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

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

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

Summary

(see detailed interventions below, from page 3)

Qatar:

Key Issues/Recommendations: decriminalize sexual activity between consenting adults, and eliminate penalties of flogging and death.

Nicaragua:

Key Issues/Recommendations: commend recent decriminalization of homosexuality, and recommend inclusion of sexual orientation and gender identity in antidiscrimination legislation and programmes.

Italy:

Key Issues/Recommendations: strengthen measures to prohibit discrimination based on sexual orientation and gender identity, combat hate crimes on these grounds, recognize each person's self-defined gender identity, and provide equal treatment to same-sex relationships.

El Salvador:

Key Issues/Recommendations: need for legislative and educational measures to address the significant incidence of violence targeting individuals because of their sexual orientation or gender identity.

Gambia:

Key Issues/Recommendations: recommend decriminalization of homosexuality, and action to combat violence based on sexual orientation and gender identity (particularly in view of comments by the Gambian President threatening homosexuals with expulsion from the country or beheading).

Bolivia:

Key Issues/Recommendations: Commend explicit inclusion of sexual orientation in the Constitution, and frank assessment of challenges to realizing these rights. Recommendations include antidiscrimination initiatives, public education programs, fulfillment of State commitment to same-sex relationship recognition and use of the Yogyakarta Principles.

Fiji:

Key Issues/Recommendations: Welcome prohibition of discrimination on the ground of sexual orientation in the Constitution, and recommend application of the Yogyakarta Principles to help ensure realisation of these rights.

San Marino:

Key Issues/Recommendations: discrimination on the grounds of sexual orientation is prohibited by law under the general heading of 'personal status'. Treaty bodies have recommended explicit articulation of the grounds protected. Same-sex relationship recognition and application of the Yogyakarta Principles are also recommended.

Kazakhstan:

Key Issues/Recommendations: absence of anti-discrimination legislation on the grounds of sexual orientation and gender identity, and need to ensure that stigma associated with sexual orientation and gender identity be addressed at the levels of both State and society.

Angola:

Key Issues/Recommendations: decriminalise sexual activity between consenting adults, particularly with regard to sanctions for acts "against the order of nature".

Islamic Republic of Iran:

Key Issues/Recommendations: decriminalize sexual activity between consenting adults, and eliminate penalties of flogging and death.

Madagascar:

Key Issues/Recommendations: promote equality for all people, including on grounds of sexual orientation and gender identity, ensure needs of marginalised groups are addressed in HIV education, prevention and treatment programs.

Iraq:

Key Issues/Recommendations: implement measures to address extrajudicial killings of persons on the basis of their actual or presumed sexual orientation.

Slovenia:

Key Issues/Recommendations: Slovenia has made significant progress on the rights of LGBT individuals, but greater consistency required to ensure equal treatment of same-sex relationships. Further steps to address hate speech and promote respect for marginalised groups also required.

Egypt:

Key Issues/Recommendations: individuals have been arrested, charged with the "habitual practice of debauchery", and subjected to cruel, inhuman or degrading treatment on the basis of actual or presumed consensual same-sex conduct and/or HIV status. Recommend that these provisions not be interpreted or applied to criminalise same-sex conduct or HIV status, and training programs for relevant authorities.

Bosnia and Herzegovina:

Key Issues/Recommendations: adopt antidiscrimination law, include sexual orientation and gender identity throughout antidiscrimination and equality initiatives, and take steps to combat hate crimes.

Qatar

Date of review: Monday, 8 February, AM

Key Issues/Recommendations: decriminalize sexual activity between consenting adults, and eliminate penalties of flogging and death.

Sample Intervention:

We understand that some forms of sexual activity between consenting adults are criminalised in Qatar, including consensual same-sex activity (under the Penal Code) and consensual sexual activity outside marriage (under Sharia law). These activities are potentially punishable by sentences of imprisonment, flogging or death. The UN Human Rights Committee has confirmed that laws against consensual same-sex conduct violate the rights to both privacy and non-discrimination, contrary to articles 17(1) and 26 of the International Covenant on Civil and Political Rights. In addition, UN resolutions on extrajudicial executions and the death penalty have been explicit that the death penalty may not be imposed for non-violent acts such as sexual relations between consenting adults. We therefore recommend that Qatar not apply flogging and the death penalty as punishments for such offences. We further recommend that Qatar bring its legislation into conformity with international human rights law by repealing provisions which criminalise sexual activity between consenting adults.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

4. Right to privacy, marriage and family life

33. Joint Submission (JS) indicated that along with the Civil and Penal Codes, Sharia law is in force in Qatar, although only applicable to Muslims and that the offence of Zina makes any sexual act by a married person outside of marriage punishable by death, while sexual acts by non-married persons are punishable by flogging.

34. JS also indicated that Qatar maintains criminal sanctions against sexual activity between consenting adults and recommended that the Human Rights Council urge Qatar to impose a moratorium on the death penalty and repeal all provisions which criminalize sexual activity between consenting adults. FMDVP indicated that it is important to stop discrimination based on sexual orientation in Qatar.

Nicaragua

Date of review: Monday, 8 February, PM

Key Issues/Recommendations: commend recent decriminalization of homosexuality, and recommend inclusion of sexual orientation and gender identity in antidiscrimination legislation and programmes.

Sample Intervention:

We warmly commend Nicaragua for decriminalising consenting same-sex relations in the 2008 revisions to the Criminal Code, as noted in the National Report. We also welcome Nicaragua's endorsement of the joint statement on sexual orientation, gender identity and human rights, delivered in December 2008 at the General Assembly, and the historic OAS resolution on sexual orientation, gender identity and human rights adopted in 2009. We note that stakeholders have identified as priorities the need to counter discrimination on these grounds in employment, education, and access to services. We therefore recommend that sexual orientation and gender identity be included as grounds in antidiscrimination legislation and equality initiatives, and that public education and

awareness campaigns be implemented to promote tolerance and respect on these grounds. We further recommend that the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* be applied as a guide to assist policy-making in this area.

NATIONAL REPORT

C. Action to combat discrimination and specific vulnerable groups

80. The new Criminal Code has established the right to freedom of sexual orientation by decriminalizing same-sex relationships.

COMPILATION OF UN INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

C. Implementation of international human rights obligations

1. Equality and non-discrimination

17. UNCT noted that the new Criminal Code, which came into force in mid-2008, abolished the crime of sodomy. A decision taken by the Ministry of Health in August 2009 prohibits health workers from discrimination against people on the grounds of their sexual orientation.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

1. Equality and non-discrimination

7. La Procuraduría para la Defensa de los Derechos Humanos (PDDH) (Office of the Human Rights Procurator) noted that the abrogation of article 204 of the Criminal Code and the adoption of articles penalizing discrimination on grounds of sexual orientation were signs of progress. Nevertheless, the Office recognized that discrimination persisted in access to decent work, education free of prejudice, access to justice and recognition for gender identity.

8. Right to education

54. PFCLC-IDS said that despite the provision in the Constitution declaring education to be non-denominational, throughout its history the State has pursued education policies which have been influenced by conservative ideas — mainly linked to religious ideology — in respect of gender, sexuality and reproduction. PFCLC-IDS recommended that religious interference should be avoided in proposals and decisions concerning State education policy and planning, particularly where sex education and reproductive health are concerned; it also recommended that a health and education policy that meets the needs of men and women and enables them to lead sexually responsible lives free from any form of discrimination should be agreed upon with civil society, including women's and feminist organizations.

Italy

Date of review: Tuesday, 9 February, AM

Key Issues/Recommendations: strengthen measures to prohibit discrimination based on sexual orientation and gender identity, combat hate crimes on these grounds, recognize each person's self-defined gender identity, and provide equal treatment to same-sex relationships.

Sample Intervention:

We welcome Italy's support for the historic joint statement on sexual orientation, gender identity and human rights, delivered in December 2008 at the General Assembly. We note that stakeholders indicate there has been positive progress in this area, but have expressed concern that legal protection for lesbian, gay and bisexual persons exists only in the area of employment, that there has been an increase over the past three years in hate crimes based on sexual orientation and gender identity, and that same-sex relationships remain unrecognized. We therefore recommend that sexual orientation and gender identity be included throughout antidiscrimination laws and equality initiatives. We further recommend that sexual orientation and gender identity be included within appropriate hate crimes legislation, that training on these grounds be provided to police and relevant authorities, and that public education and awareness campaigns be implemented to promote tolerance and respect on these grounds. We recommend that Italy take all necessary legislative, administrative and other measures to respect and legally recognize each person's self-defined gender identity. Finally, we recommend that measures be taken to ensure that same-sex partners are treated equally with opposite-sex partners, and that the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* be applied as a guide to assist in policy-making.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

1. Equality and non-discrimination

19. As indicated by the European Region of the International Lesbian and Gay Federation, in a joint submission with Arcilesbica, Arcigay, Crisalide Azione Trans, International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA Europe and others), legal protection for lesbian, gay and bisexual persons in Italy exists only in the areas of employment and persecution based on sexual orientation is considered as grounds for asylum. ILGA Europe and others recommended that Italy ensure that the outputs of media is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender identity and that speech motivated by homophobia and phobia against transsexuals does not remain unpunished.

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

28. ILGA Europe and others reported on an increase over the past three years in the number of attacks against lesbian, gay and transgender persons, or those who were perceived as having a different sexual orientation or gender identity. It recommended that Italy impose appropriate criminal penalties for such violence, take the necessary measures to prevent it, and ensure that these cases are investigated.

4. Right to privacy, marriage and family life

34. ILGA Europe and others stated that the Italian legal system did not recognize same-sex marriage or any other form of same-sex partnership, which resulted in discrimination in a number of areas, such as family reunification. In addition, ILGA Europe and others recommended that Italy take all necessary legislative, administrative and other measures to respect fully and legally recognize each person's self-defined gender identity.

El Salvador

Date of review: Tuesday, 9 February, PM

Key Issues/Recommendations: need for legislative and educational measures to address the significant incidence of violence targeting individuals because of their sexual orientation or gender identity.

Sample Intervention:

We welcome El Salvador's endorsement of the historic OAS resolution on sexual orientation, gender identity and human rights adopted in 2009. In addressing these commitments, we note that both the Human Rights Committee and stakeholders have identified a high level of violence and killings based on sexual orientation or gender identity. We would ask what measures the Government is taking to address this trend, and recommend that legislative steps be taken to protect persons from hate crimes on grounds including sexual orientation and gender identity. We further recommend that sexual orientation and gender identity be included throughout non-discrimination and equality legislation and initiatives, that public education programs on these grounds be developed, and that sensitivity training be provided to police, judicial and other authorities to promote respect for all persons, including on the grounds of sexual orientation or gender identity. Finally, we recommend that consideration be given to applying the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* as a guide to assist in policy-making in this area.

COMPILATION OF UN INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

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

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

26. The HR Committee expressed concern at the incidents of people being attacked, or even killed, on account of their sexual orientation, and at the small number of investigations mounted into such illegal acts.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

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

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

16. La Fundación Mundial Déjame Vivir en Paz (Global "Let Me Live in Peace" Foundation) (FMDVP) recently reported the murders of at least 12 members of the gay, lesbian, bisexual, transgender and intersex community in El Salvador, the result of escalating violence against the homosexual community.

Gambia

Date of review: Wednesday, 10 February, AM

Key Issues/Recommendations: recommend decriminalization of homosexuality, and action to combat violence based on sexual orientation and gender identity (particularly in view of comments by the Gambian President threatening homosexuals with expulsion from the country or beheading).

Sample Intervention:

We note that under the 1965 Criminal Code same-sex activity between consenting adults is punishable by up to 14 years' imprisonment. The UN Human Rights Committee has confirmed that criminalization of consensual same-sex conduct violates the rights to privacy and non-discrimination, contrary to articles 17(1) and 26 of the International Covenant on Civil and Political Rights, and runs counter to the implementation of effective education programmes in respect of HIV/AIDS prevention by driving marginalised communities underground, a position also supported by UNAIDS. Arbitrary arrests have been reported pursuant to this provision, and stakeholders expressed concern at public statements by

the Gambian President threatening homosexuals with expulsion from the country or beheading. We recommend that Gambia bring its legislation into conformity with international human rights law by repealing provisions which criminalise sexual activity between consenting adults, and that no-one be arrested or detained pursuant to these provisions. We further recommend that violence directed against any person, including because of their sexual orientation or gender identity, be vigorously prosecuted, and that incitement to violence on these grounds be condemned. Finally, we recommend that training be provided to police, judicial and other authorities to promote respect for all persons, including on the grounds of sexual orientation or gender identity.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

1. Equality and non-discrimination

8. The International Gay and Lesbian Human Rights Commission (IGLHRC) reported that, in the Gambia, homosexual conduct is criminalized in the 1965 Criminal Code and that those found guilty of such acts can be imprisoned for up to 14 years. IGLHRC also reported that, in 2008 and 2009, the President of the Gambia called for violence and discrimination and expulsion of "homosexuals", and called for them to be expelled from their dwellings. The Trade Union Congress (TUC) was disturbed by homophobic comments by the Gambian Head of State and strongly condemned arbitrary arrests of citizens alleged to have engaged in homosexual practices. IGLHRC recommended that the Gambia bring its legislation into conformity with its international human rights obligations by repealing all provisions criminalizing sexual activity between consenting adults, and by ensuring non-discrimination by ensuring access to adequate housing and freedom from or remedies for forced evictions, or the threat of forced evictions on the basis of sexual orientation.

4. Right to privacy, marriage and family life

26. Fundación Mundial Déjame Vivir En Paz (FMDVEP) reported that homosexuality is criminalized in the Gambia and that its President stated that he intends to behead all homosexuals placed in detention. FMDVEP recommended that marriage of gay persons as well their right to adopt children be recognized and that all sentences against gay persons solely based on their sexual orientation be eliminated.

Bolivia

Date of review: Wednesday, 10 February, PM

Key Issues/Recommendations: Commend explicit inclusion of sexual orientation in the Constitution, and frank assessment of challenges to realizing these rights. Recommendations include antidiscrimination initiatives, public education programs, fulfillment of State commitment to same-sex relationship recognition and use of the Yogyakarta Principles.

Sample Intervention:

We congratulate Bolivia for explicitly including sexual orientation as a prohibited ground of discrimination in the Constitution, and welcome also the proclamation of an official day dedicated to affirming the human rights of Persons of Diverse Sexual Orientation. We note that the National Report highlights continuing obstacles to the realization of these rights as a result of conservative attitudes, discrimination and violence. May we ask what measures are planned to help overcome these obstacles? We recommend that sexual orientation and gender identity be included throughout antidiscrimination and equality laws and initiatives, and that public education and sensitivity programs be developed and made available, including to police, military, judicial, prison and other authorities. We note that the Human Rights Action Plan 2009-20013 provides for the preparation of a Civil Partnership Act. Could the delegation indicate what progress has been made on this proposed law? We

recommend that Bolivia implement these proposals in a timely manner. Finally, we recommend that the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* be applied as a guide to assist in policy-making on these grounds.

NATIONAL REPORT

IV. Legal system for the protection of human rights

13. The Constitution has set forth wide-ranging rights based on those outlined in inter-American and universal instruments for the protection of human rights. It defines fundamental rights; civil and political rights; the rights of native indigenous campesino nations and peoples; social and economic rights; the rights of children, adolescents and young people; the rights of the family; the rights of older persons; the rights of persons with disabilities; the rights of persons deprived of their liberty; the rights of persons of diverse sexual orientation; the rights of persons with HIV/AIDS; women's rights; users' and consumers' rights; education, intercultural and cultural rights.

VII. Situation of civil and political rights

F. Equality and non-discrimination

43. For the first time the Constitution prohibits and punishes discrimination based on sex, colour, age, sexual orientation, gender identity, origin, culture, nationality, language, religious belief, ideology or any other grounds that might nullify or impair the recognition, enjoyment or exercise, on an equal footing, of the rights of any person.

D. Rights of persons of diverse sexual orientation and gender identity: gays, lesbians, bisexuals and transsexuals

135. The Constitution prohibits and penalizes discrimination on grounds of sexual orientation or sexual identity. In order to publicize this provision and combat discrimination, the Day of Human Rights of Persons with Different Sexual Orientation was proclaimed. In addition, 28 June has been proclaimed the Day of Non-Discrimination against Sexual and Gender Diversity.

136. However, it is recognized that there are still obstacles in the way of full realization of these rights, mainly owing to discrimination on the part of a society that is in the main rather conservative – discrimination that frequently results in ill-treatment, violence and difficulty in obtaining employment.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

1. Equality and non-discrimination

12. According to surveys by the Office of the Ombudsman, the groups most subject to discrimination in the country, in descending order, are indigenous people and peasant farmers (*campesinos*); homosexuals and lesbians; persons with disabilities; and older persons. The Ombudsman's Office added that equality of opportunity for women is recognized in existing legislation. However, they continue to be discriminated against in the political sphere and face difficulties in access to work, housing and land tenure. JS1 indicated that exclusion continues to affect children and adolescents, whether for reasons of social inequality, ethnicity or gender, among others. According to JS1, a poor, indigenous girl is probably one of the figures most emblematic of social exclusion in Bolivia.

14. The Initiative for Sexual Rights (JS4) indicated that there is no law specifically sanctioning discrimination on the grounds of sexual orientation and gender identity, in spite of the relevant provisions in the new Constitution. JS4, recommended, inter alia, that human rights training be provided in both the army and the police to reduce homophobia and transphobia in those sectors.

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

4. Right to privacy, marriage and family life

33. JS4 indicated that the Constitution excludes the possibility of giving legal recognition to same-sex couples through marriage or civil union. According to JS4, this situation adversely affects the right of such couples to form a family, to ensure inheritance rights and to have access to housing loans and social security benefits (i.e. sick leave to take care of the partner, spouse benefit, medical care), inter alia. IGUALDAD LGBT made similar observations. JS4 added that, although the Human Rights Action Plan 2009–2013 provides for the preparation of a preliminary draft Civil Partnership Act for same-sex couples, no action in this respect has been initiated.

Fiji

Date of review: Thursday, 11 February, AM

Key Issues/Recommendations: Welcome prohibition of discrimination on the ground of sexual orientation in the Constitution, and recommend application of the Yogyakarta Principles to help ensure realisation of these rights.

Sample Intervention:

We welcome the fact that discrimination on the grounds of sexual orientation is prohibited under the Constitution in Fiji. We would ask what measures has the Government taken to ensure this is realised in practice and recommend that the State give consideration to the application of the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* as a guide to policy making in this area.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

1. Equality and non-discrimination

19. ARC International indicated that Fiji includes sexual orientation as a prohibited ground of discrimination in its Constitution. However, in view of the current constitutional uncertainty in the State, concerns have been expressed that constitutional protections for minority groups may be undermined. ARC International recommended that the provisions of the Constitution be rigorously upheld, including the constitutional prohibition of discrimination on grounds such as sexual orientation.

San Marino

Date of review: Thursday, 11 February, PM

Key Issues/Recommendations: discrimination on the grounds of sexual orientation is prohibited by law under the general heading of 'personal status'. Treaty bodies have recommended explicit articulation of the grounds protected. Same-sex relationship recognition and application of the Yogyakarta Principles are also recommended.

Sample Intervention:

We welcome San Marino's affirmation in its National Report of its support for the landmark joint-statement on sexual orientation, gender identity and human rights, delivered in December 2008 at the General Assembly. We also note that discrimination on the ground of sexual orientation is prohibited under the classification of 'personal status'. As suggested by the CESCR and Human Rights Committee, we recommend that grounds of discrimination such as race, colour, national or ethnic origin, language,

sexual orientation and gender identity be explicitly articulated in law, in order to enhance the implementation of these rights. We also recommend measures to ensure appropriate criminal penalties for violence, threats and related harassment, including because of sexual orientation and gender identity, and public education campaigns to promote respect on these grounds. Finally, we recommend appropriate legislative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment and immigration, and we recommend that consideration be given to the application of the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* as a guide to assist policy-making in this area.

NATIONAL REPORT

C. Application of international provisions on human rights

1. Equality, non-discrimination and individuals enjoying specific rights

f) Sexual orientation

79. Prohibition of discrimination on the grounds of sex is stated by the Declaration as modified by Law No. 95 of 19 September 2000. By reforming Article 4, this Law has explicitly introduced sex as a possible element for discrimination. The Declaration also excludes any discriminatory behaviour towards a person on the basis of his/her sexual orientation, which falls under the definition of "personal status" referred to in Article 4. This expression, which avoids any misunderstanding or misapplication of the principle of equality set forth in Article 4, has been used in order to recognise the illegitimacy of any discrimination based on the status or characteristics of a person.

80. The above is confirmed by the already mentioned Law No. 66 of 28 April 2008. This Law, supplementing the provisions of the Criminal Code in force, has introduced Article 179 bis that punishes, among the other factors of discrimination, anyone encouraging to commit or committing discriminatory acts on the grounds of sex. This offence can be prosecuted ex officio. Under this Law, the perpetration of an offence for purposes related, among other aggravating circumstances, to sexual orientation is an aggravating circumstance.

81. In December 2008, San Marino signed, together with other 65 States belonging to all regional groups, the General Assembly Declaration on Sexual Orientation and Gender Identity.

COMPILATION OF UN INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

1. Equality and non-discrimination

11. In 2007, CESCR highlighted the absence of a well-structured legal framework that provides protection against discrimination in all its forms. The HR Committee was concerned that such non-discrimination grounds as sexual orientation, race, colour, language, nationality and national or ethnic origin were subsumed under the notion of 'personal status' in article 4 of the Declaration of Citizens' Rights. It observed that such subsuming of grounds made it difficult to ensure their equal and comprehensive application. The HR Committee recommended the adoption of a comprehensive antidiscrimination legal framework which expressly indicates all those grounds of discrimination that are presently subsumed under the notion of "personal status".

SUMMARY OF STAKEHOLDER INFORMATION

I. BACKGROUND AND FRAMEWORK

C. Policy measures

6. In 2009, Joint submission 1 (JS1) reported that San Marino clearly lacks education and training

programmes to promote the integration of gay, lesbian, bisexual, and transgender people.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

1. Equality and non-discrimination

8. CoE ECRI was concerned that Article 4 (equality before the law) of the Declaration on the Citizens' Rights did not explicitly include non-discrimination grounds such as race, colour, language, nationality and national or ethnic origin. It recommended that San Marino consider amending the Declaration to expressly include these grounds. JS1 highlighted that Article 4 of the Declaration did not make any reference to sexual orientation or gender identity.

10. In 2009, JS1 indicated that San Marino adopted Law N° 66 of 28 April 2008, entitled "Directives in regards to racial, ethnic, religious and sexual discrimination". According to JS1, the law punishes discrimination based on sexual orientation, but does not make any reference to gender identity with regard to transgender or intergender issues.

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

14. In 2009, JS1 recommended that San Marino take legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on sexual orientation or gender identity.

4. Right to privacy, marriage and family life

21. In 2009, JS1 reported that non-conventional family models such as unmarried partners, cohabitants and same-sex civil partners are not recognised and therefore do not have the same rights when it comes to inheritance or residency. JS1 stressed that San Marino should take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment and immigration.

Kazakhstan

Date of review: Friday, 12 February, AM

Key Issues/Recommendations: absence of anti-discrimination legislation on the grounds of sexual orientation and gender identity, and need to ensure that stigma associated with sexual orientation and gender identity be addressed at the levels of both State and society.

Sample Intervention:

We note that the Summary of Stakeholders' Information highlights the absence of legal protection from discrimination on the grounds of sexual orientation and gender identity, as well as problems with arbitrary detentions by police on these grounds, discrimination in accessing medical services, and hostile public attitudes which impede the work of human rights defenders addressing issues of sexual orientation and gender identity. We recommend that the government ensure legal protection from discrimination for all marginalized groups, including on the grounds of sexual orientation and gender identity. We further recommend that public education and awareness programmes, including on grounds of sexual orientation and gender identity, be implemented, and that sensitivity training on these grounds be provided to law enforcement, judicial and other authorities. Finally, we recommend that consideration be given to applying the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* as a guide to assist in policy development.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

1. Equality and non-discrimination

13. JS4 noted that the Criminal Code did not include sexual orientation and gender identity as prohibitive grounds for discrimination. JS1 noted that there was no judicial practice of considering discrimination claims. JS1 recommended that Kazakhstan put in place a set of legislative, administrative and organizational measures to promote development of effective anti-discrimination institutes, mechanisms and procedures.

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

20. JS4 expressed concern about police detaining people based on their sexual orientation or gender identity and expression along with medical specialists refusing to provide services to LGBT people. JS4 recommended that Kazakhstan, inter alia, take all necessary policing and other measures to prevent and provide protection; and undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence to combat the prejudices that underlie violence related to sexual orientation and gender identity.

4. Right to privacy, marriage and family life

31. JS4 noted that homosexuality was decriminalized in Kazakhstan. However, the stigma associated with criminalization and medicalization of same sex relationships remained. JS4 also noted that Kazakhstan also had legislation on the rights of transgender people to change gender and name in official documents. However this legislation was not publicized. According to JS4, Kazakhstan continues to associate homosexuality with criminal behavior in its criminal code, as separate categories for forced sexual contacts. JS4 also noted that LGBT organizations in Kazakhstan had been constantly under threat due to high visibility and had to cease their public activities until tensions decreased.

Angola

Date of review: Friday, 12 February, PM

Key Issues/Recommendations: decriminalise sexual activity between consenting adults, particularly with regard to sanctions for acts "against the order of nature".

Sample Intervention:

We understand that articles 70 and 71 of the Angolan Penal Code impose criminal sanctions on those who practice acts "against the order of nature". Stakeholders have expressed concern that such laws may sometimes be applied to criminalise same-sex activity between consenting adults, contrary to the rights to both privacy and non-discrimination in articles 17(1) and 26 of the International Covenant on Civil and Political Rights. The Human Rights Committee has indicated that laws criminalising consensual adult sexual conduct are inconsistent with international law and "run counter to the implementation of effective education programmes in respect of HIV/AIDS prevention" by driving marginalised communities underground, a position also supported by UNAIDS. We therefore recommend that Angola ensure that no provisions in the Penal Code are interpreted or applied to criminalise same-sex activity between consenting adults.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

4. Right to privacy, marriage and family life

23. A joint submission by five organizations (JS2) reported that Angola maintains criminal sanctions against homosexual activity between consenting adults, imposing security measures against people who habitually practice acts “against the order of nature”, and stating that such people shall be sent to labour camps. JS2 recommended that Angola bring its legislation into conformity with its international human rights obligations by repealing all provisions which criminalize sexual activity between consenting adults of the same sex.

24. Fundación Mundial Déjame Vivir En Paz (FMDVP) también consideró necesario crear mejores estrategias para despenalizar la homosexualidad, y que Angola reconozca el derecho al matrimonio y adoptar niños a las personas gay, como una forma de reivindicar los derechos humanos de este pueblo históricamente excluido.

Islamic Republic of Iran

Date of review: Monday, 15 February, AM

Key Issues/Recommendations: decriminalize sexual activity between consenting adults, and eliminate penalties of flogging and death.

Sample Intervention:

The Secretary General reported in 2008 that those accused of homosexual acts in Iran were routinely flogged and threatened with execution. Stakeholders have expressed concern at the existence of criminal sanctions, including flogging and the death penalty, for sexual activity between consenting adults, and have noted that juvenile offenders are also currently on death row for offences that do not meet the “most serious crimes” requirement in international law. The UN Human Rights Committee has confirmed that laws criminalising consensual same-sex conduct violate the rights to both privacy and non-discrimination, contrary to articles 17(1) and 26 of the International Covenant on Civil and Political Rights. In addition, UN resolutions on extrajudicial executions and the death penalty have been explicit that the death penalty may not be imposed for non-violent acts such as sexual relations between consenting adults. We therefore recommend that Iran not apply flogging and the death penalty as punishments for such offences. We further recommend that Iran bring its legislation into conformity with international human rights law by repealing provisions which criminalise sexual activity between consenting adults.

COMPILATION OF UN INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

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

26. The Secretary-General in 2008 noted reports of amputation, flogging, suspicious deaths and suicides of prisoners, justified by the authorities as Islamic punishments. It was also reported that those accused of homosexual acts were routinely flogged and threatened with execution. CRC expressed similar concerns regarding offenders under the age of 18.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

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

18. ELEI stated that judicial executions were still taking place in Iran at a rate of at least one a day, including juvenile offenders, for crimes that hardly ever constitute “the most serious crimes.” FPC recommended a moratorium on the execution of minors in all cases including *qesas* crimes, and that

the Government implement the Juvenile Crimes Investigation Act and other planned legal measures to end the practice of executing minors and those convicted as minors. According to Stop Child Executions, as of June 2009, at least 1601 juveniles were waiting on death row for a wide range of "offences," including homosexuality, acts incompatible with chastity, apostasy, drug trafficking and involvement in school or street fights that result in a murder.

4. Right to privacy, marriage and family life

36. Noting the existence of criminal sanctions, including the death penalty, against sexual activity between consenting adults, Joint Submission 1 (JS1) recommended that Iran bring its legislation into conformity with its international human rights obligations by repealing all provisions criminalizing such activity between consenting adults.

6. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

46. According to Joint Submission 3 (JS3), enjoyment of the freedom of expression had deteriorated drastically since 2005, including in the independent section of the publishing industry. It added that censorship was comprehensive and arbitrary in Iran, and was both pre- and post-publication. Taboos included politics, religion, and sexuality. The Ministry of Culture and Islamic Guidance acted as the censor. JS3 recommended Iran lift the permit system attached to the publication and distribution of books, formalise all administrative measures affecting the freedom to publish, and enable effective and transparent judicial review of all administrative decisions in this regard.

Madagascar

Date of review: Monday, 15 February, PM

Key Issues/Recommendations: promote equality for all people, including on grounds of sexual orientation and gender identity, ensure needs of marginalised groups are addressed in HIV education, prevention and treatment programs.

Sample Intervention:

We welcome the commitment of Madagascar, expressed in its national report, to equality and non-discrimination. Can the delegation indicate whether these principles are also extended to non-discrimination based on sexual orientation and gender identity, and what measures might be taken to promote tolerance and respect on these grounds? We recommend that measures to address HIV address the needs of marginalised communities, such as men who have sex with men, in accordance with positions advanced by UNAIDS.

Iraq

Date of review: Tuesday, 16 February, AM

Key Issues/Recommendations: implement measures to address extrajudicial killings of persons on the basis of their actual or presumed sexual orientation.

Sample Intervention:

We note from the compilation of UN information that UNAMI reports a number of assassinations of homosexuals in Iraq, many of which are unreported by family members for fear of further abuse. Stakeholders have also documented widespread extrajudicial killings of persons on the basis of their actual or presumed sexual orientation. Many men assumed to be gay have been mutilated and their bodies dumped in the streets, while others have been forced to flee Iraq after receiving death threats.

We would ask what action the Government is taking to address these disturbing trends? We recommend that legislative steps be taken to protect persons from hate crimes on grounds including sexual orientation and gender identity, and that such crimes be vigorously investigated and prosecuted, with appropriate support provided to victims and their families. We further recommend that public education programs on these grounds be developed, and that sensitivity training be provided to police, judicial and other authorities to promote respect for all persons, including on the grounds of sexual orientation or gender identity.

COMPILATION OF UN INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

4. Right to privacy, marriage and family life

30. UNAMI indicated that there have been a number of assassinations of homosexuals in Iraq and that it is believed that such incidents are underreported because families are unwilling to admit that targeted members were homosexuals, for fear of further abuse.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

4. Right to privacy, marriage and family life

32. For AI, the government has failed to provide adequate protection to men who identify themselves as gay, or who are assumed by their attackers to engage in same-sex sexual relations. Many were mutilated and their bodies dumped in the streets and many others were forced to flee Iraq after receiving death threats.

Slovenia

Date of review: Tuesday, 16 February, PM

Key Issues/Recommendations: Slovenia has made significant progress on the rights of LGBT individuals, but greater consistency required to ensure equal treatment of same-sex relationships. Further steps to address hate speech and promote respect for marginalised groups also required.

Sample Intervention:

We welcome Slovenia's support for the landmark joint statement on sexual orientation, gender identity and human rights, delivered in December 2008 at the General Assembly. We note from the National Report that the National Assembly was given 6 months following a July 2009 Constitutional Court decision to provide same-sex partners with equal inheritance rights, and would appreciate hearing what steps have been taken to comply with this court ruling. We recommend that measures be taken to treat same-sex partners equally with opposite-sex partners throughout Slovenian law. We note also concerns expressed by the Commissioner for Human Rights of the Council of Europe and the Ombudsman at ongoing public manifestations of hate speech and intolerance, including by some politicians. We recommend that the fact that a crime is motivated by hatred against a marginalised group, including on grounds such as race, religion, national or ethnic origin, sexual orientation or gender identity, be treated as an aggravating circumstance. We further recommend that public education and awareness programmes, including on grounds of sexual orientation and gender identity, be implemented, and that sensitivity training on these grounds be provided to law enforcement, judicial and other authorities. Finally, we recommend that the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* be applied as a guide to assist in policy development.

NATIONAL REPORT

III. PROMOTION AND PROTECTION OF HUMAN RIGHTS POLITICAL AND CIVIL RIGHTS

B. Prohibition of discrimination

1. Same-sex partnership

20. Decision U-I-425/06-10 of July 2009 of the Constitutional Court established the inconsistency of Article 22 of the Registration of a Same-Sex Civil Partnership Act regulating inheritance with Article 14, paragraph 1, of the Constitution. The Court establishes that the position of partners in registered same-sex partnerships is in its essential factual and legal aspects comparable with the position of spouses as regards the right to inheritance from a deceased partner. The differences in the regulation of inheritance between spouses and between partners in registered same-sex partnerships are therefore not based on any objective, non-personal circumstance, but on sexual orientation. Until the established inconsistency is remedied, the same rules apply for inheritance between partners in registered same-sex partnerships as apply for inheritance between spouses in accordance with the Inheritance Act. The National Assembly is obliged to remedy the established inconsistency within six months from the publication of this decision.

2. Children's rights

24. A new Family Code that is currently under public debate regulates comprehensively the entire family law, strengthening the influence of the state on relations within the family for the child's benefit. The novelties include the prohibition of corporal punishment of children, the system of children's advocacy, the extension of the definition of "family protected under the constitution" (with a view to enhancing the protection of children) and introduction of equal status to same-sex partnerships and heterosexual partnerships.

V. NATIONAL PRIORITIES REGARDING HUMAN RIGHTS

71. The Slovenian authorities are endeavouring to grant all people living on Slovenian territory all human rights and freedoms guaranteed by the Constitution and international agreements that are binding on the Republic of Slovenia. Special attention is devoted to children's and women's rights, rights of persons with disabilities and members of national and other ethnic communities. The Government is giving priority to the outstanding issues of trial within a reasonable time (reduction in court backlogs), persons who were transferred from the register of permanent residence following Slovenia's gaining independence to the register of aliens, and improving the rights of same-sex partnerships. Particular attention is dedicated to regular dialogue with bodies established by human rights treaties and other human rights mechanisms at the regional and universal levels.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

1. Equality and non-discrimination

8. The CoE-Commissioner stated that it was extremely concerned about the continuous public manifestations of hate speech and intolerance by some politicians. It called for greater responsibility of politicians and media in this regard and for the full respect of the rights and values laid down in international instruments. The Ombudsman stated that since the notion of hate speech is not well known, people do not recognise it as such and fail to act as provided for by the legislation. It also underlined the crucial role of state bodies in sanctioning efficiently criminal acts committed out of hatred, noting that competent law enforcement authorities did not react to individual complaints or reports, even in cases forwarded by the Ombudsman. The CoE-Commissioner also expressed concern over the homophobic and intolerant public statements made by some politicians during the discussions about the draft Law on Registered Same-Sex Partnership in the Parliament. In 2006, the European Commission against Racism and Intolerance (CoE-ECRI) strongly recommended that Slovenia

introduce a criminal law provision that expressly considers the racist motivation of an offence as a specific aggravating circumstance. More generally, CoE-ECRI recommended that Slovenia keep the criminal law provisions in force against racism and racial discrimination under review and fine-tune them as necessary.

9. SRI referred to the 1997 penal code decriminalizing homosexual sex and permitting homosexual civil unions. SRI informed that in 2006 gay activists filed a complaint to the Constitutional Court because the law did not afford the same social, family, and inheritance rights as those granted to heterosexual married couples. The court had not yet issued a ruling on the matter. Fundación Mundial Déjame Vivir en Paz (FMDVEP) considered necessary that Slovenia recognize the Rights of homosexuals to adopt a child.

7. Right to social security and to an adequate standard of living

32. In 2005, the CoE-Commissioner welcomed the enactment of the Law on Registered Same-Sex Partnership, but regretted that it does not guarantee full equality for sexual minorities in the area of social security. The law falls behind increasingly common legal standards in many EU countries and the general principle of non-discrimination.

Egypt

Date of review: Wednesday, 17 February, AM

Key Issues/Recommendations: individuals have been arrested, charged with the “habitual practice of debauchery”, and subjected to cruel, inhuman or degrading treatment on the basis of actual or presumed consensual same-sex conduct and/or HIV status. Recommend that these provisions not be interpreted or applied to criminalise same-sex conduct or HIV status, and training programs for relevant authorities.

Sample Intervention:

We note that the Committee against Torture, several Special Procedures, and NGOs including Human Rights Watch and Amnesty International have expressed concern at persons arrested and charged with the “habitual practice of debauchery”, which has been applied to criminalise sexual activity between consenting adults of the same sex. These reports also indicate that detainees have been subject to cruel, inhuman or degrading treatment, including in some cases being chained to hospital beds and being subjected to forcible anal examinations without consent. According to the Compilation of UN Information, Egypt has responded that any such prosecutions or verdicts are not related to the defendants’ sexuality, sexual orientation or HIV status. We therefore recommend that Egypt confirm that the “habitual practice of debauchery” provision is not to be interpreted or applied to criminalise any individual on the basis of his or her actual or presumed HIV status or sexual activity between consenting adults of the same sex. We further recommend that no other provision in Egyptian law be interpreted or applied to criminalise such activity, and that steps be taken to ensure that no-one is detained, incarcerated or mistreated because of actual or presumed HIV status or consensual adult same-sex conduct. Finally we recommend education and training of police, prison, medical and other authorities to help ensure that no-one is subjected to cruel, inhuman or degrading treatment or punishment on these grounds.

COMPILATION OF UN INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

4. Right to privacy, marriage and family life

20. In 2002, CAT recommended removing all ambiguity in legislation which might underpin the persecution of individuals because of their sexual orientation. Steps should also be taken to prevent all

degrading treatment during body searches. In 2009, UNICEF reported that Egypt is classified as a low prevalence country for HIV/AIDS, but has a potential concentrated epidemic among men having sex with men. In March and August 2009 three special procedures sent joint communications regarding five and twelve men respectively, who were arrested, some subject to intrusive and abusive forensic anal examinations, tested for HIV without their consent and charged under article 9(c) of Law 10/961 for crimes relating to conduct of a homosexual nature. The Government replied to the communication of March 2009 indicating that two men were charged with "habitual practices of debauchery"; that verdicts were not related to the defendants' "sexuality" or "sexual orientation"; and allegation that defendants were tried simply for being HIV positive or carrying AIDS was also unfounded.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

4. Right to privacy, marriage and family life

22. Fundación Mundial Déjame Vivir En Paz (FMDVP) noted that homosexuality and AIDS are two of the biggest taboos in Egypt, not only are they viewed badly by society but can also land you in jail. Similar information was reported by HRW and AI.

Bosnia and Herzegovina

Date of review: Wednesday, 17 February PM

Key Issues/Recommendations: adopt antidiscrimination law, include sexual orientation and gender identity throughout antidiscrimination and equality initiatives, and take steps to combat hate crimes and promote respect for marginalized groups.

Sample Intervention:

We welcome the support of Bosnia and Herzegovina for the landmark joint-statement on sexual orientation, gender identity and human rights, delivered in December 2008 at the General Assembly. We also welcome the confirmation in the National Report that discrimination on the ground of sexual orientation is prohibited. We note concerns by stakeholders at ongoing discrimination faced by marginalized groups, as well as at hate crimes and violent attacks, such as those directed against participants in the 2008 Queer Sarajevo Festival. We recommend that the antidiscrimination law be promptly adopted, and that sexual orientation and gender identity be included as grounds throughout antidiscrimination and equality legislation and initiatives. We further recommend increased measures to combat hate crimes, the development of public education and awareness programmes, including on grounds of sexual orientation and gender identity, and sensitivity training on these grounds to be provided to law enforcement, judicial and other authorities. Finally, we recommend that the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* be applied as a guide to assist in policy development.

NATIONAL REPORT

V. IMPROVEMENT AND PROTECTION OF HUMAN RIGHTS IN BIH - IMPLEMENTATION

E. Gender Equality

56. BiH has established appropriate mechanisms to prevent discrimination based on sex by defining within the legal framework the right to equal treatment on the grounds of gender and sexual orientation of any person by his/her own choice. BiH established institutional mechanisms for gender equality in order to integrate gender concept in all laws, policies, strategies and program documents. The established gender mechanisms include the Agency for Gender Equality of BiH, the entity gender centers, the commissions for gender equality within the BiH Parliament and entities assemblies, and the commissions for gender equality in the cantons and municipalities. It is important to note that the

institutional mechanisms for gender equality cooperate with NGOs in the implementation of the activities. Although the BiH Election Law provides for quotas for candidate lists, gender equality is not at a satisfactory level in the legislative and executive bodies.

SUMMARY OF STAKEHOLDER INFORMATION

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

B. Implementation of international human rights obligations

1. Equality and non-discrimination

16. The Informal UPR Coalition stated that discrimination was one of the most serious generators of human rights violations. Individuals were discriminated against on the grounds of their national, political and sexual orientation. The victims of discrimination were also members of "vulnerable" groups: persons with disabilities, national minorities, families of missing persons, victims of war elderly people, children, and returnees. Discrimination was demonstrated in some vital fields of life, such as employment, education, health and social care, pension rights. Only 0.8 per cent of working age returnees belonging to an ethnic group had employment. Furthermore, only 1.5 per cent of working age Roma had jobs.

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

25. According to The Informal UPR Coalition, there is an escalation of assaults on human rights defenders. The targets were campaigners for the rights of sexual minorities, activists engaged against human trafficking and NGOs activists investigating on corruption and crime. Assaults against and attempts to silence journalists seriously threaten freedom of expression. Family members of human rights activists are often targeted to create a sense of fear and to prevent any act of criticism. OSCE noted numerous incidents where Bosnia and Herzegovina refused to take appropriate action to prevent further victimisation of hate crimes and intolerance against non-heterosexual groups.

4. Right to privacy, marriage and family life

33. HRW expressed hope that the Government will commit to pass the anti-discrimination law, which includes the legalization of gay marriages, without any amendments. Joint Submission (JS) also noted that Family laws of the FBiH and the RS defined marriage as the union between a man and a woman. This law had not been harmonized with the State Law on Gender Equality in Bosnia and Herzegovina, and it represented discrimination on the grounds of sexual orientation.

6. Freedom of expression, association and peaceful assembly and right to participate in public and political life

38. HRW expressed hope that the Government will commit to ensuring freedom of assembly and association for lesbian, gay, bisexual and transgender communities, and condemning unequivocally any attacks on these groups. JS recommended an investigation into the attacks during the Queer Sarajevo Festival in September 2008, in which hooligans and religious groups allegedly left a minimum of 8 persons physically injured.