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## ADDRESSING HUMAN RIGHTS VIOLATIONS BASED ON SEXUAL ORIENTATION & GENDER IDENTITY AT THE 13<sup>th</sup> SESSION OF THE HUMAN RIGHTS COUNCIL

March, 2010

There are a number of opportunities to raise awareness of human rights violations based on sexual orientation and gender identity at the upcoming 13th session of the Human Rights Council. These include **high-level segment** interventions, interactive dialogue with the **High Commissioner**, the reports of the **Special Procedures**, the **UPR** and **general debate under items 3, 6 or 8**.

This document provides a summary of these opportunities. In addition:

- **Annex I** lists references to sexual orientation and gender identity in the **High Commissioner's Strategic Management Plan**;
- **Annex II** excerpts the references to sexual orientation and gender identity in the reports of the **Special Procedures**;
- **Annex III** highlights **UPR recommendations** relating to sexual orientation and gender identity in the reports of the 16 States under review.

### Summary and Overview:

Opportunities to raise awareness of human rights violations based on sexual orientation and gender identity at the 13<sup>th</sup> session of the Human Rights Council include:

#### ➤ **High level and general segment statements:**

High-level interventions could:

- affirm your government's support for the joint statement on human rights, sexual orientation and gender identity, delivered to the UN General Assembly on December 18, 2008 on behalf of 67 States from all geographic regions;
- underline the principles of universality and non-discrimination, and emphasise that the Council's effectiveness in advancing its mandate will be measured by the extent to which it addresses the rights of the most marginalised;
- acknowledge the High Commissioner's leadership on these issues;
- express support for the *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity*, and commend the Principles to the attention of States and the Council;
- note that human rights violations on the grounds of sexual orientation and gender identity continue to occur in all regions of the world, and urge the Council to address these issues as matters of priority.

#### ➤ **Interactive Dialogue with High Commissioner:**

The High Commissioner's report to the Council describes the adoption of the Strategic Management Plan, which includes sexual orientation within the thematic priority of "Countering discrimination, in

particular racial discrimination, discrimination on the ground of sex, religion and against others who are marginalized". Full details are provided in **Annex I**. The High Commissioner may face criticism from some States because of her work in this area, and supportive States may need to be prepared to affirm her **leadership**, commend her **transparent and consultative approach**, and emphasise the importance of the **independence** of her Office.

The High Commissioner's inclusion of these issues as thematic priorities is consistent with her previous public statements. For example, in a video statement at a high-level parallel event at the GA on December 18, 2008, the High Commissioner stated:

- "As we celebrate this month the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights, it is timely to remember the spirit and intent behind that most vital of instruments ... No human being, simply because of their perceived sexual orientation or gender identity, may be denied their human rights. No human being, simply because of their perceived sexual orientation or gender identity, may be subject to discrimination, violence, criminal sanctions, or abuse."
- "There are those who argue that because sexual orientation or gender identity are not explicitly mentioned in any of the conventions and covenants then there is no protection. My answer is that such a position is untenable as a matter of law ... The principle of universality admits no exception. Human rights truly are the birthright of all human beings."
- "It is our task and our challenge to move beyond a debate on *whether* all human beings have rights – for such questions were long ago laid to rest by the Universal Declaration – and instead to secure the climate for implementation .... Those who are lesbian, gay or bisexual, those who are transgender, transsexual or intersex, are full and equal members of the human family, and are entitled to be treated as such."

#### **Relevant State interventions might:**

- commend the High Commissioner for her strong and principled affirmation that no human being may be denied their rights, solely because of their sexual orientation or gender identity;
- ask the High Commissioner what steps can be taken both to enhance recognition of the principle that all persons are entitled to the full enjoyment of all human rights, without discrimination based on sexual orientation or gender identity, and to secure the implementation of this commitment;
- inquire what plans the OHCHR has to advance recognition of these principles, and what in her view the Human Rights Council can do to ensure respect for these rights;
- affirm the High Commissioner's **leadership in upholding the principle of universality of human rights for all**, commend her **transparent and consultative approach** in the preparation of the SMP, and emphasise the importance of the **independence** of her Office.

#### ➤ **Interactive Dialogue with Special Procedures:**

A number of Special Procedures address human rights violations based on sexual orientation or gender identity in their reports. Full details are provided in **Annex II**. In particular:

- The **Special Rapporteur on Human Rights Defenders** notes "continuing **denigration campaigns** and **violent threats** against defenders of lesbian, gay, bisexual and transgender rights". Although not yet available online, the Communication report (Add.1) is understood to detail extensive allegations of human rights violations directed against person because of their sexual orientation and gender identity, including in Uganda, Burundi, Colombia, Guatemala, Lithuania, Mongolia and Serbia.

- The Special Rapporteur on **Torture** notes that “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 ... within detention facilities, there is usually a strict hierarchy, and **those at the bottom of this hierarchy**, such as ... **gays, lesbians, bisexuals and transgender persons**, suffer double or triple discrimination.”
- The Special Rapporteur on **Adequate Housing** and the Independent Expert on **Minority Issues** also address these concerns.

(Note that the Special Rapporteur on **Counter-terrorism** when he presented his report to the Third Committee last December drew criticism for his focus on issues affecting sexual minorities. These issues do not form part of his report to the Council, and so hopefully such criticism will not arise. If it does, it might be pointed out that the Special Rapporteur is entitled to consider the impact of counterterrorism measures upon minorities and marginalised groups, including those who are LGBT.)

#### **Relevant State interventions might:**

- commend the Special Procedures for their work in this area;
- invite them to elaborate on what States can do to promote tolerance, respect for diversity and address the root causes of such violations; and
- ask how the Council and its mechanisms can best promote and protect the human rights of the most marginalised, including those who are lesbian, gay, bisexual or transgender.

#### ➤ **UPR 6 report adoptions:**

Many relevant recommendations relating to sexual orientation and gender identity issues were raised during the UPR of 14 of the 16 States whose reports are due to be adopted. For example, positive recommendations on these issues were **accepted by Norway, Albania, Côte d’Ivoire, Portugal, Costa Rica and Equatorial Guinea**, and the responses to many more recommendations are pending. A full list of UPR recommendations for the 16 States under review is attached as **Annex III**.

The report adoption process affords an opportunity to **commend those States which have responded favourably** to relevant recommendations, and to **encourage States who have not to address these issues more positively in future**. Item 6 general debate also affords an opportunity to comment on general positive trends.

#### ➤ **General statements – item 3 & 8:**

There will be opportunity for statements by individual States or regional groupings of States (e.g. EU, Mercosur, JUSCANZ) to make short interventions during general debate, particularly under **item 3** (*promotion and protection of all human rights*) or **item 8** (*Follow-up and implementation of the Vienna Declaration and Programme of Action*, which affirms the principles of universality and non-discrimination).

#### **Individual, joint or cross-regional State interventions during general debate under item 8 could:**

- affirm the joint statement on human rights, sexual orientation and gender identity, delivered to the UN General Assembly on December 18, 2008 on behalf of 67 States from all geographic regions – including 22 Members of the Human Rights Council;
- express support for the *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity*, and commend the Principles to the attention of States and the Council;

- express concern at ongoing human rights violations based on sexual orientation and gender identity, and call upon the Council to address the issues.

# **ANNEX I:**

## **REFERENCES TO SEXUAL ORIENTATION & GENDER IDENTITY IN HIGH COMMISSIONER'S STRATEGIC MANAGEMENT PLAN**

**Report of the United Nations High Commissioner for Human Rights  
A/HRC/13/26**

### **VII. The High Commissioner's Strategic Management Plan 2010– 2011**

56. In January 2010, OHCHR's third Strategic Management Plan (SMP), setting out the expected accomplishments and operational strategy for the 2010–2011 biennium, was launched. SMP is based on Programme 19 of the Secretary-General's Strategic Framework. Reviewed and approved every two years by the General Assembly, the Strategic Framework establishes the goals and strategic priorities of the United Nations human rights programme, including OHCHR's mandated tasks, and forms the basis of its request for regular budget resources. Complementing this approach, the SMP presents synchronized planning, implementation, and evaluation processes, providing OHCHR with the detailed operational plan and the management tool required to translate the Strategic Framework into action. In November and December 2009, OHCHR provided briefings for Member States in Geneva and New York, and civil society organizations, on the 2010–2011 SMP.

57. In an effort to sharpen our operational focus, the SMP identifies six substantive human rights priorities, which encompass the work carried out at Headquarters and in the field. These are: (a) countering discrimination, in particular racial discrimination, discrimination on the grounds of sex and against others who are marginalized; (b) pursuing economic, social and cultural rights and combating inequalities and poverty, including in the context of the economic, food and climate crises; (c) ensuring the realization of human rights in the context of migration; (d) combating impunity and strengthening accountability, the rule of law, and democratic societies; (e) protecting human rights in situations of armed conflict, violence and insecurity; and (f) strengthening international human rights mechanisms and the progressive development of international human rights law. Detailed strategies have been developed in respect of each of these priorities, taking into account OHCHR's expertise, experience and capacity to add value to the work of the United Nations system as a whole.

### **VIII. Conclusion**

60. Looking forward to 2010, OHCHR will focus its attention on supporting the human rights mechanisms, in particular the Council as it begins to review its functioning. OHCHR will continue to draw strongly on its field presences in developing and implementing capacity-building tools for Member States, United Nations entities, civil society and other stakeholders. It will prioritize enhanced and coordinated follow-up to the recommendations of the universal periodic review, special procedures and treaty bodies, as well as greater coherence and coordination. Given the scale of discrimination worldwide, particularly against women, OHCHR will continue to strengthen its work to eliminate all forms of discrimination.

#### **Excerpts from SMP:**

**Countering discrimination, in particular racial discrimination, discrimination on the grounds of sex, religion and against others who are marginalized**

Equality before the law and freedom from discrimination are basic legal principles that underpin the protection of all human rights. The roots of most human rights abuses lie in severe violations of these

principles. The Universal Declaration of Human Rights (UDHR) and the main international human rights treaties all contain clauses prohibiting discrimination and establishing state obligations to refrain from discriminatory policies and practices and to take steps to eradicate discrimination in both the public and private spheres.

While certain grounds for discrimination are the focus of specific treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, drawing directly on the language of the UDHR, extend protection to include discrimination on the basis of any “other status”, which treaty bodies have interpreted broadly.

### **OHCHR’s role**

Almost every part of the Office is involved in anti-discrimination-related work ...

### **Expected accomplishments and strategic directions**

International community, increasingly responsive to situations characterized by discrimination against individuals and groups

Proposed activities:

- Organize regional expert seminars on incitement to discrimination, hostility or violence, as envisaged in the Durban Review Conference Outcome Document, and other seminars and panel discussions on a range of discrimination-related topics such as racial discrimination and discrimination based on religion, disability, sex and sexual orientation. (pp.22- 24)

### **Human Rights Mainstreaming, Right to Development, Research and Analysis**

Fighting discrimination, in particular racial discrimination, discrimination on the grounds of sex, religion and against others who are marginalized will continue to be a primary area of focus of the Office’s work during the next biennium.

Particular attention will be given to other individuals and groups who are marginalized, and in this regard, the High Commissioner will undertake initiatives including in relation to discrimination based on religion, disability and sexual orientation. OHCHR will provide training and other forms of technical assistance to government bodies, national human rights institutions and civil society with the aim of increasing participation in decision-making by those affected by discrimination, and will support national initiatives. (p. 54)

### **REGIONAL OFFICES AND CENTRES**

#### **Sub-regional Centre for Human Rights and Democracy in Central Africa (Yaoundé, Cameroon)**

Discrimination on the basis of ethnicity, nationality, social and political affiliations, gender, sexual orientation and health status, remains a concern. (p. 66)

#### **Regional Office for Southern Africa (Pretoria, South Africa)**

The Office covers 14 countries, namely Angola, Botswana, Comoros, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Zambia and Zimbabwe.

### **Thematic priorities**

- Countering discrimination, in particular racial discrimination, discrimination on the grounds of sex and sexual orientation. (p.68)

### **Regional Office for Europe (Brussels, Belgium)**

Key human rights concerns in the region include ... the remaining differences in law between same sex and heterosexual partnerships. (p. 113)

### **United Nations Assistance Mission for Iraq**

Incidents of discrimination, displacement, threats and murder on the grounds of religious beliefs, sexual orientation, or ethnic identity remain of concern.

### **Thematic priorities**

- Countering discrimination, in particular against ethnic and religious minorities, as well as on the basis of sexual orientation. (p. 123)

## **ANNEX II:**

# **REFERENCES TO SEXUAL ORIENTATION & GENDER IDENTITY IN REPORTS OF SPECIAL PROCEDURES**

### **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, Raquel Rolnik**

**A/HRC/13/20/Add 4**

**Mission to the United States of America**

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 the situation of human rights defenders, Margaret Sekaggya**

**A/HRC/13/22**

#### **(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.

*Note: Communication report (Add.1) is not yet available. It is understood that this report details extensive allegations of human rights violations directed against person because of their sexual orientation and gender identity, including in Uganda, Burundi, Colombia, Guatemala, Lithuania, Mongolia and Serbia.*

### **Report of the independent expert on minority issues, Gay McDougall**

**A/HRC/13/23**

#### **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.

### **Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak**

**A/HRC/13/39**

## **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.

### **Mission to Uruguay A/HRC/13/39/Add.2**

Santiago Vázquez Prison (COMCAR), Montevideo Visited on 26 March 2009

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.

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.

### **Mission to Kazakhstan A/HRC/13/39/Add.3**

69. Strepetilov Vladislav, aged 38, spent the 10 days from 30 April to 10 May alone in a punishment cell because of the prohibited possession of a mobile phone.

70. From 26 February to 12 March 2009, Mr. Strepetilov was at the Prison Hospital in Stepnogorsk, EC 166/18, to get treatment for his heart problems. He was transferred with 45 other prisoners. Upon arrival, they were “treated like animals” by other prisoners who were in charge of examining the new arrivals. Mr. Strepetilov was brought to the punishment cells, stripped of his clothes and thrown against a wall. Prisoners put their hands in his mouth and anus, forced him to wash the toilet, and humiliated him with homosexual attacks while being fixed to a table.

### **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**

#### **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.

## **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.<sup>165</sup> 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 trans-gender persons.

## **Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir A/HRC/13/40/Add.1**

Summary of cases transmitted to Governments and replies received

J. Indonesia

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

(a) 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.

(b) 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.

(c) 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".

### **Mission to the Republic of Serbia, including visit to Kosovo A/HRC/13/40/Add.3**

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.

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.

## **Other reports:**

### **Ad Hoc Committee on the Elaboration of Complementary Standards (second session)**

**Report as approved ad referendum on 30 October 2009 with amendments and proposals received within the following two weeks to statements delivered during the session**

#### **A/HRC/13/CRP .1**

16. Sweden, on behalf of the EU, felt that the outcome document under the roadmap and the draft programme of work did not accurately reflect the contributions submitted by the European Union. Key principles of the EU had not been included in the principles section of the outcome document under the roadmap. Sweden requested that the outcome document under the roadmap and the programme of work be revised. It stated the outcome document under the roadmap had a strong religious bias which did not accurately reflect the contributions received. On the other hand, double and multiple forms of discrimination, including discrimination based on gender and sexual orientation, as well as the need for universal ratification and better implementation of ICERD, were insufficiently visible in the outcome document under the roadmap and the draft programme of work.

21. The Chair cited the Rules of Procedure of the General Assembly contained in document A/520/Rev.17 and deduced that, as a subsidiary body of the Human Rights Council, the Ad Hoc Committee had to apply the rules of procedure of the Human Rights Council which, in turn, applied the rules of procedure of the General Assembly. There was no legal ambiguity in this respect. As the Chair, however, H.E. Idriss Jazaïry obviously preferred consensus. This did not mean, however, that a document which was not adopted by consensus was not a valid document. Indeed, such an approach would contradict the very essence of multilateralism. He also clarified that the outcome document under the roadmap presented substance and procedure separately, and that it was obvious that the document could have been structured in a myriad of other ways. As for the issue of sexual orientation, the Chair informed that some States had requested in prior sessions that the discussion ought to focus on racial discrimination only, while others favored a focus on all forms of discrimination. Hours had already been devoted to this issue, inconclusively, and it had become clear that the matter was not conducive to consensus. The Chair then proposed that informal consultations take place on a draft programme of work which would enable the Ad Hoc Committee to elaborate complementary standards, indicating the nature of the instruments was not pre-determined.

77. Argentina, on behalf of Colombia, Dominican Republic, Guatemala, the Republic of Korea, Chile, Switzerland, Mexico, Japan, Brazil and Uruguay, stated that there was no justification for hate crimes motivated by racism or multiple grounds of discrimination, including nationality, gender identity and sexual orientation, and suggested that a compilation should be made of national legislation to combat hate crimes as well as guidelines on the issue.

113. The EU requested States to make the following commitments:

1. To promote and protect the human rights of all persons, regardless of sexual orientation and gender identity;
2. To take all necessary measures, in particular legislative or administrative, to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties, in particular executions, arrests or detention;
3. To ensure that human rights violations based on sexual orientation or gender identity are investigated and perpetrators held accountable and brought to justice.

114. The EU proposed that every individual should have the right to have their sexual orientation protected and to be free from violence, harassment, discrimination, exclusion, stigmatization and prejudice.

117. Switzerland, on behalf of Colombia, México, Guatemala, Nicaragua, Dominican Republic, Ecuador, Brazil, Chile, Argentina and Uruguay stated it favored an inclusive approach on multiple and aggravated

forms of discrimination and that there was no justification to restricting the discussion on the grounds of discrimination explicitly mentioned in the DDPA and also stated the need to address, inter alia, nationality, national origin, minority status, marital status, disability, HIV-AIDS status, gender identity and sexual orientation. It suggested the issue be studied further, in consultation with CERD and made the following proposal:

1. That CERD might consider elaborating a general comment on the issue.

118. The UK added that the UPR also provided a forum for addressing double and multiple forms of discrimination. Iran expressed its principled opposition to any reference to sexual orientation.

### **ANNEX III**

#### **Written contribution European Union**

#### **Proposals for Action submitted by the European Union following discussions at the Second session of the Ad Hoc Committee on the Elaboration of Complementary Standards**

Reaffirming that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited;

- States should promote and protect the human rights of all persons, regardless of sexual orientation and gender identity, ensure that human rights violations based on sexual orientation or gender identity are investigated and perpetrators held accountable and brought to justice, and condemn all forms of discrimination and all other human rights violations based on sexual orientation;
- States should give more attention to multiple and aggravated forms of discrimination and to fight them with increased determination, and share their experiences in combating multiple forms of discrimination, including focus on discrimination on the ground of sexual orientation;
- States should submit an overview of national legislation and best practices to the OHCHR with regard to the effective promotion and protection of sexual orientation or gender identity of every individual;A/HRC/13/CRP .1 Page 51
- The Ad Hoc Committee invites OHCHR to compile an overview within the existing resources of the obstacles in Member States' national legislation to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties, in particular executions, arrests or detention;

#### **Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her office, including technical cooperation, in Nepal A/HRC/13/73**

#### **Discrimination**

43. A wide spectrum of civil society organizations representing discriminated groups, including Dalits, indigenous peoples, disabled and religious and sexual minorities, prepared a joint report that was submitted at the Durban Review Conference. The organizations have continued to advocate for these issues in meetings with the Government.

#### **Civil society and human rights defenders**

62. Journalists have faced regular threats from armed groups and political parties for filing reports about their activities, and a female radio journalist in Janakpur was murdered in January 2009. Women human rights defenders and the group of defenders representing sexual minorities are particularly at risk in Nepal. Women human rights defenders face additional threats from within their communities and families in relation to their work in defence of women's rights, which is often viewed as a challenge to the existing social order.

## **ANNEX III: UPR RECOMMENDATIONS RELATING TO SEXUAL ORIENTATION & GENDER IDENTITY**

### **Eritrea**

#### **Conclusions and Recommendations**

**79. In the course of the discussion, the following recommendations were made to Eritrea. These recommendations will be examined by Eritrea, which will provide responses in due time. The response of Eritrea to these recommendations will be included in the outcome report to be adopted by the Human Rights Council at its thirteenth session:**

- 34. Repeal all legislative provisions which criminalize sexual activity between consenting adults of the same sex (Canada);
- 35. Bring its penal code into conformity with its international human rights obligations by repealing those provisions which criminalize same-sex activity between consenting adults (United States);

### **Cyprus**

#### **Conclusions and Recommendations**

87. In the course of the discussion, the following recommendations were made to Cyprus:

- 26. Reinforce existing non-discrimination legislation and take all necessary measures to prevent discrimination on the grounds of sexual orientation (Netherlands);
- 27. Prohibit all discriminatory practices and criminalize defamation, slander and incitement to discrimination, hostility or violence, whether they are public or not, towards a person or a group of persons because of their sexual orientation (France);
- 36. Intensify specific awareness-raising activities regarding sexual orientation at a national level to contribute to a better protection of the rights and freedoms of gays, lesbians, bisexuals and transsexuals (Spain);

**88. The response of Cyprus to these recommendations will be included in the outcome report adopted by the Human Rights Council at its thirteenth session.**

### **Dominican Republic**

#### **Conclusions and Recommendations**

**88. The following recommendations will be examined by the Dominican Republic which will provide responses in due time. The response of the Dominican Republic to these recommendations will be included in the outcome report adopted by the Human Rights Council at its thirteenth session:**

- 25. Take all necessary measures to put an end to discrimination against gays, lesbians and transsexuals (France).

### **Cambodia**

(no references)

## Norway

### Conclusions and Recommendations

**105. The recommendations formulated during the interactive dialogue have been examined by Norway and the recommendations listed below enjoy the support of Norway:**

21. Improve, with more in-depth efforts, the conditions of young gays and lesbians who live outside large cities and for those who live in multicultural communities (Colombia);

## Albania

### Conclusions and Recommendations

**67. The recommendations formulated during the interactive dialogue have been examined by Albania and the recommendations listed below enjoy the support of Albania:**

19. Provide human rights education and training to police officers corrections officers and judicial staff aimed at the protection of women, persons of minority sexual orientation and gender identity and national minorities (Czech Republic);

23. Implement public education and awareness programmes on issues related to sexual orientation and gender equality and provide training to law enforcement, judicial and other relevant authorities with the same objective (Netherlands);

43. Introduce for adoption a comprehensive, all-inclusive anti- discrimination law that includes protection against discrimination on the grounds of sexual orientation and gender identity (Netherlands);

**69. The following recommendations will be examined by Albania, which will provide responses in due time. The response of Albania to these recommendations will be included in the outcome report to be adopted by the Human Rights Council at its thirteenth session:**

7. Include sexual orientation and gender identity specifically in anti- discrimination legislation, and consider using the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (Spain);

## Democratic Republic of the Congo

### Conclusions and Recommendations

**97. The following recommendations did not enjoy the support of the Democratic Republic of the Congo:**

10. Decriminalize consensual same-sex activity between adults. (Czech Republic);

## Côte d'Ivoire

### Conclusions and Recommendations

**99. The recommendations formulated during the interactive dialogue and listed below enjoy the support of Côte d'Ivoire:**

28. Take measures to ensure non-discrimination on grounds of sexual orientation and gender identity (Slovenia);

**101. The following recommendations will be examined by Côte d'Ivoire, which will provide responses in due time. The response of Côte d'Ivoire to these recommendations will be included in the outcome report adopted by the Human Rights Council at its thirteenth session:**

28. Put in practice concrete programs for awareness raising against discrimination for gender identity and sexual orientation, guarantee the respect for privacy (Spain);

## Portugal

### Conclusions and Recommendations

**101. The following recommendations listed below enjoy the support of Portugal:**

29. Adopt further measures to provide police, prison and judicial staff with human rights training with specific focus on protection of human rights of women, children, ethnic or national minorities as well as of persons of minority sexual orientation or gender identity and strengthen the accountability of such personnel for their proper conduct, particularly when dealing with cases of hate crimes (Czech Republic);

## Bhutan

### Conclusions and Recommendations

**101. In the course of the discussion, the following recommendations were made to Bhutan. These recommendations will be examined by Bhutan, which will provide responses in due time. The response of Bhutan to these recommendations will be included in the outcome report adopted by the Human Rights Council at its thirteenth session.**

60. Repeal all provisions which criminalize sodomy and other sexual activities between consenting adults (Canada); Decriminalize sodomy or other sexual activity between consenting adults (Slovenia); Eliminate legal provisions which criminalize sodomy and other sexual activities between consenting adults (Spain);

## Dominica

### Conclusions and Recommendations

**71. The following recommendations will be examined by Dominica, which will provide responses in due time. The response of Dominica to these recommendations will be included in the outcome report to be adopted by the Human Rights Council at its thirteenth session:**

3. Promote and amend legislation to guarantee the protection of citizens who have been discriminated against based on their sexual orientation, gender identity or the fact that they are infected with HIV/AIDS (Mexico);
4. Prohibit corporal punishment of children in all settings (Slovenia), to remove all provisions from laws that allow corporal punishment and explicitly prohibit corporal punishment by law in the family, schools and other institutions (Italy) as a method to discipline children (Chile);
5. Include anti-discrimination legislation with regard to sexual orientation, gender identity and HIV/AIDS and to reform the law on sexual offences of 1998 (Spain);

6. Consider utilizing 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 (Canada);
7. Implement public education and promote awareness programmes and sensitivity training on violence and discrimination based on sexual orientation and gender identity to law enforcement, judicial and other authorities (Canada);
8. Undertake measures to promote tolerance and non-discrimination on grounds of sexual orientation or identity in line with the Yogyakarta Principles (Sweden).

**72. The following recommendations did not enjoy the support of Dominica:**

1. Repeal those legal provisions on sexual offences which criminalize sexual relations between consenting adults of the same sex (France) and decriminalize sexual activities between consenting adults of the same sex (Spain);

## Democratic People's Republic of Korea

(no references)

## Brunei Darussalam

### Conclusions and Recommendations

**90. The following recommendations did not enjoy the support of Brunei Darussalam:**

20. Repeal or amend the section of the Penal Code which provides for criminal sanctions against "carnal intercourse against the order of nature" and may thus be applied to criminalize sexual activity between consenting adults, so as to ensure that it does not discriminate against lesbians, gays, bisexuals and transsexuals (Netherlands); decriminalize sexual activity between consenting adults and bring its legislation into conformity with international human rights standards by repealing legislative provisions which criminalize "carnal intercourse against the order of nature" or other sexual activity between consenting adults (Canada); abrogate or amend section 377 of the Penal Code to guarantee non-discrimination on the grounds of sexual orientation or gender identity (Spain); amend section 377 of the Penal Code in order to decriminalize consensual sexual activity among persons of the same sex (Sweden);

## Costa Rica

### Conclusions and Recommendations

**89. The recommendations formulated during the interactive dialogue and listed below enjoy the support of the Costa Rica:**

3. Join the 67 States that have signed the joint statement on human rights, sexual orientation and gender identity (France);
16. Pursue its efforts in favour of gays, lesbians and transsexuals (France);
20. Ensure sufficient resources for effective functioning of its national preventive mechanism provided for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) and further strengthen mechanisms for independent investigation of alleged cases of torture and for effective access of victims to remedies with special attention to protection of women, children and persons of minority sexual orientation or gender identity (Czech Republic);

**91. The following recommendations will be examined by Costa Rica, which will provide responses in due time. The responses of Costa Rica to these recommendations will be included in the outcome report adopted by the Human Rights Council at its thirteenth session:**

4. Bearing in mind the protective and advanced nature of the legislation against discrimination, intensify measures intended to protect free sexual orientation and sexual identity through specific educational initiatives and awareness-raising for all society, to facilitate documentation for transsexual people in line with their identity and to guarantee access to public services without discrimination (Spain);
5. Undertake an awareness-raising campaign to address discrimination against homosexuals and transgender persons (Austria);

## **Equatorial Guinea**

### **Conclusions and Recommendations**

**70. The recommendations formulated during the interactive dialogue and listed below enjoy the support of Equatorial Guinea:**

7. Strengthen mechanisms for ensuring awareness and implementation of international human rights obligations, including through establishment of human rights educational programmes for police, prison and judicial staff with special attention to protection of human rights of women, children, persons of minority sexual orientation and gender identity, etc. (Czech Republic);

## **Ethiopia**

### **Conclusions and Recommendations**

**99. The following recommendations did not enjoy the support of Ethiopia:**

21. Strengthen the human rights education and training of military forces and police, prison and judicial staff, and ensure their accountability for any violations of human rights, in particular for violence or sexual violence against women, children and persons of minority sexual orientation or gender identity (Czech Republic);
22. Decriminalize consensual same-sex activity between adults (Czech Republic);