



International Commission of Jurists

**SEXUAL ORIENTATION AND
GENDER IDENTITY
IN HUMAN RIGHTS LAW**

**References to Jurisprudence and Doctrine of the
United Nations Human Rights System**

2007

Third updated edition

International Commission of Jurists

Founded in Berlin in 1952, the ICJ is a global network of judges, lawyers and human rights defenders united by international law and rule of law principles that advance human rights. Using our expertise in law, justice systems and advocacy, we work for victims to obtain remedies, for those responsible for abuses to be held accountable and for justice systems to be independent and active protectors of human rights. We work to change law and policy at the national and international levels when they do not adequately protect people from human rights violations.

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INTRODUCTION

This third updated edition, prepared by the International Commission of Jurists addresses the issue of human rights violations on grounds of sexual orientation¹ and gender identity².

This edition contains excerpts of the authoritative findings, jurisprudence and commentary of treaty bodies, special procedures of the Human Rights Council, the former Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights, the Office of the High Commissioner for Human Rights and the Office of the High Commissioner for Refugees, with explicit reference to sexual orientation.

The objective of this document is to compile relevant existing information in order to frame the debate, and to highlight some of the existing available materials on the topic of human rights violations on the grounds of sexual orientation and gender identity. Similarly, it is wished-for the help of human rights activists and defenders committed to the protection against discrimination based on sexual orientation.³

Human rights violations on the grounds of sexual orientation and gender identity appear at various levels within the work of the UN treaty bodies and special procedures of the Human Rights Council and the former Commission in Human Rights.

¹ “Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.”, The Yogyakarta Principles, Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, adopted by a group of 29 human rights experts in November 2006 in Yogyakarta, Indonesia.

² “Gender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.”, The Yogyakarta Principles, Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, adopted by a group of 29 human rights experts in November 2006 in Yogyakarta, Indonesia.

³ The excerpts included in this document are presented in inverted chronological order from the most recent to the oldest. Under each special procedure heading, annual reports to the former Commission on Human Rights and interim reports to the General Assembly have been included first, followed by the addenda summarizing communications with governments on individual cases. For practical constraints, in certain cases material was not available in these three languages. Internal quotes in the references have been omitted.

The document includes treaty bodies' general comments, individual communications and concluding observations, as well as special procedures' annual reports and annexes detailing individual cases. The individual cases of human rights violations on grounds of sexual orientation and gender identity, although they do not provide legal analysis, exemplify the wide spectrum of human rights violations that lesbian, gay, bisexual and transgender persons suffer.

- In a landmark communication, the Human Rights Committee affirmed that the reference to “equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” in Article 26 of the International Covenant on Civil and Political Rights includes discrimination on grounds of sexual orientation⁴. The Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the Working Group on arbitrary detention have made a similar determination⁵.

The principle of non-discrimination is enshrined in numerous international instruments and has a various and wide scope of application. The principle of non-discrimination is embodied in the Charter of the United Nations⁶, the Universal Declaration of Human Rights⁷, the International Covenant on Civil and Political Rights⁸ and the International Covenant on Economic Social and Cultural Rights⁹. These provisions substantiate the principle of non-discrimination and encompass the principle of equality before courts and tribunals, equality before the law and the right without discrimination to equal protection of the law. Overall, the prohibition of discrimination constitutes a cornerstone of human rights which underlies the human rights protection system set up by the United Nations. Many states all over the world have taken steps to include the prohibition of discrimination on grounds of sexual orientation in their laws and to address such discriminations. The treaty bodies have welcomed such steps¹⁰.

⁴ Human Rights Committee, Communications: Australia, CCPR/C/50/D/488/1992, April 4, 1994, paras. 8.2-8.7. See also Human Rights Committee, Communications: Australia, CCPR/C/78/D/941/2000, September 18, 2003, para. 10.4.

⁵ See Committee on Economic, Social and Cultural Rights, General Comment No 15, E/C.12/2002/11, January 20, 2002, para.13; General Comment No 14, E/C.12/2000/4, August 11, 2000, para.18. Committee on the Rights of the Child, General Comment No 4, CRC/GC/2003/4, July 1, 2003, para. 6; General Comment No 3, CRC/GC/2003/3, March 17, 2003, para. 8. Reports of the Working Group on arbitrary detention E/CN.4/2004/3, December 15, 2003, para. 73; E/CN.4/2003/8, December 16, 2002, paras. 68-69 and 76. Opinions adopted by the Working Group on arbitrary detention No 7/2002, Egypt, E/CN.4/2003/8/Add.1, January 24, 2003. See also Study on non-discrimination as enshrined in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights, Working paper prepared by Emmanuel Decaux, E/CN.4/Sub.2/2004/24, June 18, 2004, para. 22.

⁶ Articles 1 (3) and 55 of the United Nations Charter.

⁷ Articles 2, 7 and 10 of the Universal Declaration of Human Rights.

⁸ Articles 2, 3, 14, 25 and 26 of the International Covenant on Civil and Political Rights.

⁹ Article 2 of the International Covenant on Economic Social and Cultural Rights.

¹⁰ See for example: Canada, Colombia, Ecuador, South Africa, and United Kingdom. Human Rights Committee, Concluding observations: Greece, CCPR/CO/83/GRC, March 31, 2005, para. 5; Finland, CCPR/CO/82/FIN, December 2, 2004, para. 3 (a); Poland, CCPR/CO/82/POL, December 2, 2004, para. 5; Slovakia, CCPR/CO/78/SVK, August 22, 2003, para. 4; Australia, A/55/40, July 24, 2000, para. 502; Ecuador, CCPR/C/79/Add.92, August 18, 1998, para. 8 and CCPR/C/84/Add.8, January 19, 1999, paras. 182-183. Committee on Economic, Social and Cultural Rights, Concluding observations, Poland, E/C.12/1/Add.82, December 19, 2002, para. 5; Sweden, E/C.12/1/Add.70,

It is noteworthy that the Human Rights Committee has adopted the practice of requesting through its “list of issues” information regarding the steps taken by State Parties to prevent, address, and prohibit discrimination on grounds of sexual orientation¹¹. The treaty bodies and special procedures have been concerned with discrimination on grounds of sexual orientation, requiring states to curb discriminative and neglectful laws and practices. They have also requested states to undertake broader initiatives, such as the enactment of non-discrimination legislation including the prohibition of discrimination on grounds of sexual orientation or the suppression of the disparity between the ages for sexual consent to heterosexual and homosexual relations¹².

Persons suffering from multiple discrimination - race, gender, disability, age, poverty, health status (including HIV/AIDS) and sexual orientation or gender identity - are more greatly exposed to human rights violations and even less in a position to claim their rights and to obtain remedies¹³.

November 30, 2001, para. 8; Ireland, E/C.12/1/Add.35, May 14, 1999, para. 5. Committee on the Elimination of Discrimination Against Women, Concluding observations: Ireland, A/54/38, July 1, 1999, para. 162; Canada, A/52/38/Rev.1, August 12, 1997, para. 310; New Zealand, A/49/38, April 12, 1994, para. 612; Netherlands, A/49/38, April 12, 1994, para. 253. Committee on the Rights of the Child, Concluding Observations: Belgium CRC/C/15/Add.178, June 13, 2002, para. 18.

¹¹ See for the most recent examples: Human Rights Committee, List of issues: Poland, CCPR/C/82/L/POL, August 16, 2004, para. 22; Barbados, CCPR/C/83/L/BRB, December 1, 2004, para. 15; Colombia, CCPR/C/79/L/COL, August 22, 2003, para. 15; Egypt, CCPR/C/76/L/EGY, August 5, 2002, para. 26; Venezuela, CCPR/C/71/L/VEN, November 28, 2000, para. 20; Trinidad and Tobago, CCPR/C/70/L/TTO, August 16, 2000, para. 13; Ireland, CCPR/C/69/L/IRL, April 25, 2000, para. 16; Guyana, CCPR/C/68/L/GUY, December 3, 1999, para. 19; United Kingdom of Great Britain and Northern Ireland, CCPR/C/68/L/UKCD, December 3, 1999, para. 12; Venezuela, CCPR/C/68/L/VEN, December 3, 1999, para. 16.

¹² See for example: Human Rights Committee, Concluding observations: Greece, CCPR/CO/83/GRC, March 31, 2005, para. 19; Poland, CCPR/CO/82/POL, December 2, 2004, para. 18; Namibia, CCPR/CO/81/NAM, July 30, 2004, para. 22; Philippines, CCPR/CO/79/PHL, December 1, 2003, para. 18; El Salvador, CCPR/CO/78/SLV, July 22, 2003, para. 16; Trinidad and Tobago, CCPR/CO/70/TTO, November 3, 2000, para. 11; United Kingdom of Great Britain and Northern Ireland, CCPR/C/79/Add.119, March 27, 2000, para. 14; Hong Kong, CCPR/C/79/Add.117, November 12, 1999, para. 15; Austria, CCPR/C/79/Add.103, November 9, 1998, para. 13; Zimbabwe, CCPR/C/79/Add.89, April 6, 1998, para. 24. Committee on Economic, Social and Cultural Rights, Concluding observations: Trinidad and Tobago, E/C.12/1/Add.80, June 5, 2002, para. 14; Hong Kong, E/C.12/1/Add.58, May 21, 2001, para. 15 (c). Committee on the Rights of the Child, Concluding observations: Overseas Territories, United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.135, October 16, 2000, paras. 25-26; Isle of Man, United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.134, October 16, 2000, paras. 22-23.

¹³ See for example: background paper prepared by Mr. Theodor van Boven, member of the Committee on the Elimination of Racial Discrimination, E/CN.4/1999/WG.1/BP.7, February 26, 1999, para. 5 (c). Special Rapporteur on violence against women, its causes and consequences: E/CN.4/2005/72/Add.3, February 10, 2005, para. 21; E/CN.4/2005/72, January 17, 2005, paras. 27 and 58. Special Rapporteur on adequate housing: E/CN.4/2005/43, February 25, 2005, paras. 47, 63 and 69. Discrimination in the criminal justice system, Final working paper prepared by Ms. Leïla Zerrougui, E/CN.4/Sub.2/2002/5, May 23, 2002, para. 10.

Discrimination on the grounds of sexual orientation and gender identity may give rise to the most egregious human rights violations, such as extrajudicial killings, torture and ill-treatment and arbitrary detention, demonstrating that discrimination has consequences in the deprivation of enjoyment of all other guaranteed human rights¹⁴. These include *inter alia* the right to life, right to liberty, right to a fair trial by an independent and impartial tribunal, right to privacy, freedom of conscience, freedom of opinion, freedom of assembly and freedom of association, equal access to public services, equality before the law and equal protection of the law, right to work, right to social security including social insurance, right to the enjoyment of the highest attainable level of health, right to education, and right to adequate housing. The social stigmatisation of human beings on the grounds of their real or perceived sexual orientation exposes them more to violence and human rights abuses. This stigmatisation also increases the climate of impunity, in which such violations frequently occur¹⁵.

- In some countries, sexual relationships between same-sex consenting adults or "unnatural behaviour", such as the manifestation of transgender behaviours, are criminalized under "sodomy laws" or under the abuse of morality laws, which violate the right to privacy¹⁶ and the equal protection of the law without discrimination¹⁷. Such criminalisation reinforces attitudes of discrimination between persons on the basis of sexual orientation. In some countries such acts are punishable by corporal punishments or the death penalty impairing the right to be free from cruel, inhuman or degrading punishment and the right to life. Treaty bodies, the former Commission on Human Rights and special procedures have expressed concern at such criminalisation, called on States to refrain from such criminalisation and where such laws exist repeal them, and urged all States that maintains the death penalty not to impose it for sexual relations between same-sex consenting adults¹⁸.

¹⁴ See for example: Human Rights Committee, Concluding observations: Chile, CCPR/C/79/Add.104, March 30, 1999, para. 20; United States, A/50/40, October 3, 1995, para. 287.

¹⁵ See for example: reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2001/9, January 11, 2001, para. 50; E/CN.4/2000/3, January 25, 2000, para. 57; E/CN.4/2000/3/Add.3, November 25, 1999, paras. 90-92; E/CN.4/1999/39, January 6, 1999, para. 77. Reports of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76, December 27, 2001; A/56/156, July 3, 2001, para. 21.

¹⁶ Article 12 of the Universal Declaration of Human Rights; Article 17 of the International Covenant on Civil and Political Rights.

¹⁷ Article 7 of the Universal Declaration of Human Rights; Article 26 of the International Covenant on Civil and Political Rights.

¹⁸ See for example: Human Rights Committee, Concluding observations, Kenya, CCPR/CO/83/KEN, March 28, 2005, para. 27; Egypt, CCPR/CO/76/EGY, November 28, 2002, para. 19; Romania, CCPR/C/79/Add.111, July 28, 1999, para. 16; Lesotho, CCPR/C/79/Add.106, April 8, 1999, para. 13; Chile, CCPR/C/79/Add.104, March 30, 1999, para. 20; Cyprus, CCPR/C/79/Add.88, April 6, 1998, para. 11; Sudan, CCPR/C/79/Add.85, July 29, 1997, para. 8; United States, A/50/40, October 3, 1995, para. 287. Committee on Economic, Social and Cultural Rights, Concluding observations,

- Violence taking place in some countries against lesbian, gay, bisexual or transgender (LGBT) persons, including killings, "social cleansing", torture and ill-treatment, impairs the right to life¹⁹, the right to be free from torture and cruel, inhuman or degrading treatment or punishment²⁰, and the right to security²¹ and is also a matter of concern of treaty bodies and special procedures of the former Commission²². Victims of criminal offences suffer

Kyrgyzstan, E/C.12/1/Add.49, September 1, 2000, paras. 17 and 30. Committee on the Elimination of Discrimination Against Women, Concluding observations, Kyrgyzstan, A/54/38, August 20, 1999, paras. 127-128. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2000/3, January 25, 2000, paras. 57, 70 and 116. Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, A/56/156, July 3, 2001, para. 20. Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression, E/CN.4/2002/75/Add.1, January 17, 2002, para. 124. Reports of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, E/CN.4/1999/32, December 28, 1998; E/CN.4/1996/59, March 21, 1996, para. 44. Report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2002/106/Add.1, March 12, 2002, para. 154. Commission on Human Rights resolutions on the question of death penalty, E/CN.4/RES/2004/67, April 21, 2004, para. 4 (f); E/CN.4/RES/2003/67, April 25, 2003, para. 4 (d); E/CN.4/RES/2002/77, April 25, 2002, para. 4 (c). On the other hand, the abrogation of provisions criminalizing relationships between same-sex consenting adults has been welcomed: see for example, Human Rights Committee, Concluding observations, Ecuador, CCPR/C/79/Add.92, August 18, 1998, para. 8 and CCPR/C/84/Add.8, January 19, 1999, paras. 182-183. Committee on Economic, Social and Cultural Rights Concluding observations, Cyprus, E/C.12/1/Add.28, December 4, 1998, para. 7.

¹⁹ Article 3 of the Universal Declaration of Human Rights; Article 6 of the International Covenant on Civil and Political Rights.

²⁰ Article 5 of the Universal Declaration of Human Rights; Article 7 of the International Covenant on Civil and Political Rights.

²¹ Article 3 of the Universal Declaration of Human Rights; Article 9 of the International Covenant on Civil and Political Rights.

²² See for example: Human Rights Committee, Concluding observations, El Salvador, CCPR/CO/78/SLV, July 22, 2003, para. 16; Colombia, CCPR/C/79/Add.76, May 5, 1997, para. 16. Committee Against Torture, Concluding observations, Argentina, CAT/C/CR/33/1, December 10, 2004, para. 6 (g); Egypt, CAT/C/CR/29/4, December 23, 2002, para. 5 (e); Venezuela, CAT/C/CR/29/2, December 23, 2002, para. 10 (d). Commission on Human Rights resolutions on extrajudicial, summary or arbitrary executions, E/CN.4/RES/2002/36, April 22, 2002, para. 12; E/CN.4/RES/2000/31, April 20, 2000, para. 6. Reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2005/7, December 22, 2004, para. 71; A/59/319, September 1, 2004, para. 60; E/CN.4/2003/3, January 13, 2003, paras. 66-67; E/CN.4/2003/3/Add.2, June 14, 2002, para. 68; E/CN.4/2002/74, January 9, 2002; E/CN.4/2001/9, January 11, 2001, paras. 48-50; E/CN.4/2000/3, January 25, 2000, paras. 54-56; E/CN.4/2000/3/Add.3, November 25, 1999, paras. 90-92; E/CN.4/1999/39, January 6, 1999, para. 76; E/CN.4/1998/68/Add.1, December 19, 1997, paras. 39 and 41; E/CN.4/1995/111, January 16, 1995, para. 49. Reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2003/68/Add.2, February 3, 2003, para. 42; E/CN.4/2002/76, December 27, 2001; A/56/156, July 3, 2001, paras. 18-20; E/CN.4/1995/111, January 16, 1995, para. 49. Reports of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2005/72, January 17, 2005, para. 27; E/CN.4/2002/83, January 31, 2002, para. 102; E/CN.4/1997/47, February 12, 1997, para. 8. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2005/51/Add.1, February 2, 2005, para. 50. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2002/75/Add.1, January 17, 2002, paras. 122-123. Report of the High Commissioner for Human Rights on the situation of human rights in Colombia,

from discrimination because of their sexual orientation and gender identity, as they are often perceived as less credible by law enforcement agencies and police officials frequently show prejudice towards such persons. These officials may refuse to consider complaints introduced by LGBT victims, in particular in cases of abuse, ill treatment, including rape or sexual assault, torture, or sexual harassment, and may be disinclined to investigate promptly and thoroughly extrajudicial executions of LGBT persons. The refusal to bring those responsible for such killings to justice and to ensure that such killings are neither condoned nor sanctioned by government officials or personnel is particularly disturbing²³. The special procedures and the treaty bodies have repeatedly asked the States to take action to protect the right to life of LGBT persons, including proper investigation in cases of violence against LGBT persons²⁴. They have also called on states to take initiatives against homophobia and hate crimes, including policies and programmes aimed towards overcoming hatred and prejudice against LGBT persons²⁵.

- In some criminal justice systems, alleged criminal offenders who are LGBT persons may be subjected to summary criminal procedures short of fair trial guarantees and may receive harsher punishment or be detained in worse conditions than other inmates. In some cases LGBT prisoners are exposed to sexual abuses by their inmates or prison personnel, or even made sexual slaves, with the prison officials failing to take any preventive measures or sanctions (in violation of Articles 9 and 10 of the Universal Declaration of

E/CN.4/2005/10, February 28, 2005. Report of the Special Representative of the Secretary-General on human rights defenders, E/CN.4/2002/106/Add.2, April 24, 2002, paras. 172-174.

²³ See for example: Human Rights Committee, Concluding observations, El Salvador, CCPR/CO/78/SLV, July 22, 2003, para. 16. Reports of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2004/56/Add.1, March 23, 2004, para. 1327; E/CN.4/2002/76, December 27, 2001; A/56/156, July 3, 2001, para. 18; E/CN.4/2000/9, February 2, 2000, para. 145; E/CN.4/1995/34, January 12, 1995, para. 614. Reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2005/7/Add.1, March 17, 2005, para. 370; E/CN.4/2003/3/Add.2, June 14, 2002, para. 68; E/CN.4/2003/3/Add.4, February 3, 2003, para. 36; E/CN.4/2002/74, January 9, 2002; E/CN.4/2000/3, January 25, 2000, para. 89. Report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/2005/7/Add.1, March 17, 2005, paras. 24 and 28; E/CN.4/2002/72, February 11, 2002, paras. 57, 59 and 64.

²⁴ See for example: Commission on Human Rights resolutions on extrajudicial, summary or arbitrary executions, E/CN.4/RES/2004/37, April 19, 2004, para. 6; E/CN.4/RES/2003/53, April 24, 2003, para. 5; E/CN.4/RES/2002/36, April 22, 2002, para. 6; E/CN.4/2000/31, April 20, 2000, para. 6. Human Rights Committee, Concluding observations, Colombia, CCPR/C/79/Add.76, May 5, 1997, para. 16. Committee Against Torture, Concluding observations, Egypt, CAT/C/CR/29/4, December 23, 2002, para. 6 (k). Reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2002/74, January 9, 2002, para. 148; E/CN.4/2001/9, January 11, 2001, para. 118; E/CN.4/2000/3, January 25, 2000, paras. 89 and 116.

²⁵ See for example: reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2002/74, January 9, 2002, para. 148; E/CN.4/2001/9, January 11, 2001, para. 118.

Human Rights and Articles 2, 9, 10 and 14 of the International Covenant on Civil and Political Rights)²⁶.

- Because they transgress gender norms, transsexual and transgender persons may be particularly vulnerable to abuses. Of particular concern is the situation of transsexual and transgender prisoners, especially male-to-female, when placed in men's prisons.
- The special procedures and the treaty bodies have also expressed concern about access to information by homosexuals, lesbians, bisexuals and transgender young people as to their sexual orientation. Homophobia in schools and homes has prompted some young people to run away where they may be prone to engagement in prostitution²⁷.
- Another issue highlighted is discrimination against LGBT persons in relation to the right to health and access to medical care, and their increased vulnerability to HIV/AIDS²⁸.
- The special procedures, treaty bodies and the High Commissioner for Refugees have requested states to take into account persecution on the grounds

²⁶ See for example: Committee Against Torture, Concluding observations, Brazil, A/56/44, May 16, 2001, para. 119 (b). Report of the Working Group on Arbitrary Detention, E/CN.4/2004/3, December 15, 2003, para. 73. Reports of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, A/56/156, July 3, 2001, para. 23; E/CN.4/2002/76/Add.1, March 14, 2002; E/CN.4/2001/66/Add.2, March 30, 2001, para. 199; E/CN.4/2001/66, January 25, 2001, para. 1171; E/CN.4/1998/68/Add.3, January 22, 1998, para. 95. Report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/2002/72, February 11, 2002, paras. 57, 59 and 64. Preliminary paper by Ms. Leïla Zerrougui, Special Rapporteur appointed to conduct a detailed study of discrimination in the criminal justice system in implementation of Sub-Commission Resolution 2002/3, E/CN.4/Sub.2/2003/3, June 26, 2003, para. 16. Discrimination in the criminal justice system, Final working paper prepared by Ms. Leïla Zerrougui, E/CN.4/Sub.2/2002/5, May 23, 2002, para. 10.

²⁷ See for example: Committee on the rights of the Child, Concluding observations, United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188, October 9, 2002, para. 43. Reports of the Special Rapporteur on sale of children, child prostitution and child pornography, E/CN.4/2004/9, January 5, 2004, paras. 118 and 124; E/CN.4/2000/73, January 14, 2000, paras. 110 and 139; E/CN.4/2001/52, January 11, 2001, para. 75. Report of the Secretary-General on integrating the human rights of women throughout the United Nations system, E/CN.4/2005/68, January 10, 2005, para. 14. Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2003/75/Add.1, February 27, 2003, para. 1508.

²⁸ See for example: Committee on the Rights of the Child: Annual Report of the Committee, Report of the Nineteenth Session to the General Assembly, CRC/C/80, October 9, 1998, para. 236. Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, A/56/156, July 3, 2001, para. 22. Reports of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2004/49, February 16, 2004, paras. 32, 38 and 54; E/CN.4/2003/58, February 13, 2003, paras. 60 and 68. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2003/67, December 30, 2002, para. 74. Report of the Secretary-General on international and domestic measures taken to protect human rights and prevent discrimination in the context of HIV/AIDS, E/CN.4/1995/45, December 22, 1994, paras. 13 and 103. Progress report on Globalization and its impact on the full enjoyment of human rights submitted by J. Oloka-Onyango and Deepika Udagama, E/CN.4/Sub.2/2001/10, August 2, 2001, para. 30.

of sexual orientation and gender identity in the process of determining refugee status²⁹.

- Human rights defenders working on LGBT and sexuality issues are also particularly vulnerable and exposed to harassment and human rights violations³⁰.

The serious problem of human rights violations against persons on grounds of sexual orientation and gender identity clearly needs to be addressed by the Human Rights Council. As this document plainly illustrates, a resolution from the Council condemning human rights violations occurring on grounds of sexual orientation and gender identity would not create “new rights”. Rather, it would reaffirm the enjoyment of all internationally protected rights by all human beings and would address the lack of protection and stigmatisation experienced by persons on the grounds of their sexual orientation or gender identity. In the past, individuals have been denied existing rights on grounds of race, ethnicity, religion or gender. The UN human rights system has deployed significant efforts to tackle such human rights violations. It is time for the main human rights body to deploy similar efforts to address the serious human rights violations that take place on the grounds of the real or perceived sexual orientation or gender identity of persons.

The International Commission of Jurists calls on member states to act on their solemn affirmation at the 1993 Vienna Conference on Human Rights: “All human rights are universal, indivisible, and interdependent and interrelated. [...] While the significance

²⁹ See for example: Committee on the Elimination of Discrimination against Women, Concluding observations, Sweden, A/56/38, July 31, 2001, para. 334. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/59/324, September 1, 2004, para. 39. Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/1999/68, March 10, 1999, para. 15. Office of the High Commissioner for Refugees, Guidelines on International Protection 6, HCR/GIP/04/06, April 28, 2004, para. 34; Guidelines on International Protection 1, HCR/GIP/02/01, May 7, 2002, para. 17; Guidelines on International Protection 2, HCR/GIP/02/02, May 7, 2002, para. 1.

³⁰ See for example: reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2002/74, January 9, 2002, para. 63; E/CN.4/2001/9, January 11, 2001, para. 48; E/CN.4/2001/9/Add.1, January 17, 2001, para. 31. Reports of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, A/56/156, July 3, 2001, para. 25; E/CN.4/2004/56/Add.1, March 23, 2004, paras. 1878 and 1899; E/CN.4/2001/66, January 25, 2001, para. 1153; E/CN.4/2000/9, February 2, 2000, para. 151. Report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/1998/39, February 12, 1998, para. 43. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2005/51/Add.1, February 2, 2005, para. 50. Report of the High Commissioner for Human Rights on the situation of human rights in Sierra Leone, E/CN.4/2005/113, February 2, 2005, para. 8. Reports of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2005/101, December 13, 2004, paras. 27, 46 and 94; E/CN.4/2004/94/Add.3, March 23, 2004, paras. 238, 481 and 487; E/CN.4/2003/104/Add.1, February 20, 2003, para. 284; E/CN.4/2002/106, February 27, 2002, paras. 51, 61, 83, 104 and 115; E/CN.4/2002/106/Add.2, April 24, 2002, paras. 172-173; E/CN.4/2001/94, January 26, 2001, para. 89 (g). Report of the Secretary-General on human rights defenders, A/55/292, August 11, 2000, para. 7. Working paper on further proposals for the work of the World Conference submitted by Mr. Paulo Sérgio Pinheiro in his capacity as the representative of the Sub-Commission at the Preparatory Committee and the World Conference, A/CONF.189/PC.2/19/Add.1, March 14, 2001, para. 5.

of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”³¹.

³¹ Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna on June 25, 1993, preamble and para. 5.

I. INTERNATIONAL NORMS AND STANDARDS

A. RESOLUTIONS OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS

I. RESOLUTIONS ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS

Commission on Human Rights Resolution, E/CN.4/RES/2005/34, April 20, 2004: Extrajudicial, summary or arbitrary executions

5. *Reaffirms* the obligation of States to protect the inherent right to life of all persons under their jurisdiction and calls upon States concerned to investigate promptly and thoroughly all cases of killings, including those committed in the name of passion or in the name of honour, all killings committed for any discriminatory reason, including sexual orientation; racially motivated violence leading to the death of the victim; killings of members of national, ethnic, religious or linguistic minorities, of refugees, of internally displaced persons, of street children, of members of indigenous communities or of migrants; killings of persons for reasons related to their activities as human rights defenders, lawyers, doctors, journalists or as demonstrators, in particular as a consequence of their exercise of the right to freedom of opinion and expression; as well as other cases where a person's right to life has been violated, all of which are being committed in various parts of the world, and to bring those responsible to justice before a competent, independent and impartial national tribunal or, where appropriate, international tribunal, and to ensure that such killings, including those committed by security forces, police and law enforcement agents, paramilitary groups or private forces, are neither condoned nor sanctioned by government officials or personnel;

Commission on Human Rights Resolution, E/CN.4/RES/2004/37, April 19, 2004: Extrajudicial, summary or arbitrary executions

6. *Reaffirms* the obligation of States to protect the inherent right to life of all persons under their jurisdiction and calls upon concerned States to investigate promptly and thoroughly all killings committed in the name of passion or in the name of honour, all killings committed for any discriminatory reason, including sexual orientation; racially motivated violence leading to the death of the victim; killings of members of national, ethnic, religious or linguistic minorities, of refugees, of internally displaced persons, of street children or of members of indigenous communities; killings of persons for reasons related to their activities as human rights defenders, lawyers, journalists or as demonstrators, in particular as a consequence of their exercise of the right to freedom of opinion and expression; as well as other cases where a person's right to life has been violated, all of which are being committed in various parts of the world, and to bring those responsible to justice before a competent, independent and impartial judiciary, and to ensure that such killings, including those committed by

security forces, police and law enforcement agents, paramilitary groups or private forces, are neither condoned nor sanctioned by government officials or personnel;

**Commission on Human Rights Resolution, E/CN.4/RES/2003/53, April 24, 2003:
Extrajudicial, summary or arbitrary executions**

5. *Reaffirms* the obligation of States to ensure the protection of the inherent right to life of all persons under their jurisdiction and calls upon States concerned to investigate promptly and thoroughly all cases of killings committed in the name of passion or in the name of honour, all killings committed for any discriminatory reason, including sexual orientation; racially motivated violence leading to the death of the victim; killings of members of national, ethnic, religious or linguistic minorities, of refugees, of internally displaced persons, of street children or of members of indigenous communities; killings of persons for reasons related to their activities as human rights defenders, lawyers, journalists or as demonstrators, in particular as a consequence of their exercise of the right to freedom of opinion and expression; as well as other cases where a person's right to life has been violated, all of which are being committed in various parts of the world, and to bring those responsible to justice before a competent, independent and impartial judiciary, and to ensure that such killings, including those committed by security forces, police and law enforcement agents, paramilitary groups or private forces, are neither condoned nor sanctioned by government officials or personnel.

**Commission on Human Rights Resolution, E/CN.4/RES/2002/36, April 22, 2002:
Extrajudicial, summary or arbitrary executions**

6. *Reaffirms* the obligation of Governments to ensure the protection of the inherent right to life of all persons under their jurisdiction and calls upon Governments concerned to investigate promptly and thoroughly cases of killings committed in the name of passion or in the name of honour, all killings committed for any discriminatory reason, including sexual orientation or racially motivated violence leading to the death of the victim, killings of persons for reasons related to their peaceful activities as human rights defenders or as journalists, as well as other cases where a person's right to life has been violated, all of which are being committed in various parts of the world, and to bring those responsible to justice before a competent, independent and impartial judiciary, and to ensure that such killings are neither condoned nor sanctioned by government officials or personnel.

12. *Takes note* of the report of the Special Rapporteur (E/CN.4/2002/74 and Corr.1, Add.1 and Add.1/Corr.1 and Add.2), in particular the attention given therein to violations of the right to life of women, refugees and internally displaced persons, persons belonging to national or ethnic, religious and linguistic minorities, persons exercising their right to freedom of opinion and expression and persons killed because of their sexual orientation.

**Commission on Human Rights Resolution, E/CN.4/RES/2000/31, April 20, 2000:
Extrajudicial, summary or arbitrary executions**

6. *Notes with concern* the large number of cases in various parts of the world of killings committed in the name of passion or in the name of honour, persons killed because of their sexual orientation and persons killed for reasons related to their peaceful activities as human rights defenders or as journalists, reported by the Special Rapporteur and calls upon Governments concerned to investigate such killings promptly and thoroughly, to bring those responsible to justice and to ensure that such killings are neither condoned nor sanctioned by government officials or personnel.

II. RESOLUTIONS ON THE QUESTION OF DEATH PENALTY

**Commission on Human Rights Resolution, E/CN.4/RES/2005/59, April 20, 2005:
The question of the death penalty**

5. Calls upon all States that still maintain the death penalty: (...)

(f) To ensure also that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence;

**Commission on Human Rights Resolution, E/CN.4/RES/2004/67, April 21, 2004:
The question of the death penalty**

4. Urges all States that still maintain the death penalty: (...)

(f) To ensure that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults;

**Commission on Human Rights Resolution, E/CN.4/RES/2003/67, April 25, 2003:
The question of the death penalty**

4. Urges all States that still maintain the death penalty: (...)

(d) To ensure that the notion of "most serious crimes" does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, non-violent religious practice or expression of conscience and sexual relations between consenting adults;

**Commission on Human Rights Resolution, E/CN.4/RES/2002/77, April 25, 2002:
The question of the death penalty**

4. Urges all States that still maintain the death penalty: (...)

(c) To ensure that the notion of "most serious crimes" does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, non-violent religious practice or expression of conscience and sexual relations between consenting adults;

II. TREATY BODIES

A. HUMAN RIGHTS COMMITTEE

I. CONCLUDING OBSERVATIONS

Concluding observations: Chile, CCPR/C/CHL/CO/5, May 18, 2007

16. While it observes with satisfaction that the laws criminalizing homosexual relations between consenting adults have been repealed, the Committee remains concerned about the discrimination to which some people are subject because of their sexual orientation, for instance, before the courts and in access to health care (articles 2 and 26 of the Covenant).

The State party should guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation, including equality before the law and in access to health care. It should also launch awareness-raising programmes to combat social prejudice.

Concluding observations: Barbados, CCPR/C/BRB/CO/3, May 11, 2007

13. The Committee expresses concern over discrimination against homosexuals in the State party, and in particular over the criminalizing of consensual sexual acts between adults of the same sex (art. 26).

The State party should decriminalize sexual acts between adults of the same sex and take all necessary actions to protect homosexuals from harassment, discrimination and violence.

Concluding observations: United States of America, CCPR/C/USA/CO/3, September 15, 2006

9. The Committee welcomes the Supreme Court's decision in *Lawrence et al. v. Texas* (2003), which declared unconstitutional legislation criminalizing homosexual relations between consenting adults.

25. The Committee notes with concern allegations of widespread incidence of violent crime perpetrated against persons of minority sexual orientation, including by law enforcement officials. It notes with concern the failure to address such crime in the legislation on hate crime adopted at the federal level and in many states. It notes with concern the failure to outlaw employment discrimination on the basis of sexual orientation in many states. (Articles 2 and 26)

The State party should acknowledge its legal obligation under articles 2 and 26 to ensure to everyone the rights recognized by the Covenant, as well as equality before the law and equal protection of the law, without discrimination on the basis of sexual orientation. The State party should ensure that its hate crime legislation, both at the federal and state levels, address sexual orientation-related violence and that federal and state employment legislation outlaw discrimination on the basis of sexual orientation.

Concluding observations: Greece, CCPR/CO/83/GRC, March 31, 2005

5. The Committee welcomes the recent adoption by Parliament of a law on the implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation.

19. The Committee is concerned at reports of continued discrimination against individuals on the basis of their sexual orientation. (Articles 17 and 26)

The State party should provide remedies against discriminatory practices on the basis of sexual orientation, as well as informational measures to address patterns of prejudice and discrimination.

Concluding observations: Kenya, CCPR/CO/83/KEN, March 28, 2005

27. The Committee notes with concern that Section 162 of the Penal Code continues to criminalize homosexuality (Articles 17 and 26 of the Covenant).

The State party is urged to repeal Section 162 of the Penal Code.

Concluding observations: Poland, CCPR/CO/82/POL, December 2, 2004

5. The Committee notes with satisfaction improvements made in the area of women's rights, in particular by the appointment of a Government Plenipotentiary on the Equal Status of Women and Men. It also welcomes the extension of the Plenipotentiary's competence to issues relating not only to discrimination on the basis of sex but also on grounds of race and ethnic origin, religion and beliefs, age and sexual orientation.

18. The Committee is concerned that the right of sexual minorities not to be discriminated against is not fully recognized, and that discriminatory acts and attitudes against persons on the ground of sexual orientation are not adequately investigated and punished (art. 26).

The State party should provide appropriate training to law enforcement and judicial officials in order to sensitize them to the rights of sexual minorities.

Discrimination on the ground of sexual orientation should be specifically prohibited in Polish law.

Concluding observations: Finland, CCPR/CO/82/FIN, December 2, 2004

B. Positive aspects

3. The Committee notes with satisfaction the adoption of:

(a) A new law against discrimination which entered into force in February 2004, banning all direct or indirect discrimination based on age, ethnic or national origin, nationality, language, religion, beliefs, opinions, health, disability and sexual orientation and placing the burden of proof before the courts on the defendant;

Concluding observations: Namibia, CCPR/CO/81/NAM, July 30, 2004

22. The Committee notes the absence of anti-discrimination measures for sexual minorities, such as homosexuals (arts. 17 and 26).

The State party should consider, while enacting anti-discrimination legislation, introducing the prohibition of discrimination on grounds of sexual orientation.

Concluding observations: Philippines, CCPR/CO/79/PHL, December 1, 2003

18. While the Committee takes note of the constitutional provisions guaranteeing equal treatment of all persons before the law, the lack of legislation explicitly prohibiting racial discrimination is a matter of concern (arts. 3 and 26).

The Committee urges the State party to take the necessary steps to adopt legislation explicitly prohibiting discrimination, in accordance with articles 3 and 26 of the Covenant. The Committee notes that legislation related to sexual orientation is currently being discussed in Congress and urges the State party, in this context, to pursue its efforts to counter all forms of discrimination.

The State party is further invited to strengthen human rights education to forestall manifestations of intolerance and de facto discrimination.

Concluding Observations: Slovakia, CCPR/CO/78/SVK, August 22, 2003

4. The Committee welcomes progress made in various areas, since the review of the first periodic report in 1997, and in particular the continuing process of bringing the State party's legislation into harmony with its international obligations. This includes Constitutional Statute No. 90/2001, amending and supplementing the Constitution of the Slovak Republic; the amendment of the criminal code eliminating the crime of defamation of the Republic and its representatives; the amendment of the labour code to include non-discrimination principles, including in the area of sexual orientation; and the amendments to the Criminal Code to improve protection of the victim in domestic violence cases.

Concluding Observations: El Salvador, CCPR/CO/78/SLV, August 22, 2003

16. The Committee expresses concern at the incidents of people being attacked, or even killed, on account of their sexual orientation (art. 9), at the small number of investigations mounted into such illegal acts, and at the current provisions (such as the local "contravention orders") used to discriminate against people on account of their sexual orientation (art. 26).

The State Party should provide effective protection against violence and discrimination based on sexual orientation.

Concluding Observations: Egypt, CCPR/CO/76/EGY, November 28, 2002

19. The Committee notes the criminalization of some behaviours such as those characterized as "debauchery" (articles 17 and 26 of the Covenant).

The State party should ensure that articles 17 and 26 of the Covenant are strictly upheld, and should refrain from penalizing private sexual relations between consenting adults.

Concluding Observations: Trinidad and Tobago, CCPR/CO/70/TTO, November 3, 2000

11. The Committee urges that priority be given to all necessary preparations, so as to bring into force by proclamation at the earliest possible date the Equal Opportunities Act.

The State party should, thereafter, introduce amending legislation to extend the provisions of the Act to those suffering discrimination on grounds of age, sexual orientation, pregnancy or infection with HIV/AIDS.

Concluding Observations: Australia, A/55/40, July 24, 2000

502. The Committee welcomes the accession of the State party to the Optional Protocol to the Covenant in 1991, thereby recognizing the competence of the Committee to consider communications from individuals within its territory and subject to its jurisdiction. It welcomes the action taken by the State party to implement the Views of the Committee in the case of communication No. 488/1992 (Toonen v. Australia)³² by enacting the necessary legislation at the federal level.

³² The relevant excerpts of this case may be found under the heading Human Rights Committee, Communications, p. 14.

Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CCPR/C/79/Add.119, March 27, 2000

14. The Committee recommends that measures be taken to remove and prohibit any discrimination on grounds of sexual orientation (arts. 17 and 26).

Concluding Observations: Hong Kong, (China), CCPR/C/79/Add.117, November 12, 1999

15. The Committee remains concerned that no legislative remedies are available to individuals in respect of discrimination on the grounds of race or sexual orientation. Necessary legislation should be enacted in order to ensure full compliance with article 26 of the Covenant.

Concluding Observations: Poland CCPR/C/79/Add.110, July 29, 1999

23. The Committee regrets that the reference to sexual orientation which had originally been contained in the non-discrimination clause of the draft Constitution has been deleted from the text, which could lead to violations of articles 17 and 26.

Concluding Observations: Romania CCPR/C/79/Add.111, July 28, 1999

16. The Committee is concerned about restrictions on the right to privacy, in particular in regard to homosexual relations between consenting adults, which are penalized by article 200, paragraph 1, of the Penal Code (art. 17).

The State party should take timely action to ensure that this provision is amended so as to conform with the Covenant.

Concluding Observations: Lesotho, CCPR/C/79/Add.106, April 8, 1999

13. The Committee notes with concern that a sexual relationship between consenting adult partners of the same sex is punishable under law.

The Committee recommends that the State party amend the law in this respect.

Concluding Observations: Chile, CCPR/C/79/Add.104, March 30, 1999

20. The continuation in force of legislation that criminalizes homosexual relations between consenting adults involves violation of the right to privacy protected under article 17 of the Covenant and may reinforce attitudes of discrimination between persons on the basis of sexual orientation. Therefore:

The law should be amended so as to abolish the crime of sodomy as between adults.

Concluding Observations: Austria, CCPR/C/79/Add.103, November 9, 1998

13. The Committee considers that existing legislation on the minimum age of consent for sexual relations in respect of male homosexuals is discriminatory on grounds of sex and sexual orientation. It requests that the law be revised to remove such discriminatory provisions.

Concluding Observations: Ecuador, CCPR/C/79/Add.92, August 18, 1998

8. The Committee welcomes the information that the Constitutional Court has declared unconstitutional the criminalization of private homosexual relations between consenting adults and the law excluding persons charged under the Narcotics and Psychotropic Substances Act from the application of the new provisions on detention pending trial.

Additional information supplied by the State party: Ecuador, CCPR/C/84/Add.8, January 19, 1999

1. Decriminalization of homosexuality

182. The Constitutional Court, by decision No. 106 (R.O. 203, 27 November 1997), suspended the application of article 516 of the Penal Code, which declared homosexuality an offence, on the grounds that it constituted discrimination based on sexual orientation and was not in line with article 26 of the Covenant, this notwithstanding the fact that the Constitution does not prohibit discrimination on grounds of "other status", as required by the Covenant.

183. The National Plan for Human Rights contains a separate section (in art. 25 of the decree) concerning the rights of sexual minorities, "guaranteeing such persons the right not to be discriminated against on account of their sexual activities, and facilitating satisfaction of their economic, social and cultural needs by means of non-discriminatory laws and regulations". It also provides that "the officials responsible for State security shall not perform any acts of persecution or harassment against individuals on account of their sexual proclivities"; for such practices are extremely common within the country.

Concluding Observations: Zimbabwe, CCPR/C/79/Add.89, April 6, 1998

24. The Committee notes with concern that homosexuals are subjected to discrimination, e.g. that aliens deemed to be homosexuals may be defined as "Prohibited Persons" for immigration purposes and are subject to deportation.

The Committee recommends that such legislation be brought into conformity with the Covenant.

Concluding Observations: Cyprus, CCPR/C/79/Add.88, April 6, 1998

11. The Committee notes with concern the discriminatory legal provisions which penalize homosexual acts and urges the State party to repeal them.

Concluding Observations: Sudan, C/79/Add.85, July 29, 1997

8. The imposition in the State party of the death penalty for offences which cannot be characterized as the most serious, including apostasy, committing a third homosexual act, illicit sex, embezzlement by officials, and theft by force, is incompatible with article 6 of the Covenant. Moreover, some forms of execution fail to comply with the prohibition against cruel, inhuman or degrading treatment or punishment, especially for women, contained in article 7 of the Covenant. Therefore: The death penalty, if used at all, should be applicable only to the most serious crimes, in accordance with article 6, and should be repealed for all other crimes. Any imposition of the death penalty should comply with the requirements of article 7. In its next report, the State party is asked to furnish information on the number of executions which have taken place, the type of offence for which the death penalty has been imposed, and the manner in which the execution has been carried out.

Concluding Observations: Colombia, CCPR/C/79/Add.76, May 5, 1997

16. The Committee also deplores the fact that so-called "social-cleansing" operations, targeting street children, homosexuals, prostitutes and petty delinquents, continue to be carried out and that appropriate and effective action has not yet been taken to ensure the full protection of the rights of these groups, especially of their right to life.

Concluding Observations: United States of America, A/50/40, October 3, 1995

287. The Committee is concerned at the serious infringement of private life in some states which classify as a criminal offence sexual relations between adult consenting partners of the same sex carried out in private, and the consequences thereof for their enjoyment of other human rights without discrimination.

Concluding Observations: Norway, CCPR/C/79/Add.27, November 4, 1993

7. With respect to equality and non-discrimination, developments relating to the granting to foreigners of the right to vote in local elections and to hold local office as well as legislative steps relating to the registration of partnership of the same sex are welcomed by the Committee.

II. COMMUNICATIONS

Communication No. 1361/2005 : Colombia, CCPR/C/89/D/1361/2005, X v. Colombia, May 14,2007.

Consideration of the merits

7.2 The Committee notes that the author was not recognized as the permanent partner of Mr. Y for pension purposes because court rulings based on Act No. 54 of 1990 found that the right to receive pension benefits was limited to members of a heterosexual de facto marital union. The Committee recalls its earlier jurisprudence that the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation. It also recalls that in previous communications the Committee found that differences in benefit entitlements between married couples and heterosexual unmarried couples were reasonable and objective, as the couples in question had the choice to marry or not, with all the ensuing consequences. The Committee also notes that, while it was not open to the author to enter into marriage with his same-sex permanent partner, the Act does not make a distinction between married and unmarried couples but between homosexual and heterosexual couples. The Committee finds that the State party has put forward no argument that might demonstrate that such a distinction between same-sex partners, who are not entitled to pension benefits, and unmarried heterosexual partners, who are so entitled, is reasonable and objective. Nor has the State party adduced any evidence of the existence of factors that might justify making such a distinction. In this context, the Committee finds that the State party has violated article 26 of the Covenant by denying the author's right to his life partner's pension on the basis of his sexual orientation.

(...)

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, considers that the facts before it disclose a violation by Colombia of article 26 of the Covenant.

9. In accordance with the provisions of article 2, paragraph 3 (a), of the Covenant, the Committee finds that the author, as the victim of a violation of article 26, is entitled to an effective remedy, including reconsideration of his request for a pension without discrimination on grounds of sex or sexual orientation. The State party has an obligation to take steps to prevent similar violations of the Covenant in the future.

Communication No. 941/2000: Australia, CCPR/C/78/D/941/2000, Mr. Edward Young v. Australia, September 18, 2003

10.4 The Committee recalls its earlier jurisprudence that the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation. It recalls that in previous communications the Committee found that differences in the receipt of benefits between married couples and heterosexual unmarried couples were reasonable and objective, as the couples in question had the choice to marry with all the entailing consequences. It transpires from the contested sections of the VEA that individuals who are part of a married couple or of a

heterosexual cohabiting couple (who can prove that they are in a "marriage-like" relationship) fulfill the definition of "member of a couple" and therefore of a "dependant", for the purpose of receiving pension benefits. In the instant case, it is clear that the author, as a same sex partner, did not have the possibility of entering into marriage. Neither was he recognized as a cohabiting partner of Mr. C for the purpose of receiving pension benefits, because of his sex or sexual orientation. The Committee recalls its constant jurisprudence that not every distinction amounts to prohibited discrimination under the Covenant, as long as it is based on reasonable and objective criteria. The State party provides no arguments on how this distinction between same-sex partners, who are excluded from pension benefits under law, and unmarried heterosexual partners, who are granted such benefits, is reasonable and objective, and no evidence which would point to the existence of factors justifying such a distinction has been advanced.

In this context, the Committee finds that the State party has violated article 26 of the Covenant by denying the author a pension on the basis of his sex or sexual orientation.

Communication No. 902/1999: New Zealand, CCPR/C/75/D/902/1999, Ms. Juliet Joslin et al. v. New Zealand, July 30, 2002

8.2 [...] Article 23, paragraph 2, of the Covenant is the only substantive provision in the Covenant which defines a right by using the term "men and women", rather than "every human being", "everyone" and "all persons". Use of the term "men and women", rather than the general terms used elsewhere in Part III of the Covenant, has been consistently and uniformly understood as indicating that the treaty obligation of States parties stemming from article 23, paragraph 2, of the Covenant is to recognize as marriage only the union between a man and a woman wishing to marry each other.

8.3 In light of the scope of the right to marry under article 23, paragraph 2, of the Covenant, the Committee cannot find that by mere refusal to provide for marriage between homosexual couples, the State party has violated the rights of the authors under articles 16, 17, 23, paragraphs 1 and 2, or 26 of the Covenant.

Individual opinion of Committee members Mr. Rajsoomer Lallah and Mr. Martin Scheinin (concurring)

We found no difficulty in joining the Committee's consensus on the interpretation of the right to marry under article 23, paragraph 2. [...] The provision in no way limits the liberty of States, pursuant to article 5, paragraph 2, to recognize, in the form of marriage or in some other comparable form, the companionship between two men or between two women. However, no support can be drawn from this provision for practices that violate the human rights or dignity of individuals, such as child marriages or forced marriages.

As to the Committee's unanimous view that it cannot find a violation of article 26, either, in the non-recognition as marriage of the same-sex relationships between the authors, we wish to add a few observations. This conclusion should not be read as a general statement that differential treatment between married couples and same-sex couples not allowed under the law to marry would never amount to a violation of article 26. On the contrary, the Committee's jurisprudence supports the position that such differentiation may very well, depending on the circumstances of a concrete case, amount to prohibited discrimination.

Contrary to what was asserted by the State party (para. 4.12), it is the established view of the Committee that the prohibition against discrimination on grounds of "sex" in article 26 comprises also discrimination based on sexual orientation. And when the Committee has held that certain differences in the treatment of married couples and unmarried heterosexual couples were based on reasonable and objective criteria and hence not discriminatory, the rationale of this approach was in the ability of the couples in question to choose whether to marry or not to marry, with all the entailing consequences. No such possibility of choice exists for same-sex couples in countries where the law does not allow for same-sex marriage or other type of recognized same-sex partnership with consequences similar to or identical with those of marriage. Therefore, a denial of certain rights or benefits to same-sex couples that are available to married couples may amount to discrimination prohibited under article 26, unless otherwise justified on reasonable and objective criteria.

However, in the current case we find that the authors failed, perhaps intentionally, to demonstrate that they were personally affected in relation to certain rights not necessarily related to the institution of marriage, by any such distinction between married and unmarried persons that would amount to discrimination under article 26. Their references to differences in treatment between married couples and same-sex unions were either repetitious of the refusal of the State party to recognize same-sex unions in the specific form of "marriage" (para. 3.1), an issue decided by the Committee under article 23, or remained unsubstantiated as to if and how the authors were so personally affected (para. 3.5). (...)

Communication No. 488/1992: Australia, CCPR/C/50/D/488/1992, Nicholas Toonen v. Australia, April 4, 1994

8.2 In as much as article 17 is concerned, it is undisputed that adult consensual sexual activity in private is covered by the concept of "privacy", and that Mr. Toonen is actually and currently affected by the continued existence of the Tasmanian laws. The Committee considers that Sections 122 (a), (c) and 123 of the Tasmanian Criminal Code "interfere" with the author's privacy, even if these provisions have not been enforced for a decade. In this context, it notes that the policy of the Department of Public Prosecutions not to initiate criminal proceedings in respect of private homosexual conduct does not amount to a guarantee that no actions will be brought against homosexuals in the future, particularly in the light of undisputed statements of the Director of Public Prosecutions of Tasmania in 1988 and those of members of the

Tasmanian Parliament. The continued existence of the challenged provisions therefore continuously and directly "interferes" with the author's privacy.

8.3 The prohibition against private homosexual behaviour is provided for by law, namely, sections 122 and 123 of the Tasmanian Criminal Code. As to whether it may be deemed arbitrary, the Committee recalls that pursuant to its general comment 16 on article 17, the "introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by the law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the circumstances". The Committee interprets the requirement of reasonableness to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

8.5 As far as the public health argument of the Tasmanian authorities is concerned, the Committee notes that the criminalization of homosexual practices cannot be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of AIDS/HIV. The Australian Government observes that statutes criminalizing homosexual activity tend to impede public health programmes "by driving underground many of the people at the risk of infection". Criminalization of homosexual activity thus would appear to run counter to the implementation of effective education programmes in respect of the HIV/AIDS prevention. Secondly, the Committee notes that no link has been shown between the continued criminalization of homosexual activity and the effective control of the spread of the HIV/AIDS virus.

8.6 The Committee cannot accept either that for the purposes of article 17 of the Covenant, moral issues are exclusively a matter of domestic concern, as this would open the door to withdrawing from the Committee's scrutiny a potentially large number of statutes interfering with privacy.

It further notes that with the exception of Tasmania, all laws criminalizing homosexuality have been repealed throughout Australia and that, even in Tasmania, it is apparent that there is no consensus as to whether sections 122 and 123 should not also be repealed. Considering further that these provisions are not currently enforced, which implies that they are not deemed essential to the protection of morals in Tasmania, the Committee concludes that the provisions do not meet the "reasonableness" test in the circumstances of the case, and that they arbitrarily interfere with Mr. Toonen's right under article 17, paragraph 1.

8.7 The State party has sought the Committee's guidance as to whether sexual orientation may be considered an "other status" for the purposes of article 26. The same issue could arise under article 2, paragraph 1, of the Covenant. The Committee confines itself to nothing, however, that in its view the reference to "sex" in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation.

Communication No. 61/1979: Finland, CCPR/C/15/D/61/1979, Leo R- Hertzberg, Uit Mansson, Astrid Nikula and Marko and Tuovi Putkonen, represented by SETA (Organization for Sexual Equality) v Finland, April 2, 1982

10.1 Concerning Leo Rafael Hertzberg, the Committee observes that he cannot validly claim to be a victim or a breach by the State party of his right under article 19 (2) of the Covenant. The programme in which he took part was actually broadcast in 1976. No sanctions were imposed against him. Nor has the author claimed that the programme restrictions as applied by FBC would in any way personally affect him. The sole fact that the author takes a personal interest in the dissemination of information about homosexuality does not make him a victim in the sense required by the Optional Protocol.

10.2 With regard to the two censored programmes of Mrs. Nikula and of Marko and Tuovi Putkonen, the Committee accepts the contention of the authors that their rights under article 19 (2) of the Covenant have been restricted. While not every individual can be deemed to hold a right to express himself through a medium like TV, whose available time is limited, the situation may be different when a programme has been produced for transmission within the framework of a broadcasting organization with the general approval of the responsible authorities. On the other hand, article 19 (3) permits certain restrictions on the exercise of the rights protected by article 19 (2), as are provided by law and are necessary for the protection of public order or of public health or morals. In the context of the present communication, the Finnish Government has specifically invoked public morals as justifying the actions complained of. The Committee has considered whether, in order to assess the necessity of those actions, it should invite the parties to submit the full text of the censored programmes. In fact, only on the basis of these texts could it be possible to determine whether the censored programmes were mainly or exclusively made up of factual information about issues related to homosexuality.

10.3 The Committee feels, however, that the information before it is sufficient to formulate its views on the communication. It has to be noted, first, that public morals differ widely. There is no universally applicable common standard. Consequently, in this respect, a certain margin of discretion must be accorded to the responsible national authorities.

10.4 The Committee finds that it cannot question the decision of the responsible organs of the Finnish Broadcasting Corporation that radio and TV are not the appropriate forums to discuss issues related to homosexuality, as far as a programme could be judged as encouraging homosexual behaviour. According to article 19 (3), the exercise of the rights provided for in article 19 (2) carries with it special duties and responsibilities for those organs. As far as radio and TV programmes are concerned, the audience cannot be controlled, in particular, harmful effects on minors cannot be excluded.

Individual opinion appended to the Committee's views at the request of Mr. Torkel Opsahl:

Although I agree with the conclusion of the Committee, I wish to clarify certain points.

This conclusion prejudices neither the right to be different and live accordingly, protected by article 17 of the Covenant, nor the right to have general freedom of expression in this respect, protected by article 19. Under article 19 (2) and subject to article 19 (3), everyone must in principle have the right to impart information and ideas - positive or negative - about homosexuality and discuss any problem relating to it freely, through any media of his choice and on his own responsibility.

B. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

I. GENERAL COMMENTS

General Comment No. 18: The Right to Work (art. 6), E/C.12/GC/18, February 6, 2006

12. The exercise of work in all its forms and at all levels requires the existence of the following interdependent and essential elements, implementation of which will depend on the conditions present in each State party:

(b) *Accessibility*. The labour market must be open to everyone under the jurisdiction of States parties. Accessibility comprises three dimensions:

(i) Under its article 2, paragraph 2, and article 3, the Covenant prohibits any discrimination in access to and maintenance of employment on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, or civil, political, social or other status, which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality.[...]

General Comment No. 15: The Right to Water (arts. 11 and 12), E/C.12/2002/11, January 20, 2002

Non-discrimination and equality

13. The obligation of States parties to guarantee that the right to water is enjoyed without discrimination (Art. 2, para. 2), and equally between men and women (Art. 3), pervades all of the Covenant obligations. The Covenant thus proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability,

health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water. The Committee recalls paragraph 12 of General Comment No. 3 (1990), which states that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.

General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), E/C.12/2000/4, August 11, 2000: “Special Topics of Broad Application”

Non-discrimination and equal treatment

18. By virtue of article 2.2 and article 3, the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health. (...)

II. CONCLUDING OBSERVATIONS

Concluding Observations: Monaco, E/C.12/MCO/CO/1, June 13, 2006

3. The Committee notes with satisfaction the adoption of the Act of 15 July 2005 on freedom of public expression, which criminalizes insults of a racial, ethnic or religious nature and insults based on real or supposed sexual orientation.

Concluding Observations: Liechtenstein, E/C.12/LIE/CO/1, June 9, 2006

6. The Committee welcomes the recent establishment of an Office of Equal Opportunity with a broad mandate to combat discrimination based on gender, religion, disability, national origin and sexual orientation.

12. The Committee expresses its concern that the Office of Equal Opportunity, which replaced the Office of Gender Equality, may not have sufficient means to ensure that its work will continue to have a strong gender focus, in addition to its new responsibilities in the fields of integration of foreigners, disability, age, religion and sexual orientation.

Concluding Observations: China, E/C.12/1/Add.107, May 13 2005.

73. The Committee welcomes the establishment of the Sexual Minorities Forum, a formal communication channel between HKSAR and persons with different sexual

orientation, and the planned establishment of the Gender Identity and Sexual Orientation Unit within the Home Affairs Bureau.

78. The Committee regrets that HKSAR has not implemented a number of the recommendations contained in its concluding observations of 2001. The Committee wishes to reiterate in particular its concern at the following issues:

(a) The present anti-discrimination legislation does not cover discrimination on the basis of race, sexual orientation and age;

Concluding Observations: Poland, E/C.12/1/Add.82, December 19, 2002

5. The Committee welcomes the establishment in November 2001 of the Government Plenipotentiary for Equal Gender Status with the responsibility of promoting the principle of equality between men and women in government legislation and policies. The Committee also notes the recent expansion of the responsibilities of the Plenipotentiary to include combating discrimination based on race, ethnic origin, religion and belief, age and sexual orientation.

Concluding Observations, Trinidad and Tobago, E/C.12/1/Add.80, June 5, 2002

14. The Committee is concerned about the lack of specific and comprehensive anti-discrimination legislation in the State party. The Committee is particularly concerned that the Equal Opportunity Act 2000 does not afford protection to individuals on the grounds of sexual orientation, age and HIV/AIDS status, among others.

Concluding Observations: Sweden, E/C.12/1/Add.70, November 30, 2001

8. The Committee recognizes that a number of Ombudspersons exist in the country, dealing with different aspects of human rights with a focus on discrimination issues. The Committee welcomes the creation of the office of an Ombudsperson against Discrimination on Grounds of Sexual Orientation.

Concluding Observations: (Hong Kong) China, E/C.12/1/Add.58, May 21, 2001

15. The Committee regrets that HKSAR has not implemented a number of the recommendations in its concluding observations of 1996, despite the delegation's assurance that these must be given effect. The Committee wishes to reiterate in particular its concern on the following issues:

(c) The failure of HKSAR to prohibit discrimination on the basis of sexual orientation and age.

Concluding Observations: Kyrgyzstan, E/C.12/1/Add.49, September 1, 2000

17. The Committee regrets the absence of information on the extent of violence against women and the trafficking of women in Kyrgyzstan. The Committee is also concerned at the classification of lesbianism as a sexual offence in the Penal Code.

30. [...] The Committee recommends that the State party proceed to remove lesbianism from the Penal Code, as indicated by the delegation. [...]

Concluding Observations: Ireland, E/C.12/1/Add.35, May 14, 1999

5. The Committee also welcomes the adoption of the Employment Equality Act of 1998 and the Equal Status Bill of 1998 which aim at removing several aspects of discrimination relating to, *inter alia*, gender, marital status, family status, sexual orientation, religion, age, disability, race, colour, nationality, national or ethnic origin and membership of the traveller community.

Concluding Observations: Cyprus, E/C.12/1/Add.28, December 4, 1998

7. The Committee welcomes the abrogation of the provisions of the Penal Code criminalizing homosexual acts.

C. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

I. CONCLUDING OBSERVATIONS

Concluding Observations: Czech Republic, CERD/C/CZE/CO/7, April 11, 2007

18. The Committee notes that several distinctions made under domestic law between the rights of citizens and non-citizens may not be fully justified. It notes in particular that European Union non-citizens, although they are entitled to vote and be elected at local elections, may not belong to a political party. The Committee also notes with concern that a condition under the Act on Registered Partnerships between Persons of the Same Sex, currently under debate in Parliament, may be that at least one of the persons be a Czech citizen. (article 5)

The Committee draws the attention of the State party to its general recommendation XXX (2004) on non-citizens, and recalls that differential treatment based on citizenship constitutes discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.

Concluding Observations: Denmark, CERD/C/DEN/CO/17, October 19, 2006

6. The Committee notes with appreciation that section 81 of the Criminal Code, which entered into force on 2 April 2004, introduced an aggravating circumstance for offences based on another's ethnic origin, faith, sexual orientation or the like.

7. The Committee welcomes the decision of the State party to establish two new reporting systems on decisions in criminal cases where the crime has been committed

on account of the victim's race, nationality, ethnic background, religious belief or sexual orientation on the one hand, and concerning the implementation of the Danish Act of Prohibition against Discrimination on the Basis of Race on the other hand.

Concluding Observations: Ireland, CERD/C/IRL/CO/2/Add.1, June 16, 2006

Equality legislation

81. The Employment Equality Act, 1998 provides further protections in the area of employment. This legislation prohibits both direct and indirect discrimination in the areas of employment on nine grounds; gender, marital status, family status, sexual orientation, religion, age, disability, race or membership of the Traveller community. There are also in place the necessary institutional structures, in the shape of the Equality Authority and the Equality Tribunal, to ensure effective implementation of this legislation and the Equal Status Act, 2000 (prohibiting discrimination in access to goods and services on the same nine grounds).

Concluding Observations: Lithuania, CERD/C/LTU/CO/3, April 11, 2006.

6. The Committee welcomes the adoption of a new penal code criminalizing incitement to racial hatred as well as the adoption of a new law on Equal Opportunities, which prohibits any direct or indirect discrimination on the grounds of age, sexual orientation, disability, race or ethnicity, religion or convictions.

II. COMMUNICATIONS

Communication No. 34/2004: Denmark, CERD/C/68/D/34/2004, March 15, 2006.

7.2 The issue before the Committee is whether the State party fulfilled its positive obligation to take effective action against reported incidents of racial discrimination, having regard to the extent to which it investigated the petitioner's complaint under section 266 (b) of the Criminal Code. This provision criminalizes public statements by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion or sexual inclination.

7.3 The Committee observes that it does not suffice, for purposes of article 4 of the Convention, merely to declare acts of racial discrimination punishable on paper. Rather, criminal laws and other legal provisions prohibiting racial discrimination must also be effectively implemented by the competent national tribunals and other State institutions. This obligation is implicit in article 4 of the Convention, under which State parties "undertake to adopt immediate and positive measures" to eradicate all incitement to, or acts of, racial discrimination. It is also reflected in other provisions of the Convention, such as article 2, paragraph 1(d), which requires States to "prohibit and bring to an end, by all appropriate means," racial discrimination, and article 6,

guaranteeing to everyone "effective protection and remedies" against acts of racial discrimination.

D. COMMITTEE AGAINST TORTURE

I. CONCLUDING OBSERVATIONS

Concluding Observations: Italy, CAT/C/ITA/CO/4, May 18, 2007 (advanced unedited version)

23. While noting various measures taken by the State party, including the survey issued on 21 February 2007 by the National Institute of Statistics (ISTAT) on the issue of physical and sexual violence against women and the establishment on 8 March 2006 of an ad hoc toll-free Number 1522, called "Anti-violence against Women (Anti-violenza Donna)", the Committee remains concerned about the persistence of violence against women and children, including domestic violence. The Committee further regrets that the State party did not provide statistical data on complaints, prosecutions and sentences in matters of domestic violence. (articles 1, 2, 12 and 16)

The State party should increase its efforts to prevent, combat and punish violence against women and children, including the adoption of the Bill on "Awareness raising and prevention measures as well as the repression of crimes against the individual or within the household, on account of sexual orientation, gender identity and any other reason of discrimination" (Chamber Act No. 2169) which envisages, *inter alia*, the systematic collection and analysis of data on violence, including domestic violence.

Concluding Observations: Poland, CAT/C/POL/CO/4, May 16, 2007 (advanced unedited version)

19. The Committee notes with concern reports of intolerance and hatred towards minorities and other vulnerable groups in Poland, including alleged recent manifestations of hate speech and intolerance against homosexuals and lesbians. (art. 16)

The State party should incorporate in its Penal Code an offence to punish hate crimes as acts of intolerance and incitation to hatred and violence based on sexual orientation. Moreover, the State party should continue to be vigilant in ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and administrative directives constantly communicate to staff the message that incitation to hatred and violence will not be tolerated and will be sanctioned accordingly.

The State party should provide detailed information and statistics on the number and type of hate crimes as well as on the administrative and judicial measures taken to investigate such crimes and the sentences imposed.

Concluding Observations: United States of America, CAT/C/USA/CO/2, July 25, 2006

32. The Committee is concerned at reliable reports of sexual assault of sentenced detainees, as well as persons in pretrial or immigration detention, in places of detention in the State party. The Committee is concerned that there are numerous reports of sexual violence perpetrated by detainees on one another, and that persons of differing sexual orientation are particularly vulnerable. The Committee is also concerned by the lack of prompt and independent investigation of such acts and that appropriate measures to combat these abuses have not been implemented by the State party (arts. 16, 12, 13 and 14).

The State party should design and implement appropriate measures to prevent all sexual violence in all its detention centres. The State party should ensure that all allegations of violence in detention centres are investigated promptly and independently, perpetrators are prosecuted and appropriately sentenced and victims can seek redress, including appropriate compensation.

37. The Committee is concerned about reports of brutality and use of excessive force by the State party's law-enforcement personnel, and the numerous allegations of their ill-treatment of vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation which have not been adequately investigated (art. 16 and 12).

The State party should ensure that reports of brutality and ill-treatment of members of vulnerable groups by its law-enforcement personnel are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.

Concluding Observations: Ecuador, CAT/C/ECU/CO/3, February 8, 2006

17. The Committee is concerned about allegations of torture and ill-treatment of members of vulnerable groups, especially indigenous communities, sexual minorities and women, even though these groups are protected by domestic law. These allegations, which also concern the treatment of human rights defenders and domestic violence, have not been adequately investigated (arts. 2 and 12).

The State party should ensure that allegations of torture and ill-treatment of members of these groups are thoroughly investigated and those responsible brought to trial. The State party should also build up and strengthen the system of public defenders to protect these groups.

Concluding Observations: Argentina, CAT/C/CR/33/1, December 10, 2004

D. Subjects of concern

6. The Committee expresses its concern at the following: [...]

(g) Allegations of torture and ill-treatment of certain other vulnerable groups, such as members of the indigenous communities, sexual minorities and women.

Concluding Observations: Egypt, CAT/C/CR/29/4, December 23, 2002

D. Subjects of concern

5. The Committee is concerned about the following: [...]

(e) The reports received concerning ill-treatment inflicted on men because of their real or alleged homosexual inclinations, apparently encouraged by the lack of adequate clarity in penal legislation;

6. The Committee recommends that the State party: [...]

(k) Remove all ambiguity in legislation which might underpin the persecution of individuals because of their sexual orientation. Steps should also be taken to prevent all degrading treatment on the occasion of body searches.

Concluding observations: Venezuela, CAT/C/CR/29/2, December 23, 2002

C. Subjects of concern

10. The Committee expresses its concern at the following: [...]

(d) Complaints of threats and attacks against sexual minorities and transgender activists, particularly in the State of Carabobo.

Concluding Observations: Brazil, A/56/44, May 16, 2001

C. Subjects of concern

119. The Committee expresses its concern about the following: [...]

(b) The overcrowding, lack of amenities and poor hygiene in prisons, the lack of basic services and of appropriate medical attention in particular, violence between prisoners and sexual abuse. The Committee is particularly concerned about allegations of ill-treatment and discriminatory treatment of certain groups with regard to access to the already limited essential services, notably on the basis of social origin or sexual orientation.

II. COMMUNICATIONS

Communication No. 213/2002: Sweden, CAT/C/31/D/213/2002, Mr. E. J. V. M. v Sweden, November 28, 2003

2.5 The complainant claims that, because of his Communist affiliations, he was prevented from working in the National Theatre Company and suspended from his acting classes. He also alleges that he was publicly attacked because he was bisexual.

2.10 He also says that his life and that of his partner, P. A. M., a female-to-male transsexual, with whom he shared his political activities, was in danger. He says that their house was shot at on several occasions and that although they asked for police protection their requests were ignored. He asserts that they had to install a metal stockade in the living room of their house for protection.

4.5 On the general human rights situation in Costa Rica, the State party asserts that there is no consistent pattern of gross, flagrant or mass violations of human rights. It bases its assertion on reports on the human rights situation in the country, on the Committee's concluding observations on Costa Rica's initial report of 2001, on the fact that consensual homosexual relationships between adults are legal in that country and on the fact that Costa Rica has ratified various human rights instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The State party asserts that the torture alleged by the complainant took place some time ago and that the human rights situation in Costa Rica has considerably improved since.

5.2 The complainant quotes the opinion of the Centro de Investigación y Promoción para América Central de Derechos Humanos (CIPAC/DDHH) (Human Rights Research and Promotion Centre for Central America), on the discrimination to which homosexuals in Costa Rica are subject, the violence against them and the fact that they cannot contract same-sex marriages.

8.7 On the issue of the complainant's alleged difficulties in Costa Rica on account of his bisexuality, the Committee observes that the danger of being subjected to torture in Costa Rica in future is not based on grounds that go beyond mere theory or suspicion. In the Committee's opinion, the reports submitted by the complainant do not demonstrate substantial grounds for believing that he is personally and currently in danger of being tortured if returned to Costa Rica. In the light of the foregoing, the Committee considers that the information furnished by the complainant does not provide substantial grounds for believing that he would personally be in danger of being tortured if returned to Costa Rica.

Communication No 190/2001: Netherlands, CAT/C/30/D/190/2001, K.S.Y. v Netherlands, May 26, 2003

7.3 Concerning the alleged difficulties faced by the complainant because of his sexual orientation, the Committee notes a number of contradictions and inconsistencies in his account of past abuses at the hand of the Iranian authorities, as well as the fact that part of his account has not been adequately substantiated or lacks credibility.

7.4 The Committee also notes from different and reliable sources that there currently is no active policy of prosecution of charges of homosexuality in Iran.

E. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

I. CONCLUDING OBSERVATIONS

Concluding Observations: Sweden, A/56/38, July 31, 2001

334. The Committee commends the Government for passing legislation that provides residence permits to individuals who have a well-founded fear of persecution on the basis of sexual orientation or gender, particularly in cases that involve discrimination against women.

Concluding Observations: Kyrgyzstan, A/54/38, August 20, 1999

127. The Committee is concerned that lesbianism is classified as a sexual offence in the Penal Code.

128. The Committee recommends that lesbianism be reconceptualized as a sexual orientation and that penalties for its practice be abolished.

Concluding Observations: Ireland, A/54/38, July 1, 1999

(a) Introduction by the State party

162. [...] The representative explained that the 1998 Employment Equality Act outlawed discrimination on nine grounds, including gender, marital status, family status, sexual orientation and membership in the "traveller" community.

Concluding Observations: Mexico, A/53/38, May 14, 1998

420. The Committee requests information in the next report on whether homosexuality is penalized in the criminal code.

Concluding Observations: Canada, A/52/38/Rev.1, August 12, 1997

310. [...] A recent amendment to the Canadian Human Rights Act granted protection against discrimination on the basis of sexual orientation.

Concluding Observations: New Zealand, A/49/38, April 12, 1994

612. The Government had passed a new Human Rights Act in 1993, extending the grounds of prohibited discrimination. Its grounds would now cover gender issues, including pregnancy, childbirth, sexual harassment, marital and family status, sexual orientation, disability, age, race, religion, employment status and political opinion. The Act would come into force in 1994. (...)

Concluding Observations: Netherlands, A/49/38, April 12, 1994

253. (...) Members were favourably impressed by the fact that, one year before presenting each subsequent report to the Committee, the Government would have to report to Parliament, and they commended the concern that was shown about the issue of sexual preference. (...)

F. COMMITTEE ON THE RIGHTS OF THE CHILD

I. GENERAL COMMENTS

General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, July 1, 2003

The right to non-discrimination

6. States parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention without discrimination (art. 2), including with regard to “race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”. These grounds also cover adolescents’ sexual orientation and health status (including HIV/AIDS and mental health). Adolescents who are subject to discrimination are more vulnerable to abuse, other types of violence and exploitation, and their health and development are put at greater risk. They are therefore entitled to special attention and protection from all segments of society.

General Comment No. 3: HIV/AIDS and the Rights of the Children, CRC/GC/2003/3, March 17, 2003

The right to non-discrimination (art. 2)

8. Of particular concern is gender-based discrimination combined with taboos or negative or judgmental attitudes to sexual activity of girls, often limiting their access to preventive measures and other services. Of concern also is discrimination based on sexual orientation. In the design of HIV/AIDS related strategies, and in keeping with their obligations under the Convention, State parties must give careful consideration to prescribed gender norms within their societies with a view to eliminating gender-based discrimination as these impact on the vulnerability of both girls and boys to HIV/AIDS. States parties should in particular recognize that discrimination in the context of HIV/AIDS often impacts girls more severely than boys.

II. CONCLUDING OBSERVATIONS

Concluding Observations: Slovakia, CRC/C/SVK/CO/2, June 8, 2007

27. The Committee welcomes the reform of legislation, the adoption of action plans and the monitoring and information collection work carried out on the issue of discrimination. Nevertheless, the Committee expresses its concern that the Anti-Discrimination Act does not provide protection from discrimination in the areas of social security, healthcare, education and provision of goods and services on the grounds of ethnicity, disability, religion or belief, and sexual orientation. The Committee also notes that the action plans are the only comprehensive and systematic tools of the State Party's Government in the area of preventing discrimination and intolerance. The Committee remains concerned that in practice certain groups continue to experience discrimination. The Committee is also concerned that, parents do not want their children to have any contact with Roma children from residential homes and that in some cases, citizens have rejected by referendum the existence of a children's home in the municipality and have caused the home to be re-located.

28. The Committee urges the State party to ensure full protection under the "Anti-Discrimination Act" against discrimination on the grounds of, ethnicity, disability, religion or belief, or sexual orientation. The Committee also urges the State party to strengthen its awareness-raising and other preventive activities against discrimination, and, if necessary, to take affirmative actions for the benefit of certain vulnerable groups of children, especially the Roma. The State party should ensure that its action plans to prevent discrimination and intolerance are comprehensive, addressing all forms of discrimination against individuals or groups. The Committee also urges the State party to take all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively.

Concluding Observations: Chile, CRC/C/CHL/CO/3, April 23, 2007

29. The Committee recognises the policy measures undertaken to advance the implementation of the principle of non-discrimination, in particular in the area of health services, however remains concerned that certain vulnerable groups, including indigenous, migrant and refugee children, children with disabilities, as well as children from disadvantaged socio-economic backgrounds and those living in rural areas, continue to be victims of discrimination, particularly in their reduced access to education. The Committee further notes the prevalence of gender based discrimination and that pregnancy continues to result in the exclusion of girls from educational establishments, despite an explicit prohibition of discrimination on this ground. Furthermore, the Committee is concerned that homosexual relations, including those of persons under 18 years old, continue to be criminalized, indicating discrimination on the basis of sexual orientation.

30. The Committee recommends that the State party increase its efforts to review, monitor and ensure implementation of legislation guaranteeing the principle of non-discrimination and full compliance with article 2 of the Convention, and adopt a proactive and comprehensive strategy to eliminate discrimination on gender, ethnic, religious or any other grounds and against all vulnerable groups throughout the country.

31. The Committee also request that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party, to provide special protection to vulnerable groups and to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, also taking into account General Comment No. 1 on article 29, paragraph 1 of the Convention (aims of education).

Concluding Observations: Malaysia, CRC/C/MYS/CO/1, February 2, 2007

31. While noting with appreciation the principle of non-discrimination in article 8 of the Federal Constitution as well as in the preamble of the Child Act 2001 (Act 611) and the special measures taken to advance and protect the status and existence of indigenous peoples, the Committee is concerned that many children belonging to vulnerable groups, such as the Orang Asli, indigenous and minority children living in Sabah and Sarawak and particularly in remote areas, asylum seeking and refugee children (for example the unregistered children of Filipino refugees holding IMM13 Refugee passes), children born out of wedlock and children of migrant workers, are likely to experience de facto discrimination in their everyday life. Acknowledging the State party's challenges in providing quality services in remote areas of the country, the Committee is concerned that still many children are suffering from disparities in the field of access to social and health services and education. Concern is expressed at the insufficient efforts made to address discrimination based on sexual orientation.

32. In light of article 2 and other related articles of the Convention, the Committee recommends that the State party carefully and regularly evaluate existing disparities in the enjoyment by children of their rights and undertake on the basis of that evaluation the necessary steps to prevent and combat discriminatory disparities against children belonging to vulnerable groups, such as such as the Orang Asli, indigenous and minority children living in Sabah and Sarawak and particularly in remote areas, asylum seeking and refugee children (for example the unregistered children of Filipino refugees holding IMM13 Refugee passes), children born out of wedlock and children of migrant workers.

Concluding Observations: China, CRC/C/CHN/CO/2, November 24, 2005

31. The Committee is concerned about the persistence of discrimination against refugee, asylum-seeking and undocumented migrant children in the Hong Kong SAR, and the lack of legislation specifically prohibiting discrimination on the basis of race or sexual orientation. The Committee regrets the lack of available information on the practical implementation of article 2 of the Convention in the Macau SAR.

33. The Committee recommends that in the Hong Kong SAR the State party expedite its efforts to draft and adopt legislation prohibiting discrimination on the basis of race or sexual orientation. The Committee requests that in its next periodic report specific information be included on the practical implementation of article 2 in the Macau SAR.

Concluding observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.188, October 9, 2002

Adolescent health

43. (...) The Committee is concerned that homosexual and transsexual young people do not have access to the appropriate information, support and necessary protection to enable them to live their sexual orientation. The Committee is furthermore concerned at the rising incidence of sexually transmitted diseases among young persons.

44. In line with its previous recommendations (ibid., para. 30), the Committee recommends that the State party: (...)

(d) Provide adequate information and support to homosexual and transsexual young people (...).

Concluding Observations: Belgium CRC/C/15/Add.178, June 13, 2002

The right to non-discrimination

18. The Committee welcomes the Decree of March 2000 expanding the mandate of the Centre for Equal Opportunities and Opposition to Racism to include all forms of

discrimination, including grounds of gender, sexual orientation, birth, civil status, ill health, age and disability. (...)

Concluding Observations: Overseas Territories, United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.135, October 16, 2000

Non-discrimination

25. (...) However, the Committee remains concerned that insufficient efforts have been made to ensure the full implementation of article 2 of the Convention and that discrimination based on gender, sexual orientation and birth status remains apparent in some of the Overseas Territories. In this regard, the Committee notes that legislation, relating to these issues, particularly with respect to sexual abuse and exploitation, as well as the legal minimum age for sexual consent, refers only to girls and does not provide equal and adequate protection for boys. Concern is expressed at the growing gender bias faced by boys evident, inter alia, in their academic underachievement in many of the Overseas Territories, especially the Falkland Islands and the Territories in the Caribbean. The Committee also notes the disparity between the ages for sexual consent to heterosexual and homosexual relations in some of the Overseas Territories. (...)

26. The Committee recommends review of domestic legislation in the Overseas Territories to ensure full compliance with article 2 of the Convention and to prevent and combat discrimination, especially as regards gender, sexual orientation and birth status. In particular, the Territories should amend their legislation to ensure that boys are provided equal and adequate protection against sexual abuse and exploitation. Additionally, the Committee recommends that all appropriate measures be taken to address discrimination arising from the socialization of boys and girls into inappropriate gender roles and the resulting determination of social attitudes concerning children based on gender.

Concluding Observations: Isle of Man, United Kingdom of Great Britain and Northern Ireland, CRC/C/15/Add.134, October 16, 2000

Non-discrimination

22. The Committee expresses concern that the Isle of Man does not appear to have fully taken into account article 2 (the general principle of non-discrimination) of the Convention in its legislation, its administrative and judicial decisions, or its policies and programmes relevant to children. In this context, concern is expressed at the insufficient efforts made to provide against discrimination based on sexual orientation. While the Committee notes the Isle of Man's intention to reduce the legal age for consent to homosexual relations from 21 to 18 years, it remains concerned about the disparity that continues to exist between the ages for consent to heterosexual (16 years) and homosexual relations.

23. It is recommended that the Isle of Man take all appropriate measures, including of a legislative nature, to prevent discrimination based on the grounds of sexual orientation and to fully comply with article 2 of the Convention.

III. REPORTS

Annual Report of the Committee, Report on the Nineteenth Session to the General Assembly, CRC/C/80, October 9, 1998

236. [...] Participants pointed out that discrimination based on sexual orientation was also of particular relevance in the context of HIV/AIDS, as homosexual boys and girls, as well as belonging to a particularly vulnerable group, often faced acute discrimination.

III. CHARTER BASED BODIES

A. SPECIAL PROCEDURES OF THE FORMER UNITED NATIONS COMMISSION ON HUMAN RIGHTS

I. WORKING GROUPS

a. Reports of the Working Group on Arbitrary Detention

Report of the Working Group on Arbitrary Detention: “Civil and political rights, including the questions of torture and detention”, E/CN.4/2004/3, December 15, 2003

III. Issues of concern

A. Discrimination

73. The Working Group has also been informed that, in some countries, drug addicts, prostitutes, homosexuals and people suffering from AIDS are locked up on the grounds that they represent a risk to society, and people are given prison sentences solely because of their sexual orientation. Having received a communication concerning 55 persons prosecuted and detained on account of their homosexuality, the Working Group took the view that their detention was arbitrary because it violated articles 2, paragraph 1, and 26 of the International Covenant on Civil Rights, which guarantee equality before the law and the right to equal legal protection against all forms of discrimination, including that based on sex. The Working Group based its opinion on that of the Committee on Human Rights, according to which the reference to “sex” in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation (CCPR/C/50/488/1992, para. 8.7).³³

Opinions adopted by the Working Group on Arbitrary Detention, No 7/2002 (Egypt), E/CN.4/2003/8/Add.1, January 24, 2003

5. According to the source of the communication, at least 55 persons were arrested in Cairo on the grounds of their sexual orientation in the early hours of 11 May 2001, during a raid by police of the discotheque on the Queen Boat moored on the Nile in Zamalek District. Ten undercover officers from both State Security and the Cairo Vice Squad are said to have entered the bar around 2 a.m. After watching and filming

³³ Please note that the Working Group on arbitrary detention has also addressed this case in its Opinion No 7/2002 (Egypt), E/CN.4/2003/8/Add.1, January 24, 2003 and in its annual report of 2003, E/CN.4/2003/8, December 16, 2002. This case is also mentioned in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76/Add.1, March 14, 2002, para. 507 and in the report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/2002/72, February 11, 2003, para. 57.

the dancing in the bar for some time, they reportedly began rounding up Egyptian customers.

6. According to the information received, the police targeted men who appeared to them to be homosexuals or who were not accompanied by women. One of the men was slapped on the face several times by a police officer and was called a derogatory word for homosexual when he allegedly refused to leave the boat.

9. In its reply, dated 19 September 2001, the Government explained that there was no article in Egypt's national legislation that provides for the prosecution of a person on account of his or her sexual orientation. The Government gave the following explanations.

10. The incident of 11 May 2001 involving the arrest of the 52 accused persons was registered as Qasr al-Nil State Security (Emergency) Misdemeanour case No. 182/2001. The first and second accused persons were charged with contempt of religion, and all the other accused persons were charged with habitually engaging in immoral acts with men. Such acts are punishable as criminal offences under article 98 (f) of the Penal Code and articles 9 (c) and 15 of the Prevention of Prostitution Act No. 10 of 1961. The case was referred to the courts on 18 July 2001 and is still pending.

11. Article 2 (1) of the International Covenant on Civil and Political Rights provides that: "Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other, opinion, national or social origin, property, birth or other status." The obligations set forth in the aforementioned article, therefore, place the States parties to the Covenant, including Egypt, under a positive obligation to respect and to ensure to all individuals within their territory and subject to their jurisdiction all the rights recognized in the Covenant, without distinction of any kind or on any ground.

15. Thus, it is the personal conduct of each of the defendants, meaning their perpetration of immoral acts and offences against public decency, which is regarded as a criminal offence under this particular article. The Government reported that the gender or sexual orientation of the perpetrator is irrelevant. This offence need only display a certain type of conduct. According to the evidence gathered by the Department of Public Prosecutions, the accused persons in this case had displayed just such conduct. Therefore, the Department of Public Prosecutions referred the case, together with the contempt of religion charges brought against the defendants, to the courts.

16. There is no truth to the allegation that the accused were arrested on account of their sexual orientation (sodomy), since the offences to which the case refers are not defined by the sexual orientation of the perpetrator.

20. The report provides an account of the examination by an expert of the two persons mentioned in the initial communication. The subject is an anal examination required by the Procurator's Office, as part of the prosecution procedure, to establish whether or not the persons concerned are homosexuals.

21. In the light of the above information, the Working Group considered the case in two stages. First, it had to determine whether the alleged prosecution or conviction of the persons accused on grounds of sexual orientation was justified and, if so, whether those grounds did constitute discrimination under article 2, paragraph 1, of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which would confer an arbitrary character on their detention.

22. Concerning the allegation that the accused were prosecuted on grounds of sexual orientation, the Government argues, on the one hand, that there is no truth in the allegations that the accused were arrested on account of their sexual orientation (sodomy) since the offences to which the case refers are not determined by the sexual orientation of the offender, and, on the other, that all the persons accused were charged with "habitually engaging in immoral acts with men".

24. According to the source, who had commissioned someone to oversee the trial proceedings a fact not contested by the Government in its reply - two of the defendants (Sherif Farahat and Mahmoud Ahmed Allam) were prosecuted and/or convicted for offence against religion, while the others were charged with "making homosexual practices a fundamental principle of their group in order to create social dissensions, and engaging in debauchery with men".

25. The Working Group considers that, setting aside the case of the first two persons mentioned above, about whom it is insufficiently informed regarding the acts with which they are charged, the other persons were in fact prosecuted on charges of homosexuality, as is attested by the legal examination ordered by the Procurator's Office on the grounds that homosexuality, as a sexual orientation, is a source of "social dissensions" under article 98, paragraph 1, of the Egyptian Penal Code.

26. With regard to the discriminatory character of the measure of deprivation of liberty which would confer on such deprivation an arbitrary character, the Working Group notes that, in its reply, the Government (which is a party to the International Covenant on Civil and Political Rights) refers to article 26 of the Covenant in the following terms: "The obligations set forth in article 2 (1) place the States parties to the International Covenant, including Egypt, under a positive obligation to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, without distinction of any kind or on any ground. However, article 26 cited above, which establishes the right of all persons not to be subjected to discrimination has, as its corollary, the responsibility imposed on States parties (article 2, paragraph 1 of the Covenant) to undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights

recognized in the Covenant, without distinction of any kind, such as ... sex ... or other status.”

27. The question, therefore, is whether the reference to “sex” may be regarded as covering “sexual orientation or affiliation”, and whether it follows that the detention of the defendants can be considered arbitrary on the grounds that it was ordered on the basis of a domestic legislation provision (namely article 98, paragraph 1 of the Egyptian Penal Code) not in accordance with the international standards set forth in article 2, paragraph 1, of the Universal Declaration of Human Rights, and articles 2, paragraph 1, and 26 of the Covenant to which the Government refers. The approach adopted by United Nations human rights bodies with regard to this question would argue in favour of an affirmative answer. Of particular relevance in this regard are the following:

(a) The Human Rights Committee. In the *Nicholas Toonen v. Australia* case, the Committee notes, in paragraph 8.7 of its Views, that “The State Party has sought the Committee’s guidance as to whether sexual orientation may be considered an ‘other status’ for the purposes of article 26. The same issue could arise under article 2, paragraph 1, of the Covenant. The Committee confines itself to noting, however, that in its view the reference to ‘sex’ in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation” (CCPR/C/50/D/488/1992). Confirming this approach, the Committee subsequently called on States not only to repeal laws criminalizing homosexuality, but also to include in their constitutions the prohibition of any discrimination based on sexual preferences (see concluding observations of the Human Rights Committee (Poland), 29 July 1999 (CCPR/C/79/Add.110, para. 23));

(b) The Committee on Economic, Social and Cultural Rights. Its General Comment No. 14 (2000), referring in paragraph 18 (under the heading “Non-discrimination and equal treatment”), to article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights (the wording of which is similar to that of the above-cited article 2 of the International Covenant on Civil and Political Rights) considers that that article proscribes any discrimination, including that based on “sexual orientation”;

(c) The Committee on the Elimination of Discrimination against Women. In paragraphs 127 and 128 of its concluding observations on Kyrgyzstan (A/5438), the Committee states: “The Committee is concerned that lesbianism is classified as a sexual offence in the Penal Code, and accordingly, recommends that lesbianism be reconceptualized as a sexual orientation and that penalties for its practice be abolished”;

(d) The Office of the United Nations High Commissioner for Refugees (UNHCR). In a recent document (7 May 2002) entitled “Guidelines on International Protection: gender-related persecution within the context of article 1 A (2) of the 1951 Convention and its 1967 Protocol relating to the Status of Refugees” (HCR/GIP/02/01) it is stated in paragraph 17 under the heading “Persecution on

account of one's sexual orientation" that: "Where homosexuality is illegal in a particular society, the imposition of severe criminal penalties for homosexual conduct could amount to persecution, just as it would for refusing to wear the veil by women in some societies. Even where homosexual practices are not criminalized, a claimant could still establish a valid claim where the State condones or tolerates discriminatory practices or harm perpetrated against him or her, or where the State is unable to protect effectively the claimant against such harm."

28. In the light of the foregoing and of the approach adopted by United Nations human rights bodies in this regard, the Working Group renders the following opinion:

The detention of the above-mentioned persons prosecuted on the grounds that, by their sexual orientation, they incited "social dissention" constitutes an arbitrary deprivation of liberty, being in contravention of the provisions of article 2, paragraph 1, of the Universal Declaration of Human Rights, and articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights to which the Government is a party.

29. Consequently, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation by bringing it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights;

(b) To consider the possibility of amending its legislation so as to bring it into line with the Universal Declaration of Human Rights and other relevant international instruments to which it is a party.³⁴

Report of the Working Group on Arbitrary Detention: "V. Regarding the Arbitrary Nature on the Ground of Discrimination - of Detention Motivated by Sexual Orientation", E/CN.4/2003/8, December 16, 2002

68. Having received a communication concerning 55 persons prosecuted and detained on account of their homosexuality, the Working Group took the view that their detention was arbitrary because it violated articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights, which guarantee equality before the law and the right to equal legal protection against all forms of discrimination, including "sex".

³⁴ Please note that the Working Group on arbitrary detention has also addressed this case in its annual reports of 2004, E/CN.4/2004/3, December 15, 2003 and of 2003, E/CN.4/2003/8, December 16, 2002. This case is also mentioned in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76/Add.1, March 14, 2002, para. 507 and in the report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/2002/72, February 11, 2003, para. 57.

69. The Working Group based its opinion on that of the Committee on Human Rights, according to which the reference to “sex” in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation (CCPR/C/50/D/488/1992, para. 8.7).

76. The Working Group considered in an Opinion issued in 2002 that articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights guaranteed that all persons are equal before the law and are entitled without discrimination to equal protection of the law. The Group took the view that the reference to “sex” should be considered as covering sexual orientation.³⁵

b. Reports of the Working Group on Enforced or Involuntary Disappearances

Human Rights Council, Second session, Summary Record of the Third Meeting, A/HRC/2/SR.3, October 3, 2006

Presentation of reports followed by an interactive dialogue: Report of the Chairperson of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/2006/56 and Corr.1 and Add.1), Report of the Independent Expert on minority issues (E/CN.4/2006/74), Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (E/CN.4/2006/78 and Add.1-5)

15. She³⁶ was devoting close attention to the particular situations of women in minority groups. Minority women and girls faced multiple forms of discrimination compounded by gender, which made them particularly vulnerable to violations and denials of their rights in public and private life. Other individuals within minority communities might face additional discrimination based on disability or the fact that their sexual identity challenged social or cultural norms.

Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/2006/56/Add.1, Mission to Colombia, January 17, 2006

59. Another aspect of disappearances that has been underreported in the past and continues at the present time relates to the way in which acts of disappearance are perpetrated in conjunction with other gross violations, with targets drawn from among the most vulnerable groups in society. Numerous testimonies were received

³⁵ Please note that the Working Group on arbitrary detention has also addressed this case in its Opinion No 7/2002 (Egypt), E/CN.4/2003/8/Add.1, January 24, 2003 and in its annual report of 2004, E/CN.4/2004/3, December 15, 2003. This case is also mentioned in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76/Add.1, March 14, 2002, para. 507 and in the report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/2002/72, February 11, 2003, para. 57.

³⁶ Ms. McDOUGALL (Independent Expert on minority issues)

concerning these phenomena. The most common examples brought to our notice were: disappearances, combined with “social cleansing” (said to have been a marked feature of the practice in the city of Barrancabermeja for much of the late 1980s and throughout the 1990s, with the urban poor, the unemployed and the so-called “undesirables”, including prostitutes, petty thieves, vagabonds, gamblers and homosexuals as the victims); disappearances, subsequently combined with executions (the victims being drawn mostly from among radical political party leaders or members and trade unionists suspected of collaborating with the guerrilla groups); disappearances, combined with enforced displacement (taking place often mostly in rural areas, the objective being to dispossess victims of their land and properties); disappearances, combined with rape and other forms of sexual violence (with women and girls as victims); disappearances, combined with forced conscription recruitment (directed at children). There seems to have been an increase in all of these practices since the Working Group’s first mission to Colombia in 1988.

Appendix

VOICES FROM THE FIELD: ISSUES, EXPECTATIONS AND DILEMMAS

“The fates of other victims such as prostitutes, thieves, criminals, vagabonds, gamblers, homosexuals, and miscreants in general, tend to be justified as part of ‘social cleansing’: that is, disappearances carried out in the name of wanting to keep the city clean.”

Sessional open-ended Working Group to review and Formulate proposals for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

Background paper prepared by Mr. Theodor van Boven, member of the Committee on the Elimination of Racial Discrimination, E/CN.4/1999/WG.1/BP.7, February 26, 1999

5. (...) (c) Victims of double discrimination constitute a third area of major concern. Many persons are suffering in a double sense as victims of accumulated discrimination: race and gender, race and sexual orientation, race and being handicapped, race and age etc. Exploited and abused girls and women are often victimized because of racist and sexist attitudes and practices. (...)

II. SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL

a. Reports of the Special Representative of the Secretary-General on the situation of human rights defenders

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, A/HRC/4/37, January 24, 2007

7. During the reporting year, the Special Representative participated in numerous events organized by non-governmental organizations (NGOs) including the World Social Forum in Karachi, Pakistan, the Carter Center Conference in Atlanta, United States of America, the World Forum of Human Rights in Nantes, France, the First International Conference on lesbian, gay, bisexual and transgender human rights in Montreal, Canada, and the 2nd Human Rights Defenders' Forum in Asia, held in Bangkok.

II. THE WORK OF HUMAN RIGHTS DEFENDERS IN THE FIELD OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Legal context for activities for the promotion of economic, social and cultural rights

(...)

17. The economic, social and cultural rights, discussed further in section B below in the context of various activities of defenders, are protected by the following provisions in the ICESCR: article 6 (the right to work); article 7 (the right of everyone to the enjoyment of just and favourable conditions of work); article 8 (the right of everyone to form trade unions and join the trade union of his choice, including, inter alia, the right to strike); article 9 (the right to social security); article 10 (widest possible protection to be accorded to the family; marriage with the free consent of intending spouses; special protection to be accorded to mothers during a reasonable period before and after childbirth; special measures of protection and assistance for all children and young persons); article 11 (the right of everyone to an adequate standard of living, including adequate food, clothing and housing); article 12 (the right to enjoy the highest attainable standard of physical and mental health); article 13 (the right to education); and article 15 (the right of everyone, inter alia, to take part in cultural life). Furthermore, States parties have an obligation to guarantee that all ESCR are exercised “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (art. 2 (2)) and must be applied equally to men and women (art. 3). It is in the context of this provision that in chapter III below, the Special Representative focuses on defenders who are at particular risk, namely those who defend the rights of indigenous people and minorities; lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and women human rights defenders.

B. Human rights defenders and their work on economic, social and cultural rights

(...)

6. *The right to health*

(...)

74. (...) In August 2004 a communication was sent to the Government of Nepal concerning members of the Blue Diamond Society, an NGO that provides outreach work for LGBTI persons and campaigns to combat HIV/AIDS. A private writ had been filed to close down the organization on the grounds that it “promoted homosexuality” and 39 members were arrested on the street without charge and held without food or water for 15 hours. Three members were alleged to have been beaten and raped by the police. In December 2005, a communication was sent to the Government of Jamaica, concerning Lenford “Steve” Harvey who was killed allegedly because of his activities in the defence of the rights of marginalized people in Jamaican society, including persons living with HIV/AIDS.

III. *DEFENDERS AT PARTICULAR RISK*³⁷

B. *Defending the rights of lesbian, gay, bisexual, transgender and intersex persons*

93. Both ICESCR (art. 2 (2)) and ICCPR (art. 2 (1)) contain non-discrimination clauses, and article 7 of the Declaration on Human Rights Defenders specifically provides that “everyone has the right, individually and in association with others to develop and discuss new human rights ideas and principles and to advocate their acceptance”. The 1993 Vienna Declaration and Programme of Action confirmed that “(a)ll human rights are universal, indivisible and interdependent and interrelated. [...] While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms” and thus, to ensure that the protection of international human rights norms is universally applied.

94. Since the establishment of the mandate, the Special Representative has acted on 36 cases of alleged attacks and threats against defenders of LGBTI rights in all regions.

95. Communications have been sent to Belarus, the Holy See, Latvia, Moldova, Poland, Russia, Turkey, Nigeria, Uganda, India, Nepal, Argentina, Chile, Ecuador, Honduras, Jamaica and Iran. Defenders have been threatened, had their houses and offices raided, they have been attacked, tortured, sexually abused, tormented by regular death threats and even killed. A major concern in this regard is an almost complete lack of seriousness with which such cases are treated by the concerned authorities.

³⁷ For a description of the situation by country see the Report of the Special Representative of the Secretary-General on the situation of human rights defenders, A/HRC/4/37/Add.1, March 27, 2007, from which extracts are transcribed below.

96. In numerous cases from all regions, police or government officials are the alleged perpetrators of violence and threats against defenders of LGBTI rights. In several of these cases, the authorities have prohibited demonstrations, conferences and meetings, denied registration of organizations working for LGBTI rights and police officers have, allegedly, beaten up or even sexually abused these defenders of LGBTI rights. The authorities have generally attempted to justify action against these defenders by arguing that “the public” does not want these demonstrations to take place, or these organizations to be registered, or that “the people” do not want LGBTI people in their community. The Special Representative recalls articles 2 and 12 of the Declaration on Human Rights Defenders to remind States of their responsibility for protecting defenders against violence and threats. States are also responsible for, inter alia, ensuring that all programmes for training of law enforcement officers and public officials include appropriate elements of human rights teaching (art. 15).

97. In December 2004, the Special Representative communicated her concerns to the Government of Jamaica regarding published comments of the Police Federation’s Public Relations officer condemning the role of “so-called” human rights organizations and dismissing concerns regarding violence against LGBTI defenders, stating that “the Government and police cannot be held responsible for ... the cultural responses of the population ...”.³⁸ In January 2006, the Special Representative sent her concerns to the Government of Nigeria concerning a draft bill which would, if approved, introduce criminal penalties for public advocacy or associations supporting LGBTI rights. In June 2006, a communication was sent to the Government of Poland concerning the Director of the National In-Service Training Centre who was dismissed by the Minister for Education, allegedly for his involvement in the publication and dissemination of a Council of Europe manual on human rights education for young people, which included issues in relation to sexual orientation.

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, mission to Brazil, A/HRC/4/37/Add.2, December 19, 2006

5. It is generally acknowledged that the struggle against military dictatorship greatly contributed to building awareness of civil and political rights and to forming strong national networks of non-governmental organizations (NGOs). During that period, members of the Catholic Church, political organizations, the academic community and intellectuals also created centres for human rights education and developed pastoral social initiatives in defence of human rights. Civil society organizations working on human rights continued to grow in the 1990s. Initially, most organizations concentrated their efforts on reporting violations of civil and political rights. However, they gradually expanded the scope of their mandate and have now adopted an inclusive approach to the defence of human rights, focusing in particular on economic, social, environmental and cultural rights and on discrimination based on race, sexual orientation and gender.

³⁸ This was allegedly in response to Human Rights Watch’s publication “Hated to death: Homophobia, Violence and Jamaica’s HIV/AIDS epidemic” (16 November 2004).

10. During her visit, the Special Representative had the opportunity to examine the situation of defenders involved in social movements, such as those for the rights of landless rural workers, peasants, indigenous communities and people of African descent, sexual minorities, the homeless, and people affected by dams.

32. Activists advocating the rights of lesbian, gay, bisexual and transgender (LGBT) persons have also been targets of threats. In most cases these threats emanate from non-State entities. For instance, the Directors of Coturno de Venus, a lesbian feminist association in Brasilia, reported receiving death threats from a neo-fascist organization in September 2005 because of their activities on the occasion of the celebration of the day for lesbians in August 2005. In another instance, Claudio Alves dos Santos, an activist for the rights of homosexuals who worked for the Referral Centre against Homosexual Violence and Discrimination in Rio de Janeiro, was killed after being severely beaten and tortured in October 2005.

Annual Report of the Special Representative to the General Assembly of the United Nations, A/61/312, September 5, 2006

25. Among the events organized by civil society or regional or intergovernmental organizations in which the Special Representative has participated recently were the Dublin Platform for Human Rights Defenders in Ireland, the International Consultation on Women Human Rights Defenders in Sri Lanka, the World Social Forum in Pakistan, the Carter Conference in the United States of America, the International Conference on Lesbian, Gay, Bisexual and Transgender (LGBT) Human Rights in Canada, and conferences and round tables hosted by the Organization for Security and Cooperation in Europe, the European Union (EU), the African Union and the Inter-American Commission on Human Rights.

7. Particular challenges for vulnerable groups (...)

71. The Special Representative has sent communications concerning defenders working specifically on the rights of lesbian, gay, bisexual and transgender (LGBT) persons who have had their right to peaceful assembly violated. In one case from India, the police, allegedly several times, barred defenders and LGBT persons from entering the office of an organization working on LGBT rights. In a case from Poland, an “Equality March” organized by LGBT defenders was banned by the authorities; however, the Special Representative was pleased to note that it was allowed the following year.

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, mission to Brazil E/CN.4/2006/95/Add.4, March 24, 2006

4. In the course of her visit, the Special Representative met with a host of civil society representatives remarkable for their number, enthusiasm and level of collective organization. The Special Representative was extremely impressed to see how vibrant

the human rights movement has been in Brazil, despite difficult circumstances. She notes that human rights defenders reported that the fight against dictatorship greatly contributed to building awareness of civil and political rights, and extensive networks of NGOs were formed. Human rights organizations continued to proliferate with the beginning of the political opening, and in particular in the 1990s. While organizations initially concentrated their efforts on reporting violations of civil and political rights, they gradually expanded the scope of their mandate and have incorporated diverse human rights causes, particularly in relation to economic, social, environmental and cultural rights and to discrimination based on race, sexual orientation and gender.

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, mission to Israel and OPT E/CN.4/2006/95/Add.3, March 22, 2006

13. There are many groups and individual defenders who engage with the right to housing and carry out protest action against house demolitions. In addition, defenders are actively engaged in the defence of labour rights, rights of migrant workers, the right to education, health and of persons with disabilities, the rights of lesbians, gays and bisexual and transgender persons, land rights and environmental protection. There are religious groups and organizations that advocate the need for religious pluralism. The Special Representative also met with numerous individual Israeli human rights defenders who do not belong as such to any particular organization, such as lawyers, journalists, pacifists and conscientious objectors who refuse to serve the Israeli occupation.

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2006/95, January 23, 2006

29. To effectively fulfil her mandate, the Special Representative adopted a broad definition of human rights defenders based on activities rather than status. In doing so, she was guided by the broad categorization of the fourth preambular paragraph of the Declaration, in accordance to which human rights defenders can be any person or group of persons working to promote human rights. As such, what characterizes a human rights defender is not his/her professional background, status or skills but the human rights basis of the activities undertaken. Accordingly, the Special Representative has included in the scope of her mandate NGO members, lawyers, trade unionists, journalists, student activists, witnesses of human rights violations, certain civil servants, members of NHRIs, leaders of indigenous communities and social movements, environmental activists, lesbians, gays, transsexual and bisexual rights activists, health professionals, humanitarian workers and staff of the United Nations. Peaceful advocates of democratic or minority rights also fall within the ambit of the mandate. The list cannot be exhaustive.

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2005/101, December 13, 2004

A. Which defenders are being targeted, and where?

27. Violations have also taken place against human rights defenders working on a wide array of issues including women's rights, peace, disappearances, and lesbian, gay, bisexual and transgender issues.

2. Violation of the rights to life and mental and physical integrity

46. A number of detained defenders have been held in poor conditions without access to food, water, or medical care. Others have been held incommunicado or in solitary confinement with no access to their relatives or legal counsel. Defenders have equally been subjected to ill-treatment and torture while in custody. Thirty-nine members of an NGO working with sexual minorities on sexual health, including HIV/AIDS, and campaigning for the rights of sexual minorities were reportedly arrested and deprived of food and water for the first 15 days of their detention; four were allegedly forced into a police van, beaten and raped.

Report of the Special Representative of the Secretary-General on human rights defenders, E/CN.4/2002/106, February 27, 2002

1. Individuals, groups and organizations working for the promotion and protection of human rights

51. Others, such as peasants, environmental activists, members of religious, ethnic and sexual minorities, students, teachers and intellectuals - all working for the promotion and protection of human rights - have been subjected to human rights abuses. Equally, members of parliament, procurators, ombudspersons and members of the opposition, as well as human rights activists in general, have all been targeted for upholding human rights.

2. Human rights abuses against human rights defenders

61. Human rights defenders have been arrested, detained, charged, tried and sentenced, sometimes to long terms of imprisonment or even to hard labour, because of their engagement in a variety of activities for the promotion and defence of human rights, including: campaigning for an end to torture and for humane prison conditions; demanding official investigations in cases of abduction and disappearance; participating in international human rights conferences and forums; calling for the release of political prisoners; investigating official corruption and collusion in human rights abuses committed by paramilitary groups; documenting atrocities and providing assistance to victims of human rights violations and their families; working on behalf of refugees, asylum-seekers and internally displaced populations; campaigning for workers' rights and for the promotion of basic labour standards; peacefully

advocating independence; protesting against emergency legislation; demanding greater respect for the environment; denouncing judicial corruption; upholding the right to conscientious objection; publishing translations of the Universal Declaration of Human Rights; campaigning for more effective law enforcement in cases of violence against women; advocating the rights of religious, ethnic and sexual minorities; upholding land rights and the rights of indigenous peoples; and denouncing official embezzlement of funds.

B. Women human rights defenders

83. However, it is also important to highlight the fact that, worldwide, women human rights defenders are paying a heavy toll for their work in protecting and promoting the human rights of others. Unfortunately, an equally impossibly long list could be drawn up of the human rights abuses women defenders face or to which they have actually been subjected simply for upholding human rights. For women human rights defenders, standing up for human rights and the victims of human rights abuses - be they migrants, refugees, asylum-seekers or political activists, or simply people unwillingly relegated to the margins of society, such as ex-offenders and members of sexual minorities - can result in intimidation, harassment, unfair dismissal, death threats, torture and ill-treatment, and even death.

C. The impact on human rights defenders of the 11 September attacks

104. It is easy for Governments to foment suspicion, create public anxiety and direct sheer hostility towards human rights defenders. Human rights defenders reach out to groups that are already socially vulnerable and marginalized, such as ethnic minorities, ex-offenders, sexual minorities, asylum-seekers, refugees and migrant workers. In the post-11 September climate, Governments and other actors have an easier time in portraying anyone who disagrees with them or expresses any form of criticism as a dissident and subversive or even as aiding and abetting “foreign terrorists”.

IV. Conclusions and recommendations

115. Defenders seeking to protect the political, civil, economic, social or cultural rights of marginalized groups and persons face stronger resistance to their work, are more vulnerable and, therefore, more threatened. They include leaders of indigenous and other minority communities, leaders of movements of the poor, and defenders of the rights of women, sexual minorities, displaced persons, migrants and refugees. Environmental and anti-globalization activists seeking redress against violations of social and economic rights continue to be denigrated and exposed to violence.

Report of the Special Representative of the Secretary-General on human rights defenders, E/CN.4/2002/106/Add.2, April 24, 2002, Mission to Colombia

(j) Sexual minorities

172. The Special Representative met with lesbian, gay, transgender and bisexual organizations fighting for those who face discrimination in Colombia, i.e. members of sexual minorities, people living with HIV/AIDS and sex workers. The Colombian gay and lesbian movement has also been actively involved in campaigning for peace in Colombia's civil war, condemning all forms of hatred and violence. In particular, the leaders of this movement have joined Planeta Paz, a peace project coordinated by community leaders and involving women's, indigenous, peasant, youth and other social movements.

173. A few cases have been transmitted to the Special Representative. Robinson Sánchez, editor of *El Otro*, a publication that deals with sexuality issues and a human rights activist fighting abuses perpetrated against gay students in Medellín, has reportedly been verbally and physically abused by a security guard at the University of Antioquía, allegedly in connection with his sexual orientation and his activities as a social leader.

174. The Special Representative was also informed that sexual minorities are victims of threats and harassment particularly in the demilitarized zone.

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2002/106/Add.1, March 12, 2002, Mission to Kyrgyzstan

(d) Women human rights defenders

154. Women continue to suffer discrimination in respect of their social rights. Unemployment amongst women is higher than men; they earn a lower average wage than men do and are grossly under-represented in Government and politics. The new Criminal Code, in force since 1998, decriminalized homosexual acts between consenting adult men. Lesbianism is, however, still an offence under the Criminal Code. This indicates stronger prejudice against women's sexual rights.

Report of the Special Representative of the Secretary-General on human rights defenders, E/CN.4/2001/94, January 26, 2001

89. [...] (g) Greater risks are faced by defenders of the rights of certain groups as their work challenges social structures, traditional practices and interpretations of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups. Of special importance will be women's human rights groups and those who are active on issues of sexuality,

especially sexual orientation and reproductive rights. These groups are often very vulnerable to prejudice, to marginalization and to public repudiation, not only by State forces but by other social actors. The Special Representative will undertake or encourage studies of any such phenomena with a view to drawing up a compendium of possible measures to enhance the protection of such human rights defenders.

Summary of cases transmitted to Governments and replies received:

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, A/HRC/4/37/Add.1, March 27, 2007

Argentina³⁹

29. The Special Representative is disappointed by the National Appeal Courts decision to uphold the resolution passed by the General Inspectorate for Justice (IGJ) to deny the Asociación de Lucha por la Identidad Travestí Transexual (ALITT) legal personality. She is concerned that the IGJ's argument that ALITT's objectives do not comply with the definition of 'for the common good' as outlined in Article 3 (2) of the Criminal Code, is contrary to Article 5 of the Declaration on human rights defenders.

Belarus

61. On the 23 November 2006, the Special Representative, sent an urgent appeal concerning the detention of seven activists including Mr Vyacheslav Andreev, Ms Sviatlana Siarheichyk, Mr Svyatoslav Sementsov, Ms Tanya Ivanova, Mr Aleksei Filipenko, Ms Natallia Kavalchuk and Mr Viachaslau Bortnik who promote the human rights of lesbians, gays, bisexuals and transgender (LGBT) persons in Belarus and are current members of the Organising Committee of the International LGBT Conference which was due to be held in Minsk. According to the information received, on 8 November 2006, at approximately 8:20pm, the seven aforementioned persons were arrested and detained when the apartment in which they were holding a meeting, was broken into by the police. It is alleged that the police confiscated materials relating to the conference and brought the activists to the Zheleznodorozhnyi Borrow Police Department where they were questioned in relation to the schedule of the conference, the list of participants and the venue of the conference. Four of the activists were released after two hours but Vyacheslav Andreev, Svyatoslav Sementsov and Viachaslau Bortnik were detained until 5:30pm the following day. All were released without charge. However, the International LGBT Conference was cancelled by the organizers after their arrest. Concern was expressed that the events described above may represent attempts by the Belarusian authorities to prevent the activists from carrying out their legitimate activities, in particular raising attention to the situation of LGBT persons in Belarus. Furthermore there were concerns regarding reported

³⁹ Some parts of the report are only available in Spanish

amendments to the Criminal Code adopted on 15 December 2005 which may be used to detain members of LGBT groups, or discredit their legitimate activities.

71. The Special Representative reiterates her concerns that the charges imposed upon these human rights defenders were due to the organization's activities to monitor the election in Belarus. She is also concerned that such amendments to the Criminal Code may be used to detain members of lesbian, gay, bisexual, transgender and intersex (LGBTI) groups, or discredit their legitimate activities and encourages the Government to reply to her communication of 23 November 2006.

Brazil

92. Claudio Alves dos Santos, from the Centro de Referencia contra a Violencia e a Discriminacao Homosexual (CERCONVIDH). CERCONVIDH is an organisation that works in defence of the rights of homosexuals and lesbians and engenders communication between public security bodies, human rights organizations and homosexuals and lesbians. Mr Alves dos Santos had worked as a volunteer for CERCONVIDH and had also organized and participated in workshops to inform homosexuals and lesbians of their rights. According to the information received, Mr Alves dos Santos disappeared on 7 October 2005. His body was found three days later, reportedly with signs that he had been tortured. It is further alleged that in May and June 2005, the coordinator of CERCONVIDH had received death threats that were reported to the Human Rights Ombudsman, but that no investigations were undertaken by the authorities. Grave concern is expressed that the murder of Mr Alves dos Santos and the alleged threats against him are connected with the activities of CERCONVIDH in defence of the human rights of homosexuals and lesbians, in particular because Mr Alves dos Santos and CERCONVIDH had campaigned against impunity in relation to the alleged massacre of 30 transvestites which took place in Baixada Fluminense on 31 March 2005.

El Salvador⁴⁰

255. El 17 de agosto de 2006, el Representante Especial señaló a la atención urgente del Gobierno la información recibida en relación con William Hernández, director de la Asociación Entre Amigos (AEA), una organización que proporciona educación sexual a lesbianas, gays, bisexuales y personas transgénero en El Salvador. La AEA ha denunciado públicamente las violaciones de derechos humanos contra lesbianas, gays, bisexuales y personas transgénero en El Salvador. De acuerdo con la información recibida, el 30 de mayo de 2006 las oficinas de la AEA en San Salvador habrían sido allanadas por personas desconocidas quienes habrían registrado los archivos y habrían dejado amenazas escritas en trozos de papel diciendo “esto es su merecido” y “culeros se mueren”. Según se informa, los asaltantes se llevaron algunos documentos, incluyendo un plan escrito por una manifestación ante la Asamblea Legislativa oponiéndose a la ratificación de una reforma constitucional que prohibiría

⁴⁰ Available only in Spanish

el matrimonio entre parejas del mismo sexo y la adopción de niños por parejas del mismo sexo. El 1.º de junio de 2006 William Hernández habría sido amenazado por una persona desconocida con una pistola ante la oficina de la AEA en San Salvador. Según se informa, este individuo se acercó a William Hernández y le amenazó, diciendo: “tenéis que dejar de joder en la Asamblea. Ya busqué dentro y no encontré nada y aquí voy a encontrar los que busco... deja de joder o antes de que te cases te mato.” El asaltante habría agarrado un maletín que llevaba William Hernández. Se expresó temores de que el supuesto allanamiento de las oficinas de la AEA y las amenazas contra William Hernández pudieran estar relacionados con el trabajo que hace la AEA en defensa de los derechos humanos de lesbianas gays, bisexuales y personas transgénero en El Salvador.

Iran (Islamic republic of)

342. On 19 October 2006, the Special Representative sent an urgent appeal concerning a human rights activist from Iran, Mohammad Babaei (commonly known as “Mani”), who is the current Health Secretary of the Iranian Queer Organization (IRQO) which was formerly known as the Persian Gay and Lesbian Organization (PGLO). Mr Babaei provides mental health counseling services to lesbians, gays, bisexuals, and transgendered persons (LGBTs), and also counsels HIV/AIDS victims in Iran. According to the information received, in recent weeks Mr Babaei’s employer at the pharmaceutical company where he had been working, notified the police authorities that Mr Babaei had been actively involved in activities with the PGLO, although the organization is not aligned to any political party. According to reports, this information enabled the police to link Mr Babaei to interviews he had given to the British Broadcasting Corporation and the Canadian Broadcasting Corporation in which the interviewee was critical of the Government’s treatment of gays and lesbians in Iran. The police reportedly came to Mr Babaei’s house in order to arrest him for the alleged interview and for his activities as an activist, but he could not be found. He has since left the country, fearing for his safety. Concern was expressed for the physical integrity of Mr Babaei as it is feared that he may face persecution if he returns to Iran. Further concern was expressed that the actions taken by the authorities may be related to Mr Babaei’s legitimate activities in defence of human rights in Iran, in particular his work promoting the human rights of LGBTs and HIV/AIDS victims in Iran.

Israel

374. On 1 December 2006, the Special Representative sent a letter of allegation to the Government of Israel concerning threats against participants in the proposed Gay Pride Parade which was scheduled to take place in Jerusalem on 10 November 2006. According to the information received, the organisers of the Gay Pride Parade met with authorities in order to establish a less controversial route for the march which would avoid ultra-Orthodox Jewish neighbourhoods as the police had stated that they could not provide adequate security for the original route. However the march was later cancelled altogether due to the severe nature of the threats issued, as last year on

30 June 2005 an ultra-orthodox Jewish man reportedly stabbed three people during the fourth annual gay pride parade. Concern was expressed about the reported threats and harassment of human rights defenders campaigning for equality and against discrimination based on perceived sexual orientation. Further concern was expressed that such harassment might prevent peaceful demonstrators from carrying out their legitimate human rights activities.

Jamaica

Communications sent

386. On 9 December 2005, the Special Representative together with the Special Rapporteur on extrajudicial, summary and arbitrary executions sent an allegation letter concerning Lenford 'Steve' Harvey, Jamaica Aids Support for Life, an organization dedicated to preserving the dignity and rights of persons living with HIV/AIDS and providing education on related issues. According to the information received, on 30 November 2005, at approximately 1 am, at least four assailants forcibly entered the home of Mr Harvey. They reportedly tied him up, along with two other persons in the residence, and stole a number of possessions. They then abducted Mr Harvey and took him away in his company car. His body was found in a rural area miles from his home with gunshot wounds in his back and head. Grave concern was expressed that the killing of Mr Harvey was related to his human rights work for Jamaica Aids Support for Life and his work for marginalized people and people living with HIV/AIDS in Jamaica and the Caribbean.

Communications received

387. The Special representative regrets the absence of any official reply from the Government to her communication of 9 December 2005.

Observations

388. The Special Representative regrets that no response was received from the Government of Jamaica concerning the killing of Mr Harvey despite a request issued by her in the Communications Report of 2006. The Special Representative would urge the Government to provide substantive detailed information as to whether an investigation has been initiated into the death of Mr Harvey. The Special Representative would be interested in receiving a response from the Government of Jamaica as she has received information highlighting the dangers faced by human rights defenders working with lesbian, gay, transgendered and bisexual and HIV/AIDS issues in Jamaica.

Latvia

402. On 30 November 2006 the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and

expression sent a letter of urgent appeal concerning participants in “Riga Pride 2006”, a peaceful protest organised to promote awareness of the human rights of lesbian, gays, bisexual and transgender (LGBT) persons. According to the information received, on 19 July 2006 the Riga City Council denied an application by a number of organizations to hold “Riga Pride 2006” on 22 July 2006. The organizations appealed this decision but it was upheld by the Administrative Court of Latvia on 21 July 2006, allegedly on the grounds that the proposed event would pose a threat to national security. Detailed information regarding the reasons for this decision was reportedly classified as a state secret and will not be made available to the organisations for another five years. Following these events, the organisers of Riga Pride 2006 decided to organize a number of events on 22 July 2006 in place of the original protest march. It is reported that participants attended a service at the Anglican Church in Riga on the morning of 22 July 2006 and, as they were leaving the church, a group of anti-gay protestors who had gathered outside threw eggs and human excrement at them and verbally abused them. Reportedly, police officers who were present at the time, refused to assist individuals who asked them for assistance and protection as they were making their way from the church. Concerns are expressed that the denial of a permit to the organizers of “Riga Pride 2006” may have been aimed at preventing defenders of the rights of sexual minorities from carrying out their peaceful activities to raise awareness of the universality of human rights, to be applied to all persons regardless of their perceived sexual orientation. Further concerns are expressed by the allegations that police officers failed to provide adequate protection to participants in the service at the Anglican Church in Riga on 22 July 2006.

Moldova

454. On 23 May 2006, the Special Representative sent an allegation letter concerning a peaceful demonstration by the organisation Information Center GenderDoc-M, a non-governmental organisation that defends the rights of sexual minorities in Moldova. According to the information received, on 28 April 2006 the office of the General Mayor in Chisinau rejected an application by the Center to hold a peaceful demonstration in Chisinau on 5 May 2006. It is reported that the purpose of this demonstration was to support the adoption of legislation barring discrimination based on sexual orientation. It is further reported that the reasons for the rejection of the application were based on “the statements of religious organisations that they will organise protest actions if the demonstration organised by GenderDoc-M is allowed, and also based on letters of complaint from individuals living in Chisinau.” Furthermore, according to the information received, on 16 May 2005 the office of the General Mayor in Chisinau rejected an application to hold a peaceful demonstration in Chisinau to support the adoption of legislation based on sexual orientation. It is also reported that in June 2005 this decision was overturned by the Court of Appeal in Moldova. Concern was expressed that the above events were related to the activities of Information Center GenderDoc-M in defence of human rights, in particular their defence of the rights of sexual minorities in Moldova.

Nepal

485. On 1 December 2006, the Special Representative sent an urgent appeal concerning Madan Rai Chamling, a human rights outreach worker and member of the Blue Diamond Society. Members of the Blue Diamond Society were subject of an urgent appeal sent by the Special Representative of, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on 12 August 2004. The Blue Diamond Society is a non governmental organization working with sexual minorities, lesbian, gay, bisexual and transgender (LGBT) persons on health issues, including outreach education and prevention of HIV/AIDs, and campaigns for non-discrimination against persons based on their sexual orientation in Nepal. According to the information received, on 7 July 2006 evening, Madan Rai Chamling and other "metis" (persons who are men by birth but identify as women) working in the Tri Devi Marg area in Thamel were verbally abused by members of the Durbar Marg Police when Madan Rai Chamling questioned them as to why photos and videos were being taken of the metis. Previously that day, the Durbar Marg Police had arrived in Thamel, and proceeded to record on video a group of metis. One of the police officers, whose name is known to the Special Representative and the Special Rapporteur, gave instructions to the cameraman as to the whereabouts of the metis. The metis attempted to escape and hide their faces from the camera but they were reportedly forced to show their faces. The police threatened to arrest and detain the metis if they didn't cooperate. Furthermore, it is alleged that the police falsely told the metis that they were sent by the Director of Blue Diamond Society in an attempt to film them. Concern was expressed that the above acts of verbal abuse against Madan Rai Chamling may have been related to her human rights activities, specifically her outreach work with Blue Diamond Society. In addition, concern was expressed that the events represent a sustained campaign by police to harass, intimidate and humiliate metis in Nepal, including by sexual violence.

Nigeria

511. On 10 April 2006, the Special Representative sent an urgent appeal to the Government concerning a "Bill for an Act to Make Provisions for the Prohibition of Relationship Between Persons of the Same Sex, Celebration of Marriage by Them, and for Other Matters Connected Therewith". According to the information received, on 19 January 2006, the Minister of Justice presented a "Bill for an Act to Make Provisions for the Prohibition of Relationship Between Persons of the Same Sex, Celebration of Marriage by Them, and for Other Matters Connected Therewith" to the Federal Executive Council which was reportedly approved but not yet submitted to the National Assembly. According to the information received, this bill introduces criminal penalties for public advocacy or associations supporting the rights of lesbian and gay people, as well as for relationships and marriage ceremonies between persons of the same sex. In particular, article 7 (1) of the Bill prohibits the "registration of gay

clubs, societies and organizations by whatever name they are called (...) by government agencies”. Article 7 (3) of the Bill provides for five years imprisonment for “any person involved in the registration of gay clubs, societies and organizations, sustenance, procession or meetings, publicity and public show of same sex amorous relationships directly or indirectly in public and in private”. It also provides the same sentence to anyone who “goes through the ceremony of marriage with a person of the same sex, and “performs, witnesses, aids or abets the ceremony of same sex marriage” (article 8). Serious fears have been expressed that the bill aims at criminalizing activities of human rights defenders working on the rights of gay and lesbians, as well as potentially those engaged in fighting against HIV/AIDS through prevention programs. In particular, serious concern is expressed in view of the restriction such law would place on freedoms of expression and association of human rights defenders and members of civil society, when advocating the rights of gays and lesbians.

Poland

559. On 5 December 2006, the Special Representative together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance sent an urgent appeal concerning the banning of public events organised by the lesbian, gay, bisexual and transgender community as well as discrimination against this community. According to information received, on 15 November 2005, the mayor of the city of Poznan banned a public event known as the Equality March, which had been organised by a number of lesbian, gay, bisexual and transgender (LGBT) and women’s rights organizations. The march was planned to take place on 19 November 2005 and was intended to provide a platform for a discussion about tolerance, anti-discrimination and respect for the rights of sexual minorities. The ban was issued on the grounds of security concerns, despite the fact that security measures had already been agreed to between the municipality and the organisers of the march. Despite the ban, a few hundred protestors gathered on 20 November 2005 for a demonstration. The demonstrators were reportedly harassed and intimidated by members of a right wing group known as the All Polish Youth who shouted discriminatory slogans at them including ‘Let’s get the fags’, and ‘We’ll do to you what Hitler did with Jews’. The police only intervened toward the end of the march to disperse the crowd. It is reported that in so doing the police roughly handled several individuals and arrested and interrogated over 65 persons, who were later released. Moreover, in November 2004, the Equality Parade was stopped when the police failed to protect the demonstrators from members of the All Polish Youth who blocked the event. In September 2005 a Warsaw court had declared illegal the decision of the Mayor to ban the Equality Parade. In light of the fact that Equality Parades had also been banned in Warsaw in June 2004 and in May 2005, concern is expressed that the banning of Equality March in Poznan was based primarily on intolerance towards the LGBT community in Poland. This is highlighted by the fact that political figures are reported to have publicly made homophobic statements. For example, when the Equality Parade of May 2005 was banned, Mr Lech Kaczynski, the current President of Poland and former Mayor of Warsaw, had stated that the

parade would be 'sexually obscene' and offensive to other people's religious feelings. Less than a week after this parade was to take place, the Mayor authorised another march to take place during which members of the All Polish Youth reportedly shouted slogans inciting intolerance and homophobia. Other political figures were also reported to have made public homophobic statements, including that if 'homosexuals try to infect others with their homosexuality, then the State must intervene in this violation of freedoms'. Other public figures called for no tolerance for homosexuals and deviants and called on the public not to mistake the brutal propaganda of homosexual attitudes for calls for tolerance. Concern was further expressed in light of the recent abolition of the Office of the Government Plenipotentiary for the Equality of Men and Women which body was responsible, inter alia, for the promotion of equal treatment sexual minorities.

560. On 26 April 2006, the Special Representative together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance sent an urgent appeal concerning the third annual Krakow March for Tolerance, due to take place in Krakow, Poland on 28 April 2006. The Krakow March for Tolerance is a peaceful march organized by the Campaign against Homophobia in Poland and aims to provide a platform for discussion about tolerance, anti-discrimination and respect for the rights of all persons regardless of their perceived sexual orientation. According to the information received, a number of organizations have indicated their fear that past violence against this type of peaceful demonstration is likely to occur on this occasion. In 2004 peaceful participants in the Krakow March for Tolerance became victims of physical attacks by extreme nationalist groups. In November 2005 demonstrators in Poznan were reportedly harassed and intimidated by members of a right wing group known as the All Polish Youth. At both events it was reported that the police stood by and failed to protect the demonstrators from being harassed and intimidated by members of the All Polish Youth who shouted discriminatory slogans at them including "Let's get the fags", and "We'll do to you what Hitler did to the Jews". Furthermore, when the police did intervene it was reportedly done in a violent manner against the peaceful demonstrators. The Poznan event was brought to the attention of the Government in a communication sent by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Representative on 5 December 2005. The Special Rapporteur and Special Representative thank the Government of Poland for its prompt response to their communication and acknowledge the findings of the Constitutional Tribunal and notes that the abovementioned decisions banning the marches were subsequently quashed in appeal proceedings. Nevertheless, we would like to express our continued concern about the reported harassment of human rights defenders campaigning for equality and against discrimination based on perceived sexual orientation, and encourage the Government of Poland to protect participants of the Krakow March for Tolerance against any possible discriminatory or hateful abuse. Concern was expressed that such harassment may prevent peaceful demonstrators from carrying out their legitimate human rights activities.

562. On 19 October 2006 the Special Representative sent an urgent appeal concerning threats and acts of intimidation against Katarzyna Hejna, member of Kampania Przeciw Homofobii (Campaign against Homophobia) in Torun. She is also a founding member of ALERT, an organization which supports civil society in Poland and is a volunteer with Polska Akcja Humanitarna (Polish Humanitarian Organization). According to the information received, Katarzyna Hejna has been the subject of a campaign organized by a group calling themselves “Redwatch” who have established a website identifying people who they claim are “engaged in anti-fascist, anti-racist activities... all kinds of supporters and activists of broadly understood homosexual lobby[ing]”. In October 2005, Ms Hejna was actively involved in organizing a peaceful demonstration “Marsz rownosci idzie dalej” (Equality March Goes Further) to protest against the authorities’ decision to ban public assemblies of LGBT groups in Poznan. According to reports, Ms Hejna's personal details have been published on the website, including photographs of her, with her name, telephone number and email address, despite the fact that according to Polish law it is illegal to publish such details without the consent of the individual concerned. Since the publication of her details on the aforementioned website, Ms Hejna has reportedly received threatening emails and has been verbally harassed in the street. It is reported that Ms Hejna has made a written statement to the police but she is not aware of any progress that has been made with regard to her case. Concern was expressed for the safety and security of Ms Hejna as it was feared that the publication of her name on the “Redwatch” website may have represented an attempt to deter her from carrying out her legitimate activities in defence of human rights, in particular the defence of LGBT rights. It was alleged that an individual, who was named on the “Redwatch” website was stabbed on the Warsaw subway in June 2006.

Communications received

563. In a letter dated 21 February 2006, the Government replied to the communication of 5 December 2006. The Government stated that on 26 March 2006 an application was made by the International Lesbian and Gay Culture Network (ILGCN) for permission to organize an Equality Parade in May 2004. On 24 May 2004 the Mayor of Warsaw issued a decision banning the Equality Parade on the grounds that it could pose a potential threat to lives, health and property. The ILGCN appealed against the various decisions made in 2004, and on 10 October 2005 the Voivodeship Administrative Court discontinued proceedings as immaterial. The Government noted that in November 2005 the Voivodeship Administrative Court held that a decision to prohibit a proposed demonstration was based on Article 8 paragraph 2 of the Law on Assemblies and that the court did not anticipate a threat from the organizers but rather from opponents of the planned gathering. It was noted that Article 57 of the Constitution of Poland guarantees freedom of assembly and that a limitation on such freedom may be imposed by statute. On 18 January 2006 the Constitutional Tribunal ruled that Article 65 of the Law on Road Traffic, 1997 was incompatible with Article 57 of the Polish Constitution with the incorporation of the word “assemblies”. The Tribunal noted that freedom of assembly was a special political freedom of the individual subject to constitutional protection. The Government stated that freedom of

assembly constituted a basic human right and that the public authorities were obliged to protect groups taking part in public assembly. The Government also noted that problems pertaining to discrimination are discussed during training provided by State institutions and many professional groups, such as the PHARE training project of 2002. It was also noted that steps have been taken by the Polish authorities to provide judicial officials with anti-discrimination training.

564. In a letter dated 14 June 2006, the Government replied to the communication of 26 April 2006. The Government stated that all necessary measures were taken by the authorities to ensure that the March for Tolerance could take place in Krakow. It was noted that the Mayor of Krakow authorized two gatherings to take place on 28 April 2006. All-Poland Youth was the first organization to apply for permission to hold a gathering on Krakow Tradition and Culture. The demonstration, named March for Tolerance, was organized by the Culture for Tolerance Foundation. The Government noted that in order to avoid possible confrontation between the two events the organizers for the March for Tolerance proposed a procession route in consultation with the Krakow police. As the organization of both events met with legal requirements there were no grounds to prohibit either. The police held meetings with the organisers prior to the events to set out the route for both processions. Given that in the past participants in the March for Tolerance had been attacked by hooligans, the police decided that special security measures be put in place and a total of 435 police officers were assigned to protect both demonstrations. Both marches began peacefully, however when the March for Tolerance was attacked the police made two attempts to disperse the crowd and eventually used force to avoid a riot. It was noted that the measures taken by the police were commensurate with the situation and excessive force was avoided in order to disperse the demonstrators. During the disturbances the police detained 11 individuals. The Government stated that during preparations for the demonstration and the subsequent security operation, officials were guided by the need to respect fundamental human rights and freedoms and that all measures were taken to ensure the safety of those participating in the event.

565. In a letter dated 11 January 2007, the Government replied to the communication of 27 June 2006. The Government stated that the National In-Service Training Centre (NITTC) is responsible for teacher training at all levels in Poland and accordingly all documents published by the NITTC should be consistent with the contents of the national curricula. The current curriculum was introduced by the Regulation of the Minister of National Education and Sport of 26 February 2002. It was noted that Compass – ‘a manual on human rights education for young people’, contains chapters related to sexuality, homophobia and sexual orientation. The Government indicated that the contents of the manual were not suitable as a teaching aid and that it was contradictory to the general education curriculum of Poland which conforms with the Constitution of Poland, which protects marriage defined as a ‘union of a man and a woman’. It was also noted that the English translation of the document differs from the Polish document and that a number of links to Polish gay websites are included in the document. The Government concluded that Mr Sieltaycki was responsible for teacher training within the national curriculum and that as Deputy Chairman of the

National Committee for the European Year of Citizenship through Education, Mr Sielatyeki was in a position to suggest to the Committee that the manual be published without the NITTC's involvement. Mr Sieltaycki was dismissed in accordance with Article 38.1 of the Act on the System of Education.

Observations

566. The Special Representative thanks the Government of Poland for its detailed responses to her communications and is encouraged by its willingness to investigate alleged violations. Nevertheless the Special Representative would like to express her continued concern about the reported harassment of human rights defenders campaigning for equality and against discrimination based on perceived sexual orientation, and would encourage the Government of Poland to protect participants of public demonstrations such as the Krakow March for Tolerance against any possible discriminatory or hateful abuse. The Special Representative wishes to remind the Government of its obligations under Articles 6 (b) and (c), 7 and 12 of the Declaration on human rights defenders.

Russian Federation

568. On 11 May 2006, the Special Representative sent an urgent appeal concerning the Moscow Gay Pride Parade, which is due to take place on 27 May 2006 to mark the anniversary of the abolition of Soviet laws against homosexuality in 1993 and the International Day against homophobia. The Gay Pride Parade is a peaceful demonstration organized to provide a platform for discussion about tolerance, anti-discrimination and respect for the rights of all persons regardless of their perceived sexual orientation. According to the information received, on 16 February 2006 the press spokesman of the Mayor of Moscow told journalists that "the Moscow government is not even going to consider allowing a gay parade" and stated "that the Mayor was firm that the city government will not allow a gay parade in any form, open or disguised, and any attempts to organize an unsanctioned action will be resolutely quashed". It has also been reported that the first vice speaker of the State Duma stated that "there are several million people in Moscow who do not want to have this procession. Who is going to protect their rights?" In the light of such statements by the authorities, concern was expressed that those who wish to peacefully participate in such a parade may be prevented from doing so. The Special Representative encouraged the Government of Russia to ensure its positive obligations to support, facilitate and protect human rights defenders and that the Moscow Gay Pride Parade is allowed to take place.

Turkey

686. On 2 June 2006 the Special Representative sent an urgent appeal concerning the Rainbow Solidarity and Cultural Association for Transgenders, Gays and Lesbians (Gokkusagi Dernegi), a non-governmental organization that advocates for the rights of lesbian, gay and transgender persons in Turkey. According to the information

received, on 3 March 2006 the Rainbow Solidarity and Cultural Association for Transgenders, Gays and Lesbians (Gokkusagi Dernegi) was established in the city of Bursa. On 24 May 2006 it is reported that the Deputy Governor of Bursa initiated a court procedure at the Principal Registry, requesting the closure of the organization on the grounds that its establishment violated Articles 56 and 60 of the Turkish Civil Code, which prohibit the establishment of an organization that “is against the laws and morality rules”. It is alleged that in the request for closure, the Deputy Governor also referred to Article 11 of the European Convention of Human Rights. Concern was expressed that the reported court procedure was an attempt to close the Rainbow Solidarity and Cultural Association for Transgenders, Gays and Lesbians and that it was an attempt to prevent those who defend the rights of sexual minorities from forming, joining and participating in non governmental organizations.

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2006/95/Add.1, March 22, 2006

Jamaica

290. On 9 December 2005 the Special Representative together with the Special Rapporteur on Extra Judicial Executions sent a letter of allegation concerning Lenford ‘Steve’ Harvey, Jamaica Aids Support for Life, an organization dedicated to preserving the dignity and rights of persons living with HIV/AIDS and providing education on related issues. According to the information received, on 30 November 2005, at approximately 1:00 am, at least four assailants forcibly entered the home of Lenford Steve Harvey. They reportedly tied him up, along with two other persons in the residence, and stole a number of possessions. They then abducted Lenford Steve Harvey and took him away in his company car. His body was found in a rural area miles from his home with gunshot wounds in his back and head. Grave concern was expressed that the killing of Lenford Steve Harvey was related to his human rights work for Jamaica Aids Support for Life and his work for marginalized people and people living with HIV/AIDS in Jamaica and the Caribbean.

291. The Special Representative notes that at the time this report was being finalized, no response had been received from the Government of Jamaica concerning the death of Lenford ‘Steve’ Harvey. The Special Representative looks forward to hearing from the Government as she has received information highlighting the particular dangers that defenders face who are associated with lesbian, gay, transgendered and bisexual and HIV/Aids issues in Jamaica.

Poland

432. On 5 December 2005, the Special Representative, together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, sent an urgent appeal concerning the banning of public events organised by the lesbian, gay, bisexual and transgender community as well as discrimination against this community. According to information received, on 15

November 2005, the mayor of the city of Pozna banned a public event known as the Equality March, which had been organised by a number of lesbian, gay, bisexual and transgender (LGBT) and women's rights organisations. The march was planned to take place on 19 November 2005 and was intended to provide a platform for discussion about tolerance, anti-discrimination and respect for the rights of sexual minorities. The ban was issued on the grounds of security concerns, despite the fact that security measures had already been agreed to between the municipality and the organisers of the march. Despite the ban, a few hundred protestors gathered on 20 November 2005 for a demonstration. The demonstrators were reportedly harassed and intimidated by members of a right wing group known as the All Polish Youth who shouted discriminatory slogans at them including 'Let's get the fags', and 'We'll do to you what Hitler did with Jews'. The police only intervened toward the end of the march to disperse the crowd. It is reported that in so doing the police roughly handled several individuals and arrested and interrogated over 65 persons, who were later released. Moreover, in November 2004, the Equality Parade was stopped when the police failed to protect the demonstrators from members of the All Polish Youth who blocked the event. In September 2005 a Warsaw court had declared illegal the decision of the Mayor to ban the Equality Parade. In light of the fact that Equality Parades had also been banned in Warsaw in June 2004 and in May 2005, concern is expressed that the banning of Equality March in Pozna was based primarily on intolerance towards the LGBT community in Poland. This is highlighted by the fact that political figures are reported to have publicly made homophobic statements. For example, when the Equality Parade of May 2005 was banned, Mr. Lech Kaczy, the current President of Poland and former Mayor of Warsaw, had stated that the parade would be 'sexually obscene' and offensive to other people's religious feelings. Less than a week after this parade was to take place, the Mayor authorized another march to take place during which members of the All Polish Youth reportedly shouted slogans inciting intolerance and homophobia. Other political figures were also reported to have made public homophobic statements, including that if 'homosexuals try to infect others with their homosexuality, then the state must intervene in this violation of freedoms'. Other public figures called for no tolerance for homosexuals and deviants and called on the public not to mistake the brutal propaganda of homosexual attitudes for calls for tolerance. Concern is further expressed in light of the recent abolition of the Office of the Government Plenipotentiary for the Equality of Men and Women which body was responsible, inter alia, for the promotion of equal treatment sexual minorities.

433. The Special Representative regrets that at the time this report was being finalized, no response had been received from the Government of Poland to her communication of 5 December 2005 concerning the Equality March.

Turkey

550. On 30 September 2005, the Special Representative sent an urgent appeal concerning Kaos GL Gay and Lesbian Cultural Research and Solidarity Organization, based in Ankara, Turkey. This organization was established eleven years ago, and

operates a drop-in centre providing social and cultural support to lesbian, gay, bisexual and transgender people, in addition to advocating for measures to end discrimination and violence. It also publishes a magazine that has been registered as a legal publication in Turkey since 1999. According to information received, on July 15 2005, "Kaos GL Gay and Lesbian Cultural Research and Solidarity Organization" applied to the Ministry of Interior for recognition as a non-governmental organization. The Ministry initially approved the request, but now the Ankara Deputy Governor has responded by launching a lawsuit to close the organization. In a letter dated 15 September, Turkish officials threatened to close down the organization, on the grounds that it allegedly violates a provision in the Turkish Civil Code that forbids "establishing any organization that is against the laws and principles of morality." The letter stated that a court procedure had been opened to dissolve the organization. Concern was expressed that the reported court procedure was an attempt to close "Kaos GL Gay and Lesbian Cultural Research and Solidarity Organization" and impedes on the right to form, join and participate in non-Governmental organizations, associations or groups, as set down in the Declaration on Human Rights Defenders.

555. By a letter dated 10 November 2005 the Government responded to the communication of 30 September 2005. The Government stated that the Office of the Ankara Chief Public Prosecutor found that there were no legal grounds for launching a lawsuit against KAOS GL and dismissed the application of the Ankara Governor on 15 September 2005. Furthermore, the Government stated that it believed that the Chief Public Prosecutor set a good precedent with this decision.

Uganda

559. On 5 of August 2005, the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent an urgent appeal concerning Victor Juliet Mukasa, Chairperson of Sexual Minorities Uganda (SMUG), a non-profit, non-governmental organization that works towards achieving full legal and social equality for lesbian, gay, bisexual, transgender people in Uganda. According to the information received, on 20 July 2005, Ms. Mukasa's home, in a suburb of the capital city Kampala, was allegedly raided during the night by local Government officials. They reportedly entered into her house in her absence, and seized documents and other material relating to the activities of SMUG. Concern was expressed that following the steps taken by Ugandan law-makers in July 2005, who voted for a constitutional amendment to criminalize marriage between persons of the same sex, this incident constituted an attempt to intimidate Ms. Mukasa and prevent her from carrying out her human rights work.

560. The Special Representative regrets that at the time this report was being finalized, no response had been received from the Government of Uganda.

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2006/95/Add.5, March 6, 2006

Compilation of developments in the area of human rights defenders

Australia

113. HREOC⁴¹ advises that there are hundreds, or possibly thousands of human rights defenders operating at the federal, state, territorial and local level in Australia. Numerous human rights groups are involved in advocacy, education and various actions on a local and national level. Groups work on specific issues such as the rights of indigenous Australians; the human rights of refugees, migrants and asylum seekers; violence against women, lesbian, gay, bisexual and transgender (LGBT) rights; and they also work in general on legislation issues with regard to human rights. New security legislation in relation to “combating terrorism” and the impact this legislation has on civil and political rights has emerged as an important issue in the last few years.

Brazil

245. The fight against dictatorship (1964-1985) greatly contributed to building awareness of civil and political rights and extensive networks of NGOs were formed. Human rights organizations continued to proliferate with the beginning of the political openness, and in particular in the 1990s. While organizations initially concentrated their efforts in reporting violations of civil and political rights, they gradually adopted more assertive way such as pressuring relevant authorities to adopt concrete public security policies in relation to human rights. They have also expanded the scope of their mandate and have incorporated diverse human rights causes, particularly in relation to economic, social and cultural rights and to discrimination based on ethnicity, perceived sexual orientation and gender.

Chile⁴²

Colombia⁴³

Croatia

429. Although there are no indications that domestic legislation or national practices and trends curtail the rights and freedoms of human rights defenders, in 2001 the Special Representative received allegations according to which three unknown men attempted to assassinate a human rights defender and attacked members of his family. The Government promptly replied to this communication (see E/CN.4/2002/106, Annex, paras 131-132). The Special Representative has also been informed that

⁴¹ Australia’s national human rights institution, the Human Rights and Equal Opportunity Commission

⁴² Available only in Spanish

⁴³ Available only in Spanish

organizations promoting lesbian, gay, bisexual and transgender persons' rights receive threats on a frequent basis.

Ecuador⁴⁴

Guatemala⁴⁵

Holy See

713. From the establishment of her mandate to 1 December 2005, the Special Representative has sent one communication to the Holy See in December 2002 that concerned a priest Don Vitaliano Della Sala, who was serving in the parish of San Giacomo. The priest was allegedly removed from his function in part because of his participation in a “gay pride” march in defense of the human rights of homosexual persons. The Holy See responded to the communication in July 2003 and stated that the measures taken against Don Vitaliano Della Sala were not related to his participation in a “gay pride” march. The response stated that the actions against the priest had been preceded by two admonitions, as prescribed in the Code of canon law of the Catholic Church and that measures such as those taken were an expression of the self-organizing capacity proper to every religious community and recognized by the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

714. The Special Representative would welcome further information from the relevant authorities in the Holy See concerning the situation for human rights defenders and the implementation of the Declaration so that this profile can be updated in the future.

Honduras⁴⁶

Jamaica

844. The Special Representative has received information from non-governmental sources stating that human rights defenders continue to face hostility from the authorities and that the Police Federation in 2004 called for human rights groups to cease their “illegal interference”. The attacks are reported to be in particular directed at defenders working with Lesbian Gay Bisexual and Transsexual rights. Police violence is also reported to be a major problem in Jamaica and impunity for human rights violations, including extrajudicial killings is reportedly prevalent.

⁴⁴ Available only in Spanish

⁴⁵ Available only in Spanish

⁴⁶ Available only in Spanish

Nepal

1159. The Special Representative reiterates her deep concern over reports of serious violations being committed against human rights defenders by both sides in the conflict. The information on cases of violations increased alarmingly during 2004 and 2005. Cases reported to her frequently involved allegations of arrest and of torture during arrests and detention, in addition to rape by police, both of female and male (transvestite) defenders. One communication concerned 39 unnamed male transvestites, who are campaigning for the rights of sexual minorities.

Pacific Islands

1244. Defenders in the Pacific Islands are involved in the promotion and protection of human rights in numerous ways. In Fiji defenders work on training and education in human rights, capacity building and raising awareness of legal rights and the legal system. They monitor human rights violations on a national level, advocate for constitutional changes and law-reforms in favour of a more human rights oriented approach, publish reports and shadow-reports for committees such as the CRC and the CERD. Defenders in Fiji are also actively defending the rights of sexual minorities, people with disabilities and other vulnerable groups (...).

Poland

1356. From the establishment of her mandate until 1 December 2005, the Special Representative has sent one communication to the Government of Poland. The communication concerned an incident where a mayor banned an Equality March, which had been organized by a number of lesbian, gay, bisexual and transgender (LGBT) and women's rights organizations. The ban was reportedly issued on grounds of security concerns. Reportedly, despite the ban, a few hundred protestors gathered on 20 November 2005 for a demonstration and were thereafter harassed and intimidated by members of a right wing group known as the All Polish Youth. It was also reported that the police roughly handled several individuals and arrested and interrogated over 65 persons, who were later released. The Special Representative thanks the Government for its response to this communication.

Venezuela⁴⁷

⁴⁷ Available omly in Spanish.

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2005/101/Add.1, March 16, 2005

Ecuador⁴⁸

Jamaica

342. On 6 December 2004, the Special Representative, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, transmitted a letter of allegation regarding individuals and associations defending the rights of gays and lesbians in Jamaica, in particular the members of the human rights organization JFLAG (Jamaican Forum of Lesbians, All-sexuals and Gays). Attention has been drawn to a letter to the editor by the Jamaican Police Federation's Public Relations Officer, published in the *Jamaica Observer* of 25 November 2004. In his letter, which follows the publication on 16 November 2004 of a report by Human Rights Watch entitled "*Hated to death: Homophobia, Violence and Jamaica's HIV/AIDS epidemic*", the Police Federation's Public Relations Officer "condemn[s] the role of these so-called 'human rights' groups to spread lies and deliberately malign and slander the police force and the government". He calls on "the Minister of Justice to examine these allegations and slap on sedition charges where necessary to both foreign and local agents of provocation". In stating that "the Government and the police cannot be held responsible for.... the cultural responses of the population towards gay", the letter also appears to condone violence against gays and lesbians. This impression is insufficiently dispelled by the assurance that "as law enforcement officers we try our utmost 'to serve, to reassure and to protect'". The letter to the editor raises particular concerns against the background of reported attacks and threats against persons defending the rights of homosexual men and women in Jamaica. According to the information received, on 9 June 2004, Brian Williamson, a well-known gay rights activist, was murdered at his home. Within an hour after his body was discovered, reportedly a crowd gathered outside the crime scene. A smiling man called out, "Battyman [homosexual] he get killed!" Many others reportedly celebrated Williamson's murder laughing and calling out, "let's get them one at a time, " "that's what you get for sin, " "let's kill all of them." Furthermore, it is reported that JFLAG regularly receives intimidating mail, e-mails and telephone calls. By way of example, according to the information received, on 16 November 2004 an anonymous male called JFLAG and said "homosexuals should be dead". These incidents have been reported in writing to the Matilda's Corner police station in Kingston on 26 November 2004. In view of the above, concern is expressed that individuals and associations defending the rights of gays and lesbians, in particular the members of JFLAG, may be at risk of both attempts by public authorities to suppress their exercise of free speech and of violent attacks by homophobic individuals who may have gained the impression that the Government

⁴⁸ Available only in Spanish. Further details on these cases can be found in the report of the Secretary-General Special Representative on the situation of human rights defenders, E/CN.4/2005/101/Add.1, March 16, 2005, paras. 240 and 242.

will not vigorously pursue such violence.⁴⁹

Nepal

409. On 12 August 2004, the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the question of torture, sent an urgent appeal regarding several male transvestites and the Blue Diamond Society of Nepal, a NGO working with sexual minorities on sexual health including HIV/AIDS and campaigning for the rights of sexual minorities. According to the allegations received, on 9 August 2004, 39 male transvestites, usually called metis, all members of the Blue Diamond Society, were arrested on the street and in public places including bars and restaurants. They are now held in Hanuman Dhoka police station and were not given food or water during the first 15 hours in custody. They have not yet been charged with any offence. Concerns have been expressed that their physical integrity may be at risk. On 25 July, the Police allegedly raped four male transvestites, Jaya Bahadur Lama, Ramesh Lama, Binod and Madan. They were reportedly stopped by the police at about 3.30 a.m. in a street near Jamal, forced into a police van, beaten and their money was taken away. While driving around the city, the van stopped and one officer allegedly took Jaya Bahadur Lama into the street, beat him, forced him to perform oral sex and raped him. The men were then reportedly taken to Gausala police station where Ramesh Lama was taken into the backyard of the police station, beaten and forced to perform oral sex. Although Jaya Bahadur and Ramesh Lama managed to escape from the police, Binod and Madan were kept inside the van and were reportedly beaten and raped by 12 policemen for around three hours. The Blue Diamond Society made a complaint to police authorities about this attack and there is concern that the recent arrests may be in retaliation for this complaint. A private writ was recently filed in the Supreme Court of Nepal against the Blue Diamond Society, which calls for closing down the Blue Diamond Society on the grounds that the organization "promotes homosexuality". Concerns have been expressed that defending this court action would seriously hinder the effective functioning of the Blue Diamond Society, given the organization's limited human and financial resources, and that closing down the Blue Diamond Society would be detrimental to HIV prevention efforts in Nepal. Concerns also have been expressed that other organizations working in the area of HIV prevention among gay men could be open to similar charges.⁵⁰

⁴⁹ Please note that this case is also mentioned in the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2005/64/Add.1, March 29, 2005, para. 494.

⁵⁰ Please note that this case is also mentioned in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2005/62/Add.1, March 30, 2005, para. 1161, in the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2005/51/Add.1, February 2, 2005, para. 50, and in the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2005/64/Add.1, March 29, 2005, para. 648.

Uzbekistan

586. On 16 January 2004, the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent a follow-up urgent appeal concerning Ruslan Sharipov, a 25-year-old journalist and human rights defender. According to the information received, Ruslan Sharipov was allegedly excluded from a general amnesty announced in December 2003 by the President, reportedly on the ground that the crime he committed was "too serious". According to our previous information, Ruslan Sharipov was arrested on 29 May 2003 and convicted on 13 August by the Tashkent City Court on charges of homosexual conduct, sex with a minor and involving minors in "antisocial behaviour" (articles 120, 128 and 127 of the Criminal Code). He was reportedly first sentenced to five and a half years in prison, which was subsequently reduced to four years following his appeal in September. This was maintained despite reports indicating that forensic medical tests conducted after his arrest found no evidence of sexual relations with minors and despite reported evidence that his confessions were obtained under duress. Reports also indicate that Mr. Sharipov may have been framed in connection to his human rights activities, including his reporting on police corruption and human rights abuses in the country. Fears have been expressed that his exclusion from the presidential general amnesty may aim at further targeting him for his activities in the defence of human rights. It is reported that calls have been made for the presidential general amnesty to extend to his conviction.

590. On 14 April 2004, the Special Representative, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent a follow-up urgent appeal concerning Ruslan Sharipov, a journalist and human rights activist. Ruslan Sharipov was reportedly found guilty on 13 August 2003 under articles 120 (homosexuality) and 128 (sexual relations with a minor) of the Criminal Code, despite the lack of forensic medical evidence, and sentenced on appeal to four years in prison. He was reportedly subjected to torture and threats while in detention. It is widely believed that his prosecution was linked to his work as an investigative journalist and a human rights defender, in particular reporting on corruption and human rights abuses. According to recent information received, Mr. Sharipov, who is reportedly eligible for early release on 11 June 2004, has reportedly been placed since 13 March 2004 under house arrest and is required to report to a low-security prison for work every day. It is reported that such a transfer is automatic once one-quarter of a sentence has been completed. In this context, it is alleged that he has been barred from resuming his human rights and journalism activities, under threat of losing the possibility of early release. In particular, it is reported that Mr. Sharipov will not be allowed to travel to Istanbul in late May 2004 to receive an award on the occasion of the World Newspaper Congress and World Editors' Forum.⁵¹

⁵¹ Please note that this case is also mentioned in the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2005/64/Add.1, March 29, 2005, paras. 972 and 981. Further details on this case can be found in the report of the Special

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2005/101, December 13, 2004

Ecuador

94. The majority of cases concerned threats at gunpoint, beatings and threats by phone. Reports indicate that attacks occurred after defenders voiced public criticism, in particular regarding free trade and private contractual agreements to extract oil on alleged indigenous territory. In a few instances, the use of torture or other ill-treatment was reported in connection with defenders working on the rights of gays, lesbians and transsexuals. In many cases the perpetrators were not identified, but the police were reportedly involved in a few cases, notably those relating to defenders of gay rights.

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2004/94/Add.3, March 23, 2004

Holy See

238. On 10 December 2002, the Special Representative sent an urgent action regarding the situation of Don Vitaliano Della Sala, a priest serving in the parish of San Giacomo in the region of Sant' Angelo à Scala, who has been removed from his functions. It is alleged that the decision to remove him was taken by Bishop Tarcisio Giovanni Nazzaro and was motivated, in part, by the participation of Don Vitaliano Della Sala in a "gay pride" march in defence of the human rights of homosexuals.⁵²

Uzbekistan

481. On 5 June 2003, the Special Representative, in conjunction with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention, transmitted an urgent appeal concerning Uzbek human rights activist and independent journalist, Ruslan Sharipov, and two of his colleagues, Oleg Sarapulov and Azamat Mamankulov. According to the information received, on 26 May 2003, Ruslan Sharipov was allegedly arrested and charged under article 120 of the Criminal Code with having committed homosexual acts. He was reportedly only granted access to a lawyer on 28

Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2004/94/Add.3, March 23, 2004, paras. 481 and 487, in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2004/56/Add.1, March 23, 2004, paras. 1878 and 1899, and in the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2004/62/Add.1, March 26, 2004, paras. 811 and 819.

⁵² Please note that this case is also mentioned in the 2003 annual report to the Commission on Human Rights of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2003/104/Add.1, February 20, 2003, para. 284.

May, two days after his arrest. While in detention he was allegedly beaten, verbally abused and threatened to be raped with a bottle. The police allegedly displayed copies of his articles on a table in front of him and shouted at him for long periods. His colleagues, Azamat Mamankulov and Oleg Sarapulov were allegedly also arrested but at the time the appeal was sent, had reportedly still not been charged. These recent attacks reportedly followed previous harassment of the above-mentioned individuals in 2002. Concern was expressed that Ruslan Sharipov and his colleagues may be targeted as a result of their human rights activities, in particular articles on police corruption and human rights abuses.

487. On 1 October 2003, the Special Representative, in conjunction with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture, transmitted a second follow-up urgent appeal regarding Ruslan Sharipov, a human rights activist and journalist, for whom an urgent appeal was sent on 5 June 2003 on behalf of the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on the question of torture, the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the situation of human rights defenders. The Government responded to this appeal by a letter dated 18 July 2003. A second urgent appeal was sent in connection with this case on 13 August 2003 by the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders. Ruslan Sharipov was allegedly found guilty on 13 August 2003 under articles 120 (homosexuality), 127 (inciting minors to anti-social behaviour) and 128 (sexual relations with a minor) of the Uzbek Criminal Code, despite lack of forensic evidence that he had had sexual relations with a minor. He was reportedly sentenced to five and a half years in prison. It is reported that in a statement to the Secretary General of the United Nations written from prison on 5 September 2003, Ruslan Sharipov claimed he had been subjected to torture and threats while in detention. At an appeal hearing which took place on 25 September 2003 and during which his sentence was reduced to four years on appeal after charges under article 127 were dropped, Ruslan Sharipov's face was reportedly injured and his glasses were broken.⁵³

⁵³ Please note that this case is also mentioned in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2004/56/Add.1, March 23, 2004, paras. 1878 and 1899, and in the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2004/62/Add.1, March 26, 2004, paras. 811 and 819.

Report of the Special Representative of the Secretary-General on human rights defenders, E/CN.4/2003/104/Add.1, February 20, 2003

Ecuador⁵⁴

284. On 2 (sic) December 2002, the Special Representative transmitted an urgent appeal regarding Don Vitaliano Della Sala, a priest serving in the parish of San Giacomo in the region of Sant' Angelo à Scala, who has reportedly been removed from his functions. It is alleged that the decision to remove him was taken by Bishop Tarcisio Giovanni Nazzaro and was motivated, in part, by the participation of Don Vitaliano Della Sala in a “gay pride” march in defence of the human rights of homosexuals.⁵⁵

Report of the Special Representative of the Secretary-General on human rights defenders, E/CN.4/2002/106, February 27, 2002

Ecuador

146. On 3 April 2001, the Special Representative, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an urgent appeal regarding members of the human rights organization QUITOGAY and of the lesbian, gay, bisexual and transgendered (LGBT) community, who reportedly received an e-mail on 23 March 2001 in the QUITOGAY office in Quito mentioning that “a total social cleansing in all the QUITOGAY sector” was going to be carried out. Although the threat was directed to QUITOGAY and to LGTB people in Quito, the message allegedly referred to a “social cleansing of the whole country”. These threats came at a time when police officers had allegedly tortured and threatened to kill LGTB people.⁵⁶

Guatemala

180. On 30 August 2001, the Special Representative transmitted an urgent appeal concerning Mr. Fernando Rafael Bancés Escobar, an activist of the organization “Colectivo Gay-Lésbico” and a member of the Unidad Revolucionaria Nacional Guatemalteca. On 19 August 2001, Mr. Fernando Rafael Bancés Escobar and his friends Juan Luis Telon and Franz Alvaro were reportedly intercepted by a national civil police officer who asked him the reasons why they were laughing at him. The

⁵⁴ Further details on this case can be found in the report of the Secretary-General Special Representative on the situation of human rights defenders, E/CN.4/2003/104/Add.1, February 20, 2003, paras. 188 and 254.

⁵⁵ Please note that this case is also mentioned in the 2004 annual report to the Commission on Human Rights of the Special Representative of the Secretary-General on the situation of human rights defender, E/CN.4/2004/94/Add.3, March 23, 2004, para. 238.

⁵⁶ Please note that this case is also mentioned in the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2002/74, January 9, 2002, para.63.

policeman backed up by other officers reportedly threw Mr. Fernando Rafael Bancés Escobar on the ground and hit him. Afterwards, they checked his identity card and left. According to the information received, these facts were reported to the Oficina de Responsabilidad Profesional of the National Civil Police and Mr. Bancés Escobar was examined by a forensic doctor, who certified his injuries. It was further reported that no action was taken by the police to identify those responsible for the violation. This incident was allegedly connected with the activities of Mr. Fernando Rafael Bancés Escobar for the Colectivo Gay-Lésbico and the Unidad Revolucionaria Nacional Guatemalteca party.

India

201. The Special Representative sent an urgent appeal on 25 July 2001 concerning a police raid, on 7 July 2001, on the offices of the Bharosa Trust, a local organization for gay men, and of the liaison office in Lucknow of the Naz Foundation International (NFI), an international development agency providing technical support for the promotion of male sexual and reproductive health in South Asia. The police reportedly seized HIV/AIDS information and prevention material, and arrested Arif Jafar, executive director of the Bharosa Trust in Lucknow, as well as other Trust members, namely Mohhammad Shadid, Sudhish Kumar Singh, Parmeshwar Nayar and Pankaj Kumar. They were allegedly detained in Lucknow district jail and charged with conspiracy to commit unnatural offences. Fears have been expressed that evidence was planted by the police in the raids, which were conducted subsequent to the arrest and detention of the workers. If the charges are retained against them, the members of both organizations would face up to 10 years' imprisonment.

III. INDEPENDENT EXPERTS

a. Report of the Independent Expert on Minority Issues

Report of the independent expert on minority issues, E/CN.4/2006/74, January 6, 2006

28. Finally, the independent expert recognizes that some individuals within ethnic, religious, linguistic or national minority groups may experience multiple forms of discrimination because of other factors including gender, gender expression, gender identity, sexual orientation, disability, age or health status. This means that, within minority communities, some individuals who are already struggling against intolerable levels of generalized exclusion also face compounded forms of discrimination or violence based on their gender, personal identity or expression. As a result, the independent expert intends to consider the compounded and often negatively reinforcing nature of multiple forms of exclusion as she undertakes her work, while also highlighting the importance of protecting diverse forms of personal expression.

42. The independent expert will also devote attention to the situations of those members of minority groups who experience multiple forms of discrimination, based on aspects of their identities and personal realities such as sexual orientation or gender expression that challenge social or cultural norms.

III. SPECIAL RAPPORTEURS

a. Special Rapporteur on extrajudicial, summary or arbitrary executions

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to Guatemala, A/HRC/4/20/Add.2, February 19, 2007

Page 2

Today, a number of violent phenomena afflict Guatemala, including social cleansing, the rapidly rising killing of women, lynching, the killing of persons for their sexual identity or orientation, the killing of human rights defenders, and prison violence. In some cases, the State bears direct responsibility. There is strong evidence that some acts of social cleansing - executions of gang members, criminal suspects, and other “undesirables” - are committed by police personnel. Killings by prison inmates have been facilitated by guards. In other cases, the State bears indirect responsibility. With a criminal justice system unable to achieve more than a single-digit conviction rate for murder, the State bears responsibility under human rights law for the many who have been murdered by private individuals.

11. In contrast, ordinary murders by private persons will, in most situations, constitute simple crimes and not give rise to any State responsibility (E/CN.4/2005/7, paras. 65-76). The State is obligated, however, to exercise due diligence in preventing such crimes. Once a pattern becomes clear in which the response of the Government is clearly inadequate, its responsibility under international human rights law becomes applicable. To meet its legal obligations, the State must effectively investigate, prosecute, and punish perpetrators. When such efforts prove ineffective, the State must take whatever measures are necessary to make them effective, including new legislation, training programmes, equipment, or budget allocations. The State incurs responsibility under international law insofar as any branch of Government - executive, legislative, or judicial - fails to honour the obligations that it has assumed under international law.

12. The scope of the State’s responsibility under international law is, thus, much broader than the scope of the criminal offence of “extrajudicial execution” under Guatemala’s criminal law. That criminal offence encompasses killings by agents of the State as well as killings by private persons with the authorization or acquiescence of agents of the State, but does not include murders for which impunity is conferred

by Government inaction. The concept of “extrajudicial execution” under international law does include such murders accompanied by impunity and addresses the responsibility of the State rather than of individual perpetrators. Thus, regardless of the extent to which State agents may be involved, the evidence shows that the State has responsibility under international human rights law for the widespread killings of gang members; gay, lesbian, transgender, and transsexual persons; human rights defenders; women; and prison inmates (see chapter III).

13. However, while the question of whether particular killings were committed by State agents is not critical to determining the State’s responsibility under international law, it is key to determining the measures required for the State to prevent future such killings.

D. Impunity for attacks targeting people for being gay, lesbian, transgender, or transsexual

32. There has been impunity for murders motivated by hatred towards persons identifying as gay, lesbian, transgender, and transsexual. Credible information suggests that there were at least 35 such murders between 1996 and 2006. Given the lack of official statistics and the likely reticence if not ignorance of victims’ family members, there is reason to believe that the actual numbers are significantly higher.

33. In most cases, there is no credible information regarding the identity of the murderer. In the absence of effective investigations, it cannot be said with certainty that all of these killings have been motivated by the sexual identity of the victim, but the circumstances - e.g., the killers firing from a car in an area of Guatemala city known to be frequented by transgender sex workers - often suggest this to be the case. In those cases with witnesses, both government officials and private citizens have been implicated.

34. I spoke with one individual, Sulma, who was herself attacked and whose friend was killed. On 16 December 2005, around 11.30 p.m., Paulina and Sulma - both transgender persons - were approached in a central area of the capital by four persons riding motorbikes and wearing police uniforms. Without saying a word, the four persons opened fire on them. Paulina died of her injuries in the hospital three hours later. Sulma was severely injured but survived. She was granted police protection. However, the policemen guarding her at the hospital repeatedly told her that she should stop making statements on the incident to investigators and others, as she was putting her life at risk by doing so. Uncertain whether this was well meant advice or veiled death threats, she moved to a secret location. At the same time, she successfully applied for interim measures of protection from the Inter-American Commission of Human Rights. While there is a case file concerning the lethal attack on Paulina and Sulma opened at the Prosecutor’s Office, the proceedings had not made any progress at the time of my visit to Guatemala. Even before my visit, on 10 February 2006, I had already sent a communication to the Government of Guatemala,

seeking information on the investigations into this crime and the measures taken to protect Sulma. To date, I have not received a reply.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/4/20, January 29, 2007

8. A very brief statistical profile of the communications sent during the period under review shows that 135 communications were sent to 51 countries and 2 other actors (including 44 urgent appeals and 75 letters of allegation and 16 communications following up on previous correspondence) concerning a total of more than 1,531 individuals. A breakdown of the subjects of those appeals shows that they involved 336 males, 55 females, more than 1,087 persons whose sex was unknown, 53 minors, 58 members of religious, ethnic or indigenous minorities, 22 human rights defenders, 36 migrants and 16 journalists. More than 145 persons were killed for exercising their freedom of opinion and expression, 4 were killed in the name of honour, 4 were killed for their sexual orientation and 19 of those killed were suspected terrorists.

10. During the course of 2006, I undertook two visits:

(a) Guatemala.

I visited Guatemala from 21 to 25 August 2006 at the invitation of its Government and met with government officials and members of civil society. In Guatemala, over 5,000 people die violently each year. A degree of State responsibility derives from the involvement of its agents in some forms of violence and its ineffectual response to others. During my visit, I gathered evidence on the prevalence and causes of phenomena such as social cleansing, “femicide”, lynching, killings motivated by sexual orientation or identity, the killing of human rights defenders and prison violence. Guatemala’s choice is between a human rights-consistent approach based on a working system of criminal justice (and in line with the vision of the Peace Accords) or a brutal and repressive response, often advocated under the rubric of a *mano dura* (iron fist), to crack down on “undesirable” elements. My report is in document A/HRC/4/20/Add.2.⁵⁷

51. With respect to particular offences, the Commission on Human Rights and the Human Rights Committee have determined that a wide range of specific offences fall outside the scope of the “most serious crimes” for which the death penalty may be imposed. These include: abduction not resulting in death, abetting suicide, adultery, apostasy, corruption, drug-related offences, economic crimes, the expression of conscience, financial crimes, embezzlement by officials, evasion of military service, homosexual acts⁵⁸, illicit sex, sexual relations between consenting adults, theft or robbery by force, religious practice, and political offences.

⁵⁷ Please find the extracts from this report above.

⁵⁸ Please see the extracts of the Human Rights Committee Concluding Observations CCPR/C/79/Add.85 above.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2006/53, March 8, 2006

11. The very brief statistical details of the communications sent during the period under review indicate that 117 communications were sent to 55 countries and 3 other actors (including 57 urgent appeals and 60 letters of allegations) concerning a total of more than 800 individuals. A breakdown of the subjects of those appeals shows that they involved 373 males, 76 females, more than 350 persons of whose sex was unknown, 56 minors, 75 members of religious, ethnic or indigenous minorities, 29 human rights defenders, 6 journalists, more than 200 persons exercising their right to freedom of opinion and expression, 18 persons killed in the name of passion or of honour, 2 persons killed for various discriminatory reasons, including their sexual orientation, and 9 migrants.

18. During the course of 2005, the Special Rapporteur undertook two visits:

(a) Nigeria:

The Special Rapporteur visited from 27 June to 8 July 2005. His report (E/CN.4/2006/53/Add.4) identifies problems in the administration of the death penalty and the problems of policing. With respect to the death penalty, there are widespread procedural irregularities; an unacceptable average twenty-year stay on death row; and the imposition of death by stoning for adultery or sodomy in 12 States.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, follow-up to country recommendations, E/CN.4/2006/53/Add.2, March 27, 2006

IV the Sudan

2. The “most serious crimes” requirement

150. The death penalty appears to continue to be applicable for the offences of apostasy, homosexual acts and adultery, which were all found by the Human Rights Committee not to fulfil the criteria of “most serious crimes” when it considered, in 1997, the second periodic report of the Sudan under the Covenant.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2006/53/Add.4, January 7, 2006, Mission to Nigeria.

23. In December 2005 the Katsina Sharia Court acquitted two other men charged with the capital offence of sodomy, because there were no witnesses. They had nevertheless spent six months in prison on remand which the judge reportedly said should remind them “to be of firm character and desist from any form of immorality”.

24. Regardless of the circumstances of the individual case, however, the incident serves to highlight several major problems. They are the use of stoning to death as a punishment, and the prescription of the death penalty for private sexual conduct.

III. THE MAJOR PROBLEMS

A. The right to life and the death penalty

26. Several aspects of the death penalty in Nigeria are of particular concern: (a) widespread procedural irregularities; (b) conditions on death row; and (c) the operation of sharia law, especially in relation to adultery and sodomy.

(c) Sharia law in Nigeria

35. (...) Firstly, characterizing adultery and sodomy as capital offences leading to death by stoning is contrary to applicable Nigerian and international law. Neither can be considered to be one of the most serious crimes for which the death penalty may be prescribed. Secondly, even if the sentence is never carried out, the mere possibility that it can threaten the accused for years until overturned or commuted constitutes a form of cruel, inhuman or degrading treatment or punishment. Assurances that an offence which continues to be recognized by the law will never be applied in practice are neither justified nor convincing. The very existence of such laws invites abuse by individuals. This is all the more so in a context in which sharia vigilante groups have been formed with strong Government support. The maintenance of such laws on the books is an invitation to arbitrariness and in the case of zina to a campaign of persecution of women.

37. In relation to sodomy, the imposition of the death sentence for a private sexual practice is clearly incompatible with Nigeria's international obligations. Moral sanction is a matter for the consciences of individuals and the beliefs of religious groups. Criminal sanctions are an entirely different matter and when the threat of execution is involved the State cannot stand idly by and permit the two types of sanctions to be conflated in a way that violates international law.

104. The death penalty

(a) The Federal Government should reiterate that the imposition of the death penalty for offences such as adultery and sodomy is unconstitutional. It should commit to undertaking a constitutional challenge at the earliest opportunity;

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2005/7, December 22, 2004

18. In the period under review, the Special Rapporteur transmitted 201 communications to 63 countries (including 112 urgent appeals and 89 letters of allegations) concerning a total of 1,799 individuals. A breakdown of the subjects of

those appeals shows that they involved [...] 4 persons killed for various discriminatory reasons, including their sexual orientation (...).

71. Criminal actions might also evolve into a third, and very important, category of non-State actors of relevance to this mandate. Crimes, including murder, carried out by individuals can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators as well as to address any attitudes or conditions within society which encourage or facilitate such crimes. Two sometimes contested examples include honour killings (as defined in previous reports) and killings directed at groups such as homosexuals and members of minority groups. Other examples which have drawn attention in recent times include sustained attacks on trade unionists, so-called social cleansing of “undesirable” elements, or repeated attacks on professional groups such as doctors who are subjected to extortion demands. Also included in this category would be the activities of any of the groups described in the first category above insofar as it can be shown that there is no element of governmental involvement or complicity in their activities.

Interim report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Note by the Secretary-General, A/59/319, September 1, 2004

1. Violations of the right to life of persons belonging to national, ethnic, religious or linguistic minorities or because of their sexual orientation.

60. The Special Rapporteur has continued to receive reports of persons having been subjected to death threats or who were extrajudicially killed because of their sexual orientation. During her visit to Afghanistan, the Special Rapporteur received credible reports of suspected homosexuals being buried alive during the Taliban period. She also sent a letter of allegation to the Government of Venezuela concerning the killing of three transsexual persons into which the authorities had reportedly failed to carry out proper investigation.⁵⁹

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2003/3/Add.4, February 3, 2003, Mission to Afghanistan (13 to 23 October 2002)

36. (...) Several reports were received of summary trials of homosexuals, who were convicted and buried alive in the ground during the period of the Taliban,⁶⁰

⁵⁹ Please note that this is an interim report and that same or similar information could be found in the annual report to the Commission on Human Rights. These cases have also been mentioned in the 2003 reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2003/3/Add.4, February 3, 2003, para. 36 and E/CN.4/2003/3, January 13, 2003, paras. 66 and 67.

⁶⁰ Please note that this case is also mentioned in the reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/59/319, September 1, 2004, para. 60 and E/CN.4/2003/3, January 13, 2003, para. 66.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2003/3, January 13, 2003

J. Violations of the right to life of persons because of their sexual orientation

66. The Special Rapporteur has continued to receive reports of persons having been subjected to death threats or extrajudicially killed because of their sexual orientation. In this connection, she sent a letter to the Government of Venezuela relating to reports of killings of three transsexual persons without a government investigation having been initiated.⁶¹

67. The Special Rapporteur is encouraged by the response of the Government of Mexico that reported killings of persons because of their sexual orientation are under investigation. Reports have been received of serious human rights violations committed in Afghanistan during the Taliban period, including reports of persons suspected to be homosexuals being buried alive.⁶²

Interim report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, A/57/138, July 2, 2002.

F. Violations of the right to life of sexual, ethnic, religious or linguistic minorities

37. The Special Rapporteur wishes to note that the continuing prejudice against members of sexual minorities and, especially, the criminalization of matters of sexual orientation increase the social stigmatization of these persons. This in turn makes them more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity. The Special Rapporteur further notes that the often tendentious media coverage of this subject further contributes to creating an atmosphere of impunity and indifference in relation to crimes committed against members of sexual minorities.

38. Furthermore, the Special Rapporteur has continued to receive serious reports of persons having been subjected to death threats or extrajudicially killed because of their sexual orientation. During the reporting period she sent urgent appeals in this connection to the Governments of Argentina, Ecuador, Mexico, Somalia, Jamaica, Brazil and El Salvador. During her visit to Honduras, the Special Representative had the opportunity to talk to representatives of sexual minorities and organizations working to protect and promote the human rights of these persons. Among the allegations brought to her attention, there were several reports of death threats against and killings of members of sexual minorities. In 1999, a young gay man was allegedly

⁶¹ Please note this case is also mentioned in the interim report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/59/319, September 1, 2004, para. 60.

⁶² Please note this case is also mentioned in the reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2003/3/Add.4, February 3, 2003, para. 36 and A/59/319, September 1, 2004, para. 60.

shot dead by private security guards close to a gas station in San Pedro Sula. When members of a non-governmental organization tried to report the case to the police, they were allegedly threatened and verbally abused at the police station. The Special Rapporteur was told that no investigation into this killing had been carried out. Similarly, in May 2001 a transsexual sex worker was reportedly murdered behind the San Pedro Sula Cathedral. While it is reported that the police removed the body from the scene, it is alleged that no investigations into the case have been initiated. Nongovernmental sources alleged that some 200 gay and transsexual sex workers were killed in Honduras in the period from 1991 to 2001. Reportedly, few of these cases have ever been officially recorded, and fewer still investigated.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to Honduras, E/CN.4/2003/3/Add.2, June 14, 2002

D. The right to life of members of sexual minorities

68. During her visit, the Special Rapporteur also had the opportunity to talk to representatives of sexual minorities and organizations working to protect and promote the human rights of these persons. Among the allegations brought to her attention were several reports of death threats and killings directed against members of sexual minorities. In 1999, a young gay man was allegedly shot dead by private security guards close to a gas station in San Pedro Sula. When members of an NGO tried to report the case to the police, they were allegedly threatened and verbally abused at the police station. The Special Rapporteur was told that no investigation had been carried out into this killing. Similarly, in May 2001 a transsexual sex-worker was reportedly murdered behind the San Pedro Sula Cathedral. While it is reported that the police removed the body from the scene, it is alleged that no investigations have been initiated into the case. Non-governmental sources alleged that some 200 gay and transsexual sex-workers were killed in Honduras in the period 1991-2001. Reportedly, few of these cases have ever been officially recorded, and fewer still investigated.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2002/74, January 9, 2002

Executive summary

[...] In her report, the Special Rapporteur also discusses the situation of a number of specific categories of victims, who are particularly vulnerable or have been directly targeted for extrajudicial execution. These groups include human rights defenders, lawyers, journalists, demonstrators, members of national, ethnic, religious or linguistic minorities, internally displaced people, women, children, members of indigenous communities and persons exposed to extrajudicial killings and death threats because of their sexual orientation. [...]

F. Deaths due to acts of omission

42. In Jamaica, at St. Catherine's District Prison and at the Kingston General Penitentiary in August 1997, 16 prisoners were reportedly killed by other inmates in attacks targeting detainees known or believed to be homosexuals. The incidents allegedly occurred after guards had left the premises in protest against insinuations that they had had sexual relations with prisoners. It was alleged that no action had been taken against those responsible for the attacks.⁶³

F. Violations of the right to life of members of sexual minorities

62. The Special Rapporteur has continued to receive serious reports of persons having been subjected to death threats or extrajudicially killed because of their sexual orientation. In this connection, she sent urgent appeals to the Government of Argentina, Ecuador and Mexico. A communication was also sent to the leadership of the province of "Puntland" in Somalia.

63. The urgent appeals sent to the Government of Ecuador related to death threats targeting members of non-governmental organizations active in the defence of the rights and freedoms of sexual minorities and in spreading awareness about HIV/AIDS. In March and April 2001, members of the organizations "Amigos por La Vida", "La Organización Pro Derechos Humanos Quitogay" and "La Comunidad Lesbian, Gay, Bisexual and Transgendered Human Rights Organizations" (LGBT) reportedly received electronic mail messages in which they were told they would be killed.⁶⁴ Similarly, the Special Rapporteur wrote to the Government of Argentina following reports that, on 17 February 2001 in Córdoba, four uniformed police officers entered with force and without showing a warrant the apartment of a member of the non-governmental organization "Asociación Travestis Unidas de Córdoba". Reportedly, the police had threatened to torture the person concerned to death. It is alleged that the division for internal investigation of the Córdoba police had failed to open an inquiry into the case, despite being notified of the incident. In its reply to the Special Rapporteur's letter, the Government of Argentina stated that investigations into the case had been initiated and that the relevant authorities had taken measures to ensure the safety and integrity of the person concerned.

65. The Special Rapporteur firmly believes that the death penalty, if it is to be prescribed, should be strictly limited to the most serious crimes, which have stood the test of time, without discrimination against people on the basis of their sexual orientation. In this connection, on 22 February 2001, she sent an urgent appeal to the leadership of the province of "Puntland" in Somalia, following reports that two women had been sentenced to death by a court in Bossasso for "exercising unnatural

⁶³ Please note that this case is also mentioned in the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2002/74/Add.2, May 8, 2002, para. 370 and in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76/Add.1, March 14, 2002, para. 829.

⁶⁴ Please note that this case is also mentioned in the report of the Special Representative of the Secretary-General on human rights defenders, E/CN.4/2002/106, February 27, 2002, para. 146.

behaviour”. (...)

10. The right to life and sexual orientation

148. The Special Rapporteur encourages Governments to renew their efforts aimed at protecting the security and the right to life of persons belonging to sexual minorities. Acts of murder and death threats should be promptly and thoroughly investigated, regardless of the sexual orientation of the person or persons concerned. Measures should include policies and programmes geared towards overcoming hatred and prejudice against homosexuals, and sensitizing public officials and the general public to crimes and acts of violence directed against members of sexual minorities.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2001/9, January 11, 2001

IV. Violations of the right to life of special groups [...]

F. Violations of the right to life of members of sexual minorities

48. The Special Rapporteur has continued to receive serious reports of persons having been subjected to death threats or extrajudicially killed because of their sexual orientation.

On 19 June 2000, the Special Rapporteur sent an urgent appeal to the Government of Brazil following reports that Eduardo Bernardes da Silva, a staff member at Amnesty International's office in São Paulo, had received death threats in relation to his work in defence of gay and lesbian groups in Brazil. It was reported that in reaction to these threats Amnesty International had decided to temporarily close its São Paulo office and move Mr. da Silva to another state.⁶⁵ During the period under review, there have also been increasing reports of death threats, letter bombs and violent attacks against members of sexual minorities attributed to neo-Nazi groups in Brazil.

49. It has been reported that on 19 November 2000, a transvestite known as “Walter” was shot dead in San Salvador. The shots were reportedly fired by unknown men from a car which left the scene at high speed. It is alleged that the authorities have not taken effective action to investigate the case and to bring those responsible to justice. Non-governmental sources say that 7 similar killings were reported in El Salvador in 1999 and 12 in 1998. On 4 December 2000, the Special Rapporteur sent an urgent appeal urging the Government of El Salvador to investigate the killings and to take the necessary steps to protect members of sexual minorities from violence and extrajudicial killings.⁶⁶

⁶⁵ Please note that this case is also mentioned in the present annual report and in its addendum, E/CN.4/2001/9/Add.1, January 17, 2001, para. 31.

⁶⁶ Please note that this case is also mentioned in the present annual report and in its addendum, E/CN.4/2001/9/Add.1, January 17, 2001, para. 175.

50. The Special Rapporteur finds it unacceptable that in some States homosexual relationships are still punishable by death. It must be recalled that under article 6 of the International Covenant on Civil and Political Rights death sentences may only be imposed for the most serious crimes, a stipulation which clearly excludes matters of sexual orientation. In this context, the Special Rapporteur wishes to reiterate her belief that the continuing prejudice against members of sexual minorities and especially the criminalization of matters of sexual orientation increase the social stigmatization of these persons. This in turn makes them more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity. The Special Rapporteur further notes that the often tendentious media coverage of this subject further contributes to creating an atmosphere of impunity and indifference about crimes committed against members of sexual minorities.

VII. Concluding remarks and recommendations [...]

B. Recommendations [...]

10. The right to life and sexual orientation

118. The Special Rapporteur encourages Governments to renew their efforts aimed at protecting the security and the right to life of persons belonging to sexual minorities. Acts of murder and death threats should be promptly and thoroughly investigated regardless of the sexual orientation of the person or persons concerned. Measures should include policies and programmes geared towards overcoming hatred of and prejudice against homosexuals and sensitizing public officials and the general public to crimes and acts of violence directed against members of sexual minorities.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2000/3, January 25, 2000

J. Violations of the right to life of members of sexual minorities

54. The Special Rapporteur has continued to receive serious reports of persons having been subjected to death threats or extrajudicially killed because of their sexual orientation. It has been reported that on 4 August 1998 in Brazil, four military police officers in the city of Salvador forced two transvestite sex workers to throw themselves into the sea, after having ill-treated and humiliated them. One of the two persons, Junior da Silva Lago, reportedly drowned and his body was found three days later. Local non-governmental sources have reportedly documented the murders of 1,600 homosexuals in Brazil in the period from 1980 to 1997. It is alleged that in only 5 per cent of these cases have the perpetrators been prosecuted. The Special Rapporteur has also been informed that in the last couple of years a number of homosexual men, bisexuals and transvestites have been murdered or subjected to death threats in El Salvador.

55. The Special Rapporteur has further been alerted to the murder of Stefan Itoafa, a lawyer and journalist in the city of Constanta in Romania. He was also the local coordinator of the League for the Defence of Human Rights in Constanta. His death has been linked to his alleged homosexuality and his journalistic work to uncover corruption and organized crime. On 13 October 1998, Mr. Itoafa was found murdered in his apartment. It is reported that he had been stabbed and his throat had been cut. His hands were apparently tied behind his back. The Special Rapporteur is concerned that the police, when investigating the murder of Mr. Itoafa, reportedly released information to the media about the victim's alleged homosexuality, describing the murder as an "act of jealousy" by another homosexual. It is alleged that the information released by the police also included medical details supposedly suggesting that Mr. Itoafa had previously engaged in homosexual relations. The prejudiced attitude displayed by the police has given rise to fears that Mr. Itoafa's case will not be adequately investigated.

56. During her mission to Mexico from 12 to 24 July 1999, the Special Rapporteur met with the Comisión Ciudadana contra los Crímenes de Odio por Homofobia, a non-governmental organization working against violence and so-called "hate crimes" against members of sexual minorities in Mexico. According to information provided by this organization, in the period January 1995-May 1997, at least 125 persons were murdered because of their sexual orientation, 120 of them men. It was reported that the majority of the victims had been killed in an extremely violent and brutal way: their bodies were often found naked with hands and feet tied and with signs of torture, stabbing, strangulation or mutilation. Concern was also expressed that the prejudiced attitude of the authorities, together with tendentious media reports had contributed to an atmosphere of impunity and indifference about crimes committed against members of sexual minorities. The Special Rapporteur brought these concerns to the attention of the Mexican authorities and the Human Rights Commission of the Federal District. They claimed that the authorities did not discriminate against anyone on the ground of sexual orientation, including in the sphere of criminal investigation and prosecution.⁶⁷

57. It is a cause for great concern that in some States homosexual relationships are still punishable by death. It must be recalled that under article 6 of the International Covenant on Civil and Political Rights death sentences may only be imposed for the most serious crimes, a stipulation which clearly excludes matters of sexual orientation. In this context, the Special Rapporteur wishes to reiterate her belief that the continuing prejudice against members of sexual minorities and especially the criminalization of matters of sexual orientation increases the social stigmatization of these persons. This in turn makes them more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity.

70. Article 6, paragraph 2, of the International Covenant on Civil and Political Rights stipulates that, "in countries which have not abolished the death penalty, sentence of

⁶⁷ For further details please see the mission to Mexico report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2000/3/Add.3, November 25, 1999, Visit to Mexico.

death may be imposed only for the most serious crimes”. In its General Comment 6 on article 6 of the Covenant, the Human Rights Committee stated that the expression “most serious crimes” must be read restrictively to mean that the death penalty should be a quite exceptional measure. The Special Rapporteur shares this conclusion, and further believes that the death penalty should under no circumstances be mandatory by law, regardless of the charges involved. Paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty states that the scope of crimes subject to the death penalty should not go beyond intentional crimes with lethal or other extremely grave consequences. The Special Rapporteur is strongly of the opinion that these restrictions exclude the possibility of imposing death sentences for economic and other so-called victimless offences, or activities of a religious or political nature (...). This principle also excludes actions primarily related to prevailing moral values, such as adultery and prostitution, as well as matters of sexual orientation.

89. In most situations impunity is the result of a weak and inadequate justice system, which is either reluctant or unable to investigate and prosecute cases of human rights violations, including violations of the right to life. While in some countries the judiciary is strongly influenced by or directly subordinate to the executive authorities, in others court decisions are flatly overruled or ignored by the law enforcement authorities or the armed forces. Members of security forces are often prosecuted in military courts which in many cases fall short of international standards regarding the impartiality, independence and competence of the judiciary. Extrajudicial killings and acts of murder may sometimes also go unpunished because of the sex, religious belief, ethnicity or sexual orientation of the victim, which is used as a justification of the crime. [...]

12. The right to life and sexual orientation

116. The Special Rapporteur encourages Governments to renew their efforts to protect the security and the right to life of persons belonging to sexual minorities. Acts of murder and death threats should be promptly and thoroughly investigated regardless of the sexual orientation of the victims. Measures should include policies and programmes geared towards overcoming hatred and prejudice against homosexuals and sensitizing public officials and the general public to crimes and acts of violence directed against members of sexual minorities. The Special Rapporteur believes that decriminalizing matters of sexual orientation would greatly contribute to overcoming the social stigmatization of members of sexual minorities, and thereby curb impunity for human rights violations directed against these persons. Matters of sexual orientation should under no circumstances be punishable by death.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2000/3/Add.3, November 25, 1999, Visit to Mexico

J. Violations of the right to life and sexual orientation

90. In her report to the Commission on Human Rights at its fifty-fifth session, the Special Rapporteur expressed her concern at continuing reports of persons having been killed purely because of their sexual orientation. She noted that owing to the widespread social stigmatization of persons belonging to sexual minorities, violent acts directed against them were more likely to be committed in a climate of impunity. While preparing for her mission, the Special Rapporteur was informed of a number of cases in which homosexual men had been killed in Mexico. It was reported that the authorities had dealt with these crimes in ways that allowed them to be committed with impunity. In Mexico City she was further briefed on the subject by the NGO Citizens' Commission against Homophobic Hate Crimes (Comision Ciudadana contra los Crimines de Odio por Homofobia).

91. According to information provided by this organization, in the period January 1995 - May 1997, at least 125 persons were murdered because of their sexual orientation, 120 of them men. Sixty-five of the cases were reported to have occurred in the capital alone. It appears that the majority of the victims were killed in an extremely violent and brutal way: their bodies were often found naked with hands and feet tied and with signs of torture, stabbing, strangulation or mutilation. Concern was also expressed that the prejudiced attitude of the authorities, together with tendentious media reports, had contributed to an atmosphere of impunity and indifference about crimes directed against members of sexual minorities.

92. The Special Rapporteur brought these concerns to the notice of the authorities and the Human Rights Commission of the Federal District. They claimed that the authorities did not discriminate against anyone on the ground of sexual orientation in the matter of investigation or in bringing the perpetrators of crimes to justice.⁶⁸

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1999/39, January 6, 1999

E. The right to life and sexual orientation

76. The Special Rapporteur is deeply concerned by numerous and continuing reports of persons having been killed or sentenced to death because of their sexual orientation. She is particularly disturbed by reports from Brazil, Colombia and Mexico, where so-called "death-squads" have over the last years reportedly murdered a large of number of persons belonging to sexual minorities. The Special Rapporteur

⁶⁸ Please note that the information mentioned in the mission to Mexico report of the Special Rapporteur is also referred to in the annual report to the Commission on Human Rights of the Special Rapporteur E/CN.4/2000/3, January 25, 2000, para. 56.

has been informed that in the period from 1991 to 1994, 12 homosexual men were killed by armed groups in the city of Tuxtla Gutiérrez, Mexico. It appears that the perpetrators of these killings were never identified, and it is alleged that the authorities failed to carry out thorough and complete investigations into these crimes. The Special Rapporteur has also received reports that in the last several years hundreds of so-called “social undesirables”, including many homosexuals and transvestites, have been killed by armed groups in Colombia. In Brazil it is reported that hundreds of persons belonging to sexual minorities have been murdered in the last 10 years. It is alleged that the Brazilian and Colombian authorities have not taken adequate action to find and prosecute the persons responsible for these crimes.

77. The Special Rapporteur regrets that in some States homosexual relationships are still punishable by death. In this regard she wishes to recall that under article 6 of the International Covenant on Civil and Political Rights, death sentences may only be imposed for the most serious crimes. As discussed above in chapter V, section A (3), this restriction clearly excludes matters of sexual orientation. The Special Rapporteur further believes that criminalizing matters of sexual orientation increases the social stigmatization of members of sexual minorities, which in turn makes them more vulnerable to violence and human rights abuses, including violations of the right to life. Because of this stigmatization, violent acts directed against persons belonging to sexual minorities are also more likely to be committed in a climate of impunity.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1998/68/Add.3, January 22, 1998, Mission to the United States of America

95. Allegations of ineffective counsel in death penalty cases have been brought to the attention of the Special Rapporteur on several occasions. [...] He also intervened on behalf of Calvin Burdine, a homosexual, sentenced to death in Texas. According to the information received, his lawyer fell asleep on several occasions during the trial. The lawyer was said to have accepted three jurors onto the jury who were said to have prejudice against homosexuals. Further, the Special Rapporteur was informed that the lawyer failed to object to the statement made by the prosecutor during the sentencing phase of the trial, according to which being sent to the penitentiary was not a very bad punishment for a homosexual. The Texas Court of Criminal Appeals reportedly ruled that his lawyer’s failure to stay awake did not affect the outcome of the case. However, the federal court gave Burdine a stay of execution and ruled that another hearing was necessary to establish if his trial had been prejudiced.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1998/68/Add.1, December 19, 1997

39. In the course of the year allegations of a general nature were also received to the effect that in Maceio, the capital of Alagoas, members of the civil police were reportedly harassing, illtreating and even violating the right to life of homosexual prostitutes. According to the information received, at least seven homosexual

prostitutes had been killed in the past year, but a judicial investigation had been opened in only one of those cases.

41. The Special Rapporteur also transmitted allegations he had received in connection with violations of the right to life of the following persons: (...)

(c) Homosexual prostitutes; a transvestite, José Miguel dos Santos, and two homosexuals known as Carlos and Magao, who died on 6 June 1997 after being shot in the head in the centre of Maceio, where they practised prostitution. Two officers from the civil police station in Maceio and a civilian are charged with their deaths.

Joint report of the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1995/111, January 16, 1995, Visit to the Republic of Colombia

C. "Social cleansing"

49. In addition to criminals, persons from other sectors of the population whose presence was considered undesirable became the targets of such killings: prostitutes, homosexuals, beggars, drug consumers and street children. The killings are often preceded by torture, allegedly with the purpose of making it impossible to identify the victim (and therefore to carry out an investigation) and sending an intimidatory message to the above sectors. Several sources expressed their concern to the Special Rapporteurs that, over the years, "social cleansing" had become more and more accepted and acceptable, as a solution to the question of how to deal with marginalized sectors of the population. The qualification "desechables" (disposable) for those regarded as undesirable has gained legitimacy.⁶⁹

Summary of cases transmitted to Governments and replies received:

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, summary of cases transmitted to Governments and replies received, A/HRC/4/20/Add.1, March 12, 2007

*Page 126*⁷⁰

⁶⁹ Please note that this joint report is also mentioned under the heading Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, p. 68.

⁷⁰ Available only in Spanish.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, summary of cases transmitted to Governments and replies received, E/CN.4/2006/53/Add. 1, March 27, 2006

Islamic Republic of Iran

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According to the information I have received, both men were sentenced to death for the crime of "lavat" which is reportedly defined by Iran's Shari`a-based Penal Code as encompassing penetrative and non-penetrative sexual acts between men.

These would not appear to be isolated cases. Indeed, I have been informed of other recent cases of execution of men in Iran on the basis of their private, consensual sexual conduct. For instance, on 15 March 2005, it was reported that the Tehran Criminal Court sentenced to death two men, whose names have not been made known to me, following the discovery of a video showing them engaged in homosexual acts and based on the confession of one of them.

It is my understanding that the death penalty applies in Iran for a wide range of crimes, some of which would not appear to fall within the internationally recognised category of "the most serious crimes". Iranian law reportedly punishes all penetrative sexual acts between adult men with capital punishment. Non-penetrative sexual acts between men are punished with lashes until the fourth offence, when they are punished with death. Sexual acts between women, which are defined differently, are punished with lashes until the fourth offence, when they are also punished with death.

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It is clear that the death penalty should not be imposed for offences such as the commission of a homosexual act. It is my responsibility under the mandate provided to me by the Commission on Human Rights to seek to clarify all cases brought to my attention. Without in any way wishing to pre-judge the accuracy of the information received, I would be grateful for a reply to the following questions:

(...)

5. Please provide statistics as to the number of persons executed for the commission of homosexual acts in the past three years.

Papua New Guinea

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I would like to draw the attention of your Excellency's Government to reports regarding accounts of police violence against children. According to the information I have received, three school children who were shot dead by police on 31 October in

Enga province while another twenty to thirty five persons, some as young as nine or ten years old, were injured. The police reported that they were met by rock-throwing students when they went to arrest the headmaster of Porgera top-up primary school. It is my understanding that these executions have taken place in the context of repeated police violence -including arbitrary arrests, torture and deaths in custody- against children perceived as gang members, street vendors, child sex workers and boys engaged in homosexual conduct. At the same time, internal police statistics indicate that very few officers are punished for violence against children.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2005/7/Add.1, March 17, 2005

Ecuador⁷¹

Jamaica

370. Allegation, 22 September 2004: Mr. Brian Williamson, a 59-year-old prominent gay rights activist, was brutally murdered at his home on 9 June 2004. According to the information received, a suspect was detained in connection with the case and an identity parade later held at the Half Way Tree police station. It is however reported that the individuals in the identification parade were wearing towels on their head and white cream on their faces, making them almost unrecognizable. Concern has been expressed that there has not yet been fair, effective and adequate investigation into this incident.

371. Mr. Victor Jarrett was reportedly chopped, stabbed and stoned to death by Montego Bay residents on 18 June 2004. It is alleged that the police participated in this incident, first beating Mr. Jarrett with batons and then urging others to beat him because he was a homosexual. According to the information received, such attacks are not isolated as the police generally do not respond adequately to incidents of violence against gay men or men suspected of homosexual conduct.

Mexico⁷²

⁷¹ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2005/7/Add.1, March 17, 2005, paras. 222 and 224.

⁷² Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2005/7/Add.1, March 17, 2005, paras. 425-427.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2003/3/Add.1, February 12, 2003

Mexico⁷³

Venezuela⁷⁴

Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions, E/CN.4/2002/74/Add.2, May 8, 2002

Ecuador⁷⁵

Jamaica

370. On 30 September 2001 the Special Rapporteur, jointly with the Special Rapporteur on Torture, transmitted an allegation after having received information according to which 16 prisoners were killed and 40 injured in anti-gay attacks at St. Catherine's District Prison and Kingston's General Penitentiary in August 1997. It was reported that inmates went on the rampage, targeting prisoners known or believed to be gay after the guards had walked out in protest on an announcement of the Commissioner of Corrections that he intended to distribute condoms to guards and prisoners. No actions against those responsible had allegedly been taken.⁷⁶

Mexico⁷⁷

⁷³ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2003/3/Add.1, February 12, 2003, para. 358.

⁷⁴ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2003/3/Add.1, February 12, 2003, para. 555.

⁷⁵ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2002/74/Add.2, May 8, 2002, para. 242.

⁷⁶ Please note that this case is also mentioned in the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2002/74, January 9, 2002, para. 42 and in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76/Add.1, March 14, 2002, para. 829.

⁷⁷ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2002/74/Add.2, May 8, 2002, para. 388.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2001/9/Add.1, January 17, 2001

Brazil

31. On 19 June the Special Rapporteur sent an urgent appeal to the Government of Brazil concerning the safety of Eduardo Bernardes da Silva, an Amnesty International member who had received several death threats allegedly because of his work as a defender of the rights of gay and lesbian groups.⁷⁸

El Salvador

175. The Special Rapporteur transmitted an urgent appeal to the Government of El Salvador on 3 December 2000 expressing her outrage at continued reports of killings of gay men and transvestites in El Salvador. The Special Rapporteur was informed that a transvestite known as “Walter/Walquiria” was shot and killed in the early hours of 19 November 2000 in San Salvador. A young man who was with him, Orlando Sánchez, was wounded in the incident and is currently recovering in hospital.⁷⁹

b. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Interim report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment, A/59/324, September 1, 2004

III. The principle of non-refoulement

39. The Special Rapporteur also wishes to draw attention to factors and circumstances that stem from conditions that may prevail in a country and touch at the same time upon the vulnerability of persons whose removal to such a country is at stake. Reference is made here to persons belonging to any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds, such as sexual orientation, and who for that reason are targeted by the authorities or, with the connivance of the authorities, risk being subjected to persecution or systematic discrimination amounting to torture or other cruel, inhuman or degrading treatment or punishment. These factors and circumstances also have to be taken into account in determining the non-refoulement issue.

⁷⁸ Please note that this case is also mentioned in the annual report of the Special Rapporteur on extrajudicial, summary or arbitrary executions E/CN.4/2001/9, January 11, 2001, para. 48.

⁷⁹ Please note that this case is also mentioned in the annual report of the Special Rapporteur on extrajudicial, summary or arbitrary executions E/CN.4/2001/9, January 11, 2001, para. 49.

Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2004/56, December 23, 2003

64. The Special Rapporteur further highlights the issue of discrimination on the basis of sexual orientation in the context of torture related to HIV/AIDS. Attitudes and beliefs stemming from myths and fears associated with HIV/AIDS and sexuality contribute to stigma and discrimination against sexual minorities. In addition, the fact that members of these minorities are perceived as transgressing gender barriers or challenging predominant conceptions of gender roles seems to contribute to their vulnerability to torture as a way to “punish” their unaccepted behaviour. In this respect, the Special Rapporteur would like to recall the report of the former Special Rapporteur to the General Assembly (A/56/156, paras. 17-25), in which he referred to information he had received according to which members of sexual minorities, when arrested or when lodging a complaint, are subjected to further victimization by the police, including verbal and physical assault. It was also reported that members of sexual minorities receive inadequate medical treatment in public hospitals on grounds of their gender identity, which, in case of people living with HIV/AIDS, could lead to very serious consequences. In this regard, the International Guidelines state that “responses by States to the epidemic should include the implementation of laws and policies to eliminate systemic discrimination, including where it occurs against these [vulnerable] groups”.⁸⁰

Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2003/68/Add.2, February 3, 2003, Mission to Uzbekistan

42. Furthermore, the Special Rapporteur has received information according to which persons belonging to sexual minorities have been subjected to various forms of torture, including of a sexual nature, and harassment, and to have been arbitrarily detained with a view to threatening or punishing them and to obtaining bribes. (...)

Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76, December 27, 2001

Torture and Discrimination Against Sexual Minorities

For some years, I have received information regarding victims of torture and other forms of ill-treatment belonging to sexual minorities, who are said to have been subjected to violence of a sexual nature, such as rape or sexual assault, and other abuse relating to their real or perceived sexual orientation or gender identity.

⁸⁰ HIV/AIDS and Human Rights: International Guidelines, United Nations publication, Sales No. E.98.XIV.1, United Nations, New York and Geneva, 1998, para 85.

I believe that discrimination on grounds of sexual orientation or gender identity may contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place. Furthermore, discriminatory attitudes towards members of sexual minorities can mean that they are perceived as less credible by law enforcement agencies or not fully entitled to an equal standard of protection, including protection against violence carried out by non-State agents. Members of sexual minorities, when arrested for other alleged offences or when lodging a complaint of harassment by third parties, have reportedly been subjected to further victimization by the police, including verbal, physical and sexual assault, including rape. Silencing through shame or the threat by law enforcement officials to publicly disclose the birth sex of the victim or his or her sexual orientation (to family members, among others) may keep a considerable number of victims from reporting abuses.

Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, interim report, A/56/156, July 3, 2001

18. The Special Rapporteur has received information according to which members of sexual minorities have been subjected, inter alia, to harassment, humiliation and verbal abuse relating to their real or perceived sexual orientation or gender identity and physical abuse, including rape and sexual assault. He notes with concern that, according to the information received, the rape of a man or of a male-to-female transsexual woman is often subject to the lesser charge of “sexual assault”, which carries lighter penalties than the more serious crime of rape in a number of countries. It is also reported that male-to-female transsexual women have been beaten intentionally on their breasts and cheek-bones which had been enhanced by silicone implants, causing the implants to burst and as a result releasing toxic substances into their bodies. Ill-treatment against sexual minorities is believed to have also been used, inter alia, in order to make sex workers leave certain areas, in so-called “social cleansing” campaigns, or to discourage sexual minorities from meeting in certain places, including clubs and bars.

19. While no relevant statistics are available to the Special Rapporteur, it appears that members of sexual minorities are disproportionately subjected to torture and other forms of ill-treatment, because they fail to conform to socially constructed gender expectations. Indeed, discrimination on grounds of sexual orientation or gender identity may often contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place. The Special Rapporteur further notes that members of sexual minorities are a particularly vulnerable group with respect to torture in various contexts and that their status may also affect the consequences of their ill-treatment in terms of their access to complaint procedures or medical treatment in state hospitals, where they may fear further victimization, as well as in terms of legal consequences regarding the legal sanctions flowing from certain abuses. The Special Rapporteur would like to stress that, because of their economic and educational situation, allegedly often exacerbated or

caused by discriminatory laws and attitudes, members of sexual minorities are deprived of the means to claim and ensure the enforcement of their rights, including their rights to legal representation and to obtain legal remedies, such as compensation.

20. The Special Rapporteur is concerned that in a number of countries laws punish consensual same-sex relationships and transgendered behaviour by corporal punishment which, as stated by the Commission on Human Rights on several occasions, “can amount to cruel, inhuman or degrading punishment or even to torture”.

21. Discriminatory attitudes to members of sexual minorities can mean that they are perceived as less credible by law enforcement agencies or not fully entitled to an equal standard of protection, including protection against violence carried out by non-State agents. The Special Rapporteur has received information according to which members of sexual minorities, when arrested for other alleged offences or when lodging a complaint of harassment by third parties, have been subjected to further victimization by the police, including verbal, physical and sexual assault, including rape. Silencing through shame or the threat by law enforcement officials to publicly disclose the birth sex of the victim or his or her sexual orientation (inter alia, to family members) may keep a considerable number of victims from reporting abuses.

22. Furthermore, the Special Rapporteur has received information according to which members of sexual minorities have received inadequate medical treatment in public hospitals — even after having been victims of assault — on grounds of their gender identity. As regards the provision of medical treatment, prisoners diagnosed as suffering from gender dysphoria, once detained, are often said to be denied medical treatment for gender dysphoria, such as hormone therapy.

23. When detained, members of sexual minorities are often considered as a sub-category of prisoners and detained in worse conditions of detention than the larger prison population. The Special Rapporteur has received information according to which members of sexual minorities in detention have been subjected to considerable violence, especially sexual assault and rape, by fellow inmates and, at times, by prison guards. Prison guards are also said to fail to take reasonable measures to abate the risk of violence by fellow inmates or even to have encouraged sexual violence, by identifying members of sexual minorities to fellow inmates for that express purpose. Prison guards are believed to use threats of transfer to main detention areas, where members of sexual minorities would be at high risk of sexual attack by other inmates. In particular, transsexual and transgendered persons, especially male-to-female transsexual inmates, are said to be at great risk of physical and sexual abuse by prison guards and fellow prisoners if placed within the general prison population in men’s prisons.

24. The Special Rapporteur has received information according to which members of sexual minorities have been subject to cruel, inhuman or degrading treatment in non-penal institutions. In a number of countries, members of sexual minorities are said to

have been involuntarily confined to state medical institutions, where they were allegedly subjected to forced treatment on grounds of their sexual orientation or gender identity, including electric shock therapy and other “aversion therapy”, reportedly causing psychological and physical harm. The Special Rapporteur notes, in particular, that the World Health Organization removed homosexuality from its International Classification of Diseases-10 (ICD-10) in 1992. The Special Rapporteur has received information according to which, in a number of countries, persons suspected of homosexuality have been subjected to compulsory, intrusive and degrading medical examinations of anus and penis in order to determine whether penetration had taken place, inter alia, within the context of enlistment for military service.

25. Finally, the Special Rapporteur notes and shares the views of the Special Representative of the Secretary-General on human rights defenders regarding “greater risks ... faced by defenders of the rights of certain groups as their work challenges social structures, traditional practices and interpretation of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups. Of special importance will be (...) human rights groups and those who are active on issues of sexuality, especially sexual orientation (...). These groups are often very vulnerable to prejudice, to marginalization and to public repudiation, not only by State forces but other social actors.”⁸¹

Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2001/66/Add.2, March 30, 2001, Visit to Brazil

199. Marli Barbosa and Rosana Lage Lígero, a same-sex couple, were allegedly arrested on 19 June 1996 in Jabotão dos Guararapes on suspicion of murder and were reportedly beaten with pieces of rubber at the 14th district police station in Piedade. According to the information received, they were also verbally abused for their sexual orientation and forced to perform oral sex. They were reportedly denied access to their lawyer. The police chief is said to have asked them for money, which they allegedly refused to pay. They reportedly remained at the police station for three days and then allegedly transferred secretly to the narcotics police station where they remained for five days. They were then allegedly returned to the Piedade police station and on the following day to a local prison, without having been sentenced. According to the information received, one month later they were taken back to the Piedade police station, where they were allegedly tortured again. They are said to have remained imprisoned for 11 months. It is believed that they suffered from discrimination due to their sexual orientation. It is alleged that the policemen involved

⁸¹ Please note that this is an interim report and same or similar information could be found in the annual report to the Commission on Human Rights, E/CN.4/2002/76, December 27, 2001.

received no punishment or reprimand. According to the information received, the case is being reviewed in the Supreme Court.⁸²

Joint report of the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1995/111, January 16, 1995, Visit to the Republic of Colombia

C. "Social cleansing"

49. In addition to criminals, persons from other sectors of the population whose presence was considered undesirable became the targets of such killings: prostitutes, homosexuals, beggars, drug consumers and street children. The killings are often preceded by torture, allegedly with the purpose of making it impossible to identify the victim (and therefore to carry out an investigation) and sending an intimidatory message to the above sectors. Several sources expressed their concern to the Special Rapporteurs that, over the years, "social cleansing" had become more and more accepted and acceptable, as a solution to the question of how to deal with marginalized sectors of the population. The qualification "desechables" (disposable) for those regarded as undesirable has gained legitimacy.⁸³

Summary of cases transmitted to Governments and replies received:

Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2005/62/Add.1, March 30, 2005

Argentina⁸⁴

Ecuador⁸⁵

El Salvador⁸⁶

⁸² Please note that this case is also mentioned in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/200/9, February 2, 2000, para. 145.

⁸³ Please note that this joint report is also mentioned under the heading Special Rapporteur on extrajudicial, summary or arbitrary executions, p. 62.

⁸⁴ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2005/62/Add.1, March 30, 2005, para. 94.

⁸⁵ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2005/62/Add.1, March 30, 2005, para. 564.

⁸⁶ Available only in Spanish. Further details on these cases can be found in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2005/62/Add.1, March 30, 2005, paras. 567-570.

Mexico⁸⁷

Nepal

1019. Jaya Bahadur Lama, aged 28, and Mani Lama, aged 20, Chuchepati, Kathmandu, working at a carpet factory in Boudha. On 6 December 2003, they were approached by some individuals who tried to extort money from them. At the same time, night patrolling armed police arrived at the scene and beat Mani Lama after the individuals who assaulted them told the police that they were homosexuals. Jaya Bahadur Lama was slapped when he tried to help his friend. Both men were thrown into a police van, where they were handcuffed and forced to lie face down with the head covered. They were severely beaten with rifles and boots. It is alleged that when Jaya Bahadur Lama mentioned that they were members of the Blue Diamond Society, a NGO working for the welfare of homosexuals, the assault became more severe. One hour later, they were taken to an unknown armed police camp. They were locked into a dark room, where they were severely beaten by 20 police officers. The police allegedly attempted to force them to have oral sex. They were reportedly accused of being Maoist. They were put again in the police van and later thrown in a street with their heads covered. When they uncovered their heads, they found themselves near Ratopul and Pashupatinah temple. There, they met another police van, and they explained to the police officers what had happened. Although they were in need of immediate medical assistance, the police abandoned them on the street, allegedly after they learned that they were homosexuals. Some hours later, they were taken by the Blue Diamond Society to a hospital. A complaint was filed by the same organization with the armed police headquarters. No action has been taken to investigate this case.

1161. Jaya Bahadur Lama, Ramesh Lama, Binod and Madan. On 25 July 2004, the four men were stopped by the police at about 3.30am in a street near Jamal, forced into a police van, beaten and had their money taken. While driving around the city, the van stopped and one officer took Jaya Bahadur Lama out into the street, beat him, forced him to perform oral sex and anally raped him. The men were then taken to Gausala police station where Ramesh Lama was taken into the backyard of the police station, beaten and forced to perform oral sex. Although Jaya Bahadur and Ramesh Lama manage to escape from the police, Binod and Madan were kept inside the van and were beaten and raped by approximately 12 policemen for around three hours. The Blue Diamond Society, a non-governmental organization which campaigns for the rights of sexual minorities, made a complaint to police authorities about this attack and the recent arrests may be in retaliation for this complaint.⁸⁸

⁸⁷ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2005/62/Add.1, March 30, 2005, para. 946.

⁸⁸ Please note that this case is also mentioned in the report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2005/101/Add.1, March 16, 2005, para. 409, in the report of the Special Rapporteur on the right of everyone to the enjoyment of

United States of America

1868. Frederick Mason. The Government informed that in August 2000, he filed a lawsuit against the Chicago Police Department and two officers, alleging that on 19 July 2000, he was sodomized and called racist and anti- gay names by the two officers. The Office of Professional Standards investigated this case. The Chicago Police Superintendent indicated that a medical examination on 20 July 2000, did not support Frederick Mason's allegations and that even the most basic facts do not support his allegations of physical abuse. His civil suit was settled in June 2002 for \$20,000. The City of Chicago has denied all wrongdoing and stated that there was no evidence to support the removal of the officers from the police force. The City also claims the settlement was merely for nuisance value. According to press reports, on 6 September 2002, the two police officers involved counter-sued Frederick Mason for \$20,000, claiming malicious prosecution. The Department of Justice Criminal Section closed its file in this matter after reviewing the Federal Bureau of Investigation investigation report and concluding that the matter lacked prosecutorial merit under federal criminal civil rights statutes.⁸⁹

1869. Kentin Waits. The Government informed that according to press reports, in July 2000 he argued with a Chicago police officer and shortly thereafter returned and squirted the officer with a water bottle. The following morning approximately seven officers arrested him at his home and held him at the police station for 22 hours, subjecting him to physical and anti- gay verbal abuse. In May 2001, Kentin Waits filed a lawsuit against the city, the chief of the office of Professional Standards, and certain unidentified officers. Press reports also indicated that in November 2002, after a jury trial, Waits was awarded \$15,000 in compensatory damages and \$2 million in punitive damages. Upon review, the judge reduced the jury's punitive award to \$45,000.⁹⁰

Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2004/56/Add.1, March 23, 2004

Philippines

1327. A number of men were reportedly beaten by the police on 19 February 2003 when members of the Central Police District of the Philippine National Police raided

the highest attainable standard of physical and mental health, E/CN.4/2005/51/Add.1, February 2, 2005, para. 50, and in the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2005/64/Add.1, March 29, 2005, para. 648.

⁸⁹ Further details on this case can be found in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76/Add.1, March 14, 2002, para. 1714.

⁹⁰ Further details on this case can be found in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76/Add.1, March 14, 2002, para. 1715.

the Alta Theater, a cinema frequented by homosexual persons, in Cubao, Quezon City. The patrons were reportedly subjected to physical and verbal abuse and extortion attempts and the police allegedly hit several men with their hands and hard objects, with one man reportedly being hit with a gun. In this context, 63 men were reportedly apprehended for verification and five were arrested. All of them were allegedly brought to nearby Camp Karingal. According to the information received, they were filmed when they were brought out of the cinema with no opportunity to hide their faces from the cameras; television programmes showed the scenes. Some of the men were allegedly forced into interviews by the television crews.

Uzbekistan

1878. On 5 June 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative on human rights defenders concerning Ruslan Sharipov, an Uzbek human rights activist and independent journalist who was allegedly arrested on 26 May 2003 and charged with having committed homosexual acts. He was reportedly detained in Mirzo-Ulugbek District Police Department of Tashkent city, where he was allegedly hit by the police several times and threatened with rape with a bottle. Two of his colleagues, Azamat Mamankulov and Oleg Sarapulov, were allegedly also arrested but reportedly had still not been charged.

1899. On 1 October 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative on human rights defenders concerning Ruslan Sharipov, a human rights activist and journalist, for whom previous urgent appeals had been sent on 5 June 2003 and 13 August 2003 (see above). According to new information received, Ruslan Sharipov was found guilty on 13 August 2003 of homosexuality, inciting minors to anti-social behaviour and sexual relations with a minor, despite the fact that forensic medical tests conducted after his arrest allegedly found no evidence that he had had sexual relations with minors. He was reportedly sentenced to five and a half years in prison. In a statement written from prison on 5 September 2003 addressed to the United Nations Secretary-General, Ruslan Sharipov reportedly claimed he had been subjected to torture and threats while in detention. At an appeal hearing that took place on 25 September 2003, during which his sentence was reduced to four years on appeal after charges of inciting minors to anti-social behaviour were dropped, Ruslan Sharipov's face was reportedly injured and his glasses were broken.⁹¹

⁹¹ Please note that this case is also mentioned in the report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2004/94/Add.3, March 23, 2004, paras. 481 and 487, and in the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2004/62/Add.1, March 26, 2004, paras. 811 and 819.

Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2003/68/Add.1, February 27, 2003

Ecuador⁹²

Egypt

446. A 19-year-old university student was reportedly arrested by a police officer from the Department for Eradicating Crimes Against Public Morality at the Interior Ministry, in Cairo, on 19 May 2002, and taken to the Vice Squad headquarters in the Tahrir Administrative Compound where he was allegedly beaten, severely shaken and forced to sign a confession stating that he had been a passive partner in an anal sex relationship with several men over a three-year period. He was reportedly transferred to Qasr El-Nil Prosecution office for further interrogation. Although the medical tests he allegedly underwent on 21 May 2002, upon the prosecutor's order, did not show any evidence of anal sex, he was reportedly found guilty of "habitual practice of debauchery" and of "enticing passers-by to commit indecency", and sentenced on 8 June 2002 to three years' imprisonment, a fine and three additional years of probation or close supervision.

463. On 25 January 2002, the Special Rapporteur sent an urgent appeal on behalf of five men detained in connection with their actual or perceived sexual orientation and who had already been detained, early January 2002 in Buhaira Province, southeast of Alexandria. On 15 January, the Public Prosecutor of Damanhour reportedly ordered the men to be detained while investigations were carried out into allegations of "habitual debauchery", a charge allegedly used to criminalize homosexual acts. As the Public Prosecution reportedly ordered the defendants to be medically examined by forensic experts, fears were expressed that the men would be forcibly subjected to anal examinations.

464. On 14 March 2002, the Special Rapporteur sent a joint urgent appeal with the Chairman-Rapporteur of the Working Group on Arbitrary Detention on behalf of Yassir Ahmad Fouad, Mansour Hassan Muhamad, Ali Rizq Muhammad, Muhammad Ahmad Hussein and Samir Mahmud Ali who had reportedly been sentenced on 11 March 2002 to three years' imprisonment at a trial held in Damanhour, Al-Beheira Province, on charges of "habitual practice of debauchery" and "operating a house for the purpose of debauchery". It was reported that they had confessed under duress to consensual homosexual acts. The prosecutor was said to have confirmed that they had been subjected to an anal examination. The men had allegedly been beaten at Beheira Security Directorate and Damanhour Prison and two of them had reportedly been subjected to electric shocks at Damanhour Police Station No. 1 detention facility.

⁹² Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2003/68/Add.1, February 27, 2003, paras. 431-434.

465. By letter dated 4 June 2002, the Government responded that Yassir Ahman Fouad, Mansour Hassan Muhamad, Ali Rizq Muhammad, Muhammad Ahmad Hussein and Samir Mahmud Ali had been arrested on suspicion of engaging in habitual debauchery, as defined under the provisions of the law, and sentenced to three years' imprisonment by the Damanhour Court. An appeal lodged in Damanhour was upheld in a ruling handed down on 13 April 2002, and the accused were acquitted.

Guatemala⁹³

Mexico⁹⁴

Uganda

1861. On 7 May 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on violence against women, its causes and consequences, and on the right to freedom of opinion and expression and the Chairman-Rapporteur of the Working Group on Arbitrary Detention on behalf of Susan Nabukenya and Margie Kyeyune, who were said to be detained in Kampala Central police station, on grounds of their alleged sexual orientation. On 26 April 2002, a broadsheet newspaper Red Pepper is said to have reported that on 25 April 2002, the two women had arranged a private "engagement" ceremony presided over by a pastor. They were said to have been arrested on 1 May, reportedly under Paragraph 140 of the Penal Code, which stipulates that "[a]ny person who has carnal knowledge of any person against the order of nature" is subject to 14 years' imprisonment. They are said to have been released on 3 May, but were reportedly re-arrested a couple of hours later during the night.⁹⁵

Venezuela⁹⁶

⁹³ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2003/68/Add.1, February 27, 2003, para. 579.

⁹⁴ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2003/68/Add.1, February 27, 2003, paras. 847 and 854.

⁹⁵ Please note that this case is also mentioned in the report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2003/75/Add.2, January 14, 2003, para. 228, and in the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2003/67/Add.1, February 20, 2003, para. 610.

⁹⁶ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2003/68/Add.1, February 27, 2003, para. 1948.

Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76/Add.1, March 14, 2002

Albania

16. Nasser Almalak, a Jordanian citizen, and Amanta Bakalli, secretary of the Shqata Gay Albania (Gay Albania Society), were reportedly kicked and punched by four members of the Republican Guard in Tirana on 7 April 2001. When, on the same day, they went to the headquarters of the Republican Guard to complain about this physical assault, they were allegedly subjected to sexual taunts and threats.

Argentina⁹⁷

Egypt

507. On 17 May 2001, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the independence of judges and lawyers and the Chairman-Rapporteur of the Working Group on Arbitrary Detention on behalf of at least 56 persons, amongst them [names of persons], who had reportedly been arrested on 10 May 2001 during a raid by police in Cairo of the discotheque "Queen Boat", on a boat moored in the Nile in Zamalek district. The police reportedly targeted men who appeared to them to be homosexual or who were not accompanied by women. The detained men were reportedly driven to the vice squad headquarters in Abdin police station, where they were said to be held in incommunicado detention. They were reportedly interrogated for at least two days by the High State Security Prosecution Office. Furthermore, it was reported that they were subjected to an anal forensic medical examination by the State Security authorities, which was allegedly intended to be used as proof of homosexuality. They have reportedly been transferred to Tora prison. Officials of the High State Security Prosecution Office reportedly stated that the men would be charged with exploiting religion to promote extreme ideas to create strife and belittling revealed religions. It is believed that the defendants will be made to stand trial before a State Security court, whose rulings would reportedly not be subject to appeal.⁹⁸

508. By letter dated 21 August 2001, the Government replied that the Department of State Security Prosecutions undertook an investigation concerning members of the illegal organization Wakalat Allah, Rabb ul-Junoud (the Agency of God, the Lord of

⁹⁷ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76/Add.1, March 14, 2002, para. 57.

⁹⁸ Please note that this case is also mentioned in the report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/2002/72, February 11, 2003, para. 57. The Working Group on arbitrary detention has also addressed this case in its Opinion No 7/2002 (Egypt), E/CN.4/2003/8/Add.1, January 24, 2003, and in its annual report of 2003, E/CN.4/2004/3, December 15, 2003 and of 2002, E/CN.4/2003/8, December 16, 2002.

Hosts), which was encouraging young people to embrace its ideology based on an erroneous interpretation of some verses of the Koran. All measures taken against them were in accordance with the regulations concerning remand in custody pending investigation, contrary to the allegations to the effect that they were detained illegally or questioned without lawyers being present. Since Egyptian law contains no provision that designates sexual perversion as a criminal offence, the group was officially charged with showing contempt for religion and engaging openly in debauchery. The youngest member was put on trial separately as a juvenile in August 2001.

Jamaica

829. Sixteen prisoners were reportedly killed and 40 injured in attacks on homosexuals at St. Catherines district prison and Kingston general penitentiary in August 1997, which allegedly started after the Commissioner of Corrections announced his intention to distribute condoms to guards and prisoners in an effort to control the spread of HIV/AIDS. Guards reportedly walked out in protest at the insinuation that they were having sexual relations with inmates. In the absence of supervision, inmates reportedly went on the rampage, targeting prisoners known or believed to be homosexual. No action is known to have been taken against those responsible for the violence.⁹⁹

Mexico¹⁰⁰

United States of America

1709. By letter dated 30 September 2001, the Special Rapporteur advised the Government that he had received information concerning the high rate of inmate-on-inmate sexual abuse in prisons. About 20 per cent of inmates have reportedly experienced at least one episode of forced sexual contact in detention and about 7 per cent have been raped. Depending on their age, looks, sexual orientation and other characteristics, certain prisoners are believed to be specifically targeted for sexual assault in penal facilities, and subsequently "enslaved" by other inmates. [...]

1711. Robin Lucas, an African-American transgendered woman, was reportedly detained for credit card fraud in California in 1995 and placed in the Special Housing Unit of the Federal Detention Centre, Pleasanton, where the authorities allegedly ignored her complaints about being in a unit generally housing men and visible to male inmates and guards, including when showering and using the toilet. She was reportedly harassed, taunted and threatened because of her sexual orientation. In

⁹⁹ Please note that this case is also mentioned in the reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2002/74, January 9, 2002, para. 42 and E/CN.4/2002/74/Add.2, May 8, 2002, para. 370.

¹⁰⁰ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76/Add.1, March 14, 2002, para. 1015.

September 1995, three male inmates raped her. She reportedly suffered severe injuries to her neck, arms, back, vagina and anus. The guards implicated in these abuses were reportedly transferred to another facility and no disciplinary action was taken. A civil lawsuit for compensation was reportedly settled in her favour in 1998.

1713. Gary Adkins, an inmate at Wayne County jail in West Virginia, was reportedly assaulted by correctional officers for no apparent reason in October 1999, had mace sprayed in his eyes, was beaten and subsequently denied medical treatment, resulting in a broken nose and ribs, contusions to the head and cuts and bruises. The FBI reportedly launched an investigation, which is under review by the Department of Justice. Fears have been expressed that the cause of the alleged beating was the homosexuality of the victim.

1714. Frederick Mason was reportedly arrested by police officers of the Chicago Police Department on 19 July 2000. At the police station, two unidentified officers cuffed him by the elbows and pinned him to a wall. The arresting officer reportedly pulled down his trousers and sprayed blue cleaning liquid on a billy club before ramming the baton into Mason's rectum, whilst making remarks such as "I'm tired of you faggot - you sick motherfucker". As a result, he reportedly had blood streaming from his rectum. His doctor reportedly confirmed the injury. The case is said to be under investigation by the police department's Office of Professional Standards (OPS); however, the police chief allegedly insisted that "even the most basic facts do not support Frederick Mason's allegations".

1715. Kentin Waits was reportedly involved in a minor traffic altercation with a Chicago police officer on 22 July 2000. The next morning, he was reportedly arrested at his home, and taken to the 19th District Belmont and Western police station where he was charged with assault. Staff reportedly applauded his arrival at the station. While handcuffed, he was slammed into doors and walls, resulting in lacerations to his wrists and bruises to his upper arms. He was reportedly taken to an interrogation room, handcuffed to an overhead bar, and then beaten on the face and head and kneed in the groin. The arresting officer allegedly called him a "fucking faggot" and "gay motherfucker". He was reportedly held in a cell for 22 hours, suffering from severe pain in the stomach, but denied medical treatment. In October 2000, his case was reportedly submitted for investigation to the Chicago OPS, but "not sustained" for lack of proof.

1716. Jeffrey Lyons was reportedly assaulted by a group of between 8 and 10 off-duty police officers in Chicago on 25 November 2000, who broke his nose and fractured his cheekbone, causing neurological damage, after he embraced a male friend outside a bar. An unidentified officer reportedly said "get this through your head, you faggots will never win". Jeffrey Lyons allegedly briefly lost consciousness. The officers, in two cars, reportedly tried to run over Jeffrey Lyons' companion as he took down their licence plate numbers. The case is said to be under investigation by OPS. The police reportedly failed to secure the crime scene and prevented Jeffrey Lyons from making a positive identification of his assailant until 2½ weeks after the incident had been

highlighted in the local press. Three officers identified as the owners of the fleeing cars were reportedly initially suspended, but have since returned to duty.

Venezuela¹⁰¹

Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2001/66, January 25, 2001

United States of America

1153. By letter dated 15 November, the Special Rapporteur advised the Government that he had received information according to which excessive force, in particular the use of pepper spray, has been used against protesters who were said to be non-violent. (...) Gay activists protesting the homophobic murder of Matthew Shepard in Wyoming were reportedly arrested after a demonstration in October 1998. Some activists were said to have been denied HIV medication, food and water and not given access to toilet facilities. A number of demonstrators were reportedly subjected to ill-treatment and verbal abuse by police officers, including use of homophobic epithets.

1171. Jo Lea Lamor, a transsexual person, was reportedly assaulted by two New York Police District officers, who had been summoned in response to a 911 request for emergency medical assistance in the Bronx on 24 November 1998. The police officers reportedly verbally abused her and pushed her against a wall after discovering that she was transsexual.

Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2000/9, February 2, 2000

Brazil

145. Rosana Lage Liger and Marilu Josu Silva Barbosa, two women who had been living openly as a lesbian couple, were reportedly arrested in June 1996, after an alleged partial investigation, by the local police in Jaboatão dos Guararapes, Pernambuco. Although the police claimed to have a judicial order for the women's arrest, such an order was only issued two days after the women had entered police custody. While in custody, the two women were allegedly beaten with a rubber whip and threatened with rape. They were also verbally abused for their lesbianism. The two police officers conducting the interrogation forced each woman to perform oral sex on them with the intention of showing them "what they were missing by not having sex with men". They were transferred to several detention centres and eventually moved to a prison where they remained incarcerated for 11 months. The

¹⁰¹ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76/Add.1, March 14, 2002, para. 1757.

women agreed to being examined by the state's Legal Medical Office, which corroborated the physical injuries they had sustained as a result of the police beatings. Following a public hearing in 1997, a judge ordered their release on a temporary basis. Despite the evidence of police misconduct, they have reportedly been awaiting a review of their case by the Supreme Court of Brazil for two years. They have insistently and unsuccessfully petitioned the Ministry of Justice for a full and impartial investigation into the wrongful charges, as well as into the police brutality and torture.¹⁰²

151. Claudio Orlando dos Santos, an AIDS activist from southern Brazil and President of the Florianópolis Association for the Defence of Homosexual Rights in Santa Catarina, was allegedly beaten up and verbally harassed by Florianópolis military police officers on 24 May 1994. He was reportedly beaten while distributing condoms to the travestites in Capoeiras neighbourhood, Florianópolis, on behalf of the Santa Catarina health authority. He was first harassed by a police officer and called from a public telephone the Captain of the Military Police, the Coordinator of Centro de Operações da Polícia Militar (COPOM), to report what had happened. It is then reported that the military police officers returned and beat and kicked him. After he lost consciousness, he was reportedly handcuffed and moved, in the boot of a military police vehicle, to the 8th Civil Police Precinct, where he was allegedly beaten again and insulted. A civil police officer who is said to have witnessed his illtreatment, reportedly did nothing to prevent what was happening. The military police allegedly initially prevented him from making a formal complaint. However, he was reportedly later released and filed a complaint against the military police. At that time, he was already beginning to develop full-blown AIDS and was subsequently admitted to hospital with severe gastroenteritis, possibly brought on by being ill-treated by the police. He reportedly remained in hospital until his death on 3 November 1994. The police inquiry is said to have been closed because of lack of evidence and no one was ever charged.

Malaysia¹⁰³

726. Dr. Munawar Anees was reportedly arrested on 14 September 1998 under the Internal Security Act (ISA) and was allegedly subjected to severe physical and psychological pressure during incommunicado detention to confess to sexual acts with Anwar Ibrahim on behalf of whom the Special Rapporteur intervened in October 1998 (see E/CN.4/1999/61, para. 458). On 19 September 1998, he was reportedly convicted of "unnatural offences" under section 377D of the Penal Code, after he pleaded guilty. He later reportedly appealed his conviction and sentence, claiming that his confession had been coerced. During his prolonged interrogation, he was shaved

¹⁰² Please note that this case is also mentioned in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2001/66/Add.2, March 30, 2001, para. 199.

¹⁰³ For further information please see the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2000/9/Add.5, March 14, 2000, paras. 45-46.

bald, verbally insulted and threatened, stripped naked and forced to mimic homosexual acts. He was allegedly held in a tiny windowless cell and deprived of sleep.

Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/1995/34, January 12, 1995

Romania

Information received from the Government on cases included in previous reports

614. Finally, in the case of Marcel Brosca, who was allegedly severely beaten by police in Teduci, the Iasi military prosecutor's office concluded that no violence had been exerted against him. He was convicted of robbery and homosexual activity and sentenced to five years' imprisonment.

c. Special Rapporteur on violence against women, its causes and consequences

Report of the Special Rapporteur on violence against women, its causes and consequences, mission to The Netherlands, A/HRC/4/34/Add.4, February 7, 2007

Footnote 22

Men can become targets of HRV¹⁰⁴ if they refuse to take part in the punishment of female family members or for being an accomplice to the dishonourable act. Experts in the Netherlands also tend to view homosexual or bisexual immigrant men suffering violence at the hands of homophobic family or community members through the prism of HRV. Defining honour as a general trait of certain groups and considering all related acts of violence as HRV conceals its particularities as a form of VAW.

66. There are about 20,000 women in prostitution in the Netherlands (8,000 in Amsterdam alone). An estimated two thirds of them are immigrant women from developing countries or Eastern Europe. In addition, there are smaller numbers of men and transgender persons in prostitution.

67. VAW occurring in the context of prostitution remains a significant problem. In 2004 alone, 405 cases of trafficking in women were registered by the Dutch Foundation against Trafficking in Women, which organizes shelter and other support for victims. The vast majority of detected trafficking cases relate to the sexual exploitation of women, although trafficking of women (and men) for the purpose of labour exploitation has also become increasingly more visible.

¹⁰⁴ "Honor-related violence"

Report of the Special Rapporteur on violence against women, its causes and consequences, mission to Sweden, A/HRC/4/34/Add.3, February 6, 2007

34. While these types of vulnerabilities are generally not disputed and to some extent are also addressed by special legal provisions (see below), it is hotly debated whether cultural specificities contribute to the vulnerability of women with a foreign background. In this context, the phenomenon of “honour-related violence” has commanded much public attention, especially after the murder of Fadime Sahindal in January 2002. The term –widely used by Swedish policymakers, researchers and practitioners without being clearly defined (which is a problem) - is generally employed to describe cases in which women or girls are subjected to, or threatened with, violence because they are seen as defying their family’s expectations of “honourable” social or sexual behaviour. Some also use the term to refer to cases concerning homosexual or bisexual boys and men suffering violence at the hands of homophobic family members. The Swedish National Police Board calculates that about 400 cases of honour-related violence come to the attention of the authorities every year.

67. In March 2006, Sweden reformed its refugee legislation substantially, enhancing the protection of women coming to Sweden due to a well-founded fear of gender-related persecution. In the past, women who feared persecution solely on the basis of gender were not entitled to refugee status; they could only obtain a subsidiary protection status. The new legislation abolishes this two-tier system and expands the refugee definition to include women and men who have a well-founded fear of persecution in their country of origin because of their gender or sexual orientation. Unfortunately, some problems may persist with regard to cases involving gender-related persecution by non-State actors (i.e. the typical cases). The official commentary on the new refugee legislation indicates that it does not suffice that a private actor persecutes a woman due to her gender. In addition, the State of origin has to fail in adequately protecting the woman precisely due to her gender (or one of the grounds outlined in the 1951 Convention relating to the Status of Refugees: race, nationality, etc.). A woman who has suffered gender-related persecution by a non-State actor because the State cannot protect her due to lack of resources or inefficiency would therefore not be regarded as a refugee. This interpretation of the law, which would introduce a double persecution requirement, diverges from the Guidelines on Gender-Related Persecution of the United Nations High Commissioner for Refugees (UNHCR). It is to be hoped that Swedish officials and courts will not follow this restrictive interpretation.

V. CONCLUSIONS AND RECOMMENDATIONS

71. In view of the measures already taken and the remaining deficiencies, I would like to make the following recommendations:

- (a) To the Government:

(...)

(ii). Address root causes of violence against women by:

(...)

- Strengthening efforts, including those outlined in the National Action Plan to Combat Racism, Xenophobia, Homophobia and Discrimination, to protect persons belonging to ethnic or religious minorities from discrimination in the labour market, the justice sector and other key areas. Special measures should be considered to facilitate the equal participation of women and men with an immigrant, refugee or minority background in the educational system and the labour market. The Government should also strongly consider signing and ratifying the International Convention on the Rights of All Migrant Workers and Members of Their Families;

Report of the Special Rapporteur on violence against women, its causes and consequences, mission to Iran, E/CN.4/2006/61/Add.3, March 27, 2006

51. The Penal Code in Iran divides crimes based on the punishment prescribed for each type of offence. *Hudud* crimes refer to crimes which are considered sins and which have mandatory punishments provided for in the Koran. Applicable punishments are: the death penalty; crucifixion; stoning; amputation of the right hand and, for repeat offences, the left foot; flogging; imprisonment and exile. For example, the following crimes are punishable by death: fornication involving a non-Muslim man and a Muslim woman (art. 82) and fornication by a single person involving a fourth act (art. 90), the three previous offences being punishable by 100 lashes of the whip (art. 110); homosexuality (art. 179); and consumption of alcohol as a third offence, the punishment for the earlier offences being 80 lashes of the whip. Because the punishments for *hudud* crimes are predetermined, judges exercise little discretion in deciding on punishments in these cases. Women are disproportionately charged with *hudud* crimes related to sexual and moral conduct, such as adultery, and suffer serious consequences in this regard. As will be detailed below, when women are charged with these crimes, they are often unable to refute the charge because of additional discriminatory laws and procedures governing the administration of justice.

Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2006/61/Add.1, March 27, 2006

Nepal

Letter of allegation

1. On 9 November 2005, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, sent a letter of allegation concerning the sexual harassment and beating of several metis (men who identify themselves as women) in Thamel, Kathmandu on 24 September 2005. According to the information received, on 24 September 2005 in the evening, in the tourist area of Kathmandu (Thamel), some police officers approached a group of metis. One of the police officers burnt a

cigarette on the hand of one of the metis, P. (21), forcibly touched her private parts, and demanded that she have sex with him. When she refused, the police officer reportedly became violent towards her, pulling her hair and slapping her. The other metis in the group came to help P. and the policeman went away. Later, he returned with other men who started beating the metis and the metis responded by throwing stones at the men. Among the metis who were beaten were: S (25), S (21), N, U, and R. The policeman was also reportedly injured in the head. Moreover, around 2 am on the 25th September, policemen reportedly captured a metis named KR, beat her and took her to the Durbar Marg police station accusing her of having hit one of their colleagues with a stone. KR was kept in detention up to 6pm and told that she had to pay a fine of 28,000 rupees on a public offence charge. She was also forced into oral sex with two policemen while in custody. KR was reportedly released after having paid 1000 rupees. Attempts were made to lodge a complaint on her behalf at the National Human Rights Commission and the Human Rights Cell of the Nepal Police, but both offices reportedly refused to investigate.

Urgent appeal

2. On 28 November 2005, the Special Rapporteur, jointly with the Special Rapporteur on the sale of children, child prostitution and child pornography, and the Special Rapporteur on the question of torture, sent an urgent appeal concerning RB (15) of Khidim VDC, Arghakhanchi and GN (15) of Pali VDC in Arghakhanchi. According to the information received, on 17 April 2005, RB was arrested by security forces in the district of Arghakhanchi and detained in different places of detention. At the District Police Office in Sandhikara, she was kicked and beaten by members of the security forces. She was also subjected to sexual harassment. Before she was sent to the District Police Office in Sandhikara, she was detained at Thada Army Barracks in the Arghakhanchi District for two days and Sandhikharka Army Barracks in Taulihawa for four days. On 10 May 2005, GN was arrested and initially held overnight at Sandhikharka Army Barracks in Taulihawa. She was then transferred to the District Police Office in Sandhikharka where she was kicked and beaten by members of the security forces. On 17 June 2005, they were both transferred from the District Police Office in Sandhikara to Kapilvastu Prison where they were arrested on suspicion of being involved with the Communist Party of Nepal. They were arrested under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance which allows for preventative detention for up to one year. On 4 September 2005, the Appeal Court in the neighbouring district of Butwal ruled that their detention was illegal and they were released in front of the Kapilvastu District Court on 5 September 2005. However, they were re-arrested by the police shortly after being released. It is believed that, at the time this communication was sent, they were being held at Kapilvastu District Police Station in Taulihawa, where they were thought to be at risk of torture or ill-treatment.

Report of the Special Rapporteur on violence against women, its causes and consequences, “Integration of the human rights of women and the gender perspective: violence against women; Intersections of violence against women and HIV/AIDS”, Mission to Guatemala, E/CN.4/2005/72/Add.3, February 10, 2005

II. Intersecting Systems of Oppression and Female-Headed Households

21. Women’s exposure to violence is related to their position in the multiple systems of inequality and shows a tendency to increase as these systems intersect, creating layers of discrimination and exclusion for different groups of women. Four basic systems of inequality intersect with gender hierarchies to distinguish diverse categories of women in the Guatemalan society: class (poverty); ethnicity; urban/rural residence; and displacement. Other intervening factors such as disability and sexual orientation were brought to my attention as bases for human rights violations. Therefore, most if not all women are subjected to various forms of discrimination which places them at risk of violence.

Report of the Special Rapporteur on violence against women, its causes and consequences, “Integration of the human rights of women and the gender perspective: violence against women; Intersections of violence against women and HIV/AIDS”, E/CN.4/2005/72, January 17, 2005

1. Rape and sexual assault

27. Sexual assault and coercion “exists along a continuum, from forcible rape to non-physical forms of pressure that compel girls and women to engage in sex against their will. The touchstone of coercion is that a woman lacks choice and faces severe physical or social consequences if she resists sexual advances”. Sexual assault and coercion can occur at all stages of a woman’s life, whether in the context of marriage, between close family or extended family members, between acquaintances or total strangers. Cases of lesbian women being targeted for rape specifically because of their sexual orientation in order for the aggressor to “prove [the victim’s] womanhood” have also been documented.

58. The intersection of discrimination related to gender, HIV status and sexual orientation - often combined with race and class - create multiple forms of oppression and violence that keep women subordinated. Overall, women consistently face more and greater discrimination at home, in the community, in the workplace, or in the health-care setting. (...)

Report of the Special Rapporteur on violence against women, its causes and consequences: “Cultural practices in the family that are violent towards women”, E/CN.4/2002/83, January 31, 2002

102. Women who transgress the boundaries of appropriate sexual behaviour, even in countries where honour killings do not take place, are often subject to violence. The notion of crimes of passion or provocation has often been used to justify murder of women who engage in sexual activity outside marriage. In addition, non-heterosexual orientations are also punished severely. Recently, in Zimbabwe, a young lesbian woman was locked up by her family and forced to submit to rape by an older man to “correct” her orientation. She was raped until she became pregnant.

Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2000/68/Add.5, February 24, 2000

C. Women’s legal status

13. (...)In countries such as Nigeria, women have the legal status of a minor. Women who choose to live alone, who are widowed, divorced or lesbians, and women with children outside marriage are at a severe disadvantage, as they do not share the same rights as men. (...)

Report of the Special Rapporteur on violence against women, its causes and consequences: “Violence against Women in the Family”, E/CN.4/1999/68, March 10, 1999

15. One of the primary ways in which dominant familial ideology affects women, as well as men, is through dictates on sexuality. The European Court of Human Rights has recognized same sex marriage as an aspect of article 8, on the right to private life, of the European Convention. In 1994, the Human Rights Committee found that Tasmania's discriminatory sodomy laws were a violation of articles 7(sic) and 2.1 of the International Covenant on Civil and Political Rights. The Committee read the category of "sex" in the list of prohibited bases for discrimination in articles 2 and 26 of that Covenant as covering sexual orientation. Asylum law in some countries has also recognized the need to bring sexual orientation within the gambit of international human right's protection. The Office of the United Nations High Commissioner for Refugees has recognized in an advisory opinion that lesbians and gay men constitute "members of a particular social group" for the purposes of refugee recognition.

Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/1997/47, February 12, 1997

8. The community may also be the site of restrictions on and regulations of female sexuality. In many instances, women and girl children are subjected to violence by their communities because of their sexuality and sexual behaviour. A key component

of community identity, and therefore the demarcation of community boundaries, is the preservation of communal honour. Such honour is frequently perceived, by both community and non-community members, as residing in the sexual behaviour of the women of the community. Communities, therefore, “police” the behaviour of their female members. A woman who is perceived to be acting in a manner deemed to be sexually inappropriate by communal standards is liable to be punished. Such punishments range from eviction from the community to corporal punishment, such as flogging and stoning, and death. In many cases, the restrictions on women’s sexuality, as defined by the community, are sanctioned by the State through the promulgation of laws and policies reflecting the communal values. In most communities, the option available to women for sexual activity is confined to marriage with a man from the same community. Women who choose options which are disapproved of by the community, whether to have a sexual relationship with a man in a non-marital relationship, to have such a relationship outside of ethnic, religious or class communities, or to live out their sexuality in ways other than heterosexuality, are often subjected to violence and degrading treatment. (...)

Summary of cases transmitted to Governments and replies received:

Report of the Special Rapporteur on violence against women, its causes and consequences, Communications to and from Governments, A/HRC/4/34/Add.1, March 19, 2007

C. Trends and Observations

20. 33 out of 83 communications sent (40 per cent) concerned women facing multiple and intersecting layers of discrimination.

21. Women belonging to national, ethnic or religious minorities or lower social castes, indigenous women, and migrant women are strongly overrepresented among reported victims. The Special Rapporteur has also acted on cases of transgender persons, who identified themselves as women and were targeted due to this sex identity choice, as well as on a case of a lesbian woman, who was reportedly murdered because of her sexual orientation.

22. In this regard, the Special Rapporteur would like to draw attention to the Commission on Human Rights resolution 2005/41 on the Elimination on Violence against women in which the Commission calls on States to address the specific circumstances facing indigenous women and girls in relation to gender-based violence, especially sexual violence, arising from multiple, intersecting and aggravated forms of discrimination, including racism, paying particular attention to the structural causes of violence.

Argentina¹⁰⁵

¹⁰⁵ Available only in Spanish.

Nepal

Allegation letter

448. On 6 February 2006 the Special Rapporteur has jointly with the Special Rapporteur on the question of torture sent an allegation letter to the Government of Nepal concerning police harassment and beatings of persons who are men by birth but identify as women (known as metis in Nepal).

449. In a communication dated 7 November 2005, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women already brought to the Government's attention allegations that police had harassed and physically abused several metis. Since then, additional attacks have reportedly occurred.

450. Early in the morning on 7 December 2005, police from the Shore Khutte station raided a hotel in the Thamel district of Kathmandu. The raid was reportedly a retaliatory measure against the hotel for refusing to provide a room free of charge to four policemen where they intended to have sexual relations with two metis. During the raid, eleven metis were arrested. Eight were held without charge for five days, before they were released. The other three were even detained for six days.

451. On 27 December 2005, a meti, S., was detained in Shore Khuttee Police Station. She was not promptly informed of the reasons for her arrest and detention, was not given access to a lawyer and did not have adequate access to a toilet.

452. On 28 December 2005 at about 1.30 a.m., police arrested S., another meti, and took her to Shore Khutte police station. Police at the station verbally abused her and commanded her to strip. When she refused, they stripped her forcibly of her clothes and touched her genitals while mocking her. They also threatened to cut her hair off as punishment for wearing women's clothes. She was released the next day.

453. On 31 December 2005 at about 11 p.m., police from Shore Khutte police station detained a meti from the Thamel district. One policeman beat her with a bamboo baton calling her derogatory names. She escaped, but her right hand is reportedly swollen and badly bruised.

454. On 3 January 2005 at about 10 p.m., three metis were walking in the Thamel district, when four police from Durbar Marg police station reportedly saw them and shouted: "Metis! Kill them!" One meti was beaten with a baton on her back; one policeman pulled his gun and pointed it at her, threatening that "These hijras [local Nepali term for transgender persons] pollute the society and must be cleaned out." The other two metis were also severely beaten. All three reportedly had bruises on various parts of their bodies.

Allegation letter

470. On 1 December 2006 the Special Rapporteur has jointly with the Special Representative of the Secretary-General on the situation of human rights defenders sent an allegation letter to the Government concerning M.R.C., a human rights outreach worker and member of the Blue Diamond Society.

471. Members of the Blue Diamond Society were subject of an urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on 12 August 2004. The Blue Diamond Society is a NGO working with sexual minorities, lesbian, gay, bisexual and transgender (LGBT) persons on health issues, including outreach education and prevention of HIV/AIDS, and campaigns for non-discrimination against persons based on their sexual orientation in Nepal.

472. According to the information received: On 7 July 2006 evening, M.R.C. and other metis working in the Tri Devi Marg area in Thamel were verbally abused by members of the Durbar Marg Police when M.R.C. questioned them as to why photos and videos were being taken of the metis. Previously that day, the Durbar Marg Police had arrived in Thamel, and proceeded to record on video a group of metis. One of the police officers gave instructions to the cameraman as to the whereabouts of the metis. The metis attempted to escape and hide their faces from the camera, but were reportedly forced to show their faces. The police threatened to arrest and detain them if they didn't cooperate. Furthermore, it is alleged that the police falsely told the metis that they were sent by the Director of Blue Diamond Society in an attempt to film them.

473. Concern was expressed that the above acts of verbal abuse against M.R.C. may be related to her human rights activities, specifically her outreach work with Blue Diamond Society. In addition, concern was expressed that the events represent a sustained campaign by police to harass, intimidate and humiliate metis in Nepal, including by sexual violence.

South Africa

Letter of Allegation

631. By letter dated on 28 February 2006, the Special Rapporteur on violence against women, its causes and consequences has sent a letter of allegation concerning the murder of Z.N., a 19year old lesbian woman, outside her house in Khayelitsha, Cape Town.

632. According to information received, on 4 February 2006, Z.N. and a lesbian friend, age 17, were approached by a woman who taunted them about their sexual orientation, saying that they “wanted to get raped.” The woman gathered a group of about 20 young men and boys who then attacked the two women. Z.N. was beaten, stoned and stabbed to death. Her friend managed to escape. Fearing for her life, she is currently under the protection of a non-governmental organization.

633. The police have since identified and arrested six of the alleged perpetrators, aged 17-19 years. Reportedly, however, no official has publicly condemned the incident as a hate crime. The Special Rapporteur was informed that this case does not constitute an isolated incident and that lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths. Some parts of the population believe, for instance, that lesbian women would change their sexual orientation if they are raped by a man.

Observations

634. The Special Rapporteur regrets that the Government, while formally acknowledging receipt of her communication, has not yet provided a substantive response to the allegations

Report of the Special Rapporteur on violence against women, its causes and consequences, “Integration of the human rights of women and the gender perspective: violence against women”, E/CN.4/2005/72/Add.1, March 18, 2005

Honduras¹⁰⁶

Kuwait

Urgent appeal

232. On 15 July 2004, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance concerning A.M.Al-D., aged 27 and male by birth, who underwent sex-change surgery in 2001 and changed his name from Ahmed to a women’s name. She wishes to be addressed in accordance with her female status. It is reported that the subject caused constant friction and conflict with her family. She was asked to leave Kuwait University, was subjected to constant harassment and not allowed to work. She reportedly presents classical symptoms of gender identity disorder, with psychosocial stressors including family difficulties, stress at work and study environment and difficulties coping with societal pressure. In view of these circumstances, she tried to commit suicide three times. It is reported that she went to

¹⁰⁶ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on violence against women, its causes and consequences, “Integration of the human rights of women and the gender perspective: violence against women”, E/CN.4/2005/72/Add.1, March 18, 2005, paras. 177-179.

court regarding her legal status following her sex change. She was later told that her lawyer had conducted an interview with the local media regarding her case without her consent. She is said to have taken the newspapers to court regarding the negative reports published about her. However, a group reportedly filed a request on behalf of society and on religious grounds that the case be rejected. On 23 June 2004 the judge is said to have postponed the final judgement until 7 September 2004. In this context, fears have been expressed for her physical security and access to justice owing to discrimination on the basis of her sex.

Government reply

233. By letter dated 9 September 2004, the Government reported that A.M.Al-D.A. presented a request to the judiciary on 7 June 2003 that his sex change be recognized. The court approved his request and confirmed his right to change his sex in a decision dated 24 April 2004. The Government stated that the decision confirms the fairness of the Kuwaiti judiciary and its independence, allowing a person to exercise their right to change sex and not be subjected to any discrimination.

234. In regard to the allegations in the letter sent by the Special Rapporteurs that A.M.Al-D was humiliated and discriminated against at work, leading to his dismissal, the Government affirmed that the dismissal was not based on discrimination but was in accordance with laws governing public service in Kuwait. In regard to the allegations that he suffered harassment by his family, they stated that it is not possible for the Government to intervene in such issues.

Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2003/75/Add.1, February 27, 2003

Zimbabwe

648. In August 2001 the Sexual Offences Act was enacted, which improved the legal recourses available to women. [...] Unfortunately, the same Act also criminalizes same-sex acts.

Iran (Islamic Republic of)

1012. According to the report of the State Security Forces, an average of six women are killed and maimed everyday in Tehran. Death by stoning is the prescribed punishment for offences such as adultery, prostitution and homosexuality in Iran's penal code. Other methods of punishment include hanging, flogging and amputations.

The European Union

1508. (...) Another initiative supported by Daphne is the project "Who are these boys, who are these girls?" organized by Azione Gay e Lesbica in Florence to raise awareness on violence against adolescents because of their sexual orientation. A 200-

point questionnaire published on the Internet offered young people the opportunity to give their own personal testimonies. The responses showed that 38 per cent of the gay adolescents who replied had suffered from discrimination, and 27 per cent from violence. Lesbians in particular were targeted both by families and peer groups. And while only half the victims had disclosed their experiences – sometimes years later – 42 per cent had considered suicide, and 14 per cent had attempted it.

Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2003/75/Add.2, January 14, 2003

Uganda

228. By a letter dated 7 May 2002, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on the question of torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention regarding Susan Nabukenya and Margie Kyeyune, who are said to be detained in Kampala Central police station on the grounds of their alleged sexual orientation. A broadsheet newspaper, Red Pepper, is said to have reported that on 25 April 2002, the two women had arranged a private “engagement” ceremony presided over by a pastor. The women are said to have been arrested on 1 May, reportedly under paragraph 140 of the Penal Code, which stipulates that “Any person who has carnal knowledge of any person against the order of nature” is subject to 14 years’ imprisonment. They are said to have been released on 3 May 2002, but were reportedly re-arrested a couple of hours later. Fears have been expressed that the two women may be subjected to torture or other forms of ill-treatment, especially of a sexual nature.¹⁰⁷

d. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mission to Sweden, A/HRC/4/28/Add.2, February 28, 2007

29. In March 2006 a new national human rights action plan (2006-2009) was presented to the Riksdag (2005/06:95). This second plan represents a very considerable improvement on its predecessor as it includes a chapter on economic, social and cultural rights, as well as a section on the right to the highest attainable standard of health. The right to health section has a welcome focus on discrimination,

¹⁰⁷ Please note that this case is also mentioned in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2003/68/Add.1, February 27, 2003, para. 1861, and in the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2003/67/Add.1, February 20, 2003, para. 610.

inequalities and health. The plan proposes governmental measures, in the health context, to combat discrimination based on gender, ethnicity, religion or other belief, sexual orientation, and disability (Åtgärd 55, p. 67.).

41. The Ombudsmen on disability, ethnic discrimination and sexual orientation are currently undertaking a study on the impact of discrimination on health. The Swedish National Institute of Public Health (SNIPH: Folkhälsoinstitut) is also charged with undertaking surveys on discrimination and health. Sweden's national human rights action plan (2006-2009) proposes governmental measures to combat discrimination on grounds of gender, ethnicity, religion or other belief, sexual orientation and disability, and its impact on access to, and quality of, health care. The Special Rapporteur welcomes these studies, surveys and proposals. He recommends that the Government take measures to combat inequalities in health status and access to care. These measures should focus not only on discrimination, but also on other closely-related obstacles, such as the costs of care which render health care inaccessible for some population groups.

44. There is a high incidence of psychosocial disabilities among specific population groups, including homeless persons. Up to a quarter of refugees and asylum-seekers are affected by post-traumatic stress disorder. Refugees, asylum-seekers and homeless persons all reportedly have difficulty accessing mental health care. Among children and young people, suicide, bulimia and anorexia are increasing. However, there are few mental health programmes focused on children and young persons. Discrimination and stigma have reportedly created a high incidence of psychosocial disabilities among lesbian, gay, bisexual and transgender persons. The Special Rapporteur was informed that psychosocial disabilities are the leading cause of ill-health among women in Sweden: violence and discrimination against women have contributed to this situation.

48. The Special Rapporteur welcomes the focus in the Public Health Objectives Bill on addressing the causes of psychosocial disabilities among the population, and urges the Government to ensure adequate funding for these measures. The Special Rapporteur urges the Government to ensure that it takes measures to address causes of psychosocial disabilities among vulnerable and marginalized groups, including children, adolescents, homeless persons, women, asylum-seekers, and lesbian, gay, bisexual and transgender persons.

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2006/48, March 3, 2006

49. As the Special Rapporteur concludes in his report to the General Assembly (2004), health indicators may be used to monitor aspects of the progressive realization of the right to health provided:

(a) *They correspond, with some precision, to a right to health norm.* There has to be a reasonably exact correspondence - or link - between the indicator and a right to health norm or standard. In the case of the proportion of births attended by skilled health personnel, for example, there is a reasonably precise correspondence with several human rights norms, including the rights to health and life of mother and child e.g. article 24, paragraph 2 (a) of the Convention on the Rights of the Child;

(b) *They are disaggregated by at least sex, race, ethnicity, rural/urban and socio-economic status.* Human rights have a particular preoccupation with disadvantaged individuals and groups. This preoccupation is reflected in numerous provisions of international human rights law, not least those enshrining the principles of non-discrimination and equality. While a health indicator might or might not be disaggregated, from the human rights perspective it is imperative that all relevant indicators are disaggregated. A more difficult issue is: on which grounds should the indicators be disaggregated? From the human rights perspective, the goal is to disaggregate in relation to as many of the internationally prohibited grounds of discrimination as possible.

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2004/49, February 16, 2004

Vulnerability, discrimination and stigma

32. International human rights law proscribes discrimination in access to health care and the underlying determinants of health, and to the means for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, and civil, political, social or other status that has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health (*ibid.*, paras. 26 and 59-68).

38. As has been noted, discrimination on the grounds of sexual orientation is impermissible under international human rights law. The legal prohibition of same-sex relations in many countries, in conjunction with a widespread lack of support or protection for sexual minorities against violence and discrimination, impedes the enjoyment of sexual and reproductive health by many people with lesbian, gay, bisexual and transgender identities or conduct. Additionally, the Special Rapporteur recalls that the Human Rights Committee, in *Toonen v. Australia*, observed: "Criminalization of homosexual activity would appear to run counter to the implementation of effective education programmes in respect of HIV/AIDS prevention."

Concluding remarks: Cairo

54. Fourth, sexuality is a characteristic of all human beings. It is a fundamental aspect

of an individual's identity. It helps to define who a person is. The Special Rapporteur notes the abiding principles that have shaped international human rights law since 1945, including privacy, equality, and the integrity, autonomy, dignity and well-being of the individual. The Special Rapporteur also notes the points made in paragraph 51 above, all of which have been widely accepted by the international community. In these circumstances, the Special Rapporteur has no doubt that the correct understanding of fundamental human rights principles, as well as existing human rights norms, leads ineluctably to the recognition of sexual rights as human rights.

Sexual rights include the right of all persons to express their sexual orientation, with due regard for the well-being and rights of others, without fear of persecution, denial of liberty or social interference.

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2003/58, February 13, 2003

B. Discrimination and stigma and the right to health

60. Non-discrimination is among the most fundamental principles of international human rights law. According to CESCR, ICESCR “proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health”.

4. People living with HIV/AIDS

68. Stigma associated with HIV/AIDS builds upon and reinforces prejudices related to gender, poverty, sexuality, race and other factors. Fears related to illness and death; the association of HIV with sex workers, men having sex with men and injecting drug use; and beliefs that attribute moral fault to people living with HIV/AIDS all contribute to the impact of stigma and often give rise to intolerance and discrimination. Stigma and discrimination against people living with HIV/AIDS affects the spread and impact of the disease in several crucial ways. (...)

Summary of cases transmitted to Governments and replies received:

Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2005/51/Add.1, February 2, 2005

Nepal

50. On 12 August 2004, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on freedom of opinion and expression, the Special Representative of the Secretary-General on human rights defenders, and the Special Rapporteur on torture, regarding information that had been received concerning the Blue Diamond Society of Nepal, a non-governmental organization working with sexual minorities and sexual health, including HIV/AIDS. The Society is a member of the Asia Pacific Council of AIDS Service Organizations. It was alleged that on 25 July 2004 the police seriously abused four male transvestites, Jaya Bahadur Lama, Ramesh Lama, Binod and Madan. The alleged abuse included anal rape. The Blue Diamond Society lodged a complaint against the police regarding this attack. It is alleged that on 9 August 2004, 39 members of the Society were arrested. There was concern that these arrests might be retaliation for the complaint against the police regarding the allegations of 25 July. Also, a private writ was recently filed in the Supreme Court of Nepal calling for the Society to be closed down on the grounds that the organization “promotes homosexuality”. The Special Rapporteur was concerned, inter alia, that closing down the Society would be detrimental to HIV prevention efforts in Nepal.¹⁰⁸

e. Special Rapporteur on freedom of religion

Report of the Special Rapporteur on freedom of religion, Summary of cases transmitted to Governments and replies received, A/HRC/4/21/Add.1, March 8, 2007

152. The Special Rapporteurs brought to the attention of the Government information they had received relating to a questionnaire introduced in the state of Baden-Württemberg. The questionnaire is to be answered by citizens of the 57 member states of the Organization of the Islamic Conference (OIC) who apply for German citizenship. According to the information received, on 1 January 2006, the Ministry of the Interior of Baden-Württemberg introduced a questionnaire directed principally at Muslims who want to obtain German citizenship. They are required to fill out a 30-question questionnaire, concerning a number of issues including attitudes to equality between men and women, homosexuality and freedom of religion.

¹⁰⁸ Please note that this case is also mentioned in the report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2005/101/Add.1, March 16, 2005, para. 409, in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2005/62/Add.1, March 30, 2005, para. 1161, and in the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2005/64/Add.1, March 29, 2005, para. 648.

153. The Special Rapporteurs were concerned that an obligation imposed only on the citizens of the 57 OIC member states could be discriminatory, especially considering the large Turkish community living in Germany. It was further reported that under the new legislation, those who pass the test can have their citizenship revoked if they are found guilty of acting in conflict with their responses to the questions.

Report of the Special Rapporteur on freedom of religion, mission to Nigeria, E/CN.4/2006/Add.2, March 27, 2006

50. Among other provisions, these sharia penal codes provide for a mandatory death penalty as Hadd punishments for criminal offences such as zina, rape, sodomy and incest.

73. Despite this obligation under international law, the Special Rapporteur notes with great concern that Nigerian sharia penal codes provide for death sentences for offences which do not fall into the category of the “most serious crimes”. Such a position has been taken by other United Nations human rights mechanisms, including with regard to Nigeria.

f. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Report of the Special Rapporteur on the right to freedom of opinion and expression, Summary of cases transmitted to Governments and replies received, A/HRC/4/27/Add.1, March 26, 2007

Turkey

Follow-up to previously transmitted communications

680. By letter dated 20 February 2006, the Government of Turkey replied to the communication of 22 June 2005 concerning the case of Mr Mehmet Tarhan. The Government stated that the Military Court of the 5th Infantry Training Brigade Command convicted Mehmet Tarhan on the two insubordination charges and sentenced him to a total of 4 years imprisonment. This judgment was reversed by the Military Court of Appeals on 25 October 2005, on the ground that Mr Tarhan had stated in his defence that he was gay. It was decided that a medical examination was required in order to find out whether he was eligible for military service. The Military Court however decided that such examination would have amounted to discrimination based on sexual preference according to the jurisprudence of the European Court of Human Rights and that it would be inconsistent with law. Therefore, the Court ruled on the continuation of his 4 years' imprisonment.

Report of the Special Rapporteur on the right to freedom of opinion and expression, Summary of cases transmitted to Governments and replies received, E/CN.4/2006/55/Add.1, March 27, 2006

Uganda

1046. On 5 August 2005, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Victor Juliet Mukasa, Chairperson of Sexual Minorities Uganda (SMUG), a non-profit, non-governmental organization that works towards achieving full legal and social equality for lesbian, gay, bisexual, transgender people in Uganda. According to the information received, on 20 July 2005, Victor Juliet Mukasa's home, in a suburb of the capital city Kampala, was allegedly raided during the night by local government officials. They reportedly entered his house, and in his absence, seized documents and other material relating to the activities of SMUG.

Observations

1048. The Special Rapporteur regrets not having received a reply to his communication of 5 August 2005. Pending a reply to this communication and without making any determination on the facts of this case, he deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Report of the Special Rapporteur on the right to freedom of opinion and expression, Mission to Colombia, E/CN.4/2005/64/Add.3, November 26, 2004

B. Sexual discrimination and the AIDS pandemic

75. In accordance with the nature and the spirit of his mandate, the Special Rapporteur considers that all citizens, regardless of, inter alia, their sexual orientation, have the right to express themselves, and to seek, receive and impart information. The Special Rapporteur also considers that Governments have the obligation to provide citizens with reliable information on health issues in general and, bearing in mind the extreme gravity of the epidemic, on AIDS in particular.

76. In Colombia, despite the crucial role women play in almost all sectors of the society, sexual matters are still marked by male dominance. For instance, government officials have often used concepts such as "homosexuality" and, words like

“homosexual” to denigrate their political enemies. Gay and lesbian groups and individuals’ right to freedom of opinion and expression is hindered by the opposition they find in the media where sexual issues, especially homosexuality, are treated in a prudish and traditional way and never broadcast on prime time.

77. It emerged during the meeting that the Special Rapporteur held with representatives of the Ministry for Social Protection that homosexuals and prostitutes are severely discriminated against and stigmatized, as they are considered to bear the main responsibility for the spreading of AIDS in the country. [...]

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2003/67, December 30, 2002

74. With respect to access to information for the purposes of education and prevention of HIV/AIDS, the Special Rapporteur wishes first to underline that the level of protection of human rights in a given country has a direct impact on the spread of the epidemic, and that the realization of human rights, in particular of specific groups such as women, young people, men and women working in prostitution, men who have sex with men, migrants, refugees, intravenous drug users and other vulnerable groups, is essential to reduce vulnerability to HIV/AIDS.

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2002/75/Add.1, January 17, 2002, Mission to Argentina

122. Finally, the attention of the Special Rapporteur was drawn to the situation of sexual minorities. Though discrimination against sexual minorities does not fit fully under his mandate, the Special Rapporteur is of the view that their situation deserves attention.*

123. He met with representatives of organizations of sexual minorities and transvestites who reported to him cases of violations of human rights because of their sexual orientation. The Special Rapporteur was concerned at the number of such cases.

124. The Special Rapporteur was informed that the provincial legislation allows police to impose detention or sanctions for infractions that do not constitute criminal offences. He has also been informed that in several provinces there is a “Contravention Code” which penalizes those “who are dressed as somebody of the opposite sex” with detention for up to 15 days.

* The Special Rapporteur express (sic) concern at the numerous cases of torture, arbitrary arrest and detention of members of sexual minorities, who are targeted because of their sexual orientation. Concrete cases, including deaths, were brought to the attention of the Special Rapporteur. [internal note]

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/1996/39/Add.2, March 11, 1996, Mission to the Islamic Republic of Iran

13. In a letter dated 29 April 1994, the Special Rapporteur requested the Government of the Islamic Republic of Iran for information on Mr. Ali Akbar Saidi-Sirjani, a poet and essayist, and Mr. Niazi Kermani, a poet and journalist. According to information received by the Special Rapporteur, both men were arrested on 14 March 1994 and sentenced to death, without having had a fair trial, on the accusation of "drug trafficking", "homosexual acts", the "making of alcoholic beverages", "corruption" and "accepting money from Israel".

Summary of cases transmitted to Governments and replies received:

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2005/64/Add.1, March 29, 2005

Ecuador¹⁰⁹

Iran (Islamic Republic of)

468. On 12 August 2004, the Special Rapporteur sent an urgent appeal regarding an official bill on the punishment of crimes linked to the Internet. According to the information received, the bill proposed a legislative framework that could contravene international standards on freedom of expression. [...] The bill reportedly proposed sentences of up to one year in prison and a fine of 10 million rials for offences such as "sexual organs or sexual acts—heterosexual, homosexual or with animals". [...]

Jamaica

494. On 6 December 2004, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegation concerning individuals and associations defending the rights of homosexual men and women in Jamaica, in particular the members of the human rights organisation JFLAG, the Jamaican Forum of Lesbians, All-Sexuals and Gays. The Special Rapporteur's attention had been drawn to a letter to the editor by the Jamaican Police Federation's Public Relations Officer, published in the *Jamaica Observer* of 25 November 2004. In his letter, which followed the publication on 16 November 2004 of a report by Human Rights Watch entitled "Hated to death: homophobia, violence and Jamaica's HIV/AIDS epidemic", the Police Federation's Public Relations Officer "condemn[s] the role of these so-called 'human rights' groups to spread lies and deliberately malign and slander the police force and the

¹⁰⁹ Available only in Spanish. Further details on this case can be found in the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2005/64/Add.1, March 29, 2005, paras. 324 and 327.

Government”. He called on “the Minister of Justice to examine these allegations and slap on sedition charges where necessary to both foreign and local agents of provocation”. In stating that “the Government and the police cannot be held responsible for ... the cultural responses of the population towards gay” people, the letter also appeared to condone violence against homosexual men and women. This impression was insufficiently dispelled by the assurance that “as law enforcement officers, we try our utmost ‘to serve, to reassure and to protect’ ”. The letter to the *Observer* editor raised particular concerns, against the background of reported attacks and threats against persons defending the rights of homosexual men and women in Jamaica. According to information received, on 9 June 2004 Brian Williamson, a well-known gay rights activist, was murdered in his home. Within an hour after his body was discovered, a crowd reportedly gathered outside the crime scene. A man called out, “Battyman [homosexual] he get killed!” Many others reportedly celebrated Williamson’s murder, laughing and calling out, “Let’s get them one at a time”, “That’s what you get for sin” and “Let’s kill all of them.” Furthermore, it is reported that JFLAG regularly received intimidating mail, e-mails and telephone calls. For example, according to the information received, on 16 November 2004 an anonymous male called JFLAG and stated that “homosexuals should be dead”. On 17 November at 2 p.m., an anonymous female caller stated that homosexuals should “either stay in the closet or seek asylum abroad”. On 22 November an anonymous male caller again stated that homosexuals should be dead. A letter received through the regular mail service during that week bore the message “You are a go-dead faggard”. These incidents were reported in writing to the Matilda’s Corner police station in Kingston on 26 November 2004. In view of the above, concern was expressed that individuals and associations defending the rights of homosexual men and women, in particular the members of JFLAG, might have been at risk of, on the one hand, attempts by public authorities to suppress their exercise of free speech, and, on the other hand, of violent attacks by homophobic individuals who may have gained the impression that the Government would not vigorously pursue such violence.¹¹⁰

Nepal

648. On 12 August 2004, the Special Rapporteur, jointly with the Special Rapporteur on the question of torture, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal regarding several male transvestites and the Blue Diamond Society of Nepal, a non-governmental organization working with sexual minorities on sexual health, including HIV-AIDS, and campaigning for the rights of sexual minorities. According to the allegations received, on 9 August 2004, 39 male transvestites, called *metis*, all members of the Blue Diamond Society, were arrested on the street and in public places, including bars and restaurants. They were, at the time this communication was sent, being held in Hanuman Dhoka police station and

¹¹⁰ Please note that this case is also mentioned in the report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2005/101/Add.1, March 16, 2005, para. 342.

were not given food or drinking water for their first 15 hours in custody. They were not charged with any offence at the time this communication was sent. Concerns were expressed that their physical integrity might have been at risk. On 25 July, the Police allegedly raped four male transvestites, J.B.L., R.L., B and M. They were reportedly stopped by the police at about 3:30 a.m. on a street near Jamal, forced into a police van, beaten, and their money was taken away. While driving around the city, the van stopped and one officer allegedly took J.B.L. into the street, beat him, forced him to perform oral sex and anally raped him. The men were then reportedly taken to Gausala police station, where R.L. was taken into the backyard of the police station, beaten and forced to perform oral sex. Although J.B. and R.L. managed to escape from the police, B and M were kept inside the van and were reportedly beaten and raped by approximately 12 policemen for around three hours. The Blue Diamond Society made a complaint to police authorities about this attack, Concern was expressed that the arrests might have been in retaliation to this complaint. A private writ was then filed with the Supreme Court of Nepal against the Blue Diamond Society, a non-governmental organization which is a member of the Asia Pacific Council of AIDS Service Organizations. The writ called for the closing down of the Blue Diamond Society on the grounds that the organization “promotes homosexuality”. Concerns were expressed that defending this court action would seriously hinder the effective functioning of the Blue Diamond Society, given the organization’s limited human and financial resources, and that closing down the Blue Diamond Society would be detrimental to HIV-prevention efforts in Nepal. Concerns were also expressed that other organizations working in the area of HIV prevention could be open to similar charges.¹¹¹

Saudi Arabia

790. (...)Moreover, since early March 2004, Saudi authorities reportedly blocked access to the website www.gaymiddleeast.com, a news site for the Middle East’s homosexual community. The site was also blocked in June 2003, but the Government lifted the ban one month later. According to information received, this website focuses mainly on issues dealing with homosexual rights, and does not post any information of a pornographic nature. The United States-based website www.365gay.com, with which gaymiddleeast.com is affiliated, had also reportedly been censored. (...)

Uzbekistan

972. On 19 January 2004, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders,

¹¹¹ Please note that this case is also mentioned in the report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2005/101/Add.1, March 16, 2005, para. 409, in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2005/62/Add.1, March 30, 2005, para. 1161, and in the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, E/CN.4/2005/51/Add.1, February 2, 2005, para. 50.

sent an urgent appeal concerning Ruslan Sharipov, a 25-year old journalist and human rights defender whose case was already subject of other communications sent on 5 June 2003 (E/CN.4/2004/62/Add.1) by the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on the question of torture, the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative on human rights defenders and, on 13 August and 1 October 2003 (E/CN.4/2004/62/Add.1), by the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative on human rights defenders. According to information received, Ruslan Sharipov was allegedly excluded from a general amnesty announced in December 2003 by the President, reportedly on the ground that the crime he committed was “too serious”. According to previous information, Ruslan Sharipov was arrested on 29 May 2003 and convicted on 13 August by the Tashkent City Court on charges of homosexual conduct, sex with a minor and involving minors in “antisocial behavior” (arts. 120, 128 and 127 of the Criminal Code). He was reportedly first sentenced to five and a half years in prison, a duration which was subsequently reduced to four years following his appeal in September, despite reports indicating that forensic medical tests conducted after his arrest found no evidence of sexual relations with minors and despite reported evidence that his confessions were obtained under duress. Reports also indicated that Mr. Sharipov might have been framed in connection to his human rights activities, including his reporting on police corruption and human rights abuses in the country. Fear was expressed that his exclusion from the presidential general amnesty might have been aimed at further targeting him for his activities in the defense of human rights. It was reported that calls had been made for the presidential general amnesty to extend to his conviction.

981. On 14 April 2004, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal concerning Ruslan Sharipov, a journalist and human rights activist, whose case was already the subject of urgent appeals sent by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the question of torture, the Special Rapporteur on the right to freedom of opinion and expression and the Special Representative of the Secretary-General on human rights defenders on 5 June 2003 (E/CN.4/2004/62/Add.1); by the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on human rights defenders on 13 August and 1 October 2003 (E/CN.4/2004/62/Add.1); and by the Special Rapporteur on the right to freedom of opinion and expression and the Special Representative of the Secretary-General on human rights defenders on 19 January 2004. Ruslan Sharipov was reportedly found guilty on 13 August 2003 under articles 120 (homosexuality) and 128 (sexual relations with a minor) of the Criminal Code, despite the lack of forensic medical evidence, and sentenced on appeal to four years in prison. He was reportedly subjected to torture and threats while in detention. It was widely believed that his prosecution was linked to his work as an investigative journalist and a human rights defender, in particular reporting on corruption and human rights abuses. According to information received, Mr. Sharipov, who was

reportedly eligible for early release on 11 June 2004, had reportedly been placed since 13 March 2004 under house arrest and was required to report every day to a low-security prison for work. It was reported that such a transfer was automatic once a detainee has completed one quarter of a sentence. In this context, it was alleged that he had been barred from resuming his human rights and journalism activities, under threat of losing the possibility of early release. In particular, it was reported that Mr. Sharipov would not be allowed to travel to Istanbul in late May 2004 to receive an award on the occasion of the world Newspaper Congress and World Editors' Forum.¹¹²

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2004/62/Add.1, March 26, 2004

Uzbekistan

811. On 5 June 2003, the Special Rapporteur sent an urgent appeal, jointly with the Special Rapporteur on the question of torture, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative on human rights defenders, regarding Ruslan Sharipov, an Uzbek human rights activist and independent journalist, who was allegedly arrested together with two of his colleagues, Oleg Sarapulov and Azamat Mamankulov. According to the information received, on 26 May 2003, Ruslan Sharipov was allegedly arrested and charged under article 120 of the criminal code with having committed homosexual acts. He is reportedly being detained at Mirzo-Ulugbek District Police Department of Tashkent city. The police are reportedly further inquiring into allegations that he had sex with two male minors for money. [...]

819. On 1 October 2003, the Special Rapporteur sent an urgent appeal jointly with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on human rights defenders regarding Ruslan Sharipov, a human rights activist and journalist. According to new information recently received, Ruslan Sharipov was found guilty on 13 August 2003 under articles 120 (homosexuality), 127 (inciting minors to anti-social behaviour) and 128 (sexual relations with a minor) of the Uzbek criminal code, despite the fact that forensic medical tests conducted after his arrest allegedly found no evidence that he had had sexual relations with minors. He was reportedly sentenced to five years and a half in prison. It is reported that in a statement written from prison on 5 September 2003 and addressed to the United Nations Secretary-General, Ruslan Sharipov claimed he had been subjected to torture

¹¹² Please note that this case is also mentioned in the report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2005/101/Add.1, March 16, 2005, paras. 586 and 590. Further details on this case can be found in the report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2004/94/Add.3, March 23, 2004, paras. 481 and 487, in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2004/56/Add.1, March 23, 2004, paras. 1878 and 1899, and in the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2004/62/Add.1, March 26, 2004, paras. 811 and 819.

and threats while in detention. At an appeal hearing which took place on 25 September 2003, and during which his sentence was reduced to four years on appeal after charges under article 127 were dropped, Ruslan Sharipov's face was reportedly injured and his eyeglasses were broken.¹¹³

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2003/67/Add.1, February 20, 2003

Uganda

610. On 7 May 2002, the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on torture, the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on violence against women sent a joint urgent appeal regarding Susan Nabukenya and Margie Kyeyune, who were said to be detained in Kampala Central police station in Kampala, on the grounds of their alleged sexual orientation. On 26 April 2002, a broadsheet newspaper, Red Pepper, is said to have reported that on 25 April 2002, the two women had arranged a private "engagement" ceremony presided over by a pastor. The women are said to have been arrested on 1 May, reportedly under paragraph 140 of the Penal Code, which stipulates that "Any person who has carnal knowledge of any person against the order of nature" is subject to 14 years' imprisonment. They are said to have been released on 3 May, but were reportedly rearrested several hours later after criticism of their release. It is believed that they may soon be transferred to a local police station. Fears have been expressed that the two women may be subjected to torture or other forms of ill-treatment, especially of a sexual nature, in police custody.¹¹⁴

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2001/64, February 13, 2001

Kuwait

176. On 26 January 2000, the Special Rapporteur transmitted an urgent appeal to the Government regarding the sentencing on 22 January 2000 of Dr. Alya Shu'ayb, Laila Al-Othman and Yahia Al-Rubay'an to two months in jail and a fine for writings that were said to cause harm to religion and to morality since they mentioned lesbian relationships.

¹¹³ Please note that this case is also mentioned in the report of the Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2004/94/Add.3, March 23, 2004, paras. 481 and 487, and in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2004/56/Add.1, March 23, 2004, paras. 1878 and 1899.

¹¹⁴ Please note that this case is also mentioned in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2003/68/Add.1, February 27, 2003, para. 1861, and in the report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2003/75/Add.2, January 14, 2003, para. 228.

g. Special Rapporteur on the right to education

Report submitted by the Special Rapporteur on the right to education, E/CN.4/2006/45, February 8, 2006

64. The difficulties facing young and teenage girls are often aggravated by other types of exclusion linked to disabilities, ethnic or geographical origin, sexual preferences, and religious beliefs or lack thereof, among other things.

113. The Special Rapporteur must mention cases of discrimination and exclusion where girls have been expelled from educational institutions for displaying any kind of affection for fellow students of the same sex. There have even been reports of situations in which punishment has been meted out, not for any explicit behaviour, but rather on the strength of prejudice or unfounded arguments on the part of the school authorities.

Special Rapporteur on the right to education, E/CN.4/2001/52, January 11, 2001

75. Domestic courts have started to recognize that children themselves have standing to vindicate their right to education and rights in education. The Supreme Court of Colombia examined a complaint by two boys who had been prevented from continuing their education by attending evening classes (they had to work during the day, being too poor to afford full-time education) because of their homosexuality. The Court faulted the school for having failed to exhibit the values of tolerance and respect of diversity, adding that a public school which posits that “homosexuality is sinful” excludes potential learners. [...]

h. Special Rapporteur on the independence of judges and lawyers

Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/4/25, January 18, 2007

II. CLASSIFICATION OF THE SITUATIONS ADDRESSED BY THE SPECIAL RAPPORTEUR, 1994-2006

B. Standards and practices relevant to the rule of law, the smooth functioning of the judicial system and the right to a fair trial

21. There are many complex complaints about unequal access to justice. This problem particularly affects the most vulnerable groups (such as children and persons with mental illnesses), those who are discriminated against or persecuted (for example, on grounds of their sex, sexual orientation, ethnic origin, or religious convictions or

practices) and members of some social groups (for example, human rights defenders, environmentalists and campaigners seeking to protect natural resources). These same groups often lose out from a failure to enforce court decisions, particularly where economic, social and cultural rights are at issue. Both the lack of access to justice and the failure to enforce court decisions relating to economic, social and cultural rights are symptomatic of the relationship between key economic and social factors and the administration of justice.

23. As regards judges, it is often the case that aspects of the statutes governing the judiciary or legal safeguards on conditions of practice in fact impair judicial independence, one example being when judicial appointments are non-permanent and are within the direct gift of the head of State. Short of this extreme, practices involving discrimination on grounds such as political allegiance, religion, beliefs about human rights, sex, sexual orientation, physical disability or ethnic origin can leave judges in a precarious position, affecting their employment and promotion prospects.

Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/4/25, January 18, 2007

21. There are many complex complaints about unequal access to justice. This problem particularly affects the most vulnerable groups (such as children and persons with mental illnesses), those who are discriminated against or persecuted (for example, on grounds of their sex, sexual orientation, ethnic origin, or religious convictions or practices) and members of some social groups (for example, human rights defenders, environmentalists and campaigners seeking to protect natural resources). These same groups often lose out from a failure to enforce court decisions, particularly where economic, social and cultural rights are at issue. Both the lack of access to justice and the failure to enforce court decisions relating to economic, social and cultural rights are symptomatic of the relationship between key economic and social factors and the administration of justice.

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**Report of the Special Rapporteur on the independence of judges and lawyers,
E/CN.4/2005/60/Add.3, February 22, 2005, Mission to Brazil**

A. Discrimination against or further victimization of social groups within the judicial system

24. Lack of access to justice is more of a problem for social groups who suffer from discrimination or marginalization. The Special Rapporteur heard many accounts of court cases involving people from these groups who claimed that the initial violation of their rights had been compounded by their victimization by the judicial system, which reproduces the same discrimination and the same prejudices in the administration of justice. The people most affected are children and young persons, women, people on low incomes, indigenous people, homosexuals, transvestites, the Quilombola, people of African descent, the sick and members of social movements such as landless workers and environmentalists.

28. The victims of sexual exploitation and individuals who prostitute themselves are generally at a high risk of violence and ill-treatment in a climate of blatant impunity for their aggressors. The Special Rapporteur received information from attorneys acting on behalf of such individuals regarding specific cases in which the complaints filed by them had not been processed. Transvestites, transsexuals and homosexuals are also frequently the victims of violence and discrimination. When they turn to the judicial system, they are often confronted with the same prejudices and stereotypes they face in society at large.

29. Nevertheless, there is already in Brazil a body of jurisprudence on issues related to sexual orientation, which has enabled significant progress to be made in recognizing the human rights of lesbians and gays. Although still insufficient, this jurisprudence contains pioneering judgements on issues such as equal treatment in the public sector, employment contracts and family matters.

**Report of the Special Rapporteur on the independence of judges and lawyers,
E/CN.4/2003/65, January 10, 2003**

The Bangalore Principles of Judicial Conduct (excerpts)

Value 5: Equality

Principle:

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application:

5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes (“irrelevant grounds”).

[...]

Summary of cases transmitted to Governments and replies received:

Report of the Special Rapporteur on the independence of judges and lawyers, Situations in specific countries or territories, A/HRC/4/25/Add.1, April 5, 2007

United Arab Emirates

Communications sent

375. On 13 March 2006, the Special Rapporteur sent a joint urgent appeal together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Sultan Salem Sultan Bunawwas, Magid Muhammad Khalifa al-Mazru`I, Salih Muhammad Hussein Ahmad, Salah Yusif Hamza al-Asmakh, Shihab Muhammad Abdullah al-Mihirbi, Ahmad Muhammad Thani al-Mazru`I, Khalid Jamal Ali al-Manna`I, Abd al-Basit `Ubaid Mubarak, Nawwaf Hassan Sa`id al-Khamairi, Ahmad Rashid Abdullah al-Naqbi, Gum`a Khadim al-Muhairi and Ahmad Hamid Ali al-Marri, who were found guilty of homosexuality and obscenity. According to the information received, on 22 November 2005, police raided a villa in Ghantout and arrested 26 men who were gathering there. The police apparently acted in response to allegations that homosexual conduct was taking place and that some of the men were wearing women’s garments or make-up. It is reported that during the raid, police punched, kicked and beat some of the men. A few days after their arrest, a government official alleged that members of the group would be given male hormone injections, though this claim was later denied by another government spokesperson. Police allegedly beat the men again when they were in custody with the aim of forcing them to confess their homosexual conduct. It is also reported that some members of the group were subjected to invasive forensic examinations in an effort to prove their homosexuality. In a trial in February 2006, 12 of the 26 men, including almost all of those who were subjected to invasive bodily examinations, were sentenced to six years’ imprisonment on charges relating to homosexuality and obscenity, while a thirteenth man received a lighter sentence. Their case is now pending appeal, which should take place on 14 March 2006. The other 13 men arrested were reportedly prosecuted and acquitted. It is the understanding of the Special Rapporteurs that the law of the United Arab Emirates stipulates that a person can only be found guilty of homosexuality if four witnesses unanimously agree that they saw the act or if one of the participants confesses. In this case, it is reported that no witnesses testified against the defendants and that there was no other indication that any of them had engaged in homosexual conduct together. On the other hand, according to the information received, the alleged confessions presented as evidence

were extracted under invasive forensic examinations which could amount to torture and could therefore not be used as an evidence for a conviction.

Report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/2002/72, February 11, 2002

Egypt

57. On 17 May 2001 the Special Rapporteur sent a joint urgent appeal with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture concerning 56 individuals who were arrested on 10 May 2001, allegedly because of homosexual activities. These individuals were held in incommunicado detention and denied access to lawyers. It was further alleged that they were to be tried in a State Security Court for the offence of exploiting religion to promote extreme ideas to create strife and belittling revealed religions.¹¹⁵

59. On 19 November, the Special Rapporteur sent a joint urgent appeal with the Chairman of the Working Group on Arbitrary Detention concerning the arrest of four presumed homosexuals under charges of “habitual practice of debauchery”. According to the information received, the four men were arrested on 10 November 2001 and have since been detained in the Boulak prison in Giza. Reportedly, the four had not been charged, and it was not clear whether, if charged, they would appear before the Emergency State Security Court or a civil court. It is alleged that while in detention, the four men have been subjected to beatings and humiliating treatment.

63. On 21 August, the Special Rapporteur received a response from the Government to the joint urgent appeal of 17 May 2001. The Government explained that the individuals concerned were members of an illegal organization and that all the measures taken against them were in accordance with the regulations concerning remand in custody pending investigation, contrary to the allegations that they were detained illegally or questioned without their lawyers present. Since Egyptian law contains no provision that designates sexual perversion as a criminal offence, the group was officially charged with showing contempt for religion and engaging openly in debauchery. During August, the youngest member of the group was put on trial separately since, being a juvenile, he is not subject to the measures applicable to adults.

64. The Special Rapporteur thanks the Government for its replies. He notes from press reports that at the trial of those suspected of homosexual activities (see his appeal of 17 May above) 23 persons were convicted and sentenced to terms of imprisonment of between three and five years, and 29 were acquitted. He remains concerned about the allegations of lack of access to lawyers and legal advice in

¹¹⁵ Please note that this case is also mentioned in the report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2002/76/Add.1, March 14, 2002, para. 507. The Working Group on arbitrary detention has also addressed this case in its Opinion No 7/2002 (Egypt), E/CN.4/2003/8/Add.1, January 24, 2003, and in its annual reports of 2003, E/CN.4/2004/3, December 15, 2003 and of 2002, E/CN.4/2003/8, December 16, 2002.

sensitive criminal cases and the use of the State Security Court for the trial of crimes not constituting a threat to the security of the State.

Report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/1998/39, February 12, 1998

Brazil

43. On 24 September 1997, the Special Rapporteur sent a communication to the Government concerning Pedro Montenegro, a lawyer, member of the Permanent Forum Against Violence of Alagoas (FPCV-AI) and member of Amnesty International Brazil Section, and Marcelo Nascimento, lawyer and President of the Grupo Gay de Alagoas and member of the FPCV-AI. It was alleged that both of them had received anonymous telephone calls warning them that unless they dropped their investigations into the murders of two homosexuals and a transvestite on 6 June 1996, they would be killed.

i. Special Rapporteur on sale of children, child prostitution and child pornography

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, E/CN.4/2004/9, Add.2, February 3, 2004

Brazil

41. Gay, lesbian, bisexual and transgender adolescents are more exposed to violence, especially psychological violence. Hostile reactions by society to their gender and sexuality may leave them alone in a marginalized situation that exposes them to exploitation.

48. Article 231 of the 1940 penal code prohibits the international trafficking of women for prostitution. The definition of trafficking according to article 231 is limited. Firstly, it only considers international and not internal trafficking. Secondly, the only persons identified as potential victims are women. This means that the legislation does not cover trafficking of male adults (male children being covered by ECA) nor male to female transgenders if registered as men. Thirdly, article 231 only considers trafficking for prostitution and not for other purposes.

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, E/CN.4/2004/9, January 5, 2004

L. Groups discriminated against and exposed to higher risks

118. Some groups are exposed to greater risk of trafficking and sexual exploitation. This is due to different factors and depends on the economic and sociocultural

contexts. Those children who are generally more exposed include those belonging to ethnic minorities and indigenous peoples, those living in extreme poverty, street children, migrants, homosexuals, lesbians, bisexuals and transgender children. Social exclusion and discrimination are the underlying causes of the higher degree of risk that some groups face vis-à-vis CSEC [Commercial Sexual Exploitation of Children].

124. Up to 50 per cent of homeless children in Los Angeles, California, identify themselves as gay, lesbian or bisexual and have been forced onto the streets because of homophobia in their homes, schools and communities. They come from all corners of the world. (...)

Summary of cases transmitted to Governments and replies received:

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, E/CN.4/2000/73, January 14, 2000

Canada

110. In 1984, the Federal Government appointed the Committee on Sexual Offences against Children and Youth (the Badgley Committee) to explore legal sanctions pertaining to child sexual abuse and to make recommendations aimed at protecting children at risk. (...) The Badgley Committee also determined that many males involved in prostitution ran away from home because they were ridiculed and ostracized for their homosexual preferences. With little support from family members and a homophobic school environment, many young males turned to the streets where they believed they could meet people of the same sexual preferences and where they could escape from the hostility and derision of family and friends.

139. Many males run away to escape discrimination based on their sexual orientation. Once living on the streets, poverty and inadequate services make prostitution a viable alternative for such youth.

j. Special Rapporteur on adequate housing

Report by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, E/CN.4/2006/118, February 27, 2006

A. Groups of women in vulnerable situations

30. There are different groups of women who can be particularly vulnerable to discrimination and, due to a combination of factors, face additional obstacles in accessing adequate housing. The Special Rapporteur reiterates the fact that special attention is required for some groups/categories of women who can be more

vulnerable than others, at higher risk of becoming homeless, facing violence or suffering from the consequences of inadequate housing and living conditions. Such groups often include victims of domestic violence, widowed, elderly, divorced or separated women, female-headed households, women forcibly separated from their children, women victims of forced evictions, indigenous and tribal women, women with disabilities and women in conflict/post-conflict situations, women from ethnic and national minorities, including refugees, migrant women workers, women from descent- and work-based communities, domestic women workers, sex workers, and lesbian and transgender women. The testimonies from recent regional consultations have highlighted additional groups of women who can be particularly vulnerable to violations of their right to adequate housing including Roma/traveller women, women who have become widows as a result of HIV/AIDS, and young women - particularly young homeless women.

Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, "Women and adequate housing", E/CN.4/2005/43, February 25, 2005

Summary

Critical factors affecting women's right to adequate housing and land are lack of secure tenure, lack of information about women's human rights, lack of access to affordable social services as a result of privatization, lack of access to credit and housing subsidies, bureaucratic barriers preventing access to housing programmes, rising poverty and unemployment and discriminatory cultural and traditional practices. The Special Rapporteur notes that a State's obligation to eliminate gender discrimination is one of *immediate effect* and failure to do so constitutes a human rights violation. There is an urgent need to address multiple forms of discrimination that women face on grounds including race, class, ethnicity, caste, health, disability, sexual orientation, and other factors. An intersectional approach to gender discrimination is essential to address such multiple forms of discrimination faced by women.

II. Thematic findings

A. Violence against women

47. The regional consultations also revealed new areas of research, such as gaining a deeper understanding of: the principle of non-discrimination as reflected in the International Covenant on Economic, Social and Cultural Rights in addition to expanding on the housing and land rights dimensions of non-discrimination as traditionally understood in CEDAW; the precise meaning and application of substantive equality and the intersectionality approach, which can illustrate how adequate housing manifests differently for each person according to his or her age, economic status, gender, race, ethnicity, caste, citizenship, health, sexual orientation

or other factors, and which can guide policy formulation on women and adequate housing, particularly for specific groups of women.

F. Multiple discriminations

63. It has been widely recognized that many women face multiple forms of discrimination, including on grounds of race, class, ethnicity, caste, health, disability, and other factors. In addition to the groups mentioned below, migrant women workers, women from descent- and work-based communities, domestic women workers, women in prison, sex workers, and lesbian and transgender women may face violations of their right to adequate housing because of their marginalized status. [...]

69. The Special Rapporteur will provide a more complete list of particular groups of women who face multiple forms of discrimination and recommendations for specific policy actions in his next report.

k. Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, E/CN.4/1999/32, December 28, 1998

Annex IV

Discriminatory laws

Some of the discriminatory laws faced by minorities in Iran are:

Article 121 of the Islamic Civil Code: The punishment for “homosexual touching” (Tafkheey) and similar acts, if there is no entry, is 100 lashes. However, if the subject is a non-Muslim and the object a Muslim, the punishment for the subject is death.

Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, E/CN.4/1996/59, March 21, 1996

44. The Special Representative is informed that, under Iranian legislation, specifically the law of Hodoud and Qesas and the Ta’azirat, sometimes described collectively as the Islamic Penal Code of the Islamic Republic of Iran, the death penalty may be applied for the following offences: spreading corruption on Earth (mofsed); assassination; armed robbery; kidnapping; rape; adultery or incest, sexual relations by force or coercion and by a non-Muslim man with a Muslim woman; sodomy; apostasy; drug-trafficking and the use of arms to create fear and intimidation among the people or depriving them of their freedom and security. [...]

I. Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Political platforms which promote or incite racial discrimination. Updated study by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/HRC/5/10, May 25, 2007

II. REGIONAL CONTEXTS AND CHARACTERISTICS

A. Europe

26. In Poland, the League of Polish Families (Liga Polskich Rodzin, LPR), considered by many as a far-right party, is an ultraconservative Catholic and nationalist political party and a partner in the current governing coalition, which has an open racist and anti-Semitic discourse. In June 2006, the European Parliament condemned a rise in racist, xenophobic, anti-Semitic and homophobic intolerance in Poland and urged the Government to tone down its rhetoric or risk sanctions. In September 2006, the Anti-Defamation League called on the Polish Government to remove the head of LPR from his position as minister of education because of the anti-Semitism manifested by his party.

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Summary of cases transmitted to Governments and replies received, A/HRC/4/19/Add.1, June 5, 2007

Germany

66. According to the information received, on 1 January 2006, the Ministry of the Interior of Baden-Württemberg introduced a questionnaire directed principally at Muslims who want to obtain German citizenship. They are required to fill out a 30-question questionnaire concerning a number of issues, including attitudes towards equality between men and women, homosexuality and freedom of religion. The questionnaire included questions such as: “Where do you stand on the statement that a wife should obey her husband and that he can hit her if she fails to do so?”; “Imagine that your adult son comes to you and says he is homosexual and plans to live with another man. How do you react?”; “What do you think if a man in Germany is married to two women at the same time?” and “Were the perpetrators of the attacks of September 11 freedom fighters or terrorists?”

67. The Special Rapporteurs expressed their concern that an obligation imposed only on the citizens of the 57 member States of OIC could be discriminatory, especially considering the large Turkish community living in Germany. It was further reported that, under the new legislation, those who pass the test can have their citizenship

revoked if they are found guilty of acting in conflict with their responses to the questions.

Poland

Communication sent

137. On 26 April 2006, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal regarding the third annual Krakow March for Tolerance, which was due to take place in Krakow, Poland, on 28 April 2006. The Krakow March for Tolerance is a peaceful march organized by the Campaign against Homophobia in Poland and aims to provide a platform for discussion about tolerance, antidiscrimination and respect for the rights of all persons regardless of their perceived sexual orientation.

138. According to the information received, a number of organizations had indicated their fear that past violence against this type of peaceful demonstration was likely to occur on this occasion. In 2004 peaceful participants in the Krakow March for Tolerance were victims of physical attacks by extreme nationalist groups. In November 2005 demonstrators in Poznan were reportedly harassed and intimidated by members of a right-wing group known as the All Polish Youth. At both events it was reported that the police stood by and failed to protect the demonstrators from being harassed and intimidated by members of the All Polish Youth who shouted discriminatory slogans at them including "Let's get the fags", and "We'll do to you what Hitler did to the Jews". Furthermore, when the police did intervene it was reportedly in a violent manner and against the peaceful demonstrators.

139. The Poznan event had already been brought to the attention of the Government of Poland in a communication sent by the Special Rapporteur and the Special Representative of the Secretary-General on the situation of human rights defenders on 5 December 2005 (see E/CN.4/2006/16/Add.1, paras. 72-73).

140. Nevertheless, the Special Rapporteur and the Special Representative expressed their continued concern about the reported harassment of human rights defenders campaigning for equality and against discrimination based on perceived sexual orientation, and encouraged the Government of Poland to protect participants in the Krakow March for Tolerance against any possible discriminatory or hateful abuse.

Reply from the Government

141. On 14 June 2006, the Government of Poland sent a reply to the urgent appeal sent by the Special Rapporteur on 26 April 2006, informing him that the Krakow authorities had taken all the necessary measures to ensure that freedom of assembly was not restricted. Two gatherings were authorized to take place on 28 April 2006: the March of Krakow Tradition and Culture and the March of Tolerance. To avoid

possible confrontation with the former, the organizers of the March of Tolerance proposed a procession route in consultation with the Krakow police. Since the organizers of both public gatherings in Krakow met all the legal requirements necessary to conduct a demonstration, there were no grounds for prohibiting either the March of Tolerance or the March of Krakow Tradition and Culture. Thus, the municipal authorities ensured freedom of peaceful assembly to participants in both demonstrations.

142. The Government further reported that meetings with the organizers had been held to ensure the security of the participants. At the same time, it was agreed that representatives of the Krakow municipal authorities would also participate in the security operation. Seeing that in the past participants in the March of Tolerance had been attacked by hooligans, the police decided that special security measures should be engaged to protect the gathering. A total of 435 police officers were assigned to protect both demonstrations, the great majority of whom provided security for the March of Tolerance.

143. When the counter-demonstrators became aggressive, the police formed a cordon around the marchers, protecting them from possible incidents. Two attempts were made to block the procession. The police responded by ordering the troublemakers to disperse, and then used force against them. These measures were commensurate with the situation, and excessive force was avoided in restoring public order and security. During the operation, the police detained 11 individuals for disturbing the peace.

144. The Government indicated that the Krakow municipal authorities, while recognizing that some demonstrations might irritate or upset individuals who opposed their ideas or objectives, acted on the correct assumption that people should be free to organize demonstrations without fear of violence on the part of their opponents. Such fear could prevent associations or groups from openly expressing their views on various important social issues. True freedom of peaceful assembly must not be limited solely to abstention from intervention by the State; sometimes it requires the competent authorities to become actively involved. In ensuring the security of the march, police allowed participants to safely manifest their views.

145. Finally, the Government noted that these measures were concordant with international human rights agreements binding on Poland, and also the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly on 9 December 1998.

Follow-up to previously transmitted communications

146. On 21 February 2006, the Government replied to the Special Rapporteur's letter dated 5 December 2005 concerning the banning of assemblies organized by the sexual minority community in Warsaw (June 2004 and May 2005) and Poznan (November 2005). The Government of Poland indicated that it did not share the concern

expressed by the Special Rapporteur in connection with the abolition of the Office of the Government Plenipotentiary, at the same time determining that “tasks pertaining to the prevention of all forms of discrimination shall be implemented by the Minister of Labour and Social Policy and the remaining members of the Council of Ministers, as competent.”

147. Pursuant to an ordinance issued by the Prime Minister on 9 December 2005 concerning the statute of the Ministry of Labour and Social Policy, a department for women’s affairs, the family and prevention of discrimination was established within the structure of the Ministry. In accordance with the Ministry’s rules of procedure, the department “is responsible for coordination of actions connected with the status of women and the family in society, and implements tasks concerning the prevention of discrimination in all spheres of social, economic and political life, with the exception of matters concerning the prevention of ethnic discrimination” (ordinance of the Minister of Labour and Social Policy of 30 December 2005 introducing the rules of procedure of the Ministry of Labour and Social Policy). The above circumstances indicate that protection against discrimination will now be broader than in the past, since it will not be restricted to issues of gender inequality.

150. The Government of Poland reported also on the training for law enforcement officials concerning the rights of sexual minorities. Problems pertaining to discrimination are discussed during training provided by State institutions to many professional groups. One example of such training was the PHARE 2002 project “Strengthening AntiDiscrimination Policies” implemented by the Secretariat of the Government Plenipotentiary for Equal Status of Women and Men. A key component of the project consisted in preparing a model and programme of training on the prevention of and fight against discrimination on the grounds of race, ethnic origin, sexual orientation, gender and religion. The training was designed to provide representatives of different professional groups with the knowledge needed to identify and counter discriminatory phenomena and to sensitize them to the possibility of discrimination against different social groups. An additional, long-term assumption of the project was that it would lead to the implementation of similar training by professional associations, thus increasing the number of persons sensitized to discrimination and prepared to counteract it effectively.

152. Poland ratified the International Covenant on Civil and Political Rights on 3 March 1977, thus guaranteeing to all persons on its territory and subject to its jurisdiction full protection of the rights and freedoms envisaged under the Covenant. Discrimination, including against groups of different sexual orientation, is prohibited in a number of legal acts. Any person who has been denied equal treatment may pursue appropriate claims. Protection against discrimination on different grounds is explicitly provided in the Constitution, as well as civil, criminal and labour law. Since 1 May 2004 Poland has also been bound by directives obligating EU member States to ensure individual assistance to victims of discrimination in pursuing their claims connected with discrimination. In particular, the Constitution of the Republic of Poland of 1997 (art. 32) provides that all persons are equal before the law, have the

right to equal treatment by public authorities and cannot be discriminated against for whatever reason in political, social or economic life. The Penal Code of 1997 (arts. 256 and 257) prohibits the instigation of hatred because of national, ethnic, racial and religious differences or non-denominationalism, and similarly insulting behaviour. The Civil Code of 1964 (arts. 23 and 24 in connection with art. 415) also provides victims of discrimination with the possibility of seeking damages. Under the Civil Code victims may invoke provisions protecting personal interests to claim damages or compensation. Also, the Labour Code of 1974 prohibits any direct or indirect discrimination in employment, employee recruitment and in work relations. 153. It should be emphasized that the legal regulations prohibiting discrimination grant persons of different sexual orientation the same legal protection as that enjoyed by other persons whose rights have been violated through discrimination. The prohibition of discrimination against all persons in political, social and economic life is a constitutional principle. It is obvious that this also encompasses the prohibition of discrimination on the ground of sexual orientation. The prohibition of this type of discrimination is contained in numerous international agreements to which Poland is a party. Since the Constitution stipulates that an international agreement ratified upon prior consent granted by statute has precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes, it should be understood that full institutional protection against all forms of discrimination is ensured within the Polish legal order.

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, mission to The Russian Federation, A/HRC/4/19/Add.3, May 30, 2007

p. 2

The Special Rapporteur formulates a number of recommendations, including the following:

(...)

The establishment of an independent institution aiming at the promotion and protection of human rights and the combat against all forms of discrimination with a particular emphasis on racial discrimination and xenophobia and including discrimination on grounds of religion, ethnicity, nationality, citizenship, residence, gender, age, disability and sexual orientation.

83. The Government should also consider the establishment of an independent body at Federal level aiming at the promotion and protection of human rights and the combat against racism, xenophobia and discrimination in a holistic manner, including discrimination on grounds of race, religion, ethnicity, nationality, citizenship, residence, gender, age, disability, sexual orientation and any other status. The composition of this body, whose work would be supported by regional branches, should be representative of the diversity of Russian society, with its members being appointed by Parliament on the basis of proposals presented by the Government, civil society organizations and cultural, religious and linguistic communities. This body

would work in close cooperation with relevant State and civil society actors, in particular the Office of the Ombudsman and regional ombudsmen, and should be given administrative, legal and normative powers to investigate acts of racism and discrimination and provided with adequate human, material and financial resources.

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, mission to Switzerland, A/HRC/4/19/Add.2, January 30, 2007

87. The Special Rapporteur therefore recommends that the Government make available the appropriate means, mechanisms and institutions to implement this political will (...)

At the institutional level, the Special Rapporteur recommends two measures:
(...)

In order to ensure a holistic approach that takes account of common underlying sources and of the link between all forms of discrimination, the Government should establish a federal commission to promote human rights and combat all forms of discrimination relating to race, religious belief, gender, age, disability and sexual preference. Bearing in mind the urgency of questions relating to racism and xenophobia, the commission should attach high priority, at the initial stage, to combating racism and xenophobia. The commission's mandate should incorporate the current mandates of the Federal Commission against Racism and the Federal Commission for Foreigners. The commission should be structured around subcommissions relating to each of these forms of discrimination and should be granted administrative, legal and normative powers of investigation, action and appeal with respect to all forms of discrimination, as well as the appropriate human, material and financial resources. Its budget should be allocated by the Federal Assembly. The president and members of the commission should be appointed by the Federal Assembly at the proposal of the Government, in consultation with political parties, civil society organizations and all cultural, religious and linguistic communities, in order to reflect the diversity of Swiss society and the necessary balances. The commission should submit an annual report to the Federal Assembly containing an assessment of the situation and action-oriented recommendations for ensuring the promotion of and respect for human rights, and for combating all forms of discrimination. The commission should be administered by a technical secretariat under its authority, either by the transfer, strengthening and transformation of the current Service for Combating Racism, reinforced with additional human, material and budgetary resources, or by a new mechanism. This service should be given the mandate of follow-up, collection of statistical data, and recording and analysing incidents, manifestations and expressions of discrimination, for the commission.

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/HRC/4/19, January 12, 2007

31. Lastly, on 27 and 28 November 2006, the Special Rapporteur participated in the Race Convention 2006 in London, organized to mark the thirtieth anniversary of the Commission for Racial Equality, during which he talked about the additional challenges that globalization poses to efforts to combat racism, racial discrimination, xenophobia and related intolerance. In this context, he wishes to commend the Commission's outstanding contribution to the campaign against racism in the United Kingdom. He hopes that the new institution, the Commission for Equality and Human Rights, which is to replace the present Commission for Racial Equality, will be able to make combating racism a high priority, while promoting a holistic approach to the fight against all forms of discrimination (including race, religious belief, age, disability and sexual preference), as recommended by the Special Rapporteur in his recent reports.

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Summary of cases transmitted to Governments and replies received, E/CN.4/2006/16/Add.1, March 27 2006

Poland

Communication sent to the government

72. On 5 December 2005, the Special Rapporteur, jointly with the Special Rapporteur on Human Rights Defenders, sent an urgent appeal to the Government concerning information received regarding the events following a public event known as the Equity March. On 15 November 2005, the mayor of the city of Pozna banned a public event known as the Equality March, which had been organized by a number of lesbian, gay, bisexual and transgender (LGBT) and women's rights organizations. The march was planned to take place on 19 November 2005 and was intended to provide a platform for discussion about tolerance, anti-discrimination and respect for the rights of sexual minorities. The ban was issued on the grounds of security concerns, despite the fact that security measures had already been agreed to between the municipality and the organizers of the march. Despite the ban, a few hundred protestors gathered on 20 November 2005 for a demonstration. The demonstrators were reportedly harassed and intimidated by members of a right wing group known as the All Polish Youth who shouted discriminatory slogans at them including "Let's get the fags", and "We'll do to you what Hitler did with Jews". The police only intervened toward the end of the march to disperse the crowd. It is reported that in so doing the police roughly handled several individuals and arrested and interrogated over 65 persons, who were later released. Moreover, in November 2004, the Equality Parade was stopped when the police failed to protect the demonstrators from members of the All Polish Youth who blocked the event. In September 2005 a Warsaw court had declared illegal the decision of the Mayor to ban the Equality Parade.

73. In light of the fact that Equality Parades had also been banned in Warsaw in June 2004 and in May 2005, concern is expressed that the banning of Equality March in Pozna was based primarily on intolerance towards the LGBT community in Poland. This is highlighted by the fact that political figures are reported to have publicly made homophobic statements. For example, when the Equality Parade of May 2005 was banned, Mr. Lech Kaczy, the current President of Poland and former Mayor of Warsaw, had stated that the parade would be 'sexually obscene' and offensive to other people's religious feelings. Less than a week after this parade was to take place, the Mayor authorized another march to take place during which members of the All Polish Youth reportedly shouted slogans inciting intolerance and homophobia. Other political figures were also reported to have made public homophobic statements, including that if 'homosexuals try to infect others with their homosexuality, then the state must intervene in this violation of freedoms'. Other public figures called for no tolerance for homosexuals and deviants and called on the public not to mistake the brutal propaganda of homosexual attitudes for calls for tolerance. Concern is further expressed in light of the recent abolition of the Office of the Government Plenipotentiary for the Equality of Men and Women which body was responsible, inter alia, for the promotion of equal treatment of sexual minorities.

Observations

75. The Special Rapporteur intends to follow up on this case. In the event that no response is received from the Government, he will no longer treat the case as a mere allegation but as a proven fact.

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, mission to Japan, E/CN.4/2006/16/Add.2, January 24, 2006

79. A national commission for equality and human rights should be established, in conformity with the Paris Principles, in particular with the requirement of its independence. Given the interlinkage between all forms of discrimination, and for the purposes of efficiency and empowerment, this Commission's mandate should bring together in a holistic way the most important and indeed related fields of contemporary discrimination, namely: race, colour, gender, descent, nationality, ethnic origin, disability, age, religion and sexual orientation.

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, mission to Brazil , E/CN.4/2006/16/Add.3 , February 28, 2006

18. During the visit of the Special Rapporteur to Salvador, the Mayor inaugurated the Human Rights Municipal Council, with equal representation of local government and civil society, which will allow civil society leaders to participate in the development

of municipal human rights policies. Its priority will be fighting against the assassination of young Blacks, after the disclosure of shocking statistics indicating that in the city of Salvador 631 people have been assassinated in the first eight months of 2005, almost all of them being young Blacks: this is an increase of 19 per cent compared to last years' figures. The majority of these crimes have not been sanctioned. The Council will deal with other issues such as the persecution and assassination of homosexuals, religious intolerance against religion of African origins, the fight for the recognition of quilombos, the improvement of education, health and housing, the demarcation of indigenous land and the eradication of institutional racism.

40. Black homosexuals suffer from double discrimination, because of their colour and sexual orientation. Also, within the black community, homosexuality is seen as debilitating, as an outrage to the established social order and the image of the black man who is supposed to be manly. Homosexuals suffer from physical violence, sometimes death (158 homosexuals were assassinated in Brazil in 2004), but also psychological suffering due to the denial of their humanity and identity. The Government has approved a "Brazil without homophobia" policy, to start tackling this problem.

72. A national commission for equality and human rights should be established, in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (General Assembly resolution 48/134, annex). Given the interlinkage among all forms of discrimination, and for the purposes of efficiency and empowerment, the mandate of this commission should

examine in a holistic way, the most important and related fields of contemporary discrimination, namely: race, colour, gender, descent, nationality, ethnic origin, disability, age, religion and sexual orientation.

B. SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Study on non-discrimination as enshrined in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights, Working paper prepared by Emmanuel Decaux, E/CN.4/Sub.2/2004/24, June 18, 2004

2. Gender discrimination

22. The same is true of the Convention on the Elimination of All Forms of Discrimination against Women. But that Convention fails to address all the issues related to discrimination “on the basis of sex” inasmuch as men may also be discriminated against, as demonstrated, for example, by the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Communities in the area of gender equality. Furthermore, the reference to sex is more and more frequently interpreted as encompassing sexual orientation. As noted by the Human Rights Committee in the *Toonen v. Australia* case, “in its view, the reference to ‘sex’ in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation” (CCPR/C/50/D/488/1992, para. 8.7). The Committee on Economic, Social and Cultural Rights also included sexual orientation in its interpretation of article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights but explicitly included it, in addition, in its general comment No. 14 of 2000 on the right to health (E/C.12/2000/4, para. 18).

4. Neglected categories of discrimination

25. Lastly, recent instruments may play an effective role in revealing gaps. (...) The Bill of Rights in the South African Constitution of 1996 contains a particularly exhaustive article 9 on equality: “The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.” The European Union’s Charter of Fundamental Rights refers to “genetic features” and “disability, age or sexual orientation” (art. 21).

Preliminary paper by Ms. Leïla Zerrougui, Special Rapporteur appointed to conduct a detailed study of discrimination in the criminal justice system in implementation of Sub-Commission Resolution 2002/3, Administration of Justice, Rule of law and Democracy, Discrimination in the criminal justice system, E/CN.4/Sub.2/2003/3, June 26, 2003

16. Research carried out thus far shows that there is undeniably a racial dimension to discrimination in the criminal justice system. It is an established fact that it is often a manifestation of racism, xenophobia or intolerance, and that aliens, minorities and indigenous populations are the victims most seriously affected by such discrimination. Yet they are not the only groups to suffer: other persons for other reasons (poverty,

sexual orientation, physical or mental handicap, gender, etc.) are also victims of discrimination and subjected to unequal treatment in the criminal justice system. The problems encountered by the potential victims are often very different, but there are also similarities and common characteristics, and it will not, perhaps, be necessary to consider them separately.

Discrimination in the criminal justice system, Final working paper prepared by Ms. Leïla Zerrougui, E/CN.4/Sub.2/2002/5, May 23, 2002

10. In other words, if a fresh study is undertaken on discrimination in the criminal justice system, it is bound to shed new light on the matter. This is firstly because it has now been established that institutionalized discrimination exists and persists in national criminal justice systems, secondly because as a result of globalization and regional integration, discriminatory practices spread across borders and take on new form, and thirdly because the sort of colonialism which produced the most intolerable forms of de jure discrimination in the administration of justice has not completely disappeared. This study is all the more worthwhile insofar as it appears justified by the events which are currently upsetting the international context, while its scope will be broadened by its coverage of other vulnerable or victimized groups, which are nowadays subject to discrimination in the administration of criminal justice.*

* These groups were identified in the document prepared for the working group on the administration of justice, which refers in paragraph 39 to “the wide range of discriminatory practices and of the grounds of discrimination to which the victims are subjected, depending on their alienness, sex, ethnic or religious affiliation, age, disability, sexual orientation or material disadvantage, as the case may be, with some cases even involving double or triple discrimination” (E/CN.4/Sub.2/2001/WG.1/CRP.1). [internal note]

Progress report on Globalization and its impact on the full enjoyment of human rights submitted by J. Oloka-Onyango and Deepika Udagama, in accordance with Sub-Commission resolution 1999/8 and Commission on Human Rights decision 2000/102, E/CN.4/Sub.2/2001/10, August 2, 2001

30. [...] Lastly, the focus on differential pricing [of life-saving drugs] between (rich and poor) countries omits consideration of the fact that there are many people *within* developed countries who are also unable to afford the same drugs. This may be on account of an inaccessible or inhospitable health care system (in terms of cost or an absence of adequate social welfare mechanisms), or because of racial, gender, sexual orientation or other forms of discrimination. [...]

Working paper on further proposals for the work of the World Conference submitted by Mr. Paulo Sérgio Pinheiro in his capacity as the representative of the Sub-Commission at the Preparatory Committee and the World Conference, in accordance with Sub-Commission resolution 2000/3 (para. 14), A/CONF.189/PC.2/19/Add.1, March 14, 2001

5. As the UNDP *Human Development Report 2000* indicated, most societies in the South as well as in the North generally fail to integrate minorities and to address horizontal inequality between ethnic groups or geographic regions. Indigenous peoples are still the most deprived of economic, social and cultural rights. Discrimination on the basis of sexual orientation continues throughout the world where civil and political rights of sexual minorities are violated and where they are denied the right to organize in advocacy groups.

Final report on the realization of economic, social and cultural rights submitted by Mr. Danilo Türk, Special Rapporteur, E/CN.4/Sub.2/1992/16, July 3, 1992

185. Both the upcoming Expert Seminar on Indicators and the 1993 World Conference on Human Rights could provide a venue for exploring in programmatic terms how most effectively to pursue the issue of violations of economic, social and cultural rights. It must be emphasized that approaching this issue from the angle of discrimination may serve as a useful starting point in attaining at least some degree of conceptual clarity concerning this type of violation. To apply discrimination-oriented criteria, however, it will be necessary to devote increased attention to areas of discriminatory behaviour generally ignored at the international level, in particular the grounds of social status, income level, medical status, age, property and sexual orientation.

C. REPORTS OF THE SECRETARY-GENERAL

Report of the Secretary-General on integrating the human rights of women throughout the United Nations system, E/CN.4/2005/68, January 10, 2005

14. In his report to the Commission (E/CN.4/2004/9), the Special Rapporteur on the sale of children, child prostitution and child pornography identified groups at greater risk of trafficking and sexual exploitation, including children belonging to ethnic minorities and indigenous peoples, those living in extreme poverty, street children, migrants, homosexuals, lesbians, bisexuals and transgender children. He further stated that transgender youth could be especially vulnerable to entering into prostitution because of adverse reactions from family and peers to their gender and sexuality, often leaving them alone and unsupported. Young transgender people experienced discrimination when trying to find accommodation, obtain an education, get a job and access health services, making them among the most vulnerable and marginalized young people in society.

Report of the Secretary-General, Human rights defenders, A/55/292, August 11, 2000

7. Some human rights defenders are at greater risk because of the nature of the rights that they are seeking to protect. This is particularly true with regard to women who are human rights defenders. In many situations, women are at the front line of the struggle, not only for their own rights but also for those of their families and communities. In the midst of these struggles, many of these women are also personally at risk, for example, when they challenge the structures of societies that perpetuate discrimination against women, in particular where they relate to issues of sexuality and reproductive rights. Many women face additional discrimination because of their race, ethnicity, language, culture, religion or sexual orientation. In these circumstances, the call in the Beijing Platform for Action for Governments to ensure the protection of women engaged in the defence of human rights is of particular importance.

Report of the Secretary-General on international and domestic measures taken to protect human rights and prevent discrimination in the context of HIV/AIDS, E/CN.4/1995/45, December 22, 1994

13. Secondly, individuals and groups in society who are disadvantaged and/or do not enjoy the full exercise of their rights are particularly vulnerable to infection as they have limited or no access to HIV/AIDS-related education, prevention and health-care programmes. Such groups include women, children, minorities, migrants, indigenous peoples, men having sex with men, commercial sex workers and injecting drug users. These groups may have neither the information they need nor the ability to act on it so as to avoid infection. Infection among such groups rapidly diffuses to society at large.

C. Education and information programmes

103. Frequently, in the context of HIV/AIDS, so-called "high-risk groups" are identified, generally on the basis of sexual preference, lifestyle and racial or national origin, whose individual rights and freedoms may be affected on a large scale by virtue of their denial or discriminatory application (such as imposed testing or restriction of movement or activities) due to their apparent high-risk contamination factor. Unfortunately, most measures taken with regard to these identified groups are restrictive or discriminating in nature and generally do not focus on the prevention and protection needed to make these groups "lower risk" (through changes in behaviour, for example).

IV OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

A. REPORTS OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled “ Human Rights Council”.

Report of the High Commissioner for Human Rights on human rights and mass exoduses, A/HRC/4/105, March 14, 2007

III. OVERVIEW OF INFORMATION PROVIDED BY MEMBER STATES

Argentina

22. In Argentina, the status of refugee is recognized for "individuals who have been discriminated against for religious reasons, objections of conscience, gender, or sexual orientation". Argentina has interpreted the definition of refugee broadly and regularly accords the status of refugee to individuals persecuted by State agents.

Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled “ Human Rights Council”.

Incitement of racial and religious hatred and promotion of tolerance, report of the High Commissioner for Human Rights, June 29, 2006.

D. The scope of sanctions and remedies

65. Legal measures may be supplemented by a number of non-legal measures, including selfregulatory measures by media bodies, media outlets or journalists' associations to prevent the dissemination of harmful speech. In many countries, media sectors, in particular newspapers and journalists, have formed self-regulatory bodies to promote professional standards and in some cases to provide the public with a complaints system for reporting which fails to meet minimum standards. In many cases, these standards include rules relating to reporting on matters involving race.

66. The International Federation of Journalists, for example, has adopted a Declaration of Principles on the Conduct of Journalists.

Principle 7 states that: The journalist shall be aware of the danger of discrimination being furthered by the media, and shall do the utmost to avoid facilitating such discrimination based on, among other things, race, sex, sexual orientation, language, religion, political or other opinions, and national or social origins.

Report of the High Commissioner for Human Rights on Combating defamation of religions, E/CN.4/2006/12, February 2, 2006

13. The Government of Denmark gives high priority to the fight against discrimination in any form. The dissemination of statements or other forms of information, by which a group of people is threatened, insulted or degraded because of race, colour, national or ethnic origin, religion or sexual inclination is prohibited by law.

Report of the High Commissioner for Human Rights on the situation of human rights in Colombia (covering the year 2005), E/CN.4/2006/9, May 16, 2006

Situation of especially vulnerable groups

Several especially vulnerable groups were affected by violent actions perpetrated by illegal groups in the course of the internal armed conflict, as well as by violations of their fundamental rights and liberties. The vulnerable groups were also affected by certain policies and by the behaviour of certain public servants. They included human rights defenders, members of organizations of women and victims, leaders of communities and displaced persons and trade unionists. Communities normally at risk, such as those displaced or blockaded, as well as indigenous and Afro-Colombian communities and other ethnic minorities, were particularly affected and suffered violations and breaches. Other especially vulnerable groups include children, women, persons belonging to sexual minorities, journalists, members and leaders of political parties, conscientious objectors, detainees, hostages and disappeared persons, as well as local authorities and judicial staff.

20. Lesbians, gays, bisexuals and transgenders have also allegedly been the victims of ill-treatment attributed to State agents. There is a report that police officers, in October, forced the legal representative of the “Casa de Eventos Mango” establishment in Barranquilla (Atlántico) to undress and insulted him.

Sexual minorities

27. Lesbians, gays, bisexuals and transgenders were exposed to murder and threats in the name of “social cleansing”. Generally speaking the results of investigations into the identities of perpetrators are very inadequate. Those groups were the victims of arbitrary detentions and cruel, inhuman or degrading treatment by members of the police force. There have also been allegations of harassment of homosexuals by members of illegal armed groups. There are no specific public policies to prevent or penalize such actions or to eliminate discrimination against those groups, especially in educational establishments, in the field of employment, in the police force and in detention centres.

Report of the High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2005/10, February 28, 2005

Summary

Situation of especially vulnerable groups

Various positive measures in the field of protection and prevention were weakened by public statements by high-level government officials who on occasion questioned the legitimacy of the work of human rights defenders and their organizations. The vulnerability of human rights defenders, including trade unionists, women's organizations and other social leaders, continued, due to threats and actions by the illegal armed groups, particularly the paramilitaries. The downward trend in the number of newly displaced persons continued. At the same time, however, the total number of IDPs increased. The indigenous and Afro-Colombian communities continued to be threatened by actions by the illegal armed groups. Other vulnerable groups included women, children, journalists and opinion makers, government employees such as judicial officials, mayors, former mayors and councilmen, along with members of the Unión Patriótica and the Communist Party, and persons suffering discrimination because of their sexual orientation, such as gays, lesbians, bisexuals and transsexuals.

III. Situation of human rights and international humanitarian law [...]

B. Situation of human rights

84. The office in Colombia continued to record allegations of human rights violations attributed to the direct action of public servants, particularly members of the security forces. Responsibility is attributed to other State institutions, such as the Attorney-General's Office, for having been associated with those actions or being directly involved in carrying them out. Several of these cases affected vulnerable groups, including human rights defenders, trade unionists, indigenous and Afro-Colombian communities, journalists, persons deprived of their liberty, women, social leaders, and victims of abuses due to their sexual orientation. In some cases, omission on the part of the authorities or complicity with illegal armed groups, particularly paramilitaries, invoked the responsibility of the State.

IV. The situation of especially vulnerable groups

127. Local officials, particularly mayors and former mayors, councillors and former councillors, public officials, judicial officers, members of the Unión Patriótica and the Communist Party, doctors and business people were also particularly vulnerable to actions by illegal armed groups. Lesbians, gays, bisexuals and transgenders were also victims of abuses and discrimination, including mistreatment and acts of "social cleansing", because of their sexual orientation.

Annex III: Situation of especially vulnerable groups

22. The internal armed conflict reinforced gender discrimination, homophobia and heterosexism. Reports were made of attacks by the illegal armed groups, through

physical or psychological abuse or social cleansing, against persons because of their sexual orientation. Such persons were also frequently the victims of abuses and discrimination by the authorities. Allegations were received against members of the National Police in Medellín, Bucaramanga and Santa Marta. The Constitutional Court took action on behalf of the right to equality and other fundamental rights, emphasizing that a person's sexual orientation constitutes an element that defines their identity and a fundamental component of individual autonomy. Nonetheless, there is a lack of appropriate policies for guaranteeing the rights of lesbians, gays, bisexuals and transsexuals, as well as explicit legislative initiatives to provide criminal and disciplinary sanctions for discrimination against people based on their sexual orientation.

Report of the High Commissioner for Human Rights on Racism, Racial Discrimination, Xenophobia and all forms of Discrimination: Comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, E/CN.4/2005/22, February 14, 2005

5. Dr. Paulo Carvalho, representing the Health Minister of Brazil, spoke on health care free of discrimination as a prerequisite for the enjoyment of human rights. Brazil attaches primary importance to combating racism within the framework of the Durban Declaration and Programme of Action and undertakes various activities toward the effective elimination of discrimination including on the basis of race, ethnicity, gender and sexual orientation. While recognizing the many challenges that remain in reaching equity in various aspects of social and economic life, Dr. Carvalho expressed satisfaction at some of the achievements which are already noticeable as a result of consistent efforts.

Report of the High Commissioner for Human Rights on Racism, Racial Discrimination, Xenophobia and all forms of Discrimination: Combatting defamation of religions, E/CN.4/2005/15, February 9, 2005

21. Support, in the form of small grants administered by the "Assisting Communities Together" (ACT) project, a joint initiative of the United Nations Development Programme (UNDP) and OHCHR, was given for grass-roots youth projects to promote respect for diversity in schools and through non-formal education. Pursuant to General Assembly resolution 57/212 requesting OHCHR to continue and expand ACT, OHCHR launched in October 2003, in cooperation with UNDP, the fourth phase of the project. Human rights educational initiatives aiming at combating racism, racial discrimination, xenophobia and related intolerance were selected in 10 countries. NGOs' projects addressing discrimination against indigenous populations were awarded grants in Nicaragua, Colombia, Uruguay and Cambodia. Public awareness-raising activities to promote and enhance tolerance, a culture of peace and coexistence between ethnic groups are being implemented in Chad, Burundi and Romania. Efforts to promote and protect the rights of the disabled, eradicate gender discrimination and discrimination based on sexual orientations are being carried out through public information campaigns and training workshops in Mongolia, Serbia

and Montenegro, Kyrgyzstan and Mauritania. OHCHR also provided assistance to six national human rights institutions from Mexico, Venezuela, Fiji, India, Mongolia and Niger to implement activities in the field of awareness-raising on racism, racial discrimination, xenophobia and related intolerance.

Report of the High Commissioner for Human Rights on the situation of human rights in Sierra Leone, E/CN.4/2005/113, February 2, 2005

B. The right to life and security of the person

8. Recent months have witnessed a spate of unresolved killings in Freetown and in the regions, especially of women. In September 2004, a well-known lesbian activist, Fanny Ann Eddy, was murdered in Freetown allegedly for her sexual orientation and outspokenness in support of gay and lesbian rights. Prior to her death, she made a submission to the Sub-Commission for the Protection and Promotion of Human Rights in Geneva, advocating lesbian and gay rights in Sierra Leone.

B. ADDRESSES

Presentation of the Office of the United Nations High Commissioner for Human Rights Ms. Louise Arbour to the International Conference on LGBT (lesbian, gays, bisexual and transgender) Human Rights, Montreal, July 26, 2006

(...)

Let me turn then to the question of criminalization. Of the more than 80 countries that prohibit sexual relations between consenting adults of the same sex, seven make homosexual activity punishable by death. Others prohibit gender reassignment surgery for transsexuals or require intersex persons to undergo such surgery against their will.

There is no doubt that these laws violate international human rights standards when the sanction is death or corporal punishment, since the sentence is grossly disproportionate to the offence and violates the right to life or to freedom from torture. But, regardless of what sanction is imposed, such laws can be said to violate the right to privacy, as the Human Rights Committee found in the Toonen case. The European Court of Human Rights also concluded that laws criminalizing homosexual activity violate this right.

(...)

In my view, respect for cultural diversity is insufficient to justify the existence of laws that violate the fundamental right to life, security and privacy by criminalizing harmless private relations between consenting adults. Even when such laws are not actively enforced, or worse when they are arbitrarily enforced, their mere existence

fosters an atmosphere of fear, silence, and denial of identity in which LGBT persons are confined. I suggest that even when states assert a duty to promote moral, religious or cultural values, they must exercise considerable restraint in doing so through the use of the criminal justice system.

(...)

V. OFFICE OF THE HIGH COMMISSIONER FOR REFUGEES

A. UNHCR CODE OF CONDUCT

Code of conduct and explanatory notes, June 2004

We will show respect for all persons equally without distinction whatsoever of race, gender, religion, colour, national or ethnic origin, language, marital status, sexual orientation, age, socioeconomic status, disability, political conviction, or any other distinguishing feature. We will strive to remove all barriers to equality.

Refrain from any form of harassment, discrimination, physical or verbal abuse, intimidation or favouritism in the workplace

1. Discrimination and harassment have a negative effect on the workplace environment, the career and well-being of staff. Discrimination, harassment, or bullying (mobbing) on the grounds of race, gender, religion, colour, national or ethnic origin, language, marital status, sexual orientation, age, socio-economic status, disability, political conviction, hierarchy within UNHCR or any other distinguishing feature, must not be tolerated. Harassment can take many forms. It can be physical, verbal, visual or written (including electronic media such as e-mails). It can also be one incident or a series of incidents and can occur at work or during non-working hours. Harassment typically involves a person in a position of power or authority as the initiator, but it should be recognized that staff in subordinate or equal positions may also be initiators. Staff, either singly or as a group, may be victims of or perpetrators of harassment.

B. GUIDELINES ON INTERNATIONAL PROTECTION

Guidelines on International Protection 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, HCR/GIP/04/06, April 28, 2004

c) Conversion post departure

34. Where individuals convert after their departure from the country of origin, this may have the effect of creating a sur place claim. In such situations, particular credibility concerns tend to arise and a rigorous and in depth examination of the circumstances and genuineness of the conversion will be necessary. Issues which the decision-maker will need to assess include the nature of and connection between any religious convictions held in the country of origin and those now held, any disaffection with the religion held in the country of origin, for instance, because of its position on gender issues or sexual orientation, how the claimant came to know about

the new religion in the country of asylum, his or her experience of this religion, his or her mental state and the existence of corroborating evidence regarding involvement in and membership of the new religion.

Guidelines on International Protection 1: “Gender-related persecution” within the context of article 1 A (2) of the 1951 Convention and its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, May 7, 2002

17. “Where homosexuality is illegal in a particular society, the imposition of severe criminal penalties for homosexual conduct could amount to persecution, just as it would for refusing to wear the veil by women in some societies. Even where homosexual practices are not criminalized, a claimant could still establish a valid claim where the State condones or tolerates discriminatory practices or harm perpetrated against him or her, or where the State is unable to protect effectively the claimant against such harm.”

Guidelines on International Protection 2: “Membership of a particular social group” within the context of Article 1 A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/02, May 7, 2002

1. “Membership of a particular social group” is one of the five grounds enumerated in Article 1A(2) of the 1951 Convention relating to the Status of Refugees (“1951 Convention”). It is the ground with the least clarity and it is not defined by the 1951 Convention itself. It is being invoked with increasing frequency in refugee status determinations, with States having recognised women, families, tribes, occupational groups, and homosexuals, as constituting a particular social group for the purposes of the 1951 Convention. The evolution of this ground has advanced the understanding of the refugee definition as a whole. These Guidelines provide legal interpretative guidance on assessing claims which assert that a claimant has a well-founded fear of being persecuted for reasons of his or her membership of a particular social group.

C. REFUGEE PROTECTION IN INTERNATIONAL LAW

Human Rights and Refugee Protection, Self-Study Module 5, vol. II, December 15, 2006

p. 138

According to General Comment 18 of the Committee on Economic, Social and Cultural Rights, the right to work includes the following elements:

(...)

Accessibility: The labour market must be open to everyone under the jurisdiction of States Parties. The Covenant prohibits any discrimination in access to and maintenance of employment on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental

disability, health status (including HIV/AIDS), sexual orientation, or civil, political, social or other status, which has the intention or effect of impairing or nullifying enjoyment of the right to work on a basis of equality. Accessibility includes the right to seek, obtain, and impart information on the means of gaining access to employment through the establishment of data networks on the employment market at the local, regional, national, and international levels.

Part 4: Membership of a particular social group

4.1 Protected characteristics and social perceptions: an analysis of the meaning of ‘membership of a particular social group’, January 1, 2003.

Introduction

In recent years, the number and variety of refugee claims based on the ‘membership of a particular social group’ ground set out in the 1951 Convention Relating to the Status of Refugees 1 have increased dramatically. The social group cases have been pushing the boundaries of refugee law, raising issues such as domestic abuse, homosexuality coercive family planning policies, female genital mutilation (FGM), and discrimination against the disabled. Invocation of the particular social group ground is not surprising. Its potential breadth makes it a plausible vehicle for refugee claims that do not easily fall under the other grounds set out in Article 1A(2) of the 1951 Convention. (...)

VI. STATEMENTS

Address by Ian Martin Representative of United Nations High Commissioner for Human Rights in Nepal at the blue Diamond Society Dialogue on Sexual Orientation/Gender identity and Constituent Assembly in Kathmandu, Nepal, on the occasion of International Day Against Homophobia, May 17, 2006

(...)

In Nepal, and in other countries, discrimination against lesbian, gay men, bisexuals and transgender people, or metis, takes many forms and often results in violence against them. We know that in Nepal discrimination against sexual and gender minorities often results in them being ostracised by their families and forced to leave home; in violence against them, by family members and communities; in discrimination in educational and work opportunities; targeting of sexual and gender minorities in public places by police, including arbitrary arrest and detention; and violence, including sexual violence, against them by state agents sometimes also while they are held in detention. Further, staff and volunteers of BDS, working as human rights defenders and community health workers, have been targeted by police for arrest and detention, violating their rights and severely hampering BDS from conducting its important work.

(...)

From the various considerations and decisions of the United Nations human rights mechanisms, two key points are clear: that lesbians, gay men, bisexuals and metis have the right to non-discrimination and that they have the right to equality before the law.

This is a good starting point for discussions of constitution-making in Nepal, and of ensuring the rights of all Nepalis before the law, including Nepali people from sexual and gender minorities. Constitutions should, and most do, contain general antidiscrimination provisions which conform with the international standards established in the Universal Declaration of Human Rights. The outstanding example of constitutional protection in relation to sexual orientation is the Constitution of South African, developed after the end of the apartheid era in one of the best processes of participatory constitution making in recent times.

(...)

VII. HUMAN RIGHTS COMPONENTS OF UNITED NATIONS PEACE MISSIONS

UN Assistance Mission for Iraq, UNAMI, Human Rights Report, May 1 – June 30, 2006

Extra-judicial execution, targeted and indiscriminate killings

16. UNAMI HRO has received several reports indicating that, since 2005, homosexuals have been increasingly threatened and extra-judicially executed by militias and “death squads” because of their sexual orientation. It is believed that such incidents are underreported, because families are unwilling to admit that targeted members were homosexual for fear of further abuse. It has been difficult to independently verify the information received due to the fact that members of this group maintain a low profile, preferring instead to go into hiding or leave the country.

17. From October 2005 to 30 June 2006 at least twelve homosexuals were reportedly killed in targeted attacks. Militias are reportedly threatening families of men believed to be homosexual, stating that they will begin killing family members unless the men are handed over or killed by the family. In March 2006, a 29-year-old man was kidnapped in Baghdad and his family threatened for allowing him to lead a homosexual lifestyle. The family paid a ransom for the man’s release but the mutilated body of the kidnapped victim was instead found dead a few days later. In another case reported a homosexual man was allegedly victim of “honour crime.” It was reported in the press that the man’s father was released without trial once he explained that he had hanged his son after discovering that he was homosexual.

18. As with other human rights violations, the Iraqi Government must ensure that all persons are protected without discrimination. In 2005, the former United Nations Commission on Human Rights approved a resolution reaffirming the obligation of States to protect the right to life of all persons under their jurisdiction and called upon States to investigate promptly and thoroughly “all cases of killings, including those committed in the name of passion or in the name of honour, all killings committed for any discriminatory reason, including sexual orientation.” (Commission of Human Rights; resolution E/CN.4/RES/2005/34, 20 April 2005.)

Intolerance

34. Individuals continue to face harassment and intimidation by extremist elements if they are not inclined to conform to traditional dressing. Women, national and religious minorities as well as homosexual were particularly targeted. This intimidation is reportedly carried out at neighbourhood level through the distribution of leaflets, personal contact and even through text messages sent via cellular phones.

INTERNATIONAL INSTRUMENTS

Universal Declaration of Human Rights

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

International Covenant on Civil and Political Rights

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 5

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 23

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Economic, Social and Cultural Rights

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

International Convention on the Rights of the Child

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) To diminish infant and child mortality;

European Convention for the Protection of Human Rights and fundamental freedoms

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Convention relating to the Status of Refugees

Article 1. - Definition of the term "refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

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“The Committee recalls its earlier jurisprudence that the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation.”

[Human Rights Committee, Communication No. 1361/2005: Colombia, CCPR/C/89/D/1361/2005, X v. Colombia, May 14, 2007]



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