

## **Jurisprudential Annotations to the Yogyakarta Principles\***

*Note:* The Yogyakarta Principles reflect the application of binding international human rights law to issues of sexual orientation and gender identity. They were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds.

The following Annotations provide additional information about the international instruments and jurisprudence upon which each Principle is based. Although not explicitly forming part of the text adopted by the participating experts, the Annotations serve as a valuable guide to the legal framework underpinning each Principle.

The full text of the Yogyakarta Principles in all 6 UN languages can be found at [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org).

### **PRINCIPLE 1: THE RIGHT TO THE UNIVERSAL ENJOYMENT OF HUMAN RIGHTS**

All human beings are born free and equal in dignity and rights.<sup>1</sup> Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.<sup>2</sup>

**States shall:**<sup>3</sup>

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\* November 2007. These annotations were undertaken at the University of Nottingham Human Rights Law Centre, under the direction of Professor Michael O'Flaherty. The principal researcher was Gwyneth Williams LL.M.

<sup>1</sup> *Universal Declaration of Human Rights* [UDHR], G.A. res. 217A (III), U.N. Doc. A/810 at 71 (1948), Art. 1.

<sup>2</sup> Regarding the general principle see: ¶ UDHR, preamble and Art. 2; ¶ *Vienna Declaration and Programme of Action* [Vienna Declaration], adopted by the World Conference on Human Rights in Vienna, 25 June 1993, preamble and Part I, para. 1.

<sup>3</sup> See the obligation provisions of the core international human rights treaties: ¶ *International Convention on the Elimination of All Forms of Racial Discrimination* [ICERD], G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force 4 January 1969, Art. 2 (1): "States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races..."; ¶ *International Covenant on Civil and Political Rights* [ICCPR], G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, Art. 2 (2): "Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant. [...]"; ¶ *International Covenant on Economic, Social and Cultural Rights* [ICESCR], G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force 3 January 1976, Art. 2 (1): "Each State Party to the

A. Embody the principles of the universality, interrelatedness, interdependence and indivisibility of all human rights in their national constitutions or other appropriate legislation and ensure the practical realisation of the universal enjoyment of all human rights;<sup>4</sup>

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present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”; ¶ *Convention on the Elimination of All Forms of Discrimination against Women* [CEDAW], G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force 3 September 1981, Art. 2: “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women...”; ¶ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* [CAT], G.A. res. 39/46, Annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force 26 June 1987, Art. 2 (1): “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”; ¶ *Convention on the Rights of the Child* [CRC], G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force 2 September 1990, Art. 4: “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”; ¶ *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* [ICRMW], G.A. res. 45/158, Annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force 1 July 2003, Art. 84: “Each State Party undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention”; ¶ Human Rights Committee, *General Comment No. 31 [80]: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004; ¶ Committee on Economic, Social and Cultural Rights [CESCR], *General Comment No. 3: The nature of States parties obligations (Art. 2, par.1)*, CESCR General Comment No. 3, 14 December 1990; ¶ CESCR, *General Comment No. 9: The domestic application of the Covenant*, U.N. Doc. E/C.12/1998/24, 3 December 1998; ¶ Committee on the Rights of the Child, *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, U.N. Doc. CRC/GC/2003/5, 27 November 2003.

<sup>4</sup> ¶ Vienna Declaration, *supra* at note 2, Part I, para. 5; ¶ U.N. General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* [Declaration on Human Rights Defenders], adopted by General Assembly resolution 53/144, 9 December 1998, Art. 2; see also U.N. treaty bodies’ General Comments on the implementation obligations of states: ¶ Human Rights Committee, *General Comment No. 31 [80]: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004; ¶ CESCR, *General Comment No. 3: The nature of States parties obligations (Art. 2, par.1)*, CESCR General Comment No. 3,

B. Amend any legislation, including criminal law, to ensure its consistency with the universal enjoyment of all human rights;

C. Undertake programmes of education and awareness to promote and enhance the full enjoyment of all human rights by all persons, irrespective of sexual orientation or gender identity;<sup>5</sup>

D. Integrate within State policy and decision-making a pluralistic approach that recognises and affirms the interrelatedness and indivisibility of all aspects of human identity including sexual orientation and gender identity.<sup>6</sup>

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14 December 1990; ¶ CESCR, *General Comment No. 9: The domestic application of the Covenant*, U.N. Doc. E/C.12/1998/24, 3 December 1998; ¶ Committee on the Rights of the Child, *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, U.N. Doc. CRC/GC/2003/5, 27 November 2003.

<sup>5</sup> ¶ UDHR, preamble and Art. 26(2); ¶ ICERD, Art. 7; ¶ CESCR, Art. 13(1); ¶ CRC, Art. 29; ¶ Vienna Declaration, *supra* at note 2, Part I, para. 33 and Part II, D. Human Rights Education, paras. 78-82; ¶ Declaration on Human Rights Defenders, *supra* at note 4, Arts. 14-15; ¶ U.N. General Assembly, *Revised draft plan of action for the first phase (2005-2007) of the World Programme for Human Rights Education*, U.N. Doc. A/59/525/Rev.1, 2 March 2005; ¶ U.N. General Assembly, *United Nations Decade for Human Rights Education (1995-2004) and public information activities in the field of human rights, Report of the Secretary-General, Addendum: Guidelines for national plans of action for human rights education*, U.N. Doc. A/52/469/Add.1, 20 October 1997; ¶ U.N. General Assembly, *Note by the Secretary-General, Addendum (Appendix: Plan of Action for the United Nations Decade for Human Rights Education, 1995-2004: Human rights education - lessons for life)*, U.N. Doc. A/51/506/Add.1, 12 December 1996; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Philippines*, U.N. Doc. CCPR/CO/79/PHL, 1 December 2003, para. 18: “[...] The Committee notes that legislation related to sexual orientation is currently being discussed in Congress and urges the State party, in this context, to pursue its efforts to counter all forms of discrimination. The State party is further invited to strengthen human rights education to forestall manifestations of intolerance and de facto discrimination.”

<sup>6</sup> ¶ See the principles pronounced in ‘The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies’, in *Report of the Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform*, Stamford, Connecticut, 5-7 May 2003 (available at: [http://www.undg.org/archive\\_docs/4128-Human\\_Rights\\_Workshop\\_Stamford\\_Final\\_Report.doc](http://www.undg.org/archive_docs/4128-Human_Rights_Workshop_Stamford_Final_Report.doc)); ¶ Amnesty International, *Crimes of hate, conspiracy of silence: Torture and ill-treatment based on sexual identity*, AI Index: ACT 40/016/2001 (Amnesty International Publications: London, 2001), p. 7: “Sexual orientation, like gender or race, relates to fundamental aspects of human identity. [...] Laws and practices aimed at coercing individuals to alter or deny their sexual orientation, or punishing them for not doing so, attack a deeply rooted aspect of human personality. They inflict huge psychological as well as physical violence because they force some people to forego an area of experience which, for many, offers the greatest potential for human fulfilment.”

## PRINCIPLE 2: THE RIGHTS TO EQUALITY AND NON-DISCRIMINATION

Everyone is entitled to enjoy all human rights without discrimination<sup>7</sup> on the basis of sexual orientation or gender identity.<sup>8</sup> Everyone is entitled to

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<sup>7</sup> ¶ *Charter of the United Nations*, 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force 24 October 1945, Arts. 1(3) and 55; ¶ UDHR, Art. 2; ¶ ICERD, Art. 5; ¶ ICCPR, Art. 2(1); ¶ ICESCR, Art. 2(2); ¶ CEDAW, Art. 3; ¶ CAT, Art. 1(1); ¶ CRC, Art. 2; ¶ ICRMW, Art. 1(1); ¶ *Convention for the Protection of Human Rights and Fundamental Freedoms* [ECHR], 213 U.N.T.S. 222, entered into force 3 September 1953 (as amended by Protocols Nos. 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998), Art. 14; ¶ *Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms* [Protocol 12 to the ECHR], 4 November 2000; ¶ *American Convention on Human Rights* [American Convention], O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, Art. 1(1); ¶ *African (Banjul) Charter on Human and Peoples' Rights* [African Charter], adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986, Art. 2; see General Comments of the U.N. human rights treaty bodies: ¶ Committee against Torture, *General Comment No. 2: Implementation of article 2 by States Parties* [Advance Unedited Version], U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4, 23 November 2007 (see 'Section V: Protection for individuals and groups made vulnerable by discrimination or marginalization', p. 6); ¶ Committee on the Elimination of Racial Discrimination, *General Recommendation No. 20: Non-discriminatory implementation of rights and freedoms (Art. 5)*, U.N. Doc. Gen. Rec. No. 20, 15 March 1996; ¶ Human Rights Committee, *General Comment No. 18: Non-discrimination*, U.N. Doc. CCPR General Comment No. 18, 10 November 1989; see also: ¶ Commission on Human Rights [CHR], *Study on non-discrimination as enshrined in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights: Working paper prepared by Emmanuel Decaux*, U.N. Doc. E/CN.4/Sub.2/2004/24, 18 June 2004.

<sup>8</sup> See judgments of the European Court of Human Rights, *inter alia*: ¶ *Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, ECHR 1999-IX; ¶ *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, ECHR 1999-VI; ¶ *Karner v. Austria*, no. 40016/98, ECHR 2003-IX; ¶ *Bączkowski and Others v. Poland*, no. 1543/06, ECHR 2007; see Views of the Human Rights Committee: ¶ *Communication No. 1361/2005: Colombia*, U.N. Doc. CCPR/C/89/D/1361/2005, X v. Colombia, 14 May 2007; ¶ *Communication No. 941/2000: Australia*, U.N. Doc. CCPR/C/78/D/941/2000, Edward Young v. Australia, 18 September 2003; ¶ *Communication No. 488/1992: Australia*, U.N. Doc. CCPR/C/50/D/488/1992, Nicholas Toonen v. Australia, 4 April 1994; see General Comments of the U.N. human rights treaty bodies: ¶ CESCR, *General Comment No. 18: The Right to Work (Art. 6)*, U.N. Doc. E/C.12/GC/18, 6 February 2006; ¶ CESCR, *General comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2002/11, 20 January 2003; ¶ CESCR, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2000/4, 11 August 2000; ¶ Committee on the Rights of the Child, *General Comment No. 4 (2003): Adolescent health and development in the context of the Convention on the Rights of the Child*, U.N. Doc. CRC/GC/2003/4, 1 July 2003; ¶ Committee on the Rights of the Child, *General Comment No. 3 (2003): HIV/AIDS and the rights of the child*, U.N. Doc. CRC/GC/2003/3, 17 March 2003; see also

equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected.<sup>9</sup> The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination.

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concluding observations of the treaty bodies, *inter alia*: ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Poland*, U.N. Doc. CCPR/CO/82/POL, 2 December 2004, para. 18: "The Committee is concerned that the right of sexual minorities not to be discriminated against is not fully recognized, and that discriminatory acts and attitudes against persons on the ground of sexual orientation are not adequately investigated and punished (art. 26). The State party should provide appropriate training to law enforcement and judicial officials in order to sensitize them to the rights of sexual minorities. Discrimination on the ground of sexual orientation should be specifically prohibited in Polish law"; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: El Salvador*, U.N. Doc. CCPR/CO/78/SLV, 22 August 2003, para. 16: "The Committee expresses concern at...the current provisions...used to discriminate against people on account of their sexual orientation (art. 26). The State Party should provide effective protection against violence and discrimination based on sexual orientation"; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: United States of America*, U.N. Doc. CCPR/C/79/Add.50, 3 October 1995, para. 287: "The Committee is concerned at the serious infringement of private life in some states which classify as a criminal offence sexual relations between adult consenting partners of the same sex carried out in private, and the consequences thereof for their enjoyment of other human rights without discrimination"; ¶ Committee on the Rights of the Child, *Concluding observations of the Committee on the Rights of the Child: Malaysia*, U.N. Doc. CRC/C/MYS/CO/1, 25 June 2007, para. 31: "[...] Concern is expressed at the insufficient efforts made to address discrimination based on sexual orientation"; ¶ Committee on the Rights of the Child, *Concluding observations of the Committee on the Rights of the Child: Chile*, U.N. Doc. CRC/C/CHL/CO/3, 23 April 2007, para. 29: "...the Committee is concerned that homosexual relations, including those of persons under 18 years old, continue to be criminalized [*sic*], indicating discrimination on the basis of sexual orientation"; ¶ Committee on the Rights of the Child, *Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland-Isle of Man*, U.N. Doc. CRC/C/15/Add.134, 16 October 2000, para. 23: "It is recommended that the Isle of Man take all appropriate measures, including of a legislative nature, to prevent discrimination based on the grounds of sexual orientation and to fully comply with article 2 of the Convention"; ¶ Charter of Fundamental Rights of the European Union, 2000/C 364/01, 7 December 2000, Art. 21.

<sup>9</sup> ¶ UDHR, Art. 7; ¶ ICCPR, Art. 26; ¶ Protocol 12 to the ECHR, Art. 1; ¶ American Convention, Art. 24; ¶ African Charter, Art. 3; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Chile*, U.N. Doc. CCPR/C/CHL/CO/5, 18 May 2007, para. 16: "The State party should guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation, including equality before the law..."; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: United States of America*, U.N. Doc. CCPR/C/USA/CO/3/Rev.1, 18 December 2006, para. 25: "[...] The State party should acknowledge its legal obligation under articles 2 and 26 to ensure to everyone the rights recognized by the Covenant, as well as equality before the law and equal protection of the law, without discrimination on the basis of sexual orientation"; ¶ Amnesty International, *supra* at note 6, p. 6: "While the degree to

Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms.<sup>10</sup> Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.<sup>11</sup>

**States shall:**<sup>12</sup>

A. Embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in their national constitutions or other appropriate legislation, if not yet incorporated therein, including by means of

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which discrimination is institutionalized varies from country to country, almost nowhere are LGBT people treated as fully equal before the law."

<sup>10</sup> See comparable formulations in: ¶ ICERD, Art. 1(1); ¶ CEDAW, Art. 1.

<sup>11</sup> ¶ Human Rights Council, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir*, U.N. Doc. A/HRC/6/5, 20 July 2007, para. 28: "Since intolerance and discrimination is often applied with regard to multiple identities of the victim or group of victims, many women suffer from aggravated discrimination with regard to their religious, ethnic and sexual identities"; ¶ CHR, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène: Mission to Brazil*, U.N. Doc. E/CN.4/2006/16/Add.3, 28 February 2006, para. 40: "Black homosexuals suffer from double discrimination, because of their colour and sexual orientation. [...] Homosexuals suffer from physical violence, sometimes death...but also psychological suffering due to the denial of their humanity and identity"; ¶ CHR, *Report submitted by Ms. Hina Jilani, Special Representative of Secretary-General on human rights defenders, pursuant to the Commission on Human Rights resolution 2000/61*, U.N. Doc. E/CN.4/2002/106, 27 February 2002, para. 83: "...women human rights defenders are paying a heavy toll for their work in protecting and promoting the human rights of others. [...] For women human rights defenders, standing up for human rights and the victims of human rights abuses - be they migrants, refugees, asylum-seekers or political activists, or...ex-offenders and members of sexual minorities - can result in intimidation, harassment, unfair dismissal, death threats, torture and ill-treatment, and even death"; ¶ CHR, *Background paper prepared by Mr. Theodor van Boven, member of the Committee on the Elimination of Racial Discrimination, in accordance with paragraph 51 of Commission resolution 1998/26*, U.N. Doc. E/CN.4/1999/WG.1/BP.7, 26 February 1999, para. 5(c): "Victims of double discrimination constitute a third area of major concern. Many persons are suffering in a double sense as victims of accumulated discrimination: race and gender, race and sexual orientation..."; ¶ Amnesty International, *supra* at note 6, p. 6: "LGBT people's vulnerability to violence will also depend on such factors as gender, ethnicity and economic status."

<sup>12</sup> See note 3, *supra*.

amendment and interpretation, and ensure the effective realisation of these principles;<sup>13</sup>

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<sup>13</sup> See concluding observations of the U.N. treaty bodies, *inter alia*: ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Finland*, U.N. Doc. CCPR/CO/82/FIN, 2 December 2004, para. 3: “The Committee notes with satisfaction the adoption of: (a) A new law against discrimination which entered into force in February 2004, banning all direct or indirect discrimination based on age, ethnic or national origin...and sexual orientation...”; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Namibia*, U.N. Doc. CCPR/CO/81/NAM, 30 July 2004, para. 22: “The Committee notes the absence of anti-discrimination measures for sexual minorities, such as homosexuals...The State party should consider, in enacting anti-discrimination legislation, introducing the prohibition of discrimination on the ground of sexual orientation”; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Philippines*, U.N. Doc. CCPR/CO/79/PHL, 1 December 2003, para. 18: “[...] The Committee urges the State party to take the necessary steps to adopt legislation explicitly prohibiting discrimination, in accordance with articles 3 and 26 of the Covenant. The Committee notes that legislation related to sexual orientation is currently being discussed in Congress and urges the State party, in this context, to pursue its efforts to counter all forms of discrimination. [...]”; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Slovakia*, U.N. Doc. CCPR/CO/78/SVK, 22 August 2003, para. 4: “The Committee welcomes progress made in various areas...in particular the continuing process of bringing the State party's legislation into harmony with its international obligations. This includes...the amendment of the labour code to include non-discrimination principles, including in the area of sexual orientation...”; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Trinidad and Tobago*, U.N. Doc. CCPR/CO/70/TTO, 3 November 2000, para. 11: “The Committee urges that priority be given to all necessary preparations, so as to bring into force by proclamation at the earliest possible date the Equal Opportunities Act...The State party should, thereafter, introduce amending legislation to extend the provisions of the Act to those suffering discrimination on grounds of...sexual orientation...”; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Hong Kong (China)*, U.N. Doc. CCPR/C/79/Add.117, 12 November 1999, para. 15: “The Committee remains concerned that no legislative remedies are available to individuals in respect of discrimination on the grounds of race or sexual orientation. Necessary legislation should be enacted in order to ensure full compliance with article 26 of the Covenant”; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Poland*, U.N. Doc. CCPR/C/79/Add.110, 29 July 1999, para. 23: “The Committee regrets that the reference to sexual orientation which had originally been contained in the non-discrimination clause of the draft Constitution has been deleted from the text, which could lead to violations of articles 17 and 26”; ¶ CESCR, *Concluding observations of the Committee on Economic, Social and Cultural Rights: People's Republic of China (including Hong Kong and Macao)*, U.N. Doc. E/C.12/1/Add.107, 13 May 2005, para. 78: “[...] The Committee wishes to reiterate in particular its concern at the following issues: (a) The present anti-discrimination legislation [in HKSAR] does not cover discrimination on the basis of race, sexual orientation and age”; ¶ CESCR, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Trinidad and Tobago*, U.N. Doc. E/C.12/1/Add.80, 5 June 2002, para. 37: “The Committee recommends that the State party take legislative and other effective measures to eliminate discrimination,

B. Repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent,<sup>14</sup> and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;<sup>15</sup>

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in accordance with article 2.2 of the Covenant. In particular, the Committee wishes to encourage the State to undertake proactive policies to promote the rights of individuals, especially with regard to their sexual orientation..."; ¶ Committee on the Rights of the Child, *Concluding observations of the Committee on the Rights of the Child: Slovakia*, U.N. Doc. CRC/C/SVK/CO/2, 10 July 2007, para. 28: "The Committee urges the State party to ensure full protection under the Anti-Discrimination Law against discrimination on the grounds of, ethnicity, disability, religion or belief, or sexual orientation"; ¶ Committee on the Rights of the Child, *Concluding observations of the Committee on the Rights of the Child: Samoa*, U.N. Doc. CRC/C/WSM/CO/1, 16 October 2006, para. 28: "While noting that the Samoan Constitution and national legislation provide the child some protection from discrimination, the Committee remains concerned at the many areas of potential discrimination, such as...sexual orientation..."; ¶ European Union, *The Treaty of Amsterdam* (amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts), entered into force 1 May 1999, Art. 13; ¶ Council of Europe, Parliamentary Assembly, *Recommendation 1474 (2000): Situation of lesbians and gays in Council of Europe member states*, 26 September 2001, para. 11: "The Assembly therefore recommends that the Committee of Ministers: i. add sexual orientation to the grounds for discrimination prohibited by the European Convention on Human Rights..."; ¶ the following countries have enshrined explicit prohibitions against discrimination based on sexual orientation in their constitutions: Brazil (some states), Ecuador, Fiji, Germany (some states), Namibia, Portugal, South Africa, Sweden, and Switzerland.

<sup>14</sup> See judgments of the European Court of Human Rights, *inter alia*: ¶ *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45; ¶ *Norris v. Ireland*, judgment of 26 October 1988, Series A no. 142; ¶ *Modinos v. Cyprus*, judgment of 22 April 1993, Series A no. 259; ¶ *S.L. v. Austria*, no. 45330/99, ECHR 2003-I; ¶ *L. and V. v. Austria*, nos. 39392/98 and 39829/98, ECHR 2003-I; see also Views of the Human Rights Committee: ¶ *Communication No. 488/1992: Australia*, U.N. Doc. CCPR/C/50/D/488/1992, Nicholas Toonen v. Australia, 4 April 1994; see concluding observations of the U.N. human rights treaty bodies, *inter alia*: ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Barbados*, U.N. Doc. CCPR/C/BRB/CO/3, 11 May 2007, para. 13: "The Committee expresses concern over discrimination against homosexuals in the State party, and in particular over the criminalizing of consensual sexual acts between adults of the same sex (art. 26). The State party should decriminalize sexual acts between adults of the same sex and take all necessary actions to protect homosexuals from harassment, discrimination and violence."; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Egypt*, U.N. Doc. CCPR/CO/76/EGY, 28 November 2002, para. 19: "The Committee notes the criminalization of some behaviours such as those characterized as "debauchery"...The State party should ensure that articles 17 and 26 of the Covenant are strictly upheld, and should refrain from penalizing private sexual relations between consenting adults."; ¶ Committee on the Rights of the Child, *Concluding observations of the Committee on the Rights of the Child: Chile*, U.N. Doc. CRC/C/CHL/CO/3, 23 April 2007, para. 29: "[...] Furthermore, the Committee is concerned that homosexual relations, including those



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of persons under 18 years old, continue to be criminalized *[sic]*, indicating discrimination on the basis of sexual orientation.”; ¶ Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Kyrgyzstan*, U.N. Doc. E/C.12/1/Add.49, 1 September 2000, para. 17: “[...] The Committee is also concerned at the classification of lesbianism as a sexual offence in the Penal Code; para. 30: “[...] The Committee recommends that the State party proceed to remove lesbianism from the Penal Code...”; ¶ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Egypt*, U.N. Doc. CAT/C/CR/29/4, 23 December 2002, para. 5: “The Committee is concerned about the following: [...] (e) The reports received concerning ill-treatment inflicted on men because of their real or alleged homosexuality, apparently encouraged by the lack of adequate clarity in the penal legislation”; and para. 6: “The Committee recommends that the State party: [...] (k) Remove all ambiguity in legislation which might underpin the persecution of individuals because of their sexual orientation.”; ¶ Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Kyrgyzstan*, U.N. Doc. A/54/38, 5 February 1999, para. 127: “The Committee is concerned that lesbianism is classified as a sexual offence in the Penal Code.”; para. 128: “The Committee recommends that lesbianism be reconceptualized as a sexual orientation and that penalties for its practice be abolished.”; ¶ U.N. General Assembly, *Extrajudicial, summary or arbitrary executions, Interim report of the Special Rapporteur, Asma Jahangir*, U.N. Doc. A/57/138, 2 July 2002, para. 37: “...the continuing prejudice against members of sexual minorities and, especially, the criminalization of matters of sexual orientation increase the social stigmatization of these persons. This in turn makes them more vulnerable to violence and human rights abuses...”; ¶ CHR, *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Asma Jahangir*, U.N. Doc. E/CN.4/2000/3, 25 January 2000, para. 116: “[...] The Special Rapporteur believes that decriminalizing matters of sexual orientation would greatly contribute to overcoming the social stigmatization of members of sexual minorities”; ¶ CHR, *Opinions adopted by the Working Group on Arbitrary Detention*, Opinion No. 7/2002 (Egypt), U.N. Doc. E/CN.4/2003/8/Add.1, 24 January 2003, p. 73, para. 28: “[...] The detention of the above-mentioned persons prosecuted on the grounds that, by their sexual orientation, they incited “social dissention” constitutes an arbitrary deprivation of liberty, being in contravention of the provisions of article 2, paragraph 1, of the Universal Declaration of Human Rights, and articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights to which the Government is a party”; ¶ European Union, ‘European Parliament resolution on the situation as regards fundamental rights in the European Union’ (Res. A5-0223/2001, 5 July 2001), in *Official Journal of the European Communities*, C 65 E, Volume 45 (14 March 2002), para. 83: “Repeal discriminatory laws against gays and lesbians in criminal codes of current Member States, as well as assuring that they will not ratify any accession of countries which have discriminatory laws against homosexuality...”

<sup>15</sup> See judgment of the European Court of Human Rights: ¶ *B.B. v. the United Kingdom*, no. 53760/00, 10 February 2004; and former European Commission of Human Rights decision regarding different ages of consent: ¶ *Sutherland v. United Kingdom*, no. 25186/94, Report of the European Commission of Human Rights, 1 July 1997; see also: ¶ Committee on the Rights of the Child, *Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland-Isle of Man*, U.N. Doc. CRC/C/15/Add.134, 16 October 2000, para. 22: “...concern is expressed at the insufficient efforts made to provide against discrimination based on sexual orientation. While the Committee notes the Isle of

C. Adopt appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation and gender identity;<sup>16</sup>

D. Take appropriate measures to secure adequate advancement of persons of diverse sexual orientations and gender identities as may be necessary to ensure such groups or individuals' equal enjoyment or exercise of human rights. Such measures shall not be deemed to be discriminatory;<sup>17</sup>

E. In all their responses to discrimination on the basis of sexual orientation or gender identity, take account of the manner in which such discrimination may intersect with other forms of discrimination;<sup>18</sup>

F. Take all appropriate action, including programmes of education and training, with a view to achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression.<sup>19</sup>

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Man's intention to reduce the legal age for consent to homosexual relations from 21 to 18 years, it remains concerned about the disparity that continues to exist between the ages for consent to heterosexual (16 years) and homosexual relations"; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Austria*, U.N. Doc. CCPR/C/79/Add.103, 9 November 1998, para. 13: "The Committee considers that existing legislation on the minimum age of consent for sexual relations in respect of male homosexuals is discriminatory on grounds of sex and sexual orientation. It requests that the law be revised to remove such discriminatory provisions."

<sup>16</sup> See comparable provisions in CEDAW, Art. 2.

<sup>17</sup> See similar language in: ¶ ICERD, Art. 1(4); ¶ CEDAW, Arts. 3 and 4.

<sup>18</sup> CHR, *Report of the independent expert on minority issues, Gay McDougall*, U.N. Doc. E/CN.4/2006/74, 6 January 2006, para. 28: "Finally, the independent expert recognizes that some individuals within ethnic, religious, linguistic or national minority groups may experience multiple forms of discrimination because of other factors including gender, gender expression, gender identity, sexual orientation, disability, age or health status. This means that, within minority communities, some individuals who are already struggling against intolerable levels of generalized exclusion also face compounded forms of discrimination or violence based on their gender, personal identity or expression"; para. 42: "The independent expert will also devote attention to the situations of those members of minority groups who experience multiple forms of discrimination, based on aspects of their identities and personal realities such as sexual orientation or gender expression that challenge social or cultural norms."

<sup>19</sup> ¶ See CEDAW, Art. 5(a); ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Chile*, U.N. Doc. CCPR/C/CHL/CO/5, 18 May 2007, para. 16: "The State party should guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation...It should also launch awareness-raising programmes to combat social prejudice"; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Greece*, U.N. Doc. CCPR/CO/83/GRC, 25 April 2005, para.19: "The Committee is concerned at

### PRINCIPLE 3: THE RIGHT TO RECOGNITION BEFORE THE LAW

Everyone has the right to recognition everywhere as a person before the law.<sup>20</sup> Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity.<sup>21</sup> No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.

#### States shall:<sup>22</sup>

A. Ensure that all persons are accorded legal capacity in civil matters, without discrimination on the basis of sexual orientation or gender identity, and the opportunity to exercise that capacity, including equal rights to

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reports of continued discrimination against individuals on the basis of their sexual orientation...The State party should provide remedies against discriminatory practices on the basis of sexual orientation, as well as informational measures to address patterns of prejudice and discrimination"; ¶ Committee on the Rights of the Child, *Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland-Overseas Territories*, U.N. Doc. CRC/C/15/Add.135, 16 October 2000, para. 25: "...the Committee remains concerned that insufficient efforts have been made to ensure the full implementation of article 2 of the Convention and that discrimination based on gender, sexual orientation and birth status remains apparent in some of the Overseas Territories"; para. 26: "...the Committee recommends that all appropriate measures be taken to address discrimination arising from the socialization of boys and girls into inappropriate gender roles and the resulting determination of social attitudes concerning children based on gender"; ¶ Alice M. Miller, *Sexual Rights Words and their Meanings: The gateway to effective human rights work on sexual and gender diversity* (paper delivered at expert workshop, Yogyakarta, Indonesia, November 2006), p. 15: "...if one wishes to combat stigma and discrimination around the diverse identities and personhoods that individuals claim around sexuality, then the state's obligation to create conditions that enable diversity will be called into play."

<sup>20</sup> ¶ UDHR, Art. 6; ¶ ICCPR, Art. 16; ¶ CEDAW, Art. 15; ¶ CRC, Art. 8; ¶ American Convention, Art. 3; ¶ African Charter, Art. 5.

<sup>21</sup> In November 2006 Spain passed legislation that allows individuals who have been diagnosed with gender-identity disorder to legally change their gender (to obtain legal identity documents in their self-defined gender) without the need for gender reassignment surgery.

<sup>22</sup> See note 3, *supra*.

conclude contracts, and to administer, own, acquire (including through inheritance), manage, enjoy and dispose of property;<sup>23</sup>

B. Take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity;<sup>24</sup>

C. Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person's profound self-defined gender identity;

D. Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned;

E. Ensure that changes to identity documents will be recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy;

F. Undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment.

#### **PRINCIPLE 4: THE RIGHT TO LIFE**

Everyone has the right to life.<sup>25</sup> No one shall be arbitrarily deprived of life, including by reference to considerations of sexual orientation or gender identity.<sup>26</sup> The death penalty shall not be imposed on any person on the basis

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<sup>23</sup> ¶ UDHR, Art. 17; ¶ ICERD, Art. 5(d)(v); ¶ CEDAW, Arts. 15(2) and 16(1)(h); ¶ ICRMW, Art. 15; ¶ *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms* [Protocol 1 to the ECHR], 20 March 1952, Art. 1; ¶ American Convention, Art. 21; ¶ African Charter, Art. 14.

<sup>24</sup> See judgments of the European Court of Human Rights: ¶ *B. v. France*, judgment of 25 March 1992, Series A no. 232-C; ¶ *I. v. the United Kingdom* [GC], no. 25680/94, 11 July 2002; ¶ *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, ECHR 2002-VI.

<sup>25</sup> ¶ UDHR, Art. 3; ¶ ICCPR, Art. 6; ¶ CRC, Art. 6; ¶ ECHR, Art. 2; ¶ American Convention, Art. 4; ¶ African Charter, Art. 4.

<sup>26</sup> See, *inter alia*: ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: El Salvador*, U.N. Doc. CCPR/CO/78/SLV, 22 August 2003, para. 16: "The Committee expresses concern at the incidents of people being attacked, or even killed, on account of their sexual orientation..."; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Colombia*, U.N. Doc. CCPR/C/79/Add.76, 5 May 1997, para. 16: "The Committee also deplores the fact that so-called "social-cleansing" operations, targeting street children, homosexuals, prostitutes and petty delinquents, continue to be carried out and that appropriate and effective action has not yet been taken to ensure the full protection of the rights of these groups, especially of their right to life"; ¶ CHR, *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Asma Jahangir*, U.N. Doc. E/CN.4/2000/3, 25 January 2000, para. 116: "The Special Rapporteur encourages

of consensual sexual activity among persons who are over the age of consent or on the basis of sexual orientation or gender identity.<sup>27</sup>

**States shall:**<sup>28</sup>

A. Repeal all forms of crime that have the purpose or effect of prohibiting consensual sexual activity among persons of the same sex who are over the age of consent<sup>29</sup> and, until such provisions are repealed, never impose the death penalty on any person convicted under them;<sup>30</sup>

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Governments to renew their efforts to protect the security and the right to life of persons belonging to sexual minorities. Acts of murder and death threats should be promptly and thoroughly investigated regardless of the sexual orientation of the victims."

<sup>27</sup> ¶ ICCPR, Art. 6 (2): "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes..."; ¶ American Convention, Art. 4 (2): "In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes..."; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Sudan*, U.N. Doc. CCPR/C/SDN/CO/3/CRP.1, 26 July 2007, para. 19: "The imposition in the State party of the death penalty for offences which cannot be characterized as the most serious...as well as practices which should not be criminalised such as committing a third homosexual act and illicit sex, is incompatible with article 6 of the Covenant [...] The State party should ensure that the death penalty, if used at all, should be applicable only to the most serious crimes...and should be repealed for all other crimes."; ¶ CHR, *Resolution on the death penalty*, U.N. Doc. E/CN.4/RES/2005/59, 20 April 2005, para. 7 (f): "...ensure also that the notion of "most serious crimes" does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as...sexual relations between consenting adults..."; ¶ European Union, 'European Parliament resolution on human rights in the world in 2000 and the European Union Human Rights Policy' (Res. A5-0193/2001, 5 July 2001), in *Official Journal of the European Communities*, C 65 E, Volume 45 (14 March 2002), para. 116: "Stresses that homosexuals are still victims of discrimination, prejudice and denial of their basic human rights in countries all over the world, including some Member States and...calls upon the eighty countries in the world which still prohibit homosexuality in their domestic law to change this legislation without delay; urges those States which impose the death penalty on homosexuals to stop doing so immediately"; ¶ see also Scott Long, "Why Should He Be Punished This Way?", *Sexual Orientation, Gender Identity, Sexual Rights: Understanding the Violations*, paper delivered at Expert Workshop on 'Human Rights, Sexual Orientation and Gender Identity', Yogyakarta, Indonesia, November 2006, pp. 3-4: "...in a number of countries, particularly under *shari'a* law, sexual intercourse between men, and sometimes women, is punishable by death"; additionally, "[o]utside those states where they face legal execution, gay men, lesbians, bisexuals, and transgender people still confront steady and unrelenting threats of violent death at the hands of numerous agents--state authorities, "death squads" engaged in "social cleansing", and private individuals."

<sup>28</sup> See note 3, *supra*.

<sup>29</sup> See, *inter alia*: ¶ Human Rights Committee, *Communication No. 488/1992: Australia*, U.N. Doc. CCPR/C/50/D/488/1992, Nicholas Toonen v. Australia, 4 April 1994; see also judgments of the European Court of Human Rights, *inter alia*: ¶

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*Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45; ¶ *Norris v. Ireland*, judgment of 26 October 1988, Series A no. 142; ¶ *Modinos v. Cyprus*, judgment of 22 April 1993, Series A no. 259; ¶ *S.L. v. Austria*, no. 45330/99, ECHR 2003-I; ¶ *L. and V. v. Austria*, nos. 39392/98 and 39829/98, ECHR 2003-I; see concluding observations of the U.N. human rights treaty bodies, *inter alia*: ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Barbados*, U.N. Doc. CCPR/C/BRB/CO/3, 11 May 2007, para. 13: “The Committee expresses concern over discrimination against homosexuals in the State party, and in particular over the criminalizing of consensual sexual acts between adults of the same sex (art. 26). The State party should decriminalize sexual acts between adults of the same sex and take all necessary actions to protect homosexuals from harassment, discrimination and violence.”; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Egypt*, U.N. Doc. CCPR/CO/76/EGY, 28 November 2002, para. 19: “The Committee notes the criminalization of some behaviours such as those characterized as “debauchery”...The State party should ensure that articles 17 and 26 of the Covenant are strictly upheld, and should refrain from penalizing private sexual relations between consenting adults.”; ¶ Committee on the Rights of the Child, *Concluding observations of the Committee on the Rights of the Child: Chile*, U.N. Doc. CRC/C/CHL/CO/3, 23 April 2007, para. 29: “[...] Furthermore, the Committee is concerned that homosexual relations, including those of persons under 18 years old, continue to be criminalized [sic], indicating discrimination on the basis of sexual orientation.”; ¶ Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Kyrgyzstan*, U.N. Doc. E/C.12/1/Add.49, 1 September 2000, para. 17: “[...] The Committee is also concerned at the classification of lesbianism as a sexual offence in the Penal Code; para. 30: “[...] The Committee recommends that the State party proceed to remove lesbianism from the Penal Code...”; ¶ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Egypt*, U.N. Doc. CAT/C/CR/29/4, 23 December 2002, para. 5: “The Committee is concerned about the following: [...] (e) The reports received concerning ill-treatment inflicted on men because of their real or alleged homosexuality, apparently encouraged by the lack of adequate clarity in the penal legislation”; and para. 6: “The Committee recommends that the State party: [...] (k) Remove all ambiguity in legislation which might underpin the persecution of individuals because of their sexual orientation.”; ¶ Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Kyrgyzstan*, U.N. Doc. A/54/38, 5 February 1999, para. 127: “The Committee is concerned that lesbianism is classified as a sexual offence in the Penal Code.”; para. 128: “The Committee recommends that lesbianism be reconceptualized as a sexual orientation and that penalties for its practice be abolished.”; ¶ U.N. General Assembly, *Extrajudicial, summary or arbitrary executions, Interim report of the Special Rapporteur, Asma Jahangir*, U.N. Doc. A/57/138, 2 July 2002, para. 37: “...the continuing prejudice against members of sexual minorities and, especially, the criminalization of matters of sexual orientation increase the social stigmatization of these persons. This in turn makes them more vulnerable to violence and human rights abuses, including death threats and violations of the right to life...”; ¶ CHR, *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Asma Jahangir*, U.N. Doc. E/CN.4/2000/3, 25 January 2000, para. 116: “[...] The Special Rapporteur believes that decriminalizing matters of sexual orientation would greatly contribute to overcoming the social stigmatization of members of sexual minorities...”; ¶ CHR, *Opinions adopted by the Working Group on Arbitrary Detention*, Opinion No. 7/2002

B. Remit sentences of death and release all those currently awaiting execution for crimes relating to consensual sexual activity among persons who are over the age of consent;

C. Cease any State-sponsored or State-condoned attacks on the lives of persons based on sexual orientation or gender identity,<sup>31</sup> and ensure that all such attacks, whether by government officials or by any individual or

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(Egypt), U.N. Doc. E/CN.4/2003/8/Add.1, 24 January 2003, p. 73, para. 28: “[...] The detention of the above-mentioned persons prosecuted on the grounds that, by their sexual orientation, they incited “social dissention” constitutes an arbitrary deprivation of liberty, being in contravention of the provisions of article 2, paragraph 1, of the Universal Declaration of Human Rights, and articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights to which the Government is a party.”; ¶ European Union, ‘European Parliament resolution on the situation as regards fundamental rights in the European Union’ (Res. A5-0223/2001, 5 July 2001), in *Official Journal of the European Communities*, C 65 E, Volume 45 (14 March 2002), para. 83: “Repeal discriminatory laws against gays and lesbians in criminal codes of current Member States, as well as assuring that they will not ratify any accession of countries which have discriminatory laws against homosexuality...”

<sup>30</sup> See, *inter alia*: ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Sudan*, U.N. Doc. CCPR/C/79/Add.85, 19 November 1997, para. 8: “The imposition in the State party of the death penalty for offences which cannot be characterized as the most serious, including apostasy, committing a third homosexual act, illicit sex, embezzlement by officials, and theft by force, is incompatible with article 6 of the Covenant...Therefore: The death penalty, if used at all, should be applicable only to the most serious crimes, in accordance with article 6, and should be repealed for all other crimes. [...]”; ¶ CHR, *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Asma Jahangir*, U.N. Doc. E/CN.4/2000/3, 25 January 2000, para. 70: “[...] Paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty states that the scope of crimes subject to the death penalty should not go beyond intentional crimes with lethal or other extremely grave consequences. The Special Rapporteur is strongly of the opinion that these restrictions exclude the possibility of imposing death sentences for...actions primarily related to prevailing moral values, such as...matters of sexual orientation”; para. 116: “[...] Matters of sexual orientation should under no circumstances be punishable by death.”; ¶ *Safeguards guaranteeing protection of the rights of those facing the death penalty*, approved by Economic and Social Council resolution 1984/50, 25 May 1984, para. 1: “In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.”

<sup>31</sup> See, *inter alia*: Human Rights Committee, *Concluding observations of the Human Rights Committee: United States of America*, U.N. Doc. CCPR/C/USA/CO/3/Rev.1, 18 December 2006, para. 25: “The Committee notes with concern allegations of widespread incidence of violent crime perpetrated against persons of minority sexual orientation, including by law enforcement officials. It notes with concern the failure to address such crime in the legislation on hate crime adopted at the federal level and in many states. [...] The State party should ensure that its hate crime legislation, both at the federal and state levels, address sexual orientation-related violence...”

group,<sup>32</sup> are vigorously investigated, and that where appropriate evidence is found, those responsible are prosecuted, tried and duly punished.<sup>33</sup>

## **PRINCIPLE 5: THE RIGHT TO SECURITY OF THE PERSON**

Everyone, regardless of sexual orientation or gender identity, has the right to security of the person<sup>34</sup> and to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.<sup>35</sup>

### **States shall:**<sup>36</sup>

A. Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity;

B. Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related

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<sup>32</sup> CHR, *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Philip Alston*, U.N. Doc. E/CN.4/2005/7, 22 December 2004, para. 71: "Crimes, including murder, carried out by individuals can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators as well as to address any attitudes or conditions within society which encourage or facilitate such crimes. Two sometimes contested examples include honour killings...and killings directed at groups such as homosexuals and members of minority groups."

<sup>33</sup> ¶ CHR, *Resolution on extrajudicial, summary or arbitrary executions*, U.N. Doc. E/CN.4/RES/2005/34, 19 April 2005, para. 5: "Reaffirms the obligation of States to protect the inherent right to life of all persons under their jurisdiction and calls upon States concerned to investigate promptly and thoroughly all cases of killings, including those committed in the name of passion or in the name of honour, all killings committed for any discriminatory reason, including sexual orientation..."; ¶ see also *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, approved by Economic and Social Council resolution 1989/65, 24 May 1989, in particular paras. 9 and 18.

<sup>34</sup> ¶ UDHR Art. 3; ¶ ICCPR, Art. 9; ¶ ECHR, Art. 5; ¶ American Convention, Art. 7; ¶ African Charter, Art. 6; ¶ Declaration on Violence against Women, Art. 3(c); ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: El Salvador*, U.N. Doc. CCPR/CO/78/SLV, 22 August 2003, para. 16: "The Committee expresses concern at the incidents of people being attacked, or even killed, on account of their sexual orientation (art. 9), at the small number of investigations mounted into such illegal acts, and at the current provisions...used to discriminate against people on account of their sexual orientation (art. 26). The State Party should provide effective protection against violence and discrimination based on sexual orientation."

<sup>35</sup> ¶ See CERD Art. 5(b); ¶ CRC, Art. 19.

<sup>36</sup> See note 3, *supra*.



harassment, based on the sexual orientation or gender identity of any person or group of persons, in all spheres of life, including the family;<sup>37</sup>

C. Take all necessary legislative, administrative and other measures to ensure that the sexual orientation or gender identity of the victim may not be advanced to justify, excuse or mitigate such violence;

D. Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation;<sup>38</sup>

E. Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity.

## **PRINCIPLE 6: THE RIGHT TO PRIVACY**

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<sup>37</sup> ¶ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Poland*, U.N. Doc. CAT/C/POL/CO/4, 25 July 2007, para. 20: "The State party should incorporate in its Penal Code an offence to punish hate crimes as acts of intolerance and incitation to hatred and violence based on sexual orientation"; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: United States of America*, U.N. Doc. CCPR/C/USA/CO/3/Rev.1, 18 December 2006, para. 25: "The Committee notes with concern allegations of widespread incidence of violent crime perpetrated against persons of minority sexual orientation, including by law enforcement officials. It notes with concern the failure to address such crime in the legislation on hate crime adopted at the federal level and in many states. [...] The State party should ensure that its hate crime legislation, both at the federal and state levels, address sexual orientation-related violence..."; ¶ Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Denmark*, U.N. Doc. CERD/C/DEN/CO/17, 19 October 2006, para. 6: "The Committee notes with appreciation that section 81 of the Criminal Code...introduced an aggravating circumstance for offences based on another's ethnic origin, faith, sexual orientation or the like"; ¶ CESCR, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Monaco*, U.N. Doc. E/C.12/MCO/CO/1, 13 June 2006, para. 3: "The Committee notes with satisfaction the adoption of the Act...on freedom of public expression, which criminalizes insults...based on real or supposed sexual orientation"; ¶ CHR, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/49: Cultural practices in the family that are violent towards women*, U.N. Doc. E/CN.4/2002/83, 31 January 2002, para. 102: "Women who transgress the boundaries of appropriate sexual behaviour, even in countries where honour killings do not take place, are often subject to violence. [...] In addition, non-heterosexual orientations are also punished severely. Recently, in Zimbabwe, a young lesbian woman was locked up by her family and forced to submit to rape by an older man to "correct" her orientation."

<sup>38</sup> See 'Principle 28: The Right to Effective Remedies and Redress', *infra*.

Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family, home or correspondence as well as to protection from unlawful attacks on their honour and reputation.<sup>39</sup> The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation or gender identity, as well as decisions and choices regarding both one's own body and consensual sexual and other relations with others.

**States shall:**<sup>40</sup>

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<sup>39</sup> ¶ UDHR, Art. 12; ¶ ICCPR, Art. 17; ¶ CRC, Art. 16; ¶ ECHR, Art. 8; ¶ American Convention, Art. 11; see judgments of the European Court of Human Rights, *inter alia*: ¶ *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45; ¶ *Norris v. Ireland*, judgment of 26 October 1988, Series A no. 142; ¶ *B. v. France*, judgment of 25 March 1992, Series A no. 232-C; ¶ *Modinos v. Cyprus*, judgment of 22 April 1993, Series A no. 259; ¶ *Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, ECHR 1999-IX; ¶ *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, ECHR 1999-VI; ¶ *Lustig-Prean and Beckett v. the United Kingdom*, nos. 31417/96 and 32377/96, 27 September 1999; ¶ *A.D.T. v. the United Kingdom*, no. 35765/97, ECHR 2000-IX; ¶ *I. v. the United Kingdom* [GC], no. 25680/94, 11 July 2002; ¶ *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, ECHR 2002-VI; ¶ *S.L. v. Austria*, no. 45330/99, ECHR 2003-I; ¶ *L. and V. v. Austria*, nos. 39392/98 and 39829/98, ECHR 2003-I; ¶ *Karner v. Austria*, no. 40016/98, ECHR 2003-IX; ¶ *Van Kück v. Germany*, no. 35968/97, ECHR 2003-VII; ¶ *Grant v. the United Kingdom*, no. 32570/03, ECHR 2006; see Views of the Human Right Committee: ¶ *Communication No. 488/1992: Australia*, U.N. Doc. CCPR/C/50/D/488/1992, Nicholas Toonen v. Australia, 4 April 1994; see also concluding observations of the Human Rights Committee, *inter alia*: ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Greece*, U.N. Doc. CCPR/CO/83/GRC, 25 April 2005, para.19: "The Committee is concerned at reports of continued discrimination against individuals on the basis of their sexual orientation (arts. 17 and 26)"; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Romania*, U.N. Doc. CCPR/C/79/Add.111, 28 July 1999, para. 16: "The Committee is concerned about restrictions on the right to privacy, in particular in regard to homosexual relations between consenting adults..."; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Chile*, U.N. Doc. CCPR/C/79/Add.104, 30 March 1999, para. 20: "The continuation in force of legislation that criminalizes homosexual relations between consenting adults involves violation of the right to privacy protected under article 17 of the Covenant and may reinforce attitudes of discrimination between persons on the basis of sexual orientation"; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: United States of America*, U.N. Doc. CCPR/C/79/Add.50, 3 October 1995, para. 287: "The Committee is concerned at the serious infringement of private life in some states which classify as a criminal offence sexual relations between adult consenting partners of the same sex carried out in private, and the consequences thereof for their enjoyment of other human rights without discrimination."

<sup>40</sup> See note 3, *supra*.

A. Take all necessary legislative, administrative and other measures to ensure the right of each person, regardless of sexual orientation or gender identity, to enjoy the private sphere, intimate decisions, and human relations, including consensual sexual activity among persons who are over the age of consent, without arbitrary interference;<sup>41</sup>

B. Repeal all laws that criminalise consensual sexual activity among persons of the same sex who are over the age of consent,<sup>42</sup> and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;<sup>43</sup>

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<sup>41</sup> See concluding observations of the Human Rights Committee, *inter alia*: ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Namibia*, U.N. Doc. CCPR/CO/81/NAM, 30 July 2004, para. 22: “The Committee notes the absence of anti-discrimination measures for sexual minorities, such as homosexuals...The State party should consider, in enacting anti-discrimination legislation, introducing the prohibition of discrimination on the ground of sexual orientation”; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: El Salvador*, U.N. Doc. CCPR/CO/78/SLV, 22 August 2003, para. 16: “The Committee expresses concern at...the current provisions...used to discriminate against people on account of their sexual orientation (art. 26). The State Party should provide effective protection against violence and discrimination based on sexual orientation”; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Egypt*, U.N. Doc. CCPR/CO/76/EGY, 28 November 2002, para. 19: “[...] The State party should ensure that articles 17 and 26 of the Covenant are strictly upheld, and should refrain from penalizing private sexual relations between consenting adults”; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Poland*, U.N. Doc. CCPR/C/79/Add.110, 29 July 1999, para. 23: “The Committee regrets that the reference to sexual orientation which had originally been contained in the non-discrimination clause of the draft Constitution has been deleted from the text, which could lead to violations of articles 17 and 26.”

<sup>42</sup> See judgments of the European Court of Human Rights, *inter alia*: ¶ *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45; ¶ *Norris v. Ireland*, judgment of 26 October 1988, Series A no. 142; ¶ *Modinos v. Cyprus*, judgment of 22 April 1993, Series A no. 259; ¶ *S.L. v. Austria*, no. 45330/99, ECHR 2003-I; ¶ *L. and V. v. Austria*, nos. 39392/98 and 39829/98, ECHR 2003-I; see also Views of the Human Rights Committee: ¶ *Communication No. 488/1992: Australia*, U.N. Doc. CCPR/C/50/D/488/1992, Nicholas Toonen v. Australia, 4 April 1994; see concluding observations of the U.N. human rights treaty bodies, *inter alia*: ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Barbados*, U.N. Doc. CCPR/C/BRB/CO/3, 11 May 2007, para. 13: “The Committee expresses concern over discrimination against homosexuals in the State party, and in particular over the criminalizing of consensual sexual acts between adults of the same sex (art. 26). The State party should decriminalize sexual acts between adults of the same sex and take all necessary actions to protect homosexuals from harassment, discrimination and violence.”; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Egypt*, U.N. Doc. CCPR/CO/76/EGY, 28 November 2002, para. 19: “The Committee notes the criminalization of some behaviours such as those characterized as “debauchery”...The State party should ensure that articles 17 and 26 of the Covenant are strictly upheld, and should refrain from penalizing private sexual relations between consenting adults.”; ¶ Committee on the Rights of the Child, *Concluding observations of the Committee on the Rights*

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of the Child: Chile, U.N. Doc. CRC/C/CHL/CO/3, 23 April 2007, para. 29: “[...] Furthermore, the Committee is concerned that homosexual relations, including those of persons under 18 years old, continue to be criminalized [sic], indicating discrimination on the basis of sexual orientation.”; ¶ Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Kyrgyzstan*, U.N. Doc. E/C.12/1/Add.49, 1 September 2000, para. 17: “[...] The Committee is also concerned at the classification of lesbianism as a sexual offence in the Penal Code; para. 30: “[...] The Committee recommends that the State party proceed to remove lesbianism from the Penal Code...”; ¶ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Egypt*, U.N. Doc. CAT/C/CR/29/4, 23 December 2002, para. 5: “The Committee is concerned about the following: [...] (e) The reports received concerning ill-treatment inflicted on men because of their real or alleged homosexuality, apparently encouraged by the lack of adequate clarity in the penal legislation”; and para. 6: “The Committee recommends that the State party: [...] (k) Remove all ambiguity in legislation which might underpin the persecution of individuals because of their sexual orientation.”; ¶ Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Kyrgyzstan*, U.N. Doc. A/54/38, 5 February 1999, para. 127: “The Committee is concerned that lesbianism is classified as a sexual offence in the Penal Code.”; para. 128: “The Committee recommends that lesbianism be reconceptualized as a sexual orientation and that penalties for its practice be abolished.”; ¶ U.N. General Assembly, *Extrajudicial, summary or arbitrary executions, Interim report of the Special Rapporteur, Asma Jahangir*, U.N. Doc. A/57/138, 2 July 2002, para. 37: “...the continuing prejudice against members of sexual minorities and, especially, the criminalization of matters of sexual orientation increase the social stigmatization of these persons. This in turn makes them more vulnerable to violence and human rights abuses...”; ¶ CHR, *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Asma Jahangir*, U.N. Doc. E/CN.4/2000/3, 25 January 2000, para. 116: “[...] The Special Rapporteur believes that decriminalizing matters of sexual orientation would greatly contribute to overcoming the social stigmatization of members of sexual minorities”; ¶ CHR, *Opinions adopted by the Working Group on Arbitrary Detention*, Opinion No. 7/2002 (Egypt), U.N. Doc. E/CN.4/2003/8/Add.1, 24 January 2003, p. 73, para. 28: “[...] The detention of the above-mentioned persons prosecuted on the grounds that, by their sexual orientation, they incited “social dissention” constitutes an arbitrary deprivation of liberty, being in contravention of the provisions of article 2, paragraph 1, of the Universal Declaration of Human Rights, and articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights to which the Government is a party”; ¶ European Union, ‘European Parliament resolution on the situation as regards fundamental rights in the European Union’ (Res. A5-0223/2001, 5 July 2001), in *Official Journal of the European Communities*, C 65 E, Volume 45 (14 March 2002), para. 83: “Repeal discriminatory laws against gays and lesbians in criminal codes of current Member States, as well as assuring that they will not ratify any accession of countries which have discriminatory laws against homosexuality...”

<sup>43</sup> See judgment of the European Court of Human Rights: ¶ *B.B. v. the United Kingdom*, no. 53760/00, 10 February 2004; and former European Commission of Human Rights decision regarding different ages of consent: ¶ *Sutherland v. United Kingdom*, no. 25186/94, Report of the European Commission of Human Rights, 1 July 1997; see also: ¶ Committee on the Rights of the Child, *Concluding observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland-Isle of Man*, U.N. Doc. CRC/C/15/Add.134, 16 October 2000, para.

C. Ensure that criminal and other legal provisions of general application are not applied to *de facto* criminalise consensual sexual activity among persons of the same sex who are over the age of consent;

D. Repeal any law that prohibits or criminalises the expression of gender identity, including through dress, speech or mannerisms, or that denies to individuals the opportunity to change their bodies as a means of expressing their gender identity;

E. Release all those held on remand or on the basis of a criminal conviction, if their detention is related to consensual sexual activity among persons who are over the age of consent, or is related to gender identity;

F. Ensure the right of all persons ordinarily to choose when, to whom and how to disclose information pertaining to their sexual orientation or gender identity, and protect all persons from arbitrary or unwanted disclosure, or threat of disclosure of such information by others.<sup>44</sup>

## **PRINCIPLE 7: THE RIGHT TO FREEDOM FROM ARBITRARY DEPRIVATION OF LIBERTY**

No one shall be subjected to arbitrary arrest or detention.<sup>45</sup> Arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise, is arbitrary.<sup>46</sup> All persons under

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22: "...concern is expressed at the insufficient efforts made to provide against discrimination based on sexual orientation. While the Committee notes the Isle of Man's intention to reduce the legal age for consent to homosexual relations from 21 to 18 years, it remains concerned about the disparity that continues to exist between the ages for consent to heterosexual (16 years) and homosexual relations"; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Austria*, U.N. Doc. CCPR/C/79/Add.103, 9 November 1998, para. 13: "The Committee considers that existing legislation on the minimum age of consent for sexual relations in respect of male homosexuals is discriminatory on grounds of sex and sexual orientation. It requests that the law be revised to remove such discriminatory provisions."

<sup>44</sup> U.N. General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/56/156, 3 July 2001 ('Torture and discrimination against sexual minorities', paras. 17-25), para. 21: "[...] Silencing through shame or the threat by law enforcement officials to publicly disclose the birth sex of the victim or his or her sexual orientation (inter alia, to family members) may keep a considerable number of victims from reporting abuses."

<sup>45</sup> ¶ UDHR, Art. 9; ¶ ICCPR, Art. 9; ¶ CRC, Arts. 37(b) and (d); ¶ ECHR, Art. 5; ¶ American Convention, Art. 7; ¶ African Charter, Art. 6.

<sup>46</sup> ¶ Human Rights Council, *Opinions adopted by the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/4/40/Add.1, 2 February 2007, Opinion No. 22/2006 (Cameroon), p. 91, paras. 19-20: "Ever since the Human Rights Committee adopted its View in *Toonen v. Australia* and it itself adopted its Opinion 7/2002 (Egypt), the

arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention, whether or not charged with any offence.<sup>47</sup>

**States shall:**<sup>48</sup>

A. Take all necessary legislative, administrative and other measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for arrest or detention, including the elimination

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Working Group has followed the line taken in those cases. That means that the existence of laws criminalizing homosexual behaviour between consenting adults in private and the application of criminal penalties against persons accused of such behaviour violate the rights to privacy and freedom from discrimination set forth in the International Covenant on Civil and Political Rights. Consequently, the Working Group considers that the fact that the criminalization of homosexuality in Cameroonian law is incompatible with articles 17 and 26 of the International Covenant on Civil and Political Rights, which instrument Cameroon has ratified. The Working Group concludes that the deprivation of liberty of the above-mentioned 11 persons was arbitrary, and that regardless of the fact that they were ultimately released"; ¶ CHR, *Report of the Working Group on Arbitrary Detention*, U.N. Doc. E/CN.4/2004/3, 15 December 2003, para. 73: "The Working Group has also been informed that, in some countries, drug addicts, prostitutes, homosexuals and people suffering from AIDS are locked up on the grounds that they represent a risk to society, and people are given prison sentences solely because of their sexual orientation. Having received a communication concerning 55 persons prosecuted and detained on account of their homosexuality, the Working Group took the view that their detention was arbitrary because it violated articles 2, paragraph 1, and 26 of the International Covenant on Civil Rights, which guarantee equality before the law and the right to equal legal protection against all forms of discrimination, including that based on sex"; ¶ CHR, *Report of the Working Group on Arbitrary Detention*, U.N. Doc. E/CN.4/2003/8, 16 December 2002, p. 2: "In its recommendations in this annual report, the Working Group attaches particular importance to the following questions: [...] (c) The arbitrary character - on the ground of discrimination - of detention motivated by sexual orientation"; ¶ CHR, *Opinions adopted by the Working Group on Arbitrary Detention*, U.N. Doc. E/CN.4/2003/8/Add.1, 24 January 2003, Opinion No. 7/2002 (Egypt), p. 73, para. 28: "[...] The detention of the above-mentioned persons prosecuted on the grounds that, by their sexual orientation, they incited "social dissention" constitutes an arbitrary deprivation of liberty, being in contravention of the provisions of article 2, paragraph 1, of the Universal Declaration of Human Rights, and articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights to which the Government is a party."

<sup>47</sup> U.N. General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* [Principles for the Protection of Persons under Detention], adopted by General Assembly resolution 43/173, 9 December 1988, Principles 10 and 11.

<sup>48</sup> See note 3, *supra*.

of vaguely worded criminal law provisions that invite discriminatory application or otherwise provide scope for arrests based on prejudice;<sup>49</sup>

B. Take all necessary legislative, administrative and other measures to ensure that all persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, and whether charged or not, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention;

C. Undertake programmes of training and awareness-raising to educate police and other law enforcement personnel regarding the arbitrariness of arrest and detention based on a person's sexual orientation or gender identity;<sup>50</sup>

D. Maintain accurate and up to date records of all arrests and detentions, indicating the date, location and reason for detention,<sup>51</sup> and ensure independent oversight of all places of detention by bodies that are adequately mandated and equipped to identify arrests and detentions that may be motivated by the sexual orientation or gender identity of a person.<sup>52</sup>

## **PRINCIPLE 8: THE RIGHT TO A FAIR TRIAL**

Everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, in the determination of their rights and obligations in a suit at law and of any criminal charge against them,<sup>53</sup>

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<sup>49</sup> Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Egypt*, U.N. Doc. CAT/C/CR/29/4, 23 December 2002, para. 6: "The Committee recommends that the State party: [...] (k) Remove all ambiguity in legislation which might underpin the persecution of individuals because of their sexual orientation."

<sup>50</sup> U.N. General Assembly, *Code of Conduct for Law Enforcement Officials*, adopted by General Assembly resolution 34/169, 17 December 1979, Art. 2: "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons."

<sup>51</sup> Principles for the Protection of Persons under Detention, Principle 12.

<sup>52</sup> Principles for the Protection of Persons under Detention, Principle 29.

<sup>53</sup> ¶ UDHR, Art. 10; ¶ ICERD, Art. 5(a); ¶ ICCPR, Art. 14; ¶ CRC, Art. 40; ¶ ECHR, Art. 6; ¶ American Convention, Art. 8; ¶ African Charter, Art. 7; see also: ¶ *Basic Principles on the Independence of the Judiciary*, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, in particular Principles 2, 5 and 6; and ¶ *Guidelines on the Role of Prosecutors*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular Guidelines 12-14.

without prejudice or discrimination on the basis of sexual orientation or gender identity.<sup>54</sup>

**States shall:**<sup>55</sup>

A. Take all necessary legislative, administrative and other measures to prohibit and eliminate prejudicial treatment on the basis of sexual orientation or gender identity at every stage of the judicial process, in civil and criminal proceedings and all other judicial and administrative proceedings which determine rights and obligations,<sup>56</sup> and to ensure that no one's credibility or character as a party, witness, advocate or decision-maker is impugned by reason of their sexual orientation or gender identity;<sup>57</sup>

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<sup>54</sup> ¶ See judgment of the European Court of Human Rights: *Van Kück v. Germany*, no. 35968/97, ECHR 2003-VII; ¶ Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy*, U.N. Doc. A/HRC/4/25, 18 January 2007, para. 21: "There are many complex complaints about unequal access to justice. This problem particularly affects the most vulnerable groups...those who are discriminated against or persecuted (for example, on grounds of their...sexual orientation...)"; ¶ CHR, *Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy: Mission to Brazil*, U.N. Doc. E/CN.4/2005/60/Add.3, 22 February 2005, para. 24: "Lack of access to justice is more of a problem for social groups who suffer from discrimination or marginalization. The Special Rapporteur heard many accounts of court cases involving people from these groups who claimed that the initial violation of their rights had been compounded by their victimization by the judicial system, which reproduces the same discrimination and the same prejudices in the administration of justice. The people most affected...[included] homosexuals, [and] transvestites..."; para. 28: "[...] Transvestites, transsexuals and homosexuals are also frequently the victims of violence and discrimination. When they turn to the judicial system, they are often confronted with the same prejudices and stereotypes they face in society at large"; ¶ CHR, *Preliminary paper by Ms. Leïla Zerrougui, Special Rapporteur appointed to conduct a detailed study of discrimination in the criminal justice system in implementation of Sub-Commission Resolution 2002/3*, U.N. Doc. E/CN.4/Sub.2/2003/3, 26 June 2003, para. 16: "...other persons for other reasons (poverty, sexual orientation, physical or mental handicap, gender, etc.) are also victims of discrimination and subjected to unequal treatment in the criminal justice system."

<sup>55</sup> See note 3, *supra*.

<sup>56</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee: Chile*, U.N. Doc. CCPR/C/CHL/CO/5, 18 May 2007, para. 16: "...the Committee remains concerned about the discrimination to which some people are subject because of their sexual orientation, for instance, before the courts...The State party should guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation, including equality before the law..."

<sup>57</sup> ¶ Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy*, U.N. Doc. A/HRC/4/25, 18 January 2007, para. 23: "As regards judges...practices involving discrimination on grounds such as political allegiance, religion, beliefs about human rights, sex, sexual orientation, physical disability or ethnic origin can leave judges in a precarious position, affecting their employment and promotion prospects"; ¶ U.N. General Assembly, *Report of the*



B. Take all necessary and reasonable steps to protect persons from criminal prosecutions or civil proceedings that are motivated wholly or in part by prejudice regarding sexual orientation or gender identity;<sup>58</sup>

C. Undertake programmes of training and awareness-raising for judges, court personnel, prosecutors, lawyers and others regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.<sup>59</sup>

## **PRINCIPLE 9: THE RIGHT TO TREATMENT WITH HUMANITY WHILE IN DETENTION**

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*Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/56/156, 3 July 2001 ('Torture and discrimination against sexual minorities', paras. 17-25), para. 21: "Discriminatory attitudes to members of sexual minorities can mean that they are perceived as less credible by law enforcement agencies or not fully entitled to an equal standard of protection..."

<sup>58</sup> Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Addendum: Situations in specific countries or territories*, U.N. Doc. A/HRC/4/25/Add.1, 5 April 2007, para. 375: "[...] According to the information received, on 22 November 2005, police raided a villa in Ghantout and arrested 26 men who were gathering there. The police apparently acted in response to allegations that homosexual conduct was taking place and that some of the men were wearing women's garments or make-up. [...] In a trial in February 2006, 12 of the 26 men, including almost all of those who were subjected to invasive bodily examinations, were sentenced to six years' imprisonment on charges relating to homosexuality and obscenity, while a thirteenth man received a lighter sentence. [...] It is the understanding of the Special Rapporteurs that the law of the United Arab Emirates stipulates that a person can only be found guilty of homosexuality if four witnesses unanimously agree that they saw the act or if one of the participants confesses. In this case, it is reported that no witnesses testified against the defendants and that there was no other indication that any of them had engaged in homosexual conduct together. On the other hand, according to the information received, the alleged confessions presented as evidence were extracted under invasive forensic examinations which could amount to torture and could therefore not be used as an evidence for a conviction."

<sup>59</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee: Poland*, U.N. Doc. CCPR/CO/82/POL, 2 December 2004, para. 18: "The Committee is concerned that the right of sexual minorities not to be discriminated against is not fully recognized, and that discriminatory acts and attitudes against persons on the ground of sexual orientation are not adequately investigated and punished (art. 26). The State party should provide appropriate training to law enforcement and judicial officials in order to sensitize them to the rights of sexual minorities. Discrimination on the ground of sexual orientation should be specifically prohibited in Polish law."

Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person.<sup>60</sup> Sexual orientation and gender identity are integral to each person's dignity.

**States shall:**<sup>61</sup>

A. Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;<sup>62</sup>

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<sup>60</sup> ¶ ICCPR, Art. 10; ¶ CRC, Art. 37(c); ¶ American Convention, Art. 5; ¶ *Basic Principles for the Treatment of Prisoners*, adopted and proclaimed by General Assembly resolution 45/111, 14 December 1990, para. 1: "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings"; ¶ *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by General Assembly resolution 43/173, 9 December 1988, Principle 1: "All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person"; ¶ Human Rights Committee, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7)*, U.N. Doc. CCPR General Comment No. 20, 10 March 1992, para. 2.

<sup>61</sup> See note 3, *supra*.

<sup>62</sup> ¶ Committee against Torture, *Concluding observations of the Committee against Torture: Brazil (16 May 2001)*, U.N. Doc. A/56/44, 12 October 2001, para. 119(b): "[...] The Committee is particularly concerned about allegations of ill-treatment and discriminatory treatment of certain groups [in prisons] with regard to access to the already limited essential services, notably on the basis of social origin or sexual orientation", ¶ U.N. General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/56/156, 3 July 2001 ('Torture and discrimination against sexual minorities', paras. 17-25), para. 23: "When detained, members of sexual minorities are often considered as a sub-category of prisoners and detained in worse conditions of detention than the larger prison population. The Special Rapporteur has received information according to which members of sexual minorities in detention have been subjected to considerable violence, especially sexual assault and rape, by fellow inmates and, at times, by prison guards"; ¶ CHR, *Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2001/62, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. E/CN.4/2002/76/Add.1, 14 March 2002, para. 1713: "Gary Adkins, an inmate at Wayne County jail in West Virginia, was reportedly assaulted by correctional officers for no apparent reason in October 1999, had mace sprayed in his eyes, was beaten and subsequently denied medical treatment, resulting in a broken nose and ribs, contusions to the head and cuts and bruises...Fears have been expressed that the cause of the alleged beating was the homosexuality of the victim"; ¶ CHR, *Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, Addendum: Visit to Brazil*, U.N. Doc. E/CN.4/2001/66/Add.2, 30 March 2001, p. 112, para. 199: "Marli Barbosa and Rosana Lage Ligerio, a same-sex couple, were allegedly arrested...on suspicion of murder and were reportedly beaten with pieces of rubber at the 14th district police station in Piedade. According to the information received, they were also verbally abused for their sexual orientation...It is believed that they suffered from discrimination due to their sexual orientation."

B. Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired;<sup>63</sup>

C. Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity;<sup>64</sup>

D. Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population;

E. Ensure that conjugal visits, where permitted, are granted on an equal basis to all prisoners and detainees, regardless of the gender of their partner;

F. Provide for the independent monitoring of detention facilities by the State as well as by non-governmental organisations including organisations working in the spheres of sexual orientation and gender identity;<sup>65</sup>

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<sup>63</sup> U.N. General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/56/156, 3 July 2001 ('Torture and discrimination against sexual minorities', paras. 17-25), para. 22: "As regards the provision of medical treatment, prisoners diagnosed as suffering from gender dysphoria, once detained, are often said to be denied medical treatment for gender dysphoria, such as hormone therapy."

<sup>64</sup> CHR, *Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2001/62, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. E/CN.4/2002/76/Add.1, 14 March 2002, para. 1711: "Robin Lucas, an African-American transgendered woman, was reportedly detained for credit card fraud in California in 1995 and placed in the Special Housing Unit of the Federal Detention Centre, Pleasanton, where the authorities allegedly ignored her complaints about being in a unit generally housing men and visible to male inmates and guards, including when showering and using the toilet. She was reportedly harassed, taunted and threatened because of her sexual orientation."

<sup>65</sup> ¶ *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. res. A/RES/57/199, adopted 18 Dec. 2002, reprinted in 42 I.L.M. 26 (2003), entered into force 22 June 2006; ¶ *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by General Assembly resolution 43/173, 9 December 1988, Principle 29, para. 1: "In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct

G. Undertake programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.<sup>66</sup>

## **PRINCIPLE 10: THE RIGHT TO FREEDOM FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

Everyone has the right to be free from torture and from cruel, inhuman or degrading treatment or punishment,<sup>67</sup> including for reasons relating to sexual orientation or gender identity.<sup>68</sup>

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from the authority directly in charge of the administration of the place of detention or imprisonment"; ¶ *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, E.T.S. 126, entered into force 1 Feb. 1989.

<sup>66</sup> ¶ CAT, Art. 10; ¶ Declaration on Torture, Art. 5; ¶ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: United States of America*, U.N. Doc. CAT/C/USA/CO/2, 25 July 2006, para. 37: "The Committee is concerned about reports of brutality and use of excessive force by the State party's law-enforcement personnel, and the numerous allegations of their ill treatment of vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation..."; ¶ CHR, *Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Mongolia*, E/CN.4/2006/6/Add.4, 20 December 2005, para. 55: "...the Special Rapporteur recommends to the Government of Mongolia that: [...] (p) Law enforcement recruits undergo extensive and thorough training following a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of police equipment, and that serving officers receive continuing education; and (q) Systematic training programmes and awareness-raising campaigns be carried out on the principles of the [Convention against Torture] for the public at large, law enforcement officials, legal professionals and the judiciary."; ¶ CHR, *Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2001/62*, U.N. Doc. E/CN.4/2002/76, 27 December 2001, 'Annex I: Recommendations of the Special Rapporteur', para. (k): "Training courses and training manuals should be provided for police and security personnel [...] In the course of training, particular stress should be placed upon the principle that the prohibition of torture is absolute and non-derogable and that there exists a duty to disobey orders from a superior to commit torture. Governments should scrupulously translate into national guarantees the international standards they have approved and should familiarize law enforcement personnel with the rules they are expected to apply."

<sup>67</sup> ¶ See generally CAT; ¶ UDHR, Art. 5; ¶ ICCPR, Art. 7; ¶ CRC, Art. 37(a); ¶ ICRMW, Art. 10; ¶ ECHR, Art. 3; ¶ American Convention, Art. 5(2); ¶ African Charter, Art. 5; ¶ *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* [Declaration on Torture], G.A. res. 3452 (XXX), annex, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1975); ¶ *Declaration on the Elimination of Violence against Women* [Declaration on Violence against Women], G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993), Art. 3(h).

**States shall:**<sup>69</sup>

A. Take all necessary legislative, administrative and other measures to prevent and provide protection from torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to the sexual orientation or gender identity of the victim, as well as the incitement of such acts;<sup>70</sup>

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<sup>68</sup> ¶ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Ecuador*, U.N. Doc. CAT/C/ECU/CO/3, 8 February 2006, para. 17: "The Committee is concerned about allegations of torture and ill-treatment of members of vulnerable groups, especially indigenous communities, sexual minorities and women, even though these groups are protected by domestic law"; ¶ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Argentina*, U.N. Doc. CAT/C/CR/33/1, 10 December 2004, para. 6: "The Committee expresses its concern at the following: [...] (g) Allegations of torture and ill-treatment of certain other vulnerable groups, such as members of the indigenous communities, sexual minorities and women"; ¶ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Egypt*, U.N. Doc. CAT/C/CR/29/4, 23 December 2002, para. 5: "The Committee is concerned about the following: [...] (e) The reports received concerning ill-treatment inflicted on men because of their real or alleged homosexuality, apparently encouraged by the lack of adequate clarity in the penal legislation"; ¶ Committee against Torture, *Concluding observations of the Committee against Torture: Brazil (16 May 2001)*, U.N. Doc. A/56/44, para. 119(b): "[...] The Committee is particularly concerned about allegations of ill-treatment and discriminatory treatment of certain groups [in prisons] with regard to access to the already limited essential services, notably on the basis of social origin or sexual orientation"; ¶ U.N. General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/56/156, 3 July 2001 ('Torture and discrimination against sexual minorities', paras. 17-25), para. 18: "The Special Rapporteur has received information according to which members of sexual minorities have been subjected, inter alia, to harassment, humiliation and verbal abuse relating to their real or perceived sexual orientation or gender identity and physical abuse, including rape and sexual assault"; para. 19: "...it appears 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."

<sup>69</sup> See note 3, *supra*.

<sup>70</sup> ¶ CAT, Arts. 2(1), 11 and 16; ¶ *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. res. A/RES/57/199, adopted 18 Dec. 2002, reprinted in 42 I.L.M. 26 (2003), entered into force 22 June 2006; ¶ Declaration on Torture, Art. 4; ¶ *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, E.T.S. 126, entered into force 1 Feb. 1989; ¶ Human Rights Committee, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7)*, U.N. Doc. CCPR General Comment No. 20, 10 March 1992, paras. 8 and 11; ¶ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Poland*, U.N. Doc. CAT/C/POL/CO/4, 25 July 2007, para. 20: "The State party should incorporate in its Penal Code an offence to punish hate crimes as acts of intolerance and incitation to

B. Take all reasonable steps to identify victims of torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to sexual orientation or gender identity, and offer appropriate remedies including redress and reparation<sup>71</sup> and, where appropriate, medical and psychological support;<sup>72</sup>

C. Undertake programmes of training and awareness-raising for police, prison personnel and all other officials in the public and private sector who are in a position to perpetrate or to prevent such acts.<sup>73</sup>

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hatred and violence based on sexual orientation.”; ¶ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Egypt*, U.N. Doc. CAT/C/CR/29/4, 23 December 2002: para. 6: “The Committee recommends that the State party: [...] (k) Remove all ambiguity in legislation which might underpin the persecution of individuals because of their sexual orientation.”

<sup>71</sup> ¶ See ‘Principle 28: The Right to Effective Remedies and Redress’, *infra*; ¶ CAT, Art. 14; ¶ Declaration on Torture, Art. 11; ¶ Human Rights Committee, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7)*, U.N. Doc. CCPR General Comment No. 20, 10 March 1992, paras. 14 and 15; ¶ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Ukraine*, U.N. Doc. CAT/C/UKR/CO/5, 3 August 2007, para. 24: “The State party should ensure that adequate compensation is provided to victims of torture and ill-treatment and that appropriate rehabilitation programmes are also provided to all victims of torture, ill-treatment, trafficking, domestic and other sexual violence, including medical and psychological assistance”; ¶ U.N. General Assembly, *Interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/55/290, 11 August 2000, para. 28: “The Special Rapporteur would like to emphasize the inherent relationship between the right of torture victims to obtain reparation and the prevention or non-repetition of further violations.”

<sup>72</sup> ¶ CRC, Art. 39; ¶ Vienna Declaration, *supra* at note 2, Part II, para. 59: “The World Conference on Human Rights stresses the importance of further concrete action within the framework of the United Nations with the view to providing assistance to victims of torture and ensuring more effective remedies for their physical, psychological and social rehabilitation.”; ¶ U.N. General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/56/156, 3 July 2001, para. 22: “...the Special Rapporteur has received information according to which members of sexual minorities have received inadequate medical treatment in public hospitals - even after having been victims of assault - on grounds of their gender identity.”

<sup>73</sup> ¶ CAT, Art. 10; ¶ Declaration on Torture, Art. 5; ¶ Human Rights Committee, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7)*, U.N. Doc. CCPR General Comment No. 20, 10 March 1992, para. 10; ¶ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: United States of America*, U.N. Doc. CAT/C/USA/CO/2, 25 July 2006, para. 37: “The Committee is concerned about reports of brutality and use of excessive force by the State party’s law-enforcement personnel, and the numerous allegations of their ill treatment of vulnerable groups, in particular...persons of different sexual orientation which have not been adequately investigated...”; ¶ CHR, *Report by the Special Rapporteur on*

## **PRINCIPLE 11: THE RIGHT TO PROTECTION FROM ALL FORMS OF EXPLOITATION, SALE AND TRAFFICKING OF HUMAN BEINGS**

Everyone is entitled to protection from trafficking, sale and all forms of exploitation, including but not limited to sexual exploitation,<sup>74</sup> on the grounds of actual or perceived sexual orientation or gender identity.<sup>75</sup> Measures

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*torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Mongolia, E/CN.4/2006/6/Add.4, 20 December 2005, para. 55: "...the Special Rapporteur recommends to the Government of Mongolia that: [...] (p) Law enforcement recruits undergo extensive and thorough training following a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of police equipment, and that serving officers receive continuing education; and (q) Systematic training programmes and awareness-raising campaigns be carried out on the principles of the [Convention against Torture] for the public at large, law enforcement officials, legal professionals and the judiciary.";* ¶ CHR, *Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2001/62, U.N. Doc. E/CN.4/2002/76, 27 December 2001, 'Annex I: Recommendations of the Special Rapporteur', para. (k): "Training courses and training manuals should be provided for police and security personnel [...] In the course of training, particular stress should be placed upon the principle that the prohibition of torture is absolute and non-derogable and that there exists a duty to disobey orders from a superior to commit torture. Governments should scrupulously translate into national guarantees the international standards they have approved and should familiarize law enforcement personnel with the rules they are expected to apply."*

<sup>74</sup> ¶ UDHR, Art. 4; ¶ ICCPR, Art. 8; ¶ ICESCR, Art. 10(3); ¶ CEDAW, Art. 6; ¶ CRC, Arts. 19, 32 and 34-36; ¶ ECHR, Art. 4; ¶ American Convention, Art. 6; ¶ African Charter, Art. 5; see also: *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (2000), entered into force 18 January 2002; ¶ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* [Palermo Protocol], G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force 9 September 2003; ¶ U.N. Economic and Social Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, in 'Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council', U.N. Doc. E/2002/68/Add.1, 20 May 2002.

<sup>75</sup> ¶ CHR, *Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, Addendum: Mission to Brazil*, U.N. Doc. E/CN.4/2004/9/Add.2, 3 February 2004, para. 41: "Gay, lesbian, bisexual and transgender adolescents are more exposed to violence, especially psychological violence. Hostile reactions by society to their gender and sexuality may leave them alone in a marginalized situation that exposes them to exploitation"; ¶ CHR, *Report submitted by Juan Miguel Petit, Special Rapporteur on the sale of children, child prostitution and child pornography*, U.N. Doc. E/CN.4/2004/9, 5 January 2004, para. 118: "Some groups are exposed to greater risk of trafficking and sexual exploitation. [...] Those children who are generally more exposed include...homosexuals, lesbians, bisexuals and transgender children. Social exclusion and discrimination are the

designed to prevent trafficking shall address the factors that increase vulnerability, including various forms of inequality and discrimination on the grounds of actual or perceived sexual orientation or gender identity, or the expression of these or other identities. Such measures must not be inconsistent with the human rights of persons at risk of being trafficked.

**States shall:**<sup>76</sup>

A. Take all necessary legislative, administrative and other measures of a preventive and protective nature regarding the trafficking, sale and all forms of exploitation of human beings, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity;<sup>77</sup>

B. Ensure that any such legislation or measures do not criminalise the behaviour of, stigmatise, or in any other way, exacerbate the disadvantage of those vulnerable to such practices;

C. Establish legal, educational and social measures, services and programmes to address factors that increase vulnerability to trafficking, sale and all forms of exploitation, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity, including such factors as social exclusion, discrimination, rejection by families or cultural communities, lack of financial independence, homelessness, discriminatory social attitudes leading to low self-esteem, and lack of protection from discrimination in access to housing, accommodation, employment and social services.<sup>78</sup>

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underlying causes of the higher degree of risk that some groups face vis-à-vis [commercial sexual exploitation of children]"; ¶ CHR, *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calceñas-Santos*, U.N. Doc. E/CN.4/2000/73, 14 January 2000, para. 139: "Many males run away to escape discrimination based on their sexual orientation. Once living on the streets, poverty and inadequate services make prostitution a viable alternative for such youth."

<sup>76</sup> See note 3, *supra*.

<sup>77</sup> ¶ Palermo Protocol, *supra* at note 74, Arts. 5 and 6; ¶ CHR, *Report submitted by the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, Addendum: Mission to Brazil*, U.N. Doc. E/CN.4/2004/9/Add.2, 3 February 2004, para. 48: "The definition of trafficking according to article 231 [of the penal code] is limited...[It] does not cover trafficking of male adults...nor male to female transgenders if registered as men."

<sup>78</sup> ¶ Palermo Protocol, *supra* at note 74, Art. 9; ¶ CHR, *Report submitted by Juan Miguel Petit, Special Rapporteur on the sale of children, child prostitution and child pornography*, U.N. Doc. E/CN.4/2004/9, 5 January 2004, para. 123: "Transgender youth may be especially vulnerable to entering into prostitution because of adverse reactions to their gender and sexuality on the part of family and peers that may leave them alone and unsupported. The levels of discrimination experienced by young transgender people when trying to find accommodation, obtain an education, get a job and access health services generally leaves them among the most



## PRINCIPLE 12: THE RIGHT TO WORK

Everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment,<sup>79</sup> without discrimination on the basis of sexual orientation or gender identity.<sup>80</sup>

**States shall:**<sup>81</sup>

A. Take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment,<sup>82</sup> including in relation to

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vulnerable and marginalized young people in society. In New Zealand, intensive education programmes on human rights, discrimination, gender and sexuality are considered instrumental to promoting changes in the attitudes that put transgender youth at risk"; para. 124: "Up to 50 per cent of homeless children in Los Angeles, California, identify themselves as gay, lesbian or bisexual and have been forced onto the streets because of homophobia in their homes, schools and communities. They come from all corners of the world. The programme "Counselling on demand" is a counselling service for youth in the sex trade available 24 hours a day, seven days a week. Targeted participants of the programme are homeless gay, bisexual, transsexual and transgender males, 13 to 24 years old, who engage in survival sex on Santa Monica Boulevard, and gay, lesbian, bisexual, transsexual and transgender youths who are in semi-stable to stable living situations and are either working or attending school."

<sup>79</sup> ¶ UDHR, Art. 23; ¶ ICERD, Art. 5(e)(i); ¶ ICESCR, Arts. 6 and 7; ¶ CEDAW, Art. 11; ¶ African Charter, Art. 15; ¶ *Charter of the Organization of American States* [Charter of the OAS], 119 U.N.T.S. 3, entered into force December 13, 1951; amended by Protocol of Buenos Aires, 721 U.N.T.S. 324, O.A.S. Treaty Series, No. 1-A, entered into force Feb. 27, 1970; amended by Protocol of Cartagena, O.A.S. Treaty Series, No. 66, 25 I.L.M. 527, entered into force Nov. 16, 1988; amended by Protocol of Washington, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), 33 I.L.M. 1005, entered into force September 25, 1997; amended by Protocol of Managua, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), 33 I.L.M. 1009, entered into force January 29, 1996, Art. 45(b).

<sup>80</sup> CESCR, *General Comment No. 18: The Right to Work (Art. 6)*, U.N. Doc. E/C.12/GC/18, 6 February 2006, para. 12(b)(i): "Under its article 2, paragraph 2, and article 3, the Covenant prohibits any discrimination in access to and maintenance of employment on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, or civil, political, social or other status, which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality."

<sup>81</sup> See note 3, *supra*.

<sup>82</sup> ¶ CESCR, *General Comment No. 18: The Right to Work (Art. 6)*, U.N. Doc. E/C.12/GC/18, 6 February 2006, para. 19: "States parties have immediate obligations in relation to the right to work, such as the obligation to "guarantee" that it will be exercised "without discrimination of any kind" (art. 2, para. 2) and the obligation "to take steps" (art. 2, para. 1) towards the full realization of article 6"; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee:*

vocational training, recruitment, promotion, dismissal, conditions of employment and remuneration;<sup>83</sup>

B. Eliminate any discrimination on the basis of sexual orientation or gender identity to ensure equal employment and advancement opportunities in all areas of public service, including all levels of government service and employment in public functions,<sup>84</sup> including serving in the police and military,<sup>85</sup> and provide appropriate training and awareness-raising programmes to counter discriminatory attitudes.

### **PRINCIPLE 13: THE RIGHT TO SOCIAL SECURITY AND TO OTHER SOCIAL PROTECTION MEASURES**

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*United States of America*, U.N. Doc. CCPR/C/USA/CO/3/Rev.1, 18 December 2006, para. 25: “[...] The State party should ensure that...federal and state employment legislation outlaw discrimination on the basis of sexual orientation”; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Slovakia*, U.N. Doc. CCPR/CO/78/SVK, 22 August 2003, para. 4: “The Committee welcomes progress made in various areas...in particular the continuing process of bringing the State party’s legislation into harmony with its international obligations. This includes...the amendment of the labour code to include non-discrimination principles, including in the area of sexual orientation...”; ¶ European Union, *Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation*, 27 November 2000, Art. 1: “The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation...”; ¶ for a list of countries that have enacted legislation banning discrimination based on sexual orientation with respect to employment see: International Labour Organization [ILO], *Equality at work: Tackling the challenges - Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva: ILO Publications, 2007), p. 43.

<sup>83</sup> European Court of Justice, *P v S and Cornwall County Council*, 30 April 1996 (Reference for a preliminary ruling: Industrial Tribunal, Truro, United Kingdom, Case C-13/94), European Court reports 1996, p. I-02143: “In view of the objective pursued by Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, Article 5(1) of the directive precludes dismissal of a transsexual for a reason related to a gender reassignment.”

<sup>84</sup> ¶ UDHR, Art. 21(2); ¶ ICCPR, Art. 25(c); ¶ Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy*, U.N. Doc. A/HRC/4/25, 18 January 2007, para. 23: “As regards judges...practices involving discrimination on grounds such as political allegiance, religion, beliefs about human rights, sex, sexual orientation, physical disability or ethnic origin can leave judges in a precarious position, affecting their employment and promotion prospects.”

<sup>85</sup> See judgments of the European Court of Human Rights regarding individuals discharged from the military based on their sexual orientation: ¶ *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, ECHR 1999-VI; ¶ *Lustig-Prean and Beckett v. the United Kingdom*, nos. 31417/96 and 32377/96, 27 September 1999.

Everyone has the right to social security and other social protection measures,<sup>86</sup> without discrimination on the basis of sexual orientation or gender identity.<sup>87</sup>

**States shall:**<sup>88</sup>

A. Take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to social security and other social protection measures, including employment benefits, parental leave, unemployment benefits, health insurance or care or benefits (including for body modifications related to gender identity), other social insurance, family benefits, funeral benefits, pensions and benefits with regard to the loss of support for spouses or partners as the result of illness or death;<sup>89</sup>

B. Ensure that children are not subject to any form of discriminatory treatment within the social security system or in the provision of social or welfare benefits on the basis of their sexual orientation or gender identity, or that of any member of their family;<sup>90</sup>

C. Take all necessary legislative, administrative and other measures to ensure access to poverty reduction strategies and programmes, without discrimination on the basis of sexual orientation or gender identity.

**PRINCIPLE 14: THE RIGHT TO AN ADEQUATE STANDARD OF LIVING**

Everyone has the right to an adequate standard of living, including adequate food, safe drinking water, adequate sanitation and clothing, and to the

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<sup>86</sup> ¶ UDHR, Art. 22; ¶ ICERD, Art. 5(e)(iv); ¶ ICESCR, Art. 9; ¶ CEDAW, Art. 13(a); ¶ Charter of the OAS, Art. 45(h).

<sup>87</sup> See Views of the Human Rights Committee: ¶ *Communication No. 1361/2005: Colombia*, U.N. Doc. CCPR/C/89/D/1361/2005, X v. Colombia, 14 May 2007; ¶ *Communication No. 941/2000: Australia*, U.N. Doc. CCPR/C/78/D/941/2000, Edward Young v. Australia, 18 September 2003; see also, *inter alia*: ¶ Committee on the Rights of the Child, *Concluding observations: Slovakia*, U.N. Doc. CRC/C/SVK/CO/2, 10 July 2007, para. 27: "... the Committee expresses its concern that [Acts] on equal treatment in certain areas and on protection against discrimination, and on amendments to certain acts ("the Anti-Discrimination Law") do not provide protection from discrimination in the areas of social security, healthcare, education and provision of goods and services on the grounds of ethnicity, disability, religion or belief, and sexual orientation."

<sup>88</sup> See note 3, *supra*.

<sup>89</sup> See judgments of the European Court of Human Rights, *inter alia*: *Grant v. the United Kingdom*, no. 32570/03, ECHR 2006.

<sup>90</sup> CRC, Arts. 18(3), 20 and 26.

continuous improvement of living conditions,<sup>91</sup> without discrimination on the basis of sexual orientation or gender identity.<sup>92</sup>

**States shall:**<sup>93</sup>

A. Take all necessary legislative, administrative and other measures to ensure equal access, without discrimination on the basis of sexual orientation or gender identity, to adequate food, safe drinking water, adequate sanitation and clothing.<sup>94</sup>

## **PRINCIPLE 15: THE RIGHT TO ADEQUATE HOUSING**

Everyone has the right to adequate housing,<sup>95</sup> including protection from eviction, without discrimination on the basis of sexual orientation or gender identity.<sup>96</sup>

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<sup>91</sup> ¶ UDHR, Art. 25; ¶ ICESCR, Art. 11; ¶ CRC, Art. 27.

<sup>92</sup> CESCR, *General comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2002/11, 20 January 2003, para. 13: “[...] The Covenant thus proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water.”

<sup>93</sup> See note 3, *supra*.

<sup>94</sup> ¶ CESCR, *General comment No. 15 (2002): The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2002/11, 20 January 2003, para. 17: “[...] States parties have immediate obligations in relation to the right to water, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2, para. 2) and the obligation to take steps (art. 2, para. 1) towards the full realization of articles 11, paragraph 1, and 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to water”; ¶ CESCR, *General comment No. 12: The right to adequate food (art. 11)*, U.N. Doc. E/C.12/1999/5, 12 May 1999, para. 14: “[...] The principal obligation is to take steps to achieve *progressively* the full realization of the right to adequate food. This imposes an obligation to move as expeditiously as possible towards that goal. Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.”

<sup>95</sup> ¶ UDHR, Art. 25; ¶ ICERD, Art. 5(e)(iii); ¶ ICESCR, Art. 11(1); ¶ CEDAW, Art. 14(2)(h); ¶ CRC, Art. 27(3); ¶ ICRMW, Art. 43(1)(d).

<sup>96</sup> ¶ CESCR, *General Comment 4, The right to adequate housing (Art. 11(1) of the Covenant)*, U.N. Doc. CESCR General comment 4, 13 December 1991, para. 6: “In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination”; ¶ see the following judgment of the European Court of Human Rights: *Karner v. Austria*, no. 40016/98, ECHR 2003-IX; ¶ CHR, *Women and adequate housing - Report by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, Miloon Kothari*, U.N. Doc. E/CN.4/2006/118, 27 February 2006, para. 30: “[...] The Special Rapporteur

**States shall:**<sup>97</sup>

A. Take all necessary legislative, administrative and other measures to ensure security of tenure and access to affordable, habitable, accessible, culturally appropriate and safe housing, including shelters and other emergency accommodation, without discrimination on the basis of sexual orientation, gender identity or marital or family status;<sup>98</sup>

B. Take all necessary legislative, administrative and other measures to prohibit the execution of evictions that are not in conformity with their international human rights obligations, and ensure that adequate and effective legal or other appropriate remedies are available to any person claiming that a right to protection against forced evictions has been violated or is under threat of violation, including the right to resettlement, which includes the right to alternative land of better or equal quality and to adequate housing, without discrimination on the basis of sexual orientation, gender identity or marital or family status;<sup>99</sup>

C. Ensure equal rights to land and home ownership and inheritance without discrimination on the basis of sexual orientation or gender identity;

D. Establish social programmes, including support programmes, to address factors relating to sexual orientation and gender identity that increase vulnerability to homelessness, especially for children and young people, including social exclusion, domestic and other forms of violence, discrimination, lack of financial independence, and rejection by families or cultural communities, as well as to promote schemes of neighbourhood support and security;<sup>100</sup>

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reiterates the fact that special attention is required for some groups/categories of women who can be more vulnerable than others, at higher risk of becoming homeless, facing violence or suffering from the consequences of inadequate housing and living conditions. Such groups often include...lesbian and transgender women."

<sup>97</sup> See note 3, *supra*.

<sup>98</sup> CESCR, *General Comment 4, The right to adequate housing (Art. 11(1) of the Covenant)*, U.N. Doc. CESCR General comment 4, 13 December 1991, para. 8.

<sup>99</sup> ¶ CESCR, *General Comment 7, The right to adequate housing (Art. 11.1): Forced evictions*, U.N. Doc. CESCR General Comment 7, 20 May 1997; ¶ see also CESCR, *General Comment 4, The right to adequate housing, supra*, paras. 17-18.

<sup>100</sup> ¶ CHR, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari*, U.N. Doc. E/CN.4/2004/48, 8 March 2004, para. 49: "Some women are more vulnerable: As with any situation of stress, in forced evictions, too, some groups who are already socio-economically vulnerable, become even more so. They include...sexual minorities...The intersectional discrimination they face compounds their exclusion and inequity. These groups need special and focused attention."; ¶ CHR, *Report submitted by Juan Miguel Petit, Special Rapporteur on the sale of children, child prostitution and child pornography*, U.N. Doc. E/CN.4/2004/9, 5 January 2004, para. 124: "Up to 50 per cent of homeless children in Los Angeles, California, identify

E. Provide training and awareness-raising programmes to ensure that all relevant agencies are aware of and sensitive to the needs of those facing homelessness or social disadvantage as a result of sexual orientation or gender identity.

## **PRINCIPLE 16: THE RIGHT TO EDUCATION**

Everyone has the right to education,<sup>101</sup> without discrimination on the basis of, and taking into account, their sexual orientation and gender identity.<sup>102</sup>

**States shall:**<sup>103</sup>

A. Take all necessary legislative, administrative and other measures to ensure equal access to education, and equal treatment of students, staff and

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themselves as gay, lesbian or bisexual and have been forced onto the streets because of homophobia in their homes, schools and communities. They come from all corners of the world. The programme “Counselling on demand” is a counselling service for youth in the sex trade available 24 hours a day, seven days a week. Targeted participants of the programme are homeless gay, bisexual, transsexual and transgender males...”

<sup>101</sup> ¶ UDHR, Art. 26; ¶ ICERD, Art. 5(e)(v); ¶ ICESCR, Art. 13; ¶ CEDAW, Art. 10; ¶ CRC, Art. 28; ¶ Protocol 1 to the ECHR, Art. 2; ¶ African Charter, Art. 17; ¶ Charter of the OAS, Art. 49.

<sup>102</sup> ¶ CHR, *Girls’ right to education, Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos*, U.N. Doc. E/CN.4/2006/45, 8 February 2006, para. 113: “The Special Rapporteur must mention cases of discrimination and exclusion where girls have been expelled from educational institutions for displaying any kind of affection for fellow students of the same sex. There have even been reports of situations in which punishment has been meted out, not for any explicit behaviour, but rather on the strength of prejudice or unfounded arguments on the part of the school authorities”; ¶ CHR, *Annual report of the Special Rapporteur on the right to education, Katarina Tomaševski, submitted in accordance with Commission on Human Rights resolution 2000/9*, U.N. Doc. E/CN.4/2001/52, 11 January 2001, para. 75: “Domestic courts have started to recognize that children themselves have standing to vindicate their right to education and rights in education. The Supreme Court of Colombia examined a complaint by two boys who had been prevented from continuing their education by attending evening classes...because of their homosexuality. The Court faulted the school for having failed to exhibit the values of tolerance and respect of diversity, adding that a public school which posits that “homosexuality is sinful” excludes potential learners. [...]”; ¶ see also Mauro Isaac Cabral, *Omitir la sangre* (paper delivered at expert workshop, Yogyakarta, Indonesia, November 2006), p. 8: “Abuse and discrimination by school officials against children who do not behave like “men” or “women” has been documented in country after country; so, too has bullying by other children — ignored or encouraged by authorities — who assume responsibility for inculcating and enforcing those adult norms. The result, for many children whose gender identity or gender expression does not conform, is a basic violation of the right to education.”

<sup>103</sup> See note 3, *supra*.

teachers within the education system, without discrimination on the basis of sexual orientation or gender identity;

B. Ensure that education is directed to the development of each student's personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities;

C. Ensure that education is directed to the development of respect for human rights, and of respect for each child's parents and family members, cultural identity, language and values, in a spirit of understanding, peace, tolerance and equality, taking into account and respecting diverse sexual orientations and gender identities;<sup>104</sup>

D. Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, *inter alia*, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds;

E. Ensure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment;

F. Ensure that students subjected to such exclusion or violence are not marginalised or segregated for reasons of protection, and that their best interests are identified and respected in a participatory manner;

G. Take all necessary legislative, administrative and other measures to ensure that discipline in educational institutions is administered in a manner consistent with human dignity, without discrimination or penalty on the basis of a student's sexual orientation or gender identity, or the expression thereof;

H. Ensure that everyone has access to opportunities and resources for lifelong learning without discrimination on the basis of sexual orientation or gender identity, including adults who have already suffered such forms of discrimination in the educational system.

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<sup>104</sup> Human Rights Council, *Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani*, U.N. Doc. A/HRC/4/37, 24 January 2007, para. 97: "In June 2006, a communication was sent to the Government of Poland concerning the Director of the National In-Service Training Centre who was dismissed by the Minister for Education, allegedly for his involvement in the publication and dissemination of a Council of Europe manual on human rights education for young people, which included issues in relation to sexual orientation."

## PRINCIPLE 17: THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH

Everyone has the right to the highest attainable standard of physical and mental health,<sup>105</sup> without discrimination on the basis of sexual orientation or gender identity.<sup>106</sup> Sexual and reproductive health is a fundamental aspect of this right.<sup>107</sup>

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<sup>105</sup> ¶ UDHR, Art. 25; ¶ ICERD, Art. 5 (e)(iv); ¶ ICESCR, Art. 12; ¶ CEDAW, Art. 12; ¶ CRC, Art. 24; ¶ African Charter, Art. 16.

<sup>106</sup> ¶ CESCR, *General Comment No. 14 (2000): The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2000/4, 11 August 2000, para. 18: "...the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health"; ¶ Committee on the Rights of the Child, *General Comment No. 4 (2003): Adolescent health and development in the context of the Convention on the Rights of the Child*, U.N. Doc. CRC/GC/2003/4, 1 July 2003, para. 6: "States parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention without discrimination (art. 2), including with regard to "race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". These grounds also cover adolescents' sexual orientation and health status (including HIV/AIDS and mental health)"; ¶ Committee on the Rights of the Child, *Concluding observations: Slovakia*, U.N. Doc. CRC/C/SVK/CO/2, 10 July 2007, para. 27: "... the Committee expresses its concern that [Acts] on equal treatment in certain areas and on protection against discrimination, and on amendments to certain acts ("the Anti-Discrimination Law") do not provide protection from discrimination in the areas of social security, healthcare, education and provision of goods and services on the grounds of ethnicity, disability, religion or belief, and sexual orientation"; ¶ CHR, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Report of the Special Rapporteur, Paul Hunt*, U.N. Doc. E/CN.4/2004/49, 16 February 2004 (Section I, pp. 5-15), para. 38: "The legal prohibition of same-sex relations in many countries, in conjunction with a widespread lack of support or protection for sexual minorities against violence and discrimination, impedes the enjoyment of sexual and reproductive health by many people with lesbian, gay, bisexual and transgender identities or conduct."

<sup>107</sup> For international consensus statements regarding rights to sexual and reproductive health see: ¶ U.N. General Assembly, 'Beijing Declaration and Platform for Action', in *Report of the Fourth World Conference on Women*, Beijing, China, 4-15 September 1995, UN Doc. A/CONF.177/20/Rev.1, 1 January 1996; and ¶ U.N. General Assembly, 'Programme of Action of the International Conference on Population and Development', in *Report of the International Conference on Population and Development*, Cairo, Egypt, 5-13 September 1994, U.N. Doc. A/CONF.171/13/Rev. 1, 1 January 1995; see also: ¶ CHR, *Resolution 2005/24: The right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, U.N. Doc. E/CN.4/RES/2005/24, 15 April 2005, para. 15: The Commission calls upon States "...to protect and promote sexual and reproductive



**States shall:**<sup>108</sup>

A. Take all necessary legislative, administrative and other measures to ensure enjoyment of the right to the highest attainable standard of health, without discrimination on the basis of sexual orientation or gender identity;

B. Take all necessary legislative, administrative and other measures to ensure that all persons have access to healthcare facilities, goods and services, including in relation to sexual and reproductive health, and to their own medical records, without discrimination on the basis of sexual orientation or gender identity;<sup>109</sup>

C. Ensure that healthcare facilities, goods and services are designed to improve the health status of, and respond to the needs of, all persons without discrimination on the basis of, and taking into account, sexual orientation and gender identity, and that medical records in this respect are treated with confidentiality;<sup>110</sup>

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health as integral elements of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"; ¶ CHR, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Report of the Special Rapporteur, Paul Hunt*, U.N. Doc. E/CN.4/2004/49, 16 February 2004 (Section I, pp. 5-15).

<sup>108</sup> See note 3, *supra*.

<sup>109</sup> ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Chile*, U.N. Doc. CCPR/C/CHL/CO/5, 18 May 2007, para. 16: "...the Committee remains concerned about the discrimination to which some people are subject because of their sexual orientation, for instance...in access to health care...The State party should guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation, including...in access to health care"; ¶ CHR, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Report of the Special Rapporteur, Paul Hunt*, U.N. Doc. E/CN.4/2004/49, 16 February 2004 (Section I, pp. 5-15), para. 39: "Consistent with *Toonen v. Australia* and numerous other international and national decisions, [States] should ensure that sexual and other health services are available for men who have sex with men, lesbians, and transsexual and bisexual people."

<sup>110</sup> CHR, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Report of the Special Rapporteur, Paul Hunt*, U.N. Doc. E/CN.4/2004/49, 16 February 2004 (Section I, pp. 5-15), para. 40: "...breaches of medical confidentiality may occur. Sometimes these breaches, when accompanied by stigmatization, lead to unlawful dismissal from employment, expulsion from families and communities, physical assault and other abuse. Also, a lack of confidentiality may deter individuals from seeking advice and treatment, thereby jeopardizing their health and well-being. Thus, States are obliged to take effective measures to ensure medical confidentiality and privacy."

D. Develop and implement programmes to address discrimination, prejudice and other social factors which undermine the health of persons because of their sexual orientation or gender identity;<sup>111</sup>

E. Ensure that all persons are informed and empowered to make their own decisions regarding medical treatment and care, on the basis of genuinely informed consent, without discrimination on the basis of sexual orientation or gender identity;

F. Ensure that all sexual and reproductive health, education, prevention, care and treatment programmes and services respect the diversity of sexual orientations and gender identities, and are equally available to all without discrimination;<sup>112</sup>

G. Facilitate access by those seeking body modifications related to gender reassignment to competent, non-discriminatory treatment, care and support;

H. Ensure that all health service providers treat clients and their partners without discrimination on the basis of sexual orientation or gender identity, including with regard to recognition as next of kin;<sup>113</sup>

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<sup>111</sup> ¶ Committee on the Rights of the Child, *General Comment No. 3 (2003): HIV/AIDS and the rights of the child*, U.N. Doc. CRC/GC/2003/3, 17 March 2003, para. 7: "Discrimination is responsible for heightening the vulnerability of children to HIV and AIDS..."; para. 8: "Of concern...is discrimination based on sexual orientation. In the design of HIV/AIDS-related strategies, and in keeping with their obligations under the Convention, States parties must give careful consideration to prescribed gender norms within their societies with a view to eliminating gender-based discrimination as these norms impact on the vulnerability of both girls and boys to HIV/AIDS"; ¶ Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Addendum: Mission to Sweden*, U.N. Doc. A/HRC/4/28/Add.2, 28 February 2007, para. 48: "[...] The Special Rapporteur urges the Government to ensure that it takes measures to address causes of psychosocial disabilities among vulnerable and marginalized groups, including...lesbian, gay, bisexual and transgender persons."

<sup>112</sup> Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*, U.N. Doc. CRC/C/15/Add.188, 9 October 2002, (in the context of adolescent health) para. 43: "The Committee is concerned that homosexual and transsexual young people do not have access to the appropriate information, support and necessary protection to enable them to live their sexual orientation."

<sup>113</sup> U.N. General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/56/156, 3 July 2001, para. 22: "...the Special Rapporteur has received information according to which members of sexual minorities have received inadequate medical treatment in public hospitals - even after having been victims of assault - on grounds of their gender identity."

I. Adopt the policies, and programmes of education and training, necessary to enable persons working in the healthcare sector to deliver the highest attainable standard of healthcare to all persons, with full respect for each person's sexual orientation and gender identity.

## **PRINCIPLE 18: PROTECTION FROM MEDICAL ABUSES**

No person may be forced to undergo any form of medical or psychological treatment, procedure, testing,<sup>114</sup> or be confined to a medical facility, based on sexual orientation or gender identity.<sup>115</sup> Notwithstanding any classifications to the contrary, a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.<sup>116</sup>

### **States shall:**<sup>117</sup>

A. Take all necessary legislative, administrative and other measures to ensure full protection against harmful medical practices based on sexual orientation or gender identity, including on the basis of stereotypes, whether derived from culture or otherwise, regarding conduct, physical appearance or perceived gender norms;

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<sup>114</sup> ¶ ICCPR, Art. 7; ¶ Human Rights Committee, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7)*, U.N. Doc. CCPR General Comment No. 20, 10 March 1992, para. 7.

<sup>115</sup> U.N. General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/56/156, 3 July 2001 ('Torture and discrimination against sexual minorities', paras. 17-25), para. 24: "In a number of countries, members of sexual minorities are said to have been involuntarily confined to state medical institutions, where they were allegedly subjected to forced treatment on grounds of their sexual orientation or gender identity, including electric shock therapy and other "aversion therapy", reportedly causing psychological and physical harm. [...] The Special Rapporteur has received information according to which, in a number of countries, persons suspected of homosexuality have been subjected to compulsory, intrusive and degrading medical examinations of anus and penis in order to determine whether penetration had taken place, inter alia, within the context of enlistment for military service."

<sup>116</sup> ¶ In 1973 the American Psychiatric Association removed homosexuality from the *Diagnostic and Statistical Manual of Mental Disorders* (DSM). In 1992, the World Health Organization removed homosexuality from the *International Classification of Diseases and Related Health Problems* (ICD-10); ¶ see also Mauro Isaac Cabral, *Omitir la sangre* (paper delivered at expert workshop, Yogyakarta, Indonesia, November 2006), p. 7: "Gender identities differing from that assigned at birth, or socially rejected gender expressions, have been treated as forms of mental illness. The pathologization of difference has led to gender-transgressive children and adolescents being confined in psychiatric institutions, and subjected to aversion techniques - including electroshock therapy - as a "cure"."

<sup>117</sup> See note 3, *supra*.

B. Take all necessary legislative, administrative and other measures to ensure that no child's body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child in accordance with the age and maturity of the child and guided by the principle that in all actions concerning children, the best interests of the child shall be a primary consideration;<sup>118</sup>

C. Establish child protection mechanisms whereby no child is at risk of, or subjected to, medical abuse;

D. Ensure protection of persons of diverse sexual orientations and gender identities against unethical or involuntary medical procedures or research, including in relation to vaccines, treatments or microbicides for HIV/AIDS or other diseases;

E. Review and amend any health funding provisions or programmes, including those of a development-assistance nature, which may promote, facilitate or in any other way render possible such abuses;

F. Ensure that any medical or psychological treatment or counselling does not, explicitly or implicitly, treat sexual orientation and gender identity as medical conditions to be treated, cured or suppressed.

## **PRINCIPLE 19: THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION**

Everyone has the right to freedom of opinion and expression,<sup>119</sup> regardless of sexual orientation or gender identity.<sup>120</sup> This includes the expression of

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<sup>118</sup> CRC, Arts. 3 and 12(1).

<sup>119</sup> ¶ UDHR, Art. 19; ¶ ICERD, Art. 5(d)(viii); ¶ ICCPR, Art. 19; ¶ CRC, Art. 13; ¶ ECHR, Art. 10; ¶ American Convention, Art. 13; ¶ African Charter, Art. 9.

<sup>120</sup> ¶ CHR, *The right to freedom of opinion and expression, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. E/CN.4/2005/64/Add.1, 29 March 2005, para. 494: "On 6 December 2004, the Special Rapporteur...sent a letter of allegation concerning individuals and associations defending the rights of homosexual men and women in Jamaica, in particular the members of the human rights organisation JFLAG, the Jamaican Forum of Lesbians, All-Sexuals and Gays. [...] ...concern was expressed that individuals and associations defending the rights of homosexual men and women, in particular the members of JFLAG, might have been at risk of, on the one hand, attempts by public authorities to suppress their exercise of free speech, and, on the other hand, of violent attacks by homophobic individuals who may have gained the impression that the Government would not vigorously pursue such violence"; ¶ *ibid.*, para. 648: "On 12 August 2004, the Special Rapporteur...sent an urgent appeal regarding several male transvestites and the Blue Diamond Society of Nepal, a non governmental organization working with sexual minorities on sexual health, including HIV-AIDS, and campaigning for the rights of sexual minorities. According to the allegations received...39 male transvestites, called *metis*, all members of the Blue Diamond Society, were

identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers.<sup>121</sup>

**States shall:**<sup>122</sup>

A. Take all necessary legislative, administrative and other measures to ensure full enjoyment of freedom of opinion and expression, while respecting the rights and freedoms of others, without discrimination on the basis of sexual orientation or gender identity, including the receipt and imparting of information and ideas concerning sexual orientation and gender identity, as well as related advocacy for legal rights, publication of materials, broadcasting, organisation of or participation in conferences, and dissemination of and access to safer-sex information;<sup>123</sup>

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arrested... [...] On 25 July, the Police allegedly raped four male transvestites, J.B.L., R.L., B and M. [...] The Blue Diamond Society made a complaint to police authorities about this attack, [*sic*] Concern was expressed that the [recent] arrests might have been in retaliation to this complaint. A private writ was then filed with the Supreme Court of Nepal against the Blue Diamond Society...The writ called for the closing down of the Blue Diamond Society on the grounds that the organization “promotes homosexuality”. [...]”; ¶ *ibid.*, para. 790: “...since early March 2004, Saudi authorities reportedly blocked access to the website [www.gaymiddleeast.com](http://www.gaymiddleeast.com), a news site for the Middle East’s homosexual community. [...]”; ¶ CHR, *Report of the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo, Addendum: Mission to Colombia*, U.N. Doc. E/CN.4/2005/64/Add.3, 26 November 2004, para. 75: “In accordance with the nature and the spirit of his mandate, the Special Rapporteur considers that all citizens, regardless of, inter alia, their sexual orientation, have the right to express themselves, and to seek, receive and impart information. [...]”

<sup>121</sup> ¶ UDHR, Art. 19; ¶ ICCPR, Art. 19(2); see also Declaration on Human Rights Defenders, *supra* at note 4, Art. 6.

<sup>122</sup> See note 3, *supra*.

<sup>123</sup> ¶ Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, para. 511: “[...] According to the information received, on 19 January 2006, the Minister of Justice [of Nigeria] presented a “Bill for an Act to Make Provisions for the Prohibition of Relationship Between Persons of the Same Sex, Celebration of Marriage by Them, and for Other Matters Connected Therewith” to the Federal Executive Council which was reportedly approved but not yet submitted to the National Assembly. According to the information received, this bill introduces criminal penalties for public advocacy or associations supporting the rights of lesbian and gay people, as well as for relationships and marriage ceremonies between persons of the same sex. [...] Serious fears have been expressed that the bill aims at criminalizing activities of human rights defenders working on the rights of gay and lesbians...In particular, serious concern is expressed in view of the restriction such law would place on freedoms of expression and association of human rights defenders and members of civil society, when advocating

B. Ensure that the outputs and the organisation of media that is State-regulated is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender identity and that the personnel recruitment and promotion policies of such organisations are non-discriminatory on the basis of sexual orientation or gender identity;<sup>124</sup>

C. Take all necessary legislative, administrative and other measures to ensure the full enjoyment of the right to express identity or personhood, including through speech, deportment, dress, bodily characteristics, choice of name or any other means;<sup>125</sup>

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the rights of gays and lesbians”; ¶ CHR, *The right to freedom of opinion and expression, Report of the Special Rapporteur, Ambeyi Ligabo, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. E/CN.4/2006/55/Add.1, 27 March 2006, para. 1046: “On 5 August 2005, the Special Rapporteur...sent an urgent appeal concerning Victor Juliet Mukasa, Chairperson of Sexual Minorities Uganda (SMUG), a non profit, non-governmental organization that works towards achieving full legal and social equality for lesbian, gay, bisexual, transgender people in Uganda. According to the information received...Victor Juliet Mukasa’s home...was allegedly raided during the night by local government officials. They reportedly entered his house, and in his absence, seized documents and other material relating to the activities of SMUG”; para. 1048: “Pending a reply to this communication and without making any determination on the facts of this case, [the Special Rapporteur] deems it appropriate to make reference to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms...which provide[s] that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration”; ¶ Council of Europe, Parliamentary Assembly, *Recommendation 211 (2007) on freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons*, 26 March 2007 (available at: <https://wcd.coe.int/ViewDoc.jsp?id=1099699&Site=Congress&BackColorInternet=e0cee1&BackColorIntranet=e0cee1&BackColorLogged=FFC679>).

<sup>124</sup> CHR, *Report of the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo, Addendum: Mission to Colombia*, U.N. Doc. E/CN.4/2005/64/Add.3, 26 November 2004, para. 76: “[...] Gay and lesbian groups and individuals’ right to freedom of opinion and expression is hindered by the opposition they find in the media where sexual issues, especially homosexuality, are treated in a prudish and traditional way and never broadcast on prime time.”

<sup>125</sup> CHR, *Report submitted by Mr. Abid Hussain, Special Rapporteur, in accordance with Commission on Human Rights resolution 2001/47, Addendum: Mission to Argentina*, U.N. Doc. E/CN.4/2002/75/Add.1, 17 January 2002, para. 124: “The Special Rapporteur was informed that...in several provinces there is a “Contravention Code” which penalizes those “who are dressed as somebody of the opposite sex” with detention for up to 15 days.”

D. Ensure that notions of public order, public morality, public health and public security are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities;<sup>126</sup>

E. Ensure that the exercise of freedom of opinion and expression does not violate the rights and freedoms of persons of diverse sexual orientations and gender identities;<sup>127</sup>

F. Ensure that all persons, regardless of sexual orientation or gender identity, enjoy equal access to information and ideas, as well as to participation in public debate.<sup>128</sup>

## **PRINCIPLE 20: THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION**

Everyone has the right to freedom of peaceful assembly and association, including for the purposes of peaceful demonstrations,<sup>129</sup> regardless of sexual orientation or gender identity.<sup>130</sup> Persons may form and have recognised,

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<sup>126</sup> CHR, *The right to freedom of opinion and expression, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. E/CN.4/2004/62/Add.1, 26 March 2004, para. 488: "On 30 October 2003, the Special Rapporteur sent a letter of allegation concerning the following cases: [...] (b) In August 2003, an episode of the popular television series 3R (Respect, Relax and Respond) - which contained a 7-minute documentary about being gay - was reportedly banned by the Censorship Board, on the grounds that it allegedly promoted homosexuality, went against Islamic principles, the Constitution, and the tenets of the Rukunegara - the Government's policy of inculcating good morals and Malaysian cultural values. [...]"

<sup>127</sup> CESCR, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Monaco*, U.N. Doc. E/C.12/MCO/CO/1, 13 June 2006, para. 3: "The Committee notes with satisfaction the adoption of the Act...on freedom of public expression, which criminalizes insults...based on real or supposed sexual orientation."

<sup>128</sup> CHR, *The right to freedom of opinion and expression, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. E/CN.4/2005/64/Add.1, 29 March 2005, para. 981: "[...] Ruslan Sharipov was reportedly found guilty on 13 August 2003 under articles 120 (homosexuality) and 128 (sexual relations with a minor) of the Criminal Code, despite the lack of forensic medical evidence, and sentenced on appeal to four years in prison. He was reportedly subjected to torture and threats while in detention. It was widely believed that his prosecution was linked to his work as an investigative journalist and a human rights defender, in particular reporting on corruption and human rights abuses. [...]"

<sup>129</sup> ¶ UDHR, Art. 20; ¶ ICERD, Art. 5(d)(ix); ¶ ICCPR, Arts. 21 and 22; ¶ CRC, Art. 15; ¶ ECHR, Art. 11; ¶ American Convention, Arts. 15 and 16; ¶ African Charter, Arts. 10 and 11; ¶ Declaration on Human Rights Defenders, *supra* at note 4, Art. 5.

<sup>130</sup> ¶ See judgment of the European Court of Human Rights: *Bączkowski and Others v. Poland*, no. 1543/06, ECHR 2007; ¶ Human Rights Council, *Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani*, U.N. Doc. A/HRC/4/37, 24 January 2007, para. 96: "In numerous cases from

without discrimination, associations based on sexual orientation or gender identity, and associations that distribute information to or about, facilitate communication among, or advocate for the rights of, persons of diverse sexual orientations and gender identities.<sup>131</sup>

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all regions, police or government officials are the alleged perpetrators of violence and threats against defenders of LGBTI rights. In several of these cases, the authorities have prohibited demonstrations, conferences and meetings, denied registration of organizations working for LGBTI rights and police officers have, allegedly, beaten up or even sexually abused these defenders of LGBTI rights"; ¶ Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, para. 454: "On 23 May 2006, the Special Representative sent an allegation letter concerning a peaceful demonstration by the organisation Information Center GenderDoc-M, a non governmental organisation that defends the rights of sexual minorities in Moldova. According to the information received, on 28 April 2006 the office of the General Mayor in Chisinau rejected an application by the Center to hold a peaceful demonstration in Chisinau on 5 May 2006. [...] Concern was expressed that the above events were related to the activities of Information Center GenderDoc-M in defence of human rights, in particular their defence of the rights of sexual minorities in Moldova"; ¶ U.N. General Assembly, *Human rights defenders: Note by the Secretary-General* (report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, in accordance with General Assembly resolution 60/161), U.N. Doc. A/61/312, 5 September 2006, para. 71: "The Special Representative has sent communications concerning defenders working specifically on the rights of lesbian, gay, bisexual and transgender (LGBT) persons who have had their right to peaceful assembly violated. In one case from India, the police, allegedly several times, barred defenders and LGBT persons from entering the office of an organization working on LGBT rights. In a case from Poland, an "Equality March" organized by LGBT defenders was banned by the authorities; however, the Special Representative was pleased to note that it was allowed the following year."

<sup>131</sup> ¶ Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, para. 511: "...the Minister of Justice [of Nigeria] presented a "Bill for an Act to Make Provisions for the Prohibition of Relationship Between Persons of the Same Sex, Celebration of Marriage by Them, and for Other Matters Connected Therewith"...According to the information received, this bill introduces criminal penalties for public advocacy or associations supporting the rights of lesbian and gay people, as well as for relationships and marriage ceremonies between persons of the same sex. [...] Serious fears have been expressed that the bill aims at criminalizing activities of human rights defenders working on the rights of gay and lesbians...In particular, serious concern is expressed in view of the restriction such law would place on freedoms of expression and association of human rights defenders and members of civil society, when advocating the rights of gays and lesbians"; ¶ Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, para. 61: "On the 23 November 2006, the Special Representative, sent an urgent appeal concerning the detention of seven



**States shall:**<sup>132</sup>

A. Take all necessary legislative, administrative and other measures to ensure the rights to peacefully organise, associate, assemble and advocate around issues of sexual orientation and gender identity, and to obtain legal recognition for such associations and groups, without discrimination on the basis of sexual orientation or gender identity;<sup>133</sup>

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activists...who promote the human rights of lesbians, gays, bisexuals and transgender (LGBT) persons in Belarus and are current members of the Organising Committee of the International LGBT Conference which was due to be held in Minsk. According to the information received...the seven aforementioned persons were arrested and detained when the apartment in which they were holding a meeting, was broken into by the police. [...] Concern was expressed that the events described above may represent attempts by the Belarusian authorities to prevent the activists from carrying out their legitimate activities, in particular raising attention to the situation of LGBT persons in Belarus"; ¶ CHR, *Report submitted by Ms. Hina Jilani, Special Representative of Secretary-General on human rights defenders, pursuant to the Commission on Human Rights resolution 2000/61*, U.N. Doc. E/CN.4/2002/106, 27 February 2002, para. 61: "Human rights defenders have been arrested, detained, charged, tried and sentenced, sometimes to long terms of imprisonment or even to hard labour, because of their engagement in a variety of activities for the promotion and defence of human rights, including...advocating the rights of...sexual minorities..."; ¶ CHR, *Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders in accordance with Commission resolution 2000/61*, U.N. Doc. E/CN.4/2001/94, 26 January 2001, para. 89(g): "Greater risks are faced by defenders of the rights of certain groups as their work challenges social structures, traditional practices and interpretations of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups. Of special importance will be...those who are active on issues of sexuality, especially sexual orientation...These groups are often very vulnerable to prejudice, to marginalization and to public repudiation, not only by State forces but by other social actors"; ¶ International Conference on LGBT Rights, *Keynote address by Louise Arbour, the United Nations High Commissioner for Human Rights*, Montreal, Canada, 8 July 2006: "I recognize that many LGBT human rights organizations work in extremely difficult circumstances. They are denied freedom of association when the authorities shut them down, or otherwise prevent them from carrying out their work. They are physically attacked when they organize demonstrations to claim their rights."

<sup>132</sup> See note 3, *supra*.

<sup>133</sup> ¶ Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, para. 568: "On 11 May 2006, the Special Representative sent an urgent appeal concerning the Moscow Gay Pride Parade, which is...a peaceful demonstration organized to provide a platform for discussion about tolerance, anti-discrimination and respect for the rights of all persons regardless of their perceived sexual orientation. According to the information received, on 16 February 2006 the press spokesman of the Mayor of Moscow told journalists that "the Moscow government is not even going to consider allowing a gay parade" and stated "that the Mayor was firm that the city government will not

B. Ensure in particular that notions of public order, public morality, public health and public security are not employed to restrict any exercise of the rights to peaceful assembly and association solely on the basis that it affirms diverse sexual orientations or gender identities;<sup>134</sup>

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allow a gay parade in any form, open or disguised, and any attempts to organize an unsanctioned action will be resolutely quashed". [...] In the light of such statements by the authorities, concern was expressed that those who wish to peacefully participate in such a parade may be prevented from doing so. The Special Representative encouraged the Government of Russia to ensure its positive obligations to support, facilitate and protect human rights defenders and that the Moscow Gay Pride Parade is allowed to take place"; ¶ Council of Europe, Parliamentary Assembly, *Recommendation 211 (2007) on freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons*, 26 March 2007 (available at: <https://wcd.coe.int/ViewDoc.jsp?id=1099699&Site=Congress&BackColorInternet=e0cee1&BackColorIntranet=e0cee1&BackColorLogged=FFC679>).

<sup>134</sup> ¶ Human Rights Council, *Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani*, U.N. Doc. A/HRC/4/37, 24 January 2007, para. 96: "The authorities have generally attempted to justify action against these defenders by arguing that "the public" does not want these demonstrations to take place, or these organizations to be registered, or that "the people" do not want LGBTI people in their community"; ¶ Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, para. 686: "On 2 June 2006 the Special Representative sent an urgent appeal concerning the Rainbow Solidarity and Cultural Association for Transgenders, Gays and Lesbians (Gokkusagi Dernegi), a non-governmental organization that advocates for the rights of lesbian, gay and transgender persons in Turkey. [...] On 24 May 2006 it is reported that the Deputy Governor of Bursa initiated a court procedure...requesting the closure of the organization on the grounds that its establishment violated Articles 56 and 60 of the Turkish Civil Code, which prohibit the establishment of an organization that "is against the laws and morality rules". [...] Concern was expressed that the reported court procedure was an attempt to...prevent those who defend the rights of sexual minorities from forming, joining and participating in non governmental organizations"; ¶ Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, para. 559. "[...] According to information received, on 15 November 2005, the mayor of the city of Poznan banned a public event known as the Equality March, which had been organised by a number of lesbian, gay, bisexual and transgender (LGBT) and women's rights organizations. The march was planned to take place on 19 November 2005 and was intended to provide a platform for a discussion about tolerance, anti-discrimination and respect for the rights of sexual minorities. The ban was issued on the grounds of security concerns, despite the fact that security measures had already been agreed to between the municipality and the organisers of the march"; ¶ Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27

C. Under no circumstances impede the exercise of the rights to peaceful assembly and association on grounds relating to sexual orientation or gender identity, and ensure that adequate police and other physical protection against violence or harassment is afforded to persons exercising these rights;<sup>135</sup>

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March 2007, para. 402: "According to the information received, on 19 July 2006 the Riga City Council denied an application by a number of organizations to hold "Riga Pride 2006" on 22 July 2006. The organizations appealed this decision but it was upheld by the Administrative Court of Latvia on 21 July 2006, allegedly on the grounds that the proposed event would pose a threat to national security. [...] Concerns are expressed that the denial of a permit to the organizers of "Riga Pride 2006" may have been aimed at preventing defenders of the rights of sexual minorities from carrying out their peaceful activities to raise awareness of the universality of human rights, to be applied to all persons regardless of their perceived sexual orientation"; ¶ CHR, *Report of the Special Representative of the Secretary-General, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. E/CN.4/2006/95/Add.1, 22 March 2006, para. 550: "[...] According to information received..."Kaos GL Gay and Lesbian Cultural Research and Solidarity Organization" applied to the Ministry of Interior for recognition as a non-Governmental organization. The Ministry initially approved the request, but now the Ankara Deputy Governor has responded by launching a lawsuit to close the organization. In a letter dated 15 September, Turkish officials threatened to close down the organization, on the grounds that it allegedly violates a provision in the Turkish Civil Code that forbids "establishing any organization that is against the laws and principles of morality." [...] Concern was expressed that the reported court procedure...impedes on the right to form, join and participate in non-Governmental organizations, associations or groups, as set down in the Declaration on Human Rights Defenders."

<sup>135</sup> ¶ Declaration on Human Rights Defenders, *supra* at note 4, Art. 12; ¶ Human Rights Council, *Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani*, U.N. Doc. A/HRC/4/37, 24 January 2007, para. 96: "The Special Representative recalls articles 2 and 12 of the Declaration on Human Rights Defenders to remind States of their responsibility for protecting defenders against violence and threats. States are also responsible for, inter alia, ensuring that all programmes for training of law enforcement officers and public officials include appropriate elements of human rights teaching (art. 15)"; ¶ Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, para. 374: "On 1 December 2006, the Special Representative sent a letter of allegation to the Government of Israel concerning threats against participants in the proposed Gay Pride Parade...According to the information received, the organisers of the Gay Pride Parade met with authorities in order to establish a less controversial route for the march which would avoid ultra-Orthodox Jewish neighbourhoods as the police had stated that they could not provide adequate security for the original route. [...] Concern was expressed about the reported threats and harassment of human rights defenders campaigning for equality and against discrimination based on perceived sexual orientation. Further concern was expressed that such harassment might prevent peaceful demonstrators from carrying out their legitimate human rights activities."

D. Provide training and awareness-raising programmes to law enforcement authorities and other relevant officials to enable them to provide such protection;<sup>136</sup>

E. Ensure that information disclosure rules for voluntary associations and groups do not, in practice, have discriminatory effects for such associations and groups addressing issues of sexual orientation or gender identity, or for their members.

## **PRINCIPLE 21: THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION**

Everyone has the right to freedom of thought, conscience and religion, regardless of sexual orientation or gender identity.<sup>137</sup> These rights may not be invoked by the State to justify laws, policies or practices which deny equal protection of the law, or discriminate, on the basis of sexual orientation or gender identity.<sup>138</sup>

**States shall:**<sup>139</sup>

A. Take all necessary legislative, administrative and other measures to ensure the right of persons, regardless of sexual orientation or gender identity, to hold and practise religious and non-religious beliefs, alone or in association with others, to be free from interference with their beliefs and to be free from coercion or the imposition of beliefs;<sup>140</sup>

B. Ensure that the expression, practice and promotion of different opinions, convictions and beliefs with regard to issues of sexual orientation or gender identity is not undertaken in a manner incompatible with human rights.

## **PRINCIPLE 22: THE RIGHT TO FREEDOM OF MOVEMENT**

Everyone lawfully within a State has the right to freedom of movement and residence within the borders of the State,<sup>141</sup> regardless of sexual orientation

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<sup>136</sup> ¶ Declaration on Human Rights Defenders, *supra* at note 4, Art. 15.

<sup>137</sup> ¶ UDHR, Art. 18; ¶ ICERD, Art. 5(d)(vii); ¶ ICCPR, Art. 18; ¶ CRC, Art. 14; ¶ ECHR, Art. 9; ¶ American Convention, Art. 12; ¶ African Charter, Art. 8.

<sup>138</sup> Human Rights Committee, *General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)*, U.N. Doc. CCPR/C/21/Rev.1/Add.4, 30 July 1993, paras. 9-10.

<sup>139</sup> See note 3, *supra*.

<sup>140</sup> Human Rights Committee, *General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)*, U.N. Doc. CCPR/C/21/Rev.1/Add.4, 30 July 1993, para. 8.

<sup>141</sup> ¶ UDHR, Art. 13; ¶ ICERD, Art. 5(d)(i); ¶ ICCPR, Art. 12; ¶ CEDAW, Art. 15(4); ¶ CRC, Art. 10(2); ¶ *Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than*

or gender identity.<sup>142</sup> Sexual orientation and gender identity may never be invoked to limit or impede a person's entry, egress or return to or from any State, including that person's own State.

**States shall:**<sup>143</sup>

A. Take all necessary legislative, administrative and other measures to ensure that the right to freedom of movement and residence is guaranteed regardless of sexual orientation or gender identity.

**PRINCIPLE 23: THE RIGHT TO SEEK ASYLUM**

Everyone has the right to seek and enjoy in other countries asylum from persecution,<sup>144</sup> including persecution related to sexual orientation or gender identity.<sup>145</sup> A State may not remove, expel or extradite a person to any State

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*those already included in the Convention and in the first Protocol thereto* [Protocol 4 to the ECHR], 16 September 1963, Art. 2; ¶ American Convention, Art. 22; ¶ African Charter, Art. 12.

<sup>142</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee: Zimbabwe*, U.N. Doc. CCPR/C/79/Add.89, April 6, 1998, para. 24: "The Committee notes with concern that homosexuals are subjected to discrimination, e.g. that aliens deemed to be homosexuals may be defined as "Prohibited Persons" for immigration purposes and are subject to deportation. The Committee recommends that such legislation be brought into conformity with the Covenant."

<sup>143</sup> See note 3, *supra*.

<sup>144</sup> ¶ *Convention relating to the Status of Refugees* [Refugee Convention], 189 U.N.T.S. 150, entered into force 22 April 1954; ¶ UDHR, Art. 14(1); ¶ CRC, Art. 22; ¶ Vienna Declaration, *supra* at note 2, Part I, para. 23; ¶ American Convention, Art. 22(7); ¶ African Charter, Art. 12(3).

<sup>145</sup> ¶ United Nations High Commissioner for Refugees [UNHCR], *Protecting Refugees: Questions and Answers*, 2006, p. 15: "Homosexuals may be eligible for refugee status on the basis of persecution because of their membership of a particular social group. It is the policy of UNHCR that people facing attack, inhumane treatment, or serious discrimination because of their homosexuality, and whose governments are unable or unwilling to protect them, should be recognized as refugees" (available at: <http://www.unhcr.org/basics/BASICS/4034b6a34.pdf>); ¶ UNHCR, *Guidelines on International Protection: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/02/02, 7 May 2002, para. 1: "'Membership of a particular social group"...is being invoked with increasing frequency in refugee status determinations, with States having recognized...homosexuals, as constituting a particular social group for the purposes of the 1951 Convention."; ¶ UNHCR, *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/02/01, 7 May 2002, para. 16: "Refugee claims based on differing sexual orientation contain a gender element. A claimant's sexuality or sexual practices may be relevant to a refugee claim where he or she has been subject to persecutory (including discriminatory) action on account of his or her sexuality or sexual practices. In many such cases, the claimant has refused to adhere to socially or culturally defined roles or expectations of behaviour attributed

where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment,<sup>146</sup> on the basis of sexual orientation or gender identity.<sup>147</sup>

**States shall:**<sup>148</sup>

A. Review, amend and enact legislation to ensure that a well-founded fear of persecution on the basis of sexual orientation or gender identity is accepted as a ground for the recognition of refugee status and asylum;<sup>149</sup>

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to his or her sex. The most common claims involve homosexuals, transsexuals or transvestites, who have faced extreme public hostility, violence, abuse, or severe or cumulative discrimination"; para. 17: "Where homosexuality is illegal in a particular society, the imposition of severe criminal penalties for homosexual conduct could amount to persecution...Even where homosexual practices are not criminalised, a claimant could still establish a valid claim where the State condones or tolerates discriminatory practices or harm perpetrated against him or her, or where the State is unable to protect effectively the claimant against such harm."

<sup>146</sup> ¶ Refugee Convention, Art. 33(1); ¶ CAT, Art. 3; see also judgments of the European Court of Human Rights regarding return to torture, *inter alia*: ¶ *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V (para. 78 of judgment: "...it is well established in the case-law of the Court that expulsion by a Contracting State may give rise to an issue under Article 3 (art. 3), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 (art. 3) in the receiving country. In these circumstances, Article 3 (art. 3) implies the obligation not to expel the person in question to that country..."); ¶ Human Rights Committee, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment* (Art. 7), U.N. Doc. CCPR General Comment No. 20, 10 March 1992, para. 9: "...States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement."

<sup>147</sup> U.N. General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary-General* (interim report submitted by the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment, Theo van Boven, in accordance with Assembly resolution 58/164 of 22 December 2003), U.N. Doc. A/59/324, 1 September 2004, para. 39: "The Special Rapporteur also wishes to draw attention to factors and circumstances that stem from conditions that may prevail in a country and touch at the same time upon the vulnerability of persons whose removal to such a country is at stake. Reference is made here to persons belonging to any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds, such as sexual orientation, and who for that reason are targeted by the authorities or, with the connivance of the authorities, risk being subjected to persecution or systematic discrimination amounting to torture or other cruel, inhuman or degrading treatment or punishment. These factors and circumstances also have to be taken into account in determining the non-refoulement issue."

<sup>148</sup> See note 3, *supra*.

<sup>149</sup> ¶ Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women*:

B. Ensure that no policy or practice discriminates against asylum seekers on the basis of sexual orientation or gender identity;

C. Ensure that no person is removed, expelled or extradited to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of that person's sexual orientation or gender identity.

## **PRINCIPLE 24: THE RIGHT TO FOUND A FAMILY**

Everyone has the right to found a family,<sup>150</sup> regardless of sexual orientation or gender identity.<sup>151</sup> Families exist in diverse forms.<sup>152</sup> No family may be

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*Sweden (20 July 2001)*, U.N. Doc. A/56/38, para. 334: "The Committee commends the Government for passing legislation that provides residence permits to individuals who have a well-founded fear of persecution on the basis of sexual orientation or gender..."; ¶ European Union, *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*, Official Journal L 304, 30 September 2004 (pp. 12-23), Art. 10(1)(d): "...a particular social group might include a group based on a common characteristic of sexual orientation."

<sup>150</sup> ¶ UDHR, Art. 16; ¶ ICERD, Art. 5(d)(iv); ¶ ICCPR, Art. 23; ¶ CEDAW, Art. 16; ¶ ECHR, Art. 12; ¶ American Convention, Art. 17(2).

<sup>151</sup> See judgments of the European Court of Human Rights: ¶ *I. v. the United Kingdom* [GC], no. 25680/94, 11 July 2002; ¶ *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, ECHR 2002-VI.

<sup>152</sup> ¶ Human Rights Committee, *Communication No. 902/1999: New Zealand*, U.N. Doc. CCPR/C/75/D/902/1999, Juliet Joslin v. New Zealand, 30 July 2002, 'Appendix: Individual opinion of Committee members Mr. Rajssoomer Lallah and Mr. Martin Scheinin (concurring)': "This provision [art. 23(2)] entails an obligation for States to recognize as marriage the union of one adult man and one adult woman who wish to marry each other. The provision in no way limits the liberty of States...to recognize, in the form of marriage or in some other comparable form, the companionship between two men or between two women"; ¶ Human Rights Committee, *General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses (Art. 23)*, CCPR General Comment No. 19, 27 July 1990, para. 2: "The Committee notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition. However, the Committee emphasizes that, when a group of persons is regarded as a family under the legislation and practice of a State, it must be given the protection referred to in article 23"; ¶ Committee on the Rights of the Child, *Report on the fifth session (10-28 January 1994)*, U.N. Doc. CRC/C/24, 8 March 1994 (Annex V: Role of the family in the promotion of the rights of the child), para. 2.1: "When considering the family environment, the Convention reflects different family structures arising from various cultural patterns and emerging familial relationships"; ¶ Human Rights Committee, *General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17)*, CCPR General Comment No. 16, 8 April 1988, para. 5: "Regarding the term "family", the objectives

subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.

**States shall:**<sup>153</sup>

A. Take all necessary legislative, administrative and other measures to ensure the right to found a family,<sup>154</sup> including through access to adoption or assisted procreation (including donor insemination), without discrimination on the basis of sexual orientation or gender identity;

B. Ensure that laws and policies recognise the diversity of family forms, including those not defined by descent or marriage,<sup>155</sup> and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including with regard to family-related social welfare and other public benefits, employment, and immigration;<sup>156</sup>

C. Take all necessary legislative, administrative and other measures to ensure that in all actions or decisions concerning children, whether undertaken by public or private social welfare institutions, courts of law,

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of the Covenant require that for purposes of article 17 this term be given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned."

<sup>153</sup> See note 3, *supra*.

<sup>154</sup> See national court judgments finding the exclusion of same-sex relationships from legal recognition through marriage to be discriminatory, *inter alia*: ¶ *Minister of Home Affairs v Fourie et al* (Constitutional Court of South Africa, 2005); ¶ *Halpern et al. v Attorney General of Canada et al.* (Court of Appeal for Ontario, 2003); ¶ *Barbeau v. British Columbia* (Attorney General), 2003 BCCA 251; ¶ *Goodridge v. Dept. of Public Health*, 440 Mass. 309 (Supreme Judicial Court of Massachusetts, 2003); ¶ the following countries allow for same-sex marriage: Canada, Belgium, Netherlands, South Africa, Spain, United States (state of Massachusetts); ¶ the following countries allow for same-sex civil unions or registered partnerships: Andorra, Czech Republic, Denmark, Finland, France, Germany, Iceland, Luxembourg, New Zealand, Norway, Portugal, Slovenia, Sweden, Switzerland, United Kingdom; ¶ same-sex civil unions or registered partnerships are allowed in certain regions/states of the following countries: Argentina, Australia, Brazil, Mexico, United States.

<sup>155</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee: Norway*, U.N. Doc. CCPR/C/79/Add.27, 4 November 1993, para. 7: "With respect to equality and non-discrimination...legislative steps relating to the registration of partnership of the same sex are welcomed by the Committee."

<sup>156</sup> Human Rights Committee, *Communication No. 902/1999: New Zealand*, U.N. Doc. CCPR/C/75/D/902/1999, Juliet Joslin et al. v New Zealand, 30 July 2002, 'Appendix: Individual opinion of Committee members Mr. Rajsoomer Lallah and Mr. Martin Scheinin (concurring)': [The Committee's] conclusion should not be read as a general statement that differential treatment between married couples and same-sex couples not allowed under the law to marry would never amount to a violation of article 26. On the contrary, the Committee's jurisprudence supports the position that such differentiation may very well, depending on the circumstances of a concrete case, amount to prohibited discrimination."



administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration,<sup>157</sup> and that the sexual orientation or gender identity of the child or of any family member or other person may not be considered incompatible with such best interests;<sup>158</sup>

D. In all actions or decisions concerning children, ensure that a child who is capable of forming personal views can exercise the right to express those views freely, and that such views are given due weight in accordance with the age and maturity of the child;<sup>159</sup>

E. Take all necessary legislative, administrative and other measures to ensure that in States that recognise same-sex marriages or registered partnerships, any entitlement, privilege, obligation or benefit available to different-sex married or registered partners is equally available to same-sex married or registered partners;

F. Take all necessary legislative, administrative and other measures to ensure that any obligation, entitlement, privilege, obligation or benefit available to different-sex unmarried partners is equally available to same-sex unmarried partners;<sup>160</sup>

G. Ensure that marriages and other legally-recognised partnerships may be entered into only with the free and full consent of the intending spouses or partners.<sup>161</sup>

## **PRINCIPLE 25: THE RIGHT TO PARTICIPATE IN PUBLIC LIFE**

Every citizen has the right to take part in the conduct of public affairs, including the right to stand for elected office, to participate in the formulation of policies affecting their welfare, and to have equal access to all levels of public service and employment in public functions, including serving in the

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<sup>157</sup> CRC, Art. 3(1).

<sup>158</sup> ¶ ICESCR, Art. 10(3); ¶ see judgment of the European Court of Human Rights: *Salgueiro da Silva Mouta v. Portugal*, no. 33290/96, ECHR 1999-IX.

<sup>159</sup> CRC, Art. 12.

<sup>160</sup> See Views of the Human Rights Committee: ¶ *Communication No. 1361/2005: Colombia*, U.N. Doc. CCPR/C/89/D/1361/2005, X v. Colombia, 14 May 2007; ¶ *Communication No. 941/2000: Australia*, U.N. Doc. CCPR/C/78/D/941/2000, Edward Young v. Australia, 18 September 2003; see also a ruling of the Supreme Court of Canada finding that same-sex unmarried partners have the same rights and obligations in family law (e.g. spousal support) as different-sex unmarried partners: *M. v. H.*, [1999] 2 S.C.R. 3, 20 May 1999.

<sup>161</sup> ¶ UDHR, Art. 16(2); ¶ ICCPR, Art. 23(3); ¶ ICESCR, Art. 10(1); ¶ CEDAW, Art. 16(b); ¶ American Convention, Art. 17(3).

police and military,<sup>162</sup> without discrimination on the basis of sexual orientation or gender identity.<sup>163</sup>

**States shall:**<sup>164</sup>

A. Review, amend and enact legislation to ensure the full enjoyment of the right to participate in public and political life and affairs, embracing all levels of government service and employment in public functions, including serving in the police and military, without discrimination on the basis of, and with full respect for, each person's sexual orientation and gender identity;

B. Take all appropriate measures to eliminate stereotypes and prejudices regarding sexual orientation and gender identity that prevent or restrict participation in public life;

C. Ensure the right of each person to participate in the formulation of policies affecting their welfare, without discrimination on the basis of, and with full respect for, their sexual orientation and gender identity.

**PRINCIPLE 26: THE RIGHT TO PARTICIPATE IN CULTURAL LIFE**

Everyone has the right to participate freely in cultural life,<sup>165</sup> regardless of sexual orientation or gender identity, and to express, through cultural participation, the diversity of sexual orientation and gender identity.<sup>166</sup>

**States shall:**<sup>167</sup>

A. Take all necessary legislative, administrative and other measures to ensure opportunities for the participation in cultural life of all persons, regardless of, and with full respect for, their sexual orientations and gender identities;

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<sup>162</sup> ¶ UDHR, Art. 21; ¶ ICERD, Art. 5(c); ¶ ICCPR, Art. 25; ¶ CEDAW, Art. 7; ¶ ICRMW, Art. 41; ¶ American Convention, Art. 23; ¶ African Charter, Art. 13; ¶ Declaration on Human Rights Defenders, *supra* at note 4, Art. 8(1).

<sup>163</sup> With regard to serving in the military see the following judgments of the European Court of Human Rights: ¶ *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, ECHR 1999-VI; ¶ *Lustig-Prean and Beckett v. the United Kingdom*, nos. 31417/96 and 32377/96, 27 September 1999.

<sup>164</sup> See note 3, *supra*.

<sup>165</sup> ¶ UDHR, Art. 27(1); ¶ ICERD, Art. 5(e)(vi); ¶ ICESCR, Art. 15; ¶ CEDAW, Art. 13(c); ¶ CRC, Art. 31; ¶ African Charter, Art. 17; ¶ *Universal Declaration on Cultural Diversity*, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its 31<sup>st</sup> session, 2 November 2001, Art. 5.

<sup>166</sup> Amnesty International, *supra* at note 6, p. 4: "Same-sex relations are dubbed "unChristian", "unAfrican", "unIslamic" or a "bourgeois decadence". Some governments seek not only to exclude lesbian and gay people from local culture, but also to deny that they are members of the human race."

<sup>167</sup> See note 3, *supra*.

B. Foster dialogue between, and mutual respect among, proponents of the various cultural groups present within the State, including among groups that hold different views on matters of sexual orientation and gender identity, consistently with respect for the human rights referred to in these Principles.

## **PRINCIPLE 27: THE RIGHT TO PROMOTE HUMAN RIGHTS**

Everyone has the right, individually and in association with others, to promote the protection and realisation of human rights at the national and international levels,<sup>168</sup> without discrimination on the basis of sexual orientation or gender identity.<sup>169</sup> This includes activities directed towards the promotion and protection of the rights of persons of diverse sexual orientations and gender identities,<sup>170</sup> as well as the right to develop and discuss new human rights norms and to advocate their acceptance.<sup>171</sup>

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<sup>168</sup> Declaration on Human Rights Defenders, *supra* at note 4, Art. 1.

<sup>169</sup> ¶ Committee against Torture, *Conclusions and recommendations of the Committee against Torture: Venezuela*, U.N. Doc. CAT/C/CR/29/2, 23 December 2002, para. 10: "The Committee expresses its concern at the following: [...] (d) Complaints of threats and attacks against sexual minorities and transgender activists..."; ¶ CHR, *Report submitted by Ms. Hina Jilani, Special Representative of Secretary-General on human rights defenders, pursuant to the Commission on Human Rights resolution 2000/61*, U.N. Doc. E/CN.4/2002/106, 27 February 2002, para. 5: "Others, such as...sexual minorities, students, teachers and intellectuals - all working for the promotion and protection of human rights - have been subjected to human rights abuses."

<sup>170</sup> ¶ Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, para. 454: "On 23 May 2006, the Special Representative sent an allegation letter concerning a peaceful demonstration by the organisation Information Center GenderDoc-M, a non governmental organisation that defends the rights of sexual minorities in Moldova. According to the information received, on 28 April 2006 the office of the General Mayor in Chisinau rejected an application by the Center to hold a peaceful demonstration in Chisinau on 5 May 2006. [...] Concern was expressed that the above events were related to the activities of Information Center GenderDoc-M in defence of human rights, in particular their defence of the rights of sexual minorities in Moldova"; ¶ CHR, *Report of the Special Representative of the Secretary-General, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. E/CN.4/2006/95/Add.1, 22 March 2006, para. 291: "The Special Representative notes that at the time this report was being finalized, no response had been received from the Government of Jamaica concerning the death of Lenford 'Steve' Harvey. The Special Representative looks forward to hearing from the Government as she has received information highlighting the particular dangers that defenders face who are associated with lesbian, gay, transgendered and bisexual and HIV/Aids issues in Jamaica"; ¶ CHR, *Report submitted by Ms. Hina Jilani, Special Representative of Secretary-General on human rights defenders, pursuant to the Commission on Human Rights resolution 2000/61*, U.N. Doc. E/CN.4/2002/106, 27 February 2002, para. 61: "Human rights defenders have been arrested, detained, charged, tried and

**States shall:**<sup>172</sup>

A. Take all necessary legislative, administrative and other measures to ensure a favourable environment for activities directed towards the promotion, protection and realisation of human rights, including rights relevant to sexual orientation and gender identity;<sup>173</sup>

B. Take all appropriate measures to combat actions or campaigns targeting human rights defenders working on issues of sexual orientation and gender identity, as well as those targeting human rights defenders of diverse sexual orientations and gender identities;<sup>174</sup>

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sentenced, sometimes to long terms of imprisonment or even to hard labour, because of their engagement in a variety of activities for the promotion and defence of human rights, including...advocating the rights of...sexual minorities..."; para. 83: "...it is also important to highlight the fact that, worldwide, women human rights defenders are paying a heavy toll for their work in protecting and promoting the human rights of others...For women human rights defenders, standing up for human rights and the victims of human rights abuses - be they...simply people unwillingly relegated to the margins of society, such as...members of sexual minorities - can result in intimidation, harassment, unfair dismissal, death threats, torture and ill-treatment, and even death"; para. 115: "Defenders seeking to protect the political, civil, economic, social or cultural rights of marginalized groups and persons face stronger resistance to their work, are more vulnerable and, therefore, more threatened. They include... defenders of the rights of women, sexual minorities, displaced persons, migrants and refugees."

<sup>171</sup> Declaration on Human Rights Defenders, *supra* at note 4, Art. 7.

<sup>172</sup> See note 3, *supra*.

<sup>173</sup> ¶ Declaration on Human Rights Defenders, *supra* at note 4, Art. 2; ¶ Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, para. 402: "Concerns are expressed that the denial of a permit to the organizers of "Riga Pride 2006" may have been aimed at preventing defenders of the rights of sexual minorities from carrying out their peaceful activities to raise awareness of the universality of human rights, to be applied to all persons regardless of their perceived sexual orientation"; ¶ CHR, *Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders in accordance with Commission resolution 2000/61*, U.N. Doc. E/CN.4/2001/94, 26 January 2001, para. 89(g): "Greater risks are faced by defenders of the rights of certain groups as their work challenges social structures, traditional practices and interpretations of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups. Of special importance will be women's human rights groups and those who are active on issues of sexuality, especially sexual orientation and reproductive rights. These groups are often very vulnerable to prejudice, to marginalization and to public repudiation, not only by State forces but by other social actors."

<sup>174</sup> Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc.

C. Ensure that human rights defenders, regardless of their sexual orientation or gender identity, and regardless of the human rights issues they advocate, enjoy non-discriminatory access to, participation in, and communication with, national and international human rights organisations and bodies;<sup>175</sup>

D. Ensure the protection of human rights defenders, working on issues of sexual orientation and gender identity, against any violence, threat, retaliation, *de facto* or *de jure* discrimination, pressure, or any other arbitrary action perpetrated by the State, or by non-State actors, in response to their human rights activities. The same protection should be ensured, to human rights defenders working on any issue, against any such treatment based on their sexual orientation or gender identity;<sup>176</sup>

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A/HRC/4/37/Add.1, 27 March 2007, para. 374: "On 1 December 2006, the Special Representative sent a letter of allegation to the Government of Israel concerning threats against participants in the proposed Gay Pride Parade...According to the information received, the organisers of the Gay Pride Parade met with authorities in order to establish a less controversial route for the march which would avoid ultra-Orthodox Jewish neighbourhoods as the police had stated that they could not provide adequate security for the original route. However the march was later cancelled altogether due to the severe nature of the threats issued, as...an ultra-orthodox Jewish man reportedly stabbed three people during the fourth annual gay pride parade. Concern was expressed about the reported threats and harassment of human rights defenders campaigning for equality and against discrimination based on perceived sexual orientation."

<sup>175</sup> International Conference on LGBT Rights, *Keynote address by Louise Arbour, the United Nations High Commissioner for Human Rights*, Montreal, Canada, 8 July 2006: "I recognize that many LGBT human rights organizations work in extremely difficult circumstances. They are denied freedom of association when the authorities shut them down, or otherwise prevent them from carrying out their work. They are physically attacked when they organize demonstrations to claim their rights. Many have even been killed for daring to speak about sexual orientation. They are denied access to important fora, including at the international level, where they should be able to have their voices heard."

<sup>176</sup> ¶ Declaration on Human Rights Defenders, *supra* at note 4, Art. 12; ¶ Human Rights Council, *Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani*, U.N. Doc. A/HRC/4/37, 24 January 2007, paras. 94-96: "Since the establishment of the mandate, the Special Representative has acted on 36 cases of alleged attacks and threats against defenders of LGBTI rights in all regions. Communications have been sent to Belarus, the Holy See, Latvia, Moldova, Poland, Russia, Turkey, Nigeria, Uganda, India, Nepal, Argentina, Chile, Ecuador, Honduras, Jamaica and Iran. Defenders have been threatened, had their houses and offices raided, they have been attacked, tortured, sexually abused, tormented by regular death threats and even killed. A major concern in this regard is an almost complete lack of seriousness with which such cases are treated by the concerned authorities. In numerous cases from all regions, police or government officials are the alleged perpetrators of violence and threats against defenders of LGBTI rights. In several of these cases, the authorities have prohibited demonstrations, conferences and meetings, denied registration of organizations working for LGBTI rights and police officers have, allegedly, beaten up

E. Support the recognition and accreditation of organisations that promote and protect the human rights of persons of diverse sexual orientations and gender identities at the national and international levels.<sup>177</sup>

## **PRINCIPLE 28: THE RIGHT TO EFFECTIVE REMEDIES AND REDRESS**

Every victim of a human rights violation, including of a violation based on sexual orientation or gender identity, has the right to effective, adequate and

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or even sexually abused these defenders of LGBTI rights. [...]”; ¶ Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, para. 485: “On 1 December 2006, the Special Representative sent an urgent appeal concerning Madan Rai Chamling, a human rights outreach worker and member of the Blue Diamond Society. [...] According to the information received...Madan Rai Chamling and other “metis” (persons who are men by birth but identify as women)...were verbally abused by members of the Durbar Marg Police when Madan Rai Chamling questioned them as to why photos and videos were being taken of the metis. [...] Concern was expressed that the above acts of verbal abuse against Madan Rai Chamling may have been related to her human rights activities, specifically her outreach work with Blue Diamond Society. In addition, concern was expressed that the events represent a sustained campaign by police to harass, intimidate and humiliate metis in Nepal, including by sexual violence”; ¶ CHR, *Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders, pursuant to Commission on Human Rights resolution 2000/61, Addendum: Mission to Colombia (23-31 October 2001)*, U.N. Doc. E/CN.4/2002/106/Add.2, 24 April 2002, para. 173: “A few cases have been transmitted to the Special Representative. Robinson Sánchez, editor of *El Otro*, a publication that deals with sexuality issues and a human rights activist fighting abuses perpetrated against gay students in Medellín, has reportedly been verbally and physically abused by a security guard at the University of Antioquia, allegedly in connection with his sexual orientation and his activities as a social leader.”

<sup>177</sup> ¶ CHR, *Report of the Special Representative of the Secretary-General, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. E/CN.4/2006/95/Add.1, 22 March 2006, para. 550: “[...] According to information received...“Kaos GL Gay and Lesbian Cultural Research and Solidarity Organization” applied to the Ministry of Interior for recognition as a non-Governmental organization. The Ministry initially approved the request, but now the Ankara Deputy Governor has responded by launching a lawsuit to close the organization. In a letter dated 15 September, Turkish officials threatened to close down the organization, on the grounds that it allegedly violates a provision in the Turkish Civil Code that forbids “establishing any organization that is against the laws and principles of morality.” [...] Concern was expressed that the reported court procedure...impedes on the right to form, join and participate in non-Governmental organizations, associations or groups, as set down in the Declaration on Human Rights Defenders.”; ¶ In 2006 and 2007 several organizations working to promote and protect the human rights of persons of diverse sexual orientations and gender identities were granted ECOSOC consultative status, making them the first organizations working on such issues to gain ECOSOC accreditation in many years.

appropriate remedies.<sup>178</sup> Measures taken for the purpose of providing reparation to, or securing adequate advancement of, persons of diverse sexual orientations and gender identities are integral to the right to effective remedies and redress.<sup>179</sup>

**States shall:**<sup>180</sup>

A. Establish the necessary legal procedures, including through the revision of legislation and policies, to ensure that victims of human rights violations on the basis of sexual orientation or gender identity have access to full redress through restitution, compensation, rehabilitation, satisfaction, guarantee of non-repetition, and/or any other means as appropriate;<sup>181</sup>

B. Ensure that remedies are enforced and implemented in a timely manner;<sup>182</sup>

C. Ensure that effective institutions and standards for the provision of remedies and redress are established, and that all personnel are trained in issues of human rights violations based on sexual orientation and gender identity;

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<sup>178</sup> ¶ UDHR, Art. 8; ¶ ICERD, Art. 6; ¶ ICCPR, Art. 2(3); ¶ CAT, Art. 14; ¶ CRC, Art. 39; ¶ ICRMW, Art. 83; ¶ ECHR, Art. 13; ¶ American Convention, Art. 25; ¶ African Charter, Art. 7; ¶ U.N. General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* [Principles on the Right to a Remedy], adopted and proclaimed by General Assembly resolution 60/147, 16 December 2005, para. 25: "The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception"; ¶ Declaration on Human Rights Defenders, *supra* at note 4, Art. 9; see concluding observations of the U.N. treaty bodies, *inter alia*: ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Hong Kong (China)*, U.N. Doc. CCPR/C/79/Add.117, 12 November 1999, para. 15: "The Committee remains concerned that no legislative remedies are available to individuals in respect of discrimination on the grounds of race or sexual orientation. Necessary legislation should be enacted in order to ensure full compliance with article 26 of the Covenant"; see also: ¶ CHR, *Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum: Updated Set of principles for the protection and promotion of human rights through action to combat impunity* [Principles to Combat Impunity], U.N. Doc. E/CN.4/2005/102/Add.1, 8 February 2005, Principles 31-34.

<sup>179</sup> Human Rights Committee, *Concluding observations of the Human Rights Committee: Greece*, U.N. Doc. CCPR/CO/83/GRC, 25 April 2005, para.19: "The Committee is concerned at reports of continued discrimination against individuals on the basis of their sexual orientation...The State party should provide remedies against discriminatory practices on the basis of sexual orientation, as well as informational measures to address patterns of prejudice and discrimination."

<sup>180</sup> See note 3, *supra*.

<sup>181</sup> Principles on the Right to a Remedy, *supra* at note 178, paras. 19-23.

<sup>182</sup> Principles on the Right to a Remedy, para. 17.

D. Ensure that all persons have access to all necessary information about the processes for seeking remedies and redress;<sup>183</sup>

E. Ensure that financial aid is provided to those who are unable to afford the cost of securing redress, and that any other obstacles to securing such redress, financial or otherwise, are removed;

F. Ensure training and awareness-raising programmes, including measures aimed at teachers and students at all levels of public education, at professional bodies, and at potential violators of human rights, to promote respect for and adherence to international human rights standards in accordance with these Principles, as well as to counter discriminatory attitudes based on sexual orientation or gender identity.

## **PRINCIPLE 29: ACCOUNTABILITY**

Everyone whose human rights, including rights addressed in these Principles, are violated is entitled to have those directly or indirectly responsible for the violation, whether they are government officials or not, held accountable for their actions in a manner that is proportionate to the seriousness of the violation.<sup>184</sup> There should be no impunity for perpetrators of human rights violations related to sexual orientation or gender identity.<sup>185</sup>

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<sup>183</sup> Principles on the Right to a Remedy, para. 24.

<sup>184</sup> See generally Principles to Combat Impunity, *supra* at note 178.

<sup>185</sup> ¶ Human Rights Council, *Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani*, U.N. Doc. A/HRC/4/37, 24 January 2007, paras. 94-95: "Since the establishment of the mandate, the Special Representative has acted on 36 cases of alleged attacks and threats against defenders of LGBTI rights in all regions. [...] Defenders have been threatened, had their houses and offices raided, they have been attacked, tortured, sexually abused, tormented by regular death threats and even killed. A major concern in this regard is an almost complete lack of seriousness with which such cases are treated by the concerned authorities"; ¶ Human Rights Council, *Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received*, U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, para. 92: "[...] According to the information received, Mr Alves dos Santos disappeared on 7 October 2005. His body was found three days later, reportedly with signs that he had been tortured. It is further alleged that in May and June 2005, the coordinator of CERCONVIDH had received death threats that were reported to the Human Rights Ombudsman, but that no investigations were undertaken by the authorities. Grave concern is expressed that the murder of Mr Alves dos Santos and the alleged threats against him are connected with the activities of CERCONVIDH in defence of the human rights of homosexuals and lesbians, in particular because Mr Alves dos Santos and CERCONVIDH had campaigned against impunity in relation to the alleged massacre of 30 transvestites..."; ¶ Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Addendum: Mission to Guatemala (21-25 August 2006)*, A/HRC/4/20/Add.2, 19 February 2007, para. 32:



**States shall:**<sup>186</sup>

A. Establish appropriate, accessible and effective criminal, civil, administrative and other procedures, as well as monitoring mechanisms, to ensure the accountability of perpetrators for human rights violations related to sexual orientation or gender identity;

B. Ensure that all allegations of crimes perpetrated on the basis of the actual or perceived sexual orientation or gender identity of the victim, including such crimes described in these Principles, are investigated promptly and thoroughly, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished;<sup>187</sup>

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"There has been impunity for murders motivated by hatred towards persons identifying as gay, lesbian, transgender, and transsexual. Credible information suggests that there were at least 35 such murders between 1996 and 2006. Given the lack of official statistics and the likely reticence if not ignorance of victims' family members, there is reason to believe that the actual numbers are significantly higher"; ¶ CHR, *Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Asma Jahangir*, U.N. Doc. E/CN.4/2000/3, 25 January 2000, para. 116: "The Special Rapporteur believes that decriminalizing matters of sexual orientation would greatly contribute to overcoming the social stigmatization of members of sexual minorities, and thereby curb impunity for human rights violations directed against these persons."

<sup>186</sup> See note 3, *supra*.

<sup>187</sup> ¶ Principles to Combat Impunity, *supra* at note 178, Principles 1 and 19; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: United States of America*, U.N. Doc. CAT/C/USA/CO/2, 25 July 2006, para. 37: "The Committee is concerned about reports of brutality and use of excessive force by the State party's law-enforcement personnel, and the numerous allegations of their ill-treatment of vulnerable groups, in particular...persons of different sexual orientation which have not been adequately investigated (art. 16 and 12). The State party should ensure that reports of brutality and ill-treatment of members of vulnerable groups by its law-enforcement personnel are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished"; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: Poland*, U.N. Doc. CCPR/CO/82/POL, 2 December 2004, para. 18: "The Committee is concerned that the right of sexual minorities not to be discriminated against is not fully recognized, and that discriminatory acts and attitudes against persons on the ground of sexual orientation are not adequately investigated and punished (art. 26)"; ¶ Human Rights Committee, *Concluding observations of the Human Rights Committee: El Salvador*, U.N. Doc. CCPR/CO/78/SLV, 22 August 2003, para. 16: "The Committee expresses concern at the incidents of people being attacked, or even killed, on account of their sexual orientation [and] at the small number of investigations mounted into such illegal acts..."; ¶ CHR, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Addendum: Communications to and from Governments*, U.N. Doc. E/CN.4/2006/61/Add.1, 27 March 2006, para. 131: "...on the 25th September, policemen reportedly captured a metis named KR, beat her and took her to the Durbar Marg police station accusing her of having hit one of their

C. Establish independent and effective institutions and procedures to monitor the formulation and enforcement of laws and policies to ensure the elimination of discrimination on the basis of sexual orientation or gender identity;<sup>188</sup>

D. Remove any obstacles preventing persons responsible for human rights violations based on sexual orientation or gender identity from being held accountable.<sup>189</sup>

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colleagues with a stone. KR was kept in detention up to 6pm and told that she had to pay a fine of 28,000 rupees on a public offence charge. She was also forced into oral sex with two policemen while in custody. KR was reportedly released after having paid 1000 rupees. Attempts were made to lodge a complaint on her behalf at the National Human Rights Commission and the Human Rights Cell of the Nepal Police, but both offices reportedly refused to investigate”; ¶ International Conference on LGBT Rights, *Keynote address by Louise Arbour, the United Nations High Commissioner for Human Rights*, Montreal, Canada, 8 July 2006: “Because of the stigma attached to issues surrounding sexual orientation and gender identity, violence against LGBT persons is frequently unreported, undocumented and goes ultimately unpunished. [...] States have a legal duty to investigate and prosecute all instances of violence and abuse with respect to every single person under their jurisdiction. Excluding LGBT individuals from these protections clearly violates international human rights law as well as the common standards of humanity that define us all.”

<sup>188</sup> Council of Europe, Parliamentary Assembly, *Recommendation 1474 (2000): Situation of lesbians and gays in Council of Europe member states*, 26 September 2000, para. 11: “The Assembly therefore recommends that the Committee of Ministers: [...] ii. extend the terms of reference of the European Commission against Racism and Intolerance (ECRI) to cover homophobia founded on sexual orientation, and add to the staff of the European Commissioner for Human Rights an individual with special responsibility for questions of discrimination on grounds of sexual orientation...” (available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta00/EREC1474.htm>).

<sup>189</sup> ¶ See Vienna Declaration, *supra* at note 2, Part II, para. 60; ¶ Principles to Combat Impunity, *supra* at note 178, Principles 22-30.