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**ADDRESSING HUMAN RIGHTS VIOLATIONS BASED ON
SEXUAL ORIENTATION & GENDER IDENTITY AT THE
18th SESSION OF THE HUMAN RIGHTS COUNCIL**

September, 2011

There are a number of opportunities to raise awareness of human rights violations based on sexual orientation and gender identity at the upcoming 18th session of the Human Rights Council. These include **general debate following the update by the High Commissioner, the UPR, interactive dialogues, and general debate under items 3, 4 or 8.**

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

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

Summary and Overview:

Opportunities to raise awareness of human rights violations based on sexual orientation and gender identity at the 18th session of the Human Rights Council include:

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

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

The High Commissioner is currently preparing a report on violence and discrimination based on sexual orientation and gender identity (as requested by HRC resolution 17/19), to be completed by the end of the year.

Relevant State interventions might:

- commend the High Commissioner for her principled affirmation that no human being may be denied their rights, solely because of their sexual orientation or gender identity, and note that this position is reinforced by the comments of the Secretary General, the recent Human Rights Council resolution on sexual orientation and gender identity, the findings of treaty bodies, and the clear evidence of human rights violations brought to the Council's attention by its Special Procedures;
- welcome the upcoming report of her office on violence and discrimination based on sexual orientation and gender identity, and look forward to the opportunity to discuss this report at the March 2012 session of the Council.

➤ Reports to the Council

Reports to this session of the Council address human rights violations based on sexual orientation or gender identity. Full details are provided in **Annex I**. In particular:

- The **report of the Secretary General on the use of the death penalty** notes that "(i)n some countries death sentences are handed down for non-violent crimes that do not meet the threshold of "most serious crimes" such as economic crimes, sorcery, apostasy and drug-related offences or sexual relations between consenting adults."
- The **Special rapporteur on racism, racial discrimination, xenophobia and related intolerance** noted in a section on "good practices to counter extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements" that "some countries have developed data-collection systems on hate crimes, including hate crimes committed against individuals on the grounds of race, colour, ethnicity, origin or minority status, citizenship, language, religion, disability, sexual orientation, gender or transgender."

➤ General statements – item 3 & 8:

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

Statements by regional or cross-regional groupings might reference the recent Human Rights Council resolution on human rights, sexual orientation and gender identity (HRC/Res/17/19), look forward to working with States from all regions in preparation for the panel, and call for constructive outreach and dialogue with a view to enhancing the Council's capacity to fulfil its mandate by promoting and protecting human rights for all people without distinction.

➤ Item 6: UPR report adoptions (see Annex):

The UPR report adoption process affords an opportunity to **commend those States which have responded favourably** to relevant recommendations, and to **encourage States who have not to address these issues more positively in future**.

Many relevant recommendations relating to sexual orientation and gender identity issues were raised during the UPR of those States whose reports are due to be adopted. A full list of UPR recommendations for the States under review is attached as **Annex II**.

In particular:

- **Belgium accepted** positive recommendations to implement education and training programmes on these grounds, and to specifically include **gender identity and expression** in anti-discrimination laws and policies;
- **Palau agreed to decriminalise same-sex conduct** between consenting adults;
- **Seychelles** (which endorsed the March joint statement on human rights, sexual orientation and gender identity) **reserved its position** and will report to the HRC on whether it accepts recommendations to **decriminalise** same-sex conduct between consenting adults;
- The **Solomon Islands agreed to decriminalise** same-sex conduct between consenting adults, while reserving its position on related recommendations:
- **Latvia reserved its position** and will report to the HRC on whether it accepts recommendations to **combat discrimination and hate crimes** based on sexual orientation and gender identity;
- **Sierra Leone** (which endorsed the March joint statement on human rights, sexual orientation and gender identity) **reserved its position** and will report to the HRC on whether it accepts recommendations to **decriminalise** same-sex conduct between consenting adults;
- **Singapore rejected** recommendations to **decriminalise** same-sex conduct between consenting adults;
- **Suriname reserved its position** and will report to the HRC on whether it accepts recommendations to **equalise the age of consent** for same-sex and opposite-sex conduct, and **prohibit discrimination** based on sexual orientation and gender identity;
- **Greece accepted** recommendations to include sexual orientation and gender identity in **antidiscrimination laws and policies**, while considering that **discrimination based on gender identity or expression** “falls within the scope of discrimination on the ground of sexual orientation”. Since these are separate issues, additional clarification is needed. Greece also accepted a recommendation to “consider recognizing same-sex couples”, indicating that it will “**consider**” **whether or not to recognise same-sex couples**, following public consultations.
- **Samoa** (which endorsed the March joint statement on human rights, sexual orientation and gender identity) **reserved its position** and will report to the HRC on whether it accepts recommendations to **decriminalise same-sex conduct** between consenting adults;
- **Saint Vincent and Grenadines rejected** recommendations to **decriminalise** same-sex conduct between consenting adults, while **reserving its position** on recommendations to **address discrimination** based on sexual orientation and gender identity;
- **Hungary accepted** recommendations to explicitly **prohibit discrimination** on grounds of sexual orientation and gender identity, and ensure **police training** with respect to hate crimes;

- **Papua New Guinea reserved its position** and will report to the HRC on whether it accepts recommendations to **decriminalise** same-sex conduct between consenting adults.

ANNEX I: REFERENCES TO SEXUAL ORIENTATION & GENDER IDENTITY IN REPORTS TO THE HRC

A/HRC/18/20 – Report of the SG on the question of the death penalty

III. Enforcement of the death penalty

24. Amnesty International reported that in most countries where support for the death penalty is still strong, capital punishment reportedly continues to be imposed after unfair trials and is often based on confessions extracted through torture. In most countries, the death penalty is used disproportionately against the poor, members of minority racial, ethnic and religious communities and other minorities. In some countries death sentences are handed down for non-violent crimes that do not meet the threshold of “most serious crimes” such as economic crimes, sorcery, apostasy and drug-related offences or sexual relations between consenting adults.

A/HRC/18/27 – Analytical compilation of the OHCHR on the elements of the initiatives that succeed in achieving reductions in maternal mortality and morbidity through a human rights-based approach

Common features of good and effective practices to reduce maternal mortality and morbidity using a human rights-based approach

5. The current rate of global decline is insufficient to achieve the Millennium Development Goal target of reducing maternal mortality ratios by three quarters between 1990 and 2015.⁷ Good and effective practices to eliminate mortality and morbidity using a human rights-based approach may be complex and specific to the local situation, but, an analysis of all responses to the note verbale sent by OHCHR reveal that they share five features:

(a) Broad social and legal changes to enhance women’s status by promoting gender equality and eliminating harmful practices;

(b) Increasing access to contraception and family planning to enable women and adolescent girls to make decisions regarding their sexuality and fertility, including delaying and limiting childbearing and preventing sexually-transmitted infections, including HIV/AIDS, supported by access to education on sexuality and sexual and reproductive health;

A/HRC/18/41 – Note by the HC transmitting to the HRC the report of the 18th meeting of Special Procedures of the HRC

IV. Exchange of views with the United Nations High Commissioner for Human Rights

11. The High Commissioner referred to the role of special procedures in major thematic areas, such as the International Year of People of African Descent; the tenth anniversary of the Durban Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance; the twenty-fifth anniversary of the adoption of the United Nations Declaration on the Right to Development; the open-ended working group on ageing of the General Assembly; and the work on human rights, sexual orientation and gender identity.

A/HRC/18/44 - Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on the implementation of General Assembly resolution 65/199

II. Good practices developed at the national level to counter extremist political parties, movements and groups, including neo-Nazi and skinhead groups, and similar extremist ideological movements

13. Other positive examples identified include the training of law enforcement agents. The Special Rapporteur notes in particular that, in some cases, compulsory human rights training sessions were developed for the judiciary and that specific units to deal with hate crimes and racism were also established, including, for instance, in the Public Prosecutor's Office. The Special Rapporteur also notes with interest that some countries have developed data-collection systems on hate crimes, including hate crimes committed against individuals on the grounds of race, colour, ethnicity, origin or minority status, citizenship, language, religion, disability, sexual orientation, gender or transgender. It was also reported that some States specifically collect data on racist crimes committed by members of extremist groups.

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

Belgium

100. The recommendations formulated during the interactive dialogue listed below have been examined by Belgium and enjoy the support of Belgium:

100.30. Take all appropriate action, including programmes of education and training, in order to eliminate prejudice and discrimination based on sexual orientation and gender identity (Norway);

101. The following recommendations enjoy the support of Belgium which considers that they are already implemented or in the process of implementation:

101.18. Protect gender identity and expression under anti-discriminatory laws and policies (Norway);

Denmark

No references to sexual orientation or gender identity.

Palau

Criminalization of Sexual Relations of Consenting Adults of the Same Sex – Palau’s Position at HRC18: It is the position of Palau to accept these recommendations. Palau will take appropriate measures to modify or amend current legislation in line with international standard.

62.38. Confirm its commitments to non-discrimination by de-criminalizing sexual relations between consenting adults of the same sex and by repealing the discriminatory provisions against LGBT persons (France);

62.39. Bring its national legislation into conformity with its commitment to equality and non-discrimination, by repealing the provision of Palau’s Penal Code which continues to criminalize sexual relations between consenting adults of the same sex (Norway);

62.40. Repeal all provisions in domestic legislation criminalizing consensual sexual activity between same sex adults and combat discrimination against LGBT through political, legislative and administrative measures (Spain);

Seychelles

100. The following recommendations will be examined by Seychelles which will provide responses in due time, but no later than the 18th session of the Human Rights Council in September 2011.

100.57. Bring its legislation into conformity with its commitment to equality and non-discrimination, by prohibiting discrimination based on sexual orientation or gender identity (Canada);

100.58. Enact legislation that expressly prohibits discrimination against a person on the basis of sexual orientation or identity (Australia);

100.59. Bring its Criminal Code into conformity with its international commitments by taking appropriate steps to ensure that same-sex activity between consenting adults is not subject to criminal sanctions (Norway);

100.60. Confirm its commitments to equality and non-discrimination by decriminalizing consensual sexual relations between adults of the same sex as well as any discriminatory provisions with respect to lesbian, gay, bisexual and transgender persons (France);

100.61. Repeal all provisions in its domestic law criminalizing consensual sexual activity between adults of the same sex and combat discrimination against lesbian, gay, bisexual and transsexual persons through political, legislative and administrative measures (Spain);

Solomon Islands

80. The recommendations formulated during the interactive dialogue and listed below have been examined and enjoy the support of the Solomon Islands, which considers that they are already implemented or in the process of implementation:

80.38. Repeal all provisions which criminalize sexual activity between consenting adults in conformity with international obligations (Norway);

81. The recommendations formulated during the interactive dialogue/listed below, will be examined by the Solomon Islands which will provide responses in due time, but no later than the 18th session of the Human Rights Council in September 2011. The response of the Solomon Islands to these recommendations will be included in the outcome report adopted by the Human Rights Council at its 18th session in September 2011:

81.49. Decriminalize sexual relations between consenting adults of the same sex and repeal all discriminatory provisions relative to Lesbian, Gay, Bisexual and Transgender people (France);

81.50. Decriminalize sexual activities between consenting adults of the same sex (Slovenia);

81.51. Reform, as a matter of urgency, the law that criminalizes sexual relations between adults of the same sex (Spain);

Latvia

93. The following recommendations will be examined by Latvia, which will provide responses in due time, but no later than the 18th session of the Human Rights Council in September 2011:

93.27. Intensify its efforts to combat discrimination on the basis of sexual orientation and gender identity (Spain);

93.28. Increase efforts to combat discrimination on the grounds of sexual orientation (United Kingdom);

93.29. Provide general information about anti-discrimination and reform the curriculum in schools to put regularly emphasis on information about gender equality, Lesbian Gay, Bisexual and Transgender and ethnic minorities (Norway);

93.30. Adopt legislation that recognizes homophobic and transphobic motivation as an aggravating circumstance in the criminal law (Finland);

93.31. Amend the criminal law so that the law recognises hate speech against Lesbian Gay, Bisexual and Transgender persons (Norway);

93.32. Further strengthen measures to prevent and combat discrimination and hate crimes against ethnic minorities and other vulnerable groups, including Lesbian, Gay, Bisexual and Transgender persons (Brazil);

93.33. Consider legislative and administrative measures to recognize violence on the basis of gender identity or sexual orientation as a hate crime (United States);

93.34. Engage in awareness raising activities such as stressing the aspect of diversity in curricula of schools in order to alleviate discrimination against Lesbian, Gay, Bisexual and Transgender persons (Finland);

Sierra Leone

82. The following recommendations will be examined by Sierra Leone which will provide responses in due time, but no later than the 18th session of the Human Rights Council in September 2011. The response of Sierra Leone to these recommendations will be included in the outcome report adopted by the Human Rights Council at its 18th session in September 2011:

82.7. Bring its legislation into conformity with its commitment to equality and non-discrimination for all by prohibiting discrimination based on sexual orientation or gender identity (Canada);

82.8. Repeal all provisions which may be applied to criminalize sexual activity between consenting adults (Norway);

82.9. Repeal all provisions criminalizing sexual activity between consenting adults (Netherlands);

Singapore

97. The recommendations below did not enjoy the support of Singapore:

97.12. Repeal legal provisions criminalising sexual activity between consenting adults of the same sex (Slovenia); Draw the consequences of the positive evolution of society with respect to homosexuality by abolishing the provisions of the Penal Code related to private relations between consenting adults (France).

Suriname

73. The following recommendations will be examined by Suriname which will provide responses in due time, but no later than the 18th session of the Human Rights Council in September 2011:

73.49. Equalise the age of consent for opposite and same-sex conduct, and adopt appropriate legislative and other measures to prohibit discrimination on the basis of sexual orientation and gender identity (Norway);

73.50. Equalise the age of consent for opposite and same-sex conduct, and adopt legislative and other measures to explicitly prohibit discrimination on the basis of sexual orientation and gender identity (Netherlands);

Greece

83. The recommendations below formulated during the interactive dialogue have been examined by Greece and enjoy its support:

83.30. Include sexual orientation and gender identity as grounds for protection in anti-discrimination legislation and policies (Norway);

84. The following recommendations will be examined by Greece which will provide responses in due time, but no later than the 18th session of the Human Rights Council in September 2011:

84.10. Incorporate in the legislation the combat against discrimination based on gender identity or expression (Spain);

84.10. Greece accepts this recommendation and is already implementing it. In fact, Greek legislation has explicitly included sexual orientation among the prohibited grounds of discrimination. The anti-discrimination Law 3304/2005 provides for the implementation of the principle of equal treatment regardless, inter alia, of sexual orientation in the fields of employment and occupation. In the context of criminal legislation, the imminent transposition into the Greek legal order of the EU Council Framework Decision 2008/913/JHA of 28 November 2008, on combating certain forms and expressions of racism and xenophobia by means of criminal law (see also below recommendation 84 (14)) will update and strengthen the relevant legislative framework, since sexual orientation will be included in its field of application. The draft law is at the stage of organized consultation with the National Commission for Human Rights and the Law Schools of our country, the public consultation having now been completed. In this context it is worth mentioning that art. 79 para. 3 of the Greek Penal Code, as amended by law 3719/2008, provides that the commission of an offence motivated by ethnic, racial or religious hatred or hatred on account of a different sexual orientation constitutes an aggravating circumstance. It is considered that discrimination based on gender identity or expression falls within the scope of discrimination on the ground of sexual orientation.

84.11. Consider recognizing same sex couples (Brazil);

84.11 Greece accepts this recommendation. The Greek government is considering the matter. Any relevant decision will be taken after a public consultation on whether or not the Cohabitation Pact (law 3719/2008) should be expanded to same sex couples.

Samoa

75. The following recommendations will be examined by Samoa which will provide responses in due time, but no later than the 18th session of the Human Rights Council in September 2011. The response of Samoa to these recommendations will be included in the outcome report adopted by the Human Rights Council at its 18th session in September 2011:

75.38 Fulfil its commitment to equality and non-discrimination by repealing all legal provisions that criminalise sexual activity between consenting adults and investigate all cases of discrimination based on sexual orientation and gender identity (Canada);

75.39 Repeal laws criminalising relations between consenting adults of the same sex (France);

75.40 Repeal all provisions which may be applied to criminalize sexual activity between consenting adults and adopt appropriate legislative measures to include sexual orientation and gender identity in equality and non-discrimination laws (Norway);

75.41 Continue its reconsideration of laws that restrict the human rights of individuals based on sexual orientation or gender identity, and repeal all such laws (United States of America);

Saint Vincent and the Grenadines

78. The following recommendations will be examined by Saint Vincent and the Grenadines which will provide responses in due time, but no later than the 18th session of the Human Rights Council in September 2011:

78.18. Institute policies and initiatives to address discrimination based on sexual orientation or gender identity (Canada);

78.26. Repeal all discriminatory provisions against LGBT people (France);

79. The recommendations below did not enjoy the support of Saint Vincent and the Grenadines:

79.3. Bring the legislation into conformity with its commitment to equality and non-discrimination and its international human rights obligations, by repealing all provisions which may be applied to criminalize sexual activity between consenting adults (United Kingdom);

79.12. Consider revising its criminal code, in particular aiming at decriminalizing sexual relations between consenting adults of the same sex (Brazil);

79.13. Repeal all provisions in the law which may be used to criminalize consensual sexual activity between adults (United States);

79.14. Abolish the section 146 of the Criminal Code as a first step towards the introduction of a law prohibiting the discrimination of same sex relationships (Germany); and repeal this section which criminalises sexual relations between consenting adults of the same sex (Norway);

79.15. Eliminate legal sanctions against consensual sexual acts between adults in private (Canada);

79.16. Implement the 2008 recommendation of the Human Rights Committee by decriminalising sexual relations between consenting adults of the same sex (France);

79.17. Implement the 2008 recommendation of the UN Human Rights Committee to repeal the section 146 of the Criminal Code that criminalizes sexual relations between consenting adults of the same sex (Slovenia);

Sudan

No references to sexual orientation or gender identity.

Hungary

94. The recommendations formulated during the interactive dialogue and listed below have been examined by Hungary and enjoy the support of Hungary:

94.12. Ensure the cardinal laws, resulting from the new Fundamental Law, do not contain provisions that discriminate against people with disabilities, women and LGBT people (United Kingdom of Great Britain and Northern Ireland);

94.13. Strengthen hate crimes laws to protect against violence motivated by gender identity, sexual orientation and intolerance, and to implement public awareness campaigns, to include law enforcement officials, to combat intolerance (United States of America);

94.30. Introduce the necessary measures to ensure full respect for the rights of persons with disabilities and women, as well as persons with a different sexual orientation (Switzerland);

94.40. Adopt measures to combat discrimination and promote equal economic and social opportunities for disadvantaged and marginalized individuals and groups (Islamic Republic of Iran);

94.52. Confirm its commitment to equality and non-discrimination by explicitly prohibiting any discrimination on grounds of sexual orientation and gender identity (France);

94.62. Ensure members of the Roma community, and members of other vulnerable groups, are protected from violence and attack, including when these groups wish to assemble, hold events or organize demonstrations (United Kingdom of Great Britain and Northern Ireland);

94.83. Ensure that victims of hate crimes have access to assistance and protection, including counselling and legal assistance (Austria);

94.84. Ensure adequate training for the police and judiciary to promptly and effectively deal with hate crimes (Austria);

94.85. Ensure training for police officers, prosecutors and judges in order to ensure that they can recognize, investigate and prosecute hate crimes (Canada);

Papua New Guinea

79. The following recommendations will be examined by Papua New Guinea which will provide responses in due time, but no later than the 18th session of the Human Rights Council in September 2011:

52. Decriminalize sexual relations between consenting adults of the same sex (Slovenia);

53. Decriminalize sexual relations between consenting adults of the same sex (France);

54. Amend national legislation to include "sexual orientation" and "gender" as prohibited grounds for discrimination (United Kingdom).