

# **Sexual orientation and gender identity in international human rights law: The ICJ UN compilation**

2013 Fifth updated edition

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® Sexual orientation and gender identity in international human rights law:  
The ICJ UN compilation, 2013 Fifth updated edition

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This fifth edition was updated and prepared by Charlotte Campo under the supervision of Allison Jernow, Senior Legal Adviser at the ICJ

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## INTRODUCTION

The International Commission of Jurists is proud to present this compilation of references to sexual orientation and gender identity in the United Nations human rights system. The fifth edition of the UN compilation consists of excerpts from two of the main human rights enforcement systems of the UN: (1) the treaty bodies that were established to monitor the international human rights treaties and (2) the special procedures of the Human Rights Council.

- **Treaty bodies** are committees of independent human rights experts, serving in their individual capacity, that meet periodically to review the compliance of State parties with their treaty obligations. There are ten treaty bodies, one for each international human rights treaty, and they each have mandates to consider State reports.<sup>1</sup> They issue their “concluding observations” on State implementation of their treaty obligations. Treaty bodies also adopt “general comments” or “general recommendations” offering authoritative guidance on the interpretation of specific treaty provisions. In addition, most treaty bodies are empowered to receive communications from individuals alleging violations by States, provided the State party has formally accepted the competency of the treaty body to do so. These treaty bodies publish their findings on individual complaints in the form of views or decisions (known collectively as jurisprudence).
- More information about the treaty bodies can be found here: <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.
- **Special procedures** are independent human rights experts, serving in their individual capacity, appointed by the UN Human Rights Council to advise and report on human rights situations. They have either a thematic or country-specific mandate. Special procedures is a generic term encompassing individual special rapporteurs, special representatives, and working groups. Although the tasks of special procedures are defined in the specific resolutions creating their mandates, in general they make country visits, raise issues of concern and alleged violations with governments, and undertake thematic studies or expert consultations. They report annually to the Human Rights Council and some also report to the General Assembly. In addition, the Working Group on Arbitrary Detention is empowered to investigate cases and determine whether any deprivation of liberty is arbitrary, in violation of international standards.
- More information on special procedures, including links to the specific mandates, can be found here: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

This compilation is *comprehensive* as to treaty body jurisprudence and treaty body general comments (or, in the case of CEDAW and CERD, general recommendations). In other words, the treaty body jurisprudence includes the first sexual orientation case ever heard by a treaty body – *Toonen v. Australia* – in 1994 all the way up to the most recent one – *Fedotova v. Russian Federation* – in 2012. Treaty body general comments date back to 2000, when the Committee on Economic, Social and Cultural Rights issued its general comment on the right to health and made reference to the inclusion of sexual orientation as a prohibited ground of discrimination. We made the decision to take a comprehensive approach because treaty body jurisprudence and general comments are authoritative interpretations of State legal obligations by independent expert bodies. Treaty body jurisprudence is frequently cited by national courts. For example, *Toonen v. Australia* produced a change in the legal regime in Australia, at both the state and federal level. It has also been relied upon by courts in Colombia, Fiji, Hong Kong,

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<sup>1</sup> The core international human rights instruments and their corresponding treaty bodies are as follows: International Convention on the Elimination of All Forms of Racial Discrimination (Committee on the Elimination of Racial Discrimination); International Covenant on Civil and Political Rights (Human Rights Committee); International Covenant on Economic, Social and Cultural Rights (Committee on Economic, Social and Cultural Rights); Convention on the Elimination of All Forms of Discrimination against Women (Committee on the Elimination of Discrimination against Women); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Committee against Torture); Convention on the Rights of the Child (Committee on the Rights of the Child); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Committee on Migrant Workers); International Convention for the Protection of All Persons from Enforced Disappearances (Committee on Enforced Disappearances); Convention on the Rights of Persons with Disabilities (Committee on the Rights of Persons with Disabilities).

India, Nepal, the Philippines, and South Africa, among others, in cases involving discrimination on the basis of sexual orientation.<sup>2</sup> General comments and general recommendations are included because they are based on treaty body jurisprudence and concluding observations and thus represent a summary of treaty body interpretations of the law.

With regards to treaty body concluding observations and the special procedure reports, this compilation dates back to 2007. We were obliged to impose a date limitation due to the sheer volume of reporting in the field of sexual orientation and gender identity. We also believed that the concluding observations and special procedure reports are most useful in terms of documenting the type and number of violations. Although this kind of documentation resource is invaluable, space constraints made it necessary to include only the more recent material.

We are not including here documents from the Universal Periodic Review, which is a State-driven "peer review" process under the auspices of the Human Rights Council to assess the human rights records of all States at regular intervals.<sup>3</sup> Sexual orientation and gender identity are increasingly raised by States during the UPR and at times States have undertaken specific commitments in response to questioning. The UPR has been a very effective process in advancing LGBT human rights at the UN, but other organizations have done an excellent job of collecting the sexual orientation and gender identity references in the UPR and in helping to coordinate the work of LGBT human rights defenders.<sup>4</sup>

We also do not include here material from other UN agencies or statements and speeches by UN officials, both of which were typically included in earlier editions. Again this is due in part to space constraints, but also to a desire to focus on the human rights protection mechanisms of the UN rather than the UN's political organs or its public advocacy and engagement.

Since 2010, when the last edition of the UN compilation was published, there have been significant advances in the protection of LGBT human rights at the international level. In 2011 the Human Rights Council adopted an historic resolution on human rights, sexual orientation and gender identity.<sup>5</sup> This was the first resolution by the Human Rights Council on this topic, although resolutions by the General Assembly on extra-judicial executions had included sexual orientation and more recently gender identity in a list of vulnerable grounds. As mandated by the Human Rights Council resolution, the Office of the High Commissioner for Human Rights (OHCHR) produced a comprehensive survey titled "Discriminatory Laws and Practices and Acts of Violence against Individuals Based on their Sexual Orientation and Gender Identity." In September 2012 the OHCHR published a booklet titled "Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law," which sets forth the core legal obligations of states on the basis of the work of the treaty bodies and special procedures. Also in 2012 the United Nations High Commissioner for Refugees, which had previously issued a Guidance Note, published "Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity." Under the heading Additional Resources (below) we have provided links to these documents and much more.

In this edition, we would like to highlight some important developments.

- Beginning in December 2010, CEDAW began to regularly include sexual orientation and gender identity as vulnerable grounds in its General Recommendations, particularly in comments on intersectionality and multiple forms of discrimination.
- Throughout the treaty bodies, transgender-specific issues, such as surgery, access to identity documents, and sterilization, have become more integrated.
- Treaty bodies are also raising concerns about partnership benefits for same-sex couples.

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<sup>2</sup> For a database of national court decisions involving sexual orientation and gender identity, see the ICJ Comparative Law Casebook at <http://www.icj.org/sogi-casebook-introduction/>.

<sup>3</sup> See <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

<sup>4</sup> See ARC International at <http://arc-international.net/global-advocacy/universal-periodic-review>. For LGBT-related activism during the UPR see the International Lesbian and Gay Association at <http://ilga.org/ilga/en/article/mwRtf9j1gW> and the International Gay and Lesbian Human Rights Commission at <http://www.iglhrc.org/region/un-and-regional-mechanisms>. For general UPR info see also UPR Trax at <http://www.upr-info.org/newsletter/>.

<sup>5</sup> Resolution 17/19, introduced by South Africa and Brazil, was adopted in June 2011 at the Seventeenth Session of the Human Rights Council. As a result of Resolution 17/19, a high-level panel on sexual orientation and gender identity was held during the Nineteenth Session of the Human Rights Council. For a summary of the panel see <http://www.ohchr.org/EN/Issues/Discrimination/Pages/PanelSexualOrientation.aspx>.



- In a new sexual orientation case, *Irina Fedotova v. Russian Federation*, the Human Rights Committee held that the ban on homosexual propaganda in the Ryazan Region violated Irina Fedotova's rights to freedom of expression and non-discrimination. In doing so, the Human Rights Committee reversed its 1982 decision in the case of *Hertzberg v. Finland*.
- The Working Group on Arbitrary Detention has clearly identified forced anal examinations as medically worthless and in violation of the prohibition on torture and other forms of cruel, inhuman or degrading treatment.

Serious problems persist. Lesbian, gay, bisexual and transgender people face discrimination and unlawful violence at the hands of both State and non-state actors. Transgender people, particularly trans women who are or are perceived as sex workers, are especially vulnerable to hate crimes including murder.<sup>6</sup> LGBT human rights defenders are under attack, as the 2010 report of the Special Rapporteur on the Situation of Human Rights Defenders highlights. There has been a proliferation of laws and draft laws that would restrict public mention of homosexuality and also, although less frequently, "lesbianism" and "transgenderism." The Anti-Homosexuality Bill in Uganda would not only impose the death penalty for "aggravated homosexuality," it would also criminalize basic human rights advocacy through restrictions on expression, association and assembly.

The limitations of the UN human rights system are also readily apparent in this compilation. Treaty bodies cannot review the human rights records of States that are not parties to the respective treaties. Even where States are party to a particular treaty, they have often not become party to the relevant optional protocol on communications or made the necessary declaration to enable that treaty body to hear individual complaints. Treaty bodies are highly dependent on the submissions made by civil society to find out how laws and policies are applied in practice. Without reporting by civil society, treaty bodies may be unable to accurately assess State claims regarding compliance with treaty obligations. But just as civil society involvement is crucial, the work of civil society in many countries is increasingly repressed.

By contrast, special procedures are not geographically limited. They may receive allegations concerning a State regardless of whether a State is party to any particular human rights treaty. They are, however, limited in terms of their subject matter. In the case of discrimination and violence against LGBT individuals, there is often a protection gap. A man who is physically assaulted because of his sexual orientation or gender identity cannot file a complaint with the Special Rapporteur on Violence Against Women. If he is not a human rights defender, he cannot go to the Special Rapporteur on the Situation of Human Rights Defenders. If the situation did not involve expression or assembly and he is not being detained and he has not been killed, it may be difficult for him (or his family) to meaningfully access the special procedures. Such an individual could slip through the cracks in the UN human rights system. Unfortunately, these kinds of incidents are all too common. While the special procedures have performed an exemplary role at integrating the human rights concerns of LGBT people into their mandates, there are some violations of rights that are not addressed at all by the existing system. The ICJ hopes that this UN compilation will serve to both document existing abuses of human rights and encourage advocacy to remedy this problematic protection gap.

As in the previous edition, each entry is annotated with a key word or words. These search terms are listed in the Index and should make locating relevant documents easier.

This compilation is the result of excellent work by Charlotte Campo. The database was created by HURIDOCs. To both the ICJ owes a heavy debt of gratitude. Finally, the ICJ would like to commend those organizations and individuals who brought their cases to the attention of the treaty bodies and special procedures, who documented violations and who called States to account. Their belief in the international human rights system is what makes it work as well as it does.

## **ADDITIONAL RESOURCES**

Human Rights Council Resolution 17/19 on Human Rights, Sexual Orientation and Gender Identity:

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session17/Pages/ResDecStat.aspx>

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<sup>6</sup> For more information on trans-specific hate crimes, see the Trans Murder Monitoring Project led by Transgender Europe at [www.tgeu.org](http://www.tgeu.org). For killings of LGBTI persons generally in OAS Member States, see the work of the Unit on the Rights of LGBTI Persons at the Inter-American Commission on Human Rights at <http://www.oas.org/en/iachr/lgtbi/activities/violence.asp>.

"Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights": <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNReports.aspx>

"Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law": <http://www.ohchr.org/EN/Issues/Discrimination/Pages/BornFreeEqualBloket.aspx>

General Assembly Resolution 67/168 on extrajudicial, summary or arbitrary executions: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/67/168](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/67/168)

"Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights": <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNReports.aspx>

"Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law": <http://www.ohchr.org/EN/Issues/Discrimination/Pages/BornFreeEqualBloket.aspx>

General Assembly Resolution 67/168 on extrajudicial, summary or arbitrary executions: [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/67/168](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/67/168)

Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees: <http://www.refworld.org/docid/50348afc2.html>

Speeches and statements of Secretary-General Ban Ki-Moon, High Commissioner Navi Pillay, and Assistant Secretary-General for Human Rights Ivan Simonovic: <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTSpeechesandstatements.aspx>

HIV and the Law: Risks, Rights, Health: Report of the Global Commission on HIV and the Law: <http://www.hivlawcommission.org/index.php/report>.

UPR website: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

UPR SOGI-Related references: <http://arc-international.net/global-advocacy/universal-periodic-review>

Universal Human Rights Index: <http://uhri.ohchr.org/en>

## I. HUMAN RIGHTS TREATY BODIES

### 1. HUMAN RIGHTS COMMITTEE

<http://www2.ohchr.org/english/bodies/hrc/index.htm>

#### A. JURISPRUDENCE

#### **Communication No. 1932/2010: Russian Federation, CCPR/C/106/D/1932/2010, Fedotova v. Russian Federation, 30 November 2012**

**Keywords:** propaganda laws, freedom of expression

*The facts as presented by the author*

2.1 The author is an openly lesbian woman and an activist in the field of lesbian, gay, bisexual and transgender (LGBT) rights in the Russian Federation. In 2009 she, together with other individuals, tried to hold a peaceful assembly in Moscow (so called "Gay Pride"), which was banned by the Moscow authorities. A similar initiative to hold a march and a "picket" to promote tolerance towards gays and lesbians was banned in the city of Ryazan in 2009.

2.2 On 30 March 2009, the author displayed posters that declared "Homosexuality is normal" and "I am proud of my homosexuality" near a secondary school building in Ryazan. According to her, the purpose of this action was to promote tolerance towards gay and lesbian individuals in the Russian Federation.

*Author's comments on the State party's observations*

5.8 The author submits a copy of the legal opinion prepared by the International Commission of Jurists upon her request and asks the Committee to take it into account in considering the merits of her communication.

5.9 In its legal opinion, the International Commission of Jurists firstly considers the effect of the Committee's Views in *Hertzberg et al. v. Finland*,<sup>[7]</sup> in which it accepted, as a justification provided for in article 19, paragraph 3, of the Covenant, the public morals limitation invoked by the Government of Finland in defence of paragraph 9 of chapter 20 of the Finnish Penal Code, which provided that anyone who "publicly encourages indecent behaviour between persons of the same sex" was subject to a six-month prison sentence or a fine. The International Commission of Jurists submits that the outcome in the said communication is not dispositive of this matter, because:

(a) Equality law, in the jurisprudence of the Committee and other human rights bodies, has developed significantly since April 1982 when the Views in *Hertzberg et al. v. Finland* were adopted. At that time, sexual orientation was not recognized as a status protected from discrimination and now it is;<sup>[8]</sup>

(b) Also since 1982, the Committee and other institutions have recognized that limitations on rights must not violate the prohibition of discrimination. Even a limitation with a permissible aim – such as the protection of public morality – may not be discriminatory;

(c) Conceptions of public morality are subject to change<sup>[9]</sup> and what was considered justifiable with reference to public morality in 1982 is no longer the case today. Laws similar to paragraph 9 of chapter 20 of the Finnish Penal Code have since been repealed in States such as Austria and the United Kingdom of Great Britain and Northern Ireland. Furthermore, the Committee's jurisprudence reflects the evolution of the "public morals" conceptions, as does the case law of the European Court of Human Rights.<sup>[10]</sup>

<sup>7</sup> Communication No. 61/1979, *Hertzberg et al. v. Finland*, Views adopted on 2 April 1982.

<sup>8</sup> Reference is made to communication No. 488/1992, *Toonen v. Australia*, Views adopted on 31 March 1994, paragraph 8.7.

<sup>9</sup> Reference is made to the Individual Opinion of Torkel Opsahl in *Hertzberg et al. v. Finland*.

<sup>10</sup> Reference is made to *Toonen v. Australia*; and judgment of the European Court of Human Rights in *Dudgeon v. United Kingdom* (application No. 7525/76), 22 October 1981.

5.10 The International Commission of Jurists then submits that the Ryazan Region Law is an impermissible limitation of freedom of expression because it is discriminatory, for the following reasons: (a) sexual orientation is a protected ground under articles 2 and 26 of the Covenant;<sup>[11]</sup> (b) limitations on rights cannot be discriminatory, whether in law or practice – a law that differentiates on the basis of sexual orientation is therefore discriminatory, in violation of the Covenant, unless it has a reasonable and objective justification, and is aimed at a legitimate purpose; and (c) public morality is not a reasonable and objective justification.

5.11 The International Commission of Jurists argues that enjoyment of all Convention rights without discrimination means that the freedom of expression of LGBT individuals, as well as the expression concerning sexual orientation and same-sex relationships cannot be restricted in a discriminatory manner. Any restriction on expression about sexuality must be neutral with respect to sexual orientation.<sup>[12]</sup> Laws restricting freedom of expression must be compatible with the aims and objectives of the Covenant and must not violate its non-discrimination provisions.<sup>[13]</sup> They may not be imposed for discriminatory purposes or applied in a discriminatory manner.<sup>[14]</sup> The International Commission of Jurists argues that even the proportionate use of a permissible aim, such as public morality, cannot be the basis for a restriction on freedom of expression if it is applied in a discriminatory manner. Therefore, by penalizing “public actions aimed at propaganda of homosexuality” – as opposed to propaganda of heterosexuality or sexuality generally – the Ryazan Region Law enacts a difference in treatment that cannot be justified. It singles out one particular kind of sexual behaviour for differential treatment. It does so even though sexual relationships between consenting adults of the same sex are not illegal in the Russian Federation.

5.12 Furthermore, although not every differentiation of treatment will constitute discrimination, the criteria for such differentiation must be reasonable and objective and the aim must be to achieve a purpose that is legitimate under the Covenant.<sup>[15]</sup> Because sexual orientation is a prohibited ground, a difference in treatment founded on sexual orientation constitutes discrimination, in violation of the Covenant, unless there is a “reasonable and objective” justification.<sup>[16]</sup> Public morality does not amount to such a justification. Since Hertzberg et al. v. Finland, public morality arguments have diminished in weight.<sup>[17]</sup> The International Commission of Jurists submits that courts around the world have held that public morality is not a sufficient reason to justify a difference in treatment and established that concerns about public morality cannot serve to defend disparate treatment based on sexual orientation.<sup>[18]</sup> It adds that the Ryazan Region Law is clearly intended to target any information about homosexuality, including information that is in no manner “obscene” under criminal law.

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<sup>11</sup> Reference is made to *Toonen v. Australia*; communication No. 941/2000, *Young v. Australia*, Views adopted on 6 August 2003, paragraph 10.4. See also, general comment No. 20 (2009) of the Committee on Economic, Social and Cultural Rights on non-discrimination in economic, social and cultural rights, *Official Records of the Economic and Social Council, 2010, Supplement No. 2 (E/2010/22)*, annex VI, para. 32; general comment No. 2 (2007) of the Committee against Torture on implementation of article 2 by States parties, *Official Records of the General Assembly, Sixty-third Session, Supplement No. 44 (A/63/44)*, annex VI, para. 21; general comment No. 4 (2003) of the Committee on the Rights of the Child on adolescent health and development in the context of the Convention on the Rights of the Child, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41 (A/59/41)*, annex X, para. 6.

<sup>12</sup> Reference is made to the recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31 March 2010. Available from <https://wcd.coe.int/ViewDoc.jsp?id=1606669>.

<sup>13</sup> Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, annex, E/CN.4/1985/4, principle 2; Committee’s general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40)*, annex VI, para. 8.

<sup>14</sup> Committee’s general comment No. 22, para. 8; and the Individual Opinion of Torkel Opsahl in *Hertzberg et al. v. Finland*.

<sup>15</sup> Reference is made to the Committee’s general comment No. 18 (1989) on non-discrimination, *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40*, vol. I (A/45/40 (Vol. I)), annex VI, sect. A, paragraph 13.

<sup>16</sup> General comment No. 20 (2009) of the Committee on Economic, Social and Cultural Rights, para. 13.

<sup>17</sup> Reference is made to *Toonen v. Australia*, paragraph 8.6; and judgment of the European Court of Human Rights in *Open Door and Dublin Well Woman v. Ireland* (applications Nos. 14234/88 and 14235/88), 29 October 1992, paragraphs 65–66.

<sup>18</sup> The legal opinion, inter alia, quotes the case law of the United States Supreme Court, the Constitutional Court of South Africa and the Philippines Supreme Court.

5.13 The International Commission of Jurists further submits that the Ryazan Region Law also has serious implications for the right of children to receive information. In addition to article 19, paragraph 2, of the Covenant, the right of children to receive information concerning sexuality is specifically protected under article 13 of the Convention on the Rights of the Child.[19] The right of children to receive information about sexuality and sexual orientation is related to their rights to education and to health.[20]

5.14 For the foregoing reasons, the International Commission of Jurists concludes that section 3.10 of the Ryazan Region Law contravenes the State party's obligations under the Covenant.

#### *Consideration of the Merits*

10.2 The first issue before the Committee is whether or not the application of section 3.10 of the Ryazan Region Law to the author's case, resulting in her conviction of an administrative offence and the subsequent fine, constituted a restriction within the meaning of article 19, paragraph 3, on the author's right to freedom of expression. The Committee notes that section 3.10 of the Ryazan Region Law establishes administrative liability for "propaganda of homosexuality (sexual act between men or lesbianism) among minors". The Committee observes, however, that the wording of section 3.10 of the Ryazan Region Law is ambiguous as to whether the term "homosexuality (sexual act between men or lesbianism)" refers to one's sexual identity or sexual activity or both. In any case, there is no doubt that there has been a restriction on the exercise of the author's right to freedom of expression guaranteed by article 19, paragraph 2, of the Covenant.<sup>21</sup> In fact, the existence of the restriction in the present communication is not in dispute between the parties.

10.3 The Committee then has to consider whether the restriction imposed on the author's right to freedom of expression is justified under article 19, paragraph 3, of the Covenant, i.e. provided by law and necessary: (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. The Committee recalls in this respect its general comment No. 34 (2011) on article 19 (freedoms of opinion and expression) of the International Covenant on Civil and Political Rights,<sup>[22]</sup> in which it stated, *inter alia*, that freedom of opinion and freedom of expression are indispensable conditions for the full development of the person, that they are essential for any society, and that they constitute the foundation stone for every free and democratic society.<sup>[23]</sup> Any restrictions to their exercise must conform to the strict tests of necessity and proportionality and "must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated".<sup>[24]</sup>

10.4 The Committee observes that, in the present case, the author and the State party disagree as to whether the restriction on the exercise of the right to freedom of expression is "provided by law". In particular, the author argues with reference to article 55, paragraph 3, of the Constitution, that freedom of expression can be restricted only by federal law, whereas the Ryazan Region Law on the basis of which she was convicted of an administrative offence for "propaganda of homosexuality among minors" is not a federal law. The State party in turn submits that the Ryazan Region Law is based on the Constitution and the Code on Administrative Offences, thus it is a part of the law on administrative offences. The Committee may dispense with considering this point because, irrespective of the domestic lawfulness of the restriction in question, laws restricting the rights enumerated in article 19, paragraph 2, must not only comply with the strict requirements of article 19, paragraph 3, of the Covenant but must also themselves be compatible with the provisions, aims and objectives of the Covenant,<sup>25</sup> including the non-discrimination provisions of the Covenant.<sup>[26]</sup>

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<sup>19</sup> Reference is also made to the general comment No. 3 (2003) of the Committee on the Rights of the Child on HIV/AIDS and the Rights of the Child, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 41 (A/59/41)*, annex IX, para. 16; and the concluding observations of the Committee on the Rights of the Child on the second periodic report of the United Kingdom of Great Britain and Northern Ireland, *CRC/C/15/Add.188*, para. 44 (d).

<sup>20</sup> Reference is made to the reports of the Special Rapporteur on the right to education, *A/HRC/8/10/Add.1*, paragraphs 79–84, and *A/HRC/4/29/Add.1*, paragraphs 34–37. See also, decision of the European Committee of Social Rights, *INTERIGHTS v. Croatia* (complaint No. 45/2007), 30 March 2009.

<sup>21</sup> Communication No.780/1997, *Laptsevich v. Belarus*, Views adopted on 20 March 2000, para. 8.1.

<sup>22</sup> *Official Records of the General Assembly, Sixty-sixth session, Supplement No. 40 (A/66/40 (Vol. I))*, annex V.

<sup>23</sup> See *ibid.*, para. 2.

<sup>24</sup> *Ibid.*, para. 22.

<sup>25</sup> See *ibid.*, para. 26; and *Toonen v. Australia*, para. 8.3.

10.5 In this respect, the Committee recalls, as stated in its General Comment No. 34, that “the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations ... for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition’. Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination”.[27] In the present case, the Committee observes that section 3.10 of the Ryazan Region Law establishes administrative liability for “public actions aimed at propaganda of homosexuality (sexual act between men or lesbianism)” – as opposed to propaganda of heterosexuality or sexuality generally – among minors. With reference to its earlier jurisprudence,<sup>28</sup> the Committee recalls that the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation.

10.6 The Committee also recalls its constant jurisprudence that not every differentiation based on the grounds listed in article 26 of the Covenant amounts to discrimination, as long as it is based on reasonable and objective criteria,[29] in pursuit of an aim that is legitimate under the Covenant.[30] While noting that the State party invokes the aim to protect the morals, health, rights and legitimate interests of minors, the Committee considers that the State party has not shown that a restriction on the right to freedom of expression in relation to “propaganda of homosexuality” – as opposed to propaganda of heterosexuality or sexuality generally – among minors is based on reasonable and objective criteria. Moreover, no evidence which would point to the existence of factors justifying such a distinction has been advanced.[31]

10.7 Furthermore, the Committee is of the view that, by displaying posters that declared “Homosexuality is normal” and “I am proud of my homosexuality” near a secondary school building, the author has not made any public actions aimed at involving minors in any particular sexual activity or at advocating any particular sexual orientation. Instead, she was giving expression to her sexual identity and seeking understanding for it.

10.8 The Committee notes the State party’s arguments that the author had a deliberate intent to engage children in the discussion of the issues raised by her actions; that the public became aware of the author’s views exclusively on the initiative of the latter; that her actions from the very beginning had an “element of provocation” and her private life was not of interest either to the public or to minors, and that the public authorities did not interfere with her private life (see paragraph 6.2 above). While the Committee recognizes the role of the State party’s authorities in protecting the welfare of minors, it observes that the State party failed to demonstrate why, on the facts of the present communication, it was necessary for one of the legitimate purposes of article 19, paragraph 3, of the Covenant to restrict the author’s right to freedom of expression on the basis of section 3.10 of the Ryazan Region Law, for expressing her sexual identity and seeking understanding for it, even if indeed, as argued by the State party, she intended to engage children in the discussion of issues related to homosexuality. Accordingly, the Committee concludes that the author’s conviction of an administrative offence for “propaganda of homosexuality among minors” on the basis of the ambiguous and discriminatory section 3.10 of the Ryazan Region Law, amounted to a violation of her rights under article 19, paragraph 2, read in conjunction with article 26 of the Covenant.

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

**Keywords:** partnership benefits & recognition

*The facts as presented by the author*

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<sup>26</sup>General comment No. 34, para. 26, and General comment No. 18, para. 13.

<sup>27</sup>General comment No. 34, para. 32.

<sup>28</sup>See *Toonen v. Australia*, para. 8.7; *Young v. Australia*, para. 10.4; and communication No. 1361/2005, *X v. Colombia*, Views adopted on 30 March 2007, para. 7.2.

<sup>29</sup>See, inter alia, communication No. 172/1984, *Broeks v. the Netherlands*, Views adopted on 9 April 1982, para. 13; communication No. 182/1984, *Zwaan-de Vries v. the Netherlands*, Views adopted on 9 April 1987, para.13; communication No. 218/1986, *Vos v. the Netherlands*, Views adopted on 29 March 1989, para 11.3; communication No. 415/1990, *Pauger v. Austria*, Views adopted on 26 March 1992, para 7.3; communication No. 919/2000, *Müller and Engelhard v. Namibia*, Views adopted on 26 March 2002, para 6.7; and communication No. 976/2001, *Derksen v. the Netherlands*, Views adopted on 1 April 2004, para. 9.2.

<sup>30</sup>See, inter alia, communication No. 1314/2004, *O’Neill and Quinn v. Ireland*, Views adopted on 24 July 2006, para. 8.3.

<sup>31</sup>See *Young v. Australia*, para. 10.4; and *X v. Colombia*, para. 7.2.

2.1 On 27 July 1993, the author's life partner Mr. Y died after a relationship of 22 years, during which they lived together for 7 years. On 16 September 1994, the author, who was economically dependent on his late partner, lodged an application with the Social Welfare Fund of the Colombian Congress, Division of Economic Benefits (the Fund), seeking a pension transfer.

2.2 On 19 April 1995, the Fund rejected the author's request, on the grounds that the law did not permit the transfer of a pension to a person of the same sex.

2.3 The author indicates that according to regulatory decree No. 1160 of 1989, "for the purposes of pension transfers, the person who shared married life with the deceased during the year immediately preceding the death of the deceased or during the period stipulated in the special arrangements shall be recognized as the permanent partner of the deceased"; the decree does not specify that the two persons must be of different sexes. He adds that Act No. 113 of 1985 extended to the permanent partner the right to pension transfer on the death of a worker with pension or retirement rights, thus putting an end to discrimination in relation to benefits against members of a de facto marital union.

2.4 The author instituted an action for protection (*acción de tutela*) in Bogotá Municipal Criminal Court No. 65, seeking a response from the Benefits Fund of the Colombian Congress. On 14 April 1995, the Municipal Criminal Court dismissed the application on the grounds that there had been no violation of fundamental rights. The author appealed against this decision in Bogotá Circuit Criminal Court No. 50. On 12 May 1995, this court ordered the modification of the earlier ruling and called on the Procurator-General to conduct an investigation into errors committed by staff of the Fund.

2.5 In response to the refusal to grant him the pension, the author instituted an action for protection in Bogotá Circuit Criminal Court No. 18. This court rejected the application on 15 September 1995, finding that there were no grounds for protecting the rights in question. The author appealed against this decision to the Bogotá High Court, which upheld the lower court's decision on 27 October 1995.

2.6 The author indicates that all the actions for protection in the country are referred to the Constitutional Court for possible review, but that the present action was not considered by the Court. Since Decree No. 2591 provides that the Ombudsman can insist that the matter be considered, the author requested the Ombudsman to apply for review by the Constitutional Court. The Ombudsman replied on 26 February 1996 that, owing to the absence of express legal provisions, homosexuals were not allowed to exercise rights recognized to heterosexuals such as the right to marry or to apply for a pension transfer on a partner's death.

2.7 The author instituted proceedings in the Cundinamarca Administrative Court, which rejected the application on 12 June 2000, on the grounds of the lack of constitutional or legal recognition of homosexual unions as family units. The author appealed to the Council of State, which on 19 July 2000 upheld the ruling of the Administrative Court, arguing that under the Constitution, "the family is formed through natural or legal ties ... between a man and a woman". This decision was notified by edict only on 17 October 2000, and became final on 24 October 2000.

#### *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.[4] 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.[5] 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**

**Keywords:** partnership benefits and recognition

*The facts as presented by the author*

2.1 The author was in a same-sex relationship with a Mr. C for 38 years. Mr. C was a war veteran, for whom the author cared in the last years of his life. He died on 20 December 1998, at the age of 73. On 1 March 1999, the author applied for a pension under section 13 of the Veteran's Entitlement Act ("VEA") as a veteran's dependant. On 12 March 1999, the Repatriation Commission denied the author's application in that he was not a dependant as defined by the Act. In its decision the Commission sets out the relevant legislation as follows:

Section 11 of the Act states: "dependant, in relation to a veteran (including a veteran who has died), means (a) the partner..." Section 5E of the Act defines a "partner, in relation to a person who is a "member of a couple", [as] the other member of the couple." The notion of couple is defined in section 5E(2): "a person is a "member of a couple" for the purposes of this Act if:

(a) the person is legally married to another person and is not living separately and apart from the other person on a permanent basis; or

(b) all of the following conditions are met:

- (i) the person is living with a person of the opposite sex (in this paragraph called the partner);
- (ii) the person is not legally married to the partner;
- (iii) the person and the partner are, in the Commission's opinion (.....), in a marriage-like relationship;
- (iv) the person and the partner are not within a prohibited relationship for the purposes of Section 23 B of the Marriage Act 1961."

The decision reads "The wording of Section 5E (2) (b) (i) – the text that I have highlighted - is unambiguous. I regret that I am therefore unable to exercise any discretion in this matter. This means that under legislation, you are not regarded as the late veteran's dependant. Because of this you are not entitled to claim a pension under the Act."

The author was also denied a bereavement benefit under the Act, as he was not considered to be a "member of a couple".

2.2 On 16 March 1999, the author applied to the Veterans Review Board ("VRB") for a review of the Commission's decision. On 27 October 1999, the Board affirmed the Commission's decision, finding that the author was not a dependant as defined by the Act. In its decision the Board outlines the legislation as above and considers that it "has no discretion in its application of the Act and in this case it is bound to have regard to Section 11 of the Act. Hence, under the current legislation, the Board is required to affirm the decision under review in relation to the status of the applicant".

*Consideration of the Merits*

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**

**Keywords:** partnership benefits and recognition

*The facts as presented by the authors*

2.1 Ms. Joslin and Ms. Rowan commenced a lesbian relationship in January 1988. Since that point, they have jointly assumed responsibility for their children out of previous marriages. In living together, they have pooled finances and jointly own their common home. They maintain sexual relations. On 4 December 1995, they applied under the Marriage Act 1955 to the local Registrar of Births, Deaths and Marriages for a marriage licence, by lodging a notice of intended marriage at the local Registry Office. On 14 December 1995, the Deputy Registrar-General rejected the application.

2.2 Similarly, Ms. Zelf and Ms. Pearl commenced a lesbian relationship in April 1993. They also share responsibility for the children of a previous marriage, pool financial resources and maintain sexual relations. On 22 January 1996, the local Registry Office refused to accept a notice of intended marriage. On 2 February 1996, Ms Zelf and Ms Pearl lodged a notice of intended marriage at another Registry Office. On 12 February 1996, the Registrar-General informed them that the notice could not be processed. The Registrar-General indicated that the Registrar was acting lawfully in interpreting the Marriage Act as confined to marriage between a man and a woman.

2.3 All four authors thereupon applied to the High Court for a declaration that, as lesbian couples, they were lawfully entitled to obtain a marriage licence and to marry pursuant to the Marriage Act 1955. On 28 May 1996, the High Court declined the application. Observing *inter alia* that the text of article 23, paragraph 2, of the Covenant "does not point to same-sex marriages", the Court held that the statutory language of the Marriage Act was clear in applying to marriage between a man and a woman only.

2.4 On 17 December 1997, a Full Bench of the Court of Appeal rejected the authors' appeal. The Court held unanimously that the Marriage Act, in its terms, clearly applied to marriage between a man and a woman only. A majority of the Court further went on to hold that the restriction in the Marriage Act of marriage to a man and a woman did not constitute discrimination. Justice Keith, expressing the majority's views at length, found no support in the scheme and text of the Covenant, the Committee's prior jurisprudence, the *travaux préparatoires* nor scholarly writing for the proposition that a limitation of marriage to a man and a woman violated the Covenant.

*Consideration of the merits*

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**

**Keywords:** criminal laws

*The facts as submitted by the author*

2.1 The author is an activist for the promotion of the rights of homosexuals in Tasmania, one of Australia's six constitutive states. He challenges two provisions of the Tasmanian Criminal Code, namely, sections 122 (a) and (c) and 123, which criminalize various forms of sexual contact between men, including all forms of sexual contact between consenting adult homosexual men in private.

2.2 The author observes that the above sections of the Tasmanian Criminal Code empower Tasmanian police officers to investigate intimate aspects of his private life and to detain him, if they have reason to believe that he is involved in sexual activities which contravene the above sections. He adds that the Director of Public Prosecutions announced, in August 1988, that

proceedings pursuant to sections 122 (a) and (c) and 123 would be initiated if there was sufficient evidence of the commission of a crime.

2.3 Although in practice the Tasmanian police has not charged anyone either with "unnatural sexual intercourse" or "intercourse against nature" (section 122) nor with "indecent practice between male persons" (section 123) for several years, the author argues that because of his long-term relationship with another man, his active lobbying of Tasmanian politicians and the reports about his activities in the local media, and because of his activities as a gay rights activist and gay HIV/AIDS worker, his private life and his liberty are threatened by the continued existence of sections 122 (a) and (c) and 123 of the Criminal Code.

2.4 Mr. Toonen further argues that the criminalization of homosexuality in private has not permitted him to expose openly his sexuality and to publicize his views on reform of the relevant laws on sexual matters, as he felt that this would have been extremely prejudicial to his employment. In this context, he contends that sections 122 (a) and (c) and 123 have created the conditions for discrimination in employment, constant stigmatization, vilification, threats of physical violence and the violation of basic democratic rights.

2.5 The author observes that numerous "figures of authority" in Tasmania have made either derogatory or downright insulting remarks about homosexual men and women over the past few years. These include statements made by members of the Lower House of Parliament, municipal councillors (such as "representatives of the gay community are no better than Saddam Hussein" and "the act of homosexuality is unacceptable in any society, let alone a civilized society"), of the church and of members of the general public, whose statements have been directed against the integrity and welfare of homosexual men and women in Tasmania (such as "[g]ays want to lower society to their level" and "You are 15 times more likely to be murdered by a homosexual than a heterosexual ..."). In some public meetings, it has been suggested that all Tasmanian homosexuals should be rounded up and "dumped" on an uninhabited island, or be subjected to compulsory sterilization. Remarks such as these, the author affirms, have had the effect of creating constant stress and suspicion in what ought to be routine contacts with the authorities in Tasmania.

2.6 The author further argues that Tasmania has witnessed, and continues to witness, a "campaign of official and unofficial hatred" against homosexuals and lesbians. This campaign has made it difficult for the Tasmanian Gay Law Reform Group to disseminate information about its activities and advocate the decriminalization of homosexuality. Thus, in September 1988, for example, the Group was refused permission to put up a stand in a public square in the city of Hobart, and the author claims that he, as a leading protester against the ban, was subjected to police intimidation.

2.7 Finally, the author argues that the continued existence of sections 122 (a) and (c) and 123 of the Criminal Code of Tasmania continue to have profound and harmful impacts on many people in Tasmania, including himself, in that it fuels discrimination and violence against and harassment of the homosexual community of Tasmania.

#### *Consideration of the merits*

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.

## B. CONCLUDING OBSERVATIONS

### **Peru, CCPR/C/PER/CO/5, 27 March 2013**

**Keywords:** discrimination, stigma, equality & non-discrimination legislation

8. The Committee is concerned at reports of discrimination and acts of violence suffered by lesbian, gay, bisexual and transgender (LGBT) persons on the basis of their sexual orientation or gender identity (arts. 2, 3, 6, 7 and 26).

The State party should state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transexuality, or discrimination or violence against persons because of their sexual orientation or gender identity. It should also amend its laws with a view to prohibiting discrimination on the basis of sexual orientation and gender identity. The State party should provide effective protection to LGBT individuals and ensure the investigation, prosecution and punishment of any act of violence motivated by the victim's sexual orientation or gender identity.

### **Belize, CCPR/C/BLZ/CO/1, 26 March 2013**

**Keywords:** criminal laws, equality & non-discrimination legislation

13. The Committee takes note that certain individuals in the State party have instituted proceedings challenging the constitutionality of section 53 of the Criminal Code, which prohibits same sex relations, and of section 5(1)(e) of the Immigrations Act, which includes homosexuals on the list of prohibited persons for purposes of immigration. The Committee further notes that as such these matters are sub-judice. However, it is concerned that the State party lacks any constitutional or statutory provision expressly prohibiting discrimination on grounds of sexual orientation or gender identity. The Committee is further concerned at reports of violence against LGBT persons (arts. 2, 12 and 26).

The State party should review its Constitution and legislation to ensure that discrimination on grounds of sexual orientation and gender identity are prohibited. The

Committee further urges the State party to include in its initial report information on the outcome of the case challenging the constitutionality of section 53 of the Criminal Code and section 5(1)(e) of the Immigration Act. The State party should also ensure that cases of violence against LGBT persons are thoroughly investigated and that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims are adequately compensated.

### **Hong Kong, China, CCPR/C/CHN/HKG/CO/3, 26 March 2013**

**Keywords:** equality & non-discrimination legislation, stigma, partnership benefits & recognition

23. The Committee is concerned about the absence of legislation explicitly prohibiting discrimination on the basis of sexual orientation and reported discrimination against lesbian, gay, bisexual and transgender persons in the private sector (article 2 and 26). Hong Kong, China should consider enacting legislation that specifically prohibits discrimination on ground of sexual orientation and gender identity, take the necessary steps to put an end to prejudice and the social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity. Furthermore, Hong Kong, China should ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples, in line with article 26 of the Covenant

### **Paraguay, CCPR/C/PRY/CO/3, 26 March 2013**

**Keywords:** equality & non-discrimination legislation, stereotyping

9. El Comité lamenta que el Estado parte todavía no haya adoptado el proyecto de ley contra toda forma de discriminación, presentado a la Cámara de Senadores en mayo del 2007, mientras prevalecen estereotipos, discriminación y marginación, en particular en contra de las mujeres, las personas con discapacidad, las personas indígenas, afrodescendientes, y las personas LGBT (arts. 2, 26, 27).

El Estado parte debe adoptar una legislación amplia de lucha contra la discriminación, incluyendo la protección contra la discriminación por motivos de orientación sexual e identidad de género, y dar prioridad a la implementación de programas para erradicar los estereotipos y la discriminación, y garantizar la tolerancia y el respeto de la diversidad. El Estado parte también debe adoptar medidas para promover la igualdad de oportunidades y de acceso irrestricto y sin discriminación a todos los servicios para las mujeres, las personas con discapacidad, las personas indígenas, afrodescendientes, y las personas LGBT.

### **Philippines, CCPR/C/PHL/CO/4, 13 November 2012**

**Keywords:** criminal laws, equality & non-discrimination legislation, stigma

10. While welcoming the decision of the Supreme Court in the *Ang Ladlad* case and the statement of the delegation that it will take up a leadership role to promote lesbian, gay, bisexual, and transgender (LGBT) rights, the Committee is concerned that LGBT persons are subjected to arrest and prosecution by means of the "grave scandal" provision provided under article 200 of the Revised Penal Code. The Committee is also concerned that the comprehensive anti-discrimination bill that prohibits discrimination on grounds of sexual orientation and gender identity has not been passed into law. Furthermore, the Committee is concerned at the prevalence of stereotypes and prejudices against LGBT persons in the military, police and the society at large (arts. 2 and 26).

The State party should ensure that LGBT persons are neither arrested nor prosecuted on the basis of their sexual orientation or gender identity including for violating the "grave scandal" provision under the Revised Penal Code. The State party should adopt a comprehensive anti-discrimination law that prohibits discrimination on the basis of sexual orientation and gender identity and take steps, including awareness - raising campaigns, to put an end to the social stigmatization of and violence against homosexuals.

**Turkey, CCPR/C/TUR/CO/1, 13 November 2012**

**Keywords:** equality & non-discrimination legislation, stigma

8. The Committee is concerned that the current legislation of the State party on discrimination is not comprehensive, thus failing to protect against discrimination on all the grounds enumerated in the Covenant. In particular, the Committee is concerned about the lack of specific reference to the prohibition of discrimination on the basis of gender identity and sexual orientation. (art. 2, para. 1)

The State party should enact legislation on anti-discrimination and equality, ensuring that it includes a comprehensive prohibition of discrimination on all the grounds as set out in the Covenant, as well as the prohibition of discrimination on the basis of gender identity and sexual orientation. The State party should also ensure that reliable and public data is systematically collected on cases of discrimination and their treatment by the competent judicial authorities.

10. The Committee is concerned about the discrimination and alleged acts of violence against people on the basis of their gender identity and sexual orientation, and about the social stigmatization and social exclusion of lesbian, gay, bisexual, and transgender (LGBT) persons in terms of their access to health services, education, or to their treatment in the context of the regulations concerning compulsory military service and while serving in the military (arts. 2 and 26)

While acknowledging the diversity of morality and cultures internationally, the Committee recalls that all cultures are always subject to the principles of universality of human rights and non-discrimination (general comment No. 34, para. 32). The State party should therefore state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transexuality, or harassment of or discrimination or violence against persons because of their sexual orientation or gender identity. It should ensure the investigation, prosecution and punishment of any act of discrimination or violence motivated by the victim's sexual orientation or gender identity

**Armenia, CCPR/C/ARM/CO/2, 31 August 2012**

**Keywords:** discrimination, stigma

10. The Committee is concerned at the discrimination and violence suffered by lesbian, gay, bisexual and transgender (LGBT) persons and rejects all violations of their human rights on the basis of their sexual orientation or gender identity (arts. 3, 6, 7 and 26).

The State party should state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transexuality, or harassment of, or discrimination or violence against persons because of their sexual orientation or gender identity. The State party should prohibit discrimination based on sexual orientation and gender identity and provide effective protection to LGBT persons.

**Lithuania, CCPR/C/LTU/CO3, 31 August, 2012**

**Keywords:** equality & non-discrimination legislation, propaganda laws, stigma

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) The adoption of the Law on Equal Opportunities which came into force on 1 January 2005 and which prohibits any direct or indirect discrimination based on age, sexual orientation, disability, racial or ethnic origin, religion, or beliefs;

8. The Committee is concerned that certain legal instruments such as the Law on the Protection of Minors against the Detrimental Effect of Public Information (art. 7) may be applied in a manner unduly restrictive of the freedom of expression guaranteed under the Covenant and may have the effect of justifying discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals. The Committee is furthermore concerned at various legislative proposals, including amendments to the Code of Administrative Offences, the Constitution, and the Civil Code which, were they to be adopted, would impact negatively on the enjoyment of

fundamental rights by LGBT individuals. The Committee is also concerned at the increasing negative attitudes against, and stigmatization of, such persons in society, which has manifested itself in instances of violence and discrimination, and at reports of reluctance on the part of police officers and prosecutors to pursue allegations of human rights violations against persons on the basis of their sexual orientation or gender identity (arts. 2, 19 and 26).

The State party should take all necessary measures to ensure that its legislation is not interpreted and applied in a discriminatory manner against persons on the basis of their sexual orientation or gender identity. The State party should implement broad awareness-raising campaigns, as well as trainings for law enforcement officials, to counter negative sentiments against LGBT individuals. It should consider adopting a targeted national action plan on the issue. The Committee, finally, recalls the obligation of the State party to guarantee all human rights of such individuals, including the right to freedom of expression and the right to freedom of assembly.

15. The Committee is concerned that, despite a number of legislative and institutional measures taken by the State party, xenophobic and in particular anti-Semitic incidents continue to occur. The Committee is also concerned that manifestations of hatred and intolerance towards members of national or ethnic minorities as well as LGBT individuals remain widespread particularly on the Internet (arts. 2, 19, 20, 21, 22 and 27).

#### **Maldives, CCPR/C/MDV/CO/1, 31 August 2012**

**Keywords:** criminal laws, equality & non-discrimination legislation, stigma

8. The Committee is concerned that the State party is not fully respecting the rights of non-discrimination and privacy. In particular, it is concerned about discrimination against people on the basis of their sexual orientation as well as the social stigmatization and social exclusion of these groups. While the Committee observes the diversity of morality and cultures internationally, it recalls that they must always be subject to the principles of universality of human rights and non-discrimination (general comment No. 34(2011) on article 19 (freedoms of opinion and expression), para.32). Accordingly, the State party has the duty to protect the individual's liberty and privacy, including in the context of same sex sexual activities among consenting adults (arts. 2, 17 and 26).

The State party should decriminalize sexual relations between consenting adults of the same sex. It should also combat the stigmatization and marginalization of homosexuals in society. The State party should accelerate the enactment of the Anti-Discrimination legislation, which is currently under consideration by the Parliament, and ensure it includes a prohibition of discrimination on the basis on sexual orientation

#### **Malawi, CCPR/C/MWI/CO/1, 18 June 2012**

**Keywords:** criminal laws, violence, discrimination

7. The Committee is concerned about allegations regarding reported cases of violence and discrimination against people engaging in same-sex relationships in the State party, as well as allegations of incitement to violence against them by some public officials and authorities, despite section 20 of the Constitution, which guarantees equality of persons and prohibits discrimination. The Committee is also concerned about sections 153 and 156 of the Penal Code, which criminalize homosexuality, and about the new amendment to the Penal Code, section 137A, which also criminalizes same-sex relationships between women (arts. 2, 3 and 26)

The State party should amend its Penal Code to decriminalize homosexuality between adults of both sexes, and conduct awareness-raising campaigns to educate the population on this issue. The State party should also take appropriate steps to protect persons engaged in same-sex consensual relationships against discrimination and violence on the basis of their sexual orientation, and ensure that public officials and public authorities refrain from using language that may encourage hatred and violence against them. In this regard, the State party should prosecute persons allegedly responsible for such acts of discrimination and violence, and punish those who are convicted.

**Response:** The Government of Malawi has referred to the Law Commission for review of all legislation referred to above. The review process will be thorough and consultative. The Malawi

Law Commission is an independent body and its recommendations are seriously considered by the Government of Malawi

**Yemen, CCPR/C/YEM/CO/5, 23 April 2012**

**Keywords:** criminal laws, death penalty

13. The Committee is concerned that the Yemeni legislation continues to criminalize homosexuality, which incurs the death penalty (arts. 2, 6 and 26).

The State party should repeal or amend all legislation, which provides for or could result in prosecution and punishment of people because of their sexual orientation.

**Dominican Republic, CCPR/C/DOM/CO/5, 19 April 2012**

**Keywords:** Discrimination, violence, torture, stigma

16. The Committee is concerned at reports of discrimination, bullying, homicide, ill-treatment, torture, sexual aggression and sexual harassment against persons because of their sexual orientation or gender identity. The Committee also regrets the lack of information on the effective investigation and punishment of such acts (arts. 3, 6, 7 and 26).

The State party should indicate clearly and officially that it shall not tolerate any form of social stigmatization of homosexuality, bisexuality or transsexuality, and harassment, discrimination or violence against persons because of their sexual orientation or gender identity. The State party should ensure that any discriminatory or violent acts motivated by the sexual orientation or gender identity of the victim are investigated, prosecuted and punished.

**Guatemala, CCPR/C/GTM/CO/3, 19 April 2012**

**Keywords:** discrimination, violence, stigma

11. The Committee is concerned at the discrimination and violence suffered by lesbian, gay, bisexual, transgender and intersex persons and rejects all violations of their human rights on the basis of their sexual orientation or gender identity (arts. 3, 6, 7 and 26).

The State party should state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transsexuality, or harassment of or discrimination or violence against persons because of their sexual orientation or gender identity. The State party should ensure the investigation, prosecution and punishment of any act of discrimination or violence motivated by the victim's sexual orientation or gender identity.

**Turkmenistan, CCPR/C/TKM/CO/1, 19 April 2012**

**Keywords:** criminal laws, stereotyping

21. The Committee regrets the criminalization of sexual relations between consenting adults of the same sex, which entails a penalty of up to two years in prison. The Committee is concerned at the deep-rooted stereotypes against individuals on the basis of their sexual orientation or gender identity (art. 26).

The State party should decriminalize sexual relations between consenting adults of the same sex in order to bring its legislation in line with the Covenant. The State party should also take the necessary steps to put an end to the social stigmatization of homosexuality and send a clear message that it does not tolerate any form of discrimination against persons based on their sexual orientation or gender identity.

**Islamic Republic of Iran, CCPR/C/IRN/CO/3, 29 November 2011**

**Keywords:** torture, death penalty, discrimination



10. The Committee is concerned that members of the lesbian, gay, bisexual, and transgender community face harassment, persecution, cruel punishment and even the death penalty. It is also concerned that these persons face discrimination on the basis of their sexual orientation, including with respect to access to employment, housing, education and health care, as well as social exclusion within the community (arts. 2 and 26).

The State party should repeal or amend all legislation, which provides for or could result in discrimination against, and prosecution and punishment of, people because of their sexual orientation or gender identity. It should ensure that anyone held solely on account of freely and mutually agreed sexual activities or sexual orientation should be released immediately and unconditionally. The State party should also take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation, including with respect to access to employment, housing, education and health care, and to ensure that individuals of different sexual orientation or gender identity are protected from violence and social exclusion within the community. The Committee reaffirms that all of these matters fall entirely within the purview of the rights contained in the Covenant, and therefore within the Committee's mandate. It urges the State party to include detailed information on the enjoyment of Covenant rights by members of the lesbian, gay, bisexual and transgender community in its next periodic report.

#### **Kuwait, CCPR/C/KWT/CO/2, 18 November 2011**

**Keywords:** criminal laws, violence, stigma

30. The Committee is concerned about the criminalization of sexual relations between consenting adults of the same sex, and also about the new criminal offence of "imitating members of the opposite sex". It is also concerned about reported acts of violence against lesbian, gay, bisexual and transgender (LGBT) persons, including reports of harassment, arbitrary arrest and detention, abuse, torture, sexual assault and harassment of individuals on the basis of their sexual orientation or gender identity. (arts. 2 and 26)

The State party should decriminalize sexual relations between consenting adults of the same sex, and repeal the offence of imitating the opposite sex, in order to bring its legislation in line with the Covenant. The State party should also take the necessary steps to put an end to the social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity.

#### **Jamaica, CCPR/C/JAM/CO/3, 17 November 2011**

**Keywords:** discrimination, criminal laws, stigma, HIV/AIDS

8. While welcoming the adoption of the Charter of Fundamental Rights and Freedoms in April 2011, the Committee regrets that the right to freedom from discrimination is now expressed on the grounds of "being male or female", failing to prohibit discrimination on grounds of sexual orientation and gender identity. The Committee is also concerned that the State party continues to retain provisions under the Offences against the Person Act which criminalize consensual same-sex relationships, thus promoting discrimination against homosexuals. The Committee further regrets reports of virulent lyrics by musicians and entertainers that incite violence against homosexuals (arts. 2, 16, 26).

The State party should amend its laws with a view to prohibiting discrimination on the basis of sex, sexual orientation and gender identity. The State party should also decriminalize sexual relations between consenting adults of the same sex, in order to bring its legislation into line with the Covenant and put an end to prejudices and the social stigmatization of homosexuality. In this regard, the State party should send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons for their sexual orientation, and should ensure that individuals, who incite violence against homosexuals, are investigated, prosecuted and properly sanctioned.

9. The Committee regrets reports of prevalent societal stigmatization of people with HIV/AIDS, which conflates HIV/AIDS with homosexuality. The Committee is concerned that this stigmatization, which is partly fuelled by the laws that criminalize consensual same-sex

relationships, hampers access to treatment and medical care by persons living with HIV/AIDS, including homosexuals (arts. 2, 6 and 26)

The State party should take concrete measures to raise awareness of HIV/AIDS with a view to combating prejudices and negative stereotypes against people living with HIV/AIDS, including homosexuals. The State party should also ensure that persons living with HIV/AIDS, including homosexuals, have equal access to medical care and treatment

**Ethiopia, CCPR/C/ETH/CO/1, 19 August 2011**

**Keywords:** criminal laws, stigma

12. The Committee is concerned about the criminalization of "homosexuality and other indecent acts", as are other international human rights treaty bodies. As pointed out by the Committee, such criminalization violates the rights to privacy and to protection against discrimination set out in the Covenant. The Committee's concerns are not allayed by the information furnished by the State party that the provision in question is not applied in practice or by its statement that it is important to change mindsets before modifying the law in this regard (arts. 2, 17 and 26).

The State party should take steps to decriminalize sexual relations between consenting adults of the same sex in order to bring its legislation into line with the Covenant. The State party should also take the necessary steps to put an end to the social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation.

**Mongolia, CCPR/C/MNG/CO/5, 2 May 2011**

**Keywords:** discrimination, stigma, violence

9. The Committee notes with regret, as acknowledged by the State party, the widespread discriminatory attitudes towards lesbian, gay, bisexual and transgender (LGBT) persons (arts. 20, 24 and 26 of the Covenant).

The State party should take urgent measures to address the widespread discriminatory attitudes, social prejudice and stigmatization of LGBT persons in the State party. It should ensure that LGBT persons have access to justice, and that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated.

**Togo, CCPR/C/TGO/CO/4, 18 April 2011.**

**Keywords:** criminal laws, stigma

14. The Committee remains concerned about the criminalization of sexual relations between consenting adults of the same sex, punishable by 1 to 3 years of imprisonment and a fine of up to 500,000 CFA francs under article 88 of the current Criminal Code. As pointed out by the Committee and other international human rights bodies, such criminalization violates the rights to privacy and to protection against discrimination set out in the Covenant. The Committee's concerns are not allayed by the information furnished by the State party that the provision in question is not applied in practice or by its statement that it is important to change mindsets before modifying the law in this regard (arts. 2, 9, 17 and 26).

The State party should take steps to decriminalize sexual relations between consenting adults of the same sex in order to bring its legislation into line with the Covenant. The State party should also take the necessary steps to put an end to prejudice and the social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation.

**Poland, CCPR/C/POL/CO/6, 15 November 2010**

**Keywords:** equality & non-discrimination legislation, hate speech

5. The Committee is concerned that the Law on Equal Treatment is not exhaustive and does not cover discrimination based on sexual orientation, disability, religion or age in the fields of education, health care, social protection and housing (art. 2).

The State party should further amend the Law on Equal Treatment so that the issue of discrimination based on all grounds and in all areas is adequately covered.

8. The Committee notes with concern a significant rise in manifestations of hate speech and intolerance directed at lesbian, gay, bisexual and transgender people and, since 2005, in the number of cases based on sexual orientation filed with the Ombudsman. The Committee also regrets the absence of the provision in the Penal Code of hate speech and hate crimes based on sexual orientation or gender identity as punishable offences (art. 2).

The State party should ensure that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated. It should also: legally prohibit discrimination on the grounds of sexual orientation or gender identity; amend the Penal Code to define hate speech and hate crimes based on sexual orientation or gender identity among the categories of punishable offences; and intensify awareness-raising activities aimed at the police force and wider public.

**El Salvador, CCPR/C/SLV/CO/6, 18 November 2010.**

**Keywords:** equality & non-discrimination legislation

B. Positive Effects

3. The Committee welcomes the following measures taken since its consideration of the State party's previous periodic report:

...

(c) The adoption of Decree No. 56, of 4 May 2010, which contains provisions to prevent all forms of discrimination in the civil service on grounds of gender identity or sexual orientation;

**Cameroon, CCPR/C/CMR/CO/4, 4 August 2010**

**Keywords:** criminal laws, detention, HIV/AIDS, stigma

12. The Committee remains deeply concerned about the criminalization of consensual sexual acts between adults of the same sex, punishable with imprisonment from six months to five years under article 347(bis) of the Penal Code. As the Committee and other international human rights mechanisms have underlined, such criminalization violates the rights to privacy and freedom from discrimination enshrined in the Covenant. The information provided by the State party did not allay the Committee's concern about arbitrariness in the implementation of article 347 (bis), also observed by the United Nations Working Group on Arbitrary Detention in its Opinion No. 22/2006 (Cameroon (A/HRC/4/40/Add.1)), and about reported cases of inhumane and degrading treatment of persons detained on charges of having sexual relations with a person of the same sex. The Committee is also concerned that the criminalization of consensual sexual acts between adults of the same sex impedes the implementation of effective education programmes in respect of HIV/AIDS prevention. (arts. 2, 7, 9, 17 and 26)

The State party should take immediate steps towards decriminalizing consensual sexual acts between adults of the same sex, in order to bring its law into conformity with the Covenant. The State party should also take appropriate measures to address social prejudice and stigmatization of homosexuality and should clearly demonstrate that it does not tolerate any form of harassment, discrimination and violence against individuals because of their sexual orientation. Public health programmes to combat HIV/AIDS should have a universal reach and ensure universal access to HIV/AIDS prevention, treatment, care and support.

**Colombia, CCPR/C/COL/CO/6, 4 August 2010**

**Keywords:** violence

12. The Committee expresses its grave concern at the persistence of serious violations of human rights, including extrajudicial executions, forced disappearances, torture, rape and recruitment of children for use in the armed conflict. The Committee emphasizes the serious lack of statistics and concise information on the number of cases of torture and related investigations. The Committee notes the particular vulnerability of certain groups, such as women, children, ethnic minorities, displaced persons, the prison population, and lesbian, gay, bisexual and transgender (LGBT) persons. The Committee is concerned at the lack of criminal investigations and the slow progress of existing investigations, since many of them are still at the pre-investigation stage, thus contributing to continued impunity for serious human rights violations (arts. 2, 3, 6, 7, 24 and 26).

The State party should ensure that prompt and impartial investigations are conducted by the competent authorities and that human rights violations are punished with sentences appropriate to their seriousness. The State should provide the Human Rights and International Humanitarian Law Unit with additional resources in order to speed up its work. The Committee underlines the importance of the cases concerned being assigned to that Unit. The State must also strengthen security measures for justice operators and for all witnesses and victims. The State party should establish a centralized system making it possible to identify all serious human rights violations and to properly monitor their investigation.

**Mexico, CCPR/C/MEX/CO/5, 17 May 2010**

**Keywords:** equality & non-discrimination legislation, violence, education

21. The Committee notes with concern reports of acts of violence against lesbian, gay, bisexual and transgender (LGBT) persons. Moreover, while noting that the legal prohibition of discrimination covers discrimination based on sexual orientation, the Committee is concerned at reports of discrimination against individuals on the basis of their sexual orientation in the State party, including in the educational system (article 26 of the Covenant).

The State party should adopt immediate steps to effectively investigate all reports of violence against LGBT persons. It should also strengthen its efforts to provide effective protection against violence and discrimination based on sexual orientation, including in the educational system, and launch a campaign to raise awareness amongst the general public with a view to combating social prejudice.

**New Zealand, CCPR/C/NZL/CO/5, 7 April 2010**

**Keywords:** equality & non-discrimination legislation

A. Positive aspects

3. The Committee welcomes the following legislative and other measures:

(a) The apportionment of the Civil Union Act 2005 regarding the recognition of civil unions of persons of the same sex and the right to equality of gay, lesbian, bisexual and transgender persons;

...

**Uzbekistan, CCPR/C/UZB/CO/3, 7 April 2010**

**Keywords:** violence, discrimination, criminal laws

22. The Committee is concerned about reports that individuals have been harassed, physically attacked, or discriminated in the State party on the basis of their sexual orientation. It is also concerned that article 120 of the Criminal Code criminalizes consensual sexual activities between adult males. (arts. 7, 17 and 26)

The State party should review its legislation and align it with article 26 of the Covenant. It should also provide effective protection against violence and discrimination based on sexual orientation.

**Russian Federation, CCPR/C/RUS/CO/6, 29 October 2009**

**Keywords:** hate speech, police, violence, stigma

27. The Committee is concerned about acts of violence against lesbian, gay, bisexual and transgender (LGBT) persons, including reports of harassment by the police and incidents of people being assaulted or killed on account of their sexual orientation. The Committee notes with concern the systematic discrimination against individuals on the basis of their sexual orientation in the State party, including hate speech and manifestations of intolerance and prejudice by public officials, religious leaders and in the media. The Committee is also concerned about discrimination in employment, health care, education and other fields, as well as the infringement of the right to freedom of assembly and association and notes the absence of legislation that specifically prohibits discrimination on the basis of sexual orientation. (art. 26)

The State Party should:

(a) provide effective protection against violence and discrimination based on sexual orientation, in particular through the enactment of comprehensive anti-discrimination legislation that includes the prohibition of discrimination on the ground of sexual orientation;

(b) intensify its efforts to combat discrimination against LGBT persons, including by launching a sensitization campaign aimed at the general public as well as providing appropriate training to law enforcement officials.

(c) take all necessary measures to guarantee the exercise in practice of the right to peaceful association and assembly for the LGBT community.

The State party should also define the concept of "social groups" as stipulated in section 148 of the Criminal Code in a manner that does not include organs of the state or public officials.

**Grenada, CCPR/C/GRD/CO/1, 14 August 2009**

**Keywords:** criminal laws

21. The Committee notes with concern that the Criminal Code penalizes same-sex sexual activities between consenting adults (arts. 17 and 26).

The State party should repeal these provisions of its laws.

**Azerbaijan, CCPR/C/AZE/CO/3, 13 August 2009**

**Keywords:** police, prison

19. The Committee is concerned at reports that individuals have been harassed by police and prison officials because of their sexual orientation (art. 26).

The State party should take measures in this respect by providing training activities to its law enforcement and penitentiary authorities and by elaborating a relevant code of conduct.

**Tanzania, CCPR/C/TZA/CO/4, 6 August 2009**

**Keywords:** criminal laws

22. The Committee reiterates its concern at the criminalization of same-sex sexual relations of consenting adults, and regrets the lack of measures taken to prevent discrimination against them. (arts. 2, 17 and 26)

The State party should decriminalize same-sex sexual relations of consenting adults and take all necessary actions to protect them from discrimination and harassment.

**Sweden, CCPR/C/SWE/CO/6, 7 May 2009**

**Keywords:** equality & non-discrimination legislation, asylum & refugees, domestic violence

3. The Committee welcomes the various legislative, administrative and practical measures taken to improve the promotion and protection of human rights in the State party since the examination of the fifth periodic report, in particular:

(a) The inclusion of a new provision in the Constitution in 2003 (The Instrument of Government, chap. 1, art. 2, para. 4), clarifying that public institutions shall combat discrimination of persons on grounds of gender, colour, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the private person;

...

(d) The entry into force of the new Aliens Act (2005:716) in 2006, which provides for the right to appeal to independent bodies, allows for increased use of oral hearings on appeal, and permits the granting of refugee status to women fleeing gender-based violence as well as persons fleeing from persecution on grounds of sexual orientation;

4. The Committee has noted the merger, in January 2009, of the four previously existing Ombudsmen against Discrimination into a single Equality Ombudsman with competence to receive and examine individual complaints concerning alleged cases of discrimination, including on the grounds of age and transgender identity or expression. The Committee is concerned, however, that the State party has still not established an independent national institution, with a broad competence in the area of human rights, in accordance with the Paris Principles (General Assembly resolution 48/134; art. 2 of the Covenant).

The State party should establish a national institution with a broad human rights mandate, and provide it with adequate financial and human resources, in conformity with the Paris Principles.

8. The Committee notes the efforts made by the State party to eliminate violence against women, including through the adoption of a national action plan 2007-2010 to combat men's violence against women, family-based violence that misuses the idea of "honour", and violence in same-sex relationships, and amendment of the Social Services Act (2001:953) to provide support to women and children who are victims of violence. The Committee remains concerned, however, about the high prevalence of violence against women, particularly domestic violence. The Committee is also concerned that the State party has not provided consistent financial assistance to the shelters for victims of violence which are run by non-governmental organizations and that shelters are not available in all municipalities (arts. 3, 6, 7 and 26).

The State party should intensify its efforts towards the elimination of violence against women, inter alia through awareness-raising campaigns and effective implementation of the action plan 2007-2010 and the special package of measures to increase initiatives for the rehabilitation of men convicted of sexual violence and violent offences in close relationships. The State party should also ensure the availability of a fully adequate number of shelters for women and children subjected to domestic violence, including those with special needs, in particular women and children with disabilities.

#### **Japan, CCPR/C/JPN/CO/5, 18 December 2008**

**Keywords:** discrimination, partnership benefits & recognition, domestic violence

29. The Committee is concerned about discrimination against lesbian, gay, bisexual and transgender persons in employment, housing, social security, health care, education and other fields regulated by law, as exemplified by article 23 (1) of the Public Housing Law, which applies only to married and unmarried opposite-sex couples and effectively bars unmarried same-sex couples from renting public housing, and by the exclusion of same-sex partners from protection under the Law for the Prevention of Spousal Violence and the Protection of Victims (art. 2 (1) and 26).

The State party should consider amending its legislation, with a view to including sexual orientation among the prohibited grounds of discrimination, and ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples, in line with the Committee's interpretation of article 26 of the Covenant.

**Denmark, CCPR/C/DNK/CO/5, 16 December 2008**

**Keywords:** equality & non-discrimination legislation

4. The Committee welcomes the extensive legislative, administrative and policy measures taken to improve the promotion and protection of human rights since the examination of the fourth periodic report, including:

...

(e) The establishment, in May 2008, of the Board of Equal Treatment, with competence to receive individual complaints concerning alleged cases of discrimination based on gender, race, colour, religion or belief, disability, political opinion, age or sexual orientation, national, social or ethnic origin.

**Czech Republic, CCPR/C/CZE/CO/2/Add.1, 9 September 2008**

**Keywords:** equality & non-discrimination legislation

17. The bill amends the law on equal treatment and protection from discrimination for reasons of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The prohibition of discrimination will be set forth by the Act in a number of nominated spheres, which are: the right to employment and access to employment, access to vocational or entrepreneurial activity or other self-employed gainful activity, in the sphere of employment and other dependent activity including remuneration, membership and activities of trade unions, employee councils or other organizations of employers, membership and activities in professional associations including the benefits provided by such organizations to its members, in social security and social benefits, health care, education and access to goods and services which are provided to the public, including accommodation, and their provision. The Act further defines the titles which the victims of discrimination may claim.

**France, CCPR/C/FRA/CO/4, 31 July 2008**

**Keywords:** equality & non-discrimination legislation

6. The Committee welcomes France's creation of the High Authority to Combat Discrimination and Promote Equality (la haute autorité de lutte contre les discriminations et pour l'égalité, HALDE), which has the power to receive individual complaints and act on its own initiative to remedy problems of discrimination based on national origin, disability, health, age, gender, family and marital status, trade union activity, sexual orientation, religious beliefs, physical appearance, surname, and genetic characteristics. HALDE is empowered, pursuant to Act No. 2004/1486 of 30 December 2004, to recommend statutory or regulatory changes to public authorities and to suggest settlements to private companies, and has described its activities in comprehensive annual reports.

**Republic of San Marino, CCPR/C/SMR/CO/2, 31 July 2008**

**Keywords:** equality & non-discrimination legislation

7. The Committee is concerned that such non-discrimination grounds as sexual orientation, race, colour, language, nationality and national or ethnic origin are subsumed under the notion of 'personal status' in article 4 of the Declaration of the Citizens' Rights. It observes that such subsuming of grounds makes it difficult to ensure their equal and comprehensive application (articles 2 and 26).

The State party should adopt a comprehensive anti-discrimination legal framework which expressly indicates all those grounds of discrimination that are presently subsumed under the notion of 'personal status'.

**Ireland, CCPR/C/IRL/CO/3, 30 July 2008**

**Keywords:** transgender, identity documents, partnership benefits & recognition

8. The Committee, while noting with satisfaction the State party's intention to adopt legislation on a civil partnership bill, expresses its concern that no provisions regarding taxation and social

welfare are proposed at present. It is furthermore concerned that the State party has not recognized a change of gender by transgender persons by permitting birth certificates to be issued for these persons. (arts. 2, 16, 17, 23, and 26)

The State party should ensure that its legislation is not discriminatory of nontraditional forms of partnership, including taxation and welfare benefits. The State party should also recognize the right of transgender persons to a change of gender by permitting the issuance of new birth certificates.

**United Kingdom of Great Britain and Northern Ireland, CCPR/C/GBR/CO/6, 30 July 2008**

**Keywords:** partnership benefits & recognition, identity documents, equality & non-discrimination legislation

5. The Committee welcomes the adoption of the Civil Partnership Act 2004, the Gender Recognition Act 2004, the Equality Act 2006 and the Sex Discrimination (amendment of Legislation) Regulations 2008.

**Botswana, CCPR/C/BWA/CO/1, 24 April 2008**

**Keywords:** criminal laws

22. The Committee notes with concern that the State party criminalizes same-sex sexual activities between consenting adults (arts 17 and 26).

The State party should repeal these provisions of its criminal law.

**St. Vincent and The Grenadines, CCPR/C/VCT/CO/2, 24 April 2008**

**Keywords:** criminal laws

8. The Committee is concerned that consensual homosexual acts between adults in private are still criminalized under section 146 of the Criminal Code (art. 17).

The State party should provide information on the application of the law in practice, and consider the abolition of this law.

**Algeria, CCPR/C/DZA/CO/3, 12 December 2007**

**Keywords:** criminal laws

The Committee notes with concern that some provisions of the Criminal Code, in particular article 338, prohibit private sexual activity between consenting adults of the same sex (Covenant, arts. 17 and 26).

The State party should revoke these provisions.

**Austria, CCPR/C/AUT/CO/4, 30 October 2007**

**Keywords:** equality & non-discrimination legislation

8. The Committee notes that the Equal Treatment Act, the Employment of Disabled Persons Act and the Equality of Disabled Persons Act provide protection against discrimination on grounds of ethnic origin and disability at work and in other areas such as social security, housing, education and health. However, it notes with concern that protection against gender discrimination is less comprehensive and that protection against discrimination on grounds of age, religion and sexual orientation is limited to 'work' only under the Equal Treatment Act. It is also concerned that such hierarchisation of discrimination grounds can also be found in Provincial laws, and that in cases covered by the Acts concerning disabled persons, victims must seek an out-of-court settlement prior to filing a court action. (arts. 2 (1), 14 (1), 26)



The State party should consider amending the Equal Treatment Act, the Employment of Disabled Persons Act, the Equality of Disabled Persons Act and relevant Provincial laws, with a view to levelling up and ensuring equal substantive and procedural protection against discrimination with regard to all prohibited grounds of discrimination.

**Sudan, CCPR/C/SDN/CO/3, 29 August 2007**

**Keywords:** criminal laws, death penalty

19. The imposition in the State party of the death penalty for offences which cannot be characterized as the most serious, including embezzlement by officials, robbery with violence and drug trafficking, as well as practices which should not be criminalised such as committing a third homosexual act and illicit sex, is incompatible with article 6 of the Covenant. (arts. 6 and 7 of the Covenant)

The State party should ensure that 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 and the type of offence for which the death penalty has been imposed.

**Zambia, CCPR/C/ZMB/CO/3, 9 August 2007**

**Keywords:** criminal laws

24. The Committee notes with concern that the Penal Code criminalizes same-sex sexual activities between consenting adults. (arts 17 and 26).

The State party should repeal such provision of the Penal Code.

**Barbados, CCPR/C/BRB/CO/3, 11 May 2007**

**Keywords:** criminal laws

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.

**Chile, CCPR/C/CHL/CO/5, 18 May 2007**

**Keywords:** discrimination, criminal laws, health, stigma

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.

**Barbados, CCPR/C/BRB/CO/3, 11 May 2007**

**Keywords:** criminal laws

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.

## **2. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

<http://www2.ohchr.org/english/bodies/cescr/index.htm>

### A. JURISPRUDENCE

None

### B. CONCLUDING OBSERVATIONS

#### **Ecuador, E/C.12/ECU/CO/3, 13 December 2012**

**Keywords:** health, HIV/AIDS, sexual and reproductive health and rights

30. The Committee is concerned by the absence of sufficient, disaggregated, up-to-date mental and psychosocial health statistics in the State party. The Committee is also concerned by the rate of HIV/AIDS in the State party and especially by shortcomings in the delivery of antiretroviral drugs and health services, in particular to lesbian, gay, bisexual and transgender persons.

The Committee recommends that, in implementing its health strategy, the State party include mental health as a high-priority issue and establish regular, independent monitoring mechanisms. The Committee requests the State party to provide information on the progress made in the field of mental and psychosocial health in its next periodic report. The Committee recommends that the State party establish guidelines for ensuring that lesbian, gay, bisexual and transgender persons have access to health services, including sexual and reproductive health services, on a non-discriminatory basis.

#### **Tanzania, E/C.12/TZA/CO/1-3, 13 December 2012**

**Keywords:** equality & non-discrimination legislation, stigma, criminal laws

5. The Committee is concerned that the State party has not yet adopted a comprehensive anti-discrimination bill. It is also concerned that persons living with or affected by HIV/AIDS, persons with disabilities and persons with albinism face social stigma and discrimination, despite policy and legislative measures taken by the State party (art. 2).

The Committee recommends that the State party adopt a comprehensive anti-discrimination bill. The Committee recommends that the State party take steps to combat and prevent discrimination and societal stigma, in particular against persons with disabilities, persons with albinism, persons living with or affected by HIV/AIDS, lesbian, gay, bisexual and transgender (LGBT) individuals and persons belonging to disadvantaged and marginalized groups, and ensure their enjoyment of the rights enshrined in the Covenant, in particular access to employment, social services, health care and education. The Committee draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

6. The Committee is concerned that the Penal Code criminalizes homosexuality (art. 2). The Committee recommends that the State party take urgent steps to amend the Penal Code to decriminalize homosexuality.

#### **Bulgaria, E/C.12/BGR/CO/4-5, 11 December 2012**

**Keywords:** partnership benefits & recognition, equality & non-discrimination legislation, children

17. The Committee is concerned that couples in de facto unions and the status of children born as a result of those relationships are not regulated and protected by law. The Committee is also concerned that same-sex couples are not legally recognized and by the absence of a legal framework for the protection of the rights of such couples (arts. 2 and 10).

The Committee recommends that the State party undertake a comprehensive review of its legislation to ensure de jure equality between de facto and official unions, to legally recognize same-sex couples, to regulate the financial effects of such relationships, and to guarantee the full protection of the rights of children born out of wedlock.

#### **Slovakia, E/C.12/SVK/CO/2, 8 June 2012**

**Keywords:** equality & non-discrimination legislation

10. The Committee is concerned by the fact that homosexual couples are not legally recognized and by the absence of a legal framework for the protection of the rights of such couples (art. 2)

The Committee recommends that the State party consider adopting legislation that would grant legal recognition to homosexual couples and regulate the financial effects of such relationships.

#### **Ethiopia, E/C.12/ETH/CO/1-3, 31 May 2012**

**Keywords:** criminal laws, equality & non-discrimination legislation

8. The Committee is concerned that the State party has not yet adopted a comprehensive anti-discrimination bill. The Committee also notes with concern that the Penal Code criminalizes homosexuality (art.2).

The Committee recommends that the State party adopt a comprehensive anti-discrimination bill, and take urgent steps to amend the Penal Code to decriminalize homosexuality. The Committee recommends that the State party take steps to combat and prevent discrimination and societal stigma, in particular against persons with disabilities, LGBT individuals, as well as persons belonging to marginalized and disadvantaged groups, and ensure their enjoyment of the rights enshrined in the Covenant, in particular access to employment, social services, health care, and education. The Committee draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural Rights.

#### **Peru, E/C.12/PER/CO/2-4, 30 May 2012**

**Keywords:** equality & non-discrimination legislation

5. The Committee notes with concern that there is no specific legislation prohibiting discrimination against persons based on sexual orientation, and that lesbian, gay, bisexual or transgender persons have faced such discrimination in employment, housing, and access to education and health care (art.2).

The Committee recommends that the State party expedite the adoption of specific legislation prohibiting discrimination against persons based on sexual orientation and take measures, in particular awareness-raising, to ensure that LGBT persons are not discriminated against on the basis of their sexual orientation and gender identity.

#### **Moldova, E/C.12/MDA/CO/2, 12 July 2011**

**Keywords:** equality & non-discrimination legislation

7. The Committee is concerned at opinions expressed by certain sectors in the society, including public anti-lesbian, gay, bisexual and transgender (LGBT) statements by high-level politicians, triggered by the submission to parliament in February 2011 of the draft anti-discrimination bill.

The Committee recommends the adoption of the comprehensive anti-discrimination bill, taking into account the Committee's general comment No. 20 on Non-Discrimination in Economic, Social and Cultural Rights. The Committee also urges the State party to take measures to eliminate discrimination against LGBT people. It also recommends including provisions in the draft anti-discrimination law on "reasonable accommodation" for persons with disabilities.

#### **Russian Federation, E/C.12/RUS/CO/5, 1 June 2011**

**Keywords:** discrimination

36. The Committee requests information concerning the extent of the practice of discrimination against lesbian, gay, bisexual and transgender persons in particular in employment, health care and education in the State party (art. 2, para. 2).

#### **Germany, E/C.12/DEU/CO/5, 20 May 2011**

**Keywords:** transgender, intersex, sexual and reproductive health and rights

26. The Committee notes with concern that transsexual and inter-sexed persons are often considered to be persons with mental illness and that the State party's policies, legislative or otherwise, have led to discrimination against these persons as well as to violations of their sexual and reproductive health rights. (art. 12, 2.2)

The Committee urges the State party to step up measures, legislative or otherwise, on the identity and the health of transsexual and inter-sex persons with a view to ensuring that they are no longer discriminated against and that their personal integrity and sexual and reproductive health rights are respected. The Committee calls on the State party to fully consult transsexual and inter-sexed persons for this purpose.

#### **Uruguay, E/C.12/URY/CO/3-4, 1 December 2010**

**Keywords:** discrimination

7. The Committee notes with concern the persisting discrimination against, and the social and economic marginalization of, minority groups in the State party, including persons of African descent, and widespread discrimination on the basis of sexual orientation. The Committee notes that such discrimination and marginalization are reflected in all areas covered by the Covenant, most notably health care, education, employment and access to housing. The Committee regrets that the State party has not provided information on the budget allocations for its plans and programmes in this area or on the impact of measures taken so far to combat discrimination against these groups (art. 2, para. 2).

The Committee recommends that the State party adopt a comprehensive anti-discrimination law, taking into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural Rights, and prioritize the effective implementation of existing programmes to eliminate all forms of discrimination in law and in practice.

#### **Poland, E/C.12/POL/CO/5, 19 January 2010**

**Keywords:** equality & non-discrimination legislation, stereotyping, education

12. The Committee continues to be concerned at the de facto discrimination experienced by some disadvantaged and marginalized individuals and groups, such as ethnic minorities, persons with disabilities, and lesbian, gay, bisexual and transgender persons in the enjoyment of their economic, social and cultural rights, despite the appointment of the Plenipotentiary for Equal Treatment in April 2008. The Committee is further concerned that the draft act on implementation of some European Union directives in the field of equal treatment does not provide comprehensive protection against all forms of discrimination in all areas related to Covenant rights (art. 2.2).

The Committee strongly urges the State party to amend the provisions of the draft act on implementation of some European Union directives in the field of equal treatment, to bring it into conformity with the Committee's general comment No. 20 on non-discrimination in economic, social and cultural rights. The Committee also recommends that the State party ensure effective enforcement of existing anti-discrimination legislation, and strengthen measures to combat de facto discrimination, including through campaigns aimed at combating stereotypes, especially concerning disadvantaged and marginalized individuals and groups. The Committee invites the State party to include in its next periodic report information on the results of the work undertaken by the Plenipotentiary for Equal Treatment.

32. The Committee is deeply concerned at reports about homophobia, particularly bullying in schools (art. 13).

The Committee recommends that the State party take measures, in particular awareness-raising, to counter homophobic attitude in educational settings, ensuring that individuals are not discriminated against on the basis of their sexual orientation and identity. The Committee also recommends that the State party introduce in schools the Compass manual on human rights education with young people, published by the Council of Europe.

### **Republic of Korea, E/C.12/KOR/CO/3, 17 December 2009**

**Keywords:** equality & non-discrimination legislation

9. The Committee is concerned that a comprehensive anti-discrimination law has still not been adopted by the State party owing to the fact that the anti-discrimination bill submitted to the seventeenth National Assembly in December 2007 was discarded without consideration. The Committee is also concerned that the present version under assessment by the task force does not exclusively enumerate anti-discrimination grounds, but rather stipulates a list of typical anti-discrimination grounds as an example, and that it only contains certain grounds for discrimination, excluding others that had been indicated in the original bill, such as nationality and sexual orientation (art. 2).

The Committee urges the State party to adopt expeditiously a comprehensive anti-discrimination law that clearly spells out all the grounds for discrimination, as set out by article 2.2 of the Covenant and in line with the Committee's general comment No. 20 on non-discrimination in economic, social and cultural rights (art. 2, para. 2).

### **United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/5, 12 June 2009**

**Keywords:** equality & non-discrimination legislation

6. Le Comité note avec satisfaction l'introduction d'un projet de loi sur l'égalité qui vise à simplifier la législation en vigueur et à étendre la protection contre la discrimination à d'autres motifs tels que l'âge et l'orientation sexuelle, ainsi que la création de plusieurs institutions traitant des questions relatives à l'égalité telles que la diversité judiciaire («Panel on Judicial Diversity») et l'accès équitable aux professions libérales («Panel on Fair Access to the Professions»).

### **Brazil, E/C.12/CO/BRA/2, 12 June 2009**

**Keywords:** equality & non-discrimination legislation

3. The Committee welcomes the legislative and other measures adopted by the State party since the examination of its initial report, including the following:

...

(e) The Brazil Free of Homophobia Programme, which aims to protect and promote the rights of homosexual persons, including their rights to personal security, education, health and work;

### **Sweden, E/C.12/SWE/CO/5, 1 December 2008**

**Keywords:** domestic violence

9. The Committee welcomes the steps taken to combat violence against women, in particular the adoption of an action plan to combat men's violence against women, violence and oppression in the name of honour and violence in same-sex relationships'.

### C. GENERAL COMMENTS

#### **General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, 2 July 2009**

**Keywords:** Yogyakarta Principles, discrimination

#### *II. SCOPE OF STATE OBLIGATIONS*

11. Private sphere. Discrimination is frequently encountered in families, workplaces, and other sectors of society. For example, actors in the private housing sector (e.g. private landlords, credit providers and public housing providers) may directly or indirectly deny access to housing or mortgages on the basis of ethnicity, marital status, disability or sexual orientation while some families may refuse to send girl children to school. States parties must therefore adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.

#### *III. PROHIBITED GROUNDS OF DISCRIMINATION*

##### B. Other status

27. The nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of "other status" is thus needed to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognised grounds in Article 2(2). These additional grounds are commonly recognised when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalisation. The Committee's General Comments and Concluding Observations have recognised various other grounds and these are described in more detail below. However, this list is not intended to be exhaustive. Other possible prohibited grounds could include the denial of a person's legal capacity because he or she is in prison, or is involuntarily interned in a psychiatric institution, or the intersection of two prohibited grounds of discrimination, e.g., where access to a social service is denied on the basis of sex and disability.

32. Sexual orientation and gender identity.

"Other status" as recognized in article 2, paragraph 2, includes sexual orientation. States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace. [fn]

fn: For definitions, see Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity

#### **General Comment No. 19: The Right to Social Security, E/C.12/GC/19, 4 February 2008**

**Keywords:** discrimination

#### *II. NORMATIVE CONTENT OF THE RIGHT TO SOCIAL SECURITY*

##### B. Special topics of broad application

##### 1. Non-discrimination and equality

29. The obligation of States parties to guarantee that the right to social security is enjoyed without discrimination (article 2, paragraph 2, of the Covenant), and equally between men and women (article 3), pervades all of the obligations under Part III of the Covenant. The Covenant thus prohibits any discrimination, whether in law or in fact, whether direct or indirect, 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 social security.

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

**Keywords:** discrimination, employment

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, 20 January 2002**

**Keywords:** discrimination

*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, 11 August 2000: "Special Topics of Broad Application"**

**Keywords:** discrimination, health

*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. (...)

**3. COMMITTEE AGAINST TORTURE**

<http://www2.ohchr.org/english/bodies/cat/index.htm>

A. JURISPRUDENCE

**None**

B. CONCLUDING OBSERVATIONS

**Peru, CAT/C/PER/CO/5-6, 21 January 2013**

**Keywords:** violence, death, police

*Attacks against members of the lesbian, gay, bisexual, and transgender (LGBT) community*

22. The Committee is seriously concerned at reports of harassment and violent attacks, some of which have resulted in deaths, against the LGBT community by members of the national police, armed forces, municipal security patrols (serenos) and prison officials and at arbitrary detention and physical abuse in police stations with denial of fundamental legal safeguards (arts. 2, 11, 12, 13 and 16).

The State party should take effective measures to protect the LGBT community from attacks, abuse and arbitrary detention and ensure that all acts of violence are promptly, effectively and impartially investigated and prosecuted, perpetrators brought to justice and victims provided with redress.

**Norway, CAT/C/NOR/CO/6-7, 13 December 2012**

**Keywords:** violence, hate speech

*Minorities and other vulnerable groups*

21. The Committee notes with concern allegations of cases of ill-treatment, harassment, incitement to violence and hate speech towards minorities and other vulnerable groups in the State party, including persons belonging to the lesbian, gay, bisexual, and transgender (LGBT) community (art. 16).

The Committee recalls that, in the light of its general comment No. 2 (2007) on the implementation of article 2, the special protection of minorities or marginalized individuals or groups especially at risk is part of the State party's obligation to prevent torture or ill-treatment. In this respect, the State party should enhance efforts to eradicate any instances of violence and ill-treatment of vulnerable groups, including through increased awareness-raising and information campaigns to promote tolerance and respect for diversity. The State party should ensure that violent acts, discrimination and hate speech are systematically investigated, prosecuted and the alleged perpetrators prosecuted, if found guilty, convicted and sanctioned with penalties commensurate with the gravity of the offence.

**Russian Federation, CAT/C/RUS/CO/5, 11 December 2012**

**Keywords:** violence, discrimination

*Violent attacks because of race, ethnicity, or identity of the victims*

15. The Committee is concerned at persistent reports of discrimination and abuses including violent attacks and abuses against Roma and other ethnic minorities, migrant workers, foreign nationals, and others targeted because of their identity or social marginalization, including the death in custody of a number of Roma in Kazan and Pskov in 2005-2011. The Committee is further concerned at reports that police have failed to promptly react to, or to carry out effective investigations and bring charges against all those responsible for violent attacks against lesbian, gay, bisexual and transgender (LGBT) persons, such as alleged regarding the recent attacks on the "7 Free Days Club" in Moscow and the "Parisian Life Club" in Tyumen (arts. 2, 12, 13 and 16).

The State party should:

(a) Take effective measures to ensure the protection of all persons at risk, including Roma, persons belonging to ethnic minorities, migrant workers, LGBT persons and foreign nationals, including through enhanced monitoring. All acts of violence and discrimination against members of such groups should be promptly, impartially and effectively investigated, the perpetrators brought to justice, and redress provided to the victims. The Committee recommends that statistics be compiled regarding all crimes against members of such groups made vulnerable, and on the outcomes of investigations, prosecutions and remedial measures taken in relation to such crimes;



(b) Publicly condemn attacks against Roma, ethnic and other minorities, migrant workers, and LGBT persons and other persons at risk, and organize awareness-raising campaigns, including among the police, promoting tolerance and respect for diversity.

**Armenia, CAT/C/ARM/CO/3, 16 July 2012**

**Keywords:** detention, prison, violence

*Conditions of detention*

19. While welcoming current efforts by the State party to improve conditions of detention in prisons, including the refurbishing of some facilities and work on the construction of a new prison, the Committee remains concerned at continued reports of severe overcrowding, understaffing and inadequate food and health care. The Committee is concerned by allegations of corruption in prison, including among groups of prisoners in whose behaviour prison officials appear to acquiesce. It is also concerned by reports that some victims of violence or discrimination are singled out by such groups of prisoners for abusive treatment based on perceived sexual orientation or nationality. The Committee regrets that there has not been a significant increase in the implementation of alternative measures to detention by the courts, and also regrets the lack of a confidential mechanism for detainees to make complaints of torture or ill-treatment. The Committee notes the establishment of public monitoring groups, consisting of representatives of non-governmental organizations, mandated to carry out monitoring of penitentiary institutions and police stations. However, the Committee is concerned that the Police Monitoring Group is not granted full access to police stations (arts. 2, 11 and 16).

The State party should continue to take effective measures to improve conditions in places of detention and to reduce overcrowding in such places. The Committee recommends that the State party increase its efforts to remedy prison overcrowding, including through the application of alternative measures to imprisonment in line with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and to provide the Committee with information on any probation service to be established in charge of alternative punishment, conditional release and rehabilitation.

The State party should take necessary measures to eliminate any form of violence or discrimination against detainees based on sexual orientation or nationality, including all abusive and discriminatory actions taken by prison inmates against other detainees. It should establish a confidential system for receiving and processing complaints regarding torture or ill-treatment and ensure that the system is established in all places of deprivation of liberty. The State party should further ensure that all complaints received are promptly, impartially and effectively investigated, and the perpetrators punished with appropriate penalties.

**Bulgaria, CAT/ C/BGR/CO/4-5, 14 December 2011**

**Keywords:** hate speech, violence, stereotyping

28. While acknowledging the stance taken by the authorities in publicly condemning manifestations of discrimination and intolerance, the Committee is deeply concerned at manifestations of discrimination and intolerance, including hate speech and violent attacks against certain national and religious minorities and persons belonging to sexual minorities. The Committee is also concerned by the excessive use of force by the police against certain minorities and the recent anti-Roma riots and destruction of property, which in some cases occurred without preventive action from the police. It is also concerned that slogans amounting to hate speech are voiced against vulnerable minority groups, including by members of certain political parties and groups and that intolerance towards religious minorities has resulted in vandalism of places of worship and attacks on worshippers. The Committee takes note that the recent attacks on journalists in connection with the anti-Roma riots are being investigated (arts. 2, 12, 13, 14 and 16).

The State party should enhance efforts to eradicate stereotypes and discrimination against the Roma and other national minorities, including through increased awareness-raising and information campaigns to promote tolerance and respect for diversity. Measures should be taken to prohibit and prevent advocacy of hate speech, discrimination and intolerance, including in the public domain, in conformity with international standards and human rights instruments to which Bulgaria is a party. The

State party should enhance the enforcement of anti-discrimination legislation and ensure that violent acts, discrimination and hate speech are systematically investigated, prosecuted and the perpetrators convicted and punished. The State party should systematically apply provisions of the Criminal Code concerning crimes based on intolerance and should ensure that offences motivated by discrimination constitute an aggravating circumstance in criminal prosecution. The State party should ensure that members of the Roma community are not singled out on an ethnically motivated basis with regard to the use of force by the police and ensure that excessive use of force against members of national and other minorities is promptly and impartially investigated and perpetrators prosecuted and punished. The victims need to be compensated and accorded all remedies afforded by the Convention, including reparations for damage. The Committee requests to be updated on the results of the investigations into the recent attacks on journalists

**Paraguay, CAT/C/PRY/CO/4-6, 14 December 2011**

**Keywords:** detention

*Conditions of detention and use of pretrial detention*

19. The Committee is concerned about the habitual and widespread use of pretrial detention, which may undermine the right to presumption of innocence, rather than non-custodial measures. The Committee is also concerned by the failure to respect the maximum legal period for pretrial detention and by the existence in the State party of legislation that restricts the possibility of using alternatives to preventive detention. The Committee is especially concerned by the extensive use of pretrial detention for children aged between 16 and 18 years. The Committee notes with concern the abundant information received from various sources on the deplorable material conditions in many of the State party's police stations and prisons, the overcrowding in them, the inadequate medical services and the almost complete lack of activities for persons deprived of their liberty. In particular, the Committee is concerned about the material conditions in the psychiatric ward of the national prison in Tacumbú and the lack of specialized medical attention provided to the prisoners housed there. The Committee is further concerned about allegations of discrimination against the lesbian, gay, bisexual and transgender community in the State party's prisons, including discrimination in allowing private visits from partners. Lastly, the Committee is concerned about the arbitrary use of solitary confinement as a punishment in the State party's prisons (arts. 2, 11 and 16).

The State party should take effective measures to ensure that its policy of pretrial detention is in conformity with international standards and that pretrial detention is used solely as a last resort and for a limited period, in conformity with the requirements laid down in its legislation. To this end, the State party should review the use of pretrial detention as a primary measure for accused persons awaiting trial and consider the possibility of using alternatives to deprivation of liberty, as described in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), adopted by the United Nations General Assembly in its resolution 45/110, in particular in cases involving minors. The State party should also increase judicial control over the duration of pretrial detention.

The State party should adopt urgent measures to ensure that detention conditions in police stations, prisons and other detention centres are in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council in its resolutions 663 C (XXIV) and 2076 (LXII). In particular, the Committee recommends that the State party should:

(...)

(d) Redouble efforts to combat discrimination against vulnerable groups, and in particular against the lesbian, gay, bisexual and transgender community;

**Germany, CAT/C/DEU/CO/5, 12 December 2011**

**Keywords:** intersex, health

20. The Committee takes note of the information received during the dialogue that the Ethical Council has undertaken to review the reported practices of routine surgical alterations in children born with sexual organs that are not readily categorized as male or female, also called intersex persons, with a view to evaluating and possibly changing current practice. However,

the Committee remains concerned at cases where gonads have been removed and cosmetic surgeries on reproductive organs have been performed that entail life long hormonal medication, without effective, informed consent of the concerned individuals or their legal guardians, where neither investigation, nor measures of redress have been introduced. The Committee remains further concerned at the lack of legal provisions providing redress and compensation in such cases (arts. 2, 10, 12, 14 and 16).

The Committee recommends that the State party:

- (a) Ensure the effective application of legal and medical standards following the best practices of granting informed consent to medical and surgical treatment of intersex people, including full information, orally and in writing, on the suggested treatment, its justification and alternatives;
- (b) Undertake investigation of incidents of surgical and other medical treatment of intersex people without effective consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation;
- (c) Educate and train medical and psychological professionals on the range of sexual, and related biological and physical , diversity; and
- (d) Properly inform patients and their parents of the consequences of unnecessary surgical and other medical interventions for intersex people.

#### **Finland, CAT/C/FIN/CO/5-6, 29 June 2011**

**Keywords:** equality & non-discrimination legislation, Yogyakarta Principles

24. While taking note with satisfaction that the State party committed itself to making the recommendations made under the universal periodic review an integral part of its Government's comprehensive human rights policy, the Committee would appreciate receiving information regarding the measures in force to prevent violence against women, compile information on violence against children, provide the same coverage in national legislation and anti-discrimination training activities on grounds of sexual orientation and disability as for other grounds of discrimination in areas such as the provision of services and health care and to consider using the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity as a guide to assist in the development of its policies.

#### **Kuwait, CAT/C/KWT/CO/2, 28 June 2011**

**Keywords:** violence, hate crimes

*Discrimination and violence against vulnerable groups*

25. The Committee is concerned at reports that vulnerable groups such as lesbian, gay, bisexual and transgender (LGBT) persons are subjected to discrimination and ill-treatment, including sexual violence, both in public and domestic settings. (arts. 2 and 16)

The State party should investigate crimes related to discrimination directed towards all vulnerable groups and pursue ways in which hate crimes can be prevented and punished. The State party should also promptly, thoroughly and impartially investigate all cases of discrimination and ill-treatment of these vulnerable groups, and punish those responsible for these acts. The State party should conduct awareness-raising campaigns for all officials who are in direct contact with victims of such violence, as well for the population at large.

#### **Mongolia, CAT/C/MNG/CO/1, 20 January 2011**

**Keywords:** equality & non-discrimination legislation, hate crimes, sexual assault, Yogyakarta Principles

*Discrimination and violence against vulnerable groups*

25. The Committee is concerned:

(a) About reports that there is no comprehensive domestic law against discrimination and that hate crimes and speech is not an offence under the law. The Committee is also concerned

at reports that vulnerable groups such as lesbian, gay, bisexual and transgender (LGBT) persons are subjected to violence and sexual abuse, both in public and domestic settings, owing to widespread negative social attitudes. The Committee welcomes the official registration of the LGBT Centre and notes with appreciation the indication by the State party of the need for a public awareness-raising campaign regarding LGBT persons;

(b) About reports concerning the discrimination against persons with HIV/AIDS, especially with regard to housing and pre-screening prior to employment;

(c) That, while taking note of the enactment in 2002 of the new Civil Code which stipulates that non-citizens have the same rights as citizens in civil and legal matters, some foreigners may be subjected to organized violence based on ethnic origin (arts. 2 and 16).

The State party should establish a comprehensive legal framework to combat discrimination, including hate crimes and speech. The State party should take measures to bring perpetrators of such crimes to justice. The State party should ensure the protection of vulnerable groups such as sexual minorities, persons living with HIV/AIDS, and some foreigners. The State party should establish effective policing, enforcement and complaints mechanisms with a view to ensuring prompt, thorough and impartial investigations into allegations of attacks against persons on the basis of their sexual orientation or gender identity in line with the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity. The State party should adopt legislation to combat violence caused by organizations which promote and incite racial, ethnic and other forms of discrimination.

#### **Colombia, CAT/C/COL/CO/4, 4 May 2010**

**Keywords:** torture

##### *Complaints of torture and impunity*

11. While there has been an overall reduction in the number of complaints of torture since the last periodic review in 2004, the Committee is concerned that the incidence of torture in the State party remains high and shows specific patterns that point to widespread practice. The Committee notes that, while illegal armed groups are to a large extent responsible for such violence, there are persistent complaints about the participation or acquiescence of agents of the State in these acts. The Committee is particularly concerned at reports indicating an increased number of cases in which direct involvement by agents of the State is alleged. It also expresses grave concern at the persistence of serious violations linked to torture, such as extrajudicial execution, forced disappearance, forced displacement, sexual violation and the recruitment of children in the context of armed conflict, and at the vulnerable situation of certain groups such as women, children, ethnic minorities, displaced persons, the prison population and LGBT persons (art. 2 of the Convention).

#### **Republic of Moldova, CAT/C/MDA/CO/2, 29 March 2010**

**Keywords:** hate speech, equality & non-discrimination legislation

##### *Minorities and marginalized groups*

27. The Committee notes with concern reports of violence and hatred towards minorities, especially Roma, and other vulnerable groups in the Republic of Moldova, including alleged recent manifestations of hate speech and intolerance against homosexuals (art. 16).

The Committee recalls in the light of its general comment No. 2 on the implementation of article 2 (CAT/C/GC/2, 2008) that the special protection of minorities or marginalized individuals or groups especially at risk is part of the State party's obligation to prevent torture or ill-treatment. In this respect, the State party should:

(a) Incorporate in its Criminal 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 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;

- (b) 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 and prosecute such crimes and the sentences imposed.

**Lithuania, CAT/C/LTU/CO/2, 19 January 2009**

**Keywords:** equality & non-discrimination legislation

4. The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:

- (a) The Law on Equal Treatment which came into force on 1 January 2005 with the purpose to ensure the implementation of human rights laid down in the Constitution and to prohibit any direct or indirect discrimination based upon age, sexual orientation, disability, racial or ethnic origin, religion, or beliefs;

**Costa Rica, CAT/C/CRI/CO/2, 7 July 2008**

**Keywords:** police, prison, gender identity, morality, sexual assault, violence, stigma

11. The Committee takes note of the efforts made by the State party to address cases of abuse of authority by border guards and prison staff, including specific recommendations that officials should avoid actions or omissions which violate rights. However, the Committee remains concerned at cases of abuse of immigrants and citizens, especially on the grounds of their sexual orientation and/or transsexual identity. The Committee considers that, in particular, the rules on public morals can grant the police and judges discretionary power which, combined with prejudices and discriminatory attitudes, can lead to abuse against this group (arts. 2, 11 and 16).

Through training and awareness creation among those concerned, the State party should foster a policy of respect for human rights for all without discrimination. The State party should take steps to ensure continuous monitoring and periodic evaluation of the impact of the training and awareness creation provided for police officers, border guards and prison personnel.

18. The Committee expresses concern at the reports of sexual abuse and physical violence against homosexual and transsexual prisoners.

**Sweden, CAT/C/SWE/CO/2, 4 June 2008**

**Keywords:** equality & non-discrimination legislation, asylum & refugees, domestic violence

5. The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and ill-treatment, in particular:

(a) The amendment of the Swedish Aliens Act in 2006, which introduces a new appeal system, includes an explicit provision on non-refoulement and provides for the granting of refugee status to persons claiming fear of persecution on grounds of gender and sexual orientation;

(b) The adoption of new legislation on fundamental safeguards, including access to a lawyer and notification of custody that entered into force on 1 April 2008 (law no. 2008:67);

(c) The adoption of a national human rights plan of action for the period 2006-2009;

(d) The adoption, in November 2007, of the action plan to combat men's violence against women, violence and oppression in the name of honour and violence in same-sex relationships (Govt. Comm. 2007/08:39); and

(e) The common Action Plan developed by the Border Control Police, the Migration Board and the Social Services which aims to minimise the risks of unaccompanied asylum-seeking children disappearing and becoming victims of trafficking.

21. The Committee notes that the 2001 action plan against racism, xenophobia, homophobia and discrimination has been incorporated in the new human rights action plan for the period 2006-2009 and it welcomes the recent initiative of the Government to merge the current antidiscrimination legislation into one single Anti-Discrimination Act that will cover seven grounds of discrimination.[fn]

fn: Discrimination on the grounds of sex, sexual orientation, gender identity, ethnic background, religion or other religious beliefs, disability, and age.

#### **Portugal, CAT/C/PRT/CO/4, 19 February 2008**

**Keywords:** hate crimes, police, violence

17. The Committee notes that article 240 of the new Penal Code, concerning non-discrimination, now covers not only discrimination based on race, colour, ethnic or national origin and religion, but also discrimination based on sex and sexual orientation. It is nonetheless concerned by reports of numerous acts of violence of a discriminatory nature directed against certain minorities. The Committee is also concerned that the membership of the police forces does not reflect the diversity of minorities present in Portugal (art. 16).

The State party should take the necessary measures to effectively combat acts of violence based on any form of discrimination and to punish the perpetrators appropriately. The State party should also strive to include representatives of minorities residing in its territory in the police forces.

#### **Latvia, CAT/C/LVA/CO/2, 19 February 2008**

**Keywords:** hate crimes

19. While noting a number of measures adopted by the State party, including the recent amendment to article 48 of the Criminal Law to include racial motivation as an aggravating factor for criminal liability, the Committee expresses its concern at report of acts of violence against and discrimination of vulnerable groups, including Roma and the lesbian, gay, bisexual and transgender (LGBT) community. The Committee is concerned at reports that the number of allegedly racially motivated crimes has recently increased and that the number of reported hate crimes is underestimated due to the lack of an effective hate crime recording and monitoring system. Furthermore, while the Committee takes note of the efforts made by the State party in recent years in the process of naturalization, it remains concerned at the continued existence of the status of non-citizens and stateless persons, affecting a large group in Latvian society (art. 16).

The State party should intensify its efforts to combat discrimination against and illtreatment of vulnerable groups, in particular Roma and the LGBT community, including through the strict application of relevant legislation and regulations providing for sanctions. The State party should ensure prompt, impartial and thorough investigations into all such motivated acts and prosecute and punish perpetrators with appropriate penalties which take into account the grave nature of their acts, and ensure adequate training and instructions for law enforcement bodies and sensitization of the judiciary. The State party is encouraged to adopt the draft national programme to facilitate tolerance and to provide detailed information in its next periodic report on the effective measures adopted to prevent and combat such acts. The State party should simplify and facilitate the naturalization process and integration of non-citizens and stateless persons.

#### **Poland, CAT/C/POL/CO/4, 25 July 2007**

**Keywords:** hate crimes, hate speech

20. 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.

#### **Italy, CAT/C/ITA/CO/4, 16 July 2007**

**Keywords:** equality & non-discrimination legislation

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. (arts. 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.

#### C. GENERAL COMMENTS

#### **General Comment No. 2: Implementation of article 2 by States Parties, CAT/C/GC/2, 24 January 2008**

**Keywords:** torture, multiple discrimination

21. The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction. States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above.

22. State reports frequently lack specific and sufficient information on the implementation of the Convention with respect to women. The Committee emphasizes that gender is a key factor. Being female intersects with other identifying characteristics or status of the person such as race, nationality, religion, sexual orientation, age, immigrant status etc. to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof. The contexts in which females are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes. Men are also subject to certain gendered violations of the Convention such as rape or sexual violence and abuse. Both men and women and boys and girls may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles. States parties are requested to identify these situations and the measures taken to punish and prevent them in their reports

#### 4. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

<http://www2.ohchr.org/english/bodies/cedaw/index.htm>

##### A. JURISPRUDENCE

**None**

##### B. CONCLUDING OBSERVATIONS

#### **Austria, CEDAW/C/AUT/CO/7-8, 1 March 2013**

**Keywords:** partnership benefits & recognition

*Marriage and family life*

50. While taking note of the enactment of an Act Governing Registered Partnerships of 2010, which provides for a legal framework for cohabiting couples of the same sex, the Committee notes the lack of an equivalent regulation for couples of the opposite sex, in particular concerning the provision of maintenance and the distribution of property on dissolution of the relationship, which may negatively affect the woman partner. It is also concerned at the lack of data on forced marriages.

51. The Committee recommends the State party to regulate the rights and obligations of unmarried cohabiting couples of the opposite sex in order to provide protection with regard to the provision of maintenance and the distribution of property after the cessation of cohabitation. It should also provide data on forced marriages disaggregated by age and ethnicity of the victim, and the specific measures taken to combat forced marriages.

#### **The former Yugoslav Republic of Macedonia, CEDAW/C/MKD/CO/4-5, 1 March 2013**

**Keywords:** equality & non-discrimination legislation

10. While noting that discrimination based on sex is prohibited by Article 9 of the Constitution, the 2010 Law for Prevention and Protection Against Discrimination and the 2012 Law on Equal Opportunities for Women and Men, the Committee is concerned at the failure of the State Party to explicitly prohibit discrimination on the grounds of sexual orientation and gender identity following its pledge to do so at the last Universal Periodic Review in 2009 (A/HRC/12/15, para 46).

11. The Committee calls upon the State party to amend national gender equality and anti-discrimination laws in order to explicitly prohibit all forms of discrimination against women, in all areas covered by the Convention, in accordance with its pledge to do so at the Universal Periodic Review in 2009.

#### **Chile, CEDAW/C/CHL/CO/5-6, 12 November 2012**

**Keywords:** equality & non-discrimination legislation, stereotyping, partnership benefits & recognition

*Definition of equality and non-discrimination*

10. While noting that the new anti-discrimination legislation includes the prohibition of discrimination based on sex, gender identity and sexual orientation, the Committee remains concerned that the State party failed to incorporate, in this legislation, a comprehensive definition of discrimination against women in accordance with article 1 of the Convention, and the principle of equality between women and men in accordance with article 2 (a). Furthermore, the Committee notes with concern that, while the Convention refers to the concept of equality, the terms "equality" and "equity" are used in the State party's plans and programmes in such a way that could be interpreted as being synonymous or interchangeable.

11. The Committee calls on the State party to:



(a) adopt a comprehensive legal definition of all forms of discrimination against women, covering both direct and indirect discrimination, and to establish, in its Constitution and/or other legislation, the principle of equality between women and men in accordance with article 2 (a) of the Convention, with a view to achieving formal and substantive equality between women and men;

#### *Stereotypes*

16. While welcoming the recent legislation providing for parental leave for men (ActNo. 20.545), the Committee remains concerned about the persistence of traditional stereotypes regarding the roles and responsibilities of women and men in the family and society, which overemphasize the traditional roles of women as mothers and spouses and continue to affect their educational and professional choices. Furthermore, the Committee is gravely concerned that, as acknowledged by the delegation during the dialogue, certain groups of women face multiple forms of discrimination and violence on grounds such as sexual orientation, gender identity, indigenous origin, or being HIV/AIDS positive

17. The Committee recommends that the State party:

(a) Increase its efforts to assist women and men in striking a balance between family and employment responsibilities, inter alia, through awareness-raising and education initiatives for both women and men on adequate sharing of care of children and domestic tasks;

(b) Transform its recognition of the problem of multiple forms of discrimination into a comprehensive strategy to modify or eliminate stereotypical attitudes, in order to implement the new anti-discrimination law.

#### *Marriage and family relations*

46. The Committee notes the statement of the delegation informing it that a bill on de facto unions, which includes same sex relationship, is before the Senate., The Committee is deeply concerned about the persistence of legislation which discriminates against women with regard to the administration of marital property and reiterates its concern that legal reform in this regard has been pending since 1995 (CEDAW/C/CHI/CO/4, para. 9).

### **Guyana, CEDAW/C/GUY/CO/7-8, 27 July 2012**

**Keywords:** domestic violence, equality & non-discrimination legislation

#### *Violence against women*

22. The Committee notes the enactment of the Sexual Offences Act in 2010 and the launch of a national policy on domestic violence (2008-2013) under the slogan "Break the Cycle Take Control". The Committee expresses its concern, however, at the high prevalence of violence against women in the State party, in particular domestic and sexual violence, which is culturally accepted and in many cases remains underreported. The Committee is further concerned that there is only one centre in the country providing services to victims of violence, which is funded by the State party and run by a non-governmental organization. The Committee also expresses its concern about the acts of violence against lesbian and bisexual women and transgender persons.

23. The Committee urges the State party:

...

(f) To provide effective protection against violence and discrimination against all groups of women through the enactment of comprehensive anti-discrimination legislation that includes the prohibition of all forms of discrimination against them and the decriminalisation of consensual adult same sex relations as indicated in the oral statement of the delegation.

### **New Zealand, CEDAW/C/NZL/CO/7, 27 July 2012**

**Keywords:** health

33. The Committee commends the State party for its advocacy on the protection of women's sexual and reproductive health rights and prevention of maternal mortality. The Committee

notes with concern, however, the convoluted abortion laws which require women to get certificates from two certified consultants before an abortion can be performed, thus making women dependent on the benevolent interpretation of a rule which nullifies their autonomy. The Committee is also concerned that abortion remains criminalized in the State party, which leads women to seek illegal abortions, which are often unsafe. The Committee appreciates measures taken by the State party to improve mental health services for young women, but notes with concern the prevailing high level of suicide among young women, particularly minority and migrant youth. The Committee acknowledges the State party's comprehensive health coverage and recent successful health education campaigns, such as the campaign to promote cervical cancer screening and good practice guidelines on health services for lesbian women and transgendered persons, but remains concerned about the access to and quality of these health services. The Committee also remains concerned about inequalities in access to health care by minority women. In particular, the Committee is concerned about the high rates of teenage pregnancy among Māori women and the lack of access to effective ageappropriate education on sexual and reproductive health and rights. Furthermore, the Committee is concerned about reports that some health practitioners perceive HIV

34. The Committee urges the State party:

...

(e) To improve access and quality of health services for lesbian women and transgendered persons

### **Brazil, CEDAW/C/BRA/CO/7, 23 March 2012**

**Keywords:** partnership benefits & recognition

#### **B. Positive Aspects**

7. The Committee notes the role of the Supreme Court in guaranteeing the rights of men and women in the implementation of the Maria da Penha Law and on its decision on equal rights and obligations for same-sex couples

### **Norway, CEDAW/C/NOR/CO/8, 23 March 2012**

**Keywords:** health, equality & non-discrimination legislation

33. While noting the elaboration of a bill "prohibiting discrimination on grounds of sexual orientation and gender identity", which will be presented to the Parliament in 2013, and the establishment of the national Lesbian, Gay, Bisexual and Transgender Knowledge Centre in 2011, the Committee is concerned at the discrimination in the State party against lesbian, bisexual, transgender and intersex women in the provision of health-care services.

34. The Committee urges the State party to:

(a) Accelerate adoption of the relevant legislation mentioned above ensuring non-discrimination in the health care system; and

(b) Provide appropriate training to health-service providers, in order to avoid abuse and mistreatment of these women.

### **Zimbabwe, CEDAW/C/ZWE/CO/2-5, 23 March 2012**

**Keywords:** violence

23. While noting the adoption of the new Domestic Violence Act in 2006, the Committee expresses its concern at the high prevalence of violence against women in the State party, in particular domestic and sexual violence, which remains, in many cases, underreported, as well as at the lack of statistical data disaggregated by sex, and also at the absence of an expressed political will to give high priority to eliminating violence against women. While welcoming the enactment of the Sexual Offences Act in 2003, which recognizes marital rape as an offence, the Committee is deeply concerned that despite the enactment of the Domestic Violence Act in 2006 and the establishment of an Anti-Domestic Violence Council, responsible for the implementation of the Act, its effectiveness has been hampered, as the State party has not allocated the required monetary and human resources thereto. The Committee is further concerned at the State party's failure to address politically motivated violence against women. The Committee is again concerned that there is only one State-established shelter for women victims of violence (the two other shelters were established by NGOs), and that it is not exclusively for women

victims of domestic violence. The Committee is also concerned about acts of violence perpetrated by State and non-State actors, against lesbian, bisexual and transgender women.

24. The Committee urges the State party to:

...

(f) Provide effective protection against violence and discrimination against all groups of women, including lesbian, bisexual and transgender women, in particular through the enactment of comprehensive anti-discrimination legislation that includes the prohibition of multiple forms of discrimination and through the launching of a sensitization campaign aimed at the general public, as well as providing appropriate training to law enforcement officials;

#### **Paraguay, CEDAW/C/PRY/CO/6, 8 November 2011**

**Keywords:** equality & non-discrimination legislation

12. The Committee is concerned that, despite the prohibition contained in article 48 of the Constitution, the State party's legislation does not provide a definition of discrimination in accordance with article 1 of the Convention. The Committee is further concerned that, despite the preparation of draft laws on equality and against all forms of discrimination against women, endorsed by ministerial entities, several commissions of the legislative branch and civil society, these drafts have not been approved by the legislature. The lack of a comprehensive law disproportionately affects disadvantaged groups of women, including indigenous and rural women, lesbians and transsexuals, who are particularly vulnerable to discrimination. The Committee is further concerned at the persistence of discriminatory provisions in the legislation which denotes a need to further harmonize domestic legislation with international instruments ratified by the State party.

13. The Committee reiterates its recommendation to the State party to take effective steps to prohibit discrimination against women in line with article 1 of the Convention through the adoption of appropriate national legislation, such as the drafting of a comprehensive law on discrimination that awaits the approval of parliament. The Committee also recommends that the State party review its domestic legislation in order to harmonize it with the Convention.

#### **Montenegro, CEDAW/C/MNE/CO/1, 4 November 2011**

**Keywords:** equality & non-discrimination legislation

4. The committee welcomes the adoption, since the entry into force of the convention for the state party, of several legislative measures aimed at eliminating discrimination against women, including:

(a) law on gender equality (2007) which prohibits discrimination based on sex and provides for measures to promote equal opportunities for women and men in all spheres of public life;

(b) law on the prohibition of discrimination (2010) which defines and prohibits direct and indirect discrimination based on sex, sexual orientation, gender identity and other grounds, provides for remedies, and strengthens the protection role of the protector of human rights and freedoms (ombudsman) in relation to discrimination;

#### **Singapore, CEDAW/C/SGP/CO/4, 10 August 2011**

**Keywords:** stereotyping, culture

21. The Committee reiterates its concern about the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men within the family and society at large. In this regard, the Committee is particularly concerned that, despite the legal equality accorded to spouses, discriminatory traditional cultural attitudes that continue to utilize "the head of the household" concept, assigning this role to men, persist in the State party. Additionally, the Committee is concerned by the pervasiveness of advertising for products and services to improve body image and conform to societal expectations, as well as at the lack of clear guidelines to non-medical practitioners, such as aesthetic clinics, beauty clinics and spas. It notes that such cultural overemphasis of women's beauty and the lack of effective regulations on its commercial exploitation, including by the media, reinforces the image of women as sex objects and constitutes serious obstacles to women's enjoyment of their human

rights and the fulfillment of the rights enshrined in the Convention. The Committee further notes that despite the fact that the State party recognizes the principle of equality of all persons before the law, as enshrined in the Constitution, regardless of gender, sexual orientation and gender identity (CEDAW/C/SGP/Q/4/Add.1, para. 113), there is still negative stereotyping of women belonging to this group.

22. The Committee calls upon the State party:

(a) To put in place, without delay, a comprehensive strategy to modify or eliminate patriarchal attitudes and stereotypes that discriminate against women, including those based on sexual orientation and gender identity, in conformity with the provisions of the Convention. Such measures should include efforts, in collaboration with civil society, to educate and raise awareness of this subject, targeting women and men at all levels of society; (...)

#### **Costa Rica, CEDAW/C/CRI/CO/5-6, 2 August 2011**

**Keywords:** transgender, identity documents

40. The Committee takes note of the establishment of regulations aiming to respect the identity of transgender women in the identity photograph cards issued by the Civil Registry Office. However, it expresses its concern about discrimination in the State party against lesbian, bisexual, transgender and intersex women in access to education, employment and health-care services. The Committee is also concerned at information received indicating that some of these women are victims of abuse and mistreatment by health service providers and law enforcement officials.

41. The Committee calls on the State party to provide effective protection against violence and discrimination against women, in line with the recommendation under the universal periodic review (A/HRC/13/15 and Add.1) accepted by the State party. In this regard, the Committee urges the State party to intensify its efforts to combat discrimination against women based on their sexual orientation and gender identity, including by launching a sensitization campaign aimed at the general public, as well as providing appropriate training to law enforcement officials and health service providers, in order to avoid abuse and mistreatment of these women.

#### **Republic of Korea, CEDAW/C/KOR/CO/7, 1 August 2011**

**Keywords:** equality & non-discrimination legislation

##### *Discriminatory laws*

14. While the Committee notes that the consultations on the adoption of the Anti-Discrimination Bill and on the effectiveness of some 90 pre-existing laws on discrimination conducted by the Subcommittee on Anti-Discrimination Laws were concluded at the end of 2010, it regrets the lack of information on the results of those consultations and the slow progress in the adoption of the Anti-Discrimination Bill in the State party, which has been on hold since May 2008.

15. The Committee calls on the State party to take urgent steps towards the adoption of a comprehensive Anti-Discrimination Act, in line with articles 1 and 2 of the Convention and the Committee's general recommendation No. 28 (2010), that includes a clear prohibition of all forms of discrimination, both direct and indirect, and takes into account article 2 (4) of the National Human Rights Commission Act (Korea, 2005), which prohibits discrimination on the grounds of sexual orientation.

#### **Belarus, CEDAW/C/BLR/CO/7, 6 April 2011**

**Keywords:** multiple discrimination

41. The Committee is concerned about the lack of disaggregated data on the situation of women who typically face multiple forms of discrimination, such as older women, women with disabilities, women belonging to minorities, including Roma women, and lesbians, and who are particularly vulnerable to violence and abuse.

42. The Committee recommends that the State party:

(a) Collect disaggregated data on the situation of women facing multiple forms of discrimination such as older women, women with disabilities, women belonging to minorities, including Roma women, and lesbians and include such information in its next periodic report;

(b) Adopt pro-active measures, including temporary special measures, to eliminate any such discrimination, including in political and public life and in the areas of education, employment and health, and to protect those women from violence and abuse

#### **South Africa, CEDAW/C/ZAF/CO/4, 5 April 2011**

**Keywords:** sexual assault, hate crimes, equality & non-discrimination legislation

##### *Sexual orientation*

39. The Committee notes that the State party has in its Constitution the prohibition of discrimination based on the sexual orientation of individuals. However, the Committee expresses grave concern about reported sexual offences and murder committed against women on account of their sexual orientation. The Committee further expresses serious concern about the practice of so called "corrective rape" of lesbians.

40. The Committee calls on the State party to abide by its Constitutional provisions and to provide effective protection from violence and discrimination against women based on their sexual orientation, in particular through the enactment of comprehensive anti-discrimination legislation that would include the prohibition of multiple forms of discrimination against women on all grounds, including on the grounds of sexual orientation. The Committee further recommends that the State party continue its sensitization campaign aimed at the general public, as well as provide appropriate training to law enforcement officials and other relevant actors.

#### **Sri Lanka, CEDAW/C/LKA/CO/7, 5 April 2011**

**Keywords:** criminal laws, detention

24. The Committee is concerned that, despite the adoption of the Prevention of Domestic Violence Act, there are significant delays before cases are processed under this Act. It appears from the constructive dialogue that most cases are dealt with through police mediation, and that family relations prevail over protection of women and suppression of violence against women. The Committee is further concerned that marital rape is recognized only if a judge has previously acknowledged the separation of the spouses. It also regrets the absence of specific data and information on domestic violence. The Committee is further concerned that the criminalization of same-sex relationship results in women being completely excluded from legal protection. It is also concerned about the information that the law enforcement officers are allowed to arbitrarily detain them.

25. In accordance with its general recommendation No. 19, the Committee urges the State party:

(a) To give priority attention to combating violence against women and girls and to adopt comprehensive legislation to criminalize all forms of violence against women;

(b) To carry out additional educational and awareness-raising trainings for the judiciary and public officials, in particular law enforcement officers, health service providers and social workers, community leaders and the general public so as to raise awareness and sensitivity to the fact that all forms of violence against women constitute a criminal offence;

(c) To take the necessary measures to provide support to victims of violence, including by improving women's access to justice, and implement its decision to establish State-sponsored shelters for victims of violence;

(d) To extend criminalization of marital rape regardless of judicial acknowledgement of separation; and

(e) To take measures to prevent violence against women, investigate occurrences, prosecute and punish perpetrators;

(f) To provide protection, relief and remedies, including appropriate compensation, to victims and their families; and

(g) To decriminalize sexual relationship between consenting adults of same sex, and abide by the obligation of non-discrimination under the Convention

#### **Czech republic, CEDAW/C/CZE/CO/5, 10 November 2010**

**Keywords:** equality & non-discrimination legislation

7. The Committee further welcomes the adoption and implementation, since the consideration of the last report, of several laws aimed at eliminating discrimination and violence against women, including:

(a) The Act on Equal Treatment and Legal Means of Protection against Discrimination and on the Amendment to Certain Laws ("Anti-discrimination Act", 2009), which prohibits discrimination on grounds of, inter alia, sex and sexual orientation in areas such as access to goods and services, education, employment, social protection and housing, and assigns the role of national equality body to the Ombudsman;

#### **Uganda, CEDAW/C/UGA/CO/7, 5 November 2010**

**Keywords:** criminal laws, hate crimes

*Sexual orientation and gender identity*

43. The Committee notes with grave concern that homosexual behaviour is criminalized in Uganda. The Committee also expresses its serious concern about reported harassment, violence, hate crimes and incitement of hatred against women on account of their sexual orientation and gender identity. The Committee is further concerned that they face discrimination in employment, health care, education and other fields. Furthermore, the Committee notes with concern the private member's proposed Anti- Homosexuality Bill, the contents of which would result in further discrimination of women on the basis of sexual orientation and gender identity.

44. The Committee calls on the State party to decriminalize homosexual behaviour and to provide effective protection from violence and discrimination against women based on their sexual orientation and gender identity, in particular through the enactment of comprehensive anti-discrimination legislation covering, inter alia, the prohibition of multiple forms of discrimination against women on all grounds, including on the grounds of sexual orientation and gender identity. To this end, the Committee urges the State party to oppose the private member's proposed Anti-Homosexuality Bill. The Committee also urges the State party to intensify its efforts to combat discrimination against women on account of their sexual orientation and gender identity, including by launching a sensitization campaign aimed at the general public, as well as providing appropriate training to law enforcement officials and other relevant actors.

#### **Albania, CEDAW/C/ALB/CO/3, 16 September 2010**

**Keywords:** equality & non-discrimination legislation

*Positive aspects*

8. The Committee further welcomes the laws enacted since the consideration of the last report aimed at advancing the situation of women and eliminating discrimination based on sex and gender, as well as those aimed at multiple and intersecting forms of discrimination against women, such as the new Family Code, Law No. 9062 of 8 May 2003; Law No. 9669 on Measures against Violence in Family Relations of 18 January 2006; Law No. 9970 on Gender Equality in Society of 24 July 2008, which contains a definition of discrimination against women in line with article 1 of the Convention; amendments to the Electoral Code of 29 December 2008 aimed at increasing the number of women running as candidates for national and local elections; Law No. 10221 on Protection from Discrimination of 4 February 2010, which makes Albania one of the few States parties that expressly prohibit discrimination, inter alia, on the grounds of gender,

gender identity and sexual orientation; and amendments to the Penal Code with regard to trafficking in women and girls.

*Harmonization of national legislation*

18. The Committee notes the efforts to reconcile the newly enacted gender equality and anti-discrimination laws, legislation previously in force and the Convention, especially in addressing multiple and intersecting forms of discrimination experienced by ethnic minority women, women with disabilities, rural women and other disadvantaged groups of women, and notes the legal basis for imposing sanctions for acts of discrimination.

19. The Committee recommends that the State party monitor the impact of the gender equality and anti-discrimination legislation, identify inconsistencies and address them, as appropriate, with a view to ensuring that the implementation of the legislation is conducive to the effective elimination of discrimination against women, especially women belonging to disadvantaged groups, such as ethnic and linguistic minority women, women with disabilities, older women, women living in rural or remote areas, migrant women, women living with HIV/AIDS and women discriminated against on the grounds of their sexual orientation and gender identity.

*Disadvantaged groups of women*

40. The Committee regrets that the State party lacks information about the situation of female migrant workers.

41. The Committee calls on the State party to provide information about the situation of female migrant workers and remittances received by the State party. The Committee also urges the State party to develop a safe service labour migration policy to protect the human rights of migrant women in accordance with the guidelines provided in the Committee's general recommendation No. 26.

42. While welcoming the adoption of the Law on Protection from Discrimination, which expressly prohibits discrimination on the grounds of gender identity and sexual orientation, the Committee expresses concern about discrimination and acts of violence against women on such grounds.

43. The Committee calls on the State party to implement fully the Law on Protection from Discrimination in relation to discrimination based on gender identity and sexual orientation by providing effective protection against discrimination and violence against women on such grounds.

**Argentina, CEDAW/C/ARG/CO/6, 16 August 2010**

**Keywords:** violence, discrimination

*Disadvantaged groups of women*

43. The State party acknowledges that the rights of older women, women migrants and women with disabilities are not fully respected and that discrimination against them often takes place. Also, the State party recognizes that the rights of lesbian, bisexual and transgendered women are not fully respected and that sometimes they are discriminated against and are the targets of violence.

44. The Committee urges the State party to ensure that the rights of older women, women migrants and women with disabilities and lesbian, bisexual and transgendered women, among others, are fully protected. All of the above-mentioned women should be able to live free from any discrimination or violence and to enjoy all their rights, including civil, cultural, economic, political and social, as well as sexual and reproductive, rights.

**Russian Federation, CEDAW/C/USR/CO/7, 16 August 2010**

**Keywords:** violence, death

*Lesbian, bisexual and transgender women*

40. While welcoming the statement by the delegation that discrimination is not allowed on any grounds in the State party, including on the grounds of sexual orientation, the Committee

expresses its concern about acts of violence against lesbian, bisexual and transgender women, including reports of harassment by the police and incidents of people being assaulted or killed on account of their sexual orientation. The Committee is also concerned about discrimination in employment, health care, education and other fields.

41. The Committee calls on the State party to provide effective protection against violence and discrimination against women based on their sexuality, in particular through the enactment of comprehensive anti-discrimination legislation that includes the prohibition of multiple forms of discrimination, including on the grounds of sexual orientation. The Committee also urges the State party to intensify its efforts to combat discrimination against lesbian, bisexual and transgender women, including by launching a sensitization campaign aimed at the general public, as well as providing appropriate training to law enforcement officials.

#### **Panama, CEDAW/C/PAN/CO/7, 5 February 2010**

**Keywords:** stereotyping, discrimination, violence

22. The Committee reiterates its concern about the persistence of traditional stereotypes regarding the roles and responsibilities of women and men in the family and society, which represents a significant impediment to the implementation of the Convention and constitutes a serious obstacle to women's enjoyment of their human rights. Furthermore, the Committee is gravely concerned that, as acknowledged by the delegation, certain groups of women, in addition to being affected by gender stereotypes, face multiple forms of discrimination and violence on grounds such as sexual orientation and gender identity. In this regard, the Committee notes that the communication media in the State party reinforce images of women as sex objects and also contribute to different ethnic prejudices.

23. The Committee urges the State party to increase its efforts to design and strengthen comprehensive awareness-raising programmes to foster a better understanding of, and support for, equality between women and men at all levels of society. Such efforts should aim to modify stereotypical attitudes and cultural norms about the responsibilities and roles of women and men in the family, workplace, political life and society, as required under articles 2 (f) and 5 (a) of the Convention. The Committee also urges the State party to transform its recognition of the problem of multiple forms of discrimination into an overall strategy for eliminating gender stereotypes relating to women in general and, in particular, to discrimination against women as specified in paragraph 22. This strategy could include awareness-raising programmes in school curricula, the training of teachers and the sensitization of the media and the public at large, including actions specifically targeting men and boys.

#### **Netherlands, CEDAW/C/NLD/CO/5, 5 February 2010**

**Keywords:** transgender, identity documents, stereotyping

6. The Committee welcomes the initiatives and measures developed by the Netherlands to prevent and combat female genital mutilation and honour-related killings, as well as the commitment to protect women against discrimination on the grounds of sexual orientation, as indicated in the introductory statement of the delegation of the State party.

25. The Committee calls upon the State party to strengthen its efforts to eliminate stereotypical images and attitudes regarding the roles of women and men in the family and in society, in accordance with articles 2 (f) and 5 (a) of the Convention. This should include developing additional programmes to address gender stereotypes related to discrimination on other grounds, such as race, age, sexual orientation and disability, and to scrutinize government policies, in particular migration and integration policies, as well as targeted programmes in the education system and the gender equality training of teachers. It calls upon all the governments to periodically review the measures taken in order to assess their impact and effectiveness, to take any necessary follow-up or remedial action, and to report thereon to the Committee in its next report.

46. While noting that the national report for 2009-2010 on the implementation of the Convention will be devoted to the health of ethnic minority women in relation to their socio-economic position, the Committee expresses serious concern that the maternal mortality risk for female asylum-seekers is four times higher than for native Dutch women in the Netherlands and that undocumented female immigrants face great difficulties in accessing the health services to which they are formally entitled, mainly because of a lack of appropriate information provided to



them. The Committee also expresses concern at specific health problems experienced by transgender women, in particular the compulsory sterilization they should undergo to get their birth certificates changed and the non-reimbursement by health insurance for surgical placement of their breast implants. The Committee is further concerned that pregnant women suspected of drug trafficking at Schiphol national airport who cannot undergo a body scan may be detained for lengthy periods of time.

47. The Committee urges the Netherlands to include in its next report the outcome of the study into the health condition of ethnic minority women related to the obligation under the Convention and general recommendation No. 24. In the meantime, the Committee urges the Netherlands to take immediate measures to reduce the maternal mortality of female asylum-seekers and to provide information to undocumented women on their rights as well as practical information on how they can access health-care services. The Committee strongly supports the intention of the Netherlands to conduct in-depth research on the health situation of transgender women and to revise the law making sterilization compulsory for transgender women. The Committee also invites the Netherlands to reconsider its position to not reimburse transgender women for breast implants. The Committee urges the Netherlands to use appropriate methods of examination on pregnant women suspected of drug trafficking in order to avoid their detention at the national airport.

#### **Uzbekistan, CEDAW/C/UZB/CO/4, 5 February 2010**

**Keywords:** multiple discrimination

40. The Committee notes the very limited information and statistics available on vulnerable groups of women, including elderly women, women with disabilities and women discriminated against on the basis of their sexuality. The Committee is concerned that those women often suffer from multiple forms of discrimination, especially with regard to access to education, employment and health care, protection from violence and access to justice.

#### **Ukraine, CEDAW/C/UKR/CO/7, 5 February 2010**

**Keywords:** multiple discrimination

42. The Committee regrets the lack of detailed information in relation to vulnerable groups of women, such as migrant and refugee women, women belonging to ethnic minorities, in particular Roma women, as well as rural women, older women, disabled women and female sexual minorities, and notes with concern that these groups of women may be subjected to multiple forms of discrimination.

43. The State party is invited to provide comprehensive information and statistical data in its next periodic report on the situation of the vulnerable groups of women, such as migrant and refugee women, women belonging to ethnic minorities, in particular Roma women, as well as rural women, older women, disabled women and female sexual minorities, and on the measures taken for eliminating discrimination against these women with regard to their access to health, education, employment, social benefits, etc.

#### **Panama, CEDAW/C/PAN/CO/7, 5 February 2010**

**Keywords:** multiple discrimination, violence, stereotyping

22. The Committee reiterates its concern about the persistence of traditional stereotypes regarding the roles and responsibilities of women and men in the family and in the society at large, which represent a significant impediment to the implementation of the Convention and constitute serious obstacles to women's enjoyment of their human rights. Furthermore, the Committee is gravely concerned that certain groups of women, in addition to being affected by gender stereotypes, face multiple forms of discrimination as well as violence on grounds such as sexual orientation and gender identity, as recognized by the delegation. In this regard, the Committee notes that the communication media in the State party reinforces images of women as sex objects and also contributes to different ethnic prejudices.

#### **Germany, CEDAW/DEU/CO/6, 12 February 2009**

**Keywords:** equality & non-discrimination legislation, transgender, intersex

5. The Committee commends the State party for the adoption of the General Equal Treatment Act of 18 August 2006 aimed at preventing and eliminating discrimination, as well as of harassment and sexual harassment.[fn]

fn: The purpose of this Act is to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation. See section 1 of this Act, online resources of the Federal Anti-Discrimination Agency, [www.antidiskriminierungsstelle.de](http://www.antidiskriminierungsstelle.de).

61. The Committee notes with satisfaction the cooperation of the State party with civil society organizations, particularly women's organizations, which is mostly achieved through Government cooperation with such organizations on specific programmes and projects. The Committee regrets, however, that the call for dialogue by non-governmental organizations of intersexual and transsexual people has not been favourably entertained by the State party.

62. The Committee requests the State party to enter into dialogue with non-governmental organizations of intersexual and transsexual people in order to better understand their claims and to take effective action to protect their human rights.

#### **Guatemala, CEDAW/GUA/CO/7, 10 February 2009**

**Keywords:** discrimination, stereotyping

19. Notwithstanding various measures taken by the State party to eliminate gender stereotypes, the Committee is concerned at the pervasiveness of patriarchal attitudes and deep rooted stereotypes regarding the roles and responsibilities of women and men in the family, in the workplace, in political life and society, which constitute serious obstacles to women's enjoyment of their human rights. The Committee is also concerned that certain groups of women, in addition to being affected by gender stereotypes, face multiple forms of discrimination on grounds such as their ethnicity or their sexuality.

20. The Committee urges the State party to increase its efforts to design and implement comprehensive awareness-raising programmes to foster a better understanding of, and support for, equality between women and men at all levels of society. Such efforts should aim at modifying stereotypical attitudes and cultural norms about the responsibilities and roles of women and men in the family, the workplace, political life and society, as required under articles 2 (f) and 5 (a) of the Convention. The Committee also urges the State party to adopt an overall strategy to eliminate gender stereotypes relating to women in general, and in particular discrimination against women based on their ethnicity or sexuality. This strategy could include awareness-raising programmes in school curricula, the training of teachers and the sensitization of the media and the public at large, including actions specifically targeting men and boys.

#### **Ecuador, CEDAW/ECU/CO/7, 7 November 2008**

**Keywords:** equality & non-discrimination legislation

28. While noting the prohibition of discrimination against sexual minorities referred to in Article 11, paragraph 2 of the new Constitution, the Committee is concerned with reports of discrimination against women on this ground.

29. The Committee recommends that the State party ensure investigation of such cases and undertake remedial action in line with its Constitution.

#### **Sweden, CEDAW/C/SWE/CO/7, 8 April 2008**

**Keywords:** domestic violence, asylum & refugees

9. The Committee commends the State party for the adoption, in November 2007, of the action plan to combat men's violence against women, violence and oppression in the name of honour and violence in same-sex relationships.

10. The Committee welcomes the amendment of the Swedish Aliens Act in 2006, which provides

for the granting of refugee status to persons claiming fear of persecution on grounds of gender and sexual orientation and which will be of benefit to women refugees.

### C. GENERAL RECOMMENDATIONS

#### **General Recommendation No. 29 on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, Economic consequences of marriage, family relations and their dissolution CEDAW/C/GC/29, 26 February 2013**

**Keywords:** partnership benefits & recognition

#### *IV. VARIOUS FORMS OF FAMILY*

16. General recommendation No. 21, in its paragraph 13, acknowledges that families take many forms and underscores the obligation of equality within the family under all systems, "both at law and in private".

17. Subsequent statements by other entities in the United Nations system confirm this understanding that "the concept of „family“ must be understood in a wide sense". The Human Rights Committee, in its general comment No. 28, acknowledges the "various forms of family". In his report on the observance of the International Year of the Family (see A/50/370, para. 14), the Secretary-General confirms that "families assume diverse forms and functions among and within countries"

24. Certain forms of relationships (i.e. same sex relationships) are not legally, socially or culturally accepted in a considerable number of States parties. However, where they are recognized, whether as a de facto union, registered partnership or marriage, the State party should ensure protection of economic rights of the women in these relationships.

#### **General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010**

**Keywords:** multiple discrimination

#### *III. GENERAL OBLIGATIONS CONTAINED IN ARTICLE 2*

##### *A. Introductory sentence of article 2*

18. Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25

#### **General Recommendation No. 27 on older women and protection of their human rights, CEDAW/C/GC/27, 16 December 2010**

**Keywords:** multiple discrimination

#### *Specific areas of concern*

13. The discrimination experienced by older women is often multidimensional, with the age factor compounding other forms of discrimination based on gender, ethnic origin, disability, poverty levels, sexual orientation and gender identity, migrant status, marital and family status, literacy and other grounds. Older women who are members of minority, ethnic or indigenous

groups, internally displaced or stateless often experience a disproportionate degree of discrimination.

## 5. COMMITTEE ON THE RIGHTS OF THE CHILD

<http://www2.ohchr.org/english/bodies/crc/index.htm>

### A. JURISPRUDENCE

**None**

### B. CONCLUDING OBSERVATIONS

#### **Australia, CRC/C/AUS/CO/4, 28 August 2012**

**Keywords:** equality & non-discrimination legislation

29. While welcoming the People of Australia – Australia’s Multicultural Policy and the State party’s National Anti-Racism Partnership and Strategy, the Committee notes with concern that racial discrimination in general remains a problem. It is particularly concerned at:

...  
(e) The absence of federal legislation protecting against discrimination on the basis of sexual orientation or gender identity.

30. In accordance with article 2 of the Convention, the Committee reiterates its previous recommendation that the State party regularly evaluate disparities in the enjoyment by children of their rights and on the basis of that evaluation undertake the necessary steps to prevent and combat discriminatory disparities. In doing so, the Committee recommends that the State party strengthen its awareness-raising and other preventative activities against discrimination, including through integrating such activities within school curricula, and if necessary taking affirmative action for the benefit of children in vulnerable situations, including Aboriginal and Torres Islander children and children from non-Anglo-Australian background. Furthermore, the

Committee calls upon the State party to:

(e) Enact federal legislative protection against discrimination on the basis of sexual orientation or gender identity.

#### **Republic of Korea, CRC/C/KOR/CO/3-4, 2 February 2012**

**Keywords:** equality & non-discrimination legislation

*Non-discrimination*

28. The Committee regrets that the State party’s draft Anti-discrimination Act was discarded without consideration at the National Assembly in December 2007 and that the legislative definition of discrimination does not contain an express prohibition of discrimination based on sexual orientation and nationality. Furthermore, the Committee is concerned at the multiple forms of discrimination that continue to persist in the State party, including those against children from multicultural or migrant backgrounds or who have come from the Democratic People’s Republic of Korea; refugee children; children with disabilities; and single mothers, particularly those who are adolescent, including with regard to their preclusion from State support measures.

29. The Committee urges the State party to:

(a) Expeditiously enact anti-discrimination legislation with the objective of adopting legislation that is in full compliance with article 2 of the Convention;

(b) Take all necessary measures, including awareness-raising and public education campaigns, to eradicate and prevent discriminatory attitudes towards children in vulnerable or minority situations;

(c) Provide adequate support to single mothers, including those who are adolescent.

**New Zealand, CRC/C/NZL/CO/3-4, 11 April 2011**

**Keywords:** children

25. The Committee recommends that the State party ensure full protection against discrimination on any grounds, including by:

...

(b) Strengthening its awareness-raising and other preventive activities against discrimination and, if necessary, taking affirmative action for the benefit of children in vulnerable situations, such as Maori and Pacific children, refugee children, migrant children, children with disabilities and lesbian, bisexual, gay and transgender children and children living with persons from these groups;

**Denmark, CRC/C/DNK/CO/4, 7 April 2011**

**Keywords:** equality & non-discrimination legislation

33. The Committee calls upon the State party to ensure the effective enforcement of protective laws, to undertake studies and launch comprehensive public information campaigns to prevent and combat all forms of discrimination, and to sensitize society to the situation and needs of children within the society and particularly within the family. In this regard, the Committee requests that specific information be included in the next periodic report on the measures and programmes undertaken to follow up on the Durban Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Committee's general comment No. 1 (2001) on the aims of education, and in doing so strengthen its efforts to promote values and behaviour free of discrimination on any ground, including gender, ethnic origin, immigration status, disabilities, sexual orientation and any other.

**United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 20 October 2008**

**Keywords:** equality & non-discrimination legislation, children, stigma

24. The Committee welcomes the State party's plans to consolidate and strengthen equality legislation, with clear opportunities to mainstream children's right to nondiscrimination into the United Kingdom anti-discrimination law (the forthcoming Equality Bill). The Committee also welcomes the adoption of action plans and the monitoring and information collection work carried out on the issue of discrimination. However, the Committee is concerned that in practice certain groups of children, such as: Roma and Irish Travellers' children; migrant, asylum-seeking and refugee children; lesbian, bisexual, gay, and transgender children (LGBT) and children belonging to minority groups continue to experience discrimination and social stigmatization. The Committee is also concerned at the general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the State party, including in the media, and may be often the underlying cause of further infringements of their rights.

25. The Committee recommends that the State party ensure full protection against discrimination on any grounds, including by:

(a) Taking urgent measures to address the intolerance and inappropriate characterization of children, especially adolescents, within the society, including in the media;

(b) Strengthening its awareness-raising and other preventive activities against discrimination and, if necessary, taking affirmative actions for the benefit of vulnerable groups of children, such as Roma and Irish Travellers' children; migrant, asylum-seeking and refugee children; lesbian, bisexual, gay and transgender children (LGBT); and of children belonging to minority groups;

(c) Taking all necessary measures to ensure that cases of discrimination against children in all sectors of society are addressed effectively, including with disciplinary, administrative or – if necessary – penal sanctions.

**Slovakia, CRC/C/SVK/CO/2, 10 July 2007**

**Keywords:** equality & non-discrimination legislation, children

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 Act No. 136/2003 Coll. and Act No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination, and on amendments to certain acts ("the Anti-Discrimination Law") do 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 relocated.

28. The Committee urges the State party to ensure full protection under the Anti-Discrimination Law 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 further 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.

29. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Committee's general comment No.1 (2001) on the aims of education.

#### **Malaysia, CRC/C/MYS/CO/1, 25 June 2007**

**Keywords:** equality & non-discrimination legislation, children

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 are likely to experience de facto discrimination in everyday life. These include 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. Acknowledging the State party's challenges in providing quality services in remote areas of the country, the Committee is concerned that many children are still 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 the 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 on the basis of that evaluation undertake the necessary steps to prevent and combat discriminatory disparities against children belonging to vulnerable groups. These include 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.

#### **Chile, CRC/C/CHL/CO/3, 23 April 2007**

**Keywords:** criminal laws, equality & non-discrimination legislation

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 nondiscrimination 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 requests 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).

### C. GENERAL COMMENTS

#### **General Comment No. 13: The rights of the child to freedom from all forms of violence, CRC/GC/2011/13, 18 April 2011**

**Keywords:** violence, children

#### *VI. NATIONAL COORDINATION FRAMEWORK ON VIOLENCE AGAINST CHILDREN*

72. Elements to be mainstreamed into national coordinating frameworks.

(g) Children in potentially vulnerable situations.

Groups of children which are likely to be exposed to violence include, but are not limited to, children: not living with their biological parents, but in various forms of alternative care; not registered at birth; in street situations; in actual or perceived conflict with the law; with physical disabilities, sensory disabilities, learning disabilities, psychosocial disabilities and congenital, acquired and/or chronic illnesses or serious behavioural problems; who are indigenous and from other ethnic minorities; from minority religious or linguistic groups; who are lesbian, gay, transgender or transsexual; at risk of harmful traditional practices; in early marriage (especially girls, and especially but not exclusively forced marriage); in hazardous child labour, including the worst forms; who are on the move as migrants or refugees, or who are displaced and/or trafficked; who have already experienced violence; who experience and witness violence in the home and in communities; in low socio-economic urban environments, where guns, weapons, drugs and alcohol may be easily available; living in accident- or disaster-prone areas or in toxic environments; affected by HIV/AIDS or who are themselves HIV infected; who are malnourished; looked after by other children; who are themselves carers and heads of households; born to parents who are themselves still under 18; who are unwanted, born prematurely or part of a multiple birth; hospitalized with inadequate supervision or contact with caregivers; or exposed to ICTs without adequate safeguards, supervision or empowerment to protect themselves. Children in emergencies are extremely vulnerable to violence when, as a consequence of social and armed conflicts, natural disasters and other complex and chronic emergencies, social systems collapse, children become separated from their caregivers and care giving and safe environments are damaged or even destroyed;

#### **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**

**Keywords:** equality & non-discrimination legislation

*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**

**Keywords:** discrimination, stigma

*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 genderbased 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. SPECIAL PROCEDURES: WORKING GROUPS, SPECIAL RAPPORTEURS, AND INDEPENDENT EXPERTS**

### **1. WORKING GROUP ON ARBITRARY DETENTION**

<http://www2.ohchr.org/english/issues/detention/index.htm>

#### **Report of the Working Group on Arbitrary Detention, A/HRC/22/44, 24 December 2012**

**Keywords:** detention, employment

#### *II. ACTIVITIES OF THE WORKING GROUP 2012*

##### *B. Country visits*

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

#### *Malta*

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

#### *III. DELIBERATION No.9 CONCERNING THE DEFINITION AND SCOPE OF ARBITRARY DEPRIVATION OF LIBERTY UNDER CUSTOMARY INTERNATIONAL LAW*

##### *A. Introduction and methodology*

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

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

...

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

#### **Report of the Working Group on Arbitrary Detention. Addendum: Opinions adopted by the Working Group on Arbitrary Detention\*, A/HRC/16/47/Add.1, 2 March 2011**

**Keywords:** arrests, criminal laws, violence, police, forensic examinations

#### **Opinion No. 25/2009 (Egypt): Communication addressed to the Government on 18 May 2009**

Concerning: The source has specifically requested that the names of the 10 individuals concerned not be published; the Government was fully informed of their identities.

6. The ten persons were arrested on 2 January 2009 for allegedly engaging in consensual sexual relations with others of the same sex. All 10 men have been charged under case No.169/2009 Al-Agouza Misdemeanours pursuant to article 9, lit. (c) of Law 10/1961 (Law on Combating Prostitution). This provision criminalizes the "habitual practice of debauchery", which is interpreted to include consensual sexual behaviour between men. In addition, one person has been charged with "managing a residence for the practice of debauchery", under Article 8 of

Law 10/1961. It may lead to imposition of a sentence of up to three years of imprisonment and a fine of up to 300 Egyptian pounds.

7. It was alleged that their arrest dates were falsified in the police reports to suggest that they were arrested on 4 January 2009. The 10 men were arrested in an apartment rented by one of them in Mohandesine, Giza. The police officers who arrested them allegedly failed to produce any arrest warrants.

8. Initially, the 10 individuals were taken to the Morality Police Department in Mogamma'a al-Tahrir in central Cairo, where they were held until they were taken to alAgouza prosecution office on 4 January 2009. All were denied the right to inform a person of their choice about their arrest, in violation of article 71 of the Constitution of Egypt and article 139 of the Code of Criminal Procedure.

9. Some of those detained allege that they were ill-treated by police while being held at the Morality Police Department, including by being insulted, beaten on the back with a stick, slapped on the face and repeatedly kicked.

10. On 4 January 2009, the al-Agouza prosecution office ordered their preventive detention for four days, which was extended on 6 January 2009 for a further 15 days. The Prosecutor also ordered the transfer of all 10 men to the Forensic Medical Authority without their consent to be subjected to anal examinations and to the Ministry of Health laboratories for HIV testing.

11. Following their appearance before the al-Agouza prosecution office, the 10 individuals were moved to the al-Agouza police station, where they remained until 6 January 2009. While at the al-Agouza police station, they were reportedly subjected to further ill-treatment, including verbal abuse and physical beatings by police officers. On one occasion, a police officer is reported to have ordered all ten individuals to remove their clothes and then to have beaten them.

12. On 6 January 2009, the individuals were moved to the Giza police station. On 20 January 2009, before the expiration of the initial 15-day extension, they appeared before a district judge who renewed their preventive detention for another 15 days. This order was appealed before the Appellate Court of Misdemeanours on behalf of the defendants by an Egyptian human rights organization. The court dismissed the appeal on 21 January 2009 and upheld the district judge's decision.

13. On 3 February 2009, the 10 individuals' preventive detention was renewed for a further 15 days by the district judge, apparently because the results of the anal examinations and HIV tests carried out had not yet been lodged.

14. On 19 February 2009, the individuals' detention was renewed for a further 45 days by the Appellate Court of Misdemeanours. The individuals are now being held at el-Qatta prison, where they were transferred following the latest renewal of their preventive detention period. The appeal of the renewal decision on 26 February 2009 before the Giza Criminal Court was rejected.

15. The Prosecutor General argues that the individuals were prostitutes and that while Egyptian law does not criminalize individual sexual orientation per se, it does criminalize promoting or trading in same-sex sexual relations as it criminalizes prostitution. In addition, it was argued that the arrests were carried out in order to protect public health, specifically with relation to HIV/AIDS.

16. The Prosecutor General's Office maintains that the police entered Mr. Mohamed Ragab Mohamed's home on the basis of a warrant issued by the Office of the Prosecution. It further asserts that the individuals confessed during both the police and public prosecutor investigations to having accepted money in exchange for same-sex sexual relations. The prosecution further argues that interrogations took place in the presence of lawyers and that their confessions were voluntary and made in the presence of their lawyers, who did not object or comment on them. Following their confessions, the defendants were subjected to preventive detention and presented before a judge four days after the arrests, who renewed their detention. The prosecution also confirms that the individuals were referred for forensic anal examinations and that this procedure was used to establish whether or not the accused had engaged in same-sex sexual conduct, either to confirm an accusation or to secure an acquittal.

17. In its response, the Government of Egypt states the following: the 10 persons referred to in the request were arrested at a furnished flat in Agouza district by a police officer from the

Morality Police Department. They confessed to engaging in sodomy, an offence under Egyptian law, which criminalizes prostitution and all acts of public indecency, in order to preserve public order.

18. Agouza police station crime report No. 169/2009 was filed on the incident. When the accused were brought to the Public Prosecutor's Office, the latter took the following decisions:

(a) To detain the accused for four days pending investigations; to compile files containing background information on them; to request their criminal records; to reimpose the items seized at the time of their arrest and to deposit them in the police depot until the case had been heard;

(b) To designate a forensic doctor to examine the accused in order to establish whether sexual intercourse had taken place and to collect and analyse samples;

(c) To ask a doctor from the Ministry of Health central laboratories to examine the accused and to conduct tests in order to establish whether or not any of them was suffering from a particular disease and, if so, the nature and mode of transmission of the disease;

(d) To ask the Morality Police Department to conduct further investigations into the incident and to identify other suspects, based on information provided by those who had been arrested.

19. When the accused were again brought to the Public Prosecutor's Office, the Office decided to detain them for a further 15 days pending investigation and to reclassify the case as a serious offence, since one of the accused (a minor) had admitted to having sex in exchange for material reward. The reclassification was carried out in conformity with article 291 of the Children's Act No. 126 of 2008, which prescribes a penalty of five years' rigorous imprisonment for crimes involving the sexual exploitation of young persons.

20. On 28 May 2009, the South Giza Assize Court decided to release the accused on condition that they provided it with details of their place of residence.

21. The interviews conducted by the Public Prosecutor's Office with the accused resulted in the following:

(a) Seven of the accused admitted to the charges, while three stated that they had witnessed the other seven engaging in sodomy with one another and with others but that they themselves had not taken part;

(b) One of the accused admitted to renting the furnished apartment and to equipping it for the purpose of paid prostitution;

(c) One of the accused (the minor) admitted to having sex for money and stated that the person renting the flat had previously brought a person there to have paid sex with him (the minor). The minor had also received extra money from the person renting the flat;

(d) The allegations that the accused were beaten or tortured during their detention were not borne out by the test results. Furthermore, due process was followed throughout and the medical examination that the accused underwent was conducted in accordance with a decision of the Public Prosecutor's Office.

22. The source's comment on the Government's reply makes the following points:

(a) The raid on the flat and arrests of these 10 individuals were made without a warrant;

(b) Upon arrest in the flat, they were asked if they confessed to committing debauchery with men 'habitually' and as a practice 'without distinction'. The defendants, not having assistance of a lawyer at the time of this questioning, made confessional statements to this effect, which were later retracted before a judge;

(c) The combination of these terms implies the overriding concern of the arresting authorities relating to homosexuality and their objective to obtain statements along those lines. The Egyptian authorities continue to detain individuals on the basis of their real or alleged sexual orientation on the basis that this is done to protect public order and morality. Private

consensual acts of individuals do not fall within this perview and violate basic human rights of individuals under national and international law;

(d) The source observes that in relation to forced medical examination of the defendants, reports indicate that five of the 10 detainees were subjected to anal examinations without any further detail as to the nature of the tests. The source challenges the scientific use of these tests as well as the intrusive nature of these procedures which violate bodily rights and amount to torture and other ill-treatment; (e) The only results provided by the laboratory analysing the tests were in relation to AIDS which incidentally were negative. The source argues that an AIDS test does not prove or disprove the crime of debauchery and is thus unnecessary in the offence under which the 10 men were arrested and charged;

(f) The source states that whilst the defendants have been released on bail, two trials are coming up in which they are implicated as follows: all 10 defendants will face the charge of the "habitual practice of debauchery" under article 9(c) of law 10/1961; in the same trial and before the same court, 9 of the 10 defendants will face the additional charge of 'assault on honour without the use of force or intimidation' against the defendant aged 17 years under article 269 of the Penal Code; the first defendant Mr. Mohammad Ragab will face two additional charges under law 10/1961 i.e., of managing a furnished house for the practice of debauchery, and enticing and assisting the other nine defendants in the practice of debauchery;

(g) The source also mentions that in the approximately five months of preventive detention that the defendants spent, the case was being dealt with as a misdemeanour attracting sentence of upto 3 years of imprisonment. According to the Code of Criminal Procedures and Instructions of the Prosecution of 2006, the maximum period stipulated for preventive detention for a felony, not misdemeanour, is five months. The defendants have spent time in detention beyond that allowed by law for misdemeanours.

23. The Working Group notes that a number of procedural lapses have occurred in the current case. For instance, it appears that the arresting authorities entered the premises without a warrant. The defendants were questioned and asked to record statements without the presence of a lawyer. Third, no apparent distinction appears to have been meted out in the treatment of the arresting and detaining authorities towards the defendant under the age of 18 and those who were adults. Fourth, preventive detention of the defendants was extended for reasons of supposedly obtaining evidence from medical examinations and tests. These tests, forcibly undertaken, are in and of themselves intrusive in nature and violative of bodily rights of the individual under human rights law.

24. The Working Group views with concern that cases where individuals are being detained, prosecuted, imprisoned and discriminated on the basis of their sexual orientation, appear to be of an ongoing nature and one of which the Working Group as well other human rights bodies are being seized of. To this effect, the Working Group brings to the attention of the Government its Opinions (Opinion No. 7/2002 (Egypt) of 21 June 2002 and Opinion no. 42/2008 (Egypt) of 30 May 2008). It also refers to the concluding observations of the Human Rights Committee (Egypt, CCPR/CO/76/EGY; 28 November 2002).

25. The Working Group would like to bring to the attention of the Government of Egypt its concern over the wide margin of discretion given to the Morality Police, which has been charged with oversight of "moral" and "immoral" behaviour. This wide discretion given to the police to determine what constitutes immoral actions, does not bode well for basic human rights such as privacy; freedom; liberty; freedom of opinion and expression.

26. As stated in its Opinion no. 42.2008 (Egypt) 30 May 2008, the Working Group would like to repeat its view that homosexual behaviour appears to be the focus of crackdown by the authorities, even if it is in a private and consensual environment. Further, that there appears to be an incorrect assumption that homosexual relationships are responsible for HIV/AIDS and thus detrimental to public health. "The Working Group is unable to agree with the Government's view that these tests are in the best interests of her citizens, especially in view of the fact that a huge stigma is attached to HIV/AIDS and when seen in conjunction with homosexuality, sufficient to marginalize and victimize a person for life. The investigation and prosecution procedures as well as treatment meted out to such detainees, is one of multiple discriminations and falls far short of a fair trial, equality before law and equal protection of the law".

27. The Working Group would also like to reiterate its position that the provision on public morals and public health and safety for restricting a right, be invoked where undesirable and controversial acts are being committed in the public domain and likely to be disruptive of the public order. The present case does not appear to be of this nature. Furthermore, the

Government would be well aware of the social consequences for individuals convicted (or even accused) of being a homosexual in Egyptian society thus demanding extreme caution and sensitivity when arresting persons on the basis of 'habitual debauchery' and same sex relationship.

28. Accordingly, the Working Group considers that the arrest and detention of these 10 persons is arbitrary, as forced anal examinations contravene the prohibition of torture and other cruel, inhumane and degrading treatment, whether if, like in the present cases, they are employed with a purpose to punish, to coerce a confession, or to further discrimination.

29. In addition, they are medically worthless for the determination whether or not a person has engaged in same-sex sexual conduct or whether the person has been involved in the practice of habitual debauchery or the prostitution of men.

30. The Working Group has been advised of the release of the detainees pending trial but would like to request and urge strongly that all the requirements of a fair trial be ensured and monitored in accordance with national and international human rights law.

31. In light of the above, the Working Group is of the opinion that the detention of these 10 people is arbitrary, and falls under categories I and II of the categories applied by the Working Group detention. The detention of these persons is in violation of article 2 of the Universal Declaration of Human Rights and articles 2 and 26 of the ICCPR.

32. Consequently, the Working Group requests the immediate release of these persons.

33. In addition, the Working Group reiterates its earlier call (vide Opinion No. 42/2008) upon the Government to reconsider the Anti-Prostitution Law and to bring it in conformity with the international human rights obligations undertaken by the State.

Adopted on 24 November 2009

**Report of the Working Group on Arbitrary Detention. Addendum: Mission to Senegal (5 to 15 September 2009), A/HRC/13/30/Add.3, 8 February 2011.**

**Keywords:** prison, morality

*VI. REMARKS*

I. Detentions on grounds of sexual orientation

72. The Working Group received information according to which officers of the National Police had detained persons on allegations of committing "unnatural sexual acts". This was the case of four men arrested in the town of Darou Mousty, in the Louga region, on 19 June 2009. In another case in 2008, the Dakar Court of Appeal had set aside a judgment sentencing nine persons to eight years in prison.

73. No one was being detained for reasons of sexual orientation at the time of the Working Group's visit.

*V. CONCLUSIONS*

81. However, the country has to confront a series of challenges, such as the shortage of criminal lawyers; the excessive proportion of detainees in pretrial detention; the long duration of pretrial detention in the majority of cases; the administrative detention of foreigners in police station cells after having served their sentence; the possible application of article 80 of the Criminal Code to journalists; the practice of the so-called "return by the prosecution"; or the detention of persons of different sexual orientation on the grounds of offending public decency. To these can be added the problem posed by prison overcrowding, though this is not excessive compared to other countries and the problem does not apply to Saint-Louis.

*VI. RECOMMENDATIONS*

82. In the light of these conclusions, the Working Group recommends the Senegalese Government to:

...  
(g) Pay particular attention to detentions on the grounds of offending decency or public morality, with a view to avoiding any possible discrimination against persons of a different sexual orientation;

## **Report of the Working Group on Arbitrary Detention, A/HRC/16/47, 19 January 2011**

**Keywords:** discrimination

### *III. IMPLEMENTATION OF THE MANDATE OF THE WORKING GROUP*

7. The mandate of the Working Group is to investigate cases of deprivation of liberty imposed arbitrarily. In the discharge of its mandate, the Working Group refers to the relevant international standards set forth in the Universal Declaration of Human Rights, as well as to the relevant international instruments accepted by the States concerned, in particular the International Covenant on Civil and Political Rights; the Convention relating to the Status of Refugees of 1951; the International Convention on the Elimination of All Forms of Racial Discrimination, as well as, when appropriate, the following standards:

...

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

### **Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Addendum: Opinions adopted by the Working Group on Arbitrary Detention, A/HRC/13/30/Add.1, 2 March 2010**

**Keywords:** arrests, criminal laws, HIV/AIDS, morality, forensic examinations

*Opinion No. 42/2008 (EGYPT): Communication addressed to the Government on 30 May 2008.*

Concerning Messrs. A, B, C, and D (Full names were transmitted to the Government but are not published at source's request).

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source.
3. (Same text as paragraph 3 of Opinion No. 17/2008.)
4. According to the source, Messrs. A, B, C, and D were arrested on 20 November 2007 at the home of Mr. A in Agouza. An arrest warrant had only been issued against Mr. A. Their arrests were part of a crackdown on HIV-positive suspects.
5. The four men were charged with homosexual conduct and convicted by the Agouza Court of Misdemeanours (case file No. 26073/2007) to one year of imprisonment each on 13 January 2008 pursuant to article 9 (c) of Law 10/1961, which makes the "habitual practice of debauchery (fujur)" a crime. In addition, Mr. A was charged with "administering a house for debauchery" and the other three with "exploitation of the debauchery of others". The Agouza Court of Misdemeanours applied the underlying criminal provisions as to include and incriminate consensual homosexual conduct. The Agouza Appellate Court of Misdemeanours rejected the four men's appeals on 2 February 2008 and upheld their prison sentences.
6. Messrs. A, C, and D are currently imprisoned at Al Qota Prison, Giza. Mr. B was being held chained to his bed 23 hours a day at Imbaba Fevers Hospital in Cairo until his sentence was upheld on 2 February 2008. It is believed that he was to be transferred to the hospital at Al Qota Prison; however, his current place of detention could not be established.
7. The source alleges that the convictions were not based on any evidence except for coerced and repudiated statements, whose contents the men were not allowed to read, which were taken from them at the Ministry of Interior's Morality Police Department. No witnesses were heard. All men pleaded not guilty to the charges and denied before the prosecution to having ever engaged in homosexual conduct.

8. According to the arrest report the four men were fully dressed and not engaging in any illegal acts at the time of the arrest in the apartment of Mr. A. The report further stated that the arrests were based on "secret investigations" conducted by the arresting officer. However, the nature or the outcome of these investigations has never been presented to the Prosecutor, who has not asked for them, either. Motions by the defence attorneys before the Agouza Court of Misdemeanours, including a request that the judge order the Police to produce in court the contents of the report on the "secret investigations" and that the arresting officer be summoned for cross-examination, were rejected.

9. The source alleges that, after their arrests, Mr. B was ill-treated by police officers at AlAgouza police station by being beaten across the head several times and all four were forced to stand in a painful position for three hours with their arms lifted into the air. They were not provided with any food, water or a blanket during the first four days of detention. The authorities also conducted HIV tests without their consent. When the prosecutor was informed about the positive HIV test results of Mr. B, he reportedly uttered the following: "People like you should be burned alive. You do not deserve to live".

10. It was reported that the arrest of the above-mentioned persons might solely be connected to that fact that they were present in an apartment, which had been formerly rented by Mr. E and Mr. F. This assertion is supported by the fact that an arrest warrant had reportedly been issued against Mr. A in connection with the investigation related to case No. 16087/2007 and by reports that the apartment had been placed under police surveillance after the arrests carried out in relation to this case.

11. The source argues that the arrest, detention and conviction of the four above-mentioned men violated their right to a fair trial and has led to arbitrary detention. Criminalizing adult consensual homosexual conduct is in violation of Egypt's obligations undertaken under applicable international human rights law, and particularly the discriminatory application of article 9 (c) of Law 10/1961 in such cases on the basis of assumed or declared HIV status; forced HIV tests; ill-treatment in detention; the conduct of trials driven by prejudice and the convictions based on no evidence, which violate the norms on prohibition of arbitrary deprivation of liberty.

12. These allegations were transmitted to the Government. The Government in its response, whilst acknowledging the detention and subsequent trial and sentencing of the four detainees, refutes the allegations presented by the source. It states that at all stages of the arrest, detention, trial and sentencing, legal processes and procedures were followed and there was no complaint of irregularity or violation of due process. These persons were arrested pursuant to a warrant issued by the Department of Public Prosecutions, following surveillance of the premises which Mr. A was reported to be running for the purposes of facilitating debauchery. Article 9 (c) of Anti-Prostitution Decree Law No. 10/1961 criminalizes prostitution, meaning the indiscriminate commission of lewd and obscene acts, without making distinction between the perpetrators of such acts. It explains that in so doing the State is acting within the margin of appreciation afforded to it under international law to protect public morals and safety.

13. The Government then proceeds to justify mandatory HIV testing as a measure of the Ministry of Health for safeguarding the health and safety of all citizens and to provide adequate medical coverage, including dispensing free antiretroviral treatment. HIV testing was made a requirement for all Egyptian citizens in 2004 in order to counter any discrimination against those undergoing testing for the disease.

14. According to the Government, the fact that both prostitution (when the person committing the offence is a woman) and debauchery (when the person is a man) are designated crimes under Egyptian penal law does not constitute discrimination on grounds of sex. This is a matter of "necessity" to protect morals in Egypt with a view to preserving the cohesiveness of society and public order. The trial judge handed down minimum sentences to the individuals concerned, which shows that he did not deal with them in an arbitrary manner.

15. The Working Group has considered the allegations received from the source as well as the information provided by the Government and believes it to be in a position to render an Opinion.

16. The Working Group is of the view that circumstances of arrest, detention, trial and sentence as well as conditions of detention form an integral component of its determination of whether a detention is arbitrary or not. In the instant case, the Government has not responded to the query raised by the source that the arrests may have been the result of mistaken facts and that it might have been the previous tenants, Messrs. E and F, whose residence was under surveillance by the police. Coincidental linkages between persons appear to have been the

rationale for detaining these four persons. This is an important material fact overlooked in the case and which no doubt required clarification. 17. The Government did not comment on or refute a critical allegation that a detainee was chained to his hospital bed for months and only released from their chains on an order of the Ministry of the Interior on 25 February 2008. The Working Group considers that chaining to a bed a detainee has no legal basis in national or international law and cannot form part of any regime of detention.

18. The wide discretion given to the Morality Police, charged with oversight "moral" or "immoral" behaviour and to determine what constitutes immoral actions, is a cause of concern to the Working Group in its work on determining the arbitrariness or otherwise of a person's detention. This wide discretion given to the Police to determine what constitutes "immoral" actions, does not bode well for basic human rights such as right to privacy, right to own liberty, freedom of opinion and freedom of expression.

19. It is apparent from the information received that homosexual orientation and behaviour is at a disadvantage in this regard and the subject of a number of factually incorrect assumptions. Thus homosexuality is perceived as necessarily leading to HIV/AIDS as a consequence of same sex relationships. Thus, the detainee who informed the police officer that he was HIV-positive was immediately considered homosexual, declared immoral and criminalized with debauchery for the sole reason of being HIV-positive. All persons arrested subsequent to the interrogation of this person were also labelled as homosexuals, subjected to contemptuous treatment by the lawenforcement agents and forcibly required to undergo HIV tests 20. The Working Group is unable to agree with the Government's view that these tests are in the best interests of Egyptian citizens, especially in view of the fact that a huge stigma is attached to HIV/AIDS-positive results and when, seen in conjunction with homosexuality, it results sufficient to marginalize and victimize a person for life. The investigation and prosecution procedures as well as the treatment meted out to such detainees, is one of multiple discriminations and falls far short of equality before law, equal protection of the law and fair trial.

21. The Working Group further notes that due process of legal standards as well as safeguards of a fair trial were not met in the instant case as the detainees were not given a fair hearing. Their ill-treatment, beatings, denial of food and bedding were not investigated by the authorities nor have these allegations been explicitly refuted or addressed vigorously in the Government's response.

22. It is to be noted that in a similar case in Egypt in 2002, the so-called "Queen Boat" case, the Working Group found that the detention of more than 50 men, who were arrested after a police raid on a night club on a boat and prosecuted on the grounds of their sexual orientation, constituted arbitrary detention and contravened article 2 of the Universal Declaration on Human Rights and articles 2 and 26 of the International Covenant on Civil and Political Rights (Opinion No. 7/2002, E/CN.4/2003/8/Add.1).

23. While the Working Group respects national laws and health related laws to safeguard the interest of citizens, the right to privacy of medical information and non-divulgence of sexual orientation without the informed consent of the individual concerned remains a basic right accorded by international human rights law. Thus, the Working Group believes that presenting the HIV-positive status of detainees as supportive information concerning their sexual orientation or their homosexuality contributes to the arbitrariness of their detention since police officers and other law enforcing personnel have stated that these persons are a threat to the safety of others and should not be freed on the streets.

24. It is a well established principle of international law that the provisions on public morals and public health and safety, in order to restricting a right, may be invoked where undesirable and controversial acts are being committed in the public domain and likely to be disruptive of the public order. There is no suggestion that this was the predicament in the instant case. Finally, as a matter of justice and equity, matters of such personal and societal sensitivity which if known publicly would cause ill repute and possible exclusion from society and loss of face for the person and his/her family, caution and balance is required.

25. The Working Group considers that these four persons were subjected to violations of their fundamental rights during their arrests, investigations and trial proceedings and also suffered discrimination on account of their sexual orientation and HIV/AIDS status. Because Egyptian law does not expressly prohibit homosexuality, they were tried for debauchery. The vilification and persecution of persons for their sexuality violate the principles of international human rights law. The right to freedom from discrimination on the basis of sex includes sexual orientation.



26. The Working Group believes that the use of article 9 (c) of the Anti-Prostitution Decree Law No. 10/1961 in these cases to detain people on the basis of their declared HIV status, and to test them without their consent for HIV infection, violates human rights protections to individual privacy and personal autonomy. Furthermore, the detention of persons on the basis of their HIV status violates the principles agreed to in 2001 by Member States in the Declaration of Commitment on HIV/AIDS.

27. The Working Group also considers that the interdiction of all discrimination based on sex, set forth in international human rights law, is to be understood as an interdiction to discriminate someone on the grounds of homosexuality.

28. In light of the above, the Working Group renders the following Opinion: The detention of Messrs. A, B, C, and D constitutes arbitrary detention according to categories II and III of the categories applied by the Working Group in its consideration of cases. It is in violation of articles 2, 9, and 10 of the Universal Declaration on Human Rights and articles 2, 9, 14, and 26 of the International Covenant on Civil and Political Rights.

29. Consequently, the Working Group requires the immediate release of these persons. It further calls upon the Government to end arbitrary arrests based on HIV status; and to study the possibility of reconsidering the Anti-Prostitution Decree Law and its implementation in practice in order to bring them in conformity with the international human rights obligations undertaken by the Arab Republic of Egypt as a State party to International Covenant on Civil and Political Rights.

**Report of the Working Group on Arbitrary Detention. Addendum: Mission to Colombia, A/HRC/10/21/Add.3, 16 February 2009**

**Keywords:** detention, police

The Working Group notes the gap between the Constitution - an instrument recognized worldwide for its democratic nature, in both its genesis and content - the law, and reality. It criticizes the practice of administrative pretrial detention by the National Police; mass or multiple arrests by the military in rural areas; detentions in the poor areas of the big cities, especially of beggars, the destitute and members of ethnic and sexual minorities; military round-ups and enlist conscription. The Working Group expresses its concern at the problem of "false positives" whereby the bodies of young persons who have disappeared in the big cities crop up a short time later hundreds of kilometres away, identified as guerrillas killed in combat. It criticizes the absence of criminal enforcement judges in prisons, prison overcrowding, especially in the La Picota, Villa Hermosa and Palmira prisons, and the practice of citizen's arrests.

56. The National Police is continuing its practice of carrying out round-ups or raids in big cities, justifying the practice as a preventive measure. Communities of sexual minorities complained of being detained frequently because of their appearance or clothes. Beggars, the destitute, vagrants, people who look suspicious, and even street vendors, whose goods are confiscated, are also detained.

**Opinions adopted by the Working Group on Arbitrary Detention, A/HRC/4/40/Add.1, 2 February 2007**

**Opinion No. 22/2006 (Cameroon)**

**Keywords:** criminal laws, police, detention

7. The source states that the above-mentioned 11 persons were arrested with six other persons (17 in all) in a bar known to be frequented by homosexuals. The arrests were widely covered in the press and by local television channels, which showed pictures of them. The source adds that some of the arrestees have been released, but that the above-mentioned 11 of them are still in detention

8. These 11 persons have been charged under article 347 (bis) of Order No. 72-16 of the Cameroonian Criminal Code of 28 September 1972, which provides for a penalty of 6 months' to 5 years' imprisonment and a fine of 20,000 to 200,000 CFA francs for anyone guilty of having sexual relations with a person of the same sex. In September 2005, their lawyer obtained the transfer to the juvenile offenders' section of the only minor in the group; he (aged 17) had

previously been held with the other adult detainees. In October 2005 the lawyer applied for the pretrial release of all 11 accused, but the application was denied.

14. In its response, the Government stated that the 11 persons had been placed in preventive detention for the purposes of proceedings against them by the Court of First Instance of Yaoundé-Centre Administratif. The detention had been founded on a gendarmerie investigation that had brought to light substantial evidence against them. Homosexuality is an offence under article 347 bis of the Cameroonian Criminal Code.

15. On 21 April 2006, all the accused were brought before the competent court, which found, in the light of the relevant legislation, that the case had been improperly referred to it. In the Government's view, the basis for the court's finding was Law No. 90/45 of 19 December 1990, which provides that persons accused of certain offences, including the offence to which article 347 bis of the Criminal Code relates, must be brought directly before the competent court. In consequence of the finding, all the accused were returned to custody under a committal order on 24 April 2006 and, on 8 May 2006, brought before the court, which then proceeded on the basis of the prosecution service's record of questioning on arrest *flagrante delicto*.

16. The Government asserts that the criminalization of homosexuality is contrary neither to article 12 of the Universal Declaration of Human Rights nor to article 26 of the International Covenant on Civil and Political Rights, since the persons in question are not denied a right or service on the ground of their presumed sexual orientation. What is involved is prosecution for practices contrary to law and to the moral standards of Cameroonian society.

17. The Government also states that, even should criminalization not be consistent with article 26 of the International Covenant, justification for it can be found in article 29, paragraph 2, of the Universal Declaration of Human Rights, which provides that a State may limit a right or freedom "for the purposes of securing due recognition for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

18. In its comments on the Government's response, the source invokes the leading opinions expressed by the Working Group in earlier cases, in particular the determination that the references to "sex" in the first paragraph of article 2 of the Universal Declaration of Human Rights and in article 2, paragraph 1, and article 26 of the International Covenant on Civil and Political Rights can be considered as including "sexual orientation". It also refers to the views of the Human Rights Committee, particularly those concerning the case of *Nicholas Toonen v. Australia* (CCPR/C/50/D/488/1992), in which the Committee held that the criminalization of homosexual practices was incompatible with article 17 of the International Covenant. The source adds that the Government's contention that issues of morality are solely within the jurisdiction of States themselves is unacceptable: to agree to it would be to open the door to the removal from international control of a potentially considerable number of domestic laws that could give rise to interference in people's private lives. The sources reassert that the deprivation of liberty of the above-mentioned 11 persons was, for all those reasons, arbitrary.

19. Ever since the Human Rights Committee adopted its View in *Toonen v. Australia* and it itself adopted its Opinion 7/2002 (Egypt), the Working Group has followed the line taken in those cases. That means that the existence of laws criminalizing homosexual behaviour between consenting adults in private and the application of criminal penalties against persons accused of such behaviour violate the rights to privacy and freedom from discrimination set forth in the International Covenant on Civil and Political Rights. Consequently, the Working Group considers that the fact that the criminalization of homosexuality in Cameroonian law is incompatible with articles 17 and 26 of the International Covenant on Civil and Political Rights, which instrument Cameroon has ratified.

20. The Working Group concludes that the deprivation of liberty of the above-mentioned 11 persons was arbitrary, and that regardless of the fact that they were ultimately released.

21. In accordance with paragraph 17 (a) of its methods of work, the Working Group considers that the case in question warrants the rendering of an Opinion even though the persons concerned were released. The reasons for this position are the Group's wish to restate its jurisprudence on a matter of importance and the fact that one of the accused in the case died, apparently as a result of the conditions of his arbitrary detention.

22. In the light of the foregoing, the Working Group renders the following Opinion: The deprivation of liberty of Messrs. François Ayissi, Pascal Atangana Obama, Alim Mongoche, Marc Lambert Lamba, Christian Angoula, Blaise Yankeu Yankam Tchatchoua, Stéphane Serge

Noubaga, Balla Adamou Yerima and Raymond Mbassi was arbitrary, as contravening the provisions of articles 17 and 26 of the International Covenant on Civil and Political Rights and falling under category II of the categories applicable to the consideration of cases submitted to the Working Group.

23. The Working Group, having rendered this Opinion, requests the Government to take the necessary steps to remedy the situation by considering the possibility of amending domestic law to bring it into line with the Universal Declaration of Human Rights and the other relevant international standards accepted by the State.

## **2. WORKING GROUP ON THE USE OF MERCENARIES AS A MEANS OF VIOLATING HUMAN RIGHTS AND IMPEDING THE EXERCISE OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION**

<http://www2.ohchr.org/english/issues/mercenaries/index.htm>

**Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. Addendum: Peru, A/HRC/7/7/Add.2, 4 February 2008**

**Keywords:** transgender, hate crimes

42. Reports were received of the death of a Spaniard, killed and robbed by a watchman. Moreover, of the 69 attacks on transvestites, transgenders or transsexuals investigated by Runa in 2006, 52 were committed by watchmen. Because local taxes vary from municipality to municipality, the rich ones have better protection, which is against the universal principle of non-discrimination in the right to security. In addition, the lack of any overall civic security policy means that each of Peru's 1,600 districts has a different strategy. The State is thus abdicating its duty to protect its citizens.

## **3. SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS**

<http://www2.ohchr.org/english/issues/defenders/index.htm>

**Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/22/47, 16 January 2013**

**Keywords:** human rights defenders

### *V. CONCLUSIONS AND RECOMMENDATIONS*

#### *B. Recommendations*

119. To Member States:

...

(g) Should establish a focal point or an entity dedicated to human rights defenders with specific attention to groups of defenders at particular risk such as women defenders and those working for women's rights and gender issues; those working on the rights of lesbian, gay, bisexual and transgender (LGBT) communities; defenders working on environmental and land issues; journalists; and lawyers. This entity must be adequately resourced in order to respond promptly to reported violations and to offer necessary protection.

**Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Mission to Honduras, A/HRC/22/47/Add.1, 13 December 2012**

**Keywords:** stigma, violence, hate crimes

### *IV. SITUATION OF HUMAN RIGHTS DEFENDERS*

64. The Special Rapporteur observed that, because of their legitimate work in upholding human rights and fundamental freedoms, certain categories of human rights defenders are at particular

risk, including journalists; defenders working on economic, social and cultural issues, including defenders working on indigenous, Afro-Honduran, environmental and land rights issues; defenders working on the rights of women, children and the lesbian, gay, bisexual, transgender and intersex community (LGBTI); lawyers, prosecutors and judges; and the staff of the National Commissioner for Human Rights.

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

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

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

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

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

### V. CHALLENGES FACED BY HUMAN RIGHTS DEFENDERS

#### D. Stigmatization of human rights defenders

113. The Special Rapporteur is concerned at stigmatization in the media and the delegitimizing statements made by public officials against human rights defenders, and notes the particular vulnerability of women defenders and defenders working on women's and children's rights, those working on the rights of the LGBTI community, journalists and defenders working on social, economic and cultural rights, particularly indigenous and Afro-Hondurans and those working on land issues.

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

### **Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Observations on communications transmitted to Governments and replies received, A/HRC/19/55/Add.2, 23 February 2012**

#### **Democratic Republic of the Congo**

**Keywords:** equality & non-discrimination legislation, criminal laws

101. JUA 09/02/11 Case no.: COD 2/2011 State Reply: 07/02/11.

Allégation de menaces contre des défenseurs des droits de l'homme.

102. JUA 15/04/11 Case no. COD 2/2011 State Reply: None to date

Allégation de menaces et actes d'intimidation

103. AL 06/07/11 Case no.: COD 3/2011 State Reply: None to date

Projet de loi portant sur la promotion et la protection des défenseurs des droits de l'homme.

104. UA 05/08/11 Case no.: COD 4/2011 State Reply: None to date

Allégations de menaces de mort et d'actes d'intimidation contre un défenseur des droits de l'homme.

### **Observations**

108. Enfin, la Rapporteuse spéciale exhorte une nouvelle fois les membres de l'Assemblée nationale de la République démocratique du Congo à ne pas adopter la « proposition de loi relative aux pratiques sexuelles contre nature », en conformité avec les obligations internationales du pays en matière de droits de l'homme, incluant la Déclaration sur les défenseurs des droits de l'homme.

### **Honduras**

**Keywords:** violence, threats, death

152. JAL 06/05/11 Case no.: HND 4/2011 State Reply: 08/08/11

Supuesto uso excesivo de la fuerza.

153. JAL 19/05/11 Case no.: HND 5/2011 State Reply: None to date

Supuesto asesinato de defensor de derechos humanos y periodista.

154. JAL 09/06/11 Case no.: HND 5/2011 State Reply: None to date

Fallecimiento de siete jóvenes en el contexto de hechos ocurridos alrededor de un operativo policial y el presunto asesinato de un Fiscal.

155. JUA 05/07/11 Case no.: HND 6/2011 State Reply: 22/07/11

Presunta amenaza con arma de fuego.

156. JUA 26/07/11 Case no.: HND 7/2011 State Reply: None to date

Supuestos actos intimidatorios.

157. JUA 25/10/11 Case no.: HND 9/2011 State Reply: None to date

Presunto asesinato, atentado contra la vida, detención arbitraria y amenaza de muerte.

### **Observations**

159. La Relatora Especial reitera su especial preocupación por el contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en Honduras incluyendo asesinatos y actos de hostigamiento e intimidación, en particular en contra de los periodistas, sindicalistas, estudiantes, activistas LGBTI, jueces y abogados, y defensores que trabajan documentando violaciones ocurridas durante las protestas pacíficas relacionadas con el golpe de Estado de 2009. Asimismo, la Relatora Especial expresa preocupación por el excesivo uso de fuerza durante manifestaciones

### **Republic of Moldova**

**Keywords:** freedom of expression, threats

294. JAL 31/05/11 Case no.: MDA 3/2011 State Reply: 11/07/11

Alleged ban to broadcast a documentary film on LGBTI rights.

295. JUA 19/07/06 Case no.: MDA 3/2006 State Reply: 20/06/11

Alleged acts of intimidation against lawyers.

### **Observations**

296. The Special Rapporteur remains concerned about the situation of defenders of LGBTI rights in the Republic of Moldova, including restrictions on their right to freedom of expression. In this regard, the Special Rapporteur reiterates the need for the Government to ensure rights protected under article 6, points b) and c), and article 7 of the Declaration on Human Rights Defenders are respected. She remains available to provide any technical assistance the Government of the Republic of Moldova might require.

### **Russian Federation**

**Keywords:** propaganda laws, freedom of assembly/association, freedom of expression

305. JUA 30/11/11 Case no.: RUS 12/2011 State Reply: 18/01/12  
Allegation of the passing of the first reading of a bill, which allegedly restricts LGBTI rights by the Legislative Assembly in St. Petersburg.

**Observations**

308. The Special Rapporteur is also concerned about increased obstacles for defenders of LGBTI rights as a result of legislative moves in some cities in the Russian Federation, which would represent considerable restrictions on their rights to freedom of expression and freedom of assembly. In this regard, the Special Rapporteur urges the Russian Federation to ensure rights protected under article 6, points b) and c), and article 7 of the Declaration on Human Rights Defenders are respected.

**Serbia**

**Keywords:** freedom of expression, freedom of assembly/association

324. JAL 28/10/11 Case no.: SRB 1/2011 State Reply: None to date  
Alleged ban of the 2011 Belgrade Pride Parade.

**Observations**

325. The Special Rapporteur wishes to express her regret that, at the time of the finalization of this report, the Government had not responded to the communication she sent during the reporting period. The Special Rapporteur is concerned at the alleged harassment of human rights defenders engaged in work protecting the rights of LGBTI people in Serbia. In this connection, the Special Rapporteur wishes to refer the Government of Serbia to the provisions outlined in the Declaration on Human Rights Defenders, particularly to article 5, points (a) and (b), and article 7.

**South Africa**

**Keywords:** sexual assault

328. JAL 14/01/11 Case no.: ZAF 1/2011 State Reply: None to date  
Alleged "corrective" rape of a lesbian woman.

**Observations**

329. The Special Rapporteur wishes to express her regret that, at the time of the finalization of this report, the Government had not responded to the communication she sent during the reporting period. The Special Rapporteur is concerned for the physical and psychological integrity of human rights defenders working to protect the rights of lesbians in South Africa and urges the Government of South Africa to create a safe environment conducive to their legitimate work. In this regard, in the spirit of cooperation, the Special Rapporteur refers the Government of South Africa to the recommendations put forward in her 2010 report to the Human Rights Council (A/HRC/13/22), particularly paras. 113 and 114, as well as those put forward in her 2011 report to the Human Rights Council (A/HRC/16/44), in particular para. 109.

**Turkey**

**Keywords:** arrests, transgender

368. JAL 30/11/11 Case no.: TUR 7/2011 State Reply: None to date  
Allegation of arrest and sentencing of three women human rights defenders and members of an LGBTI organization.

**Observations**

370. The Special Rapporteur is concerned for the physical and psychological integrity of human rights defenders in Turkey, particularly in light of the alleged spate of arrests of defenders. In this context, the Special Rapporteur notes her concern regarding the allegations of the targeting

of human rights lawyers in connection with their legitimate human rights work. Accordingly, the Special Rapporteur wishes to refer the Government of Turkey to the provisions outlined in the Declaration on Human Rights Defenders, notably to article 9, para. 3 (c) and to article 2. The Special Rapporteur remains available to provide any technical assistance the Government might require.

## **Uganda**

**Keywords:** death, criminal laws

371. JAL 01/02/11 Case no.: UGA 1/2011 State Reply: None to date  
Alleged murder of LGBTI rights activist.

372. UA 25/02/11 Case no.: UGA 2/2011 State Reply: None to date  
Alleged break-in at the office of Sexual Minorities Uganda (SMUG).

373. JAL 05/05/11 Case no.: UGA 3/2011 State Reply: None to date  
Alleged arrest and deportation of human rights defenders.

374. JAL 25/05/11 Case no.: UGA 5/2011 State Reply: 27/05/11  
Alleged abuses by the police and the military forces.

### **Observations**

375. The Special Rapporteur wishes to thank the Government for the response provided to her communication dated 25 May 2011, but notes with regret that information on the issues raised has yet to be provided. Furthermore, the Special Rapporteur wishes to express her regret that the Government of Uganda has not responded to the other communications sent during the reporting period.

376. The Special Rapporteur remains deeply concerned about the situation of human rights defenders advocating for LGBTI rights in Uganda, and urges the Government of Uganda to create a safe environment conducive to their legitimate work. In this regard, the Special Rapporteur respectfully refers the Government of Uganda to the recommendations put forward in her 2010 report to the Human Rights Council (A/HRC/13/22), particularly paras. 113 and 114, as well as those put forward in her 2011 report to the Human Rights Council (A/HRC/16/44), in particular para. 109. The Special Rapporteur remains available to provide any guidance or technical support the Government of Uganda might require.

## **Ukraine**

**Keywords:** threats, discrimination

377. AL 24/11/10 Case no.: UKR 5/2010 State Reply: 04/02/11  
Alleged harassment against human rights defenders.

378. JUA 24/11/10 Case no.: UKR 6/2010 State Reply: 21/02/11  
Alleged attack against members of LGBTI organisations.

### **Observations**

379. The Special Rapporteur thanks the Government of Ukraine for providing details of the investigations carried out in respect to the concerns previously raised. Nonetheless, the Special Rapporteur urges the Government to ensure that human rights defenders do not face harassment or discrimination in connection with their work, and to take steps to create a safe environment conducive to this work. In this respect, the Special Rapporteur wishes to refer the Government of Ukraine to the recommendations put forward in her 2010 report to the Human Rights Council (A/HRC/13/22), particularly paras. 113 and 114. Furthermore, the Special Rapporteur respectfully reminds the Government of Ukraine of its obligations as outlined in the Declaration on Human Rights Defenders, particularly article 12, para. 2.

## **Report of the Special Rapporteur on the situation of Human Rights Defenders. Addendum: Mission to India, A/HRC/19/55/Add.1, 6 February 2012.**

**Keywords:** detention

### *III. SITUATION OF HUMAN RIGHTS DEFENDERS*

F. Defenders working for the rights of marginalized people

109. The Special Rapporteur is particularly concerned at the plight of human rights defenders working for the rights of marginalized people, including Dalits, Adivasis (tribals) and sexual minorities, who face particular risks and ostracism because of their legitimate activities. Collectivities striving to achieve the rights of those people have also been victimized.

### 3. Sexual minorities

122. Defenders engaged in promoting and defending the rights of lesbian, gay, bisexual and transgender (LGBT) persons face discrimination, stigmatization and threats reportedly from many parts of society, especially in rural areas. On some occasions, the police attacked LGBT activists for raising issues pertaining to the situation of the LGBT community. In 2008, five LGBT defenders were falsely charged with extortion and unlawful assembly. In 2009, one LGBT activist was arrested in Orissa and detained for one day because of his advocacy work. He was insulted by police officers in the course of his arrest and detention.

123. In West Bengal, an LGBT activist stated that she has faced public harassment, emotional violence and beatings.

### **Note by the Secretary-General transmitting the report of the Special Rapporteur on the situation of human rights defenders, A/66/203, 28 July 2011**

**Keywords:** violence, stereotyping, freedom of assembly/association

#### *I. INTRODUCTION*

7. In accordance with the mandate of the Special Rapporteur to integrate a gender perspective throughout her work, the present report refers to the specificities of the situation of women human rights defenders and the particular challenges they face. Women defenders are more at risk of being subjected to certain forms of violence, prejudices, exclusion, repudiation and other violations, than their male counterparts. This is often due to the fact that women defenders are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation and the role and status of women in society. The term "women human rights defenders" in the present report refers to women who, individually or in association with others, act to promote or protect human rights, including women's rights. The term "women human rights defenders" can also refer to male human rights defenders working on women's rights as well as on gender issues more generally.

#### *II. RIGHT TO BE PROTECTED*

17. In every region of the world, defenders — including women defenders and those working on women's rights or gender issues — continue to face intimidation, threats, killings, disappearances, torture, ill-treatment, arbitrary detention, surveillance, administrative and judicial harassment and, more generally, stigmatization by both State and non-State actors. Violations faced by women defenders may take a gender-specific form, ranging from verbal abuse based on their sex, to sexual abuse and rape. Defenders also confront violations of the exercise of their rights to freedom of opinion and expression, access to information, access to funding, free movement and freedoms of association and peaceful assembly. In many countries, a climate of impunity for violations committed against defenders prevails.

18. Specific situations impeding the work of human rights defenders and leading to a highly insecure environment include: (a) The stigmatization to which both women defenders and their male counterparts are subjected in certain contexts, including accusations of being fronts for guerrilla movements, terrorists, political extremists, separatists, or working on behalf of foreign countries or their interests. Also, women defenders often face further stigmatization by virtue of their sex or the gender-based rights they advocate

19. In addition, community leaders and faith-based groups are increasingly resorting to the stigmatization of — and attacks against — defenders working on issues such as the rights of lesbian, gay, bisexual and transgender persons, violence against women and domestic violence. Also, women human rights defenders working in the area of domestic violence and other types of violence against women are often pressured by family members or threatened by the perpetrators to drop cases.

#### *VII. RIGHT TO PROTEST*



55. Violations suffered by defenders as a consequence of their participation in protests range from threats following demonstrations to arbitrary arrest and detention, intimidation, ill-treatment, torture and excessive use of force by authorities. A cause for concern is the number of peaceful protesters who have been injured or killed during violent crackdowns by the authorities. The mandate holder has also identified specific protection needs concerning some groups of protestors, including women defenders and defenders working on lesbian, gay, bisexual and transgender rights; student activists; trade unionists; and defenders monitoring and reporting on demonstrations. Defenders engaged in protests linked to demands for democratic reforms; the anti-globalization movement; election processes; peace demonstrations; and land rights, natural resources and environmental claims are often in need of specific protection

### *VIII. RIGHT TO DEVELOP AND DISCUSS NEW HUMAN RIGHTS IDEAS*

56. The right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This right may be seen as an elaboration of the right to freedom of opinion and expression, the right to freedom of assembly and the right to freedom of association, which are protected under many regional and international instruments.<sup>11</sup> The Declaration on Human Rights Defenders affirms the right to develop and discuss new human rights ideas, and to advocate their acceptance in Article 7

57. Many of the basic human rights that today we take for granted took years of struggle and deliberation before they took final shape and became widely accepted. A good example is the long struggle of women in many countries to gain the right to vote. Today, we see the case of defenders working on lesbian, gay, bisexual and transgender rights. In many countries around the world, these activists are targeted for their work, harassed, and sometimes killed, because of their work in defending a different idea of sexuality. Similarly, women human rights defenders are more at risk of suffering certain forms of violence because they are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation and the role and status of women in society.

### *XII. CONCLUSIONS AND RECOMMENDATIONS*

#### *Right to Protest*

111. States are encouraged to take the following measures to address the protection needs of the following groups of defenders:

- ...
- (b) Defenders working on lesbian, gay, bisexual and transgender rights:
    - (i) Hold accountable authorities taking unlawful decisions banning demonstrations;
    - (ii) Ensure the protection of participants in gay pride parades before, during and after marches from violence by counter-protestors;
    - (iii) Train law enforcement officials on appropriate conduct, particularly in relation to the implementation of the non-discrimination principle and respect for diversity

#### *Right to develop and discuss new ideas*

114. States should take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence because they are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation and the role and status of women in society

**Report submitted by the Special Rapporteur on the situation of human rights defenders. Addendum: Responses to the questionnaire on risks and challenges faced by women human rights defenders and those working on women's rights and gender issues, A/HRC/16/44/Add.3, 7 March 2011.**

**Keywords:** threats, violence, freedom of assembly/association, stigma

### *II. QUESTIONNAIRE*

Questions on women human rights defenders and those working on women's rights and gender issues: risks, security and protection. It would be deeply appreciated if responses were brief. They may be submitted in bullet-points if preferred. For non-Governmental organizations (NGOs), should they so wish, their identity will remain confidential (only the country where they

operate will be disclosed). Furthermore, they shall only answer questions, which are relevant to them, and may share information about defenders other than themselves.

1. Please indicate, with brief examples, the main challenges and risks that women defenders and those working on women's rights and gender issues face in your country. Please refer to the specific security needs of women defenders and those working on women's rights and gender issues in your country.

2. Please list specific legislative measures (excluding Constitutional provisions) and/or concrete short and long-term protection strategies/programmes (including early warning mechanisms and the work of existing national human rights institutions) which have been, or are to be, adopted and/or implemented to specifically address the safety and protection of women defenders and those working on women's rights and gender issues in your country. How have the specific needs of women defenders and those working on women's rights and gender issues been taken into account in the designing and implementation of these measures, strategies and programmes?

3. In the absence of effective protection, please provide concrete examples on how women defenders and those working on women's rights and gender issues strive to keep themselves safe, either individually or collectively, at the local level in your country.

4. Please list specific protection programmes and/or tools for women defenders and those working on women's rights and gender issues developed by non-Governmental organizations at the national, regional and international levels. In your view, what are their main strengths and challenges?

5. Please describe specific measures adopted by the relevant regional human rights mechanisms<sup>1</sup> to address the specific protection needs of women defenders and those working on women's rights and gender issues who are at risk.

### *III. RESPONSES RECEIVED TO THE QUESTIONNAIRE*

#### **Argentina**

Question 3: Response from the Government

18. Además de lo mencionado en los párrafos precedentes, las redes de mujeres, de profesionales y de personas sensibles a los derechos humanos de las mujeres, las niñas y niños y los grupos de homosexuales, bisexuales, lesbianas y personas transgénero, constituyen un sistema de alerta contra estas presiones y amenazas, mediante su difusión pública, sanción social y demanda de investigación.

#### **Mesoamerica**

Question 4: response from Just Associates (JASS)

826. Impulsar campañas y materiales que desmonten los mitos y prejuicios alrededor del trabajo y valor de las defensoras. Sobre todo el movimiento feminista y lésbico han trabajado mucho en la sensibilización y comprensión de la sociedad, sobre la importancia de los derechos de las mujeres, de las diversidades sexuales; a través de campañas y materiales educativos. También el movimiento trans y de trabajadoras sexuales ha contribuido a combatir los estereotipos y estigmas que están detrás de muchas agresiones a las defensoras.

827. Fondos flexibles de emergencia. Dentro de la filantropía feminista y los fondos de mujeres se ha venido reflexionando sobre la necesidad de recursos para las defensoras que necesiten protección. En algunos casos se han etiquetado algunos fondos específicos para esto. Sin embargo los recursos asignados son insuficientes, muchas veces no pueden ser asignados oportunamente por los procedimientos administrativos y no todos los fondos de mujeres cuentan con este tipo de apoyo.

#### **El Salvador**

Question 1: response from the Government

183. Es importante señalar que otro aspecto que afecta la labor de defensa es que existen sectores radicales dentro de la sociedad, que por el abordaje de ciertos temas o grupos (ejemplo: las personas privadas de libertad, la comunidad gay, lesbianas, transexuales, entre

otros), atacan incluso por medios de comunicación a los y las defensoras, tildándolos de defensores de delincuentes.

184. Recientemente, luego de la aprobación de la Ley Especial Integral para una vida libre de violencia para las Mujeres, se han dado una serie de comentarios y señalamientos peyorativos por parte de los medios de comunicación a las y los defensores de los derechos humanos, en este caso en particular a la Directora Ejecutiva del Instituto Salvadoreño para el Desarrollo de la Mujer (ISDEMU), licenciada Julia Evelyn Martínez y a la Procuradora adjunta de la Familia y la Mujer, de la Procuraduría para la Defensa de los Derechos Humanos (PDDH), licenciada Raquel Caballero de Guevara. En esta ocasión, a través de medios de comunicación escrita, fueron tildadas de lesbianas, frente a lo cual han tenido que aclarar la situación y enfrentar este tipo de difamación por haberse pronunciado a favor de esta ley, que amplía el marco jurídico para erradicar la violencia contra la mujer. Ejemplo de ello es la Carta a los diputados de la Asamblea Legislativa, de Paolo Lüers, publicada el sábado, 27 de noviembre de 2010.

## **Canada**

Question 2: response from the Government

80. In Canada, human rights defenders are well protected, as are all individuals in Canada, through a combination of constitutional and legislative measures.

81. The Canadian Charter of Rights and Freedoms guarantees all individuals in Canada freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press; freedom of peaceful assembly; and freedom of association.

82. Section 15 of the Canadian Charter of Rights and Freedoms, ensures equal protection and equal benefit of the law "without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability". This list of prohibited grounds is not closed. Courts have expanded it to include grounds such as sexual orientation and marital status. Section 15 protects against both direct discrimination and adverse effect discrimination which means that even if the purpose or intent is not discriminatory, a measure may be discriminatory if the effect is to deny an individual equal protection or benefit of the law.

## **Ireland**

Question 3: Response from the Government

378. The Guidelines for applications to Irish Aid's Civil Society Fund in 2010 indicated that priority consideration would be given to interventions that contribute to specific policy objectives of the Irish Government, including interventions in the area of the protection of human rights defenders, the prevention of gender-based violence, and interventions that strengthen the participation and representation of poor and marginalized people in the international human rights system. Ireland recognizes that certain human rights defenders face particular risks, including women human rights defenders and those defenders working on issues relating to discrimination on the basis of sexual orientation.

## **Serbia**

Question 1: response from the Government

701. The main challenges and risks faced by women human rights defenders and other persons dealing with women's rights and gender equality are associated with a misunderstanding on the part of patriarchal mentality and conservative and traditionalist circles existing in Serbia. This refers above all to the challenges and risks that are faced by persons whose work focuses on the rights of sexual minorities.

**Report of the Special Rapporteur on the situation of human rights defenders.  
Addendum: Summary of cases transmitted to Governments and replies received,  
A/HRC/16/44/Add.1, 28 February 2011**

**Democratic Republic of Congo**

**Lettre d'allégation**

**Keywords :** criminal laws, HIV/AIDS

740. Le 15 novembre 2010, la Rapporteuse spéciale, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Rapporteur spécial sur le droit de toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, a envoyé une lettre concernant une « proposition de loi relative aux pratiques sexuelles contre nature » qui aurait été débattue récemment au sein de l'Assemblée nationale de la République démocratique du Congo.

741. Les titulaires de mandat ont demandé au Gouvernement de bien vouloir transmettre la présente lettre au Président de l'Assemblée nationale de la République démocratique du Congo.

742. Selon les informations reçues, le 21 octobre 2010, la salle des Congrès de l'Assemblée nationale de la République démocratique du Congo aurait débattu d'une « proposition de loi relative aux pratiques sexuelles contre nature ». Selon cette proposition de loi, « l'homosexualité (...) [est] une menace à la famille (...), une déviation de la race humaine vers des relations contre nature (...) et [constitue] une dépravation des mœurs qualifiées d'abomination ».

743. La proposition de loi vise à réviser le code pénal congolais, tel que modifié et complété par la loi du 20 juillet 2006 sur les violences sexuelles. Les modifications portent spécifiquement sur le paragraphe 8 de la section III du titre VI de la dite loi du code pénal :

- selon l'article 174h1 de la proposition de loi, « [s]era puni de trois à cinq ans de servitude pénale et d'une amende de 500.000 francs congolais, quiconque aura eu des relations homosexuelles » ;
- selon l'article 174h2 de la proposition de loi, « [s]ont interdites... toute association promouvant ou défendant des rapports sexuels contre nature. Sera puni de six mois à un an de servitude pénale et d'une amende de 1.000.000 francs congolais constants, quiconque aura créée, financé, initié et implanter toute association toute structure promouvant les relations sexuelles contre nature » ; et
- selon l'article 174h3 de la proposition de loi, « [s]ont interdits... toute publication, affiches, pamphlets, film mettant en exergue, ou susceptibles de susciter ou encourager des pratiques sexuelles contre nature ».

744. la République démocratique du Congo dans sa lutte contre le VIH/SIDA. Les politiques de la santé publique concernant l'épidémie du VIH/SIDA démontrent clairement que la décriminalisation de l'homosexualité, combinée avec des efforts visant à lutter contre la discrimination des homosexuels, lesbiennes, bisexuels et transsexuels, représentent une mesure substantielle pour restreindre la propagation du virus. De plus, si la proposition de loi est adoptée, celle-ci aurait pour effet d'entraver l'accès à information, aux soins et aux traitements des personnes homosexuelles, atteintes de VIH/SIDA en République démocratique du Congo, et par conséquent pourrait compromettre la réponse nationale dans la lutte contre le VIH/SIDA.

745. Cette proposition de loi aurait également un effet néfaste sur la situation des défenseurs des droits de l'homme qui œuvrent pour la promotion et la protection des droits des homosexuels, lesbiennes, bisexuels et transsexuels en République démocratique du Congo. En effet, cette proposition de loi mettrait ces défenseurs dans une situation de vulnérabilité accrue car ils seraient potentiellement la cible d'attaques et d'actes d'intimidation de la part des autorités et de la population.

## **Observations**

746. La Rapporteuse spéciale regrette, au moment de la finalisation du présent rapport, l'absence de réponse à 57 des 58 communications envoyées depuis 2004. Elle considère les réponses à ses communications comme partie intégrante de la coopération des gouvernements avec son mandat. Elle exhorte le Gouvernement à répondre au plus vite aux craintes exprimées dans celles-ci, notamment en fournissant des informations précises sur les enquêtes menées afin de traduire en justice les auteurs des faits et les mesures de protection prises pour assurer l'intégrité physique et mentale des défenseurs et de leurs familles.

747. La situation des défenseurs des droits de l'homme opérant en République démocratique du Congo demeure très préoccupante, comme en témoignent les 10 communications envoyées en 2010, et ce malgré les recommandations formulées par la Rapporteuse spéciale à la suite de sa visite du pays en juin 2009 (A/HRC/13/22/Add.2). La Rapporteuse spéciale craint notamment une nouvelle recrudescence de violations contre les défenseurs dans le contexte des prochaines élections présidentielles qui devraient se tenir à la fin de l'année. Enfin, la Rapporteuse spéciale espère que le procès dans le cadre du meurtre de M. Floribert Chebeya Bahizire sera l'occasion de faire toute la lumière sur cet acte odieux

748. Enfin, la Rapporteuse spéciale exhorte une nouvelle fois les membres de l'Assemblée nationale de la République démocratique du Congo à ne pas adopter la « proposition de loi relative aux pratiques sexuelles contre nature », en conformité avec les obligations internationales du pays en matière de droits de l'homme.

## **Jamaica**

### **Letter of allegations**

**Keywords:** freedom of assembly/association

1366. On 1 December 2010, the Special Rapporteur sent a letter of allegations to the Government concerning the **Jamaica Forum for Lesbians, All-Sexuals and Gays** (J-FLAG), a human rights lobby group which advocates equal rights for lesbian, gay, transgender and intersex (LGBTI) persons in Jamaica. The organisation was previously the subject of a Joint Allegation Letter sent by the then Special Rapporteur on the situation of human rights defenders and the then Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 6 December 2004. As of today, no response has been received by the part of your Excellency's Government.

1367. According to the information received, on 16 November 2010, J-FLAG was refused permission to hold a meeting regarding LGBTI issues and human rights at the Jamaica Pegasus hotel in Kingston.

1368. It is reported that on 11 November 2010, J-FLAG made a booking with the said hotel to hold a meeting, on 18 November 2010, with similar organisations and stakeholders with a view to examining LGBTI-related human rights issues in Jamaica. However, on 16 November 2010, the Executive Director of J-FLAG was informed via a telephone call from the hotel's Director of Sales and Marketing that due to the nature of the work carried out by J-FLAG, the Jamaica Pegasus Hotel was unwilling to allow the meeting to take place on its premises. It is alleged that this marks a change in policy on the part of the hotel, which had previously hosted groups including LGBTI persons.

### **Response from the Government**

1369. In a letter dated 31 January 2010, the Government responded to the communication dated 1 December 2010.

1370. The allegation by J-FLAG of the refusal of the Pegasus Hotel to honour a reservation to hold a meeting was investigated by the Government. The investigations revealed that the information communicated by J-FLAG to you appears to be factual. The Hotel's decision was related to a number of concerns, which included the need to protect both the meeting attendees and the hotel, as a prior event hosted by a pro-gay group was marred by unsatisfactory behaviour.

1371. Following the incident, a meeting was convened between J-FLAG and the hotel where an amicable agreement was reached on future arrangements. The parties agreed that a designated member of the hotel staff would address reservation requests from J-FLAG and on confirmation of such requests, consultations will be done on the tilting and listing of the event on the hotel's notice board.

### **Observations**

1372. The Special Rapporteur wishes to thank the Government for responding to her communication dated 1 December 2010. The Special Rapporteur encourages the Government to take the necessary measures to ensure the existence of an environment which is conducive to the work of all human rights defenders.

## **Uganda**

### **Urgent appeal**

**Keywords:** arrests, detention

2303. On 23 September 2010, the Special Rapporteur, together with the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and

protection of the right to freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, sent and urgent appeal regarding the arrest and current situation of Mr. Al-Amin Kimathi, of Kenyan nationality and Executive Coordinator of Muslims Human Rights Forum (MHRF), and Mr. Mbugua Mureithi, of Kenyan nationality and a human rights lawyer. Mr. Al- Amin Kimathi has worked to expose and document human rights violations, arbitrary detention and unlawful renditions in the context of counter-terrorism operations in the East and Horn of Africa. Mr. Mbugua Mureithi represents the families of Kenyan suspects transferred to Uganda on allegations of involvement in the 11 July 2010 bombings in Kampala.

2304. According to the information received, on 16 September 2010, the Ugandan police arrested the two Kenyan human rights defenders at the Entebbe International Airport. Both men were travelling to Kampala for the court hearing of Kenyan suspects arrested in connection with the bombings that killed 70 people in Kampala on 11 July 2010.

2305. According to reports received, the two human rights defenders were transferred to the Rapid Response Unit headquarters in Kireka, a suburb of Kampala, where they were reportedly held incommunicado and had no access to a lawyer.

2306. It had been reported that on 18 September 2010 Mr. Mbugua Mureithi was released from police custody in Kampala and immediately expelled to Kenya. Mr. Al-Amin Kimathi was reportedly held incommunicado at the Ugandan police's Rapid Response Unit Headquarters in Kireka, Kampala, without charges or access to legal representation, until 21 September. On this date, it had been reported that Mr. Al-Amin Kimathi was brought before a judge and remanded to the Luzira Maximum Security Prison on charges of murder and attempted murder as well as terrorism-related charges in connection with the bombings that took place in Kampala in July 2010.

2307. Due to their arrest, detention and, in the case of Mr. Mureithi, expulsion, the two men had not had a chance to meet with their clients, who are charged with offences including murder and terrorism, punishable by death under Ugandan law. The court case involving their clients had continued in their absence.

2308. Concern was expressed at the arrest of Mr. Al-Amin Kimathi and Mr. Mbugua Mureithi and at allegations received that their arrest could be linked to their work, respectively as human rights lawyer and in denouncing and documenting unlawful practices by the authorities in counter-terrorism operations. Further concern was expressed about allegations indicating that Mr. Al-Amin Kimathi had no access to a lawyer since the time of his arrest and until he was remanded to the Luzira Maximum Security Prison.

## **Observations**

2309. The Special Rapporteur wishes to express her regret that, at the time of finalizing the present report, the Government of Uganda has not responded to her communication sent during the reporting period and has not responded to any of the 10 communications sent by the mandate since 2004. She considers response to her communications an important part of cooperation by Governments. She urges the Government to respond to concerns raised by her and provide detailed information regarding investigations undertaken, prosecutions as well as protective measures taken.

2310. The Special Rapporteur reiterates her concern about the situation of human rights defenders advocating for the rights of women as well as lesbian, gay, bisexual and transgender people in Uganda, and urges the Government of Uganda to create a safe environment conducive to their legitimate work. As stated in a press release dated 1 March 2010, the Special Rapporteur, jointly with Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, voiced their deep concern about the Anti-Homosexuality Bill which, if adopted as it was, would have not only violated the fundamental rights of lesbian, gay, bisexual and transgender people in Uganda but would also criminalize the legitimate activities of men and women, as well as national and international organizations, who strive for the respect for equality and non-discrimination on the basis of sexual orientation.

## **Indonesia**

### **Urgent appeal**

**Keywords:** threats, freedom of assembly/association

1157. On 26 March 2010, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal to the Government regarding the situation of participants to an Asian regional meeting of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA).

1158. According to the information received, on 26 March 2010, more than 150 human rights defenders representing 100 organizations from 16 Asian countries gathered in Surabaya to participate in a three-day Asian regional meeting of the ILGA.

1159. In response to protests by conservative Muslim groups and the Indonesian Ulema Council, the police reportedly ordered the cancellation of the conference, and national and international participants were ordered to leave the conference hotel.

1160. At the time of drafting the present appeal, a group of militant fundamentalists was inside the hotel, attempting to identify conference participants, by conducting a room-by-room search.

1161. According to various reports, the police were not taking any measure to ensure the safety of the participants.

1162. Grave concern was expressed for the physical and psychological integrity of the participants of the ILGA meeting. We remind the Government of Indonesia of its responsibility under international human rights law to ensure the safety of the participants.

### **Observations**

1163. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to her communication dated 26 March 2010. She considers response to her communications an important part of cooperation by Governments with her mandate.

1164. The Special Rapporteur reiterates her concern regarding the allegations in this communication, particularly taking in to account the number of human rights defenders present at the LGBT gathering. Moreover, she is also concerned about reports that police did not take measures to ensure that those present were offered adequate protection. As such, she urges the Government to provide information about the allegations at its earliest convenience.

### **Georgia**

#### **Urgent appeal**

**Keywords:** threats, violence

860. On 31 December 2009, the Special Rapporteur sent an urgent appeal to the government regarding the situation of the **Inclusive Foundation**, its staff and the members of its Women's Club. Inclusive Foundation is a Lesbian, Gay, Bisexual and Transgender organisation.

861. According to the information received, on 15 December 2009, five armed men allegedly raided and searched the premises of the Inclusive Foundation. The raid allegedly occurred during a meeting of the "Women's Club" where members of the LGBT community and the leaders of the Foundation were present. It is alleged that the armed men did not present a search warrant and refused to identify themselves, but some of them were wearing jackets with a police inscription when they entered the offices. The participants at the meeting were not allowed to leave and they were told that "only their chief was of interest to them".

862. The bags of the participants were allegedly searched and their cellular phones seized. It is also alleged that they were subjected to humiliating remarks and called "perverts", "sick persons" and "satanists". Two women were allegedly forcibly taken to the bathroom, undressed and searched. Furthermore, the armed men allegedly threatened to kill Ms. Eka Agdgomelashvili, one of the leaders of the organization, and Ms. Tinatin Japaridze if they continued to ask them for a search warrant and for their identification documents. They also threatened to take photos of the women and disseminate them to reveal their sexual orientation.

863. Mr. Paata Sabelashvili, the Head of the Foundation, was allegedly arrested and detained in Tbilisi. After his arrest, and without the presence of a lawyer, Mr. Sabelashvili reportedly

confessed being in possession of marijuana. It is alleged that his confession was forcibly made. Mr. Sabelashvili has been released on bail on 26 December 2009. It is also alleged that since the raid of the Foundation's premises, its staff members have been under constant surveillance by cars full of men in plainclothes.

864. Concern was expressed that the raid of the Foundation, the acts of harassment and intimidation against its staff and members and the arrest of Mr. Sabelashvili may have been directly related to their legitimate work in defence of human rights.

### **Response from the Government**

865. In a letter dated 8 February 2010, the Government responded to the communication sent on 31 December 2009. The Ministry of Internal Affairs confirmed that on 15 December 2009, the office of the Inclusive Foundation was searched, illegal drugs were found and as a result Mr. Sabelashvili was arrested for illegal transportation and possession of drugs. Mr. Sabelashvili and his lawyers have only challenged the amount of drugs found and not the possession, transportation, and consumption.

As to specific facts alleged in the summary:

866. "The armed men" mentioned in the summary were Criminal Police Local District Officers who on legitimate grounds and in accordance with Georgian Legislation, in particular based on the Search Order of the investigator, entered the office of Inclusive Foundation. A Search Order is similar to a search warrant. It is applied in specific cases when a search needs to be carried out urgently. An investigator/prosecutor can order that a search be carried out urgently, a Search Order is issued; the order must be examined by the court within 48 hours issuance. In the present case the court verified and approved the Search Order as required by legislation.

867. The search was undertaken by the local unit of the criminal police, who wear easily identifiable coats with Criminal Police signs. Only an officer of a rank such as Detective does not have to wear a uniform, all other officers were in uniform.

868. They also presented their Police Identification Cards to all those present in the given location and showed the Search Order to the Head of the Inclusive Foundation, Mr. Paata Sabelashvili, who approved of it with his signature.

869. The Government would like to stress that the so called "raid" was in fact a legitimate police operation aimed at checking operative information received regarding illegal drugs in the given location and to detain suspects if any. Illegal drugs were indeed found as a result of the search conducted by police officers in the presence of Mr. Sabelashvili and two witnesses selected by him.

870. The Government confirms that police actions were directed at Mr Sabelashvili as he was figurant of the operative information and not the organisation as such.

871. Concerning "searching and seizing the cell phones of the participants" – Police Officers did order individuals present in the given location, not to leave the office and to put their cell phones on the table. This is a common police practice throughout the world, aimed at securing the operative police action, the same applies to the temporary seizure of cell phones and does not represent any violation of Georgian criminal procedure legislation or any international act.

872. As to "women forcibly taken to the bathroom, undressed and searched" please be informed that this statement is not only exaggerated but highly misleading. These persons (not two as indicated, but all) were only checked visually which differs procedurally from the search of a person and is a very simple process. Police did not have the right to undertake a search without a warrant and they did not. Visual Check however is allowed by legislation. Fully in line with legislation, the women were checked by the uniformed female police officers. During the check they were asked to take off coats/jackets and shoes only, and to empty their pockets by themselves.

873. Allegations with respect to threats made toward Ms. Eka Agdgomelashvili or any other are not true. However, some of the members of the "Women's Club" were indeed quite aggressive toward the police, cursing, insulting and threatening to the extent that police officers tried not to enter into the conversation at all. Their lack of awareness about the criminal procedures and legislation is understandable, as they are not lawyers. They continuously confuse terms, failing to accept police legitimate orders and explanations, for instance regarding the difference



between the Search Warrant and Search Order. Or Search and Visual Check they were attempting to escalate the situation. Mr. Sabelashvili himself asked them twice to calm down.

874. With regard to the search of the office, all those present, apart from Mr. Sabelashvili and two witnesses he has chosen to observe the search were asked to wait in a separate room. This again does not represent a violation of any procedure or law, and was aimed at securing the area of search and proper working environment for police officers on duty.

875. Regarding arresting Mr. Sabelashvili, according to Georgian Legislation, illicit purchase, possession, as well as consumption of narcotics is a criminal offence. Mr. Sabelashvili was arrested in accordance with all procedural norms. When police entered the office, showed ID and a Search Order to Mr. Sabelashvili, he denied possession of illegal drugs and the search was undertaken in his presence and in the presence of two witnesses selected by him. As a result of the search conducted by the Police, illegal drugs were found, which were seized in an appropriate manner and the relevant protocol has been signed by Mr. Sabelashvili and the two observers of the search. Mr. Sabelashvili in front of the witnesses admitted that the substance found was marijuana and belonged to him. The substance was indeed identified as marijuana by the forensic examination later.

876. Afterwards in his first testimony as a suspect, Mr. Sabelashvili, in presence of his legal attorney, admitted not only to possession, but that he purchased the drugs abroad and transported them to Georgia (separate crime under a different article of the Criminal Code). Later at the initial court hearing, the defendant used his right to be silent, while his attorney petitioned for alternative expertise with regard to the quantity of illegal drugs. The defendant and his attorney admitted before the judge to purchasing and transporting the drugs as part of the plea agreement with the prosecutor's office. Mr. Sabelashvili was fined and sentenced to a conditional sentence. Accordingly Mr. Sabelashvili was released from custody on 26 December. Thus the allegation that Mr. Sabelashvili's "confession was forcible made" is simply not true.

877. As to the quotation that "since the raid of the Foundation's premises, its staff members have been under constant surveillance by cars full of men in plainclothes", it is baseless, police had and have no interest in this criminal case. As noted above, only Mr. Sabelashvili was figurant of the operative information and the criminal offense against him was never linked to his professional activity. After the witnesses of the search had given testimonies to the police at the police station, following the search, police have not attempted directly or indirectly to make contact with them.

878. Neither members nor the staff of the Inclusive Foundation had ever lodged any complaints regarding the given matter. Moreover the persons involved in the case – in particular: witnesses of the search, legal attorney, and Mr. Sabelashvili himself had the possibility to register their complaints and objection to the process or the form of the search and police behaviour in general, but thus far they have not lodged any complaints.

879. However on 8 January 2010, the Ministry received a letter from the Public Defender and attached written explanations of Mr. Paata Sabelashvili (to be noted in his explanation he again admits possession, purchase as well as transportation of marijuana) and three individuals present in the location during the police operative actions.

880. Prior the receipt of the Public Defenders letter, there have been no inquiries carried out since the actions conducted (search and arrest) by the Police, nor has the behaviour of the Police Officers been challenged. However, with this letter, the competent authority, specifically, General Inspection had legal grounds to initiate an inquiry.

881. In his letter based on the explanations provided by the 4 individuals, the Public Defender made 4 assumptions and requested an inquiry and reaction.

These assumptions were:

882. Mr. Sabelashvili claimed he was not presented with a Search Order. This was not confirmed by the inquiry of the General Inspection.

883. Some members of the Women's Club claimed they were checked without sanction. This was not confirmed by the inquiry of the General Inspection.

884. Mr. Sabelashvili claimed substances found in the office were not properly seized. This was not confirmed by the inquiry of the General Inspection.

885. Mr. Sabelashvili alleged to have been subjected to a cynical and at times insulting attitude, based on the inquiry, including an interrogation by officers. General Inspection applied administrative sanctions and Severe Reprimand against the officer who escorted Mr. Sabelashvili from the Court to the prison in accordance with the Police Code of Ethics as his actions were qualified as non-ethical and inappropriate for a police officer. Severe Reprimand was also applied against two officers present for not preventing their fellow officer from making statements that could have been considered insulting by the detainee.

886. The investigation was initiated on the grounds of operative information, which contained elements of the offence prescribed by the Georgian Criminal Legislation. This particular case involved illicit purchase, transportation, possession, as well as consumption of narcotics, all of which are criminal offences punishable under Georgian legislation. After the search had been conducted, and marijuana was found, Mr Sabelashvili admitted that he had purchased the aforementioned drugs abroad and transported them to Georgia. Mr. Sabelashvili was arrested as a suspect for committing the offences prescribed by the Criminal Code of Georgia (Art 260 part I and Article 261 part I).

887. To conclude, it also must be noted, that the Georgian law enforcement authorities are fully aware that the Rule of Law is more about the process, rather than having a suspect arrested. Bearing in mind that the suspect represented a minority group, but most importantly to avoid questioning the reputation of the Inclusive Foundation because of its Head's specific criminal charge, the Ministry of Internal Affairs did not make this case public, including through its daily TV police news programme. This decision was made acknowledging the important role that this organisation, as well as other organisations play, in building a democratic, tolerant society. On the other hand we must also highlight that holding a position, particular status, or membership of a religion, ethical, sexual or other minority does not safeguard a person against criminal responsibility.

### **Observations**

888. The Special Rapporteur wishes to thank the Government for the detailed response provided to her communication sent on 31 December 2009. The Special Rapporteur encourages the Government to take the necessary measures to ensure the existence of an environment which is conducive to the work of all human rights defenders.

### **Honduras**

#### **Carta de alegaciones**

**Keywords:** death

997. El 19 de enero de 2010, la Relatora Especial sobre la situación de los defensores de los derechos humanos, junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, enviaron una carta de alegaciones en relación con el Sr. Walter Orlando Trochez, defensor de los derechos de la comunidad lesbiana, gay, bisexual y transgénero (LGTB) e integrante del Centro de Promoción e Investigación de los Derechos Humanos (CIPRODEH). En su calidad de miembro de CIPRODEH, realizaba actividades en defensa de los derechos humanos tras el golpe de Estado. Recientemente, habría hecho esfuerzos para liberar detenidos después de los operativos de represión contra las protestas pacíficas de la resistencia y habría denunciado las violaciones de los derechos humanos cometidas por oficiales del ejército y de la policía durante las manifestaciones.

998. Según las informaciones recibidas, el 13 de diciembre de 2009, aproximadamente a las 10:30 horas de la noche, un hombre no identificado habría disparado contra el Sr. Trochez en el centro de la ciudad de Tegucigalpa, cerca del Parque Central Francisco Morazán. El Sr. Trochez habría sido llevado al hospital donde habría muerto poco después.

999. Cabe añadir que el 4 de diciembre de 2009, el Sr. Trochez habría hecho una denuncia pública a nivel nacional e internacional alegando que habría sido secuestrado por cuatro individuos encapuchados y llevado en un vehículo sin placas a un lugar desconocido donde habría sido golpeado. Los agresores le habrían preguntado sobre sus actividades de defensa de los derechos humanos y sobre otros líderes opuestos al Gobierno de facto. Asimismo, le habrían dicho que lo iban a matar. En aquella ocasión el Sr. Trochez habría logrado escapar.

1000. Se expresó temor porque el asesinato del Sr. Trochez pudiera estar relacionado con las actividades que realizaba en la defensa de los derechos humanos, en particular sus actividades documentando y denunciando las violaciones de los derechos humanos durante protestas

pacíficas relacionadas con el golpe de Estado. Este asesinato se enmarcaría en un contexto de gran vulnerabilidad para los defensores de los derechos humanos en Honduras.

## **Serbia**

### **Letter of allegations**

**Keywords:** threats

2108. On 19 January 2010, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent a letter of allegations concerning **Mr. Marko Karadzic**, State Secretary of the Ministry for Human and Minority Rights of the Republic of Serbia.

2109. Mr. Karadzic was the subject of an urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders on 6 May 2009. We regret that no response to that communication has been received from Government to date.

2110. According to the information received, on 8 January 2010, Mr. Marko Karadzic's apartment was broken into by unknown individuals. Apart from some cash no other valuables have been reported missing.

2111. At the same time, a graffiti by the organization "Crna Ruka" (black Hand) appeared near Mr. Karadzic's apartment in Belgrade. The same organization posted obscene posters of Mr. Karadzic in Pancevo at the beginning of 2009.

2112. Concern was expressed that the harassment of Mr. Marko Karadzic may have been related to his peaceful activities defending human rights, in particular his advocacy for the adoption of the Anti-Discrimination Law; his public stance against the eviction of Roma families; his call on the Government to ban extremist right wing organizations advocating violence against the Roma and Lesbian, Gay, Bisexual and Transgender people and his comments rejecting political statements about the implied superiority of Serbs over other minorities living in Serbia.

### **Response from the Government**

2113. In a letter dated 25 May 2010, the Government responded to the communication sent on 19 January 2010 as follows. On 20 January 2010 a criminal complaint by an unknown person was forwarded to the Ministry of Interior for the committee criminal offence of grand larceny as prescribed in Article 204 of the Criminal Code of the Republic of Serbia to the detriment of Mr. Marko Karadzic. The mentioned criminal complaint was submitted to the Police Directorate of the City of Belgrade, the Directorate of Criminal Complaints, for processing with an order to send it to the competent public prosecution office, pursuant to Article 224, paragraph 3 of the Criminal Procedure Code as well as to make the checks of the allegations contained in the complaint upon receipt of the request to collect the necessary information.

2114. According to the report by the police officers, within the period from 12:30 to 16:30pm on 8 January 2010, the criminal offence of grand larceny as prescribed in Article 204 was committed to the detriment of Mr. Marko Karadzic, the State Secretary of Human and Minorities Rights from Belgrade. The criminal offence was committed by an unknown perpetrator by breaking the outside door and stealing EUR 150.00 from the flat of the damaged person, together with other valuables. The specialized teams of the Police Directorate of the City of Belgrade carried out the investigation on the scene of the crime.2115. The scene of the crime was processed with the aim to find possible traces, the swabs were taken in order to establish possible DNA profiles of the perpetrator, the traces of papillary lines were fixed as well as traces of footwear. On 11 January 2010, the Ministry of Interior, the Police Directorate of the City of Belgrade, Department of Investigation, Operative Jobs, submitted to the First Public Prosecutor Office a complaint against an unknown person for the criminal offence of grand larceny as prescribed in Article 204, paragraph 1, item 1 of the Criminal Code to the detriment of Mr. Marko Karadzic.

### **Observations**

2116. The Special Rapporteur wishes to thank the Government for the response received to her communication sent on 19 January 2010. However, she wishes to express her regret that, at the time of the finalization of this report, the Government had not responded to her

communications sent on 6 May and 7 August 2009. She considers response to her communications an important part of cooperation by Governments. She urges the Government to respond to concerns raised by her and provide detailed information regarding investigations undertaken, prosecutions as well as protective measures taken.

## **Ukraine**

### **Urgent appeal**

**Keywords:** freedom of assembly/association, transgender

2325. On 3 December 2010, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal regarding an attack against Mr. Timur Lysenko and Ms. Anastasia Medco, along with other members of the organisations Insight, Fulcrum, and the Visual Cultural Centre in Kiev, Ukraine. Insight is an organisation that works to improve the lives of people who identify themselves as part of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community in Ukraine. The Visual Cultural centre is a platform for the integration of contemporary artistic practices and scientific disciplines within the academic field.

2326. According to the information received, on 20 November 2010, Insight organized a candlelight vigil, film exhibition and discussion on transgender issues, in cooperation with the Visual Cultural Centre, to promote the Transgender Day of Remembrance held in memory of those who have been killed due to anti-transgender violence in Ukraine.

2327. While the film was being screened, a group of ten men wearing masks reportedly attempted to enter the Visual Cultural Centre by force; however, they were denied entrance by the organizers of the event including Mr. Timur Lysenko, the coordinator of the transgender programme of Insight. The masked men consequently attacked and beat Mr. Lysenko. Furthermore, before fleeing, the intruders reportedly also sprayed tear gas at those present, severely injuring Mr. Lysenko and Ms. Anastasia Medco, a representative of the NGO Fulcrum, among others. It is reported that Mr. Lysenko was subsequently hospitalised and diagnosed with internal injuries and facial chemical burns.

2328. Numerous complaints had reportedly been lodged with the police regarding the attack which, it is reported, was characterised by the police as "hooliganism". The alleged victims, however, claim that it bears the hallmark of a planned attack with the intention of disrupting an LGBTI event, and have thus urged the police to characterise the attack as a hate crime. The police, however, have reportedly refused to do so.

2329. Concern was expressed that the attacks against Mr. Timur Lysenko and Ms. Anastasia Medco may be related to their legitimate and peaceful work in defence of human rights, particularly with regard to the LGBTI community in Ukraine. Further concern was expressed that these acts, if confirmed, would reflect a context of increasing violence and other forms of harassment against LGBTI organisations in Ukraine.

### **Observations**

2330. The Special Rapporteur wishes to thank the Government for the response to her communication dated 24 November 2010 but expresses her regret that the Government of Ukraine has not responded to the other two communications sent during the reporting period dated 21 May and 3 December 2010. She considers response to her communications an important part of cooperation by Governments. She urges the Government to respond to concerns raised by her and provide detailed information regarding investigations undertaken, prosecutions as well as protective measures taken.

2331. The Special Rapporteur wishes to express her concern at the reported context of increasing violence and other forms of harassment against human rights defenders in Ukraine. The Special Rapporteur encourages the Government to take the necessary measures to ensure the existence of an environment which is conducive to the work of all human rights defenders.

## **Uzbekistan**

### **Letter of allegations**

**Keywords:** detention

2371. On 11 May 2010, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sent a letter of allegation concerning the sentencing of Mr. Maxim Popov, psychologist, founder and director of the non-governmental organization Izis, founded by young medical professionals which works on HIV/AIDS prevention. Izis has also implemented HIV prevention activities, including under contracts with UNICEF, UNFPA and UNAIDS.

2372. According to the information received, Mr. Maxim Popov was arrested in January 2009 and convicted in July 2009. His conviction was publicly disclosed only at the end of February 2010. Mr. Popov was sentenced to 7 years imprisonment for charges which included theft by embezzlement, concealment of foreign currency, tax evasion, inducing minors to antisocial behaviour, indecent assault without violence against a minor and inducing engagement in the use of narcotic drugs or psychotropic substances.

2373. It is believed that Mr. Popov was convicted in connection with writing and distributing HIV/AIDS prevention materials. Mr. Maxim Popov is the author of the brochure "HIV and AIDS today", a publication funded by UNAIDS and UNICEF. He was also convicted for distributing HIV prevention materials published by UNAIDS and other UN agencies to adolescents that explicitly refer to drug use, sex work and homosexuality.

2374. Concern was expressed that the arrest and sentencing of Mr. Maxim Popov may be related to his peaceful activities in defence of human rights, in particular his work on HIV/AIDS prevention

#### **Response from the Government**

2375. In a letter dated 30 June 2010, the Government responded to the communication sent on 11 May 2010 as follows. IZIS, a voluntary organization, was registered in 2003 with the Tashkent Justice Department as a legal entity, with Maxim Popov, an Uzbek national, as director. The organization's basic aims were to work on problems relating to the education, health and social protection of children and to assist in the social integration of the aged, the poor or other vulnerable sections of society.<sup>2376</sup> In accordance with article 21 of the Non-State Non-Commercial Organizations Act, the Tashkent Justice Department, as the registering body, carried out checks on IZIS in 2008 to ensure that it was carrying out its statutory aims and purposes and acting in accordance with the law. The checks showed that the organization conducted its activities under agreements concluded with a number of international organizations, including the local office of the foreign non-governmental organization Population Service International (PSI), and with United Nations agencies in Uzbekistan, such as the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF). In partnership with these organizations, IZIS carried out a wide variety of projects, aimed largely at injection-drug users and persons living with HIV.

2377. In the course of the verification process, it was found that the requirements of the statute had been breached and that there had been violations of Uzbek law, some of them of a criminal nature.

2378. In order to avoid untoward consequences and to take the proper legal action against IZIS, the materials of the verification process were handed over to the public prosecutor's office.

2379. According to information provided by the law enforcement agencies, criminal charges were brought against IZIS and, once the preliminary investigation had been completed, the case was transferred to Chilanzar District Criminal Court.

2380. On 9 June 2009, the Chilanzar District Criminal Court found Maxim Vladimirovich Popov, the director of IZIS, guilty. It sentenced him to seven years' deprivation of freedom and stripped him of the right to hold any office involving the direction of an organization or economic administration for two years.

2381. In view of the above, and given the evidence of a number of breaches of the statute and the law in the activities of IZIS, the Tashkent Justice Department, as the registering body, applied to the Tashkent Civil Court for IZIS to be wound up. This application was granted on 30 September 2009.

2382. In accordance with the Court's decision of 29 October 2009, the Central Administrative

Board of the Tashkent Justice Department adopted the decision to terminate the activities of IZIS and to remove it from the register as a legal entity.

#### *The case of Maxim Popov*

2383. Maxim Vladimirovich Popov, an Uzbek national and executive director of the voluntary organization IZIS, was found guilty by the Chilanzar District Criminal Court on 9 June 2009 of committing offences under articles 167, paragraph 3 (a); 178, paragraph 2 (a) and (c); 184, paragraph 3; 127, paragraph 3 (b) and (c); 129, paragraph 1; 274, paragraph 2 (c); and, in accordance with articles 45, 59 and 61 of the Criminal Code, was sentenced to seven years' deprivation of freedom and stripped of the right to occupy any office relating to the direction of an organization or economic administration for two years. This sentence was upheld by the Tashkent Criminal Court, Appeal Division, on 14 July 2009.

2384. Popov's criminal activities did not end there. Knowing that the rent of the IZIS office was paid for the period from January to December 2008 under the tripartite agreement, at a cost of \$700 a month, Popov, acting in collusion with Kostyuchenko and in abuse of his official position, claimed \$200 a month for the office rental for the period January-December 2008, with no justification, thus embezzling the grant resources entrusted to him in the amount of 802,000 sum.

2385. Over the period 4 June 2008 to 11 December 2008, Popov misappropriated material goods placed in his charge, in the form of 990 Shield contraceptives, valued at 47,900 sum, purchased with the funds provided by UNDP, 24 T-shirts worth 132,000 sum and 263 vouchers worth 15,100 sum provided by the UNICEF office, at a total value of 193,100 sum.

2386. Moreover, in pursuance of his vile beliefs, which led him to entice young people into using narcotic drugs and psychotropic substances and to encourage an antisocial and amoral way of life by acting on their unformed minds and outlook, Popov distributed in Uzbek educational establishments attended by schoolchildren and students engaging in academic, sporting or communal activities a book that promoted narcotic drug use and antisocial behaviour among the young over the period 2006–2007. The book was entitled *Healthy Lifestyles. Teacher's Guide XXI*, 200 copies of which he had received under the contract with PSI. Popov was well aware of the nature of the book's contents.

2387. Knowing what the book contained, Popov deliberately distributed this book with a view to the promotion of depraved acts by persons whom he knew to be under 16. The book contained texts instructing young people in sexual activities and propaganda for homosexuality, prostitution and pornographic images among young people, including those attending educational institutions in Uzbekistan.

2388. Popov's guilt in respect of the offences in question is confirmed by witness statements, expert conclusions, checks, inventories, receipts and transfers, inspection and confiscation reports using material evidence, bills and other records required for a criminal case. The Supreme Court is not in possession of any information relating to the use of impermissible investigation methods. The sentence imposed on Popov has now become enforceable.

#### **Observations**

2402. The Special Rapporteur wishes to thank the Government for the responses provided to her communications dated 23 February, 23 March, 30 June and 11 August 2010. The Special Rapporteur remains seriously concerned at the situation of human rights defenders in Uzbekistan, including reports of acts of intimidation, arbitrary arrest and heavy sentencing.

2403. The Special Rapporteur is particularly concerned at allegations concerning denial of medical treatment in detention and the reported disappearance of Ms. Umida Ahmedova, which she considers as unacceptable. She thanks the Government for its reply indicating the fate and whereabouts of Ms. Ahmedova but urges the authorities to ensure that the arrest, detention and treatment of those detained are in full compliance with international norms and standards.

2404. The Special Rapporteur regrets that her request to carry out a country mission to Uzbekistan has been outstanding for over ten years despite repeated follow-up and hopes that the Government will consider this request favourably in the near future.

#### **Malawi**

##### **Urgent appeal**

**Keywords:** HIV/AIDS, freedom of assembly/association, human rights defenders

1489. On 13 January 2010, the Special Rapporteur sent an urgent appeal to the Government concerning the situation of Mr. Dunker Kamba and the Centre for the Development of People (CEDEP). Mr. Kamba is an HIV/AIDS activist working for CEDEP, a non-governmental organization that advocates for sexual minorities and people with HIV/AIDS.

1490. According to the information received, on 4 January 2010, the police allegedly raided the premises of CEDEP and arrested Mr. Kamba. Mr. Kamba has been charged with possession of pornographic material.

1491. It is alleged that the material possessed by Mr. Kamba is AIDS/HIV educational materials and that his arrest as well as the raid of the offices of CEDEP follow CEDEP's involvement in the defence of Mr. Chimbalanga and Mr. Monjeza, who were arrested on 29 December 2009 after their public engagement in a traditional ceremony. CEDEP, notably through statements of his Executive Director in several news reports, has been protesting the arrests of Mr. Chimbalanga and Mr. Monjeza who have been charged with gross public indecency and unnatural offences and are detained in Chichiri Prison pending trial.

1492. Concern was expressed that the raid of CEDEP's premises and the arrest of Mr. Kamba might be directly related to their work in defense of human rights.

### **Observations**

1497. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to her communications sent during the reporting period dated 13 January and 9 March 2010. The Special Rapporteur considers response to her communications an important part of the cooperation between governments and her mandate and as such requests that the Government of Malawai provide details about the issues raised in the aforementioned communications.

### **Zimbabwe**

#### **Letter of allegations**

**Keywords:** police, detention, , freedom of assembly/association

2517. On 16 June 2010, the Special Rapporteur, together with the the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint allegation letter regarding the situation of Mr. Chesterfield Samba, Ms. Ellen Chademana and Mr. Ignatius Muhamba, respectively Director and employees of Gays and Lesbians of Zimbabwe (GALZ). GALZ is an association advocating for social tolerance for sexual minorities and the repeal of homophobic legislation in Zimbabwe, and is officially authorized to operate in Zimbabwe.

2518. According to the information received, on 21 May 2010, police officers from the Criminal Investigations Department (CID) raided GALZ offices in Milton Park, Harare, reportedly searching for dangerous narcotics and pornographic material. The police had a warrant to search for dangerous drugs and pornographic material citing contravention of Section 157 (1) of the Criminal Law (Codification and Reform) Act Chapter 9:23 and Section 32 (1) of the Censorship and Entertainment Control Act Chapter 10:04.

2519. It was alleged that the police confiscated computers, records and banners and reportedly seized pornographic material as evidence for the case. They arrested Ms. Chademana and Mr. Muhamba and transferred them to the Harare Central Police Station.

2520. On 23 May 2010, the police allegedly returned to GALZ offices claiming that they were notified that the office had been raided. They requested entry into the office, but the guard did not have the keys. They left a message that they were to return on Monday 24 May 2010 to carry out another search.

2521. On 24 May 2010, the police took Ms. Chademana and Mr. Muhamba from Harare Central Police Station to GALZ offices for a further search, without notifying their lawyers. Later the same day, both employees were reportedly formally charged of "possessing pornographic material" and "undermining the office of the President" but the police failed to bring them before the court. On 25 May 2010, Ms. Chademana and Mr. Muhamba reportedly appeared before the court.

2522. On 26 May 2010, five police officers searched the house of Mr. Samba during his absence. They allegedly seized magazines, books, Mr. Samba's birth certificate and business cards. They asked his sister in law and niece, who were present at the time of the search, of Mr. Samba's whereabouts and when he would return to town.

2523. On 27 May 2010, Ms. Chademana and Mr. Muhamba were reportedly released on bail. It is alleged that they are however required to report to the police twice a week and to stay in Harare until the next hearing, which is expected to be held on 10 June 2010. It is further alleged that GALZ staff members have been asked to report to the police to appear as witnesses the case against their colleagues Ms. Chademana and Mr. Muhamba.

2524. Furthermore, it was reported that Ms. Chademana and Mr. Muhamba were subjected to ill-treatment during their detention. They reported that during their detention the police used empty soft drinks bottles to assault them on their knees and forced them to 'sit' in a position without a chair or any other tool for a prolonged period. They were allegedly subjected to assaults all over their bodies.

2525. Concern was expressed that the arrests of Ms. Chademana and Mr. Muhamba and the searches of GALZ premises and Mr. Samba's house might be directly related to the peaceful activities of Mr. Samba, Ms. Chademana and Mr. Muhamba in the defense of human rights. Further concern is expressed for the safety of all staff members of GALZ.

### **Observations**

2549. The Special Rapporteur wishes to express her regret that the Government of Zimbabwe has not responded to any of her communications sent during the reporting period as well as to 37 of the 47 communications sent by the mandate since 2004. She considers response to her communications an important part of cooperation by Governments. She urges the Government to respond to concerns raised by her and provide detailed information regarding investigations undertaken, prosecutions as well as protective measures taken.

2550. The Special Rapporteur remains deeply concerned about continuous reports of threats and acts of harassment against human rights defenders in Zimbabwe, including restrictions to the exercise of the right of freedom of opinion and expression. She reiterates her hope that the Government will respond favorably to her follow-up request of 21 January 2010 to visit the country. (NB: previous requests are dated 1 July 2002, 20 January 2004 and 5 November 2008)

### **Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Mission to Armenia, A/HRC/16/44/Add.2, 23 December 2010**

**Keywords:** freedom of assembly/association, hate speech, threats

#### *II. GENERAL CONTEXT IN WHICH HUMAN RIGHTS DEFENDERS OPERATE*

17. The prevailing atmosphere of political dispute has also led to a context within which civil and political rights defenders appear to predominate within the human rights community. In contrast, economic and social rights activists, including those who work on women's' and lesbian, gay, bisexual and transgender (LGBT) rights as well as other social issues, are able to escape much of the politicization of other organizations, and the authorities have been responsive to some of their recommendations. However, economic and social rights activists often find themselves marginalized within dominant human rights discourse and are successful in their work insofar as it does not impact on civil and political issues, or touch on the vested interests of powerful individuals within society.

#### *IV. CHALLENGES FACED BY HUMAN RIGHTS DEFENDERS*

##### *A. Overview of civil society in Armenia*

60. Among the most vulnerable groups of human rights defenders in Armenia are those working on the rights of LGBT persons, women human rights defenders, NGOs working in remote areas and environmental activists.

61. Defenders working on the rights of LGBT persons frequently face hate speech by the media and verbal and physical abuse by representatives of law enforcement agencies. Intimidation of LGBT defenders is recurrent and it is felt that they are not understood even by some other parts of the civil society. There is a lack of awareness about issues related to LGBT persons in society



in general, but also within civil society itself. Defenders working on LGBT issues are not able to register their organization as such, and are often forced to carry out their activities as human rights and sexual health organizations.

#### B. Recommendations

106. The Special Rapporteur recommends that the Government:

- Address the specific needs of human rights defenders, including women and LGBT human rights defenders, in the National Action Plan on Human Rights

### **Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/16/44, 20 December 2010**

**Keywords:** violence, discrimination, stigma, sexual assault

#### *III. WOMEN HUMAN RIGHTS DEFENDERS AND THOSE WORKING ON WOMEN'S RIGHTS OR GENDER ISSUES*

##### B. The approach of the mandate

22. Notwithstanding the legal recognition of the legitimacy of their work, women defenders continue to face significant challenges. Since its inception, the mandate has, both in its thematic and mission reports and other aspects of its work, consistently addressed the specificities of the situation of women human rights defenders and the particular challenges they face.

23. In this regard, the mandate holders have reiterated on several occasions that women defenders are more at risk of suffering certain forms of violence and other violations, prejudice, exclusion, and repudiation than their male counterparts. This is often due to the fact that women defenders are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society. Their work is often seen as challenging "traditional" notions of the family which can serve to normalize and perpetuate forms of violence and oppression of women. This can, in certain contexts, lead to hostility or lack of support from the general population, as well as the authorities.

##### 1. Most common activities of those who face violations

37. A large number of communications sent during the period (196) concerned alleged violations against defenders, including males, working on women's rights or gender issues, including lesbian, gay, bisexual and transsexual issues (LGBT). This group is thoroughly heterogeneous, including women and men carrying out a vast range of activities related to women's rights, including those working on issues related to sexual and reproductive rights; organizations dealing with violence against women, rehabilitation and impunity related to violence, rape and sexual violence, women's shelters caring for victims of the above; and journalists and bloggers writing on women's rights issues.

42. The 28 communications sent regarding defenders working on women's rights or gender issues in Europe and Central Asia predominantly concerned LGBT activists in East and Central European countries including Poland, Moldova, Serbia, and the Russian Federation, as well as women's rights activists operating in Uzbekistan and Belarus. Alleged violations against LGBT activists in this region generally related to freedom of assembly or association, such as denial of permits for peaceful rallies or refusal to register an organization. Other reported violations against women's rights defenders were again largely judicial by nature, including arrests, detentions, judicial harassment, and conviction.

43. During the period, the mandate sent 47 communications regarding defenders working on LGBT issues. Aside from the aforementioned alleged violations related to freedom of assembly and association, killings of LGBT human rights defenders were alleged in five communications, with rape and sexual violence, including against males, being reported in a further six. Various other communications detailed many instances of threats, death threats, physical attacks and violence, and stigmatization. Further, the criminalization of homosexuality has in some countries led to alleged arrests, torture and ill-treatment, including of a sexual nature, while in other countries it effectively prevented defenders from engaging in any advocacy for LGBT rights.

58. The human rights activities carried out by those subjected to threats and death threats in the Americas region ranged very widely. Among the groups that appear to be most at risk are

women defenders working to fight impunity for alleged human rights violations, particularly in Brazil, Colombia, Guatemala, Mexico, and Peru. Moreover, those working on indigenous rights also appear to be at risk, particularly in Brazil, Chile, Colombia, Ecuador, Guatemala, and Honduras; trade unionists, particularly in Colombia and Guatemala; and women's rights and/or LGBT defenders in the region.

C. Risks and challenges faced by women human rights defenders and those working on women's rights and gender issues

2. Risks and violations reported

(c) *Stigmatization*

85. Aside from the "political" stigmatization to which both women defenders and their male counterparts are subjected in certain contexts, including accusations of being fronts for guerrilla movements, terrorists, political extremists, separatists, foreign countries or interests, women human rights defenders often face further stigmatization by virtue of their sex or the gender- or sexuality-based rights they advocate. As noted above, such work can be perceived as challenging established socio-cultural norms, tradition or perceptions about the role and status of women in society. As a result of this, women defenders often find themselves and their work subjected to stigmatization by both State and non-State actors. A common accusation directed in particular at those working on women's rights, gender issues, and LGBT rights, is the assertion that these defenders are somehow advocating or attempting to import "foreign" or "Western" values which contradict national or regional culture. State agents or representatives are often alleged to be responsible for such stigmatization.

(d) *Sexual violence and rape*

86. As both mandate holders have reiterated on various occasions, female human rights defenders are subject to particular risks to which their male counterparts are not so greatly exposed, foremost among these being the risk of rape, sexual abuse, and other forms of sexual violence and harassment. During the 2004-2009 period, the mandate sent 26 communications regarding cases of rape, threatened rape, or other forms of sexual violence and harassment against women defenders. However, of these, six communications concerned abuses of this kind against LGBT activists.

87. In 2005, the mandate sent a communication regarding the systematic use of sexual and other forms of violence against women defenders in the Democratic Republic of the Congo. Aside from this, two other cases of threatened and attempted rape were reported from the DRC, along with one attempted rape of a women defender's daughter in the Central African Republic, and the threatened rape of an LGBT activist in Kenya. Sexual assaults, including instances of gang rape in detention of LGBT activists, were also reported in Ecuador, Honduras, Mexico, India, and Nepal. The alleged perpetrators of these acts were mostly unknown/ unidentified but also included members of the police, military, armed groups, or local members of the community.

**Report of the Special Rapporteur on the situation of human rights defenders.  
Addendum: Mission to Colombia, A/HRC/13/22/Add.3, 4 March 2010.**

**Keywords:** freedom of assembly/association, death, torture

*III. SITUATION OF HUMAN RIGHTS DEFENDERS*

B. Persistent insecurity faced by human rights defenders

10. Lesbian, gay, bisexual and transgender and HIV/AIDS activists

49. The Special Rapporteur met with lesbian, gay, bisexual and transgender (LGBT) groups, which apprised her of the precarious situation of LGBT defenders. She is very concerned about their plight due to their lack of acceptance of society.

50. An emblematic case is the killing of Alvaro Miguel Rivera Linares, an LGBT and HIV/AIDS activist who was found dead in his flat on 6 March 2009. His body bore marks of torture. Prior to his murder, Mr. Rivera Linares had denounced the general violence against the LGBT population in Cali, including alleged abuses and arbitrary detention by police officers. In 2001, he received threats because he denounced the practice of guerilla members of testing the population for HIV/AIDS and ostracizing people who were tested positive.

51. The Special Rapporteur notes the concern expressed by local authorities in Cali for the situation of LGBT activists, and urges them to make every effort to fully protect them.

**Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/13/22, 30 December 2009**

**Keywords:** threats, freedom of assembly/association

*III. The security and protection of human rights defenders*

A. Security of human rights defenders

(e) Security challenges faced by women defenders and defenders of sexual minorities

49. The Special Rapporteur is deeply concerned about the continuing denigration campaigns and the violent threats against defenders of lesbian, gay, bisexual and transgender rights. The right to peaceful assembly is also often denied to defenders working on lesbian, gay, bisexual and transgender issues or, alternatively, the police does not provide adequate protection for such demonstrations. Complaints related to violence and attacks are often not taken seriously by the police and are not always investigated properly.

**Report of the Special Representative of the Secretary-General on the situation of human rights defenders A/HRC/10/12, 12 February 2009**

**Keywords:** freedom of assembly/association, human rights defenders,

*I. ACTIVITIES DURING THE REPORTING PERIOD*

C. Cooperation with the United Nations system and intergovernmental organizations

21. On 24 October 2008, the Special Rapporteur presented her first report (A/63/288) to the General Assembly, in which she presented her vision and defined her priorities for the mandate. In her report, the Special Rapporteur outlined her methods of work, which build on those developed by the Special Representative, including communications and country visits. The priorities outlined by the Special Rapporteur are: the analysis of trends and challenges, and the reinforcement of scrutiny of defenders exposed to specific violations and attacks, including women defenders; defenders working on economic, social and cultural rights; defenders working on the rights of minorities, indigenous peoples and lesbian, gay, bisexual and transgender people; defenders working on past abuses; and defenders engaged in student protests. The Special Rapporteur expressed her intention to continue the analysis of the challenges and obstacles that defenders face in the enjoyment of their rights to the core freedoms of association and peaceful assembly. She is also particularly interested in studying the facts that are necessary to devise an early-warning mechanism for the protection of defenders with a view to anticipating systematic threats against them by activating appropriate sectors of the national protection system. The Special Rapporteur also intends to intensify efforts on follow-up, collaborate with various stakeholders, popularize the Declaration on human rights defenders, and share good practices. Her report to the General Assembly included as an annex "Key messages on human rights defenders ten years after the adoption of the Declaration on human rights defenders, ten messages to raise awareness about defenders".

*II. UNIVERSAL PERIODIC REVIEW: ENHANCING THE PROTECTION OF HUMAN RIGHTS DEFENDERS*

B. Assessment after three rounds

2. Compilation of United Nations information

65. Targeting of specific groups was mentioned in relation to women human rights defenders in Bahrain, Serbia and Zambia; indigenous groups particularly in South American States such as Ecuador and Peru, and Asian States such as India and the Philippines; rural groups in Serbia; lesbian, gay, bisexual, transgender and intersex groups in Eastern European States such as Poland and Serbia, and South American States such as Argentina and Ecuador; witnesses in Peru; and persons belonging to minorities in Israel.

3. Summary of stakeholder information: overview and analysis

72. Restrictions on the exercise of rights to freedom of human rights defenders included freedom of expression with regard to Bahrain, Morocco, Tunisia and the United Arab Emirates. Problems and restrictions relating to freedoms of peaceful assembly and association were mentioned in connection with Ecuador (criminalization of social protest), Morocco, Poland

(assembly, campaigns for equality and relating to sexual orientation), Turkmenistan and the United Arab Emirates. Restrictions on the exercise of rights to freedom of movement of human rights defenders, in particular travel restrictions and the denial of exit and entry visas were highlighted in connection with Israel, Morocco, Tunisia and Uzbekistan.

74. Targeting of specific groups was mentioned in relation to women human rights defenders in Bahrain, Israel and Serbia; indigenous groups in Ecuador; defenders working on issues related to persons belonging to minorities in the Czech Republic (Roma), India (Dalits) and Turkmenistan; defenders working on lesbian, gay, bisexual and transgender issues in Israel, Montenegro, the Republic of Korea, Serbia and Sri Lanka. Problems faced by defenders working on issues related to migrants were mentioned with regard to South Africa.

82. As for groups of defenders, the situation of women human rights defenders was mentioned in Zambia; the situation of and problems faced by activists working on lesbian, gay, bisexual and transgender rights in Poland and Romania, and on marginalized groups in the Czech Republic was also mentioned.

**Report of the Special Representative of the Secretary-General on the situation of human rights defenders. Addendum: Guatemala, A/HRC/10/12/Add.3, 16 February 2009**

**Keywords:** freedom of assembly/association, police

*II. HUMAN RIGHTS DEFENDERS*

B. Communications sent to Guatemala between the two visits

20. The increased number and intensity of attacks against human rights defenders in Guatemala were among the factors that prompted the follow-up visit of the Special Representative. In the time between her two visits, the Special Representative addressed to the Government 87 communications of allegations of human rights violations affecting defenders. While reiterating the caveat that the picture resulting from the communications sent by the Special Representative does not reflect human rights violations against defenders in the magnitude they occur worldwide but only those reported to her, Guatemala emerged among the countries of greatest concern among those on which the Special Representative received information. The 87 communications of the Special Representative reported allegations of human rights violations affecting over 170 defenders, a third of whom were women, and some 100 organizations, including trade unions; women's organizations; farmers' organizations and those working on land rights; environmentalist organizations; youth associations, students' networks and children's rights organizations; media associations; organizations working on justice and the right to truth, including associations of the families of victims of past abuses; indigenous organizations; associations to protect the rights of displaced persons; organizations working on economic, social and cultural rights; organizations providing legal aid and assistance; organizations working on the rights of lesbian, gay, bisexual and transgender people; religious organizations engaged in humanitarian, social and human rights work; organizations working on migrants' rights; international NGOs; and staff of the Office of the Ombudsperson.

C. Overview of attacks and violations against human rights defenders

6. Youth defenders

48. A youth organization working on the rights of lesbians, gays, bisexual and transgender people is exposed to attacks linked to the stigmatization around sexual orientation and gender identity and reported, inter alia, constant harassment from the police.

**Report of the Special Representative of the Secretary-General on the situation of human rights defenders. Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/10/12/Add.1, 4 March 2009**

**Keywords:** violence, threats

**Armenia**

**Letter of allegations/Communications sent**

**Keywords:** discrimination, violence

115. On 29 May 2008, the Special Rapporteur sent a letter of allegation to the government concerning Mr Mikael Danielian, chairman of the Helsinki Association – Armenia, a human rights organization based in Yerevan.

116. According to the information received, on the afternoon of 21 May 2008, Mr Mikael Danielian was a passenger in a taxi in Terian St. in Yerevan when he was approached by a man, who had got out of a nearby vehicle. The suspect's name is known to the Special Rapporteur. The man allegedly punched Mr Danielian through the open car window at which point Mr Danielian got out of the taxi. The man reportedly continued to harass him, calling him a CIA agent who defended the interests of gay people and a 'shame to Armenia'.

117. Reports indicated that the man then shot Mr Danielian with a pneumatic weapon. The latter was not seriously injured but sustained some injuries to his chest and neck and was treated for a sharp rise in blood pressure by an ambulance at the scene. Mr Danielian was taken to the police department of Kentron district police station, where an investigator ordered that he undergo a medical forensic examination on May 22. Witnesses reported that the man who shot Mr Danielian was also taken to a police station, although it was not known if any charges have been brought against him.

118. Concern was expressed that the shooting of Mr Danielian may be directly related to his work in defense of human rights, particularly in the aftermath of recent political turmoil in Armenia. Following these reports, serious concern was expressed for Mr Danielian's physical and psychological integrity. The mandate-holder also requested that the Government refer to her predecessor's urgent appeal of 3 April 2008 to which she looked forward to a response.

### **Observations**

119. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to her communications of 3 April 2008 and 29 May 2008. She considers response to her communications as an important part of the cooperation of Governments with her mandate, and urges the Government to respond to the concerns raised by her.

120. The Special Rapporteur reminds the Government of the relevant provisions of the Declaration on human rights defenders, especially article 5 paragraph (a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.

121. The Special Rapporteur reiterates her concern regarding Mr Danielian's physical and psychological integrity, and urges the government to transmit to her all relevant information regarding any investigation or prosecution into the case.

### **Bosnia and Herzegovina**

#### **Letter of allegations/Communications sent**

**Keywords:** hate speech, hate crimes, freedom of assembly/association, violence

275. On 27 November 2008, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a letter of allegations concerning participants of the "Sarajevo Queer Festival", a festival of art and culture, organized to promote awareness of the human rights of lesbian, gay, bisexual and transgender (LGBT) persons. According to the information received, permission for the first "Sarajevo Queer Festival" was granted to the organizing NGO called 'Udruzenje Q' for 24-28 September 2008 in Sarajevo. This festival of art and culture included a series of exhibitions, performances, film showings and public discussions to promote the universality of human rights and an end to discrimination based on sexual orientation or gender identity. In the month preceding the festival, several newspapers, including 'SAFF' and 'Dnevni Avaz' used derogatory language in reaction to gay and lesbian people and called for the participants of the festival to be lynched, stoned, doused with petrol or expelled from the country.

276. Death threats were issued on the internet against several individual gay rights activists, including members of the NGO 'Udruzenje Q'; media, venues and organizers received threats on a daily basis, and appeals were made to the public to disrupt the festival. Organization Q's forum at queer.ba website was hacked into twice. Tram stops in Sarajevo were covered with

posters quoting the Qur'an and inciting hatred against homosexuals. Participants of the opening ceremony were physically attacked at the end of the first day of the festival. Eight persons were injured, including QSF international guests, several journalists and at least one policeman, when dozens of young people described as 'Wahhabis', 'football fans' and 'skinheads' attacked participants of the festival. Six persons sought medical assistance, but media and eyewitness claim many more attacks went unreported.

277. Although the festival was granted permission to be held until 28 September 2008, as the security situation deteriorated, the organizers decided to close the event to the public. When the death threats continued, they decided to terminate the festival. The decision was based on their assessment of the situation due to the lack of protection by the police. Death threats against the organizers continue.

278. Grave concern was expressed that the hate campaigns in the lead up to the event directly contributed to the climate of fear, hatred and intolerance which culminated in physical attacks and the harassment of the participants. It was recommended that the use of homophobic language by the media must be strongly condemned. Concern was expressed that these activities appeared to constitute a deliberate attempt to prevent participants and defenders from carrying out their peaceful activities in raising awareness of the universality of human rights. Further concerns were expressed by the absence of appropriate policing which contributed to the disruption of the event and failure to provide adequate protection to participants of the festival.

### **Observations**

279. The Special Rapporteur thanks the Government of Bosnia and Herzegovina of the substantive response provided to the urgent appeal of 30 July 2008. The Special Rapporteur appreciates that the events are investigated by the Public Security Center in Bijeljina under supervision of the District Prosecutor's Office, and would welcome further details about the outcome of those investigations. The Special Rapporteur welcomes the decision of the Government also to provide increased security measures around the home of Mr Branko Todorovic and the premises of the Helsinki Committee in Bijeljina.

280. At the same time, the Special Rapporteur regrets that no response had been transmitted yet to the communication of 27 November 2008, regarding participants of the Sarajevo Queer Festival. In this connection, the Special Rapporteur wishes to remind the Government of the provisions of the Declaration on human rights defenders, in particular article 7 which states that "Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocates their acceptance", as well as article 12 paragraphs 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, (...) 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".

### **Bulgaria**

#### **Urgent appeal**

**Keywords:** freedom of assembly/association, freedom of expression, hate speech

342. On 27 June 2008, the Special Rapporteur sent an urgent appeal concerning the Gay Pride Parade organized by the Bulgarian Gay Organization "Gemini" and scheduled to take place in Sofia on 28 June 2008. According to information received, reports indicated that several websites have published content which incite hostility and violence towards participants in the Gay Pride march. The website of the Ataka political party has called for an 'intervention' by all those opposed to the march and has associated the Parade with paedophilia. Furthermore, on 19 June the Bulgarian National Union (BNU) released a message on its official website reportedly entitled "BNU against homosexuality and paedophilia" (<http://bg.bgns.net/Aktualno/Anti-gei-kampaniya.html>) announcing a campaign called 'Don't be tolerant, be normal - A week of intolerance against homosexuality and paedophilia' from 22 June onwards. In the course of the week, the BNU is reportedly organizing round tables advocating the restriction of public displays of homosexuality and reportedly calling for direct opposition to the march of 28 June.

343. Deep concern was expressed that these statements may lead to threats intimidation and

violence towards participants in the Gay Pride March in Sofia, who are exercising their legitimate and peaceful right to freedom of expression and freedom of assembly. In this context, I also express my serious concern for the physical and psychological integrity of the participants in the aforementioned march and for speech which may incite hatred.

## **Observations**

344. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to the communication of 27 July 2008. She considers response to her communications as an important part of the cooperation of Governments with her mandate, and urges the Government to respond to the concerns raised by her.

## **Burundi**

### **Letter of allegations/Communications sent**

**Keywords:** criminal laws, discrimination

345. Le 4 décembre 2008, la Rapporteuse spéciale, conjointement avec l'Expert indépendant sur la situation des droits de l'homme au Burundi, le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Rapporteur spécial sur le droit de toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, a envoyé une lettre d'allégations sur le cas suivant.

346. L'Assemblée Nationale du Burundi aurait adopté le 22 novembre 2008 le projet de Code pénal révisé. Ce projet prévoit dans une nouvelle disposition la criminalisation de l'homosexualité et condamne ainsi tout acte sexuel entre des personnes du même sexe consentantes jusqu'à une peine de 2 ans d'emprisonnement.

347. Ce projet de Code stipule que « *Quiconque a des relations sexuelles avec une personne du même sexe est puni d'une servitude pénale de trois mois à deux ans et d'une amende de cinquante mille francs à cent mille francs ou d'une de ces peines seulement* ».

350. Le Comité de droits de l'homme des Nations Unies s'est prononcé sur le sujet de l'homosexualité à plusieurs reprises et a conclu que la criminalisation de l'acte sexuel entre des personnes consentantes de même sexe constitue une violation du droit à la vie privée et au droit à l'égalité devant la loi. Le même Comité a aussi déclaré qu'une telle criminalisation est également contraire aux articles 17(1) et 26 du Pacte international sur les droits civils et politiques (*Toonen contre Australie*, mars 2004), ainsi qu'aux obligations fondamentales d'égalité et de non-discrimination énumérées dans la Charte Africaine des droits de l'homme et des peuples. Les conventions citées ci-dessus font partie intégrante de la Constitution du Burundien conformément avec son article 19.

351. Ce même Comité a affirmé cette position à plusieurs reprises, soit en demandant aux Etats de retirer les lois criminalisant l'homosexualité, soit en leur demandant de les mettre en conformité avec le Pacte. Le Comité considère également que ces lois vont à l'encontre du droit relatif à la vie privée, qu'il soit applicable ou non et « vont à l'encontre de la mise en oeuvre des programmes éducatifs concernant la prévention du SIDA » en poussant les groupes déjà marginalisés vers la clandestinité.

352. Cette position a également été adoptée par la Cour Européenne des droits de l'homme (*Dudgeon vs United Kingdom, Norris v Ireland; Modinos v Cyprus*) et la Cour Constitutionnelle de l'Afrique du Sud (*National Coalition for Gay and Lesbian Equality and another v Minister of Justice and others*).

353. La criminalisation de l'homosexualité aurait par ailleurs un effet préjudiciable sur les efforts du Burundi dans sa lutte contre le SIDA. Les politiques de la santé publique concernant l'épidémie du VIH/SIDA démontrent clairement que la décriminalisation de l'homosexualité combinée avec des efforts visant à lutter contre la discrimination des homosexuels, lesbiennes, bisexuels et transsexuels, représentent une mesure substantielle pour restreindre la propagation du virus. De plus, si le projet de code en question entre en vigueur, celui-ci aurait pour effet d'entraver l'accès à l'information, aux soins et aux traitements des personnes homosexuelles, atteintes de VIH/SIDA au Burundi, et par conséquent pourrait compromettre la réponse nationale dans la lutte contre le VIH/SIDA.

354. Ce projet de loi aurait enfin un effet néfaste sur la situation des défenseurs des droits de

l'homme qui oeuvrent pour la promotion et la protection des droits des homosexuels, bisexuels et transsexuels. En effet, cette loi mettrait ces défenseurs dans une situation de vulnérabilité accrue car ils seraient potentiellement la cible d'attaques et d'actes d'intimidation de la part des autorités et de la population.

355. Ainsi, le projet de loi criminalisant l'homosexualité n'est pas conforme au droit international des droits de l'homme et aux obligations légales internationales du Burundi il est demandé que les préoccupations exprimées dans la présente lettre soient portées à la connaissance du Sénat lors du prochain examen du projet de loi.

356. Il est enfin noté que lors de l'examen périodique universel du Burundi en date du 2 décembre 2008, le Gouvernement du Burundi a été interpellé sur cette question de la criminalisation de l'homosexualité et qu'il a demandé à disposer de plus de temps pour y répondre convenablement.

## **India**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly/association, transgender, gender identity, police, detention, violence

1244. On 3 December 2008, the Special Rapporteur, together with the Special Rapporteur on the promotion of 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 violence against women, sent a letter of allegations to the Government concerning Madesh M, Dil Faraz, Kokila, Sahana Bangena and Savita S, members of the *Sangana* crisis intervention team. *Sangana* is an NGO working on issues related to the human rights of persons belonging to sexual minorities, especially *hijras* (male-to-female transsexuals).

1245. According to the information received, on 20 October 2008, Madesh M, Dil Faraz, Kokila, Sahana Bangena and Savita S went to the Grinagar police station as they had received news about five hijras being arrested and detained, and allegedly been beaten by members of the Grinagar police. As they tried to inquire about the detention of the hijras, the members of the Sangama crisis intervention team were assaulted and detained at the Grinagar police station, and later at the Banashankari police station. They have been accused of offences punishable under Section 143 (*unlawful assembly*), 145 (*joining unlawful assembly ordered to be dispersed*), 147 (*rioting*), and 353 (*obstructing government officials in performing their duty*) of the Indian Police Code. They were brought before a magistrate and placed in judicial custody later that evening. All five crisis team members were released on bail on 22 October 2008.

1246. In the evening of 20 October 2008, approximately 150 human rights activists and lawyers gathered in front of the Banashankati police station to peacefully protest against the arrest and detention of the Sangama crisis team members and to try and negotiate their release. Six delegates from the protestors had been detained for about four hours at the police station and were subjected to physical and verbal abuse. In the meantime members of the Banashankati police attacked the peaceful protestors with sticks and subjected them to physical, verbal and sexual assault. Thirty-one human rights activists were placed into a small police van, and kept there for about seven hours.

1247. Concern was expressed that the harassment, arrest and detention of the five members of the NGO Sangama may have been solely related to their peaceful activities in defence of human rights, especially their work on the rights of sexual minorities, including hijras. Further concern was expressed that this may have formed part of an ongoing campaign of intimidation of the Bengaluru policeforce regarding hijras and NGOs acting in their defence.

## **Iran (Islamic Republic of)**

### **Urgent appeal**

**Keywords:** freedom of expression, freedom of assembly/association, transgender, detention, prison

1295. On 13 February 2008, the then Special Representative, together with the Special



Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture sent an urgent appeal to the Government concerning Mr. Amin Ghaza'i, aged 29, writer, chief editor of an electronic journal called "ArtCult", and prominent member of an organisation called "Students for Freedom and Equality" ("Daneshjouyan-e Azadi Khah va Beraber Talab"). Some other student members or affiliates of this group were already been the subject matter of a joint urgent appeal to the Government by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 21 January 2008.

1296. According to the information received; Mr. Amin Ghaza'i was arrested in Tehran on 14 January 2008 at a meeting along with 14 other students. He was currently being held without charge or trial in solitary confinement in Section 209 of Evin Prison in Tehran and had been ill-treated. On 15 January 2008 the police searched Mr. Ghaza'i's home and confiscated his computer and papers. On 30 January 2008, Mr. Ghaza'i was allowed a three minute telephone conversation with his family in the presence of guards, during which he appeared to be intimidated. Apart from this phone call Mr. Ghaza'i had not been allowed access to his family or a lawyer. Mr. Ghaza'i suffers from a peptic ulcer, heart problems, and asthma.

1297. Mr. Ghaza'i has published articles on the internet and written books about gender identity and has translated into the Persian language books on the subject, which are banned in the Islamic Republic of Iran. In view of his reported incommunicado detention concerns were expressed as to Mr. Amin Ghaza'i's physical and mental integrity and his state of health. Further concern was expressed that the arrest and detention of Mr. Amin Ghaza'i might solely be connected to his reportedly peaceful exercise of his rights to freedom of expression and association.

## **Iran (Islamic Republic of)**

### **Urgent appeal**

**Keywords:** freedom of expression

1387. On 14 August 2008, the Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal regarding Ms Shirin Ebadi, Nobel Peace Prize laureate and lawyer.

1388. According to the new information received, on 8 August 2008, an article was published on the website of the Iranian Republic News Agency (IRNA), entitled "Ebadi bogged down with the Bahai's". The article reacts to the fact that Ms Ebadi has undertaken the defence of seven members of the Baha'i community. The article contains allegations such as that human rights are used as means of pressure to impose Western norms to other cultures, and criticizes Ms Ebadi for taking up the defence of homosexuals, Bahai's and "CIA agents". The article also refers to the conversion to the Baha'i faith of Ms Nargess Tavassolian, the daughter of Ms Ebadi. Another article, which was published on IRNA's website, alleged that the reason why Ms Ebadi took up the defence of the seven Baha'i members was in connection with her daughter's conversion to the faith. On 4 August 2008, the newspaper 'Kayhan' also published an article insinuating links between Ms Ebadi, Israel and the Baha'i community.

1389. Concern was expressed that the recent slander campaign may be perceived as incitement to further harassment against Ms Ebadi and her family, especially in conjunction with the death threats against her in April 2008. Further concern was expressed with regard to the physical and psychological integrity of Ms Ebadi and her family, as well as her ability to carry out her work.

## **Kenya**

### **Urgent appeal**

**Keywords:** freedom of expression, threats

1511. On 19 September 2008, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom

of opinion and expression sent an urgent appeal to the Government regarding acts of intimidation against Ms. Poulina Kimani, a member of the Gay and Lesbian Coalition of Kenya.

1512. According to information received, on 23 August 2008, Ms. Poulina Kimani appeared on a television program which dealt with the issue of homosexuality in Kenya. On 25 August 2008, she was the victim of intimidation by a group of men in her community, while on 1 September 2008 she was chased and threatened with rape by a group of men. On 2 September 2008, she received threats in an envelope which was found outside her place of residence. These incidents were reported to the police by Ms. Poulina Kimani but she is unaware of whether there has been any investigation into them yet.

1513. Concern was expressed that the acts of intimidation against Ms. Poulina Kimani may have been related to her activities in defense of the rights of the gay and lesbian community in Kenya. Further concern was expressed for the physical and psychological integrity of Ms. Poulina Kimani.

## **Observations**

1514. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to her communications of 6 July 2005, 27 July 2005, 17 September 2007, 15 January 2008, 23 January 2008, 31 January 2008, 26 February 2008, 22 May 2008, 15 August 2008 and 19 September 2008. She considers response to her communications an important part of the cooperation of Governments with her mandate. She urges the Government to respond to the concerns raised by her, and provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

## **Kyrgyzstan**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly/association, police

1558. On 24 April 2008, the then 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 allegation to the Government concerning the alleged warrantless raid of the community centre of the organization Labrys, an organization working for the rights of lesbian, gay, bisexual and transgender persons (LGBT). Labrys was founded in April 2004 to assist and advocate for the rights of lesbian and bisexual women, gay men, and transgender people. It has been a legally registered nongovernmental organization since 14 February 2006. The community center of Labrys, opened in February 2008, serves as a place for meeting and discussion, as well as shelter for victims of violence.

1559. According to the information received, on the evening of 8 April 2008, three police forced their way into the building housing the group Labrys in Bishkek, which at the time was hosting a dinner for local and international LGBT groups from the Anti AIDS Association and Tais Plus, as well as for international partner organizations – COC (Cultuur en Outspannings-Centrum) and HIVOS (Humanist Institute for Cooperation with Developing Countries) from the Netherlands, and Gender Doc-M from Moldova. The police threatened to arrest anyone who did not produce identification, and searched private files.

1560. It was reported that the police demanded to see the organization's registration documents, statutes, and rent statements. The police gained entry to a locked private office and went through desks and files. A short time later, the district police chief arrived and said the officers would leave only if Labrys promised to submit its administrative and financial documents to the police station the following day. Labrys complied with the request.

1561. This is reportedly the second time that the police have raided Labrys without a warrant. On 4 June 2006, police forced their way into the group's office after verbally threatening that they would rape everyone inside.

1562. The mandate-holders expressed their concern that the warrantless raid of the community centre of Labrys may be related to the activities of the organization in defense of human rights, in particular LGBT rights, and also that restrictions or breaches of the right to freedom of association may discourage defenders working on the protection of the right of marginalized or stigmatized groups to carry out their activities.

## **Turkey**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly/association, police

2574. On 17 April 2008, the then Special Representative sent a letter of allegations to the Government concerning the Lambda Istanbul Cultural Center, an organization advocating the rights of lesbian, gay, bisexual and transgender (LGBT) persons in Turkey.

2575. According to the information received, on the afternoon of 7 April 2008, approximately a dozen plainclothes policemen entered the Lambda Istanbul Cultural Centre with a search warrant. The search of the premises lasted approximately two hours, during which time the entire office was examined and the identity cards of all those who were present or entered the Center were collected. Documents and files concerning the financial and membership structure of the organization were confiscated by the officers when they left.

2576. Reports indicated that the search may have taken place as a result of a complaint filed, accusing the organization of participation in illegal prostitution and procurement of sex workers. It was also reported that the Cultural Center had been under observation by the authorities, who had been taking note of those entering and leaving the building. The association was also in the midst of legal proceedings to apply for official status as an organization, reportedly following a complaint by the city governorship that Lambda should be closed down as the group constituted a threat to Turkish family values and public decency. The fifth hearing was reportedly scheduled for April 17.

2577. Concern was expressed that the aforementioned events may be directly related to the activities of the Lambda Istanbul Cultural Center in defense of human rights, particularly the rights of LGBT persons and further concern was expressed for the physical and psychological integrity of its members.

### **Response from the Government**

2578. In a letter dated 26 May 2008, the Government responded to the communication sent on 17 April 2008 concerning the "Lambda Istanbul LGBT Solidarity Association". The Government reported that on 18 March 2008, a complaint was lodged against the "Lambda Istanbul LGBT Solidarity Association", claiming that its administrators have been involved in illegal prostitution through the activities of the association.

2579. The Public Order Division of the Directorate for Security of Istanbul conducted a preliminary inquiry in connection with the allegations. On the basis of the report prepared by the Public Order Division officers following the inquiry, a request for warrant to search the premises of the above-mentioned association was made to the Office of the Chief Public Prosecutor of Beyoglu, which was conveyed to the Beyoglu 2nd Criminal Court of Peace. The Court issued a search warrant on 7 April 2008 under Articles 116 and 119 of the Criminal Procedure Code.

2580. Article 116 of the Criminal Procedure Code allows for the law enforcement authorities to search the premises of a suspect if there are reasonable grounds to believe that an evidence of the crime might be obtained. Article 119 stipulates the legal procedure to be followed for a search warrant.

2581. On 7 April 2008 the search was carried out in the premises of the "Lambda Istanbul LGBT Solidarity Association" in accordance with the court's decision. The lawyer of the Association filed an appeal with the Beyoglu 9th Criminal Court of First Instance against the search warrant on 14 April 2008. Having considered the appeal, the court decided (Decision No. 2008/81) that there were no grounds for correcting the previous court decision.

2582. The Government noted that the legal proceeding concerning the deficiencies and irregularities in the Statute of the Association is pending before the Beyoglu 3rd Civil Court of First Instance. On 30 October 2007, the Court instructed an expert witness, who is examining the case file.

## **Uganda**

## Letter of allegations/Communications sent

**Keywords:** transgender, gender identity, freedom of assembly/association, torture, police, detention, HIV/AIDS

2608. On 12 August 2008, the Special Rapporteur, together with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a letter of allegations on the situation of Usaam "Auf" Mukwaya, Onziema Patience, Valentine Kalende, and Julian "Pepe" Onziema, all members of Sexual Minorities Uganda (SMUG), a local organization advocating on behalf of Uganda's lesbian, gay, bisexual, and transgender (LGBT) people and on HIV/AIDS issues in Uganda; and Nikki Mawanda, programme coordinator of Transgender, Intersex, Transsexual (TIT), an organization that supports the needs of transgender, transsexual, and intersex Ugandans. According to the allegations received:

2609. On 4 June 2008, police arrested Usaam Mukwaya, Onziema Patience, and Valentine Kalende in Kampala, after a protest at the 2008 "HIV/AIDS Implementers Meeting." The activists were protesting against statements made by Kihumuro Apuuli, director general of the Uganda AIDS Commission, who on 2 June declared that "gays are one of the drivers of HIV in Uganda, but because of meager resources we cannot direct our programmes at them at this time."

2610. Police took the three activists to the Jinja Road Police Station and detained them until 6 June. Authorities finally released the activists on bail after charging them with criminal trespass, under Section 302 of the Uganda Penal Code, despite the fact that sponsors of the Implementers Meeting had invited the activists to attend the conference.

2611. The defendants last appeared before a Kampala court on 25 July, where several witnesses of the State (mainly police officers) and the defendants were cross-examined. The judge adjourned the hearing until 1 August. At previous hearings held on July 9 and 10, the judge adjourned the case following the public prosecutor's request to give police additional time to locate new witnesses.

2612. After the court hearing, a patrol car stopped the taxi Mukwaya was riding in and four men identifying themselves as police officers, three of them with uniforms and the fourth with plain clothes, detained him and put him in the police's pickup truck. The police officers drove towards Jinja Road where a civilian car with tinted screens was waiting for them parked in front of Shoprite. Police officers forced Mukwaya into the other car with three other policemen; two wore suits and one wore a police uniform. The men drove around for about 30 minutes and took Mukwaya to an undisclosed location. Two female and one male police officer were waiting. The police confiscated Mukwaya's mobile phone, which contained contact names and numbers of members of SMUG and other LGBT rights organizations. The police asked Mukwaya if he was Nikki, when he said he was not they asked him his name. The three police officers then pushed him through a dark corridor into a room where they made him sit on a chair. Mukwaya, 26, saw four other men around his age in the room. One had a broken leg and the other three appeared to have been beaten. One of the women officers scraped his knuckles with a razor-like object. His abductors asked him questions in Luganda, a local language, about the activists' funders and supporters, and about his own role "among the homosexuals." They also demanded information about Pepe and Nikki. They demanded the address of the SMUG office, as well as the residence and office of Mukwaya's lawyer. Before dawn, they forced him to strip to his underwear, asked him if he was a man or a woman, and made him walk around the room in his underwear. In the room, there was a machine that suspended above a cushioned bench, and a prisoner's arms are restrained by extensions alongside the device. As it is lowered by a switch, the extensions stretch the prisoner's arms. Mukwaya was ordered by a policeman to lie on the bench face-up, and threatened that he should provide information on the organization's source of funds. Mukwaya said nothing and his arms were stretched, leaving him with intense pain. After about 15 minutes, the machine was turned off and he was asked how much he was paid to be a homosexual. When he did not answer, they left him sleeping on the bench. The following day, 26 July, the police dropped Mukwaya off at Mulago round-about in central Kampala. On 28 July, activists accompanied Mukwaya to file an official complaint before the Uganda Human Rights Commission (UHRC). He also visited a doctor who documented the ill-treatment. On 29 July he went to the African Centre for Torture Victims (ACTV) to receive psychological support. As of today, police have not detained the people responsible for Mukwaya's torture.

2613. Concern was expressed that Usaam Mukwaya, Onziema Patience, Valentine Kalende, and Julian Onziema, and Nikki Mawanda may be at risk of torture or other forms of ill-treatment.

Concern was also expressed in regard to the physical and psychological integrity of Usaam "Auf" Mukwaya. Further concerns were expressed that the arrests and detention of Usaam "Auf" Mukwaya, Onziema Patience, Valentine Kalende, Julian Onziema and Nikki Mawanda might be solely connected to the reportedly non-violent exercise of their right to freedom of opinion and expression, of assembly and of association.

## **Uganda**

### **Urgent appeal**

**Keywords:** police, freedom of assembly/association, detention

2614. On 22 September 2008, the Special Rapporteur, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal on the situation of George Oundo and Kiiza Brendah. George Oundo and Kiiza Brendah work as lesbian, gay, bisexual and transgender (LGBT) activists, promoting and protecting the rights of the lesbian, gay, bisexual and transgender community in Uganda. According to the information received:

2615. On 10 September 2008 George Oundo and Kiiza Brendah were arrested in the home of Oundo, in the village of Nabweru, Wakiso district, outside Kampala. The policemen removed gay literature from Oundo's home, and transferred them to Nalukologolo police station. On 11 September 2008 they were transferred to Nabweru police station, where they were subjected to extensive interrogation about lesbian, gay, bisexual and transgender (LGBT) human rights defenders. George Oundo and Kiiza Brendah were detained for seven days and released on 18 September 2008. They were held at the police station without charge and have not been brought before a court within the constitutional limit of 48 hours. Upon their release on 18 September they were ordered to present themselves at the police station again on 24 September 2008.

2616. Concern was expressed about the arrest and detention without charges of George Oundo and Kiiza Brendah. Concern was also expressed with regard to their physical and psychological integrity. Further concerns were expressed that the arrests and detention of George Oundo and Kiiza Brendah might be solely connected to the reportedly nonviolent exercise of their right to freedom of opinion and expression, of assembly and of association.

### **Observations**

2617. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to the communications of 5 August 2005, 30 November 2007, 12 August 2008 and 22 September 2008. She considers response to her communications an important part of the cooperation of Governments with her mandate.

2618. The Special Rapporteur welcomes the end of the judicial proceedings against Usaam "Auf" Mukwaya, Onziema Patience, Valentine Kalende, and Julian "Pepe" Onziema. However, she remains concerned about the vulnerability of human rights defenders advocating for the rights of lesbian, gay, bisexual and transgender people in Uganda, and urges the Government of Uganda to create a safe environment conducive to their legitimate work.

## **Report of the Special Representative of the Secretary-General on the situation of human rights defenders. Addendum: Mission to Serbia including Kosovo, A/HRC/7/28/Add.3, 4 March 2008**

**Keywords:** freedom of assembly/association, police, threats

### *I. VISIT TO SERBIA*

#### *D. The human rights defenders community*

53. Other areas of work include the rights of minorities, discrimination, women's rights, lesbian, gay, bisexual, transgender and intersex (LGBTI) rights, disability, and children's rights. Defenders provide legal aid, monitor and report on prisoners' rights, and conduct human rights education and training. Some defenders file cases at the European Court of Human Rights and refer to the decisions of the Court at the national level.

#### *E. Recommendations*

77. Adopt a national plan or strategy on human rights with specific measures for the protection of human rights defenders and their activities. The plan or strategy should include the protection of defenders in vulnerable positions, like women defenders in rural areas and defenders working on lesbian, gay, bisexual, transgender and intersex rights. The Government should engage non-governmental organizations and other members of civil society in the process of discussion of such a strategy at the national level.

## *II. VISIT TO KOSOVO*

### B. The Ahtisaari status proposal

#### 2. Human rights defenders today

107. Defenders working for the rights of lesbians, gays, transgender and intersex (LGBTI) persons are in a particularly vulnerable situation. They have chosen not to register as an association for fear of being then identified as individuals and harassed or attacked. In the recent past, members of this group were confronted with homophobic episodes at the hands of the police, who did not protect their privacy when they reported cases of attacks. The Special Representative was reassured by the Ministry of Interior, who was aware of these episodes, acknowledged the problem, and was committed to addressing it. Improvements in the attitude of the police were confirmed by defenders working on LGBTI rights, who stressed the need to train the police on these issues. They also pointed to the ostracism they face vis-à-vis other human rights organizations, which, with few exceptions, are openly against considering LGBTI issues as human rights issues.

### E. Conclusions and recommendation

#### 10. The role of the international community

153. The process of consultation with civil society and human rights defenders should be institutionalized and systematized so that their active participation in legislative and policy decision-making is ensured, particularly that of defenders working on the human rights of people discriminated against or marginalized. These include defenders working on Roma, Ashkali and Egyptian rights, and lesbian, gay, bisexual, transgender and intersex (LGBTI) rights.

## **Report of the Special Representative of the Secretary-General on the situation of human rights defenders. Addendum: Mission to Former Yugoslav Republic of Macedonia, A/HRC/7/28/Add.4, 3 March 2008**

**Keywords:** freedom of assembly/association

## *II. HUMAN RIGHTS DEFENDERS*

26. In terms of thematic areas of work, some trends identified in the 2004 report were confirmed, such as the strength of the women's movement, the steady growth of capacity and activities carried out by defenders working on the rights of Roma. New thematic areas are now on the agenda of human rights defenders. Work on the human rights of persons with disabilities has become prominent in the country. Another emerging area is the rights of lesbians, gays, bisexual, transgender and inter-sexual persons (LGBTI). While the difficult access to public authorities for NGOs working on LGBTI rights is a concern, the Special Representative notes as a positive development the solid work of defenders on LGBTI rights, who are well-integrated among human rights organizations, formed a coalition to pursue improvements in the legislation, and achieved changes in media ethics banning homophobic positions.

## **Report of the Special Representative of the Secretary-General on the situation of human rights defenders. Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/7/28/Add.1, 3 March 2008**

### **Honduras**

#### **Urgent appeal**

**Keywords:** freedom of assembly/association, police, prison

1027. El 5 de abril de 2007 la Representante Especial, junto con el Relator Especial sobre la tortura señalaron a la atención urgente del Gobierno la información recibida con respecto a la Sr. Donny Reyes, miembro de la asociación Arcoiris, asociación que trabaja por la defensa de los derechos de lesbianas, gays, bisexuales y personas transgénero (LGBT). De acuerdo con las

informaciones recibidas, el 18 de marzo, hacia las tres de la madrugada, el Sr. Donny Reyes salió de las oficinas de la asociación Arcoiris y mientras esperaba un taxi, seis agentes de policía en dos autos de patrulla se detuvieron junto a él y le pidieron que subiera a uno de los autos. Cuando Donny Reyes se negó los agentes empezaron a golpearle y le insultaron diciendo "a estos maricones hay que desaparecerlos de aquí". El Sr. Donny Reyes fue trasladado a la comisaría de Comayagüela, donde lo encerraron en una celda con otros 57 hombres. Donny Reyes fue golpeado, desnudado y violado por cuatro detenidos, después de que un agente de policía gritara "miren, aquí les traigo a una princesita, ya saben lo que tienen que hacer". El Sr. Reyes fue dejado en libertad al día siguiente después de pagar un soborno de 200 lempiras.

1028. Tres días después el Sr. Donny Reyes denunció lo sucedido ante la fiscalía y desde entonces viene siendo objeto de intimidaciones por parte de la policía. Desde el 27 de marzo autos de patrulla se estacionan varias veces al día durante periodos de cinco minutos frente a las oficinas de la asociación Arcoiris, en un aparente intento por presionar al Sr. Donny Reyes para que abandone sus denuncias. Igualmente, se expresó temor de que estos eventos puedan estar relacionados con la actividad en defensa de los derechos humanos del Sr. Reyes, en particular su trabajo por la defensa de los derechos de lesbianas, gays, bisexuales y personas transgénero (LGBT).

1037. El 22 de Mayo de 2007 la Representante Especial, junto con el Presidente-Relatora del Grupo de Trabajo sobre la Detención Arbitraria y la Relatora Especial sobre la violencia contra la mujer señalaron a la atención urgente del Gobierno la información recibido en relación con en relación con Josef Fabio Estrada (también conocido como Débora), coordinador del grupo de travestís Arcoiris, asociación que trabaja por la defensa de los derechos de lesbianas, gays, bisexuales y personas transgénero (LGBT) y profesional del sexo en Tegucigalpa. El 5 de abril de 2007, la Representante Especial sobre los defensores de derechos humanos y el Relator Especial sobre la cuestión de la tortura enviaron un llamamiento urgente al Gobierno de su Excelencia respecto a Donny Reyes, tesorero de la Asociación antes mencionada.

1038. De acuerdo con la información recibida, el 20 de abril de 2007, hacia las 22:00 horas, Josef Fabio Estrada fue agredido por cinco desconocidos mientras trabajaba en el barrio rojo habitado por gays y travestís en Comayagüela, Tegucigalpa. Según informes, uno de los individuos habría intentado quitarle la peluca antes de arrojarle al suelo y golpearle. Según se informa, un auto patrulla de la policía se habría estacionado al lado del lugar donde se ubicaban los profesionales del sexo minutos antes de las 22:00 horas. Los agentes policiales no solamente habrían sido testigos de la golpiza propinada al Sr. Estrada, sino que habrían alentado a los agresores gritando "¡Maten a este maricón, golpéenlo!". El Sr. Estrada utilizó un objeto afilado, posiblemente una botella rota, que habría encontrado en el suelo, para defenderse, hiriendo a uno de sus agresores y recién en ese momento los agentes policiales intervinieron.

1040. Se expresó temor de que estos hechos estén relacionados con la actividad en defensa de los derechos humanos, particularmente de los derechos de lesbianas, gays, bisexuales y personas transgénero (LGBT), realizada por el Sr. Estrada. Se recuerda que otro miembro de la Asociación Arcoiris, el Sr. Donny Reyes, fue arrestado el 18 de marzo de 2007 durante 24 horas en la estación de policía de Comayagüela. Según la información recibida, los agentes le golpearon y luego le llevaron a otra estación donde le dejaron durante más de seis horas en una celda con otros detenidos. Donny Reyes fue golpeado y violado repetidamente por otros detenidos, instigados, según se afirma, por un agente policial. Se afirma también que miembros de la policía vienen intimidando y hostilizando al Sr. Reyes por haber denunciado los hechos ante la Fiscalía.

### **Respuesta del Gobierno**

1042. Al llegar a la Penitenciaría Central fue trasladado al modulo de diagnostico, durante tres días reubicándolo el 30 de abril fue ubicado en el modulo de procesados 1, hogar 17; lugar donde se encuentran los grupos vulnerables. En un principio vivió en compañía de otro homosexual, posteriormente le fue asignado una celda en la que vive hasta la fecha. Admitió que sí recibió malos tratos físicos y psíquicos por parte de personas cuyo nombre se reserva por temor a represalias, pero dejó entrever que se trata de personas que se encuentran internas en la Penitenciaría Nacional. No se recibió información sobre Medidas Cautelares.

### **India**

#### **Letter of allegations/Communications sent**

**Keywords:** police, transgender, gender identity, HIV/AIDS

1076. On 10 May 2007 the Special Representative sent a letter of allegations to the Government concerning Ms Subhajit Dey, a transgender Peer Educator at the AIDS Prevention and Control Society, West Bengal State. Ms Dey is also a member of the Pratyay Gender Trust, an organisation which works to defend the rights of those marginalized due to their sexual orientation in India. She has been involved in the Targeted Intervention Project for Communities at risk of HIV/AIDS, in Calcutta.

1078. According to reports, Ms Dey was then brought inside the police station where she was met by 8 to 9 police officers, the majority of whom were in civilian clothing. The officers accused Ms Dey of being a criminal before subjecting her to a barrage of verbal abuse and sexual assault. After her ordeal, Ms Dey was permitted to leave the police station on the condition that she would never return to Sealdah again. Concern was expressed that the aforementioned events may be directly related to Ms Subhajit Dey's work in the defence of human rights in India, in particular her work defending the rights of those marginalised because of their sexual orientation in the country.

### **Observations**

1107. The Special Representative reiterates her concerns for the situation of human rights defenders representing vulnerable groups, such as lesbians, gays, bisexual and transgender (LGBT) persons and members of caste groups facing discrimination. The situation of the Dalit community is of particular concern as human rights defenders advocating their rights face entrenched prejudice from many sectors of society.

1108. The Special Representative hopes that the Government of India will continue in its efforts to work for the improvement of conditions for those belonging to such communities and those working in defence of their rights.

## **Israel**

### **Response from the Government**

**Keywords:** freedom of assembly/association

1248. In a letter dated 5 November 2007, the Israeli Government further responded (following initial responses on 7 and 18 December 2006) to a letter of allegations sent by the Special Representative on 1 December 2006 concerning threats against participants in a proposed Gay Pride Parade, which had been scheduled to take place in Jerusalem on 10 November 2006. In the letter the Government stated that resistance to the holding of the parade from ultra-orthodox members of the Jewish community, Muslims, and Christians has been particularly strong, following violence at the previous year's parade, including the stabbing of three participants by an ultraorthodox man.

1249. Following protracted negotiations between the Parade organisers and the authorities a route had been agreed for the parade scheduled for 10 November 2006; however some days beforehand, the security situation in Jerusalem deteriorated and the city's District Commander informed the organisers that there would not be sufficient police forces available to guarantee security at the parade. The Government letter also stated that the authorities suggested postponing the event for one week but that the parade organisers elected to instead hold a rally at the Hebrew University's Stadium of Givat Ram in Kiryar Ha'leom. This event, approved by police, was attended by thousands of people and passed off peacefully.

## **Moldova (Republic of)**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly/association

1408. According to the information received, on 11 April 2007, Chisinau City Council banned the Moldovan Pride parade, organised by Information Center GenderDoc-M, on the grounds that it could pose a public disorder threat, that it would promote sexual propaganda and that it would undermine Moldovan Christian values. The event was due to take place in Chisinau city between 27 and 29 April 2007 and was planned as part of the Council of Europe's "All Different, All



Equal” campaign. In February 2007, the Supreme Court held that the City Council had acted illegally in banning the event in 2006. According to reports, the Parade was prohibited on two previous occasions. On 28 April 2006, the office of the General Mayor in Chisinau, Moldova rejected an application by the Information Center GenderDoc-M to hold a peaceful demonstration in Chisinau on 5 May 2006. The purpose of this demonstration was to support the adoption of legislation barring discrimination based on sexual orientation. The reported 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.”

1409. Furthermore, on 16 May 2005 the office of the General Mayor in Chisinau, Moldova reportedly rejected an application to hold a peaceful demonstration in Chisinau to support the adoption of legislation based on sexual orientation. It was 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 its work in defence of the rights of sexual minorities in Moldova.

## **Nepal**

### **Letter of allegations/Communications sent**

**Keywords:** police, freedom of assembly/association, transgender, gender identity

1492. On 31 July 2007 the Special Representative sent a letter of allegations to the Government concerning Mr Alex Chimling (called Juli), a meti and HIV/AIDS outreach worker with The Blue Diamond Society (BDS), a community-based sexual health advocacy service for local networks of lesbian, gay, bisexual, transgender and intersex groups in Kathmandu, Nepal.

1493. According to information received, on the evening of 14 July 2007, Mr Chimling was approached for help by an acquaintance who informed him that herself and four other transgender persons or ‘metis’ were subject to beatings and sexual abuse by three policemen from Janasewa Police Station in Ratna Park, Kathmandu. Mr Chimling called the emergency number to alert the police. When two policemen from Durbar Marg Police Station arrived, they, together with Mr Chimling, continued to the park where the three policemen from Janasewa Police Station, including the Sub-Inspector Pradeep Chand, were beating the four remaining metis. However, the policemen only watched the incident without wanting to intervene. The Sub-Inspector recognised Mr Chimling and started searching his bag while simultaneously beating him with batons, and kicking him on the back, legs and face. When the Sub-Inspector found that Mr Chimling was carrying condoms in his bag, he proceeded to verbally abuse him and said that he was behaving in an immoral and illegal manner. The Sub- Inspector then instructed the two policemen from Durbar Marg Police Station to take Mr Chimling and one of the other metis into custody.

1496. Concern was expressed that the aforementioned mistreatment of Mr Alex Chimling may have been in relation to his human rights activities in defence of the rights of the lesbian, gay, bisexual, transgender and intersex persons. Further concern was expressed for the physical and psychological integrity of Mr Chimling and other staff members of the BDS.

### **Response from the Government to a communication sent before 2 December 2006**

**Keywords:** police

1515. Furthermore, in a letter dated 5 June 2007, the Nepalese Government responded to a letter of allegations sent by the Special Representative, together with the Special Rapporteur on violence against women on 1 December 2006. The urgent appeal sent was concerning alleged verbal abuse of and threats made by police officers against a group of people, including Ms Madan Rai Chamling, a human rights outreach worker and member of the Blue Diamond Society, a non- Governmental organization working with sexual minorities lesbian, gay, bisexual and transgender (LGBT) persons.

1516. The Government response stated that, the location of the alleged incident, Thamel, was one of the most crowded areas in Kathmandu, and as such was the scene of regular clashes and arguments. The letter further stated that the police were merely engaged in facilitating the smooth flow of traffic and had not been involved in taking photographs or filming the activities

of the aforementioned, nor had they verbally abused or harassed them.

## **Poland**

### **Response from the Government**

**Keywords:** threats

1659. In a letter dated 6 August 2007, the Polish Government responded to an urgent appeal sent by the Special Representative on 15 November 2006, concerning threats made against Ms Hejna Katarzyna, a member of the Campaign against Homophobia in Torun, by members of the neo-Nazi organization Blood & Honour (BH). The Government letter stated that the BH-Poland website (Redwatch) which displayed Ms Katarzyna's personal information, and as such facilitated the threats made against her, was based on a server in the US, where the law permits this. The Prosecutor's Office asked US law enforcement agencies for legal assistance in obtaining information relating to server and the IP numbers of the computers logging onto the website.

1660. As a result of Polish-US cooperation, the website was closed down twice, but since US law does not ban such organisations, the website was again operational. In view of a criminal investigation being conducted into this activity, the General Inspector for the Protection of Personal Data had refrained from opening administrative proceedings in connection with infringement of regulations on the protection of personal data. To date, Ms Hejna had not complained to the General Inspector concerning the use of her personal data by people connected to BH-Poland.

### **Observations**

1661. The Special Representative thanks the Government of Poland for its response to the communication of 15 November 2006, and trusts that the Government will continue to make efforts to ensure that intimidation of and threats made against human rights defenders working in defence of LGBT rights are thoroughly investigated, thus allowing them to carry out their work without fear of such harassment.

## **Tunisia**

### **Réponse du Gouvernement**

**Keywords:** freedom of assembly/association

1856. Le 1er février 2008, le Gouvernement a répondu à la lettre d'allégation envoyée le 19 décembre 2006. Le Gouvernement informe que s'agissant de l'empêchement allégué le 3 décembre 2006 d'une réunion du Comité de soutien à la LTDH, il y a lieu de préciser que la ligue comptait organiser à cette date un séminaire sur « les orientations futures de la Ligue et les droits de l'homme ». C'est à la demande d'un huissier de justice mandaté par les plaignants que le Procureur de la République territorialement compétent a autorisé l'assistance de la force publique pour l'exécution du jugement en référé décidant, le 18 avril 2006, la suspension du congrès de la Ligue et l'arrêt de tous les actes préliminaires ou préparatoires du congrès projeté, en attendant de trancher le litige quant au fond. C'est ainsi que l'intervention autorisée de la police, pour en assurer l'exécution, s'est déroulée selon les procédures usuelles et dans le cadre de la loi.

## **Turkey**

### **Response from the Government**

**Keywords:** freedom of expression

1899. The same letter of 25 May 2007 also responded to a letter of allegations, sent by the Special Representative on 17 August 2006, concerning the confiscation by police, on 8 August 2006 of the magazine published by Kaos GL, a Gay Lesbian Cultural Research and Solidarity Organisation. The letter stated that Mr Umut Güner, owner and publisher of the magazine, was acquitted of the charge of publishing obscene materials, by the decision of the 2nd Court of First Instance of Ankara, dated 28 February 2007. The Court also decided that the confiscated

editions of the magazine be returned to Mr Güner once the decision had been finalized.

## **Uganda**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of expression, police

1907. On 30 November 2007, the Special Representative sent a letter of allegations to the Government concerning Ugandan and Kenyan defenders of Lesbian, Gay, Bisexual, Transgender (LGBT) rights, including Ms Victor Juliet Mukasa, and members of Sexual Minorities Uganda (SMUG) as well as Amakula, a renowned non- LGBT film organisation based in Kampala which promotes African talent and human diversity. According to the information received, on 23 November 2007, Ugandan and Kenyan defenders of LGBT rights, including Ms Victor Juliet Mukasa and members of SMUG, were prevented from delivering their speeches at the Commonwealth Heads of Governments Meeting (CHOGM) Speaker's Corner in Kampala during the People's Space. They were reportedly forcibly removed from the building by police officers and were threatened with sticks not to enter the premises again.

1908. The LGBT defenders waited outside quietly for seven hours to be allowed back in the building, in vain. On 22 November 2007, Amakula showed at CHOGM a film that addressed homosexuality. The following day, two members of Amakula were expelled from the People's Space. The People's Space was established "to provide opportunities to share in the diversity and richness of the Commonwealth people", and was designed to give people "renewed energy to facilitate social change with a clear sense of building the future together". Concern was expressed that the expulsion of the aforementioned individuals from the People's Space may be related to their peaceful activities in defence of LGBT rights.

### **Report of the Special Representative of the Secretary-General on the situation of human rights defenders, A/HRC/7/28, 31 January 2008**

#### *II. FROM ACTIONS TO IMPACT: FOLLOW-UP TO THE ACTIVITIES OF THE SPECIAL REPRESENTATIVE*

##### B. Communications

##### 2. Thematic analysis of communications

32. The report presented in 2007 to the General Assembly (A/62/225) built on that analysis and focused on the right to protest in the context of freedom of assembly. In order to give prominence to the protest element of the analysis, the information was organized on the basis of: groups of protesters i.e. women defenders, student activists, trade unionists and defenders working on the rights of lesbian, gay, transgender and bisexual persons (LGBT); and thematic areas of protest, i.e. the anti-globalization movement, demonstrations linked to elections, peace demonstrations and protests linked to land rights and environmental claims.

### **Report of the Special Representative of the Secretary-General on the situation of human rights defenders. Addendum: Mission to Indonesia, A/HRC/7/28/Add.2, 28 January 2008**

**Keywords:** freedom of assembly/association

#### *IV. THE CHANGING SITUATION OF HUMAN RIGHTS DEFENDERS IN INDONESIA*

##### B. Vulnerable groups of human rights defenders

##### 2. Defending the rights of LGBTI and HIV/AIDS persons

59. The Special Representative is particularly concerned about the lack of protection for defenders who are engaged with issues that are socially sensitive such as the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons or public awareness on HIV/AIDS.

60. She received credible reports of violations against such defenders. For instance, Ms. Maria, Gaya Nusantara, East Java, who advocated for equal rights for LGBTI persons in East Java, was subsequently assaulted and intimidated. The victim filed a complaint with the police, but they reportedly did not register her complaint, allegedly in the absence of national legislation on LGBTIs. She further sought legal counselling from lawyers, but they refused to take up her case because of the apprehension of the issue of LGBTI in the country as a "foreign product". In

another case, Mr. Hartoyo, an advocate for women's rights in Aceh, was subjected to torture and degrading treatment by police officers while in custody because of his sexual orientation. The Special Representative was further informed of intimidation directed at Ms. Baby Jim Aditya in Jakarta, who was warned in 2003 not to attend the funeral of a patient who had died from AIDS.

**Report of the Special Representative of the Secretary-General on the situation of human rights defenders. Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/4/37/Add.1, 27 March 2007**

**Argentina**

**Letter of allegations/Communications sent**

**Keywords:** freedom of assembly/association

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**

**Letter of allegations/Communications sent**

**Keywords:** freedom of assembly/association

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 Borow 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 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.

**Observations**

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**

**Letter of allegations/Communications sent**

**Keywords :** freedom of assembly/association, death, torture

Killings or attempts of killing

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 Salvador**

### **Letter of allegations/Communications sent**

**Keywords :** threats, hate crimes, freedom of assembly/association

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 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)**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of expression, freedom of assembly/association, police, HIV/AIDS

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**

### **Letter of allegations/Communications sent**

**Keywords:** threats, freedom of assembly/association

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.

### **Observations**

381. She urges the Government to respond to her communications and the concerns raised by her in her: allegation letter of 22 December 2005 concerning Qasem Qasem; the urgent appeal of 12 January 2006 concerning Catherine Richards; the joint urgent appeal of 20 January 2006 concerning Hassan Mustafa Hassan Zaka; the joint urgent appeal of 14 March 2006 concerning Ziyad Muhammad Shehadeh Hmeidan; the allegation letter of 11 April 2006 regarding Brian Morgan; the allegation letter of 28 April 2006 concerning Sister Anne Montgomery, Tore Ottesen , Karien Laier, Brian Larsen and Anna Svennson; the urgent appeal of 19 May 2006 concerning Mr Ziyad Muhammad Shehadeh Hmeidan; the joint allegation letter of 2 June 2006 concerning Ms Kate Maynard; the joint allegation letter of 6 June 2006 concerning Hassan Mustafa Hassan Zaka; the joint letter of allegation of 17 October 2006 concerning the Ansar Al-Sajeen (Prisoners Friends' Association) in Israel and in the West Bank and Mr Munir Mansour; the joint urgent appeal of 25 October 2006 concerning Ahmad Abu Haniya; joint letter of allegation of 1 December 2006 concerning Ziyad Muhammad Shehadeh Hmeidan; letter of allegation of 1 December 2006 concerning Tove Johansson of the International Solidarity Movement; and letter of allegation of 1 December 2006 concerning the Gay Pride Parade.

## **Jamaica**

### **Observations**

**Keywords:** death

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**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly/association, threats

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 (Republic of)**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly/association

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 organize 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**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly/association, police, transgender, gender identity

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 nongovernmental 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**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of expression, freedom of assembly/association

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**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly/association, freedom of expression, threats, violence, education

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 Henjna 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.

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 Sieltaycki 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**

## **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly/association

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.

## **Observations**

583. The Special Representative continues to be concerned about the deteriorating situation in terms of the right to freedom of expression and information in the Russian Federation, and is particularly disappointed by reports that first vice speaker of the State Duma stated in relation to the Moscow Gay Pride Parade that "there are several million people in Moscow who do not want to have this procession. Who is going to protect their rights?" which was the subject of a communication sent on 11 May 2006. The Special Representative urges the Government to provide a detailed response to this case and to consider Article 7 of the Declaration which establishes 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.

## **Turkey**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of assembly/association

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.

**Joint Statement from the Special Representative of the Secretary-General on Human Rights Defenders, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 23 February 2007**

**Keywords:** criminal laws, stigma, discrimination, HIV/AIDS

*INDEPENDENT UN EXPERTS EXPRESS SERIOUS CONCERN OVER DRAFT NIGERIAN BILL OUTLAWING SAME-SEX RELATIONSHIPS*

The Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène; the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt issued the following statement today:

"We express our deep concern about the draft "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" which was heard before the Judiciary Committee of the Nigerian House of Representatives on Wednesday 14 February 2007. Provisions of the draft Bill discriminate against a section of society, are an absolutely unjustified intrusion of an individual's right to privacy and contravene Article 1 of the Universal Declaration of Human Rights that '(a)ll human beings are born equal in dignity and rights'.

The Bill, as currently drafted, heightens the potential for stigmatization, discrimination and intolerance against individuals for their actual and imputed sexual orientation or their gender identity, raising serious concerns regarding their protection. We are apprehensive that, if adopted, the proposed law will make persons engaging in, or perceived to be engaging in, same sex relationships in Nigeria more susceptible to arbitrary arrests, detention, torture and ill-treatment and expose them even more to violence and attacks on their dignity. The proposed law may lead to the denial of opportunities and conditions necessary for the enjoyment of economic, social and cultural rights. In particular, the Bill is likely to undermine HIV/AIDS education and prevention efforts by driving stigmatized communities underground, posing a threat to the right to the highest attainable standard of physical and mental health.

In this context, we note with concern that same-sex relationships are already prohibited and criminalized in Nigeria and carry the death penalty. During the last session of the Human Rights Council in Geneva, the Government of Nigeria expressed its view that the death penalty by stoning for "unnatural sexual acts" such as lesbianism and homosexuality may be considered "appropriate and just punishment".

In addition to clear elements of discrimination and persecution on the basis of sexual orientation, the Bill contains provisions that infringe freedoms of assembly and association and imply serious consequences for the exercise of the freedom of expression and opinion. The introduction of criminal penalties of imprisonment in the Bill, if enacted, would in particular have a chilling effect for local human rights defenders who undertake peaceful advocacy on the adverse human rights implications of the law for lesbian, gay, bisexual and transgender persons. Such provisions are contrary to the principle recognized in the Declaration on Human Rights Defenders 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".

Whilst the significance of regional and national particularities are acknowledged, we nevertheless remind the Government that such particularities or historical, cultural or religious practices, though significant in many aspects, do not absolve governments from their duty to promote and protect all human rights and fundamental freedoms and to ensure that such protection is universally applied and respected.

We therefore urge the Government to reconsider the Bill and to ensure that any law that is adopted conforms to international human rights norms and to Nigeria's obligations under international law. Nigeria's recent progress in institutionalizing democratic processes and practices strengthens the hope that the Government will give due consideration to our serious concerns and will take immediate steps to withdraw the Bill".

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

**Keywords:** freedom of assembly/association, discrimination, health

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*

### 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.

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 ...".[fn] 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.

fn: 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).

#### **4. SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE**

<http://www2.ohchr.org/english/issues/racism/rapporteur/index.htm>

#### **Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Implementation of General Assembly resolution 66/143, A/HRC/20/38, 29 May 2012**

**Keywords:** multiple discrimination, death, violence

#### *II. ADDRESSING THE HUMAN RIGHTS AND DEMOCRATIC CHALLENGES POSED BY EXTREMIST POLITICAL PARTIES, MOVEMENTS AND GROUPS IN THE CONTEXT OF THE CORRENT ECONOMIC CRISIS.*

##### **B. Persistence of racial violence against vulnerable groups**

8. While minorities, migrants, foreigners, asylum seekers and refugees continue to be the main victims of racist and xenophobic violence by individuals linked to extremist political parties, movements or groups, the Special Rapporteur is concerned that such individuals also target persons on the basis of their sexual orientation. In this regard, he is deeply concerned about information received recently regarding the death of a young gay man of 24 years old, following a brutal attack by individuals linked to a neo-Nazi group, who beat him unconscious and cut swastikas on his chest and arms with a broken bottle. The Special Rapporteur draws the attention of States and relevant actors to prejudice and behaviour that tends to stigmatize and place individuals into a single category. Like his predecessor, he recalls that the identity of each individual is made up of a multitude of components, including gender, age, nationality, profession, sexual orientation, political opinion, religious affiliation and social origin (A/HRC/14/43, para. 13). He calls for further tolerance, mutual understanding and respect for all, without prejudice, stereotyping or discrimination of any kind. In this regard, it is essential that appropriate measures be taken by States to address the multiple and often interlinked forms of discrimination faced by individuals on the basis of their race, colour, descent, national or ethnic origin and sexual orientation.

9. The Special Rapporteur shares the view of the High Commissioner that States should investigate promptly all reported killings and other serious incidents of violence perpetrated against individuals because of their actual or perceived sexual orientation or gender identity, whether carried out in public or in private by State or non-State actors (A/HRC/19/41, para. 84

(a)), including extremist movements and groups, and to hold the perpetrators accountable. Indeed, reports received indicate that racist, xenophobic and intolerant acts perpetrated by persons belonging or linked to extremist political parties, movements and groups are not always prosecuted or adequately sanctioned. In this regard, the Special Rapporteur received information about a case regarding the murder of nine migrants by a neo-Nazi group during a 13-year crime spree, which the authorities allegedly failed to adequately investigate.

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Addendum - Mission to Hungary A/HRC/20/33/Add.1, 23 April 2012**

**Keywords:** equality & non-discrimination legislation

*III. LEGAL HUMAN RIGHTS FRAMEWORK*

C. Specific legislation prohibiting racism, racial discrimination, xenophobia and related intolerance

15. The Special Rapporteur welcomes the adoption by Parliament on 22 December 2003, of Act No. CXXV on Equal Treatment and Promotion of Equal Opportunities (Equal Treatment Act) which entered into force on 27 January 2004. The Act constitutes comprehensive legislation to combat racial discrimination. It prohibits both direct and indirect discrimination on 19 grounds, including racial origin, colour, nationality, origin of national or ethnic minority, mother tongue, religious or ideological conviction, sexual orientation, and sexual identity (article 8). It also explicitly prohibits segregation (article 7 (1)). A broad range of fields are covered under this legislation including employment, social security, health care, housing, education and training, as well as the sale of goods and use of services. The Act further applies to both public and private actors and allows the adoption of positive measures of a temporary duration for certain disadvantaged groups.

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on the implementation of General Assembly resolution 65/199, A/HRC/18/44, 21 July 2011**

**Keywords:** hate crimes

*II. Good practices developed at the national level to counter extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements*

13. Other positive examples identified include the training of law enforcement agents. The Special Rapporteur notes in particular that, in some cases, compulsory human rights training sessions were developed for the judiciary and that specific units to deal with hate crimes and racism were also established, including, for instance, in the Public Prosecutor's Office. The Special Rapporteur also notes with interest that some countries have developed data-collection systems on hate crimes, including hate crimes committed against individuals on the grounds of race, colour, ethnicity, origin or minority status, citizenship, language, religion, disability, sexual orientation, gender or transgender. It was also reported that some States specifically collect data on racist crimes committed by members of extremist groups.

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/HRC/17/40, 24 May 2011**

**Keywords:** equality & non-discrimination legislation

*III. DISCRIMINATION BASED ON WORK AND DESCENT, INCLUDING DISCRIMINATION ON CASTE AND ANALOGOUS SYSTEMS OF HERITED STATUS.*

B. Good practices and contemporary challenges

(c) Other parts of the world and the diaspora

67. Despite the limited information available on the issue, the Special Rapporteur has identified a good practice regarding the diaspora community in the United Kingdom, where the previous anti-discrimination legal regime has been replaced by the Equality Act 2010. This legislative framework aims to protect the rights of individuals and advance equality of opportunity for all. Initially, the Act covered nine protected characteristics (sex, gender reassignment, race, religion

or belief, age, disability, sexual orientation, marriage and civil partnership, and pregnancy and maternity) in areas such as work, education and goods and services. It makes provision for the advancement of equality, through the public sector equality duty and through positive action.

**Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, Report of the Secretary-General, A/65/377, 17 September 2010**

**Keywords:** multiple discrimination, equality & non-discrimination legislation, hate speech

*II. CONTRIBUTIONS RECEIVED*

A. Member States

*Sweden*

45. Sweden highlighted the fact that the fight against all forms of discrimination, including multiple discrimination, is one of the key human rights objectives of the Government. The most extensive initiative to achieve that goal in recent years is the new Anti-discrimination Act, which entered into force on 1 January 2009. The Act includes protection against discrimination on the five previously protected grounds; i.e., sex, ethnic origin, religion or other belief, disability and sexual orientation. It also adds two new grounds — age and transgender identity or expression.

46. Sweden noted that in conjunction with the adoption of the new Anti-discrimination Act, a new agency was established by merging the four previous anti-discrimination ombudsmen into a new body, namely, the Equality Ombudsman, who is mandated to supervise compliance with the Anti-discrimination Act and to combat discrimination and promote equal rights and opportunities for everyone.

47. Sweden noted that its penal code contains two provisions directly concerned with contempt or discrimination on the grounds of race, colour, national or ethnic origin, religious belief or sexual orientation; one relating to agitation against a national or ethnic group, the other to unlawful discrimination. The Code also contains a specific clause which states that, when assessing the penal value of a crime, it shall be considered an aggravating circumstance if the motive of a crime was to aggrieve a person, ethnic group, or some other similar group of people by reason of race, colour, national or ethnic origin, religious belief, sexual orientation or other similar circumstance.

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Addendum: Mission to Germany, A/HRC/14/43/Add.2, 22 February 2010**

**Keywords:** equality & non-discrimination legislation

*III. LEGAL AND INSTITUTIONAL FRAMEWORK*

B. The General Equal Treatment Act

15. In 2006, the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*) was enacted by parliament, coming into force on 18 August 2006. The Act is in fact a transposition into German law of some key European Union (EU) anti-discrimination directives. As section 1 of the Act states, its purpose "is to prevent or stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation". It prohibits discrimination on these grounds in a variety of areas, including employment, vocational training, membership or involvement in workers' and employers' organizations, social protection, health care, education and housing. In this regard, the Act is an important milestone in offering specific protection to vulnerable groups in Germany, creating a particular set of rights that can be pursued through the courts and making more specific the general equal treatment provision contained in the Constitution.

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Addendum: Dominican Republic, A/HRC/7/19/Add.5, A/HRC/7/23/Add.3, 18 March 2008**

**Keywords:** equality & non-discrimination legislation



*VI. JOINT RECOMMENDATIONS OF THE SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE AND THE INDEPENDENT EXPERT ON MINORITY ISSUES*

119. An independent national institution for the promotion and protection of human rights should be established and empowered, in accordance with the Paris Principles, with the independent authority to work to combat all forms of discrimination in a holistic manner, including on all grounds such as race, ethnicity, nationality, sex, age, disability, sexual orientation and any other status. The experts note Law No. 19-01 in this respect, establishing a human rights ombudsman's office (*Defensor del Pueblo*) and urge the implementation of this law in practice.

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Addendum: Estonia, A/HRC/7/19/Add.2, 17 March 2008**

**Keywords:** equality & non-discrimination legislation, hate crimes

*III. POLITICAL AND LEGAL STRATEGY OF THE PUBLIC AUTHORITIES*

A. Legal and institutional framework to combat racism and racial discrimination

1. Constitutional and legislative provisions

20. The Constitution of Estonia establishes the general right to non-discrimination under its Article 12, which provides that "No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds". This principle is further specified in the Penal Code (§ 152), which establishes a possibility of punishment by fine, detention or one year of imprisonment to any "unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, financial or social status".

21. Article 12 of the Constitution provides that "the incitement of national, racial, religious or political hatred, violence or discrimination shall, by law, be prohibited and punishable". The Penal Code (§ 151) increases the scope of the prohibition by referring additionally to colour, sex, language, origin, sexual orientation, financial or social status. Different levels of punishment are established, ranging from a fine to 3 years of imprisonment.

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Addendum: Mission to Lithuania, A/HRC/7/19/Add.4, 7 February 2008**

**Keywords:** equality & non-discrimination legislation

*II. LEGAL FRAMEWORK, PUBLIC POLICIES AND VIEWS OF STATE OFFICIALS*

A. The legal and institutional framework to combat racism and racial discrimination

The Law on Equal Treatment and the Equal Opportunities Ombudsperson

24. The broad provisions established in the Constitution are specified in the Law on Equal Treatment approved on 18 November 2003, entering into force on 1 January 2005. The purpose of the Law is to "ensure the implementation of human rights laid down in the Constitution" and "to prohibit any direct or indirect discrimination based upon age, sexual orientation, disability, racial or ethnic origin, religion or beliefs" (art. 1.1). The Law makes explicit reference to Lithuania's human rights obligations laid down in both international and national instruments and spells out the specific responsibilities of State and municipal institutions, educational institutions, employers and consumer service providers.

26. The Law on Equal Treatment expanded the role of the Equal Opportunities Ombudsperson, who is responsible to receive complaints from persons that allege being subject to discriminatory actions and to oversee the general implementation of the Law. Prior to 2005, the Ombudsperson was responsible primarily for issues of gender equality. However, since the adoption of the Law on Equal Treatment, its mandate was expanded to cover various forms of discrimination, namely on the basis of age, sexual orientation, disability, racial or ethnic origin, religion or beliefs. The Ombudsperson is allowed to investigate complaints filed not only by citizens, but also foreigners and stateless persons. An important element of the

Ombudsperson's mandate is the power to initiate investigations at her discretion and not only in response to existing complaints.

**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/4/19/Add.1, 5 June 2007**

**Germany**

**Communication sent**

**Keywords:** discrimination

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**

**Keywords:** freedom of assembly/association

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.

## **Poland**

### **Follow-up to previously transmitted communications**

**Keywords:** freedom of assembly/association

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. Addendum: Mission to Russian Federation, A/HRC/4/19/Add.3, 30 May 2007**

**Keywords:** equality & non-discrimination legislation

*Summary*

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.

*V. RECOMMENDATIONS OF THE SPECIAL RAPPORTEUR*

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.

**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, 25 May 2007**

**Keywords:** discrimination

*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. Addendum: Mission to Italy, A/HRC/4/19/Add.4, 15 February 2007**

**Keywords:** equality & non-discrimination legislation

*VI. RECOMMENDATIONS*

69. The Government should consider the establishment by law of an independent national institution for the promotion and protection of human rights in accordance with the Paris Principles and for combating all forms of discrimination in a holistic manner, including all grounds such as race, ethnicity, nationality, sex, age, disability, sexual orientation and any other status. Pending the establishment of this institution, the Government should consider with urgency the need to increase the level of independence and the human as well as financial resources of the National Office for the Fight against Racial Discrimination.

**Report by Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Addendum: Mission to Switzerland, A/HRC/4/19/Add.2, 30 January 2007**

**Keywords:** equality & non-discrimination legislation

*V. RECOMMENDATIONS*

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.

**Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/HRC/4/19, 12 January 2007**

**Keywords:** equality & non-discrimination legislation

*RESURGENCE OF RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA*

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.

**5. SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF**

<http://www2.ohchr.org/english/issues/religion/index.htm/rapporteur/index.htm>

**Report of the SR on freedom of religion or belief. Addendum: Mission to Moldova, A/HRC/19/60/Add.2, 27 January 2012**

**Keywords:** freedom of expression, freedom of assembly/association

*V. ISSUES OF CONCERN TO THE MANDATE*

C. Manifestations of intolerance

46. A general climate of scepticism was noticeable also with regard to State institutions, with the result that acts of positive civic engagement apparently remain rare. Moreover, a broad and stable consensus that the public sphere –in terms of both physical public places and a culture of public discourse – should be open for everybody in a non-discriminatory manner may still be lacking. This has detrimental consequences for minorities, which continue to face difficulties when trying to meet or present their views in the public sphere. For instance, recently, a group of Seventh-Day Adventists, and members of Lesbian Gay Bisexual and Transgender groups, were denied the use of central public spaces in Chisinau, reportedly as a result of opposition voiced by some sectors from within the Orthodox Church or affiliated groups.

**Report of the SR on freedom of religion or belief. Addendum: Mission to Paraguay, A/HRC/19/60/Add.1, 26 January 2012.**

**Keywords:** education, equality & non-discrimination legislation, sexual and reproductive health and rights

*V. MANDATE-RELATED ISSUES*

A. General observations on the human rights situation

21. Although the Special Rapporteur generally noticed a strong human rights commitment in the State and society, virtually all interlocutors from Government and civil society agreed that many challenges remain to be addressed. A major problem broadly affecting the situation of human rights in Paraguay seems to be the weakness of implementation mechanisms. Given the enormous social inequalities in such areas as distribution of wealth, access to public or private education, political influence, ethnic and linguistic minority status and gender-related differences, the weak presence and poor capacity of State institutions render certain sectors of the population structurally vulnerable to possible human rights abuses, including in the field of freedom of religion or belief. This problem seems to be even more pronounced outside the capital, especially in remote areas. A number of interlocutors stated that, in certain remote regions, the State is virtually absent, with the result that human rights guarantees and policies in those areas are rarely effective. This can have serious consequences for, for instance, members of indigenous peoples, but also for other individuals in situations of particular

vulnerability, including members of ethnic, religious or sexual minorities, women, children and people living in poverty.

22. While finding broad consensus on many human rights topics and challenges, the Special Rapporteur also became aware of certain politically contentious issues relating to his mandate. Open tensions that came up repeatedly during discussions concerned problems where education met anti-discrimination policies, especially in the field of gender- and sexual orientation-related discrimination. The Pedagogical Regulating Framework (Marco Rector Pedagógico), a Government initiative recently prepared with the involvement of civil society and the support of the United Nations system in Paraguay aiming to provide population sectors at risk, for example young people and pregnant women, with information and education on sexual and reproductive health, had elicited strong opposition from advocates of traditional family values. The opposition against the initiative apparently received much support from religious groups across different denominations and some Congress members. A similar political controversy, which was also reflected in many discussions held during the country visit, concerned the role of anti-discrimination principles in the school curriculum. In this context, the Special Rapporteur learned that anti-discrimination legislation had been repeatedly shelved as a result of opposition in Congress and in certain religious and conservative groups.

#### D. Freedom of religion or belief and the school system

42. In discussions about school education, the Special Rapporteur was repeatedly witness to highly emotional exchanges over the Pedagogical Regulating Framework (see paragraph 22 above) initiated by the Government with the purpose of providing, as part of the mandatory school curriculum, information on sexual and reproductive health. Whereas interlocutors from specific Government sectors, civil society organizations, women's organizations and representatives of sexual minorities strongly supported the initiative, some vocal members of Christian churches and other religious groups mostly expressed reservations or even harsh opposition. Advocates of the Framework put the initiative into the context of the ongoing fight against gender-based discrimination. Opponents in turn saw it in sharp contradiction to their own religious or moral convictions, and felt that their concerns had not been taken seriously. This bitter controversy led not only to a blockage within Parliament and to divisions in society at large, but also had a negative impact on school life. According to allegations received from civil society, certain religious organizations directly targeted young-age school children in the context of public campaigns by urging them to sign petitions against the Framework. The Special Rapporteur also received credible information about acts of intimidation and harassment by the part of religious groups opposing the Framework, which, in some instances, have been close to physical violence and led to the cancellation of public information meetings about the initiative.

43. The Special Rapporteur does not see himself in a position to make a comprehensive analysis of the complex conflict around the Pedagogical Regulating Framework, nor to give concrete advice on how to act. However, he received the clear impression that communication between the opposing camps had partly broken down, leading to bitterness, mistrust and lack of mutual understanding. In this context, he regards any act of intimidation and harassment as unacceptable, and would like to recall that the Human Rights Council has, on many occasions, advocated for a holistic understanding of human rights, all of which should be seen as mutually reinforcing one another. This also includes the relationship between freedom of religion or belief and rights to be free from discrimination on grounds like gender or sexual orientation. According to the formulation of the Vienna Declaration and Programme of Action, agreed upon at the World Conference on Human Rights, held in Vienna in 1993, "all human rights are universal, indivisible and interdependent and interrelated". In addition, with regard to the rights to life, health and education, the Special Rapporteur refers to the relevant recommendations made by the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Special Rapporteur on the right to education.

**Report of the Special Rapporteur on freedom of religion or belief. Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/13/40/Add.1, 16 February 2010**

**Indonesia.**

**Urgent Appeal**

**Keywords:** discrimination, religion

2. Urgent appeal sent on 2 October 2009 jointly with the Special Rapporteur on torture

and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on extrajudicial, summary or arbitrary executions

### **Allegations transmitted to the Government**

114. The Special Rapporteurs brought to the attention of the Government information they had received regarding the adoption of the new Islamic Criminal Code (*Qanun Jinayah*) in Aceh. On 14 September 2009, the Aceh Legislative Council adopted a new Islamic Criminal Code which imposes severe sentences for consensual extra-marital sexual relations, rape, homosexuality, alcohol consumption and gambling. Among other sanctions, the Code imposes the punishment of stoning to death for adultery; 100 cane lashes for sexual intercourse outside marriage; between 100 and 300 cane lashes or imprisonment for rape; and 100 lashes for homosexuality. In addition, the new Code legalizes marital rape.

### **Response from the Government dated 23 December 2009**

116. In its response dated 23 December 2009, the Government indicated that the Province of Aceh is given a special status under law no. 18 of 2001, which incorporated a special system of autonomy. In the preamble of this law, special status is granted to Aceh for its distinct contribution to the formation of the Indonesian nation, as much as for Aceh's unique historical and cultural background, as well as its religious, moral and social values which had been preserved from generation to generation. The special status of Aceh as an autonomous region was expressed through four specific areas over which it had sole decisional power: religious issues, customs, education and the role of the *Ulema* in the local policy-making process. This special status was further reinforced through law no. 11 of 2006 on the Governing of Aceh.

### **Observations of the Special Rapporteur**

123. The Special Rapporteur is grateful that the Government of Indonesia replied to the joint urgent appeal of 2 October 2009. She would like to refer to General Assembly resolution 63/181, in which the Assembly urges States "to ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights" (para. 9 b). The Special Rapporteur also recalls that the General Assembly in the same resolution urges States "to step up their efforts to eliminate intolerance and discrimination based on religion or belief, [...] devoting particular attention to practices that violate the human rights of women and discriminate against women" (para. 12 a). Furthermore, the General Assembly invites all actors to address "situations of violence and discrimination that affect many women as well as other individuals on the grounds or in the name of religion or belief or in accordance with cultural and traditional practices" (para. 16 b). Moreover, the Human Rights Committee in its general comment no. 22 emphasizes that "[i]f a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it".

### **Report of the Special Rapporteur on freedom of religion or belief. Addendum: Republic of Serbia, including Kosovo, A/HRC/13/40/Add.3, 28 December 2009**

**Keywords:** equality & non-discrimination legislation

#### *I. Freedom of religion or belief in Central Serbia and Vojvodina*

##### C. Domestic legal framework on freedom of religion or belief

13. The Parliament of the Republic of Serbia adopted a law on the prohibition of discrimination in March 2009. The law defines "discrimination" and "discriminatory treatment" as any unjustifiable differentiation or inequitable treatment, i.e. act of omission regarding persons or groups, as well as their family members or people close to them, performed in an overt or concealed manner, on grounds of, inter alia, religious convictions. According to article 18 of the 2009 law, "discrimination occurs when the principle of freedom of expressing one's religious beliefs is breached, i.e. if a person or group is denied their right to adopt, maintain, express or change their religious beliefs, or to behave in accordance with their religious beliefs". Shortly before the adoption of the 2009 law, a second paragraph was added to article 18 of the law, providing that "priests' or other religious officials' actions that are in accordance with the



doctrine, beliefs or goals of the churches and religious communities" registered under the 2006 Law on Churches and Religious Communities should not be deemed to be discriminatory. Reportedly, pressure by religious and conservative groups regarding issues such as religious conversion and free expression of sexual orientation had led to a temporary withdrawal of the bill from the legislative agenda in early March 2009. An amended anti-discrimination law was finally adopted on 26 March 2009 by a narrow majority.

#### E. Issues of concern for the mandate

23. Furthermore, the recently adopted anti-discrimination law provides for specific exemptions of the prohibition of discrimination with regard to actions of priests or other religious officials which are in accordance with the doctrine, beliefs or goals of registered churches and religious communities. Members of civil society organizations emphasized that this exemption was introduced shortly before the adoption of the 2009 Law on the Prohibition of Discrimination in its article 18 due to lobbying efforts by "traditional" churches and religious communities, inter alia, in order to protect priests against charges of discriminating against others on grounds of sexual orientation.

### **Report of the Special Rapporteur on freedom of religion or belief. Addendum: United Kingdom of Great Britain and Northern Ireland, A/HRC/7/10/Add.3, 7 February 2008**

**Keywords:** religion

#### *III. RESPECT FOR FREEDOM OF RELIGION OR BELIEF IN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND*

##### B. Overview of reported concerns

27. Members of various Christian denominations (Church of England, Church of Ireland, Church of Scotland, Methodist, Presbyterian, Protestant, Roman Catholic, etc.) reported discrimination and violence related to sectarianism, not only in Northern Ireland but also in the rest of the United Kingdom. Furthermore, Christian Students' Unions at several universities were reported to face pressures with regard to their adherence to university equal opportunities policies. In general, the Government's Sexual Orientations Regulations were perceived by some Christians as hampering the work of Christian adoption agencies and establishing a hierarchy of rights with religion having a rather low priority. Another example of this trend was a court judgement which ruled that an employee's freedom to manifest his religious beliefs was not infringed by his dismissal for refusal to agree to work on Sunday. On the other hand, the particular role and privileges of the Church of England were criticized by some Christians as no longer reflecting the religious demography of the country and the rising proportion of other Christian denominations.

##### C. Thematic Issues

###### 5. Balancing of competing rights

47. Some recent statutory equality provisions are reported to lead to a clash of religious convictions with other strands, for example sexual orientation. On the one hand, some Christian interlocutors raised their concerns that religion would have to conform to a non-religious world view; while not being opposed to antidiscrimination legislation as such, they felt discriminated by sexual orientation regulations and indicated that many Christian adoption agencies would close if not given an opt-out from having to place children with homosexual couples. On the other hand, members of the lesbian, gay, bisexual and transgender community argued that the existing statutory exemptions already favour religion and they stressed that non-discriminatory delivery of goods and services is crucial especially when public services are contracted out to faith-based organizations.

48. The Special Rapporteur was informed about the differences of the pertinent regulations in Northern Ireland and in Great Britain. The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006, which make it unlawful to discriminate or subject another person to harassment on the grounds of sexual orientation, provide for an exception to organizations relating to religion and belief. Thus it is not unlawful for such an organization to restrict membership, participation in activities, the provision of goods, services or activities, or the use or disposal of premises on the ground of sexual orientation if this is necessary to comply with the doctrine of the organization or in order to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers. The regulations for Northern Ireland, which came into force on 1 January 2007, however, do not extend the exception to organizations whose sole or main purpose is commercial or to those who act under a contract with and on behalf of a public authority. Similar regulations for the rest of the United Kingdom

are in force since 30 April 2007, but the Equality Act (Sexual Orientation) Regulations 2007 in Great Britain do not contain harassment clauses as the corresponding regulations for Northern Ireland. These harassment provisions have been subject to judicial review and the High Court of Justice in Northern Ireland decided on 11 September 2007 to quash them, inter alia, because the width and vagueness of the definition of harassment gave rise to a risk of incompatibility with both freedom of speech and freedom of thought, conscience and religion.[fn]

fn: High Court of Justice in Northern Ireland, Queen's Bench Division, (2007) NIQB 66, paras. 40-43.

## V. CONCLUSIONS AND RECOMMENDATIONS

### *Balancing of competing rights*

72. Concerning the issue of balancing competing rights, the Special Rapporteur would like to emphasize that there exists no hierarchy of discrimination grounds. She welcomes the fact that the mandate of the recently established Commission for Equality and Human Rights includes promoting understanding and encouraging good practices concerning relations between members of groups who share a common attribute in respect of age, disability, gender, race, religion or belief and sexual orientation. The approach taken by the pertinent anti-discrimination legislation seems to be quite balanced and there are specific exemptions or transitional provisions for organizations relating to religion and belief. Ultimately, balancing different competing rights can only be decided on a case-by-case basis taking into account the particular circumstances and implications of the case.

## **Report of the Special Rapporteur on freedom of religion or belief, A/HRC/6/5, 20 July 2007**

**Keywords:** multiple discrimination, religion

## II. OVERVIEW OF THE MANDATE'S ISSUES OF CONCERN

### C. Vulnerable groups

#### 1. Women

28. Women are in a particularly vulnerable situation as evidenced by numerous urgent appeals and allegation letters sent by various Special Rapporteurs. Since intolerance and discrimination is often applied with regard to multiple identities of the victim or group of victims, many women suffer from aggravated discrimination with regard to their religious, ethnic and sexual identities. A comprehensive thematic study by the second mandate holder (E/CN.4/2002/73/Add.2) lists the different types of discrimination against women, such as practices that are harmful to the health of women, discrimination against women within the family, attacks on the right to life, honour killings, and attacks on their dignity, such as restrictions on the education of women or their exclusion from certain functions. Furthermore, this study reveals that there are many cultural practices to be found among peoples having many diverse religious traditions. While many religions have combated cultural practices which undermine the status of women, some harmful practices such as female genital mutilation are perpetuated in the name of religion or imputed to religion. The Special Rapporteur would like to reiterate the importance of ensuring that the right to freedom of religion or belief adds to the values of human rights and does not unintentionally become an instrument for undermining freedoms. Women all too often are required to negotiate with male religious leaders and with other members of their own communities in order to exercise their full human rights. Women themselves have to be empowered since they continue to be largely excluded from the decision-making process within most religious communities. Similarly, at a time when much emphasis is put on inter-religious dialogue, the absence of women's voices from that dialogue is striking.

## **6. SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS**

<http://www2.ohchr.org/english/issues/migration/rapporteur/index.htm>

## **Report of the Special Rapporteur on the human rights of migrants. Addendum: Mission to South Africa, A/HRC/17/33/Add.4, 2 May 2011**

**Keywords:** equality & non-discrimination legislation, immigration, hate crimes

#### IV. GOOD PRACTICES

##### A. Constitutional and legal guarantees

22. The Special Rapporteur was informed of the strong constitutional and legal guarantees that protect all persons in South Africa against deprivation of liberty and the progressive enumeration of social and economical rights, which prohibits discrimination in access to public services such as health care, education and social security.

23. The Constitution is the supreme law in South Africa. In the preamble, it acknowledges the injustices of the past and dedicates the nation to building a democratic and open society. The Constitution contains 14 chapters and 7 schedules. Chapter 2 (sects. 7-39) contains the Bill of Rights, which is regarded as one of the most progressive of the world. Most of its provisions apply to all persons in the country, whether they are citizens or not or have legal status of stay or residence. In particular, section 9, the provision guaranteeing equality of all persons, states that:

(a) Everyone is equal before the law and has the right to equal protection and benefit of the law;

(b) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination may be taken;

(c) 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.

##### B. Absence of anti-immigrant stance in political discourse

27. The Special Rapporteur was informed that a hate crime bill was currently being prepared by the Department of Justice and Constitutional Development, in charge of drafting bills proposed by the Government. The bill would strengthen the measures already contained in the Constitution and other applicable laws to address violence against foreign nationals (including asylum-seekers and refugees), and would expressly criminalize violence committed against individuals or their property on the basis of a person's race, nationality, religion, ethnicity, sexual orientation or gender identity ("hate crime"). This would follow the introduction in 2009 of a law combating human trafficking, currently tabled in Parliament. In the meantime, plans for a potential law against smuggling are still being prepared.

#### VI. CONCLUSIONS AND RECOMMENDATIONS

77. The Special Rapporteur encourages the Government to introduce as soon as possible the hate crime bill, which is currently being finalized by the Department of Justice and Constitutional Development, given the fact that general provisions included in the Constitution and the Criminal Code are not effective enough in protecting migrants from discrimination based on nationality. Migrant communities should be consulted and encouraged to participate in the process of elaboration of this law. The law should, in particular:

(a) Make any act of violence against individuals or property on the basis of a person's race, nationality, religion, ethnicity, sexual orientation or gender identity ("hate crime") an aggravating circumstance;

(b) Provide effective resources and training for police, justice and other relevant officials to ensure the successful implementation of the provisions of the law, including training on detecting, recording and prosecuting hate crimes, as well as monitoring any trends in them.

**Report submitted by the Special Rapporteur on the human rights of migrants. Addendum: Communications sent to Governments and replies received, A/HRC/14/30/Add.1, 25 May 2010**

**Spain, communication sent to the Government on 3 June 2009**

**Keywords:** detention, immigration

203. El 3 de junio de 2009, el Relator Especial sobre los Derechos Humanos de los migrantes junto con el Vice-Presidente del Grupo de Trabajo sobre la Detención Arbitraria, y la Relatora Especial sobre la situación de los defensores de los derechos humanos enviaron un llamado de urgencia al Gobierno de España, con respecto a información recibida sobre la Sra. Laura

Bugalho, pedagoga, defensora de los derechos humanos; activista por los derechos de las personas migrantes y particularmente de las inmigrantes trabajadoras sexuales y de los transexuales; dirigente del Foro Gallego de Inmigración y fundadora de "Transgaliza" y de la revista "Andaina", quien fue detenida el 26 de mayo de 2009 en Santiago de Compostella por agentes policiales. Luego de su detención se realizó un registro policial en su despacho en la sede gallega del sindicato CIG, donde trabaja. La Sra. Bugalho fue internada en los calabozos de la Comisaría Central de Santiago.

204. Según la información recibida, la Sra. Bugalho es conocida por sus actividades en pro de facilitar el empadronamiento y registro de inmigrantes en situación irregular. Su detención habría sido ordenada por la Subdelegación del Gobierno en razón de acusaciones de que habría colaborado en la comisión de supuestas irregularidades administrativas en la tramitación de documentación para la legalización de algunos inmigrantes en situación irregular. Según la fuente, dichos hechos, de ser ciertos, habrían sido cometidos con absoluto desinterés y no serían, en todo caso, constitutivos de delito. La detención de la Sra. Bugalho tendría por objeto, según la fuente, sancionar sus actividades en favor de la legalización de las trabajadoras sexuales y de los transexuales inmigrantes y amedrentar a quienes realizan en Galicia un trabajo similar. En vista de lo aquí resumido se teme por la integridad física y psicológica de la Sra. Bugalho.

205. Al respecto, los Relatores Especiales anteriormente mencionados solicitaron información sobre los asuntos siguientes, siempre y cuando fuesen aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Fue presentada alguna queja?
3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de los exámenes médicos llevados a cabo. Si éstas no hubieran tenido lugar o no hubieran sido concluidas, le rogamos que explique el por qué.
4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

#### **Reply from the Government to the communication sent on 3 June 2009**

206. El 1 de julio de 2009, el Gobierno respondió a la comunicación fechada el 3 de junio de 2009, señalando que efectivamente, la Sra Bugallo fue detenida como consecuencia de su participación en la tramitación de solicitudes de autorización de residencia de cinco ciudadanos extranjeros.

207. En su respuesta, el Gobierno precisó que en concreto, las supuestas falsificaciones para acreditar el requisito de permanencia en España, se refieren a un billete de tren, a un certificado bancario, a dos certificados de empadronamiento, a un certificado de la ONG Cáritas, a un historial clínico y a una analítica hospitalaria. El Gobierno también precisó que la Sra. Bugallo fue acusada de ser la autora material de las supuestas falsificaciones por dos de los inmigrantes participantes en el supuesto fraude, no pudiendo ser localizados los tres restantes por la policía.

208. El Gobierno también señaló en su respuesta que no consta la presentación de queja o denuncia alguna por detención ilegal, ni la presentación de "habeas corpus" por parte de la interesada o su representación legal. Igualmente señaló que no se realizaron exámenes médicos puesto que no fueron necesarios ni tampoco solicitados por la interesada. Finalmente, el Gobierno destacó que el caso está sometido a conocimiento de un juzgado de instrucción en Santiago de Compostela que acordó la libertad con cargos de la Sra. Bugallo, correspondiendo a la Autoridad Judicial la realización de las diligencias oportunas para determinar la veracidad de los delitos de falsedad documental y favorecimiento de la inmigración ilegal que se le imputan.

#### **Report of the Special Rapporteur on the human rights of migrants. Addendum: United States of America, A/HRC/7/12/Add.2, 5 March 2008**

**Keywords:** discrimination

##### *Introduction*

8. Migrant rights issues raised in these various meetings included, but were not limited to, the following: indefinite detention; arbitrary detention; mandatory detention; deportation without due process; family separation; anti-immigrant legislation; racial profiling; linguistic, racial, ethnic, gender and sexual-orientation discrimination; State violence; wage theft; forced labour;

limited access to health and education; the growing anti-immigrant climate (including the post-9/11 backlash); and significant limitations on due process and judicial oversight. Most of these issues are addressed in this report.

**Report of the Special Rapporteur on the human rights of migrants, Spain, A/HRC/4/24, 14 February 2007**

**Keywords:** partnership benefits & recognition

*II. CASE STUDIES AND RESPONSES TO THE QUESTIONNAIRE ON THE IMPACT OF CERTAIN LAWS AND ADMINISTRATIVE MEASURES ON MIGRANTS*

D. Conditions for admission/stay

**Question:** *Please provide information regarding any existing requirements and conditions for marriages of non-nationals and/or of nationals with non-nationals as well as the possibility for withdrawing authorization to stay following separation; and conditions for reunification of children. Please indicate recent changes in such legislation.*

**Responses**

107. Spain specified that the same laws must apply for a marriage between nationals and a marriage between a national and a non-national, according to article 27 of the Civil Code. An exception is made for homosexual marriages in the case that the country of origin of one of the future spouses has no regulation yet on the matter. If both spouses are non-nationals, Spanish law or their national law should be applied.

**7. SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF EXPRESSION AND OPINION**

<http://www2.ohchr.org/english/issues/opinion/index.htm>

**Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/67/357, 7 September 2012**

**Keywords:** death, hate crimes

27. In Africa, there have been violent riots (for example, in Kenya, caused by alleged election-rigging and fuelled by tribal tension, and in Nigeria, on the basis of tribal tensions), leading to the deaths of several thousand people; attacks by Muslim villagers against Coptic Christians in Egypt; and various forms of incitement to violence and hatred on the basis of sexual orientation by politicians, the media and religious leaders in Uganda, as epitomized by the tragic killing of David Kato, whose name, photograph and description had been published by the Sunday Pepper newspaper in what it described as a "killer dossier".

**Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/17/27/Add.1, 27 May 2011**

**Colombia**

**Llamamiento urgente**

**Keywords:** hate crimes, threats

629. El 22 de diciembre de 2010, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con las amenazas contra integrantes de varias organizaciones de derechos humanos en el Valle del Cauca, entre ellas el Movimiento de Víctimas de Crímenes de Estado (MOVICE), la Fundación Comité de Solidaridad con los Presos Políticos – Seccional Valle del Cauca (FCSP), la Asociación para la Investigación y Acción Social (NOMADESC), la Asociación ECATE y el Sindicato Nacional de Trabajadores y Empleados Universitarios de Colombia, Subdirectiva Cali (SINTRAUNICOL). Varias comunicaciones de los procedimientos especiales han sido enviadas en relación con estas

organizaciones y sus integrantes, la más reciente por la Relatora Especial sobre la situación de los defensores de los derechos humanos y el Presidente-Relator del Grupo de Trabajo sobre la Detención Arbitraria el 23 de noviembre de 2010. En este respecto, agradecemos la respuesta del Gobierno de su Excelencia de fecha 6 de diciembre 2010.

630. Según las informaciones recibidas, el 10 y 11 de diciembre del 2010, varias organizaciones ubicadas en las zonas del Valle del Cauca habrían llevado a cabo actividades en conmemoración del día internacional de los derechos humanos en los municipios de Cali y Zarzal. Estas actividades habrían tenido como objetivo la visibilización de la situación de derechos humanos de algunos sectores de la región, entre ellos lesbianas, gays, bisexuales y personas transgéneros (LGBT), sindicatos, residentes en asentamientos urbanos, defensores y defensoras de derechos humanos y estudiantes, y habrían culminado con la presentación del "Plan de Vida de Derechos Humanos para el Valle del Cauca".

631. Sin embargo, se informa que inmediatamente después de la finalización de los dichos actos, varias de las mujeres integrantes que se encontraban presentes habrían recibido amenazas de muerte mediante mensajes de teléfono, supuestamente provenientes del grupo paramilitar conocido como "Águilas Negras". Aproximadamente a las 18:00h, el primero de estos habría llegado al teléfono de la Sra. Martha Lucia Giraldo, promotora del Capítulo Valle del MOVICE, desde un número conocido por la Relatora Especial, y habría dicho textualmente: "Ustedes son los que no dejan que este país progrese apoyando a familias de gerilleros (sic) y a los que depimen (sic) con esas ideas estúpidas de libertad por lo tanto son declarados objetivos de muerte nuestros. nomadesc. comité de presos. ecate. movice. Banco de datos cabildos y líderes indígenas...muerte a ustedes y comensamos (sic) desde hoy águilas negras nueva generación".

632. Posteriormente, aproximadamente a las 21:00h, otro mensaje proveniente del mismo número habría llegado al teléfono de la Sra. Cristina Castro, integrante del CSPP y de la Red de Hermandad y Solidaridad con Colombia, el cual habría amenazado de muerte a integrantes de MOVICE, ECATE, FSCPP y grupos LGBT, entre otros, acusándoles de ser guerrilleros. Además, se informa que las Sras. Berenice Celeyta, directora de la Asociación NOMADESC y Aída Quilcué, ex consejera mayor del Concejo Regional Indígena del Cauca y anterior vocera del proceso Minga de Resistencia Social y Comunitaria, habrían asimismo recibido un mensaje similar al anterior, junto con otro que habría amenazado de muerte a integrantes de las mismas organizaciones, entre otras, así como sus familiares, acusándoles asimismo de ser "benefactores de la guerrilla".

633. Se expresó grave preocupación por la integridad física y psicológica de las Sras. Martha Lucia Giraldo, Cristina Castro, Berenice Celeyta y Ayda Quilcué, así como otros integrantes de MOVICE, FCSPP, Asociación ECATE, NOMADESC, SINTRAUNICOL y de otras organizaciones de derechos humanos que trabajan en el Valle del Cauca. Asimismo, se expresó temor por las alegaciones de que las amenazas en contra de estas organizaciones pudieran estar relacionadas con sus actividades pacíficas y legítimas de promoción y protección de los derechos humanos. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en el Valle del Cauca, así como en Colombia generalmente en los últimos meses.

### **Observaciones**

634. El Relator Especial agradece las respuestas detalladas que el Gobierno de Colombia ha proporcionado en relación con las comunicaciones enviadas. Sin embargo, el Relator Especial lamenta que, en el momento de la finalización del presente informe, no había recibido respuesta a 25 comunicaciones enviadas anteriormente. El Relator Especial considera que el responder a las comunicaciones representa un elemento fundamental para la cooperación de los Estados con el mandato, es por ello que insta al gobierno colombiano a que le proporcione una respuesta tratando los asuntos mencionados.

635. El 12 de agosto de 2010, el Relator Especial, junto con la Relatora Especial de la Organización de Estados Americanos, publicaron un comunicado de prensa en el cual ellos manifestaron su profundo rechazo ante el atentado ocurrido en la madrugada del 12 de agosto frente a Radio Caracol, en Bogotá, y expresaron su solidaridad con las personas heridas y con el personal de la emisora. Los relatores enfatizaron que, para impedir la repetición de estos actos brutales, es determinante la actuación inmediata del Estado para identificar la causa del ataque, capturar, procesar y condenar de manera efectiva y proporcionada a los autores materiales e intelectuales del mismo.

### **Democratic Republic of the Congo**

## **Lettre d'allégation**

**Keywords:** criminal laws, human rights defenders, HIV/AIDS

671. Le 15 novembre 2010, le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur le droit de toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, a envoyé une lettre concernant une « proposition de loi relative aux pratiques sexuelles contre nature » qui aurait été débattue récemment au sein de l'Assemblée nationale de la République démocratique du Congo.

672. Les titulaires de mandat ont demandé au Gouvernement de bien vouloir transmettre la présente lettre au Président de l'Assemblée nationale de la République démocratique du Congo.

673. Selon les informations reçues, le 21 octobre 2010, la salle des Congrès de l'Assemblée nationale de la République démocratique du Congo aurait débattu d'une « proposition de loi relative aux pratiques sexuelles contre nature ». Selon cette proposition de loi, « l'homosexualité (...) [est] une menace à la famille (...), une déviation de la race humaine vers des relations contre nature (...) et [constitue] une dépravation des mœurs qualifiées d'abomination ».

674. La proposition de loi vise à réviser le code pénal congolais, tel que modifié et complété par la loi du 20 juillet 2006 sur les violences sexuelles. Les modifications portent spécifiquement sur le paragraphe 8 de la section III du titre VI de la dite loi du code pénal :

- selon l'article 174h1 de la proposition de loi, « [s]era puni de trois à cinq ans de servitude pénale et d'une amende de 500.000 francs congolais, quiconque aura eu des relations homosexuelles » ;
- selon l'article 174h2 de la proposition de loi, « [s]ont interdites... toute association promouvant ou défendant des rapports sexuels contre nature. Sera puni de six mois à un an de servitude pénale et d'une amende de 1.000.000 francs congolais constants, quiconque aura créée, financé, initié et implanter toute association toute structure promouvant les relations sexuelles contre nature » ; et
- selon l'article 174h3 de la proposition de loi, « [s]ont interdits... toute publication, affiches, pamphlets, film mettant en exergue, ou susceptibles de susciter ou encourager des pratiques sexuelles contre nature ».

675. La criminalisation de l'homosexualité aurait un effet préjudiciable sur les efforts de la République démocratique du Congo dans sa lutte contre le VIH/SIDA. Les politiques de la santé publique concernant l'épidémie du VIH/SIDA démontrent clairement que la décriminalisation de l'homosexualité, combinée avec des efforts visant à lutter contre la discrimination des homosexuels, lesbiennes, bisexuels et transsexuels, représentent une mesure substantielle pour restreindre la propagation du virus. De plus, si la proposition de loi est adoptée, celle-ci aurait pour effet d'entraver l'accès à l'information, aux soins et aux traitements des personnes homosexuelles, atteintes de VIH/SIDA en République démocratique du Congo, et par conséquent pourrait compromettre la réponse nationale dans la lutte contre le VIH/SIDA.

676. Cette proposition de loi aurait également un effet néfaste sur la situation des défenseurs des droits de l'homme qui œuvrent pour la promotion et la protection des droits des homosexuels, lesbiennes, bisexuels et transsexuels en République démocratique du Congo. En effet, cette proposition de loi mettrait ces défenseurs dans une situation de vulnérabilité accrue car ils seraient potentiellement la cible d'attaques et d'actes d'intimidation de la part des autorités et de la population.

## **Indonesia**

### **Urgent appeal**

**Keywords:** human rights defenders, police, freedom of assembly/association

1080. On 26 March 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government regarding the situation of participants to an Asian regional meeting of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA).

1081. According to the information received, on 26 March 2010, more than 150 human rights defenders representing 100 organizations from 16 Asian countries gathered in Surabaya to participate in a three-day Asian regional meeting of the ILGA.

1082. In response to protests by conservative Muslim groups and the Indonesian Ulema Council, the police reportedly ordered the cancellation of the conference, and national and international participants were ordered to leave the conference hotel.

1083. At the time of drafting the present appeal, a group of militant fundamentalists was inside the hotel, attempting to identify conference participants, by conducting a room-by-room search.

1084. According to various reports, the police were not taking any measure to ensure the safety of the participants.

1085. Grave concern was expressed for the physical and psychological integrity of the participants of the ILGA meeting. We remind the Government of Indonesia of its responsibility under international human rights law to ensure the safety of the participants.

### **Observations**

1093. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not replied to his communication dated 26 March 2010 and 19 July 2010, as well as to 11 communications sent earlier. He considers response to his communications an important part of cooperation by Governments with his mandate, and urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

1094. The Special Rapporteur reiterates his concern regarding the allegations in his communications, particularly the communication of 26 March 2010 taking into account the number of human rights defenders present at the LGBT gathering. Moreover, he is also concerned about reports that the police did not take measures to ensure that those present were offered adequate protection. As such, he urges the Government to provide information about the allegations at its earliest convenience.

### **Mexico**

#### **Llamamiento urgente**

**Keywords:** detention, HIV/AIDS, police

1654. El 14 de febrero de 2011, el Relator Especial, junto con el Relator Especial sobre el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental, la Relatora Especial sobre la situación de los defensores de los derechos humanos, y el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con la detención del señor José Ricardo Maldonado Arroyo, Director de la Red de Personas Afectadas por VIH (REPAVIH) con sede en Mérida, Yucatán, y activista de los derechos del colectivo de gays, lesbianas, bisexuales y personas transgénero (LGBT). REPAVIH es una organización que desde 2006 ofrece asesoramiento médico y apoyo emocional a las personas afectadas por el virus VIH en Yucatán y lleva a cabo campañas de sensibilización y contra la discriminación.

1655. Según las informaciones recibidas, el 4 de diciembre de 2010, el Sr. José Ricardo Maldonado Arroyo habría sido detenido de manera arbitraria por elementos de la policía judicial del Estado de Yucatán. Los agentes habrían alegado que el motivo de su arresto era la presunta investigación de un delito y, sin mostrarle una orden de detención, le habrían esposado, vendado los ojos e introducido y transportado en un vehículo no oficial donde le habrían insultado y se habrían dirigido a él con expresiones homófobas.

1656. Según las informaciones recibidas, los agentes habrían golpeado al Sr. Maldonado Arroyo en repetidas ocasiones en la cara, el pecho y la espalda mientras le preguntaban acerca de su trabajo de defensa de los derechos de las personas que viven con el VIH y del colectivo de gays, lesbianas, bisexuales y personas transgénero. El Sr. Maldonado Arroyo habría permanecido cerca de cuatro horas retenido con el rostro cubierto con su propia playera tiempo durante el cual habría sido obligado a cambiar varias veces de vehículo. Posteriormente, habría sido puesto en libertad bajo la amenaza de volver a ser agredido si presentaba alguna queja por los hechos ocurridos.



1657. La identidad de uno de los agentes a cargo de la detención del Sr. Maldonado Arroyo, el cual vestían cazadora negra con la leyenda "PGJ", ha sido puesta en conocimiento de nosotros.

1658. Según se informa, el 5 de diciembre de 2010, el Sr. Maldonado Arroyo habría presentado una denuncia ante la Procuraduría General de Justicia en el Estado así como una queja ante la Comisión de Derechos Humanos del Estado de Yucatán (CODHEY). En primera instancia se habría abierto un expediente por el delito de "lesiones" pero descartando el abuso de autoridad o tortura. Por su parte, la CODHEY habría también realizado su propia investigación, incluyendo fotografías sobre las lesiones, certificados médicos y testimonios. A pesar de la solicitud por parte del Sr. Maldonado Arroyo de medidas cautelares a su favor, se informa que éstas habrían sido denegadas de forma verbal.

1659. Se expresó preocupación por la integridad física y psicológica del Sr. Maldonado Arroyo y por las alegaciones de que su detención fue arbitraria y de que sufrió amenazas y agresiones por parte de las fuerzas del orden. Asimismo, se expresa preocupación por la información recibida indicando que estos hechos pudieran estar relacionados con sus actividades de promoción y protección de los derechos humanos, en particular a favor de los derechos de las personas que viven con VIH y de los derechos del colectivo de gays, lesbianas, bisexuales y personas transgénero. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para los defensores de los derechos humanos en México.

## **South Africa**

### **Allegation letter**

**Keywords:** hate crimes, sexual assault

2012. On 14 January 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on violence against women, sent an allegation letter concerning the situation of Ms. Millicent Gaika, a woman who was allegedly beaten and raped by a man who intended to "cure" her from her sexual orientation, and Ms. Ndumie Funda, a local community activist supporting victims of "corrective" rape.

2013. According to the information received, Ms. Gaika, a lesbian woman, and her friends were walking home when Mr. Andile Ngoza, a man she had known for a number of years and who had never objected to her sexuality before, asked her for a cigarette. She stayed to smoke with him, and followed him into his room when he refused to pass the cigarette to her. The man then locked the door and started hitting her while she tried to fight back. Ms. Gaika was strangled with a wire, tortured and raped for five hours by Mr. Ngoza who intended to "turn her straight".

2014. Since this incident took place, the court-case addressing it has reportedly been postponed numerous times, last time to February 2011, and Mr. Ngoza is currently out on bail, roaming the same streets where Ms. Gaika lives. This has forced Ms. Gaika to go into hiding for fear of her safety.

2015. Ms. Ndumie Funda, a local community activist reached out to Ms. Gaika through a small local charity she set up in the Cape Town township of Gugulethu to rescue and support survivors of "corrective" rape. She is currently covering and supporting the criminal proceedings of Ms. Gaika. Although Mr. Ngoza is forbidden to enter Gugulethu as part of his bail conditions, he has reportedly broken those conditions constantly and threatened Ms. Funda various times.

2016. Since his release he has allegedly asked family and friends to attack Ms. Funda, constantly harassed her and made threats against her life and against her partner. This has forced Ms. Funda to go into hiding as well, which has prevented her from carrying out the assistance work she provides to other women victims of violence.

2017. Serious concern was expressed about the physical and psychological integrity of Ms. Gaika and Ms. Funda. Further concern was expressed that these attacks do not constitute isolated incidents and that lesbian women in South Africa face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths that maintain they would change their sexual orientation if they are raped by a man. Furthermore, concern was expressed over increasing reports that hate crimes against lesbians are not being recognized or punished by the South African legal system.

### **Observations**

2018. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a response to his communication of 14 January 2011. He urges the Government to respond to the concerns raised by him, and to provide detailed information regarding investigations undertaken, subsequent prosecutions as well as protective measures taken.

## **Uganda**

### **Allegation letter**

**Keywords:** hate crimes, death, human rights defenders

2228. On 1 February 2011, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions, sent an allegation letter concerning the death threats against and subsequent murder of Mr. David Kato. Mr. Kato was the advocacy officer of Sexual Minorities Uganda, a coalition of lesbian, gay, bisexual and transgender (LGBT) human rights organizations working to promote the human rights of the LGBT community in Uganda.

2229. According to the information received, on 26 January 2011, at approximately 13:00 a man entered the home of David Kato and hit him twice on the head. The man then fled the scene by car. Mr. Kato died on his way to Kawolo hospital as a result of injuries sustained during the beating.

2230. In recent months Mr. Kato had received numerous death threats in connection with his work on LGBT rights, and especially following the publication of an article entitled "Hang them" in Rolling Stones, a local newspaper. The article provided names, addresses and photos of members and perceived members of the LGBT community in Uganda. Mr. Kato's photo was featured on the front cover. Although the motives of his attacker have not yet been clearly determined, Mr. Kato is a well-known public figure and face of the LGBT movement in Uganda, and has long been considered a prime target for anti-gay vigilantism.

2231. According to information received, the murder of Mr. Kato forms part of an increasing trend of attacks and intimidation against human rights defenders, particularly those working on LGBT issues. The attacks take place against a background of media reports which appear to incite discrimination, hostility and violence, as well as proposed legislation to further entrench the criminalization of homosexuality and to provide for increased criminal penalties against persons found to be homosexual.

### **Observations**

2232. The Special Rapporteur regrets that at the time of finalizing the present report, the Government of Uganda has not responded to the communications sent during the reporting period, and has not responded to any of the 8 communications sent earlier. He considers response to his communications an important part of cooperation by Governments, and urges the Government to respond to concerns raised by him and provide detailed information regarding investigations undertaken, prosecutions as well as protective measures taken.

## **Ukraine**

### **Urgent appeal**

**Keywords:** hate crimes, freedom of assembly/association, transgender

2238. On 3 December 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding an attack against Mr. Timur Lysenko and Ms. Anastasia Medco, along with other members of the organisations Insight, Fulcrum, and the Visual Cultural Centre in Kiev, Ukraine. Insight is an organisation that works to improve the lives of people who identify themselves as part of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community in Ukraine. The Visual Cultural centre is a platform for the integration of contemporary artistic practices and scientific disciplines within the academic field.

2239. According to the information received, on 20 November 2010, Insight organized a candlelight vigil, film exhibition and discussion on transgender issues, in cooperation with the

Visual Cultural Centre, to promote the Transgender Day of Remembrance held in memory of those who have been killed due to anti-transgender violence in Ukraine.

2240. While the film was being screened, a group of ten men wearing masks reportedly attempted to enter the Visual Cultural Centre by force; however, they were denied entrance by the organizers of the event including Mr. Timur Lysenko, the coordinator of the transgender programme of Insight. The masked men consequently attacked and beat Mr. Lysenko. Furthermore, before fleeing, the intruders reportedly also sprayed tear gas at those present, severely injuring Mr. Lysenko and Ms. Anastasia Medco, a representative of the NGO Fulcrum, among others. It is reported that Mr. Lysenko was subsequently hospitalised and diagnosed with internal injuries and facial chemical burns.

2241. Numerous complaints had reportedly been lodged with the police regarding the attack which, it is reported, was characterised by the police as "hooliganism". The alleged victims, however, claim that it bears the hallmark of a planned attack with the intention of disrupting an LGBTI event, and have thus urged the police to characterise the attack as a hate crime. The police, however, have reportedly refused to do so.

2242. Concern was expressed that the attacks against Mr. Timur Lysenko and Ms. Anastasia Medco may be related to their legitimate and peaceful work in defence of human rights, particularly with regard to the LGBTI community in Ukraine. Further concern was expressed that these acts, if confirmed, would reflect a context of increasing violence and other forms of harassment against LGBTI organisations in Ukraine.

### **Response from the Government**

2243. In a letter dated 21 February 2011, the Government replied to the communication sent on 3 December 2010 by transmitting information from the Ministry of Internal Affairs of Ukraine with regard to the official inquiry into the report of bodily injury sustained by Ms. A.A. Medko and Mr. T.V. Lysenko, as follows.

2244. It has been established that on 20 November 2010, in the building of the Visual Culture Research Centre, which is located on the premises of the Kyiv-Mohyla Academy (No. 2, Skovoroda Street), Mr. T.V. Lysenko, manager of the non-governmental organization "Insight", organized a candlelight vigil, a film screening and a discussion to commemorate the day of remembrance of victims of violence against transsexuals in Ukraine.

2245. Following the film screening, some 10 youths wearing black clothing and masks gathered outside the Centre and attempted to enter the building using force. Two of the participants in the event, Ms. A.A. Medko and Mr. T.V. Lysenko, attempted to restrain them at the entrance door, as a result of which Ms. Medko was punched in the face and Mr. Lysenko in the stomach.

2246. On 20 November 2010, Mr. T.V. Lysenko, Ms. A.A. Medko, D.A. Pichakhchi and D.S. Marchika presented themselves at the Podol District Department of the Main Directorate of the Ministry of Internal Affairs in the city of Kyiv to report that they had sustained bodily injury during the struggle with the unidentified persons at the Visual Culture Research Centre. The applicants were recommended to undergo a forensic medical examination in order to establish the degree of seriousness of the bodily injuries sustained and were advised of the relevant procedure; however, they did not present themselves for such an examination.

2247. A police investigation team visited the scene of the incident to survey the site and to gather evidence.

2248. Citizens who had been on the premises of the Kyiv-Mohyla Academy in their free time and the security guards of the institution reported when interviewed that they had not seen any suspicious persons, nor had they been aware of any disturbances.

2249. It was established that arrangements for access to the premises of the Kyiv-Mohyla Academy were poor and that the entry of visitors was not controlled.

2250. As the result of consideration of the reports filed by the applicants with the Podol District Department, a decision not to institute criminal proceedings was issued on the basis of article 6 (Circumstances precluding criminal proceedings), paragraph 2, of the Code of Criminal Procedure of Ukraine and the applicants were notified accordingly. Efforts to establish the identity of the persons reported by the applicants to have committed acts of criminal mischief were unsuccessful.

2251. The decision issued by the office of the procurator for the Podol District of the city of Kyiv is considered to be justified and has been left unchanged.

## **Observations**

2252. The Special Rapporteur thanks the Government for the response to the communication sent on 3 December 2010, but regrets that the Government of Ukraine has not responded to the communication sent on May 2010. He considers response to his communications an important part of cooperation by Governments, and urges the Government to respond to concerns raised by him and provide detailed information regarding investigations undertaken, prosecutions as well as protective measures taken.

## **Uzbekistan**

### **Allegation letter**

**Keywords:** arrests, detention, HIV/AIDS, children

2260. On 11 May 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sent a letter of allegation concerning the sentencing of Mr. Maxim Popov, psychologist, founder and director of the non-governmental organization Izis, founded by young medical professionals which works on HIV/AIDS prevention. Izis has also implemented HIV prevention activities, including under contracts with UNICEF, UNFPA and UNAIDS.

2261. According to the information received, Mr. Maxim Popov was arrested in January 2009 and convicted in July 2009. His conviction was publicly disclosed only at the end of February 2010. Mr. Popov was sentenced to 7 years imprisonment for charges which included theft by embezzlement, concealment of foreign currency, tax evasion, inducing minors to antisocial behaviour, indecent assault without violence against a minor and inducing engagement in the use of narcotic drugs or psychotropic substances.

2262. It is believed that Mr. Popov was convicted in connection with writing and distributing HIV/AIDS prevention materials. Mr. Maxim Popov is the author of the brochure "HIV and AIDS today", a publication funded by UNAIDS and UNICEF. He was also convicted for distributing HIV prevention materials published by UNAIDS and other UN agencies to adolescents that explicitly refer to drug use, sex work and homosexuality.

2263. Concern was expressed that the arrest and sentencing of Mr. Maxim Popov may be related to his peaceful activities in defence of human rights, in particular his work on HIV/AIDS prevention

#### *The case of Maxim Popov*

2273. Maxim Vladimirovich Popov, an Uzbek national and executive director of the voluntary organization IZIS, was found guilty by the Chilanzar District Criminal Court on 9 June 2009 of committing offences under articles 167, paragraph 3 (a); 178, paragraph 2 (a) and (c); 184, paragraph 3; 127, paragraph 3 (b) and (c); 129, paragraph 1; 274, paragraph 2 (c); and, in accordance with articles 45, 59 and 61 of the Criminal Code, was sentenced to seven years' deprivation of freedom and stripped of the right to occupy any office relating to the direction of an organization or economic administration for two years. This sentence was upheld by the Tashkent Criminal Court, Appeal Division, on 14 July 2009.

2276. Moreover, in pursuance of his vile beliefs, which led him to entice young people into using narcotic drugs and psychotropic substances and to encourage an antisocial and amoral way of life by acting on their unformed minds and outlook, Popov distributed in Uzbek educational establishments attended by schoolchildren and students engaging in academic, sporting or communal activities a book that promoted narcotic drug use and antisocial behaviour among the young over the period 2006–2007. The book was entitled Healthy Lifestyles. Teacher's Guide XXI, 200 copies of which he had received under the contract with PSI. Popov was well aware of the nature of the book's contents.

2277. Knowing what the book contained, Popov deliberately distributed this book with a view to the promotion of depraved acts by persons whom he knew to be under 16. The book contained texts instructing young people in sexual activities and propaganda for homosexuality,

prostitution and pornographic images among young people, including those attending educational institutions in Uzbekistan.

**Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Addendum: Summary of cases transmitted to Governments and replies received, A/HRC/14/23/Add.1, 1 June 2010**

**Colombia**

**Llamamiento urgente**

**Keywords:** detention, death, HIV/AIDS, violence

485. El 24 de marzo de 2009, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con el asesinato del Sr. Álvaro Miguel Rivera Linares Rivera, defensor de los derechos de la población Lesbianas, Gay, Bisexuales y/o Transgeneristas (LGBT) en la ciudad de Santiago de Cali, Valle del Cauca, Colombia.

486. El Sr. Álvaro Miguel Rivera hizo parte de diferentes organizaciones y proyectos que promueven los derechos de la población LGBT, como la Red Colombiana de Personas Viviendo con VIH 'RECOLVIH', de la cual fue uno de los gestores, y la cual trabaja en gran medida en defensa de los derechos de las personas que conviven con el virus del VIH/SIDA. Según las informaciones el Sr. Rivera Linares también fue gestor del Colectivo Tinku, apoyó los procesos de formación de la Confluencia de Organizaciones "Líderes y Líderesas del Sector LGBT" y fue gestor de la Tercera Marcha del Orgullo LGBT en Cali "Katari 2008".

487. Según la información recibida, el 6 de de marzo de 2009, el Sr. Álvaro Miguel Rivera Linares, habría sido hallado muerto en su apartamento, maniatado, amordazado y con golpes en varias partes del cuerpo y en la cabeza.

488. En razón de su trabajo, el Sr. Rivera Linares habría sido amenazado en varias ocasiones anteriores. En el año 2001, el Sr. Rivera Linares habría sido amenazado por su trabajo y se habría visto obligado a desplazarse forzosamente tras haber denunciado la práctica de exámenes forzados de VIH/SIDA por parte de la guerrilla.

489. El homicidio del Sr. Álvaro Miguel Rivera, se habría sumada a las cerca de 60 muertes por prejuicio contra el género ocurridas entre 2006 y 2007 en Colombia, así como al homicidio de otro defensor de derechos humanos de la población LGBT, el Sr. Fredys Pineda quien habría sido asesinado en Apartadó (Departamento de Antioquia) en febrero de 2008.

490. La muerte del Sr. Álvaro Miguel Rivera habría ocurrido en un momento en el que se habría denunciado la violencia generalizada contra la población LGBT en Cali, entre la cual se habría contado abusos por parte de la Policía y detenciones arbitrarias, especialmente contra la población travestis en ejercicio de la prostitución.

491. El 1 de febrero de 2009 habría sido asesinada en su peluquería en Cali la estilista transgeneristas Sharon Perea, y al día siguiente habría muerta la Sra. Susana (Alejandro Gómez Fajardo) en el Barrio Granada por un disparo de arma de fuego. También el 1 de febrero de 2009 habría sido asesinada en Pereira, Risaralda, la trabajadora sexual la Sra. Ariadna Paniagua.

492. Varias mujeres transgeneristas, en particular trabajadoras sexuales, habrían denunciado una "campaña" llamada de "prevención" por parte de algunos policías en Santiago de Cali, bajo la cual ellos las habría obligados a llenar un formulario con datos personales, fotos y huella digital. Las que no habrían aceptada esta encuesta habría sido arrestadas y llevadas a una estación de policía y sólo habría sido liberadas al aceptar brindar los datos exigidos.

493. A pesar de la denuncia de esta práctica por parte de la ONG Santamaría Fundación ante las autoridades competentes (Policía Metropolitana de Cali, Defensoría y Personería), varias mujeres transgeneristas habrían seguido siendo hostigadas, arrestadas arbitrariamente, y amenazadas impunemente por los mismos policías al denunciar estos actos. Entre los 30 casos registrados por Santamaría Fundación, está el de Britney Vanessa Cabral, quien habría sido arrestada hacia las 22h00 del 7 de febrero de 2009 en el Barrio Granada y llevada a la Estación de policía La Flora. Esta situación se habría venido denunciando desde hace algunos años por

varias organizaciones de defensa de los derechos de esa comunidad y por activistas como el Sr. Álvaro Miguel Rivera. Según las denuncias, habría persistido la inacción de las entidades estatales concernidas frente a esta situación.

494. Se agradeció la nueva legislación colombiana que reconoce los derechos de las uniones homosexuales. Sin embargo se expresó temor que la muerte del Sr. Álvaro Miguel Rivera podría estar relacionada con su trabajo legítimo en defensa de los derechos de la comunidad LGBT. En visto de lo aquí resumida se expresó preocupación por la integridad física y psicológica y la seguridad de todas las personas de la comunidad LGTB que han sido víctimas de atropellos y/u hostigamientos.

### **Respuesta del Gobierno**

495. En una carta fechada el 19 de junio de 2009, la Misión Permanente de Colombia respondió al llamamiento con información elaborada por la Dirección de Derechos Humanos del Ministerio de Relaciones Exteriores de Colombia. Dicha carta confirmó las alegaciones presentadas en el llamamiento urgente. Según la carta, se inició una investigación y el 18 de marzo de 2009, en asocio con el investigador judicial asignado, se elaboró el programa metodológico en el que se ordenaron algunas pruebas tales como entrevistas en el vecindario, actividad laboral del occiso y otras con el fin de facilitar el esclarecimiento de los hechos.

496. Según la carta, una vez asumida la investigación, se adelantaron las siguientes diligencias: Entrevista recibida por investigador de campo, informe del investigador de laboratorio con la fijación polimétrica del lugar de los hechos y los planos topográficos respectivos, informe con documentación fotográfica.

497. Se ha cumplido la recepción de entrevistas, se allegó el protocolo de la necropsia número 20090101760011000558 suscrito por el médico forense el 7 de abril de 2009, e igualmente se recibió el informe del investigador de campo adscrito al CTI, en el que se adjuntó la documentación fotográfica sobre la escena de los hechos.

498. Se informó que al momento de rendir el informe, no se habrían tomado decisiones de fondo y en el transcurso de la etapa investigativa no se ha contado con agencia especial del Ministerio Público.

499. Asimismo, se informó que los hechos presentados en la comunicación y las presuntas violaciones contra los derechos de las personas transexuales en Cali han sido tratados con especial atención, con el fin de propiciar un escenario de respuesta interinstitucional.

500. Según la carta, en enero de 2009 se convocó una reunión en la que participaron representantes de la Alcaldía de Cali y dos organizaciones LGBT.

501. Se informó que, entre otras decisiones tomadas, la policía metropolitana nombró un oficial de enlace para atender las peticiones de la población LGBT.

502. En relación con el tema de orientación sexual y derechos humanos en general, cabe señalar que, de conformidad con lo previsto en el artículo 13, del Decreto 4530 de 2008, por el cual se modificó la estructura del Ministerio de interior y de justicia, son funciones de la Dirección de Asuntos Indígenas, Minorías y Rom, entre otras las siguientes:

503. "3. Diseñar programas de asistencia técnica. Social y de apoyo a la política para comunidades indígenas. Rom y poblaciones LGTB Lesbianas, gays, transexuales y bisexuales".

504. "9. Prestar asesoría a las gobernaciones y alcaldías municipales para la debida atención a las comunidades indígenas, al pueblo Rom y a la población LGTB".

505. Se informó que, en atención a lo anterior, el Gobierno está concertando una cita con el Director de Asuntos indígenas, Minorías y Rom del Ministerio del Interior y de Justicia, con el fin de generar una dinámica de concertación para impulsar políticas públicas sobre la materia, que propicien transformaciones tendientes a superar la violencia ejercida contra esa población.

### **Honduras**

#### **Carta de alegaciones**

**Keywords:** death, violence, transgender

1018. El 26 de enero de 2009, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias y la Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias, enviaron una carta de alegaciones señalando a la atención urgente del Gobierno la información recibida en relación con el asesinato de la Sra. Cynthia Nicole, defensora líder de los derechos de las personas transgénero en Honduras.

1019. Según las informaciones recibidas, en la madrugada del 9 de enero de 2009 tres hombres desconocidos le habrían disparado a la Sra. Nicole desde un automóvil azul en movimiento en el Barrio Guaserique, Comayaguela, una ciudad colindante a Tegucigalpa. La activista por los derechos de las personas transgénero recibió tres disparos en el pecho y uno en la cabeza, y murió a causa de las heridas.

1020. Este asesinato era el más reciente en una serie de agresiones violentas contra personas transgénero en Honduras. En noviembre y diciembre de 2008 hubo agresiones contra otras cinco personas transgénero, dos de ellas resultaron muertas.

1021. Además de estas agresiones, el 20 de diciembre, personal policial en Tegucigalpa golpeó a una trabajadora activista transgénero dedicada a difundir la prevención del VIH/SIDA.

1022. Se expresó grave preocupación por el asesinato de la Sra. Cynthia Nicole y por la seguridad física y psicológica de los/las defensores/as de la comunidad transgénero en Honduras.

## **Honduras**

### **Carta de alegaciones**

**Keywords:** death, violence

1048. El 19 de enero de 2010, el Relator Especial, junto con el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias y la Relatora Especial sobre la situación de los defensores de los derechos humanos, enviaron una carta de alegaciones en relación con el homicidio del Sr. Walter Orlando Trochez, defensor de los derechos de la comunidad lesbiana, gay, bisexual y transgénero (LGTB) e integrante del Centro de Promoción e Investigación de los Derechos Humanos (CIPRODEH). En su calidad de miembro de CIPRODEH, realizaba actividades en defensa de los derechos humanos tras la destitución del Presidente Zelaya. Recientemente, habría trabajado en la liberación de detenidos en el marco de los operativos organizados para disolver las manifestaciones de los partidarios del Presidente Manuel Zelaya, y habría así mismo denunciado las presuntas violaciones de derechos humanos cometidas por oficiales del ejército y de la policía durante dichas manifestaciones.

1049. Según las informaciones recibidas, el 13 de diciembre de 2009, aproximadamente a las 22:30 horas, un hombre no identificado disparó contra el Sr. Trochez en el centro de la ciudad de Tegucigalpa, cerca del Parque Central Francisco Morazán. El Sr. Trochez fue llevado al hospital donde murió poco después.

1050. Cabe añadir que el 4 de diciembre de 2009, el Sr. Trochez habría hecho una denuncia pública a nivel nacional e internacional alegando que había sido secuestrado por cuatro individuos encapuchados y llevado en un vehículo sin placas de matrícula a un lugar desconocido donde habría sido golpeado. Los presuntos agresores le habrían interrogado sobre sus actividades en defensa de los derechos humanos y sobre líderes opuestos al gobierno de facto. Asimismo, le habrían amenazado con asesinarlo. En esta ocasión el Sr. Trochez habría logrado escapar de sus secuestradores.

1051. Se teme que el asesinato del Sr. Trochez esté relacionado con las actividades que realizaba en la defensa de los derechos humanos, en particular sus actividades documentando y denunciando las violaciones de los derechos humanos durante protestas pacíficas en contra del golpe de estado del 28 de junio. Este asesinato se enmarca en un contexto actual de gran vulnerabilidad para los defensores de los derechos humanos en Honduras. Quisiéramos instar al Gobierno de su Excelencia que tome medidas para garantizar la seguridad de los defensores de los derechos humanos y para garantizar que las violaciones de sus derechos humanos no queden en la impunidad.

## **Lithuania**

## **Urgent appeal**

**Keywords:** propaganda laws, children, freedom of expression, freedom of assembly/association

1400. On 16 July 2009, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal to the Government regarding the adoption of the Law on the Protection of Minors against the Detrimental Effect of Public Information.

1401. According to information received, on 14 July 2009, the Seimas (Lithuanian Parliament) voted to adopt the "Law on the Protection of Minors against the Detrimental Effect of Public Information". The legislation had initially been passed by the Seimas on 16 June only to be vetoed by former President Valdas Adamkus one week later. The Presidential veto was overturned by a majority vote of 87 representatives. The law takes effect after the new President Ms. Dalia Grybauskaitė signs it into law, which she is reportedly required to do within three days.

1402. The "Law on the Protection of Minors against the Detrimental Effect of Public Information" seeks to ban public dissemination of information considered harmful to the mental health or the intellectual and moral development of minors. It would also ban all materials that "agitate for homosexual, bisexual and polygamous relations" from schools or other public places where they can be seen by youth.

1403. The Law classifies public information about homosexuality and bisexuality in the same category as other prohibited material, such as that which portrays physical or psychological violence and graphic depictions of dead bodies.

1404. In December 2008, a joint statement on human rights and sexual orientation and gender identity, was presented by 66 States, including Lithuania, at the United Nations General Assembly. The statement called upon other States to promote and protect the human rights of all persons, regardless of their sexual orientation or gender identity and to remove obstacles that prevent human rights defenders from carrying out their work on issues of human rights and sexual orientation and gender identity.

1405. Concern was expressed that the aforementioned legislation may result in limiting the right of freedom of expression in Lithuania. Further concern was expressed that the law could be applied to limit the legitimate work of human rights defenders, particularly those working to defend the rights of Lesbian, Gay, Bisexual and Transgender (LGBT) people in the country.

## **Response from the Government**

1406. In a letter dated 11 September 2009, the Government responded to the communication sent on 16 July 2009. The Government transmitted the response of the Ministry of Culture of Lithuania as follows.

1407. Accuracy of the facts. The Law on the Protection of Minors against the Detrimental Effect of Public Information was signed by the President Ms. Dalia Grybauskaitė and published on 21 July 2009 (Official Journal, 2009, No. 86-3637) and takes effect only on 1 March 2010, not immediately after the President had signed it.

1408. The Law does not classify all public information about homosexuality and bisexuality as harmful information, but Article 4, provision 14 states that, "Public information having a detrimental effect on the mental health, physical, intellectual, or moral development of minors shall be considered the information (...) whereby homosexual, bisexual or polygamous relations are promoted". It is necessary to mention that the Law does not restrict or limit accumulation and/or dissemination of information about homosexual, bisexual or polygamous relationship. The Law only limits direct and public information propaganda for minors of homosexual, bisexual or polygamous relationship. Furthermore, Article 5 of the Law stipulates that any public information may be non-assigned to the category of information having a detrimental effect on the mental health, physical, intellectual or moral development of minors where it conforms to the criteria set out in sub-paragraphs 1-19 of paragraph 1 of Article 4 of this Law, whereas it conforms one of these criteria: 1) its content is composed only of information about events, political, social, religious beliefs or outlook; 2) the information is significant from a scientific or artistic point of view or it is necessary for research and education; 3) there is a public interest to make it available to the public; 4) its scope and effect are minor. Therefore, there is no presumption to allege that all information about homosexual, bisexual or polygamous relationship is forbidden.



1409. Currently, the Ministry of Culture had presented and registered new draft of the Law on the Protection of Minors against the Detrimental Effect of Public Information Article 4 provision 14, whereas norm "whereby homosexual, bisexual or polygamous relations are promoted" should be changed into "whereby sexual relations are promoted deliberately" (Project registered in Lithuanian Parliament on 27 July 2009, project No. XIP-953). This Project will be considered in the next session of the Seimas beginning in September 2009.

1410. Freedom of expression of LGBT people. There is no special legal regulation for freedom of expression of LGBT people whereas the Constitution of Lithuania states the respect of human rights (including freedom of expression) of all groups of people, not excepting LGBT people. Article 25 of the Constitution states that "the human being shall have the right to have his own convictions and freely express them". As well as Article 29 of the Constitution states that "All persons shall be equal before the law, the court and other State institutions and officials. The rights of the human being may not be restricted, nor may he be granted any privileges on the ground of gender, race, nationality, language, origin, social status, belief, convictions, or views". Therefore it fully complies with the International Covenant on Civil and Political Rights and other international treaties, as mentioned above.

1411. Compatibility of the Law with international human rights norms and standards. Children's rights and their welfare are covered in a number of pieces of legislation. A World Fit for Children Declaration adopted by the United Nations General Assembly in 2002 encourages states to create a world in which all girls and boys can enjoy childhood, in which they are loved, respected and cherished, where their safety is paramount and where they can develop in health, peace and dignity. Article 17 of the United Nations Convention on the Rights of the Child stipulates that "States Parties shall (...) encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being". In its Concluding Observations of 26 January 2001 regarding the initial report of Lithuania on the implementation of the UN Convention on the Rights of the Child in Lithuania, the United Nations Committee on the Rights of the Child encouraged Lithuania "to further enforce appropriate guidelines and legislation for the protection of the child from information and material injurious to his or her development, in particular violence and pornography".

1412. While legislating the Law on the Protection of Minors against the detrimental effect of Public information Lithuanian Parliament is pursuing the goal of balance between the freedom of expression, freedom of thought or freedom of association as stated in the European Convention for the Protection of Human Rights and Fundamental Freedoms, Charter of Fundamental Rights of the European Union, the International Covenant on Civil and Political Rights and the Declaration on Human Rights Defenders and public interest to protect minors from public information which may have a negative impact on minors' health, physical, intellectual and/or moral development, that is trying to protect the morality of minors. This duty for the State to protect minors derives also from EU Directive 89/552/EC, which stated that "Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence" (Art 22). It is necessary to remark that the European Human Rights Court in case *Handyside v. United Kingdom* in 1976 December 7th decision noted that there is no unanimous concept of morality, therefore every member state has a right to evaluation freedom when taking measures to protect persons' morality. Moreover, international legal acts regulating freedom of expression stipulate some possibilities to take restrictions to freedom of expression or freedom of association. And one of the versatile restrictions to freedom to expression and freedom of association is made with the purpose to protect persons' morality. Therefore the Law sets few restrictions, which are taken to protect minors as a special group and are justified as essential and proportional. Once again, the Law does not discriminate against or prohibit any kind of relationship or lifestyle, which is a freedom and right to a private life of every individual. On the contrary, the Law provides for the criteria which prohibit any kind of sexual propaganda targeted at minors since it has a negative impact on their development. Moreover, freedom of association as it is set in the International Covenant on Civil and Political Rights and the Declaration on Human Rights Defenders may be enjoyed as it complies with the Article 5 of the Law ("Nonassignment of Public Information to the Category of Information Having a Detrimental Effect on the Development of Minors").

1413. It is noteworthy that the Lithuanian Human Rights Association had made a public statement (20 July 2009), stating and both regretting that criticism of the Law is ungrounded. The Association had reviewed and evaluated legal liabilities of Lithuania in the area of human rights and made a statement that none of the Law norms contravene with the European Convention for the Protection of Human Rights and Fundamental Freedoms (article 9 – Freedom

of thought, conscience and religion, Article 10 – Freedom of expression, Article 14 – Prohibition of discrimination).

## **Observations**

1414. The Special Rapporteur wishes to thank the Government for the detailed response transmitted.

## **Serbia**

### **Letter of allegations**

**Keywords:** hate speech, threats

2093. On 21 January 2009, the Special Rapporteur, together with Special Rapporteur on the situation of human rights defenders, sent a letter of allegations to the Government concerning members of the NGO Queeria, which advocates for the human rights of lesbian, gay, bisexual and transgender people in the Republic of Serbia.

2094. According to the information received, on 17 December 2008, the organization Naši (Ours), allegedly put up posters in central Belgrade, containing messages against Queeria. The posters showed a photograph of Queeria's president, Mr. Boban Stojanovic, stating "While Serbs are being laid off, look who is being financed by Boris Tadic and the government of Serbia. The Serbian Ministry of Culture within a tender for projects in the field of public information has recently granted 256.000 dinars for the website Queeria centre which is promoting gay rights and slandering the Serbian Orthodox Church in the most despicable way. Is this what the democrats were promising before the election?" The posters showed homoerotic images of the leaders of Queeria.

2095. Apart from the poster campaign, Queeria receives daily death threats and threats of physical violence on their website and official email address since it was granted financial support by the Ministry of Culture of the Republic of Serbia. Activists of Queeria are also frequently targeted on the website 'Stormfront', and on the community website Facebook.

2096. Concern was expressed for the physical and psychological integrity of the members of the NGO Queeria. Further concern was expressed regarding the apparent lack of investigation and prosecution into the death threats and threats of physical violence against Queeria activists. Additional concern was also expressed regarding the use of a combination of personal images of activists, sexualized personal insults and inflammatory language on the posters in question.

### **Response from the Government**

2097. In a letter dated 29 April 2009, the Government responded to the communication sent on 21 January 2009 as follows.

2098. According to information received from the Serbian Ministry of the Interior (MUP), Queeria's president, Mr. Bojan Stojanovic, has not lodged a formal complaint to the police regarding the alleged incident, but has, instead, brought it to the attention of non-governmental and international organizations. However, Serbia's Ministry for Human and Minority Rights has brought this case to the attention of the Republic's Public Prosecutor. The allegation letter has been referred to the Special Prosecutor in charge of cybercrime with the District Public Prosecutor's Office in Belgrade, who is responsible for the prosecution of such cases in all the territory of the Republic of Serbia. It was recommended that pre-trial proceedings be instituted in order for the police (MUP) to investigate a certain Mr. Ivan Ivanovic, president of the organization Nasi (Ours), who allegedly denied the allegations in a press interview.

2099. Once having knowledge of the case, police officers, in cooperation with the case Prosecutor, began undertaking measures and actions provided for by the law to look into it. Furthermore, the Republic's Prosecutor gathered evidence of the published newspaper articles and on official websites of the organizations concerned.

2100. At the same time, checks are currently underway to find out whether the allegations about death threats received, as contained in the Special Rapporteur's letter, is true as well as whether the website page of the organization Nasi is posted by a local or foreign provider and whether it is possible to obtain from the server in question daily listings of accessing by users for the purpose of identifying a person/persons making death threats. The Republic's Prosecutor

is acting in this case under the authority to possibly substitute or devolve the lower-instance prosecution office.

## **Serbia**

### **Urgent appeal**

**Keywords:** equality & non-discrimination legislation, threats

2111. Mr. Marko Karadzic received additional threats in connection with his support for the adoption of the comprehensive Anti-discrimination Law, which the Parliament adopted after several setbacks on 26 March 2009. The law contains sexual orientation as a ground for nondiscrimination in Article 21. On 4 April 2009, posters appeared on the streets of several cities with photographs of explicit gay sexual acts and a photograph and quote from Mr. Marko Karadzic, implying that his advocacy for the Anti-discrimination Law will bring sexual orgies to the streets of Serbia. The posters had been prepared by an extreme right-wing group called "Crna ruka" (Black Hand, named after a terrorist organization formed in the early 1900s).

2112. On 14 April 2009, Mr. Karadzic received an anonymous letter containing serious death threats and threats of beatings, and warnings that he should not to take part in the Belgrade gay parade. Mr. Karadzic also received further death threats through the social networking website Facebook, suggesting that "if the posters would not stop him, there is something that will". Mr. Marko Karadzic informed the State Security Service of the threats he had received, but reportedly received no meaningful advice or protection, which increases the possibility of further threats or attacks. He had further notified the Minister for Human and Minority Rights, Mr. Svetozar Ciplic about the threats

2113. Concern was expressed that the threats against, and harassment of, Mr. Marko Karadzic may be related to his peaceful activities defending human rights, in particular his advocacy for the adoption of the Anti-discrimination Law; his public stance against the eviction of Roma families; and his call on the Government to ban extremist right wing organizations advocating violence against the Roma or Lesbian, Gays, Bisexuals and Transgender people. Further concern was expressed regarding the physical and psychological integrity of Mr. Karadzic, and the apparent lack of adequate response from the police and the State Security Service in responding to these threats and the failure to launch investigations into them.

## **Serbia**

### **Letter of allegations**

**Keywords:** equality & non-discrimination legislation, threats

2130. On 19 January 2010, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent a letter of allegations concerning Mr. Marko Karadzic, State Secretary of the Ministry for Human and Minority Rights of the Republic of Serbia.

2131. According to the new information received, on 8 January 2010, Mr. Marko Karadzic's apartment was broken into by unknown individuals. Apart from some cash no other valuables have been reported missing.

2132. At the same time, a graffiti by the organization "Crna Ruka" (Black Hand) appeared near Mr. Karadzic's apartment in Belgrade. The same organization posted obscene posters of Mr. Karadzic in Pancevo at the beginning of 2009.

2133. Concern was expressed that the harassment of Mr. Marko Karadzic might be related to his peaceful activities defending human rights, in particular his advocacy for the adoption of the Anti-Discrimination Law; his public stance against the eviction of Roma families; his call on the Government to ban extremist right wing organizations advocating violence against the Roma and Lesbian, Gay, Bisexual and Transgender people and his comments rejecting political statements about the implied superiority of Serbs over other minorities living in Serbia.

## **Uganda**

### **Urgent appeal**

**Keywords:** criminal laws, hate crimes, death

2483. On 30 April 2009, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding the physical attacks against Mr. David Kato and Mr. Julian "Pepe" Onziema, both members of Sexual Minorities Uganda (SMUG) and the media campaign against human rights defenders who work with lesbian, gay, bisexual, transgender and intersex (LGBTI) human rights organisations, including the Chairperson of SMUG, Mr. Frank Mugisha. SMUG is a coalition of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) human rights organizations that advocates on behalf of Uganda's LGBTI people and on HIV/AIDS issues in Uganda. The Special Rapporteur and the then Special Representative on the protection of human rights defenders previously sent communications concerning SMUG on 12 August 2008 and 30 November 2007 respectively.

2484. According to the information received, on 19 April 2009, the newspaper Sunday Pepper published an article, self-described as a 'killer dossier', listing the names of several human rights defenders and other LGBTI people. The article contained pictures, names, physical descriptions, details about their profession and residence, and negative stereotyping and accusations of "spreading the gay and lesbian vice in schools". As it had announced, the Sunday Pepper published a follow up report on 26 April containing new names of LGBTI people as well as pictures of SMUG members including the Chairperson of SMUG, Mr. Frank Mugisha.

2485. On 23 April, the Family Life Network (FLN) presented a public petition to the Ugandan Parliament requesting new laws providing harsher punishment for homosexuality. The FLN has taken the lead in organising an anti-LGBT campaign and fomenting anti-LGBTI sentiments. This campaign, which TV, radio and printed media echoed, is fostering a climate of strong hostility and is encouraging attacks against LGBTI defenders.

2486. On 12 April, Mr. David Kato and Mr. Julian "Pepe" Onziema, whose names and pictures were published on several occasions in the media, were physically attacked in two separate incidents in Kampala.

2487. According to reports received, the Ugandan authorities are allegedly contributing to the climate of hostility against LGBTI defenders through repeated defamatory statements both to the media and Parliament. On 2 April, the Government owned newspaper New Vision reported comments made by Minister of Ethics and Integrity, James Nsaba Buturo, who stated that defenders working on sexual orientation and gender identity, being self-confessed LGBTI people, should be investigated and punished.

2488. LGBTI defenders have reportedly been the subject of an increased level of harassment and threats in recent weeks including death threats. It is feared that such a smear campaign will further incite hatred and violence against human rights defenders and members of the LGBTI community.

2489. Concern was expressed that the physical attacks on Mr. David Kato and Mr. Julian "Pepe" Onziema and the media harassment of Mr. Frank Mugisha and other members of the LGBTI community might be related to their peaceful activities in defence of LGBTI rights.

## **Uganda**

### **Letter of allegations**

**Keywords:** criminal laws, HIV/AIDS

2508. On 23 December 2009, the Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, 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 extrajudicial, summary or arbitrary executions, sent a letter of allegations to the Government concerning a legislative bill pending before the Ugandan legislature, Bill N° 18 of 2009.

2509. According to the information received, the Parliament of Uganda is considering Bill No 18 (also known as the Anti-homosexuality Bill) tabled before it on 15 October 2009. The proposed bill would allegedly increase penalties for homosexual conduct and criminalize many related activities. Consensual homosexual conduct is already a criminal offence under article 145 sub a) of the criminal code, which penalizes "carnal knowledge of any person against the order of

nature". However, Bill N° 8 would purportedly expand the reach of this existing provision by including "any person who touches another person with the intention of committing an act of homosexuality". It was also noted that the bill also punishes 'aggravated homosexuality', including activity by 'serial offenders' or those who are living with HIV, with the death penalty.

2510. Furthermore, the Bill punishes any form of 'promotion of homosexuality' with imprisonment of five to seven years, which allegedly would criminalize the work of civil society actors and human rights defenders addressing issues of sexual orientation or gender identity. The Bill specifies that this includes anyone who publishes or disseminates 'homosexual materials', 'funds or sponsors homosexuality and related activities', 'uses electronic devices which include internet, films and mobile phone' or 'who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices'. The Bill also criminalizes failure to report any offences within its scope, compelling citizens to report to the authorities anyone whom they suspect of being homosexual.

2511. According to information received, the Bill will prohibit any kind of community or political organizing around non-hetero-normative sexuality. It will lend itself to misapplication and abuse, and allegedly, implicitly encourages the persecution of sexual minorities by private actors. HIV prevention activities in Uganda, which rely on an ability to speak frankly about sexuality and health and to provide condoms and other safer sex materials, will be compromised. Women, sex workers, people living with HIV, and other marginalized groups may also find their activities tracked and criminalized through this Bill.

### **Observations**

2512. The Special Rapporteur regrets that at the time of finalizing the present report, the Government had not transmitted a single reply to his communications. He considers response to his communications an important part of the cooperation of Governments with her mandate. He urges the Government to respond to the concerns raised by him, and provide detailed information regarding investigations undertaken to prosecute the perpetrators as well as protective measures taken.

### **Report of the Special Rapporteur on Freedom of Expression, Addendum: Tenth anniversary joint declaration: ten key challenges to freedom of expression in the next decade, A/HRC/14/23/Add.2, 25 March 2010**

**Keywords:** discrimination, hate speech, stereotyping

#### *ANNEX: TENTH ANNIVERSARY JOINT DECLARATION: TEN KEY CHALLENGES TO FREEDOM OF EXPRESSION IN THE NEXT DECADE*

##### 5. Discrimination in the enjoyment of the right to freedom of expression

Equal enjoyment of the right to freedom of expression remains elusive and historically disadvantaged groups — including women, minorities, refugees, indigenous peoples and sexual minorities — continue to struggle to have their voices heard and to access information of relevance to them. We are particularly concerned about:

- (a) Obstacles to the establishment of media by and for historically disadvantaged groups;
- (b) The misuse of hate speech laws to prevent historically disadvantaged groups from engaging in legitimate debate about their problems and concerns;
- (c) The lack of adequate self-regulatory measures to address:
  - (i) Underrepresentation of historically disadvantaged groups among mainstream media workers, including in the public media;
  - (ii) Inadequate coverage by the media and others of issues of relevance to historically disadvantaged groups;
  - (iii) The prevalence of stereotypical or derogatory information about historically disadvantaged groups being disseminated in society.

### **Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Addendum: Summary of cases transmitted to Governments and replies received A/HRC/7/14/Add.1, 25 February 2008**

#### *SUMMARY OF CASES TRANSMITTED AND REPLIES RECEIVED*

##### **Republic of Moldova**

**Letter of allegations sent on 8 May 2007 jointly with the Special Representative of the Secretary-General on human rights defenders**

**Keywords:** freedom of assembly/association

529. The Special Rapporteur and the Special Representative brought to the attention of the Government the situation of the Information Center GenderDoc-M, a non-governmental organisation that defends the rights of sexual minorities in Moldova. The organisation was the subject of an allegation letter sent by the Special Representative to the Secretary-General for Human Rights Defenders on 23 May 2006.

530. According to the information received, on 11 April 2007, Chisinau City Council banned the Moldovan Pride parade, organised by Information Center GenderDoc-M, on the grounds that it could pose a public disorder threat, that it would promote sexual propaganda and that it would undermine Moldovan Christian values. The event was due to take place in Chisinau city between 27 and 29 April 2007 and was planned as part of the Council of Europe's "All Different, All Equal" campaign. In February 2007, the Supreme Court held that the City Council had acted illegally in banning the event in 2006. According to reports, the Parade was prohibited on two previous occasions. On 28 April 2006, the office of the General Mayor in Chisinau, Moldova rejected an application by the Information Center GenderDoc-M to hold a peaceful demonstration in Chisinau on 5 May 2006. The purpose of this demonstration was to support the adoption of legislation barring discrimination based on sexual orientation. The reported 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." 531. Furthermore, on 16 May 2005 the office of the General Mayor in Chisinau, Moldova reportedly rejected an application to hold a peaceful demonstration in Chisinau to support the adoption of legislation based on sexual orientation. It was also reported that in June 2005 this decision was overturned by the Court of Appeal in Moldova.

**Observations**

532. The Special Rapporteur regrets that he has not received a response to the above communication.

**Venezuela (Bolivarian Republic of)**

**Llamamiento urgente enviado el 20 de noviembre de 2007 con el Relator Especial sobre la independencia de magistrados y abogados y la Representante Especial del Secretario- General para los defensores de los derechos humanos**

**Keywords:** freedom of assembly/association, police, equality & non-discrimination legislation

727. Los titulares de mandato de procedimientos especiales enviaron un llamamiento urgente en relación con la reforma de la Constitución de la República Bolivariana de Venezuela, aprobada el 3 de noviembre de 2007 por la Asamblea Nacional de la República Bolivariana de Venezuela, y que sería sometida a referéndum a principio de diciembre del 2007. Por un lado, querían destacar que, dentro de la reforma propuesta, hay importantes avances para los derechos humanos como, por ejemplo, la extensión de la prohibición, contenida en el artículo 21 de la Constitución a la discriminación por razones de salud y de orientación sexual, así como el reconocimiento al valor de la diversidad de culturas, contenido en el artículo 100 de la Constitución. Por otro lado, se había recibido información sobre los cambios sugeridos y aprobados por la Asamblea Nacional en los artículos 337, 338 y 339 referidos al estado de excepción. Según las informaciones recibidas, la reforma aprobada por la Asamblea Nacional eliminaría la obligación de presentar el decreto que declare el estado de excepción ante la Sala Constitucional del Tribunal Supremo de Justicia para que se pronuncie sobre su constitucionalidad.

728. Se habrían suprimido los límites temporales que la Constitución vigente establece para los estados de excepción. Además, la reforma eliminaría la exigencia expresa de que el decreto que declare el estado de excepción cumpla con las garantías establecidas en el Pacto Internacional de Derechos Civiles y Políticos y en la Convención Americana sobre Derechos Humanos. Asimismo, durante un estado de excepción, podrían suspenderse algunas garantías consagradas en la Constitución vigente, en particular el acceso a la información. Si bien el nuevo texto incluye, en el listado de derechos humanos intangibles, al derecho a la defensa, a la integridad

personal, a ser juzgado o juzgada por sus jueces naturales y a no ser condenado o condenada a penas que excedan los treinta años, así como la prohibición a la desaparición forzosa; no menciona en forma expresa, como así lo hace el texto vigente, el derecho a un debido proceso.

729. Asimismo, dicha propuesta de reforma cambiaría las disposiciones vigentes sobre la remoción de los magistrados del Tribunal Supremo de Justicia (Artículo 265). Mientras la Constitución en vigor prevé que dichos magistrados pueden ser removidos por la Asamblea Nacional mediante una mayoría calificada de las dos terceras partes de sus integrantes, la reforma prevé que su remoción puede ser votada por solo la mayoría de los integrantes de la Asamblea Nacional. Esta disposición fragiliza la posición de los magistrado y vulnera su independencia respecto al poder legislativo. Según las informaciones recibidas, dicha propuesta de reforma cambiaría las disposiciones vigentes sobre libertad de asociación, prohibiendo a las "asociaciones con fines políticos y que participen en el proceso electoral" recibir fondos provenientes de fuentes internacionales, tanto públicas como privadas. La definición de "asociaciones con fines políticos" podría dar lugar a incertidumbres legales que afectarían directamente a las asociaciones de defensa de los derechos humanos y otras organizaciones no gubernamentales. De esta manera, se les impediría recibir fondos internacionales de los que, en muchos casos, dependen.

730. Los titulares de mandato expresaron su preocupación por la seguridad de los periodistas y los participantes en las manifestaciones que se suceden entre partidarios y opositores a la mencionada reforma constitucional. En este sentido, querían señalar a la atención de su Gobierno la información que hemos recibido sobre varios incidentes que han tenido lugar recientemente. Así, el 25 de octubre de 2007, Paulina Moreno, de la cadena pública Ávila televisión, habría resultado herida por un explosivo cuando cubría un foro en el Instituto Pedagógico de Caracas, y un camarógrafo del mismo medio habría sido agredido por opositores a la reforma. El 7 de noviembre de 2007, varios estudiantes habrían resultado heridos de bala por varios desconocidos armados en el campus de la Universidad Central de Venezuela, en Caracas, durante una manifestación de oposición a la reforma.

#### **Respuesta del Gobierno enviada el 30 de noviembre de 2007**

731. El gobierno venezolano respondió a la comunicación arriba. El gobierno lamentó que, a su juicio, los titulares de mandato no respetaron las pautas de conducto al no darle al Estado venezolano la oportunidad de formular sus observaciones sobre las evaluaciones hechas.

#### **Seguimiento de comunicaciones transmitidas previamente**

732. Por carta con fecha 30 de abril de 2007, el Gobierno transmitió la siguiente información en respuesta a la comunicación del 8 de septiembre de 2004 en relación con el homicidio del Sr. Mauro del Valle Marcano Ramos. Las Fiscalías Séptima y Quincuagésima del Ministerio Público de la Circunscripción Judicial del Estado Monagas se encuentran a cargo de la causa. El 7 de julio de 2005, se solicitó orden de aprehensión en contra de 5 individuos cuyos nombres son conocidos por el Relator Especial. Se solicitó orden de aprehensión en contra de un sexto individuo el 26 de julio de 2005, en conformidad con el artículo 25 del Código Orgánico Procesal Penal. El 24 de julio de 2005, se llevó a cabo en la sede del Juzgado Segundo de Primera Instancia en Funciones de Control del Circuito Judicial Penal del Estado Monagas, la Audiencia de Presentación de uno de los imputados, a quien el tribunal le decretó Medida de Privación Judicial Preventiva de Libertad. Por considerar que el individuo había aportado una serie de datos útiles para aclarar los hechos que se investigan, el 9 de diciembre de 2005 fueron decretadas Medidas Cautelares Sustitutivas de Libertad, de acuerdo a lo pautado en el artículo 256. El 30 de agosto de 2006, el Ministerio Público tuvo conocimiento que uno de los ciudadanos se encontraba detenido en Trinidad y Tobago. Se iniciaron las gestiones legales necesarias para hacer efectiva la deportación de lo mismo. En reuniones con autoridades de Trinidad y Tobago, se explicó la situación procesal pendiente de dicho individuo y la necesidad que el mismo respondiera ante el sistema de Justicia de Venezuela. Como el individuo se encontraba sometido a investigación de naturaleza penal en Trinidad y Tobago, resulta necesario esperar la determinación en dicho procedimiento para luego proceder a la deportación del mismo. Observaciones

733. El Relator Especial agradece al Gobierno por sus respuestas a las comunicaciones del 8 de septiembre de 2004, 1 de marzo de 2007 y 20 de noviembre de 2007. El Relator lamenta que no haya recibido respuesta a sua carta del 30 de mayo de 2007.

#### **Report of the Special Rapporteur on the right to freedom of opinion and expression. Addendum: Summary of cases transmitted to Governments and replies received,**

**A/HRC/4/27/Add.1, 26 March 2007**

**Keywords:** discrimination

**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 5<sup>th</sup> 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.

**8. SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS**

<http://www2.ohchr.org/english/issues/judiciary/index.htm>

**Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/20/19, 7 June 2012**

**Keywords:** equality & non-discrimination legislation

*V. STATUS AND ROLE OF PROSECUTORS*

B. Functions and role of prosecutors in relation to judicial and other actors

*The role of prosecutors in ensuring non-discriminatory practices*

53. Selection criteria for prosecutors should embody safeguards against appointments based on partiality or prejudice, without discrimination based on race, colour, gender, sexual orientation, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status. It is important, in this respect, that an adequate representation of minority groups is ensured in prosecution services. Such groups should also have equal access to justice.

54. States should also ensure that mechanisms for prosecuting perpetrators of violence are gender sensitive, especially in cases involving sexual and/or gender-based violence, and that they are available, effective and sensitive to the specific needs of vulnerable groups. Prosecutors play an essential role in ensuring full equality with regard to access to justice and preventing the recurrence of violence, including by effectively sanctioning crimes against perpetrators.

*X. RECOMMENDATIONS*

105. States should also ensure that mechanisms for prosecuting perpetrators of violence are gender sensitive, especially in cases involving sexual and/or gender-based violence, and that they are available, effective and sensitive to the specific needs of vulnerable groups.

**Report of the special rapporteur on the independence of judges and lawyers, A/HRC/8/4, 13 May 2008**

**Keywords:** discrimination

*III. ACCESS TO JUSTICE*

B. Content and scope of the right of access to justice

6. Positive obligations of the State

23. The State should refrain from any action that hinders access to justice or makes it



impossible for those working in the judicial system - judges, lawyers and prosecutors - to carry out their task.[fn1] Access to justice requires the establishment of a judicial system that guarantees rights, and of parallel measures such as mechanisms and programmes to facilitate free legal assistance, in both criminal and civil cases. [fn2] This positive aspect of the State's obligations, likewise firmly established in both the European[fn3] and the inter-American systems, [fn4] must be considered in relation to socio-economic factors and others such as age, sexual orientation, and people's physical and psychological condition, which have a major bearing on effective access to justice.

fn1: Esta dimensión negativa es la que aborda más específicamente la legislación británica. *Vid.*, M. Penfold Schoenborn, "The Access to justice Bill and Human Rights Act of 1998: Britain's legislative overhaul leaves the system scrambling to mend the safety net", *Buffalo Human Rights Law Review*, vol. 6, p. 201.

fn2: *Vid.* TEDH, *Airey c/Irlanda*, Sentencia del 9 de octubre de 1979.

fn3: Del razonamiento del Tribunal en ese asunto se deduce que el Estado no sólo tiene la obligación de abstenerse de interferir el ejercicio del derecho al acceso a la justicia, sino también la obligación de adoptar acciones positivas y remover los obstáculos materiales que impiden su ejercicio efectivo. TEDH, *Airey c/Irlanda*, Sentencia del 9 de octubre de 1979.

fn4: Corte Interamericana de derecho Humanos, *Opinión Consultiva OC-11/90, del 10 de agosto de 1998. Excepciones al agotamiento de los recursos internos*; Corte Interamericana de derecho Humanos, *Caso Fairen Garben y Solis Corrales*, ST de 15 de marzo de 1989, Serie C, núm. 6, párr. 93.

## **Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/4/25, 18 January 2007**

**Keywords:** discrimination

### *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.

## **9. SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN BELARUS**

### **Report of the Special Rapporteur on the situation of human rights in Belarus, A/HRC/4/16, 15 January 2007**

**Keywords:** freedom of assembly/association, human rights defenders

On 23 November 2006, the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the situation of human rights in Belarus expressed concern at the detention of seven activists who worked to promote the human rights

of lesbians, gays, bisexuals and transgender (LGBT) persons in Belarus, and at the cancellation of the International LGBT Conference they had organized.

## **10. SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES**

<http://www2.ohchr.org/english/issues/women/rapporteur/index.htm>

### **Report of the Special Rapporteur on violence against women, its causes and consequences, A/67/227, 3 August 2012**

**Keywords:** multiple discrimination, health, stigma

#### *III. REPORT ON VIOLENCE AGAINST WOMEN WITH DISABILITIES*

##### B. Social model understanding of violence against women with disabilities

27. Lesbians and other sexual minorities who identify as female and who have disabilities confront social barriers, isolation, exclusion and violence due to both sexual minority status and disability. Lesbians with psychosocial disabilities have been largely excluded or overlooked in research and treatment, despite their usage of mental health-care and other psychosocial services. They sometimes experience a "cultural contradiction" imposed by society since lesbianism is viewed as a sexual identity, while women with disabilities are often stereotyped as asexual.

### **Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum: Mission to Italy, A/HRC/20/16/Add.2, 15 June 2012**

**Keywords:** transgender, detention

#### *III. MANIFESTATIONS OF VIOLENCE AGAINST WOMEN AND GIRLS*

##### E. Women in detention facilities

35. Other challenges brought to the attention of the Special Rapporteur include dissatisfaction with the quality of some State-sponsored legal aid; the inconsistent practices followed by some surveillance judges in the review of sentences for early release of detainees who fulfill the conditions for alternative forms of detention; and the lack of information on and reasons for decisions, which can foster anger and misunderstanding amongst detainees. Furthermore, the detention of transgender inmates in male sections of most prisons further exposes them to violence.

### **Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/20/16, 23 May 2012**

**Keywords:** death, violence, multiple discrimination, stereotyping, hate crimes

#### *III. GENDER-RELATED KILLINGS OF WOMEN*

14. In this report, the Special Rapporteur addresses the topic of gender-related killings of women whether they occur in the family or the community or are perpetrated or condoned by the State. Globally, the prevalence of different manifestations of such killings is increasing, and a lack of accountability for such crimes is the norm. Terms such as femicide, feminicide, honour killings and crimes of passion, among others, have been used to define such killings.

15. Rather than a new form of violence, gender-related killings are the extreme manifestation of existing forms of violence against women. Such killings are not isolated incidents that arise suddenly and unexpectedly, but are rather the ultimate act of violence which is experienced in a continuum of violence. Women subjected to continuous violence and living under conditions of gender-based discrimination and threat are always on "death row, always in fear of execution". This results in the inability to live, and is a major part of the death process when the lethal act finally occurs. Rather than serving isolated or individual purposes, such violence follows institutional logic "to delineate and sustain hierarchical social relations of race, gender, sexuality and class and, thereby, to perpetuate the inequality of marginalized communities".

16. The killings can be active or direct, with defined perpetrators, but they can also be passive or indirect. The direct category includes: killings as a result of intimate-partner violence; sorcery/witchcraft-related killings; honour-related killings; armed conflict-related killings; dowry-related killings; gender identity- and sexual orientation-related killings; and ethnic- and indigenous identity-related killings. The indirect category includes: deaths due to poorly conducted or clandestine abortions; maternal mortality; deaths from harmful practices; deaths linked to human trafficking, drug dealing, organized crime and gang- related activities; the death of girls or women from simple neglect, through starvation or ill- treatment; and deliberate acts or omissions by the State.

17. The discrimination and violence that is reflected in gender-related killings of women can be understood as multiple concentric circles, each intersecting with the other. These circles include structural, institutional, interpersonal and individual factors. The structural factors include macrolevel social, economic and political systems; institutional factors include formal and informal social networks and institutions; interpersonal factors include personal relationships between partners, among family members and within the community; and individual factors include personality and individual capacities to respond to violence.

18. Thus an understanding of gender-related killings requires taking into account the political, social and economic contexts within which it takes place, including the responses of men to women's empowerment; the political, legal and societal reaction to such killings; the principle of the continuum of violence; and patterns of structural discrimination and inequality that continue to form part of the reality of women's lives. It is also important to disaggregate data by factors such as race, ethnicity, education, sexual orientation and economic status, among others, to establish systemic patterns that exacerbate existing vulnerabilities.

### *III. GENDER-RELATED KILLINGS OF WOMEN*

#### *A. Conceptual evolution of terms*

26. Despite the increasing attention paid to the killings of women, there is little consistency in the normative frameworks used by researchers and service providers. Some scholars propose that a framework which includes the theoretical, political, operative and judicial aspects is useful, as it enables the recognition of multiple intersections of class, ethnicity, race, age, disability, migration, occupation, sexual orientation and gender identity, among others, in the killings of women.

#### 4. Killings in the context of armed conflict

53. The Special Rapporteur on the situation of human rights defenders has stated that women human rights defenders, who challenge oppressive governments and policies, are more at risk of suffering violence and other violations. While reclaiming their rights or the rights of their communities, they are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society. The mission report on Colombia by the Special Rapporteur on the situation of human rights defenders highlights the killings of several women human rights defenders and the gravity of the violence, persecution and sexual torture in these murders.

55. In the 45-year-old civil war in Colombia, women community leaders and women fighting for their rights are the main targets of gender-related killings. These women are especially vulnerable if they promote land rights and the rights of the most marginalized groups, such as indigenous people, ethnic and religious minorities, trade unionists, and lesbian, gay, bisexual and transgender individuals. The Special Rapporteur on extrajudicial, summary or arbitrary executions has confirmed that defenders of women's rights are significant targets of unlawful killings by both Colombian State forces and illegal armed groups. The gender-specific intimidation of women defenders includes the targeting of their children and families, as a way to manipulate their roles as mothers, thereby exerting additional pressure on them to stop their human rights work.

#### 8. Killings as a result of sexual orientation and gender identity

71. Gender-based killing due to sexual orientation and gender identity is a phenomenon that has been recently, albeit insufficiently, documented. Although limited statistics are available, civil society reports suggest that violence, motivated by hatred and prejudice based on sexual orientation and gender identity, is a daily reality for many. It is "characterized by levels of serious physical violence that in some cases exceed those present in other types of hate crimes". Lesbian, gay, bisexual, transsexual, transgender, intersex and queer persons

(LGBTIQ), and also activists working in this sector, are targeted because they do not conform to stereotypes of gender sexuality and/or identity, thus becoming victims of homophobic crimes.

72. Manifestations of violence, such as abuse of police power, sexual violence in prisons and murders fuelled by hate, as well as several kinds of discrimination, persist. As academics have noted, there is a paradox in the advancement in the protection of individuals' sexual rights on the one hand, and the increasing escalation of homophobic crimes on the other. In this sense, LGBTIQ persons, including women, are especially vulnerable to many kinds of violent crime, from killings in private homes to killings in public spaces known as "social cleansing", extortion by blackmailers who threaten to reveal their identity to the public, and abuse from officials, especially the police, who sometimes arrest them.

73. In the case of South Africa, the recent murders of Black lesbian women demonstrates the multiple and intersecting factors that have led to an escalation in homophobic attacks, despite progressive constitutional provisions preventing discrimination on the basis of, among others, race, gender and sexual orientation.

74. The Human Rights Council has expressed its concern about the increasing violence and killings of lesbian, gay, bisexual and transgender persons and the impunity surrounding these crimes. More recently, the Council passed a groundbreaking resolution on human rights violations based on sexual orientation and gender identity.

75. The Inter-American Commission on Human Rights has held several hearings in the last three years regarding the situation of violence and discrimination against sexual minorities in some countries of the Caribbean and Central and South America. In these countries, civil society organizations have expressed their concern regarding increasing incidents of homophobic crimes.

76. Reports of homicides of "trans" people reflect that 93 murders were recorded in the first half of 2010. Another project has revealed that between January 2008 and September 2011 there were 681 reports of murdered "trans" people in 50 countries.

#### *IV. INTERNATIONAL AND NATIONAL DEVELOPMENTS*

##### *A. International human rights law and jurisprudence*

93. The Committee against Torture has stated that the definition of torture includes the principle of non-discrimination on any grounds, including gender, sexual orientation and transgender identity. Thus, States are obliged to protect certain minority or marginalized individuals or populations especially at risk of torture, and should ensure such protection by fully prosecuting and punishing all acts of violence and abuse and ensuring implementation of other positive measures of prevention and protection. The Human Rights Council, in its resolution 17/19, requested the United Nations High Commissioner for Human Rights to present a study documenting discriminatory laws and practices and acts of violence against individuals based on sexual orientation and gender identity.

#### **Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum: Summary report on the expert group meeting on gender-motivated killings of women, A/HRC/20/16/Add.4, 16 May 2012.**

**Keywords:** death, stigma

#### *III. OVERVIEW OF DISCUSSIONS*

##### *B. Manifestations and causes of gender-motivated killings of women: current trends and regional perspectives (session 1)*

12. In this session, presenters discussed the prevalence, manifestations and causes of gender-motivated killings of women in different parts of the world, drawing upon specific national or regional trends, particularities and recent developments. This included information on the physical manifestations of killings, their legal, political, socioeconomic and cultural contexts and how killings are situated in the continuum of violence against women. Presentations also examined legislative measures to prevent killings and good practices and challenges in preventing, investigating and prosecuting gender-motivated killings of women as well as strategies to encourage data collection and reporting. States' compliance with their due diligence obligation and measures undertaken by States to combat impunity of perpetrators and ensuring accountability was given particular emphasis.

13. Dowry-related killings of women, suicides and self-immolation (South Asia), killings of women as a result of intimate partner violence (Europe), killings of women accused of sorcery and witchcraft (Africa and the Pacific), honour-related killings of women (Middle East and North Africa) and extreme forms of gender-motivated killings of women (femicides) in Latin America were among the different manifestations discussed in this session. Participants also examined gender-motivated killings of women on the basis of sexual orientation and identity and ethnic or racial origins and in the context of armed conflict, underscoring the emphasis of the mandate on the multiple forms and intersectionality of discrimination and violence.

## 2. Manifestations and causes of gender-motivated killings: specific contexts

20. The difficulty of gathering information on the prevalence and manifestations of gender-motivated killings of women was highlighted in the examination of gender-motivated killings on the basis of sexual orientation and gender identity. Reluctance to report such crimes due to stigma was particularly challenging. It was noted that this problem was compounded by the fact that many of such killings were concealed behind the shame that the perceived transgression of sexual identity was considered to bring about. While gender-motivated killings were a global phenomenon, the presentation underlined the importance of recognizing the different causes thereof, depending on the specific local, national or regional context. In that respect, in order for States to respond effectively, the importance of assessing prevailing stereotypes and addressing the social or cultural or economic factors and belief systems that underpinned such attitudes and values (including "honour") was emphasized. The often aggravated nature of these killings, the prevalence of violence and killings of that group of women in the family sphere and the social intolerance and harassment that might lead to suicides among lesbian, transgender and bisexual women were highlighted. Good practices and studies of the Council of Europe and the Organization of American States were referred to.

## IV. CONCLUSIONS

27. Participants of the expert group meeting identified a number of concerns, challenges and recommendations relating to gender-motivated killings of women and States' responsibility to prevent, respond to and provide remedies for these human rights violations. These will be explored and developed in depth in the report of the Special Rapporteur to the Human Rights Council at its twentieth session (A/HRC/20/16).

28. The killing of women because they are women is a global phenomenon. In some parts of the world, gender-motivated killings of women are on the increase. They are often located at the end of a continuum of violence against women, set against general patterns of discrimination against women and tolerated impunity of perpetrators. While manifestations, prevalence and causes differ between regions in response to specific local contexts, many similarities exist. Notably, the meeting accentuated the particular vulnerability of certain groups of women to gender-motivated killings due to the intersectionality between discrimination on the grounds of ethnicity, race, beliefs, sexual orientation, social status, migration or other status, on the one hand, and violence against women, on the other. The meeting confirmed that the violent nature of killings often included sexual violence.

## **Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum: Mission to Italy. Comments by the State on the report of the Special Rapporteur, A/HRC/20/16/Add.6, 21 June 2012**

**Keywords:** transgender, prison

## II. SPECIFIC OBSERVATIONS

98. With reference to what the UN report states about the presence of transsexual prisoners in male wings of prisons, it is to be said that the management of that category of prisoners still represents a critical issue. With the purpose of ensuring a decent detention to transsexual prisoners, (who are 77, according the last survey of October 2011), the Italian Penitentiary Administration has given several instructions to prison governors so that they adopt solutions aimed at avoiding promiscuity situations, accommodating those subjects in female wings or, anyway, in separate wings; governors were also instructed to adopt such organizational measures as reducing the risk for the prisoners' safety. Specific wings for transsexual prisoners are established in the prisons of Naples Poggioreale, Rimini, Rome Rebibbia "Nuovo Complesso", Milan "San Vittore", Alba, Foggia, Agrigento, Florence Sollicciano and Belluno.

133. From November 28, 2011 it also possible to report case of discrimination related to disability, age, religion, sexual orientation and gender identity to the contact center 800 90 10 10 managed by UNAR (National Office against Racial Discrimination) established at the Presidency of the Council of Ministers in the implementation of EU Directive 43/2000. After a trial of just over a year, and taking into account the interconnection with the contact center UNAR widespread on the national territory, it is possible to improve the promotion and ensure the respect of the principle of equal treatment. The free helpline is available from Monday through Friday, from 10 to 20 in Italian, English, French, Spanish, Albanian, Arabic, Russian, Romanian, Chinese.

**Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum: Communications to and from Governments, A/HRC/17/26/Add.1, 18 May 2011**

**Honduras**

**Carta de alegación**

**Keywords:** death, transgender, stereotyping

95. Mediante carta fechada el 9 de febrero 2011 la Relatora Especial, junto con el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias enviaron una carta de alegación señalando la atención del Gobierno la información recibida en relación con asesinato de 31 personas lesbianas, gays, bisexuales, transgénero y travestís durante los 18 últimos meses.

96. Una de estas personas, WOT, un prominente defensor de los derechos humanos de la comunidad lesbiana, gay, bisexual y transgénero e integrante ONG fue el objeto de una comunicación conjunta por parte del Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión y de la Relatora Especial sobre la situación de los defensores de los derechos humanos enviada el 19 de enero 2010. Lamentablemente, hasta la fecha, no se ha recibido respuesta por parte del Gobierno de su Excelencia.

97. Tres de las personas mencionadas habrían sido recientemente asesinadas. Hemos recibido información más detallada sobre los casos siguientes:

98. El 22 de diciembre de 2010, un travesti de 23 años, llamada LAH habría sido encontrada muerta en un una zanja en Comayagüela. Según las informaciones recibidas, su cuerpo habría sido golpeado e incinerado. La información recibida indica también que los golpes en su rostro causados por lapidación habrían sido tan graves que sus restos habrían quedado prácticamente irreconocibles. Además se expresó preocupación por las alegaciones recibidas indicando que LAH habría sido violada.

99. Ese mismo día, otra travesti de 45 años, llamada LOMS, habría sido encontrada en su casa del Barrio El Rincón en Tegucigalpa. Según las informaciones recibidas, su cuerpo habría sido incinerado y mostraba numerosas puñaladas. Vecinos reportaron que observaron a dos individuos sospechosos salir corriendo de su casa cuando inició el fuego.

100. El 2 de enero de 2011, otra joven travesti conocida como C habría sido encontrada asesinada en la calle principal de Colonia Almeda en Tegucigalpa. Según informaciones recibidas, su cuerpo habría mostrado heridas de puñal en el pecho.

101. Los asesinatos de personas transgénero en Honduras, así como los asesinatos de defensores de sus derechos, fueron ya el objeto de una comunicación enviada al Gobierno de Honduras el 23 de enero del 2009 por parte del Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, la Relatora Especial sobre la situación de los defensores de los derechos humanos y la Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias. El Gobierno de Honduras no ha respondido a dicha comunicación hasta la fecha.

102. Se expresó grave preocupación por el asesinato de estas 31 personas y por las alegaciones de que estos hechos pudieran estar relacionados con la orientación sexual de las víctimas. Las alegaciones, de ser confirmadas, se enmarcarían en un contexto de creciente violencia e inseguridad para las personas lesbianas, gays, bisexuales, transgénero y travestís en Honduras.

103. La Relatora Especial solicitó al Gobierno que clarificara la exactitud de las alegaciones presentadas, así como información detallada con respecto a cualquier investigación, examen forense y judicial u otro tipo de pesquisa que se hubiera llevado a cabo; las diligencias judiciales que se hubieran iniciado; las medidas que hubieran sido adoptadas para garantizar la protección de las personas lesbianas, gays, bisexuales, transgénero y travestís en el país; y la posible compensación a las familias de las víctimas.

### **Observations**

104. The Special Rapporteur regrets that at the moment of finalizing the report, she had not received an official reply. She recalls that communications are an important part of the cooperation of Governments with her mandate and urges the Government to respond to the concerns raised.

105. The Special Rapporteur takes this opportunity to make reference to Commission on Human Rights Resolution 2005/41 on the Elimination on Violence against women, which provides that women should be empowered to protect themselves against violence and, in this regard, stresses that women have the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

106. She further wishes to recall Article 4 (j) of the Declaration on the Elimination of Violence against Women, which calls upon States to adopt all appropriate measures to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women.

### **South Africa**

#### **Allegation letter**

**Keywords:** hate crimes, sexual assault

204. On **14 January 2011**, the Special Rapporteur on violence against women, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent an allegation letter to the Government concerning the situation of MG, a woman who was allegedly beaten and raped by a man who intended to "cure" her from her sexual orientation, and NF, a local community activist supporting victims of "corrective" rape.

205. According to the information received, MG, a lesbian woman, and her friends were walking home when AN, a man she had known for a number of years and who had never objected to her sexuality before, asked her for a cigarette. She stayed to smoke with him, and followed him into his room when he refused to pass the cigarette to her. The man then locked the door and started hitting her while she tried to fight back. MG was strangled with a wire, tortured and raped for five hours by AN who intended to "turn her straight".

206. Since this incident took place, the court-case addressing it had reportedly been postponed numerous times, last time to February 2011, and AN was currently out on bail, roaming the same streets where MG lived. This had forced MG to go into hiding for fear of her safety.

207. Ms. NF, a local community activist reached out to MG through a small local charity she set up in the Cape Town township of Gugulethu to rescue and support survivors of "corrective" rape. She was currently covering and supporting the criminal proceedings of MG. Although AN was forbidden to enter Gugulethu as part of his bail conditions, he had reportedly broken those conditions constantly and threatened NF various times.

208. Since his release he had allegedly asked family and friends to attack NF, constantly harassed her and made threats against her life and against her partner. This had forced NF to go into hiding as well, which had prevented her from carrying out the assistance work she provided to other women victims of violence.

209. Serious concern was expressed about the physical and psychological integrity of MG and NF. Further concern was expressed that these attacks did not constitute isolated incidents and that lesbian women in South Africa faced an increasing risk of becoming victims of violence, especially rape, because of widely held prejudices and myths that maintained they would

change their sexual orientation if they were raped by a man. Furthermore, concern was expressed over increasing reports that hate crimes against lesbians were not being recognized or punished by the South African legal system.

210. The Special Rapporteur requested information from the Government regarding the accuracy of the alleged facts, as well as further clarifications concerning any investigation, medical examinations, and judicial or other inquiries that may have been carried out in relation to this case; the details regarding the current status of the judicial proceeding against AN; the protective measures that might have been put in place to ensure the safety and integrity of MG and NF; and the measures that might have been undertaken with a view to eradicate sexual violence against women generally, and particularly regarding the prevalence of "corrective" rape.

### **Observations**

211. The Special Rapporteur regrets that at the moment of finalizing the report, she had not received an official reply. She recalls that communications are an important part of the cooperation of Governments with her mandate and urges the Government to respond to the concerns raised.

212. The Special Rapporteur takes this opportunity to make reference to Commission on Human Rights Resolution 2005/41 on the Elimination on Violence against women, which provides that women should be empowered to protect themselves against violence and, in this regard, stresses that women have the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.

213. The Special Rapporteur also wishes to recall the obligation by States under international human rights law to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

### **Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/17/26, 2 May 2011**

**Keywords:** multiple discrimination, stigma, violence

## *II. MULTIPLE AND INTERSECTING FORMS OF DISCRIMINATION AND VIOLENCE AGAINST WOMEN*

### *B. Forms, causes and consequences*

21. It has been acknowledged that violence results from a complex interplay of individual, family, community and social factors, and that, even though all women are at risk of violence in every society in the world, not all women are equally vulnerable to acts and structures of violence. Representing both the universality and the particularity of women's risk of violence requires the social location and bodily attributes of individuals and groups to be explicitly accounted for.

22. Social location refers to the different positions occupied by individual women that give rise to intra-gender differences among women. Factors such as geographic location, level of education, employment situation, household size, marital relationships, and access to political and civic participation, all impact women's vulnerability to violence. Further contributory factors for risk of violence include individual aspects of women's bodily attributes such as race, skin colour, intellectual and physical abilities, age, language skills and fluency, ethnic identity and sexual orientation.

23. Also, one has to situate the experience of the abuse within the given cultural context of each woman's location and her understanding of the impact of the abuse on her life. Not all women experience similar acts of violence similarly; therefore it is necessary to consider how a woman's response to any act of violence will be impacted by services and assistance that are offered to remedy harmful consequences.

### 3. Consequences

40. It is undisputed that inequality and discrimination, including intersecting forms of discrimination, causes violence against women. Such violence cuts across gender, race, class,



geographical location, religion or belief, educational attainment, ability and sexuality. Examples of inequality and discrimination can also be noted in patriarchy and ideologies of male supremacy and female subordination. Feminists have traditionally argued that in societies where there is more gender equity, less violence against women is found. But recent studies have reconsidered this point in light of research which documents high levels of violence against women in societies with greater parity in pay, access to Government and business participation, education and health care.

47. Women who are lacking social and cultural capital, due to their minority or immigration status, language barriers, religious or ethnic affiliation, sexual orientation and/or gender identity or educational attainment, are also at greater risk of long-term health consequences. They may be denied proper health or medical services, they may fear the consequences of asking for medical assistance, they may receive improper or low quality care, or they may live in places where no health services are available. Women who suffer from cognitive and/or physical disabilities are further negatively impacted since the stigma of disability is persistent in most countries, and they therefore may not be viewed as requiring care, or may live in places where no specialized care is available.

#### C. The holistic approach to recognizing women's rights to be free from discrimination and violence

51. Adopting a holistic approach to recognizing the human right of all women to be free from violence and discrimination addresses two approaches to analyzing violence against women. First, violence against women constitutes discrimination against women if it has the purpose or effect of targeting women because they are women; second, violence also constitutes discrimination when it is perpetrated with the purpose or effect of targeting identifiable subgroups of women, because their personhood is defined in terms of both their femaleness and other factors such as race, colour, national origin, citizenship, ethnicity, ability, religion/culture, socio-economic, marital, sexual orientation, refugee, or any other status.

58. Research demonstrates the utility of an approach that accounts for additional aspects of personhood, such as nationality, disability, indigenous belonging, sexual orientation, and socio-economic class, to predetermine the likelihood and extent to which women will experience multiple forms and various levels of violence. In adopting a more comprehensive approach, a picture of the different ways in which intersectional and multiple forms of discrimination operate in the context of violence against women emerges. It reflects the type of systematic, comprehensive, multisectoral and sustained approach needed to develop national strategies, concrete programmes and actions aimed at eliminating all forms of violence against women.

##### 1. Human rights as universal, interdependent and indivisible

59. Human rights are universal in the sense that everyone is entitled to have their rights respected, protected and fulfilled no matter who they are or where they reside. Universality renders geographic location and social position impermissible bases on which to deny human rights, including the right to be free from violence. The "gendered theorization of human rights," incorporates "an intersectional approach to race, class, gender, sexuality and nation" where "no one right can be easily broken down into a singular issue, as rights are always already constituted through the social structural relations of multiple positionalities."

##### 3. Structural and institutional discrimination and inequalities

67. The existence of structural and institutional inequalities is the result of various aspects and factors related to discrimination. Discrimination based on race, ethnicity, national origin, ability, socio-economic class, sexual orientation, gender identity, religion, culture, tradition and other realities often intensifies acts of violence against women. The acknowledgement of structural aspects and factors of discrimination is necessary for achieving non-discrimination and equality.

##### 4. Social and/or economic hierarchies among women and between women and men

73. Material reality is linked to economic and social security and is crucial for both protecting and preventing violence against women. Material reality, such as educational attainment, housing, and access to land, water, food and work, all play a role in how and to what extent women experience violence. Not only does violence against women disproportionately target the most vulnerable women in society in terms of race, ethnic origin, nationality, disability and sexual orientation, but the conditions in which women live can also position them as being especially receptive to gender-based violence.

- D. Some critical aspects to consider when adopting a holistic approach  
1. The right to an adequate standard of living

87. The right to security and bodily integrity per se is essential for the enjoyment of other human rights. All people, regardless of citizenship, gender, race, ethnicity, national origin, and/or sexuality, have the right to bodily integrity within which health and the environment play important roles.

E. Conclusions and recommendations

104. Situating violence against women as a problem that cuts across political, civil, economic, social and cultural rights compels us to recognize the universality of violence. This report argues that individual women's productive and reproductive activities in all sectors is impacted by forms of interpersonal and structural violence which intersect with various factors such as immigration, trade and economic policy, social and economic development, civil and political development, sexual orientation, ability, legal protection, conflict, security concerns, and so on.

**Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum: Follow-up mission to El Salvador (17-19 March 2010), A/HRC/17/26/Add.2, 14 February 2011.**

**Keywords:** hate crimes, sexual assault, transgender, HIV/AIDS

*IV. MANIFESTATIONS OF VIOLENCE AGAINST WOMEN*

D. Attacks against lesbians, bisexuals and transgender persons

28. According to civil society organizations, El Salvador is also facing an escalating level of violence against the gay, lesbian, bisexual, transgender and intersex communities, with murders increasing from 4 in 2003 to at least 12 in 2009. High level of societal homophobia is particularly reflected in employment, in society generally, but also in the intolerance portrayed by the media.

29. In a meeting with the Special Rapporteur, interlocutors shared their accounts of widespread discrimination and violence, generally overlooked by the Government, including brutal gang rapes and family violence owing to their sexual orientation or gender identity (see case study below). Concern was particularly expressed at the attempt to introduce discriminatory amendments to the Constitution, including the definition of marriage as the union between a man and woman or the explicit prohibition of adoption by same-sex couples. Transgender persons also noted difficulties in legally changing their gender in official identity papers.

*Case study*

Paula's story (assumed name) illustrates the level of violence endured by the lesbian, gay, transgender, bisexual and intersex communities in El Salvador. Paula was brutally attacked and shot by a group of men when she was leaving a nightclub in San Salvador. While in hospital, she faced harsh treatment and disdain from health-care personnel because she was transgender and HIV-positive. A few months after leaving hospital, she was detained and put in a male prison for two years for attempted homicide, although she claimed to have acted in self-defence; Paula was released after the man she had attacked admitted that this was the case. In prison, she was put in a cell with members of gangs (*mara*) and was raped more than 100 times, sometimes with the complicity of prison officials. Upon her release from jail, she was again attacked by *mara* members who found out that she was HIV-positive and that some of those that had raped her in jail had been infected.

*VI. MAIN REMAINING CHALLENGES*

C. Statistics and data collection

72. Despite the fact that the Office of the Procurator-General and the Ministry of Health and Social Assistance are responsible for monitoring the implementation of the Intra-Family Law, the statistics they collect do not contain specific information on violence against women and not all of their data is disaggregated by sex. Another weakness relates to the lack of registration of pregnancies among girls as cases of violence, thus rendering any investigation into cases of statutory rape non-existent. Reportedly, despite the rise in the number of hate-motivated crimes against lesbian, gay, bisexual and transgender persons, no institution compiles statistics on such victims of discrimination and violence.

## VII. CONCLUSIONS AND RECOMMENDATIONS

77. In the light of the information received, the Special Rapporteur considers the recommendations in the report of the previous mandate holder still applicable and relevant, and reiterates the need for the Government to:

...

(b) Ensure the protection of women and girls through legislative, investigative and judicial reforms, including by:

...

(iii) Taking specific measures to ensure the protection of women who are victims of discrimination and violence on account of their sexual orientation or gender identity;

### **Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum: Communications to and from Governments, A/HRC/14/22/Add.1, 2 June 2010**

**Keywords:** sexual assault, multiple discrimination

## III. TRENDS AND OBSERVATIONS

### B. Sexual violence and other forms of violence amounting to torture or ill-treatment

17. The Special Rapporteur wishes to recall that sexual violence, a pervasive manifestation of gender-based violence, is not restricted to specific regions, countries or contexts, but is a universal problem that exists in every country and region of the world, be it in contexts of peace, conflict, post-conflict and transitional justice. Sexual violence is rooted in a global culture of discrimination, which results in unequal power relations between men and women and legitimizes the appropriation and control of women's bodies. Women's vulnerability to sexual violence is heightened by the existence of social and cultural norms that foster inequality, as well as by sexist policies and practices that often deny women effective recourse and force them to remain in violent situations. While sexual violence is often looked at in isolation, it often intertwines with other forms of discrimination, including on the basis of race, ethnicity, religion, sexual identity, social status or disabilities.

### D. Violence against women facing multiple and intersecting layers of discrimination

22. 7 out of 38 of all communications sent concerned women facing multiple and intersecting forms of discrimination. Women belonging to national, ethnic or religious minorities and migrant women are represented among such reported victims.

23. In this regard, the Special Rapporteur would like to refer to Human Rights Council Resolution 7/24 and recall that all forms of discrimination, including racism, racial discrimination, xenophobia and related intolerance and multiple or aggravated forms of discrimination and disadvantage can lead to the particular targeting or vulnerability to violence against girls and some groups of women, such as women belonging to minority groups, indigenous women, refugee and internally displaced women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, women with disabilities, elderly women, widows and women in situations of armed conflict, women who are otherwise discriminated against, including on the basis of HIV/AIDS status and victims of commercial sexual exploitation. She also wishes to recall the widespread discrimination and violence suffered by some groups of women owing to their sexual orientation and gender identity.

## IV. COMMUNICATIONS SENT AND GOVERNMENT REPLIES RECEIVED

### **Indonesia**

#### **Urgent appeal**

**Keywords:** criminal laws

159. On 2 October 2009 the Special Rapporteur on violence against women, its causes and consequences, jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on freedom of religion or belief sent an urgent

appeal to the Government regarding the adoption of the new Islamic Criminal Code (Qanun Jinayah) in Aceh.

160. According to the information received, on 14 September 2009, the Aceh Legislative Council adopted a new Islamic Criminal Code which imposed severe sentences for consensual extra-marital sexual relations, rape, homosexuality, alcohol consumption and gambling. Among other sanctions, the Code imposed the punishment of stoning to death for adultery; 100 cane lashes for sexual intercourse outside marriage; between 100 and 300 cane lashes or imprisonment for rape; and 100 lashes for homosexuality.

**Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum: Mission to Kyrgyzstan, A/HRC/14/22/Add.2, 28 May 2010.**

**Keywords:** violence, discrimination, transgender, identity documents

*III. VIOLENCE AGAINST WOMEN*

23. Violence against women in Kyrgyzstan is gradually gaining increased visibility and attention. However, the laudable efforts by the Government and civil society to address this problem have been insufficient to reach the majority of the population. Various forms of violence against women such as domestic violence, bride-kidnapping, trafficking, custodial violence, sexual violence and harassment and violence against lesbians, bisexuals and transgender persons remain unreported and unpunished.

A. Forms of violence and prevalence

4. Attacks against lesbians, bisexuals and transgender persons

37. A high level of societal homophobia, discrimination and violence against lesbian, bisexual and transgender people exists in Kyrgyzstan, according to organizations working in this sector. One study indicates that 23 per cent of lesbian and bisexual women have had forced sexual contacts; 35 per cent believe that their sexual orientation or identity creates problems for them and society; and 56 per cent have had their families try to force them to change their sexual identity or orientation. They face discrimination in employment and in society. They report that the media has increased intolerance towards them with the homophobic tone of their press reports and issues relevant to them – including human rights violations – are generally overlooked by the Government and civil society. They are particularly concerned by discriminatory provisions in the Kyrgyz Criminal Code and the discriminatory implementation of other laws and policies. Transgender persons also note difficulties in legally changing their gender in official identity papers.

38. Many people within this category are compelled to move from rural to urban areas and break off ties with their family and communities, because of the pressure or violence they have experienced. In a meeting with the Special Rapporteur, interlocutors shared accounts of incidents of having been subjected to widespread discrimination and violence including brutal gang rapes, “curative” rapes and family violence owing to their sexual orientation and gender identity.

*V. CONCLUSIONS AND RECOMMENDATIONS*

92. Elimination of violence against women and girls:

- Take measures to ensure the protection of women who are victims of discrimination and violence on account of their sexual orientation or gender identity, and simplify procedures for changing the sexual identity of transgender persons in their identity cards.

**Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/14/22, 23 April 2010.**

**Keywords:** discrimination, violence, partnership benefits & recognition

*III. REPERATIONS FOR WOMEN SUBJECTED TO VIOLENCE*

B. Reparations for women subjected to violence in countries coming out of widespread conflict or authoritarian repression

2. Substantive considerations: understanding harm to women  
(a) Gender violence and the definition of victims

44. The current explicit inclusion of sexual violence in many reparations programmes is a victory against a tradition that minimizes its importance as collateral, private or nonpolitical damage. Nevertheless, the forms of sexual violence that are included are often limited in range and other forms of victimization with a disparate gender impact are also not included. Often excluded have been forms of reproductive violence (including forced abortions, sterilization or impregnations), domestic enslavement, forced "marital" unions, forced displacement, abduction and forced recruitment. Gross violations of social, economic and cultural rights have also been excluded, even when they result in the loss of health, life and death of culture, or when such violations are specifically related to systematic forms of discrimination, including based on sex, ethnicity or sexual orientation. Forced domestic labour, often taking the form of forced conscription or forced marriages, has also traditionally been left out. This tendency to include a narrow range of forms of sexual violence in such programmes runs the risk of sexualizing women, if it is not accompanied by a serious effort to encompass a broader notion of harm.

(b) Gender violence and the identification of beneficiaries

47. The definition of "victim" endorsed by the Basic Principles and Guidelines assumes that, although the violation of a right is a precondition for the right to reparation, the relationship between the right and the violation, for purposes of reparation, is mediated by the notion of harm. As a result, the potential rights holders include not only victims, but also others, such as close family members and dependants, who are affected or harmed as a consequence of the violation. This notion of victim that links rights and harms allows for the reflection that every gross violation generates a "community of harm" which impacts others to be reflected. Bringing the notion of harm to the fore can also allow victims to be prioritized according to the severity of the harm endured. Both expanding beneficiaries and prioritizing victims and beneficiaries according to harm can have important consequences for women.

48. There is a broader question regarding the concept of family that is embraced in reparations programmes. In this regard, polygamous unions, de facto unions, same-sex unions and more extensive culturally contingent support mechanisms, should be adequately represented to reflect the real web of dependencies and the harms entailed by their disruption.

**Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum: 15 years of the United Nations Special Rapporteur on Violence against women, its causes and consequences (1994 – 2009) – A critical review, A/HRC/11/6/Add.5, 27 May 2009**

**Keywords:** domestic violence, sexual and reproductive health and rights, stereotyping, gender identity, violence

*III. KEY AREAS OF FOCUS*

A. Domestic violence

33. The mandate has applied international standards of equality and non-discrimination, in the context of marriage and the family, upholding the right to privacy, sexual health (including sexual orientation) and reproductive rights within the context of family. In doing so, the mandate has rejected conventional critiques judging interventions to address oppressive family forms as being anti-family. In applying rights holistically within the domain of the family, the SRVAW "intentionally [departed] from traditional definitions of domestic violence, which address violence perpetrated by intimates against intimates, or equate domestic violence with woman-battering". The Secretary-General's study on VAW reinforced the principle that protection from domestic violence must extend to a broad range of interpersonal relationships within the family.

98. The mandate holders have noted that all forms of gender-based violence are "often used as an instrument to control female sexual behaviour" in ways that cast women as male property or punish women who transgress the sexual norms. Through the country missions and the communications, the mandate holders have responded to retribution for women's expressions of reproductive and non-reproductive sexual activity, as well as for expressions of heterosexual and non-heterosexual sexuality. The SRVAW has issued communications in respect to information received regarding detention of women in police stations on grounds of sexual orientation and the resulting risk of torture and sexual violence to them in custody, and in respect of arrest, detention and torture of transgendered persons; similarly, a communication was issued to express concern for the physical security and access to justice for a man who had undergone sex-change surgery. Many of the communications to governments by the mandate holders have been in relation to honour crimes committed by family members, or to the

action/inaction of the State with regard to stoning, flogging or death by hanging of women for suspected premarital sex, for adultery, for failing to prove rape, and for acts deemed incompatible with chastity - in one case involving a minor raped by her brother, and another of a teenage girl with psychosocial disabilities.

100. The observations of the mandate have not been limited to violations alone, but have also endorsed rights, such as the inclusion of same-sex unions within the expanded definition of the family, and have reaffirmed reproductive and sexual rights. While calling attention to the Cairo language that "all human beings have a right to a safe and satisfying sex life", Radhika Coomaraswamy has also noted that "gender-based violence ... is particularly acute when combined with discrimination on the basis of sexual orientation or change of gender identity. Violence against sexual minorities is on the increase and it is important that we take up the challenge of what may be called the last frontier of human rights".

117. Radhika Coomaraswamy has noted that responding to the challenge regarding sexuality is the last frontier of human rights. It has been argued that this challenge requires moving beyond condemning regulation of female sexuality through an exclusive focus in VAW on sexual wrongs, such as rape, child sexual abuse, sexual assault and sexual harassment. In this regard, it has been noted that "if we fail to pursue a more radical and affirmative strategy on matters related to sex we will fail to adequately address the sexual harms women continue to experience". Further, Coomaraswamy has pointed out that a focus on sexual wrongs and regulation will only perpetuate sexual stereotypes, sexism and orthodoxies that reinforce the control over female sexuality - ideologies that underscore gender inequality. The need to shift beyond sexual wrongs to sexual rights has been explained as: "The ability to say 'no' to what one does not desire is hugely conditioned on the capacity to recognize, delight in, and respond to one's desire to say 'yes', free of limiting stereotypes and with knowledge of the implications for one's safety and contentment. Although sexual health is a part of reproductive rights, sexual rights are distinct from reproductive rights, "since many of the expressions of sexuality are non-reproductive" and 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", and require further attention in the context of human rights. The scope of sexual rights is much broader than sexual health or reproductive rights, and is not specific to women alone. Thus it needs to be developed in terms of respect, protection and fulfillment within human rights law by more than one body or mechanism in the United Nations system, in order to move beyond its current violation-centered boundaries to fully challenge gender inequality. However, the SRVAW, in cooperation with the Special Rapporteur on the Right to Health, has a distinct role to play in this development given the causal link with the mandate.

**Report of the Special Rapporteur on violence against women, its causes and consequences. Addendum: communications to and from governments, A/HRC/11/6/Add.1, 26 May 2009**

*III. COMMUNICATIONS SENT AND GOVERNMENT REPLIES RECEIVED*

**Honduras**

**Letter of allegations/Communications sent**

**Keywords:** hate crimes, transgender, gender identity

177. El 23 de enero de 2009, la Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias, junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, y el Relator Especial sobre la situación de los defensores de los derechos humanos enviaron una carta de alegación al Gobierno de Honduras en relación con el asesinato de la Sra. C. N., defensora líder de los derechos de las personas transgénero en Honduras, los asesinatos de tres otras personas transgénero, la Sra. J. (P. R. Z.), la Sra. B. (A. E. V. M.) y la Sra. N. (C. A. R.), y otros recientes actos de agresión contra personas transgénero en Honduras.

178. Según las informaciones recibidas, la madrugada del 9 de enero de 2009, tres hombres desconocidos efectuaron varios disparos contra la Sra. C. N., activista por los derechos de las personas transgénero en Honduras, desde un automóvil azul en marcha en el Barrio Guaserique, Comayaguela, una ciudad colindante a Tegucigalpa. La Sra. N. recibió tres disparos en el pecho y uno en la cabeza, y murió a causa de las heridas.

179. El 20 de diciembre de 2008, cuatro agentes del cuerpo de policía golpearon a una trabajadora sexual y activista transgénero dedicada a la difusión de campañas de prevención del VIH/SIDA en el distrito del Palmira, Tegucigalpa. Los agentes intentaron robarla pero cuando se resistió, le asaltaron. Los agentes entonces le rotaron la cabeza contra una ventana y ella recibió cortes numerosos en su cara. Los agentes dijeron que estaban arrestando a la señora por romper la ventana para entrar a una propiedad privada. La llevaron a un centro médico local para tratar sus heridas. Después de que les dijo a los agentes que tiene SIDA, le insultaron. Luego le amenazaron: "si hablas, te dejaremos muerta en el monte." Se le liberó sin cargos el día siguiente. 180. El 17 de diciembre de 2008, un agresor desconocido mató la Sra. N. (C. A. R.), una trabajadora sexual transgénero cuando le asestó catorce puñaladas.

181. El 21 de noviembre de 2008, otro agresor disparó a la señora B. (A. E. V. M.), otra trabajadora sexual transgénero, mientras se encontraba trabajando en el Obelisco, parque ubicado en la zona céntrica de Comayagüela.

182. El día 30 de octubre de 2008 un agresor, cuya identidad permanece desconocida, asesinó a la Sra. J. (P. R. Z.), también trabajadora sexual transgénero.

### **Observaciones**

183. La Relatoria Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias, lamenta no haber recibido respuesta a su comunicación de 23 de enero de 2009 en el momento de finalización del presente informe y reitera su interés en recibir respuestas en relación con las alegaciones sometidas.

184. The Special Rapporteur regrets that the Government of Honduras did not reply to her communication of 23 January 2009, and reiterates her interest in receiving a response from the Government in regard to the allegations submitted.

### **India**

#### **Response from the Government to an allegation letter sent in 2007 Allegation letter**

**Keywords:** transgender, gender identity, police, violence

239. On 03 December 2008, the Special Rapporteur on violence against women, its causes and consequences, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, sent an allegation letter concerning the harassment, arrest and detention of five members of the NGO Sangama, an NGO working on issues related to the human rights of persons belonging to sexual minorities, especially hijras (male-to female transsexuals).

240. According to the information received, on 20 October 2008, M. M., D. F., K., S. B. and S. S. went to the Girinagar police station as they had received news about five hijras who had been arrested and detained, and allegedly beaten by members of the Girinagar police. As they tried to inquire about the detention of the hijras, the members of the Sangama crisis intervention team were assaulted and detained at the Girinagar police station, and later at the Banashankari police station. They were accused of offences punishable under Section 143 (unlawful assembly), (joining unlawful assembly ordered to be dispersed), 147 (rioting), and 353 (obstructing government officials in performing their duty) of the Indian Police Code. They were brought before a magistrate and placed in judicial custody later that evening. All five crisis team members were subsequently released on bail on 22 October 2008.

241. On the evening of the 20 October 2008, approximately 150 human rights activists and lawyers gathered in front of the Banashankati police station to peacefully protest against the arrest and detention of the Sangama crisis team members and to try and negotiate their release. Six delegates among the protesters were detained for about four hours at the police station and were subjected to physical and verbal abuse. Reportedly, members of the Banashankati police also attacked the peaceful protesters with sticks and subjected them to physical, verbal and sexual assault. Thirty-one human rights activists were placed into a small police van, and kept there for approximately seven hours.

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

**Keywords:** multiple discrimination, transgender, gender identity

C. Trends and Observations

3) Violence against women facing multiple and intersecting layers of discrimination

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.

D. Communications sent and Government replies received

**Argentina**

**Letter of allegations/Communications sent**

**Keywords:** transgender, gender identity

28. El 16 de mayo de 2006, la Relatora Especial, juntamente con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos de conformidad con las resoluciones, envió una carta de alegaciones al Gobierno en relación con la Asociación de Lucha por la Identidad Travestí Transexual (ALITT), una organización que trabaja en defensa de los derechos de las personas travestís y transexuales en Argentina.

29. De acuerdo con la información recibida: el 16 de septiembre de 2003 la oficina de Inspección General de Justicia (IGJ) habría negado la solicitud de otorgamiento de la personería jurídica de la ALITT. En la carta de negación la IGJ habría basado su decisión en el artículo 33, segunda parte, inciso 1 del Código Civil, que requiere que los objetivos de las organizaciones civiles tengan el objeto de bien común. Según del IGJ, los propósitos de la ALITT que incluyen la lucha para que el Estado y la sociedad acepten el travestismo como una identidad propia y la "construcción de una ciudadanía travestí - transexual" que ofrezca un marco valioso para el desarrollo de la convivencia, integrando así el patrimonio espiritual y cultural de la comunidad, no encuadraban en el concepto de "bien común". Según la información recibida la ALITT habría apelado la decisión de la IGC en la Corte Suprema en Argentina y hasta la fecha no habría recibido una respuesta.

**Respuesta del Gobierno**

36. El principal argumento que los órganos jurisdiccionales vertieron al denegar la personería jurídica consistió en entender que en la interpretación de la acepción "bien común" no es suficiente que el objeto de la asociación sea lícito sino que también debe ser socialmente útil. El fin útil de la asociación no debe serlo sólo para sus integrantes sino que debe alcanzar a la comunidad toda. Al respecto, la IGJ y la Cámara expresaron que no comprenden cuál es el bien común para toda la sociedad que se sigue de aceptar a las personas travestís o transexuales como iguales, miembros de la misma comunidad humana; tan sólo observó un beneficio particular para los integrantes del grupo conformado por las personas que detentan esa condición.

37. En este sentido, ambas instancias reprodujeron los argumentos dados en su momento por la Corte Suprema en el caso de la Comunidad Homosexual Argentina (CHA) (12/7/90, ED 138-788). En este caso, la mayoría sostuvo que bien común "supone en primer lugar bienes que



como tales satisfacen necesidades del hombre, perfeccionándolo y al mismo tiempo que son comunes, o sea susceptibles de ser obtenidos y participados por todos en forma solidaria. En este sentido bien común se contrapone a bien individual y aunque la idea es aplicable en forma análoga a todo bien común, remite principalmente al bien común general".

41. Conforme a lo expuesto, entendido el 'bien común' como las condiciones de la vida social que permiten a los integrantes de la sociedad alcanzar el mayor grado de desarrollo personal y la mayor vigencia de los valores democráticos, cabe concluir que el otorgamiento estatal de la personería jurídica a una asociación que tiene entre los propósitos de su estatuto los de luchar para que el Estado y la sociedad acepten el travestismo como una identidad propia a fin de fomentar practicas ciudadanas más democráticas e inclusivas que tiendan a la eliminación de la discriminación de la que fueron objeto históricamente en virtud de su orientación sexual y apariencia física, generar espacios de reflexión, educación e investigación tendientes a la difusión de la cultura democrática antidiscriminatoria en la que su identidad se encuentre libre de apreciaciones negativas y consecuentemente no sea estigmatizada y condenada a la exclusión y contribuir a la eliminación de los estereotipos que vinculan el travestismo a la violencia y a la prostitución como única alternativa de vida, se ciñe perfectamente a dicha manera de interpretar bien común.

42. Más aun, el mismo concepto de 'bien común' público exige que el Estado apoye, promueva y facilite la creación de asociaciones que tienen como objetivo fundamental luchar por la no discriminación de grupos de ciudadanos históricamente excluidos de la arena social, política y económica, como es el caso de las minorías sexuales, en este caso más específicamente, travesties y transexuales.

45. De aquí podría interferirse el avasallamiento al derecho de asociación reconocido en la Constitución Argentina (art. 14) y en los instrumentos internacionales de derechos humanos que gozan de jerarquía constitucional. Sin embargo, más allá de la viabilidad o no de este argumento, corresponde poner de manifiesto la violación al principio de igualdad y no discriminación que genera el no otorgamiento de la personalidad jurídica a una asociación que tiene como objeto luchar por la eliminación de la discriminación por sexo y orientación sexual en la sociedad.

49. En este sentido, cabe dejar en claro que la denegación de personería jurídica en el caso pone en juego no tanto la violación al derecho a la libertad de asociación, reunión y participación como la violación al principio de no discriminación, ya que la razón de dicha denegación solo puede estar fundada en un ánimo discriminatorio en virtud de la orientación sexual de los miembros de la ALITT -como se dio también en el caso CHA mencionado.

## **Nepal**

### **Letter of allegations/Communications sent**

**Keywords:** police, violence, transgender, gender identity, HIV/AIDS

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.

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.

## **South Africa**

### **Letter of allegations/Communications sent**

**Keywords:** hate crimes, death, sexual assault

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 19-year 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.

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

**Keywords:** stereotyping, domestic violence

*IV. MANIFESTATIONS OF VIOLENCE AGAINST WOMEN AND STATE RESPONSE*

B. Violence against immigrant, refugee and asylum-seeking women

47. Although boys and men may also become targets,[fn] HRV (honour related violence serves to ensure women's conformity with group norms and sustain control over their sexuality, as honour is seen to reside in the bodies of women.

fn: Men can become targets of HRV 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.

C. Violence in the context of prostitution

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.

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

**Keywords:** asylum & refugees, domestic violence

*III. MANIFESTATIONS OF VIOLENCE AGAINST WOMEN IN SWEDEN*

C. Violence against women of immigrant, asylum-seeker or refugee background

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 Şahindal in January 2002. [fn] 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.

fn: Fadime, who grew up in a Kurdish family of Turkish origin, refused to enter into a marriage arranged by her family and had a Swedish boyfriend. She publicly spoke out against patriarchal oppression in immigrant families and also addressed the Parliament in this context. In January 2002 her father shot and killed her in the family's home in Uppsala. He claimed to have committed the crime to restore the family's honour.

#### *IV. STATE AND CIVIL SOCIETY INITIATIVES WITH RESPECT TO VIOLENCE AGAINST WOMEN*

##### *B. Protection of women at risk of violence*

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.

#### *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 to address the perpetuation of unequal gender power relations in the private sphere, including through measures at the school and preschool levels, to foster the development of male and female identities that break with notions of inequality and use of force;
- 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

## **11. SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH**

<http://www2.ohchr.org/english/issues/health/right/index.htm>

### **Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Addendum: Mission to Viet Nam, A/HRC/20/15/Add.2, 4 June 2012**

**Keywords:** HIV/AIDS, stigma, discrimination

#### *V. PREVENTION AND CONTROL OF HIV/AIDS*

43. Problems of data collection and intervention design are exacerbated by the stigmatization of vulnerable groups. The Commission on AIDS in Asia confirmed that the HIV epidemic in Asia is largely driven by vulnerable groups, including female sex workers (FSWs), injecting drug users (IDUs) and men who have sex with men (MSM). Stigmatization and discrimination of IDUs, FSWs and MSM often arises from, and is perpetuated by, criminalization (or de facto criminalization) of the activities of these groups. Stigma contributes to the spread of the epidemic by deterring affected individuals from accessing such health services as HIV testing and treatment for fear of criminal sanctions, violence and discrimination. Furthermore, stigmatization and discrimination present barriers to the development and implementation of preventative measures tailored to the needs of these vulnerable groups.

##### *C. Participation in decision-making*

59. Participation in health-related decision-making is also critical to empowering vulnerable groups. Empowerment of affected populations, particularly IDUs, FSWs and MSM, will encourage community-guided and community-led initiatives towards raising awareness of the issues faced by these groups. Such initiatives will also help combat the stigmatization and discrimination in the society. This will assist with the rehabilitation of IDUs and their reintegration into the wider community, ultimately improving the health outcomes of these populations. Moreover, other experiences show that community-led initiatives are more sustainable in the long run. For these reasons, the Special Rapporteur encourages the Government to facilitate the participation of vulnerable populations, including IDUs, FSWs and MSM, in the formulation and implementation of all decisions affecting their health. The Special Rapporteur also encourages community-based peer groups of current and former PWUD and FSWs, such as those currently operating in Hanoi, Hai Phong and Ho Chi Minh City, which offer support to PWUD and FSWs through group meetings, small loans, overdose prevention and connections to health and harm-reduction services.

#### *VI. CONCLUSIONS AND RECOMMENDATIONS*

63. The Special Rapporteur urges the Government to consider the following recommendations in the area of HIV/AIDS:

(a) Ensure accurate and complete epidemiological surveillance and data collection regarding HIV/AIDS;

(b) Eliminate stigmatization and create an enabling environment, in which at-risk populations, including injecting drug users, female sex workers and men who have sex with men, are able to effectively access health care, by de-penalizing drug use and sex work;

(c) Develop a strategy to account for reductions in international assistance in order to ensure that access to HIV/AIDS prevention, treatment and care is maintained and expanded;

64. The Special Rapporteur urges the Government to consider the following recommendations with respect to people who use drugs and rehabilitation centres:

(a) Close all "05" and "06" rehabilitation centres, with a view to replacing the current practice of compulsory detention and non-consensual treatment with alternative forms of treatment, care and support in compliance with international human rights standards;

...

(e) Support and encourage community-based peer groups of current and former people who use drugs and female sex workers that offer support through group meetings, small loans, overdose prevention and connections to health and harm-reduction services.

**Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Addendum: Mission to Ghana, A/HRC/20/15/Add.1, 10 April 2012**

**Keywords:** criminal laws, stigma, HIV/AIDS

*III. HEALTH SYSTEM*

*HIV/AIDS under NHIS*

21. Although knowledge of HIV/AIDS in Ghana is high, this broad awareness has not translated into knowledge of HIV/AIDS prevention. While 98 per cent of women and 99 per cent of men have heard of HIV/AIDS, only 25 per cent of women and 33 per cent of men possess comprehensive knowledge of prevention strategies. This awareness has more importantly failed to reduce the still potent stigma directed against people living with HIV (PLHIV). This stigmatization is reinforced through criminalization of the conduct of some of the most at risk populations, namely female sex workers and men who have sex with men. Criminalization of the conduct of these groups is a serious concern in light of discrimination experienced by men who have sex with men. The impact of criminalization, aside from the generation of stigma, includes reduced access to goods and services for PLHIV who are afraid to seek out such services for fear of sanction. As a result, HIV prevalence rates among female sex workers (25.1 per cent) and men who have sex with men (25 per cent) remain far and unacceptably higher than in the general population.

*IX. CONCLUSIONS AND RECOMMENDATIONS*

60. In respect of HIV/AIDS, the Special Rapporteur urges the Government to:

- (a) Provide anti-retroviral treatment free of charge;
- (b) Decriminalize sex work and men having sex with men;
- (c) Ensure that access to anti-retroviral treatment is maintained and expanded by developing a plan to make up for funding shortfalls that may result from reductions in international assistance.

**Note by the Secretary-General transmitting the interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/66/254, 3 August 2011**

**Keywords:** criminal laws, sexual and reproductive health and rights

*III. INTERNATIONAL HUMAN RIGHTS LAW AND THE RIGHT TO SEXUAL AND REPRODUCTIVE HEALTH*

9. Reproductive health rights also feature prominently in the Programme of Action of the 1994 International Conference on Population and Development, the 1995 Beijing Platform for Action and the Millennium Development Goals, which affirm the rights of women to control all aspects of their health, to respect bodily autonomy and integrity and to decide freely in matters relating to their sexuality and reproduction, free of discrimination, coercion and violence. The Beijing Platform for Action states that States should consider removing punitive measures related to sexual and reproductive health. The relationship between improved sexual and reproductive health for women and poverty reduction is particularly emphasized.

*IV. CRIMINAL LAWS AND OTHER LEGAL RESTRICTIONS AFFECTING THE RIGHT TO SEXUAL AND REPRODUCTIVE HEALTH*

Impact of Criminal Laws and other Legal Restrictions affecting the Right to Sexual and Reproductive Health

4. Education and Information on Sexual and Reproductive Health

59. Laws restricting information about sexual and reproductive health and which censor discussions of homosexuality in the classroom fuel stigma and discrimination of vulnerable minorities. For example, laws and policies that promote abstinence only education reduce sexual education to images and stereotypes of heteronormativity, given their focus on procreation; some of these programmes even contain explicitly discriminatory content on gender and sexual orientation. In certain instances, teachers have been suspended or threatened with lawsuits for engaging in discussions on "inappropriate" sexual matters with

their students when discussing sexual and reproductive health issues in the classroom. In other cases, pursuant to abstinence-only and anti-obscenity policies, school districts, courts and legislators have prohibited civil society organizations from meeting in public schools. Such laws and policies perpetuate false and negative stereotypes concerning sexuality, alienate students of different sexual orientations and prevent students from making fully informed decisions regarding their sexual and reproductive health

**Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Addendum: Summary of communications sent and replies received from States and other actors, A/HRC/17/25/Add.1, 16 May 2011.**

**Cameroon**

**Communication sent**

**Keywords:** arrests, detention, police, forensic examinations

70. Le 27 Octobre 2010, le Rapporteur spécial sur le droit à toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, conjointement avec le Groupe de travail sur la détention arbitraire et le Rapporteur spécial sur la torture et autres peines ou traitements cruels, inhumains ou dégradants a envoyé un appel urgent au Gouvernement du Cameroun concernant l'arrestation de M. Bruno Afaaba et de M. Marc- Henri Batta pour leur supposée homosexualité.

71. Selon les informations reçues, M. Afaaba et M. Batta auraient été arrêtés le 27 septembre 2010 par des officiers du 1er escadron de gendarmerie à Yaoundé, et seraient actuellement détenus à la prison de Kondengui. Ils auraient été arrêtés après que leurs maisons aient été fouillées. Lors de cette fouille, des boîtes de préservatifs et de lubrifiants auraient été trouvées. Les deux hommes auraient été détenus et le 4 octobre, auraient été forcés à subir un examen anal pour confirmer leur activité sexuelle. Il est aussi allégué que M. Afaaba et M. Batta ont été menottés pendant l'examen médical et n'ont pas été informés sur leur droit de garder le silence, ni d'avoir recours à une assistance juridique.

**Observation**

72. Le Rapporteur spécial regrette, au moment de la finalisation du présent rapport, l'absence de réponse aux communications.

**Mexico**

**Communication sent**

**Keywords:** detention, torture, police

194. El **14 de Febrero de 2011**, el Relator Especial sobre el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes y el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión enviaron un llamamiento urgente señalando a la atención urgente del Gobierno la información recibida en relación con la detención del señor José Ricardo Maldonado Arroyo, Director de la Red de Personas Afectadas por VIH (REPAVIH) con sede en Mérida, Yucatán, y activista de los derechos del colectivo de gays, lesbianas, bisexuales y personas transgénero (LGBT). REPAVIH es una organización que desde 2006 ofrece asesoramiento médico y apoyo emocional a las personas afectadas por el virus VIH en Yucatán y lleva a cabo campañas de sensibilización y contra la discriminación.

195. Según las informaciones recibidas, el 4 de diciembre de 2010, el Sr. José Ricardo Maldonado Arroyo habría sido detenido de manera arbitraria por elementos de la policía judicial del Estado de Yucatán. Los agentes habrían alegado que el motivo de su arresto era la presunta investigación de un delito y, sin mostrarle una orden de detención, le habrían esposado, vendado los ojos e introducido y transportado en un vehículo no oficial donde le habrían insultado y se habrían dirigido a él con expresiones homófobas.

196. Según las informaciones recibidas, los agentes habrían golpeado al Sr. Maldonado Arroyo en repetidas ocasiones en la cara, el pecho y la espalda mientras le preguntaban acerca de su trabajo de defensa de los derechos de las personas que viven con el VIH y del colectivo de gays, lesbianas, bisexuales y personas transgénero. El Sr. Maldonado Arroyo habría permanecido cerca de cuatro horas retenido con el rostro cubierto con su propia playera tiempo durante el cual habría sido obligado a cambiar varias veces de vehículo. Posteriormente, habría sido puesto en libertad bajo la amenaza de volver a ser agredido si presentaba alguna queja por los hechos ocurridos.

197. La identidad de uno de los agentes a cargo de la detención del Sr. Maldonado Arroyo, el cual vestían cazadora negra con la leyenda "PGJ", ha sido puesta en conocimiento de nosotros.

198. Según se informa, el 5 de diciembre de 2010, el Sr. Maldonado Arroyo habría presentado una denuncia ante la Procuraduría General de Justicia en el Estado así como una queja ante la Comisión de Derechos Humanos del Estado de Yucatán (CODHEY). En primera instancia se habría abierto un expediente por el delito de "lesiones" pero descartando el abuso de autoridad o tortura. Por su parte, la CODHEY habría también realizado su propia investigación, incluyendo fotografías sobre las lesiones, certificados médicos y testimonios. A pesar de la solicitud por parte del Sr. Maldonado Arroyo de medidas cautelares a su favor, se informa que éstas habrían sido denegadas de forma verbal.

### **Observations**

199. El Relator Especial lamenta que al finalizar este informe, no se había recibido una respuesta a la comunicación del **14 de febrero de 2011**.

### **République démocratique du Congo**

#### **Communication sent**

**Keywords :** criminal laws

268. Le 15 novembre 2010, le Rapporteur spécial sur le droit de toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression ont envoyé une lettre d'allégation au Gouvernement de la République Démocratique du Congo concernant une « proposition de loi relative aux pratiques sexuelles contre nature » qui aurait été débattue récemment au sein de l'Assemblée nationale de la République démocratique du Congo.

269. Selon les informations reçues, le 21 octobre 2010, la salle des Congrès de l'Assemblée nationale de la République démocratique du Congo aurait débattu d'une « proposition de loi relative aux pratiques sexuelles contre nature ». Selon cette proposition de loi, « l'homosexualité (...) [est] une menace à la famille (...), une déviation de la race humaine vers des relations contre nature (...) et [constitue] une dépravation des mœurs qualifiées d'abomination ».

270. La proposition de loi visait à réviser le code pénal congolais, tel que modifié et complété par la loi du 20 juillet 2006 sur les violences sexuelles. Les modifications portaient spécifiquement sur le paragraphe 8 de la section III du titre VI de la dite loi du code pénal :

- selon l'article 174h1 de la proposition de loi, « [s]era puni de trois à cinq ans de servitude pénale et d'une amende de 500.000 francs congolais, quiconque aura eu des relations homosexuelles » ;

- selon l'article 174h2 de la proposition de loi, « [s]ont interdites... toute association promouvant ou défendant des rapports sexuels contre nature. Sera puni de six mois à un an de servitude pénale et d'une amende de 1.000.000 francs congolais constants, quiconque aura créée, financé, initié et implanter toute association toute structure promouvant les relations sexuelles contre nature » ; et

- selon l'article 174h3 de la proposition de loi, « [s]ont interdits... toute publication, affiches, pamphlets, film mettant en exergue, ou susceptibles de susciter ou encourager des pratiques sexuelles contre nature ».

### **Observation**

271. Le Rapporteur regrette que le Gouvernement n'ait pas transmis de réponse à sa communication au moment de la finalisation du rapport.

## **Uzbekistan**

### **Communication sent**

**Keywords:** arrests, detention, HIV/AIDS, children

352. On 11 May 2010, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a joint allegation letter to the Government of Uzbekistan concerning the sentencing of Mr. Maxim Popov, psychologist, founder and director of the non-governmental organization Izis, founded by young medical professionals which works on HIV/AIDS prevention. Izis has also implemented HIV prevention activities, including under contracts with UNICEF, UNFPA and UNAIDS.

353. According to the information received, Mr. Maxim Popov was arrested in January 2009 and convicted in July 2009. His conviction was publicly disclosed only at the end of February 2010. Mr. Popov was sentenced to 7 years imprisonment for charges which included theft by embezzlement, concealment of foreign currency, tax evasion, inducing minors to antisocial behaviour, indecent assault without violence against a minor and inducing engagement in the use of narcotic drugs or psychotropic substances.

354. It was believed that Mr. Popov was convicted in connection with writing and distributing HIV/AIDS prevention materials. Mr. Maxim Popov was the author of the brochure "HIV and AIDS today", a publication funded by UNAIDS and UNICEF. He was also convicted for distributing HIV prevention materials published by UNAIDS and other UN agencies to adolescents that explicitly referred to drug use, sex work and homosexuality.

355. Concern was expressed that the arrest and sentencing of Mr. Maxim Popov may be related to his peaceful activities in defence of human rights, in particular his work on HIV/AIDS

### **Response received**

356. On 30 June 2010, the Government of Uzbekistan replied to the joint allegation letter sent on 11 May 2010. It provided information on IZIS and on Mr. Popov.

357. With regard to IZIS, the Government indicated that in the course of the checks conducted to ensure that the aims of the organisation were in accordance with the law, it was found that the requirements of the statute had been breached and that there had been violations of Uzbek law, some of them of a criminal nature. The materials of the verification process were handed over to the public prosecutor's office and criminal charges were brought against IZIS. The criminal court found Mr. Popov to be guilty and subsequently the Tashkent Civil Court accepted the application for IZIS to be dissolved.

358. Concerning Mr. Popov, the Court ruled that he had abused his official position as director of IZIS by embezzling large sums of money that were supposed to be used for projects related to IZIS. Notably, Mr. Popov and his chief accountant Mr. Kostyuchenko, embezzled funds provided by UNICEF regional office, UNDP, the Regional Management Board of the Central Asia AIDS Control Project etc. Besides, Mr. Popov misappropriated material goods placed in his charge, of a total value of a 193,100 sum.

359. The Government added that Mr. Popov distributed a book in Uzbek education establishments attended by schoolchildren and students engaging in academic, sporting or communal activities, which promoted the use of narcotic drugs and antisocial behaviour among the young. The Government considered that Mr. Popov was well aware of the nature of the book's content. The book contained texts instructing young people of sexual activities and propaganda for homosexuality, pornography and pornographic images.

360. As a result Mr. Popov was found guilty and sentenced to seven years imprisonment and stripped him of the right to hold any office involving the direction of an organization or economic administration for two years.

### **Observation**

361. The Special Rapporteur thanks the Government for its response received on 30 June 2010.



**Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Addendum: Mission to the Syrian Arab Republic - A/HRC/17/25/Add.3, 21 March 2011.**

**Keywords:** health, detention, stigma

*VII. RIGHT TO HEALTH AND PERSONS IN DETENTION*

78. Certain conditions and situations as described by the prison medical staff were cause for concern, especially in light of the Standard Minimum Rules. For example, there is no routine examination provided to the prisoners upon admission. In the Special Rapporteur's opinion, such a routine check is necessary, in order to accurately and adequately determine the incarcerated persons' health needs. Furthermore, people who use drugs were kept in unnecessary isolation from the rest of the prison population. Moreover, in cases of homosexual detainees, prison staff follow an isolation procedure, during which time these prisoners receive psychological "treatment" and are kept apart from the rest of the prison population for no reason besides their sexual orientation or gender identity. In each of these cases stigma is reinforced, vulnerable detainees are discriminated against, and there is a resulting deprivation of the enjoyment of the right to health without meaningful public health benefit.

**Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/14/20, 27 April 2010.**

**Keywords:** criminal laws, health, violence, stigma

*I. INTRODUCTION*

1. In the present report, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health considers several issues relating to the criminalization of private, consensual sexual behaviour between adults, and the impact of such criminalization on the enjoyment of the right to health. The law concerning health practices and behaviours can protect the health of individuals or create barriers to effective health interventions and outcomes. The Special Rapporteur considers criminalization to include not only laws that are enacted to render certain conduct deserving of criminal punishment, but additionally, the use of pre-existing criminal laws against certain individuals or communities on the basis of certain characteristics (such as sexuality or occupation).

2. The Special Rapporteur believes that the criminalization of private, consensual sexual interaction between adults represents a significant impediment to the realization of the right to health of all persons, particularly those against whom the law is directed. He emphasizes that all human rights are universal, indivisible, interdependent and interrelated. The criminalization of private, consensual sexual conduct between adults infringes on not only the right to health, but also various other human rights, including the rights to privacy and equality. In turn, infringement of these human rights impacts indirectly on the right to health.

*II. SAME-SEX CONDUCT, SEXUAL ORIENTATION AND GENDER IDENTITY*

6. Criminal laws concerning consensual same-sex conduct, sexual orientation and gender identity often infringe on various human rights, including the right to health. These laws are generally inherently discriminatory and, as such, breach the requirements of a right-to-health approach, which requires equality in access for all people. The health related impact of discrimination based on sexual conduct and orientation is far-reaching, and prevents affected individuals from gaining access to other economic, social and cultural rights. In turn, the infringement of other human rights impacts on the realization of the right to health, such as by impeding access to employment or housing.

7. These infringements ultimately undermine the inherent dignity of persons upon which the international human rights framework is based. Denying the dignity of individuals through the criminalization of certain conducts substantially diminishes their self-worth and, in doing so, prevents the realization of the right to health. The decriminalization of such conduct is necessary to address the disempowerment that affected individuals and communities face, and to enable full realization of the right to health.

A. Criminalization of same-sex conduct, sexual orientation and gender identity: background

8. Various criminal laws exist worldwide that make it an offence for individuals to engage in same-sex conduct, or penalize individuals for their sexual orientation or gender identity. For example, consensual same-sex conduct is a criminal offence in about 80 countries. Other laws also indirectly prohibit or suppress same-sex conduct, such as antidebauchery statutes and prohibitions on sex work. Many States also regulate extra-marital sexual conduct through criminal or financial sanctions, which affects individuals who identify as heterosexual but intermittently engage in same-sex conduct. These laws also have a significant impact on individuals engaging in sexual conduct with members of the opposite sex outside of marriage, particularly women, although this is outside the scope of this report. These laws represent an infringement of the right to health as outlined in article 12 of the International Covenant on Economic, Social and Cultural Rights. Article 2, paragraph 2, of the Covenant requires that State parties undertake to guarantee that the rights within the Covenant, including the right to health, are exercised without discrimination of any kind, including on the basis of "other status". This is further developed in general comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights, which notes that the Covenant proscribes any discrimination in access to health care and underlying determinants of health, including on the grounds of sexual orientation (para. 18). The Committee also recognizes gender identity as a prohibited ground of discrimination.<sup>10</sup> In its general comment No. 4 (2003), the Committee on the Rights of the Child also confirmed that "other status" extends to sexual orientation (para. 6). Such criminalization impedes the right to health, not only through discrimination, but by denying equal access to health services, as will be demonstrated.

10. Sexual orientation is defined as "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". Gender identity refers 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 ... and other expressions of gender.

#### *Interpretation and legal developments:*

11. The European Court of Human Rights has held that discrimination based on sexual orientation or gender identity is in violation of human rights. In 1981, in *Dudgeon v. United Kingdom*, the European Court of Human Rights determined that the criminalization of private homosexual acts constituted an unjustified interference with the right to privacy enshrined within article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The United Nations Human Rights Committee in *Toonen v. Australia* subsequently ruled that "sex" discrimination includes discrimination based upon sexual orientation, noting that criminalization was not a reasonable measure to prevent spread of HIV/AIDS. In *S.L. v. Austria*, the European Court of Human Rights also held that differences in the treatment of heterosexual and homosexual populations based on age of consent had no objective and reasonable justification, and was therefore discriminatory.

12. A number of States now prohibit discrimination on the basis of sexual orientation, following judicial decisions or the introduction of legislation concerning this issue. In the landmark 1998 case *National Coalition for Gay and Lesbian Equality and another v. Minister of Justice and others*, the South African Constitutional Court struck down three separate sodomy laws, noting the right of all people to dignity and equality in concluding that discrimination based on sexual orientation was prohibited under the South African Constitution. The Supreme Court of the United States declared Texan sodomy laws unconstitutional in the case of *Lawrence v. Texas*, on the basis that it infringed on the liberty protected under the Fourteenth Amendment to the Constitution through the criminalization of intimate, consensual sexual conduct.

13. In the matter of *Naz Foundation v. Government of NCT of Delhi and Others*, the High Court of Delhi cited the case of *Toonen* and considered the reasoning of the South African Constitutional Court in finding section 377 of the Indian Penal Code unconstitutional. This section of the code criminalized, "carnal intercourse against the order of nature with any man, woman or animal" – wording from colonial rule that is still in use in more than half of the jurisdictions criminalizing sodomy worldwide. The Naz Foundation submitted that by criminalizing private, consensual same-sex conduct, section 377 perpetuated negative and discriminatory beliefs towards same-sex conduct, driving activities underground and crippling HIV/AIDS prevention efforts.

14. In February 2010, Fiji passed a law decriminalizing consensual same-sex conduct, through the National Crimes Decree.<sup>21</sup> Hong Kong Special Administrative Region of China also overturned a long-standing statute banning sodomy in 2005, and since 2007, consensual same-

sex acts have also been legal in Nepal.

15. Despite these recent developments in decriminalization, bringing many States into conformity with international human rights obligations, a significant number of countries maintain criminal penalties for consensual same-sex conduct. Some States have taken steps to broaden the application of existing laws, or to impose harsher penalties for same-sex conduct. Section 365A of the penal code of Sri Lanka formerly prohibited male homosexual acts, but was subsequently amended to be "gender-neutral", resulting in the criminalization of female same-sex conduct. The Parliament of Uganda introduced a bill in October 2009 that would allow for the death penalty as punishment for the violation of certain provisions of the anti-sodomy statute. Uganda, praised by HIV/AIDS activists for its treatment programme and policies, will put its campaign to eliminate HIV in great danger should this bill pass.

16. Conversely, an article proposed for inclusion in the penal code of Rwanda that would have carried penalties ranging from 5 to 10 years' imprisonment for any person who "practices, encourages or sensitizes people of the same sex, to sexual relation or any sexual practice" was recently rejected. The Minister of Justice of Rwanda, Tharcisse Karugarama, stated that "... sexual orientation is a private matter and each individual has his or her own orientation – this is not a State matter at all".

#### B. Effects of criminalization on the right to health

##### *Poor health outcomes and inhibition of access to health services*

17. The Special Rapporteur believes that criminalization has adverse consequences on the enjoyment of the right to health of those who engage in consensual same-sex conduct, through the creation of the societal perception that they are "abnormal" and criminals. This has a severe deleterious impact on their self-regard, with significant, and sometimes tragic, consequences on their health-seeking behaviour and mental health. Rates of suicide attempts amongst youth who engage in consensual same-sex conduct have been variously reported as between three and seven times higher than for youth who identify as heterosexual; the rates are similar for adults.

18. In jurisdictions in which their sexual conduct is criminalized, affected individuals are much more likely to be unable to gain access to effective health services, and preventive health measures that should be tailored to these communities are suppressed. The fear of judgement and punishment can deter those engaging in consensual same-sex conduct from seeking out and gaining access to health services. This is often a direct result of the attitudes of health-care professionals who are not trained to meet the needs of same-sex practising clients – not only in terms of sexual health, but also with regard to health care more generally. Often, health professionals may refuse to treat homosexual patients altogether, or respond with hostility when compelled to do so. Where patients may be guilty of a criminal offence, by engaging in consensual same-sex conduct, this has the potential to jeopardize the obligations of confidentiality that arise during the course of the doctor-patient relationship, as health professionals may be required by law to divulge details of patient interaction.

19. These problems are compounded for persons living with HIV/AIDS. Due to historical circumstances – most significantly, the association of AIDS with the gay community – the enjoyment of the right to health is disproportionately impacted as it pertains to HIV/AIDS diagnosis and treatment. For instance, in the Asia-Pacific region, almost 90 per cent of homosexual men have no access to HIV prevention or care. While this is due to a range of circumstances, a general atmosphere of fear has been the predominant factor in preventing HIV-positive individuals from accessing health services and treatment. This atmosphere of fear also impacts adversely on the wider community. In countries where homosexuality is criminalized, the negative association of HIV/AIDS with homosexuality can result in individuals who do not engage in consensual same-sex conduct avoiding testing and treatment for HIV/AIDS, for fear of being subject to criminal sanctions, violence or discrimination.

##### *Violence and abuse*

20. Sanctioned punishment by States reinforces existing prejudices, and legitimizes community violence and police brutality directed at affected individuals. Seven States, or parts thereof, currently retain the death penalty as a possible punishment for sodomy. The Special Rapporteur believes that the imposition of the death penalty for consensual samesex conduct is not only unconscionable, but further represents arbitrary deprivation of life, constituting an infringement of the right to life recognized in article 6 of the International Covenant on Civil and Political Rights.

21. Many reports indicate instances of violence directed at individuals based on same-sex conduct and gender identity. Violence can inhibit individuals from seeking access to health services out of fear of reprisals and secondary victimization resulting from identification as a victim of such an attack.

#### *Stigmatization*

22. Criminalization may not be the sole reason behind stigma, but it certainly perpetuates it, through the reinforcement of existing prejudices and stereotypes. Same-sex conduct was long considered a psychiatric disorder; until recently, the world's major professional psychological classification system retained homosexuality as a psychological disorder, which speaks to how deeply this stigma was embedded.

23. Stigmatization prevents legislative and policymaking institutions from adequately addressing health-related matters in communities that are especially vulnerable to the infringement of the enjoyment of the right to health. Where same-sex conduct is illegal, sexual orientation may be treated as a problem that needs to be corrected, ignored or used to legitimize violence directed towards these individuals. Attempts to "cure" those who engage in same-sex conduct are not only inappropriate, but have the potential to cause significant psychological distress and increase stigmatization of these vulnerable groups.

#### C. Right-to-health approach

24. As with all human rights, States are required to take steps to respect, protect and fulfill the right to health. The criminalization of private, consensual same-sex conduct creates an environment that is not conducive to affected individuals achieving full realization of their right to health. Health services must be accessible for all, without discrimination, especially for the most vulnerable or marginalized sections of the population. The repeal of laws criminalizing consensual same-sex conduct between adults helps to ensure compliance with this State obligation.

25. Criminalization is not only a breach of a State's duty to prevent discrimination; it also creates an atmosphere wherein affected individuals are significantly disempowered and cannot achieve full realization of their human rights. For instance, States are bound to take steps to establish prevention and education programmes for behaviour-related health concerns such as HIV/AIDS. Decriminalization facilitates the achievement of this obligation because a social atmosphere wherein adult consensual same-sex conduct is accepted constitutes an essential part of structural prevention of HIV/AIDS. A legal framework promoting an enabling environment has been noted as one of the most important prerequisites to achieve this goal, along with combating both discrimination and structural violence.

26. A right-to-health approach requires that States decriminalize same-sex consensual conduct, as well as repeal laws that discriminate in respect of sexual orientation and gender identity, in order to meet core obligations of the right to health and create an environment enabling full enjoyment of the right.

#### *V. RECOMMENDATIONS*

76. The Special Rapporteur calls upon States:

(a) To take immediate steps to decriminalize consensual same-sex conduct and to repeal discriminatory laws relating to sexual orientation and gender identity, as well as to implement appropriate awareness-raising interventions on the rights of affected individuals;

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#### **Burundi**

#### **Communication sent**

**Keywords :** criminal laws, HIV/AIDS, human rights defenders

12. Le 3 avril 2009, le Rapporteur spécial sur le droit à toute personne de jouir du meilleur état

de santé physique et mentale susceptible d'être atteint, conjointement avec l'Expert indépendant sur la situation des droits de l'homme au Burundi et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, a envoyé un appel urgent au Gouvernement du Burundi concernant une disposition du projet de code pénal qui criminalisait l'homosexualité et punissait tout acte sexuel entre des personnes du même sexe consentantes d'une peine allant jusqu'à deux ans d'emprisonnement. De sérieuses préoccupations avaient déjà été exprimées au sujet de ce projet de loi dans un appel urgent en date du 5 décembre 2008.

13. Selon les nouvelles informations reçues, le 17 février 2009, le Sénat aurait largement rejeté la disposition dans le projet de code pénal qui criminalisait l'homosexualité. Cependant, l'Assemblée Nationale aurait par la suite voté la restauration de cette disposition dans le projet de code pénal. Une commission parlementaire, composée de membres de l'Assemblée Nationale et du Sénat, aurait été mandatée pour produire un rapport sur cette question et aurait entériné ce vote. Le projet de code pénal serait actuellement entre les mains du Président du Burundi pour promulgation.

14. La criminalisation de l'homosexualité aurait un effet préjudiciable sur les efforts du Burundi dans sa lutte contre le VIH/SIDA. Les politiques de la santé publique concernant l'épidémie du VIH/SIDA démontrent clairement que la décriminalisation de l'homosexualité combinée avec des efforts visant à lutter contre la discrimination des homosexuels, lesbiennes, bisexuels et transsexuels, représentent une mesure substantielle pour restreindre la propagation du virus. De plus, si le projet de code en question entre en vigueur, celui-ci aurait pour effet d'entraver l'accès à l'information, aux soins et aux traitements des personnes homosexuelles, atteintes de VIH/SIDA au Burundi, et par conséquent pourrait compromettre la réponse nationale dans la lutte contre le VIH/SIDA.

15. Ce projet de loi aurait également un effet néfaste sur la situation des défenseurs des droits de l'homme qui oeuvrent pour la promotion et la protection des droits des homosexuels, bisexuels et transsexuels. En effet, cette loi mettrait ces défenseurs dans une situation de vulnérabilité accrue car ils seraient potentiellement la cible d'attaques et d'actes d'intimidation de la part des autorités et de la population.

16. Lors de l'examen périodique universel du Burundi en date du 2 décembre 2008, le Gouvernement de Votre Excellence a été interpellé sur cette question de la criminalisation de l'homosexualité et qu'il a demandé à disposer de plus de temps pour y répondre convenablement.

17. Le Rapporteur spécial, l'Expert indépendant sur la situation des droits de l'homme au Burundi et la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme exhortent le Président du Burundi à ne pas promulguer le projet de code pénal dans son état actuel, en conformité avec les obligations internationales du pays en matière de droits de l'homme énoncées précédemment dans la lettre du 5 décembre 2008.

18. Le Rapporteur spécial regrette, au moment de la finalisation du présent rapport, l'absence de réponse aux communications en date du 3 avril 2009. Il considère la réponse à son communication comme partie intégrante de la coopération des gouvernements avec son mandat. Il exhorte le Gouvernement à répondre au plus vite aux craintes exprimées dans celle-ci.

## **Uganda**

### **Communication sent**

**Keywords:** criminal laws, detention, torture

328. On 12 November 2009, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with the Chairperson of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint urgent appeal to the Government of Uganda concerning the Detention of nine men under Penal Act Code Article 145(a) and the alleged ill treatment of two of the detainees, one of whom died immediately upon release from prison.

329. According to the information received, consensual homosexual conduct is a criminal offense in Uganda, punishable, in some cases, with life imprisonment. At present, people suspected of homosexual conduct are being prosecuted on the charge of "carnal knowledge of

any person against the order of nature" under Penal Act Code Article 145(a). Reportedly, nine men currently are being detained on this charge and have been held in detention for over 90 days without trial. They allegedly were arrested without warrant or other permission by local police officers, in some cases in cooperation with Local Council Officials, on the basis of unfounded allegations of homosexuality made by fellow villagers. They thus have been detained for extended periods of time, longer than the maximum of 48 hours, during which time some men were beaten by other detainees and the police, forced to undergo invasive medical examinations and denied access to necessary health care.

330. Details regarding each of the individuals are as follows:

1. Mr. S. S. was first detained in Nakifuma, Kawuuga Prison, Mukono, and is now detained in Luzira Prison, Kibuye. Initially charged with "carnal knowledge against the order of nature", he was later charged with "defilement" and "aggravated defilement". Mr. S. remains in Luzira Prison pending a hearing on his application for bail, which has recently been postponed for two months.

2. Mr. S. K. K. has been detained since March 2009 in Kigo Prison, Entebbe. He was initially charged with "carnal knowledge against the order of nature" and later with "aggravated defilement".

3. Mr. C. T.: The details of his detention are unknown.

4. Mr. J. K. is detained in Butuntumula Prison, Luwero Village. Initially charged with "carnal knowledge against the order of nature", he was later charged with "defilement" and "aggravated defilement".

5. Mr. J. S. was detained from June 2009 to 13 July 2009 in Luzira Prison, Kibuye, charged with "aggravated defilement".

6. Mr. D. E. M. K. K. was arrested in May 2009 in Nakawuka Village, Kasanje Sub-County, Wakiso District and charged with "aggravated defilement".

7. Mr. J. K. T. was arrested in October 2008 in Karoza, Mitooma, Bushenyi and charged with "carnal knowledge against the order of nature".

8. Mr. F. W. (also known as N. M.) was arrested on 8 April 2009 in Namakwekwe Village, Mbale District of Eastern Uganda and charged with "carnal knowledge against the order of nature". He was detained in Kampala Road Police Station, Mbale Police Station, and Maluke Prison (all in the Mbale District of Eastern Uganda) until 20 May 2009.

9. Mr. B. M. was arrested on 8 April 2009 in Namakwekwe Village, Mbale District of Eastern Uganda, charged with "carnal knowledge against the order of nature". He was detained in Kampala Road Police Station, Mbale Police Station and Maluke Prison (all in the Mbale District of Eastern Uganda) until June 16, 2009.

331. In particular, information received regarding Mr. B. M. and Mr. F. W. suggests that there were no investigations into actions by the police, who lacked arrest warrants. The arrests followed denunciations of Namakwekwe villagers and local LCD officers who suspected Messrs. M. and W. of homosexual activity. At the Kampala Road Police Station, both men were kept in a cell with 17 other men who allegedly severely beat them on two occasions, after having been incited by the police to do so upon disclosure of the allegations against them.

332. On 9 April 2009, both men were transferred to Mbale Police Station, where a police doctor allegedly examined them in a humiliating and invasive manner. The report of these examinations (dated 16 June 2009) stated that both men had gonorrhoea and were HIV negative, and mentioned that both men had pierced ear lobes, a presumed sign of homosexuality. The police also allowed the media to take photographs of Mr. M. and Mr. W., which were then used in full coverage stories on television and in newspapers. Reports about these alleged violations of the right to privacy were submitted to the Uganda Human Rights Commission on 17 June 2009.

333. Both men remained in custody at Mbale until 17 April 2009, when they were formally charged in court with "having carnal knowledge against the order of nature." They were then transferred on remand to Maluke Prison in Mbale. Following appearances on 21 April 2009 and 4 May 2009, bail was set for both of them. However, neither man could immediately meet the financial terms and conditions set by the court, so their detention was again extended until 20

May 2009, when Mr. W. was released. He is attending court hearings while on bail.

334. Meanwhile, Mr. M. remained in custody until 16 June 2009. Due to the violent treatment received while in custody, Mr. M. was admitted to Mbale District Hospital, with severe injuries to his head and internal organs, immediately upon getting bail. However, he went into a coma before any medical examinations were carried out. Subsequently, his condition deteriorated and he died on 13 September 2009. Medical records contain conflicting information on the cause of this death. While one report indicates that the coma was due to complications from syphilis, others indicate that his death was related to meningitis or anaemia. Despite the resulting uncertainty, no autopsy was carried out on Mr. M. and the cause of this death remains unknown. However, a number of sources have indicated their fear that physical and psychological ill-treatment or torture during Mr. M.'s detention may have caused or contributed to his death.

#### **Observation**

335. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to this communication.

#### **Uganda**

##### **Communication sent**

**Keywords:** criminal laws, HIV/AIDS

342. On 23 December 2009, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, together with Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Chairperson of the Working Group on Arbitrary Detention, and Special Rapporteur on extrajudicial, summary or arbitrary executions sent a joint allegation letter to the Government of Uganda concerning a legislative bill pending before the Ugandan legislature, Bill No. 18 of 2009.

343. According to the information received, the Parliament of Uganda would be currently considering Bill No. 18 of 2009 (also known as the "Anti-Homosexuality Bill") tabled before it on 15 October 2009. The proposed Bill increases penalties for homosexual conduct and criminalizes many related activities. The envisaged penalties range from imprisonment not exceeding three years for the failure to denounce the commission of an offence as defined by the Bill to life imprisonment and the death sentence. Consensual homosexual conduct is already a criminal offence under article 145(a) of the Ugandan criminal code, which penalizes "carnal knowledge of any person against the order of nature". However, Bill No. 18 would expand the reach of this existing provision by including "any person who touches another person with the intention of committing an act of homosexuality". The Bill also punishes "aggravated homosexuality," including activity by "serial offenders" or those who are living with HIV, with the death penalty.

344. In addition, the Bill punishes any form of "promotion of homosexuality" with imprisonment of five to seven years. This raises concerns that the work of civil society actors and human rights defenders addressing issues of sexual orientation or gender identity might be criminalized. The Bill specifies that this includes anyone who publishes or disseminates "homosexual materials," "funds or sponsors homosexuality and related activities," "uses electronic devices which include internet, films and mobile phone" or "who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices." The Bill also criminalizes failure to report any offences within its scope, compelling citizens to report to the authorities anyone whom they suspect of engaging in homosexual activity.

345. Furthermore, HIV prevention activities in Uganda, which rely on an ability to speak frankly about sexuality and health and to provide condoms and other safer sex materials, may be compromised by this Bill. However, women, sex workers, people living with HIV and other marginalized groups may also find their activities tracked and criminalized through this Bill should it be enacted into law.

346. Concerns were raised with the Government regarding its commitment to protect the right to health as reflected in the international legal instruments, including the Universal Declaration of Human Rights (article 25(1)) and the International Covenant on Economic, Social and Cultural Rights (article 12), which the Government of Uganda ratified on 21 April 1987.

347. Furthermore, a number of studies indicate that criminalization of homosexuality will have a detrimental impact on efforts to combat the spread of HIV in Uganda. It has been shown that decriminalization of homosexuality, combined with efforts to address stigma and discrimination against lesbian, gay, bisexual and transgender (LGBT) persons constitutes a far more effective approach to HIV prevention. If the Bill came into force, it would impede access to HIV- and health-related information and services for LGBT individuals and could thereby undermine the national HIV response, not only by discouraging LGBT individuals from seeking and accessing services, but also by preventing service providers from providing information and services to members of this community.

#### **Observation**

348. The Special Rapporteur regrets that at the time of the finalization of the report, the Government has not transmitted any reply to his communication.

#### **Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Addendum: Mission to Poland, A/HRC/14/20/Add.3, 20 May 2010.**

**Keywords:** sexual and reproductive health and rights, tradition, HIV/AIDS

#### *III. RIGHTS TO SEXUAL AND REPRODUCTIVE HEALTH*

##### A. Access to information and sexuality education

25. Access to comprehensive, non-discriminatory, unbiased and science-based sexuality information and education in Poland is one of the issues related to rights to sexual and reproductive health that raises concern for the Special Rapporteur, particularly with regard to adolescents facing unwanted pregnancies. Despite the fact that the 1993 Act on Family Planning requires the Ministry of Education to introduce sexuality education into the school curriculum, sexuality education falls into the category "Family life education" as provided for by the Regulation of the Minister of National Education and Sport of 26 February 2002 on the core curricula for preschool education and general education. Family life courses focus narrowly on marriage and family and touch only to a very limited extent on issues of sexuality and procreation, merely promoting abstinence and traditional methods of family planning. The curriculum also lacks science and evidence-based information on contraception, abortion and non-discriminatory content on gender and sexual orientation. The Special Rapporteur was also informed that schools do not follow a consistent programme and often sexuality education courses are taught by school counsellors, physical education teachers or teachers of vocational subjects. Sometimes, these courses are given by priests or nuns, whose religious beliefs may affect their ability to provide unbiased, science-based and reliable information about sexual and reproductive health, irrespective of whether they are otherwise qualified to teach.

#### *IV. HARM REDUCTION POLICIES AND PRACTICES*

##### D. HIV/AIDS and harm reduction policies

78. The Centre also seeks to raise awareness at the community level regarding HIV and AIDS. It hosts workshops for doctors, nurses, teachers, VCT counsellors and mounts campaigns to promote safe sex, use of condoms and other harm reduction techniques. Education and awareness programmes target people within the 18–35 age group, those who travel, are sexually active, and specifically targets groups most vulnerable to HIV, such as women and children, members of lesbian, gay, bisexual and transgender communities, people using drugs, street workers, etc. This includes the dissemination of appropriate information relating to health, availability of services, and supporting people in making informed choices regarding their health

#### **Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/64/272, 10 August 2009**

**Keywords:** discrimination, Yogyakarta Principles, health

#### *IV. Vulnerable groups and informed consent*

46. Certain groups deserve special consideration regarding the protection of informed consent as a result of vulnerabilities stemming from economic, social and cultural circumstances. Principles 17 and 18 of the Yogyakarta Principles, for instance, highlight the importance of



safeguarding informed consent of sexual minorities. Health-care providers must be cognizant of and adapt to the specific needs of lesbian, gay, bisexual, transgender and intersex persons. Such elements of vulnerability significantly overlap and exacerbate inequalities; however, certain groups are addressed separately below for the purposes of this report.

**Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Addendum: Mission to Sweden, A/HRC/4/28/Add.2, 28 February 2007**

**Keywords:** discrimination, health

*IV. THE REALIZATION OF THE RIGHT TO HEALTH AT THE NATIONAL LEVEL: SOME ISSUES OF PARTICULAR CONCERN*

A. Is appropriate health care accessible to all?

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.

B. Mental health

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.

## 12. SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

<http://www2.ohchr.org/english/issues/torture>

### Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53, 1 February 2013

**Keywords:** Yogyakarta Principles, stigma, health, intersex, transgender, children

#### III. APPLYING THE TORTURE AND ILL-TREATMENT PROTECTION FRAMEWORK IN HEALTH-CARE SETTINGS

##### C. Interpretative and guiding principles 3. Stigmatized identities

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

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

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

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

76. The Pan American Health Organization (PAHO) has concluded that homophobic ill-treatment on the part of health professionals is unacceptable and should be proscribed and denounced. [fn1] There is an abundance of accounts and testimonies of persons being denied medical treatment, subjected to verbal abuse and public humiliation, psychiatric evaluation, a variety of forced procedures such as sterilization, State-sponsored forcible anal examinations for the prosecution of suspected homosexual activities, and invasive virginity examinations conducted by health-care providers,[fn2] hormone therapy and genital-normalizing surgeries under the guise of so called "reparative therapies".[fn3] These procedures are rarely medically necessary,[fn4] can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression and have also been criticized as being unscientific, potentially harmful and contributing to stigma (A/HRC/14/20, para. 23). The Committee on the Elimination of Discrimination against Women expressed concern about lesbian, bisexual, transgender and intersex women as "victims of abuses and mistreatment by health service providers" (A/HRC/19/41, para. 56).

fn1: PAHO, "„Cures“ for an illness that does not exist" (2012), p. 3

fn2: See HRW, In a Time of Torture: The Assault on Justice in Egypt's Crackdown on Homosexual Conduct (2003)

fn3: PAHO/WHO, "„Therapies“ to change sexual orientation lack medical justification and threaten health", news statement, 17 May 2012; and submission by Advocates for Informed Choice to the Special Rapporteur on the question of torture, 2012.

fn4: PAHO/WHO, "„Therapies“".

77. Children who are born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization, involuntary genital normalizing surgery, performed without their informed consent, or that of their parents, "in an attempt to fix their sex",<sup>[fn5]</sup> leaving them with permanent, irreversible infertility and causing severe mental suffering.

fn5: A/HRC/19/41, para. 57

78. In many countries transgender persons are required to undergo often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender. In Europe, 29 States require sterilization procedures to recognize the legal gender of transgender persons. In 11 States where there is no legislation regulating legal recognition of gender,<sup>[fn6]</sup> enforced sterilization is still practised. As at 2008, in the United States of America, 20 states required a transgender person to undergo "gender-confirming surgery" or "gender reassignment surgery" before being able to change their legal sex.<sup>[fn7]</sup> In Canada, only the province of Ontario does not enforce "transsexual surgery" in order to rectify the recorded sex on birth certificates.<sup>[fn8]</sup> Some domestic courts have found that not only does enforced surgery result in permanent sterility and irreversible changes to the body, and interfere in family and reproductive life, it also amounts to a severe and irreversible intrusion into a person's physical integrity. In 2012, the Swedish Administrative Court of Appeals ruled that a forced sterilization requirement to intrude into someone's physical integrity could not be seen as voluntary.<sup>[fn9]</sup> In 2011, the Constitutional Court in Germany ruled that the requirement of gender reassignment surgery violated the right to physical integrity and self-determination.<sup>[fn10]</sup> In 2009, the Austrian Administrative High Court also held that mandatory gender reassignment, as a condition for legal recognition of gender identity, was unlawful.<sup>[fn11]</sup> In 2009, the former Commissioner for Human Rights of the Council of Europe observed that "[the involuntary sterilization] requirements clearly run counter to the respect for the physical integrity of the person".<sup>[fn12]</sup>

fn6: Commissioner for Human Rights of the Council of Europe, *Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe* (2011), pp. 86-87.

fn7: D. Spade, "Documenting gender", *Hastings Law Journal*, vol. 59, No. 1 (2008), pp. 830-831

fn8: *XY v. Ontario*, 2012 HRTO 726 (CanLII), judgement of 11 April 2012.

fn9: Mål nr 1968-12, Kammarrätten i Stockholm, Avdelning 03, [http://du2.pentagonvillan.se/images/stories/Kammarrttens\\_dom\\_-\\_121219.pdf](http://du2.pentagonvillan.se/images/stories/Kammarrttens_dom_-_121219.pdf), p. 4.

fn10: Federal Constitutional Court, 1 BvR 3295/07. Available from [www.bundesverfassungsgericht.de/entscheidungen/rs20110111\\_1bvr329507.html](http://www.bundesverfassungsgericht.de/entscheidungen/rs20110111_1bvr329507.html).

fn11: Administrative High Court, No. 2008/17/0054, judgement of 27 February 2009.

fn12: Human rights and gender identity, issue paper (2009), p. 19.

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

#### V. Conclusions and recommendations.

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

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

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum - Observations on communications transmitted to Governments and replies received, A/HRC/19/61/Add.4, 29 February 2012**

**United Kingdom of Great Britain and Northern Ireland**

**Urgent Appeal**

**Keywords:** asylum & refugees

(a) Urgent Appeal: Alleged risk of torture for asylum seeker facing deportation  
Case No. GBR 1/2011, 23/02/2011.

State reply: None to date.

168. The Special Rapporteur regrets that the Government of the United Kingdom of Great Britain and Northern Ireland has not responded to this communication, thereby failing to cooperate with the mandate issued by the Human Rights Council. The communication referred to allegations of risk of torture for Mr. X, a homosexual man, if returned to Burundi. The Special Rapporteur reiterates that article 3 of the UN Convention against Torture holds that no State party shall expel, return ("refouler"), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. Based on the information received, the Special Rapporteur determines that the rights of Mr. X under the UN Convention against Torture are at risk of being violated. The Special Rapporteur calls on the Government not to extradite Mr. X until a fair assessment of his risk of torture is conducted. In this context, diplomatic assurances do not mitigate the Government's obligation to refrain from violating the non-refoulement provision

## **United States of America**

### **Joint Urgent Appeal**

**Keywords:** immigration, detention, torture

(c) Joint Urgent Appeal: Alleged torture and ill-treatment in immigration facilities.  
Case No. USA 15/2011, 19/08/2011

State reply: None to date.

172. The Special Rapporteur regrets that the Government of the United States of America to date has not responded to the communication dated 19 August 2011, regarding the allegations of torture and ill-treatment in immigration facilities. According to the information received, 16 gay and transgender individuals have allegedly been subjected to solitary confinement, torture and ill-treatment while in detention in U.S. immigration facilities. Furthermore, there was reportedly a lack of protection from persecution and respect for the principle of non-refoulement for those who risk torture if returned to their home countries on account of their sexual orientation, gender identity or HIV status. In this regard, the Special Rapporteur would like to draw the attention of the Government to paragraph 6 of General Comment No. 20 of the Human Rights Committee, to article 7 of the Basic Principles for the Treatment of Prisoners, to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Standard Minimum Rules for the Treatment of Prisoners, particularly rule 22 (2). Given the lack of any evidences to the contrary, the Special Rapporteur believes that the fact reveal that there have been various violations of the provisions under the Convention against Torture, in particular breach of articles 7 and 12. The Special Rapporteur calls on the Government to undertake a prompt and impartial investigation on the conditions of detention, solitary confinement and ill-treatment of the immigrants, prosecute and punish those responsible, and ensure that the victims obtain redress, including fair and adequate compensation, and as full rehabilitation as possible.

## **Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/19/61, 18 January 2012**

**Keywords:** discrimination

### *IV. IDENTIFYING BEST PRACTICES AND ESTABLISHING STANDARDS FOR COMMISSIONS OF INQUIRY*

#### *C. Composition*

62. Where human rights violations have had a distinct ethnic, racial, or religious dimension, it is important to include people who fully understand the plight of affected communities. Under all circumstances careful attention should be paid to the inclusion of women in the composition of the commission. Of additional value is the inclusion of individuals with a gender perspective to better understand the specific ways in which vulnerable persons, including, women, children,

lesbian, gay, bisexual and transgender persons, persons with disabilities and persons belonging to a minority or indigenous group suffer from gross violations, including torture and other forms of ill-treatment and how they affect their communities. Geographic and cross-cultural balance in a commission is also of the greatest importance, as long as the standards of expertise and professionalism are not diminished for the sake of political balance.

**Note by the Secretary-General transmitting the interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/66/268, 5 August 2011.**

**Keywords:** detention

*III. SOLITARY CONFINEMENT*

E. States Rationale for the Use of Solitary Confinement

42. Solitary confinement is also used to separate vulnerable individuals, including juveniles, persons with disabilities, and Lesbian, Gay, Bisexual and Transgender Persons, for their own protection. They may be placed in solitary confinement at the own request or at the discretion of the prison officials

J. Vulnerable Individuals

3. Lesbian, Gay, Bisexual and Transgender

69. Lesbian, Gay, Bisexual and Transgender individual are often subjected to solitary confinement as a form of "protective custody". Although segregation of such individuals may be necessary for their safety, Lesbian, Gay, Bisexual and Transgender status does not justify limitation on their social regime, e.g. access to recreation, reading materials, legal counsel and medical doctors.

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Mission to Greece, A/HRC/16/52/add.4, 4 March 2011**

**Keywords:** prison, transgender

*III. ASSESSMENT OF THE SITUATION*

D. Conditions of detention

2. Judicial Prisons

51. In Korydallos Prison, in Athens, the prisoners were extremely agitated and showed a very high level of frustration. The blocks were overcrowded, and the sanitary conditions were bad with some mattresses hiding hundreds of cockroaches and bugs. He was informed that detainees had to buy almost everything and were not provided with enough food and sanitary products. He met detainees who had been in pre-trial detention for up to 18 months and expressed a strong feeling of arbitrariness. The Special Rapporteur noticed with concern that a part of Block E was hosting aliens in administrative detention, despite the clear lack of competence of prisons for such detainees. He observed that vulnerable groups such as gay, lesbian and transgender persons were held in separate cells. However, they were kept inside at all times in unacceptable conditions. Finally, in Korydallos and Chios Prisons, he noticed a lack of meaningful opportunities for education, work and recreation. The Special Rapporteur welcomes the completion of a new detention facility in Nigrita, Serres, with a capacity of 700, reportedly part of a Greek government plan to construct more detention facilities. It is his hopes that the planned constructions in Drama and Chania will be completed as scheduled in 2012.

*APPENDIX: PLACES OF DETENTION VISITED AND INTERVIEWS CONDUCTED*

*Korydallos Men's Prison, Athens, Visited on 18 October 2010*

Individual cases

241. Two transgender persons from Greece were brought from Corfu to Athens for their court hearing three days earlier. They complained about the fact that the cell is overcrowded and very unhygienic. Also, they mention that the section of vulnerable persons is completely locked down all along the year, and that detainees cannot access the yard, because of an escape that happened in 2008. They therefore have to remain inside the small block all the time. They say that guards and detainees are respectful. The Government informed that the vulnerable persons

in Block C of Korydallos Detention Facility were all pre-trials and held in separate cells for their own protection temporarily - contrary to the information provided by some detainees who mentioned they had been in these cells for a rather long period of time. The Government added that these two persons have already been transferred to other detention facilities, in individual cells, for serving their sentence

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum – Summary of information, including individual cases, transmitted to governments and replies received, A/HRC/16/52/add.1, 1 March 2011**

**Cameroon, 8 Avril 2010**

**Keywords:** arrests, detention, forensic examinations

Concernant l'arrestation de M. B. A. et de M. M-H.B. pour supposée homosexualité.

M. A. et M. B. auraient été arrêtés le 27 septembre 2010 par des officiers du 1er escadron de gendarmerie à Yaoundé, et seraient actuellement détenus à la prison de Kondengui. Ils auraient été arrêtés après que leurs maisons aient été fouillées. Lors de cette fouille, des boîtes de préservatifs et de lubrifiants auraient été trouvées. Les deux hommes auraient été détenus et le 4 octobre, auraient été forcés à subir un examen anal pour confirmer leur activité sexuelle. Il est aussi allégué que M. A. et M. B. ont été menottés pendant l'examen médical et n'ont pas été informés sur leur droit de garder le silence, ni d'avoir recours à une assistance juridique.

**Malawi, 13 January 2010**

**Keywords:** detention, forensic examinations

Concerning Mr. T. C. and Mr. S. M. Mr. T. C. and Mr. S. M. were arrested on 29 December 2009 by the Blantyre Police, following a public traditional engagement ceremony in Chirimba Township. They are currently in detention at Chichiri Prison, pending their trial for gross public indecency and unnatural offences. In addition, the State Prosecutor has allegedly applied for an order to force Mr. C. and Mr. M. to undergo anal examinations to prove that they had sex with each other.

**Zimbabwe, 17 June 2010**

**Keywords:** detention, police, human rights defenders, freedom of assembly/association

Concerning the situation of Mr. Chesterfield Samba, Ms. Ellen Chademana and Mr. Ignatius Muhamba, respectively Director and employees of Gays and Lesbians of Zimbabwe (GALZ). GALZ is an association advocating for social tolerance for sexual minorities and the repeal of homophobic legislation in Zimbabwe, and is officially authorized to operate in Zimbabwe.

According to the information received:

On 21 May 2010, police officers from the Criminal Investigations Department (CID) raided GALZ offices in Milton Park, Harare, reportedly searching for dangerous narcotics and pornographic material. The police had a warrant to search for dangerous drugs and pornographic material citing contravention of Section 157 (1) of the Criminal Law (Codification and Reform) Act Chapter 9:23 and Section 32 (1) of the Censorship and Entertainment Control Act Chapter 10:04.

It is alleged that the police confiscated computers, records and banners and reportedly seized pornographic material as evidence for the case. They arrested Ms. Chademana and Mr. Muhamba and transferred them to the Harare Central Police Station.

On 23 May 2010, the police allegedly returned to GALZ offices claiming that they were notified that the office had been raided. They requested entry into the office, but the guard did not have the keys. They left a message that they were to return on Monday 24 May 2010 to carry out another search.

On 24 May 2010, the police took Ms. Chademana and Mr. Muhamba from Harare Central Police Station to GALZ offices for a further search, without notifying their lawyers. Later the same day, both employees were reportedly formally charged of "possessing pornographic material" and "undermining the office of the President" but the police failed to bring them before the court. On 25 May 2010, Ms. Chademana and Mr. Muhamba reportedly appeared before the court.

On 26 May 2010, five police officers searched the house of Mr. Samba during his absence. They allegedly seized magazines, books, Mr. Samba's birth certificate and business cards. They asked his sister in law and niece, who were present at the time of the search, of Mr. Samba's whereabouts and when he would return to town.

On 27 May 2010, Ms. Chademana and Mr. Muhamba were reportedly released on bail. It is alleged that they are however required to report to the police twice a week and to stay in Harare until the next hearing, which is expected to be held on 10 June 2010. It is further alleged that GALZ staff members have been asked to report to the police to appear as witnesses the case against their colleagues Ms. Chademana and Mr. Muhamba.

Furthermore, it is reported that Ms. Chademana and Mr. Muhamba were subjected to ill-treatment during their detention. They reported that during their detention the police used empty soft drinks bottles to assault them on their knees and forced them to 'sit' in a position without a chair or any other tool for a prolonged period. They were allegedly subjected to assaults all over their bodies.

Concern is expressed that the arrests of Ms. Chademana and Mr. Muhamba and the searches of GALZ's premises and Mr. Samba's house might be directly related to the peaceful activities of Mr. Samba, Ms. Chademana and Mr. Muhamba in the defense of human rights. Further concern is expressed for the safety of all staff members of GALZ.

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Mission to Jamaica, A/HRC/16/52/add.3, 11 October 2010**

**Keywords:** detention, HIV/AIDS, stigma

*III. ASSESSMENT OF THE SITUATION*

C. Conditions of detention

3. Correctional centres

47. Homosexuals detained at St. Catherine and Tower Street correctional centres were held in the "vulnerable persons unit" as a protective measure. However, their separation led to a loss of privileges of a punitive character, such as work and recreation, including the use of the library and playing field. In the security section in the Tower Street centre, detainees were locked up in dark, solitary cells without a toilet or water, and had nobody to call for help.

*APPENDIX. PLACES OF DETENTION VISITED AND INTERVIEWS CONDUCTED*

*St. Catherine Adult Correctional Centre, Spanish Town Visited on 17 February 2010*

112. At the time of the Special Rapporteur's visit, the prison's occupancy rate was almost 50% over its maximum capacity. In addition to four main buildings (Blocks A, B, C, D) there were three special buildings: the Side Cells with four sections, also called VPU (Vulnerable Prisoners Unit), which held persons with mental disabilities, homosexuals and other vulnerable groups; Gibraltar (including six deathrow prisoners in Gibraltar 1 on the 1st floor); and the New Hall. Section 1 in Block A was called security section. The cells in the security sector had doors with no windows. Detainees serving a life sentence were not separated from others. The last execution had taken place in February 1988. The gallows were still there, but the officers could not find the keys to show them to the Special Rapporteur.

114. Mark Reid, aged 29, was detained in a solitary cell in the sector reserved for homosexuals; he had to serve a 25-year sentence. He had to be in a single cell for his own protection, because he was afraid of being killed if he had to share a cell. He was allowed to leave the cell from 6:00 to 11:30 a.m. and from 1:00 to 2:30 p.m. He could receive two visits per month. He added that there were no beatings in that sector, but complained that he did not receive enough food.

116. Ricardo Lee, aged 39, British national, had been detained at St. Catherine for five years. He had asked to be placed in the vulnerable persons unit for protection, as he had been

attacked by other detainees. He expressed fear that everyone would know in which sector he was detained upon his release, and that his life would be threatened. He did not have a lawyer. There was a lot of violence among the prisoners and between the prisoners and the guards. He also complained about not being able to use the library because there was a common belief that if other prisoners touched any book that he had touched, they would become homosexuals. He was confronted with the same attitude with regard to the gym and the playing field. As a result, he could not associate with any other prisoners, and could only walk around in his unit. He also expressed fear about speaking to the authorities, as he did not trust them. He requested that stamps and envelopes be provided to those prisoners who could not afford them.

118. A detainee, aged approximately 50, HIV positive and homosexual, had been charged for a murder and sentenced to 20 years imprisonment. He always received his medicine but reported that because he complained that he was not getting the special diet he needed, he was beaten by a warder who broke one of his ribs. Warders would often enter his cell and insult him. He was also very scared of other detainees because of the heavy discrimination against homosexuals. In church they had a special section for homosexuals. If they sat on other benches, they were beaten by the others. Because of this stigma homosexuals were also prevented from doing many activities. Many detainees spent many more years in jail than what they were sentenced for because their parole hearings were constantly postponed.

122. Nicholas McIntosh and other detainees complained about discrimination of homosexuals, who were segregated and had no access to church, the gym, school and other common activities.

*Tower Street Adult Correctional Centre, "General Penitentiary", Kingston Visited on 18 February 2010*

174. The prison had a capacity of 900, but held 1,647 prisoners at the time of the visit, including one juvenile. The prison was comprised of eight blocks (A, B, C, D, E, F, G, H), divided into North and South Sections, a Hospital Ward and Security Cells (also called Jail Section), which were likely used as solitary punishment cells, although this was denied by the officers. Sections E, F, G and H South were reserved for homosexuals and other vulnerable prisoners. Sections H and F North were Security Sections. The George Davis Centre was originally for female prisoners and was later used for prisoners with mental disabilities. According to the officers, there were no major incidents and no complaints about any beatings since 2007. In 2009, five prisoners had died. During the debriefing, Superintendent Fairweather admitted that overcrowding was a serious problem, and that he had to use single cells for three prisoners.

#### *Individual Interviews*

*Special Location/ "Gay Section" (E, F, G, H South)*

177. Eustace Hanson, aged 38, had been sentenced to death in 1990 and had spent four years on death row in St. Catherine. In 1994 his sentence was commuted to life imprisonment, and he was transferred to Tower Street. He spent two years at the Security Section of F and H North, but he was later transferred to the gay section, where conditions were better. He had been beaten a long time before, but not in recent years. Prisoners could be placed in the "punishment cells" for up to three months.

178. A detainee had been sent to Tower Street in October 2008; he was sentenced to four years imprisonment. He felt discriminated by the other inmates because he was homosexual and had been beaten by officers with batons. He was a musician and would like to use the instruments in the prison, but the other inmates used them and they refused to let him join. He was not accepted in the Rasta choir either because he was a homosexual.

*Windsor Children's Home for Girls, St. Ann's Bay Visited on 20 February 2010*

205. J.A.F., aged 17, had to spend three years at Windsor for being "uncontrollable". She complained primarily about the food. The girls had to get up between 6 and 7 a.m. The new arrivals went to school at the compound; the others went to school outside. At 1 p.m. they came back, had lunch and usually spent the afternoon outside playing games or doing sports. They could also work on computers. She alleged that at St. Ann's Police Station she and her friend were discriminated and treated roughly (called "dogs") because they were lesbians. She also alleged that at Windsor girls were discriminated against because of their colour of skin: If one had a lighter colour, she would get a nicer room, a TV and other privileges.

### **Report of the Special Rapporteur on torture and other cruel, inhuman or degrading**



**treatment or punishment, A/HRC/13/39, 9 February 2010**

**Keywords:** multiple discrimination

*VII. Conclusions and recommendations*

75. Among detainees, certain groups are subject to double discrimination and vulnerability, including aliens and members of minorities, women, children, the elderly, the sick, persons with disabilities, drug addicts and gay, lesbian and transgender persons.

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention, A/HRC/13/39/Add.5, 5 February 2010**

**Keywords:** police, violence, discrimination

*III. Cruel, inhuman and degrading treatment and punishment*

B. Excessive use of force by law enforcement bodies

189. Upon my fact-finding missions I have received numerous worrying allegations of excessive use of force by police authorities outside of the context of detention. As stated above, this may amount to CIDT if it does not meet the test of proportionality.

193. Of particular concern are the reports of police brutality against vulnerable, disadvantaged groups and minorities. In Paraguay, I have received numerous allegations of excessive force by the police against members of indigenous communities and the military in dispersing demonstrations of campesino movements. The Committee against Torture has equally expressed its concern about reports of police brutality against vulnerable groups such as racial minorities, migrants and persons of different sexual orientation, which have not been adequately investigated.

D. Corporal punishment

2. Corporal punishment as a judicial sanction

216. Since assuming my mandate, I have sent several communications relating to corporal punishment to a certain number of countries. In fact, a review of these communications reveals that only a very limited number of countries seem to sustain this cruel and inhuman form of judicial sanctions. Another fact that can be observed from assessing my communications is, on the one hand, the incredible cruelty of some of the reported punishments, such as amputations of the right hand and the left foot or flogging with 5000 lashes. On the other, many of the offences sanctioned with corporal punishment involved acts related to sexuality, such as "un-Islamic sexual activities", "illicit relations", or adultery.

E. Conditions of detention

231. Many detainees complained that they felt like they were treated worse than animals. Indeed, most human beings would not like their dogs or cats to be treated in the same way that many human beings are treated in detention. They usually belong to the most disadvantaged, discriminated and vulnerable groups in society, such as the poor, minorities, drug addicts or aliens. Within detention facilities, there is usually a strict hierarchy, and those at the bottom of this hierarchy, such as children, the elderly, persons with disabilities and diseases, gays, lesbians, bisexuals and trans-gender persons, suffer double or triple discrimination.

*V. Conclusions and recommendations*

257. Among detainees, certain groups are subject to double discrimination and vulnerability, including aliens and members of minorities, women, children, the elderly, the sick, persons with disabilities, drug addicts, gays, lesbians and transgender persons.

**Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Uruguay, A/HRC/13/39/Add.2, 21 December 2009**

**Keywords:** detention, prison

#### General information

112. The Special Rapporteur was received by the Director of the prison, Comisario Inspector Jose L. Beledo Pérez, and his two deputies. In an open and cooperative manner the Director admitted that everybody knew that "our prisons are terrible". The prison is the largest in the country and has a capacity of 1,600 detainees. At the time of the visit, 2,768 detainees were held in COMCAR. The major problem was thus overcrowding, as well as a lack of staff. Detainees were held according to classification: in Module 1 (484 detainees) transvestites, transsexuals, homosexuals, and former police and military officers were held. These groups were rejected by the general prison population and needed extra security. Module 2 was a security module with 586 detainees. In total, around 1,000 detainees were held under a security regime. Modules 3 and 4 were general modules. The management could not classify the detainees according to the crime or according to pretrial or convicted status due to a lack of resources. Thus, all kinds of detainees were held together in these modules. First offenders were held in Module 5, in order to separate them from the recidivists. However, some of them might have been detained in an INAU facility earlier. The majority of the detainees in Module 5 were between 18 and 29 years old. A new module consisted of the so-called "*barracas*", with large dormitories for around 40 prisoners each. Detainees were transferred there for good behaviour. However, the prison administration had not been able to fill the module because of a lack of detainees with a suitable profile. The *barracas* had 228 places but there were only 130 to 140 detainees.

118. Within the prison, there were 32 conjugal cells available. The cells could be used upon request. Minor women were only allowed inside if they could prove they were married to the detainee. Homosexual visits were not allowed. The visits were limited to one hour and took place on Tuesdays and Thursdays during visiting hours, between 1 and 5 p.m. The Special Rapporteur noted during his visit that several makeshift tents were being set up on the patio during visiting hours. He was informed by one of the detainees that the tents were used as additional places for "conjugal visits".

120. At the time of the visit, 484 persons were held in Module 1. The module was divided into two sectors, A and B. Sector A had two floors and sector B had three. On the first floor of sector A, former police officers and former members of the military were kept. On the second floor, there were common criminals. Sector B was reserved for homosexuals, transsexuals and sexual offenders, as well as a few former police officers. According to the prisoners, the food had improved, but was still of poor quality. Sometimes there was no water for one to three days. The module used to have punishment cells, which were not used as such any longer because of the severe overcrowding. The cells were open from 8 a.m. to 5.30 p.m. All cells were severely overcrowded, dirty and run down. There were toilets in every cell, but due to a lack of water they were often not usable.

#### **Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/64/215, 3 August 2009**

**Keywords:** detention, torture

#### *III. Conditions of detention*

##### A. Detainees: out of sight, out of mind

40. Many people think that torture is primarily the fate of political and other "high-ranking" prisoners. In reality, most of the victims of arbitrary detention, torture and inhuman conditions of detention are usually ordinary people who belong to the poorest and most disadvantaged sectors of society, including those belonging to the lowest classes, children, persons with disabilities and diseases, gays, lesbians, bisexuals, transgender persons, drug addicts, aliens and members of ethnic and religious minorities or indigenous communities.

61. Where resources for the fulfilment of basic needs are scarce, the establishment of hierarchies among human beings can instantly be observed. At the bottom are often people who are marginalized because of their age, social status, health condition or disabilities, gender, ethnic or religious origin, status as foreigners or sexual orientation or owing to a drug addiction.

#### **Report of the Special Rapporteur on torture and other cruel, inhuman or degrading**

**treatment or punishment, Addendum: Mission to Denmark, A/HRC/10/44/Add.2, 18 February 2009**

*I. LEGAL FRAMEWORK*

C. National level

13. Despite the absence of a specific provision, there have been moves by the Ministry of Justice and the legislature towards tightening the legal framework in relation to torture. However, instead of making torture a specific offence, as envisaged by article 4 of the Convention against Torture, the newly introduced section 157 A only refers to torture as aggravating circumstance in relation to existing crimes and increases the maximum penalties for such acts:

...

(2) A violation of this Act shall be considered to have been committed by torture if it was committed in the performance of Danish, foreign or international public service or duty by inflicting harm on the body or health of another or causing severe physical or mental pain or suffering to another

(3) Due to the subject's political belief, gender, race, skin colour, national or ethnic origin, religious belief or sexual inclination."

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Summary of Information, including Individual Cases Transmitted to Governments and Replies Received, A/HRC/10/44/Add.4, 17 February 2009**

61. **Egypt**, Date: 28/03/08

**Allegations Transmitted**

**Keywords:** detention, criminal laws, forensic examinations, torture

A. S. R., M. H. A., A. M. M., K. A. A. and A. H. A., who are the subjects of a criminal case before the Qasr al-Nil Court of Misdemeanors. On 24 October 2007, Mr. A. S. R. and Mr. M. H. A. were arrested during an altercation in Bab El-Louk in downtown Cairo. When Mr. R. explained to the arresting police officers that he was HIV-positive, both were taken directly to the Morality Police Department in Mugamma'al-Tahrir, where they were detained, and later interrogated by an officer named M. O. A. The officers allegedly slapped Mr. R. in the face and beat Mr. A. They forced them to sign statements, the contents of which they were not allowed to read. During the four days they were detained in Mugamma' al-Tahrir, the two men were handcuffed to an iron desk and left to sleep on the floor. They were denied food and water and were required to pay for them later. A forensic anal examination was performed on both men in order to establish whether they had engaged in anal sexual intercourse. On 20 January 2008, Mr. A. M. M. was arrested on the street, Mr. K. A. A. at his apartment on the following day, and Mr. A. H. A. on 3 February 2008 at an unknown location. On 19 February 2008, Mr. M. was beaten by a police guard. The police guard handcuffed his wrists to opposite poles of the bed and chained one of his ankles to the bed's end to prevent him from moving. Allegedly, Mr. M. had been punched repeatedly in the face, head and body by the same officer.

On or around 20 November 2007, Mr. M. M. M. and Mr. E. H. M. were arrested and held at the Appeals Jail in central Cairo, apparently in connection with the arrests of Mr. R. and Mr. A. Police arrested Mr. M. at his workplace. Both men were released on 26 February and 29 February, respectively, upon court orders as the maximum preventive detention period had expired. Another individual, Mr. G. M., was arrested on an unknown date and later released. It is alleged that all men were forcibly tested for HIV without their consent. Mr. E. H. M., Mr. M. M. M. and Mr. G. M. tested negative and charges against them were dropped. Mr. A. S. R., Mr. M. H. A., Mr. A. M. M., and Mr. K. A. A. tested positive and are being held at Abbasiyya Fevers Hospital. They were chained to their beds until 25 February 2008 when the Ministry of Health intervened. Mr. A. H. A. is at present detained at Tora Prison. Reportedly, the five detainees were indicted on 4 March 2008 on charges of "habitual practice of debauchery" under article 9 (c) of Law 10/1961. Mr. A. S. R. and Mr. M. H. A. continued to be detained and were indicted after the lapse of the maximum 90-day period of preventive detention for misdemeanours. Allegedly, the lead prosecutor indicated to a defense counsel that the men should not be permitted to roam the streets freely as the Government considers them to present a danger to public health. The first trial hearing scheduled for 12 March was postponed to 19 March in order to provide the defense more time to prepare. Their verdict is expected for 9 April. Concerns are expressed for

the physical and mental integrity of the men. Further, it is alleged that the five above-mentioned individuals might have been discriminatorily arrested and detained and that their indictment might be solely connected to their reported HIV status.

### **Government Response**

By letter dated 06/10/08, the Government informed that two individuals, Mr. A. S. R. and Mr. M. H. A. were involved in a street fight in a crowded area in the center of midtown Cairo. A police officer near the scene of the fight intervened to separate the two men and to calm down the situation. Upon enquiring from the two men about the reasons for their altercation, Mr. H. claimed that Mr. R. had insisted upon him to resume their sexual relationship, something he did not wish to do in light of his knowledge that Mr. R. had contracted HIV/AIDS. The two individuals were taken to the police station in order to continue the investigation. Mr. R. confirmed that he was infected with HIV/AIDS which he believed to have contracted through homosexual intercourse with a number of individuals whom he named. According to procedure, the Public Prosecutor's Office (PPO) was notified and assumed the responsibility for further investigation into the case. The investigations indicated that the two individuals and the group they named habitually engage in male prostitution, and that one of them actually runs a brothel for male prostitution. Therefore, the Attorney General issued an order summoning the individuals named in the testimony of the two men and they were later charged with "habitual practices of debauchery". During the investigations, a number of them admitted to the charges pressed against them and confirmed that the others also participated with them in such practices. Once the PPO investigations were completed, charges were brought against the aforementioned individuals, their cases were referred to the courts which ruled against the defendants in two of the cases. The defendants in both cases appealed the verdict, one was rejected while a decision on the second has not yet been issued. It is worth mentioning that the court verdict assigned the convicted individuals infected with HIV/AIDS to designated health centers and not to regular prisons in order to ensure they receive the necessary medical treatment while serving their sentences. The verdicts against the individuals named as defendants in these cases were not related to their "sexuality" or due to their "sexual orientation". They were clearly based on violations of specific provisions of the Egyptian penal code, none of which explicitly or implicitly criminalizes homosexuality. The allegation that the defendants were tried simply for being HIV positive or for carrying the AIDS virus is also unfounded. As demonstrated above, the trial was for violating specific provisions of Egyptian law and not for health status of the defendants. The infected individuals were granted medical services throughout the process and continue to receive the necessary treatment while serving their sentences. All proceedings at every stage of this case were carried out under strict judicial supervision. More specifically, the investigations were done by an independent judicial authority. Moreover, the rights of the accused were fully respected and included, inter alia, their right to a fair hearing before a competent court, their right to present their defense and the right to legal representation throughout the investigations and the trial, and the right of appeal. Allegations of arbitrary detention and torture are also unsubstantiated as the entire process followed the designated legal course including the issuance of the required legal permits to summon the group based on a previously defined and criminalized act punishable by the law. The court rulings were based on articles of the Egyptian Penal Code. Allegations of inhuman treatment and torture are also groundless. Firstly, Egyptian law penalizes any mistreatment, including torture and inhuman practices, of individuals including detainees and prisoners. Furthermore, the PPO closely follows and investigates any claims of illegal practices by security personnel and/or any other executive body in Egypt. In case such claims prove to be substantiated, whoever commits such crimes is presented to court to be tried for his or her actions. The initial investigations of the PPO show that all of these claims were unsubstantiated and lacked concrete evidence needed to incriminate any offender of the law.

92. **Indonesia**, Date: 31/10/08

### **Allegations transmitted**

**Keywords:** hate crimes, police, violence

On 22 January 2007, Mr. H. and his partner were assaulted by approximately 16 civilians while they were at their home. On 23 January, they were taken to the Bandaraya Aceh Sector Police at about 1:230 a.m., where they were severely beaten and sexually abused by police officers. When the investigation process was set in motion, the prosecutor treated the case as a minor offence. On 8 October 2008, the Bandaraya Aceh District Police summoned Mr. H. to give testimony at the Banda Aceh District Court. The trial against four police officers took place that same day. During the trial, the judge did not examine the perpetrated acts of torture but rather

focused on the sexual orientation of Mr. H. He gave the impression that the accused should be allowed to beat and assault the victim on the grounds of his different sexual orientation. After Mr. H. gave his testimony, all of the accused accepted it without objection. The court sentenced the four defendants to three month imprisonment, six months probation and a fine of IDR 1.000 (0.1 USD) for "minor maltreatment". Since the charge was a minor offense, the victim has no right to appeal. In its reasoning for the light punishment, the court stated that the police officers had committed a minor offence, had confessed their acts, both parties had forgiven each other and they were needed by their country.

### **Government Response**

By letter dated 15/12/08, the Government of Indonesia indicated that Mr. H., an NGO worker, was said to have a male lover who went by the name of Mr. F. On 22 January 2008, Mr. H and Mr. F were allegedly assaulted by about 16 civilians while they were at home together at the second floor of a coffee shop in Lamgalang Village, regency of Banda Aceh, allegedly having intercourse. At the time, it was said that the assault was a direct result of the disapproval felt in their community for their sexual misconduct which contravened the local laws, traditions and religious values. The police came and allegedly asked them to sign a letter addressed to the Lamgalang Head of the Village informing him that they would not repeat their homosexual actions in the future in that village. On 23 January 2007, the two were arrested by the Banda Raya Aceh Sector Police at approximately 1:30 a.m. and were taken to the local police station in Banda Aceh. The arrest was linked to their public disorder. Following their arrest, there were allegations that they had been mistreated while in police custody.

During his trial, Mr. H. was requested to give testimony before the Banda Aceh District Court on 8 October. As homosexuality is considered a crime in the legislation in Aceh, the judge advised him to "turn away" from this legal violation. Regarding the allegations of torture and mistreatment, it is illicit for authority figures to misuse their power to the detriment of detainees. As a result, four police officers were placed on trial, R. H, W. P, W. S. and A. They did not deny the accusation and later apologized to Mr. H. They were also sentenced them to three years' imprisonment, with six months of probation and a fine of IDR 1.000.

### **Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Summary of Information, including Individual Cases Transmitted to Governments and Replies Received, A/HRC/7/3/Add.1, 19 February 2008**

74. **France**, Date: 27/07/07

#### **Allegations Transmitted**

**Keywords:** asylum & refugees

Hamid Balaei, âgé de 21 ans, d'origine iranienne. Il aurait fui l'Iran pour échapper aux poursuites liées à son orientation sexuelle un an et demi auparavant. Il aurait été arrêté par la police à Paris le 18 juillet 2007 et se trouverait en détention depuis lors. Sa déportation en Iran serait imminente. Des craintes ont été exprimées quant à l'intégrité physique et mentale de M. Balaei, s'il était déporté en Iran. En Iran, l'homosexualité serait considérée un crime passible d'emprisonnement, de punitions corporelles et de la peine capitale.

80. **Honduras**, Date: 05/04/07

#### **Allegations Transmitted**

**Keywords:** police, detention, threats

Sr. Donny Reyes, miembro de la asociación Arcoiris, asociación que trabaja por la defensa de los derechos de lesbianas, gays, bisexuales y personas transgénero (LGBT). El 18 de marzo, hacia las 3 de la madrugada, el Sr. Donny Reyes salió de las oficinas de la asociación Arcoiris y mientras esperaba un taxi, seis agentes de policía en dos autos de patrulla se detuvieron junto a él y le pidieron que subiera a uno de los autos. Cuando Donny Reyes se negó, los agentes empezaron a golpearle y le insultaron diciendo "a estos maricones hay que desaparecerlos de aquí". El Sr. Donny Reyes fue trasladado a la comisaría de Comayagüela, donde lo encerraron en una celda con otros 57 hombres. Donny Reyes fue golpeado, desnudado y violado por cuatro detenidos, después de que un agente de policía gritara "miren, aquí les traigo a una princesita,

ya saben lo que tienen que hacer". El Sr. Reyes fue dejado en libertad al día siguiente después de pagar un soborno de 200 lempiras. Tres días después el Sr. Donny Reyes denunció lo sucedido ante la fiscalía y desde entonces viene siendo objeto de intimidaciones por parte de la policía. Desde el 27 de marzo autos de patrulla se estacionan varias veces al día por periodos de cinco minutos frente a las oficinas de la asociación Arcoiris, en un aparente intento por presionarle para que abandone sus denuncias. Igualmente, se teme que estos eventos puedan estar relacionados con la actividad en defensa de los derechos humanos del Sr. Reyes, en particular su trabajo por la defensa de los derechos de lesbianas, gays, bisexuales y personas transgénero.

### **Government Response**

Por carta de fecha 13/06/07, el Gobierno informó que la Fiscalía General de la República sigue realizando investigaciones con relación al caso del Sr. Donny Reyes. Con el fin de esclarecer los hechos, la Secretaría de Seguridad procedió a la conformación de una Comisión Especial, creada mediante acuerdo ministerial N° 0525-07 de fecha 16 de abril de 2007. La Secretaría de Seguridad ha suspendido temporalmente a 10 oficiales de la Escala Básica de la Cuarta Estación Policial de la Jefatura Metropolitana N° 3, involucrados en el incidente con el Sr. Donny Reyes. Los 10 oficiales se encuentran concentrados temporalmente en el Comando de Operaciones Cobras para evitar que interfieran en las acciones de investigación. El Gobierno informa de que el Sr. Reyes no es beneficiario de medidas cautelares y que no ha recibido ningún tipo de compensación a modo de indemnización, ya que para tal fin debe acudir a las instancias jurisdiccionales correspondientes.

165. **Nepal**, Date: 02/05/07

### **Allegations Transmitted**

**Keywords:** detention, police, violence

D. C., a 16-year-old from Tarahara VDC-8, and Ms. Sarita Choudhary, a 20-year-old from Pakali VDC-1. Both women belong to a low caste in the Sunsari district of Terai, where the Communist Party of Nepal (Maoist) is exercising delegated authority. On 9 April 2007, the couple filed an official complaint to the Nepal National Human Rights Commission in relation to harassment and threats of abduction from their families or Maoists in relation to their homosexual relationship. The couple is currently hiding. On 2 March 2007, the women were abducted by Maoists from Pakali village when they were on their way to celebrate the annual Hindu Holi festival. They were taken into custody at the Maoist camp in Singiya village, Sunsari district, and intensively interrogated about their sexuality. They were told that their blood would be tested to determine whether they were lesbian. The women were released after ten hours on the condition that they return with staff from the Human Welfare Society to their parents. Staff of the Human Welfare Society was also summoned to the camp and subjected to part of the interrogation. D.C. was forcibly returned by her parents to her family home on several occasions, most recently on 22 March 2007. Her parents and her brother (who is a Maoist) informed the Maoists about their relationship in order to encourage them to discontinue their relationship and lifestyle. The two young women, who commenced living together in the beginning of 2006, have been hiding in different places since their respective families do not approve. In October 2006, Ms. Dukhani Choudhary and Ms. Sarita Choudhary were abducted and held in the Maoist camp in Lochani village in Morang District. At the camp, the Maoists called the couple derogatory names for homosexuals including "chakka" and "hijara" and ordered the girls to join the Maoist party and undergo the training for the Maoist militia. As the young women refused to join the Maoist party and carry weapons, they were beaten, verbally abused, and deprived of food almost everyday. After being detained for almost one month, they managed to escape from the camp and went into hiding.

### **Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Mission to Nigeria, A/HRC/7/3/Add.4, 22 November 2007**

**Keywords:** criminal laws

#### *IV. CORPORAL PUNISHMENT, SHARIA PENAL CODE PUNISHMENTS, AND CAPITAL PUNISHMENT* A. Corporal punishment

56. The Special Rapporteur notes that corporal punishment, such as caning, and including

sharia penal code punishments of the northern states (i.e. amputation, flogging and stoning to death), remain lawful in Nigeria. Moreover he notes that sharia-related provisions for adultery and sodomy discriminate against women and same-sex couples, respectively.

**Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Addendum: Summary of Information, including Individual Cases Transmitted to Governments and Replies Received, A/HRC/4/33/Add.1, 20 March 2007**

154. **Nepal**, Date: 06/02/06

**Allegations transmitted**

**Keywords:** transgender, gender identity, police, threats, violence

Police harassment and beatings of persons who are men by birth but identify as women (known as metis in Nepal). 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 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 detained for six days. On 27 December 2005, a meti named S. was detained in Shore Khutte Police Station. She was not promptly informed of the reasons for her arrest and detention, was not given access to a lawyer and also did not have adequate access to a toilet. On 28 December 2005 at about 1:30 am, police arrested another meti called S. 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. On 31 December 2005 at about 11 pm, police from Shore Khutte Police Station detained a meti in 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. On 3 January 2005 at about 10 pm, three metis were walking in the Thamel District, when four police from Durbar Marg Police Station 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 had bruises on various parts of their bodies.

317. **United Arab Emirates**, Date: 13/03/06

**Allegations transmitted**

**Keywords:** criminal laws, police, violence, gender expression, forensic examinations, torture

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. On 22 November 2005, police raided a villa in Ghantout and arrested twenty-six men. The police apparently acted in response to allegations that the men were carrying out homosexual acts and that some of the men were wearing women's clothing or make-up. During the raid, police punched, kicked and beat some of the men. A few days after their arrest, a government official alleged that the men would be subjected to male hormone injections, although this claim was later denied by another government spokesperson. The police beat the men while they were in custody with the aim of forcing them to confess to homosexual conduct. Some members of the group were subjected to invasive forensic examinations in an effort to prove their homosexuality. In a trial in February 2006, twelve of the twenty-six men, including almost all of those who had endured invasive examinations, were sentenced to six years of imprisonment on charges relating to homosexuality and obscenity under a Sharia-based law, while a thirteenth was sentenced to a lesser sentence. Their case is now pending appeal, which should take place on 14 March 2006. The other thirteen men arrested were acquitted. The law of the United Arab Emirates stipulates that a person can only be found guilty of homosexuality if four witnesses unanimously agree they saw the act or if the accused confesses. It is reported that no witnesses testified against the defendants and that

there was no other indication that they had engaged in homosexual conduct. The alleged confessions, which were presented as evidence, were extracted under invasive forensic examinations which could amount to torture or ill-treatment.

### **13. SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS**

<http://www2.ohchr.org/english/issues/executions/index.htm>

**Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Addendum: Follow-up country recommendations: Colombia, A/HRC/20/22/Add.2, 15 May 2012**

**Keywords:** death

#### *II. INTRODUCTION*

5. The present report contains an analysis of progress made by the Government of Colombia in implementing recommendations made by the former Special Rapporteur on extrajudicial, summary or arbitrary executions following his visit to the country from 8-18 June 2009 (A/HRC/14/24/Add.2). During his visit, the Special Rapporteur documented killings by security officers, guerrillas, paramilitaries and illegal armed groups, and examined the effectiveness of the criminal, civil and military justice systems in relation to the killings. He further addressed the situation of especially vulnerable groups, including human rights defenders, trade unionists, women, gay, lesbian and transgender activists, and Afro-Colombia and indigenous communities, and highlighted the need for strengthened institutional capacity and reform.

#### *VI. ESPECIALLY VULNERABLE GROUPS*

55. In the mission report, the Special Rapporteur noted that vulnerable groups were disproportionately killed and threatened by State forces, paramilitaries and IAGs. The targets of killings included human rights defenders, indigenous persons and Afro-Colombians, trade unionists, lesbian, gay, bisexual and transgender individuals, and persons with physical or mental disabilities. The Special Rapporteur observed that human rights defenders were occasionally accused by Government officials of terrorism and undermining security policies and that those accusations placed them at risk.

#### *VIII. CONCLUSIONS*

76. The Special Rapporteur urges the State to significantly strengthen efforts to establish accountability for extrajudicial executions, ensure the effective protection of victims and witnesses and, through consultations with affected communities, take preventive protection measures for vulnerable groups. The behaviour aimed at discouraging human rights defenders and victims seeking justice is of serious concern.

**Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Addendum: Mission to Ecuador, A/HRC/17/28/Add.2, 9 May 2011**

**Keywords:** death

#### *IV. SOCIAL CLEANSING*

41. In other cases, the killings appear to be part of an attempt by a group to gain control of an area by purportedly enforcing "law and order" and by punishing "undesirables". I was provided copies of social cleansing notices from Sucumbios in which groups stated that they had "made the irrevocable decision to attack violence with violence", and threatened to murder sex workers and "drug dealers, thieves, carjackers, kidnappers, and young drug users". They also stated that the group already had its "first cleansing list" and would begin killing soon. They asked the community to collaborate by distributing the leaflets widely.

42. To my knowledge, similar flyers were distributed in La Concordia, Manabí and Guayaquil. The pamphlets all warned of the elimination of "criminals" and those who "have relationships with such people." In Guayas, LGBT activists had also received such notices.



**Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/14/24, 20 May 2010**

**Keywords:** death penalty

*III. REVIEW OF ISSUES ADDRESSED AND RESEARCH UNDERTAKEN*

F. The death penalty

52. In the death penalty context it has also been necessary to address the relationship between international legal obligations and sharia law or Islamic criminal law as applied in some countries. Specifically, reports have discussed stoning, the illegality of the death penalty for homosexuality or adultery, and the challenges of diyah (compensation in lieu of criminal punishment)

I. Victim groups

59. Understanding the dynamics and causes of killings in particular situations will often require a focus on the victims' membership of especially vulnerable groups. Thus, for example, building upon Ms. Jahangir's work (see for example E/CN.4/2000/3, paras. 78-84), my reports have addressed the particular vulnerability of women in relation to practices such as honour killings, domestic violence, sexual violence as a cause of death, "femicide" and killings of "witches". Country reports have addressed other vulnerable groups, including: refugees; indigenous persons; those deemed to be "socially undesirable"; suspected criminals; children; the elderly; the disabled; those perceived to be or identifying as gay, lesbian, bisexual or transsexual; human rights defenders; and journalists.

**Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Addendum: Communications to and from Governments, A/HRC/14/24/Add.1, 18 June 2010**

**Indonesia: Concern over legislation imposing the death penalty for non-serious crimes**

**Keywords:** death penalty, criminal laws

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

Subject(s) of appeal: Group concern

Character of reply: No response

Observations of the Special Rapporteur: The Special Rapporteur regrets that the Government of Indonesia has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent Appeal dated 2 October 2009, sent with the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women, its causes and consequences.

348. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the adoption of the new Islamic Criminal Code (Qanun Jinayah) in Aceh.

According to the information received,

On 14 September 2009, the Aceh Legislative Council adopted a new Islamic Criminal Code which imposes severe sentences for consensual extra-marital sexual relations, rape, homosexuality, alcohol consumption and gambling. Among other sanctions, the Code imposes the punishment of stoning to death for adultery; 100 cane lashes for sexual intercourse outside marriage; between 100 and 300 cane lashes or imprisonment for rape; and 100 lashes for homosexuality.

In addition, the new Code legalizes marital rape and provides that a woman alleging that she is a victim of rape will be found guilty of sex outside marriage unless she can provide four male

witnesses testifying to the lack of consent on her part; impunity will be given to those who commit rape at the command of superiors. The National Commission against Violence on Women has called for a judicial review of Law No. 11/2006 of the Government of Aceh concerning the sources the Aceh Legislative Council has used to adopt the Aceh Islamic Criminal Code. Moreover, this Code applies to both Muslims and non-Muslims.

It is furthermore alleged that although the Code is applicable to the population as a whole in practice women are far more likely to become victims of stoning due to patriarchal and discriminatory practices and policies, as well as biological differences such as pregnancy.

349. While we do not wish to prejudge the accuracy of these allegations, we should like to recall that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### **Iran: Concern about executions based on charges of homosexuality**

**Keywords:** death penalty, criminal laws

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

Subject(s) of appeal: 7 males and 3 minors

Character of reply: No response

Observations of the Special Rapporteur: The Special Rapporteur regrets that the Government of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent Appeal dated 22 December 2009

450. In this connection, I would like to draw the attention of your Government to information I have received regarding several cases of men sentenced to death on charges of homosexuality.

According to the information received:

Articles 108 to 111 of the Islamic Penal Code of Iran provide for the death penalty for sexual intercourse with penetration between "mature, sane and consenting" men (lavat). Article 114 requires that lavat be proven by the testimony of four male eyewitnesses. Under article 120 of the Code, however, if there are no four male eyewitnesses supporting a charge of lavat, the judge may issue a verdict and death sentence "on the basis of the knowledge which he has acquired through generally accepted methods". Nemat Safavi was arrested on charges of lavat in June 2006, when he was aged 16. The Criminal Court of Ardabil found him guilty and sentenced him to death in 2008. In November 2009, the Supreme Court quashed the sentence and sent the case back to a different section of the Criminal Court of Ardabil. Ghaseem Bashkool, a university student born in 1984, and another man were arrested on charges of lavat on 31 May 2007. The First District of the Criminal Court of Ardabil found the two men guilty of lavat and sentenced them to death. Reportedly, the conviction was based on "the knowledge of the judge". The current state of the proceedings against him is unknown. In or briefly before February 2008, Hamze Chavoshi (aged 19 at the time) and Loghman Hemzepour (aged 18 at the time) were arrested on charges of lavat. The current state of the proceedings against them is unknown.

In July 2008, the Second District of the Criminal Court of Tabriz found Mahdi Pooran (reportedly aged 17), Hamid Taghi, Ebrahim Hamidi, and Mehdi Rezaii guilty of lavat and sentenced them to death. The four defendants are accused by a fifth man of having raped him. Reportedly, there is enmity between the alleged victim's family and the family of Ebrahim Hamidi. The alleged victim initially stated that there were no witnesses to the rape. At the trial, however, three relatives of the alleged victim were introduced as witnesses to the rape. As that did not meet the requirement of four male witnesses, the judge convicted the four defendants on the basis of "the knowledge of the judge". The case is currently pending before the Supreme Court. On an unspecified date the Criminal Court of Shiraz found Mohsen Ghabraii guilty of lavat and sentenced him to death. The judgment has been upheld on appeal by the Supreme Court and there is a risk that execution might be imminent.

451. While I do not wish to prejudge the accuracy of these allegations, I would like to recall that article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". In interpreting article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As I have observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Already in 1993, the Human Rights Committee (CCPR/C/79/Add.25) noted in its concluding observations on the periodic report under the Covenant of your Excellency's Government that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant.

452. With regard to the cases of Nemat Safavi and Mahdi Pooran, I would further like to draw your Government's attention once again to the fact that any further judgments imposing the death sentence and executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which I have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child, to which Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

453. It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate? Please provide detailed information on the current state of criminal proceedings on charges of lavat against Nemat Safavi, Ghaseem Bashkool and the man arrested together with him, Hamze Chavoshi and Loghman Hemzepour, Mahdi Pooran, Hamid Taghi, Ebrahim Hamidi, and Mehdi Rezaii, and Mohsen Ghabraii.

2. Is the information summarized above concerning the relevant provisions of the Islamic Penal Code of Iran accurate? Please explain the concept of a guilty finding based on "the knowledge of the judge".

3. Please provide statistics as to the number of persons sentenced to death for the offence of lavat and the number of those executed in the past five years.

#### **Uganda: Death in custody of Brian Mpadde**

**Keywords:** death, detention, torture

Violation alleged: Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention.

Subject(s) of appeal: 1 males (death in custody) and 8 others.

Character of reply: No response

Observations of the Special Rapporteur: The Special Rapporteur regrets that the Government of Uganda has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Urgent appeal dated 12 November 2009, sent with the Working Group on arbitrary detention, 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 torture and other cruel, inhuman or degrading treatment or punishment.

1126. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the detention of nine men under Penal Act Code

Article 145(a) and the alleged ill treatment of two of the detainees, one of which died immediately upon release from prison.

According to the information received,

Consensual homosexual conduct is a criminal offense in Uganda, punishable, in some cases, with life imprisonment. At present people suspected of homosexual conduct are being prosecuted on the charge of 'carnal knowledge of any person against the order of nature' under Penal Act Code Article 145 (a). Reportedly, nine men are currently being detained on this charge and have been held in detention for over 90 days without trial. They were allegedly arrested without warrant or other permission by local police officers in some cases cooperating with the Local Council Officials, on the basis of unfounded allegations of homosexuality made by fellow villagers. They have then been detained for extended periods of time, longer than the maximum of 48 hours, during which time some men were beaten by other detainees and police, forced to undergo invasive medical examinations, and were denied access to necessary health care.

Details regarding each of the individuals are outlined below:

1. Mr. Simon Semondo was first detained in Nakifuma, Kawuuga Prison, Mukono, and is now detained in Luzira Prison, Kibuye. Initially charged with "carnal knowledge against the order of nature", he was later charged with "defilement" and "aggravated defilement". Mr. Semondo remains in Luzira Prison pending a hearing on his application for bail, which has recently been postponed for two months
2. Mr. Shasha Kalule Kirumira has been detained since March 2009 in Kigo Prison, Entebbe. He was initially charged with "carnal knowledge against the order of nature" and later with "aggravated defilement".
3. Mr. Christopher Timmy: The details of his detention are unknown.
4. Mr. Julius Kizito is detained in Butuntumula Prison, Luwero Village. Initially charged with "carnal knowledge against the order of nature", he was later charged with "defilement" and "aggravated defilement".
5. Mr. Joseph Ssempijja was detained from June 2009 to 13 July 2009 in Luzira Prison, Kibuye, charged with "aggravated defilement".
6. Mr. David Erias Musoke Kazeeyi Kazooba was arrested in May 2009 in Nakawuka Village, Kasanje Sub-County, Wakiso District and charged with "aggravated defilement".
7. Mr. Justus Kiiiza Turyamureba was arrested in October 2008 in Karoza, Mitooma, Bushenyi and charged with "carnal knowledge against the order of nature".
8. Mr. Fred Wasukira (also known as Nabooza Margate) was arrested on 8 April 2009 in Namakwekwe Village, Mbale District of Eastern Uganda and charged with "carnal knowledge against the order of nature". He was detained in Kampala Road Police Station, Mbale Police Station, and Maluke Prison (all in the Mbale District of Eastern Uganda) until 20 May 2009.
9. Mr. Brian Mpadde was arrested on 8 April 2009 in Namakwekwe Village, Mbale District of Eastern Uganda, charged with "carnal knowledge against the order of nature". He was detained, in Kampala Road Police Station, Mbale Police Station and Maluke Prison (all in the Mbale District of Eastern Uganda) until June 16, 2009.

In particular, information received regarding Mr. Brian Mpadde and Mr. Fred Wasukira suggests that there were no investigations into allegations by the police who lacked warrants of arrest. The arrests followed denunciations of Namakwekwe villagers and local LCD officers who 'suspected' Wasukira and Mpadde of homosexual activity. At the Kampala Road Police Station, both men were kept in a cell with 17 other men who allegedly severely beat them on two occasions, allegedly after having been incited by the police to do so and disclosure of the allegations against them. On 9 April 2009, both men were transferred to Mbale Police Station, where they were allegedly examined by a police doctor in a humiliating and invasive manner. The report of these examinations (dated 16 June 2009) stated that both men had the STI gonorrhoea and were HIV negative and mentioned that both men had pierced ear lobes, a presumed sign of homosexuality. The police also allowed the media to take photographs of Mr. Wasukira and Mr. Mpadde, which were then used in full coverage stories on television and in newspapers. Reports about these alleged violations of the right to privacy were submitted to the Uganda Human Rights Commission on 17 June 2009. Both men remained in custody at Mbale until 17 April 2009 when they were formally charged in court with 'having carnal knowledge against the order of nature'. They were then transferred on remand to Maluke Prison in Mbale. Following appearances on 21 April 2009 and 4 May 2009, bail was set for both of them. However, neither man could immediately meet the financial terms and conditions set by the court, so their detention was again extended until 20 May 2009, when Mr. Wasukira was released. He is attending court hearings while on bail. Meanwhile, Mr. Mpadde remained in

custody until 16 June 2009. Due to the violent treatment received while in custody, Mr. Mpadde was admitted to Mbale District Hospital, with severe injuries to his head and internal organs, immediately upon getting bail. However, he went into a coma before any medical examinations were carried out. Subsequently, his condition deteriorated and he died on 13 September 2009. Medical records contain conflicting information on the cause of this death. While one report indicates that the coma was due to complications from syphilis, others indicate that his death was related to meningitis or anemia. Despite the resulting uncertainty, no autopsy was carried out on Mr. Mpadde and the cause of this death remains unknown. However, a number of sources have indicated their fear that physical and psychological ill-treatment or torture during Mr. Mpadde's detention may have caused or contributed to his death.

1127. Without expressing at this stage an opinion on the facts of the above cases and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

1128. We would also like to draw your Excellency's Government's attention to its commitment to protect the right to health as reflected in the international legal instruments. The Universal Declaration of Human Rights provides that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food (Article 25 (1))." Article 12 of the International Covenant on Economic, Social and Cultural Rights, which your Excellency's Government ratified on 21 April 1987, specifically provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on part of all States parties to ensure that health facilities, goods, and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

1129. We would further like to draw your Excellency's Government's attention to the evidence that shows that criminalization of homosexuality has a negative effect on responses to HIV. It has been shown that decriminalization of homosexuality, combined with efforts to address stigma and discrimination against lesbian, gay, bisexual and transgender (LGBT) presents an effective approach to HIV prevention. Criminalization of homosexuality impedes access to HIV- and health-related information and services for LGBT individuals and thereby can undermine the national HIV response, by not only discouraging LGBT individuals from seeking and accessing services, but also by preventing service providers from providing information and services to members of this community

1130. In this context, we would like to draw your Excellency's Government's attention to General Comment No. 20 on Non-Discrimination in Economic, Social and Cultural Rights (art. 2 para. 2) of the Committee on Economic, Social and Cultural rights, and in particular to its paragraph 7, which states: "Non-discrimination is an immediate and cross-cutting obligation in the Covenant. Article 2(2) requires States parties to guarantee nondiscrimination in the exercise of each of the economic, social and cultural rights enshrined in the Covenant and can only be applied in conjunction with these rights. It is to be noted that discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights".

1131. Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this context, we would like to draw your Excellency's Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

1132. With regard to Mr. Mpadde, we wish to recall that, when the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a

presumption of State responsibility. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3, stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions" (OP 4).

1133. In the event that your investigations support or suggest the above allegations to be correct, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

1134. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the abovementioned persons in compliance with the above international instruments.

1135. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged pertaining to the arrests and detention of the nine men listed above correct?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to these nine cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please indicate which measures were taken to address the medical needs of Mr. Brian Mpadde and Mr. Fred Wasukira following the injuries they sustained as a result of the alleged beatings, and to ensure the right to the highest attainable standard of health. If no measures were taken, please explain why.
4. What measures have been taken to ensure non-discrimination on the basis of sexual orientation in the realization of the right to health?
5. Please indicate the legal basis for the arrest and detention of these persons and how these measures are compatible with applicable international human rights principles and standards as contained, inter alia, in the Universal Declaration of Human Rights.

#### **Uganda: Concerns about proposed Anti-Homosexuality Bill**

**Keywords:** criminal laws, human rights defenders, HIV/AIDS

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

Subject(s) of appeal: Group concern

Character of reply: No response

Observations of the Special Rapporteur: The Special Rapporteur regrets that the Government of Uganda has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Allegation letter dated 23 December 2009, sent with the Working Group on arbitrary detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

1136. We would like to bring the attention of your Excellency's Government information received concerning a legislative bill pending before the Ugandan legislature, Bill N° 18 of 2009.

1137. According to the information received, the Parliament of Uganda is currently considering Bill N° 18 of 2009 (also known as the "Anti-Homosexuality Bill") tabled before it on 15 October 2009. The proposed Bill increases penalties for homosexual conduct and criminalizes many

related activities. The envisaged penalties range from imprisonment not exceeding three years for the failure to denounce the commission of an offence as defined by the Bill to life imprisonment and the death sentence. Consensual homosexual conduct is already a criminal offence under article 145 sub a) of the Ugandan criminal code, which penalizes "carnal knowledge of any person against the order of nature". However, Bill N° 18 would expand the reach of this existing provision by including "any person who touches another person with the intention of committing an act of homosexuality". The Bill also punishes 'aggravated homosexuality', including activity by 'serial offenders' or those who are living with HIV, with the death penalty.

1138. In addition, the Bill punishes any form of 'promotion of homosexuality' with imprisonment of five to seven years. This raises concerns that the work of civil society actors and human rights defenders addressing issues of sexual orientation or gender identity might be criminalized. The Bill specifies that this includes anyone who publishes or disseminates 'homosexual materials', 'funds or sponsors homosexuality and related activities', 'uses electronic devices which include internet, films and mobile phone' or 'who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices'. The Bill also criminalizes failure to report any offences within its scope, compelling citizens to report to the authorities anyone whom they suspect of engaging in homosexual activity.

1139. Furthermore, HIV prevention activities in Uganda, which rely on an ability to speak frankly about sexuality and health and to provide condoms and other safer sex materials, may be compromised by this Bill. However, women, sex workers, people living with HIV, and other marginalized groups may also find their activities tracked and criminalized through this Bill should it be enacted into law.

1140. We would like to draw the attention of your Excellency's Government to its commitment to protect the right to health as reflected in the international legal instruments. The Universal Declaration of Human Rights provides that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food (Article 25 (1))." Article 12 of the International Covenant on Economic, Social and Cultural Rights, which your Excellency's Government ratified on 21 April 1987, specifically provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on part of all States parties to ensure that health facilities, goods, and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

1141. Furthermore, a number of studies indicate that criminalization of homosexuality will have a detrimental impact on efforts to combat the spread of HIV in Uganda. It has been shown that decriminalization of homosexuality, combined with efforts to address stigma and discrimination against lesbian, gay, bisexual and transgender (LGBT) persons constitutes a far more effective approach to HIV prevention. If the Bill came into force, it would impede access to HIV- and health-related information and services for LGBT individuals and could thereby undermine the national HIV response, not only by discouraging LGBT individuals from seeking and accessing services, but also by preventing service providers from providing information and services to members of this community.

1142. In this context, we would like to remind your Excellency's Government of General Comment N° 20 on Non-Discrimination in Economic, Social and Cultural Rights, adopted by the Committee on Economic, Social and Cultural Rights in 2009. In paragraph 32, the Committee stated that "parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the work place".

1143. The Committee also underlined in paragraph 33 that "health status refers to person's physical or mental health. States parties should ensure that a person's actual or perceived health status is not a barrier to realizing the rights under the Covenant. The protection of public health is often cited by States as a basis for restricting human rights in the context of a person's health status. However, many such restrictions are discriminatory, for example, when HIV status is used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum. States parties should also adopt measures to address widespread stigmatization of persons on the basis of their health status"

1144. In relation to the penalty of imprisonment as enshrined in the Bill, we would like to draw your Excellency's Government's attention to article 9, paragraph 1, clause 2, of the International Covenant on Civil and Political Rights (ICCPR), which the Government of Uganda ratified on 21 June 1995. This provision stipulates that [n]o one shall be subjected to arbitrary arrest or detention. The Working Group on Arbitrary Detention has qualified deprivation of liberty as arbitrary, inter alia, "[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II). In this connection, we would like to draw your Excellency's Government to Opinion N° 22/2006 (A/HRC/4/40/Add.1, page 91), in which the Working Group on Arbitrary Detention, at para. 19, held that "[e]ver since the Human Rights Committee adopted its View in *Toonen v. Australia* and it itself adopted its Opinion 7/2002 ... the Working Group has followed the line taken in those cases. That means that the existence of laws criminalizing homosexual behaviour between consenting adults in private and the application of criminal penalties against persons accused of such behaviour violate the rights to privacy and freedom from discrimination set forth in the International Covenant on Civil and Political Rights. Consequently, the Working Group considers that the fact that the criminalization of homosexuality ... is incompatible with articles 17 and 26 of the International Covenant on Civil and Political Rights."

1145. In addition, with regard to the provisions in article 13 of the Bill which criminalize any form of 'promotion of homosexuality', including using electronic devices such as the Internet, films, mobile phones for "purposes of homosexuality" or "promoting sexuality", we would like to remind your Excellency's Government of its obligation to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the ICCPR, which provides that "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."

1146. Finally, we would like to draw your attention to principles of international law relevant in relation to article 3 of the Bill, which makes "aggravated homosexuality" (such as where the person against whom the "offence of homosexuality" is committed is a minor or a person with a disability, or the "perpetrator" is a person living with HIV or a "serial offender") punishable by the death penalty. We would like to recall that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". As the Special Rapporteur on extrajudicial, arbitrary or summary executions observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Article 3 of Bill N° 18 of 2009 is incompatible with this well-established principle of international law.

1147. We urge your Excellency's Government to take all necessary measures to ensure that the enjoyment of the right to the highest attainable standard of physical and mental health, of the rights not to be arbitrarily deprived of one's life or personal freedom, as well as of the right to freedom of opinion and expression is protected. It is our opinion as independent human rights experts of the Human Rights Council that only the withdrawal or rejection of Bill N° 18 of 2009 can ensure that fundamental principles of international human rights law binding for Uganda are not seriously violated.

1148. We would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged pertaining to the proposed "Anti-Homosexuality Bill" correct?
2. Please provide details of any actions taken to remove the provisions in the Bill which violate the human rights of the people of Uganda – specifically those relating to the application of the death penalty, imprisonment, discrimination on the basis of sexual orientation, discrimination on the basis of HIV status, freedom of opinion and expression, and the right to health, but generally with a view to the Bill in its entirety.
3. What measures have been taken to ensure non-discrimination on the basis of sexual orientation?



**Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Addendum: Mission to Colombia, A/HRC/14/24/Add.2, 31 March 2010**

**Keywords:** death

*VII. ESPECIALLY VULNERABLE GROUPS*

74. Important targets of unlawful killings by both Colombian State forces and IAGs have historically included human rights defenders, trade unionists, proponents of women's, victims' and minority rights, lesbian, gay, bisexual or transgender individuals or people with physical or mental disabilities. Statistics about the number of unlawful killings of people in each of these categories differ, but the incontrovertible reality remains that they continue to be disproportionately killed or threatened and are especially vulnerable. Government efforts to hold perpetrators accountable are weak. For example, of 877 trade unionists killed between 1984 and 2008, only 106 cases have reached the sentencing stage, while the vast majority (621) remain at the initial investigative stage. Impunity for killings by State forces and by paramilitaries and IAGs continues.

**Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Addendum: Guatemala, A/HRC/11/2/Add.7, 4 May 2009**

**Keywords:** hate crimes, death, transgender

*IV. TYPES OF KILLINGS*

13. In his report, the Special Rapporteur indicated several particularly problematic types of killings that occur in Guatemala: social cleansing; lynching; femicide; attacks targeting people for being gay, lesbian, transgender or transsexual; [fn] attacks on human rights defenders; and violence against those in prisons. In addition, in the last few years a new form of violence has taken hold - attacks against conductors of public transit.

fn: Updated information on attacks in Guatemala against those perceived to be gay, lesbian, transgender or transsexual was not provided.

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

**Keywords:** hate crimes, transgender, death

**Guatemala: Muerte de Juan Pablo Méndez Cartagena y Ataque contra Kevin Robles**

*Violación alegada*

Muerte a consecuencia de ataque o asesinato por las fuerzas de la policía

*Persona objeto del llamamiento*

2 individuales (un menor atacado debido a su orientación sexual y un defensor de los derechos humanos)

*Carácter de la respuesta*

No respuesta Observaciones del Relator Especial El Relator Especial lamenta que el Gobierno de Guatemala no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

**Llamamiento urgente del 10 de febrero de 2006**

Quisiera señalar a la atención urgente de su Gobierno la información que he recibido relativa al ataque armado a manos de la policía en contra de dos travestís profesionales del sexo, a saber Kevin Robles, alias Sulma, y Juan Pablo Méndez Cartagena, alias Paulina.

De acuerdo con la información recibida, en la madrugada del 17 de diciembre Sulma y Paulina se encontraban en la zona 1 de la ciudad de Guatemala, en la intersección entre la Cuarta Avenida y la Calle 11, cuando cuatro hombres en motocicleta, que según testigos llevaban uniformes de la policía, les ordenaron que se detuvieran, y luego dispararon contra ellas. Paulina recibió dos disparos en la cabeza, y murió minutos después. Sulma recibió tres disparos, pero sobrevivió. Se encuentra en estado grave pero estable en el hospital. Habla con dificultad,

pues, según los informes, una de las balas le destruyó todos los dientes superiores.

Sulma y Paulina colaboraban desde años con la Organización de Apoyo a una Sexualidad Integral frente al SIDA (OASIS), organización que trabaja para prevenir el VIH/sida y presta apoyo a lesbianas, gays, bisexuales y personas transgénero. Paulina había empezado a trabajar como empleada asalariada de OASIS en 2004, y desde entonces sólo había tenido que ganar dinero ocasionalmente como profesional del sexo. OASIS ha pedido protección especial para Sulma, ya que agentes de la policía están patrullando las calles cerca del lugar donde se produjeron los disparos, en un aparente esfuerzo para intimidar a los testigos. Informes indican que la Procuraduría de los Derechos Humanos transmitió dicha solicitud al Ministerio de Gobernación. Sin embargo, hasta la fecha no se ha tomado ninguna medida de seguridad a favor de Sulma. Sin implicar, de antemano, una conclusión sobre los hechos, requiero al Gobierno de su Excelencia que proteja con efecto inmediato a Sulma y que aparte de sus puestos a todos los agentes implicados en las amenazas y homicidios. Además, solicito al Gobierno que me informe sobre los progresos realizados en las investigaciones sobre el asesinato y el ataque en contra de Paulina y Sulma.

Es mi responsabilidad de acuerdo con el mandato que me ha entregado la Comisión de Derechos Humanos y reforzado por las resoluciones pertinentes de la Asamblea General, intentar conseguir clarificación sobre los hechos llevados a nuestra atención. En mi deber de informar sobre esos casos a la Comisión, estaría muy agradecido de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. Son exactos los hechos referidos? Si no, para que se refute esas denuncias? Favor de proporcionar los resultados de la diligencia producida, incluyendo autopsias efectuadas.
2. Si fue presentada una queja, cuales son las acciones proporcionadas en respuesta?
3. Por favor, proporcione los detalles así como los resultados, en caso que sean disponibles, de las diligencias, judiciales o de otro tipo, realizadas en relación a este caso.
4. Por favor, proporcione los detalles de cualquier diligencia que haya sido emprendida.
5. Por favor, indique si alguna compensación fue otorgado a la familia de Paulina y a Sulma.

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

**Keywords:** violence, transgender, gender identity, death, hate crimes

*Summary*

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.

*II. LEGAL FRAMEWORK*

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).

*III. ANALYSIS OF THE KINDS OF EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS*

## OCCURRING IN GUATEMALA

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.

36. In practice, intolerance and discrimination is often applied with regard to multiple identities of the victim or group of victims. Many of the Special Rapporteur's communications and urgent appeals concern cases where women suffer from aggravated discrimination with regard to their religious, ethnic and sexual identities. Women in many countries appear to be victims of double or triple forms of aggravated discrimination, owing to serious restrictions in the areas of education and employment.

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

**Keywords:** death, police

### II. ACTIVITIES

#### A. Communications

8. ...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.

#### B. Visits

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

*III. ISSUES OF PARTICULAR IMPORTANCE*

C. Imposing the death penalty only for the “most serious crimes”

40. ... In communications with Governments, the Special Rapporteur has addressed death sentences for offences and conduct including adultery, apostasy, blasphemy, bribery, acts incompatible with chastity, corruption, drug possession, drug trafficking, drug-related offences, economic offences, expressing oneself, holding an opinion, homosexual acts, matters of sexual orientation,...

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 acts, illicit sex, sexual relations between consenting adults

**14. SPECIAL RAPPORTEUR ON THE RIGHT TO EDUCATION**

<http://www2.ohchr.org/english/issues/education/rapporteur/index.htm>

**Report of the Special Rapporteur on the right to education, the promotion of equality of opportunity in education, A/HRC/17/29, 18 April 2011**

**Keywords:** equality & non-discrimination legislation, employment

*V. NATIONAL LEGAL FRAMEWORK*

39. Pursuant to the legal obligations assumed by States under international human rights treaties, and following up on the political commitments they have undertaken, it is incumbent upon them to apply the principle of equality of opportunity in education through their national legal system. The place accorded to this principle in constitutions and other national legislation bears evidence to the way States incorporate their obligations into domestic law.

43. Additionally, other countries have enacted laws specifically addressing the principles of non-discrimination and equality of opportunity in education. Examples include the Promotion of Equality and Prevention of Unfair Discrimination Act (2000) in South Africa; the Law on Equality of Rights and Opportunities, Participation and Citizenship of Persons with Disabilities (2005) in France; the Prohibition of Discrimination Act (2005) in Norway, which establishes the function of Ombudsman on Equality and Anti-Discrimination; the General Equality of Treatment Act (2006) in Germany, which aims “to prevent or remove disadvantages due to race or ethnic background, gender, religion or philosophy, disability, age or sexual orientation” in employment and vocational training; the Equality Act (2006) in the United Kingdom which establishes a Commission for Equality and Human Rights and requires public authorities “to take proactive steps in promoting equality of opportunity between men and women”.

**Report of the United Nations Special Rapporteur on the right to education, A/65/162, 23 July 2010**

**Keywords:** sexual and reproductive health and rights, Yogyakarta Principles, stereotyping

*I. INTRODUCTION*

D. The right to sexual education: its relationship to other rights and the need for a gender and diversity perspective

23. In order to be comprehensive, sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity. Sexual education is a basic tool for ending discrimination against persons of diverse sexual orientations. A very important contribution to thinking in this area was made by the 2006 Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender

identity. The Special Rapporteur fully endorses the precepts of Principle 16, referring specifically to the right to education.

## *II. THE RIGHT TO COMPREHENSIVE SEXUAL EDUCATION IN INTERNATIONAL HUMAN RIGHTS LAW*

C. Other international standards and initiatives of relevance to the human right to comprehensive sexual education

39. The European Committee of Social Rights set important standards on the right to sexual education in a landmark decision. The Committee decided that States parties to the European Social Charter were required to provide sexual education to young people on a scientific and non-discriminatory basis without censoring, withholding or intentionally misrepresenting information, for example as regards contraception. The Committee recommended that such education should be provided throughout the entire period of schooling and stated that education in sexual and reproductive health should be designed to develop the capacity of children and young people to understand their sexuality in its biological and cultural dimensions, which would enable them to take responsible decisions with regard to sexual and reproductive health behaviour. In its decision, the Committee expressed the view that States were required to ensure that sexual education programmes did not reinforce stereotypes or perpetuate prejudices regarding sexual orientation.

## *III. SITUATION OF THE RIGHTS TO COMPREHENSIVE SEXUAL EDUCATION FROM THE VIEWPOINT OF STATE RESPONSIBILITY*

B. Analysis by perspective

65. In the case of Latin America and the Caribbean, gender issues are stated to be important at all levels. However, the regional average shows that countries are still not dealing with all aspects of sexual inequality in official programmes. Moreover, the question of discrimination based on sexual orientation or preference is practically omitted from school curricula in the region. Only Uruguay reports that it is included in all programmes, while Colombia and Argentina report that it is addressed in most programmes.

66. The male perspective has already been recognized for some years as an important dimension of gender analysis, and an area of action to promote gender equality. It should be borne in mind that patriarchy affects everyone by normalizing and stereotyping roles, thereby imposing needs and ways of being and feeling. But, like any social construct, it can be changed. This important and difficult task must be taken up by all men and women for reasons of gender solidarity and must therefore be tackled explicitly in education.

67. The importance of the sexual diversity approach, which is linked to the gender perspective, should be emphasized. Regrettably, few sexual education programmes and curricula include this approach. The aforementioned Yogyakarta Principles are a fundamental tool for inclusion of the diversity perspective in the public policies that have to be taken into account in education.

### **Report of the special rapporteur on the right to education. Addendum: Mission to Bosnia and Herzegovina, A/HRC/8/10/Add.4, 27 May 2008**

**Keywords:** equality & non-discrimination legislation

## *II. GENERAL VIEW OF THE EDUCATION SYSTEM*

A. National legal framework

3. Framework Law on Higher Education in Bosnia and Herzegovina

22. The Law states that access to higher education regulated by licensed higher education institutions in Bosnia and Herzegovina shall not be restricted, directly or indirectly, on any actual or presumed grounds such as gender, race, sexual orientation, physical or other impairment, marital status, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth, age or other status.

### **Report of the Special Rapporteur on the right to education. Addendum: Communications sent to and replies received from Governments, A/HRC/8/10/Add.1, 13 May 2008**

## **Poland**

### **Letter of allegations/Communications sent**

**Keywords:** freedom of expression, education, children

79. On 21 June 2007, the Special Rapporteur sent a communication concerning information received that in March 2007, the deputy Minister of education, Mr. Miroslaw Orzechowski, allegedly stated in different occasions that Government was developing legislation to ban "promotion of homosexuality" in schools and all education facilities. According to this legislation, teachers, students and principals who violate its provisions could face dismissal, fines or prison terms. Moreover, health educators advocating safer sex practices for homosexuals would be banned from schools, as well as lesbian, gay and transgender (LGBT) organizations.

80. In addition, it was alleged that in a radio interview Mr. Orzechowski, stated that "homosexuals should not hold positions such as those of a teacher". The next day he insisted that he was misquoted and said that "only those who propagate homosexuality would face consequences". Previously, at a summit of European Union education Ministers in March 2007, Deputy Prime Minister and Minister of Education, Mr. Roman Giertych, allegedly affirmed that children are receiving "propaganda about homosexuality", adding that this "must be limited so children will have the correct view of the family".

81. According to the information received the legislative proposal was under "popular consultation", which is a step of the legislative process. However, it has not been made public. It would have the support of the Prime Minister Mr. Jaroslaw Kaczynski and the President Mr. Lech Kaczynski.

82. The Special Rapporteur reiterated his concern already expressed in a communication sent on 27 June 2006, as well as in his report A/HRC/4/29/Add.1 presented to the Human Rights Council during its 4th session, regarding the dismissal of the Director of the National In-Service Training Centre, due to his involvement in the publication and dissemination of a Council of Europe's human rights handbook for young people. The Special Rapporteur was concerned that the legislation referred to above might be also an attempt to prevent the dissemination in Poland of educative information that promotes universal human rights, tolerance and respect for diversity. He was also preoccupied that it would prevent students of having access to sexual health information and that it would jeopardize polish educators' rights.

83. By letter dated 26 November 2007, the Government replied to the communication sent by the Special Rapporteur on 21 June 2007 concerning the preparation by the Polish Ministry of National Education of a draft Act aiming at the prevention to promote homosexuality in schools and on the ban of propagating the homosexuality as an ideology in Polish educational system. The Government informed that on 6 September 2007, the Managing Board of the Ministry of National Education decided on the discontinuation of further legislative process on the mentioned draft.

84. The Special Rapporteur thanks the Government for its reply and is pleased to note that the draft legislation has been discontinued.

### **Report of the Special Rapporteur on the right to education. Addendum: Summary of communications sent to and replies received from Governments and other actors, A/HRC/4/29/Add.1, 15 March 2007**

## **Poland**

### **Communications received**

**Keywords:** education, children

33. In a letter dated 11 January 2007, the Government replied to the communication of 27 June 2006.

34. The Government stated that the National In-Service Teacher Training Centre –(NITTC) is responsible for the 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.

35. 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.

36. The Government concluded that Mr Sielatycki 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 Sielatycki was in a position to suggest to the Committee that the manual be published without the involvement of the NITTC. Mr Sielatycki was dismissed in accordance with Article 38.1 of the Act on the System of Education.

### **Observations**

37. The Special Rapporteur thanks the Government for its response. However, he remains concerned over the situation of Mr. Sielatycki. In spite of the fact that his dismissal has been decided according to internal legislation, it appears that it does not comply with Poland’s international obligations. Indeed, the inclusion of the Manual on Human Rights Education with Young People into the national curriculum was compatible with the goals pursued by the international human rights law, in particular the International Covenant on Economic, Social and Cultural Rights, that Poland ratified in 1977. The Special Rapporteur urges the Government to reconsider its decision on the matter.

## **15. SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING**

<http://www2.ohchr.org/english/issues/housing/index.htm>

### **Report of 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 in this context, A/HRC/19/53, 26 December 2011**

**Keywords:** equality & non-discrimination legislation, discrimination

#### *III. GENDER-SENSITIVE HOUSING LAW, POLICY AND PROGRAMMING: THE RIGHT TO ADEQUATE HOUSING FROM A GENDER-EQUALITY PERSPECTIVE*

##### *Accessibility*

50. In order to ensure that housing is accessible to all groups of women, it is similarly important for housing law, policy and programmes to reflect the needs of women who may be especially disadvantaged and who encounter intersectional discrimination, including widows, elderly women, lesbians, homeless women, migrant women, women with disabilities, women who may be single mothers or single heads of households, women living with or otherwise affected by chronic illnesses such as HIV/AIDS and mental health disorders, women belonging to racial/ethnic/linguistic minorities, domestic workers, sex workers, illiterate women and women who have been displaced.

#### *V. CONCLUSIONS AND RECOMMENDATIONS*

62. In order to continue to advance the recognition, protection and enjoyment of women’s right to adequate housing, as well as women’s rights to non-discrimination and equality, States should adopt reinforcing strategies. These strategies should be targeted both at the articulation of domestic law, policy and programming which uphold women’s right to adequate housing, as well as at effective implementation. In order to better protect and realize women’s right to adequate housing, the Special Rapporteur offers the following recommendations.

63. The Special Rapporteur reiterates that States should design, adopt and implement gender-sensitive and human rights-based law, policy and programming which:

...

(d) Prioritizes the needs of particularly vulnerable and/or marginalized women, including widows, elderly women, lesbians, homeless women, migrant women, women with

disabilities, women who may be single mothers or single heads of household, women living with or otherwise affected by HIV/AIDS, women belonging to minorities, domestic workers, sex workers, illiterate women and women who have been displaced;

**Report of 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 in this context. Addendum: Mission to the United States of America, A/HRC13/20/Add.4, 12 February 2010**

**Keywords:** discrimination, housing

*IV. Discrimination*

D. Discrimination based on economic and other status

75. The Special Rapporteur also welcomes HUD's (Department of Housing and Urban Development) initiative to examine the extent that lesbians, gay men, bisexual and transgender people experience discrimination when renting or owning their homes.

**Report of 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 in this context. Addendum: Summary of Communication sent and replies received by Governments and other actors, A/HRC/10/7/Add.1, 17 February 2009**

**Keywords:** equality & non-discrimination legislation

**Greece**

*II. SUMMARY OF COMMUNICATIONS SENT TO GOVERNMENTS AND REPLIES RECEIVED*

B. Facts regarding alleged pattern of forced evictions of Roma in Greece

50. In any case, as regards the implied alleged systematic infringement of the right to adequate housing and the existence of discriminatory acts or even failure to act due to discrimination, we would like to emphasize the following:

...

(f) With regard to police behavior, it is to be noted that standard orders from the Hellenic Police Headquarters to all regional police departments are for absolute respect of one's personality and their human rights and of equal treatment of all regardless of racial or ethnic origin, religious beliefs, disabilities, age or sexual orientation. Those orders are based on article 4 of the Greek Constitution, they are within the framework of Law 3303/2005 on "equal treatment regardless of racial or ethnic origin, religious beliefs, disabilities, age or sexual orientation" and article 5§3,4 of the Presidential Degree 254/2004 on "Policemen Professional Ethics Code."

**Report of 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 in this context. Addendum: Canada, A/HRC/10/7/Add.3, 17 February 2009**

**Keywords:** discrimination, housing

*IV. CONCERNS RELATED TO ADEQUATE HOUSING*

C. Discrimination

50. Despite the legal prohibition of discrimination with respect to housing, investigations into social and private housing in Canada reveal the persistence of discrimination against some groups, including on the basis of race, country of origin, sex, age, marital status, family status, sexual orientation, disability and social condition (including poverty and reliance on social assistance).

**Report of 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 in this context, A/HRC/7/16, 13 February 2008**

**Keywords:** multiple discrimination, housing



### III. THE REALIZATION OF THE RIGHT TO ADEQUATE HOUSING FOR SPECIFIC GROUPS

#### A. Women and adequate housing

39. There is an urgent need to address multiple forms of discrimination that women face on grounds including race, class, ethnicity, caste, health status, disability, income, sexual orientation, and other factors. An intersectional approach to gender discrimination is essential to address the multiple forms of discrimination faced by women. Other categories of women may face further discrimination due to their status, including women affected by domestic violence, women in rural and remote areas, women affected by HIV/AIDS, pregnant women, women with newborn children, and single women, including single mothers.

#### **Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. Addendum: Mission to Australia, A/HRC/4/18/Add.2, 11 May 2007**

**Keywords:** discrimination

### III. THE RIGHT TO ADEQUATE HOUSING OF SPECIFIC GROUPS

#### G. Other groups

125. Other vulnerable groups were identified throughout the visit of the Special Rapporteur, including the elderly, persons with complex needs (e.g. HIV/AIDS, sexual minorities), single parents, migrants and peoples with low incomes. All these groups need specific adequate housing solutions and a right-based approach to efficiently address their situations.

## **16. SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS WHILE COUNTERING TERRORISM**

<http://www2.ohchr.org/english/issues/terrorism/rapporteur/srchr.htm>

#### **Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/64/211, 3 August 2009**

**Keywords:** Yogyakarta Principles, multiple discrimination, transgender, gender identity, threats, violence

### III. A gender perspective on countering terrorism

#### B. Gender, equality and non-discrimination in international human rights law

20. Gender is not synonymous with women but rather encompasses the social constructions that underlie how women's and men's roles, functions and responsibilities, including in relation to sexual orientation and gender identity, are defined and understood. This report will therefore identify the gendered impact of counter-terrorism measures both on women and men, as well as the rights of persons of diverse sexual orientations and gender identities. As a social construct, gender is also informed by, and intersects with, various other means by which roles, functions and responsibilities are perceived and practiced, such as race, ethnicity, culture, religion and class. Consequently, gender is not static; it is changeable over time and across contexts. Understanding gender as a social and shifting construct rather than as a biological and fixed category is important because it helps to identify the complex and inter-related gender-based human rights violations caused by counterterrorism measures; to understand the underlying causes of these violations; and to design strategies for countering terrorism that are truly non-discriminatory and inclusive of all actors.

21. International human rights law, including the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, requires States to ensure non-discrimination and equality (de jure and de facto) on the basis of gender, sex, sexual orientation and gender identity, as well as to address instances where gender inequality intersects with other prohibited grounds of discrimination, such as race, colour and religion. These guarantees of non-discrimination and gender equality are particularly integral to ensuring the enjoyment of economic, social and cultural rights, which are often adversely impacted by counter-terrorism measures. In the light of the extent to which counter-terrorism measures curtail the claims of asylum-seekers, it is also important to note that international refugee law provides protection

against gender-related persecution, including through refugee claims relating to sexual orientation and gender identity, within the context of article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees. [fn]

fn: See UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity (Office of the United Nations High Commissioner for Refugees (November 2008)); HRC/GIP/02/01.

#### C. Gendered targeting and militarization

23. Those subject to gender-based abuses are often caught between targeting by terrorist groups and the State's counter-terrorism measures that may fail to prevent, investigate, prosecute or punish these acts and may also perpetrate new human rights violations with impunity. This squeezing effect is present for example, in Algeria, where women have been arrested and detained as potential terrorists after they report sexual violence and humiliation by armed Islamists. In Nepal, the counter-insurgency campaign that was defined with reference to terrorism was characterized by attacks on *meti* (effeminate males or transgender persons) by both sides, with reports that the Maoists were abducting *meti* and the police were taking advantage of the counter-terrorism environment to attack *meti* as part of a "cleansing" of Nepali society. A recent report by Amnesty International exemplifies the extent to which women may be targeted by all entities, noting that in Iraq, "crimes specifically aimed at women and girls, including rape, have been committed by members of Islamist armed groups, militias, Iraqi government forces, foreign soldiers within the US-led Multinational Force, and staff of foreign private military security contractors. Most of these crimes have been committed with impunity". The gender dimensions of these abuses are explicit: "Women and girls are being attacked in the street by men with different political agendas but who all want to impose veiling, gender segregation and discrimination". When States fail to prevent, investigate and punish gender-based violence by government actors or terrorist groups they embolden such attacks and legitimize gender inequality.

#### D. Gender and overly broad definitions of terrorism

27. The breadth of Governments' counter-terrorism measures have resulted in significant gender-based human rights violations. In many instances, Governments have used vague and broad definitions of "terrorism" to punish those who do not conform to traditional gender roles and to suppress social movements that seek gender equality in the protection of human rights. For example, Governments have alleged terrorism links to justify the arrest and persecution of "suspected 'homosexuals'" and regularly accuse women's human rights defenders of being members of terrorist groups. As well as being discriminatory, the latter criminalizes activities that are protected by the guarantees of freedom of opinion, expression and association in the International Covenant on Civil and Political Rights and exposes women's human rights defenders to gender-specific forms of abuse and harassment at the hands of government.

#### M. Restrictive immigration controls, asylum procedures and trafficking

48. Counter-terrorism measures disproportionately affect women and transgender asylum-seekers, refugees and immigrants in specific ways. For example, enhanced immigration controls that focus attention on male bombers who may be dressing as females to avoid scrutiny make transgender persons susceptible to increased harassment and suspicion. Similarly, counter-terrorism measures that involve increased travel document security, such as stricter procedures for issuing, changing and verifying identity documents, risk unduly penalizing transgender persons whose personal appearance and data are subject to change. This jeopardizes the right of persons of diverse sexual orientations and gender identities to recognition before the law. In this regard, the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity identify that States must "ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex ... reflect the person's profound self-defined gender identity".

### IV. CONCLUSIONS AND RECOMMENDATIONS

#### A. Conclusions

52. In accordance with his mandate defined by the Human Rights Council, the Special Rapporteur has integrated a gender perspective throughout his work. This report expands upon earlier reports of the Special Rapporteur to provide a comprehensive overview of the frequency and nature of gender-based human rights abuses in counter-terrorism measures and to explore the complex relationship between gender equality and countering terrorism. Gender is not synonymous with women, but rather it encompasses the social constructions that underlie how women's and men's roles, functions and responsibilities, including in relation to sexual

orientation and gender identity, are defined and understood. While many of the dimensions of the theme of this report relate to the human rights of women, and violations thereof, gender-based violations of the human rights of male persons have also been addressed. Moreover, the human rights of lesbian, gay, bisexual, transgender and intersex individuals have required particular attention in the context of a human rights assessment of gender and counter-terrorism.

## B. Recommendations

53. The Special Rapporteur submits the following recommendations to Member States:

...  
(b) To undertake all appropriate measures to investigate, document and monitor the gendered impacts of counter-terrorism measures on women and lesbian, gay, bisexual, transgender and intersex individuals, including in reporting to inter-governmental organizations;

(c) To end impunity for all direct and collateral gender-based human rights violations in the name of countering terrorism, including economic, social and cultural rights violations, and provide redress for victims, including through reparations schemes that are non-discriminatory and equality-enhancing and provide recognition for all forms of gendered harms, including for victims targeted on the basis of sexual orientation and gender identity;

...  
(e) To ensure that counter-terrorism measures do not extend to target or impede activities that do not constitute terrorism, such as the exercise of the right to freedom of peaceful assembly and association by women's and lesbian, gay, bisexual, transgender and intersex human rights defenders;

...  
(l) To take all necessary legislative, administrative and other measures to prevent, investigate and punish the use of torture and cruel, inhuman or degrading treatment or punishment in the name of countering terrorism, perpetrated on the basis of the sexual orientation or gender identity of the victim;

(m) To ensure that the rights of women and persons of diverse sexual orientations and gender identities are never used as a bartering tool to appease terrorist or extremist groups;

## 17. INDEPENDENT EXPERT ON MINORITY ISSUES

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

**Keywords:** multiple discrimination

### II. GENERAL CONSIDERATIONS

16. In their efforts towards effective implementation of the Declaration, all actors should recognize and address multiple and intersecting forms of discrimination against persons belonging to minorities, including on the basis of sex, age, gender identity and disability, and the compounded negative impact upon the enjoyment of their rights.

**Recommendations of the Forum on Minority Issues at its third session, on minorities and effective participation in economic life (14 and 15 December 2010), A/HRC/16/46, 31 January 2011**

**Keywords:** multiple discrimination, equality & non-discrimination legislation, employment

### II. GENERAL CONSIDERATIONS

13. Particular attention should be given to multiple and intersecting forms of discrimination against minorities, including on the basis of sex, age, disability, sexual orientation and gender identity. Intersectional discrimination deepens and complicates the impact of the denial of access to jobs, housing and other economic rights, making it more difficult to identify sustainable solutions. Minority women in rural or remote areas in some countries must cope

with a profound isolation created by boundaries of the home, lack of education and language barriers. Their workload is made heavier by the lack of basic amenities such as clean water and sanitation, cheap and clean cooking fuels, the availability of child-care support, and protection against domestic and societal violence. Entrenched gender roles leave women highly vulnerable, particularly with regard to ownership of land or property, inheritance rights and access to credit, technology or markets.

### *III. RECOMMENDATIONS*

#### A. Governments

16. Governments should eliminate de jure and de facto discrimination affecting participation in economic life for minorities. Measures must be taken to eliminate discrimination against minorities in both the public and private sectors, including in the key fields of employment and labour rights, financial services, education and training, productivity-enhancing technologies, social security, land tenure and property rights. Governments should recognize and address multiple and intersecting forms of discrimination against minorities, including on the basis of sex, age, sexual orientation and gender identity or disability and their compounded negative impact on the women and other groups concerned.

#### D. Trade unions

51. Trade unions should survey union members to identify issues of discrimination on the basis of minority identity, including multiple and intersecting forms of discrimination on the basis of sex, age, disability, sexual orientation and gender identity, that have affected equal access to employment and labour rights. Trade unions should establish task forces to develop plans of action to eradicate labour practices that discriminate against minorities.

### **Report of the independent expert on minority issues, A/HRC/13/23, 7 January 2010**

**Keywords:** multiple discrimination

### *IV. Minorities and effective political participation: a survey of law and national practices*

#### D. Preconditions for and obstacles to effective political participation

56. Discrimination is a key cause of the widespread marginalization of minorities in societies worldwide. It is also an obstacle to the effective participation of minorities. Discrimination can take different forms. Certain segments of minority populations are exposed to multiple forms of discrimination; in addition to being discriminated against on account of their belonging to a national or ethnic, religious or linguistic minority, they are discriminated against because of their gender, age, disability, sexual orientation or other grounds.

## **18. SPECIAL RAPPORTEUR ON THE HUMAN RIGHT TO SAFE DRINKING WATER AND SANITATION**

<http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx>

### **Report of the Special Rapporteur on the human right to safe drinking water and sanitation, *Stigma and the realization of the human rights to water and sanitation*, A/HRC/21/42, 2 July 2012**

**Keywords:** stigma, violence, equality & non-discrimination legislation

### *II. UNDERSTANDING STIGMA AND ITS DRIVERS*

12. Stigma relates closely to power and inequality, and those with power can deploy it at will. Stigma can broadly be understood as a process of dehumanizing, degrading, discrediting and devaluing people in certain population groups, often based on a feeling of disgust. Put differently, there is a perception that the person with the stigma is not quite human. Stigma attaches itself to an attribute, quality or identity that is regarded as "inferior" or "abnormal". Stigma is based on a socially constructed "us" and "them" serving to confirm the "normalcy" of the majority through the devaluation of the "other".

13. What is considered “abnormal” changes over time and place, while the targets of stigma are always those who do not fit the social norm. In some instances, stigma is attached to a person’s social identity, especially in relation to one’s gender or gender identity, sexual orientation, caste or race. Many ethnic groups experience very pronounced stigma. Stigma is also a common reaction to health conditions such as HIV/AIDS and some forms of disabilities. The Committee on Economic, Social and Cultural Rights explicitly calls on States to “adopt measures to address widespread stigmatization of persons on the basis of their health status, such as mental illness, diseases such as leprosy and women who have suffered obstetric fistula”. Indeed, stigma is often closely linked to the body as a site of the “normal” and the “different” and as a vehicle of contagion, especially in terms of sexuality and disease. Furthermore, stigma is frequently attached to activities that are considered “immoral”, “detrimental to society” or “dirty”, affecting, for instance, sex workers, sanitation workers, prisoners and homeless people.

20. Stigma also has its drivers at the societal level with, for instance, the media contributing to spreading prejudices and stereotypes. It is also driven by deeply entrenched cultural beliefs relating, for instance, to gender, sexuality, health and descent. Caste systems are striking examples of systems that lead to the stigmatization of large parts of the population, potentially amounting to violations of human rights.

#### *IV. MANIFESTATIONS OF STIGMA*

##### *E. Threats to privacy and security*

40. A report of the United Nations High Commissioner for Human Rights on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity has highlighted that homophobic and transphobic violence may be physical or psychological, and that those attacks “constitute a form of gender-based violence, driven by a desire to punish those seen as defying gender norms” (A/HRC/19/41, para. 20). While the human rights concerns are much broader, in relation to water and sanitation specifically, the use of public bathrooms, which are often sex- segregated, has been associated with exclusion, denial of access, verbal harassment, physical abuse and sometimes even the arrest of transgender and intersex individuals. More broadly, they are at risk of exposure, violence and harassment in seeking access to services such as water and sanitation when those are in common areas, or where privacy is unavailable or compromised.

##### *F. Criminalization*

41. Stigma often finds its way into legislative and policy frameworks mirroring societal attitudes and prejudices. In many countries, stigmatization is reflected in the criminalization of work-related activities and practices or the lack of legal protection. For instance, the lack of protection creates a climate of impunity, invisibility and silence and violence against sex workers. They are often forced to work in unsafe environments, including in the outskirts of cities, with no access to services.

#### *V. SITUATING STIGMA IN THE HUMAN RIGHTS FRAMEWORK*

##### *C. Non-discrimination and equality*

48. The right to be free from discrimination in the exercise of human rights, including the rights to water and sanitation, is paramount and cross-cutting under international human rights law. Non-discrimination and equality are central to all core international human rights treaties. They include extensive provisions to protect against discrimination and ensure equality, covering in particular racial discrimination, as well as the situation of children, women, and persons with disabilities.

49. Discrimination is defined as constituting “any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights”.

50. In terms of prohibited grounds of discrimination, the International Covenants on Human Rights list race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The term “other status” indicates that these lists are not exhaustive. The treaty bodies have sought to elucidate the term, finding that it encompasses, inter alia, disability, age, sexual orientation and gender identity, health status, place of residence, and economic and social situation. These grounds show a significant overlap with groups experiencing stigmatization, highlighting again that stigma often lies at the root of discrimination. Conversely, this relationship also allows for the use of stigma as a marker and

for the consideration of groups who experience stigmatization when interpreting the term “other status”. While it may already be implicit in the treaty bodies’ reasoning, this would, for instance, require the recognition of homelessness as a prohibited ground of discrimination.

51. States have an immediate obligation to guarantee non-discrimination in the exercise of the rights to water and sanitation. They must ensure that laws, policies, programmes and other measures are not discriminatory. When deeply engrained, discrimination is intractable—as is often the case where stigma lies at the root of discriminatory action—and temporary special measures may be required to ensure the redistribution of power and resources. Finally, to address discrimination based on stigma as a deeply entrenched societal phenomenon, States must adopt measures to ensure that private actors do not discriminate on prohibited grounds.

#### E. Right to privacy

55. According to article 17 of the International Covenant on Civil and Political Rights, “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”. It guarantees the respect for the individual existence and autonomy of the human being. The right to privacy includes the right to be different. Human rights law awards the same protection to the honour and reputation of, for example, homeless people, sex workers or prisoners as to that of any other member of society.

57. Article 17 of the International Covenant on Civil and Political Rights goes on to guarantee that “everyone has the right to the protection of the law against such interference or attacks”, thus including an explicit guarantee of protection against interference by private parties. This results in a positive obligation of States parties to protect privacy against interference and attacks by others, which has been found to be of particular relevance, for instance, in relation to persons deprived of personal liberty, older persons, persons with disabilities or transgendered persons. This provision is of enormous significance in the context of combatting stigma. It clearly demonstrates that States’ obligations reach into the private sphere. They cannot dismiss stigma as a social phenomenon over which States have no influence. Instead, they have positive obligations that extend into this realm, requiring States, for instance, to take measures that enable women and girls to manage their menstrual hygiene needs in a manner that protects their privacy and dignity.

### VI. IDENTIFYING APPROPRIATE STRATEGIES FOR PREVENTION AND RESPONSE

#### A. Participation and empowerment

60. Meaningful participation of stigmatized individuals in crafting measures to combat stigma in relation to water and sanitation is absolutely essential. In order to ensure meaningful participation States must guarantee access to information in relevant languages and formats and targeted to different ages and population groups. For example, since stigma relating to some diseases is often reinforced by a lack of scientific information on ways to prevent, treat or transmit diseases, a critical aspect is to run public health campaigns and ensure that all individuals can seek and receive accurate and trustworthy information. Empowerment should be the key strategy, with those experiencing stigma having space to combat prejudices and discrimination.

#### B. Awareness-raising to break taboos and challenge stereotypes

64. Silence is a major component of stigma. The first step is to speak openly about what seems “unpleasant” or “unmentionable” or deviates from dominant public opinion, and to recognize the stigma attached—be it obstetric fistula, homelessness, intersexuality, menstrual hygiene or another issue. Stigma is often based on ignorance, fears and misconceptions that can be tackled through awareness-raising. The voice of the stigmatized must be amplified, and their space must be broadened to clearly articulate their needs and rights.

65. Probably the greatest challenge in combatting stigma is the fact that it is deeply entrenched in sociocultural norms and attitudes. Tackling it requires raising awareness of stigmatizing practices that are pursued under the umbrella of culture, religion and tradition. The interpretations of culture on which such practices are based are neither immutable nor homogenous and must therefore be challenged, including by questioning the legitimacy of those who perpetuate stigmatizing practices in the name of culture and uncovering the underlying power dynamics (E/CN.4/2006/61, para. 85).

## **19. INDEPENDENT EXPERT ON THE SITUATION OF HUMAN RIGHTS IN BURUNDI**

<http://www2.ohchr.org/english/countries/bi/mandate/index.htm>

**Report of the Independent Expert on the situation of human rights in Burundi, A/HRC/16/CRP.1, 29 September 2010**

**Keywords:** criminal laws

### *IV. HUMAN RIGHTS SITUATION*

- A. Major human rights violations and abuses
  - 5. Gender equality and sexual and gender-based violence

38. The revised Criminal Code adopted in April 2009 by the Parliament criminalizes same sex relationship. In this context, on 5 December 2008, the Independent Expert on the human rights situation in Burundi, jointly with three other Special Rapporteurs of the Human Rights Council, sent an allegation letter to the Government of Burundi, requested it to review the provision criminalizing homosexuality and to reconsider its decision on this matter, as it had undertaken during the Universal Periodic Review in December 2008. However, the provision has so far remained unchanged. The Independent Expert therefore observes that discrimination on the basis of sexual orientation continues to pose a potential threat.

## 20. SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS

<http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx>

### **Report of the Special Rapporteur on extreme poverty and human rights. Addendum: Mission to Paraguay, A/HRC/20/25/Add.2, 3 April 2012**

**Keywords:** equality & non-discrimination legislation

#### *IV. PERSONAS VULNERABLES A LA EXTREMA POBREZA*

##### I. Personas lesbianas, gais, bisexuales, transgénero e intersex

95. En Paraguay, las personas lesbianas, gais, bisexuales, transgénero e intersex (LGBTI) se encuentran ante una situación de enorme discriminación e inseguridad, frente a abusos de autoridades públicas y privadas ante una total inacción del Estado. A pesar de que el principio de igualdad y no discriminación está consagrado constitucionalmente (art. 46), la prohibición de discriminación por orientación sexual e identidad de género con mucha frecuencia no es garantizada ni promovida por los entes públicos.

96. Dicha discriminación afecta en todas las esferas de la vida, incluyendo la laboral y por tanto aumenta desproporcionadamente el riesgo de pobreza. Es deber del Estado asegurar la protección de las personas LGBTI frente a cualquier vulneración de sus derechos y eliminar cualquier tipo de discriminación de jure o de facto que las afecte.

#### *VI. RECOMENDACIONES FINALES*

##### Personas LGBTI

144. El Estado debe garantizar que las políticas públicas no discriminen en base a la orientación sexual e identidad de género y debe establecer mecanismos eficaces y no estigmatizantes para presentar denuncias en casos de violaciones de derechos.

145. El Estado debe garantizar que las violaciones a los derechos de las personas LGBTI no queden impunes. Asimismo, se recomienda sensibilizar a la población respecto a los derechos de este grupo y como la discriminación de que son objeto constituye uno de los mayores obstáculos para escapar de la pobreza.

## 21. SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION

<http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx>

### **Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. Addendum: Observations on communications transmitted to Governments and replies received, A/HRC/20/27/Add.3, 19 June 2012**

#### **Malaysia: Alleged banning of the Lesbian, Gay, Bisexual and Transgender (LGBT) festival, harassment and questioning of organizers**

**Keywords:** discrimination, criminal laws, human rights defenders, freedom of assembly/association

200. JAL 23/01/2012. Case no. MYS 11/2011.  
State Reply: 24/04/2012.

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

Excellency,



We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 16/4, 15/21 and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the alleged banning of the fourth annual Seksualiti Merdeka Lesbian, Gay, Bisexual and Transgender (LGBT) festival in Kuala Lumpur. Seksualiti Merdeka is a coalition of organizations, including the Malaysian Bar Council and Amnesty International Malaysia, working to promote the rights of LGBT individuals and communities in Malaysia.

According to the information received:

From 9 to 13 November 2011, a series of talks, workshop, performances and literary events were scheduled to take place as part of the fourth annual Seksualiti Merdeka festival in Kuala Lumpur. The purpose of the festival is reportedly to celebrate sexual diversity and gender rights and to promote human rights and acceptance of the LGBT community.

On 3 November 2011, it is reported that the Sungai Besi township police disbanded a peaceful event by Seksualiti Merdeka supporters at the Annexe Gallery in Kuala Lumpur and declared a ban on the aforementioned festival, on the grounds that it constituted a "threat to public order" under section 298A of the Penal Code. It is alleged that no evidence to justify this decision was provided and that the organizers had consistently stated that this year's events were to follow the model of previous years which had taken place without incident or interference from State authorities.

The police Deputy Inspector-General reportedly stated that the police had received 28 reports opposing the festival and that the police were undertaking an investigation into the matter under Section 298A of the Penal Code and Section 27A (1) (C) of the Police Act. It is alleged that the Inspector-General also stated that these laws would be used to clamp down on any future events organized by the Seksualiti Merdeka coalition.

Section 298A of the Penal Code allows the police to take action against anyone who causes "disharmony, disunity, feeling of enmity, hatred, ill-will or prejudice" or can be invoked "for the maintenance of harmony or unity on the grounds of religion". It carries with it a sentence of between two to five years of imprisonment. Section 27 A (1) ( C) of the Police Act carries a fine of between 2,000 and 10,000 Malaysian Ringgit (approximately 472-2,361 Euros) and up to one year of imprisonment. It allows the police to ban any activity that takes place on private premises and to disperse anyone found on the premises, where the activity is deemed to be "prejudicial to the interest and security of Malaysia" or to be an activity that would "excite disturbance of the peace".

On 4 November 2011, it is reported that a non-governmental Malay supremacy body comprised of several Islamic groups, protested against the festival on the basis that it opposed the teachings of Islam. The protestors allegedly demanded that some of the organizations, including the Malaysian Bar Council, withdraw their support for the festival. It is alleged that at this protest language inciting hatred against the LGBT community was used but despite this the police failed to intervene.

On 7 November 2011, Mr. Pang KheeTeik, co-founder of the festival, Ms. Ambiga Sreenevasan, the former Bar Council Chair and current Bersih 2.0 Chair, Ms. Irene Fernandez, Tenaganita Chair and Ms. Maria Chin Abdullah Bersih 2.0 committee member were allegedly called in for questioning by the police regarding the festival. Bersih 2.0 is reportedly a coalition of opposition parties and civil society organizations campaigning for increased electoral transparency in Malaysia.

The Deputy Inspector-General of Police reportedly stated, on 9 November 2011, that the police had received a total of 154 reports expressing opposition to the festival, from both individuals and various organizations. It is alleged that the Home Minister has reportedly confirmed that the police have finished its investigation into the organization of the festival and that the matter would now be submitted to the Attorney General who would decide whether to initiate judicial proceedings.

According to information received, organizers of the festival have been subjected to harassment and threats of violence by way of phone calls, text messages and through social media following the imposition of the ban on the festival.

Concern is expressed that the banning of the fourth annual Seksualiti Merdeka LGBT festival in Kuala Lumpur may constitute a violation of the rights to freedom of peaceful assembly and expression as well as discrimination against the LGBT community. Further concern is expressed that the organizers of the event may face criminal prosecution for their peaceful and legitimate work in the promotion and protection of human rights and in particular the rights of the LGBT community in Malaysia.

We would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights (UDHR) which provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of assembly, as recognized in article 20(1) of the UDHR, which provides that "[e]veryone has the right to freedom of peaceful assembly and association."

Furthermore, we would like to draw the attention of your Excellency's Government's attention to Human Rights Council's resolution 15/21, in which the Council "[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully... including persons espousing minority or dissenting views or beliefs, human rights defenders... seeking to exercise or to promote [this] right, and to take all necessary measures to ensure that any restrictions on the free exercise of the right to freedom of peaceful assembly... are in accordance with their obligations under international human rights law" (OP1).

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in 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 articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5, point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully; and
- 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regard to article 7 of the Declaration on Human Rights Defenders, the Special Rapporteur on the situation of human rights defenders has stated that the right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This includes the right to discuss and advocate for human rights ideas and principles that are not necessarily new but that, in some

contexts, may be perceived as new or unpopular because they address issues that might challenge tradition and culture.

In this connection, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

We would also like to recall resolution 17/19 of the Human Rights Council, where the Council expressed grave concern at acts of violence and discrimination in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible for the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the abovementioned persons in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Seksualiti Merdeka?
3. Please provide the full details of the legal basis for the banning of the fourth annual Seksualiti Merdeka Lesbian, Gay, Bisexual and Transgender (LGBT) festival. Please indicate how this ban is compatible international human rights standards as contained in the aforementioned legal instruments.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

## **Observations**

201. The Special Rapporteur thanks the Government of Malaysia for having replied to all communications sent during the reported period. He remains nevertheless concerned by repeated allegations that those peacefully exercising their rights to freedom of peaceful assembly and association face undue restrictions, as echoed in a press release dated 7 December 2011 issued by four special procedures mandate holders.

202. The Special Rapporteur is concerned that, according to the Government's response, a demonstration of members and supporters of the Coalition for Fair and Free Elections (Bersih) was prevented on the sole basis that an opposite group wanted to demonstrate on the same day and at the same location. When there is still credible information that a violent counter-demonstration may take place, greater efforts are required to ensure adequate protection for the members of the first assembly planned. In this connection, the State has a positive obligation to ensure that the right of peaceful assembly is protected against any disruption or provocation.

203. Given the repeated allegations of acts of harassment and intimidation, the Special Rapporteur recommends the Government to immediately put in place an enabling and safe environment allowing individuals to exercise their legitimate freedoms of peaceful assembly and association without undue hindrances. A thorough and independent investigation into any allegations of any alleged human rights violations, including acts of intimidations or harassments, committed against those exercising their rights to freedom of peaceful assembly

and of association, should be conducted; those responsible should be held accountable; and victims should be provided with full redress.

204. The Special Rapporteur thanks the Government for the information it transmitted with regard to the new legislation. He nevertheless remains concerned about numerous provisions of this law, as identified in the communication he sent. He renews its availabilities to provide any technical support and assistance needed to ensure that the legal framework related to peaceful assemblies and its implementation meet international law standards.

205. The Special Rapporteur refers again to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law".

206. The Special Rapporteur reminds the Government of Malaysia of his country visit request sent in September 2011, to which a response is yet to be received. In this connection, OP6 of resolution 15/21 states that the "Human Rights Council... [c]alls upon States to cooperate fully with and assist the Special Rapporteur in the performance of his or her tasks, to provide all necessary information requested by him or her, ... and to consider favourably his or her requests for visits".

**Nigeria: Alleged restrictions on the rights to freedom of association and of peaceful assembly of groups defending lesbian, gay, bisexual, and transgender (LGBT) rights.**

**Keywords:** criminal laws, partnership benefits & recognition, morality

228. JAL 20/12/2011. Case no. NGA 5/2011.  
State Reply: None to date.

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 16/4, 15/21, 15/22, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the Same-Gender Marriage Bill that may discriminate and unduly restrict the rights to freedom of association and of peaceful assembly of groups defending Lesbian, Gay, Bisexuals and Transgender (LGBT) rights. Similar issues have been raised in the urgent appeal addressed to your Excellency's Government by the Special Rapporteur on the situation of human rights defenders on 10 April 2006.

According to the information received:

On 29 November 2011, Nigeria's Senate passed the "Same-Gender Marriage" Bill. It is reported that the approval of the House of Representatives is pending before the President is able to sign it into law. It is alleged that if passed the "Same-Gender Marriage" Bill would have further adverse implications on LGBT people in Nigeria.

It is alleged that the Bill contains a broad definition of the term "same-sex marriage" as it includes all suspected same-sex relationships and targets not only those who are suspected of practicing same-sex relationships, but also anyone who "registers, operates or participates in gay clubs, societies and organizations" or those who "witness, aid or abet" such relationships.

It is alleged that if passed, the Bill may put a wide range of people at risk of criminal sanctions. Not only may those suspected of practising same-sex relationships be targeted by the Bill, but also anyone who denounces discrimination based purely on a person's actual or presumed sexual orientation or gender identity.

If passed, the Bill, which provides for up to 14 years of imprisonment for those suspected of engaging in same-sex relationships, would contradict universally recognized human rights law, including the right not to be arbitrarily or unlawfully subject to interference with one's privacy and family (article 17 of the ICCPR) or the right to be treated equally before the law and to be entitled without any discrimination to equal protection of the law (article 26).

By seeking to impose up to ten years imprisonment and a severe fine on anyone who "registers, operates or participates in gay clubs, societies or organizations" or "witnesses", "aids" or "abets" same-sex relationships or even "supports the registration, operation and sustenance of gay clubs, societies, organizations, processions or meetings", the Bill may also unduly restrict the rights to peaceful assembly and of association (Article 21 stipulates "The right of peaceful assembly shall be recognized"; and Article 22 states that "Everyone shall have the right to freedom of association with others"). If the law is adopted, lesbian, gay, bisexual and transgender individuals, as well as those perceived as belonging to any of these groups, and those that bring support to them will be prevented from associating or assembling freely. The Bill, if brought into law, could also penalize any human rights defenders and activists who would seek to stand up for the rights of lesbian, gay, bisexual or transgender people in Nigeria.

It is alleged that the Bill may also have a far-reaching effect on a wide range of associations working in related fields, including for instance those who provide psychosocial support to LGBT people, those who advocate for human rights for all without discrimination, and those working to prevent transmission of HIV.

Should this information be corroborated, serious concerns are expressed that the aforementioned proposed legislation may unduly limit the free exercise of the right to freedom of association and of peaceful assembly. Concerns are further expressed that obstacles may be put in place to prevent human rights defenders and activists defending LGBT rights, to peacefully advocate for dissenting views and exercise their legitimate rights. Concerns are also expressed that this legislative move may contravene your Excellency's Government commitment when it stated, at the occasion of the debate of the 2009 Universal Periodic Review of Nigeria, that "as citizens, all Nigerians have their fundamental rights guaranteed by the Constitution."

While we do not wish to prejudge the accuracy of these allegations, we wish to remind your Excellency's Government that Nigeria, as a State party to the International Covenant on Civil and Political Rights (ICCPR), has a duty to guarantee equal protection before the law and to prohibit discrimination on any ground. The words "or any other grounds" in article 26 ICCPR have been interpreted to include sexual orientation. The right to freedom from discrimination on grounds of sex is also recognized in article 2 of the African Charter on Human and Peoples' Rights, which was ratified by Nigeria in 1983, and which has become part of Nigeria's national laws under the 1990 Ratification and Enforcement Act. The African Commission, in outlining that the aim of the principle in article 2 is to ensure equality of treatment for individuals, listed sexual orientation as one of the grounds of prohibited discrimination.

We also wish to call to your Excellency's Government's attention the common provisions stipulated under article 21 and 22 of the International Covenant on Civil and Political Rights, where the rights to freedom of peaceful assembly and association are recognized, and whereby "(n)o restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others". Such permissible restrictions, however, can only be justified in a democratic society for achieving one of the abovementioned purposes and shall not be arbitrarily invoked to prevent dissenting views from exercising their legitimate rights.

We would like to refer your Excellency's Government to the Human Rights Council resolution 15/21 recognizes that "exercising the rights to freedom of peaceful assembly and of association free of restrictions, subject only to the limitations permitted by international law, in particular international human rights law, is indispensable to the full enjoyment of these rights, particularly where individuals may espouse minority or dissenting religious or political beliefs." Moreover, and in line with operative paragraph 1 of the same resolution, we call on your Excellency's Government "to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom

of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

With regard to the effects of the proposed Bill on the work of human rights defenders as well as their position in society, we would like to refer Your Excellency's Government to the fundamental principles set forth in 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 articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

With regard to article 7 of the Declaration on human rights defenders, the Special Rapporteur on the situation of human rights defenders has stated (A/66/203, paras. 56-61 and 112-114) that the right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This includes the right to discuss and advocate for human rights ideas and principles that are not necessarily new but that, in some contexts, may be perceived as new or unpopular because they address issues that might challenge tradition and culture. In this connection, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence or discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

We would also like to recall resolution 17/19 of the Human Rights Council, where the Council expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

Furthermore, we would like to bring to the attention of your Excellency's Government 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that "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.”

We are also concerned that the Bill's alleged criminalization of the registration, operation and participation in gay clubs, societies and organization, as well as sanctions against persons supporting those activities, will have a detrimental impact on the efforts to combat the spread of HIV in Nigeria, which has the world's third-largest number of people living with HIV. It has been shown that criminalization of vulnerable populations, including LGBT people, makes HIV and AIDS prevention, treatment and education efforts less accessible to these groups. While decriminalization combined with efforts to address stigma and discrimination against those vulnerable populations constitutes a far more effective approach to HIV prevention.

In connection to the allegations and concerns described above, we urge your Excellency's Government to take all necessary measures to guarantee that the right to freedom of association and of peaceful assembly is upheld. We also encourage your Excellency's

Government to adopt the necessary measures to ensure that defenders, activists and civil society organizations can carry out their human rights work in a free and safe environment.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Is the information alleged in the summary accurate?
2. Please provide the full details of the aforementioned Bill and explain how its provisions are in accordance with Nigeria's obligations under international human rights law and standards, particularly with regard to the rights to freedom of peaceful assembly and of association.
3. Please indicate what measures have been taken to ensure that human rights defenders, activists and civil society organizations can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.
4. Please indicate any consultation undertaken, including with civil society on this Bill.

### **Observations**

229. The Special Rapporteur regrets that no reply has been received from the Government of Nigeria to the allegation letter sent during the reporting period. He considers responses to his communications as an important part of the cooperation of Governments with his mandate, and urges the authorities to provide as soon as possible detailed responses to all the concerned he raised in his communication.

230. The Special Rapporteur underlines that the rights of peaceful assembly and of association are key for individuals espousing minority or dissenting views or beliefs. He therefore urges States to refrain from adopting legislations that can hamper the legitimate work of civil society, notably of those espousing minority or dissenting views or beliefs. He recommends to the Government to revise the Same-Gender Marriage" Bill to ensure it complies with international human rights law. He is available to provide any technical assistance the Government might require in this regard.

### **Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. Addendum: Responses to the questionnaire on best practices related to the rights to freedom of peaceful assembly and of association, A/HRC/20/27/Add.1, 6 June 2012**

**Keywords:** freedom of assembly/association

#### *II. QUESTIONNAIRE*

Questions on best practices that promote and protect the rights to freedom of peaceful assembly and of association.

##### *Right to freedom of peaceful assembly:*

6. Please describe one or more recent examples where the right to freedom of peaceful assembly may have not been respected and the reasons for citing this example(s). In particular, please describe challenges faced in the implementation of laws, policies or programmes for the promotion and protection of the right to freedom of peaceful assembly in your country. Please provide details of any lessons learnt in that regard. Briefly evaluate, in both law and practice, the enjoyment of the right to freedom of peaceful assembly in your country, including by women, individuals facing discrimination or violence because of their sexual orientation and gender identity, as well as persons with disabilities, espousing minority or dissenting views or beliefs, and belonging to other groups at risk

##### *Right to freedom of association:*

14. Please describe one or more recent examples where the right to freedom of association may have not been respected and the reasons for citing this example(s). In particular, please describe challenges faced in the implementation of laws, policies or programmes for the

promotion and protection of the right to freedom of association in your country. Please provide lessons learnt in that regard. Briefly evaluate, in both law and practice, the enjoyment of the right to freedom of association in your country, including by women, individuals facing discrimination or violence because of their sexual orientation and gender identity, as well as persons with disabilities, espousing minority or dissenting views or beliefs, and belonging to other groups at risk.

**Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012**

**Keywords:** freedom of assembly/association

*III. BEST PRACTICES RELATED TO THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION*

A. Common principles

1. Legal framework

13. Resolution 15/21 reaffirms that “everyone has the rights to freedom of peaceful assembly and of association” (emphasis added). This provision must be read jointly with article 2 of the International Covenant on Civil and Political Rights, which stipulates that “each State Party undertakes 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 race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (emphasis added), and article 26 thereof, which guarantees to all individuals equal and effective protection against discrimination on grounds identified in article 2. This applies *inter alia* to minors, indigenous peoples, persons with disabilities, persons belonging to minority groups or other groups at risk, including those victims of discrimination because of their sexual orientation and gender identity (see Council resolution 17/19), non-nationals including stateless persons, refugees or migrants, as well as associations, including unregistered groups. The rights to freedom of peaceful assembly and of association are key human rights in international human rights law, which are enshrined in article 20 of the Universal Declaration of Human Rights.

C. Best practices related to the right to freedom of association

3. The right to operate freely and to be protected from undue interference  
(b) Negative obligation

64. Furthermore, States have a negative obligation not to unduly obstruct the exercise of the right to freedom of association. Members of associations should be free to determine their statutes, structure and activities and make decisions without State interference (e.g. legislation in Bulgaria, Slovakia and Slovenia). Associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection. Associations should enjoy, *inter alia*, the rights to express opinion, disseminate information, engage with the public and advocate before Governments and international bodies for human rights, for the preservation and development of a minority’s culture or for changes in law, including changes in the Constitution. The Special Rapporteur recognizes that the formation of associations embracing minority or dissenting views or beliefs may sometimes lead to tensions, but he emphasizes the duty of the State to ensure that everyone can peacefully express their views without any fear. For instance, in Lesotho, the Registrar General registered the first ever lesbian, gay, bisexual and transgender organization in the country called Matrix in November 2010 (after numerous delays).

*IV. CONCLUSIONS AND RECOMMENDATIONS*

A. General recommendations

84. The Special Rapporteur calls upon States:

(b) To ensure that the rights to freedom of peaceful assembly and of association are enjoyed by everyone and any registered or unregistered entities, including women, youth, indigenous peoples, persons with disabilities, persons belonging to minority groups or groups at risk, including those victims of discrimination because of their sexual orientation and gender identity, non-nationals, as well as activists advocating economic, social, and cultural rights;



## **22. SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON VIOLENCE AGAINST CHILDREN**

### **Annual report of the Special Representative to the Secretary-General on violence against children, A/HRC/19/64, 13 January 2012**

**Keywords:** equality & non-discrimination legislation, violence

Council of Europe Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence adopted by the Committee of Ministers, November 2009  
- Recommendation CM/Rec (2009)10

2. Aims, scope, definitions and principles
  - 2.3 Principles
    - General principles

#### *Non-discrimination*

All children regardless of their sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, state of health, disability or other status, should be protected from all forms of violence and be provided with such care and assistance as to ensure to the maximum extent possible their survival and development.

## **23. SPECIAL RAPPORTEUR ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

<http://www.ohchr.org/EN/Issues/Children/Pages/ChildrenIndex.aspx>

### **Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, A/65/221, 4 August 2010**

**Keywords:** equality & non-discrimination legislation

15. Numerous studies and situation analyses have been carried out by some States, associations, NGOs and multilateral agencies on violence and some forms of sexual exploitation of children, forced labour and trafficking in children and unaccompanied minors. Data gathering and processing systems have been established in many countries and between certain countries.

16. Thanks to these efforts, more data are now available on long-term trends and specific aspects of some types of sale and sexual exploitation of children, including:

- The gender dimension of sexual exploitation, which has the greatest effect on girls, although there are reports of some cases of sexual exploitation of boys (prostitution, pornography, sexual tourism); very few cases have been reported owing to taboos and laws prohibiting homosexuality;

## **24. WORKING GROUP ON PEOPLE OF AFRICAN DESCENT**

<http://www.ohchr.org/EN/Issues/Racism/WGAfricanDescent/Pages/WGEPADIndex.aspx>

### **Report of the Working Group on People of African Descent on its eleventh session, Addendum: Mission to Portugal, A/HRC/21/60/Add.1, 13 August 2012**

**Keywords:** equality & non-discrimination legislation

#### *II. CONTEXT OF PEOPLE OF AFRICAN DESCENT IN PORTUGAL*

- B. Framework for the protection of the human rights of people of African descent

## 2. The national policy and legal framework

19. In Portugal's legal regime, racism and its prohibition are referred to in article 13 of the Constitution, article 240 of the Criminal Code, Law 134/99 and Law 18/2004. Article 13.2 of the Constitution states that "no one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation". Article 240 of the Criminal Code prohibits racist organizations, incitement to discrimination or racist violence, racial vilification and making racist threats. Law 134/99 on the Prohibition of Discrimination in the Exercise of Rights due to Motives based on Race, Colour, Nationality or Ethnic Origin covers direct and indirect discrimination. According to this law, racial discrimination includes any distinction, exclusion, restriction or preference based on race, colour, descent, nationality or ethnic origin which results in annulling or restricting the recognition or exercise of a person's economic, social and cultural rights. Law 134/99 establishes the CICDR to assist with the law's implementation. Law 18/2004 makes racial discrimination an administrative offence as well which is actionable by the relevant Inspector General.

### **25. SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN**

<http://www.ohchr.org/EN/Issues/Trafficking/Pages/TraffickingIndex.aspx>

**Report of the Special Rapporteur on trafficking in persons, especially women and children. Addendum: Mission to Argentina, A/HRC/17/35/Add.4, 24 May 2011**

**Keywords:** discrimination

#### *III. CONCLUSIONS AND OBSERVATIONS*

##### B. Recommendations

94. The Special Rapporteur recommends that the Government of Argentina:

...

(c) Provide holistic, reintegration and rehabilitative assistance to victims of trafficking, in full recognition of their human rights. Programmes of assistance to victims should be made available – not just in the city of Buenos Aires, but in all provinces – to reach victims of trafficking and potential victims who might fall prey to trafficking, without discrimination on grounds of sex, gender and/or sexual orientation

### **26. INDEPENDENT EXPERT IN THE FIELD OF CULTURAL RIGHTS**

<http://www.ohchr.org/EN/Issues/CulturalRights/Pages/SRCulturalRightsIndex.aspx>

**Report of the independent expert in the field of cultural rights. Addendum: Mission to Brazil (8-19 November 2010), A/HRC/17/38/Add.1, 21 March 2011**

**Keywords:** culture

#### *III. NORMATIVE AND INSTITUTIONAL FRAMEWORK*

##### C. National institutional framework

##### 1. Culture-specific institutions and the protection of cultural rights

37. The Secretariat of Identity and Cultural Diversity, created in 2003 as part of the Ministry of Culture, implements the Identity and Cultural Diversity - Plural Brazil programme which seeks to ensure access by groups and networks of cultural producers to support and promotion mechanisms, and to cultural exchanges between regions and groups in Brazil, taking into consideration factors such as gender, sexual orientation, age, ethnicity and popular culture.

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