



Human Rights Council

Distr.: General

Date of Submission: 17.01.2017

Original: English

Economic and Social Council

Human Rights Council

CET Model United Nations, Bhubaneswar, January-February, 2017.

REPORT SUBMITTED IN ACCORDANCE TO THE AGENDA TABLE OF THE HUMAN RIGHTS COUNCIL

| The present document intends to make you aware of the background of the problem. Its content does not imply the expression of any opinion whatsoever on the part of the Secretariat of the CET MUN 2017. |

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Report Prepared by:
The Executive Board
The Human Rights Council

Executive Note:

It is my pleasure to welcome you all to the United Nations Human Rights Council at The CET Model United Nations 2017. It is my distinct privilege to serve you all as the Chairperson of the Committee.

Having said that, this report should be the first step towards your research and you are encouraged to by all means further expand your realm of knowledge by delving into the themes and sub themes mention in the guide and the reference provided for further research. The Executive Board has not seen it fit to list the Questions that a Resolution must answer since that will be entirely dependent on the manner in which the committee probes and explores an agenda. Only Reuter's reports will be accepted by the Executive Board as proof of the fact that the United Nations Organization recognizes something to be fact. Delegates may use reports by official government sources/agencies only against that particular government. All claims, counter claims and allegations which delegates attempt to further in committee will be expected to be via a hard copy of the same which is to be provided to the Executive Board. Soft copies will not be accepted.

Delegates are especially requested to be well versed with basic principles of international law, their foreign policy and display diplomatic courtesy befitting that of a representative in the United Nations. In this committee we are not going to be judging delegates based on how experienced or articulate they are. Delegates respecting others opinions/diversity of views while finding ways around them in consonance with their foreign policy and creating a unanimously acceptable solution are to be encouraged and thus in this respect newcomers have as good a chance as veterans. Regardless, whether this is your first time or one of many conferences, we look forward to impassioned and rigorous debates in the days to come. Feel free to contact the Executive Board in case of any doubts/query.

Wishing you the best of luck with your preparations.

Regards,

Vaivab Das
Chairperson

Suravi Patnaik
Vice Chairperson

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OVERVIEW OF THE COMMITTEE

Human Rights Council: Committee Overview and Mandate

Human rights are inalienable entitlements established not by law, but by human birthright, and the history of human rights has been shaped by all major world events and by the struggle for dignity, freedom and equality everywhere. However, it was only with the signing of the Charter of the United Nations (1945), the subsequent establishment of the United Nations (UN) in the shadow of World War II, and the call to “reaffirm faith in fundamental human rights,” where human rights finally achieved formal, universal recognition. The UN has remained committed to “promoting and encouraging respect for human rights and for fundamental freedoms for all” through charter-based and treaty-based mechanisms. Charter-based mechanisms derive from the provisions of the Charter, most commonly as subsidiary bodies like the Human Rights Council. Treaty-based mechanisms are the human rights covenants and conventions, along with their respective treaty bodies, which take the force of law and monitor the implementation of the provisions of the treaties. The Universal Declaration of Human Rights (UDHR, 1948), a treaty-based mechanism, was adopted by the General Assembly as a “common standard of achievement” for all peoples and countries to pursue the protection and promotion of human rights. After decades of standing alone, this cornerstone document was joined by the International Covenant on Economic, Social and Cultural Rights (1976), and the International Covenant on Civil and Political Rights (1966) and its two Optional Protocols to comprise the International Bill of Rights. It was not just these documents which guided human rights in the UN system, but also the Commission on Human Rights, which manifested as “the main subsidiary organ of the United Nations dealing with human rights.

Mandate

Recognizing the need to preserve and build on the Commission’s achievements and to redress its shortcomings, the HRC was created to ensure stronger system-wide coherence and preserve the value of human life “in larger freedom.” The Council was charged with, inter alia, assuming the roles and responsibilities of the Commission, promoting the full implementation of human rights obligations, responding to human rights emergencies, undertaking a universal periodic review, and making recommendations to States and the General Assembly (GA).

Governance, Structure and Membership:

The HRC is a charter-based subsidiary body of the General Assembly established by resolution 60/251 of 3 April 2006. It consists of forty-seven members elected directly and individually by secret ballot of the GA for a membership based on equitable geographical distribution. It convenes a minimum of three times a year, with a total annual duration of no fewer than ten weeks. Aside from the mandate and general

structure of the Council, the majority of the institution's features were left up to the Council to formulate in their first year's Institution-Building Process. The improvement upon the Commission's Special and Complaint Procedures, and the development of the Universal Periodic Review procedure were all developed and adopted by HRC resolution 5/1, the Institution-Building Package, on 18 June 2007.

Functions and Powers:

The functions and powers of the HRC were developed to allow it to make an efficient and impartial impact on the status of human rights. The aforementioned Special Procedures of the Council direct the individual human rights experts and working groups to report and advise on human rights' situations from a thematic or country specific perspective while remaining impartial, objective, and independent of the UN. Actions of this body include: undertaking country visits; gathering information and analysis in order to contribute to the development of international human rights standards; sending letters of allegation to States for human rights violations; raising public awareness of abuses; and introducing annual reports to the Council and the General Assembly. The Universal Periodic Review process, established in HRC resolution 5/1, is a mechanism aimed at improving civil, political, economic, social, and cultural human rights' situations in all Member States. Each state must submit a national report for review every four years, and forty-two States are reviewed each year by its national leadership, the Office of the High Commissioner on Human Rights, and working groups composed of the members of the HRC, and headed by the Council's President. The outcome report is adopted by the Council and lists the recommendations the state under review will have to implement before the next review. The Complaint Procedure allows for an examination of confidential complaints, which form a consistent pattern of gross and reliably attested violations of human rights and freedoms. Once the Council receives a consistent pattern of proven human rights violations it can then decide to examine the conditions of human rights in the country concerned.

Link to the committee page:

<http://www.ohchr.org/en/hrbodies/hrc/pages/hrcindex.aspx>

Rules of Procedure to be followed in the committee: <http://munual.org/guide-to-una-usa-rops/>

OVERVIEW OF THE AGENDA

A. Introduction to Agenda

In all regions, people experience violence and discrimination because of their sexual orientation or gender identity. In many cases, even the perception of homosexuality or transgender identity puts people at risk. Violations include – but are not limited to – killings, rape and physical attacks, torture, arbitrary detention, the denial of rights to assembly, expression and information, and discrimination in employment, health and education. United Nations mechanisms, including human rights treaty bodies and the special procedures of the Human Rights Council, have documented such violations for close to two decades.

The Secretary-General expressed his concern in a speech on Human Rights Day 2010, when he stated: As men and women of conscience, we reject discrimination in general, and in particular discrimination based on sexual orientation and gender identity ... Where there is a tension between cultural attitudes and universal human rights, rights must carry the day. Together, we seek the repeal of laws that criminalize homosexuality, that permit discrimination on the basis of sexual orientation or gender identity, that encourage violence.

United Nations entities have integrated issues of sexual orientation and gender identity into their work, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Labour Organization (ILO), the World Health Organization (WHO), the United Nations Population Fund (UNFPA) and the Joint United Nations Programme on HIV/AIDS (UNAIDS).

While not addressing all violations perpetrated in relation to sexual orientation or gender identity, the present report highlights critical human rights concerns that States have an obligation to address, and highlights emerging responses. It draws on United Nations sources, and includes data and findings from regional organizations, some national authorities and non-governmental organizations.

B. Applicable international standards and obligations:

Universality, equality and non-discrimination

The application of international human rights law is guided by the principles of universality and non-discrimination enshrined in article 1 of the Universal Declaration of Human Rights, which states that “all human beings are born free and equal in dignity and rights”. All people, including lesbian, gay, bisexual and transgender (LGBT) persons, are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly. The Vienna Declaration and Programme of Action confirms that, “while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

Non-discrimination is a core human rights principle embodied in the Charter of the United Nations, the Universal Declaration of Human Rights and core human rights treaties. Non-discrimination clauses in international instruments typically require that the rights set forth be made available to everyone without discrimination, and States ensure that their laws, policies and programmes are not discriminatory in impact. For example, under article 2 of the International Covenant on Civil and Political Rights, each State party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The specific grounds of discrimination referred to in the International Covenant on Civil and Political Rights and other human rights treaties are not exhaustive. The drafters intentionally left the grounds of discrimination open by using the phrase “other status”. Sexual orientation and gender identity, like disability, age and health status, are not explicitly mentioned among the grounds listed in the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights. In 1994, in the case of *Toonen v. Australia*, the Human Rights Committee held that States are obligated to protect individuals from discrimination on the basis of their sexual orientation. This position is reflected in later decisions of the Committee, and in general comments of the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee against Torture and the Committee on the Elimination of Discrimination against Women. In its general comment no. 20, for example, the Committee on Economic, Social and Cultural Rights observed that “other status” included sexual orientation. “States parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor’s pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination”.

State obligations under international human rights law:

The obligations of States to prevent violence and discrimination based on sexual orientation and gender identity are derived from various international human rights instruments. These obligations include the ones listed below.

1. To protect the right to life, liberty and security of persons irrespective of sexual orientation or gender identity

- Under article 3 of the Universal Declaration of Human Rights, “everyone has the right to life, liberty and the security of person”. Article 6 of the International Covenant on Civil and Political Rights affirms that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” The State has an obligation to exercise due diligence to prevent, punish and redress deprivations of life, and to investigate and prosecute all acts of targeted violence.
- Article 33 of the Convention relating to the Status of Refugees provides that States parties have an obligation not to expel or return a refugee to a place where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion. In the view of UNHCR, individuals who fear persecution on account of their sexual orientation or gender identity may be considered members of a “particular social group”. State parties to the Convention should ensure that such individuals are not returned to a State where their lives or freedom would be at risk and, provided the individuals concerned meet the criteria for refugee status, recognize them as refugees to be treated in accordance with the provisions of the Convention.

2. To prevent torture and other cruel, inhuman or degrading treatment on grounds of sexual orientation or gender identity

- The right to be free from torture and other cruel, inhuman or degrading treatment is absolute. Article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights provide that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”
- According to the Committee against Torture, States are obligated to protect from torture and ill-treatment all persons, regardless of sexual orientation or transgender identity,¹² and to prohibit, prevent and provide redress for torture and ill-treatment in all contexts of State custody or control.¹³ The Committee has repeatedly expressed concern regarding allegations of such abuses in concluding observations on States parties’ reports.

3. To protect the right to privacy and against arbitrary detention on the basis of sexual orientation or gender identity

- The right to privacy is enshrined in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, which state that no one should be subjected to “arbitrary or unlawful interference with his privacy, family, home or correspondence” Articles 9 of the Universal Declaration and the Covenant further protect individuals from “arbitrary arrest and detention”. In its general comment no.16, the Human Rights Committee confirmed that any interference with privacy, even if provided for by law, “should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances”.
- Since Toonen in 1994, the Human Rights Committee has held that laws used to criminalize private, adult, consensual same-sex sexual relations violate rights to privacy and to non-discrimination. The Committee has rejected the argument that criminalization may be justified as “reasonable” on grounds of protection of public health or morals, noting that the use of criminal law in such circumstances is neither necessary nor proportionate. In their concluding observations, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child have urged States to reform such laws and, where relevant, have welcomed their repeal. The Working Group on Arbitrary Detention has held that detaining someone on the basis of sexual orientation constitutes arbitrary detention in breach of article 9 of the International Covenant on Civil and Political Rights.

4. To protect individuals from discrimination on grounds of sexual orientation and gender identity

- The right to be free from discrimination is included in the Universal Declaration of Human Rights (art. 2) and core international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (art. 2) and the Convention on the Rights of the Child (art. 2). Article 26 of the International Covenant on Civil and Political Rights guarantees equality before the law, requiring States to prohibit discrimination.
- In their general comments, concluding observations and views on communications, human rights treaty bodies have confirmed that States have an obligation to protect everyone from discrimination on grounds of sexual orientation or gender identity. The fact that someone is lesbian, gay, bisexual or transgender does not limit their entitlement to enjoy the full range of human rights.

The Human Rights Committee has urged State parties to “guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation”, and welcomed legislation that includes sexual orientation among

prohibited grounds of discrimination. The Committee on Economic, Social and Cultural Rights has affirmed the principle of non-discrimination on grounds of sexual orientation in general comments on the rights to work, water, social security and the highest attainable standard of health. In addition, in its general comment on discrimination, the Committee included both sexual orientation and gender identity as prohibited grounds of discrimination under the Covenant. In their general comments and concluding observations, the Committee on the Rights of the Child, the Committee against Torture and the Committee on the Elimination of Discrimination against Women have included recommendations on countering discrimination based on sexual orientation and gender identity.

Europe (OSCE), homophobic hate crimes and incidents often show a high degree of cruelty and brutality and include beatings, torture, mutilation, castration and sexual assault.

Quantifying homophobic and transphobic violence is complicated by the fact that few States have systems in place for monitoring, recording and reporting these incidents. Even where systems exist, incidents may go unreported or are misreported because victims distrust the police, are afraid of reprisals or threats to privacy, are reluctant to identify themselves as LGBT or because those responsible for registering the incidents fail to recognize motives of perpetrators.

C. Violence

1. Killings

- Since 1999, the Special Rapporteur on extrajudicial, summary or arbitrary executions has regularly referred to persons being subjected to death threats or killed because of sexual orientation and gender identity. The current mandate holder recently highlighted the murders of at least 31 LGBT persons in Honduras during an 18-month period, including a transgender person found dead in a ditch, her body beaten and burned, showing evidence of rape and blows to her face from stoning so severe as to render the remains virtually unrecognizable.
- In Jamaica, a man was allegedly stabbed and stoned to death after police, who reportedly participated in the attack, urged others to beat him because he was homosexual.
- The Special Rapporteur on violence against women has highlighted the targeted murder of lesbians in South Africa, including a case in which two lesbians were beaten, stoned and one stabbed to death.
- LGBT persons are also among the victims of so-called “honour” killings, carried out against those seen by family or community members to have brought shame or dishonour on a family, often for transgressing gender norms or for sexual behaviour, including actual or assumed same-sex sexual activity. While women are generally the targets of this sort of punishment, these attacks can be directed at individuals of any sex.

- Reports from regional and non-governmental organizations point to a pattern of targeted violence. The African Commission on Human and Peoples' Rights noted "an upsurge of intolerance against sexual minorities" in Cameroon, and the Inter-American Commission on Human Rights has repeatedly addressed related concerns in Latin America and the Caribbean. OSCE reported 44 bias-motivated murders of LGBT persons in 2009 on the basis of partial data from 22 of its Member States.
- The European Parliament and the Council of Europe have also regularly expressed concern at incidents in which LGBT persons have been targeted and killed, including murders of gay men in the Netherlands and Sweden, and the killing of a homeless transgender woman in Portugal.
- The National Coalition of Anti-Violence Programs in the United States of America reported 27 bias-motivated murders of LGBT persons in 2010, up from 22 in 2009.
- The Trans Murder Monitoring project, which collects reports of murders of transgender persons in all regions, lists 680 murders in 50 countries during the period from 2008 to 2011.

2. Other violence, including rape

- Non-lethal violence directed at individuals on the basis of their sexual orientation or gender identity is less consistently documented by special procedures, largely because of underreporting and a protection gap in terms of existing mandates. Nevertheless, several mandate holders have highlighted individual cases and voiced concern at the prevalence of such violence. In her 2010 report to the Human Rights Council, the Special Rapporteur on human rights defenders noted that she had sent 47 communications regarding defenders working on LGBT issues during the previous year; killings of LGBT human rights defenders were alleged in five communications, with rape and sexual violence, including against males, being reported in a further six.
- Allegations of lesbians being attacked, raped, forcibly impregnated and otherwise punished because of sexual orientation come from many regions. The Committee on the Elimination of Discrimination against Women expressed grave concern about reported sexual offences committed against women on account of their sexual orientation. The Special Rapporteur on violence against women recently reported alleged incidents of gang rapes, family violence and murder experienced by lesbian, bisexual and transgender women in El Salvador, Kyrgyzstan and South Africa, where the Rapporteur noted that "lesbian women face an increased risk of becoming victims of violence, especially rape.

- The Special Rapporteur on human rights defenders has expressed deep concern regarding “denigration campaigns and violent threats against defenders of lesbian, gay, bisexual and transgender rights.” The Special Representative of the Secretary-General on human rights defenders noted in 2007 that those defending the rights of LGBT and intersex persons had had their houses and offices raided, and been attacked, tortured, sexually abused, threatened and killed, adding that “a major concern in this regard is an almost complete lack of seriousness with which such cases are treated by concerned authorities”.
- Where available, national crime figures indicate high levels of violence targeted at individuals on the basis of their actual or presumed sexual orientation or gender identity. In the United States, for example, Government figures show numbers of bias-motivated incidents against gay, lesbian and bisexual people rank second only to racist incidents and on par with incidents against members of religious minorities.
- In the United Kingdom of Great Britain and Northern Ireland, the only European Union state to publish official data on prosecutions for LGBT-related hate crimes, 988 criminal cases were initiated in 2007, of which 759 resulted in convictions.
- A recent Council of Europe report found “Hate-motivated violence and hate crimes against LGBT persons take place in all Council of Europe member states.” A survey conducted in 2008 in the United Kingdom by the non-governmental organization Stonewall, with Government support, found that a third of lesbians and a quarter of gay men experienced a hate crime or incident (including verbal aggression) in the preceding three years.
- In a Slovenian study, 53 per cent of lesbian and gay respondents reported experiencing violence in the past because of their sexual orientation. A 2011 report of the European Union Agency for Fundamental Rights found that lesbian and bisexual women are more likely to experience sexual and other assaults in private settings than gay or bisexual men, who are more likely to be attacked by unknown perpetrators. The perpetrators are usually young men in groups.
- Treaty bodies have expressed concern about rhetoric used to incite hatred and related violence. Such language can be used by political and community leaders to stir up homophobic sentiment or harass individuals. In each case, LGBT people and those advocating related rights are at risk of violence and discrimination as a result.

D. Right of asylum for those persecuted because of sexual orientation or gender identity:

UNHCR estimates that at least 42 States have granted asylum to individuals with a well-founded fear of persecution owing to sexual orientation or gender identity, although the precise figure is unclear. Some States grant asylum even without a clear policy in this regard, while others do not track reasons for granting refugee status or asylum.

Even in countries that recognize these grounds for asylum, practices and procedures often fall short of international standards. Review of applications is sometimes arbitrary and inconsistent. Officials may have little knowledge about or sensitivity towards conditions facing LGBT people. Refugees are sometimes subjected to violence and discrimination while in detention facilities and, when resettled, may be housed within communities where they experience additional sexuality and gender-related risks. Refoulement of asylum-seekers fleeing such persecution places them at risk of violence, discrimination and criminalization. In some cases, they are returned with instructions to “be discreet”, an approach criticized by UNHCR.

E. Discriminatory laws

I. Laws criminalizing same-sex sexual relations between consenting adults and other laws used to penalize individuals because of sexual orientation or gender identity

Seventy-six countries retain laws that are used to criminalize people on the basis of sexual orientation or gender identity. Such laws, including so-called “sodomy laws”, are often relics of colonial-era legislation. They typically prohibit either certain types of sexual activity or any intimacy or sexual activity between persons of the same sex. In some cases, the wording used refers to vague and undefined concepts, such as “crimes against the order of nature” or “morality”, or “debauchery”. What these laws have in common is their use to harass and prosecute individuals because of their actual or perceived sexuality or gender identity. Penalties range from short-term to life imprisonment, and even the death penalty.

The criminalization of private consensual homosexual acts violates an individual’s rights to privacy and to non-discrimination and constitutes a breach of international human rights law. In *Toonen v. Australia*, the Human Rights Committee found that “adult consensual sexual activity in private is covered by the concept of „privacy” under the International Covenant on Civil and Political Rights. According to the Committee, it is irrelevant whether laws criminalizing such conduct are enforced or not; their mere existence continuously and directly interferes with an individual’s privacy. Since *Toonen*, the Committee, other treaty bodies and special procedures have repeatedly urged States to reform laws criminalizing homosexuality or sexual conduct between consenting adults of the same sex, and have welcomed their repeal.

Special procedures mandate holders have emphasized the link between criminalization and homophobic hate crimes, police abuse, torture, and family and community violence, as well as constraints that criminalization places on work of human rights defenders working to protect the rights of LGBT persons. The Special Rapporteur on health noted that “sanctioned punishment by States reinforces existing prejudices, and legitimizes community violence and police brutality directed at affected individuals.” The Special Rapporteur on extrajudicial executions noted that criminalization increases social stigmatization and made people “more vulnerable to violence and human rights abuses,

including death threats and violations of the right to life, which are often committed in a climate of impunity.”

Since 2000, laws criminalizing homosexual acts between consenting adults have been repealed in Armenia, Azerbaijan, Bosnia and Herzegovina, Cape Verde, Georgia, Fiji, India, the Marshall Islands, Nepal, Nicaragua, Panama and the United States, together with dependent territories of New Zealand and the United Kingdom. In some cases, the courts have overturned these laws; in others, repeal has resulted from a legislative process. In the context of the universal periodic review, several States – including Mauritius, Nauru, Palau, Sao Tome and Principe, and Seychelles – have accepted recommendations to decriminalize homosexuality.

In at least 14 countries, the legal age of consent differs for homosexual and heterosexual relationships, which treaty bodies have held to be discriminatory.

Discriminatory practices persist in all regions. Sometimes, Government policies have a direct discriminatory impact; in other cases, the absence of applicable national laws facilitates discrimination by private actors. The section below examines several areas where individuals are particularly susceptible to discriminatory treatment, marginalization and restrictions on enjoyment of rights because of their sexual orientation or gender identity. It is not exhaustive: areas of concern not addressed here include discrimination in access to justice, housing and social benefits, and discriminatory dress codes that restrict men dressing in a manner perceived as feminine and women dressing in a manner perceived as masculine, and punish those who do.

II. Death penalty

In at least five countries the death penalty may be applied to those found guilty of offences relating to consensual, adult homosexual conduct. In addition to violating rights to life, privacy and non-discrimination, application of the death penalty in these circumstances violates article 6 of the International Covenant on Civil and Political Rights, which provides that, in countries that have not abolished the death penalty, a “sentence of death may be imposed only for the most serious crimes”. The Commission on Human Rights and the Human Rights Committee have confirmed that use of the death penalty for non-violent acts, including sexual relations between consenting adults, constitutes a violation of international human rights law.

The Special Rapporteur on extrajudicial executions has noted that “death sentences may only be imposed for the most serious crimes, a stipulation which clearly excludes matters of sexual orientation.” Commenting on the situation in parts of Nigeria, the Special Rapporteur stated that, “in relation to sodomy, the imposition of the death sentence for a private sexual practice is clearly incompatible with Nigeria’s “international obligations.” Addressing the response that there was a de facto moratorium on executions, the Special Rapporteur stated, “the „mere possibility“ that it can be applied threatens the accused for years, and is a form of cruel, inhuman or degrading treatment or punishment. Its status as a law justifies persecution by vigilante groups, and invites abuse.”

III. Arbitrary arrest and detention

The Working Group on Arbitrary Detention has stated that detaining someone for offences relating to sexual orientation or gender identity, including offences not directly related to sexual conduct, such as those pertaining to physical appearance or so-called “public scandal”, breaches international law. In 2002, the Working Group considered a case involving 55 men arrested at a discotheque and charged with “debauchery” and “social dissension”. It concluded that the arrests were discriminatory, in violation of articles 2 and 26 of the International Covenant on Civil and Political Rights, and that the detention was arbitrary.⁸² The Working Group has since reaffirmed its position on several occasions.

F. Discriminatory Practices

The Human Rights Committee has urged State parties to “guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation.” States have a “legal obligation ... to ensure to everyone the rights recognized by the Covenant ... without discrimination on the basis of sexual orientation.” Both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have called regularly on States to enact laws prohibiting discrimination on grounds of sexual orientation and have welcomed legislation that includes sexual orientation among the prohibited grounds of discrimination.

Explicit constitutional guarantees of protection from discrimination on grounds of sexual orientation apply in six countries, while in several others such guarantees are incorporated into regional or provincial-level constitutions. In other countries (including Canada, Colombia, Hong Kong (China), India and Nepal), general language on non-discrimination has been interpreted by courts as providing equivalent protection.

I. Discrimination in employment

Under international human rights law, States are obligated to protect individuals from any discrimination in access to and maintenance of employment. The Committee on Economic, Social and Cultural Rights has confirmed that the International Covenant on Economic, Social and Cultural Rights “prohibits discrimination in access to and maintenance of employment on grounds of ... sexual orientation” and noted concern about discrimination directed at “disadvantaged and marginalized groups and individuals.” According to the Committee, “any discrimination in access to the labour market or to means and entitlements for obtaining employment constitutes a violation of the Covenant.”

Fifty-four States have laws prohibiting discrimination in employment based on sexual orientation. In the absence of such laws, employers may be able to fire or refuse to hire or promote people simply because they are thought to be homosexual or transgender. Benefits that accrue to heterosexual employees may be denied to their LGBT counterparts - from parental or family leave to participation in pension and health-care insurance schemes. In *X v. Colombia* and *Young v. Australia*, the Human Rights

Committee found that failure to provide pension benefits to an unmarried same-sex partner, when such benefits were granted to unmarried heterosexual couples, was a violation of rights guaranteed by the Covenant.

Discrimination can lead to harassment and violence within and outside workplace confines.⁹⁵ Surveys indicate that verbal harassment of LGBT employees is commonplace.

II. Discrimination in health care

Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights provides that States parties to the Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights has indicated that the Covenant proscribes any discrimination in access to health care and the underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of sexual orientation and gender identity.

The criminalization of homosexuality may deter individuals from seeking health services for fear of revealing criminal conduct, and results in services, national health plans and policies not reflecting the specific needs of LGBT persons. The Special Rapporteur on health observed: “Criminal laws concerning consensual same-sex conduct, sexual orientation and gender identity often infringe on various human rights, including the right to health.” In *Toonen*, the Human Rights Committee rejected the claim that laws criminalizing consensual same-sex conduct were a necessary public health measure, noting that such laws risk driving many of those at risk underground. Since then, the Secretary-General, special procedures and UNAIDS have drawn attention to the negative health impact of criminalization.

In countries where no criminal sanctions exist, homophobic, sexist and transphobic practices and attitudes on the part of health-care institutions and personnel may nonetheless deter LGBT persons from seeking services, which in turn has a negative impact on efforts to tackle HIV/AIDS and other health concerns. Concerns of potential patients include breaches of confidentiality, further stigma and violent reprisals. The Committee on the Elimination of Discrimination against Women expressed concern about lesbian, bisexual, transgender and intersex women as “victims of abuses and mistreatment by health service providers”. Special procedures have also criticized the practice of so-called “reparative” therapy intended to “cure” individuals of their homosexual attraction, as being unscientific, potentially harmful and contributing to stigma.

In many countries, transgender persons face particular difficulties in their access to health care. Gender reassignment therapy, where available, is often prohibitively expensive and State funding or insurance coverage is rarely available. Health-care professionals are often insensitive to the needs of transgender persons and lack necessary professional training. In addition, intersex children, who are born with atypical sex characteristics, are often subjected to discrimination and medically unnecessary surgery, performed without their informed consent, or that of their

parents, in an attempt to fix their sex.

III. Discrimination in education

Some education authorities and schools discriminate against young people because of their sexual orientation or gender expression, sometimes leading to their being refused admission or being expelled. LGBT youth frequently experience violence and harassment, including bullying, in school from classmates and teachers. Confronting this kind of prejudice and intimidation requires concerted efforts from school and education authorities and integration of principles of non-discrimination and diversity in school curricula and discourse. The media also have a role to play by eliminating negative stereotyping of LGBT people, including in television programmes popular among young people.

The Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have expressed concern about homophobic discrimination in schools, and called for measures to counter homophobic and transphobic attitudes. According to UNESCO, “it is often in the primary school playground that boys deemed by others to be too effeminate or young girls seen as tomboys endure teasing and sometimes the first blows linked to their appearance and behaviour, perceived as failing to fit in with the heteronormative gender identity.”

Isolation and stigma generate depression and other health problems and contribute to truancy, absenteeism, children being forced out of school and, in extreme cases, attempted or actual suicide. A survey in the United Kingdom found that almost 65 per cent of lesbian, gay and bisexual youth had been bullied in schools because of their sexual orientation and more than a quarter had been physically abused. These findings are mirrored by results of studies carried out in other countries.

A related area of concern is sex education. The right to education includes the right to receive comprehensive, accurate and age-appropriate information regarding human sexuality in order to ensure young people have access to information needed to lead healthy lives, make informed decisions and protect themselves and others from sexually-transmitted infections. The Special Rapporteur on the right to education noted that “in order to be comprehensive, sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality.”

FURTHER READING:

1. The United Nations Speaks Out: Tackling Discrimination on Grounds of Sexual Orientation and Gender Identity”, OHCHR, WHO and UNAIDS, April 2011; the statements made by the United Nations High Commissioner for Human Rights at a side event of the fifteenth session of the Human Rights Council, on the theme, “Ending violence and criminal sanctions based on sexual orientation and gender identity”, 17 September 2010;
2. remarks made at the conclusion of the interactive dialogue with the High Commissioner at the sixteenth session of the Human Rights Council, 3 March 2011; “Legal environments, human rights and HIV responses among men who have sex with men and transgender people in Asia and the Pacific: an agenda for action”, UNDP, July 2010;
3. “Protecting children from violence in sport: a review with a focus on industrialized countries”, UNICEF, July, 2010; “International technical guidance on sexuality education”, UNESCO with UNAIDS, UNFPA, UNICEF and WHO, December 2009; UNHCR, Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, UNHCR, November 2008;
4. Report of the Director-General: Equality at Work, ILO, 2007; Report on prevention and treatment of HIV and other sexually-transmitted infections among men who have sex with men and transgender populations, WHO, June 2011;
5. “Experiencias de estigma y discriminación en personas homosexuales/gays, bisexuales y trans”, UNFPA, July 2010; International Guidelines on HIV/AIDS and Human Rights, UNAIDS and OHCHR, July 2006.
6. Toonen v. Australia, communication No. 488/1992 (CCPR/C/50/D/488/1992)
7. See, for example, Young v. Australia, communication No. 941/2000 (CCPR/C/78/D/941/2000), para. 10.4; X v. Colombia, communication no. 1361/2005 (CCPR/C/89/D/1361/2005), para. 9; and concluding observations on Mexico (CCPR/C/MEX/CO/5), para. 21, and Uzbekistan (CCPR/C/UZB/CO/3), para. 22.
8. See Committee on Economic, Social and Cultural Rights, general comment No. 20 (E/C.12/GC/20), para. 32; Committee on the Rights of the Child, general comment No. 13 (CRC/C/GC/13), paras. 60
9. UNHCR, Guidance Note on Refugee Claims (see footnote 1), para. 3; see also UNHCR in relation to Secretary of State for the Home Department v. Patrick

Kwame Otchere, 1988.

10. Article 2 (1) of the Convention against Torture stipulates that “each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”, while article 2 (2) states that “no exceptional circumstances whatsoever ... may be invoked as a justification of torture”.
11. See Human Rights Committee concluding observations on Togo (CCPR/C/TGO/CO/4), para. 14; Uzbekistan (CCPR/C/UZB/CO/3), para. 22; and Grenada (CCPR/C/GRD/CO/1), para. 21; Committee on Economic, Social and Cultural Rights, concluding observations on Cyprus (E/C.12/1/Add.28),
12. See Committee on the Rights of the Child, general comment No. 4 (CRC/GC/2003/4), para.6; Committee against Torture, general comment No. 2 (CAT/C/GC/2), para. 21; and Committee on the Elimination of Discrimination against Women, general comment No. 28 (CEDAW/C/GC/28), para. 18. See also Committee on the Elimination of Discrimination against Women, concluding observations on South Africa (CEDAW/C/ZAF/CO/4), para. 40; and Costa Rica (CEDAW/C/CRI/CO/5-6), para. 41.
13. Article 2 of the Declaration on the Elimination of Violence against Women notes that violence against women encompasses violence within the family, within the community, and physical, sexual or psychological violence perpetrated and condoned, by the State, wherever it occurs.
14. “Hate Crimes in the OSCE Region – Incidents and Responses”, Annual Report for 2006, OSCE/ODIHR, Warsaw, 2007, p. 53. See also Altschiller, Donald, Hate Crimes: A Reference Handbook, ABC-CLIO, 2005, pp. 26–28: “(Murders of gay men) frequently involved torture, cutting, mutilation... showing the absolute intent to rub out the human being because of his (sexual) preference.
15. “Hate Crimes in the OSCE Region – Incidents and Responses”, Annual Report for 2009, OSCE Office for Democratic Institutions and Human Rights, Warsaw, November 2010.
16. T. Hammarberg, “Hate Crimes: the ugly face of racism, anti-Semitism, anti-Gypsyism, Islamophobia and Homophobia”, Council of Europe, Strasbourg, 2008.
17. “Hate Violence against Lesbian, Gay, Bisexual Transgender, Queer and HIV-Affected Communities in the United States in 2010”, report of the National Coalition of Anti-Violence Programs, New York, July 2011.

18. Trans Murder Monitoring results update March 2011, Trans Gender Europe, March 2011.
19. Uniform Crime Report: Hate Crime Statistics 2009, U.S. Department of Justice, Federal Bureau of Investigation, Washington, D.C., November 2010.
20. European Union Agency for Fundamental Rights, "Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity: Part II – the Social Situation", 2009, Vienna, p. 38.
21. "Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe", Council of Europe, Strasbourg, June 2011, p. 52.
22. "Homophobic hate crime: The Gay British Crime Survey 2008", Stonewall, London, 2009, p. 11.
23. Svab, R. Kuhar, "The Unbearable Comfort of Privacy: Everyday Life of Gays and Lesbians", Ljubljana, 2005, p. 153.
24. "Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Summary of Findings, Trends, Challenges and Promising Practices", European Union Agency for Fundamental Rights, Vienna, 2011, p. 1

GUIDELINES FOR THE POSITION PAPER:

A position paper is an introductory document which reflects your research and the position of your country with regard to the agenda at hand. At a glance, it should make clear the urgency of the matter and a wholehearted effort to resolve the same. The format of the Position Paper should be as follows:

Name: ABC
Committee: Human Rights Council
Agenda:
Country: XYZ

The position paper begins after the above details and should not exceed **2 pages in Times New Roman, 12 font, line spacing 1.5**. All position papers should be **submitted in hardcopy on the first day of the Conference**. The paper should cover the following:

- I. Introduction to the Agenda
- II. Causes and Effects of the problem
- III. Recent Developments
- IV. Current Scenario
- V. Country position on the agenda
- VI. Treaties and Conventions signed by the country with regard to the agenda
- VII. Work done by country to combat the concerned problem
- VIII. National Initiatives taken up by the country
- IX. Suggestions for the International Community
- X. Possible Solutions for implementation by the United Nations

Sample Position Papers can be found at the following link:

<http://www.unausa.org/global-classrooms-model-un/how-to-participate/model-un-preparation/position-papers/sample-position-paper>

AFTERWORD:

In the entire guide, we have tried our best to keep to the practices of the UN by giving only the background of the agenda, and its main arms, without resorting to quoting countries or polarizing the agenda by favouring any bloc-outlook. It is expected of the delegates to research well on the various tangents that this agenda can take, and take the proceedings forward. We have, still, given a few additional guidelines to help you research by incorporating the same in the form of comments.

One needs to be mindful while researching on this agenda to keep the perspective of the country that you will be representing, and the nature of the problem that you want to address, in prime focus. Allegations and counter-allegations are bound to occur, but what the world today needs are solutions that need to be multi-faceted so as to take into account all the players in the scenario.

And lastly, we remind you that a backing, or proof, of your statements from independent sources (such as Wikipedia, local newspapers, free-lance researchers, etc.) can be subject to questioning on the grounds of credibility and authority, and may be dismissed if deemed so. As such, we recommend that documents from the UN system, or those published from any Government-authorized body (such as government releases, state-owned newspapers, press releases, etc.) be given preference for formulating your proofs/backing statements.

In case of any doubt, feel free to contact us at:

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Best of luck with your preparations!

