



For further information:

John Fisher
Co-Director
+41-79-508-3968
john@arc-international.net

Sheherezade Kara
Advocacy & Communications
+41-78-834-9916
sheherezade@arc-international.net

**ADDRESSING HUMAN RIGHTS VIOLATIONS BASED ON
SEXUAL ORIENTATION & GENDER IDENTITY AT THE
22nd SESSION OF THE HUMAN RIGHTS COUNCIL**

February-March 2013

There are a number of opportunities to raise awareness of human rights violations based on sexual orientation and gender identity at the upcoming 22nd session of the Human Rights Council.

These include **the high-level segment, interactive dialogue with the High Commissioner following presentation of her Annual Report, the UPR, interactive dialogues with Special Procedures** (particularly on **torture and human rights defenders**), and **general debate under items 3, 4 or 8**.

There will also be the opportunity under **item 5** to discuss the **HRC Advisory Committee report**, which includes several **critiques of a traditional values approach**.

The **high-level panel on the Vienna Declaration and Program of Action** also serves as an opportunity to underline the principles of universality and non-discrimination in this context.

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

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

Summary and Overview:

Opportunities to raise awareness of human rights violations based on sexual orientation and gender identity at the 22nd session of the Human Rights Council include:

➤ **High level and general segment statements:**

High-level interventions could:

- affirm your government's support for the resolution on human rights, sexual orientation and gender identity, presented by South Africa and adopted by the Council at its 17th session, and welcome the panel discussion on human rights, sexual orientation and gender identity, which took place last March;
- underline the principles of universality and non-discrimination, and emphasise that the Council's effectiveness in advancing its mandate will be measured by the extent to which it addresses the rights of the most marginalised;

- acknowledge the leadership of the Secretary General and High Commissioner on these issues, and reiterate their call for an end to violence and discrimination against LGBT people;
- express support for the *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity*, and commend the Principles to the attention of States and the Council;
- note that human rights violations on the grounds of sexual orientation and gender identity continue to occur in all regions of the world, welcome the regional seminars on SOGI-related violence and discrimination currently taking place, and urge the Council to address these issues in an ongoing systematic way;
- endorse/pledge to implement the recommendations made in the High Commissioner's study on violence, and discriminatory laws and practices based on sexual orientation and gender identity.

In addition, the High-level segment serves as an opportunity for **Foreign Ministers** and other high-ranking officials to **meet bilaterally with their counterparts** in other States or regions. This affords a key opportunity for outreach to **build cross-regional support for the panel discussion** on human rights, sexual orientation and gender identity. It would also be appropriate for Foreign Ministers to **thank the High Commissioner** for her important work in this area, and encourage her to raise the study on sexual orientation and gender identity in her meetings with key States.

➤ **Interactive Dialogue with the High Commissioner:**

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. As noted in the **High Commissioner's Annual Report** (see **Annex I**):

"Discrimination on the basis of sexual orientation and gender identity continues to affect millions of people in all regions. ... Continued dialogue and reporting are needed to overcome divisions of opinion among States and to mobilize support for measures, including the repeal of discriminatory laws, the prohibition of discriminatory practices and action to counter violence."

Relevant State interventions might:

- commend the High Commissioner for her principled affirmation that no human being may be denied their rights, solely because of their sexual orientation or gender identity, and note that this position is reinforced by the comments of the Secretary General, the recent Human Rights Council resolution on sexual orientation and gender identity, the findings of treaty bodies, and the clear evidence of human rights violations brought to the Council's attention by its Special Procedures;
- 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

Various 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 **Special Rapporteur on human rights defenders** recommended that Member States "establish a focal point or an entity dedicated to human rights defenders with specific attention to groups of defenders at particular risk such as women defenders and those working for women's rights and gender issues; those working on the rights of lesbian, gay, bisexual and transgender (LGBT) communities".

The Special Rapporteur's report to the GA also highlighted concerns with laws that criminalise and otherwise impede the work of human rights defenders. This is a growing concern in relation to LGBT human rights defenders, who are facing increased backlash as a result of hostile new legislative initiatives (e.g, the Bill currently under consideration in Russia prohibiting awareness and education-raising measures related to sexual orientation and gender identity under the guise of banning "homosexual propaganda").

- The **Special Rapporteur on torture** noted that "There is an abundance of accounts and testimonies of persons being denied medical treatment, subjected to verbal abuse and public humiliation, psychiatric evaluation, a variety of forced procedures such as involuntary sterilization of "children born with atypical sex characteristics", State-sponsored forcible anal examinations for the prosecution of suspected homosexual activities, and invasive virginity examinations conducted by health-care providers, hormone therapy and genital-normalizing surgeries under the guise of so called 'reparative therapies'". With regards to LGBTI persons, the Special Rapporteur called upon all States:

"to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, "reparative therapies" or "conversion therapies", when enforced or administered without the free and informed consent of the person concerned.

He also calls upon them to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups.

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 attacks on human rights defenders, forced surgery, involuntary sterilisation and unethical experimentation;
- 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 – items 3, 4 and 5:

There will be opportunity for statements during general debate, particularly under **item 3** (*promotion and protection of all human rights*), **item 4** (*Human rights situations that require the Council's attention*) – which might be used to address country situations of particular concern.

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.

Statements under **Item 5** might reference the report of the Advisory Committee on traditional values (A/HRC/22/71). The study brings attention to some of the negative impacts of traditional values on human rights:

- "There is no agreed definition of the term 'traditional values of humankind'. No such definition resulted from the discussions held by the Human Rights Council or the Advisory Committee. ... traditions are so varied and complex that, while some traditions comply with human rights norms and contribute to their promotion and protection, others undermine or are in conflict with them." (paras.7 & 11, A/HRC/22/71)
- "[T]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision." (para.40, A/HRC/22/71)
- Women human rights 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 challenged accepted socio-cultural norms, traditions, perceptions and stereotypes" (para.41, A/HRC/22/71)
- "[V]iolations justified by traditional, cultural or religious values are often targeted against minority or disenfranchised groups [...] the Special Rapporteur on indigenous peoples observed that the master-slave relationships persisting in one country reflected the structural inequalities that result from deeply engrained discriminatory attitudes about indigenous peoples" (para.43, A/HRC/22/71)

20th Anniversary of the VDPA – high-level panel and item 8

The **20th Anniversary of the VDPA** provides an opportunity to reaffirm the fundamental principles of universality and non-discrimination – both during the **high-level panel on the VDPA** under **item 8** (*Follow-up and implementation of the Vienna Declaration and Programme of Action*).

The VDPA also emphasizes (in para. 5) that "while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms" – a key framing of the issues in the light of current discussions relating to "traditional values".

A short opinion piece by ARC Co-Director John Fisher on the application of the VDPA to LGBT people can be found in an online collection of perspectives on the VDPA compiled by ISHR:

http://www.ishr.ch/index.php?option=com_content&view=article&id=1445#JohnFisher

➤ **UPR report adoptions – item 6 (see Annex II):**

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:

- **Guatemala** accepted a recommendation to consider the possibility of strengthening the necessary measures for the protection and integration of LGBT persons;
 - **Zambia** accepted a recommendation to ensure thorough and impartial investigation into all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity;
 - **Peru** agreed to repeal penal sanctions on homosexuality in the police force; to consider enacting legislation that addresses crimes based on sexual orientation; and to consider applying the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* as a guide to assist in policy development.
-

ANNEX I:

REFERENCES TO SEXUAL ORIENTATION & GENDER IDENTITY IN REPORTS TO THE HUMAN RIGHTS COUNCIL

Annual report of the United Nations High Commissioner for Human Rights A/HRC/22/17

II. Thematic priorities

A. Discrimination

Discrimination on the basis of sexual orientation and gender identity

20. Discrimination on the basis of sexual orientation and gender identity continues to affect millions of people in all regions. OHCHR issued a study documenting abuses and proposing recommendations.³ The Human Rights Council devoted a panel discussion to the issue at its nineteenth session. Continued dialogue and reporting are needed to overcome divisions of opinion among States and to mobilize support for measures, including the repeal of discriminatory laws, the prohibition of discriminatory practices and action to counter violence. OHCHR also published *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, identifying States' obligations in this field.

F. Human rights mechanisms and international law

2. Human Rights Council

74. Panel discussions have become characteristic of the sessions of the Human Rights Council. Fifteen panel discussions were held on such topics as the realization of the right to development; reprisals against individuals and groups who cooperate with the United Nations and its mechanisms; people living with or affected by HIV/AIDS; discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity; participation in political and public life of persons with disabilities; the right to health of older persons; the promotion and protection of freedom of expression on the Internet; human rights mainstreaming; due diligence in prevention of violence against women the language and culture of indigenous peoples; and human rights in a multicultural context.

Report of the Secretary-General on the question of the realization in all countries of economic, social and cultural rights A/HRC/22/24

III. Activities of treaty bodies

22. The present section maps recent developments on the economic, social and cultural rights of women in the work of United Nations treaty bodies.

A. Committee on Economic, Social and Cultural Rights

23. On 25 May 2009, the Committee on Economic, Social and Cultural Rights adopted its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights. This General Comment elaborates on article 2, paragraph 2, of the Covenant on Economic, Social and Cultural Rights and discusses its application to the substantive rights enshrined in the Covenant, offering further guidance on the scope of the prohibition of discrimination and on "sex" as a forbidden ground of discrimination. The general comment also clarifies, in paragraph 20, that:

The notion of the prohibited ground "sex" has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfilment of economic, social and cultural rights. Thus the refusal to hire a woman, on the ground that she might become pregnant, or the allocation of low-level or part time jobs to women based on the stereotypical assumption that, for example, they are unwilling to commit as much time to their work as men, constitutes discrimination.

IV. Activities of special procedures on women's economic, social and cultural rights

A. Special Rapporteur on the human right to safe drinking water and sanitation

34. The Special Rapporteur on the human right to safe drinking water and sanitation has explained in her recent report (A/HRC/21/42) on stigma and the realization of the human rights to water and sanitation, how the intersection of different attributes can compound the discrimination faced by certain groups or persons, such as being a woman and a sex worker, a woman infected with HIV/AIDS or a woman belonging to a certain marginalized group, such as the Dalits. The stigma these groups of women face greatly affects their access to water supply and sanitation. Menstruating women suffer stigma and menstruation remains taboo in many countries. Women often lack appropriate facilities and the necessary privacy to change or wash during menstruation, and cultural perceptions that menstruating women are "contaminated" or "impure" lead to reduced mobility or even seclusion, as well as dietary restrictions and restricted access to water resources and food. The taboos and deeply rooted practices also have a negative impact on girls' right to education, since girls can be absent from school during menstruation, either because there are no appropriate facilities at school or because they are isolated by their family owing to prejudice.

C. Special Rapporteur on the right to education

39. The former Special Rapporteur on the right to education submitted a report to the General Assembly on the human right to sexual education in 2010 (A/65/162). In the report, the former Special Rapporteur places the right to sexual education in the context of patriarchy and control of sexuality. He explains the interdependence of sexuality, health and education and the relationship of this right to other rights from a gender and diversity perspective. In this report, he concluded that (para. 77):

The right to sexual education is particularly important to women's and girls' empowerment and to ensuring that they enjoy their human rights. It is therefore one of the best tools for dealing with the consequences of the system of patriarchal domination by changing social and cultural patterns of behaviour that affect men and women and tend to perpetuate discrimination and violence against women.

40. The report strongly recommends that Governments institute comprehensive sexual education programmes from primary school onwards and train and support teachers accordingly (para. 87 (b)–(e)).

**Report of the United Nations High Commissioner for Human Rights on the right of the child to the enjoyment of the highest attainable standard of health
A/HRC/22/31**

IV. Health issues relating to children requiring attention

E. Sexual and reproductive health

52. A continuum of adolescent-friendly HIV-related services should be made universally available, such as HIV prevention, voluntary counselling and testing, care, treatment and support services. Post-exposure prophylaxis should be available to victims of sexual assault. Due attention should be given to ensuring the confidentiality of HIV test results and other related information.

53. In some places, social and cultural values may limit access to information and services. For example, comprehensive sexuality education is considered inappropriate in some settings, where abstinence-only sexual education is provided. Where traditional views on sexuality prevail, access to sexual and reproductive health services can be limited for some segments of the populations, including adolescents. Parental and spousal consent laws may deny adolescents their right to have access to sexual and reproductive health information.

F. Education

86. Article 24 of the Convention on the Rights of the Child highlights children's need for information on all aspects of health education to realize their right to health and to enable them to make informed choices in relation to lifestyle and access to health services. Information and life skills education should address, inter alia, comprehensive sexuality education, healthy eating and the promotion of physical activity, accident and injury prevention, sanitation, and the dangers of tobacco and psychoactive substance use. It should encompass appropriate information about the right of the child to health, the obligations of Governments, and how and where to obtain access to health information and services.

**Report of the Working Group on Arbitrary Detention
A/HRC/22/44**

II. Activities of the Working Group in 2012

B. Country visits

2. Follow-up to country visits of the Working Group

Malta

35. The Government provided information on various cases in which the Ombudsman effectively assisted in the protection of various rights, including the rights of rejected immigrants to marry and have a family; the right to worship by a group of Muslims; and the right of irregular immigrants to receive humanitarian protection and be reunited with their families. Two cases regarding discrimination on the ground of age (in relation to access to medical care) and employment on the ground of sexual orientation were also handled by the Ombudsman.

III. Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law

A. Introduction and methodology

37. The Working Group on Arbitrary Detention is the only body in the international human rights system entrusted by the former Commission on Human Rights and the Human Rights Council with a specific mandate to receive and examine cases of arbitrary deprivation of liberty. In this capacity, the Working Group has interpreted and enforced the international legal rules on deprivation of liberty as they have developed in domestic, regional and international jurisdictions since 1991. In order to determine the definition and scope of arbitrary deprivation of liberty under customary international law, the Working Group has reviewed international treaty law and its own jurisprudence and that of international and regional mechanisms for the protection of human rights.

38. The Working Group regards cases of deprivation of liberty as arbitrary under customary international law in cases where:

(e) The deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights.

**Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya
A/HRC/22/47**

V. Conclusions and recommendations

B. Recommendations

119. To Member States:

(g) Should establish a focal point or an entity dedicated to human rights defenders with specific attention to groups of defenders at particular risk such as women defenders and those working for women's rights and gender issues; those working on the rights of lesbian, gay, bisexual and

transgender (LGBT) communities; defenders working on environmental and land issues; journalists; and lawyers. This entity must be adequately resourced in order to respond promptly to reported violations and to offer necessary protection.

Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya
Addendum
Mission to Honduras*
A/HRC/22/47/Add.1

IV. Situation of human rights defenders

64. The Special Rapporteur observed that, because of their legitimate work in upholding human rights and fundamental freedoms, certain categories of human rights defenders are at particular risk, including journalists; defenders working on economic, social and cultural issues, including defenders working on indigenous, Afro-Honduran, environmental and land rights issues; defenders working on the rights of women, children and the lesbian, gay, bisexual, transgender and intersex community (LGBTI); lawyers, prosecutors and judges; and the staff of the National Commissioner for Human Rights.

C. Women defenders and defenders working on women and children's rights

88. The Special Rapporteur noted with concern reports that femicide had dramatically increased. She has reiterated on several occasions that women defenders are more at risk of certain forms of violence and other violations, such as prejudice, exclusion and repudiation, than their male counterparts. This is mainly due to the fact that women defenders are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation and the role and status of women in society, which often serve to normalize and perpetuate forms of violence and oppression. The Special Rapporteur strongly recommends that the role of women human rights defenders be recognized.

D. Defenders working for the rights of the lesbian, gay, bisexual, transgender and intersex community

90. The LGBTI community constitutes another group facing severe discrimination and violence in Honduras, particularly since the coup d'état. According to the information received, the persistence of acts of violence and attacks against persons belonging to the LGBTI community could correspond to patterns of hate crimes by public and private agents, including, primarily, the police and private security guards. The Special Rapporteur received information that, since June 2009, more than 34 people belonging to the LGBTI community had been killed in the country. She addressed an allegation letter in 2010 on the killing of the human rights activist Walter Tróchez, who worked to promote and protect the human rights of the LGBTI community. The Special Rapporteur regrets that the criminal investigation into his death has not yielded results.

91. The Special Rapporteur is also concerned that public officials, including high-ranking authorities, made public statements stigmatizing members of the LGBTI community. She received information indicating that human rights defenders working on the protection of the rights of LGBTI persons had been threatened and persecuted, particularly by police officers, because their work was perceived as defending immoral behaviour. In addition, she received information that members of the LGBTI community were prohibited from meeting in certain public places by police agents and threatened with arbitrary detention. As a consequence of this discrimination, members of the LGBTI community live in constant fear of attack. The Special Rapporteur calls upon the State to recognize their rights and to strengthen their actions to effectively prevent and investigate cases of attacks against relevant defenders.

V. Challenges faced by human rights defenders

D. Stigmatization of human rights defenders

113. The Special Rapporteur is concerned at stigmatization in the media and the delegitimizing statements made by public officials against human rights defenders, and notes the particular

vulnerability of women defenders and defenders working on women's and children's rights, those working on the rights of the LGBTI community, journalists and defenders working on social, economic and cultural rights, particularly indigenous and Afro-Hondurans and those working on land issues.

114. The Special Rapporteur calls upon the State to recognize and support the work and roles of all groups, organs and individuals involved in the promotion and protection of human rights and fundamental freedoms, as this is the first step towards the creation of a safe working environment for defenders.

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez A/HRC/22/53
--

Interpretative and guiding principles

3. Stigmatized identities

36. In a 2011 report (A/HRC/19/41), the United Nations High Commissioner for Human Rights examined discriminatory laws and practices and acts of violence against individuals based on sexual orientation and gender identity in health-care settings. She observed that a pattern of human rights violations emerged that demanded a response. With the adoption in June 2011 of resolution 17/19, the Human Rights Council formally expressed its "grave concern" regarding violence and discrimination based on sexual orientation and gender identity.

37. Many policies and practices that lead to abuse in health-care settings are due to discrimination targeted at persons who are marginalized. Discrimination plays a prominent role in an analysis of reproductive rights violations as forms of torture or ill-treatment because sex and gender bias commonly underlie such violations. The mandate has stated, with regard to a gender-sensitive definition of torture, that the purpose element is always fulfilled when it comes to gender-specific violence against women, in that such violence is inherently discriminatory and one of the possible purposes enumerated in the Convention is discrimination (A/HRC/7/3, para. 68).

38. In the context of prioritizing informed consent as a critical element of a voluntary counselling, testing and treatment continuum, the Special Rapporteur on the right to health has also observed that special attention should be paid to vulnerable groups. Principles 17 and 18 of the Yogyakarta Principles, for instance, highlight the importance of safeguarding informed consent of sexual minorities. Health-care providers must be cognizant of, and adapt to, the specific needs of lesbian, gay, bisexual, transgender and intersex persons (A/64/272, para. 46). The Committee on Economic, Social and Cultural Rights has indicated that the International Covenant on Economic, Social and Cultural Rights proscribes any discrimination in access to health-care and the underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of sexual orientation and gender identity.

4. Lesbian, gay, bisexual, transgender and intersex persons

76. The Pan American Health Organization (PAHO) has concluded that homophobic ill-treatment on the part of health professionals is unacceptable and should be proscribed and denounced. There is an abundance of accounts and testimonies of persons being denied medical treatment, subjected to verbal abuse and public humiliation, psychiatric evaluation, a variety of forced procedures such as sterilization, State-sponsored forcible anal examinations for the prosecution of suspected homosexual activities, and invasive virginity examinations conducted by health-care providers, hormone therapy and genital-normalizing surgeries under the guise of so called "reparative therapies". These procedures are rarely medically necessary, can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression and have also been criticized as being unscientific, potentially harmful and contributing to stigma (A/HRC/14/20, para. 23). The Committee on the Elimination of Discrimination against Women expressed concern about lesbian, bisexual, transgender and intersex women as "victims of abuses and mistreatment by health service providers" (A/HRC/19/41, para. 56).

77. Children who are born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization, involuntary genital normalizing surgery, performed without their informed consent, or that of their parents, “in an attempt to fix their sex”, leaving them with permanent, irreversible infertility and causing severe mental suffering.

78. In many countries transgender persons are required to undergo often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender. In Europe, 29 States require sterilization procedures to recognize the legal gender of transgender persons. In 11 States where there is no legislation regulating legal recognition of gender, enforced sterilization is still practised. As at 2008, in the United States of America, 20 states required a transgender person to undergo “gender-confirming surgery” or “gender reassignment surgery” before being able to change their legal sex. In Canada, only the province of Ontario does not enforce “transsexual surgery” in order to rectify the recorded sex on birth certificates. Some domestic courts have found that not only does enforced surgery result in permanent sterility and irreversible changes to the body, and interfere in family and reproductive life, it also amounts to a severe and irreversible intrusion into a person’s physical integrity. In 2012, the Swedish Administrative Court of Appeals ruled that a forced sterilization requirement to intrude into someone’s physical integrity could not be seen as voluntary. In 2011, the Constitutional Court in Germany ruled that the requirement of gender reassignment surgery violated the right to physical integrity and self-determination. In 2009, the Austrian Administrative High Court also held that mandatory gender reassignment, as a condition for legal recognition of gender identity, was unlawful. In 2009, the former Commissioner for Human Rights of the Council of Europe observed that “[the involuntary sterilization] requirements clearly run counter to the respect for the physical integrity of the person”.

79. The mandate has noted that “members of sexual minorities are disproportionately subjected to torture and other forms of ill-treatment because they fail to conform to socially constructed gender expectations. Indeed, discrimination on grounds of sexual orientation or gender identity may often contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place.” “Medically worthless” practices of subjecting men suspected of homosexual conduct to non-consensual anal examinations to “prove” their homosexuality¹¹⁶ have been condemned by the Committee against Torture, the Special Rapporteur on the question of torture and the Working Group on Arbitrary Detention, which have held that the practice contravenes the prohibition of torture and ill-treatment (A/HRC/19/41, para. 37).

V. Conclusions and recommendations

3. Lesbian, gay, bisexual, transgender and intersex persons

88. The Special Rapporteur calls upon all States to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, “reparative therapies” or “conversion therapies”, when enforced or administered without the free and informed consent of the person concerned. He also calls upon them to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups.

Recommendations of the Forum on Minority Issues at its fifth session: implementing the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: identifying positive practices and opportunities (27 and 28 November 2012)
A/HRC/22/60

II. General considerations

16. In their efforts towards effective implementation of the Declaration, all actors should recognize and address multiple and intersecting forms of discrimination against persons belonging

to minorities, including on the basis of sex, age, gender identity and disability, and the compounded negative impact upon the enjoyment of their rights.

Study of the Human Rights Council Advisory Committee on promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind
A/HRC/22/71

III. Relationship between traditional values and human rights

A. The 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.

B. The negative impact of traditional values on vulnerable groups

42. It is important to note that those who challenge the social constructions of gender on the basis of values said to be traditional, cultural or religious are particularly exposed to the risk of 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. The Special Rapporteur in the field of cultural rights stressed that cultural rights include the right not to participate in specific traditions, customs and practices, particularly those that infringe on human rights and dignity, and to revise and (re)negotiate existing traditions, values or practices, regardless of their provenance.

ANNEX II:

UPR RECOMMENDATIONS RELATING TO SEXUAL ORIENTATION & GENDER IDENTITY

Czech Republic

Recommendations: Take necessary measures aimed at eliminating all discriminatory treatment on the basis of sexual orientation or gender identity; Work towards the equal status of same sex couples starting with legal recognition of same sex couples.

Status: Pending to HRC22 (March 2013)

Argentina

Documents: The National report, compilation of UN information, and summary of stakeholder submissions all provided information on human rights relating to sexual orientation and gender identity in Argentina. The National report outlined efforts to combat discrimination through relationship recognition, gender recognition and public awareness raising. The UN compilation raised concerns about transsexuals and MSM being particularly affected by HIV. Stakeholders were concerned about the treatment of LGBT detainees, education and the existence of provincial codes of misdemeanour.

Discussions: The delegation outlined the Equal Marriage Act and the Gender Identity Act. There were no other statements or recommendations on sexual orientation or gender identity.

Gabon

Summary: There were no references to sexual orientation and gender identity during the review of Gabon, in either the input documents or the Working Group session. There were also no references or recommendations on human rights issues relating to sexual orientation or gender identity throughout the process of the UPR of Gabon in the first cycle in 2008.

Ghana

Documents: The compilation of UN information noted that criminalisation of MSM and sex workers provides an obstacle to HIV prevention and the implementation of rights of people living with HIV. Stakeholders also expressed concern about the criminalisation of consensual relations between adults.

Discussions: Whilst it was recommended that Ghana give consideration to revising the Criminal Code in order to repeal the provision that criminalises sexual activity between consenting adults in the previous cycle, there were no references to sexual orientation or gender identity during the second cycle working group review of Ghana.

Ukraine

Recommendations: Withdraw its draft legislation criminalising the promotion of homosexuality, and refrain from adopting any other legislation that restricts freedom of expression; Adopt a comprehensive anti-discrimination law that addresses the worrying trend of incidents based on gender, sexual orientation, racial and ethnic discrimination.

Status: Pending to HRC22 (March 2013)

Guatemala

Recommendations: Consider the possibility of strengthening the necessary measures for the protection and integration of LGBT persons.

Status: Accepted.

Benin

Recommendations: Decriminalise sexual relations between consenting, same-sex individuals; establish educational programmes and appropriate policies for police that promote the personal security of all Benin citizens regardless of sexual orientation.

Status: Rejected.

Republic of Korea

Recommendations: Include in the Anti-discrimination Law a specific prohibition on discrimination on the basis of sexual orientation; Study the possibility of intensifying measures aiming at eliminating all discriminatory treatment on the basis of sexual orientation or gender identity; Review the possibility of repealing laws that criminalize on the basis of sexual orientation within the military.

Status: Pending to HRC22 (March 2013)

Switzerland

Recommendations: Take necessary measures to expand the provisions of the Criminal Code on hate speech in order to include grounds which go beyond hatred based on race, religion or origin of the individual, integrating such factors as language, colour, sex, mental or physical deficiency, sexual orientation or other similar grounds; Introduce legislation, uniformly across the Confederation, that explicitly protects LGBT persons from discrimination, and take into account the issues faced by LGBT persons when creating a general act on equal treatment.

Status: Pending to HRC22 (March 2013)

Pakistan

Recommendations: Decriminalize adultery and non-marital consensual sex and to ensure punishment for all perpetrators of this violence and calls to it including members and leaders of jirgas.

Status: Pending to HRC22 (March 2013)

Zambia

Recommendations: Ensure thorough and impartial investigation into all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity.

Status: Accepted.

Recommendations: Follow up on the recommendations by its National Aids Council, and include men having sex with other men in its HIV/AIDS policies.

Status: Rejected.

Recommendations: Repeal the law criminalizing same-sex relations among consenting adults; Study the possibility of strengthening measures to eliminate all discriminatory treatment based on sexual orientation and gender identity.

Status: Pending to HRC22 (March 2013)

Japan

Recommendations: Implement comprehensive anti-discrimination legislation to provide protection for the rights of LGBT persons.

Status: Pending to HRC22 (March 2013)

Peru

Recommendations: Repeal penal sanctions on homosexuality in the police force; Consider enacting legislation that addresses crimes based on sexual orientation; Consider applying the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* as a guide to assist in policy development.

Status: Accepted.

Sri Lanka

Recommendations: Decriminalize consenting homosexual relationships between persons over the age of consent by repealing Section 365A of the penal code; Strengthen the measures to eliminate all discriminatory treatment based on sexual orientation or gender identity.

Status: Rejected.