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**UN HUMAN RIGHTS COUNCIL
Universal Periodic Review –Fourteenth Session**

SUGGESTED RECOMMENDATIONS ON HUMAN RIGHTS ISSUES RELATED TO SEXUAL ORIENTATION AND GENDER IDENTITY

All documents referred to can be found on the respective country pages at:
<http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>.

Details of recommendations and references to sexual orientation and gender identity during the first cycle can be found at <http://arc-international.net/global-advocacy/universal-periodic-review>

Summary

(See detailed interventions below, from page 3)

Czech Republic

Key Issues/Recommendations: adopt comprehensive measures to address hate crimes; review adoption policies; remove forced/coerced sterilisation as a prerequisite to gender recognition.

Argentina

Key Issues/Recommendations: welcome significant progress on LGBT rights; ensure provincial codes of misdemeanour are not applied to discriminate or harass on grounds of race, sexual orientation or gender identity; implement sensitivity training for public officials; ensure fair treatment of LGBT detainees in accordance with the *Yogyakarta Principles*; implement comprehensive sex education programme; explicitly include sexual orientation and gender identity in antidiscrimination legislation.

Gabon

Key Issues/Recommendations: review the High Commissioner's report on sexual orientation and gender identity, and consider implementing the recommendations.

Ghana

Key Issues/Recommendations: apply Constitutional guarantees of equality to LGBT persons; combat violence and harassment; engage in dialogue regarding decriminalisation of consensual same-sex relations; review the High Commissioner's report on sexual orientation and gender identity, and consider implementing the recommendations.

Ukraine

Key Issues/Recommendations: reject draft legislation that would restrict freedom of expression by banning “promotion of homosexuality”; take action against hate crimes; include sexual orientation and gender identity in antidiscrimination legislation; review the High Commissioner’s report on sexual orientation and gender identity, and consider implementing the recommendations.

Guatemala

Key Issues/Recommendations: Welcome acceptance of recommendations relating to sexual orientation and gender identity during the first UPR cycle, and recommend reporting on progress made towards achieving these goals; take action to combat violence and discrimination; apply the *Yogyakarta Principles*.

Benin

Key Issues/Recommendations: review the High Commissioner’s report on sexual orientation and gender identity, and consider implementing the recommendations.

Republic of Korea

Key Issues/Recommendations: include sexual orientation and gender identity in antidiscrimination legislation; treat homosexuality equally with heterosexuality in the military; conduct education and public awareness campaigns.

Switzerland

Key Issues/Recommendations: include sexual orientation and gender identity in non-discrimination legislation; introduce comprehensive sexuality education; apply the *Yogyakarta Principles*.

Pakistan

Key Issues/Recommendations: review the High Commissioner’s report on sexual orientation and gender identity, and consider implementing the recommendations.

Zambia

Key Issues/Recommendations: review the High Commissioner’s report on sexual orientation and gender identity, and consider implementing the recommendations.

Japan

Key Issues/Recommendations: include sexual orientation and gender identity in non-discrimination legislation; provide equal benefits to unmarried same-sex and opposite-sex couples; remove restrictions on changing gender in government registries; consider applying the *Yogyakarta Principles* as a guide to policy development.

Peru

Key Issues/Recommendations: include sexual orientation and gender identity in antidiscrimination legislation; repeal penal sanctions on homosexuality in the police force; provide for legal recognition of self-defined gender identity; take measures to address hate crimes; ensure equal access to HIV/AIDS services and treatment; apply the *Yogyakarta Principles*.

Sri Lanka

Key Issues/Recommendations: review the report of the High Commissioner on sexual orientation and gender identity, and consider implementing the recommendations.

CZECH REPUBLIC

Date of review: Monday, 21 October AM

Key Issues/Recommendations: adopt comprehensive measures to address hate crimes; review adoption policies; remove forced/coerced sterilisation as a prerequisite to gender recognition.

Sample Intervention: We welcome the Czech Republic's commitment to equality and non-discrimination at both the national and international levels, and its acceptance during the first UPR cycle of a recommendation to apply the Yogyakarta Principles as a guide to policy development.

We note that a number of stakeholders have expressed concerns about the rise of neo-Nazi groups, and hate crimes and harassment directed against individuals, including on the basis of sexual orientation and gender identity. **We recommend that consideration be given to introducing hate crimes legislation on these grounds, as well as to public education programs and sensitivity training to promote respect for all persons, including on the grounds of sexual orientation or gender identity.**

To assist efforts to address hate crimes on these and other grounds more systematically, we further recommend: that senior government officials should speak out against hate crime incidents and ensure that there is a rapid response of the law enforcement and the criminal justice authorities; that the Government should seek to establish guidelines and best practices for public officials at all levels to prevent statements that incite violence or promote acts that would curtail the enjoyment of rights by others; that the Ministry of the Interior improve efforts to collect comprehensive disaggregated data on hate crime attacks; that the authorities ensure thorough investigations and prosecution of any reports of police misconduct or abuse; that law enforcement agencies be trained in equality and cultural sensitivity and their approach should avoid and repeat victimization; and that the Ministry of Justice authorities train prosecutors and judges on recognizing and prosecuting bias-motivated offences to ensure the systematic use of penalty enhancement provisions in appropriate cases.

We further note that that under the 2006 Law on Registered Partnership, registered partners of the same-sex are not eligible to apply for adoption, not even in relation to the biological child of the other partner. **We recommend that consideration be given to the application of the Yogyakarta Principles in reviewing adoption policies, taking into account the best interests of the child.**

Finally, we note that the condition of sterilisation before allowing an official change of gender is the only case in Czech law in which forced sterilisation is required. Transgender persons thus continue to live with laws which force them to choose between their human rights to recognition before the law, and their rights to bodily integrity with regards their health, ability to form a family, and freedom from cruel, inhuman and degrading treatment. **We therefore recommend that the Czech Republic legally recognise the self-defined gender identity of all persons without infringement on other rights, including by removing the requirement of sterilisation.**

[Previous cycle](#)

The Czech Republic accepted a recommendation to "consider using the *Yogyakarta Principles* as a guide to assist in policy development".

[National report](#)

III. Implementation of the recommendations made during the first review

C. Anti-discrimination legislation (recommendations nos. 4, 6, 9, 20 and 30)

29. Anti-discrimination legislation is based on the constitutional principles of equality in dignity and rights, and on the prohibition of discrimination on illegitimate grounds. The Anti-Discrimination Act effective since 2009 defines the right to equal treatment and protection against discrimination. In accordance with EU law, it prohibits discrimination on the following grounds:

- race;
- ethnic origin;
- nationality;
- sex;
- sexual orientation;
- age;
- disability;
- religion, belief or world view.

In the following areas:

- right to employment and access to employment or independent gainful activity;
- employment or alternative employment arrangement, including remuneration;
- social security and social benefits and facilities;
- health care;
- education, and
- access to goods and services available to the public, including housing.

J. Using the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (recommendation no. 14)

52. The Czech Republic is committed to supporting all minorities living in its territory, including sexual minorities. The Committee for Sexual Minorities set up within the Government Council for Human Rights in 2009 uses the Yogyakarta Principles as a guidance document for its work. The seats on the Committee are divided between government authorities and civil society representatives. The Committee analyzes the situation and rights of sexual minorities in the Czech Republic and, like the Council's other committees, may present to the Council proposals concerning legislative amendments, changes to the procedures followed by government authorities, and solutions to other problems facing sexual minorities. For example, the Committee helped create a handbook on "Homophobia in the Classroom" and recommendations for the media how to treat and present to the public different sexual identities.

Compilation of UN information

I. Background and framework

B. Constitutional and legislative framework

5. CEDAW welcomed the adoption and implementation of the Anti-Discrimination Act prohibiting discrimination on grounds of sex and sexual orientation, as also welcomed by UNHCR.

III. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Equality and non-discrimination

17. CEDAW reiterated its recommendation to address persistent and deep-rooted gender stereotypes that perpetuated discrimination against women.

Summary of stakeholders' information

I. Information provided by other accredited national human rights institutions and other stakeholders

A. Background and framework

2. Constitutional and legislative framework

4. Joint Submission 3 (JS3) noted that the Criminal Code defined specific bias- motivated acts as separate offences and it contained provisions by which racist or other bias motivations can be considered as a specific aggravating circumstance in the commission of certain offences. However, according to JS3, this general aggravating circumstance is considered against extenuating circumstances, and has little impact on the final sentencing. Joint Submission 4 (JS4) also noted a similar concern particularly regarding crimes motivated by hate towards a real or said sexual orientation of the victim.

B. Cooperation with human rights mechanisms

C. Implementation of international human rights obligations

2. Right to life, liberty and security of the person

21. Referring to a recommendation of the first cycle UPR, JS2 noted that there had been increasing numbers of violent attacks and regular anti-Roma marches organized by a reinvigorated Neo-Nazi movement in the Czech Republic. JS3 also noted that bias- motivated violence and harassments were a serious problem particularly having devastating effects on Roma communities, lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, the Jewish community, and other vulnerable minorities.

22. With respect to hate crime in the Czech Republic, JS3 recommended, among others: that senior government officials should speak out against hate crime incidents and ensure that there is a rapid response of the law enforcement and the criminal justice authorities; the Government should seek to establish guidelines and best practices for public officials at all levels to prevent statements that incite violence or promote acts that would curtail the enjoyment of rights by others; the Ministry of Interior improve efforts to collect comprehensive disaggregated data on hate crime attacks; the authorities ensure thorough investigations and prosecution of any reports of police misconduct or abuse; the law enforcement agencies be trained in cultural sensitivity and their approach should avoid and repeat victimization; and the Ministry of Justice authorities train prosecutors and judges on recognizing and prosecuting bias-motivated offences to ensure the systematic use of penalty enhancement provisions in appropriate cases.

26. [...] JS4 also stated that the condition of sterilization before the official change of gender was the only case of forced sterilization required in Czech law at present.

4. Right to privacy, marriage and family life

33. JS4 noted that under the 2006 Law on Registered Partnership, registered partners of the same-sex were not entitled to adopting children, not even the biological child of the other partner. JS4 further noted that the 2012 new Civil Code to come into effect on 1 January 2014 had omitted the institution of registered partnership, as a result of which registered partners are not eligible for consideration as family.

34. JS4 also noted that a new Law on International Private Law along with the Civil Code would not recognize adoption performed abroad by Czech same-sex couples, which would lead to a legal vacuum regarding the legal status of the adopted child.

ARGENTINA

Date of review: Monday, 21 October PM

Key Issues/Recommendations: welcome significant progress on LGBT rights; ensure provincial codes of misdemeanour are not applied to discriminate or harass on grounds of race, sexual orientation or gender identity; implement sensitivity training for public officials; ensure fair treatment of LGBT detainees in accordance with the *Yogyakarta Principles*; implement comprehensive sex education programme; explicitly include sexual orientation and gender identity in antidiscrimination legislation.

Sample Intervention: We welcome Argentina's commitment to equality and non-discrimination on the grounds of sexual orientation and gender identity, and

commend the government for its significant successes in advancing the rights of lesbian, gay, bisexual and transgender people.

However, we note from the stakeholder submissions that each of Argentina's 25 provinces has a code of misdemeanours which is used to penalise racial and gender minorities. One NGO deplored the persecution suffered by transgender women at the hands of the police under the codes. **We recommend aligning laws relating to misdemeanours with the Constitution and with international human rights law, to ensure that they are not applied to harass or discriminate against any marginalised group, including on grounds such as race, sexual orientation or gender identity. We further recommend sensitivity training for police, prosecution, prison and other authorities on these grounds.**

We are concerned at reports that the treatment of LGBT detainees remains at the discretion of prison authorities, on the basis of regulations that provide for punishments for reasons of "morality". Stakeholders have indicated that transgender detainees are usually kept in isolation or placed with persons detained in connection with gender-related crimes.

We recommend that Argentina apply the *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity* as a guide to policy development, including those principles relating to the right to treatment with humanity while in detention, conjugal visits on an equal basis, and the need to ensure that, so far as is reasonably practicable, protective measures involve no greater restriction on the rights of LGBT detainees than is experienced by the general prison population.

We further welcome the establishment by law of a comprehensive sex education programme. However, stakeholders note that between 2008 and 2011 little progress had been made in implementing the programme. **We recommend that federal and provincial policies be coordinated to achieve effective delivery of comprehensive sex education, and we further recommend incorporating diversity of sexuality and expressions of gender identity in the application of the law on comprehensive sex education.**

Finally, we recommend that sexual orientation and gender identity be explicitly included in antidiscrimination legislation.

Previous cycle

Working Group discussions: Argentina was asked during the Working Group discussions about measures to ensure equal treatment of sexual minorities.

Response: Argentina replied during the Working Group discussions that the matter is addressed in the National Plan against Discrimination, and that the government has supported equal pension benefits for surviving same-sex partners before the courts.

National report

IV. Achievements in the implementation of the recommendations

A. Countering discrimination towards the most vulnerable sectors (recommendations 1 and 2)

28. The National Institute to Combat Discrimination, Xenophobia and Racism (INADI) works in five main subject areas: gender, education, health, interculturality and disabilities. Within each area, there are a number of programmes that focus on different issues. INADI also has cross-cutting activities dealing with such topics as sexual diversity, older adults, good practices in public employment and many others. In addition, the Institute has an office that assists and advises people who are subject to discrimination. This office (the Assistance and Advisory Directorate) processes complaints regarding xenophobic, discriminatory or racist behaviour and provides free legal aid to victims.

3. Sexual orientation

42. Measures taken to address the situation of other groups that are frequently the target of discriminatory practices include the steps taken to eliminate the legal inequalities to which some people are subject as a result of their sexual orientation. On the basis of two INADI reports, the National Social Security Administration issued a decision recognizing the pension rights of same-sex partners. In July 2010, an amendment to the Civil Code (Act No. 26.618) was passed that provides for the recognition of equality in marriage for all persons, regardless of their sexual orientation, and that permits same-sex marriages and allows for the possibility of adoption in such cases.

43. An important step forward in the expansion of the rights of groups that have historically been discriminated against because of their members' sexual orientation was taken with the promulgation, by Decree No. 773/12, of Gender Identity Act No. 26.743. This law provides that all people have the right to recognition of their gender identity, to unhindered personal development in keeping with their gender identity, to be treated in accordance with their gender identity and, in particular, to be identified on identity documents with first name(s), a picture and an indication of their sex that is in keeping with their gender identity.

44. Under the new law, court authorization is not required either for the modification of identity information or for medical interventions; the informed consent of the person concerned is sufficient. The law permits total and partial surgical interventions and/or hormone treatments for persons over 18 years of age for the purpose of adapting their body to their self-perceived identity. All health care is covered by the Compulsory Medical Plan (PMO).

45. Along the same lines, the National Programme for Sexual Health and Responsible Parenthood, which was established by Act No. 25.673, guarantees the right to express one's sexual preference without hindrance and without being subjected to any sort of discrimination or violence. As part of this programme, a task force has been working since October 2010 to define and promote public policies aimed at ensuring genuine access to sexual and reproductive health services for the lesbian, gay, transgender and bisexual population.

I. Systematic inclusion of a gender perspective in the follow-up to the universal periodic review process (recommendation 18)

123. This report not only incorporates a gender perspective but also attempts to include the issues relevant to persons with disabilities, children and adolescents, older adults, the lesbian, gay, transgender and bisexual community, and others.

Compilation of UN information

III. Implementation of international human rights obligations

A. Equality and non-discrimination

21. CEDAW urged Argentina to ensure that the rights of older women, women migrants, women with disabilities, and lesbians, bisexual and transgendered women are fully protected.

H. Right to health

62. UNCT reported that HIV continued to particularly affect transsexuals, men who had sex with men, drug users and sex workers. Moreover, although by law testing was required to be voluntary, obligatory pre-employment testing continued to be carried out, sometimes without the knowledge of the person concerned.

Summary of stakeholder information

II. Information provided by other stakeholders

A. Background and framework

2. Constitutional and legislative framework

12. The Multisectorial por la Diversidad en Tucumán (MDT) and the Federación Argentina de Lesbianas, Gays, Bisexuales y Trans (FALGBT) acknowledged the progress made in improving the situation of the lesbian, gay, bisexual and transgender community and highlighted the adoption of the Equal Marriage Act, which allowed same-sex couples to marry.

16. The Asociación Pensamiento Penal (APP) reported that each of the country's 25 provinces had a code of misdemeanours and that the resulting diversity of punitive measures undermined the right to equality before the law. The Movimiento Afrocultural (MAC) stressed that, in some provinces, persons of African descent were detained under such a code simply for being in the street. FALGBT said that the codes penalized gender identities. MDT deplored the persecution suffered by transgender women at the hands of the police under the codes. APP recommended aligning the legislation relating to misdemeanours with the Constitution and with international human rights law.

C. Implementation of international human rights obligations

1. Equality and non-discrimination

24. FALGBT pointed out that anti-discrimination law still failed to recognize gender identity and sexual orientation as determinants of discrimination.

2. Right to life, liberty and security of the person

32. FALGBT said that the treatment of lesbian, gay, bisexual and transgender detainees remained at the discretion of the prison authorities, on the basis of regulations that provided for punishments for reasons of "morality". Members of the transgender community were usually kept in isolation or placed with persons detained in connection with gender crimes.

9. Right to education

80. FALGBT expressed the view that religious education continued to be one of the main perpetrators of prejudice, discriminatory discourse and harassment in the school environment.

81. FALGBT welcomed the establishment by law, in 2006, of a comprehensive sex education programme. However, between 2008 and 2011, little or no progress had been made in implementing the programme. According to CADE, one of the problems was that each district had the autonomy to apply the programme according to its own circumstances. Joint Submission 1 recommended that federal and provincial policies be coordinated to achieve effective delivery of comprehensive sex education. MDT recommended incorporating diversity of sexual feeling and expressions of gender identity in the application of the law on comprehensive sex education.

GABON

Date of review: Tuesday, 23 October AM

Key Issues/Recommendations: review the High Commissioner's report on sexual orientation and gender identity, and consider implementing the recommendations.

Sample Intervention: We welcome Gabon's commitment to equality and non-discrimination on all grounds. In keeping with this commitment, **we recommend that Gabon review the report of the UN High Commissioner for Human Rights on *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, and give consideration to implementing the recommendations therein.**

Previous cycle

There were no references or recommendations on human rights issues relating to sexual orientation or gender identity throughout the process of the UPR of Gabon in 2008.

National report

Not available at time of writing.

Compilation of UN information

No references to sexual orientation or gender identity

Summary of stakeholder information

No references to sexual orientation or gender identity

GHANA

Date of review: Tuesday, 23 October PM

Key Issues/Recommendations: apply Constitutional guarantees of equality to LGBT persons; combat violence and harassment; engage in dialogue regarding decriminalisation of consensual same-sex relations; review the High Commissioner's report on sexual orientation and gender identity, and consider implementing the recommendations.

Sample Intervention: We welcome Ghana's commitment to equality and non-discrimination on all grounds. However we note that several stakeholders have expressed concern that sexual activity between consenting adults remains criminalised under the Criminal Code. Ghana did not provide a response to a recommendation to consider repealing this provision during the first cycle. Amnesty International has provided information that this clause has the effect of encouraging discrimination, harassment and persecution of people on the basis of their identity and consensual sexual behaviour. **We recommend that Ghana ensure that the provisions in the Constitution that guarantee equality and dignity are equally applied to members of the LGBT community. We recommend that the Government take action to combat violence or harassment on any ground, including sexual orientation and gender identity. We recommend dialogue and cooperation between the government and civil society groups, human rights defenders, religious groups and other relevant stakeholders on the decriminalisation of same-sex relations between consenting adults.**

Finally, **we recommend that Ghana review the report of the UN High Commissioner for Human Rights on *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, and give consideration to implementing the recommendations therein.**

Previous cycle

Recommendations made: to give consideration to revising the Criminal Code in order to repeal the provision that criminalises the sexual activity between consenting adults.

Status of recommendations: no response.

National report

No references to sexual orientation or gender identity.

Compilation of UN information

III. Implementation of international human rights obligations

A. Equality and non-discrimination

14. UNAIDS stated that there are no explicit laws protecting the rights of PLHIV (people living with HIV). Several acts strengthen the Constitutional prohibition against discrimination, but they do not address the issue of HIV/AIDS-based discrimination. It also stated that the laws and policies need to address ostracized groups, including MSM (men who have sex with men) and certain professions such as commercial sex work. The activities of these groups are criminalized, which inhibits the development of mechanisms to prevent discrimination against them.

Summary of stakeholder information

B. Implementation of international human rights obligations

1. Equality and non-discrimination

17. AI indicated that Ghana's Constitution guarantees freedom from discrimination, in line with the International Covenant on Civil and Political Rights, Article 2 of which guarantees non-discrimination on the grounds of sex. However, discrimination on the grounds of sexual orientation persists.

4. Right to privacy

41. AI stated that sexual activity between consenting adults remains criminalized under Chapter 6, Article 104 of the Criminal Code, which prohibits —unnatural carnal knowledge (defined to include consensual sexual intercourse between men). This clause has the effect of encouraging discrimination, harassment and persecution of people on the basis of their identity and consensual sexual behaviour. AI recommended that Ghana protect the human rights of lesbian, gay, bisexual and transgender people and to amend the Criminal Code to repeal the provision that criminalizes sexual activity between consenting adults.

42. CHRI stated that the period under review has seen statements by members of parliament that the government should take action against homosexuals. Church organisations, which wield significant influence in Ghanaian politics, have publicly called for the strengthening of the laws in relation to same-sex sexual conduct. The impact of the debates, and the animosity towards homosexuality this incites, has meant that lesbian, gay, bisexual, transgender and intersexual individuals (LGBTI) are more vulnerable to discrimination, harassment and violence. As homosexuality is illegal in Ghana, they have no protection under the law. JS3 raised similar concern.

43. CHRI recommended that Ghana issue a moratorium on public prosecutions under Section 104(b) of the 1960 Criminal Code and embark on a process of repealing it. CHRI also recommended that Ghana ensure that the provisions in the Constitution that guarantee equality and dignity are used to protect members of the LGBTI community; and encourage dialogue and cooperation between civil society groups, human rights defenders, religious groups and other relevant stakeholders on the decriminalisation of same-sex sexual conduct.

UKRAINE

Date of review: Wednesday, 24 October AM

Key Issues/Recommendations: reject draft legislation that would restrict freedom of expression by banning "promotion of homosexuality"; take action against hate crimes; include sexual orientation and gender identity in antidiscrimination legislation; review the High Commissioner's report on sexual orientation and gender identity, and consider implementing the recommendations.

Sample Intervention: We welcome the commitment expressed by Ukraine in its national report to equality and non-discrimination.

We are deeply concerned, however, that a number of Bills are currently under consideration that would explicitly discriminate on the ground of sexual orientation. Framed as banning the "promotion of homosexuality", these draft Bills would stifle freedom of expression, which includes the right to seek, receive and impart information, opinions and ideas, as well as the rights to freedom of peaceful assembly and association, and the rights of human rights defenders to promote new ideas and advocate for justice and equality. No other group in society is subject to such discriminatory restrictions. We note that the High Commissioner for Human Rights has explicitly spoken out against such laws. **We therefore recommend that the government reject any proposed legislation that would restrict freedom of expression relating to sexual orientation, whether framed as a ban on homosexual promotion, propaganda or otherwise.**

We further note that stakeholders have expressed concern about an absence of comprehensive anti-discrimination legislation, including protection from discrimination on grounds of sexual orientation and gender identity. Furthermore, one NGO noted that some laws contain

discriminatory provisions against LGBT persons. Another stakeholder referred to reports indicating that LGBT persons experienced direct and indirect discrimination in employment, access to services, education, housing, health care, relationship recognition and access to justice. There were further reports of high incidences of bias-motivated crimes directed against LGBT individuals and organisations, including blackmail and extortion by law enforcement officials.

We recommend that the government of Ukraine take action against hate crimes and harassment, including on grounds of sexual orientation and gender identity. We further recommend that sexual orientation and gender identity be explicitly included in antidiscrimination legislation.

Finally, we recommend that Ukraine review the report of the UN High Commissioner for Human Rights on *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, and give consideration to implementing the recommendations therein.

Previous cycle

Recommendation made: to apply the Yogyakarta Principles on the Application of International Human Rights Law in relations to Sexual Orientation and Gender Identity as a guide to assist in policy development.

Status of recommendation: rejected.

National report

No references to sexual orientation or gender identity

UN Compilation

No references to sexual orientation or gender identity

Summary of stakeholder information

Note: recent developments in Ukraine include introduction of draft legislation prohibiting the “promotion of homosexuality” – see:

<http://tinyurl.com/9px6jvp>

<http://tinyurl.com/bl549cx>

II. Information provided by other stakeholders

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Equality and non-discrimination

13. JS11 highlighted that the principle of equality was not extended to citizens in the Constitution. JS11 noted the absence of a comprehensive anti-discrimination legislation. Council of LGBT organisations of Ukraine (CLGBT) stated that anti-discrimination provisions were scattered throughout the legal system and lacked effective mechanism for their implementation. JS2 stated that legislation did not provide a definition of discrimination, including direct and indirect discrimination and did not include a comprehensive list of grounds for discrimination. As CoE noted, CoE-ECRI reiterated its recommendation that Ukraine include in the Constitution the right to equality and non- discrimination for all, but not just for citizens. JS11, JS2, CLGBT, Insight and the Council of Europe (CoE) recommended that Ukraine adopt a comprehensive anti-discrimination law covering all areas of life.

19. HRF highlighted the lack of explicit legal protection against discrimination based on sexual orientation. Furthermore, as CLGBT noted, some laws contained discriminatory provisions

against LGBT persons. HRF and CLGBT pointed to intolerance towards LGBT persons in society. JS2 referred to reports indicating that LGBT persons experienced direct and indirect discrimination in employment, access to services, education, housing, health care and access to justice. JS2 also pointed to reported high incidence of bias-motivated crimes directed at LGBT individuals and organisations. Insight reported that politicians chose to use homophobia as part of their election platforms in 2010 and 2012.

20. Insight reported that hate crimes towards LGBT people often treated as hooliganism. JS2 stated that LGBT persons were reported to be often victims of police profiling and illegal arrests. CLGBT reported that threats to disclose information about the person's sexual orientation to his/her relatives or colleagues were reportedly used by law enforcement bodies to extort money or make LGBT people to admit guilt for crimes they did not commit.

4. Right to privacy, marriage and family life

38. Insight reported that legislation did not provide rights to LGBT people to register their partnership, to marry or to adopt children. CLGBT explained that same-sex couples were deprived of any form of legal recognition and of any rights as a family even if they cohabit and de facto constitute a family. Same-sex couples were not allowed to jointly adopt children and legislation did not recognise any parental or custodial rights and obligations for a partner in a same-sex couple in relation to the child of the other partner. Insight concluded that the lack of legal recognition of diverse forms of families resulted in discrimination in a number of areas of life.

GUATEMALA

Date of review: Wednesday, 24 October PM

Key Issues/Recommendations: Welcome acceptance of recommendations relating to sexual orientation and gender identity during the first UPR cycle, and recommend reporting on progress made towards achieving these goals; take action to combat violence and discrimination; apply the *Yogyakarta Principles*.

Sample Intervention: We welcome Guatemala's acceptance, during the first UPR cycle, of numerous recommendations relating to sexual orientation and gender identity, including measures to address violence and hate crimes against LGBT people, ending impunity, education and awareness programmes on these grounds, and measures to combat discrimination.

We note that the national report for the second cycle does not address these matters, however, and stakeholders have raised concerns about lack of implementation. **We therefore recommend that Guatemala report to the Human Rights Council in the course of the upcoming year on measures taken and progress made in achieving implementation of these accepted recommendations from the first cycle.**

We also note that the Human Rights Committee, UNFPA and several stakeholders have expressed concerns about discrimination and violence against people on the basis of sexual orientation or gender identity.

We recommend that Guatemala implement the Human Rights Committee recommendation to investigate, prosecute and punish any act of discrimination or violence motivated on grounds of sexual orientation or gender identity.

We further recommend that Guatemala consider applying the *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity* as a guide in policy development.

Previous cycle

Recommendations made: take all the necessary measures to fight against the lynching and killings of persons based on their sexual orientation; put an end to impunity for reported attacks against members of marginalized communities, including on the grounds of sexual orientation and gender identity, as well as to put in operation awareness-raising efforts in that respect, targeted particularly at law enforcement officials and the judiciary; adopt further measures to end impunity for attacks against human rights defenders and against persons because of their sexual orientation or gender identity, including specific education and awareness raising programmes for law enforcement, judicial and other authorities, which focus, inter alia, on protection of enjoyment of human rights by persons of minority sexual orientation and gender identity.

Status of recommendations: accepted.

National report

No references to sexual orientation or gender identity

Compilation of UN information

III. Implementation of international human rights obligations

A. Equality and non-discrimination

19. In 2012, the Human Rights Committee expressed concern about discrimination and violence against lesbians, gays, bisexuals and transsexuals (LGBT). The United Nations Population Fund (UNFPA) noted that transsexuals were the victims of hate crimes. The Committee recommended that any act of discrimination or violence motivated by the victim's sexual orientation should be investigated, prosecuted and punished. UNFPA made similar recommendations.

Summary of stakeholder information

I. Information provided by the accredited national human rights institution of the State under review in full compliance with the Paris Principles

B. Implementation of international human rights obligations, taking into account applicable international humanitarian law

3. With regard to the UPR recommendations concerning the implementation of the Law against Femicide, the Advocate stated that, notwithstanding the enhanced legal protection, the phenomenon continued unabated between 2007 and 2011. The Advocate was informed of 3,272 cases of violent deaths of women; 618 of the cases had led to convictions. Lesbian, gay, bisexual, and transgender (LGBT) persons had also been victims of violence. There had been many victims of domestic violence, mostly children; and the number of trafficking victims had increased by 44 per cent in the previous two years.

II. Information provided by other stakeholders

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Equality and non-discrimination

27. LAMBDA and the Organización de Apoyo a una Sexualidad Integral frente al SIDA (Organization to Support an Integrated Sexuality to Confront AIDS) (OASIS) reported that, notwithstanding the UPR recommendations, Guatemala failed to take significant measures to protect LGBT persons and that this was reflected in their vulnerability and in discrimination and exclusion. The Colectiva de Mujeres en Resistencia indicated that there was a lack of awareness of cases of femicide against lesbian women because the sexual orientation of these women remains — in general — undisclosed. The Organización Trans-Reinas de la Noche expressed similar concerns and recommended the implementation of policies and practices to prevent impunity in cases of human rights violations committed against persons on the ground of their gender identity, proper investigations of such offences and punishment of the perpetrators. The Colectiva de Mujeres en Resistencia recommended the application of the Yogyakarta Principles to promote the integration of the LGBT population into society.

BENIN

Date of review: Thursday, 25 October AM

Key Issues/Recommendations: review the High Commissioner's report on sexual orientation and gender identity, and consider implementing the recommendations.

Sample Intervention: We welcome Benin's commitment to equality and non-discrimination on all grounds. In keeping with this commitment, **we recommend that Benin review the report of the UN High Commissioner for Human Rights on *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, and give consideration to implementing the recommendations therein.**

Previous cycle

Recommendation made: to consider decriminalising homosexual activities between consenting adults.

Status of recommendation: rejected.

National report

III. Follow-up on the previous review

K. Human rights, sexual orientation and gender identity (recommendation 6)

92. Benin has not accepted this recommendation.

Compilation of UN information

No references to sexual orientation or gender identity

Summary of stakeholder information

No references to sexual orientation or gender identity

REPUBLIC OF KOREA

Date of review: Thursday, 25 October PM

Key Issues/Recommendations: include sexual orientation and gender identity in antidiscrimination legislation; treat homosexuality equally with heterosexuality in the military; conduct education and public awareness campaigns.

Sample Intervention: We welcome the Republic of Korea's commitment to equality and non-discrimination on all grounds, as outlined in the National Report. However we note from the input reports that the anti-discrimination bills have not yet been adopted. Could the Republic of Korea provide a timeframe for the adoption of these bills? **We recommend that the Republic of Korea take urgent steps to adopt a comprehensive anti-discrimination act, including on grounds of sexual orientation and gender identity, in keeping with their UPR commitments and international law.**

We note that the Republic of Korea continues to penalise homosexuality in the military. **We recommend that the government modify relevant regulations to ensure equivalent treatment of same-sex and opposite-sex identity and conduct. We further recommend that the Republic of Korea combat discrimination on the basis of sexual orientation and gender identity and promote education and public awareness to ensure the protection of the rights of sexual minorities.**

Previous cycle

Recommendations made: to include discrimination on basis of sexual orientation in the draft antidiscrimination bill.

Status of recommendations: no clear response.

National report

IV. Implementation of and progress on the recommendations of the previous UPR

Anti-discrimination act (Recommendation 21 and 23)

45. The Government has continued its research and review on a general act on anti-discrimination, encompassing grounds for discrimination such as gender, race, religion, and sexual orientation. While studying relevant domestic legislations, international human rights norms, and legislations of other countries, the Government has sought to address social and economic issues that can be entailed in the enactment of a general anti-discrimination act and to strike a balance between the right to equality and the principle of private autonomy. In 2010, the Government organized a special sub-committee consisting of government officials from relevant ministries, academics, legal experts and interest groups for in-depth discussions in this regard. In 2011, two draft bills for anti-discrimination proposed by lawmakers were submitted to the National Assembly, but they expired with the conclusion of the 18th National Assembly session in May 2012.

Compilation of UN information

III. Implementation of international human rights obligations A. Equality and non-discrimination

8. CEDAW regretted the slow progress in the adoption of the Anti-Discrimination Bill which had been on hold since May 2008 with CESCR and CRC regretting that the legislative definition of discrimination does not contain an express prohibition of discrimination based on sexual orientation and nationality. The Government in its replies to CERD in 2008 indicated that it was redoubling its efforts to introduce the Anti-Discrimination Act. CEDAW called for urgent steps to be taken towards the adoption of a comprehensive Anti-Discrimination Act, in line with the Convention and article 2 (4) of the NHRC Act.

Summary of stakeholder information

I. Information provided by the accredited national human rights institution of the State under review in full compliance with the Paris Principles

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

13. The Constitutional Court, in March 2011, upheld article 92 of the Military Penal Code, which penalizes same-sex sexual activity for the military. The Government should modify relevant regulations to combat discrimination against sexual minorities and promote education and public awareness to ensure the protection of the rights of sexual minorities.

SWITZERLAND

Date of review: Monday, 29 October AM

Key Issues/Recommendations: include sexual orientation and gender identity in non-discrimination legislation; introduce comprehensive sexuality education; apply the *Yogyakarta Principles*.

Sample Intervention: We welcome Switzerland's commitment to equality and non-discrimination on all grounds, including on the basis of sexual orientation and gender identity, as outlined in the national report.

However, we note that stakeholders have expressed concerns that legal protection against discrimination is still fragmentary. In the context of employment, cases of discrimination due to HIV/AIDS are reportedly on the rise and LGBTI persons subject to discrimination. **We recommend that Switzerland introduce federal legislation that explicitly prevents and combats discrimination, including for people living with chronic diseases and on grounds of sexual orientation and gender identity.**

We further recommend that the Government include comprehensive sexuality education in the curricula and ensure equal access to such education.

Finally, we recommend that the Government consider applying the *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity* as a guide in policy development.

Previous cycle

Recommendations made: to strive for federal legislation to provide protection against all forms of discrimination, including on grounds of sexual orientation and gender identity; to take additional steps to ensure that same-sex couples are not discriminated.

Status of recommendations: rejected.

National report

III. Promotion and protection of human rights

A. Equality, non-discrimination (Universal Declaration of Human Rights, arts. 1, 2 and 7) and subjects of specific rights

11. Dignity and equality are the first two rights listed in the series of enforceable rights set forth in the Federal Constitution (arts. 7–34). The constitutional principles of equality before the law and the prohibition of discrimination (article 8 of the Constitution) are reflected in several federal laws such as the Gender Equality Act, the Disabled Persons Equality Act, and the Act on Registered Partnerships between Persons of the Same Sex.

7. Sexual orientation and gender identity

50. On 22 February 2012, the Federal Council endorsed an amendment to the Act on Registered Partnerships between Persons of the Same Sex allowing the adoption by one partner of the natural or adopted children of the other when such children are the issue of, or were adopted during, a prior relationship. The proposed revision of the Nationality Act, however, does not provide for same-sex partners in a registered partnership to benefit from an expedited naturalization procedure.

51. On 1 February 2011, the Zurich Supreme Cantonal Court ruled that an application for a change of sex that had been filed by a person who had undergone long-term hormone treatment but not gender reassignment was admissible. In February 2012, the Federal Government supported this ruling in a similar case. In accordance with the relevant recommendations of the Council of Europe, the Federal Government also ordered registry offices to register legal decisions attesting the sex change of married persons or persons in a registered partnership, if those persons so wished, without requiring them to dissolve the marriage or partnership first.

Compilation of UN information

No references

Summary of stakeholder submissions

III. Implementation of international human rights obligations

A. Equality and non-discrimination

19. JS1 similarly observed that legal protection against discrimination was still fragmentary. Some individuals and specific groups were exposed to discrimination because they were not specifically protected and did not have the specific legal instruments to claim their rights. In the context of employment, cases of discrimination due to HIV/AIDS were on the rise and LGBTI persons were also still subject to discrimination. JS1 recommended that Switzerland introduce a new federal law that explicitly prevents and combats discrimination and that protects different groups, including explicitly people living with chronic diseases and LGBTI persons. JS3 similarly recommended that Switzerland explicitly consider the issues and violations faced by LGBTI persons when creating a general act on equal treatment.

I. Right to education

46. JS4 recommended the introduction of education on sexuality in all curricula. JS1 called on the Government to guarantee equal access to comprehensive sexuality education for all children and adolescents. A strategy to implement efficiently existing models and standards should be developed together with professional associations and educational institutions. JS3 recommended that Switzerland systematically include education on sexuality and sexual health in the curricula and implement such education in a comprehensive manner.

PAKISTAN

Date of review: Tuesday, 30 October AM

Key Issues/Recommendations: review the High Commissioner's report on sexual orientation and gender identity, and consider implementing the recommendations.

Sample Intervention: We welcome Pakistan's commitment to equality and non-discrimination on all grounds, as outlined in the National report. In keeping with this commitment, **we recommend that Pakistan review the report of the UN High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, and give consideration to implementing the recommendations therein.**

Previous cycle

Recommendations made: to repeal provisions of the Hadood Ordinances that criminalize non-marital consensual sex and fail to recognize marital rape; to decriminalize adultery and non-marital consensual sex.

Status of recommendations: rejected.

National report

No references to sexual orientation or gender identity.

Compilation of UN information

No references to sexual orientation or gender identity.

Summary of stakeholder information

I. Information provided by stakeholders

A. Background and framework

2. Constitutional and legislative framework

8. CHRI stated that there are no laws to protect against discrimination on the basis of sexual orientation, and recommended a moratorium on public prosecutions under section 377 of the criminal code and a process to repeal section 377.

ZAMBIA

Date of review: Tuesday, 30 October PM

Key Issues/Recommendations: review the High Commissioner's report on sexual orientation and gender identity, and consider implementing the recommendations.

Sample Intervention: We welcome Zambia's commitment to equality and non-discrimination on all grounds, as outlined in the National report. In keeping with this commitment, **we recommend that Zambia review the report of the UN High Commissioner for Human Rights on *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, and give consideration to implementing the recommendations therein.**

Previous cycle

Recommendations made: to decriminalize same-sex activity between consenting adults; to develop programmes to respond to the HIV/AIDS related needs of sexually active gay men; to strive to amend its Criminal Code to decriminalize same-sex activity between consenting adults.

Status of recommendations: rejected.

National report

I. Methodology

1. The Republic of Zambia was reviewed under the Universal Periodic Review in May, 2008. Following the review, Zambia accepted nineteen recommendations and undertook to consider eleven recommendations and inform the Human Rights Council of its position during the eighth session of the Council. Zambia did not accept three recommendations. [Footnote: The recommendations that were not accepted included the recommendation that Zambia should de-criminalise same-sex sexual activity between consenting adults and that Zambia should develop programmes to respond to the HIV/AIDS related needs of sexually active gay men.] The recommendations that were accepted were made available to various government departments and ministries to ensure that the recommendations are implemented through institutions' strategic plans.

Compilation of UN information

There were no references to sexual orientation or gender identity.

Summary of stakeholder information

II. Information provided by other stakeholders

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

2 Right to life, liberty and security of the person

25. JS 2 stated that the prevalence of HIV/AIDS in prisons have been attributed to a number of factors including men having sex with men, tattooing and intravenous drug use. It made recommendations including addressing same sex activity through HIV/AIDS programmes and the recognition of conjugal rights for all married prisoners. UOCL-IHRC made recommendations including the distribution of condoms in prison to reduce the transmission of HIV/AIDS.

JAPAN

Date of review: Wednesday, 31 October PM

Key Issues/Recommendations: include sexual orientation and gender identity in non-discrimination legislation; provide equal benefits to unmarried same-sex and opposite-sex

couples; remove restrictions on changing gender in government registries; consider applying the *Yogyakarta Principles* as a guide to policy development.

Sample Intervention: We welcome Japan's commitment to equality and non-discrimination, including on grounds of sexual orientation and gender identity, as outlined in the national report, its acceptance of recommendations during the first UPR cycle to take measures to eliminate discrimination based on sexual orientation and gender identity, and its support for international initiatives in this area.

We note, however, that the Human Rights Committee and stakeholders have expressed concern about the lack of national legislation explicitly providing protection against discrimination including on grounds of sexual orientation and gender identity. Stakeholders provided information that LGBT persons were subject to marginalisation, stigmatisation and discrimination in all aspects of life, including education, employment, housing, health care and access to social services.

We recommend that Japan implement the Human Rights Committee recommendation and explicitly include sexual orientation and gender identity among the prohibited grounds in antidiscrimination legislation, and ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples.

We further recommend that Japan remove the "no minor child" requirement as a prerequisite for changing gender in government registers.

Finally, we recommend that Japan consider applying the *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity* as a guide in policy development.

Previous cycle

Recommendations made: to take measures to eliminate discrimination based on sexual orientation and gender identity.

Status of recommendations: accepted.

National report

IV. Achievements, best practices, challenges

B. Protection of the human rights of women and others

5 Initiatives to address problems faced by minority women (subparagraph 8)

40. Based on the Third Basic Plan for Gender Equality, the Government of Japan intends to advance efforts to realize a gender-equal society.

41. The Basic Plan states that "in such cases where women are put in an even more difficult situation because of their gender and where people, regardless of sex, are put in a difficult situation because of their sexual orientation, necessary efforts will be made from the perspective of ensuring gender equality, while carrying out education and awareness-raising activities on human rights and providing remedies to victims of human rights violations."

E. Measures to eliminate discrimination based on sexual orientation and gender identity (subparagraph 11)

61. In Japan, with the entry into force in July 2004 of the Act on Special Provisions for Handling People with Gender Identity Disorders, people with gender identity disorder may now change their gender in family registers. The 2008 revision to the Act has relaxed requirements for the change of gender by people with gender identity disorder from "the person has no child at present" to "the person has no minor child at present."

62. The Third Basic Plan for Gender Equality states that “efforts will be made on awareness, consultation, investigation, and redress activities with the aim of eliminating discrimination and prejudice against sexual orientation” and “efforts will be made on awareness, consultation, investigation, and redress activities with the aim of eliminating discrimination and prejudice against people with gender identity disorders.”

63. The Human Rights Organs of the Ministry of Justice regard the issues of sexual orientation and gender identity disorders as a part of issues that needs to be addressed and are carrying out throughout the year various awareness-raising activities, including seminars or distribution of pamphlets all over the country. Furthermore, in case a human rights infringement such as harassment for sexual orientation or gender identity disorder is suspected through the course of human rights counseling, etc. the organs investigate it as a human rights infringement case and take appropriate measures in cooperation with the concerned organizations.

64. The Government of Japan believes that any violation of human rights due to sexual orientation or gender identity should not be tolerated, and therefore signed as a member of the core group the statement on sexual orientation and gender identity adopted by the General Assembly of the United Nations at its 63rd session in 2008.

65. At the 16th session of the Human Rights Council held in 2011, Japan participated in the joint statement calling for an end to criminalization and violence against people because of their sexual orientation and gender identity, and supported the resolution concerning “human rights, sexual orientation and gender identity” at the 17th session of the Human Rights Council. Japan will continue to participate in related discussions organized by the United Nations.

Compilation of UN information

III. Implementation of international human rights obligations

A. Equality and non-discrimination

24. The HR Committee urged Japan to amend the legislation in order to include sexual orientation among the prohibited grounds of discrimination and ensure that benefits granted to unmarried cohabiting opposite-sex couples were equally granted to unmarried cohabiting same-sex couples.

Summary of stakeholder submissions

I. Background and framework

C. Institutional and human rights infrastructure and policy measures

9. HRN questioned the independence and the compliance with Paris Principles of the National Human Rights Institution (NHRI) proposed in the 2011 draft legislation to establish a NHRI under the Minister of Justice. JS2 stated that the proposed NHRI would not address the problematic discrimination issues (harassment against Korean schools, discriminatory speech against women or sexual minorities, etc.). JS2 considered that the NHRI should be organizationally, financially and functionally independent in line with the Paris Principles; the requirement of the commissioners should include expertise in human rights activities and remedies and the participation of the minorities should also be ensured. It further stated that an anti-discrimination law should be adopted along with the law on the NHRI. AI expressed also concerns regarding the independence of the envisaged NHRI.

15. Joint Submission 8 (JS8) welcomed the inclusion of lesbian, bisexual women and transgender people in the Third Basic Plan for Gender Equality.

E. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Equality and non-discrimination

22. AI indicated Ainu, Burakamin and Okinawans, continued to face discrimination. It added that national legislation did not provide protection against direct or indirect discrimination on the basis of age, gender, religion, sexual orientation or nationality.

25. According to SA there is no legislation to prohibit discrimination on the ground of sexual orientation or gender identity. As a result, this kind of discrimination is prevalent, therefore lesbian, gay, bisexual and transgender (LGBT) people often cannot obtain appropriate support, many of them are often subjected to harassment, sometimes resulting in committing suicide, resignation, and dismissal from work. SA also noted that LGBT people did not have access to social services due to lack of understanding of the public officers and users of the public facilities.

26. JS8 said that the situation faced by LGBT persons was characterized by invisibility, marginalization, silent prejudice and stigmatization. It added that LGBT persons were subjected to human rights violations including discrimination in all aspects of life such as education, employment, housing and health care. JS8 noted that cases of human rights violations against LGBT persons had not been adequately documented and suggested the adoption of anti-discrimination legislation.

PERU

Date of review: Thursday, 1 November AM

Key Issues/Recommendations: include sexual orientation and gender identity in antidiscrimination legislation; repeal penal sanctions on homosexuality in the police force; provide for legal recognition of self-defined gender identity; take measures to address hate crimes; ensure equal access to HIV/AIDS services and treatment; apply the *Yogyakarta Principles*.

Sample Intervention: We welcome Peru's commitment to equality and non-discrimination on all grounds, including on the basis of sexual orientation or gender identity. However, we note that CESCR has expressed concern about discrimination against lesbian, gay, bisexual and transgender persons in employment, housing and access to education and healthcare. **We recommend that Peru implement the CESCR recommendation to adopt specific legislation to prohibit discrimination based on sexual orientation or gender identity.**

Stakeholders have noted that Peru penalises homosexuality in the police force. **We recommend that these provisions (Code MG.66 of Annex III of Act No. 29356) be repealed.**

We further recommend that Peru:

- recognise the right to legal recognition before the law of transgender persons, allowing identity documentation to reflect a person's self-defined gender identity;
- pass a law on hate crimes, and take the necessary steps to ensure that the police and the courts carry out investigations into hate crimes committed against LGBT persons and bring the perpetrators of such crimes to justice;
- ensure universal access to HIV/AIDS preventative and diagnostic services and treatment, and ensure health care protocols take the needs of LGBT persons into account;
- consider applying the *Yogyakarta Principles* as a guide to policy development in this area.

Previous cycle

Recommendation made: 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.

Status of recommendation: no response.

National report

III. Follow-up of the recommendations made during the first cycle of the universal periodic review

B. Measures adopted to combat all forms of discrimination (recommendation 2)

24. Domestic legislation prohibits acts of discrimination in any form. Article 2.2 of the Constitution, for example, recognizes the right to equality before the law and prohibits discrimination on any grounds, among which sexual orientation may be deemed to be included.

27. Protective measures under the national plan to combat violence against women, 2009–2015, also cover lesbians who are victims of discrimination on account of their sexual orientation.

Compilation of UN information

I. Background and framework

B. Constitutional and legislative framework

9. CESCR recommended the adoption of specific legislation to prohibit discrimination based on sexual orientation.

10. CESCR recommended amending the criminal code, concerned that it classified consensual sexual relations between adolescents as statutory rape and penalized abortions in cases of pregnancy resulting from rape. In 2011, CEDAW had similar observations.

C. Institutional and human rights infrastructure and policy measures

20. With regard to recommendation 2, the United Nations system noted that there has been no noticeable progress in the implementation of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity as a guide for public policy development (UNCT submission, para. 4.).

III. Implementation of international human rights obligations

A. Equality and non-discrimination

31. CESCR was concerned about discrimination against lesbian, gay, bisexual and transgender persons in employment, housing and access to education and health care.

Summary of stakeholder submissions

Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Equality and non-discrimination

20. The Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX) (Centre for the Promotion and Protection of Sexual and Reproductive Rights) reported that there is a bill before the legislature designed to combat discrimination against gay, lesbian, bisexual and transgender (LGBT) persons. Joint submission 9 (JS9) recommended that a law be passed to ensure equality and non-discrimination on the basis of sexual orientation and gender identity; that sexual orientation and gender identity be included among the categories protected under Act No. 28983 of 2007 (Equality of Opportunity for Women and Men Act); that legislation which denies or restricts people's rights on the basis of their sexual orientation, gender identity or forms of gender expression be repealed or amended and that equal marriage rights be established by means of an amendment of the Constitution and the Civil Code; that Code MG.66 of annex III of Act No. 29356, which penalizes homosexuality in the national police force, be repealed; that a law be passed to make it permissible for the notation of the name and gender of holders of the national identity document (DNI) to reflect those with which they identify; and that consideration be given to the recommendation made at the last universal periodic review of Peru concerning the application of the Yogyakarta Principles as a guide for the development and implementation of policies to protect and promote rights in relation to sexual orientation and gender identity.

2. Right to life, liberty and security of the person

22. JS9 referred to violence against LGBT persons and recommended that a law be passed that defines and penalizes hate crimes, and that the necessary steps be taken to ensure that the police and the courts carry out investigations into hate crimes committed against LGBT persons and bring the perpetrators of such crimes to justice.

7. Right to health

56. Joint submission 5 (JS5) reported that official statistics indicate that HIV/AIDS is most prevalent among young people. JS8 referred to the shortage of anti-retroviral drugs for adults and children and recommended that supply management arrangements be revised in order to bring them into line with WHO recommendations on the subject. JS9 also referred to community health services for the LGBT population and recommended that universal access to HIV/AIDS preventive and diagnostic services and treatment be guaranteed and that health-care protocols be used that take all the needs of LGBT persons into account.

SRI LANKA

Date of review: Thursday, 1 November PM

Key Issues/Recommendations: review the report of the High Commissioner on sexual orientation and gender identity, and consider implementing the recommendations.

Sample Intervention: We note that CEDAW has expressed concern at the criminalisation of consensual adult same sex activity under Section 365A of the penal code. Stakeholders have also expressed concern that persons of diverse sexual orientation and gender identity were not explicitly protected from discrimination by the Constitutional provisions regarding non-discrimination.

We recommend that Sri Lanka review the report of the UN High Commissioner for Human Rights on *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, and give consideration to implementing the recommendations therein.

Previous cycle

Documents – The summary of stakeholders' information noted that consensual sexual activity between adults of the same sex remains a crime in Sri Lanka and that there are a number of different human rights violations and forms of discrimination against LGBTIQ individuals.

Discussions – There were no references to human rights issues relating to sexual orientation or gender identity during the Working Group review, nor during the report adoption at the HRC plenary session. No relevant recommendations were made to Sri Lanka on these issues.

National report

No references to sexual orientation or gender identity.

Compilation of UN information

III. Implementation of international human rights obligations, taking into account applicable international humanitarian law

D. Right to privacy, marriage and family life

38. UNCT highlighted the concern of CEDAW at the criminalization of consensual adult same-sex relationships by virtue of Section 365A of the penal code and recommended that this provision be repealed. UNCT reported that many individuals from these communities faced ongoing violence and discrimination.

Summary of stakeholder submissions

I. Information provided by other accredited national human rights institutions and other stakeholders

A. Background and framework

2. Constitutional and legislative framework

5. JS1 stated that persons of diverse sexual orientation and gender identities were not explicitly protected from discrimination by the Constitutional provisions regarding non-discrimination thereby contributing their vulnerability.

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Equality and non-discrimination

16. Joint Submission 2 (JS2) recommended taking immediate and targeted steps to embody the principles of equality and non-discrimination on the basis of sexual orientation in public and private in the Constitution of Sri Lanka and ensure the effective realization of these principles.

4. Right to privacy, marriage and family life

46. JS2 recommended immediately decriminalizing same-sex sex relations between persons who are over the age of consent and ensuring that the same age of consent applies to sexual activities between persons of the same sex as persons of a different sex. JS2 also recommended immediately including the right to privacy in the national Constitution.