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UPR 14th Session RECOMMENDATIONS RELATING TO SEXUAL ORIENTATION & GENDER IDENTITY

Summary

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.

CZECH REPUBLIC

22 October 2012

I. Summary of the proceedings of the review process

B. Interactive dialogue and responses by the State under review

57. The Czech Republic acknowledged the importance of equality and antidiscrimination. The most important legal regulation was the Anti-discrimination Act, adopted in 2009, which prohibits discrimination on the grounds of race, sex, sexual orientation, age, disability and religion in the areas of employment, social security and social benefits, health care, education and access to goods and services. The victim can claim damages in courts and can be represented by specialised NGOs. Equal treatment was also controlled by public authorities who can impose monetary fines on discriminating subjects. They kept records on cases of discrimination and formulated their plans of work accordingly to focus on the most important areas. The national authority for the fight against discrimination was the Ombudsman, whose task is to help enforce the right to equal treatment, assist discrimination victims, conduct research, publish reports and recommendations on discrimination issues and disseminate information.

88. The Czech Republic fully recognized the right of individuals to control and decide on matters of their own sexuality and reproductive health. The Ombudsman reported however, in 2006, that there had been individual cases in which the procedure prescribed by law was not followed properly. In 2009, the Government officially expressed its regret for past sterilizations performed contrary to the legal regulation, and it committed to adopt measures to prevent their reoccurrence. New legislation, in effect since 2012, reinforced the guarantees of patients' rights with respect to free and informed consent. It stated that the Government was presently considering a proposal to establish a non-judicial mechanism which could complement the existing judicial means by providing a possibility to award compensation ex gratia. A new complex set of rules which should facilitate access to legal aid was also being considered.

II. Conclusions and/or recommendations

94. The following recommendations will be examined by the Czech Republic which will provide responses in due time, but no later than the 22nd session of the Human Rights Council in March 2013. The response of the Czech Republic to these recommendations will be included in the outcome report adopted by the Human Rights Council at its 22nd session in March 2013:

94.74. Take necessary measures aimed at eliminating all discriminatory treatment on the basis of sexual orientation or gender identity (Argentina);

94.75. Work towards the equal status of same sex couples starting with legal recognition of same sex couples (Netherlands);

ARGENTINA

22 October 2012

I. Summary of the proceedings of the review process

A. Presentation by the State under review

17. The delegation [of Argentina] mentioned the equal marriage and gender identity laws as a fundamental step towards equality and the extension of the collective rights of those groups that had been historically discriminated against on the ground of sexual orientation. The Equal Marriage Act allowed marriage between same sex adults and the possibility of adoption. The Gender Identity Act guaranteed that every citizen could change his/her name, photo and sex in his/her identity documents.

GABON

23 October 2012

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

23 October 2012

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.

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

24 October 2012

I. Summary of the proceedings of the review process

B. Interactive dialogue and responses by the State under review

19. The Netherlands observed that Ukraine has signed but not ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence. It welcomed a letter by the Ombudsman to recall draft law No. 8711, as the law might lead to excessive restrictions on freedom of expression. The Netherlands made recommendations.

21. Norway expressed deep concern about instances of selective justice in Ukraine and welcomed the approval of a new criminal procedures code. It appreciated Ukraine's active stance to integrate minorities. It expressed its concern at legislation under consideration that would explicitly discriminate against LGBT persons and limit their right to freedom of expression. Norway made recommendations.

33. Sweden stated that the new criminal procedure code is a step in the right direction but noted that the need for further reforms to the prosecutor's office and the independence of the court system, have been identified. Sweden raised concerns over the widespread of cases of police brutality and their impunity; as well as protection of rights of LGBT persons. It encouraged Ukraine to ratify the Rome Statute of the International Criminal Court (ICC). Sweden made recommendations.

43. Switzerland expressed concern at allegations of torture and ill-treatment by the police as well as the lack of investigations of such cases. It was concerned by the detention and treatment of members of the former government. Switzerland also expressed concern with discriminatory acts on the basis of race and nationality as well as the draft legislation discriminating LGBT persons. It made recommendations.

47. The United Kingdom of Great Britain and Northern Ireland noted the reform of the judicial system, including the new Criminal Procedure Code. It highlighted reports of selective justice and serious violations of fundamental legal principles in relation to recent trials. It was concerned by the discrimination of LGBT persons and by the draft Bill 8711. It made recommendations.

48. The United States of America expressed concern at the deterioration of fundamental freedoms and the rule of law, and widening corruption. It viewed positively the passage of the Criminal Procedure Code. It remained concerned over politically motivated trials, the imprisonment of the opposition, increased pressure on independent media, police abuse, trafficking in persons, discrimination of LGBT persons and the weak asylum system. The United States of America made recommendations.

49. Uruguay noted Ukraine's cooperation with the universal system of human rights including its mid-term report on UPR implementation and its standing invitation to special

procedures. Uruguay referred to the discrimination against LGBT persons. Uruguay made recommendations.

54. Australia was concerned about the deteriorating situation regarding freedoms of assembly and expression and fair judicial process. It welcomed the withdrawal of draft legislation that would have re-criminalized defamation. However, it was deeply concerned about the draft bill outlawing the promotion of homosexuality and the selective and politically-motivated judicial processes applied against opposition figures. Australia made recommendations.

62. Canada remained concerned about prison conditions and asked about measures that were adopted to guarantee detainees' right to be treated humanely, including steps to strengthen complaints mechanisms. It welcomed steps taken to raise awareness of domestic violence and racism. Canada was concerned about attacks and discrimination against the LGBT community and draft legislation threatening freedom of speech and assembly. Canada made recommendations.

77. Finland welcomed ratification of the CRPD and its optional protocol and amendments to legislation on the rights of persons with disabilities, but was concerned about their effective implementation. It was also concerned about draft legislation criminalizing references to homosexuality in the media or public domain, which would contradict Ukraine's international human rights obligations. Finland made recommendations.

78. France welcomed measures adopted to respond to allegations of torture and ill-treatment, but noted that they seemed insufficient. It was concerned about increasing violence against persons because of their sexual orientation and at attempts by Parliament to adopt legislation criminalizing the promotion of homosexuality. It was also concerned about pressure exerted on the independent media and journalists. France made recommendations.

79. Germany expressed its appreciation at efforts to implement the recommendations of the first UPR cycle, but remained concerned about continued human rights violations. It encouraged Ukraine to abandon draft legislation criminalizing the promotion of homosexuality and to refrain from other legislation infringing on the human rights and fundamental freedoms of LGBT persons. Germany made recommendations.

85. Ireland commended Ukraine on progress achieved in implementing commitments made following the first Universal Periodic Review. It was concerned about the lack of explicit legal protection against discrimination based on sexual orientation.

II. Conclusions and/or recommendations

97. The following recommendations will be examined by Ukraine, which will provide responses in due time, but no later than the 22nd session of the Human Rights Council in March 2013:

97.18. Reject any proposed legislation that would restrict freedom of expression relating to sexual orientation (Slovenia) (Norway);

97.19. Withdraw its draft legislation criminalising the promotion of homosexuality, and refrain from adopting any other legislation that restricts freedom of expression (Australia);

97.24. Ensure that legislation, including the proposed Bill 8711, is fully compliant with Ukraine's international commitments, including under the European Convention for Human Rights (United Kingdom of Great Britain and Northern Ireland);

97.25. Enact legislation that explicitly protects LGBT persons from discrimination and that laws that contain discriminatory provisions against LGBT persons are amended (Ireland);

97.30. Adopt a comprehensive anti-discrimination law that addresses the worrying trend of incidents based on gender, sexual orientation, racial and ethnic discrimination (Portugal);

97.56. Remove from the legislation discriminatory provisions based on race, sex or sexual orientation, and adopt comprehensive anti-discrimination legislation (Canada);

97.57. Step up the efforts to fight against discrimination by refraining from contradictory legislation and by amending the anti-discrimination legislation to include explicit references to sexual orientation and gender identity as possible grounds of discrimination (Finland);

97.59. Continue its effort to combat discrimination and promote equality in accordance with international treaties establishing guarantees of fundamental human rights and freedoms and equality in the enjoyment of such rights, without privileges or restrictions based on race, colour, political, religious or other belief, gender, sexual orientation, ethnic or social origin, property status, place of residence, language or other grounds (Brazil);

97.69. Respect its international commitments on fundamental rights related to non-discrimination, prevent the adoption of a law prohibiting freedom of expression with regards to homosexuality and raise awareness of civil society on combating all forms of discrimination, including discrimination based on sexual orientation and gender identity (France);

97.70. Take an active stance to stop any actions or laws that constitute an infringement of the rights of LGBT persons (Sweden);

97.71. Implement the recommendation issued in 2010 by the Committee of Ministers of the Council of Europe on measures to combat discrimination based on sexual orientation or gender identity (Switzerland);

97.72. Adopt legislative and other measures to correct and prevent discrimination based on sexual orientation, and to ensure full respect for freedom of expression and association of LGBT persons (Uruguay);

97.73. Increase efforts to improve the effective protection of LGBT persons, and abandon legislation work on draft law no. 8711 on so called 'propaganda of homosexuality' and refrain from other legislation infringing on the human rights and fundamental freedoms of LGBT persons (Germany);

GUATEMALA

24 October 2012

II. Conclusions and/or recommendations

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

100.27. Consider the possibility of strengthening the necessary measures for the protection and integration of LGBT persons (Argentina);

BENIN

25 October 2012

I. Summary of the proceedings of the review process

B. Interactive dialogue and responses by the State under review

87. The United States of America applauded legislative efforts on domestic violence, corruption and torture and the establishment of human rights institutions. It remained concerned about violence by security services, harsh prison conditions and long pre-trial detention periods, restrictions on the right to strike and slowness in addressing the worst forms of child labour. It asked Benin on what services or educational programmes were available to ensure the safety and well-being of LGBT citizens. It made recommendations.

95. Belgium asked what measures Benin had adopted to include the abolition of the death penalty in its domestic legislation and whether abolition of the death penalty would be enshrined in the Constitution. It also asked if the LGBT citizens enjoy legal protection on the grounds of their sexual identity and orientation and how the authorities would react if there were to be any prosecution on the ground of homosexuality. Belgium made recommendations.

II. Conclusions and/or recommendations

110. The recommendations below did not enjoy the support of Benin.

110.1. Bring legislation in conformity with its commitments to equality and non-discrimination by reviewing Article 88 of the Penal Code and by decriminalizing homosexual relations between consenting adults (Canada);

110.2. Formally abolish any punishment on the grounds of sexual orientation or gender identity (Germany);

110.3. Intensify efforts to address discrimination on the basis of sexual orientation or gender identity and investigate and prosecute crimes against lesbian, gay, bisexual and transgender (LGBT) community members (Norway);

110.4. Study the possibility to increase the measures to eliminate all discriminatory treatment based on sexual orientation or gender identity (Argentina);

110.5. Decriminalise sexual relations between consenting, same-sex individuals and establish educational programmes and appropriate policies for police that promote the personal security of all Benin citizens regardless of sexual orientation (United States of America);

REPUBLIC OF KOREA

25 October 2012

I. Summary of the proceedings of the review process

B. Interactive dialogue and responses by the State under review

53. The [delegation stated that the] second National Action Plan for Human Rights includes preparing for the enactment of a general anti-discrimination act. The Government will fully consider including in it grounds for discrimination such as sexual orientation, and indirect discrimination.

100. Australia noted that the death penalty remains applicable and that no formal moratorium has been decided. It encouraged Republic of Korea to reach a social consensus for abolition. It noted that there remains a substantial difference between men's and women's salaries and that there is no broad anti-discrimination and harassment legislation protecting homosexual, bisexual and transgender social groups. It made recommendations.

113. [The delegation noted that a]ccording to Article 92-5 of the *Military Criminal Act*, sodomy and sexual molestation acts are punished. The Constitutional Court on two occasions decided that such a provision was constitutional considering that it was meant for military discipline and sustenance of combat capabilities and only valid in case of an act taking place between militants within a barrack. Therefore, it is inappropriate to repeal or revise such a provision at this point.

II. Conclusions and/or recommendations

124. The following recommendations will be examined by the Republic of Korea which will provide responses in due time, but no later than the 22nd session of the Human Rights Council in March 2012. The response of the Republic of Korea to these recommendations will be included in the outcome report adopted by the Human Rights Council at its 22nd session in March 2012.

124.24. Adopt the Anti-discrimination Act as a matter of priority while encompassing also grounds for discrimination on the basis of sexual orientation (Czech Republic); Include in the Anti-discrimination Law a specific prohibition on discrimination on the basis of sexual orientation (Spain);

124.33. Study the possibility of intensifying measures aiming at eliminating all discriminatory treatment on the basis of sexual orientation or gender identity (Argentina);

124.34. Review the possibility of repealing laws that criminalize on the basis of sexual orientation within the military (United States of America);

SWITZERLAND

29 October 2012

I. Summary of the proceedings of the review process

A. Presentation by the State under review

22. Furthermore, the delegation noted that measures would also be taken in the coming years to improve the legal framework for same sex couples. Starting 2013, registered partnerships will have the same rights as married couples with respect to name. In addition, conditions for the changing of name, sex or civil status will be relaxed.

II. Conclusions and/or recommendations

123. The following recommendations will be examined by Switzerland, which will provide responses in due time, but no later than the 22nd session of the Human Rights Council in March 2013:

123.49. 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 (Canada);

123.76. Adopt federal legislation in order to provide protection against all forms of discrimination, including on grounds of sexual orientation and gender identity (Norway);

123.77. 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 (Ireland);

PAKISTAN

30 October 2012

II. Conclusions and/or recommendations

122. The following recommendations will be examined by Pakistan which will provide responses in due time, but no later than the 22nd session of the Human Rights Council in March 2013. The response of Pakistan to these recommendations will be included in the outcome report adopted by the Human Rights Council at its 22nd session in March 2013.

122.37. 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 (Czech Republic).

ZAMBIA

30 October 2012

I. Summary of the proceedings of the review process

B. Interactive dialogue and responses by the State under review

36. Norway [...] welcomed the enactment of the 2011 Anti-Gender Based Violence Act while expressing concern over the persistence of gender violence. It raised stakeholders' concerns over prohibited consensual same-sex activity. It made recommendations.

55. The United Kingdom of Great Britain and Northern Ireland [...] encouraged Zambia to continue addressing gender inequalities and gender-based balance; improve enforcement of the employment law; and legislate to protect LGBT rights. It made recommendations.

62. Australia expressed concern over criminalisation of consensual same-sex relationships. It made recommendations.

66. With regard to issues relating to LGBT persons, the delegation [of Zambia] stated that the Constitution making process will give the people the opportunity to determine whether specific rights for LGBT persons should be enshrined in the Constitution. The Government was determined not to prescribe to the Zambian people those rights that the Constitution should contain, but to let them make such a determination.

85. Germany [...] would welcome extension of Zambia's anti-discrimination commitment to sexual orientation.

II. Conclusions and/or recommendations

103. The recommendations listed below enjoy the support of Zambia:

103.43. Ensure thorough and impartial investigation into all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity (Norway).

104. The recommendations listed below will be further examined by Zambia and responses will be provided in due time, but no later than the 22nd session of the Human Rights Council in March 2013. These responses will be included in the outcome report adopted by the Human Rights Council at its 22nd session in March 2013:

104.20. Eliminate criminalization of homosexual relations as well as the elimination of all discriminatory practice towards LGBT persons (Spain);

104.21. Decriminalise same-sex relationships between consenting adults and strengthen efforts to address inequality and discrimination based on sexual orientation (Australia);

104.22. Repeal laws that criminalize a person's sexuality (Canada);

104.23. Repeal the law criminalizing same-sex relations among consenting adults (France);

104.24. Review and repeal domestic law which criminalizes sexual orientation (Uruguay);

104.35. Study the possibility of strengthening measures to eliminate all discriminatory treatment based on sexual orientation and gender identity (Argentina).

105. The recommendations below did not enjoy the support of Zambia¹

105.1. Follow up on the recommendations by its National Aids Council, and include men having sex with other men in its HIV/AIDS policies (The Netherlands).

JAPAN

31 October 2012

II. Conclusions and/or recommendations

147. The recommendations formulated during the interactive dialogue/listed below will be examined by Japan which will provide responses in due time, but no later than the 22nd session of the Human Rights Council in March 2013. The responses of Japan will be included in the outcome report to be adopted by the Human Rights Council at its 22nd session in March 2013:

147.34. Consider strengthening legislative protection from racial discrimination and discrimination based on sexual orientation (Canada);

147.36. Ensure that the domestic legislation concerning discrimination is consistent with that contained in the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) which deals furthermore with all forms of direct or indirect discrimination based on age, sex, religion and sexual orientation (Switzerland);

¹ This was the only recommendation to be rejected outright by Zambia

147.65. Review its national legislation with a view to eliminating discriminatory provisions based on a comprehensive list of grounds, including social status, gender and sexual orientation (Czech Republic);

147.85. Define discrimination in national legislation in line with the ICERD, and prohibit all forms of direct and indirect discrimination, including on the basis of age, gender, religion, sexual orientation, ethnicity, or nationality (Norway);

147.89. Consider further measures for the protection and integration of LGBT individuals, and for the elimination of all discriminatory treatment on the grounds of sexual orientation or gender identity (Argentina);

147.90. Lobby for and implement comprehensive anti-discrimination legislation to provide protection for the rights of LGBT persons (United States of America);

PERU

1 November 2012

I. Summary of the proceedings of the review process

B. Interactive dialogue and responses by the State under review

73. With regards to questions on legislative measures to combat discrimination against LGBTs, [the delegation of Peru] stated that, in general terms, domestic law including the Constitution prohibits discrimination of any kind. Moreover, Peru's Constitutional Procedure Code explicit provides that persons discriminated against because of their sexual option can lodge a writ of "amparo" for their protection.

93. Netherlands [...] expressed hope that Peru would take measures to combat discriminations against LGBT persons.

II. Conclusions and/or recommendations

116. The recommendations formulated during the interactive dialogue/listed below enjoy the support of Peru:

116.14. Repeal penal sanctions on homosexuality in the police force (Slovenia);

116.15. Consider enacting legislation that addresses crimes based on sexual orientation (Canada)²;

116.32. 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 (Slovenia).

SRI LANKA

1 November 2012

II. Conclusions and/or recommendations

129. The recommendations below did not enjoy the support of Sri Lanka:

129.23 Decriminalize consenting homosexual relationships between persons over the age of consent by repealing Section 365A of the penal code (Canada);

129.59 Strengthen the measures to eliminate all discriminatory treatment based on sexual orientation or gender identity (Argentina).³

² The recommendation as read during the interactive dialogue: "Enact legislation that addresses crimes based on sexual orientation to ensure that rights are protected and enforced (Canada)".

³ The matter is presently under consideration.