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## UPR 13th Session RECOMMENDATIONS RELATING TO SEXUAL ORIENTATION & GENDER IDENTITY

### Summary

#### Bahrain

**Documents:** There were no references to sexual orientation or gender identity in the input reports to the 13<sup>th</sup> session. However, the Summary of Stakeholders' Information in the previous cycle highlighted the fact that Bahrain maintains criminal sanctions against some forms of sexual activity between consenting adults.

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

#### Ecuador

**Documents:** The UN Compilation and Summary of Stakeholders' information noted discrimination against LGBT persons and high incidences of violence against women based on their sexual orientation and gender identity.

**Discussions:** Ecuador stated that it implements measures to combat violations of the human rights in respect of LGBT people. El Salvador, Estonia and the UK welcomed measures taken by Ecuador to prevent discrimination based on sexual orientation and gender identity. There were no recommendations on these issues.

#### Tunisia

**Recommendations:** 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.

**Status:** Accepted

**Recommendations:** Abolish legislation discriminating on the basis of sexual orientation, in order to guarantee the same rights to all citizens, including LGBT persons.

**Status:** Pending to September 2012

**Recommendations:** Decriminalise same sex relations between consenting adults.

**Status:** Rejected.

#### Morocco

**Documents:** There were no references to sexual orientation or gender identity in the input reports to the 13<sup>th</sup> session. However, the Summary of Stakeholders' Information in the previous cycle highlighted the fact that Morocco maintains criminal sanctions against some forms of sexual activity between consenting adults.

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

### Indonesia

**Recommendations:** 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.

**Status:** Pending to September 2012

### Finland

**Recommendations:** Reinforce its efforts, such as the drafted National Action Plan for Reducing Crime, to eliminate the phenomenon of bullying and violence at schools.

**Status:** Accepted.

**Recommendations:** 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; That development aid must not be tied to conditionalities that do not take into account the traditional values of recipient countries.

**Status:** Pending to September 2012.

### United Kingdom

**Recommendations:** Ensure equality and non-discrimination, including in employment, health care and education.

**Status:** Pending to September 2012.

### India

**Recommendations:** ensure access to information and counselling on SRHR as set out in its National Population Policy; Study the possibility of eliminating any criminalisation of same sex relations; Take measures to address violence and discrimination directed towards persons based on their sexual orientation, especially related to employment.

**Status:** Pending to September 2012.

### Brazil

**Recommendations:** 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.

**Status:** Pending to September 2012.

### Philippines

**Recommendations made:** Effective implementation of the Magna Carta of Women in all fields, inter alia, labour relations, access to justice and sanitation, and sexual violence; ensure right to the highest attainable standard of sexual and reproductive health.

**Status:** Accepted.

**Recommendations made:** Consider establishing a comprehensive legislation to combat discrimination faced by LGBT people; 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.

**Status:** Pending to September 2012.

### Algeria

**Recommendations made:** Eliminate legislation criminalizing sexual relations between persons of the same sex, as well as discriminatory legislation on the ground of sexual and guarantee the right to the protection of privacy to all persons.

**Status:** Pending to September 2012.

## **Poland**

**Recommendations made:** 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; Institute outreach by police and law enforcement to LGBT persons and communities to increase reporting of hate crimes; 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).

**Status:** Pending to September 2012.

## **Netherlands**

**Recommendations made:** 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; Develop a national action plan to combat discrimination in consultation with civil society; 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.

**Status:** Pending to September 2012.

## **South Africa**

**Recommendations made:** 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 CEDAW, harmful stereotypes and practices which discriminate women; 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; Launch awareness campaigns against homophobia and discrimination on the basis of sexual orientation; 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; 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; 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; Publically denounce crimes committed against LGBTs and to conduct thorough investigations into and prosecutions of these attacks; 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; 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.

**Status:** Pending to September 2012.

## **Bahrain**

21 May 2012

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

## **Ecuador**

21 May 2012

### **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**

22 May 2012

### **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**

22 May 2012

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

### **Indonesia**

23 May 2012

#### **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 21<sup>st</sup> 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**

23 May 2012

#### **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**

24 May 2012

### **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 21<sup>st</sup> 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**

24 May 2012

### **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 21<sup>st</sup> 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**

25 May 2012

## **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 21<sup>st</sup> 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**

29 May 2012

### **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 21<sup>st</sup> 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**

29 May 2012

### **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 21<sup>st</sup> 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**

30 May 2012

### **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**

31 May 2012

### **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 21<sup>st</sup> 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);

## **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 ICESCR. 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 interactive 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 21<sup>st</sup> 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 21<sup>st</sup> 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);