

Joint NHRI statement on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity

Human Rights Council

23rd Session

Item 8: Follow-up to and implementation of the Vienna Declaration and Programme of Action

10 June 2013

Dear Mr President,

This is a joint statement on behalf of the following A status National Human Rights Institutions (NHRI): Republic of Albania People's Advocate, Australian Human Rights Commission, Defensor del Pueblo de Bolivia, Human Rights Ombudsman of Bosnia and Herzegovina, Canadian Human Rights Commission, Instituto Nacional de Derechos Humanos de Chile, Ombudsman of the Republic of Croatia, The Danish Institute for Human Rights, Procuraduría para la Defensa de los Derechos Humanos de El Salvador, French National Consultative Commission for Human Rights, Office of Public Defender Georgia, German Institute for Human Rights, Great Britain Equality and Human Rights Commission, Greek National Commission for Human Rights, Irish Human Rights Commission, Luxembourg Human Rights Commission, The National Human Rights Commission of Mauritius, National Human Rights Commission of Mongolia, National Human Rights Commission of Nepal, New Zealand Human Rights Commission, Procuraduría para la Defensa de los Derechos Humanos de Nicaragua, Northern Ireland Human Rights Commission, Commission on Human Rights of the Philippines, Provedor de Justiça Portugal, Scottish Human Rights Commission, South African Human Rights Commission, El Defensor del Pueblo de España, National Human Rights Commission of Thailand, and Ukrainian Parliament Commissioner for Human Rights.

We, as NHRIs accredited under the Paris Principles,¹ are charged with the obligation to protect and promote human rights of all individuals without prejudice or discrimination.

We recall the previous joint NHRI statement on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, presented at the 19th session of the Human Rights Council in 2012.

Twenty years ago the international community unanimously adopted the Vienna Declaration and Programme of Action. The Vienna Declaration and Program of Action reinforce the universality of human rights and reaffirm the principles of equality and non-discrimination. The Vienna Declaration and Programme of Action recognise the importance of national and regional particularities and various

¹ Principles relating to the Status of National Institutions (The Paris Principles) adopted by UN General Assembly, *National institutions for the promotion and protection of human rights*, UN Doc A/RES/48/134 (20 December 1993).

historical, cultural and religious backgrounds, while noting that ‘it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.’

We welcome the United Nations Secretary-General’s report *National institutions for the promotion and protection of human rights*.² As NHRIs in a diversity of cultures and societies working in regions across the world, we express our concern at the systemic and continuing human rights violations on the basis of sexual orientation, gender identity and of intersex persons in all regions of the world including killings, rape, torture and other forms of cruel, inhumane and degrading treatment, medical abuses, criminalisation of homosexuality, denial of the recognition of relationships and recognition before the law, denial of the freedoms of expression and association, and of the right to the health.

We welcome the ongoing commitment of the Secretary General, the Human Rights Council, the High Commissioner for Human Rights, special procedures, treaty bodies, civil society and human rights defenders worldwide to address the issue of violence and discrimination based on sexual orientation and gender identity and against intersex persons.

We recognise that there is a need to give equitable focus to human rights violations on the basis of gender identity, intersex status and sexual orientation.

We commend the positive action taken by the Human Rights Council to highlight the violence, discrimination and human rights abuses faced by lesbian, gay, bisexual, transgender and intersex (LGBTI)³ people around the world, by adopting the first UN resolution solely focused on the human rights of LGBTI people.⁴ We welcome the report by the High Commissioner for Human Rights⁵ and the panel discussion at the Human Rights Council⁶ that followed. We further welcome the joint statements made to the Human Rights Council and the General Assembly in 2011, 2008 and 2006.⁷

We support the findings in the High Commissioner for Human Rights’ report, and note that on the basis of the information presented within the report ‘a pattern of

² UN Human Rights Council, *National institutions for the promotion and protection of human rights: Report of the Secretary-General*, UN Doc A/HRC/23/27 (2 April 2013).

³ The terms lesbian, gay, bisexual, transgender and intersex are abbreviated to LGBTI. These terms are used to refer to same-sex behaviour, identities or relationships, diverse gender identities and sex characteristics.

⁴ UN Human Rights Council, *Human Rights, Sexual Orientation and Gender Identity*, Res 17/19, UN Doc A/HRC/RES/17/19 (17 June 2011).

⁵ UN Human Rights Council, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights*, A/HRC/19/41 (17 November 2011).

⁶ UN Human Rights Council panel on ending violence and discrimination against individuals based on their sexual orientation and gender identity. Geneva, 7 March 2012. Concept note and Summary of discussion available at:

<http://www.ohchr.org/EN/Issues/Discrimination/Pages/PanelSexualOrientation.aspx>.

⁷ *Joint statement on ending acts of violence and related human rights violations based on sexual orientation & gender identity* was delivered to the Human Rights Council on behalf of 85 countries in 2011. This follows previous statements including a 2008 statement by 67 countries at the General Assembly, and a 2006 statement by 54 countries at the Human Rights Council.

human rights violations emerges that demands a response.’ We welcome the acknowledgement in the report of the important role that NHRIs play in addressing violence and discrimination on the basis of sexual orientation and gender identity.

We reflect on the outcomes of the regional seminars held in Paris, Kathmandu and Brasilia, the information gathered through civil society events in Africa and the global dialogue in Oslo in 2013.⁸ We welcome the constructive approach taken by States and civil society during these consultations, and hope that the dialogue will pave the way for continuing engagement at the national, regional and international level.

NHRIs play a crucial role in protecting and promoting the rights of LGBTI people. Functions and powers available to NHRIs include the ability to investigate complaints, review laws and policies, hold national inquiries and conduct public education. Given the important and unique role of NHRIs we call on States to ensure that NHRIs have the necessary resources to fulfil their mandates. We also encourage the Human Rights Council and the Office of the High Commissioner for Human Rights to work with NHRIs to strengthen their capacity to address issues affecting LGBTI persons and respond to violations.

We affirm the High Commissioner’s finding that a more comprehensive analysis of the human rights challenges facing LGBTI persons requires a more systematic study and regular reporting. We call on the Human Rights Council to encourage States to improve data collection concerning sexual orientation, gender identity and intersex to better inform the extent to which human rights are being realised by LGBTI persons. This data should be collected in accordance with human rights principles, and in consultation with LGBTI persons.

We call on the Human Rights Council to encourage States to accept recommendations and implement commitments made through the Universal Periodic Review process related to sexual orientation and gender identity.

We support the work of treaty bodies and special mechanisms and we reiterate our call for the continued mainstreaming of protection for individuals discriminated against because of their sexual orientation, gender identity or because they are intersex, through existing international and regional human rights systems.

We call on the Human Rights Council to establish an appropriate mechanism to study, document and report to the Human Rights Council concerning human rights violations, barriers and challenges on the basis of sexual orientation, gender identity and for intersex persons. This mechanism should operate in consultation with LGBTI persons to promote dialogue, identify best practice and provide guidance to States and other UN bodies on human rights.

Whilst a resolution at this session would have been welcomed the decision to host two high level meetings is recognised as an important step towards sustained

⁸ International Conference on Human Rights Sexual Orientation and Gender Identity, 15-16 April 2013, Oslo, Norway. Outcomes of the International Conference and Regional Seminars available at: <http://www.hrsogi.org/midleertidighome.cfm>.

engagement on these issues. As NHRIs we look forward to participating in those discussions and to the report back of those meetings to the Human Rights Council. We further encourage all Member States to engage in open dialogue and work together constructively with NHRIs and civil society to ensure that a resolution is presented to the Human Rights Council at an upcoming session.

As NHRIs we renew our commitment to promoting and protecting human rights for all, including the rights of LGBTI persons. We will continue to work with States, civil society, the Human Rights Council and other international mechanisms to guarantee the ongoing visibility, protection and promotion of these rights and to ensure human rights violations against LGBTI persons are effectively addressed.