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**ADDRESSING HUMAN RIGHTS VIOLATIONS BASED ON  
SEXUAL ORIENTATION & GENDER IDENTITY AT THE  
23<sup>rd</sup> SESSION OF THE HUMAN RIGHTS COUNCIL**

May-June, 2013

There are a number of opportunities to raise awareness of human rights violations based on sexual orientation and gender identity at the upcoming 23<sup>rd</sup> session of the Human Rights Council. These include **general debate following the update by the High Commissioner, interactive dialogue with relevant Special Procedures (e.g. on violence against women, health and extrajudicial executions), relevant panels, and general debate under items 3, 4 or 8.**

This document provides a summary of these opportunities. In addition, **Annex I** (page 5) excerpts the references to sexual orientation and gender identity in the reports of the **Special Procedures** and other reports to the Council and **Annex II** (page 25) summarises references to sexual orientation and gender identity in **UPR reports** to be adopted at this session.

It is not yet known whether South Africa will present a **follow-up to resolution 17/19** on human rights, sexual orientation and gender identity.

**Summary and Overview:**

Opportunities to raise awareness of human rights violations based on sexual orientation and gender identity at the 23<sup>rd</sup> session of the Human Rights Council include:

➤ **General Debate following the High Commissioner's update:**

The High Commissioner has played an active role in calling for an end to violence, discrimination and criminalisation based on sexual orientation and gender identity over recent months. As part of an anti-discrimination campaign, the OHCHR has committed to working with States, national human rights institutions and civil society to achieve progress towards the worldwide decriminalization of homosexuality and further measures to protect people from violence and discrimination on grounds of their sexual orientation or gender identity. The OHCHR recently produced a video for the International Day against Homophobia (May 17). In December 2011 the OHCHR published a report on violence and related human rights violations based on sexual orientation and gender identity, as requested by HRC resolution 17/19. More information can be found at <http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>.

The High Commissioner recently released her Annual Report, which brings specific attention to the work of her Office in addressing human rights violations based on sexual orientation and gender identity.

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

- commend the High Commissioner for her principled affirmation that no human being may be denied their rights, solely because of their sexual orientation or gender identity, and note that this position is reinforced by the comments of the Secretary General, the HRC resolution on human rights, sexual orientation and gender identity, the findings of treaty bodies, and the clear evidence of human rights violations brought to the Council's attention by its Special Procedures;
- commend the High Commissioner for her report (A/HRC/19/41) on *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity* and her contribution to the panel at the 19th session of the HRC, and encourage the OHCHR to explore opportunities for follow-up activities, such as further reporting, a study of best practices, an experts' seminar with intergovernmental and civil society participation, regional consultations or other means to raise awareness of the issues;
- welcome the attention in the High Commissioner's Annual Report to fighting discrimination against marginalised groups, including on grounds of sexual orientation and gender identity, and encourage the High Commissioner to continue to integrate the issues throughout the work of her Office, including at the field level.

### ➤ **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 I**. In particular:

- The **Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance** expressed concern about attacks by individuals linked to extreme-right and neo-Nazi groups against persons based on sexual orientation and gender identity.
- The **Special Rapporteur on cultural rights** expressed concern about laws in Russia prohibiting "propaganda of homosexuality". She also expressed concern about "retrogressive trends on gender issues" in the Russian Federation along with a "political discourse on traditional values" which "has weakened the position of women in Russian society."
- The **Special Rapporteur on extreme poverty** noted that "the criminalisation of sex work in Namibia lies at the foundation of a climate of stigma, discrimination and violence surrounding sex work" and recommended that Namibia "repeal the provisions relating to sex work in the Combating of Immoral Practices Act".
- The **Special Rapporteur on health** further noted that the "possibility of arrest, detention and deportation due to immigration status further discourages access to health facilities, goods and services, particularly for transgender sex workers who may face severe discrimination and abuse in their home country".
- The **Special Rapporteur on extrajudicial executions** included a chapter on the particular vulnerability of the right to life of LGBT persons in his country report on Turkey, noting 20 documented murders in a two year period that are believed to have been committed on the grounds of the victims' sexual orientation or gender identity.
- The report of the **Working Group on discrimination against women** on their mission to Moldova noted that "women journalists who initiate and participate in public debates on issues which challenge traditional views face attacks and threats to their personal safety. Women lawyers who assist women victims of sexual

offences are often accused of “defending prostitution” ... Women activists who speak out in defense of the human rights of lesbians, gays, bisexual and transgender (LGBT) have items such as eggs, bottles and stones thrown at them or their offices”.

- The **Working Group** was “additionally concerned about transgender women who are unable to amend identity documents following hormonal therapy or sexual correction because of court decisions which are reversed due to Government intervention” and noted that “these actions deny full enjoyment of human rights”.

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

- commend the Special Procedures for their work in this area;
- highlight the serious human rights violations identified on grounds of sexual orientation and gender identity, including killings, rape, torture and violence;
- invite mandate holders to elaborate on what States can do to promote tolerance, respect for diversity and address the root causes of such violations;
- 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, transgender or intersex.

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

There will be opportunity for statements 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).

Statements by regional or cross-regional groupings might reference the recent panel on ending violence and related human rights violations based on sexual orientation and gender identity, and call for constructive outreach and dialogue with a view to enhancing the Council’s capacity to fulfil its mandate by promoting and protecting human rights for all people without distinction.

#### ➤ **UPR Report adoptions – item 6 (see Annex II, p.24):**

The UPR 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**.

Many relevant recommendations relating to sexual orientation and gender identity issues were raised during the UPR of those States whose reports are due to be adopted. A full list of UPR recommendations for the States under review is attached as **Annex II**. In particular:

- **Romania** is **expected to respond** to recommendations to: a) intensify training for State and local authorities and the public at large on international human rights standards, particularly those in relation to sexual orientation and gender identity, and; b) to ensure that acts of discrimination against LGBT persons and persons belonging to other vulnerable groups are properly investigated and perpetrators held accountable.
- **Botswana** is **expected to respond** to recommendations to: a) Take steps to implement comprehensive anti-discrimination laws, particularly to eliminate discrimination on the basis of sexual orientation, and; b) Engage in a dialogue to repeal laws which criminalize consensual adult same sex relations.
- **Luxembourg** is **expected to respond** to a recommendation to include ‘gender reassignment’ as a ground for protection in domestic anti-discrimination legislation.
- **Barbados** is **expected to respond** to a recommendation to implement measures to protect the LGBT population from harassment, discrimination and violence.

- **Montenegro accepted a recommendation** to establish effective mechanisms of dialogue with human rights defenders in the field of sexual minorities.
- **Serbia accepted a recommendation** to respond effectively to discrimination and violence against LGBT persons and ensure their safety during public events.

## ➤ Panels

The **annual full day of discussion on women's human rights** will be split into two panels, on "Taking stock of efforts to eliminate violence against women, from the Vienna Declaration and Programme of Action to the 57<sup>th</sup> session of the Commission on the Status of Women" and "Setting Priorities for the Future: Strengthening the Work of the Human Rights Council and other Inter-governmental Bodies and Processes in the area of violence against women" respectively.

Statements for the **first panel on taking stock of efforts to eliminate violence against women** could:

- Express concern that whilst the VDPA affirmed the core principles of universality and non-discrimination, some States misquote the document to justify denying rights to certain categories of marginalised women, such as those who face discrimination based on their sexual orientation and gender identity.
- Note that Article 5 of the VDPA also underlines that while "historical, cultural and religious backgrounds must be borne in mind, it is the duty of States *regardless* of their political, economic and cultural systems to promote and protect all human rights".
- Note that violence against women on the basis of their sexual orientation or gender identity continues to be documented in all regions of the world, and provide examples of how your State has taken steps to address such violence.
- Ask panelists how the VDPA and CSW can be used to effectively combat violence against marginalized women, such as those who face violence on the basis of their sexual orientation or gender identity, as well as violence against women which is justified by cultural, religious or traditional values.

Statements for the **second panel on strengthening the work of the HRC and other bodies** could:

- Thank the moderator for her work to bring a better understanding of violence against women, its causes and consequences, to the HRC, and for the many valuable recommendations presented by her mandate.
- Note that an emerging challenge in addressing violence against women based on sexual orientation and gender identity has been the use of traditional, cultural and religious values as a justification for such violence.
- Ask the panellists how to respond to those who use tradition, culture or religion to justify violence against marginalised women, including those targeted because of their sexual orientation or gender identity.

# **ANNEX I:**

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

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**A/HRC/23/18 - Workshop on regional arrangements for the promotion and protection of human rights  
Report of the United Nations High Commissioner for Human Rights**

### **II. Progress in cooperation between United Nations and regional human rights mechanisms**

#### **A. Cooperation with United Nations human rights mechanisms**

##### **3. Universal periodic review**

26. Representatives of regional human rights mechanisms have increasingly addressed the Human Rights Council. At its nineteenth session, the Council of Europe, the African Commission on Human and Peoples' Rights and the Inter-American Commission of Human Rights participated in panels on sexual orientation, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the annual discussion on women's human rights.

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**A/HRC/23/23 - Report on discrimination against women on nationality- related matters, including the impact on children  
Report of the Office of the United Nations High Commissioner for Human Rights**

### **IV. Discrimination relating to the nationality of children**

36. Children living under laws that do not allow women to pass on nationality to their children risk becoming stateless, for instance when the father is stateless, unknown or not married to the mother at the time of birth; the father has been unable to take the administrative steps necessary to confer his nationality or acquire proof of nationality for his children owing to death, forcible separation from his family or inability to fulfil onerous documentation or other requirements; the father is unwilling to fulfil administrative steps to confer his nationality or acquire proof of nationality for his children (for example, if he has abandoned the family); or the laws of the father's country do not permit him to confer nationality in certain circumstances, such as when the child is born abroad. In addition, some contemporary families formed by single women or lesbian couples may find that their children are rendered stateless, because women are prevented from conferring their nationality.

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**A/HRC/23/24 - Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on the implementation of General Assembly resolution 67/154**

### **II. Information received relating to the existence of extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements**

#### **B. Protecting vulnerable groups against racist and xenophobic crimes**

15. The Special Rapporteur is also concerned about the targeting of persons on the basis of their sexual orientation. In this regard, he was informed about attacks by individuals linked to extreme-right and neo-Nazi groups who had beaten homosexual men and lesbian women during or after public manifestations advocating for the recognition of LGBT rights. Similarly, he was informed about laws and regulations that would prohibit such public events, which aim to promote tolerance and the recognition of sexual orientation. In the

view of the Special Rapporteur, the identity of an individual is made up of multiple components, including gender, age, nationality, profession, sexual orientation, political opinion, religious affiliation and social origin; therefore, tolerance, mutual understanding and respect for all, without prejudice, stereotyping or discrimination, should be the basis of human relations of any kind. He urges States to take appropriate measures to address the multiple and often interlinked forms of discrimination faced by individuals on the basis of their race, colour, descent, national or ethnic origin or sexual orientation.

16. The Special Rapporteur is concerned that the underreporting of racist crimes by victims continues to be a problem, including in the case of irregular migrants and asylum seekers. Lack of reporting distorts statistics and data, and may as a result create the impression that racist crimes by extremist political parties, movements and groups do not exist or are less prevalent than they actually are. Furthermore, lack of reporting and of reliable data remains an important obstacle to address effectively racist, xenophobic and intolerant crimes by individuals closely linked to extremist political parties, movements and groups. The Special Rapporteur reiterates again the importance of collecting accurate statistics and disaggregated data on racist, xenophobic and homophobic crimes. He also encourages States and civil society actors to establish detailed systems for recording, reporting and monitoring all these incidents and to encourage victims to report them.

### **III. Good practices in countering extremist political parties, movements and groups**

24. The Special Rapporteur also welcomes measures taken by States with regard to the training of their officials, in particular law enforcement agents. He was informed of programmes that include human rights training sessions developed for the police, the judiciary and the Public Prosecutor's Office. The Special Rapporteur also noted with interest that some countries had developed specific statistics collection systems that disaggregate data on hate crimes, including hate crimes committed against individuals on the grounds of race, colour, ethnicity, origin or minority status, citizenship, language, religion, disability, sexual orientation, gender or transgender. The Special Rapporteur also noted that, in the absence of official data in some States, non-governmental organizations play a key role by collecting statistical data on hate crimes. He welcomes these initiatives, which allow the prevalence of such crimes and the impact of legislation on racist and xenophobic crimes to be assessed.

### **IV. Conclusions and recommendations**

31. As stated in the outcome document of the Durban Review Conference, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence should be prohibited by law, as should be the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence or incitement to such acts. In this regard, the Special Rapporteur calls upon all States to respect the commitments made in the Durban documents. He calls upon States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to comply fully with their obligations as enshrined in article 4 of the Convention. In this connection, it is crucial to introduce into domestic criminal law a provision to the effect that the commission of an offence with racist, xenophobic, anti-Semitic or homophobic motivation or aim constitutes an aggravating circumstance attracting heavier sanctions.

32. The Special Rapporteur recalls that States have the responsibility of bringing to justice the perpetrators of crimes with racist, xenophobic, anti-Semitic or homophobic motivation and to fight against impunity. Indeed, as stated in paragraph 81 of the Durban Declaration, any form of impunity for crimes motivated by racist and xenophobic attitudes plays a role in weakening the rule of law and democracy and tends to encourage the recurrence of such acts. States should therefore ensure prompt, thorough and impartial investigation into these crimes, and that those responsible are adequately sanctioned.

33. The Special Rapporteur reiterates his recommendation that States should collect disaggregated data and statistics on racist, xenophobic, anti-Semitic and homophobic

crimes in order to identify the types of offences committed, the characteristics of the victims and of the perpetrators, whether they are affiliated with an extremist political party, movement or group. Such disaggregated data would allow for a clear and concise assessment of the phenomenon and of the effectiveness of measures taken to address these crimes. Adequate financial, human and technical resources should be provided to improve the quality of data-collection systems where they already exist, while ensuring that civil society is involved in this process and that it is undertaken in such a way as to guarantee the protection of privacy.

34. The Special Rapporteur also recommends that the capacity of law enforcement officials and members of the judiciary be strengthened further to address crimes motivated by racist, xenophobic, anti-Semitic or homophobic biases. Complete and mandatory human rights training, including training with a specific focus on racist and xenophobic crimes perpetrated by individuals linked to extremist political parties, groups and movements should be available to public officials. Law enforcement agents should also be provided with the necessary guidelines and procedures to be able to identify, investigate and register such crimes. States should also ensure that law enforcement agents further engage with vulnerable groups who are particularly at risk of racist, xenophobic, anti-Semitic or homophobic crimes in order to reduce their fears and concerns, restore confidence in the application of the rule of law and report such crimes adequately.

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**A/HRC/23/25 - Report on creating and/or strengthening synergies and linkages on violence against women and girls**  
**Report of the Office of the United Nations High Commissioner for Human Rights**

**IV. Recommendations**

52. It is important that the analysis and recommendations produced by the Human Rights Council's thematic work on violence against women and girls are fully embedded in the Council's efforts to promote States' accountability and full implementation of human rights obligations. To this end, the Council may wish to consider the following recommendations:

(d) Encourage adequate attention in the overall work of the Human Rights Council to multiple forms of discrimination exposing women to heightened risks of violence, including the intersection between sex and age, disability, ethnic origin and/or affiliation, religious beliefs, language, national or social origin, political or other opinion, property, birth, migratory status, family and marital status, sexual orientation, gender-identity or other status.

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**A/HRC/23/34 - Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed**  
**The right to freedom of artistic expression and creativity**

**III. Restrictions and obstacles: the need for national assessments**

**C. Motivations**

50. Issues relating to gender, sexuality and sexual orientation, in relation to religion and morals, continue to be highly debated in connection with artistic expressions and creations. Artworks that are concerned range from those addressing the issue of love and romance, or representing or exposing nudity, to those resorting to pornography or certain forms of pornography. References to, or descriptions of, homosexual relationships in literature, music and visual arts are criminalized in several countries, or face particular censorship in some others. The Special Rapporteur notes with concern that the motivation of protecting children from certain content may be used to and lead to prohibited access for adults.<sup>25</sup> She further stresses that according to some information, "despite widely publicized claims that adverse effects [of sexual or violent content on children] have been proven, the studies are ambiguous, disparate and modest in their results".<sup>26</sup> Arts education, together

with education that teaches children how to interpret and critique media and entertainment messages, may be a far better and more effective solution than censorship.

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**A/HRC/23/34/Add.1 - Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed**

**Addendum**

**Mission to the Russian Federation (16 – 26 April 2012)**

**IV. Cultural rights: good practices and challenges**

36. The Special Rapporteur visited the Youth Centre for Theatre and Cinema, supported by the Saint Petersburg authorities and the Federal Ministry of Culture. This interesting institution enables young artists to run their own theatre, with about 200 actors and 25 directors. On the occasion of festivals on human rights, the theatre has organized events and discussions on, inter alia, lesbian, gay, bisexual and transsexual issues.

**C. Situation of specific categories of the population**

**3. Lesbian, gay, bisexual and transgender people**

101. The identity of individuals is always multi-faceted, and this includes gender identity. During her visit, the Special Rapporteur was informed that it is increasingly difficult for lesbian, gay, bisexual and transgender (LGBT) people in the Russian Federation to use cultural spaces such as film festivals and other events to explore and express that part of their identity safely.

102. In recent years, in several cities, groups trying to organize festivals to offer a space of interaction between LGBT and others and to promote tolerance and human rights through art and culture have faced great difficulties, including threats and violence (for example, the International Queer Culture Festival in Saint Petersburg, and the Side by Side LGBT international film festival, in Saint Petersburg, Novosibirsk, Kemerovo, Tomsk and Arkhangelsk). Permissions for exhibitions and screenings have been revoked, allegedly under the pressure of the administration, forcing groups to relocate to more obscure locations. The Special Rapporteur appreciates, however, that since 2008, the Saint Petersburg authorities have not interfered with the Side by Side festival and that, in 2012, it was held without any problem in Tomsk.

103. The Special Rapporteur is concerned that numerous statements in the media reportedly depict homosexuality as a mental disorder and call for the segregation of LGBT persons to prevent their participation in cultural life. The prevailing atmosphere is said to have an impact on the attitude of the private sector.

104. The Special Rapporteur is also concerned that the Saint Petersburg Law of 29 February 2012 prohibiting "propaganda of homosexuality" among minors, and apparently similar laws in Arkhangelsk, Ryazan and Kostroma, exacerbate this situation. Furthermore, similar laws are reported to be envisaged in other regions and at the federal level. The Government has stressed that these laws aim to prohibit the aggressive imposition of one group's lifestyle and norms of behaviour on children, and to protect the health and development of children. However, it is feared that, in practice, the laws will lead to eliminating any expression of LGBT identity and the dissemination of information or artistic creations addressing LGBT issues. It is also of concern that, by dealing with the two together, the laws confuse homosexuality with paedophilia.

**Women**

105. Retrogressive trends have been noted on gender issues in the Russian Federation following the break-up of the Soviet Union, as have an upsurge in religious identity and political discourse on traditional values. This, according to interlocutors, has weakened the position of women in Russian society.



106. Cultural practices violating women's rights are said to be resurgent in Chechnya and Ingushetia where, reportedly, honour killings have taken place; women have been forced to wear a headscarf, or experience extreme pressure to do so; and may be humiliated and physically attacked if not deemed to be dressed appropriately. It was also reported that the imposition of these new codes and customs as culturally necessary in North Caucasus has resulted in women being afraid to rely on the Federation's law to defend their rights, as they fear retaliation.

107. The Special Rapporteur recalls that the right of women to have access to, participate in and contribute to all aspects of cultural life encompasses their right to engage actively in identifying and interpreting cultural heritage and to decide which cultural traditions, values or practices are to be kept, reoriented, modified or discarded.

## **V. Conclusions and recommendations**

115. The Special Rapporteur encourages the Government to respect and protect the right of LGBT persons to express their identity safely, including through attending and organizing cultural events. She recommends that the Government and relevant regional authorities ensure that all legislation respects this right, and that they:

(a) Exercise due diligence and protect from violence and threats by others LGBT persons as well as organizers and audiences of LGBT events;

(b) Increase efforts to combat prejudice and hostility against LGBT persons.

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## **A/HRC/23/36/Add.1 - Report of the Special Rapporteur on extreme poverty and human rights, Ms. Magdalena Sepúlveda Carmona Addendum Mission to Namibia (1 to 8 October 2012)**

### **IV. Groups particularly vulnerable to poverty**

#### **E. Sex workers**

50. The criminalization of sex work in Namibia lies at the foundation of a climate of stigma, discrimination and violence surrounding sex work. During her visit, the Special Rapporteur heard testimonies from sex workers of recurring police abuse and high levels of violence, including the confiscation of condoms, arbitrary detention and rape. Such abuse severely compromises sex workers' personal safety as well as their right to equal protection of the law. Moreover, it creates a climate of impunity that fosters further violence and discrimination against sex workers in the community at large.

51. Stigma, discrimination and violence often discourage sex workers from accessing public services, particularly health care, thereby violating their rights as well as hampering efforts to reduce the spread of HIV/AIDS. It also discourages them from seeking justice and redress when their rights are violated. The discrimination that they suffer is also often evident in other spheres such as education and employment.

52. Particularly concerning is the lack of access by sex workers to comprehensive sexual and reproductive health services, including access to safe and legal abortion.

53. Due to these multifaceted human rights violations, sex workers remain disproportionately affected by HIV. The Special Rapporteur welcomes the National Strategic Framework for HIV and AIDS 2010/11-2015/16, which identifies sex workers as a priority; however, the information on the extent of sex work in Namibia and the needs and challenges faced by sex workers remains limited. There are no national guidelines for effective, rights-based programming for this sector of the population. In line with its human rights obligations, Namibia is obliged to provide all persons equal and effective protection of the law and take measures to prevent and combat indirect systemic discrimination on the

form of legal rules, policies, practices or predominant cultural attitudes in either the public their rights.

## **B. Right to health**

65. Information received by the Special Rapporteur also suggests that health-care personnel often lack appropriate training, discriminate against vulnerable and disadvantaged groups such as persons living with HIV/AIDS and sex workers, and that there are no effective accountability mechanisms when they fail to respect the rights of patients, such as the right to informed consent and confidentiality or to address dishonest or unlawful practices such as a high level of absenteeism and requests for illegal payments.

66. The Special Rapporteur is also concerned about information received on the obstacles that particular groups such as prisoners and lesbian, gay, bisexual and transsexual (LGBT) persons encounter in accessing condoms, a situation that is hampering their enjoyment of their right to health.

## **VII. Conclusions and final recommendations**

### **Sex workers**

- (a) Repeal the provisions relating to sex work in the Combating of Immoral Practices Act (Act 21 of 1980) and all similar municipal regulations;
- (b) Provide training to all health service providers and law enforcement agents, in relation to their obligations and attitudes towards sex workers;
- (c) Ensure that law enforcement personnel are held accountable for any act of violence or abuse against sex workers and improve mechanisms of legal recourse for sex workers; develop support systems (legal and counselling) for sex workers;
- (d) Strengthen the capacity of organizations representing sex workers by, inter alia, providing a platform for their participation in public decision-making processes that affect them.

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## **A/HRC/23/36/Add.2 - Report of the Special Rapporteur on extreme poverty and human rights, Ms. Magdalena Sepulveda Carmona Addendum Mission to Mongolia (3 to 7 December 2012)**

### **III. Legal and institutional framework**

14. The Constitution unambiguously states that no discrimination shall be enforced on the basis of social origins and economic situation (Art. 14). However, the Special Rapporteur is concerned that substantial gaps remain in the legislation on discrimination such as prohibiting discrimination on the basis of sexual orientation, gender identity or health status. Moreover, there is no effective mechanism to ensure that victims of discrimination have access to a remedy.

### **V. The situation of groups particularly vulnerable to poverty**

25. The Special Rapporteur identified groups that are particularly vulnerable to extreme poverty and that require specific initiatives to overcome the impact of economic deprivation and social exclusion.

### **H. LGBT Persons**

60. Although the Constitution of Mongolia provides for a non-discrimination clause, prohibition on the basis of sexual orientation is not explicitly mentioned in the norm. As a result lesbian, gay, bisexual and transgender (LGBT) persons in Mongolia face numerous human rights violations ranging from rape, physical and sexual attacks, arbitrary arrests and physical and sexual assault while in detention. Due to a fear of reprisals and secondary victimization, mainly by the police, many incidents of harassment and violence are not reported.

61. Information received suggests that discrimination against LGBT persons is endemic in the public, private and non-governmental sectors and encompasses the police and the judiciary, health services, education, the housing sector and the media. Such levels of stigmatization lead to significant barriers to accessing health services, seeking employment and social acceptance. The Special Rapporteur also received reports that a high proportion of the LGBT community is living in poverty due to difficulties in finding employment, or receiving an education because of stigmatization.

62. The Special Rapporteur urges the Government to implement the recommendations made during the 2011 UPR Review of Mongolia to develop legislation with a view to effectively protecting the rights of LGBT persons, and discourage the development of discriminatory ideologies in the country through information and human rights education and to ensure that all allegations of attacks and threats against individuals targeted because of their sexual orientation are thoroughly and impartially investigated and punished.

## **VIII. Conclusion and recommendations**

### **A. Improving the poverty reduction strategy and its implementation**

#### **Legal and institutional framework**

(c) Revise the definition of discrimination within the Constitution in line with international human rights legislation to prohibit all forms of discrimination including on the basis of sexual orientation, gender identity and health status and develop effective mechanisms to provide access to justice and remedies in cases of violation of those rights.

### **B. The situation of groups particularly vulnerable to poverty**

#### **LGBT Persons**

(a) Develop legislation with a view to effectively protecting the rights of LGBT persons including thorough and impartial investigation of allegations of attacks against LGBT individuals.

(b) Facilitate the full participation of LGBT persons at the decision making level and implement a universal non-discrimination policy at all educational and healthcare facilities and ensure that effective accountability mechanisms are established in cases of non-compliance.

(c) Implement training for law enforcement personnel on the prevalence of gender based violence against the LGBT community.

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## **[A/HRC/23/36/Add.3 - Report of the Special Rapporteur on extreme poverty and human rights, Ms. Magdalena Sepúlveda Carmona](#)**

### **[Addendum](#)**

### **[Mission to Namibia: comments by the State on the report of the Special Rapporteur](#)**

#### **Groups particularly vulnerable to poverty**

15. Article 10 of the Constitution of the Republic of Namibia states that no persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status. In this regard, and as highlighted in the sections contained in this report, the services provided by Government are for all those in need of them. However, due to factors such as poverty, high inequality inherited at independence, long distances from places of service, some are not able not able to access services as readily as others, and the Government continues to increase its efforts to bridge the gap.

16. In her report, the Special Rapporteur highlights several groups that are particularly vulnerable to poverty and social exclusion. The Government fails to understand why the Special Rapporteur would point out sex workers as particularly vulnerable, while not providing an analysis on truthfully vulnerable groups such as the San, Ovahimba that constitute a much larger portion of the population that is in need. Working as sex worker does not translate into living in extreme poverty and social exclusion. Being a sex

worker is not a visible attribute on any person, and no one can tell just by looking at an individual, that that individual is a sex worker.

17. Moreover, sex work is illegal in Namibia. As discussed in various part of this response, the Government has put in place various measures to address poverty, including providing employment opportunities. Those who participate in sex work should abide by the laws of the Republic of Namibia and take advantage of the opportunities the Government provides. The Special Rapporteur's support and promotion of illegal activity is not seen as a productive way to fight poverty and to help the vulnerable.

18. Therefore, if sex workers feel "discouraged" from accessing public services, as described by the Special Rapporteur, it may be their own perception, because they realize and know that what they are doing in private in carrying out sex work, is illegal. Government services are offered to the public without discrimination to anyone.

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## **A/HRC/23/39 - Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai**

### **III. Ability of associations to access financial resources: a vital part of the right to freedom of association**

#### **C. Meeting international human rights norms and standards**

21. The Special Rapporteur also warns that the political environment, where for instance patriarchy, sexism and authoritarian regimes are structural challenges, can also unduly undermine access to funding to civil society. Furthermore, criminalization in certain countries of peaceful activities, such as protection of human rights, non-discrimination and equality or promotion of gender equality, can also make it difficult, if not impossible, for associations working on these issues to raise funds.

### **IV. Ability to hold peaceful assemblies: an integral component of the right to freedom of peaceful assembly**

#### **A. Background**

43. The ability to hold peaceful assemblies is a fundamental and integral component of the multifaceted right to freedom of peaceful assembly, which shall be enjoyed by everyone. Such ability is of utmost importance to the work of civil society actors, including those promoting the realization of economic, social and cultural rights, as it enables them to publicly voice their message, which ultimately benefits the realization of the right(s) they strive to promote and protect, especially in the context of the ongoing dire economic crisis. This is all the more relevant for groups most at risk of violations and discrimination, such as women, youth, indigenous peoples, persons with disabilities, persons belonging to minority groups, groups at risk because of their sexual orientation and gender identity and non-nationals.

#### **B. Procedural and practical measures for holding peaceful assemblies**

##### **4. Pre-event planning**

68. The Special Rapporteur considers pre-event planning, including risk assessment, by law enforcement officials, together with organizers of peaceful assemblies and, if possible, local authorities, as a good practice which may contribute to the success of the assembly. However, participation of organizers in such planning should never be made compulsory.

69. Possible issues for discussion include an estimate of the number of participants expected; itinerary of the assembly, if it is not static; specific needs of persons with disabilities and groups at risk, such as women, indigenous peoples and groups who, due to their sexual orientation and/or gender identity may be in need of greater protection by the authorities; need to deploy properly trained and clearly identified stewards whose role is to provide assistance to organizers by, inter alia, informing and orienting the public during the event, but who should not be used to palliate deficiencies in the security apparatus. Importantly, when organizers cannot be identified due to the nature of certain assemblies

(such as those convened through the Internet), the authorities must undertake such planning and be prepared to the same extent.

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**A/HRC/23/41 - Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover**

**Sex work**

58. States have a responsibility to respect, protect and fulfil the enjoyment of the right to health of migrant sex workers, regardless of whether they have been trafficked or not. Migrant sex workers are a highly stigmatized population as sex or sex-related work may be criminalized in many countries. Occupational health hazards for sex workers include a disproportionate risk of HIV and other sexually transmitted diseases, violence and often rape. Criminalization perpetuates discrimination, stigma and violence towards sex workers and is a barrier to accessing health-care services, which leads to poorer health outcomes. When combined with xenophobia, criminalization may legitimize harassment, intimidation and violence against migrant sex workers, especially by law enforcement authorities, without mechanism for protection or redress. The nature of the occupation is also used to justify compulsory testing for HIV and other communicable diseases. Additionally, human traffickers may take advantage of the illegality of sex work and migration and exert undue influence and control over sex workers.

59. The possibility of arrest, detention and deportation due to immigration status further discourages access to health facilities, goods and services, particularly for transgender sex workers who may face severe discrimination and abuse in their home country. Health needs of migrant sex workers are poorly understood in many countries, resulting in policies that fail to address their needs and vitiate the right to health. For example, possession of a condom as evidence of sex work-related criminality actively deters migrant sex workers from carrying condoms, which results in risky sexual behaviour and exposure to HIV and other sexually transmitted infections.

60. Ensuring non-discriminatory access to health care both in law and practice requires States to decriminalize consensual adult sex work, enact and implement laws extending labour rights, occupational health and safety and access to affordable health care, with particular focus on irregular migrant sex workers.

61. Participation of migrant sex workers in the formulation and implementation of health laws, programmes and collection of disaggregated data is required to ensure that health concerns of sex workers are addressed. Measures that provide a confidential and supportive environment for voluntary testing, treatment, referral and counselling, that educate sex workers about sexual and reproductive health rights, including preventing the transmission of HIV, and that tackle the marginalization experienced by sex workers are consistent both with epidemiological evidence and the right to health framework.

**IV. Conclusion and recommendations**

76. The right to health approach to migrant workers fills gaps in existing frameworks that protect migrant workers and their families and bolsters protections contained therein. It provides necessary safeguards to migrant workers by recognizing that migrant workers and nationals of a specific State have equal rights which must not be limited. The Special Rapporteur recommends that sending and receiving States take the following steps in order to realize the right to health of migrant workers:

(j) Extend existing domestic labour laws, occupational health and safety laws, social insurance schemes and other protections to all categories of migrant workers, including domestic workers, sex workers and irregular migrant workers.

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**A/HRC/23/46/Add.3 - Report by the Special Rapporteur on the human rights of migrants, François Crépeau**  
**Addendum**  
**Mission to Italy (29 September–8 October 2012)**

**V. Detention of migrants in an irregular situation**

**F. Special categories of detainees**

**4. Others**

83. The Special Rapporteur also observed that there appeared to be no standard procedures to deal with persons with specific vulnerabilities or special needs in CIEs, including persons with health or psychological problems, victims of torture, victims of trafficking, or lesbian, gay, bisexual, transgender and intersex persons.

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**A/HRC/23/47/Add.1 - Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns**  
**Addendum**  
**Mission to India**

**IV. Violations of the right to life by non-State actors**

**C. Practices affecting women's right to life**

**3. "Honour" killings**

58. So-called "honour" killings are committed against persons believed to have sullied the honour of a family. They are almost always directed against women, usually for having exercised their right to choose a partner whom the family does not approve of. There are reports of a strong correlation between "honour" killings and inequalities of castes and gender.

59. Although the NHRC regards the number as low, other sources estimate that approximately 1,000 to 1,200 deaths occur every year in honour-related killings. Most of them reportedly occur in Haryana, Punjab and Uttar Pradesh States.

60. Honour killings are not regulated under separate legislation in India, and fall under the broader crime of murder.<sup>40</sup> In order to address honour killings, the IPC and Certain Other Laws (Amendment) Bill of 2010 proposed amendments to, inter alia, the IPC to create penalties for "honour" killings. Meetings of the Group of Ministers were convened in 2010 to discuss the matter of introducing amendments to the IPC or enacting separate legislation in order to address "honour" killings. Despite such steps, the Special Rapporteur was informed that there remains a lack of ensuring effective prosecution and prevention of such killings.

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**A/HRC/23/47/Add.2 - Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns**  
**Addendum**  
**Mission to Turkey**

**III. Challenges to respect of the right to life by non-State actors**

**C. Killings of lesbian, gay, bisexual and transgender individuals**

47. Lesbian, gay, bisexual and transgender (LGBT) individuals are also particularly vulnerable to attacks, including lethal attacks, in Turkey. This occurs in the context of a generally hostile climate towards LGBT individuals, who often face discrimination and intimidation as well as negative stereotyping, including from high-level public figures and law enforcement agents. According to information provided by non-governmental organizations, there were eight murders in 2011 and 12 murders in 2010 that are believed to have been committed on the grounds of the victims' sexual orientation or gender identity.

48. In Turkey, killings of LGBT individuals usually occur either in the context of expression of hate or as part of the phenomenon of honour killings. With regard to hate-related incidents, the Special Rapporteur heard information on the lack of comprehensive specific legislation regarding hate speech and hate crimes, as well as a general absence of language on gender identity and sexual orientation in Turkish legislation, including in the most recent legislative texts. This creates a gap in the legal framework with regard to the protection of LGBT individuals.

49. Another difficulty lies in the attitude of family members of LGBT individuals, who, sometimes due to so-called honour motives, insist that the investigation files in cases of murder are closed as soon as possible. Family members can also perpetrate murders of LGBT individuals in the name of honour. A prominent case concerns Ahmet Yildiz, a 26 year old man believed to have been killed in 2008 by his father who viewed his son's homosexuality as disgraceful to the family. Ahmet Yildiz reportedly addressed the Prosecution Office three times to seek protection against death threats, but his requests were never followed up with a protection order.

50. There appears to be a trend in Turkey for law enforcement officers and the judiciary to take a lenient attitude towards crimes against LGBT individuals. LGBT individuals are rarely treated seriously when they seek protection, and investigations and prosecution of crimes against them display fundamental shortcomings, leading to impunity of perpetrators. This was also confirmed by reports from other organizations. Problems related to reprisals and lighter sentencing of perpetrators, which have considerable application to the killings of LGBT individuals and failures of accountability for such crimes in Turkey, will be addressed in chapter IV of this report.

#### **E. Prosecutorial and judicial discretion**

78. Even in cases where the perpetrator is charged with killing, sentences are sometimes significantly reduced by the judge further to a finding of "unjust provocation" under article 29 of the Turkish Penal Code, whereby the defendant is considered less culpable because he acted under so-called provocation. The application of this principle can be inappropriate, for example, in some cases of honour killings and killings of LGBT individuals, where judges may, on the basis of their own moral convictions, impose a lighter sentence for murder.

79. In other cases, judges apparently reduce the sentence because of the "good conduct" of the defendant during legal proceedings. According to interlocutors, there is a tendency to reduce sentences in particular in cases of violence against women, killings of LGBT individuals or offences perpetrated by law enforcement officials.

### **VII. Recommendations**

#### **Right to life and non-State actors**

110. To reduce the vulnerable situation of LGBT individuals, Turkish legislation should be reviewed to include language sensitive to gender identity and sexual orientation.

114. Awareness-raising campaigns as well as training of security officials and professionals of the judiciary should continue with regard to the rights of women and gender equality, and should be launched on the rights of LGBT individuals.

#### **Fight against impunity**

121. "Unjust provocation" should not be misused as a mitigating factor in cases which involve alleged morality motives as a cause of killing, in particular in cases of honour killings and killing of LGBT individuals. "Good conduct" during legal proceedings should also not be used to reduce the sentences in such cases.

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## Rapporteur on extrajudicial, summary or arbitrary executions

14. Concerning paragraph 50, according to the relevant legislation, the members of judiciary are under an obligation to investigate and adjudicate the killings irrespective of the motive of the incident. Any omission or negligence in investigation and adjudication bear criminal and administrative liability. In practice, cases concerning crimes against LGBT individuals are investigated and prosecuted diligently by the judges and prosecutors. For instance, H.A., who was accused of killing 3 women, one of whom was homosexual, was given by Izmir 7th Heavy Criminal Court aggravated life sentence. On another case, Istanbul 5th Heavy Criminal Court sentenced O.B.C. to 19 years imprisonment for the killing of homosexual M.T.

30. Concerning paragraphs 109-110, Article 216 of the TPC criminalizes the hate crimes.

32. As for the situation of LGBT individuals, 2nd paragraph of the above-referred Article criminalizes the gender-related hate offenses.

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## A/HRC/23/50 - Report of the Working Group on the issue of discrimination against women in law and in practice

### III. Thematic analysis: eliminating discrimination against women in political and public life with a focus on political transition

#### B. Targets and achievements in women's representation

28. The Working Group is concerned that the knowledge gap remains on the whole spectrum of women's participation in political and public life. This undermines the capacity to move to gender-responsive inclusive democracy, development and peace. Most available data is not sufficiently disaggregated to allow the understanding of the intersectionality of gender with other grounds of discrimination, in the light of Committee on the Elimination of Discrimination against Women general recommendation No. 28 (2010) according to which "discrimination against women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity" (para. 18). Evidence-based knowledge is weak on the extent of violence against women in political and public life and its impact on women's capacity to exercise their right to political participation.

#### C. Women's political participation, democracy and human rights

##### 3. Women's agency and autonomous movements

47. Women's rights advocates engage actively in different normative regimes, including religious communities and indigenous or customary groups. They do so, among others, by initiating hermeneutic projects within their respective religions. In their cultural communities, women express their opinions on politics also through the arts, including writings, music and plays, and their works have been attacked, criminalized and condemned by State and non-State actors. In certain contexts, economically independent women playing leadership roles are stigmatized and attacked as witches. Lesbian, bisexual and transgender women who defend their human rights are vulnerable to attacks on their civil rights and personhood where there is a climate of intolerance arising from their perceived challenge to established norms of gender identity, gender roles and sexuality.

48. The new space and opportunities created by revolutionary developments in ICTs have enabled women to initiate or enhance their participation in political and public life. Women who are confined in private homes have used ICTs as a means to break out of their isolation and take part in collective action. Women who live under threat of attack because of their sexual orientation have found safety in the anonymity of the Internet, which allows them to freely speak out, establish virtual communities and participate in public debates. During moments of political unrest, women have utilized SMS, micro-blogging and social networking to provide "bodyguard" protection to each other on the ground.



## **D. Eliminating structural and societal discrimination against women in political and public life**

### **4. Stereotypes**

70. Women who belong to vulnerable groups, based on race, class, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity, are effectively barred from political and public life based on multiple stereotyping. In its concluding observations, the Committee on the Elimination of Discrimination against Women has expressed concern about stereotyped media portrayals of women's roles within the family and society.

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## **A/HRC/23/50/Add.1 - Report of the Working Group on the issue of discrimination against women in law and in practice**

### **Addendum**

#### **Mission to the Republic of Moldova**

### **III. The legal framework and its implementation: improvements and challenges**

17. Article 171 of the Criminal Code defines and sanctions rape and provides for a number of aggravating circumstances such as recidivism and age of the victim. Article 172 sanctions "homosexuality or satisfying sexual needs in perverted forms committed through the physical or mental coercion of the person or by taking advantage of the person's incapacity to defend him or herself or to express his/her will shall be punished by imprisonment for 3 to 5 years". The Government noted during its universal periodic review in the Human Rights Council that homosexuality among consenting adults was no longer criminalized; however, the rationale for differentiating rape (article 171) and "homosexual rape" (article 172) remains unclear. This contributes to exacerbating the bias against homosexuality, particularly of law enforcement agencies and the judicial system. In 2012, new amendments were made to the Criminal Code. Law N. 73 introduced amendments to articles 174, 175 and 175/1, which sanction sexual violence against children. These amendments increased sanctions and added an innovative clause dealing with child grooming. However, the age of children, 16, in these articles remains inconsistent with the definition of the child in the Convention on the Rights of the Child.

21. The Republic of Moldova has a solid legal framework, with crucial weaknesses that need to be addressed. For example, the Law on Ensuring Equality, which extends the protection against discrimination on many grounds also other than sex, was adopted by parliament during the Working Group's visit to the country. Under preparation since 2007, its adoption faced strong opposition to inclusion of a ban on discrimination on grounds of gender identity and sexual orientation, often accompanied by homophobic arguments, such as that being anti-gay is part of the Moldovan identity. Such opposition led to four grounds of discrimination being deleted from the bill: health status, wealth, social origin and sexual orientation. Sexual orientation was cited as a ground for discrimination only as concerns work. This law also includes a number of exceptions evidently in tension with or possibly in direct conflict with international law. It excludes from its protection families other than those based on marriage of a man and woman, adoption in cases of homosexual relationships, and issues connected to the right to manifest religion or belief.

25. Also during the Working Group's visit, a legislative amendment introduced article 104/1 in the Criminal Code. This article provides for chemical castration as a mandatory additional sanction in cases of rape and homosexual or perverse sexual acts committed through physical or psychological coercion against children less than 14 years of age. In cases of repeated rape or rape with grave consequences for the victim, chemical castration may be applied at the court's discretion. The Working Group is concerned about the repressive approach of this legislation as expressed by the very nature of this additional sanction and the conditions of its application. Such sanction has been considered "invasive, irreversible and mutilating" by the European Committee for the Prevention of Torture and raises the issue of its severity and justifiability in the context of the prohibition of cruel, inhuman or

degrading treatment or punishment. The amendment also constitutes a regressive measure vis-à-vis patients' rights to informed consent on any health intervention.

## **V. Women in political and public life**

### **B. Obstacles to full and equal participation**

58. Women journalists who initiate and participate in public debates on issues which challenge traditional views face attacks and threats to their personal safety. Women lawyers who assist women victims of sexual offences are often accused of "defending prostitution". A woman journalist who has written on diversity themes was recently portrayed on an internet site as a covert Islamist. Women activists who speak out in defense of the human rights of lesbians, gays, bisexual and transgender (LGBT) have items such as eggs, bottles and stones thrown at them or their offices. Outspoken Lesbian, Bisexual and Transgender (LBT) women are publicly "outed" on internet sites in an attempt at public shaming. These acts have been generally condoned by the authorities and many testify to the non-responsiveness of the police during such attacks.<sup>18</sup> Some positive developments from the Government side have been reported in 2012.

59. The Working Group is concerned that LBT women are not able to enjoy the right to free assembly and association. For example, following the ban of "aggressive propaganda of non-traditional sexual orientation" and the declaration of "a support zone for the Orthodox Church" by the City Council of Balti in March 2012, at least four other municipalities, two districts, and a village reportedly also issued similar ordinances. Legal proceedings initiated by civil society in Balti were reportedly suspended and the case was pending at the time of the visit. In the meantime, following the State Chancellery's legal proceedings, some of these local decisions have reportedly been repealed. Further, during its visit, the Working Group noted highly discriminatory, often sexist and homophobic, remarks by members of the Moldovan leadership in the lead-up to the adoption of the Law on Ensuring Equality. These statements are viewed as condoning discrimination and serve to further polarize society.

60. The Working Group is additionally concerned about transgender women who are unable to amend identity documents following hormonal therapy or sexual correction because of court decisions which are reversed due to Government intervention. These actions deny full enjoyment of human rights.

## **IX. Conclusions and recommendations**

### **B. Recommendations**

#### **1. Measures to improve the legal framework and implementation of legislation, policy and institutional commitments**

88. The Working Group recommends to independent national institutions:

(a) The Council to Prevent and Combat Discrimination and Ensure Equality should develop jurisprudence and work practices in conformity with international law, and establish a comprehensive ban on discrimination covering all grounds under international law, including sexual orientation and gender identity.

(b) The Centre for Human Rights and its successor should develop a mechanism for the protection of human rights defenders, with immediate priority for Lesbian, Bisexual and Transgender (LBT) defenders and LBT women, and marginalized groups, in particular Romani women.

#### **2. Measures to strengthen the effective protection of women's human rights and empowerment of women**

89. The Working Group recommends that the Government:

(a) Initiate a national campaign to increase public understanding and support for the elimination of discrimination against women in all fields of life, including for women migrant workers, minority women, LBT women, and all other women in positions of vulnerability,

and to promote public recognition and acceptance of women's leadership role in political and public life.

(c) Support the establishment and development of independent think tanks which would improve evidence-based policy discussions and public discourse to address persistent barriers in equality and non-discrimination, including on controversial issues such as reproductive health and sexual orientation and gender identity, as well as to address blind spots in understanding such as on the situation of Romani women, women migrant workers and other women in positions of vulnerability.

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## **A/HRC/23/51 - Communications report of Special Procedures**

Date: 12/12/2012

Type: Joint letter of allegation

Case No: RUS 8/2012

([https://spdb.ohchr.org/hrdb/23rd/public - AL Russian Fed. 12.12.12 \(8.2012\).pdf](https://spdb.ohchr.org/hrdb/23rd/public - AL Russian Fed. 12.12.12 (8.2012).pdf))

Country: Russian Federation

Mandates: Freedom of expression; Health; Human rights defenders

Summary of the allegation transmitted: Alleged impending first reading of the draft federal law No. 44554-6 introducing amendments to the Code of the Russian Federation on Administrative Offences regarding the "propaganda of homosexuality". According to the information received, on 19 December 2012, the Russian State Duma was scheduled to consider in first reading a draft law banning the "propaganda of homosexuality" at federal level across the country. The amendment contained in Art. 6.13.1. to the Code of the Russian Federation on Administrative Offences would make the –propaganda of homosexuality among minors punishable by administrative fine. The amount of the fine foreseen is 4,000-5,000 roubles (\$130 – 160) for citizens; 40,000-50,000 (\$1,300-1,600) roubles for officials and 400,000-500,000 roubles (\$13,000 – 16,000) for legal entities.

Reply: Information of the Government of the Russian Federation in relation to the joint communication of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the situation of human rights defenders concerning the Draft Law "On introducing amendments to the Code of the Russian Federation on Administrative Offences" Reference: UA G/SO 214 (67-17) Health (2002-7) G/SO 214 (107-9) RUS 8/2012.

In connection with the joint communication of the Special Rapporteurs concerning the Draft Law "On introducing amendments to the Code of the Russian Federation on Administrative Offences" dealing with propaganda of homosexuality the Russian side would like to communicate the following.

In March of 2012, the Legislative assembly of the Novosibirsk Region submitted to the State Duma of the Russian Federation the Draft Law "On introducing amendments to the Code of the Russian Federation on Administrative Offences" (to establish administrative liability for propaganda of homosexuality among minors).

The Draft Law proposes to add to the Code of the Russian Federation on Administrative Offences a new Article 6.13.1 stipulating administrative liability for propaganda of homosexuality among minors in the form of punishment by an administrative fine for citizens in the amount of four thousand to five thousand rubles; for officials – forty to fifty thousand rubles; for legal entities – four hundred thousand rubles to five hundred thousand rubles.

The State Duma's Committee on Family Affairs, Women and Children is in charge of the work on this piece of legislation. 47 subjects of the Russian Federation submitted their

comments with regard the Draft Law, including 26 comments from legislative bodies of power and 48 – from executive bodies of power. All the comments were positive. At the same time, the State Duma Department for Legal Issues and the Federation Council Committee on Constitutional Legislation, Legal and Judicial Issues and Civil Society Development made some observations concerning the Draft Law.

The State Duma Department for Legal Issues did not find in the Draft Law any contradictions with the international obligations of the Russian Federation in the area of human rights and, in particular, with the International Covenant on Civil and Political Rights.

However, in the opinion of the Department for Legal Issues proposed Article 6.13.1 "Propaganda of homosexuality among minors" required additional discussion, especially taking into account the fact that in accordance with paragraph 3 of Part 1 of Article 1.3 of the Code of the Russian Federation on Administrative Offences administrative responsibility regarding matters of federal importance shall be established for violating the rules and norms provided for by federal laws and other normative legal acts of the Russian Federation. Besides, as it is pointed out in the conclusions of the Department for Legal Issues, the legislation of the Russian Federation does not have a definition of the term "homosexuality".

Consequently, the Draft Law was sent back to the Committee for the improvement and did not go through its first reading. For the time being its consideration has been postponed.

The Russian side notes that in case of its eventual adoption the Draft Law will introduce changes into the Code of the Russian Federation on Administrative Offences (CAO RF) in terms of administrative liability not for homosexuality but for its propaganda among minors only.

Legitimate interests of minors represent an important social value. One of the objectives of state policy in the interests of children is their protection from factors having a negative impact on their physical, intellectual, psychological, spiritual and moral development. Paragraph 1 of Article 14 of the Federal Law "On Basic Guarantees of Children's Rights in the Russian Federation" (No. 124-FZ, 24 July 1998) directly states the obligation of public authorities of the Russian Federation to take measures to protect children from information, propaganda and campaigning that harm their health and moral and spiritual development.

These measures are in full compliance with obligations of the Russian Federation under the UN Convention on the Rights of the Child, in particular under paragraph 2 (b) of Article 13 and Article 17 (e).

The Special Rapporteurs's concerns that the Draft Law, if adopted, may potentially be used to restrict the human rights of persons belonging to sexual minorities and all the more so to "criminalize" them are unfounded. The right of all citizens of the Russian Federation without any discrimination are guaranteed in the Constitution of the Russian Federation. Russia is also bound by a number of anti- discriminatory obligations within the UN system as well as by relevant provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. Labor and Criminal Codes of the Russian Federation just as its legislation in the area of health and education contain anti-discriminatory norms, which allow to protect the rights of all persons irrespective of their sexual orientation.

The Russian side also does not see any linkage between the abovementioned amendments in the CAO RF and fight against the spread of HIV/AIDS.

The Russian side expresses its gratitude to the Special Rapporteurs for reminding Russia about its international obligations and assures them that it firmly abides by provisions of the international human rights treaties ratified by it.

The Russian side reminds distinguished Special Rapporteur on the situation of human rights defenders that the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms is not a legally binding instrument.

The Russian Federation unflinchingly supports adherence to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in accordance with its obligations under the International Covenant on Economic, Social and Cultural Rights. In this connection we draw the attention of the relevant Special Rapporteur to the fact that Article 12 of this Covenant does not mention the notion of "sexual and reproductive health" or the right thereto. The Russian side calls upon the Special Rapporteur to be strictly guided by the provisions of this Covenant rather than by concepts, which had not been approved by the international community as a whole.

The Russian side notes that no internationally recognized standards exist with respect to the notion of "sexual and reproductive health" and with regard to the rights of persons belonging to the sexual minorities.

In this connection the Russian side draws attention of the Special Rapporteurs to the provisions of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council (A/HRC/5/2), in particular to paragraph c) of Article 6 where it is stated that the mandate-holders: "shall evaluate all information in the light of internationally recognized human rights standards relevant to their mandate, and of international conventions to which the State concerned is a party".

Moreover, the Russian side views the overreaction of the Special Procedures to the abovementioned Draft Law as an unjustified attempt to interfere in the democratic legislative process.

In conclusion, the Russian side draws special attention to the last paragraph of the joint communication in which, inter alia, there is a call to ensure "accountability of any person responsible for alleged violations". The Russian side expresses its utmost perplexity with respect to the use of such a language in the communication which deals exclusively with a legislative initiative rather than an individual case of the violation of human rights.

The Russian side presumes that in compiling this communication negligence was committed and calls upon the Special Rapporteurs to pay closer attention to the texts of the documents they sign.

Date: 21/12/2012

Type: Joint letter of allegation

Case No: UKR 3/2012

([https://spdb.ohchr.org/hrdb/23rd/public - AL Ukraine 21.12.12 \(3.2012\).pdf](https://spdb.ohchr.org/hrdb/23rd/public - AL Ukraine 21.12.12 (3.2012).pdf) )

Country: Ukraine

Mandates: Freedom of expression; Freedom of peaceful assembly and of association; Human rights defenders;

Summary of the allegation transmitted: Alleged attack against LGBT rights defenders. According to the information received, on 8 December 2012, approximately one hundred lesbian, gay, bisexual and transsexual (LGBT) human rights defenders took part in a peaceful demonstration in Kiev in order to commemorate International Human Rights Day and to denounce Draft Law 8711, adopted at first reading on 2 October 2012, which criminalizes any reference to homosexuality in the media or public domain. As the demonstration began, police allegedly stated that the assembly was illegal, despite the authorities being reportedly notified of the demonstration's location and time, in accordance with Ukrainian law. A number of protestors were subsequently reportedly attacked by members of a radical right-wing group, while one individual also allegedly sprayed an unidentified gas into the crowd. Sources state that police detained the alleged perpetrators

as well as six LGBT rights defenders, who were subsequently released. Two of the LGBT defenders were reportedly charged with "petty hooliganism" and were issued a fine, while the organizer of the demonstration was allegedly charged with conducting an illegal assembly, an offence which could reportedly result in a considerable fine.

Reply: [https://spdb.ohchr.org/hrdb/23rd/Ukraine\\_18.03.13\\_\(3.2012\)\\_Trans.pdf](https://spdb.ohchr.org/hrdb/23rd/Ukraine_18.03.13_(3.2012)_Trans.pdf)

Date: 10/01/2013

Type: Joint letter of allegation

Case No: KSV 1/2012

([https://spdb.ohchr.org/hrdb/23rd/public - AL Kosovo 10.01.13 \(1.2012\).pdf](https://spdb.ohchr.org/hrdb/23rd/public_-_AL_Kosovo_10.01.13_(1.2012).pdf) )

Country: Kosovo

Mandates: Freedom of expression; Freedom of peaceful assembly and of association; Human rights defenders; Summary executions;

Summary of the allegation transmitted: Alleged physical attacks and threats against lesbian, gay, bisexual, and transgender (LGBT) rights defenders, including members of the organizations Kosovo 2.0 and Libertas. According to the information received, on 14 December 2012, the website Kosovo 2.0 was due to launch its new print issue, which focused on the theme of sexuality. On the evening of the launch, a group of individuals allegedly entered the building where the event was taking place, destroying the stage and physically attacking a member of Kosovo 2.0., while another group subsequently approached the building shouting insults. Police reportedly assisted guests of the event to evacuate the building. On 15 December, a threatening and abusive video against the LGBT community in Kosovo was released on the Internet, with two LGBT women defenders being allegedly threatened with death. Furthermore, on 16 December, members of Libertas, an LGBT rights organization in Kosovo, were physically attacked by a group of individuals as they returned to a meeting of the organization, with one individual being severely beaten. The alleged attackers managed to escape and police were immediately notified.

Reply: [https://spdb.ohchr.org/hrdb/23rd/Kosovo\\_26.03.13\\_\(1.2012\).pdf](https://spdb.ohchr.org/hrdb/23rd/Kosovo_26.03.13_(1.2012).pdf)

Date: 17/01/2013

Type: Urgent appeal

Case No: CMR 1/2013

([https://spdb.ohchr.org/hrdb/23rd/public - UA Cameroun 17.01.13 \(1.2013\).pdf](https://spdb.ohchr.org/hrdb/23rd/public_-_UA_Cameroun_17.01.13_(1.2013).pdf) )

Country: Cameroon

Mandates: Summary executions;

Summary of the allegation transmitted: Allégation d'assassinat et de menaces de mort, qui seraient liées à leur orientation sexuelle. Selon les informations reçues, en mars 2011, M. Jonas Singa Kumie et M. Franky Ndome auraient été condamnés pour homosexualité sur base de leur apparence extérieure et du choix qu'ils auraient fait de boire une certaine liqueur. Il a été signalé que M. Kumie et M. Ndome auraient subi des violences et insultes de la part des autorités pénitentiaires et des personnes détenues. De plus, les deux hommes auraient reçu des menaces de mort pendant leur garde à vue. Le 11 janvier 2013, M. Kumie et M. Ndome auraient été relâchés après que la Cour d'Appel de Yaounde les eût déclarés innocents d'homosexualité le 7 janvier 2013. Il a été allégué que M. Kumie et M. Ndome courraient un risque imminent de mort à cause des différentes menaces de mort qu'ils auraient reçues. Par ailleurs, le 6 janvier 2012, M. Lamine Goche aurait été vu avec un garçon de 17 ans dans son magasin. Il aurait été tué en public dans un marché de Maroura à cause de son orientation sexuelle.

Reply: none.

Date: 21/02/2013

Type: Joint letter of allegation

Case No: UGA 6/2012

([https://spdb.ohchr.org/hrdb/23rd/public - AL Uganda 21.02.13 \(6.2012\).pdf](https://spdb.ohchr.org/hrdb/23rd/public_-_AL_Uganda_21.02.13_(6.2012).pdf) )

Country: Uganda

Mandates: Freedom of expression; Freedom of peaceful assembly and of association; Human rights defenders; Health

Summary of the allegation transmitted: Allegations that the draft “anti-homosexuality legislation” in Uganda would criminalize “any form of homosexual act” or “attempt to commit a homosexual act, including consensual sex between same-sex individuals”. According to information received, the draft legislation, if adopted, would also prohibit the “promotion of homosexuality”; require people, including doctors, to report any lawbreaker or risk criminal sanction; and compel a person charged with the offence of “aggravated homosexuality” to undergo an HIV test without his/her consent.

Reply: none

Date: 02/04/2012

Type: Joint letter of allegation

Case No: CRI 2/2012

([https://spdb.ohchr.org/hrdb/21st/UA\\_Costa\\_Rica\\_02.04.12\\_\(2.2012\).pdf](https://spdb.ohchr.org/hrdb/21st/UA_Costa_Rica_02.04.12_(2.2012).pdf))

Country: Costa Rica

Mandates: Freedom of expression; Freedom of peaceful assembly and of association; Human rights defenders;

Summary of the allegation transmitted: Supuesto allanamiento y robo en la sede de una organización de derechos humanos. Según la información recibida, el 2 de febrero de 2012, la sede de Mulabi - Espacio Latinoamericano de Sexualidades y Derechos - que trabaja en temas relacionados a los derechos sexuales y reproductivos de lesbianas, bisexuales, personas trans e intersex (LBTI), y que además es la vivienda de la Sra. Natasha Jiménez, la coordinadora general de la organización, habría sido allanada y varios objetos de valor habrían sido robados.

Reply: [https://spdb.ohchr.org/hrdb/23rd/Costa\\_Rica\\_01.02.13\\_\(2.2012\).pdf](https://spdb.ohchr.org/hrdb/23rd/Costa_Rica_01.02.13_(2.2012).pdf)

Date: 08/02/2013

Type: Joint urgent appeal

Case No: MDA 1/2013

([https://spdb.ohchr.org/hrdb/21st/UA\\_Costa\\_Rica\\_02.04.12\\_\(2.2012\).pdf](https://spdb.ohchr.org/hrdb/21st/UA_Costa_Rica_02.04.12_(2.2012).pdf))

Country: Republic of Moldova

Mandates: Freedom of expression; Freedom of peaceful assembly and of association; Human rights defenders;

Summary of the allegation transmitted: Alleged risks to the physical and psychological integrity of two representatives of the GENDERDOC-M Information Centre, in view of insults and threats received during court hearings. According to the information received, on 22 January 2013, Ms. Angela Frolov and Ms. Doina Ioana Straisteanu, during a court hearing on the case “GENDERDOC-M vs. City Council of Balti” were insulted and threatened by people who attended this open hearing. Ms. Frolov is the Lobby and Advocacy program coordinator and Ms. Strasteanu is the legal representative of GENDERDOC-M Information centre which works for the defence and promotion of the rights of LGBT people.

Reply: [https://spdb.ohchr.org/hrdb/23rd/Moldova\\_09.04.13\\_\(1.2013\).pdf](https://spdb.ohchr.org/hrdb/23rd/Moldova_09.04.13_(1.2013).pdf)

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## **A/HRC/23/52 - Report of the Special Rapporteur on the situation of human rights in Belarus**

### **IV. Human rights concerns**

#### **L. Treatment of lesbian, gay, bisexual and transgender persons**

100. Although “homosexual activity” was decriminalized in Belarus in 1994, social prejudice against sexual minorities and human rights defenders working on this issue appears to be encouraged by an openly derisive discourse from the official media and the authorities. In March 2013, in response to international criticism over human rights violations, President Lukashenko stated “it is better to be a dictator than gay”. Reports persist of instances of

hate-motivated violence against lesbian, gay, bisexual and transgender (LGBT) persons, but rarely meet with any law enforcement action.

101. The situation of the rights to freedom of assembly and of association is particularly critical for LGBT persons. Reportedly, no LGBT public events or associations were authorized during the period under review. Recently, LGBT persons reported a significant deterioration in their situation. The organization GayBelarus sought registration with the Ministry of Justice as the human rights centre "Lambda", producing more than the required 70 signatures of founding members. On 8 February 2013, Lambda was denied registration on the grounds that its charter did not provide appropriately for youth socialization and all-round development. Subsequently, 67 of the 71 founding members, living in 12 different cities in Belarus, were reportedly summoned by drug or traffic police for a "conversation". Those who refused were visited by the police, at home or at work, while "notifications" were sent to their workplace.

102. The police also repeatedly raided LGBT clubs in Minsk and Vitebsk, of which eight were registered in January and February 2013. The raids were reportedly intimidating and degrading, with people lined up, body searched and interrogated about their sexual habits.

## **V. Conclusions and recommendations**

119. The Special Rapporteur recommends that the Government of Belarus review and fully implement the recommendations made by the High Commissioner in her report. In addition, the Special Rapporteur recommends that the Government:

(k) Investigate promptly allegations of violent incidents perpetrated because of actual or perceived sexual orientation, and establish a system to record such incidents.

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## **A/HRC/23/56/Add.1 - Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere Addendum Visit to the Plurinational State of Bolivia**

### **III. Legal and institutional framework**

#### **B. Constitutional provisions and legislative reforms**

11. The Constitution of the Plurinational State of Bolivia 2009 provides that the objective and essential function of the State is "to establish a just and harmonious society, founded on decolonization, without discrimination or exploitation, with social justice, to strengthen the plurinational identities." Its article 14, paragraph II, provides that: the State prohibits and punishes all forms of discrimination based on sex, colour, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, religious creed, ideology, political or philosophical affiliation, marital status, social or economic status, occupation, level of education, disability, pregnancy, or others with the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on equality, of the rights of every person.



## ANNEX II:

# SUMMARY OF REFERENCES TO SEXUAL ORIENTATION & GENDER IDENTITY IN UPR REPORTS

### France

**Recommendations:** Adopt additional measures for the protection of the family institution and stop propaganda on relations between same-sex couples at the state level. Bring up the issue of adoption of children by same-sex couples to the public consideration.

**Response: pending to June 2013**

### Tonga

**Recommendations:** strengthen measures to eliminate all discriminatory treatment related to sexual orientation or gender identity; Decriminalize consensual sexual relations between same-sex adults.

**Response: Pending to June 2013**

### Romania

**Recommendations:** intensify training for State and local authorities and the public at large on international human rights standards, particularly those in relation to sexual orientation and gender identity; Take practical action to ensure that existing anti-discrimination legislation is properly enforced so as to combat discrimination against its citizens, both systemic and overt, based on in particular, ethnicity, sexual orientation and gender identity, and HIV status; Ensure that acts of discrimination against LGBT persons and persons belonging to other vulnerable groups are properly investigated and perpetrators held accountable.

**Response: Pending to June 2013**

### Mali

There were no references to sexual orientation or gender identity during the working group review of Mali, or in the input reports. This was also the case during the first cycle.

### Botswana

**Recommendations:** Take steps to implement comprehensive anti-discrimination laws, particularly to eliminate discrimination on the basis of sexual orientation; Engage in a dialogue to repeal laws which criminalize consensual adult same sex relations.

**Response: Pending to June 2013**

**Recommendations:** Decriminalize consensual same-sex activities between adults.

**Response: Rejected.**

### Bahamas

**Recommendations:** Adopt measures to eradicate negative gender stereotypes; address the commission of any criminal acts or violence directed towards people based on their actual or perceived sexual orientation; Include sexual orientation as a prohibited ground of discrimination in its Constitution Reform process; Repeal all provisions that discriminate against persons on the grounds of their sexual orientation, including in the Domestic Violence Act (Protection Orders) and the Sexual Offences and Domestic Violence Act.

**Response: Pending to June 2013.**

#### **Burundi**

**Recommendations:** Revoke article 567 from the Penal Code and remove any discrimination on the grounds of sexual orientation from all other laws and policies; Adopt all necessary political and legislative measures to decriminalize sexual relations between consenting adults of the same sex as well as adopt measures to guarantee the enjoyment of the right to health without discrimination based on sexual orientation; Revise its education policy that further entrenches discrimination on the basis of sexual orientation; Investigate, prosecute and, if convicted, punish perpetrators of human rights abuses, including those committed against civil society groups, members of the media and LGBT individuals.

**Response: Pending to June 2013.**

#### **Luxembourg**

**Recommendations:** Include 'gender reassignment' as a ground for protection in domestic anti-discrimination legislation; Adopt and comprehensively implement the draft law on the marriage among same-sex persons.

**Response: Pending to June 2013.**

#### **Barbados**

**Recommendations:** Show leadership in human rights issues by protecting all human rights within the country, including those LGBT, and the freedom of movement and expression of human rights defenders, starting by organizing a dialogue between government, civil society and interested individuals, on these and other human rights related issues; Enhance its efforts to eliminate gender stereotyping; strengthen measures to eliminate any discriminatory treatment based on sexual orientation; Implement measures to protect the LGBT population from harassment, discrimination and violence; Repeal laws that criminalize consensual same sex adult sexual relations; establish policies to combat discrimination, prejudice and violence based on sexual orientation or gender identity.

**Response: Pending to June 2013.**

#### **Montenegro**

**Recommendations:** Take additional concrete steps to combat societal discrimination on the basis of race, sexual orientation, disability or gender identification; Take measures necessary to protect the rights of LGBT persons effectively and investigate and prosecute alleged cases of violence and discrimination against LGBT persons; Establish effective mechanisms of dialogue with human rights defenders in the field of sexual minorities; Consider amending the Criminal Code so that hate crimes against LGBT persons are considered serious criminal offenses or at least aggravating circumstances.

**Response: Accepted.**

#### **United Arab Emirates**

**Recommendations:** Protect the human rights of all individuals, including LGBT individuals, and take appropriate steps to help ensure that protection is provided to the victim and

perpetrators are identified and prosecuted; Repeal the criminalization of sexual relations between persons of the same sex.

**Response: Pending to June 2013.**

### Israel

Israel failed to appear before the UPR Working Group. The Human Rights Council adopted a decision agreeing to defer Israel's review to the 17<sup>th</sup> session of the UPR, at the latest. Read more at <http://www.upr-info.org/+Israel-absent-from-its-own-UPR+.html>

### Liechtenstein

**Recommendations:** Develop a comprehensive strategy to eliminate discriminatory gender stereotypes; Take the necessary measures to raise awareness among the population against homophobia, and in general, in favour of the non-discrimination on the basis of sexual orientation, undertaking global public awareness campaigns.

**Response: Pending to June 2013.**

### Serbia

**Recommendations:** Respond effectively to discrimination and violence against LGBT persons and ensure their safety during public events; Establish a more effective mechanism of dialogue with human rights defenders in the area of sexual minorities; Take concrete steps to protect its LGBTI citizens and their freedom of assembly and expression.

**Response: Accepted.**