



General Assembly

Distr.: General
17 November 2011

Original: English

Human Rights Council

Nineteenth session

Agenda items 2 and 8

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

**Follow-up and implementation of the Vienna Declaration
and Programme of Action**

Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted to the Human Rights Council pursuant to its resolution 17/19, in which the Council requested the United Nations High Commissioner for Human Rights to commission a study documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity.

* Owing to the length of the present report, the footnotes thereto are reproduced in the language of submission only.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1–4	3
II. Applicable international standards and obligations	5–19	4
A. Universality, equality and non-discrimination	5–7	4
B. State obligations under international human rights law	8–19	5
III. Violence	20–39	8
A. Killings, rape and other acts of discriminatory violence	20–33	8
B. Torture and other forms of cruel, inhuman and degrading treatment	34–37	12
C. Right of asylum for those persecuted because of sexual orientation or gender identity	38–39	13
IV. Discriminatory laws	40–47	13
A. Laws criminalizing same-sex sexual relations between consenting adults and other laws used to penalize individuals because of sexual orientation or gender identity	40–44	13
B. Death penalty	45–46	15
C. Arbitrary arrest and detention	47	15
V. Discriminatory practices	48–73	16
A. Discrimination in employment	51–53	16
B. Discrimination in health care	54–57	17
C. Discrimination in education	58–61	18
D. Restrictions on freedom of expression, association and assembly	62–65	20
E. Discriminatory practices in the family and community	66–67	21
F. Denial of recognition of relationships and related access to State and other benefits	68–70	22
G. Gender recognition and related issues	71–73	22
VI. Emerging responses	74–80	23
VII. Conclusions and recommendations	81–85	24

I. Introduction

1. 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.

2. 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.

3. United Nations entities¹ 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).

4. 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.

¹ See, for example, “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; 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; “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; 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; “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.

II. Applicable international standards and obligations

A. Universality, equality and non-discrimination

5. 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)² 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.”³

6. 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.

7. 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.⁴ This position is reflected in later decisions of the Committee,⁵ 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.⁶ In its general comment no. 20, for example, the

² The terms lesbian, gay and bisexual and transgender are used throughout the report, but often abbreviated to LGBT. These terms are used to refer to same-sex behaviour, identities or relationships and non-binary gender identities. In several places in the text, discrimination against intersex persons is also addressed.

³ A/CONF.157/23, para. 5.

⁴ *Toonen v. Australia*, communication No. 488/1992 (CCPR/C/50/D/488/1992).

⁵ 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.

⁶ 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

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”.⁷

B. State obligations under international human rights law

8. 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

9. 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.”⁸ The State has an obligation to exercise due diligence to prevent, punish and redress deprivations of life,⁹ and to investigate and prosecute all acts of targeted violence.

10. 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.¹⁰

and 72(g); Committee against Torture, general comment no. 2 (CAT/C/GC/2), para. 21; and Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (CEDAW/C/GC/28), para. 18.

⁷ E/C.12/GC/20, para. 32. In the same general comment, the Committee refers to the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity as a source of guidance on definitions of “sexual orientation” and “gender identity” (footnote 25, para. 32). The Principles, which are non-binding, were developed by human rights experts. Several United Nations entities have used these definitions to describe sexual orientation and gender identity; see for example UNHCR, Guidance Note on Refugee Claims (see footnote 1), Handbook on prisoners with special needs; and UNAIDS, “Review of Legal Frameworks and the Situation of Human Rights related to Sexual Diversity in Low and Middle Income Countries”.

⁸ In its resolution 65/208, the General Assembly urged all States to, inter alia, ensure the effective protection of the right to life of all persons under their jurisdiction and to investigate promptly and thoroughly all killings, including those targeted at specific groups of persons, such as killings of persons because of their sexual orientation.

⁹ Human Rights Committee general comment No. 6.

¹⁰ 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.

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

11. 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”.¹¹

12. 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.¹⁴

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

13. 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”.

14. 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.¹⁵ 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.¹⁶ The Working Group on Arbitrary

¹¹ 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”.

¹² General comment no. 2 (CAT/C/GC/2), para. 21.

¹³ Ibid., para. 15.

¹⁴ See concluding observations of the Committee against Torture on the United States of America (CAT/C/USA/CO/2), paras. 32 and 37; Ecuador (CAT/C/ECU/CO/3), para. 17; and Argentina (CAT/C/CR/33/1), para. 6(g). See also general comment no. 2 (CAT/C/GC/2), para. 22. The Committee recommended that States parties should take all necessary measures to prevent such acts, including through the review of rules for detention and custody, investigation of all allegations of acts of torture or ill-treatment, prosecution and conviction of perpetrators, compensation to victims and training of personnel involved in detention and custody. See for example the Committee’s concluding observations on Mongolia (CAT/C/MNG/CO/1), para. 25; Kuwait (CAT/C/KWT/CO/2), para. 25; and Colombia (CAT/C/COL/CO/4), para. 11.

¹⁵ CCPR/C/50/D/488/1992, paras. 8.3-8.7.

¹⁶ 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),

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.¹⁷

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

15. 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.

16. 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.

17. 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”,¹⁸ and welcomed legislation that includes sexual orientation among prohibited grounds of discrimination.¹⁹ 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.²⁰ 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.²¹ 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.²²

para.7; Committee on the Elimination of Discrimination against Women, concluding observations on Uganda (CEDAW/C/UGA/CO/7), paras. 43-44; and Kyrgyzstan (*Official Records of the General Assembly, Fifty-fourth session, Supplement No. 38 (A/54/38/Rev.1)*), paras. 127-128; and Committee on the Rights of the Child, concluding observations on Chile (CRC/C/CHL/CO/3), para. 29.

¹⁷ See opinions No. 22/2006 on Cameroon (A/HRC/4/40/Add.1), and No. 42/2008 on Egypt (A/HRC/13/30/Add.1). See also A/HRC/16/47, annex, para. 8 (e).

¹⁸ See concluding observations on Chile (CCPR/C/CHL/CO/5), para. 16. See also concluding observations on San Marino (CCPR/C/SMR/CO/2), para. 7; and Austria (CCPR/C/AUT/CO/4), para. 8.

¹⁹ See concluding observations on El Salvador (CCPR/C/SLV/CO/6), para. 3 (c); Greece (CCPR/CO/83/GRC), para. 5; Finland (CCPR/CO/82/FIN), para. 3 (a); and Slovakia (CCPR/CO/78/SVK), para. 4.

²⁰ See general comments No. 18 (E/C.12/GC/18) (right to work), para. 12 (b) (i); No. 15 (E/C.12/2002/11) (right to water), para. 13; No. 19 (E/C.12/GC/19) (right to social security), para. 29; and No. 14 (E/C.12/2000/4) (right to the highest attainable standard of health), para. 18.

²¹ See general comment no. 20 (E/C.12/GC/20), para. 32.

²² 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. Several mechanisms have addressed intersectionality or multiple

5. To protect the right to freedom of expression, association and assembly in a non-discriminatory manner

18. Freedom of expression, association and peaceful assembly are enshrined in the Universal Declaration of Human Rights (arts. 19-20) and the International Covenant on Civil and Political Rights (arts. 19, 21-22). Under article 19 of the Universal Declaration, “everyone has the right to freedom of thought and expression; this right includes freedom to hold opinions without interference and to seek receive and impart information and ideas”. Under article 20 (1), “everyone has the right to freedom of peaceful assembly and association.”²³

19. The International Covenant on Civil and Political Rights permits restriction of these rights, but only when provided by law and necessary to protect the rights (or, in the case of expression, reputation) of others or national security, public safety, public order or public health or morals. The Human Rights Committee has confirmed that any such restrictions must be compatible with the provisions, aims and objectives of the Covenant and “must not violate the non-discrimination provisions of the Covenant”, including, in accordance with the Committee’s jurisprudence, on grounds of sexual orientation or gender identity.²⁴

III. Violence

A. Killings, rape and other acts of discriminatory violence

20. Homophobic and transphobic violence has been recorded in all regions. Such violence may be physical (including murder, beatings, kidnappings, rape and sexual assault) or psychological (including threats, coercion and arbitrary deprivations of liberty).²⁵ These attacks constitute a form of gender-based violence, driven by a desire to punish those seen as defying gender norms.

21. In addition to “street” violence and other spontaneous attacks in public settings, those perceived as LGBT may be targets of more organized abuse, including by religious extremists, paramilitary groups, neo-Nazis and extreme nationalists. Young LGBT people and those of all ages who are seen to be transgressing social norms are at risk of family and community violence. Lesbians and transgender women are at particular risk because of gender inequality and power relations within families and wider society.

22. Violence against LGBT persons tends to be especially vicious compared to other bias-motivated crimes. According to the Organization for Security and Cooperation in

forms of discrimination: see for example Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (CEDAW/C/GC/28), paras. 18 and 31; Committee on Economic, Social and Cultural Rights, general comment No. 16 (E/C.12/2005/4), para. 5; and Committee on the Elimination of Racial Discrimination, general recommendation No. 25, *Official Records of the General Assembly, Fifty-fifth Session* (A/55/18), annex V, sect. A.

²³ Also relevant is the Declaration on Human Rights Defenders which, while not legally binding, was adopted by consensus by the General Assembly in its resolution 53/144. Article 7 of the Declaration refers to the right to “develop and discuss new human rights ideas and principles and to advocate their acceptance”.

²⁴ General comment No. 34 (CCPR/C/GC/34), para. 26. See also general comment No. 22 (CCPR/C/21/Rev.1/Add.4), para. 8.

²⁵ 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.

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.²⁶

23. 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.

1. Killings

24. 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.²⁷ 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.²⁸ 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.²⁹ 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.³⁰

25. 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.³¹ While women are generally the targets of this sort of punishment, these attacks can be directed at individuals of any sex.

26. 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.³² OSCE reported 44 bias-motivated murders of LGBT persons in 2009

²⁶ “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.”

²⁷ See E/CN.4/1999/39, para. 76, A/HRC/4/20 and Add.1, A/HRC/4/29/Add.2, A/HRC/11/2/Add.7, A/HRC/14/24/Add.2 and A/HRC/17/28/Add.1.

²⁸ See A/HRC/17/28/Add.1, pp. 114-117.

²⁹ E/CN.4/2005/7/Add.1, para. 371.

³⁰ A/HRC/4/34/Add.1, paras. 631-633.

³¹ See A/61/122/Add.1, para. 124, E/CN.4/2002/83, paras. 27-28, A/HRC/4/34/Add.2, para. 19; and A/HRC/4/34/Add.3, para. 34. See also “India: Haryana widows battered to death”, available from www.bbc.co.uk/news/world-south-asia-13125674 (accessed 28 October 2011); “They Want Us Exterminated: Murder, Torture, Sexual Orientation and Gender in Iraq”, Human Rights Watch report, 17 August 2009; and “Was Ahmet Yildiz the victim of Turkey’s first gay honour killing?”, available from www.independent.co.uk/news/world/europe/was-ahmet-yildiz-the-victim-of-turkeys-first-gay-honour-killing-871822.html (accessed 28 October 2011).

³² See concluding observations of the African Commission on Human and Peoples Rights, (Cameroon), 11-25 May 2005, para. 14; Inter-American Commission on Human Rights press release No. 11/09

on the basis of partial data from 22 of its Member States.³³ 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.³⁴

27. 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 2009.³⁵ 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 2011.³⁶

2. Other violence, including rape

28. 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.³⁷

29. Allegations of lesbians being attacked, raped, forcibly impregnated and otherwise punished because of sexual orientation come from many regions.³⁸ 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.³⁹ 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,⁴⁰ where the Rapporteur noted that “lesbian women face an increased risk of becoming victims of violence, especially rape, because of widely held prejudices and myths”, including “for instance, that lesbian women would change their sexual orientation if they are raped by a man”.⁴¹

(Colombia), preliminary observations 15-18 May 2010, para. 12 (Honduras), and press release No. 59/08 (Jamaica).

³³ “Hate Crimes in the OSCE Region – Incidents and Responses”, Annual Report for 2009, OSCE Office for Democratic Institutions and Human Rights, Warsaw, November 2010.

³⁴ T. Hammarberg, “Hate Crimes: the ugly face of racism, anti-Semitism, anti-Gypsyism, Islamophobia and Homophobia”, Council of Europe, Strasbourg, 2008.

³⁵ “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.

³⁶ Trans Murder Monitoring results update March 2011, Trans Gender Europe, March 2011.

³⁷ A/HRC/16/44, para. 43.

³⁸ See A/HRC/17/26, para. 40. See also A/HRC/14/22/Add.2, para. 23, A/HRC/17/26/Add.1, paras. 204-213, E/CN.4/2002/83, para. 102, A/HRC/4/34/Add.3, para. 34, and the concluding observations of the Committee on the Elimination of Discrimination against Women on the Russian Federation (C/USR/CO/7), paras. 40-41.

³⁹ Concluding observations on South Africa (CEDAW/C/ZAF/CO/4), para. 39-40.

⁴⁰ See A/HRC/14/22/Add.2, paras. 37-38, and A/HRC/17/26/Add.2, paras. 28-29.

⁴¹ A/HRC/4/34/Add.1, paras. 632-633. Both the Committee on the Elimination of Discrimination against Women and the Special Rapporteur on violence against women, its causes and consequences have addressed so-called “curative” or “corrective” rape, perpetrated by men who claim their intent is to “cure” women of their lesbianism. See, for example, the concluding observations of the Committee

30. 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.”⁴² 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”.⁴³

31. 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.⁴⁴ 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.⁴⁵

32. 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.”⁴⁶ 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.⁴⁷ In a Slovenian study, 53 per cent of lesbian and gay respondents reported experiencing violence in the past because of their sexual orientation.⁴⁸ 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.⁴⁹

33. Treaty bodies have expressed concern about rhetoric used to incite hatred and related violence.⁵⁰ Such language can be used by political and community leaders to stir up

on South Africa (CEDAW/C/ZAF/CO/4), para. 39; and on the report of the Special Rapporteur on her mission to Kyrgyzstan (A/HRC/14/22/Add.2), para. 38.

⁴² A/HRC/13/22, para. 49.

⁴³ A/HRC/4/37, paras. 94-96.

⁴⁴ Uniform Crime Report: Hate Crime Statistics 2009, U.S. Department of Justice, Federal Bureau of Investigation, Washington, D.C., November 2010.

⁴⁵ 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.

⁴⁶ “Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe”, Council of Europe, Strasbourg, June 2011, p. 52.

⁴⁷ “Homophobic hate crime: The Gay British Crime Survey 2008”, Stonewall, London, 2009, p. 11.

⁴⁸ A. Svab, R. Kuhar, “The Unbearable Comfort of Privacy: Everyday Life of Gays and Lesbians”, Ljubljana, 2005, p. 153.

⁴⁹ “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. 13.

⁵⁰ See for example the concluding observations of the Human Rights Committee on Poland (CCPR/C/POL/CO/6), para. 8. See also the concluding observations of the Committee against Torture on the Republic of Moldova (CAT/C/MDA/CO/2), para. 27; Poland (CAT/C/POL/CO/4), para. 20; and Mongolia (CAT/C/MNG/CO/1), para. 25.

homophobic sentiment or harass individuals.⁵¹ In each case, LGBT people and those advocating related rights are at risk of violence and discrimination as a result.

B. Torture and other forms of cruel, inhuman and degrading treatment

34. The Special Rapporteur on torture has noted that “members of sexual minorities are disproportionately subjected to torture and other forms of ill-treatment because they fail to conform to socially constructed gender expectations. Indeed, discrimination on grounds of sexual orientation or gender identity may often contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place.”⁵² In 2010, the Special Rapporteur noted that, in detention facilities, there was usually a strict hierarchy, and that those at the bottom of the hierarchy, such as gays, lesbians, bisexuals and transgender persons, suffered double or triple discrimination.⁵³ The Special Rapporteur has highlighted the susceptibility of male-to-female transgender prisoners to physical and sexual abuse if placed within the general prison population.⁵⁴

35. The Special Rapporteur has also reported incidents in which individuals were subjected to victimization by police and prison guards and authorities failed to take reasonable measures to prevent violence against detainees perceived as LGBT.⁵⁵ For example, in a police station in Indonesia, a man and his male partner were allegedly severely beaten and sexually abused by police officers a day after reportedly having been assaulted by 16 civilians.⁵⁶ In Uzbekistan, a male human rights defender charged with homosexuality was reportedly beaten by police and threatened with rape with a bottle.⁵⁷ A lesbian couple in Brazil was allegedly beaten at a police station and forced to perform oral sex.⁵⁸ In Greece, detainees in a lesbian, gay and transgender section of a prison were reportedly denied access to an outside yard for two years, confined to their cells and a corridor at all times.⁵⁹ The Special Rapporteur has also reported transsexual women being intentionally beaten on their breasts and cheekbones to burst implants and release toxins.⁶⁰

36. The Special Rapporteur on violence against women has highlighted similar cases. In 2006, she detailed allegations of *metis* in Nepal being beaten by police, who demanded money and sex.⁶¹ In 2011, she described a case in El Salvador in which a transgender woman was placed in a male-only prison and detained in a cell with gang members, where she was raped more than 100 times, sometimes with the complicity of prison officials.⁶²

⁵¹ See for example the concluding observation of the Human Rights Committee on the Russian Federation (CCPR/C/RUS/CO/6), para. 27.

⁵² A/56/156, para. 19. See also E/CN.4/2001/66/Add.2, para. 199, E/CN.4/2002/76, annex III, p. 11, and E/CN.4/2005/62/Add.1, paras. 1019 and 1161.

⁵³ A/HRC/13/39/Add.5, para. 231.

⁵⁴ A/56/156, para. 23.

⁵⁵ See A/56/156, paras. 18, 21 and 23-24; and E/CN.4/2002/76/Add.1, paras. 16 and 1711.

⁵⁶ A/HRC/10/44/Add.4, para. 92.

⁵⁷ E/CN.4/2004/56/Add.1, paras. 1878 and 1899.

⁵⁸ E/CN.4/2001/66/Add.2, para. 199.

⁵⁹ Press statement of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment presenting preliminary findings on his mission to Greece, 20 October 2010.

⁶⁰ A/56/156, para. 18.

⁶¹ See E/CN.4/2006/61/Add.1, para. 131, and A/HRC/4/34/Add.1, paras. 448-454. *Meti* is a term used in Nepal to describe people who have been assigned a male gender at birth and who have a female gender identity/gender expression.

⁶² A/HRC/17/26/Add.2, paras. 28-29.

Other cases have been documented by the Special Representative of the Secretary-General on human rights defenders.⁶³

37. One issue highlighted by United Nations experts is the “medically worthless” practice of subjecting men suspected of homosexual conduct to non-consensual anal examinations to “prove” their homosexuality.⁶⁴ Such examinations have been condemned by the Committee against Torture, the Special Rapporteur on torture and the Working Group on Arbitrary Detention, which has held that the practice contravenes the prohibition of torture and ill-treatment.⁶⁵

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

38. 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.

39. 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.⁶⁶ 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.⁶⁷

IV. Discriminatory laws

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

40. Seventy-six countries retain laws that are used to criminalize people on the basis of sexual orientation or gender identity.⁶⁸ 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,

⁶³ A/HRC/7/28/Add.2, paras. 59-60.

⁶⁴ See A/HRC/16/47/Add.1, opinion No. 25/2009 (Egypt), para. 29.

⁶⁵ See the concluding observations of the Committee against Torture on Egypt (CAT/C/CR/29/4), paras. 5 (e) and 6 (k). See also A/56/156, para. 24; A/HRC/4/33/Add.1, para. 317; A/HRC/10/44/Add.4, para. 61; A/HRC/16/52/Add.1, para. 131; and A/HRC/16/47/Add.1, opinion no. 25/2009 (Egypt), paras. 24, 28-29.

⁶⁶ UNHCR, Guidance Note on Refugee Claims Relating to Sexual Orientation or Gender Identity, paras. 37 and 41.

⁶⁷ Ibid., paras. 25, 26 and 41. See also the decision of the Supreme Court of the United Kingdom, *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31.

⁶⁸ “State-sponsored homophobia: a world survey of laws criminalising same-sex sexual acts between consenting adults”, International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), Brussels, May 2011, p. 9.

the wording used refers to vague and undefined concepts, such as “crimes against the order of nature” or “morality”, or “debauchery”.⁶⁹ What these laws have in common is their use to harass and prosecute individuals because of their actual or perceived sexuality or gender identity.⁷⁰ Penalties range from short-term to life imprisonment, and even the death penalty.

41. 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.⁷¹ 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,⁷² and have welcomed their repeal.⁷³

42. 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.”⁷⁴ 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.”⁷⁵

43. 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.

⁶⁹ See A/HRC/10/21/Add.3, paras. 56-58.

⁷⁰ These laws may also be used in “social cleansing” efforts. See, for example, E/CN.4/1995/111, para. 49, and E/CN.4/2005/7, para. 71.

⁷¹ CCPR/C/50/D/488/1992, para. 8.2.

⁷² See, for example, the concluding observations of the Human Rights Committee 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. See also the concluding observations of the Committee on the Elimination of Discrimination against Women on Uganda (CEDAW/C/UGA/CO/7), paras. 43-44; and Kyrgyzstan (*Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 38 (A/54/38/Rev.1)*), paras. 127-128; and the concluding observations of the Committee on the Rights of the Child on Chile (CRC/C/CHL/CO/3), para. 29.

⁷³ See, for example, the concluding observations of the Human Rights Committee on El Salvador (CCPR/C/SLV/CO/6), para. 3 (c); and Chile (CCPR/C/CHL/CO/5), para. 16.

⁷⁴ A/HRC/14/20, para. 20. See also the concluding observations of the Human Rights Committee on Togo (CCPR/C/TGO/CO/4), para. 14, and E/CN.4/2000/3, para. 116.

⁷⁵ A/57/138, para. 37.

44. In at least 14 countries, the legal age of consent differs for homosexual and heterosexual relationships, which treaty bodies have held to be discriminatory.⁷⁶

B. Death penalty

45. 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”.⁷⁷ 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.⁷⁸

46. 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.”⁷⁹ 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.”⁸⁰ 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.”⁸¹

C. Arbitrary arrest and detention

47. 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.⁸³

⁷⁶ See the concluding observations of the Committee on the Rights of the Child on Chile (CRC/C/CHL/CO/3), para. 29; the United Kingdom of Great Britain and Northern Ireland: Isle of Man (CRC/C/15/Add.134), para. 22; and the concluding observations of the Human Rights Committee on Austria (CCPR/C/79/Add.103), para. 13.

⁷⁷ See the concluding observations of the Human Rights Committee on the Sudan (CCPR/C/SDN/CO/3), para. 19; and E/CN.4/2000/3, para. 57.

⁷⁸ See Commission on Human Rights resolutions 2002/77, para. 4 (c); 2003/67, para. 4 (d); 2004/67, para. 4 (f); and 2005/59, para. 7 (f). See also the concluding observations of the Human Rights Committee on the Sudan (CCPR/C/SDN/CO/3), para. 19.

⁷⁹ E/CN.4/2000/3, para. 57.

⁸⁰ E/CN.4/2006/53/Add.4, para. 37.

⁸¹ A/HRC/8/3/Add.3, para. 76.

⁸² E/CN.4/2003/8/Add.1, opinion no. 7/2002 (Egypt).

⁸³ See, for example opinions No. 22/2006 (Cameroon) (A/HRC/4/40/Add.1) and No. 42/2008 (Egypt) (A/HRC/13/30/Add.1).

VI. Discriminatory practices

48. 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.”⁸⁴ States have a “legal obligation … to ensure to everyone the rights recognized by the Covenant … without discrimination on the basis of sexual orientation.”⁸⁵ 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.⁸⁶

49. Explicit constitutional guarantees of protection from discrimination on grounds of sexual orientation apply in six countries,⁸⁷ while in several others such guarantees are incorporated into regional or provincial-level constitutions.⁸⁸ 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.

50. 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.⁸⁹

A. Discrimination in employment

51. Under international human rights law, States are obligated to protect individuals from any discrimination in access to and maintenance of employment. The Committee on

⁸⁴ See the Committee’s concluding observations on Chile (CCPR/C/CHL/CO/5), para. 16. See also its concluding observations on San Marino (CCPR/C/SMR/CO/2), para. 7, and Austria (CCPR/C/AUT/CO/4), para. 8.

⁸⁵ See the Committee’s concluding observations on the United States of America (CCPR/C/USA/CO/3), para. 25.

⁸⁶ See for example the concluding observations of the Human Rights Committee on El Salvador (CCPR/C/SLV/CO/6), para. 3 (c); Greece (CCPR/CO /83/GRC), para. 5; Finland (CCPR/CO/82/FIN), para. 3 (a); Slovakia (CCPR/CO/78/SVK), para. 4; the concluding observations of the Committee on Economic, Social and Cultural Rights on Cyprus (E/C.12/1/Add.28), para. 7; and the United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories (E/C.12/GBR/CO/5), para. 6.

⁸⁷ Bolivia (Plurinational State of), Ecuador, Portugal, South Africa, Sweden and Switzerland.

⁸⁸ Argentina, Brazil, British Virgin Islands (United Kingdom of Great Britain and Northern Ireland), Germany and Kosovo (Serbia). See ILGA, “State-sponsored homophobia” (see footnote 68), p. 13.

⁸⁹ See, for example, the concluding observations of the Human Rights Committee on the Russian Federation (CCPR/C/RUS/CO/6), para. 27, and Japan (CCPR/C/JPN/CO/5), para. 29; the concluding observations of the Committee on the Elimination of Discrimination against Women on Uganda (CEDAW/C/UGA/CO/7), paras. 43-44, and the Russian Federation (CEDAW/C/USR/CO/7), paras. 40-41; and Human Rights Committee general comment No. 34 (CCPR/C/GC/34), para. 12. See also A/HRC/4/25, para. 21; E/CN.4/2005/43, para. 63, E/CN.4/2006/118, para. 30, A/HRC/4/18/Add.2, para. 125, A/HRC/7/16, para. 39, A/HRC/10/7/Add.3, para. 50; E/CN.4/2003/58, para. 68, E/CN.4/2004/49, para. 38; and E/CN.4/2005/72/Add.1, paras. 232-234.

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”⁹⁰ and noted concern about discrimination directed at “disadvantaged and marginalized groups and individuals.”⁹¹ 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.”⁹²

52. Fifty-four States have laws prohibiting discrimination in employment based on sexual orientation.⁹³ 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.⁹⁴

53. Discrimination can lead to harassment and violence within and outside workplace confines.⁹⁵ Surveys indicate that verbal harassment of LGBT employees is commonplace.⁹⁶

B. Discrimination in health care

54. 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.⁹⁷

55. 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

⁹⁰ Committee on Economic, Social and Cultural Rights general comment No. 18 (E/C.12/GC/18), para. 12 (b)(i). See also the concluding observations of the Human Rights Committee on the United States of America (CCPR/C/USA/CO/3/Rev.1), para. 25.

⁹¹ E/C.12/GC/18, para. 23.

⁹² Ibid., para. 33. The Committee also noted the connection between discrimination and poverty: “Sometimes poverty arises when people have no access to existing resources because of who they are... Discrimination may cause poverty, just as poverty may cause discrimination.” (E/C.12/2001/10), para. 11.

⁹³ Ibid., ILGA, “State Sponsored Homophobia” (see footnote 68), pp. 12-13.

⁹⁴ *X v. Colombia* (CCPR/C/89/D/1361/2005), paras. 7.2-7.3; *Young v. Australia* (CCPR/C/78/D/941/2000), paras. 10-12.

⁹⁵ See Committee on Economic, Social and Cultural Rights general comment No. 20 (E/C.12/GC/20), para. 32.

⁹⁶ European Union Agency for Fundamental Rights, “Homophobia and Discrimination (see footnote 45), pp. 63-64.

⁹⁷ General comment No. 14 (E/C.12/2000/4), para. 18.

to health.”⁹⁸ 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.⁹⁹ Since then, the Secretary-General, special procedures and UNAIDS have drawn attention to the negative health impact of criminalization.¹⁰⁰

56. 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.¹⁰¹ Concerns of potential patients include breaches of confidentiality, further stigma and violent reprisals.¹⁰² 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”.¹⁰³ 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.¹⁰⁴

57. 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.¹⁰⁵ 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.¹⁰⁶

C. Discrimination in education

58. Some education authorities and schools discriminate against young people because of their sexual orientation or gender expression, sometimes leading to their being refused

⁹⁸ A/HRC/14/20, para. 6.

⁹⁹ CCPR/C/50/D/488/1992, para. 8.5.

¹⁰⁰ See Message of the Secretary-General on World AIDS Day, 1 December 2009, New York; A/HRC/14/20/Add.1, para. 14; A/HRC/14/24/Add.1, para. 1141, and A/HRC/17/27/Add.1, para. 675; UNAIDS, Getting to Zero: 2011-2015 Strategy; UNAIDS, 26th Meeting of the UNAIDS Programme Coordinating Board, 22-24 June 2010, agenda item 5(12). See also A/HRC/10/12/Add.1, paras. 345-355.

¹⁰¹ See the concluding observations of the Human Rights Committee on Cameroon (CCPR/C/CMR/CO/4), para. 12. See also A/HRC/14/20, paras. 22-23; Aggleton, P., *HIV and AIDS-related stigmatization, discrimination and denial: research studies from Uganda and India* (Geneva, UNAIDS, 2000), pp. 17-18; African Commission on Human and Peoples’ Rights resolution, 26 May 2010 (ACHPR/Res163(XLVII)2010); “Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people: recommendations for a public health approach”, WHO, 2011, pp. 10- 11; Committee on the Rights of the Child, general comment No. 4 (CRC/GC/2003/4), para. 6.

¹⁰² A/HRC/14/20, para. 21.

¹⁰³ Concluding observations on Costa Rica (CEDAW/C/CRI/CO/5-6), para. 40.

¹⁰⁴ See A/HRC/14/20, para. 23, and A/56/156, para. 24.

¹⁰⁵ “Human Rights and Gender Identity”, issue paper by the Council of Europe Commissioner for Human Rights, 2009, para. 3.3; WHO, “Prevention and treatment of HIV and other sexually transmitted infections” (see footnote 101), pp. 30-31.

¹⁰⁶ Concluding observations of the Committee on the Elimination of Discrimination against Women on Costa Rica (CEDAW/C/CRI/CO/5-6), para. 40.

admission or being expelled.¹⁰⁷ LGBT youth frequently experience violence and harassment, including bullying, in school from classmates and teachers.¹⁰⁸ 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.

59. 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.¹⁰⁹ 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.”¹¹⁰

60. Isolation and stigma generate depression and other health problems and contribute to truancy, absenteeism, children being forced out of school¹¹¹ and, in extreme cases, attempted or actual suicide.¹¹² 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.¹¹³ These findings are mirrored by results of studies carried out in other countries.¹¹⁴

61. 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.¹¹⁵ 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.”¹¹⁶

¹⁰⁷ E/CN.4/2006/45, para. 113.

¹⁰⁸ See, for example, E/CN.4/2001/52, para. 75, and E/CN.4/2006/45, para. 113.

¹⁰⁹ See, for example the concluding observations of the Human Rights Committee on Mexico (CCPR/C/MEX/CO/5), para. 21; the concluding observations of the Committee on Economic, Social and Cultural Rights on Poland (E/C.12/POL/CO/5), paras. 12-13; and Committee on the Rights of the Child general comments No. 3 (CRC/GC/2003/3), para. 8; and No. 13 (CRC/C/GC/13), paras. 60 and 72 (g); and the Committee’s concluding observations on New Zealand (CRC/C/NZL/CO/3-4), para. 25; Slovakia (CRC/C/SVK/CO/2), paras. 27-28; and Malaysia (CRC/C/MYS/CO/1), para. 31.

¹¹⁰ “International consultation on homophobic bullying and harassment in educational institutions”, UNESCO concept note, July 2011.

¹¹¹ See, for example, E/CN.4/2006/45, para. 113.

¹¹² E/CN.4/2003/75/Add.1, para. 1508.

¹¹³ Ruth Hunt and Johan Jensen, *The experiences of young gay people in Britain’s schools: the school report* (London, Stonewall, 2007), p. 3.

¹¹⁴ “Social Exclusion of Young Lesbian, Gay, Bisexual and Transgender People in Europe”, ILGA-Europe and the International Gay and Lesbian Youth Organization, 2006.

¹¹⁵ See Committee on the Rights of the Child general comment No. 4 (CRC/GC/2003/4), paras. 26 and 28. See also International Conference on Population and Development, Programme of Action, para. 7.47; Commission on Population and Development resolution 2009/1, para. 7; and UNESCO International Technical Guidance on Sexuality Education, sects. 2.3 and 3.4.

¹¹⁶ A/65/162, para. 23. See also “Comprehensive sexuality education: giving young people the information, skills and knowledge they need”, UNFPA, and “Standards for Sexuality Education in Europe”, WHO Regional Office for Europe and the Federal Centre for Health Education (including page 27).

D. Restrictions on freedom of expression, association and assembly

62. Under article 19 of the International Covenant on Civil and Political Rights, “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” The Covenant also affirms that “everyone shall have the right to freedom of association with others...” (art. 22), and that “the right of peaceful assembly shall be recognized” (art. 21). Under the Covenant, States parties may limit enjoyment of these rights only insofar as restrictions are provided for by law and necessary to protect rights of others, national security, or public safety, order, health or morals. Any such restrictions should be compatible with the provisions, aims and objectives of the Covenant and should not be discriminatory.¹¹⁷

63. Various bodies within the United Nations system have addressed restrictions on rights of people whose advocacy addresses sexuality and gender issues.¹¹⁸ Where States require legal registration of non-governmental organizations, LGBT groups have had applications rejected or their legal registration revoked.¹¹⁹ The threat of deregistration has been used to curtail advocacy on sexuality and gender issues and intimidate individuals in the organizations concerned. Police have raided offices of LGBT groups and confiscated computer hard drives and contact lists of clients and supporters, thereby exposing others to risk of harassment or violence.¹²⁰ Where computer files have contained information about sexual orientation and HIV prevention, including about condom use, staff and volunteers of LGBT groups have sometimes been arrested or harassed.¹²¹ The personal reputations of defenders who support rights related to gender and sexuality have been challenged and maligned, including through allegations related to sexual orientation, in efforts to suppress their advocacy.¹²² Special procedures have highlighted risks faced by women defenders owing to the perception that they are “challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society.”¹²³

64. LGBT defenders and supporters of related rights have been subjected to violence and harassment when convening meetings or cultural events, or participating in LGBT “equality marches”. In some States, such events are denied police protection or permits, sometimes under guise of threats to public morals or safety, which privileges the antagonists rather than those claiming rights. In the absence of effective police protection, advocates and marchers have sometimes been physically attacked and harassed by State and non-State actors, including “skinhead” and fundamentalist groups.¹²⁴ In 2010, the European Court of Human Rights fined the Russian Federation for violating rights related to assembly, discrimination and remedy after the State banned LGBT parades in Moscow

¹¹⁷ Human Rights Committee general comment No. 34 (CCPR/C/GC/34), para. 26. See also general comment No. 22 (CCPR/C/21/Rev.1/Add.4), para. 8.

¹¹⁸ See A/HRC/4/37, para. 96; A/HRC/10/12/Add.1, paras. 2574-2582, and A/HRC/16/44; A/HRC/11/4/Add.1, paras. 289-292 and 1513-1515; and E/CN.4/2005/64/Add.1, para. 494.

¹¹⁹ See A/HRC/4/37/Add.1, para. 29 (on Argentina), para. 511 (on Nigeria), and para. 686 (on Turkey); and A/HRC/10/12/Add.1, paras. 1558-1562 (on Kyrgyzstan) and 2574 -2577 (on Turkey).

¹²⁰ A/HRC/10/12/Add.1, paras. 1558-1562 and 2574-2582.

¹²¹ A/HRC/16/44/Add.1, paras. 2517-2525 (on Zimbabwe).

¹²² A/HRC/16/44, para. 85.

¹²³ See E/CN.4/2001/94, para. 89 (g), and A/HRC/16/44.

¹²⁴ See A/HRC/10/12/Add.1, paras. 275-280 (on Bosnia and Herzegovina) and A/HRC/11/4/Add.1, paras. 289-292; and A/HRC/16/44/Add.1, paras. 1157-1164 (on Indonesia).

on grounds of public safety. The Court stated that “mere existence of a risk is insufficient for banning the event”.¹²⁵

65. Special procedures have raised concerns regarding restrictions on freedom of expression – including direct censorship, bans on dissemination of information and restrictions on legitimate advocacy – purportedly justified on grounds of alleged threats to public health, morality or State security.¹²⁶ Restrictions on information on sexual orientation, including those allegedly intended to protect “public decency”, can have a deleterious impact on public health efforts, including in relation to transmission of the HIV virus.¹²⁷

E. Discriminatory practices in the family and community

66. While families and communities are often an important source of support, discriminatory attitudes within families and communities can also inhibit the ability of LGBT people to enjoy the full range of human rights. Such discrimination manifests itself in various ways, including through individuals being excluded from family homes, disinherited, prevented from going to school, sent to psychiatric institutions, forced to marry, forced to relinquish children, punished for activist work and subjected to attacks on personal reputation. In many cases, lesbians, bisexual women and transgender people are especially at risk owing to entrenched gender inequalities that restrict autonomy in decision-making about sexuality, reproduction and family life.¹²⁸

67. Family or community members often enforce gender norms and punish transgressions. In 1997, the Special Rapporteur on violence against women noted, “the community may also be the site of restrictions on and regulations of female sexuality ... Women who ...live out their sexuality in ways other than heterosexuality are often subjected to violence and degrading treatment.”¹²⁹ United Nations mechanisms and non-governmental organizations have documented a range of gender-specific violations targeted at women – including forced marriage, forced pregnancy, and rape in marriage – some of

¹²⁵ European Court of Human Rights, *Alekseyev v. Russia*, applications Nos. 4916/07, 25924/08 and 14599/09, judgement of 21 October 2010, paras. 75-76. See the concluding observations of the Human Rights Committee on the Russian Federation (CCPR/C/RUS/CO/6), para. 27. See also *Baczkowski and Others v. Poland*, application no. 1543/06, 3 May 2007, para. 64.

¹²⁶ See A/58/380, paras. 6, 11-12 and 15-20; A/HRC/4/37, para. 95-97; A/HRC/4/37/Add.1, para. 402; and E/CN.4/2002/72, para. 57. See also the joint statement of the Special Representative of the Secretary-General on human rights defenders, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on violence against women, and the Special Rapporteur on the right to the highest attainable standard of physical and mental health (on Nigeria), available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=5599&LangID=E (accessed 10 November 2011); and A/HRC/14/23/Add.1, para. 1401-1405 (on Lithuania).

¹²⁷ UNAIDS, Getting to Zero: 2011-2015 Strategy.

¹²⁸ See E/CN.4/2000/68/Add.5, para. 13, E/CN.4/2002/83, paras. 99-105, E/CN.4/2006/61/Add.3, para. 51 and A/HRC/4/34/Add.3, para. 34. See also CEDAW/C/GUA/CO/7, para. 19; and Fourth World Conference on Women, Beijing Platform for Action, para. 96. Discriminatory attitudes are also sometimes reflected in decisions regarding child custody; for example, the Inter-American Court of Human Rights has admitted a case concerning a lesbian mother and her daughters seeking redress for a decision by the Chilean authorities to deny custody based on sexual orientation: see *Karen Atala and Daughters v. Chile*, Case 1271-04, report No. 42/08, OEA/Ser.L/V/II.130 Doc. 22, rev. 1 (2008).

¹²⁹ E/CN.4/1997/47, para. 8.

which are enacted as forms of punishment for assumed or actual sexual orientation or behaviour.¹³⁰

F. Denial of recognition of relationships and related access to State and other benefits

68. The Human Rights Committee has held that States are not required, under international law, to allow same-sex couples to marry.¹³¹ Yet, the obligation to protect individuals from discrimination on the basis of sexual orientation extends to ensuring that unmarried same-sex couples are treated in the same way and entitled to the same benefits as unmarried opposite-sex couples.¹³²

69. In some countries, the State provides benefits for married and unmarried heterosexual couples but denies these benefits to unmarried homosexual couples. Examples include pension entitlements, the ability to leave property to a surviving partner, the opportunity to remain in public housing following a partner's death, or the chance to secure residency for a foreign partner. Lack of official recognition of same-sex relationships and absence of legal prohibition on discrimination can also result in same-sex partners being discriminated against by private actors, including health-care providers and insurance companies.

70. The Human Rights Committee has welcomed measures to address discrimination in this context. In its concluding observations on Ireland, the Committee urged the State party to ensure that proposed legislation establishing civil partnerships not be "discriminatory of non-traditional forms of partnership, including taxation and welfare benefits."¹³³

G. Gender recognition and related issues

71. In many countries, transgender persons are unable to obtain legal recognition of their preferred gender, including a change in recorded sex and first name on State-issued identity documents.¹³⁴ As a result, they encounter many practical difficulties, including when applying for employment, housing, bank credit or State benefits, or when travelling abroad.

72. Regulations in countries that recognize changes in gender often require, implicitly or explicitly, that applicants undergo sterilization surgery as a condition of recognition. Some States also require that those seeking legal recognition of a change in gender be unmarried, implying mandatory divorce in cases where the individual is married.

73. The Human Rights Committee has expressed concern regarding lack of arrangements for granting legal recognition of transgender people's identities. It has urged States to recognize the right of transgender persons to change their gender by permitting the issuance of new birth certificates and has noted with approval legislation facilitating legal recognition of a change of gender.¹³⁵

¹³⁰ See A/HRC/16/44, paras. 23-24; E/CN.4/2002/106, para. 90-92; E/CN.4/2002/83, paras. 57 and 101-102; and A/61/122/Add.1, paras. 57, 73, 84 and 151.

¹³¹ *Joslin v. New Zealand* (CCPR/C/75/D/902/1999), 10 IHRR 40 (2003).

¹³² *Young v. Australia* (CCPR/C/78/D/941/2000), para. 10.4.

¹³³ CCPR/C/IRL/CO/3, para. 8.

¹³⁴ Ibid. See the Committee's concluding observations on the United Kingdom of Great Britain and Northern Ireland (CCPR/C/GBR/CO/6), para. 5. See also A/64/211, para. 48; and T. Hammarberg, "Human rights and gender identity", Council of Europe, Strasbourg, 2009, para. 3.2.1.

¹³⁵ See CCPR/C/IRL/CO/3, para. 8, and CCPR/C/GBR/CO/6, para. 5.

VI. Emerging responses

74. There are many examples, in all regions, of initiatives developed by States and non-State entities that seek to address violence and discrimination on grounds of sexual orientation and gender identity. While all such initiatives are too numerous to mention, the examples below illustrate the kinds of actions identified in the course of preparing the present study.

75. Many Member States have instituted training programmes for law-enforcement officials to sensitize them to bias-motivated violence against LGBT persons and help them to recognize, register and respond to reports of such crimes. In some countries, including Spain and Honduras, special prosecutors have been appointed to investigate and bring cases to trial. In South Africa, a national task team on homophobic and transphobic hate crime has been established following consultations with the LGBT community.¹³⁶ Some States, including Brazil, Ecuador, Germany, the Netherlands and Uruguay, have used the Yogyakarta Principles to help guide policy responses to incidents of violence and discrimination.¹³⁷

76. There are many examples of public information campaigns, sometimes developed with State support, designed to address societal prejudice. In Brazil, the Government has supported a public education campaign implemented under the slogan “Brazil without Homophobia”. Similar initiatives, often led by civil society, have been launched in countries in all regions. Celebrities have played an important role as message-carriers in such campaigns.

77. Examples of initiatives to counter homophobia and transphobia in educational institutions include teacher-training programmes, the establishment of “safe spaces” for LGBT youths in schools, and awareness-raising campaigns. In Australia, the publicly-funded Safe Schools Coalition (www.safeschoolscoalitionvictoria.org.au) offers teacher training and learning materials. In China, the Boys and Girls Clubs Association of Hong Kong (www.bgca.org.hk) offers counselling in schools and youth centres. In Ireland, an anti-homophobia video shown in schools has been watched by half a million people online.¹³⁸ In the United States, gay-straight alliances or clubs have been established in more than 4,000 high schools.¹³⁹

78. National human rights institutions can play an important role. For example, in 2011, the Kenya Human Rights Commission produced the report, “The Outlawed Amongst Us: A Study of the LGBTI Community’s Search for Equality and Non-Discrimination in Kenya”. The Asia Pacific Forum of National Human Rights Institutions has facilitated dialogue among member institutions, with positive contributions from national institutions in

¹³⁶ See www.justice.gov.za/m_statements/2011/20110504_lgbti-taskteam.html (accessed 9 November 2011).

¹³⁷ While not legally binding, the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity provide guidance to States on related human rights issues and legal standards. In the universal periodic review process, several Governments have committed to using the Principles in future policy development. In addition, the Organization of American States may consider the creation of a special rapporteur on LGBT-related violations.

¹³⁸ For more information, see www.belongto.org.

¹³⁹ For more information, see www.glsen.org.

Australia, Indonesia, Jordan, Malaysia, Mongolia, Nepal, New Zealand, the Philippines, the Republic of Korea and Thailand.¹⁴⁰

79. Some States – *inter alia*, Australia, India, Nepal, Pakistan, Portugal, the United Kingdom and Uruguay – have made it easier for transgender and intersex persons to obtain legal recognition of a change of gender or to indicate a gender other than male or female. The New Zealand Human Rights Commission recently concluded a two-year consultation to identify human rights concerns of transgender persons.¹⁴¹

80. Finally, recognizing that safeguarding the rights of LGBT persons is a multifaceted undertaking, the Government of Norway recently published a plan of action intended to mobilize eight Government departments to implement a series of specific measures.¹⁴²

VII. Conclusions and recommendations

81. The present report summarizes only some of the information gathered by United Nations treaty bodies and special procedures, regional and non-governmental organizations on violence and discrimination based on actual or perceived sexual orientation or gender identity. A more comprehensive analysis of the human rights challenges facing LGBT and intersex persons would require a more extensive study and, in future, regular reporting.

82. Nevertheless, on the basis of the information presented herein, a pattern of human rights violations emerges that demands a response. Governments and inter-governmental bodies have often overlooked violence and discrimination based on sexual orientation and gender identity. The mandate of the Human Rights Council requires it to address this gap: the Council should promote “universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.”¹⁴³ With the adoption in June 2011 of resolution 17/19, the Council formally expressed its “grave concern” regarding violence and discrimination based on sexual orientation and gender identity. Further action is now needed, especially at the national level, if individuals are to be better protected from such human rights violations in future.

83. The recommendations to Member States set out below, which are not exhaustive, draw on measures recommended by United Nations human rights mechanisms.

84. The High Commissioner recommends that Member States:

(a) Investigate promptly all reported killings and other serious incidents of violence perpetrated against individuals because of their actual or perceived sexual orientation or gender identity, whether carried out in public or in private by State or non-State actors, and hold perpetrators accountable, and establish systems for the recording and reporting of such incidents;

¹⁴⁰ For more information on the work of the Asia Pacific Forum in this area and contributions of national human rights institutions in the region, see www.asiapacificforum.net/support/issues/sexual_orientation.

¹⁴¹ “To Be Who I am”, New Zealand Transgender Inquiry report, New Zealand Human Rights Commission, 2008.

¹⁴² “Improving Quality of Life among Lesbians, Gays, Bisexuals and Trans persons, 2009 –2012”, Norwegian Ministry of Children and Equality, 2008.

¹⁴³ General Assembly resolution 60/251, para. 2.

- (b) Take measures to prevent torture and other forms of cruel, inhuman or degrading treatment on grounds of sexual orientation and gender identity, to investigate thoroughly all reported incidents of torture and ill-treatment, and to prosecute and hold accountable those responsible;
- (c) Ensure that no one fleeing persecution on grounds of sexual orientation or gender identity is returned to a territory where his or her life or freedom would be threatened, and that asylum laws and policies recognize that persecution on account of one's sexual orientation or gender identity may be a valid basis for an asylum claim;
- (d) Repeal laws used to criminalize individuals on grounds of homosexuality for engaging in consensual same-sex sexual conduct, and harmonize the age of consent for heterosexual and homosexual conduct; ensure that other criminal laws are not used to harass or detain people based on their sexuality or gender identity and expression, and abolish the death penalty for offences involving consensual sexual relations;
- (e) Enact comprehensive anti-discrimination legislation that includes discrimination on grounds of sexual orientation and gender identity among prohibited grounds and recognizes intersecting forms of discrimination; ensure that combating discrimination on grounds of sexual orientation and gender identity is included in the mandates of national human rights institutions;
- (f) Ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity;
- (g) Implement appropriate sensitization and training programmes for police, prison officers, border guards, immigration officers and other law enforcement personnel, and support public information campaigns to counter homophobia and transphobia among the general public and targeted anti-homophobia campaigns in schools;
- (h) Facilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights.

85. The High Commissioner recommends that the Human Rights Council:

- (a) Keep regularly informed and updated on incidents of violence and discrimination linked to sexual orientation and gender identity;
- (b) Encourage existing special procedures to continue to investigate and report on human rights violations affecting individuals on the basis of sexual orientation or gender identity within the context of their specific mandates.