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**ADDRESSING HUMAN RIGHTS VIOLATIONS BASED ON
SEXUAL ORIENTATION & GENDER IDENTITY AT THE
21st SESSION OF THE HUMAN RIGHTS COUNCIL**

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There are a number of opportunities to raise awareness of human rights violations based on sexual orientation and gender identity at the upcoming 21st 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.**

The Russian resolution on **traditional values** continues to be of concern, and there will be an interactive dialogue under **item 5** with the **HRC Advisory Committee**, which is preparing a report on the issue.

Two **side-events** of interest include an event on **LGBT issues on Friday, 14 September**, and one on **traditional values on Wednesday, 19 September**.

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 14 States under review.

Summary and Overview:

Opportunities to raise awareness of human rights violations based on sexual orientation and gender identity at the 21st session of the Human Rights Council include:

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

The High Commissioner has played an active role in calling for an end to violence, discrimination and criminalisation based on sexual orientation and gender identity over recent months. As part of an anti-discrimination campaign, the OHCHR has committed to working with States, national human rights institutions and civil society to achieve progress towards the worldwide decriminalization of homosexuality and further measures to protect people from violence and discrimination on grounds of their sexual orientation or gender identity. The OHCHR produced a video for the International Day against Homophobia (May 17). In December 2011 the OHCHR published a report on violence and related human rights

violations based on sexual orientation and gender identity, as requested by HRC resolution 17/19. More information can be found at:
<http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>.

In addition, the High Commissioner's Annual Report brings specific attention to the work of her Office in addressing human rights violations based on sexual orientation and gender identity.

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 HRC resolution on human rights, 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;
- commend the High Commissioner for her support of the issues at the HRC, including her report (A/HRC/19/41) on *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity* and her contribution to the panel at the 19th session of the HRC, and encourage the OHCHR to explore opportunities for follow-up activities to raise awareness of the issues;
- welcome the attention in the High Commissioner's Annual Report to fighting discrimination against marginalised groups, including on grounds of sexual orientation and gender identity, and encourage the High Commissioner to continue to integrate the issues throughout the work of her Office, including at the field level.

➤ **Reports to the Council**

Several 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 Secretary-General** expressed concern about the continued use of the **death penalty** in violation of international safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the use of the death penalty for crimes which could not be considered as "most serious crimes" and its use against members of vulnerable groups including sexual minorities.
- **The Special Rapporteur on water and sanitation** noted that "the use of public bathrooms, which are often sex-segregated, has been associated with exclusion, denial of access, verbal harassment, physical abuse and sometimes even the arrest of transgender and intersex individuals.
- **The Special Rapporteur on contemporary forms of slavery** discussed the "root causes of servile marriage, which include strengthening family links, preventing unsuitable relationships, protecting perceived cultural and religious ideals, protecting family honour and controlling female behaviour and sexuality".

Other reports also addressed issues pertaining to human rights violations justified by cultural, religious or traditional values:

- **The Special Rapporteur on the rights of indigenous peoples** suggested that "indigenous peoples must challenge and combat any existing patriarchal social structures, continued attitudes of superiority of men over women and supposed justifications based on culture for battering or discriminating against women".
- **The Commission of Inquiry on the situation in the Syrian Arab Republic** observed that "there are difficulties in collecting evidence in cases of sexual assault in Syria due to cultural, social and religious beliefs surround marriage and sexuality"

and that there were “serious consequences for female victims”. For example, a female rape victim was subsequently killed by her brother-in-law to “preserve the honour of the family”.

Relevant State interventions might:

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

➤ **General statements – item 3, 4, 5 & 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 Human Rights Council panel debate on human rights, sexual orientation and gender identity (HRC19), look forward to working with States from all regions in building on the outcomes of 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.

In addition, there will be opportunity for interactive dialogue under **item 5** with the HRC Advisory Committee, which is preparing a report on **traditional values**, which includes substantial critique of the whole concept.

➤ **Resolutions: traditional values**

It is a matter of significant concern that Russia has announced its intention to proceed with yet another resolution on traditional values, this time focusing on “best practices” in an attempt to position “traditional values” as inherently positive. Approaches to the resolution might focus on the fact that it is inappropriate to present a new resolution before the Advisory Committee has finalised the report on the same subject it was tasked to prepare by the HRC, that one cannot focus on only positive aspects of traditional values without also considering their potential harmful impact, and that the HRC should instead focus on implementing universal human rights standards in diverse cultural and traditional contexts.

➤ **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:

- **Tunisia accepted a recommendation** to “put in place a comprehensive strategy to eliminate patriarchal attitudes and negative stereotypes of women in the Tunisian society as well as eliminate discrimination against women that still exists in the national legislation”, and **is expected to respond** to a recommendation to “abolish legislation discriminating on the basis of sexual orientation, in order to guarantee the same rights to all citizens, including LGBT persons”.
- **Indonesia is expected to respond** to a recommendation to “eliminate the legislation which criminalises sexual relations among persons of the same sex, as well as all legislation which discriminates on the basis of sexual orientation”.
- **Finland is expected to respond** to a recommendation to “increase its efforts in the field of discrimination on grounds of sexual orientation and gender identity”.
- **India is expected to respond** to a recommendation to “take measures to address violence and discrimination directed towards persons based on their sexual orientation”.
- **The Philippines is expected to respond** to a recommendation to “consider establishing a comprehensive legislation to combat discrimination faced by LGBT people”.
- **Algeria is expected to respond** to a recommendation to “eliminate legislation criminalising sexual relations between persons of the same sex, as well as discriminatory legislation on the ground of sex and guarantee the right to the protection of privacy to all persons”.
- **Poland is expected to respond** to recommendations to “guarantee the full enjoyment of the rights of the LGBT community”; “recognize gender identity as possible ground for discrimination and gender identity and sexual orientation as an aggravating circumstance for hate crime”; “adopt regulations recognising the rights of same-sex couples and of self-defined gender or transgender persons”; “strengthen anti-discrimination laws with regard to a better protection of LGBT persons and persons with disabilities”, and; “institute outreach by police and law enforcement to LGBT persons and communities to increase reporting of hate crimes”.
- **South Africa is expected to respond** to a number of recommendations to combat discrimination and violence based on sexual orientation and gender identity, including through awareness-raising for police and other law enforcement officials, and to ensure that victims of violence and discrimination receive support.

➤ Side events

Two side-events of interest include:

- A side event on **LGBT Rights**, featuring **human rights defenders from diverse regions**, on **Friday, 14 September, from 12-2 p.m. in Room XXVII**; and
- A side event titled “**Traditional values and human rights: an oxymoron?**”, on **Wednesday, 19 September, from 12-2 p.m. in Room XVI**. Among other speakers, this will include human rights defenders from Russia.

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

[A/HRC/21/20 - Progress report on the implementation of the World Programme for Human Rights Education - Report of the United Nations High Commissioner for Human Rights](#)

II. National initiatives reported by Governments and national human rights institutions

F. Military

53. The Ministry of Defence of Serbia has trained its officials and those of the army on the national security and defence strategies, both of which stress the observance of human rights. It has also held trainings on gender perspective in security sector reform and prohibiting discrimination of the lesbian, gay, bisexual and transgender population.

[A/HRC/21/22 - Technical guidance on the application of a human rights based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality - Report of the Office of the United Nations High Commissioner for Human Rights](#)

B. Example of identified problem: adolescent girls are suffering from disproportionately high rates of maternal morbidity and death

59. The first step is to analyse not only why adolescent girls suffer from high rates of maternal morbidity and death, but also why they are becoming pregnant. A human rights-based approach defines the problem and addresses it in terms of both the immediate and underlying causes of maternal mortality and morbidity, given that they determine the possibilities for resolving concrete problems at the local level. Amidst many other factors, adolescent pregnancy might be due to a lack of comprehensive sexuality education; gender norms that reinforce early pregnancy; early marriage; high levels of sexual violence and/or transactional sex; a lack of youth-friendly health services; lack of affordable and accessible contraception; or a combination of the above. Disproportionately high rates of morbidity and death may be attributable to, inter alia, late arrival at health facilities or failure to seek care for any of the reasons noted in the example above. Among adolescents, there might also be a disproportionately high rate of self-induced abortion and fear of criminal sanctions; a marked lack of awareness relating to obstetric alarm signals; perceived and actual insensitivity to youth in facilities; or a combination of the above.

[A/HRC/21/27 - The incompatibility between democracy and racism - Report of the United Nations High Commissioner for Human Rights](#)

Romania

[Original: English] [27 April 2012]

39. Romania reported that the constitutional prohibition of racial discrimination was complemented by Government Ordinance No. 137/2000 on preventing and punishing all forms of discrimination. Additionally, incitement to discrimination was criminalized and the law allowed judicial authorities to consider racial motivation for a crime as an aggravating factor in sentencing. Emergency Ordinance No. 31, adopted in 2002, prohibited organizations and symbols with fascist, racist or xenophobic character or policies. By the same token, the Audiovisual Law No. 504/2002 prohibited broadcasting programmes, which contained any form of incitement to hatred on grounds of race, religion, nationality, gender or sexual orientation. The Government of Romania annually allocated funds in support of inter-ethnic projects aimed at combating intolerance and had supported awareness-raising initiatives through the Department for Inter-ethnic Relations.

Spain

[Original: Spanish] [27 April 2012]

51. In its submission, Spain reported that its Constitution protected equality as a right and supreme value under the legal system and required all public institutions to eliminate all obstacles to the full enjoyment of equality and freedom. The constitutional protection was further strengthened by the human rights plan adopted in December 2008, which established measures to prevent any form of discrimination on the grounds of religion, disability, age, sex, sexual orientation, racial origin or other reasons. The Penal Code regulated crimes committed on the grounds of discrimination and required that discriminatory motives for a crime should be considered an aggravating factor in considering the penal value of any crime. The Government had established specialized prosecutorial offices in Barcelona, Madrid, Malaga and Valencia to

deal with hate crimes. Spain also reported that it endorsed the recommendations of the Council of Europe and European Union Agency for Fundamental Rights regarding raising the awareness of the populace as a cornerstone of the strategy to address racism and discrimination in political and social circles.

52. In order to ensure real equality and diversity, the Government had adopted a quadrennial strategic plan aiming at addressing racism, racial discrimination and xenophobia especially considering the changes in Spanish society due to the influx of migrants. The first two plans covering the periods 2007–2010 and 2011–2014, respectively, included a management plan for diversity encouraging organizations to adopt a diversity charter to demonstrate their commitment to promoting diversity and to establish “etiquettes and labels of diversity” and prizes to recognize and honour those promoting those values. Several programmes had been developed by the Government to create awareness and promote intercultural education, including, “Schools without racism, schools for peace and development”, in which over 263 Spanish schools had participated. Spain noted that the most effective measures in preventing or combating racism included encouraging public authorities to provide real protection to victims, undertake special activities and promote public awareness.

Sweden

[Original: English] [20 April 2012]

53. Sweden reported that its Anti-Discrimination Act provided legal protection against discrimination on the grounds of sex, ethnic origin, religion or other belief, disability, sexual orientation, age and transgender identity or expression. The Swedish Penal Code criminalized discrimination and required that discriminatory motives should be considered an aggravating factor in assessing the penal value of a crime.

[A/HRC/21/29 - Question of the death penalty - Report of the Secretary-General](#)

Summary

The present report contains information mostly covering the period from July 2011 to June 2012. Although the international community as a whole is moving towards abolition of the death penalty in law or in practice, some Member States have continued to use the death penalty during the reporting period. In some instances, international standards guaranteeing the protection of the rights of those facing the death penalty were not fully respected. In this regard, the report draws attention to a number of phenomena, including the ongoing difficulties in gaining access to reliable information regarding executions, the continued use of the death penalty in violation of international safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the use of the death penalty for crimes, such as drug offences, which could not be considered as “most serious crimes”, and its use against children under 18 at the time of the alleged offence and members of vulnerable groups, in particular individuals belonging to racial, religious, national, ethnic and sexual minorities. Attention is drawn to the forthcoming report of the Secretary-General to the General Assembly on moratorium on the use of the death penalty, which will highlight, inter alia, national and international efforts made towards the universal abolition of the death penalty.

IV. Application of the safeguards guaranteeing protection of the rights of those facing the death penalty

A. Restriction of use of the death penalty to “most serious crimes”

28. The use of the death penalty for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults that may not constitute “most serious crimes” under international human rights law is also a particular concern. For instance, in February 2012, a district court in Pakistan confirmed the death sentence of a Pakistani national, who is resident in the United States of America, for blasphemy crimes under its penal law.

C. Discrimination in the imposition of the death penalty

58. The High Commissioner for Human Rights reported that, in at least five countries, the death penalty may be applied to sexual minorities, in particular those found guilty of offences relating to consensual, adult homosexual conduct (A/HRC/19/41, para. 45). In November 2011, the Human Rights Committee expressed concern that members of the lesbian, gay, bisexual, and transgender community in the Islamic Republic of Iran face harassment, persecution, cruel punishment and even the death penalty (CCPR/C/IRN/CO/3). The country’s new Islamic Penal Code, adopted in January 2012, provides for the death sentence for sodomy (art. 235) and for the non-Muslim party in same-sex relations not involving penetration (art. 233). In Liberia, in February 2012, a bill was reportedly tabled to amend section 2.3 of the Domestic Relations Law to prohibit same-sex relations and make such relations publishable by penalties ranging from one year’s imprisonment to death.

VI. Conclusions and recommendations

62. Some States, however, still retain the death penalty in law. A smaller number thereof continue to impose it, and thousands of individuals are still executed each year. In some cases, children under 18 at the time of the alleged offence and individuals belonging to vulnerable groups, including racial, national, religious, ethnic and sexual minorities, are executed in violation of international human rights law.

[A/HRC/21/41 - Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences - Thematic report on servile marriage](#)

IV. International legal framework on servile marriage

C. International human rights mechanisms

35. In its general recommendation No. 24, the Committee on the Elimination of All Forms of Discrimination against Women specifically recommends that States parties enact and effectively enforce laws that prohibit the marriage of girls. In its general recommendation No. 21, the Committee recognizes that forced marriage may exist as a result of cultural or religious beliefs, but maintains that a woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being and that this must be protected and enforced by law.

36. In its general comment No. 4, the Committee on the Rights of the Child strongly urges States parties to develop and implement legislation aimed at changing prevailing attitudes, and address gender roles and stereotypes that contribute to harmful traditional practices. It also calls upon States parties to protect adolescents from all harmful traditional practices, such as early marriage, and recommends that they review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

V. Root causes of servile marriage

42. In the present section, the Special Rapporteur discusses the root causes of servile marriage, which include strengthening family links, preventing unsuitable relationships, protecting perceived cultural and religious ideals, protecting family honour and controlling female behaviour and sexuality.

A. Gender inequality

43. The leading cause of servile marriage is gender inequality, where girls and women are perceived, because of cultural or religious beliefs, to be commodities unable to make proper decisions about who and when to marry. Girls and women are forced to become brides because it is easier to control them and, in the case of girls, their virginity can be guaranteed and they have longer reproductive periods in which to produce more children.

44. Gender inequality also contributes to servile marriage through its impact on formal legal systems. Although a woman's right to choose if, when and whom to marry is recognized in international human rights law, and although the Committee on the Elimination of All Forms of Discrimination against Women and the Committee on the Rights of the Child and other treaty bodies state that the minimum age of marriage should be 18 years, several countries with high rates of early marriage also have unequal laws of consent for boys and girls. Such laws reinforce and legalize the idea that marriage is suitable for girls earlier than for boys. Patriarchal laws and practices give women and girls less negotiating power around marriage and sexual and reproductive health and rights.

[A/HRC/21/42 - Report of the Special Rapporteur on the human right to safe drinking water and sanitation - Stigma and the realization of the human rights to water and sanitation](#)

II. Understanding stigma and its drivers

12. Stigma relates closely to power and inequality, and those with power can deploy it at will. Stigma can broadly be understood as a process of dehumanizing, degrading, discrediting and devaluing people in certain population groups, often based on a feeling of disgust. Put differently, there is a perception that the person with the stigma is not quite human. Stigma attaches itself to an attribute, quality or identity that is regarded as "inferior" or "abnormal". Stigma is based on a socially constructed "us" and "them" serving to confirm the "normalcy" of the majority through the devaluation of the "other".

13. What is considered “abnormal” changes over time and place, while the targets of stigma are always those who do not fit the social norm. In some instances, stigma is attached to a person’s social identity, especially in relation to one’s gender or gender identity, sexual orientation, caste or race. Many ethnic groups experience very pronounced stigma. Stigma is also a common reaction to health conditions such as HIV/AIDS and some forms of disabilities. The Committee on Economic, Social and Cultural Rights explicitly calls on States to “adopt measures to address widespread stigmatization of persons on the basis of their health status, such as mental illness, diseases such as leprosy and women who have suffered obstetric fistula”. Indeed, stigma is often closely linked to the body as a site of the “normal” and the “different” and as a vehicle of contagion, especially in terms of sexuality and disease. Furthermore, stigma is frequently attached to activities that are considered “immoral”, “detrimental to society” or “dirty”, affecting, for instance, sex workers, sanitation workers, prisoners and homeless people.

20. Stigma also has its drivers at the societal level with, for instance, the media contributing to spreading prejudices and stereotypes. It is also driven by deeply entrenched cultural beliefs relating, for instance, to gender, sexuality, health and descent. Caste systems are striking examples of systems that lead to the stigmatization of large parts of the population, potentially amounting to violations of human rights.

IV. Manifestations of stigma

E. Threats to privacy and security

40. A report of the United Nations High Commissioner for Human Rights on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity has highlighted that homophobic and transphobic violence may be physical or psychological, and that those attacks “constitute a form of gender-based violence, driven by a desire to punish those seen as defying gender norms” (A/HRC/19/41, para. 20). While the human rights concerns are much broader, in relation to water and sanitation specifically, the use of public bathrooms, which are often sex-segregated, has been associated with exclusion, denial of access, verbal harassment, physical abuse and sometimes even the arrest of transgender and intersex individuals. More broadly, they are at risk of exposure, violence and harassment in seeking access to services such as water and sanitation when those are in common areas, or where privacy is unavailable or compromised.

F. Criminalization

41. Stigma often finds its way into legislative and policy frameworks mirroring societal attitudes and prejudices. In many countries, stigmatization is reflected in the criminalization of work-related activities and practices or the lack of legal protection. For instance, the lack of protection creates a climate of impunity, invisibility and silence and violence against sex workers. They are often forced to work in unsafe environments, including in the outskirts of cities, with no access to services.

V. Situating stigma in the human rights framework

C. Non-discrimination and equality

48. The right to be free from discrimination in the exercise of human rights, including the rights to water and sanitation, is paramount and cross-cutting under international human rights law. Non-discrimination and equality are central to all core international human rights treaties. They include extensive provisions to protect against discrimination and ensure equality, covering in particular racial discrimination, as well as the situation of children, women, and persons with disabilities.

49. Discrimination is defined as constituting “any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights”.

50. In terms of prohibited grounds of discrimination, the International Covenants on Human Rights list race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The term “other status” indicates that these lists are not exhaustive. The treaty bodies have sought to elucidate the term, finding that it encompasses, inter alia, disability, age, sexual orientation and gender identity, health status, place of residence, and economic and social situation. These grounds show a significant overlap with groups experiencing stigmatization, highlighting again that stigma often lies at the root of discrimination. Conversely, this relationship also allows for the use of stigma as a marker and for the

consideration of groups who experience stigmatization when interpreting the term “other status”. While it may already be implicit in the treaty bodies’ reasoning, this would, for instance, require the recognition of homelessness as a prohibited ground of discrimination.

51. States have an immediate obligation to guarantee non-discrimination in the exercise of the rights to water and sanitation. They must ensure that laws, policies, programmes and other measures are not discriminatory. When deeply engrained, discrimination is intractable—as is often the case where stigma lies at the root of discriminatory action—and temporary special measures may be required to ensure the redistribution of power and resources. Finally, to address discrimination based on stigma as a deeply entrenched societal phenomenon, States must adopt measures to ensure that private actors do not discriminate on prohibited grounds.

E. Right to privacy

55. According to article 17 of the International Covenant on Civil and Political Rights, “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”. It guarantees the respect for the individual existence and autonomy of the human being. The right to privacy includes the right to be different. Human rights law awards the same protection to the honour and reputation of, for example, homeless people, sex workers or prisoners as to that of any other member of society.

56. For many stigmatized individuals, stigma results in a negative impact on their right to privacy when attempting to meet their water and sanitation needs. For instance, homeless people may be forced to urinate and defecate in public, given the inexistence or lack of maintenance of public facilities. During her mission to Slovenia, the Special Rapporteur met with Roma communities who were forced to defecate in the open and bathe in a stream due to the lack of adequate facilities. When doing so they were reportedly chased by the police (A/HRC/18/33/Add.2, para. 35). In these cases, the State directly interferes with people’s privacy, not only by chasing them, but also by not allowing their dwellings to be connected to water supply and sewerage systems due to their alleged “illegal” status. Similar situations can be found in slums all over the world where the alleged “illegal” status of settlements results in people being denied access to facilities that would guarantee their privacy. In South Africa, a case was brought to the court concerning unenclosed toilets built by the municipality, that is, toilets that were erected without the enclosing superstructure that would hide people from view when using them. The Western Cape High Court found, inter alia, a violation of the right to privacy enshrined in article 14 of the South African Constitution.

57. Article 17 of the International Covenant on Civil and Political Rights goes on to guarantee that “everyone has the right to the protection of the law against such interference or attacks”, thus including an explicit guarantee of protection against interference by private parties. This results in a positive obligation of States parties to protect privacy against interference and attacks by others, which has been found to be of particular relevance, for instance, in relation to persons deprived of personal liberty, older persons, persons with disabilities or transgendered persons. This provision is of enormous significance in the context of combatting stigma. It clearly demonstrates that States’ obligations reach into the private sphere. They cannot dismiss stigma as a social phenomenon over which States have no influence. Instead, they have positive obligations that extend into this realm, requiring States, for instance, to take measures that enable women and girls to manage their menstrual hygiene needs in a manner that protects their privacy and dignity.

VI. Identifying appropriate strategies for prevention and response

A. Participation and empowerment

60. Meaningful participation of stigmatized individuals in crafting measures to combat stigma in relation to water and sanitation is absolutely essential. In order to ensure meaningful participation States must guarantee access to information in relevant languages and formats and targeted to different ages and population groups. For example, since stigma relating to some diseases is often reinforced by a lack of scientific information on ways to prevent, treat or transmit diseases, a critical aspect is to run public health campaigns and ensure that all individuals can seek and receive accurate and trustworthy information. Empowerment should be the key strategy, with those experiencing stigma having space to combat prejudices and discrimination.

61. In the context of sex workers, the Durbar Mahila Samanwaya Committee, a grassroots sex workers’ collective in India, began organizing self-regulatory boards made up of its staff, doctors, advocates, national

human rights commissioners, local politicians and officials, and sex workers themselves in a number of red-light districts. Their objectives included mitigating violence against sex workers, but also brought about improvements in access to water and sanitation.

B. Awareness-raising to break taboos and challenge stereotypes

64. Silence is a major component of stigma. The first step is to speak openly about what seems “unpleasant” or “unmentionable” or deviates from dominant public opinion, and to recognize the stigma attached—be it obstetric fistula, homelessness, intersexuality, menstrual hygiene or another issue. Stigma is often based on ignorance, fears and misconceptions that can be tackled through awareness-raising. The voice of the stigmatized must be amplified, and their space must be broadened to clearly articulate their needs and rights.

65. Probably the greatest challenge in combatting stigma is the fact that it is deeply entrenched in sociocultural norms and attitudes. Tackling it requires raising awareness of stigmatizing practices that are pursued under the umbrella of culture, religion and tradition. The interpretations of culture on which such practices are based are neither immutable nor homogenous and must therefore be challenged, including by questioning the legitimacy of those who perpetuate stigmatizing practices in the name of culture and uncovering the underlying power dynamics (E/CN.4/2006/61, para. 85).

[A/HRC/21/47 - Report of the Special Rapporteur on the rights of indigenous peoples](#)

III. Violence against indigenous women and girls

C. Essential element of the holistic approach: advancing indigenous peoples’ self-determination

33. [T]here is a need for indigenous peoples themselves to continue to strengthen their own organizational and local governance capacity, and their own justice institutions, to meet the challenges faced by their communities. Indigenous peoples have a responsibility to work to rebuild strong and healthy relationships within their families and communities, and to take concerted measures to address social ills where these exist. Within their households, their communities and the broader people of which they are a part, indigenous peoples must challenge and combat any existing patriarchal social structures, continued attitudes of superiority of men over women and supposed justifications based on culture for battering or discriminating against women. In this connection, indigenous peoples must make concerted efforts to strengthen their own traditional justice systems, where these fall short of providing effective remedies to punish and prevent violence against indigenous women and girls in accordance with relevant human rights standards.

[A/HRC/21/50 - Updated report on the work of the Commission of Inquiry on the situation in the Syrian Arab Republic](#)

Annex IX

Sexual violence

I. Government forces and Shabbiha

[English only]

1. The commission conducted 43 interviews detailing incidents of sexual violence — against men, women and children — committed by Government forces and Shabbiha since February 2012. These interviews included two female and three male victims of rape. Also interviewed were five eyewitnesses of rape (one of whom was also a victim). Additionally, seven of those interviewed were former members of the army, now defected, who stated that rapes and other forms of sexual assault, committed by soldiers and Shabbiha, took place during the Government forces’ ground operations as described below.

2. There are difficulties in collecting evidence in cases of sexual violence in Syria due to cultural, social and religious beliefs surrounding marriage and sexuality. Victims’ reluctance to disclose information stem from the trauma, shame and stigma linked to sexual assault. There are also serious consequences for female victims’ lives and marriages. In one incident, the commission was informed that a female rape victim was subsequently killed by her brother-in-law to “preserve the honour of the family”. Another interviewee stated another female rape victim had later killed herself. Several interviewees stated that female rape victims had been abandoned by their husbands and consequently struggled to survive. All victims and/or members of their families interviewed suffered psychological trauma. Many broke down during the interview.

3. The fear of rape and sexual assault also restricted the freedom of movement of women and young girls. Many of the women interviewed sought refuge in neighbouring countries in part because they feared sexual assault.

[A/HRC/21/51 - Report of the nineteenth annual meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Human Rights Council \(Geneva, 11-15 June 2012\) - Note by the United Nations High Commissioner for Human Rights](#)

VII. Consultations with stakeholders

C. Civil society and non-governmental organizations

51. The organizations expressed gratitude for the commitment of mandate holders to confront cases of reprisal, and encouraged them to speak up, in consultation with the victims and families of victims. It was suggested that the Manual of Operations of the Special Procedures be revised to include a section on reprisals, while mandate holders stated that mechanisms for protection against reprisal were crucial as reprisal should be dealt with more systematically by the Human Rights Council, which should react automatically and immediately in this context. The contribution of the special procedures to highlighting specific and sensitive human rights issues, including sexual orientation and gender identity, was acknowledged. The organizations drew attention to the upcoming high-level debate on the rule of law to be convened by the General Assembly in the latter half of 2012, and encouraged the mandate holders to make collective and individual contributions to it. The Chairperson indicated that mandate holders would prepare a joint statement in the lead-up to the high-level debate.

[A/HRC/AC/9/2 - Preliminary study on traditional values \(A/HRC/21/27 - deferred to HRC 22\)](#)

III. Relationship between traditional values and human rights

A. Roots of universal human rights in diverse traditional and cultural contexts

38. Explaining international human rights principles in ways that resonate in diverse cultures and traditions may assist in promoting respect for human rights. For example, during a panel discussion at the Human Rights Council on the theme “discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity”, the Ambassador of South Africa, as moderator of the panel, invoked the doctrine of Ubuntu: What Ubuntu essentially says is, “I am because you are”. And in that, it conveys that we are all linked in our common humanity, and therefore we have a responsibility to protect each other according to the basic principles that in fact underlie our concepts of human rights.

43. It is important to note that those who challenge gender roles reinforced by values said to be traditional, cultural or religious are particularly subject to violence and abuse of human rights. In a report on human rights defenders working on gender-related issues, the Special Rapporteur on human rights defenders noted that women defenders were more at risk of suffering certain forms of violence and other violations, prejudice, exclusion and repudiation than their male counterparts, owing to the fact that women defenders were perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation and the role and status of women in society.

45. During the universal periodic review, one Government noted that “deeply rooted religious, cultural and moral values” were the primary obstacle to the recognition of the human rights of lesbian, gay and bisexual people in its country.

IV. Promotion and protection of human rights through traditional values

B. Social institutions and the transmission of values

61. The institutions that form the context within which an individual lives his or her life socialize a person and mould his or her values. At the same time, it has been noted that these institutions can transmit positive values consistent with international human rights, but may also be sites for the transmission of negative values that undermine human rights. For example, in her report on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity and submitted to the Human Rights Council pursuant to its resolution 17/19, the United Nations High Commissioner for Human Rights noted that, while families and communities are often an important source of support, discriminatory attitudes within families and communities can also inhibit the ability of LGBT people to enjoy the full range of human rights. “Such discrimination manifests itself in various ways, including through individuals being

excluded from family homes, disinherited, prevented from going to school, sent to psychiatric institutions, forced to marry, forced to relinquish children, punished for activist work and subjected to attacks on personal reputation”.

[A/HRC/21/60/Add.1 - Report of the Working Group on People of African Descent on its eleventh session, Addendum - Mission to Portugal](#)

II. Context of people of African descent in Portugal

B. Framework for the protection of the human rights of people of African descent

2. The national policy and legal framework

19. In Portugal's legal regime, racism and its prohibition are referred to in article 13 of the Constitution, article 240 of the Criminal Code, Law 134/99 and Law 18/2004. Article 13.2 of the Constitution states that “no one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation”. Article 240 of the Criminal Code prohibits racist organizations, incitement to discrimination or racist violence, racial vilification and making racist threats. Law 134/99 on the Prohibition of Discrimination in the Exercise of Rights due to Motives based on Race, Colour, Nationality or Ethnic Origin covers direct and indirect discrimination. According to this law, racial discrimination includes any distinction, exclusion, restriction or preference based on race, colour, descent, nationality or ethnic origin which results in annulling or restricting the recognition or exercise of a person's economic, social and cultural rights. Law 134/99 establishes the CICDR to assist with the law's implementation. Law 18/2004 makes racial discrimination an administrative offence as well which is actionable by the relevant Inspector General.

[A/HRC/21/60/Add.2 Report of the Working Group on People of African Descent on its eleventh session, Addendum - Draft Programme of Action for the Decade for People of African Descent](#)

V. Priority areas for the Decade for People of African Descent

D. Multiple forms of discrimination

41. States should adopt and implement laws, policies and programmes which provide effective protection for and review and repeal all policies and laws that could negatively affect people of African descent facing multiple or aggravated forms of discrimination based on related grounds, such as sex, language, religion, political or other opinion, social origin, property, birth or other status deriving from the Durban Declaration and Programme of Action (see paragraph 2 of the Declaration). States should pay particular attention to:

(d) Implementing mass media and information campaigns to eliminate racist and sexist stereotypes and prejudices against women of African descent. Human rights education and specific gender and equality issues must be incorporated into training for law enforcement officials, the media and health and education personnel;

(e) Giving special attention to the health needs and rights of women of African descent, including the right to sexual and reproductive health, trauma treatment and counselling for women in especially difficult circumstances;

[A/HRC/21/65 - Summary of the Human Rights Council panel discussion on the theme of remedies for women subjected to violence - Report of the Office of the United Nations High Commissioner for Human Rights](#)

III. Panel II: Protecting women human rights defenders

A. Opening statements

25. The panel was opened by Mona Rishmawi, Chief of the Rule of Law, Equality and Non-Discrimination Branch, on behalf of the Deputy High Commissioner for Human Rights, Kyung-wha Kang. In her opening remarks, Ms. Rishmawi stressed that the role and contribution of women human rights defenders was fully recognized by the international community, and that the specific risks and threats faced by women human rights defenders were well documented. She highlighted that women human rights defenders were subjected to the same risks as their male counterparts but that they were subjected to additional risks and threats due to their sex and the transgression of gender norms. However, protection mechanisms for human rights defenders did not respond to the specific needs of women human rights defenders in appropriate ways. Other

obstacles highlighted in the statement included persistent gender stereotypes on the role of women human rights defenders in the public and private spheres and the existence of linkages between perpetrators and those in power. Ms. Rishmawi referred to various OHCHR activities aimed at ensuring support to and, where needed, also protection for, women human rights defenders.

B. Gender aspect of violence against human rights defenders

27. The Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, defined the threats and risks faced by women human rights defenders. She pointed out that both women and men human rights defenders faced the same risks but that, in addition, women were exposed to gender-specific risks, ranging from verbal abuse based on their gender to sexual violence, and that those forms of threats were particularly common in conflict situations. Ms. Sekaggya drew attention to the stigmatization of women human rights defenders, who were often perceived in their communities as challenging accepted social, cultural and religious norms as well as patriarchal systems that perpetuated harmful gender stereotypes. Globalization policies had also contributed to the targeting of women who advocated for the rights of minorities, indigenous peoples, lesbian, gay, bi- sexual and transgender persons, and reproductive rights. She emphasized the link between militarization and an increase in sexual violence against women human rights defenders, especially in times of conflict. Ms. Sekaggya noted that the threats faced by women human rights defenders had multiple sources and stemmed primarily from social, cultural and religious norms, the effects of globalization and the militarization of society, especially in times of war.

28. In her intervention, Sunila Abeysekera, a member of the Executive Committee of the International Coalition of Women Human Rights Defenders, highlighted the ways in which women human rights defenders were targeted, as well as the root causes of those threats. Ms. Abeysekera noted that the violations experienced by women human rights defenders related to civil, political, economic, social and cultural rights. She added that those violations took place both in the private and public spheres and in all situations and were perpetrated by both State and non-State actors, including family members, private companies, transnational corporations and mercenaries. She reported that certain groups of women human rights defenders were increasingly vulnerable to attacks. Those women included those who defended the right of peoples to land, water and a clean environment; women who defended reproductive rights and rights relating to sexuality; women who advocated for equality and non-discrimination for non-normative individuals and communities; women who organized and mobilized communities; and women living in societies in transition. Ms. Abeysekera stressed that the context in which violations took place was as important as the nature of the violations. Those contexts included the existing societal framework of patriarchy and hetero-normativity, which justified violence against women and allowed violence to be perpetrated against women with impunity, alongside religious fundamentalism, extreme nationalist politics, the deterioration of democratic norms, the current global economic crisis, and the militarization of society and conflicts in every part of the world. Those contexts limited the capacity of women to promote and defend human rights.

[A/HRC/21/66 - Final paper on human rights and international solidarity prepared by Chen Shiqiu on behalf of the drafting group on human rights and international solidarity of the Human Rights Council Advisory Committee](#)

II. Definition and scope

7. The right to solidarity is a human right by virtue of which every human person and all peoples are entitled to enjoy equally the benefit of a harmonious international society with a just and fair international political and economic order, in which all human rights and fundamental freedoms may be fully realized.

8. All peoples and human beings, without distinction as to race, colour, sex, sexual orientation, language, religion, nationality, ethnic origin, family, economic or social status, level of education or political or other conviction, should have the right to live in dignity and freedom and to enjoy the right to international solidarity and should, on their part, contribute to it.

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

Bahrain

There were no references to sexual orientation or gender identity during the Working Group review of Bahrain.

Ecuador

A. Presentation by the State under review

24. Regarding discrimination on the grounds of sexual and gender identity (recommendation 7), Ecuador implements measures to combat violations of the human rights in respect of gay, lesbian, bisexual, transsexual, transgender and transvestite community.

B. Interactive dialogue and responses by the State under review

49. El Salvador took note of the efforts made in establishing democratic institutions and achievements in public policies. It congratulated Ecuador for the changes in the Constitution and legislation, such as the inclusion of the African-descendent collective rights, as well as the programs to address discrimination based on sexual orientation.

50. Estonia noted positive changes since 2008 and welcomed legal provisions to prevent discrimination based on sexual orientation and gender identity. Estonia observed that independence of the judiciary still remained a challenge and expressed concern by some policies in the area of freedom of the press. Estonia made a recommendation.

112. The United Kingdom of Great Britain and Northern Ireland stated that the social policies had led to improvements in areas such as education; health and the rights of ethnic, sexual minorities and elderly. It recognized efforts made in the prosecution of past human rights violations. It noted concerns raised by NGOs regarding potential restrictions on freedom of expression.

Tunisia

B. Interactive dialogue and responses by the State under review

40. Regarding the de-criminalization of homosexuality, Tunisia stated that it would be possible to conduct an objective and transparent national dialogue on the subject. However, it was not ready at this stage to adopt a decision

42. Tunisia further stated that the National Constitutional Assembly would uphold Tunisia's international obligations regarding respect for human rights and gender equality, and that the religious and cultural authorities in the country would not work against its international undertakings.

II. Conclusions and/or recommendations

114. The recommendations formulated during the interactive dialogue/listed below enjoy the support of Tunisia:

114.1. Put in place a comprehensive strategy to eliminate patriarchal attitudes and negative stereotypes of women in the Tunisian society as well as eliminate discrimination against women that still exists in the national legislation, in particular concerning marriage, child custody, guardianship, as well as effective and equal access to justice (Poland 1); Put in place a broad strategy to eliminate patriarchal attitudes and stereotypes that discriminate against women in conformity with Articles 2 (f) and 5 (a) of CEDAW (Uruguay);

116. The following recommendations will be examined by Tunisia which will provide responses in due time, but no later than the 21st session of the Human Rights Council in September 2012:

116.5. Abolish legislation discriminating on the basis of sexual orientation, in order to guarantee the same rights to all citizens, including LGBT persons (Spain);

117. The recommendations below did not enjoy the support of Tunisia, which considers that the recommendations below cannot be accepted.

117.1. Eliminate any legislation criminalizing same-sex relations (Spain);

117.2. Modify or repeal Article 230 of the Penal Code in order to decriminalize same-sex relations of consenting adults (Austria);

Morocco

There were no references to sexual orientation or gender identity during the Working Group review of Morocco.

Indonesia

B. Interactive dialogue and responses by the State under review

36. Switzerland expressed concern about acts of intolerance and discrimination perpetrated against religious and ethnical minorities or against people for their sexual orientation or gender identity.

II. Conclusions and/or recommendations

109. The following recommendations will be examined by Indonesia which will provide responses in due time, but no later than the 21st session of the Human Rights Council in September 2012.

109.20. Eliminate the legislation which criminalizes sexual relations among persons of the same sex, as well as all legislation which discriminates on the basis of sexual orientation, particularly in the Aceh province, where since the establishment of the Sharia Law in 2002 these kind of relations are not allowed (Spain);

Finland

A. Presentation by the State under review

16. The delegation reassured Finland's commitment to full and effective implementation of the 1951 Geneva Convention related to the status of refugees and to respecting the principle of non-refoulement. When assessing the reasons for persecution, the Finnish Immigration Service took into account, inter alia, certain factors, such as sexual orientation. According to the recent decision of the Supreme Administrative Court, asylum cannot be denied even if the person could have avoided persecution in his home country by hiding his sexual orientation.

B. Interactive dialogue and responses by the State under review

47. With regard to combating bullying and discrimination in schools, the delegation said that Finland had launched an anti-bullying programme with the participation of over 90 per cent of schools. An evaluation of the programme indicated that it had significantly reduced bullying and victimization, including verbal, physical and cyber bullying, with 98 per cent of victims reporting that their situation had improved. Furthermore, a positive effect on academic achievement and motivation levels had been recorded. The programme had won the European Crime Prevention Award in 2009.

71. In respect to discrimination of LGBTI persons, the delegation acknowledged the existing challenges in protection of the rights of this group and that the protection of the rights of LGBTI persons were not visible enough in Finland. In addition to the ongoing reform of the legislation, the Ombudsman for Equality has increasingly been called upon to address the protection of the sexual and gender minorities. The delegation assured its commitment to work closely with the LGBTI community and NGOs to address the protection of this minority.

79. Guatemala welcomed Finland's programme and policy aimed at the rights of women, children, ethnic and linguistic minorities, indigenous peoples, persons with disabilities, persons with HIV and sexual and gender minorities. Guatemala also congratulated Finland for the ratification of various international instruments and requested information about the steps taken to ratify the ILO Convention no. 169. It praised Finland's efforts to protect the rights of migrants. Guatemala also requested further information on legislation and practices in the area of migration. Guatemala expressed concern over reported high level domestic violence and encouraged Finland to continue its efforts to protect women and children.

II. Conclusions and/or recommendations

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

89.12. Reinforce its efforts, such as the drafted National Action Plan for Reducing Crime, to eliminate the phenomenon of bullying and violence at schools (Slovakia);

90. The following recommendations will be examined by Finland which will provide responses in due time, but no later than the 21st session of the Human Rights Council in September 2012.

90.8. Increase its efforts in the field of discrimination on grounds of sexual orientation and gender identity, inter alia, by review of national legislation and administration with a view to eliminate discrimination against LGBTI people with regard to family and parental rights and the right to security and integrity of the person (Iceland);

90.25. That development aid must not be tied to conditionalities that do not take into account the traditional values of recipient countries (Namibia);

United Kingdom

B. Interactive dialogue and responses by the State under review

72. Responding to Turkey, the United Kingdom said that the Government was fully committed to tackling hate crime as it had no place in a civilised society. The UK had one of the strongest legislative frameworks in the world, including a new offence of stirring up hatred on the grounds of sexual orientation, alongside a cross Government action plan to prevent hate crime happening in the first place. The Welsh Government was currently developing a hate crime framework and the Scottish Government was providing over £9m to organisations and projects working on the ground to help deliver race equality.

II. Conclusions and/or recommendations

110. The following recommendations will be examined by the United Kingdom of Great Britain and Northern Ireland which will provide responses in due time, but no later than the 21st session of the Human Rights Council in September 2012. The response of the United Kingdom of Great Britain and Northern Ireland to these recommendations will be included in the outcome report adopted by the Human Rights Council at its 21st session in September 2012.

110.49. Review national legislation to ensure equality and non-discrimination (Egypt);

110.50. Continue stepping up its efforts in tackling discrimination and inequality for all its citizens (Indonesia);

110.51. Continue efforts to combat discrimination on any ground and violence against women and girls (Cuba);

110.66. Consider strengthening policies to combat discrimination in all areas, notably in employment and education (Morocco);

110.102. Strengthen measures aimed at reducing serious inequalities in access to health, education and employment, which still exist despite the adoption of the Equality Act (Spain);

India

I. Summary of the proceedings of the review process

B. Interactive dialogue and responses by the State under review

47. [The UK welcomed India's commitment to addressing inequality in all forms, and encourages India to continue work in this area. The UK hoped that the Government could formally support the Delhi High Court's 2009 ruling to decriminalise homosexuality.] *Not reflected in the draft report of the Working Group*

64. Brazil welcomed the Right to Education Act and the ruling of the Delhi High Court that the criminalization of homosexuality was a violation of fundamental rights. It welcomed the Protection of Women against sexual Harassment at work place Bill and India's introduction of a constitutional amendment to ensure women's participation in Parliament. Brazil made recommendations.

78. With regard to the protection of LGBT persons, the delegation [of India] stated that Article 15 of the Constitution clearly prohibited discrimination on grounds of religion, race, caste, sex or place of birth. Article 16 provided for equality of opportunity in matters of public employment. The Delhi High Court judgment in 2009 had decriminalized consensual sex between adults of the same sex in private. Transgender persons also had the right to be listed as “other” rather than “male” or “female” on electoral rolls and voter identity cards.

II. Conclusions and/or recommendations

138. The recommendations formulated during the interactive dialogue and listed below will be examined by India who will provide its responses in due time, but no later than the 21st session of the Human Rights Council in September 2012. These responses will be included in the outcome report adopted by the Human Rights Council at its 21st session.

138.2. Intensify the efforts working towards the MDG5, including by withdrawing its reservation to Article 16 in Convention on the Elimination of All Forms of Discrimination against Women, and by ensuring access to information and counselling on SRHR as set out in its National Population Policy (Sweden);

138.89. Study the possibility of eliminating any criminalisation of same sex relations (Argentina);

138.90. Take measures to address violence and discrimination directed towards persons based on their sexual orientation, especially related to employment (Canada);

Brazil

I. Summary of the proceedings of the review process

A. Presentation by the State under review

12. Turning to the sphere of respect for diversity and combat of stigma, Minister Nunes pointed out that Brazil has a vast array of measures covering gender equality, LGBT rights, elimination of racism, religious freedom, protection of human rights defenders, rights of indigenous communities and Roma people, access to justice, dignity of persons deprived of liberty, rights of migrants, the protection of children, older persons and persons with disabilities.

B. Interactive dialogue and responses by the State under review

26. Norway commended Brazil's efforts on poverty reduction, social equality, women's rights, LGBT rights, the Truth Commission and the Law on Access to Public Information. It expressed concern for the situation of indigenous peoples and human rights defenders and perpetrators' impunity. It made recommendations.

77. Colombia commended Brazil for its plan for the rights of people with disabilities, the success of its 'Brazil without Poverty' plan and its combat of all forms of discrimination. It welcomed the 2010 creation of the national LGBT council and its commitment to the MDGs. It made recommendations.

92. Finland welcomed Brazil's efforts to promote the rights of LGBT persons, and noted that the ruling of the Brazilian Supreme Court concerning the constitutionality of same sex unions has been considered very important. It noted that continued reports on homophobic crimes and violence indicate that additional measures are needed and asked what legislative measures and steps being taken to combat these crimes. Finland made recommendations.

108. Minister Nunes highlighted the recognition of same-sex stable unions as family units by the Supreme Federal Court and the National Plan for Promotion of LGBT Citizenship and Human Rights. The Minister, while reaffirming Brazil's commitment to combating homophobic crimes and violence, acknowledged that the challenges are still significant.

II. Conclusions and/or recommendations

119. The following recommendations will be examined by Brazil which will provide responses in due time, but no later than the 21st session of the Human Rights Council in September 2012.

119.127. Protect the natural family and marriage, formed by a husband and a wife, as a basic cell of society as it provides the best conditions for raising children (Holy See).

Philippines

I. Summary of the proceedings of the review process

94. In addition to the pending Anti-Discrimination Bill, the Philippines has embarked on a number of initiatives to protect and promote the rights of Lesbian, Gays, Bisexuals and Transgender.

II. Conclusions and/or recommendations

129. The recommendations formulated during the interactive dialogue/listed below enjoy the support of the Philippines:

129.7. Fully implement the 'Magna Carta' of Women for promoting gender equality (Republic of Korea); Provide more resources to support the effective implementation of the Magna Carta of Women (Malaysia); Effective implementation of the Magna Carta of Women in all fields, inter alia, labour relations, access to justice and sanitation, including aspects of sexual and reproductive health; and sexual violence (Spain);

129.41. Increase its efforts, as a matter of urgency, in addressing high infant and maternal mortality rates, including providing an access to sexual and reproductive health information (Slovakia); Take steps to increase efforts to ensure the rights of individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to the highest attainable standard of sexual and reproductive health (New Zealand);

131. The following recommendations will be examined by the Philippines which will provide responses in due time, but no later than the 21st session of the Human Rights Council in September 2012:

131.30. Consider establishing a comprehensive legislation to combat discrimination faced by LGBT people (Argentina);

131.35. Establish a legal framework in order to help women and men develop knowledge to enable them to decide freely and responsibly on matters related to their sexuality, including their sexual and reproductive health (Norway).

Algeria

I. Summary of the proceedings of the review process

105. Germany noted the measures for better opportunities for young people. It inquired about measures to amend existing legislation to strengthen the rights to freedom of expression, information, association and assembly. It asked for the steps to ensure non-discrimination, including sexual orientation, and the right to privacy. It made recommendations.

II. Conclusions and/or recommendations

129. The following recommendations will be examined by Algeria which will provide responses in due time, but no later than the 21st session of the Human Rights Council in September 2012.

129.107. Eliminate legislation criminalizing sexual relations between persons of the same sex, as well as discriminatory legislation on the ground of sexual orientation (Spain) and guarantee the right to the protection of privacy to all persons and take measures to ensure equality and non-discrimination on all grounds, including sexual orientation, in conformity with articles 17 (1) and 26 of the ICCPR, by revising article 338 of its Penal Code, which criminalizes sexual acts between consenting adults of the same sex (Canada);

Poland

I. Summary of the proceedings of the review process

A. Presentation by the State under review

14. On the question made by the United Kingdom regarding activities to promote equality and inclusion of members of underprivileged groups, including persons with disabilities and LGBT community, Poland had been preparing a National Action Plan for Equal Treatment for the years 2012–2017, which includes measures to counteract intolerance. Since 2011, a project to counteract discrimination on all grounds at all levels of the government administration, and which includes training to public servants and public campaigns had been implemented. Poland had been preparing a series of trainings for media representatives, co-financed by the European Union. It had also engaged in a Council of Europe project "Fighting discrimination based on sexual orientation and gender identity", to be implemented in 2013.

B. Interactive dialogue and responses by the State under review

37. Spain raised concern that despite the anti-discrimination Law of 1st January 2011 there was widespread social perception that homosexuality was a disease and de facto discrimination in the workplace and educational centers persisted. It inquired whether Poland intended to launch education campaigns on sexual and emotional diversity or plan to grant a legal status to same sex couples. It made recommendations.

42. The United Kingdom of Great-Britain and Northern Ireland welcomed the Act of 3rd December 2010 Implementing Certain European Provisions on Equal Treatment. It inquired about the implementation of the principle of equal treatment by the authorities and about the progress with respect to the ratification of CRPD. It noted the lack of hate crime provision in the Criminal Code that include sexual orientation and gender identity as possible ground or aggravating circumstance. It made recommendations.

43. The United States expressed concern that discrimination and violence against LGBT persons were still common and most hate crimes against LGBT persons went unreported. It mentioned the recent anti-Semitic incidents and regretted the halting pace of property restitution to Holocaust victims and their heirs. It made recommendations.

60. Australia welcomed the adoption of legislation governing discrimination, differential treatment and the role of the Ombudsperson. It remained concerned by discrimination against LGBT especially transgender persons facing obstacles in accessing health care. It referred to the "conscience clause" for Poland's pharmaceutical law to allow chemists to refuse selling birth control pills on the basis of religious belief. It made recommendations.

64. Brazil expressed concern about the acts of discrimination and that the high prevalence of discriminatory attitudes and violence against a large variety of ethnic, national and religious groups were still reported by UNHCR, CERD and the Human Rights Committee. It welcomed the new law on Equal Treatment which came in force in 2011, but was concerned about the safety of LGBT people. Brazil made recommendations.

II. Conclusions and/or recommendations

90. The recommendations formulated during the interactive dialogue and listed below will be examined by Poland who will provide its responses in due time, but no later than the 21st session of the Human Rights Council in September 2012. These responses will be included in the outcome report adopted by the Human Rights Council at its 21st session.

90.66. Include sexual orientation and gender identity in the hate speech provisions of the national Criminal Code, and adopt appropriate legal measures making sexual orientation and gender identity as possible discrimination grounds in any context (Slovenia);

90.67. Guarantee the full enjoyment of the rights of the LGBT community (Spain);

90.68. Recognize gender identity as possible ground for discrimination and gender identity and sexual orientation as an aggravating circumstance for hate crime (UK);

90.69. Adopt regulations recognising the rights of same-sex couples and of self-defined gender or transgender persons (Australia);

90.70. Strengthen anti-discrimination laws with regard to a better protection of LGBT persons and persons with disabilities (Austria);

90.71. The adoption of policies that safeguard the rights of LGBT people and fight discrimination based on sexual orientation (Brazil);

90.94. Institute outreach by police and law enforcement to LGBT persons and communities to increase reporting of hate crimes (United States of America);

90.97. Pass legislation giving same-sex couples the possibility to enter into a civil union contract (France);

90.99. Continue to protect the natural family and marriage, formed by a husband and a wife, as the basic cell of society, as well as the right to life (Holy See);

Netherlands

I. Summary of the proceedings of the review process

A. Presentation by the State under review

7. In addition, Minister Spies explained that in April 2012, the coalition government of the Netherlands resigned. Therefore, the current government, although officially not in function, will continue its work on the implementation of the main policy measures to endorse full respect of human rights. Inter alia, guaranteeing the equality of every citizen, promoting integration, fighting domestic violence by punishing perpetrators and protecting victims, combating the trafficking of human beings, protecting refugees and asylum seekers, promoting social acceptance of LGBT-people in society, and human rights education in the Dutch school.

B. Interactive dialogue and responses by the State under review

22. Estonia congratulated the Netherlands on the inclusion of civil society and other stakeholders in the preparation of its UPR report. Estonia commended the creation of a Children's Ombudsman, its policies on LGBT rights, the protection of privacy and individual data and its role as a driver in the Internet freedom agenda. Estonia encouraged the Netherlands to continue its combat on incitement against minority groups. Estonia made recommendations.

43. Regarding non-discrimination, its ban is enshrined in article 1 of the Constitution. The Netherlands is highly committed to combat discrimination and racism. It rejects any form of discrimination, be it on the grounds of race, descent, religion, belief, gender, sexual orientation, handicap or any other ground. Discrimination is at odds with citizenship and impedes them from taking part in their community. The Minister stated the Dutch government does not pursue specific policies targeting specific types of discrimination. She referred to bodies to prevent and combat discrimination, like the antidiscrimination bureaus, the Equal Treatment Commission and the police, which are accessible to everyone. In addition, in 2010 a National Action Plan to Combat Discrimination was enacted. In 2011, further measures were put in place to combat discrimination, including school programmes.

80. Azerbaijan asked about the efforts undertaken by the Dutch Government to establish national human rights institutions compliant with the Paris Principles. Azerbaijan remained concerned about the persistence of gender-role stereotypes, in particular about migrant women and men. Furthermore, Azerbaijan welcomed the introduction of compulsory education and measures taken to give all children access to school and decrease dropout rates. Azerbaijan made recommendations.

84. Brazil welcomed the progress made concerning LGTB rights, especially promoting the safety of LGTB persons, and also commended the Netherlands for their measures regarding women's rights. Furthermore, Brazil asked the Dutch delegation about statistics on the number of asylum seekers who had effectively been granted refugee status in the country in the last 5 years. Brazil made recommendations.

II. Conclusions and/or recommendations

98. The following recommendations will be examined by the Netherlands which will provide responses in due time, but no later than the 21st session of the Human Rights Council in September 2012.

98.36. Develop a system of recording official statistical data on the most widespread crimes and offences committed on the basis of discrimination taking into account the legal obligations of the Netherlands in registering such crimes (Uzbekistan);

98.51. Develop a national action plan to combat discrimination in consultation with civil society (Norway);

98.96. Intensify its efforts to ensure that education, health, employment and social protection programmes are inclusive and not discriminatory. Apply also these measures to all the countries and territories that form the kingdom of the Netherlands (Nicaragua);

South Africa

I. Summary of the proceedings of the review process

A. Presentation by the State under review

21. With regards to health, amongst many improvements, in addition to the existing 385 public hospitals, a total of 29 hospitals in rural and urban areas are under construction, while 17 others are in the planning and design stage. These facilities will also provide services for people with HIV and AIDS. Over 3,000 primary health care clinics are now able to provide counselling and testing and treatment for people with HIV and AIDS. This has resulted in an increase in the number of patients accessing Antiretroviral Therapy, from 500 000 in 2008 to 1.9 million in 2012. Access to HIV Testing and Treatment, for mothers and children, has improved, resulting in a more than 50% reduction in HIV transmission from mothers to children, from 8% in 2008 to 3.5% in 2010.

22. South Africa has prioritised the issues of gender equality and the advancement of the rights of women, the promotion and protection of the rights of the child and people with disabilities. Government has established, in 2009, a fully-fledged Department for Women, Children and People with Disabilities (DWCPD) with the core mandate of advocacy for mainstreaming and monitoring of government's policies and programmes with respect to these targeted groups.

23. Furthermore, discrimination on the ground of sexual orientation is prohibited by the Constitution. Given the recent spate of violence that targeted LGBTI persons, government has established a National Task Team comprising representatives from government and civil society to advise on measures to ensure maximum protection, adequate remedies and combating impunity. The Courts have set an important precedent and sent a strong signal that crimes of this nature will not be tolerated. Recently, four perpetrators of the so-called "corrective rape" of lesbians were sentenced to 18 years imprisonment.

B. Interactive dialogue and responses by the State under review

42. Ireland [...] encouraged South Africa to continue its gender-based violence prevention efforts and strengthen provision of services and accountability in that area. Ireland made recommendations.

48. Mexico highlighted progress in primary education and access to healthcare for persons with HIV. Referring to the obligations under the CEDAW, it enquired what steps were being taken to accelerate implementation of the strategy to change or eradicate negative stereotypes that discriminate against women. Mexico made recommendations.

52. Netherlands commended South Africa for its leading role in the Human Rights Council, notably in different areas of anti-discrimination. It welcomed its commitment to partnerships with civil society and a national dialogue in the preparation of the national report. Netherlands made recommendations.

53. New Zealand enquired about increasing maternal mortality and morbidity and plans to address them. It also asked what steps would be taken to deal with sexual violence, especially against LGBT persons. It requested an update on the Combating Torture Bill and on plans to ratify the OP-CAT. New Zealand made recommendations.

55. Norway supported South Africa's leadership in combating violence and discrimination based on sexual orientation and gender identity. It expressed concern about the Protection of State Information Bill. It welcomed new national institutions, particularly to address violence against women. Norway made recommendations.

60. Italy encouraged South Africa to pursue the advancement of human rights in particular MDGs 4, 5 and 6 and praised the country's role in adopting the United Nations resolution on sexual orientation and gender identity. It asked what about the measures adopted against FGM phenomena in migrant communities. Italy made a recommendation.

68. Slovenia encouraged South Africa to continue its action to achieve MDGs. It expressed concern about the persistence of attacks against LGBT individuals, the occurrence of hate crimes, reports of violence against children and lack of legislative measure to prevent, prosecute and punish acts of torture and other ill-treatment. Slovenia made recommendations.

69. Spain commended South Africa for progress in addressing HIV/AIDS and the protection of the rights of LGBT. It asked about measures adopted to ensure that the future Law Protection of State Information does

not curtail freedom of the press and right to information on possible inappropriate action by public officials. Spain made recommendations.

79. The United Kingdom of Great Britain and Northern Ireland was concerned by continuing violent crimes against women and LGBT people in South Africa. It welcomed the fact that the Constitution upheld freedom of expression and asked how the Government will ensure that the proposed legislation will not restrict this right. It made recommendations.

80. The United States of America commended South Africa for its position in the prevention of discrimination including based on sexual orientation, but was concerned about reports of violence and prejudice against LGBT communities. It recognized efforts to combat human trafficking, but raised concern about the Protection of State Information Bill. It made recommendations.

81. Uruguay recognized major normative advances in combating xenophobia, hate incitation and ethnic-based origin violence. It noted the persistence of patriarchal attitudes regarding women. It made recommendations.

92. Belgium commended South Africa's positive role in the promotion of human rights notably in combating discrimination. It highlighted progressive legislation regarding LGBT but noted very serious incidents of violence, including sexual violence. It expressed concern over the fate of migrant workers and asylum seekers. It made recommendations.

106. Denmark was concerned at reports of violent attacks against women because of their sexual orientation. It inquired about measures taken to ensure that victims of gender based violence have effective access to justice and social support services. It welcomed the Prevention and Combating of Torture Bill and requested information on the timeline for the enactment of the bill by Parliament. It made recommendations.

110. Finland welcomed South Africa's progressive approach to sexual orientation and gender identity. It expressed its concerns over cases of violence, including reported hate crimes against LGBT individuals. It inquired about measures taken to prevent such crimes. Finland made a recommendation.

111. France noted that South Africa is not yet party to OP CAT or ICESC. It regretted that LGBT persons continue to be targets of serious physical or psychological violence. It inquired about the conformity of provisions of the draft bill on transferring judicial powers to traditional chiefs with the principles enshrined in the Constitution. It made recommendations.

115. South Africa then provided responses to questions presented in advance and during the inter-active dialogue.

118. Government is committed to combat any discrimination or violence against persons on the basis of sexual orientation and has pronounced itself accordingly. The Minister of Justice and Constitutional Development has established a Task Team to develop a national intervention strategy on these crimes through, among others, research, and policy development. Government has adopted measures that focus among others, on the prevention, combating and punishment of sexual violence against women and children. These include support to the victims through the establishment of victim friendly facilities. Additionally Government is considering re-establishing sexual offences courts.

119. With regards to questions raised on fighting crime in rural areas, it was reiterated that crime had decreased in the fiscal year 2010–2011. The decrease in contact crimes, which include serious offences such as murder, rape and assault, has been of 6.9 %. Furthermore, in 2010 the Rural Safety Strategy was launched which involves the various concerned actors in addressing contact crimes, such as farm killings and others. Regarding allegations that some police officials had accepted bribes from rape suspects, South Africa responded that the government takes such allegations very seriously and, when these are reported, criminal and administrative proceedings are immediately instituted. The community is also continuously encouraged to report such action.

II. Conclusions and/or recommendations

125. The following recommendations will be examined by country South Africa which will provide responses in due time, but no later than the 21st session of the Human Rights Council in September 2012. The response

of South Africa to these recommendations will be included in the outcome report adopted by the Human Rights Council at its 21st session in September 2012:

125.47. Implement a national strategy which includes the review and the drafting of laws, and campaigns to raise awareness about discrimination at all levels of society, including traditional leaders, aimed at modifying or eliminating, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), harmful stereotypes and practices which discriminate women (Uruguay);

125.49. Ensure effective implementation of the existing normative framework guaranteeing women's right to equality, in particular to ensure access to justice, protection and other remedies (Austria);

125.50. Launch awareness campaigns against homophobia and discrimination on the basis of sexual orientation (Belgium);

125.51. Develop programs to prevent discrimination based on sexual orientation and gender identity, to punish violence of this kind and ensure that victims receive appropriate support (France);

125.60. Step up efforts to eliminate violence and discrimination against women (Republic of Korea);

125.61. Adopt all necessary measures to prevent, fight and punish any violence against women and children (Switzerland);

125.62. Put in place stronger mechanisms to protect women and girls against gender-based violence and provide redress to victims (Austria);

125.63. Take increased measures to protect and provide redress to women subjected to gender-based violence (Czech Republic);

125.64. Take concrete measures to improve the protection of women against gender-based violence and to ensure that perpetrators are held accountable (Norway);

125.65. Increase efforts for the protection of women victims of gender violence, ensuring that perpetrators face the required trials and training the authorities involved on the subject of the protection and prevention of violence against women (Nicaragua);

125.67. Undertake continued and enhanced efforts to protect and provide redress to women suffering from violence and to continue raising awareness, through training and other means, in the judicial system, including police, of the necessity to act against this violence (Sweden);

125.68. Strengthen the training of the police, prosecutors and the judiciary in the area of gender based violence (Norway);

125.69. Take measures to guarantee thorough investigation and prosecution of crimes of sexual violence, including relevant training of law enforcement officials, and implement national human rights awareness-raising focused on women's rights (Japan);

125.70. Promote awareness-raising campaigns and human rights education programmes particularly directed to law enforcement officials and educators that address the problematic of sexual violence against women (Portugal);

125.71. Adopt and implement appropriate, efficient measures ensuring that all allegations of sexual violence against women are properly registered, prosecuted and their perpetrators duly convicted, including a provision of victims' access to redress and social support services (Slovakia);

125.72. Establish mechanisms that will offer the victims of rape appropriate and adequate support and provide them with redress (Slovenia);

125.73. Step up efforts against sexual violence and improve social support services to victims (Italy);

125.74. Rigorously apply the legislation against gender violence and sexual violence, especially against girls and boys (Spain);

125.75. Conduct comprehensive public awareness campaigns and enhance the investigation and prosecution of violent crimes perpetrated on grounds of ethnicity, nationality, religion, sexual orientation or gender identity (Slovenia);

125.76. Establish national policies aimed at putting an end to violence and crimes motivated by race nationality, religion ethnicity, sexual orientation or identity, through the approval of laws that explicitly criminalize violence against people or property (Uruguay);

125.77. Implement training programs for the security forces so that crimes motivated by race nationality, religion ethnicity, sexual orientation or identity, are adequately investigated (Uruguay);

125.78. Continue its efforts in the fight against violence and discrimination based on sexual orientation and gender identity (Argentina);

125.79. Ensure police and justice officials have appropriate training and direction to improve the investigation and prosecution of sexual violence including that based on sexual orientation or gender identity (New Zealand);

125.80. Ensure that law enforcement officials and other relevant actors are adequately trained to investigate and prosecute hate crimes on the basis of sexual orientation and gender identity, including through the promotion of awareness-raising and sensitization campaigns (Denmark);

125.81. Develop monitoring capacity and legislation to enhance the prevention, investigation and prosecution of crimes of violence against individuals on the grounds of their sexual orientation or gender identity (Netherlands);

125.82. Enhance the prevention, investigation and prosecution of crimes of violence against individuals based on their gender or sexual orientation (United Kingdom of Great Britain and Northern Ireland);

125.83. Take steps to ensure targeted attacks against individuals based on their sexual orientation are thoroughly investigated and prosecuted, and strengthen mechanisms to prevent crimes of violence (Canada);

125.84. Publicly denounce crimes committed against LGBTs and to conduct thorough investigations into and prosecutions of these attacks (Austria);

125.85. Publicly denounce all violence based on sexual orientation or gender identity and adopt effective measures to raise public awareness concerning the constitutional protection of LGBT individuals (Finland);

125.86. Increase advocacy for freedom from discrimination based on sexual orientation and gender identity through public education and awareness building and address violence targeting LGBT persons through training for police, first responders and justice system officials (United States of America);

125.87. In order to avoid the occurrence of impunity in cases of violence against LGBT persons, that all such cases be subject of credible investigations and the perpetrators prosecuted (Belgium);

125.95. Ensure that the proposed new Traditional Courts Bill, if adopted, does not violate South Africa's international obligations or its own Constitution in the area of women's rights and gender equality (Norway);