmes are not discriminatory in impact. For example, under article 2 of the International Covenant on Civil and Political Rights, each State party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

7. The specific grounds of discrimination referred to in the International Covenant on Civil and Political Rights and other human rights treaties are not exhaustive. The drafters intentionally left the grounds of discrimination open by using the phrase “other status”. Sexual orientation and gender identity, like disability, age and health status, are not explicitly mentioned among the grounds listed in the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights. In 1994, in the case of *Toonen v. Australia*, the Human Rights Committee held that States are obligated to protect individuals from discrimination on the basis of their sexual orientation.⁴ This position is reflected in later decisions of the Committee,⁵ and in general comments of the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee against Torture and the Committee on the Elimination of Discrimination against Women.⁶ In its general comment no. 20, for example, the

² The terms lesbian, gay and bisexual and transgender are used throughout the report, but often abbreviated to LGBT. These terms are used to refer to same-sex behaviour, identities or relationships and non-binary gender identities. In several places in the text, discrimination against intersex persons is also addressed.

³ A/CONF.157/23, para. 5.

⁴ *Toonen v. Australia*, communication No. 488/1992 (CCPR/C/50/D/488/1992).

⁵ See, for example, *Young v. Australia*, communication No. 941/2000 (CCPR/C/78/D/941/2000), para. 10.4; *X v. Colombia*, communication no. 1361/2005 (CCPR/C/89/D/1361/2005), para. 9; and concluding observations on Mexico (CCPR/C/MEX/CO/5), para. 21, and Uzbekistan (CCPR/C/UZB/CO/3), para. 22.

⁶ See Committee on Economic, Social and Cultural Rights, general comment No. 20 (E/C.12/GC/20), para. 32; Committee on the Rights of the Child, general comment No. 13 (CRC/C/GC/13), paras. 60

Committee on Economic, Social and Cultural Rights observed that “other status” included sexual orientation. “States parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor’s pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination”.⁷

B. State obligations under international human rights law

8. The obligations of States to prevent violence and discrimination based on sexual orientation and gender identity are derived from various international human rights instruments. These obligations include the ones listed below.

1. To protect the right to life, liberty and security of persons irrespective of sexual orientation or gender identity

9. Under article 3 of the Universal Declaration of Human Rights, “everyone has the right to life, liberty and the security of person”. Article 6 of the International Covenant on Civil and Political Rights affirms that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”⁸ The State has an obligation to exercise due diligence to prevent, punish and redress deprivations of life,⁹ and to investigate and prosecute all acts of targeted violence.

10. Article 33 of the Convention relating to the Status of Refugees provides that States parties have an obligation not to expel or return a refugee to a place where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion. In the view of UNHCR, individuals who fear persecution on account of their sexual orientation or gender identity may be considered members of a “particular social group”. State parties to the Convention should ensure that such individuals are not returned to a State where their lives or freedom would be at risk and, provided the individuals concerned meet the criteria for refugee status, recognize them as refugees to be treated in accordance with the provisions of the Convention.¹⁰

and 72(g); Committee against Torture, general comment no. 2 (CAT/C/GC/2), para. 21; and Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (CEDAW/C/GC/28), para. 18.

⁷ E/C.12/GC/20, para. 32. In the same general comment, the Committee refers to the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity as a source of guidance on definitions of “sexual orientation” and “gender identity” (footnote 25, para. 32). The Principles, which are non-binding, were developed by human rights experts. Several United Nations entities have used these definitions to describe sexual orientation and gender identity; see for example UNHCR, Guidance Note on Refugee Claims (see footnote 1), Handbook on prisoners with special needs; and UNAIDS, “Review of Legal Frameworks and the Situation of Human Rights related to Sexual Diversity in Low and Middle Income Countries”.

⁸ In its resolution 65/208, the General Assembly urged all States to, inter alia, ensure the effective protection of the right to life of all persons under their jurisdiction and to investigate promptly and thoroughly all killings, including those targeted at specific groups of persons, such as killings of persons because of their sexual orientation.

⁹ Human Rights Committee general comment No. 6.

¹⁰ UNHCR, Guidance Note on Refugee Claims (see footnote 1), para. 3; see also UNHCR in relation to *Secretary of State for the Home Department v. Patrick Kwame Otchere*, 1988.

2. To prevent torture and other cruel, inhuman or degrading treatment on grounds of sexual orientation or gender identity

11. The right to be free from torture and other cruel, inhuman or degrading treatment is absolute. Article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights provide that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.¹¹

12. According to the Committee against Torture, States are obligated to protect from torture and ill-treatment all persons, regardless of sexual orientation or transgender identity,¹² and to prohibit, prevent and provide redress for torture and ill-treatment in all contexts of State custody or control.¹³ The Committee has repeatedly expressed concern regarding allegations of such abuses in concluding observations on States parties’ reports.¹⁴

3. To protect the right to privacy and against arbitrary detention on the basis of sexual orientation or gender identity

13. The right to privacy is enshrined in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, which state that no one should be subjected to “arbitrary or unlawful interference with his privacy, family, home or correspondence” Articles 9 of the Universal Declaration and the Covenant further protect individuals from “arbitrary arrest and detention”. In its general comment no. 16, the Human Rights Committee confirmed that any interference with privacy, even if provided for by law, “should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances”.

14. Since *Toonen* in 1994, the Human Rights Committee has held that laws used to criminalize private, adult, consensual same-sex sexual relations violate rights to privacy and to non-discrimination. The Committee has rejected the argument that criminalization may be justified as “reasonable” on grounds of protection of public health or morals, noting that the use of criminal law in such circumstances is neither necessary nor proportionate.¹⁵ In their concluding observations, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child have urged States to reform such laws and, where relevant, have welcomed their repeal.¹⁶ The Working Group on Arbitrary

¹¹ Article 2 (1) of the Convention against Torture stipulates that “each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”, while article 2 (2) states that “no exceptional circumstances whatsoever ... may be invoked as a justification of torture”.

¹² General comment no. 2 (CAT/C/GC/2), para. 21.

¹³ Ibid., para. 15.

¹⁴ See concluding observations of the Committee against Torture on the United States of America (CAT/C/USA/CO/2), paras. 32 and 37; Ecuador (CAT/C/ECU/CO/3), para. 17; and Argentina (CAT/C/CR/33/1), para. 6(g). See also general comment no. 2 (CAT/C/GC/2), para. 22. The Committee recommended that States parties should take all necessary measures to prevent such acts, including through the review of rules for detention and custody, investigation of all allegations of acts of torture or ill-treatment, prosecution and conviction of perpetrators, compensation to victims and training of personnel involved in detention and custody. See for example the Committee’s concluding observations on Mongolia (CAT/C/MNG/CO/1), para. 25; Kuwait (CAT/C/KWT/CO/2), para. 25; and Colombia (CAT/C/COL/CO/4), para. 11.

¹⁵ CCPR/C/50/D/488/1992, paras. 8.3-8.7.

¹⁶ See Human Rights Committee concluding observations on Togo (CCPR/C/TGO/CO/4), para. 14; Uzbekistan (CCPR/C/UZB/CO/3), para. 22; and Grenada (CCPR/C/GRD/CO/1), para. 21; Committee on Economic, Social and Cultural Rights, concluding observations on Cyprus (E/C.12/1/Add.28),

Detention has held that detaining someone on the basis of sexual orientation constitutes arbitrary detention in breach of article 9 of the International Covenant on Civil and Political Rights.¹⁷

4. To protect individuals from discrimination on grounds of sexual orientation and gender identity

15. The right to be free from discrimination is included in the Universal Declaration of Human Rights (art. 2) and core international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (art. 2) and the Convention on the Rights of the Child (art. 2). Article 26 of the International Covenant on Civil and Political Rights guarantees equality before the law, requiring States to prohibit discrimination.

16. In their general comments, concluding observations and views on communications, human rights treaty bodies have confirmed that States have an obligation to protect everyone from discrimination on grounds of sexual orientation or gender identity. The fact that someone is lesbian, gay, bisexual or transgender does not limit their entitlement to enjoy the full range of human rights.

17. The Human Rights Committee has urged State parties to “guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation”,¹⁸ and welcomed legislation that includes sexual orientation among prohibited grounds of discrimination.¹⁹ The Committee on Economic, Social and Cultural Rights has affirmed the principle of non-discrimination on grounds of sexual orientation in general comments on the rights to work, water, social security and the highest attainable standard of health.²⁰ In addition, in its general comment on discrimination, the Committee included both sexual orientation and gender identity as prohibited grounds of discrimination under the Covenant.²¹ In their general comments and concluding observations, the Committee on the Rights of the Child, the Committee against Torture and the Committee on the Elimination of Discrimination against Women have included recommendations on countering discrimination based on sexual orientation and gender identity.²²

para.7; Committee on the Elimination of Discrimination against Women, concluding observations on Uganda (CEDAW/C/UGA/CO/7), paras. 43-44; and Kyrgyzstan (*Official Records of the General Assembly, Fifty-fourth session, Supplement No. 38* (A/54/38/Rev.1)), paras. 127-128; and Committee on the Rights of the Child, concluding observations on Chile (CRC/C/CHL/CO/3), para. 29.

¹⁷ See opinions No. 22/2006 on Cameroon (A/HRC/4/40/Add.1), and No. 42/2008 on Egypt (A/HRC/13/30/Add.1). See also A/HRC/16/47, annex, para. 8 (e).

¹⁸ See concluding observations on Chile (CCPR/C/CHL/CO/5), para. 16. See also concluding observations on San Marino (CCPR/C/SMR/CO/2), para. 7; and Austria (CCPR/C/AUT/CO/4), para. 8.

¹⁹ See concluding observations on El Salvador (CCPR/C/SLV/CO/6), para. 3 (c); Greece (CCPR/CO/83/GRC), para. 5; Finland (CCPR/CO/82/FIN), para. 3 (a); and Slovakia (CCPR/CO/78/SVK), para. 4.

²⁰ See general comments No. 18 (E/C.12/GC/18) (right to work), para. 12 (b) (i); No. 15 (E/C.12/2002/11) (right to water), para. 13; No. 19 (E/C.12/GC/19) (right to social security), para. 29; and No. 14 (E/C.12/2000/4) (right to the highest attainable standard of health), para. 18.

²¹ See general comment no. 20 (E/C.12/GC/20), para. 32.

²² See Committee on the Rights of the Child, general comment No. 4 (CRC/GC/2003/4), para.6; Committee against Torture, general comment No. 2 (CAT/C/GC/2), para. 21; and Committee on the Elimination of Discrimination against Women, general comment No. 28 (CEDAW/C/GC/28), para. 18. See also Committee on the Elimination of Discrimination against Women, concluding observations on South Africa (CEDAW/C/ZAF/CO/4), para. 40; and Costa Rica (CEDAW/C/CRI/CO/5-6), para. 41. Several mechanisms have addressed intersectionality or multiple

5. To protect the right to freedom of expression, association and assembly in a non-discriminatory manner

18. Freedom of expression, association and peaceful assembly are enshrined in the Universal Declaration of Human Rights (arts. 19-20) and the International Covenant on Civil and Political Rights (arts. 19, 21-22). Under article 19 of the Universal Declaration, “everyone has the right to freedom of thought and expression; this right includes freedom to hold opinions without interference and to seek receive and impart information and ideas”. Under article 20 (1), “everyone has the right to freedom of peaceful assembly and association.”²³

19. The International Covenant on Civil and Political Rights permits restriction of these rights, but only when provided by law and necessary to protect the rights (or, in the case of expression, reputation) of others or national security, public safety, public order or public health or morals. The Human Rights Committee has confirmed that any such restrictions must be compatible with the provisions, aims and objectives of the Covenant and “must not violate the non-discrimination provisions of the Covenant”, including, in accordance with the Committee’s jurisprudence, on grounds of sexual orientation or gender identity.²⁴

III. Violence

A. Killings, rape and other acts of discriminatory violence

20. Homophobic and transphobic violence has been recorded in all regions. Such violence may be physical (including murder, beatings, kidnappings, rape and sexual assault) or psychological (including threats, coercion and arbitrary deprivations of liberty).²⁵ These attacks constitute a form of gender-based violence, driven by a desire to punish those seen as defying gender norms.

21. In addition to “street” violence and other spontaneous attacks in public settings, those perceived as LGBT may be targets of more organized abuse, including by religious extremists, paramilitary groups, neo-Nazis and extreme nationalists. Young LGBT people and those of all ages who are seen to be transgressing social norms are at risk of family and community violence. Lesbians and transgender women are at particular risk because of gender inequality and power relations within families and wider society.

22. Violence against LGBT persons tends to be especially vicious compared to other bias-motivated crimes. According to the Organization for Security and Cooperation in

forms of discrimination: see for example Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (CEDAW/C/GC/28), paras. 18 and 31; Committee on Economic, Social and Cultural Rights, general comment No. 16 (E/C.12/2005/4), para. 5; and Committee on the Elimination of Racial Discrimination, general recommendation No. 25, *Official Records of the General Assembly, Fifty-fifth Session (A/55/18)*, annex V, sect. A.

²³ Also relevant is the Declaration on Human Rights Defenders which, while not legally binding, was adopted by consensus by the General Assembly in its resolution 53/144. Article 7 of the Declaration refers to the right to “develop and discuss new human rights ideas and principles and to advocate their acceptance”.

²⁴ General comment No. 34 (CCPR/C/GC/34), para. 26. See also general comment No. 22 (CCPR/C/21/Rev.1/Add.4), para. 8.

²⁵ Article 2 of the Declaration on the Elimination of Violence against Women notes that violence against women encompasses violence within the family, within the community, and physical, sexual or psychological violence perpetrated and condoned, by the State, wherever it occurs.

Europe (OSCE), homophobic hate crimes and incidents often show a high degree of cruelty and brutality and include beatings, torture, mutilation, castration and sexual assault.²⁶

23. Quantifying homophobic and transphobic violence is complicated by the fact that few States have systems in place for monitoring, recording and reporting these incidents. Even where systems exist, incidents may go unreported or are misreported because victims distrust the police, are afraid of reprisals or threats to privacy, are reluctant to identify themselves as LGBT or because those responsible for registering the incidents fail to recognize motives of perpetrators.

1. Killings

24. Since 1999, the Special Rapporteur on extrajudicial, summary or arbitrary executions has regularly referred to persons being subjected to death threats or killed because of sexual orientation and gender identity.²⁷ The current mandate holder recently highlighted the murders of at least 31 LGBT persons in Honduras during an 18-month period, including a transgender person found dead in a ditch, her body beaten and burned, showing evidence of rape and blows to her face from stoning so severe as to render the remains virtually unrecognizable.²⁸ In Jamaica, a man was allegedly stabbed and stoned to death after police, who reportedly participated in the attack, urged others to beat him because he was homosexual.²⁹ The Special Rapporteur on violence against women has highlighted the targeted murder of lesbians in South Africa, including a case in which two lesbians were beaten, stoned and one stabbed to death.³⁰

25. LGBT persons are also among the victims of so-called “honour” killings, carried out against those seen by family or community members to have brought shame or dishonour on a family, often for transgressing gender norms or for sexual behaviour, including actual or assumed same-sex sexual activity.³¹ While women are generally the targets of this sort of punishment, these attacks can be directed at individuals of any sex.

26. Reports from regional and non-governmental organizations point to a pattern of targeted violence. The African Commission on Human and Peoples’ Rights noted “an upsurge of intolerance against sexual minorities” in Cameroon, and the Inter-American Commission on Human Rights has repeatedly addressed related concerns in Latin America and the Caribbean.³² OSCE reported 44 bias-motivated murders of LGBT persons in 2009

²⁶ “Hate Crimes in the OSCE Region – Incidents and Responses”, Annual Report for 2006, OSCE/ODIHR, Warsaw, 2007, p. 53. See also Altschiller, Donald, *Hate Crimes: A Reference Handbook*, ABC-CLIO, 2005, pp. 26–28: “(Murders of gay men) frequently involved torture, cutting, mutilation... showing the absolute intent to rub out the human being because of his (sexual) preference.”

²⁷ See E/CN.4/1999/39, para. 76, A/HRC/4/20 and Add.1, A/HRC/4/29/Add.2, A/HRC/11/2/Add.7, A/HRC/14/24/Add.2 and A/HRC/17/28/Add.1.

²⁸ See A/HRC/17/28/Add.1, pp. 114–117.

²⁹ E/CN.4/2005/7/Add.1, para. 371.

³⁰ A/HRC/4/34/Add.1, paras. 631–633.

³¹ See A/61/122/Add.1, para. 124, E/CN.4/2002/83, paras. 27–28, A/HRC/4/34/Add.2, para. 19; and A/HRC/4/34/Add.3, para. 34. See also “India: Haryana widows battered to death”, available from www.bbc.co.uk/news/world-south-asia-13125674 (accessed 28 October 2011); “They Want Us Exterminated: Murder, Torture, Sexual Orientation and Gender in Iraq”, Human Rights Watch report, 17 August 2009; and “Was Ahmet Yildiz the victim of Turkey’s first gay honour killing?”, available from www.independent.co.uk/news/world/europe/was-ahmet-yildiz-the-victim-of-turkeys-first-gay-honour-killing-871822.html (accessed 28 October 2011).

³² See concluding observations of the African Commission on Human and Peoples Rights, (Cameroon), 11–25 May 2005, para. 14; Inter-American Commission on Human Rights press release No. 11/09

on the basis of partial data from 22 of its Member States.³³ The European Parliament and the Council of Europe have also regularly expressed concern at incidents in which LGBT persons have been targeted and killed, including murders of gay men in the Netherlands and Sweden, and the killing of a homeless transgender woman in Portugal.³⁴

27. The National Coalition of Anti-Violence Programs in the United States of America reported 27 bias-motivated murders of LGBT persons in 2010, up from 22 in 2009.³⁵ The Trans Murder Monitoring project, which collects reports of murders of transgender persons in all regions, lists 680 murders in 50 countries during the period from 2008 to 2011.³⁶

2. Other violence, including rape

28. Non-lethal violence directed at individuals on the basis of their sexual orientation or gender identity is less consistently documented by special procedures, largely because of underreporting and a protection gap in terms of existing mandates. Nevertheless, several mandate holders have highlighted individual cases and voiced concern at the prevalence of such violence. In her 2010 report to the Human Rights Council, the Special Rapporteur on human rights defenders noted that she had sent 47 communications regarding defenders working on LGBT issues during the previous year; killings of LGBT human rights defenders were alleged in five communications, with rape and sexual violence, including against males, being reported in a further six.³⁷

29. Allegations of lesbians being attacked, raped, forcibly impregnated and otherwise punished because of sexual orientation come from many regions.³⁸ The Committee on the Elimination of Discrimination against Women expressed grave concern about reported sexual offences committed against women on account of their sexual orientation.³⁹ The Special Rapporteur on violence against women recently reported alleged incidents of gang rapes, family violence and murder experienced by lesbian, bisexual and transgender women in El Salvador, Kyrgyzstan and South Africa,⁴⁰ where the Rapporteur noted that “lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths”, including “for instance, that lesbian women would change their sexual orientation if they are raped by a man”.⁴¹

(Colombia), preliminary observations 15-18 May 2010, para. 12 (Honduras), and press release No. 59/08 (Jamaica).

³³ “Hate Crimes in the OSCE Region – Incidents and Responses”, Annual Report for 2009, OSCE Office for Democratic Institutions and Human Rights, Warsaw, November 2010.

³⁴ T. Hammarberg, “Hate Crimes: the ugly face of racism, anti-Semitism, anti-Gypsyism, Islamophobia and Homophobia”, Council of Europe, Strasbourg, 2008.

³⁵ “Hate Violence against Lesbian, Gay, Bisexual Transgender, Queer and HIV-Affected Communities in the United States in 2010”, report of the National Coalition of Anti-Violence Programs, New York, July 2011.

³⁶ Trans Murder Monitoring results update March 2011, Trans Gender Europe, March 2011.

³⁷ A/HRC/16/44, para. 43.

³⁸ See A/HRC/17/26, para. 40. See also A/HRC/14/22/Add.2, para. 23, A/HRC/17/26/Add.1, paras. 204-213, E/CN.4/2002/83, para. 102, A/HRC/4/34/Add.3, para. 34, and the concluding observations of the Committee on the Elimination of Discrimination against Women on the Russian Federation (C/USR/CO/7), paras. 40-41.

³⁹ Concluding observations on South Africa (CEDAW/C/ZAF/CO/4), para. 39-40.

⁴⁰ See A/HRC/14/22/Add.2, paras. 37-38, and A/HRC/17/26/Add.2, paras. 28-29.

⁴¹ A/HRC/4/34/Add.1, paras. 632-633. Both the Committee on the Elimination of Discrimination against Women and the Special Rapporteur on violence against women, its causes and consequences have addressed so-called “curative” or “corrective” rape, perpetrated by men who claim their intent is to “cure” women of their lesbianism. See, for example, the concluding observations of the Committee

30. The Special Rapporteur on human rights defenders has expressed deep concern regarding “denigration campaigns and violent threats against defenders of lesbian, gay, bisexual and transgender rights.”⁴² The Special Representative of the Secretary-General on human rights defenders noted in 2007 that those defending the rights of LGBT and intersex persons had had their houses and offices raided, and been attacked, tortured, sexually abused, threatened and killed, adding that “a major concern in this regard is an almost complete lack of seriousness with which such cases are treated by concerned authorities”.⁴³

31. Where available, national crime figures indicate high levels of violence targeted at individuals on the basis of their actual or presumed sexual orientation or gender identity. In the United States, for example, Government figures show numbers of bias-motivated incidents against gay, lesbian and bisexual people rank second only to racist incidents and on par with incidents against members of religious minorities.⁴⁴ In the United Kingdom of Great Britain and Northern Ireland, the only European Union state to publish official data on prosecutions for LGBT-related hate crimes, 988 criminal cases were initiated in 2007, of which 759 resulted in convictions.⁴⁵

32. A recent Council of Europe report found “Hate-motivated violence and hate crimes against LGBT persons take place in all Council of Europe member states.”⁴⁶ A survey conducted in 2008 in the United Kingdom by the non-governmental organization Stonewall, with Government support, found that a third of lesbians and a quarter of gay men experienced a hate crime or incident (including verbal aggression) in the preceding three years.⁴⁷ In a Slovenian study, 53 per cent of lesbian and gay respondents reported experiencing violence in the past because of their sexual orientation.⁴⁸ A 2011 report of the European Union Agency for Fundamental Rights found that lesbian and bisexual women are more likely to experience sexual and other assaults in private settings than gay or bisexual men, who are more likely to be attacked by unknown perpetrators. The perpetrators are usually young men in groups.⁴⁹

33. Treaty bodies have expressed concern about rhetoric used to incite hatred and related violence.⁵⁰ Such language can be used by political and community leaders to stir up

on South Africa (CEDAW/C/ZAF/CO/4), para. 39; and on the report of the Special Rapporteur on her mission to Kyrgyzstan (A/HRC/14/22/Add.2), para. 38.

⁴² A/HRC/13/22, para. 49.

⁴³ A/HRC/4/37, paras. 94-96.

⁴⁴ Uniform Crime Report: Hate Crime Statistics 2009, U.S. Department of Justice, Federal Bureau of Investigation, Washington, D.C., November 2010.

⁴⁵ European Union Agency for Fundamental Rights, “Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Part II – the Social Situation”, 2009, Vienna, p. 38.

⁴⁶ “Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe”, Council of Europe, Strasbourg, June 2011, p. 52.

⁴⁷ “Homophobic hate crime: The Gay British Crime Survey 2008”, Stonewall, London, 2009, p. 11.

⁴⁸ A. Svab, R. Kuhar, “The Unbearable Comfort of Privacy: Everyday Life of Gays and Lesbians”, Ljubljana, 2005, p. 153.

⁴⁹ “Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Summary of Findings, Trends, Challenges and Promising Practices”, European Union Agency for Fundamental Rights, Vienna, 2011, p. 13.

⁵⁰ See for example the concluding observations of the Human Rights Committee on Poland (CCPR/C/POL/CO/6), para. 8. See also the concluding observations of the Committee against Torture on the Republic of Moldova (CAT/C/MDA/CO/2), para. 27; Poland (CAT/C/POL/CO/4), para. 20; and Mongolia (CAT/C/MNG/CO/1), para. 25.

homophobic sentiment or harass individuals.⁵¹ In each case, LGBT people and those advocating related rights are at risk of violence and discrimination as a result.

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

34. The Special Rapporteur on torture has noted that “members of sexual minorities are disproportionately subjected to torture and other forms of ill-treatment because they fail to conform to socially constructed gender expectations. Indeed, discrimination on grounds of sexual orientation or gender identity may often contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place.”⁵² In 2010, the Special Rapporteur noted that, in detention facilities, there was usually a strict hierarchy, and that those at the bottom of the hierarchy, such as gays, lesbians, bisexuals and transgender persons, suffered double or triple discrimination.⁵³ The Special Rapporteur has highlighted the susceptibility of male-to-female transgender prisoners to physical and sexual abuse if placed within the general prison population.⁵⁴

35. The Special Rapporteur has also reported incidents in which individuals were subjected to victimization by police and prison guards and authorities failed to take reasonable measures to prevent violence against detainees perceived as LGBT.⁵⁵ For example, in a police station in Indonesia, a man and his male partner were allegedly severely beaten and sexually abused by police officers a day after reportedly having been assaulted by 16 civilians.⁵⁶ In Uzbekistan, a male human rights defender charged with homosexuality was reportedly beaten by police and threatened with rape with a bottle.⁵⁷ A lesbian couple in Brazil was allegedly beaten at a police station and forced to perform oral sex.⁵⁸ In Greece, detainees in a lesbian, gay and transgender section of a prison were reportedly denied access to an outside yard for two years, confined to their cells and a corridor at all times.⁵⁹ The Special Rapporteur has also reported transsexual women being intentionally beaten on their breasts and cheekbones to burst implants and release toxins.⁶⁰

36. The Special Rapporteur on violence against women has highlighted similar cases. In 2006, she detailed allegations of *metis* in Nepal being beaten by police, who demanded money and sex.⁶¹ In 2011, she described a case in El Salvador in which a transgender woman was placed in a male-only prison and detained in a cell with gang members, where she was raped more than 100 times, sometimes with the complicity of prison officials.⁶²

⁵¹ See for example the concluding observation of the Human Rights Committee on the Russian Federation (CCPR/C/RUS/CO/6), para. 27.

⁵² A/56/156, para. 19. See also E/CN.4/2001/66/Add.2, para. 199, E/CN.4/2002/76, annex III, p. 11, and E/CN.4/2005/62/Add.1, paras. 1019 and 1161.

⁵³ A/HRC/13/39/Add.5, para. 231.

⁵⁴ A/56/156, para. 23.

⁵⁵ See A/56/156, paras. 18, 21 and 23-24; and E/CN.4/2002/76/Add.1, paras. 16 and 1711.

⁵⁶ A/HRC/10/44/Add.4, para. 92.

⁵⁷ E/CN.4/2004/56/Add.1, paras. 1878 and 1899.

⁵⁸ E/CN.4/2001/66/Add.2, para. 199.

⁵⁹ Press statement of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment presenting preliminary findings on his mission to Greece, 20 October 2010.

⁶⁰ A/56/156, para. 18.

⁶¹ See E/CN.4/2006/61/Add.1, para. 131, and A/HRC/4/34/Add.1, paras. 448-454. *Meti* is a term used in Nepal to describe people who have been assigned a male gender at birth and who have a female gender identity/gender expression.

⁶² A/HRC/17/26/Add.2, paras. 28-29.

Other cases have been documented by the Special Representative of the Secretary-General on human rights defenders.⁶³

37. One issue highlighted by United Nations experts is the “medically worthless” practice of subjecting men suspected of homosexual conduct to non-consensual anal examinations to “prove” their homosexuality.⁶⁴ Such examinations have been condemned by the Committee against Torture, the Special Rapporteur on torture and the Working Group on Arbitrary Detention, which has held that the practice contravenes the prohibition of torture and ill-treatment.⁶⁵

C. Right of asylum for those persecuted because of sexual orientation or gender identity

38. UNHCR estimates that at least 42 States have granted asylum to individuals with a well-founded fear of persecution owing to sexual orientation or gender identity, although the precise figure is unclear. Some States grant asylum even without a clear policy in this regard, while others do not track reasons for granting refugee status or asylum.

39. Even in countries that recognize these grounds for asylum, practices and procedures often fall short of international standards. Review of applications is sometimes arbitrary and inconsistent. Officials may have little knowledge about or sensitivity towards conditions facing LGBT people.⁶⁶ Refugees are sometimes subjected to violence and discrimination while in detention facilities and, when resettled, may be housed within communities where they experience additional sexuality and gender-related risks. Refoulement of asylum-seekers fleeing such persecution places them at risk of violence, discrimination and criminalization. In some cases, they are returned with instructions to “be discreet”, an approach criticized by UNHCR.⁶⁷

IV. Discriminatory laws

A. Laws criminalizing same-sex sexual relations between consenting adults and other laws used to penalize individuals because of sexual orientation or gender identity

40. Seventy-six countries retain laws that are used to criminalize people on the basis of sexual orientation or gender identity.⁶⁸ Such laws, including so-called “sodomy laws”, are often relics of colonial-era legislation. They typically prohibit either certain types of sexual activity or any intimacy or sexual activity between persons of the same sex. In some cases,

⁶³ A/HRC/7/28/Add.2, paras. 59-60.

⁶⁴ See A/HRC/16/47/Add.1, opinion No. 25/2009 (Egypt), para. 29.

⁶⁵ See the concluding observations of the Committee against Torture on Egypt (CAT/C/CR/29/4), paras. 5 (e) and 6 (k). See also A/56/156, para. 24; A/HRC/4/33/Add.1, para. 317; A/HRC/10/44/Add.4, para. 61; A/HRC/16/52/Add.1, para. 131; and A/HRC/16/47/Add.1, opinion no. 25/2009 (Egypt), paras. 24, 28-29.

⁶⁶ UNHCR, Guidance Note on Refugee Claims Relating to Sexual Orientation or Gender Identity, paras. 37 and 41.

⁶⁷ Ibid., paras. 25, 26 and 41. See also the decision of the Supreme Court of the United Kingdom, *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31.

⁶⁸ “State-sponsored homophobia: a world survey of laws criminalising same-sex sexual acts between consenting adults”, International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), Brussels, May 2011, p. 9.

the wording used refers to vague and undefined concepts, such as “crimes against the order of nature” or “morality”, or “debauchery”.⁶⁹ What these laws have in common is their use to harass and prosecute individuals because of their actual or perceived sexuality or gender identity.⁷⁰ Penalties range from short-term to life imprisonment, and even the death penalty.

41. The criminalization of private consensual homosexual acts violates an individual’s rights to privacy and to non-discrimination and constitutes a breach of international human rights law. In *Toonen v. Australia*, the Human Rights Committee found that “adult consensual sexual activity in private is covered by the concept of ‘privacy’” under the International Covenant on Civil and Political Rights. According to the Committee, it is irrelevant whether laws criminalizing such conduct are enforced or not; their mere existence continuously and directly interferes with an individual’s privacy.⁷¹ Since *Toonen*, the Committee, other treaty bodies and special procedures have repeatedly urged States to reform laws criminalizing homosexuality or sexual conduct between consenting adults of the same sex,⁷² and have welcomed their repeal.⁷³

42. Special procedures mandate holders have emphasized the link between criminalization and homophobic hate crimes, police abuse, torture, and family and community violence, as well as constraints that criminalization places on work of human rights defenders working to protect the rights of LGBT persons. The Special Rapporteur on health noted that “sanctioned punishment by States reinforces existing prejudices, and legitimizes community violence and police brutality directed at affected individuals.”⁷⁴ The Special Rapporteur on extrajudicial executions noted that criminalization increases social stigmatization and made people “more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity.”⁷⁵

43. Since 2000, laws criminalizing homosexual acts between consenting adults have been repealed in Armenia, Azerbaijan, Bosnia and Herzegovina, Cape Verde, Georgia, Fiji, India, the Marshall Islands, Nepal, Nicaragua, Panama and the United States, together with dependent territories of New Zealand and the United Kingdom. In some cases, the courts have overturned these laws; in others, repeal has resulted from a legislative process. In the context of the universal periodic review, several States – including Mauritius, Nauru, Palau, Sao Tome and Principe, and Seychelles – have accepted recommendations to decriminalize homosexuality.

⁶⁹ See A/HRC/10/21/Add.3, paras. 56-58.

⁷⁰ These laws may also be used in “social cleansing” efforts. See, for example, E/CN.4/1995/111, para. 49, and E/CN.4/2005/7, para. 71.

⁷¹ CCPR/C/50/D/488/1992, para. 8.2.

⁷² See, for example, the concluding observations of the Human Rights Committee on Togo (CCPR/C/TGO/CO/4), para. 14; Uzbekistan (CCPR/C/UZB/CO/3), para. 22; and Grenada (CCPR/C/GRD/CO/1), para. 21. See also the concluding observations of the Committee on the Elimination of Discrimination against Women on Uganda (CEDAW/C/UGA/CO/7), paras. 43-44; and Kyrgyzstan (*Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 38* (A/54/38/Rev.1)), paras. 127-128; and the concluding observations of the Committee on the Rights of the Child on Chile (CRC/C/CHL/CO/3), para. 29.

⁷³ See, for example, the concluding observations of the Human Rights Committee on El Salvador (CCPR/C/SLV/CO/6), para. 3 (c); and Chile (CCPR/C/CHL/CO/5), para. 16.

⁷⁴ A/HRC/14/20, para. 20. See also the concluding observations of the Human Rights Committee on Togo (CCPR/C/TGO/CO/4), para. 14, and E/CN.4/2000/3, para. 116.

⁷⁵ A/57/138, para. 37.

44. In at least 14 countries, the legal age of consent differs for homosexual and heterosexual relationships, which treaty bodies have held to be discriminatory.⁷⁶

B. Death penalty

45. In at least five countries the death penalty may be applied to those found guilty of offences relating to consensual, adult homosexual conduct. In addition to violating rights to life, privacy and non-discrimination, application of the death penalty in these circumstances violates article 6 of the International Covenant on Civil and Political Rights, which provides that, in countries that have not abolished the death penalty, a “sentence of death may be imposed only for the most serious crimes”.⁷⁷ The Commission on Human Rights and the Human Rights Committee have confirmed that use of the death penalty for non-violent acts, including sexual relations between consenting adults, constitutes a violation of international human rights law.⁷⁸

46. The Special Rapporteur on extrajudicial executions has noted that “death sentences may only be imposed for the most serious crimes, a stipulation which clearly excludes matters of sexual orientation.”⁷⁹ Commenting on the situation in parts of Nigeria, the Special Rapporteur stated that, “in relation to sodomy, the imposition of the death sentence for a private sexual practice is clearly incompatible with Nigeria’s international obligations.”⁸⁰ Addressing the response that there was a de facto moratorium on executions, the Special Rapporteur stated, “the ‘mere possibility’ that it can be applied threatens the accused for years, and is a form of cruel, inhuman or degrading treatment or punishment. Its status as a law justifies persecution by vigilante groups, and invites abuse.”⁸¹

C. Arbitrary arrest and detention

47. The Working Group on Arbitrary Detention has stated that detaining someone for offences relating to sexual orientation or gender identity, including offences not directly related to sexual conduct, such as those pertaining to physical appearance or so-called “public scandal”, breaches international law. In 2002, the Working Group considered a case involving 55 men arrested at a discotheque and charged with “debauchery” and “social dissension”. It concluded that the arrests were discriminatory, in violation of articles 2 and 26 of the International Covenant on Civil and Political Rights, and that the detention was arbitrary.⁸² The Working Group has since reaffirmed its position on several occasions.⁸³

⁷⁶ See the concluding observations of the Committee on the Rights of the Child on Chile (CRC/C/CHL/CO/3), para. 29; the United Kingdom of Great Britain and Northern Ireland: Isle of Man (CRC/C/15/Add.134), para. 22; and the concluding observations of the Human Rights Committee on Austria (CCPR/C/79/Add.103), para. 13.

⁷⁷ See the concluding observations of the Human Rights Committee on the Sudan (CCPR/C/SDN/CO/3), para. 19; and E/CN.4/2000/3, para. 57.

⁷⁸ See Commission on Human Rights resolutions 2002/77, para. 4 (c); 2003/67, para. 4 (d); 2004/67, para. 4 (f); and 2005/59, para. 7 (f). See also the concluding observations of the Human Rights Committee on the Sudan (CCPR/C/SDN/CO/3), para. 19.

⁷⁹ E/CN.4/2000/3, para. 57.

⁸⁰ E/CN.4/2006/53/Add.4, para. 37.

⁸¹ A/HRC/8/3/Add.3, para. 76.

⁸² E/CN.4/2003/8/Add.1, opinion no. 7/2002 (Egypt).

⁸³ See, for example opinions No. 22/2006 (Cameroon) (A/HRC/4/40/Add.1) and No. 42/2008 (Egypt) (A/HRC/13/30/Add.1).

VI. Discriminatory practices

48. The Human Rights Committee has urged State parties to “guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation.”⁸⁴ States have a “legal obligation ... to ensure to everyone the rights recognized by the Covenant ... without discrimination on the basis of sexual orientation.”⁸⁵ Both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have called regularly on States to enact laws prohibiting discrimination on grounds of sexual orientation and have welcomed legislation that includes sexual orientation among the prohibited grounds of discrimination.⁸⁶

49. Explicit constitutional guarantees of protection from discrimination on grounds of sexual orientation apply in six countries,⁸⁷ while in several others such guarantees are incorporated into regional or provincial-level constitutions.⁸⁸ In other countries (including Canada, Colombia, Hong Kong (China), India and Nepal), general language on non-discrimination has been interpreted by courts as providing equivalent protection.

50. Discriminatory practices persist in all regions. Sometimes, Government policies have a direct discriminatory impact; in other cases, the absence of applicable national laws facilitates discrimination by private actors. The section below examines several areas where individuals are particularly susceptible to discriminatory treatment, marginalization and restrictions on enjoyment of rights because of their sexual orientation or gender identity. It is not exhaustive: areas of concern not addressed here include discrimination in access to justice, housing and social benefits, and discriminatory dress codes that restrict men dressing in a manner perceived as feminine and women dressing in a manner perceived as masculine, and punish those who do.⁸⁹

A. Discrimination in employment

51. Under international human rights law, States are obligated to protect individuals from any discrimination in access to and maintenance of employment. The Committee on

⁸⁴ See the Committee’s concluding observations on Chile (CCPR/C/CHL/CO/5), para. 16. See also its concluding observations on San Marino (CCPR/C/SMR/CO/2), para. 7, and Austria (CCPR/C/AUT/CO/4), para. 8.

⁸⁵ See the Committee’s concluding observations on the United States of America (CCPR/C/USA/CO/3), para. 25.

⁸⁶ See for example the concluding observations of the Human Rights Committee on El Salvador (CCPR/C/SLV/CO/6), para. 3 (c); Greece (CCPR/CO/83/GRC), para. 5; Finland (CCPR/CO/82/FIN), para. 3 (a); Slovakia (CCPR/CO/78/SVK), para. 4; the concluding observations of the Committee on Economic, Social and Cultural Rights on Cyprus (E/C.12/1/Add.28), para. 7; and the United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories (E/C.12/GBR/CO/5), para. 6.

⁸⁷ Bolivia (Plurinational State of), Ecuador, Portugal, South Africa, Sweden and Switzerland.

⁸⁸ Argentina, Brazil, British Virgin Islands (United Kingdom of Great Britain and Northern Ireland), Germany and Kosovo (Serbia). See ILGA, “State-sponsored homophobia” (see footnote 68), p. 13.

⁸⁹ See, for example, the concluding observations of the Human Rights Committee on the Russian Federation (CCPR/C/RUS/CO/6), para. 27, and Japan (CCPR/C/JPN/CO/5), para. 29; the concluding observations of the Committee on the Elimination of Discrimination against Women on Uganda (CEDAW/C/UGA/CO/7), paras. 43-44, and the Russian Federation (CEDAW/C/USR/CO/7), paras. 40-41; and Human Rights Committee general comment No. 34 (CCPR/C/GC/34), para. 12. See also A/HRC/4/25, para. 21; E/CN.4/2005/43, para. 63, E/CN.4/2006/118, para. 30, A/HRC/4/18/Add.2, para. 125, A/HRC/7/16, para. 39, A/HRC/10/7/Add.3, para. 50; E/CN.4/2003/58, para. 68, E/CN.4/2004/49, para. 38; and E/CN.4/2005/72/Add.1, paras. 232-234.

Economic, Social and Cultural Rights has confirmed that the International Covenant on Economic, Social and Cultural Rights “prohibits discrimination in access to and maintenance of employment on grounds of ... sexual orientation”⁹⁰ and noted concern about discrimination directed at “disadvantaged and marginalized groups and individuals.”⁹¹ According to the Committee, “any discrimination in access to the labour market or to means and entitlements for obtaining employment constitutes a violation of the Covenant.”⁹²

52. Fifty-four States have laws prohibiting discrimination in employment based on sexual orientation.⁹³ In the absence of such laws, employers may be able to fire or refuse to hire or promote people simply because they are thought to be homosexual or transgender. Benefits that accrue to heterosexual employees may be denied to their LGBT counterparts - from parental or family leave to participation in pension and health-care insurance schemes. In *X v. Colombia* and *Young v. Australia*, the Human Rights Committee found that failure to provide pension benefits to an unmarried same-sex partner, when such benefits were granted to unmarried heterosexual couples, was a violation of rights guaranteed by the Covenant.⁹⁴

53. Discrimination can lead to harassment and violence within and outside workplace confines.⁹⁵ Surveys indicate that verbal harassment of LGBT employees is commonplace.⁹⁶

B. Discrimination in health care

54. Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights provides that States parties to the Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights has indicated that the Covenant proscribes any discrimination in access to health care and the underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of sexual orientation and gender identity.⁹⁷

55. The criminalization of homosexuality may deter individuals from seeking health services for fear of revealing criminal conduct, and results in services, national health plans and policies not reflecting the specific needs of LGBT persons. The Special Rapporteur on health observed: “Criminal laws concerning consensual same-sex conduct, sexual orientation and gender identity often infringe on various human rights, including the right

⁹⁰ Committee on Economic, Social and Cultural Rights general comment No. 18 (E/C.12/GC/18), para. 12 (b)(i). See also the concluding observations of the Human Rights Committee on the United States of America (CCPR/C/USA/CO/3/Rev.1), para. 25.

⁹¹ E/C.12/GC/18, para. 23.

⁹² Ibid., para. 33. The Committee also noted the connection between discrimination and poverty: “Sometimes poverty arises when people have no access to existing resources because of who they are... Discrimination may cause poverty, just as poverty may cause discrimination.” (E/C.12/2001/10), para. 11.

⁹³ Ibid., ILGA, “State Sponsored Homophobia” (see footnote 68), pp. 12-13.

⁹⁴ *X v. Colombia* (CCPR/C/89/D/1361/2005), paras. 7.2-7.3; *Young v. Australia* (CCPR/C/78/D/941/2000), paras. 10-12.

⁹⁵ See Committee on Economic, Social and Cultural Rights general comment No. 20 (E/C.12/GC/20), para. 32.

⁹⁶ European Union Agency for Fundamental Rights, “Homophobia and Discrimination (see footnote 45), pp. 63-64.

⁹⁷ General comment No. 14 (E/C.12/2000/4), para. 18.

to health.”⁹⁸ In *Toonen*, the Human Rights Committee rejected the claim that laws criminalizing consensual same-sex conduct were a necessary public health measure, noting that such laws risk driving many of those at risk underground.⁹⁹ Since then, the Secretary-General, special procedures and UNAIDS have drawn attention to the negative health impact of criminalization.¹⁰⁰

56. In countries where no criminal sanctions exist, homophobic, sexist and transphobic practices and attitudes on the part of health-care institutions and personnel may nonetheless deter LGBT persons from seeking services, which in turn has a negative impact on efforts to tackle HIV/AIDS and other health concerns.¹⁰¹ Concerns of potential patients include breaches of confidentiality, further stigma and violent reprisals.¹⁰² The Committee on the Elimination of Discrimination against Women expressed concern about lesbian, bisexual, transgender and intersex women as “victims of abuses and mistreatment by health service providers”.¹⁰³ Special procedures have also criticized the practice of so-called “reparative” therapy intended to “cure” individuals of their homosexual attraction, as being unscientific, potentially harmful and contributing to stigma.¹⁰⁴

57. In many countries, transgender persons face particular difficulties in their access to health care. Gender reassignment therapy, where available, is often prohibitively expensive and State funding or insurance coverage is rarely available. Health-care professionals are often insensitive to the needs of transgender persons and lack necessary professional training.¹⁰⁵ In addition, intersex children, who are born with atypical sex characteristics, are often subjected to discrimination and medically unnecessary surgery, performed without their informed consent, or that of their parents, in an attempt to fix their sex.¹⁰⁶

C. Discrimination in education

58. Some education authorities and schools discriminate against young people because of their sexual orientation or gender expression, sometimes leading to their being refused

⁹⁸ A/HRC/14/20, para. 6.

⁹⁹ CCPR/C/50/D/488/1992, para. 8.5.

¹⁰⁰ See Message of the Secretary-General on World AIDS Day, 1 December 2009, New York; A/HRC/14/20/Add.1, para. 14; A/HRC/14/24/Add.1, para. 1141, and A/HRC/17/27/Add.1, para. 675; UNAIDS, *Getting to Zero: 2011-2015 Strategy*; UNAIDS, 26th Meeting of the UNAIDS Programme Coordinating Board, 22-24 June 2010, agenda item 5(12). See also A/HRC/10/12/Add.1, paras. 345-355.

¹⁰¹ See the concluding observations of the Human Rights Committee on Cameroon (CCPR/C/CMR/CO/4), para. 12. See also A/HRC/14/20, paras. 22-23; Aggleton, P., *HIV and AIDS-related stigmatization, discrimination and denial: research studies from Uganda and India* (Geneva, UNAIDS, 2000), pp. 17-18; African Commission on Human and Peoples’ Rights resolution, 26 May 2010 (ACHPR/Res163(XLVII)2010); “Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people: recommendations for a public health approach”, WHO, 2011, pp. 10-11; Committee on the Rights of the Child, general comment No. 4 (CRC/GC/2003/4), para. 6.

¹⁰² A/HRC/14/20, para. 21.

¹⁰³ Concluding observations on Costa Rica (CEDAW/C/CRI/CO/5-6), para. 40.

¹⁰⁴ See A/HRC/14/20, para. 23, and A/56/156, para. 24.

¹⁰⁵ “Human Rights and Gender Identity”, issue paper by the Council of Europe Commissioner for Human Rights, 2009, para. 3.3; WHO, “Prevention and treatment of HIV and other sexually transmitted infections” (see footnote 101), pp. 30-31.

¹⁰⁶ Concluding observations of the Committee on the Elimination of Discrimination against Women on Costa Rica (CEDAW/C/CRI/CO/5-6), para. 40.

admission or being expelled.¹⁰⁷ LGBT youth frequently experience violence and harassment, including bullying, in school from classmates and teachers.¹⁰⁸ Confronting this kind of prejudice and intimidation requires concerted efforts from school and education authorities and integration of principles of non-discrimination and diversity in school curricula and discourse. The media also have a role to play by eliminating negative stereotyping of LGBT people, including in television programmes popular among young people.

59. The Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have expressed concern about homophobic discrimination in schools, and called for measures to counter homophobic and transphobic attitudes.¹⁰⁹ According to UNESCO, “it is often in the primary school playground that boys deemed by others to be too effeminate or young girls seen as tomboys endure teasing and sometimes the first blows linked to their appearance and behaviour, perceived as failing to fit in with the heteronormative gender identity.”¹¹⁰

60. Isolation and stigma generate depression and other health problems and contribute to truancy, absenteeism, children being forced out of school¹¹¹ and, in extreme cases, attempted or actual suicide.¹¹² A survey in the United Kingdom found that almost 65 per cent of lesbian, gay and bisexual youth had been bullied in schools because of their sexual orientation and more than a quarter had been physically abused.¹¹³ These findings are mirrored by results of studies carried out in other countries.¹¹⁴

61. A related area of concern is sex education. The right to education includes the right to receive comprehensive, accurate and age-appropriate information regarding human sexuality in order to ensure young people have access to information needed to lead healthy lives, make informed decisions and protect themselves and others from sexually-transmitted infections.¹¹⁵ The Special Rapporteur on the right to education noted that “in order to be comprehensive, sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality.”¹¹⁶

¹⁰⁷ E/CN.4/2006/45, para. 113.

¹⁰⁸ See, for example, E/CN.4/2001/52, para. 75, and E/CN.4/2006/45, para. 113.

¹⁰⁹ See, for example the concluding observations of the Human Rights Committee on Mexico (CCPR/C/MEX/CO/5), para. 21; the concluding observations of the Committee on Economic, Social and Cultural Rights on Poland (E/C.12/POL/CO/5), paras. 12-13; and Committee on the Rights of the Child general comments No. 3 (CRC/GC/2003/3), para. 8; and No. 13 (CRC/C/GC/13), paras. 60 and 72 (g); and the Committee’s concluding observations on New Zealand (CRC/C/NZL/CO/3-4), para. 25; Slovakia (CRC/C/SVK/CO/2), paras. 27-28; and Malaysia (CRC/C/MYS/CO/1), para. 31.

¹¹⁰ “International consultation on homophobic bullying and harassment in educational institutions”, UNESCO concept note, July 2011.

¹¹¹ See, for example, E/CN.4/2006/45, para. 113.

¹¹² E/CN.4/2003/75/Add.1, para. 1508.

¹¹³ Ruth Hunt and Johan Jensen, *The experiences of young gay people in Britain’s schools: the school report* (London, Stonewall, 2007), p. 3.

¹¹⁴ “Social Exclusion of Young Lesbian, Gay, Bisexual and Transgender People in Europe”, ILGA-Europe and the International Gay and Lesbian Youth Organization, 2006.

¹¹⁵ See Committee on the Rights of the Child general comment No. 4 (CRC/GC/2003/4), paras. 26 and 28. See also International Conference on Population and Development, Programme of Action, para. 7.47; Commission on Population and Development resolution 2009/1, para. 7; and UNESCO International Technical Guidance on Sexuality Education, sects. 2.3 and 3.4.

¹¹⁶ A/65/162, para. 23. See also “Comprehensive sexuality education: giving young people the information, skills and knowledge they need”, UNFPA, and “Standards for Sexuality Education in Europe”, WHO Regional Office for Europe and the Federal Centre for Health Education (including page 27).

D. Restrictions on freedom of expression, association and assembly

62. Under article 19 of the International Covenant on Civil and Political Rights, “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” The Covenant also affirms that “everyone shall have the right to freedom of association with others...” (art. 22), and that “the right of peaceful assembly shall be recognized” (art. 21). Under the Covenant, States parties may limit enjoyment of these rights only insofar as restrictions are provided for by law and necessary to protect rights of others, national security, or public safety, order, health or morals. Any such restrictions should be compatible with the provisions, aims and objectives of the Covenant and should not be discriminatory.¹¹⁷

63. Various bodies within the United Nations system have addressed restrictions on rights of people whose advocacy addresses sexuality and gender issues.¹¹⁸ Where States require legal registration of non-governmental organizations, LGBT groups have had applications rejected or their legal registration revoked.¹¹⁹ The threat of deregistration has been used to curtail advocacy on sexuality and gender issues and intimidate individuals in the organizations concerned. Police have raided offices of LGBT groups and confiscated computer hard drives and contact lists of clients and supporters, thereby exposing others to risk of harassment or violence.¹²⁰ Where computer files have contained information about sexual orientation and HIV prevention, including about condom use, staff and volunteers of LGBT groups have sometimes been arrested or harassed.¹²¹ The personal reputations of defenders who support rights related to gender and sexuality have been challenged and maligned, including through allegations related to sexual orientation, in efforts to suppress their advocacy.¹²² Special procedures have highlighted risks faced by women defenders owing to the perception that they are “challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society.”¹²³

64. LGBT defenders and supporters of related rights have been subjected to violence and harassment when convening meetings or cultural events, or participating in LGBT “equality marches”. In some States, such events are denied police protection or permits, sometimes under guise of threats to public morals or safety, which privileges the antagonists rather than those claiming rights. In the absence of effective police protection, advocates and marchers have sometimes been physically attacked and harassed by State and non-State actors, including “skinhead” and fundamentalist groups.¹²⁴ In 2010, the European Court of Human Rights fined the Russian Federation for violating rights related to assembly, discrimination and remedy after the State banned LGBT parades in Moscow

¹¹⁷ Human Rights Committee general comment No. 34 (CCPR/C/GC/34), para. 26. See also general comment No. 22 (CCPR/C/21/Rev.1/Add.4), para. 8.

¹¹⁸ See A/HRC/4/37, para. 96; A/HRC/10/12/Add.1, paras. 2574-2582, and A/HRC/16/44; A/HRC/11/4/Add.1, paras. 289-292 and 1513-1515; and E/CN.4/2005/64/Add.1, para. 494.

¹¹⁹ See A/HRC/4/37/Add.1, para. 29 (on Argentina), para. 511 (on Nigeria), and para. 686 (on Turkey); and A/HRC/10/12/Add.1, paras. 1558-1562 (on Kyrgyzstan) and 2574 -2577 (on Turkey).

¹²⁰ A/HRC/10/12/Add.1, paras. 1558-1562 and 2574-2582.

¹²¹ A/HRC/16/44/Add.1, paras. 2517-2525 (on Zimbabwe).

¹²² A/HRC/16/44, para. 85.

¹²³ See E/CN.4/2001/94, para. 89 (g), and A/HRC/16/44.

¹²⁴ See A/HRC/10/12/Add.1, paras. 275-280 (on Bosnia and Herzegovina) and A/HRC/11/4/Add.1, paras. 289-292; and A/HRC/16/44/Add.1, paras. 1157-1164 (on Indonesia).

on grounds of public safety. The Court stated that “mere existence of a risk is insufficient for banning the event”.¹²⁵

65. Special procedures have raised concerns regarding restrictions on freedom of expression – including direct censorship, bans on dissemination of information and restrictions on legitimate advocacy – purportedly justified on grounds of alleged threats to public health, morality or State security.¹²⁶ Restrictions on information on sexual orientation, including those allegedly intended to protect “public decency”, can have a deleterious impact on public health efforts, including in relation to transmission of the HIV virus.¹²⁷

E. Discriminatory practices in the family and community

66. While families and communities are often an important source of support, discriminatory attitudes within families and communities can also inhibit the ability of LGBT people to enjoy the full range of human rights. Such discrimination manifests itself in various ways, including through individuals being excluded from family homes, disinherited, prevented from going to school, sent to psychiatric institutions, forced to marry, forced to relinquish children, punished for activist work and subjected to attacks on personal reputation. In many cases, lesbians, bisexual women and transgender people are especially at risk owing to entrenched gender inequalities that restrict autonomy in decision-making about sexuality, reproduction and family life.¹²⁸

67. Family or community members often enforce gender norms and punish transgressions. In 1997, the Special Rapporteur on violence against women noted, “the community may also be the site of restrictions on and regulations of female sexuality ... Women who ...live out their sexuality in ways other than heterosexuality are often subjected to violence and degrading treatment.”¹²⁹ United Nations mechanisms and non-governmental organizations have documented a range of gender-specific violations targeted at women – including forced marriage, forced pregnancy, and rape in marriage – some of

¹²⁵ European Court of Human Rights, *Alekseyev v. Russia*, applications Nos. 4916/07, 25924/08 and 14599/09, judgement of 21 October 2010, paras. 75-76. See the concluding observations of the Human Rights Committee on the Russian Federation (CCPR/C/RUS/CO/6), para. 27. See also *Baczowski and Others v. Poland*, application no. 1543/06, 3 May 2007, para. 64.

¹²⁶ See A/58/380, paras. 6, 11-12 and 15-20; A/HRC/4/37, para. 95-97; A/HRC/4/37/Add.1, para. 402; and E/CN.4/2002/72, para. 57. See also the joint statement of the Special Representative of the Secretary-General on human rights defenders, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on violence against women, and the Special Rapporteur on the right to the highest attainable standard of physical and mental health (on Nigeria), available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=5599&LangID=E (accessed 10 November 2011); and A/HRC/14/23/Add.1, para. 1401-1405 (on Lithuania).

¹²⁷ UNAIDS, *Getting to Zero: 2011-2015 Strategy*.

¹²⁸ See E/CN.4/2000/68/Add.5, para. 13, E/CN.4/2002/83, paras. 99-105, E/CN.4/2006/61/Add.3, para. 51 and A/HRC/4/34/Add.3, para. 34. See also CEDAW/C/GUA/CO/7, para. 19; and Fourth World Conference on Women, Beijing Platform for Action, para. 96. Discriminatory attitudes are also sometimes reflected in decisions regarding child custody; for example, the Inter-American Court of Human Rights has admitted a case concerning a lesbian mother and her daughters seeking redress for a decision by the Chilean authorities to deny custody based on sexual orientation: see *Karen Atala and Daughters v. Chile*, Case 1271-04, report No. 42/08, OEA/Ser.L/V/II.130 Doc. 22, rev. 1 (2008).

¹²⁹ E/CN.4/1997/47, para. 8.

which are enacted as forms of punishment for assumed or actual sexual orientation or behaviour.¹³⁰

F. Denial of recognition of relationships and related access to State and other benefits

68. The Human Rights Committee has held that States are not required, under international law, to allow same-sex couples to marry.¹³¹ Yet, the obligation to protect individuals from discrimination on the basis of sexual orientation extends to ensuring that unmarried same-sex couples are treated in the same way and entitled to the same benefits as unmarried opposite-sex couples.¹³²

69. In some countries, the State provides benefits for married and unmarried heterosexual couples but denies these benefits to unmarried homosexual couples. Examples include pension entitlements, the ability to leave property to a surviving partner, the opportunity to remain in public housing following a partner's death, or the chance to secure residency for a foreign partner. Lack of official recognition of same-sex relationships and absence of legal prohibition on discrimination can also result in same-sex partners being discriminated against by private actors, including health-care providers and insurance companies.

70. The Human Rights Committee has welcomed measures to address discrimination in this context. In its concluding observations on Ireland, the Committee urged the State party to ensure that proposed legislation establishing civil partnerships not be “discriminatory of non-traditional forms of partnership, including taxation and welfare benefits.”¹³³

G. Gender recognition and related issues

71. In many countries, transgender persons are unable to obtain legal recognition of their preferred gender, including a change in recorded sex and first name on State-issued identity documents.¹³⁴ As a result, they encounter many practical difficulties, including when applying for employment, housing, bank credit or State benefits, or when travelling abroad.

72. Regulations in countries that recognize changes in gender often require, implicitly or explicitly, that applicants undergo sterilization surgery as a condition of recognition. Some States also require that those seeking legal recognition of a change in gender be unmarried, implying mandatory divorce in cases where the individual is married.

73. The Human Rights Committee has expressed concern regarding lack of arrangements for granting legal recognition of transgender people's identities. It has urged States to recognize the right of transgender persons to change their gender by permitting the issuance of new birth certificates and has noted with approval legislation facilitating legal recognition of a change of gender.¹³⁵

¹³⁰ See A/HRC/16/44, paras. 23-24; E/CN.4/2002/106, para. 90-92; E/CN.4/2002/83, paras. 57 and 101-102; and A/61/122/Add.1, paras. 57, 73, 84 and 151.

¹³¹ *Joslin v. New Zealand* (CCPR/C/75/D/902/1999), 10 IHRR 40 (2003).

¹³² *Young v. Australia* (CCPR/C/78/D/941/2000), para. 10.4.

¹³³ CCPR/C/IRL/CO/3, para. 8.

¹³⁴ Ibid. See the Committee's concluding observations on the United Kingdom of Great Britain and Northern Ireland (CCPR/C/GBR/CO/6), para. 5. See also A/64/211, para. 48; and T. Hammarberg, “Human rights and gender identity”, Council of Europe, Strasbourg, 2009, para. 3.2.1.

¹³⁵ See CCPR/C/IRL/CO/3, para. 8, and CCPR/C/GBR/CO/6, para. 5.

VI. Emerging responses

74. There are many examples, in all regions, of initiatives developed by States and non-State entities that seek to address violence and discrimination on grounds of sexual orientation and gender identity. While all such initiatives are too numerous to mention, the examples below illustrate the kinds of actions identified in the course of preparing the present study.

75. Many Member States have instituted training programmes for law-enforcement officials to sensitize them to bias-motivated violence against LGBT persons and help them to recognize, register and respond to reports of such crimes. In some countries, including Spain and Honduras, special prosecutors have been appointed to investigate and bring cases to trial. In South Africa, a national task team on homophobic and transphobic hate crime has been established following consultations with the LGBT community.¹³⁶ Some States, including Brazil, Ecuador, Germany, the Netherlands and Uruguay, have used the Yogyakarta Principles to help guide policy responses to incidents of violence and discrimination.¹³⁷

76. There are many examples of public information campaigns, sometimes developed with State support, designed to address societal prejudice. In Brazil, the Government has supported a public education campaign implemented under the slogan “Brazil without Homophobia”. Similar initiatives, often led by civil society, have been launched in countries in all regions. Celebrities have played an important role as message-carriers in such campaigns.

77. Examples of initiatives to counter homophobia and transphobia in educational institutions include teacher-training programmes, the establishment of “safe spaces” for LGBT youths in schools, and awareness-raising campaigns. In Australia, the publicly-funded Safe Schools Coalition (www.safeschoolscoalitionvictoria.org.au) offers teacher training and learning materials. In China, the Boys and Girls Clubs Association of Hong Kong (www.bgca.org.hk) offers counselling in schools and youth centres. In Ireland, an anti-homophobia video shown in schools has been watched by half a million people online.¹³⁸ In the United States, gay-straight alliances or clubs have been established in more than 4,000 high schools.¹³⁹

78. National human rights institutions can play an important role. For example, in 2011, the Kenya Human Rights Commission produced the report, “The Outlawed Amongst Us: A Study of the LGBTI Community’s Search for Equality and Non-Discrimination in Kenya”. The Asia Pacific Forum of National Human Rights Institutions has facilitated dialogue among member institutions, with positive contributions from national institutions in

¹³⁶ See www.justice.gov.za/m_statements/2011/20110504_lbgiti-taskteam.html (accessed 9 November 2011).

¹³⁷ While not legally binding, the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity provide guidance to States on related human rights issues and legal standards. In the universal periodic review process, several Governments have committed to using the Principles in future policy development. In addition, the Organization of American States may consider the creation of a special rapporteur on LGBT-related violations.

¹³⁸ For more information, see www.belongto.org.

¹³⁹ For more information, see www.glsen.org.

Australia, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, the Philippines, the Republic of Korea and Thailand.¹⁴⁰

79. Some States – inter alia, Australia, India, Nepal, Pakistan, Portugal, the United Kingdom and Uruguay – have made it easier for transgender and intersex persons to obtain legal recognition of a change of gender or to indicate a gender other than male or female. The New Zealand Human Rights Commission recently concluded a two-year consultation to identify human rights concerns of transgender persons.¹⁴¹

80. Finally, recognizing that safeguarding the rights of LGBT persons is a multifaceted undertaking, the Government of Norway recently published a plan of action intended to mobilize eight Government departments to implement a series of specific measures.¹⁴²

VII. Conclusions and recommendations

81. The present report summarizes only some of the information gathered by United Nations treaty bodies and special procedures, regional and non-governmental organizations on violence and discrimination based on actual or perceived sexual orientation or gender identity. A more comprehensive analysis of the human rights challenges facing LGBT and intersex persons would require a more extensive study and, in future, regular reporting.

82. Nevertheless, on the basis of the information presented herein, a pattern of human rights violations emerges that demands a response. Governments and inter-governmental bodies have often overlooked violence and discrimination based on sexual orientation and gender identity. The mandate of the Human Rights Council requires it to address this gap: the Council should promote “universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.”¹⁴³ With the adoption in June 2011 of resolution 17/19, the Council formally expressed its “grave concern” regarding violence and discrimination based on sexual orientation and gender identity. Further action is now needed, especially at the national level, if individuals are to be better protected from such human rights violations in future.

83. The recommendations to Member States set out below, which are not exhaustive, draw on measures recommended by United Nations human rights mechanisms.

84. The High Commissioner recommends that Member States:

(a) Investigate promptly all reported killings and other serious incidents of violence perpetrated against individuals because of their actual or perceived sexual orientation or gender identity, whether carried out in public or in private by State or non-State actors, and hold perpetrators accountable, and establish systems for the recording and reporting of such incidents;

¹⁴⁰ For more information on the work of the Asia Pacific Forum in this area and contributions of national human rights institutions in the region, see www.asiapacificforum.net/support/issues/sexual_orientation.

¹⁴¹ “To Be Who I am”, New Zealand Transgender Inquiry report, New Zealand Human Rights Commission, 2008.

¹⁴² “Improving Quality of Life among Lesbians, Gays, Bisexuals and Trans persons, 2009 –2012”, Norwegian Ministry of Children and Equality, 2008.

¹⁴³ General Assembly resolution 60/251, para. 2.

(b) Take measures to prevent torture and other forms of cruel, inhuman or degrading treatment on grounds of sexual orientation and gender identity, to investigate thoroughly all reported incidents of torture and ill-treatment, and to prosecute and hold accountable those responsible;

(c) Ensure that no one fleeing persecution on grounds of sexual orientation or gender identity is returned to a territory where his or her life or freedom would be threatened, and that asylum laws and policies recognize that persecution on account of one's sexual orientation or gender identity may be a valid basis for an asylum claim;

(d) Repeal laws used to criminalize individuals on grounds of homosexuality for engaging in consensual same-sex sexual conduct, and harmonize the age of consent for heterosexual and homosexual conduct; ensure that other criminal laws are not used to harass or detain people based on their sexuality or gender identity and expression, and abolish the death penalty for offences involving consensual sexual relations;

(e) Enact comprehensive anti-discrimination legislation that includes discrimination on grounds of sexual orientation and gender identity among prohibited grounds and recognizes intersecting forms of discrimination; ensure that combating discrimination on grounds of sexual orientation and gender identity is included in the mandates of national human rights institutions;

(f) Ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity;

(g) Implement appropriate sensitization and training programmes for police, prison officers, border guards, immigration officers and other law enforcement personnel, and support public information campaigns to counter homophobia and transphobia among the general public and targeted anti-homophobia campaigns in schools;

(h) Facilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights.

85. The High Commissioner recommends that the Human Rights Council:

(a) Keep regularly informed and updated on incidents of violence and discrimination linked to sexual orientation and gender identity;

(b) Encourage existing special procedures to continue to investigate and report on human rights violations affecting individuals on the basis of sexual orientation or gender identity within the context of their specific mandates.

Relevant resources

Born Free and Equal

Born Free and Equal – Sexual Orientation and Gender Identity in International Human Rights Law is a 60-page booklet on sexual orientation and gender identity in international human rights law, released by the UN Human Rights Office. The publication is designed as a tool to help States understand their obligations as well as the actions required to meet them. It may also be a useful resource for those striving to hold States accountable for violations of international human rights law.

See <http://tinyurl.com/Free-Equal>

World map on LGBT human rights

A project of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), this map seeks to provide an overview of the status of the human rights of sexual minorities worldwide.

See <http://tinyurl.com/ILGAMap>

Yogyakarta Principles

A set of international principles relating to sexual orientation and gender identity, intended to apply international human rights law standards to address the abuse of the human rights of LGBT persons. A helpful guide to the principles is the publication An Activist's Guide to the Yogyakarta Principles.

See <http://www.ypinaction.org>

Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People

The LGBT toolkit is aimed at helping EU institutions and Member States to prevent violations of the human rights of LGBT people, as well as to address the underlying causes.

See <http://tinyurl.com/EUtoolkit>

Discrimination on grounds of sexual orientation and gender identity in Europe - CoE publication

The report Discrimination on grounds of sexual orientation and gender identity in Europe is the result of the most comprehensive study on homophobia and transphobia ever carried out in the 47 member states of the Council of Europe. The report examines the socio-legal situation of LGBT persons in these states.

See <http://tinyurl.com/COEsogi>

CoE Ministerial Recommendation CM/Rec (2010) 5

In 2010 the Committee of Ministers of the Council of Europe adopted the first ever international instrument dealing specifically with LGBT issues: CM Recommendation (2010) 5 to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, which has a human rights-based approach and recommends a range of measures to be taken by member states in order to combat discrimination in this area and covers the major challenges facing LGBT persons.

See <http://tinyurl.com/CMrecommendation5>

Council of Europe's standards

This document contains a collection of the Council of Europe's standards relating to discrimination on grounds of sexual orientation and gender identity. This includes inter alia, recommendations, resolutions and other relevant thematic documents.

See <http://tinyurl.com/COEstandards>



REPUBLIC OF SOUTH AFRICA



NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS