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ADDRESSING HUMAN RIGHTS VIOLATIONS BASED ON SEXUAL ORIENTATION & GENDER IDENTITY AT THE 17th SESSION OF THE HUMAN RIGHTS COUNCIL

June, 2011

There are a number of opportunities to raise awareness of human rights violations based on sexual orientation and gender identity at the upcoming 17th session of the Human Rights Council. These include **general debate following the update by the High Commissioner, interactive dialogue with relevant Special Procedures (e.g. on violence against women, health and extrajudicial executions), the UPR, relevant panels, and general debate under items 3, 4 or 8.**

This document provides a summary of these opportunities. In addition:

- **Annex I** excerpts the references to sexual orientation and gender identity in the reports of the **Special Procedures** and other reports to the Council;
- **Annex II** highlights **UPR recommendations** relating to sexual orientation and gender identity in the reports of the 16 States under review.

Summary and Overview:

Opportunities to raise awareness of human rights violations based on sexual orientation and gender identity at the 17th session of the Human Rights Council include:

➤ **General Debate following the High Commissioner's update:**

The High Commissioner has played an active role in calling for an end to violence, discrimination and criminalisation based on sexual orientation and gender identity over recent months. As part of an anti-discrimination campaign, the OHCHR has committed to working with States, national human rights institutions and civil society to achieve progress towards the worldwide decriminalization of homosexuality and further measures to protect people from violence and discrimination on grounds of their sexual orientation or gender identity. The OHCHR recently produced a video for the International Day against Homophobia (May 17) and a joint brochure with UNAIDS, WHO and UNDP on "*Tackling discrimination on grounds of sexual orientation and gender identity*". More information can be found at <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>. The recent joint statement, endorsed by 85 States also contained a paragraph directed to the OHCHR:

"8. We encourage the Office of the High Commissioner for Human Rights to continue to address human rights violations based on sexual orientation and gender identity and to explore opportunities for outreach and constructive dialogue to enhance understanding and awareness of these issues within a human rights framework."

Relevant State interventions might:

- commend the High Commissioner for her principled affirmation that no human being may be denied their rights, solely because of their sexual orientation or gender identity, and note that this position is reinforced by the comments of the Secretary General, the recent vote on extrajudicial executions at the General Assembly, the findings of treaty bodies, and the clear evidence of human rights violations brought to the Council's attention by its Special Procedures;
- note that the recent joint statement encourages the OHCHR to explore opportunities for outreach and constructive dialogue on sexual orientation and gender identity issues, and invite the OHCHR to consider a report, study of best practices, experts' seminar with intergovernmental and civil society participation, or other means to raise awareness of the issues.

➤ **Interactive Dialogue with Special Procedures:**

A number of Special Procedures address human rights violations based on sexual orientation or gender identity in their reports. Full details are provided in **Annex I**. In particular:

- The **Special Rapporteur on violence against women, its causes and consequences**, has noted that factors contributing to the risk of violence include individual aspects of women's bodily attributes such as race, skin colour, intellectual and physical abilities, age, language skills and fluency, ethnic identity and sexual orientation. She further noted that women who are lacking social and cultural capital, due to their minority or immigration status, language barriers, religious or ethnic affiliation, sexual orientation and/or gender identity or educational attainment, are also at greater risk of long-term health consequences.

In her Communications report, the Special Rapporteur references a letter sent to the Government of Honduras on 9 February 2011, concerning the **killings of 31 LGBT people in the last 18 months, and specifically highlights violence and killings directed against transgender persons**.

The Communications report also references an allegation letter sent to the Government of South Africa on 14 January 2011 concerning a **lesbian woman allegedly "strangled with a wire, tortured and raped for five hours** by [an acquaintance] who intended to 'turn her straight'."

The Rapporteur further notes (at para 209): "Further concern was expressed that these attacks did not constitute isolated incidents and that lesbian women in South Africa faced an increasing risk of becoming victims of violence, especially rape, because of widely held prejudices and myths that maintained they would change their sexual orientation if they were raped by a man. Furthermore, concern was expressed over increasing reports that hate crimes against lesbians were not being recognized or punished by the South African legal system."

In the report of the Special Rapporteur's mission to El Salvador, a section is reserved for the topic of attacks against lesbians, gays, bisexuals, transgender and intersex persons. In a meeting with the Special Rapporteur, interlocutors shared their accounts of widespread discrimination and violence, generally overlooked by the Government, "including **brutal gang rapes and family violence** owing to their sexual orientation or gender identity". A specific case study is provided of **a transgender person "brutally attacked and shot** by a group of men when she was leaving a nightclub", **treated harshly and with disdain in hospital by health-care personnel** because she was transgender and HIV-positive, detained in a male prison where she was placed in a cell with gang members and **raped more than 100 times**, and further attacked upon her release from jail.

- The **Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health** noted in his report on his mission to the Syrian Arab Republic that in cases of **homosexual detainees**, prison staff follow an **isolation procedure**, during which time these prisoners receive psychological "treatment" and are kept apart from the rest of the prison population for no reason besides their sexual orientation or gender identity.
- The communications report of the **Special Rapporteur on extrajudicial, summary or arbitrary executions** is not yet available; however the Special Rapporteur on violence against women refers to a joint communication with the Special Rapporteur on executions in relation to the killing of at least 31 LGBTI persons in Honduras, so it may be assumed that the communications report on executions will also reference killings based on sexual orientation and gender identity.

Relevant State interventions might:

- commend the Special Procedures for their work in this area;
- highlight the serious human rights violations identified on grounds of sexual orientation and gender identity, including killings, rape, torture and violence;
- invite them to elaborate on what States can do to promote tolerance, respect for diversity and address the root causes of such violations;
- bring particular attention to gender-based violence, "curative" rape, and targeting of transgender persons;
- ask how the Council and its mechanisms can best promote and protect the human rights of the most marginalised, including those who are lesbian, gay, bisexual, transgender or intersex.

➤ UPR 10 report adoptions:

The UPR report adoption process affords an opportunity to **commend those States which have responded favourably** to relevant recommendations, and to **encourage States who have not to address these issues more positively in future**. States which **endorsed the recent joint statement** (Nauru, Rwanda, Nepal, Austria, Australia, Georgia, Estonia, Paraguay) might be commended for their support and encouraged to follow up on their commitment.

Many relevant recommendations relating to sexual orientation and gender identity issues were raised during the UPR of those States whose reports are due to be adopted. For example, positive recommendations on these issues were **accepted** by **Nepal, São Tomé and Príncipe** and **Paraguay**, and the responses to many more recommendations are pending. **Nauru** pledged to repeal laws criminalising same-sex relations during the Working Group session, and

we hope to see this formalised during the report adoption. However, it was disappointing that **Mozambique** rejected recommendations to repeal the laws criminalising sexual relations between consenting adults of the same sex, as well as to guarantee fully the right of association including for NGOs working on issues of sexual orientation and gender identity.

A full list of UPR recommendations for the 16 States under review is attached as **Annex II**.

➤ **General statements – item 3 & 8:**

There will be opportunity for statements during general debate, particularly under **item 3** (*promotion and protection of all human rights*) or **item 8** (*Follow-up and implementation of the Vienna Declaration and Programme of Action*, which affirms the principles of universality and non-discrimination).

Statements by regional or cross-regional groupings might reference the recent joint statement on ending violence, criminal sanctions and related human rights violations based on sexual orientation and gender identity, supported by 85 States, and call for constructive outreach and dialogue with a view to enhancing the Council's capacity to fulfil its mandate by promoting and protecting human rights for all people without distinction.

➤ **Panels**

The half-day panel on violence against women affords an opportunity to further consider measures that may be taken to explore the human rights concerns raised by the Special Rapporteur on violence against women, including "corrective" or punitive rape related to sexual orientation and gender identity, and gender-related violence directed against transgender persons and others because of their perceived sexual orientation or gender identity.

➤ **Side event**

A side-event is currently planned on 7 June by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) on the topic: "The Growing Consensus: Towards the End of Criminalization and Human Rights Violations based on Sexual Orientation and Gender Identity?"

➤ **Informal briefing on Gender Identity issues**

At some point during the second week of the Council, NGO colleagues who will be attending the session would appreciate the opportunity to meet with supportive States for an informal briefing on issues of gender identity and expression, and specific human rights concerns of transgender persons. Further details will be provided in due course.

ANNEX I:

REFERENCES TO SEXUAL ORIENTATION & GENDER IDENTITY IN REPORTS OF SPECIAL PROCEDURES

Report of the United Nations High Commissioner for Human Rights on the question of the realization in all countries of economic, social and cultural rights

A/HRC/17/24

II. Activities of the Office of the United Nations High Commissioner for Human Rights C. Partnerships with civil society and United Nations agencies

37. In 2010, OHCHR and WHO strengthened their partnership and increased the areas of mutual collaboration. New areas of cooperation include the Tuberculosis and Human Rights Task Force, co-chaired by WHO and UNAIDS, which OHCHR has joined, and increased focus on non-communicable diseases from a human rights perspective. WHO provided technical inputs and guidance on a number of issues, including social pensions and older persons, the High Commissioner's report on maternal mortality and morbidity, the report to the Human Rights Council by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, which examines the criminalization of same-sex conduct and sexual orientation, sex-work, and HIV transmission (A/HRC/14/20), as well as the Committee on ESCR day of general discussion on sexual and reproductive health. OHCHR has also provided substantive input to WHO's ongoing work on a Public Health Law Manual, the WHO-led year-long consultations for an Interagency⁴ Statement on gender-biased sex selection, and several training courses. A number of joint publications were issued, including an information sheet on a human rights-based approach to health, and a document entitled, "Human Rights and Gender Equality in Health Sector Strategies – How to Assess Policy Coherence", prepared in close collaboration with the Swedish International Development Cooperation Agency and intended for use primarily by national multi-disciplinary teams of health planners, policy makers and human rights practitioners.

IV. Activities of special procedures

55. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental **health** submitted a report to the sixty-fifth session of the General Assembly in [August] 2010 on drug control and the right to health, which questioned the current international drug control efforts that have focused on creating a drug-free world through, almost exclusively, law enforcement and criminal sanctions. The Special Rapporteur suggested that approaches that reduce harm associated with drug use and the decriminalization of certain laws would improve the health and welfare of people who use drugs and benefit society. He also submitted a report to the fourteenth session of the Human Rights Council, focusing on the right to health and criminalization of same-sex conduct and sexual orientation, sex-work and HIV transmission.

57. The Special Rapporteur on the right to **education** devoted his annual report to the fourteenth session of the Human Rights Council to the question of the right to education of migrants, refugees and asylum-seekers. The report aimed to inform and assist Governments and interested parties in their efforts to address these matters and develop best practices so as to ensure the enjoyment of the currently unfulfilled right to education of migrants, refugees and asylum-seekers. In his report to the General Assembly, the Special Rapporteur addressed the issue of sexual education, including the interdependence of sexuality, health and education and the relationship of this right to other rights from a gender and diversity perspective. He

also discussed the right to sexual education in the context of international human rights law. During the reporting period, the Special Rapporteur conducted a mission to Mexico.

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover

Communications to and from Governments

A/HRC/17/25/Add.1

Cameroun

Communication sent

70. Le 27 Octobre 2010, le Rapporteur spécial sur le droit à toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, conjointement avec le Groupe de travail sur la détention arbitraire et le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants a envoyé un appel urgent au Gouvernement du Cameroun concernant l'arrestation de M. Bruno Afaaba et de M. Marc- Henri Batta pour leur supposée homosexualité.

71. Selon les informations reçues, M. Afaaba et M. Batta auraient été arrêtés le 27 septembre 2010 par des officiers du 1er escadron de gendarmerie à Yaoundé, et seraient actuellement détenus à la prison de Kondengui. Ils auraient été arrêtés après que leurs maisons aient été fouillées. Lors de cette fouille, des boîtes de préservatifs et de lubrifiants auraient été trouvées. Les deux hommes auraient été détenus et le 4 octobre, auraient été forcés à subir un examen anal pour confirmer leur activité sexuelle. Il est aussi allégué que M. Afaaba et M. Batta ont été menottés pendant l'examen médical et n'ont pas été informés sur leur droit de garder le silence, ni d'avoir recours à une assistance juridique.

Observation

72. Le Rapporteur spécial regrette, au moment de la finalisation du présent rapport, l'absence de réponse aux communications.

Mexico

Communication sent

194. El **14 de Febrero de 2011**, el Relator Especial sobre el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes y el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con la detención del señor José Ricardo Maldonado Arroyo, Director de la Red de Personas Afectadas por VIH (REPAVIH) con sede en Mérida, Yucatán, y activista de los derechos del colectivo de gays, lesbianas, bisexuales y personas transgénero (LGBT). REPAVIH es una organización que desde 2006 ofrece asesoramiento médico y apoyo emocional a las personas afectadas por el virus VIH en Yucatán y lleva a cabo campañas de sensibilización y contra la discriminación.

195. Según las informaciones recibidas, el 4 de diciembre de 2010, el Sr. José Ricardo Maldonado Arroyo habría sido detenido de manera arbitraria por elementos de la policía judicial del Estado de Yucatán. Los agentes habrían alegado que el motivo de su arresto era la presunta investigación de un delito y, sin mostrarle una orden de detención, le habrían esposado, vendado los ojos e introducido y transportado en un vehículo no oficial donde le habrían insultado y se habrían dirigido a él con expresiones homófobas.

196. Según las informaciones recibidas, los agentes habrían golpeado al Sr. Maldonado Arroyo en repetidas ocasiones en la cara, el pecho y la espalda mientras le preguntaban acerca de su

trabajo de defensa de los derechos de las personas que viven con el VIH y del colectivo de gays, lesbianas, bisexuales y personas transgénero. El Sr. Maldonado Arroyo habría permanecido cerca de cuatro horas retenido con el rostro cubierto con su propia playera tiempo durante el cual habría sido obligado a cambiar varias veces de vehículo. Posteriormente, habría sido puesto en libertad bajo la amenaza de volver a ser agredido si presentaba alguna queja por los hechos ocurridos.

197. La identidad de uno de los agentes a cargo de la detención del Sr. Maldonado Arroyo, el cual vestían cazadora negra con la leyenda "PGJ", ha sido puesta en conocimiento de nosotros.

198. Según se informa, el 5 de diciembre de 2010, el Sr. Maldonado Arroyo habría presentado una denuncia ante la Procuraduría General de Justicia en el Estado así como una queja ante la Comisión de Derechos Humanos del Estado de Yucatán (CODHEY). En primera instancia se habría abierto un expediente por el delito de "lesiones" pero descartando el abuso de autoridad o tortura. Por su parte, la CODHEY habría también realizado su propia investigación, incluyendo fotografías sobre las lesiones, certificados médicos y testimonios. A pesar de la solicitud por parte del Sr. Maldonado Arroyo de medidas cautelares a su favor, se informa que éstas habrían sido denegadas de forma verbal.

Observations

199. El Relator Especial lamenta que al finalizar este informe, no se había recibido una respuesta a la comunicación del **14 de febrero de 2011**.

République démocratique du Congo

Communication sent

268. Le **15 novembre 2010**, le Rapporteur spécial sur le droit de toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression ont envoyé une lettre d'allégation au Gouvernement de la République Démocratique du Congo concernant une « proposition de loi relative aux pratiques sexuelles contre nature » qui aurait été débattue récemment au sein de l'Assemblée nationale de la République démocratique du Congo.

269. Selon les informations reçues, le 21 octobre 2010, la salle des Congrès de l'Assemblée nationale de la République démocratique du Congo aurait débattu d'une « proposition de loi relative aux pratiques sexuelles contre nature ». Selon cette proposition de loi, « l'homosexualité (...) [est] une menace à la famille (...), une déviation de la race humaine vers des relations contre nature (...) et [constitue] une dépravation des mœurs qualifiées d'abomination ».

270. La proposition de loi visait à réviser le code pénal congolais, tel que modifié et complété par la loi du 20 juillet 2006 sur les violences sexuelles. Les modifications portaient spécifiquement sur le paragraphe 8 de la section III du titre VI de la dite loi du code pénal :

- selon l'article 174h1 de la proposition de loi, « [s]era puni de trois à cinq ans de servitude pénale et d'une amende de 500.000 francs congolais, quiconque aura eu des relations homosexuelles » ;
- selon l'article 174h2 de la proposition de loi, « [s]ont interdites... toute association promouvant ou défendant des rapports sexuels contre nature. Sera puni de six mois à un an de servitude pénale et d'une amende de 1.000.000 francs congolais constants, quiconque aura crée, financé, initié et implanter toute association toute structure promouvant les relations sexuelles contre nature » ; et
- selon l'article 174h3 de la proposition de loi, « [s]ont interdits... toute publication, affiches, pamphlets, film mettant en exergue, ou susceptibles de susciter ou encourager des pratiques sexuelles contre nature ».

Observation

271. Le Rapporteur regrette que le Gouvernement n'ait pas transmis de réponse à sa communication au moment de la finalisation du rapport.

Uzbekistan

Communication sent

352. On 11 May 2010, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a joint allegation letter to the Government of Uzbekistan concerning the sentencing of Mr. Maxim Popov, psychologist, founder and director of the non-governmental organization Izis, founded by young medical professionals which works on HIV/AIDS prevention. Izis has also implemented HIV prevention activities, including under contracts with UNICEF, UNFPA and UNAIDS.

353. According to the information received, Mr. Maxim Popov was arrested in January 2009 and convicted in July 2009. His conviction was publicly disclosed only at the end of February 2010. Mr. Popov was sentenced to 7 years imprisonment for charges which included theft by embezzlement, concealment of foreign currency, tax evasion, inducing minors to antisocial behaviour, indecent assault without violence against a minor and inducing engagement in the use of narcotic drugs or psychotropic substances.

354. It was believed that Mr. Popov was convicted in connection with writing and distributing HIV/AIDS prevention materials. Mr. Maxim Popov was the author of the brochure "HIV and AIDS today", a publication funded by UNAIDS and UNICEF. He was also convicted for distributing HIV prevention materials published by UNAIDS and other UN agencies to adolescents that explicitly referred to drug use, sex work and homosexuality.

355. Concern was expressed that the arrest and sentencing of Mr. Maxim Popov may be related to his peaceful activities in defence of human rights, in particular his work on HIV/AIDS prevention.

Response received

356. On 30 June 2010, the Government of Uzbekistan replied to the joint allegation letter sent on 11 May 2010. It provided information on IZIS and on Mr. Popov.

357. With regard to IZIS, the Government indicated that in the course of the checks conducted to ensure that the aims of the organisation were in accordance with the law, it was found that the requirements of the statute had been breached and that there had been violations of Uzbek law, some of them of a criminal nature. The materials of the verification process were handed over to the public prosecutor's office and criminal charges were brought against IZIS. The criminal court found Mr. Popov to be guilty and subsequently the Tashkent Civil Court accepted the application for IZIS to be dissolved.

358. Concerning Mr. Popov, the Court ruled that he had abused his official position as director of IZIS by embezzling large sums of money that were supposed to be used for projects related to IZIS. Notably, Mr. Popov and his chief accountant Mr. Kostyuchenko, embezzled funds provided by UNICEF regional office, UNDP, the Regional Management Board of the Central Asia AIDS Control Project etc. Besides, Mr. Popov misappropriated material goods placed in his charge, of a total value of a 193,100 sum.

359. The Government added that Mr. Popov distributed a book in Uzbek education establishments attended by schoolchildren and students engaging in academic, sporting or

communal activities, which promoted the use of narcotic drugs and antisocial behaviour among the young. The Government considered that Mr. Popov was well aware of the nature of the book's content. The book contained texts instructing young people of sexual activities and propaganda for homosexuality, pornography and pornographic images.

360. As a result Mr. Popov was found guilty and sentenced to seven years imprisonment and stripped him of the right to hold any office involving the direction of an organization or economic administration for two years.

Observation

361. The Special Rapporteur thanks the Government for its response received on 30 June 2010.

Mission to the Syrian Arab Republic

A/HRC/17/25/Add.3

VII. Right to health and persons in detention

78. Certain conditions and situations as described by the prison medical staff were cause for concern, especially in light of the Standard Minimum Rules. For example, there is no routine examination provided to the prisoners upon admission. In the Special Rapporteur's opinion, such a routine check is necessary, in order to accurately and adequately determine the incarcerated persons' health needs. Furthermore, people who use drugs were kept in unnecessary isolation from the rest of the prison population. Moreover, in cases of homosexual detainees, prison staff follow an isolation procedure, during which time these prisoners receive psychological "treatment" and are kept apart from the rest of the prison population for no reason besides their sexual orientation or gender identity. In each of these cases stigma is reinforced, vulnerable detainees are discriminated against, and there is a resulting deprivation of the enjoyment of the right to health without meaningful public health benefit.

Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo

A/HRC/17/26

II. Multiple and intersecting forms of discrimination and violence against women

B. Forms, causes and consequences

21. It has been acknowledged that violence results from a complex interplay of individual, family, community and social factors, and that, even though all women are at risk of violence in every society in the world, not all women are equally vulnerable to acts and structures of violence. Representing both the universality and the particularity of women's risk of violence requires the social location and bodily attributes of individuals and groups to be explicitly accounted for.

22. Social location refers to the different positions occupied by individual women that give rise to intra-gender differences among women. Factors such as geographic location, level of education, employment situation, household size, marital relationships, and access to political and civic participation, all impact women's vulnerability to violence. Further contributory factors for risk of violence include individual aspects of women's bodily attributes such as race, skin colour, intellectual and physical abilities, age, language skills and fluency, ethnic identity and sexual orientation.

23. Also, one has to situate the experience of the abuse within the given cultural context of each woman's location and her understanding of the impact of the abuse on her life. Not all women experience similar acts of violence similarly; therefore it is necessary to consider how a

woman's response to any act of violence will be impacted by services and assistance that are offered to remedy harmful consequences.

3. Consequences

40. It is undisputed that inequality and discrimination, including intersecting forms of discrimination, causes violence against women. Such violence cuts across gender, race, class, geographical location, religion or belief, educational attainment, ability and sexuality. Examples of inequality and discrimination can also be noted in patriarchy and ideologies of male supremacy and female subordination. Feminists have traditionally argued that in societies where there is more gender equity, less violence against women is found. But recent studies have reconsidered this point in light of research which documents high levels of violence against women in societies with greater parity in pay, access to Government and business participation, education and health care.

47. Women who are lacking social and cultural capital, due to their minority or immigration status, language barriers, religious or ethnic affiliation, sexual orientation and/or gender identity or educational attainment, are also at greater risk of long-term health consequences. They may be denied proper health or medical services, they may fear the consequences of asking for medical assistance, they may receive improper or low quality care, or they may live in places where no health services are available. Women who suffer from cognitive and/or physical disabilities are further negatively impacted since the stigma of disability is persistent in most countries, and they therefore may not be viewed as requiring care, or may live in places where no specialized care is available.

C. The holistic approach to recognizing women's rights to be free from discrimination and violence

51. Adopting a holistic approach to recognizing the human right of all women to be free from violence and discrimination addresses two approaches to analyzing violence against women. First, violence against women constitutes discrimination against women if it has the purpose or effect of targeting women because they are women; second, violence also constitutes discrimination when it is perpetrated with the purpose or effect of targeting identifiable subgroups of women, because their personhood is defined in terms of both their femaleness and other factors such as race, colour, national origin, citizenship, ethnicity, ability, religion/culture, socio-economic, marital, sexual orientation, refugee, or any other status.

58. Research demonstrates the utility of an approach that accounts for additional aspects of personhood, such as nationality, disability, indigenous belonging, sexual orientation, and socio-economic class, to predetermine the likelihood and extent to which women will experience multiple forms and various levels of violence. In adopting a more comprehensive approach, a picture of the different ways in which intersectional and multiple forms of discrimination operate in the context of violence against women emerges. It reflects the type of systematic, comprehensive, multisectoral and sustained approach needed to develop national strategies, concrete programmes and actions aimed at eliminating all forms of violence against women.

1. Human rights as universal, interdependent and indivisible

59. Human rights are universal in the sense that everyone is entitled to have their rights respected, protected and fulfilled no matter who they are or where they reside. Universality renders geographic location and social position impermissible bases on which to deny human rights, including the right to be free from violence. The "gendered theorization of human rights," incorporates "an intersectional approach to race, class, gender, sexuality and nation" where "no one right can be easily broken down into a singular issue, as rights are always already constituted through the social structural relations of multiple positionalities."

3. Structural and institutional discrimination and inequalities

67. The existence of structural and institutional inequalities is the result of various aspects and factors related to discrimination. Discrimination based on race, ethnicity, national origin, ability, socio-economic class, sexual orientation, gender identity, religion, culture, tradition and other realities often intensifies acts of violence against women. The acknowledgement of structural aspects and factors of discrimination is necessary for achieving non-discrimination and equality.

4. Social and/or economic hierarchies among women and between women and men

73. Material reality is linked to economic and social security and is crucial for both protecting and preventing violence against women. Material reality, such as educational attainment, housing, and access to land, water, food and work, all play a role in how and to what extent women experience violence. Not only does violence against women disproportionately target the most vulnerable women in society in terms of race, ethnic origin, nationality, disability and sexual orientation, but the conditions in which women live can also position them as being especially receptive to gender-based violence.

D. Some critical aspects to consider when adopting a holistic approach

1. The right to an adequate standard of living

87. The right to security and bodily integrity per se is essential for the enjoyment of other human rights. All people, regardless of citizenship, gender, race, ethnicity, national origin, and/or sexuality, have the right to bodily integrity within which health and the environment play important roles.

E. Conclusions and recommendations

104. Situating violence against women as a problem that cuts across political, civil, economic, social and cultural rights compels us to recognize the universality of violence. This report argues that individual women's productive and reproductive activities in all sectors is impacted by forms of interpersonal and structural violence which intersect with various factors such as immigration, trade and economic policy, social and economic development, civil and political development, sexual orientation, ability, legal protection, conflict, security concerns, and so on.

Communications to and from Governments

Annex- A/HRC/17/26/Add.1

Honduras

Carta de alegación

95. Mediante carta fechada el 9 de febrero 2011 la Relatora Especial, junto con el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias enviaron una carta de alegación señalando la atención del Gobierno la información recibida en relación con asesinato de 31 personas lesbianas, gays, bisexuales, transgénero y travestís durante los 18 últimos meses.

96. Una de estas personas, WOT, un prominente defensor de los derechos humanos de la comunidad lesbiana, gay, bisexual y transgénero e integrante ONG fue el objeto de una comunicación conjunta por parte del Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión y de la Relatora Especial sobre la situación de los defensores de los derechos humanos enviada el 19 de enero 2010. Lamentablemente, hasta la fecha, no se ha recibido respuesta por parte del Gobierno de su Excelencia.

97. Tres de las personas mencionadas habrían sido recientemente asesinadas. Hemos recibido información más detallada sobre los casos siguientes:

98. El 22 de diciembre de 2010, un travesti de 23 años, llamada LAH habría sido encontrada muerta en un una zanja en Comayagüela. Según las informaciones recibidas, su cuerpo habría sido golpeado e incinerado. La información recibida indica también que los golpes en su rostro causados por lapidación habrían sido tan graves que sus restos habrían quedado prácticamente irreconocibles. Además se expresó preocupación por las alegaciones recibidas indicando que LAH habría sido violada.

99. Ese mismo día, otra travesti de 45 años, llamada LOMS, habría sido encontrada en su casa del Barrio El Rincón en Tegucigalpa. Según las informaciones recibidas, su cuerpo habría sido incinerado y mostraba numerosas puñaladas. Vecinos reportaron que observaron a dos individuos sospechosos salir corriendo de su casa cuando inició el fuego.

100. El 2 de enero de 2011, otra joven travesti conocida como C habría sido encontrada asesinada en la calle principal de Colonia Almeda en Tegucigalpa. Según informaciones recibidas, su cuerpo habría mostrado heridas de puñal en el pecho.

101. Los asesinatos de personas transgénero en Honduras, así como los asesinatos de defensores de sus derechos, fueron ya el objeto de una comunicación enviada al Gobierno de Honduras el 23 de enero del 2009 por parte del Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, la Relatora Especial sobre la situación de los defensores de los derechos humanos y la Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias. El Gobierno de Honduras no ha respondido a dicha comunicación hasta la fecha.

102. Se expresó grave preocupación por el asesinato de estas 31 personas y por las alegaciones de que estos hechos pudieran estar relacionados con la orientación sexual de las víctimas. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para las personas lesbianas, gays, bisexuales, transgénero y travestís en Honduras.

103. La Relatora Especial solicitó al Gobierno que clarificara la exactitud de las alegaciones presentadas, así como información detallada con respecto a cualquier investigación, examen forense y judicial u otro tipo de pesquisa que se hubiera llevado a cabo; las diligencias judiciales que se hubieran iniciado; las medidas que hubieran sido adoptadas para garantizar la protección de las personas lesbianas, gays, bisexuales, transgénero y travestís en el país; y la posible compensación a las familias de las víctimas.

Observations

104. The Special Rapporteur regrets that at the moment of finalizing the report, she had not received an official reply. She recalls that communications are an important part of the cooperation of Governments with her mandate and urges the Government to respond to the concerns raised.

105. The Special Rapporteur takes this opportunity to make reference to Commission on Human Rights Resolution 2005/41 on the Elimination on Violence against women, which provides that women should be empowered to protect themselves against violence and, in this regard, stresses that women have the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

106. She further wishes to recall Article 4 (j) of the Declaration on the Elimination of Violence against Women, which calls upon States to adopt all appropriate measures to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women.

South Africa
Allegation letter

204. On **14 January 2011**, the Special Rapporteur on violence against women, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an allegation letter to the Government concerning the situation of MG, a woman who was allegedly beaten and raped by a man who intended to "cure" her from her sexual orientation, and NF, a local community activist supporting victims of "corrective" rape.

205. According to the information received, MG, a lesbian woman, and her friends were walking home when AN, a man she had known for a number of years and who had never objected to her sexuality before, asked her for a cigarette. She stayed to smoke with him, and followed him into his room when he refused to pass the cigarette to her. The man then locked the door and started hitting her while she tried to fight back. MG was strangled with a wire, tortured and raped for five hours by AN who intended to "turn her straight".

206. Since this incident took place, the court-case addressing it had reportedly been postponed numerous times, last time to February 2011, and AN was currently out on bail, roaming the same streets where MG lived. This had forced MG to go into hiding for fear of her safety.

207. Ms. NF, a local community activist reached out to MG through a small local charity she set up in the Cape Town township of Gugulethu to rescue and support survivors of "corrective" rape. She was currently covering and supporting the criminal proceedings of MG. Although AN was forbidden to enter Gugulethu as part of his bail conditions, he had reportedly broken those conditions constantly and threatened NF various times.

208. Since his release he had allegedly asked family and friends to attack NF, constantly harassed her and made threats against her life and against her partner. This had forced NF to go into hiding as well, which had prevented her from carrying out the assistance work she provided to other women victims of violence.

209. Serious concern was expressed about the physical and psychological integrity of MG and NF. Further concern was expressed that these attacks did not constitute isolated incidents and that lesbian women in South Africa faced an increasing risk of becoming victims of violence, especially rape, because of widely held prejudices and myths that maintained they would change their sexual orientation if they were raped by a man. Furthermore, concern was expressed over increasing reports that hate crimes against lesbians were not being recognized or punished by the South African legal system.

210. The Special Rapporteur requested information from the Government regarding the accuracy of the alleged facts, as well as further clarifications concerning any investigation, medical examinations, and judicial or other inquiries that may have been carried out in relation to this case; the details regarding the current status of the judicial proceeding against AN; the protective measures that might have been put in place to ensure the safety and integrity of MG and NF; and the measures that might have been undertaken with a view to eradicate sexual

violence against women generally, and particularly regarding the prevalence of “corrective” rape.

Observations

211. The Special Rapporteur regrets that at the moment of finalizing the report, she had not received an official reply. She recalls that communications are an important part of the cooperation of Governments with her mandate and urges the Government to respond to the concerns raised.

212. The Special Rapporteur takes this opportunity to make reference to Commission on Human Rights Resolution 2005/41 on the Elimination on Violence against women, which provides that women should be empowered to protect themselves against violence and, in this regard, stresses that women have the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

213. The Special Rapporteur also wishes to recall the obligation by States under international human rights law to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

Report of the Special Rapporteur on violence against women, its causes and consequences, on her follow-up mission to El Salvador (17-19 March 2010) Annex- A/HRC/17/26/Add.2

IV. Manifestations of violence against women

D. Attacks against lesbians, bisexuals and transgender persons

28. According to civil society organizations, El Salvador is also facing an escalating level of violence against the gay, lesbian, bisexual, transgender and intersex communities, with murders increasing from 4 in 2003 to at least 12 in 2009. High level of societal homophobia is particularly reflected in employment, in society generally, but also in the intolerance portrayed by the media.

29. In a meeting with the Special Rapporteur, interlocutors shared their accounts of widespread discrimination and violence, generally overlooked by the Government, including brutal gang rapes and family violence owing to their sexual orientation or gender identity (see case study below). Concern was particularly expressed at the attempt to introduce discriminatory amendments to the Constitution, including the definition of marriage as the union between a man and woman or the explicit prohibition of adoption by same-sex couples. Transgender persons also noted difficulties in legally changing their gender in official identity papers.

Case study

Paula’s story (assumed name) illustrates the level of violence endured by the lesbian, gay, transgender, bisexual and intersex communities in El Salvador. Paula was brutally attacked and shot by a group of men when she was leaving a nightclub in San Salvador. While in hospital, she faced harsh treatment and disdain from health-care personnel because she was transgender and HIV-positive. A few months after leaving hospital, she was detained and put in a male prison for two years for attempted homicide, although she claimed to have acted in self-defence; Paula was released after the man she had attacked admitted that this was the case. In prison, she was put in a cell with members of gangs (*mara*) and was raped more than 100 times, sometimes with the complicity of prison officials. Upon her release from jail, she was again attacked by *mara* members who found out that she was HIV-positive and that some of those that had raped her in jail had been infected.

VI. Main remaining challenges

C. Statistics and data collection

72. Despite the fact that the Office of the Procurator-General and the Ministry of Health and Social Assistance are responsible for monitoring the implementation of the Intra-Family Law, the statistics they collect do not contain specific information on violence against women and not all of their data is disaggregated by sex. Another weakness relates to the lack of registration of pregnancies among girls as cases of violence, thus rendering any investigation into cases of statutory rape non-existent. Reportedly, despite the rise in the number of hate-motivated crimes against lesbian, gay, bisexual and transgender persons, no institution compiles statistics on such victims of discrimination and violence.

VII. Conclusions and recommendations

77. In the light of the information received, the Special Rapporteur considers the recommendations in the report of the previous mandate holder still applicable and relevant, and reiterates the need for the Government to:

(b) Ensure the protection of women and girls through legislative, investigative and judicial reforms, including by:

(iii) Taking specific measures to ensure the protection of women who are victims of discrimination and violence on account of their sexual orientation or gender identity;

Report of the Special Rapporteur on the right to education, Kishore Singh The promotion of equality of opportunity in education

A/HRC/17/29

V. National legal framework

39. Pursuant to the legal obligations assumed by States under international human rights treaties, and following up on the political commitments they have undertaken, it is incumbent upon them to apply the principle of equality of opportunity in education through their national legal system. The place accorded to this principle in constitutions and other national legislation bears evidence to the way States incorporate their obligations into domestic law.

43. Additionally, other countries have enacted laws specifically addressing the principles of non-discrimination and equality of opportunity in education. Examples include the Promotion of Equality and Prevention of Unfair Discrimination Act (2000) in South Africa; the Law on Equality of Rights and Opportunities, Participation and Citizenship of Persons with Disabilities (2005) in France; the Prohibition of Discrimination Act (2005) in Norway, which establishes the function of Ombudsman on Equality and Anti-Discrimination; the General Equality of Treatment Act (2006) in Germany, which aims "to prevent or remove disadvantages due to race or ethnic background, gender, religion or philosophy, disability, age or sexual orientation" in employment and vocational training; the Equality Act (2006) in the United Kingdom which establishes a Commission for Equality and Human Rights and requires public authorities "to take proactive steps in promoting equality of opportunity between men and women".

Report of the Special Rapporteur on independence of judges and lawyers, Gabriela Knaul

Addendum: Summary of information, including individual cases, transmitted to Governments and replies received

A/HRC/17/30/Add.1

Iran (Islamic Republic of) Communication sent

555. On 11 February 2011, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other

cruel, inhuman or degrading treatment or punishment, sent an urgent appeal concerning the imposition of the death penalty upon **Ms. Fatemeh Salbehi** and **Mr. Ehsan Rangraz Tabaatabaa'ie**, who were reportedly both juveniles at the time the alleged criminal offences were committed.

556. According to the information received, Ms. Fatemeh Salbehi, currently aged 19, is at imminent risk of execution for having allegedly murdered her husband three years ago, when she was 16 years old. In May 2008, her husband, Mr. Hamed Sadeghi, an employee of the Public Relations Office at the local judiciary, was reportedly found dead in their home in Shiraz when she was at school.

557. Fatemeh Salbehi was allegedly arrested and interrogated without the presence of a lawyer. It is further alleged that she first confessed to the murder, but then stated that two persons broke into her home and killed her husband. Fatemeh Salbehi was allegedly convicted of murder by Branch Five of the Fars Criminal Court and sentenced to death. This sentence has reportedly been upheld by the Supreme Court.

558. In 2007, Mr. Rangraz Tabaatabaa'ie, now aged 19, and two other men were arrested on suspicion of having committed sodomy rape when Mr. Rangraz Tabaatabaa'ie was 17 years old. After interrogation the two other accused persons denied the accusations and were subsequently released. However, it is alleged that Mr. Rangraz Tabaatabaa'ie was beaten, blackmailed and forced to confess. He was later charged with the offence of "*lavat be onf*", i.e. consummated sexual activity between males, whether penetrative or non penetrative, under article 108 of the Iranian penal code. We are informed that under Iranian law *lavat* includes both consensual and forcible sodomy between men.

559. Prior to the trial, the complainant allegedly withdrew his allegation of rape. Nonetheless, officials decided to proceed with the trial on the basis of "*hudud*" i.e. public nature of the crime.

560. The Special Rapporteurs are informed that during the trial, Mr. Rangraz Tabaatabaa'ie pleaded not guilty, did not have access to a lawyer and informed the court that his confession had been obtained under torture. However, the court proceeded to use his confession as a basis for the ruling. We are informed that this is contrary to article 38 of the constitution of Islamic Republic of Iran, which stipulates that "All forms of torture for the purpose of extracting confession or acquiring information are forbidden. Compulsion of individuals to testify, confess, or take an oath is not permissible; and any testimony, confession, or oath obtained under duress is devoid of value and credence." Additionally, article 116 of the Islamic Penal Code states that "The confession of [sodomy] is only admissible if the person who confesses is ... under no pressure, and is willing to testify."

561. Furthermore, according to articles 114 and 115 of the Islamic Penal Code, in order to prove the act of *lavat* based on the confession, "the confession should be made four times in front of the judge" If the confession is made less than four times, the confession is not admissible. In the case of Mr. Rangraz Tabaatabaa'ie, this was allegedly not complied with and there was no evidence offered to substantiate the allegation.

562. Following the trial, Mr. Rangraz Tabaatabaa'ie was convicted of sodomy rape and sentenced to death by a five-member panel of judges at the Fourth Branch of the Criminal Court in Fars Province, Shiraz. On appeal, the case was heard by the Thirteenth Branch of the Iranian Supreme Court in Tehran, which upheld the decision of the lower court. Currently, Mr. Rangraz Tabaatabaa'ie is reportedly being held at the Adel Abaad Prison in Shiraz while awaiting execution. The source has also indicated that it is not clear whether the Head of the Judiciary has approved the execution.

Communication received

563. At the time this report was finalized, no response to this communication has been received.

Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante Addendum: Mission to South Africa

A/HRC/17/33/Add.4

IV. Good practices

A. Constitutional and legal guarantees

22. The Special Rapporteur was informed of the strong constitutional and legal guarantees that protect all persons in South Africa against deprivation of liberty and the progressive enumeration of social and economical rights, which prohibits discrimination in access to public services such as health care, education and social security.

23. The Constitution is the supreme law in South Africa. In the preamble, it acknowledges the injustices of the past and dedicates the nation to building a democratic and open society. The Constitution contains 14 chapters and 7 schedules. Chapter 2 (sects. 7-39) contains the Bill of Rights, which is regarded as one the most progressive of the world. Most of its provisions apply to all persons in the country, whether they are citizens or not or have legal status of stay or residence. In particular, section 9, the provision guaranteeing equality of all persons, states that:

(a) Everyone is equal before the law and has the right to equal protection and benefit of the law;

(b) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination may be taken;

(c) The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

B. Absence of anti-immigrant stance in political discourse

27. The Special Rapporteur was informed that a hate crime bill was currently being prepared by the Department of Justice and Constitutional Development, in charge of drafting bills proposed by the Government. The bill would strengthen the measures already contained in the Constitution and other applicable laws to address violence against foreign nationals (including asylum-seekers and refugees), and would expressly criminalize violence committed against individuals or their property on the basis of a person's race, nationality, religion, ethnicity, sexual orientation or gender identity ("hate crime"). This would follow the introduction in 2009 of a law combating human trafficking, currently tabled in Parliament. In the meantime, plans for a potential law against smuggling are still being prepared.

VI. Conclusions and recommendations

77. The Special Rapporteur encourages the Government to introduce as soon as possible the hate crime bill, which is currently being finalized by the Department of Justice and Constitutional Development, given the fact that general provisions included in the Constitution and the Criminal Code are not effective enough in protecting migrants from discrimination based on nationality. Migrant communities should be consulted and encouraged to participate in the process of elaboration of this law. The law should, in particular:

- (a) Make any act of violence against individuals or property on the basis of a person's race, nationality, religion, ethnicity, sexual orientation or gender identity ("hate crime") an aggravating circumstance;**
- (b) Provide effective resources and training for police, justice and other relevant officials to ensure the successful implementation of the provisions of the law, including training on detecting, recording and prosecuting hate crimes, as well as monitoring any trends in them.**

**Report of the independent expert in the field of cultural rights, Farida Shaheed
Addendum: Mission to Brazil (8-19 November 2010)**

A/HRC/17/38/Add.1

II. General background

C. National institutional framework

1. Culture-specific institutions and the protection of cultural rights

37. The Secretariat of Identity and Cultural Diversity, created in 2003 as part of the Ministry of Culture, implements the Identity and Cultural Diversity - Plural Brazil programme which seeks to ensure access by groups and networks of cultural producers to support and promotion mechanisms, and to cultural exchanges between regions and groups in Brazil, taking into consideration factors such as gender, sexual orientation, age, ethnicity and popular culture.

ANNEX II: UPR RECOMMENDATIONS RELATING TO SEXUAL ORIENTATION & GENDER IDENTITY

NAURU

79. The following recommendations will be examined by Nauru which will provide responses in due time, but no later than the 17th session of the Human Rights Council:

- 79.38 Continue its efforts to address domestic violence, promote the empowerment of women, improve the quality of education, address unemployment and to draft a new criminal code that would, *inter alia*, decriminalise sexual activity between consenting adults of the same sex (Slovenia);
- 79.74 Present a bill for a new Criminal Code which would decriminalise sexual activity between consenting adults of the same sex as outlines in the national report (United Kingdom);
- 79.95 Recognise the principle of non-discrimination, which prohibits discrimination on any ground, including sexual orientation, and to abolish the law that criminalises homosexuality without delay (Sweden);

RWANDA

No references to sexual orientation/gender identity.

NEPAL

106. The recommendations formulated during the interactive dialogue/listed below have been examined by Nepal and enjoy its support:

- 106.1 Ensure that the new Constitution fully guarantees the right to freedom of religion or belief and the right to equality and non-discrimination in line with international standards (Italy);
- 106.5 Enact legislation to ensure members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community citizenship rights, consistent with the equal rights enumerated in the Nepali Supreme Court's 2008 decision (United States of America);
- 106.23 Take steps to ensure non-discrimination based on sexual orientation and gender identity including in the proposed civil and criminal laws (New Zealand); Implement fully the Supreme Court decision regarding sexual and gender minorities (Norway);
- 106.24 Eliminate all forms of discrimination and pass the bill on caste-based discrimination and untouchability (Denmark);
- 106.26 Take concrete steps to ensure the security of human rights defenders, including journalists (Czech Republic)

SAINT LUCIA

89. The following recommendations will be examined by Saint Lucia which will provide responses in due time, but no later than the 17th session of the Human Rights Council in June

2011. The response of Saint Lucia to these recommendations will be included in the outcome report adopted by the Human Rights Council at its 17th session in June 2011.

- 89.35 Take the necessary measures to ensure that the Constitution guarantees the same protection to all inhabitants of the country, without distinction based on their sexual orientation or identity (Canada);
- 89.89 Ensure that thorough investigations of allegations of acts of violence committed against individuals because of their sexual orientation or identity are promptly conducted (Canada);
- 89.92 Repeal any legal provision that criminalises consensual relations between adults of the same sex and combat the discrimination against LGBT persons through awareness raising and education campaigns to begin at school (Spain);
- 89.93 Decriminalise sexual relations between consenting adults of the same sex, and repeal any law discriminating against LGBT people (France);
- 89.94 Decriminalise sexual relations between consenting adults of the same sex (Canada);
- 89.95 Decriminalise same sex activity between consenting adults (Slovenia);
- 89.96 Decriminalise homosexual conduct by reforming the penal code so that for the purposes of prosecution, gross indecency would not apply to private acts between consenting adults (USA);
- 89.97 Condemn acts of violence and human rights violations committed against persons because of their sexual orientation or gender identity and to ensure adequate protection for human rights defenders who work on the rights of LGBT persons (USA)

OMAN

91. The recommendations below did not enjoy the support of Oman:

- 3. Recognise the full and equal enjoyment of human rights by all and immediately abolish the law that criminalizes homosexuality (Sweden);
- 4. Take effective measures to combat discrimination on any grounds, including sexual orientation and identity (Sweden).

AUSTRIA

98. The following recommendations will be examined by Austria which will provide responses in due time, but no later than the 17th session of the Human Rights Council in June 2011:

- 89.31 Include a sexual orientation and gender identity perspective with regard to measures against incitement to hatred (Spain);
- 89.34 Harmonize all anti-discrimination laws to ensure equal protection on all grounds of discrimination (UK);
- 89.35 Revise and harmonize anti-discrimination laws to ensure equal protection on all grounds of discrimination (Iran);
- 89.37 Move forward with the proposal to amend the Equal Treatment Act to harmonise existing legislation, especially when it comes to provide equal protection on all discrimination grounds (Norway);
- 89.43 Ensure equal protection against all forms of discrimination including on the basis on age, religion, sexual orientation and gender identity (Canada);
- 89.48 Treat equally same sex relationships with opposite sex relationships, including the right to equal consideration for adoption and access to reproductive medicine (Netherlands).

90. The recommendations below did not enjoy the support of Austria:

- 90.10 Amend the legal status of same-sex partnerships to enable the right to adopt and have children (United Kingdom).

AUSTRALIA

II. Conclusions and/or recommendations

86. The following recommendations will be examined by Australia which will provide responses in due time, but no later than the 17th session of the Human Rights Council in June 2011:

- 86.66. Continue to implement the harmonization and consolidation of anti-discriminatory laws and to move forward with the promulgation of laws protecting persons against discrimination on the grounds of sexual orientation or gender (Colombia);
- 86.67. Introduce a national legal provision prohibiting discrimination and harassment based on sexual orientation and gender (Switzerland);
- 86.68. As a high priority, introduce Federal law which prohibits discrimination on the grounds of sexual orientation (New Zealand);
- 86.69. Take measures to ensure consistency and equality across individual States in recognising same-sex relationships (United Kingdom);
- 86.70. Amend the Marriage Act to allow same-sex partners to marry and to recognise same-sex marriages from overseas (Norway).

GEORGIA

No references to sexual orientation/gender identity.

SAINT KITTS & NEVIS

76. The following recommendations will be examined by Saint Kitts and Nevis which will provide responses in due time, but no later than the 17th session of the Human Rights Council in June 2011.

- 76.49 Take effective measures to effectively combat discrimination on all grounds, including on grounds of sexual orientation or identity (Sweden);
- 76.50 Recognise the full and equal enjoyment of all human rights by all and review and abolish all discriminatory laws, including the law that criminalizes homosexuality (Sweden);
- 76.51 Repeal all provisions in its domestic legislation, which criminalize sexual activity between consenting adults of the same sex (Spain);
- 76.52 Make the necessary efforts to repeal all legal provisions which can be applied to criminalize consensual sexual activity between adults of the same sex (Uruguay);
- 76.53 Bring its legislation into conformity with its commitment to equality and non-discrimination, by repealing all legal provisions that criminalize sexual activity between consenting adults (Canada);
- 76.54 Bring its legislation into conformity with international human rights obligations, by repealing all provisions which may discriminate against lesbian, gay, bisexual and transgender persons (Norway);
- 76.55 Decriminalize homosexual conduct by repealing relevant provisions within the Offences against the Person Act that may be used to criminalize homosexual conduct between consenting adults (United States of America);
- 76.56 Repeal provisions in national law, notably sections 56 and 57 of the Offences against Persons Act, which criminalise sexual relations between consenting adults of the same sex (France).

SAO TOME & PRINCIPE

II. Conclusions and/or recommendations

64. The following recommendations formulated during the interactive dialogue have been examined by Sao Tome and Principe and enjoy its support:

- 64.55. Bring legislation into conformity with its support for the GA joint statement on human rights, sexual orientation and gender identity and its international human rights obligations by repealing the provisions which criminalise sexual activity between consenting adults of the same sex (Norway);
- 64.56. Develop awareness-raising campaigns and programs against sexual orientation discrimination (Brazil);
- 64.57. Repeal the provisions under its criminal legislation that punish sexual relations between consenting adults of the same sex (France);
- 64.58. Bring its legislation into conformity with its commitment to equality and non-discrimination, and its international human rights obligations, by repealing all provisions which may be applied to criminalise sexual activities between consenting adults (United Kingdom).

NAMIBIA

93. The following recommendations below did not enjoy the support of Namibia.

1. Revoke the law which criminalizes consensual, non-commercial adult homosexual conduct, as it violates the rights to privacy, and the protection against discrimination (Portugal);
2. Abrogate all laws prohibiting consensual sexual relations between adults of the same sex (France);
3. Legislative measure be adopted to decriminalize contentious sexual relation of the same sex including the prohibition discrimination on the basis of sexual orientation or on gender identity (Spain) [sic].

[N.B. Namibia received 120 recommendations in total, 90 of which were accepted, 27 remain pending, and just 3 (but those 3 on repealing criminal laws) were rejected.]

NIGER

No references to sexual orientation or gender identity.

MOZAMBIQUE

91. The recommendations below did not enjoy the support of Mozambique:

- 91.4 Repeal the laws criminalising sexual relations between consenting adults of the same sex and guarantee fully the right of association including for NGOs working on the question of sexual orientation (France);
- 91.5 Repeal criminal sanctions against sexual activity between consenting adults (Netherlands);
- 91.6 Amend articles 70 and 71 of the Penal Code with a view to not criminalising sexual relations between consenting adults of the same sex; ensure the right to association of LGBTs and facilitate the registration and activities of NGOs specialised on issues of sexual orientation and gender identity (Spain);

- 91.8 Ensure the right to freedom of association and enable the registration of NGOs working on issues of sexual orientation and gender identity (Netherlands).

ESTONIA

77. The recommendations formulated during the interactive dialogue and listed below have been examined by Estonia and enjoy the support of Estonia.

- 77.45. Take all necessary measures to combat discrimination against homosexuals (Belgium);
- 77.46. Develop public awareness and education programs that advance tolerance on the grounds of sexual orientation and gender identity (Netherlands);
- 77.47. Undertake awareness raising programs on gender identity and sexual orientation for civil servants, including security forces and bodies (Spain);

79. The following recommendations will be examined by Estonia, which will provide responses in due time, but no later than the 17th session of the Human Rights Council in June 2011.

- 79.13. Develop comprehensive policy instruments based on the Yogyakarta Principles to combat discrimination against sexual minorities (Finland);
- 79.14. Pay special attention to acts of violence against homosexuals (Belgium);

80. The recommendations below did not enjoy the support of Estonia.

- 80.11. Accord the same rights and responsibilities to same-sex partners as are accorded to opposite-sex partners (Netherlands);
- 80.15. Give legal recognition to same-sex relationships (United Kingdom of Great Britain and Northern Ireland);
- 80.16. Recognize same-sex marriages (Norway).

PARAGUAY

84. The recommendations formulated during the interactive dialogue/listed below enjoy the support of Paraguay.

- 84.25. Continue to make progress in measures to prevent discrimination against any person due to its sexual orientation or gender identity (Colombia);

85. The following recommendations enjoy the support of Paraguay which considers that they are already implemented or in the process of implementation.

- 85.26. Adopt and promulgate as soon as possible the draft law on all forms of discrimination and to include in this draft law discrimination on the basis of sexual orientation and gender identity (France);
- 85.27. Take the necessary measures to effectively combat discrimination based on sexual orientation in law as well as practice (Sweden).