



62, rue de Vermont, suite 44, Genève 1202  
Ph.: +41-22-733-47-05 • Cell: +41-79-508-3968 • Fax: +41-22-734-4761  
[arc@arc-international.net](mailto:arc@arc-international.net) • [www.arc-international.net](http://www.arc-international.net)

## **RECOGNIZING HUMAN RIGHTS VIOLATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY AT THE HUMAN RIGHTS COUNCIL, SESSION 8**

**2-18 June, 2008**

### **Part I: Overview**

(Part I of this report provides an overview of attention paid to sexual orientation and gender identity issues at the 8th session of the Human Rights Council, including a summary of recommendations and State responses during the adoption of UPR reports. For full details, please refer to Part II of the attached report, which sets out all interventions made during the Council session, and Part III of the attached report, which provides full transcripts of State responses to UPR recommendations, as well as the comments of NGOs and other stakeholders.)

The June 2008 session of the UN Human Rights Council saw the conclusion of the Council's second year, the adoption of the first reports under the Universal Periodic Review, a full-day discussion on the human rights of women, including violence against women and maternal mortality, the adoption by the Council of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the renewal of the mandates of key Special Procedures, including on extrajudicial executions and torture, and the appointment of mandate-holders on key rights including health, freedom of expression, racism, trafficking and arbitrary detention. It also marked the final session of outgoing UN High Commissioner for Human Rights Louise Arbour, and the rotation of the Council Presidency from Ambassador Doru Romulus Costea of Romania to Ambassador Martin Uhomoibhe of Nigeria.

On sexual orientation and gender identity issues, the session was a busy one, due largely to the visibility of these issues throughout the UPR process, although it was also apparent that two years into the Council's lifecycle, NGOs and States have been successful in integrating these issues throughout the Council agenda.

From the very first day of the Council session, sexual orientation was referenced in a **keynote address by the President of Slovenia** in the context of the universality of human rights for all people. This was closely followed by the final report of **High Commissioner Louise Arbour**, who condemned the fact that "the perpetuation of prejudices continues to deny equal rights and dignity to millions worldwide on the basis of nothing more innocuous than their sexual identity or orientation". This represented the first time that the High Commissioner has herself proactively raised sexual orientation issues in an address to the Council, having previously only addressed the matter in response to questions. Egypt, on behalf of the African Group, took exception to any attempt "to promote and advocate specific forms of unacceptable social behaviour falling outside the scope of internationally agreed human rights norms and protection" – a by now familiar refrain. In an open meeting with NGOs, the High Commissioner identified

sexual orientation and gender identity issues as priority concerns that she would bring to her successor's attention.

The Special Rapporteur on **Extrajudicial, Summary or Arbitrary Executions**, in presenting his report, specifically expressed concern at the maintenance of the death penalty for homosexuality in Iran and criticised Nigeria for failing to follow up on recommendations to repeal the death penalty for consensual sexual conduct. During interactive dialogue, Ireland reiterated these concerns and Slovenia on behalf of the EU also raised questions about the treatment of LGBT detainees. In reply, Nigeria stated that no executions have taken place, and asserted that the maximum penalty for consensual same-sex sexual conduct between adults is 14 years' imprisonment.

During the review of the mandate on extrajudicial, summary or arbitrary executions, Uruguay also raised concerns about "the killing of people because of their identity or sexual orientation", as did Amnesty International. Sweden, the sponsor of the resolution, included in a draft text a specific reference to killings based on sexual orientation in a paragraph which also condemned racially-motivating killings, killings of human rights defenders and a number of other groups subject to extrajudicial executions, but ultimately dropped the relevant paragraph in favour of a broader condemnation of extrajudicial executions "in all circumstances and for whatever reason".

During informal negotiations, Egypt bluntly stated that killings based on sexual orientation do not warrant the same degree of attention or concern as killings based on race, and upon ultimate adoption of the resolution stated that the African Group deplored attempts made during the negotiations to equate serious killings with "peripheral issues which fall entirely outside the purview of human rights protection, do not in any way add to, or subtract from, our efforts to eliminate extrajudicial killings and trivialize the millions of lives lost arbitrarily on an annual basis." Pakistan, on behalf of the OIC, similarly expressed regret that "during negotiations on the draft resolution an attempt was made to promote certain issues which are not linked with the issue of extrajudicial, summary or arbitrary executions."

During interactive dialogue, Egypt also described abortion as "the brutal murder of a defenceless soul", proposing that it should be treated as "the most serious form of extrajudicial execution", but ultimately did not pursue the point during negotiations.

The panel discussion on the **human rights of women** afforded an opportunity to affirm women's rights to control their own sexuality. Amongst other things, NGOs drew attention to "the needs of women who are particularly marginalised, such as those who face rape or other violence because of their sexual orientation or gender identity".

Significant attention was also paid to sexual orientation and gender identity issues during the week dedicated to discussion and adoption of the outcome reports for the first 32 States to be considered under the **Universal Periodic Review**. Questions and recommendations relating to sexual orientation and gender identity had been raised in relation to 22 of these 32 States. Many of these States gave their responses to these recommendations during the adoption of their reports by the Council plenary, and NGOs also had the opportunity to make general comments in plenary prior to the adoption of the report.

Below is a summary of key questions and recommendations raised relating to sexual orientation and gender identity, together with the States' responses. Full transcripts of all recommendations and responses are included in the detailed report attached to this overview.

### **Argentina:**

- **Working Group discussions:** Argentina was asked during the Working Group discussions about measures to ensure equal treatment of sexual minorities.
- **Response:** Argentina replied during the Working Group discussions that the matter is addressed in the National Plan against Discrimination, and that the government has supported equal pension benefits for surviving same-sex partners before the courts.

#### **Benin:**

- **Recommendation:** to decriminalise same-sex relations between consenting adults.
- **Response:** Benin indicated that “no Benin jurisdiction has engaged in court action or punishment” for such acts, but **did not accept** the recommendation, stating that “it would be difficult to immediately envisage” decriminalising such deeds.

#### **Brazil:**

- **Working Group discussions:** During the Working Group discussions, Brazil referenced its support for non-discrimination on the ground of sexual orientation, and its hosting a National Conference on LGBT Rights. It was commended for its “Brazil without Homophobia Program” and support for the *Yogyakarta Principles*.

#### **Czech Republic:**

- **Recommendation:** to consider using the *Yogyakarta Principles* as a guide to assist in policy development.
- **Response:** the Czech Republic **accepted** the recommendation.

#### **Ecuador:**

- **Recommendations:** to consider the *Yogyakarta Principles*, and to take action to counter discrimination based on sexual orientation and gender identity.
- **Response:** Ecuador **accepted** the recommendations at the Working Group stage, and announced in plenary a voluntary commitment to implement a “national system to guarantee equality and non-discrimination” on the ground of sexual orientation.

#### **Finland:**

- **Recommendations:** to ensure the same coverage for sexual orientation discrimination as for other grounds of discrimination and to consider applying the *Yogyakarta Principles* as a guide to policy development;
- **Response:** Finland **accepted** and agreed to follow up on the recommendations.

#### **Ghana:**

- **Recommendation:** to decriminalise same-sex relations between consenting adults.
- **Response:** Ghana **did not respond** to this recommendation.

#### **Guatemala:**

- **Recommendations:** to adopt measures to end impunity for killings based on sexual orientation and gender identity, and implement education and awareness raising programmes for law enforcement, judicial and other authorities.
- **Response:** Guatemala “welcomed” the various recommendations, “fully concurred” with the concerns raised, and expressed the “political will” of the Government to the promotion and protection of human rights generally, but **did not refer** to any specific recommendations.

#### **India:**

- **Working Group discussions:** a question was raised during the Working Group discussions regarding India’s criminal provisions against certain forms of consensual sexual conduct and measures to ensure equality on the ground of sexual orientation.
- **Response:** During the Working Group discussions, India provided a historical overview of the British colonial law, acknowledging that it was “a matter of great argument” and that the criminal provisions are currently being challenged before the Courts.

#### **Japan:**

- **Recommendation:** to eliminate discrimination based on sexual orientation and gender identity.
- **Response:** Japan **accepted** the recommendation.

#### **The Netherlands:**

- **Working Group discussions:** The Netherlands was asked how it planned to better integrate religious and ethnic minorities, noting that Dutch Muslims often feel compelled to defend themselves against criticism relating to their integration into society and conservative views around women’s rights and homosexuality.
- **Recommendation:** Iran recommended that the Netherlands “promote and strengthen the foundation of the family and its values among the society.”
- **Response:** The Netherlands replied that the increasing diversity of Dutch society is a positive development, but that all are expected to respect fundamental societal values, including non-discrimination on grounds of gender and sexual orientation. The Netherlands **accepted** the recommendation, affirming that “families in all their various manifestations play a crucial role in society”.

#### **Pakistan:**

- **Recommendations:** to decriminalise adultery and non-marital consensual sex.
- **Response:** Pakistan took the position that these recommendations fall outside “universally recognized human rights” and **did not accept** them.

#### **Peru:**

- **Recommendation:** to consider applying the *Yogyakarta Principles* as a guide to assist in policy development.

- **Response:** Peru indicated that the recommendations would provide “substantial guidance” to its human rights agenda, but left **unclear** its specific position on the recommendation.

#### **Poland:**

- **Recommendations:** to adopt an antidiscrimination law, including on grounds of sexual orientation and gender identity, to withdraw any restrictions on addressing issues of homosexuality within educational establishments, and to ensure respect for the freedom of expression and association of those campaigning for equality on grounds of sexual orientation.
- **Response:** Poland **accepted** the recommendations.

#### **Republic of Korea:**

- **Recommendation:** to include sexual orientation in antidiscrimination legislation.
- **Response:** the Republic of Korea expressed the view that the antidiscrimination legislation was to be interpreted as including sexual orientation, but left **unclear** whether this ground would be explicitly added to the legislation.

#### **Romania:**

- **Recommendations:** to develop awareness-raising programmes, including for law enforcement personnel, to promote respect for persons of minority sexual orientations or gender identities, to punish ill-treatment of sexual minorities in detention, to take additional measures to combat discrimination on grounds of sexual orientation and gender identity, and to protect the rights of LGBT activists to participate in peaceful public gatherings, such as the GayFest.
- **Response:** Romania **accepted** the recommendations.

#### **South Africa:**

- **Recommendations:** to “continue to promote and protect the right of all persons to equality without discrimination based on sexual orientation, at both the national and international levels”, to provide better remedies to victims of discrimination based on sexual orientation, and to seek to prevent such discrimination through sensitivity programmes and education.
- **Response:** South Africa made a general statement affirming the principle of non-discrimination, including on the ground of sexual orientation, but left **unclear** its position on the specific recommendations.

#### **Switzerland:**

- **Recommendations:** that federal legislation be introduced to prohibit discrimination, including on grounds of sexual orientation and gender identity, that the *Yogyakarta Principles* be applied to enhance the Government’s commitment to non-discrimination, and that the rights accorded to same-sex couples be equivalent to those accorded to opposite-sex couples.
- **Response:** Switzerland **did not accept** the recommendations.

#### **Tonga:**

- **Recommendations:** to decriminalise sexual activity between consenting adults (recommended by the Netherlands, Canada and the Czech Republic), and to maintain criminal laws against consensual same-sex conduct (recommended by Bangladesh).
- **Response:** Tonga **did not accept** these recommendations, indicating that as a tolerant Christian society, respect for difference allows a wide margin of appreciation and robust debate on equality issues.

#### **Ukraine:**

- **Recommendation:** to consider applying the *Yogyakarta Principles* as a guide to assist in policy development.
- **Response:** Ukraine **rejected** the recommendation.

#### **United Kingdom of Great Britain and Northern Ireland:**

- **Recommendation:** to follow the Council of the European Union “Asylum Qualification Directive” with regard to sexual orientation as a ground of asylum-seeking.
- **Response:** The UK **accepted** the recommendation.

#### **Zambia:**

- **Recommendations:** to decriminalise same-sex activity between consenting adults, to develop HIV/AIDS programmes to respond to the needs of sexually-active gay men, and to improve access to retroviral treatment for vulnerable groups, including women.
- **Response:** Zambia **accepted** the recommendation to improve access to retroviral treatment for vulnerable groups, including women, but **rejected** the other recommendations.

The varied recommendations raised with such a diverse range of States illustrate the value of the UPR in bringing attention to human rights issues, including on grounds of sexual orientation and gender identity.

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## **Part II: Discussion of Sexual Orientation and Gender Identity Issues at 8<sup>th</sup> session of Human Rights Council**

### **Address by the President of Slovenia (Prof. Danilo Türk):**

#### **Oral Presentation:**

In his statement to the HRC that opened the session Prof Türk pointed out that:

- "Prevention of discrimination on the grounds of race, ethnicity, gender or sexual orientation continues to require new, and real, solutions. This is necessary to uphold the principle of universality of human rights for all."

### **Update by UN High Commissioner for Human Rights (Ms. Louise Arbour):**

#### **Oral Presentation:**

In her update to the HRC the High Commissioner made the following statement:

- "Let me also point out that the perpetuation of prejudices continues to deny equal rights and dignity to millions worldwide on the basis of nothing more innocuous than their sexual identity or orientation, or their ancestry, in the case of caste discrimination. Whether these are explicitly articulated grounds of prohibited discrimination or not, it remains that they are immutable personal attributes, or, as in the case of religious adherence, they are personal choices that could only be forcibly abandoned at an unconscionable personal cost. Against this background and the moving target of interests and values, international human rights law cannot be pigeon-holed to deny protection to those whose discriminatory exclusion is real, and who are entitled to turn to the law for their protection. It must provide the best, the most reliable and fairest guidance for managing and protecting the multiple identities that each of us carries and the values and principles that each of us embraces, for ourselves, and for each other."

#### **Interactive Dialogue:**

##### **Egypt (on behalf of the African Group):**

- "The African Group believes that the principles of equality and non-discrimination apply to all human beings without distinction. However, we take strong exception to any attempt to try to distort the noble cause of fighting racism to promote and advocate specific forms of unacceptable social behaviour falling outside the scope of internationally agreed human rights norms and protection. In our view, such attempts are condescending and disoriented, as they constitute a form of imposition of cultural values on others, and undermine the very notion of human rights and their universality."

### **Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (Philip Alston):**

#### **Written Report:**

In his written report to the Council, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions noted communications with Iran for imposition of the death penalty for alleged homosexuality, and also criticised the government of Nigeria for failing to follow up on recommendations to repeal the death penalty for consensual sexual conduct such as adultery and anal intercourse:

- "2. Illegal imposition of the death penalty

Twelve northern Nigerian States permit - in violation of the Nigerian Constitution and international law - the imposition of the death penalty by stoning for sodomy and adultery. The Federal Government acknowledged that the laws of the northern States were unconstitutional. Accordingly, the Special Rapporteur recommended that the Federal Government of Nigeria reiterate that the death penalty for these offences is unconstitutional, and undertake a constitutional challenge to invalidate the State laws.

76. In response to the Special Rapporteur's recommendation, on 19 September 2006, Nigeria stated to the Human Rights Council that it disagreed with the Special Rapporteur's position on the "death penalty by stoning under Shari'a law for unnatural sexual acts".<sup>[1]</sup> Nigeria argued that the issue should not have featured in the Special Rapporteur's report because there was a "long-standing moratorium on executions" in Nigeria, that no executions have taken place after the passing of death sentences by Shari'a courts, and that the practice of stoning is not pervasive. These arguments, seeking to silence criticism of the death penalty for private sexual acts by contending that it is not applied in practice, are unconvincing. First, as elaborated below in Part III(C)(3), Nigeria has not in fact had a general moratorium on executions. Second, as the Special Rapporteur explained in his 2006 report, the fact that the death penalty may not actually be carried out does not justify its existence as a penalty available on the books. As he 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 law justifies persecution by vigilante groups, and invites abuse. Third, the argument that stoning is not pervasive does not address concerns about the legality of its application in individual cases.

77. Nigeria also argued that "the notion that executions for offences such as homosexuality and lesbianism are excessive is judgemental rather than objective. What may be seen by some as disproportional penalty in such serious offences and odious conduct such may be seen by others as appropriate and just punishment".<sup>[2]</sup> This argument is also unconvincing. The provision by twelve Nigerian States of the death penalty for sodomy contradicts not just settled international law,<sup>[3]</sup> but the federal law of Nigeria itself. The Special Rapporteur's recommendation was simply that Nigeria take action to ensure the conformity of the law of its States with the Nigerian federal Constitution.

78. No action has been taken on that front. In fact, Nigeria continues to hand down death sentences for sodomy and adultery. In October 2006, the Special Rapporteur wrote an allegation letter to Nigeria concerning two individuals who were sentenced to death by stoning for sodomy in June 2006. Nigeria did not respond."

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<sup>[1]</sup> Nigeria's response to the Report on extrajudicial, summary, or arbitrary executions, submitted by Philip Alston, delivered by H.E. Mr Joseph U Ayalogu, Ambassador/Permanent Representative of Nigeria. Geneva, 19 September 2006.

<sup>[2]</sup> Nigeria's response to the Report on extrajudicial, summary, or arbitrary executions, submitted by Philip Alston, delivered by H.E. Mr Joseph U Ayalogu, Ambassador/Permanent Representative of Nigeria. Geneva, 19 September 2006.

<sup>[3]</sup> Article 6 (2) of the ICCPR, which Nigeria acceded to without reservation in 1993, provides that the death penalty may only be imposed "for the most serious crimes". It is clear that "most serious crimes" only includes crimes where there was an intention to kill which resulted in the loss of life: A/HRC/4/20, para. 53.



### **Oral Presentation:**

In his oral presentation the Special Rapporteur made the following statement:

- "In Nigeria the Government has enacted some reforms in response to my 2006 visit. But Nigeria has failed to make sufficient progress, and sometimes any progress at all, in relation to the majority of the recommendations made. And on some issues, the situation appears to have deteriorated...The death penalty has been carried out surreptitiously and no steps have been taken to remove crimes such as adultery and sodomy from the list of capital offences in many states."

### **Interactive Dialogue:**

#### **Slovenia (on behalf of the EU):**

- "The serious problem of prisoners running prisons is thoroughly covered in your report. Have you encountered any particular concerns with regard to child, or lesbian, gay, bisexual or transgender detainees respectively?"

#### **Ireland:**

- "You mentioned in your report HRC/8/3/Add.3 that the continued use of the death penalty in some countries for sexual conduct between consenting adults remains an issue of deep concern. You mention in this regard particular laws in certain states in Nigeria concerning adultery and same-sex activity. What is your response to such divergence from the principle of universal protection contained in international human rights law? In the context of extrajudicial, summary or arbitrary executions would you elaborate on the relevant international standards and what can the HRC do to ensure compliance with those standards?"

#### **Nigeria:**

- "On the issue of Shari'a law practised in twelve of Nigeria's thirty-six states, we wish to state that the Nigerian constitution, which is comprehensive in its provisions, has clearly spelt out the relationship between the State and the Federal judicial systems. Press reports of executions of people in Nigerian under the Shari'a law are simply fabrications. Let it be understood that no executions have taken place in any of the affected states even after death sentences have been passed on offenders by the Shari'a courts. The Nigerian constitution provides that death penalties are reviewed by higher appellate courts, which are wholly secular. Besides, there is the recourse for such judgements to be reviewed and the prerogative of mercy exercised by the Chief Executives of States or the President, as the case may be.

We are amazed by the source of the Rapporteur's information that the Federal Government of Nigeria has imposed the death penalty for offences such as adultery and sodomy, which he further went on to describe as unconstitutional. My delegation wishes to correct this impression and to state that the penalty for the offences in question is provided for in Chapter 43, section 214 of the Nigerian Criminal Code which penalizes consensual same-sex sexual conduct between adults with fourteen years imprisonment."

#### **Reply by the Special Rapporteur:**

- "In relation to Nigeria, I appreciate the clarifications made [on the relationship between the Federal and State levels, the use of Shari'a law, and on criminal sanctions provided for in cases of adultery and sodomy] and I look forward to

receiving a reply to my communication relating to the seven hangings that are alleged to have taken place in 2006.”

### **Review, Rationalization and Improvement of Special Procedures - Review of the Mandate of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions:**

#### **Uruguay:**

- “Uruguay notes with great concern violent phenomena including social cleansing, the wave of murders of women, lynchings, *the killing of people because of their identity or sexual orientation*, the murder of human rights defenders, trade unionists and violence in jails. These are all unacceptable phenomena.”

#### **Amnesty International (Patrizia Scannella):**

- “Mandate holders have...highlighted killings perpetrated by non-state actors, and presented information and recommendations concerning killings with a gender dimension, *the right to life and sexual orientation*, and violations as they relate to specific groups.”

### **Adoption of Resolution A/HRC/8/L.4/Rev.1 (Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions):**

#### **General Comments and Explanations of the Vote Before the Vote:**

#### **Egypt (on behalf of African Members of the HRC):**

- “The text of the resolution before us fails to give due recognition to some of the most potent and egregious forms of extrajudicial killings, in particular those committed in armed conflict, including the deliberate targeting of civilians, so called targeted assassinations and mercy killings. Extrajudicial killings in armed conflict are recognised by the international community and the Rapporteur as constituting an essential component of the mandate given the complementary and mutually reinforcing nature of human rights law and IHL. The African group deplores the attempts made during the negotiations to equate such killings with peripheral issues which fall entirely outside the purview of human rights protection, do not in any way add to, or subtract from, our efforts to eliminate extrajudicial killings and trivialize the millions of lives lost arbitrarily on an annual basis. We particularly deplore that these attempts have led to the exclusion of other specific forms of extrajudicial killings requiring special attention such as racially motivated killings.”

#### **Pakistan (on behalf of the OIC):**

- “The OIC regrets that during negotiations on the draft resolution an attempt was made to promote certain issues which are not linked with the issue of extrajudicial, summary or arbitrary executions.”

### **Panel Discussion on the Human Rights of Women - Addressing Violence Against Women:**

#### **Interactive Dialogue:**

#### **Norway:**

- “We need to take a comprehensive approach by empowering women and enhancing their participation in all decision-making issues that may affect their lives: protecting and promoting women’s freedom of movement, education and occupational opportunities, parenthood and custody, marriage and divorce, *control of sexuality* and reproduction...[etc.].

We must be able to address intersecting axes of gender related and gender based violence and discrimination.”

**Coalition Against Trafficking in Women (CATW), Mouvement pour l'abolition de la Prostitution et de la Pornographie et de Toutes Formes de Violences Sexuelles et de Discriminations Sexistes (MAPP):**

- “Traditional family values that foster violence against women have to be removed. How can women’s sexual and reproductive rights and health needs be addressed in connection with the eradication of violence against women?”

**Canadian HIV/AIDS Legal Network, the International Alliance of Women, and Action Canada for Population and Development (ACPD) (John Fisher):**

- “We welcome the Council’s consideration of its role in addressing violence against women, and today’s discussion of these critical issues. We express appreciation to the President’s Office, the Mission of Chile, and the many States and other stakeholders cross-regionally which have facilitated this important discussion.

Violence against women remains all-too-prevalent throughout the world today. As long as these human rights violations persist, today’s discussion cannot be a one-off event, but must be integrated throughout the Council’s work. We must recognise, as has the Special Rapporteur on violence against women, that women themselves should not be situated as mere victims, but as agents of change, and we must renew our efforts to make gender balance a reality within this Council and all its mechanisms.

We must recognise, as the Secretary-General’s report emphasises, that attempts by men to control women, women’s sexuality, women’s bodies and women’s lives lie at the core of the social and political environment which enables violence against women to be perpetuated around the world.

Those of us who are men must recognise our particular responsibility to address violence against women and must pursue these efforts within international mechanisms, within States and within civil society.

We must not shy away from sensitive discussions, recognising that in every region of the world we have often failed to adequately recognise or address marital rape and other violence experienced by women within the home, and that all-too-often State actors and international bodies refuse to address – or even discuss – the needs of women who are particularly marginalised, such as those who face rape or other violence because of their sexual orientation or gender identity. We must act vigorously to ensure that no exception is admitted to the principle that every woman has the right to live free from violence, wherever, whenever and against whomever it occurs.

We welcome this panel’s attention to the responsibilities of the Council to address violence against women, and would appreciate the civil society representative’s views on how the proposed gender focal point might work in practice, as well as the views of all the panellists on additional steps the Council can take to integrate violence against women, as well as its causes and consequences, throughout

relevant discussions, mandates, resolutions, and agenda items.”

### **General Debate on Follow-Up to the Vienna Declaration and Program of Action (Item 8):**

#### **Netherlands:**

- “Article 5 of the Vienna Declaration states that all human rights are universal, indivisible, interdependent, and interrelated, and that it is the duty of States to promote and protect all human rights. Article 5 of the Vienna Declaration thus confirms article 2 of the Universal Declaration of Human Rights, in the sense that all persons are entitled to equal protection by human rights norms regardless of their status. Article 2 of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights, states the same principle.

In this respect, the Netherlands wishes to draw the attention of the members of the Council towards a vulnerable group, which exists in every society and frequently suffers from discrimination based on their status, both by States and from within societies: we are referring to lesbian, gay, bisexual and transgender people. It is clear that there is still much work to do under the Vienna Program of Action to protect the rights of this group of people.

This Council rightfully devotes a lot of time to combating intolerance and countering discrimination. The Netherlands is concerned with the fact that governments and politicians in several countries are using inflammatory language towards LGBTs. The Netherlands calls upon politicians worldwide to act and speak responsibly, never to incite to violence and to protect this group of people from harm. In fact, States have an active obligation to promote tolerance amongst their populations through education.

Another concern is the way in which lesbian, gay, bisexual and transgender people are denied rights to which others are entitled such as the right to assembly when local authorities prevent demonstrations or the registration of LGBT organizations for unclear reasons.

The Netherlands calls upon members of this Council to respect diversity in sexual orientation, and strongly urges the President of the Council to put the topic of human rights violations based on sexual orientation on its agenda, thus answering the call of the 54 UN members states that signed a joint statement read out by Norway in December 2006. An example for what this Council could do is the OAS resolution on “Human Rights, Sexual Orientation and Gender Identity” that was recently adopted by consensus by the 34 countries of the Organization of American States.”

#### **Action Canada for Population and Development (ACPD) (Katherine McDonald):**

- “In 1993 the Vienna Declaration and the Programme of Action reaffirmed the principles of universality and non-discrimination and confirmed that human rights are indivisible, interdependent and interrelated. And this year, on May 31, 2008, on the occasion of the 60th anniversary of the Charter of the Organization of American States, the 38th General Assembly of the OAS approved by consensus the resolution “Human Rights, Sexual Orientation and Gender Identity”, presented by the Brazilian delegation. We would like to congratulate Brazil for submitting this resolution. We salute the 34 members of the Organization of American States for agreeing by consensus that serious human rights violations are faced by individuals based on their sexual orientation and gender identity and that this

situation requires attention within the principles of universality, indivisibility and interdependence of human rights as affirmed in Vienna 15 years ago. This is the second regional human rights system to express a clear political commitment by its Member States acknowledging human rights violations of LGBTI individuals.

This is the first time in the history of the hemisphere that the words sexual orientation and gender identity appear in an official document approved by the 34 countries of the Americas. This unprecedented document in the region was agreed by consensus, including by the English speaking Caribbean countries where legislation still criminalizes sexual conduct between individuals of the same sex.

The resolution represents an important step forward in the working process for the approval of the draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance, whose negotiation will continue next year. The current draft already includes sexual orientation and gender identity as protected categories.

We would also salute the efforts of civil society. More than 20 activists of different sexual orientations and gender identities and expressions representing 21 organizations from 16 countries of Latin America and the Caribbean met in Medellín before the meeting. They worked on a strategy to strengthen the participation and visibility of the regional LGBTTTI movement as a component of the civil society within the OAS in this quintessential moment of the political life of the OAS. We congratulate civil society for its extraordinary efforts to advance the human rights of travesti, transsexual, transgender, intersex, bisexual, lesbian and gay activists of Latin America and the Caribbean."

**European Region of the International Lesbian and Gay Association (ILGA-Europe), Danish National Organisation for Gay Men and Lesbians (LBL), Lesbian and Gay Federation in Germany (LSVD), Swedish Federation of Lesbian, Gay, Bisexual and Transgender Rights (RFSL) (Stephen Barris):**

- "In 1993, the Declaration of Vienna and its Action Program reaffirmed the principles of universality and non-discrimination and confirmed that human rights are "indivisible, interdependent and interrelated".

Our world federation gathers 670 groups coming from over a hundred countries. Though it is difficult for people to organise in groups especially in countries which most heavily punish same sex activity amongst consenting adults, we do have contacts in most countries of the world. Last year, we have welcomed the creation of the first African federation of Lesbian, Gay, Bisexual and Transgender groups which already counts over 50 members. These activists are determined to live and love as they wish.

Anyone here having experienced the injustice of being discriminated for being who you are will understand their determination, their anger as well. Those activists often humble us with their courage; nobody in the world wakes up one day and says: from now on, I will make my life more difficult, I'll be a man who loves men, a women who loves women, or, even more difficult, I'll express my gender differently than the one that was assigned to me at birth.

The courage of millions of people to be themselves despite the hardships they face is living proof that homosexuality is part of the cultural fabric of every society. As the Vienna Declaration recognises, we come to this forum with legitimate differences based on culture, tradition and religion. But the Declaration also states that we have a responsibility to explore the many areas of commonality. Though the way we express love, our sexual orientation, our

gender, are of course impacted by our different cultures, the reality of the diversity of sexuality is just as undeniable. It is a universal experience.

Many traditional cultures still are governed by principles of inclusion and belonging: they recognize the interrelationship and interdependency of us all. Homosexuality is all but a fashion. It is not an import. What, indeed, in most cases, is an import from the colonisers is homophobia and the laws punishing same sex activity amongst consenting adults. State sponsored homophobia, in other words state sponsored hatred, is a recent historical mistake doomed to disappear.

Gays, lesbians, bisexuals and transgender people do not turn to this Human Rights Council for special rights, but because they are human and because they are being deprived basic rights. They experience injustice and want to see this acknowledged and amended. They seek protection.

Discrimination causes useless suffering and deaths that could be avoided if States put into action the universality of human rights as required by the Vienna Declaration and its Program of Action."

## **Part III: Universal Periodic Review Plenary Discussion and Adoption of Outcome Documents**

### **Consideration of the Review of Argentina:**

#### **Working Group:**

Issues relating to sexual orientation and gender identity were raised by States at the Working Group stage but no concrete recommendations were made.

#### **Plenary:**

#### **Member and Observer Comments on the Outcome of the Review:**

**Latin American Committee for the Defence of Women's Rights (CLADEM), Action Canada for Population and Development (ACPD), Fundación para Estudio e Investigación de la Mujer (FEIM), Federation for Women and Family Planning, International Women's Rights Action Watch (IWRAP) - Asia Pacific (Alejandra Sardá):**

- "We'd like to refer now to an important matter...: Effective implementation of Law 26.150 on Sexual Education approved in 2006. Last week, finally, we saw the approval of minimum content including...respect for identities and gender equality."

#### **Action Canada for Population and Development (ACPD) (Dorota Trypens):**

- "In reference to paragraphs 16 and 25 of the Working Group Report, we regret that the issue of women's sexual and reproductive health and rights was raised as a question but did not translate into any recommendation."

### **Consideration of the Review of Benin:**

#### **Working Group:**

At the Working Group stage in May the following recommendation was made to Benin:

- (Recommendation 6) "Recommended that Benin consider decriminalizing homosexual activities between consenting adults".

The delegation stated that it would inform the Council in June of its response to the recommendation.

#### **Plenary:**

#### **Delegation's Statement and Response to Recommendations:**

In their opening statement the delegation accepted 33 of the 34 recommendations made. They **did not accept** the recommendation on the decriminalization of homosexuality:

- "With respect to Recommendation number 6 on the decriminalization of homosexual relations between consenting adults, my delegation pointed out during the interactive dialogue that this is a very marginal phenomenon in Benin and at the same time that no Benin jurisdiction has engaged in court action or punishment for such acts. Given the present state of positive law in Benin and

certain endogenic factors it would be difficult to immediately envisage decriminalizing such deeds.”

### **Consideration of the Review of Brazil:**

During the Working Group discussions, Brazil highlighted the National Conference on lesbian, gay, bisexual and transgender rights, and Norway and Belgium commented favourably on Brazil's leadership in this area, without making any specific recommendations.

### **Consideration of the Review of the Czech Republic:**

#### **Working Group:**

At the Working Group stage in April the following recommendation was made to the Czech Republic:

- (Recommendation 14) “To consider using the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* as a guide to assist Czech human rights policies.”

The delegation stated that it would inform the Council in June of its responses to the recommendation.

#### **Plenary:**

#### **Delegation's Statement and Response to Recommendations:**

In its opening statement to the plenary session the Czech delegation made the following statement:

- “Regarding the *Yogyakarta Principles*, currently a committee for issues relating to sexual minorities is being set up under the Government Council for Human Rights. The committee will work on implementing recommendations stemming from the recently prepared analysis of the state of the lesbian, gay, bisexual and transgender minority, most of which are already in compliance with the *Yogyakarta Principles*, and stemming from the *Yogyakarta Principles*.”

In their written response to recommendations the Czech delegation made the following remarks on Recommendation 14:

- “In 2007, the Government Council for Human Rights set up a Working Group for the issues of sexual minorities. An Analysis of the State of Lesbian, Gay, Bisexual and Transgender Minorities was prepared. The analysis contains a number of recommendations for the Government, most of them being in line with the *Yogyakarta Principles*. Currently, a Committee for the issues of sexual minorities is being set up under the Government Council for Human Rights. The Committee will work on the implementation of both recommendations stemming from the analysis and from the *Yogyakarta Principles*.”

This appears to constitute **acceptance** of the recommendation.

#### **Member and Observer Comments on the Outcome of the Review:**

**Centre on Housing Rights and Evictions (COHRE), the Centre of Reproductive Rights, the European Roma Rights Centre and the Peacework Development Fund**



**(Claude Cahn):**

- "We in particular welcome the close attention paid during the interactive dialogue and in the report of the Working Group to the severe exclusion of the Romani minority in the Czech Republic, as well as to matters concerning the need to tackle discrimination on the basis of sexual orientation in the Czech Republic."
- "It is of extreme concern that on 16 May, President Vaclav Klaus vetoed the anti-discrimination bill which the Czech Parliament adopted on 24 April 2008 and, in an open letter to Chairperson of the Chamber of Deputies Miloslav Vlcek, President Klaus stated that he considered this law to be "useless, counter-productive and of low quality and its consequences very problematic". These statements would seem to make a mockery both of the priorities expressed by the governments of Council during the interactive dialogue, as well as the statements of the Czech delegation itself during the UPR proceedings."

**Consideration of the Review of Ecuador:**

**Working Group:**

At the working group stage in April the following recommendation was made to Ecuador:

- (Recommendation 7) "Implement measures to combat discrimination on the ground of sexual orientation and gender identity, as well as other human rights violations against the gay, lesbian, bisexual, transsexual and transvestite community."

Ecuador **accepted** the recommendation at the working group stage.

**Plenary:**

**Delegation Statement and Response to Recommendations:**

- "Ecuador indicated that it wished to state for the record that it had acted in a very responsible manner, profoundly committed to the need to make progress in the area of human rights, and thus it had welcomed all recommendations put forward by delegations, and thus these recommendations enjoy the support of Ecuador. It further indicated that Ecuador will continue to follow up on these recommendations and that it will make all efforts to implement them in practice."

**Voluntary Commitments**

- "In the area of persons with different sexual orientation, implementation of national system to guarantee equality and non-discrimination."

**Member and Observer Comments on the Outcome of the Review:**

**Latin American Committee for the Defence of Women's Rights (CLADEM), the Federation for Women and Family Planning and International Women's Rights Action Watch (IWRAP) (Alejandra Sardá):**

- "We would advise maintaining in the constitutional text protection of women... allowing them to make free and responsible decisions on their reproductive and sexual lives."

**Action Canada for Population and Development (ACPD) (Sandeep Prasad):**

- “We welcome the strong commitment to the universality of human rights showed by the Ecuadorean delegation during the UPR review, including their defence of their obligation to combat discrimination based on sexual orientation.

In the same spirit, we welcome the decision made by the Constitutional Assembly to preserve the references forbidding discrimination based on sexual orientation in the text of the new Constitution that is currently being drafted - a decision that corresponds to the letter and spirit of UPR Recommendation No.7 (UN Doc. A/HRC/8/20, par. 60(7)). We wish to encourage Ecuador to add “gender identity” to the prohibited grounds of discrimination found in the new Constitution.

As an additional measure to continue the work Ecuador is already doing, we recommend to develop and implement training and sensitization programs on gender identity, gender expression and sexual orientation issues for police personnel and for the educational system at all levels. We also recommend that it take concrete steps to address the situation of social and economic marginalization faced particularly by transvestites and transsexuals but also by many lesbians, bisexuals and gay men.”

#### **Center for Women’s Global Leadership (CWGL) (Kim Vance):**

- “In spite of being prominent in civil society reports, women’s reproductive rights were not adequately highlighted during the UPR. In the first place, we would like to encourage Ecuador to affirm the Constitutional principles of non-discrimination and the right to exercise informed choice in matter of sexual and reproductive health above the interests of particular groups, including religious groups, in the implementation of national policies in the area.

Research done by civil society shows that women do not use contraception due to ignorance, pressure from their husbands/partners and “religious beliefs”. We encourage the Ecuadorean government to strengthen the awareness-raising component of their current plans on Reproductive Health to better educate the population on the uses of contraception and to eradicate gender stereotypes and harmful beliefs, including those of a religious nature, that hamper the full exercise of their sexual and reproductive rights by women and men.”

#### **Consideration of the Review of Finland:**

##### **Working Group:**

At the Working Group stage in April the following recommendation was made to Finland:

- (Recommendation 7) “To provide the same coverage in national legislation and anti-discrimination training activities for the grounds of sexual orientation and disability as for other grounds of discrimination, for example in areas such as the provision of services and health care and to consider using the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* as a guide to assist in its policies development.”

The delegation “considered the recommendations made during the interactive dialogue and...agrees to follow up on them.” This would seem to constitute **acceptance** of the recommendations.

##### **Plenary:**

##### **Delegation Statement and Response to Recommendations:**

In its opening presentation the delegation made the following statements:

- "In a ... spirit of openness and constructivism, recommendations and follow-up proposals made during the interactive dialogue were received by us, and we have naturally given our consent to fully follow up on them. The recommendations will form an integral part of the Government's comprehensive human rights policy report currently under preparation to be submitted to the Parliament in spring 2009."
- "Seventh recommendation related to sexual orientation and the use of the *Yogyakarta Principles*: According to the Finnish Constitution everyone is equal before the law. Discrimination is further prohibited in several Acts of which some, such as criminal law, clearly mention sexual orientation and gender. We have initially studied the *Yogyakarta Principles* and recognize their usefulness in bringing greater clarity and coherence to State's human rights obligations. Finland is committed to further enhancing the situation of LGBT people in Finland and the possible role of the *Yogyakarta Principles* in this will be studied further."

This appears to constitute a form of **acceptance** of the recommendation made.

### **Consideration of the Review of Ghana:**

#### **Working Group:**

The following recommendations were made to Ghana at the Working Group stage in May:

- (Paragraph 15) "The Czech Republic recommended...that Ghana's Criminal Code be amended to decriminalize sexual activity between consenting adults."
- (Paragraph 21) "Romania... recommended that consideration be given to revising the Criminal Code in order to repeal the provision that criminalizes the sexual activity between consenting adults."
- (Paragraph 42) "Slovenia recommended that Ghana's Criminal Code be amended to decriminalise sexual activity between consenting adults."

Ghana stated that it would provide information on whether it accepted these and other recommendations at the plenary stage and would provide comments, if any, then.

#### **Plenary:**

#### **Delegation's Statement and Response to Recommendations:**

In their opening statement the Ghanaian delegation stated that:

- "In accordance with the undertaking made by the delegation at the Review, the Government has carefully examined the other recommendations listed in ... the report [which includes the three listed above] and wishes to respond as follows."

That response, however, referred only to five specific issues and made **no reference at all to the recommendations** on decriminalizing sexual activity between consenting adults.

#### **Member and Observer Comments on the Outcome of the Review:**

## **Egypt:**

- "Egypt wishes to express its understanding for the fact that Ghana could not accept some recommendations as there are some points in recommendations that fall outside the purview of the UPR."

## **Consideration of the Review of Guatemala:**

### **Working Group:**

At the Working Group stage in May the following recommendations were made to Guatemala:

- (Recommendation 16) "Take all the necessary measures to fight against femicide and the lynching and killings of persons based on their sexual orientation."
- (Recommendation 35) "Put an end to impunity for reported attacks against members of marginalized communities, including on the grounds of sexual orientation and gender identity, as well as to put in operation awareness-raising efforts in that respect, targeted particularly at law enforcement officials and the judiciary."
- (Recommendation 36) "Adopt further measures to end impunity for attacks against human rights defenders and against persons because of their sexual orientation or gender identity, including specific education and awareness raising programmes for law enforcement, judicial and other authorities, which focus, inter alia, on protection of enjoyment of human rights by persons of minority sexual orientation and gender identity."

The delegation stated that it would inform the Council in June of its response to the recommendations.

### **Delegation's Statement and Response to Recommendations:**

During its oral presentation to the plenary the delegation made the following statement:

- "Guatemala welcomes the various recommendations resulting from the review that took place on 6 May 2008. We fully concur with the concerns reflected in these recommendations on specific issues which affect the exercise of human rights in our country, and we reiterate the political will of the Government on the importance and priority that we attach to the promotion and protection of human rights. The challenge which we will be facing in implementing the recommendations will be considerable, the range of issues very varied."

It is **unclear** whether this constitutes formal **acceptance** of the recommendations mentioned above.

## **Consideration of the Review of India:**

### **Working Group:**

At the working group stage some States raised questions about the criminalization of homosexuality, though no specific recommendations were made. India replied during the Working Group discussions, acknowledging that the law had been introduced during the colonial era, and was subject to challenge before the Courts.

### **Plenary:**

### **Member and Observer Comments on the Outcome of the Review:**

#### **Action Canada for Population and Development (ACPD), the Federation for Women and Family Planning and Latin American Committee for the Defence of Women's Rights (CLADEM) (Arvind Narrain):**

- "In para. 67 [of the report of the Working Group], Sweden raised the question as to the measures taken by the Indian Government to ensure full equality before the law regardless of sexual orientation.

In para 84, the Indian Government made the very important point, "under Section 377 of the Indian Penal Code, the concept of sexual offences, 'against the order of nature' was introduced. This was essentially a Western concept, which has remained over the years. The concept of homosexuality itself does not find a mention in the Indian Penal Code and it can be debated whether it is 'against the order of nature'.

Mr President, we welcome this civilizational understanding which, if succinctly put, states that it is not homosexuality, but homophobia, which is a Western import.

We urge the Indian government to take forward this valuable historical understanding and repeal what Prof. Amartya Sen has called 'a colonial era monstrosity'. We also urge the Indian Government to do more, by enacting civil rights legislation banning discrimination on grounds of sexual orientation and gender identity.

The repeal of Section 377 and the enactment of non-discrimination legislation would do justice to India being the world's largest democracy with a unique multi-cultural character. It would be a significant step in fulfilling the promise of universal human rights embedded in international law and the Indian constitution."

### **Consideration of the Review of Japan:**

#### **Working Group:**

At the Working Group stage in May the following recommendation was made to Japan:

- (Recommendation 11) "Take measures to eliminate discrimination based on sexual orientation and gender identity."

The delegation stated that it would inform the Council in June of its response to the recommendations.

#### **Plenary:**

#### **Delegation's Statement and Response to Recommendations:**

Japan **accepted** Recommendation 11 in its written submission to the plenary. In its oral presentation:

- "Japan stated that the distinguished delegation of Canada recommended that the Japanese Government should take measures to eliminate discrimination based on sexual orientation and gender identity. Japan replied that for the purpose of eliminating all forms of discrimination including discrimination based on sexual

orientation and gender identity, the human rights organs of the Ministry of Justice were conducting awareness-raising activities for human rights, human rights counselling, and the investigation and resolution of human rights violation cases.”

### **Member and Observer Comments on the Outcome of the Review:**

#### **Thailand:**

- “Many important recommendations that Japan has agreed to undertake are both instrumental and key in improving the situation of human rights on the ground in a practical manner. Specific measures worth highlighting are the follow-up on the establishment of human rights institutions, the elimination of all forms of discrimination including discrimination based on sexual orientation and gender identity as well as the intention to consider signing or ratifying relevant human rights treaties. We commend the Japanese Government for these steps.”

### **Consideration of the Review of the Netherlands:**

#### **Working Group:**

Issues relating to sexual orientation and gender identity were raised by States at the Working Group stage but no concrete recommendations were made. Iran, however, made the following recommendation:

- (Recommendation 12) “To promote and strengthen the foundation of the family and its values among the society.”

The Dutch delegation informed the Working Group that it would inform the Council in June of its responses to the recommendations.

#### **Plenary:**

### **Delegation’s Statement and Response to Recommendations:**

The delegation provided the following response to Iran’s recommendation:

- “The Kingdom of the Netherlands can support this recommendation which already gets all necessary attention. *Families in all their various manifestations* play a crucial role in society. The government’s job is to create the right conditions for families to play their role successfully.”

### **Member and Observer Comments on the Outcome of the Review:**

#### **Aim for Human Rights (Martha Meijer):**

- “The Netherlands should develop and implement a holistic approach to prevent the spread of intolerance and discrimination on the grounds of religion, race, sexual orientation and ethnic origin.”

### **Consideration of the Review of Pakistan:**

#### **Working Group:**

At the Working Group stage of the review in May the following recommendations were made to the Pakistani delegation:

- (Paragraph 23) “Canada recommended... (b) to repeal provisions of the Hadood

Ordinances that criminalize non-marital consensual sex..."

- (Paragraph 62) "The Czech Republic... recommended that Pakistan adopt as a matter of priority further legislative and practical measures... (b) to decriminalize adultery and non-marital consensual sex."

The Pakistani delegation replied by stating that:

- (Paragraph 49) "Regarding the issue of non-marital consensual sex, she [the Representative (Ms. Mahreen Bhutto)] highlighted that this was not recognized as a human right and that every society has its norms and values; freedoms and limits are derived there from. In Pakistan, non-marital consensual sex falls under the definition of adultery and dealt with under the Haddood laws. The offence can only be proved by confession, or with four witnesses, as it is considered an act against society."

And **rejected** the recommendations stating that:

- (Paragraph 108) "Pakistan considers that recommendations contained in paragraphs 23(b) and (f), 27(b), 30(b) and (d), 43(c), and 62(b) and (e)...are neither universally recognized human rights nor conform to its existing laws, pledges and commitments, and cannot accept them."

### **Plenary:**

### **Delegation's Statement and Response to Recommendations:**

In its oral presentation to the plenary, the delegation made the following statement:

- "Politicisation: We accept the recommendation to continue to oppose the politicisation of human rights in the United Nations and elsewhere. Each human rights situation should be considered on its merits. The ills of partiality and selectivity that have infected the human rights machinery should be cast out through dialogue and cooperative efforts."

### **Member and Observer Comments on the Outcome of the Review:**

#### **Canada:**

- "We are disappointed that Pakistan has rejected our recommendations to repeal provisions of the Hudood Ordinances that criminalize non-marital consensual sex and fail to recognize marital rape. The right to liberty and the prohibition of arbitrary interference in privacy are universally recognized freedoms found in the Universal Declaration of Human Rights. Consensual sex is not a crime. Rape is, in or out of marriage."

#### **International Federation of Human Rights Leagues (FIDH) (Julie Gromellon):**

- "We would like to express our deepest concern about the comment made by Pakistan in the Working Group report paragraph 108 that a number of recommendations proposed in the framework of the UPR "neither fall under the framework of universally recognized human rights nor are consistent with the pledges and commitments made by Pakistan."

Referring to paragraph 43, we want to raise the issue of women who continue to be hounded under accusations of Zina (extra-marital sex), even when legally married but without the blessing of their families. For awarding Hadd punishment

the evidence of non-Muslims and women is not acceptable despite the fact that Hadd punishment is also prescribed for the crime of rape, where women are victims.”

**Human Rights Watch (Julie de Rivero):**

- “The Human Rights Commission of Pakistan, a leading NGO, in May publicly expressed their discontent with the position taken by the government at the UPR that recommendations relating to the Hadd Ordinances, marital rape and the death penalty fall outside the scope of universally recognized human rights and do not conform to existing commitments of Pakistan. Human Rights Watch supports their recognition that ‘safeguards and restrictions to the imposition of the death penalty is a universal and recognized human rights principle’ and that ‘the government is misleading itself by denying that the vulnerability of women accused of Zina is not a violation of their rights. Similarly, marital rape is a crime and not a right or privilege of the offender’. We strongly regret Pakistan’s position which undermines the protection of human rights and in particular the protection of women’s rights.”

**International Commission of Jurists (Lukas Machon):**

- “As regards the recommendations to prevent discrimination against women... the Government of Pakistan is reminded of the accessory and substantive nature of the right to equality before the law and to equal protection of the law.

Such a right has been recognized and stipulated by the Universal Declaration of Human Rights and subsequent human rights instruments, with the aim of reinforcing the universal character of all human rights. The ICJ therefore calls on the Council to disregard the contents of paragraph 108 of the UPR working Group’s report on Pakistan.”

**Amnesty International (Peter Splinter):**

- “Pakistan rejected some recommendations on the grounds that they are not universally recognized human rights. Many of these recommendations deal with issues addressed in UN human rights instruments ratified by Pakistan ... Amnesty International encourages Pakistan to reconsider the recommendations covered by paragraph 108 of the Working Group report and to respond to their substance rather than their form.”

**Asian Legal Resource Centre (ALRC):**

- “The Asian Legal Resource Centre is disappointed by Pakistan’s attempts to undermine its review and the UPR process as a whole by trying to discard valid recommendations made to it, notably concerning, inter alia, the Hadd Ordinances, blasphemy laws and the death penalty, all of which are justifiable concerns.”

**International Women's Rights Action Watch (IWRAP) Asia Pacific (Lisa Pusey):**

- “International Women’s Rights Action Watch Asia Pacific (IWRAP Asia Pacific) wishes to express its deepest concern that the government of Pakistan has rejected recommendations put to it during the interactive dialogue during the Universal Periodic Review on the erroneous ground that these recommendations are not universally recognised human rights.

Contrary to the assertion of Pakistan, recommendation 23(b) and 30(d) in the



Outcome Document relating to the non-recognition of marital rape, reflect clearly recognised international human rights norms which prohibit all forms of violence against women.

We call on the Pakistan government to accept the recommendations relating to the criminalization of non-marital consensual sex and adultery in Pakistan in Recommendations 23(b) and 62(b) of the Outcome Document. The criminalization of non-marital consensual sex and adultery has been recognized by the Human Rights Committee as a violation of the human rights to privacy and non-discrimination guaranteed to all people by international instruments, and is a practice which particularly discriminates against women and sexual minorities who are more likely to be criminalized under these laws because of discriminatory social and cultural norms."

### **Concluding Remarks of the Pakistani Delegation:**

- "About consensual sex out of wedlock I would like to say that we cannot legalize it. I'm sorry, at the moment we can't. This is our point of view. Do not try to impose your point of view on us or do not try to draft our laws. Because our laws would stem from our own societal norms and we do not think that this is a universal human right and recognized as such.

About Zina, I can say that we have started reform of the Zina law. I mentioned in my statement today that we looked in to the question of the flaws in the registration procedures, and I think rape victims in particular are of special concern to us and we are trying to provide redress to them."

### **Consideration of the Review of Peru:**

#### **Working Group:**

At the Working Group stage in May, the following recommendation was made to Peru:

- (Recommendation 2) "To consider applying the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* as a guide to assist in policy development."

The delegation stated that it would inform the Council in June of its response to the recommendation.

#### **Plenary:**

#### **Delegation's Statement and Response to Recommendations:**

In its opening statement the Peruvian delegation firmly accepted certain recommendations that reflected its voluntary commitments. It explicitly rejected one recommendation on the death penalty and made the following statement regarding the remainder, including the recommendation outlined above:

- "Within the framework of its national legislation, Peru will study each of them in a constructive spirit and they will serve as substantial guidance for our internal human rights agenda."

It is **unclear** whether or not this constitutes acceptance of the recommendation.

### **Consideration of the Review of Poland:**

### **Working Group:**

At the working group stage in April the following recommendations were made to Poland:

- (Recommendation 6) "Recommended to Poland to adopt an anti-discrimination law that would ensure equal treatment and non-discrimination on any grounds, including sexual orientation and gender identity."
- (Recommendation 13) "While enquiring about the status of the legislative proposal aimed at punishing anyone who promotes homosexuality or any other deviance of a sexual nature in education establishment, recommended to withdraw it if it has not yet been done."
- (Recommendation 17) "Recommended to Poland to ensure that human rights defenders, in particular groups campaigning for equality and against discrimination based on perceived sexual orientation, are allowed to carry out their work in a secure environment, and that the rights to freedom of expression and association are respected."

Poland informed the Working Group that it would inform the Council in June of its responses to the recommendations.

### **Plenary:**

#### **Delegation's Statement and Response to Recommendations:**

The Polish delegation made the following statements in their presentation to the Council:

- "In accordance with the draft law on equal treatment, the Minister responsible for family matters and equal treatment, using data and analyses from independent research and in conjunction with other relevant bodies, will prepare a National Program for Counteracting Discrimination. The program will determine adequate measures to:
  - raise social awareness of the root causes and effects of discrimination;
  - counteract violations of the principle of equal treatment;
  - establish cooperation with social partners concerned, involved in implementing equal treatment."
- "Poland will continue to combat and counteract racism, xenophobia, anti-Semitism and hate crimes.

The phenomena of racism, xenophobia, anti-Semitism and hate crimes are not common in Poland. However, we are determined to implement a wide catalogue of preventive measures of an institutional, legal and educational nature.

We will continue implementing and evaluating the Program for the Roma Community, the national Program for Counteracting Racial Discrimination, Xenophobia and Related Intolerance in 2004-2009, and the Law Enforcement Office Program for Combating Hate Crimes.

Moreover, the existing network of Human Rights Advisers attached to the Police Commander in Chief and Voivodship Police Commanders in Chief will conduct ongoing monitoring of incidents, trends and crimes related to discrimination and misconduct of law enforcement authorities. They will also make analyses and elaborate proposals for improvement of the quality and methods of the law enforcement work."

- "Poland will continue to participate in the World Program for Human Rights Education. Within the first stage of the Program, education on human rights has been introduced into the core curriculum of general education in primary and middle schools. Moreover, the Ministry of National Education has launched a number of other measures to promote education on human rights and the rights of the child. Training to prepare for the advancement of human rights and counteracting discrimination in local communities has been carried out under numerous projects."

The Polish delegation gave the following **responses to the recommendations 6, 13 and 17.**

- (Recommendation 6 and others) "Poland envisages the adoption of the draft law on equal treatment by the end of 2008. It will regulate in a comprehensive manner the issues relating to equal treatment of persons without regard to sex, race, ethnic origin, religion or belief, political views, disability, age, sexual orientation, or marital and family status. The catalogue of the premises of discrimination, specified in the law, is an open one, since under Article 32.2 of the Polish Constitution "No one shall be discriminated in political, social or economic life for any reason". The law complements the relevant legal solutions already in force. The draft law on equal treatment envisages the responsibility of two institutions for matters related to equal treatment: the Commissioner for Civil Rights (Ombudsman) and the cabinet minister competent for family matters and equal treatment. The scope of activity of the Minister and Ombudsman will cover all types of discrimination. At present, the Ministry of Labor and Social Policy is in charge of the coordination of undertakings related to the status of women and the family in society, as well as with combating all forms of discrimination. These tasks have been transmitted to the Ministry from the Government Plenipotentiary for Equal Status of Women and Men. The Ministry has been notified to the European Commission as the organ competent for equal treatment, for the purposes specified in respective EU directives. Furthermore, the Government appointed on 30 April 2008 the Plenipotentiary for Equal Treatment, with the rank of secretary of state in the Office of the Prime Minister. The Plenipotentiary's obligations complement those of other ministers in this area. He/she is responsible *inter alia* for government policy on equal treatment and analyses the impact of legal regulations on issues relating to equal treatment."
- (Recommendation 13) "The proposal to punish the promotion of homosexuality in educational establishments was put forward in 2007, during the preparation of the amendment to the law on the system of education. There was no follow-up to that proposal."
- (Recommendation 17) "The freedom of expression and association are enshrined in the Polish Constitution and all public institutions are obliged to respect it. In this regard, groups campaigning for equality and against discrimination based on sexual orientation are protected by the law enforcement institutions pursuant to the Polish law. Furthermore, to enhance the freedoms guaranteed by the Constitution, the Ministry of the Interior and Administration is preparing the amendment to the law on public assemblies, designed to ensure that the refusal by municipal authority to allow a public assembly can be heard on appeal before the planned date of the assembly."

These statements appear to constitute general **acceptance** of the recommendations made.

#### **Member and Observer Comments on the Outcome of the Review:**

### **Amnesty International:**

- "Amnesty International welcomes the focus, in the UPR Working Group, by many delegations on identity-based violence and discrimination. As raised by many States during the review, Amnesty International shares a deep concern at the climate of fear that increasingly threatens the basic human rights of lesbian, gay, bisexual and transgender people in Poland.

Amnesty International urges the Polish authorities to endorse and act upon the recommendations made in the outcome report to take effective measures to combat discrimination, in particular by adopting legislation to combat discrimination on any ground, including sexual orientation and gender identity. Additionally, and in line with these recommendations, Polish authorities should refrain from making public statements which could be interpreted as encouraging discrimination. Rather the authorities must ensure that thorough and impartial investigations into all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are carried out and that those responsible are brought to justice."

### **Helsinki Foundation for Human Rights (Dorota Puzianowska):**

- "There are different segments of society that experience discrimination. For example, many problems concerning the rights of LGBT people are still present in Polish society. While freedom of assembly is no longer an issue, we still face other problems, including hate speech and physical violence towards LGBT people, discrimination at the workplace, limited access to services (which is sometimes hidden since LGBT people do not want to come out when pursuing their rights), and possible discrimination in family matters (parental custody).

A new anti-discrimination law is currently being prepared. The law seems to be very restrictive and limits itself to proper implementation of EU Directives, thus neglecting any additional issues that could be covered by such a law. A new Plenipotentiary for Equal States has been appointed; however, due to lack of material resources she cannot perform her duties effectively. We hope that the government will take up these problems in the near future."

### **European Region of the International Lesbian and Gay Association (ILGA Europe) (Robert Biedron):**

- "The International Lesbian and Gay Association would like to emphasize its great satisfaction that the Polish government has accepted most of the recommendations for the Universal Periodic Review Report. We are glad that recommendations concerning lesbian, gay, bisexual and transgender people were addressed.

Recommendation number 6 made by Slovenia, the UK and Sweden, encouraged Poland to adopt an anti-discrimination law that would ensure equal treatment and non-discrimination on any grounds, including sexual orientation and gender identity. We must stress that the governmental proposition of the anti-discrimination law includes sexual orientation only in employment. The human rights standards in Europe on this matter include sexual orientation and gender identity in all contexts. Therefore, we recommend implementing the current UPR recommendations and the ones presented by Canada in 2004 for preparation of the Horizontal Anti-Discrimination Initiative. We also welcome the Algerian recommendation number 27 encouraging the Polish government to enact a comprehensive body of anti-discrimination legislation and to set up a body to

combat discrimination. We call upon the Polish government to equip the new Plenipotentiary of Equal Status with the material and personal resources required for effective performance of its duties.

Recommendation number 17 made by Canada stressed the importance of the rights to freedom of expression and association. We would like to encourage the Polish government to fulfil the decision of the European Court of Human Rights in the case of *Bączkowski and others* guaranteeing freedom of assembly to all. We also strongly encourage the Polish government to include sexual orientation and gender identity as one of the grounds in the anti-hate speech criminal code provisions.

Recommendation number 23 made by Cameroon encouraged Poland to intensify its efforts to promote and protect dignity and equality. The Polish government has claimed at international meetings that the issue of the Council of Europe's handbook COMPAS on promoting human rights has been resolved and that it is no longer banned and censored in Poland. Yet we do not have any confirmation of this. ILGA Europe would like to see that inaccurate information on homosexuality is removed from Polish school textbooks."

### **Consideration of the Review of the Republic of Korea:**

#### **Working Group:**

At the Working Group stage in May the following recommendation was made to the Republic of Korea:

- (Recommendation 23) "That discrimination on the basis of sexual orientation be also included in the draft anti-discrimination bill."

The delegation stated that it would inform the Council in June of its response to the recommendations.

#### **Plenary:**

#### **Delegation's Statement and Response to Recommendations:**

In its written reply to the recommendation, the delegation stated that:

- "It is interpreted that discrimination is prohibited by the Constitution, human rights treaties and relevant domestic laws. The National Human Rights Commission conducts its activities against discriminatory practices."

And, later in the same document:

- "The Netherlands and France raised a question regarding what measures the Korean Government is taking to make sure that vulnerable groups in society, including gays and lesbians, receive equal treatment. Article 11 of the Constitution stipulates that there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status. It is interpreted that sex, religion or social status are enumerative ones, thus discrimination based on other grounds stipulated in international human rights instruments is also prohibited. Furthermore, a variety of laws have relevant provisions preventing discrimination. In this regard, the National Human Rights Commission of Korea has carried out activities such as investigating any discriminatory practices when receiving complaints against discriminatory acts including sexual orientation and

recommending that relevant authorities provide remedy. The Government submitted to the 17th National Assembly, in December 2007, a draft Anti-Discrimination Act that prohibits ungrounded discrimination in all areas of life and will continued to take into consideration opinions of Member States when pursuing a new draft Act."

It is **unclear** precisely what this means in terms of the recommendation, although it appears that the anti-discrimination legislation is to be interpreted as including sexual orientation.

#### **Member and Observer Comments on the Outcome of the Review:**

##### **Statement by the Canadian HIV/AIDS Legal Network on Behalf of the Korean Sexual-Minority Cultures and Rights Center and the Alliance Against Homophobia and Discrimination of Sexual Minorities (Arvind Narrain, for Huso Yi):**

- "On behalf of the civil societies of the Republic of Korea, in particular of the eighty six joint grassroots human and cultural rights organizations, we would first like to thank the UN Human Rights Council for this opportunity to address this NGO statement to Recommendation 23 of the Working Group report, which recommends that 'discrimination on the basis of sexual orientation be included in the draft anti-discrimination bill', and we note also the exclusion of six other categories from the Bill: 'educational status, family type, military status, nationality, language, and criminal or detention record.'

In the original version of the proposed bill, those categories of protection were included, as recommended by the National Human Rights Commission, with the following categories of 'sex, disability, age, nationality, ethnicity, race, skin colour, origin of birth, appearance, marriage status, pregnancy status, religion, ideology, or political belief, or social status.' Last November, all of a sudden, the seven categories were dropped without any public discussion or reasonable explanations and passed to the Congress. The only response by the Ministry of Justice was, 'Even though the categories have been dropped, it does not mean that individuals who are and will be discriminated based on those categories should be discriminated'.

However, we know from history that exclusion is indeed a tacit approval for discrimination against groups that need protection. We are deeply concerned that it may provide the basis for further structural and inter-personal violence upon sexual minorities.

As noted in the UPR Working Group report, for the past two decades, Korea has made significant achievements in democracy. The accomplishment of Constitutional rights such as freedom of speech and political associations has reached toward recognition of diversity and acceptance of differences as well as increasing accountability for the disadvantaged and marginalized. Globally, the country also demonstrated international leadership to uphold and respect international law protecting minorities. Our civil societies are very proud of being a part of the nation's efforts toward equality and equity. With profound concerns, we have been very disappointed and alarmed by the growing chasm and communication gap between civil societies and the current Administration in the discourse of human rights and well-being of citizens.

The Universal Declaration of Human Rights begins: 'All human beings are born free and equal in dignity and rights.' In order to full acknowledge the Declaration, the non-discrimination law must be inclusive and explicit. We urge the current

government to continue to engage in our nation's endeavours to promote civil rights of minorities and to re-confirm its commitment to the leadership of international human rights by reintroducing the six dropped categories with the specification of gender identity in the federal non-discrimination law immediately. By doing so, the law will fully realize its intent of human rights protection in the Republic of Korea."

### **Consideration of the Review of Romania:**

#### **Working Group:**

The following recommendations were made to Romania at the Working Group stage of the review in May:

- (Recommendation 3) "To launch awareness raising programmes on protection of enjoyment of human rights by persons of minority sexual orientation and gender identity for law enforcement personnel as part of a wider comprehensive campaign to prevent and punish any acts of ill-treatment in detention against persons perceived as belonging to these groups."
- (Recommendation 4) "To continue its efforts in combating discrimination and to take additional measures to fight discrimination against minorities, including the Roma population, as well as homosexuals and persons living with HIV/AIDS, and to continue the adoption of measures, including awareness raising programmes, against negative prejudices and discrimination against people living with HIV and sexual minorities."
- (Recommendation 8) "To investigate and prosecute those responsible for the attacks on peaceful lesbian and gay activists and ensure that future LGBT gatherings, including the annual GayFests, are both permitted and protected by the Romanian authorities."

The delegation stated that it would inform the Council in June of its response to the recommendations.

#### **Plenary:**

#### **Delegation's Statement and Response to Recommendations:**

At the plenary stage the Romanian delegation **accepted** all three of these recommendations. In their oral presentation they made the following comments:

- "Recommendation No. 3: In the last years, successive legislative amendments in the public safety area have also generated changes in the working methods of law enforcement personnel. The 2005 Code of Conduct and Deontology for the Law Enforcement Officials sets out the principles of equality, impartiality and non-discrimination. Thus the conduct of law enforcement officials cannot be influenced by discriminatory criteria, such as gender or sexual orientation. In 2007, the Romanian Police elaborated and widely distributed "The Good Practices Manual" – a guide of best intervention practices available to any police officer.

Romania is committed to further ensure adequate human rights training for the law enforcement officials, including in the area of combating discriminatory practices and prejudices, as well as to closely monitor the observance of the relevant provisions regarding their professional conduct."

- "Recommendations Nos. 4 and 5: Romania is determined to continue its efforts to combat any form of discrimination. As mentioned in its national report, Romania has already built up an efficient and advanced legislative and institutional framework in this area. The Romanian legislation offers a broad definition of the concept of "discrimination" listing practically all criteria which could nullify or impair the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in all field of public life.

The National Council for Combating Discrimination and the Ombudsman remain at the forefront of this fight. Its regulatory and monitoring functions are complemented by the awareness-raising activities, through the organization of educational campaigns. The National Strategy for Implementing Measures on Preventing and Combating Discrimination for 2007-2013 further develops this framework and focuses on certain categories most exposed to discrimination such as Roma, persons with disabilities or HIV-infected persons."

- "Recommendation No. 8: 280 policemen and 450 gendarmes were involved in maintaining order and public safety during the Gay Fest parade organized in 2007. 65 contravention sanctions were applied on that occasion for public order disturbances. 11 persons have been further investigated for minor crimes out of which 9 have been prosecuted. As in previous years, the Romanian Police took adequate measures to ensure the organization of this year's Gay Fest in good conditions. The Police and Gendarmerie collaborated very well with the organizers. No incidents were registered during Gay Fest parade that took place in Bucharest on 24 May 2008."

#### **Member and Observer Comments on the Outcome of the Review:**

#### **European Region of the International Lesbian and Gay Association (ILGA Europe), the Canadian HIV/AIDs Legal Network, ACCEPT and the International Gay and Lesbian Human Rights Commission (Adrian Coman):**

- "The UPR gives all of us the opportunity to look at the future and identify how to better respect, protect, and fulfil the human rights of all, including lesbian, gay, bisexual and transgender people.

In this respect, as per the report of the working group recommendation no. 4 from Argentina and Canada, we encourage the Romanian government to continue its efforts in combating discrimination and to take additional measures, which we believe should include the following: (1) strengthening the anti-discrimination mechanism, in particular the National Council for Combating Discrimination, (2) including gender identity and expression in addition to sex among the non-discrimination criteria of Ordinance 137/2000, so that transgender people are explicitly protected by the law, (3) raising awareness about the discrimination of LGBT professionals in the education and health systems, and (4) eliminating discrimination in regards to rights accessed through the institution of marriage, which is currently available only to heterosexual couples.

In regards to recommendation no. 8 from Finland, we encourage the Romanian police to finalize the investigation of a few cases of violence instigated by the 2006 and 2007 LGBT marches in Bucharest.

Last but not least, we commend the Romanian government for several important achievements, including the repeal of article 200 of the Penal Code which criminalized private same-sex relations among consenting adults, the development of the anti-discrimination mechanisms which from the beginning



included sexual orientation among non-discrimination grounds, and the police protection ensured at LGBT marches in the last four years in Bucharest.”

### **Consideration of the Review of South Africa:**

#### **Working Group:**

At the working group stage in April the following recommendations were made to South Africa:

- (Recommendation 20) “Recommended to South Africa to continue to promote and protect the right of all persons to equality without discrimination based on sexual orientation, at both the national and international levels.”
- (Recommendation 21) “Recommended to South Africa to increase its efforts to provide mediation machinery to provide victims of discrimination on the basis of sexual orientation more accessible and rapid remedies.”
- (Recommendation 22) “Recommended to make efforts on the sensitization in education to strengthen the prevention of these forms of discrimination.”

The delegation stated that it would inform the Council in June of its responses to the recommendations.

#### **Plenary:**

#### **Delegation’s Statement and Response to Recommendations:**

In its presentation to the plenary the delegation made the following statements:

- “Mr. President, most of the recommendations proposed for South Africa require serious contextualization. In the main, most of the recommendations have already been implemented through national legislation and policy programmes. ... South Africa promotes a human rights-based approach to all its educational policies, and these are strongly reflected into the National Curriculum Statement. This promotes the interests of the child and teaches the values of respect and dignity, of diversity and non-discrimination. The Department of Education has initiated the Advanced Certificate Programme in Human Rights and Values Education for teachers, which is offered by universities, and enables teachers to act as champions for human rights in schools. Various other programmes contribute to this aspect as well. ...

In South Africa everyone has the right to equal protection and benefit of the law. No one may be discriminated against on any ground. Our Constitution extends this protection to all groups, including persons with alternative life and sexual orientations. Successful cases have been adjudicated upon by the South African Constitutional Court where discrimination on some of these grounds could be proven.”

It is **unclear** whether the government accepts the recommendations or not.

#### **Member and Observer Comments on the Outcome of the Review:**

#### **Human Rights Watch (Julie de Rivero):**

- "South Africa’s Constitution protects its citizens from discrimination on the

grounds of sexual orientation. HRW supports the recommendation made to South Africa to provide victims of discrimination on the basis of sexual orientation more accessible and rapid remedies particularly given the increased number of killings and reports of violence suffered by gays and lesbians in the country and the delays experienced securing effective remedy for these violations."

### **Consideration of the Review of Switzerland:**

#### **Working Group:**

At the Working Group stage in May the following recommendations were made to Switzerland:

- (Recommendation 18) "That federal legislation be strived for to provide protection against all forms of discrimination, including on grounds of sexual orientation and gender identity."
- (Recommendation 20) "To take additional steps to ensure that same-sex couples are not discriminated."

The delegation stated that it would inform the Council in June of its response to the recommendations.

#### **Plenary:**

#### **Delegation's Statement and Response to Recommendations:**

In their initial presentation to the plenary, and in a written response to the recommendations, the delegation made the following explanations for **rejecting** both of the recommendations:

- "The general tenor of recommendation 18 does not pose a major problem to Switzerland, as we have made the fight against all forms of discrimination a priority. However, the fact that sexual orientation is the only form of discrimination to be expressly mentioned constitutes an obstacle to its acceptance. Switzerland therefore rejects the recommendation in order to be consistent with the response given to recommendation 20.

This last recommendation [i.e. Recommendation 20], which is also rejected, requested Switzerland to "take additional steps to ensure that same-sex couples are not discriminated". The federal law on registration of partners, which entered into force on 1 January 2007 and introduced the registration of partners, also permitted same-sex couple to obtain recognition of their relationship on the judicial level. Registered partners are treated the same as married couples. Nevertheless, such persons are not authorized to adopt a child nor to receive assistance with fertility treatment."

#### **Member and Observer Comments on the Outcome of the Review:**

#### **Amnesty International (on behalf of a coalition of 32 Swiss NGOs):**

- "The refusal to envisage federal legislation against discrimination is a missed opportunity to set up a central instrument to work on a preventive basis on questions such as discrimination based on racial or religious reasons, or persistent discrimination against women, or discrimination on the grounds of sexual orientation or disability."

### **Centre on Housing Rights and Evictions (COHRE) (Claude Cahn):**

- “With a mind to Switzerland’s rejection of Recommendation 18 on discrimination on grounds of sexual orientation, the reason provided, that homosexuals do not have the right to adopt is, since the European Court of Human Rights decision in *E P v France* of 28 January 2008, now explicitly impermissible in Council of Europe systems.”

### **Canadian HIV/AIDS Legal Network (John Fisher):**

- “We have serious concerns about the refusal of the Swiss government to accept Recommendation 18 to put in place a federal anti-discrimination law including on grounds of sexual orientation and gender identity. We do note that in its response Switzerland accepts the fact that it is committed to non-discrimination, that it has no problems with the general tenor of this recommendation and that fighting against all forms of discrimination is a priority. So we understand that in general there is no problem with this recommendation.

However the reason given for not specifically accepting the recommendation is that Switzerland is reluctant to single out a particular ground such as sexual orientation or gender identity, and with respect, we find this response unconvincing. For one thing Switzerland has accepted Recommendation 5 dealing specifically with a national commission on the rights of women, it has accepted Recommendation 6 dealing specifically with measures to combat racial discrimination, it has accepted Recommendation 12 dealing specifically with measures to improve the situation of people with disabilities. So clearly Switzerland does accept the principle that particular needs can be particularly addressed.

Secondly, I do not think it was the intention of the recommendation that sexual orientation or gender identity be the only grounds covered, simply that there be a national non-discrimination law which includes protection on those grounds. We therefore encourage Switzerland to continue to reflect on its response to the recommendations, to put in place a national non-discrimination law and to ensure that such a law is inclusive of *all* grounds.”

### **Concluding Remarks of the Swiss Delegation:**

- “I have taken careful note of the comment concerning discrimination based on sexual orientation. Rest assured that we have a comprehensive approach. We would not want to exclude any group from the prohibition of discrimination. As I explained in my short statement this morning, I think that Switzerland has really taken quite a number of measures not only to promote the legal status of couples of the same sex but in other areas. I have also explained the new law on partnership.”

### **Consideration of the Review of Tonga:**

#### **Working Group:**

The following recommendations were made to Tonga at the Working Group stage in May:

- (Paragraph 28) “Although Tonga is not party to ICCPR, it (a) recommended that Tonga amend legal provisions that criminalize some forms of sexual activity between consenting adults and decriminalize sexual activity between consenting adults.”

- (Paragraph 31) "Canada... noted that Tonga maintains criminal sanctions against some forms of sexual activity between consenting adults and (b) recommended that Tonga amend its criminal laws so that sexual activity between consenting adults is not a criminal offence."
- (Paragraph 39) "The Czech Republic... (b) recommended the decriminalization of consensual same-sex activity between adults."
- (Paragraph 58) "Bangladesh... indicated that the purpose of UPR was not to impose the values of one society on another and noted that if the traditional society of Tonga does not permit consensual sex between two men or two women, one should refrain from imposing this on them, as it is outside the purview of universally accepted human rights norms. As there is no treaty obliging Tonga to do otherwise, it (b) recommended that the Government continue to criminalize consensual same sex, which is outside the purview of universally accepted human rights norms, according to Tonga's national legislation."

At that stage Tonga **rejected** all four of these recommendations and made the following comment in the report of the Working Group:

- "Whilst current laws might criminalize certain consensual sexual conduct, Tonga is a Christian society that believes in tolerance and respect across difference. A respect for difference allows the widest margin of appreciation to lawmakers as well as other stakeholders and encourages robust debate about equality within society."

### **Plenary:**

### **Member and Observer Comments on the Outcome of the Review:**

#### **The Canadian HIV/AIDS Legal Network (John Fisher):**

- "We are disappointed that Tonga chose not to accept the recommendation to decriminalize certain forms of consensual sexual conduct. I take the point that the law is not enforced, but at the same time, any law that brands a group of people as criminals sends a message of exclusion and marginalization, which I would respectfully suggest is inconsistent with Tonga's commitment to international human rights principles of equality for all people, and to values of respect, fairness and equal dignity for all.

As the UN Human Rights Committee held, in a communication against Australia: 'it is undisputed that adult consensual sexual activity in private is covered by the concept of 'privacy' [in international human rights law], and that...the continued existence of the Tasmanian laws...interfere with the author's privacy, even if these provisions have not been enforced for a decade.'

We also note that one or two States during the Working Group discussions actually took it upon themselves to recommend that Tonga keep criminalizing consensual same-sex conduct. Clearly, any recommendation that a State *perpetuate* discrimination against a minority group would do nothing to improve the human rights situation in Tonga, and is inconsistent with both Tonga's values of respect for difference and with international human rights law, and so we are pleased that you rejected that particular recommendation.

Particularly in this 60<sup>th</sup> anniversary year of the UDHR, it is important that we vigorously uphold the universality of human rights for all people. We note that in the outcome report, you welcome continuing frank and robust discussion of the

issue. We hope that you will continue to keep an open mind, and maintain that dialogue with a view to decriminalizing such consensual conduct in the near future so that all Tongans may participate in the life of the community in equal dignity and respect.”

**International Women's Rights Action Watch (IWRAP) Asia Pacific, Action Canada for Population and Development (ACPD), Federation for Women and Family Planning, Latin American Committee for the Defence of Women's Rights (CLADEM) (Lisa Pusey):**

- “We wish to express our concern that the government of Tonga has rejected recommendations put to it during the interactive dialogue which signal an unwillingness to comply with international human rights norms protecting the rights of women and all people including sexual minorities. ...

We also note with serious concern that Tonga has rejected recommendation 39(b) in the outcome document and others calling on the government to decriminalise consensual same sex activities. The criminalization of consensual same-sex activities has been recognized by the Human Rights Committee as a violation of the human right to privacy and non-discrimination guaranteed to all people by international instruments. We do, however, appreciate the rejection of recommendation 58(b) which encourages Tonga to continue to criminalize consensual same-sex activities on the grounds that it is outside of the purview of universally accepted human rights norms and Tonga’s national legislation. This erroneous recommendation fails to take into account international law and precedent and the respect for the human rights of all people. We call on the Tongan government to accept the recommendations in the outcome document which relate to addressing discrimination against women and sexual minorities, and thereby furthering the full implementation of human rights norms and the full enjoyment by all people of their human rights.”

**Concluding Remarks of the Tongan Delegation:**

- “With respect to some of the issues that have been raised, in particular the decriminalization of certain sexual activities and the status of Tongan women in society, these had been already dealt with during the review and it did not intend to repeat the position of Tonga or to create a debate on those issues at this stage, and Tonga certainly noted the interventions made in that regard.”

**Consideration of the Review of Ukraine:**

**Working Group:**

The following recommendation was made to Ukraine at the Working Group stage of the review in May:

- (Recommendation 5) “To consider applying the *Yogyakarta Principles on the Application of International Human Rights Law in relations to Sexual Orientation and Gender Identity* as a guide to assist in policy development.”

The delegation stated that it would inform the Council in June of its response to the recommendations.

**Plenary:**

**Delegation’s Statement and Response to Recommendations:**

In its oral presentation the delegation stated that Ukraine **"can not accept"** Recommendation 5 on use of the *Yogyakarta Principles*.

### **Consideration of the Review of the United Kingdom:**

#### **Working Group:**

The following recommendation was made to the UK at the Working Group stage in April:

- (Recommendation 18) "To follow the Council of the European Union Asylum Qualification Directive in future cases with regard to sexual orientation as a ground for asylum-seeking."

The delegation informed the Working Group that it would inform the Council in June of its responses to the recommendations.

#### **Plenary:**

#### **Delegation Statement and Response to Recommendations:**

In its written response to recommendations the UK stated the following in respect of Recommendation 18:

- "The United Kingdom **accepts** the recommendation, has implemented it, and will keep the matter under review.

The UK has already fully transposed the provisions of the Qualification Directive (2004/83/EC) into UK law. The Government is committed to providing protection for those individuals found to be genuinely in need, in accordance with our commitments under international law.

If after consideration of the individual merits of their asylum claim, the individual is found (a) to have a well founded fear of persecution and (b) are a member of a 'particular social group' then they will fall within the Refugee Convention and be granted asylum. If an applicant is at risk of persecution but not for reason of membership of a particular social group - or other Refugee Convention reason - they would qualify for Humanitarian Protection."

### **Consideration of the Review of Zambia:**

#### **Working Group:**

The following recommendations were made during the Working Group stage of the review in May:

- (Paragraph 19) "Canada...referred to the Human Rights Committee's concerns that the Criminal Code criminalizes consensual same-sex activity and (a) recommended that it be amended to decriminalize same-sex activity between consenting adults and that (b) Zambia develop programmes to respond to the HIV/AIDS related needs of sexually active gay men. Canada further (c) recommended to improve access to antiretroviral treatment for vulnerable groups, including women."
- (Paragraph 22) "The Netherlands...noted the Human Rights Committee's concern about the criminalization of consensual same-sex activity and (b) recommended that Zambia strive to amend its Criminal Code to decriminalize same-sex activity between consenting adults in accordance with the recommendation of the Human

Rights Committee.”

- (Recommendation 17) “To improve access to anti-retroviral treatment for vulnerable groups, including women.”

The first two of these recommendations were **rejected** at this stage and the latter was **accepted**.

### General Debate on the UPR (Item 6):

#### International Federation of Human Rights Leagues (FIDH) (Julie Gromellon):

- “Certain rights have been publicly called into question. For example, the right not to be discriminated against on the basis of sexual orientation was challenged as not part of the corpus of rights contained in the Universal Declaration of Human Rights, in contradiction with all the jurisprudence on this issue developed by the special rapporteurs and treaty bodies.”

#### Canadian HIV/AIDS Legal Network (John Fisher):

- “At its best, the UPR offers a significant opportunity for genuine dialogue to strengthen the human rights situation in countries around the world. The universality of the process ensures that no State is exempt from scrutiny, and the high-level participation by many States under review is a welcome indicator of the seriousness with which the process is taken.

During the adoption of reports this week, a number of States have provided very clear responses regarding their position on each of the recommendations. However, one matter of serious concern is that some States delivered general presentations but failed to give a clear response on which recommendations were accepted and which were not. In at least two cases I still have no idea what was actually adopted because no clear State response to recommendations was provided. Even where clear State responses were provided, these were often not circulated in the room until the adoption of the report and we would urge that these responses be finalized and circulated in advance in future to enhance transparency and assist both States and civil society in formulating their comments.

We are encouraged that a broad range of human rights issues were able to be explored through the UPR, including some which have not yet been sufficiently addressed by the Council itself. The way in which the Council addresses the needs of particularly marginalized groups is a very good indicator of the effectiveness of the UPR process as a whole. Sexual orientation and gender identity issues, for example, were raised with States from all regions, and we appreciate the positive and constructive way in which the majority of States from a diverse range of regions addressed the issues.

It is however unfortunate that a very small number of States sought to explicitly exclude human rights violations based on sexual orientation from the basis of review, asserting that the issues fall outside “universally-recognised human rights”. This position is clearly unsustainable. One basis of the review is the Universal Declaration of Human Rights, which provides that “all human being are born free and equal in dignity and rights”. There is no exception for lesbians, gays, bisexuals or transgender people from the requirements of the Universal Declaration the “everyone has the right to life”, that “no-one shall be subjected to torture”, that “everyone has the right to freedom of peaceful assembly and

association". Universal human rights, by definition, apply to all human beings. No erosion of this fundamental principle can be permitted through the UPR, particularly in this 60<sup>th</sup> Anniversary Year of the UDHR.

In a similar vein, and at the risk of stating the obvious, recommendations should be aimed at *improving* the human rights situation in the State under review. Recommendations to reintroduce the death penalty, to criminalize consensual conduct or to perpetuate discrimination against a minority group do nothing to meet this standard.

Finally, I would underline our understanding that *all* discussions in general debate may be illustrated by reference to specific situations, including in particular countries.

By maintaining the focus squarely on universal human rights and the needs of those who experience human rights violations around the world, the UPR can continue to be a valuable tool for enabling the Council to fulfil its mandate of "promoting universal respect of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner" (GA Resolution 60/251, para 2)."