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Equitable Representation of Women and Minorities in Government

The Universal Declaration of Human Rights (UDHR), adopted in 1948, recognizes the equal and inalienable rights of all human beings without distinction of any kind.¹ This reaffirms equal rights for women and minorities. There is no agreed definition that incorporates all possible groups that may be considered minority groups, but the term can generally be understood to correspond to persons belonging to groups in the non-dominant position which include, *inter alia*, stateless persons, migrants, victims of forced displacement, persons with disabilities, people living with HIV/AIDS and lesbian, gay, bisexual, or transgender (LGBT) persons. Ensuring fair and equal representation for all such groups is vital to ensuring that the rights of such groups are protected, in accordance with agreed international human rights standards. Beyond that, the incorporation of women and minorities in government has the potential to improve the efficiency of government, both in terms of limiting corruption, and in terms of aiding development efforts through ensuring the full participation of disadvantaged groups in society.

The International Covenant on Civil and Political Rights (ICCPR), adopted by the General Assembly in 1966, is a multilateral document that commits its parties to respect and promote the political and civil rights of these individuals, including freedom of speech, freedom

¹ "The Universal Declaration of Human Rights." *UN News Center*. December 10, 1948.

of assembly, and electoral rights.² One of the fundamental objectives for the achievement of equality, development and peace, as promoted by the UDHR, is the full participation and representation of women and minorities in the decision-making process. Article 25 of the ICCPR states that the basis of equal representation holds that women and minorities have the right to take part in public affairs, including the right to vote, the opportunity to be elected to public office, and to have equal access to public services.³

Consequently, to lay down a comprehensive set of rights from a gender perspective, Member States adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979.⁴ The Convention positively affirms the principle of equality by urging State parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."⁵ CEDAW emphasizes the need for equality of access to education, equality in the workforce, and equality in the political arena, among other areas.⁶ While CEDAW is a significant element of the international community's efforts to ensure equal rights and representation for women, it does not enjoy universal ratification; moreover, a number of Member States that have ratified the

² "International Covenant on Civil and Political Rights." International Covenant on Civil and Political Rights. December 16, 1966.

³ "Women and Elections." *United Nations*, 2014, <http://www.un.org/womenwatch/osagi/wps/.../WomenAndElections.pdf>

⁴ "Convention on the Elimination of All Forms of Discrimination against Women." *Office of the High Commissioner for Human Rights*. September 3, 1981.

⁵ "Convention on the Elimination on All Forms of Discrimination Against Women," *United Nations*, 1979, <http://www.un.org/womenwatch/daw/cedaw/>

⁶ *Ibid.*

Convention have done so with specific reservations, and thus do not consider themselves bound by the entire treaty.⁷

In the spirit of CEDAW, the General Assembly adopted the Beijing Platform for Action in September of 1995. As the principal international action plan on women's rights, the Beijing Platform states that the empowerment and autonomy of women and the improvement of their political status is essential for the achievement of both transparent and accountable government and administration, as well as sustainable development in all areas of life. In 2005, the Beijing Platform was renewed until 2020. In 2013, UN Women began the Beijing+20 campaign, which seeks to expand the fight for gender equality in the UN Women's Beijing +20 Action Plan.⁸ The Action Plan supports a comprehensive, multilateral approach to empowering women by partnering with national movements and women's machineries to act as catalysts for social and political change.⁹

Similar to CEDAW and the Beijing Action Plan, the UN Declaration on the Rights of Indigenous People, adopted on September 13, 2007 by the General Assembly, is a landmark step towards ensuring indigenous rights, in particular their inclusion in government affairs. The Declaration states that "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State."¹⁰ It also states that indigenous peoples are entitled to all human rights and fundamental freedoms set forth in the UN Charter, UDHR, and international human rights laws, including the

⁷ "Convention on the Elimination of All Forms of Discrimination against Women", *UN Treaty Center*, 2014, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en.

⁸ "Beijing 20." *UN Women*. May 22, 2014.

⁹ *Ibid.*

¹⁰ "UN Declaration on the Rights of Indigenous People." *United Nations General Assembly*, September 13, 2007, Accessed October 21, 2014. http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf.

right to freely participate in government.¹¹ The Declaration reflects the need to protect the rights of indigenous people in general; as indigenous peoples comprise one of the most disenfranchised minority categories in many States, the Declaration has particular relevance to their political representation.

However, the aim of equitable participation of women and minorities in government cannot be fully achieved because of several factors that hinder their rights in the political arena. Women and minorities continue to struggle to take part in the decision-making process as a result of poverty and lack of economic resources. They are challenged by their socio-economic status, which in some cases cause them to earn less while having to prioritize the needs of their families. Lack of education and leadership training, particularly in rural areas, hinder the ability of women and minorities to participate fully in the political process. For example, the indigenous Batwa people have limited access to educational opportunities which results in an extremely low literacy rate. Consequently, the Batwa earn well below the average per capita income of \$200 USD.¹²

Minority participation in government is also hindered by institutional barriers that prevent women and minorities from voting. Lack of identification is one of the most common obstacles faced by women and minorities with regards to voting. Lack of identification can be a result of racial suppression, inability to pay state identification fees, or an inability to read and/or write in order to properly fill out the paperwork required to obtain an identification card. Beyond lack of identification, the actual act of physically voting can become a burden to those living in impoverished areas. In many third world nations, polling stations are limited and the distance

¹¹ "UN Declaration on the Rights of Indigenous People." *United Nations General Assembly*, September 13, 2007, Accessed October 21, 2014. http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

¹² "Unrepresented Nations and Peoples Organization." *UNPO: Batwa*, March 25, 2008.

needed to reach a polling station from a rural area is a burden to most rural families. Electoral fraud is also a serious problem in many countries, especially those with transitional governments. Electoral fraud includes vote rigging, intimidation, vote buying, intentionally spreading misinformation, and misleading or confusing ballots.¹³

The internal culture of political parties can also be a major obstacle to the participation and representation of women and minorities in the government. Political parties decide matters of candidate selection, and their decision-making bodies are often mostly composed of male members of the majority. As the internal hierarchy and procedures of many political parties can be rigid or uncompromising, women and minorities can find it difficult to overcome institutional obstacles and achieve positions of any significant political importance. For instance, Lebanese women gained suffrage in 1952, however only 2.3 percent of the Lebanese parliament is composed of women.¹⁴ Overall, political parties tend to marginalize both the struggle and voices of women and minorities, making it difficult to increase participation levels.¹⁵

Because of the challenges that women and minorities face, various resolutions have been adopted to encourage Member States to promote political participation and representation of disadvantaged groups. In 1990, the UN Economic and Social Council (ECOSOC) adopted Resolution 1990/15, which urges “governments, political parties, trade unions, and professional and other representative groups to adopt a 30 percent minimum proportion of women in

¹³ "Election Crimes: An Initial Review and Recommendations for Future Study." December 1, 2006. Accessed October 24, 2014. http://www.eac.gov/assets/1/workflow_staging/Page/57.PDF

¹⁴ Fahmiyah Sharafeddine, “Step Towards Equality: Quota for Female MPs in Lebanese Parliament”, *Al-Monitor*, February 12, 2012, <http://www.al-monitor.com/pulse/culture/2012/02/is-the-lebanese-society-prepared.html#>.

¹⁵ "Equal Participation of Women and Men in Decision-Making Processes, with Particular Emphasis on Political Participation and Leadership." October 27, 2005. Accessed October 14, 2014.

leadership positions, with a view to achieving equal representation.”¹⁶ Additionally, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN Minorities Declaration), adopted in 1992, grants minorities the right to participate in decisions which will affect them at the national and regional levels. Furthermore, the General Assembly adopted A/RES/58/142 (2003) which expresses the importance of ensuring that women are given equal opportunity in reconciling their familial and professional responsibilities. It also stresses the importance of developing programs that will educate and train women with regard to skills such as campaigning techniques and public speaking, in an effort to provide potential women candidates with the tools to overcome institutional and cultural barriers to their participation in politics.¹⁷ In 2011, the General Assembly adopted Resolution 66/130, which calls for the removal of barriers that discriminate against women directly or indirectly, and to take important measures that will encourage them to participate in all levels of the decision-making process.¹⁸

In addition to these instruments, the international community has established several programs specific to gender rights issues, most notably the United Nations Entity for Gender Equality and the Empowerment of Women, also known simply as UN Women, adopted through UN General Assembly Resolution 64/289 in 2010. The organization is committed to promoting women’s leadership and political participation. UN Women provides civic education for voters as well as sensitization campaigns on gender equality for female political candidates. Moreover, UN Women encourages women’s fair access to political spheres as voters, candidates, elected

¹⁶“Equal Participation of Women and Men in Decision-Making Processes, with Particular Emphasis on Political Participation and Leadership.” October 27, 2005. Accessed October 14, 2014.

¹⁷Ibid.

¹⁸“Global Norms and Standards: Leadership and Political Participation”, *UN Women*, 2014, <http://www.unwomen.org/en/what-we-do/leadership-and-political-participation/global-norms-and-standards>.

officials and civil service members through legislative and constitutional reforms. Working in tandem with UN Women is the United Nations Girl Up program, which seeks to empower young girls by providing them with opportunities to become global leaders by channelling their energy to raise awareness and funds for United Nations programs that assist some of the world's hardest-to-reach adolescent girls.¹⁹

Equitable participation and representation of women and minorities in government is not a far-fetched dream, but it also cannot be done easily. Incessant efforts are needed to fully achieve this goal of equity. Denying or limiting the role of women and minorities in the process of governance is not only an affront to the rights of such individuals, but also a threat to development and good governance programs. A government that excludes, either by law or by custom, certain categories of people is a government that excludes itself from potentially valuable talent, and a government that widens and inflames divisions between majority and minority groups. There have been, in recent years, significant successes in the status of women even in states that are affected by conflict. This is evident in countries such as Rwanda, wherein equality is incorporated in its new constitution, and in Liberia and Kosovo through anti-corruption campaigns. The international community must continue to build on these successes, and find ways to achieve equivalent results in other states as well, in keeping with the highest standards of respect for equality, justice and human rights.

Questions to Consider:

1. What are the key developments in the participation of women in the political process in your state?

¹⁹ "Leadership", *Girl Up*, 2014, <http://www.girlup.org/learn/leadership.html>.

2. What are the current persisting barriers that hinder women and minorities in participating in government?
3. What are the mechanisms of your government which encourage the participation of women in accordance with the Resolution A/RES/66/130?
4. What are some possible measures that the international community should take in increasing the participation of women and minorities in government?
5. How should the international community address the issues regarding the equitable representation of women in government?
6. How successful has your state been in implementing the principles of the UN Minorities Declaration? What obstacles still remain that hinder its implementation, if any?

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Ensuring the Dignity and Rights of Persons with Respect to Sexual Orientation and Gender Identity

International human rights law upholds the principles of equality and non-discrimination in the application of recognized rights. Everyone is entitled to all rights and freedoms set forth in the Universal Declaration of Human Rights (UDHR) without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹ Furthermore, Article 2 of the International Covenant on Civil and Political Rights calls for State parties to respect and recognize the rights of all individuals within its territory and subject to its jurisdiction without distinction of any kind.² Despite the failure to explicitly state sexual orientation as part of the prohibited grounds of discrimination, the United Nations Human Rights Committee confirmed that sexual orientation is indeed included in the understanding of sex as a prohibited basis for discrimination.³ The UN General Assembly (GA) affirmed, in a statement made in 2008 that human rights are for all regardless of sexual orientation or gender identity.⁴

Despite efforts of the international community and the UNHRC, discrimination and violence based on sexual orientation and gender identity has been prevalent in many countries,

¹"The Universal Declaration of Human Rights", *UN News Center*. December 10, 1948. Accessed October 17, 2014.

²"International Covenant on Civil and Political Rights", *United Nations General Assembly*, December 19, 1966.

³"Sexuality Under the ICCPR", *Australian Human Rights Commission*, November 19, 2007, Accessed October 17, 2014.

⁴"Letter Dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations Addressed to the President of the General Assembly", December 22, 2008, Accessed October 17, 2014.

some of which have legal measures that institutionalize violence and discrimination against LGBT persons. Today, seventy-seven countries, mostly in Asia and Africa, have laws that criminalize homosexual acts.⁵ Five of these countries penalize those engaged in homosexual acts with death.⁶ This underscores the urgency and necessity behind advancing efforts to curb discrimination through the United Nations system.

The case of *Toonen v. Australia* is the first recorded legal challenge to discriminatory practices against LGBT persons, wherein the ruling confirmed the repealing of offending laws that interferes with the rights of individuals regardless of sexual orientation.⁷ On 25 December 1991, Mr. Nicholas Toonen, an Australian citizen and a frontline member of the Tasmania Gay Law Reform Group, submitted his complaint to the UN Human Rights Committee. In his complaint, Mr. Toonen claimed to be a victim of the State party (Australia), whom he argued violated his rights under Article 2 paragraph 1, Article 17 and 26 of the International Covenant on Civil and Political Rights. He cited the Tasmanian Criminal Code, particularly Sections 122(a) and (c) and 123, which criminalized various forms of sexual contact between men - including sexual contact between consenting adult homosexual men done in private - in his complaint as violating international law that protects his right to privacy and non-discrimination. He further argued that the above-mentioned sections of the Tasmanian Criminal Code gives power to Tasmanian police officers to investigate intimate aspects of his private life. Furthermore, the criminal code allowed police officers to detain him in the case of proven involvement in prohibited sexual activities.

⁵"Discriminatory Laws and Practices and Acts of Violence against Individuals Based on Their Sexual Orientation and Gender Identity", *Office of the High Commissioner for Human Rights*, November 17, 2011.

⁶"Where Is It Illegal to Be Gay?" *BBC News*. February 10, 2014, Accessed October 17, 2014.

⁷"Sexuality Under the ICCPR," *Australian Human Rights Commission*, November 19, 2007, Accessed October 17, 2014.

As a response, the State party conceded that Toonen had been a victim of arbitrary interference with his privacy. Moreover, Australia admitted that the legislative provisions challenged by Toonen could not be justified on the grounds of public health and morality. The State party expressed that it did not seek to claim that the challenged laws are based on reasonable and objective criteria. However, Australia sought the guidance of the Committee in the inclusion of sexual orientation in the “other status” clause found Article 2 paragraph 1 and Article 26 of the International Covenant on Civil and Political Rights.

On 31 March 1994, the Human Rights Committee ruled that the challenged provisions of the Tasmanian Criminal Code failed to withstand reason and logic. Furthermore, the Committee declared that the challenged provisions of the criminal code interfered with Toonen’s right to privacy found in Article 17 of the International Covenant on Civil and Political Rights. Consequently, under Article 2 paragraph 1 of the Covenant, Mr. Toonen is entitled to restitution, which the Committee determined to be the repealing of the provisions of the Tasmanian Criminal Code that interferes with his aforementioned right. Since the Committee ruled the violations under Article 2 paragraph 1 and Article 17 of the Covenant, the Committee did not consider it necessary to determine violation under Article 26 of the Covenant. On the issue whether to consider sexual orientation as other status declared in Covenant, the Committee declared sexual orientation as part or included in sex, which is explicit in the Covenant. Up to this date, the resolution on the inclusion of sexual orientation as a prohibited basis for discrimination guides several treaty bodies of the UN such as the Committee on Economic, Social and Cultural Rights, Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women.

Other states have experienced similar movement away from discriminatory practices. Brazil, for example, has also made efforts to include sexual orientation and human rights in the context of the UN ever since the UN World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001. In another effort to do so, the delegation of Brazil introduced a resolution prohibiting discrimination on the basis of sexual orientation drawing conviction from the Universal Declaration of Human Rights during the 59th Session of the United Nations Commission on Human Rights (UNCHR). Australia, European Union and Canada were the initial supporters of the resolution.

In 2003, Brazil took a step closer to initiating a discussion on violence and discrimination based on sexual orientation when it introduced Resolution E/CN.4/2003/L.94 or the Resolution on Human Rights and Sexual Orientation before the UNCHR. The resolution received strong opposition from conservative states such as Pakistan, Vatican City, Zimbabwe, Malaysia, Saudi Arabia and Bahrain. Countries in opposition urged other countries to vote against the resolution. They argued that the Commission should not waste its time on a topic not worthy of UN discussion and even claimed that the resolution was an insult to all Muslims around the world. Consequently, Pakistan, leading the Organization of Islamic Conference, suggested a no-action motion to avoid putting the resolution to a vote. With twenty-four votes against the no-vote motion, twenty-two in favor and six abstentions, the Commission moved on to the debate regarding the resolution. However, the opposition used delaying tactics such as threatening to submit hundreds of amendments to the resolution, mostly deleting the words sexual orientation in every clause, and moving to a procedural debate consuming the remaining time of the

meeting. As a result, the Chair proposed considering the resolution in next year's session. The motion received twenty-four votes in favor, seventeen against and ten abstentions.⁸

Before the 60th Session of the UNCHR, however, Brazil withdrew the resolution, citing concerns that a lack of international support and international political will would doom the proposal in any case. Some observers indicate that Brazil's withdrawal of the resolution was a result of intense pressure from Islamic countries and lack of support from EU countries. Moreover, some argue that Egypt may have threatened to veto the proposal for Brazil to host the Arab League-Latin American Summit if Brazil did not withdraw the resolution.⁹ While the proposed resolution did not contain the strongest language possible, it would have been the first UNCHR resolution to directly link human rights to sexual orientation and the first to condemn discrimination against people based on their sexual orientation.¹⁰ The case of this proposed draft underlines the severe difficulties involved in fostering any progress on the topic.

Since no other country was willing to sponsor the Brazilian resolution on human rights and sexual orientation, this constituted a failure to include violence and discrimination experienced by LGBT persons in high-level discussions. The topic was not re-addressed at a high level until the 60th anniversary of the UDHR, when a Joint Statement on Sexual Orientation, Gender Identity and Human Rights was presented before the GA.¹¹ Sixty-six Member States

⁸“Human Rights and Sexual Orientation and Gender Identity”, *Amnesty International*, 2004, <http://www.amnesty.org/en/library/asset/ACT79/001/2004/en/a1e0b38f-d5fe-11dd-bb24-1fb85fe8fa05/act790012004en.pdf>.

⁹Ibid.

¹⁰Ibid.

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“General Assembly – Joint statement on sexual orientation and gender identity”, *Arc International*, 2008, http://arc-international.net/global-advocacy/general-assembly/ga_jointstatement_en.

from the Organization of American States, European Union, Africa and Asia supported the first ever statement addressing rights and violations based on sexual orientation and gender identity at the GA. The statement reaffirms the principle of universality, equality and non-discrimination of human rights. It expresses concerns over violations of human rights and fundamental freedom based on sexual orientation or gender identity. The statement also condemns these human rights violations, and urges States to take all necessary legislative or administrative measures to protect LGBT persons from criminal penalties, arrests or detention due to their sexual orientation and gender identity. Furthermore, it calls on relevant international human rights mechanisms to commit to promote and protect the human rights of all persons, regardless of sexual orientation and gender identity. The joint statement is a non-binding document but constitutes a leap toward the inclusion of sexual orientation and gender identity in the UN language.

In 2011, the HRC adopted the first UN resolution on human rights, sexual orientation and gender identity. The Council, through Resolution 17/19, calls on the UNHCHR to commission a study documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity.¹² By adopting this resolution, States also decide to convene a panel discussion during the nineteenth session of the HRC to discuss the issue of discriminatory laws and practices, and acts of violence, against individuals based on their sexual orientation and gender identity. The panel discussion will make use of the information and data gathered in the study commissioned by the UNHCHR.¹³ In pursuant with Resolution 17/19, the High Commissioner for Human Rights presented the report on

¹² “A/HRC/RES/17/19”, *Human Rights Council*, 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement>.

¹³ “A/HRC/RES/17/19”, *Human Rights Council*, 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement>.

Discriminatory Laws and practices and acts of violence against individuals based on their sexual orientation and gender identity during the nineteenth session of the HRC.¹⁴ The 25-page report highlighted violations of the principles of universality, equality and non-discrimination in the application of human rights.¹⁵ The High Commissioner for Human Rights also noted in A/HRC/19/41 (2011) that the different State responsibilities under International Human Rights Law must be observed without distinction on the grounds of sexual orientation and gender identity. The responsibilities mentioned are the protection of life, liberty and property, the prevention of torture and other cruel, inhumane or degrading treatment, the protection of the right to privacy and against arbitrary detention, and the protection of the right to freedom of expression, association and assembly.¹⁶ Following report 19/41, the HRC adopted Resolution HRC/27/L.27/Rev.1 in 2014.¹⁷ This resolution expands on 2011's Resolution 17/19 and calls for an updated version of report 19/41, and emphasizes researching and developing best practices with regard to rolling back discriminatory policies.

The report on discriminatory laws and practices commissioned by the UNHCHR cited incidents of violence such as killings, rape, torture and other forms of cruel, inhumane and degrading treatment. Despite the scarcity of data, the final output of the report managed to put together relevant cases and data to paint a picture of the current situation of LGBT-related violence. Included in the report are data on the murder of at least 31 LGBT persons in Honduras during an 18-month period, the murder of 44 LGBT persons in Europe in 2009, the 988 hate-

¹⁴ “A/HRC/19/41”, *Human Rights Council*, 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf.

¹⁵ *Ibid*, 4.

¹⁶ *Ibid*, 5-8.

¹⁷ “Resolution 27/L.27/Rev.1”, *UN Human Rights Council*, 2014, http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/27/L.27/Rev.1.

crimes related cases in United Kingdom of Great Britain and Northern Ireland and a number of sexual abuses committed by police officers against LGBT persons.¹⁸

According to data from the HRC's report 19/41, seventy-seven States, Uganda being the most recent, have laws criminalizing homosexuality.¹⁹ While in the case *Toonen v. Australia*, the Committee ruled that laws criminalizing private, consensual homosexual acts violate a person's right to privacy under the International Covenant on Civil and Political Rights, and thus called to repeal such offending laws, many States remain firm in criminalizing sexual acts of LGBT persons. Some States need not to establish or prove the LGBT person's engagement in homosexual acts. Their law simply penalizes LGBT persons for defying social norms and gender roles. Other States have laws criminalizing homosexuality using colonial-era legislation wherein they prohibit either certain types of sexual activity or any intimacy or sexual activity among same-sex couples.²⁰ Criminal penalties range from years imprisonment to the death penalty. At least five States penalize being LGBT and engaging in homosexual acts with death.²¹

International efforts vary from being discrete to being vocal in including the issue of sexual orientation and gender identity based violence and discrimination. Despite recent progress within the HRC and various organs of the United Nations, many are still suffering from the ill-treatment of others solely because of their sexual orientation and gender identity. Violence and discrimination against LGBT persons persists, and is increasing in number and severity. The biggest challenge faced by the LGBT community and LGBT advocates remains the legal

¹⁸ "A/HRC/19/41", *Human Rights Council*, 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf.

¹⁹ Ibid.

²⁰ "A/HRC/19/41", *Human Rights Council*, 2011, http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf.

²¹ "Criminalization", *UN Free & Equal*, 2014, https://unfe-uploads-production.s3.amazonaws.com/unfe-43-UN_Fact_Sheets_-_FINAL_-_Criminalization_%281%29.pdf.

measures that perpetuate gender-based violence and discrimination. Such measures protect the violators rather than the victims, encourage violence rather than tolerance, and subscribe to homogeneity rather than diversity.

Under international law, States have the main responsibility of upholding and protecting the rights of their citizens without distinction and biases, and criminalization of same-sex relationships undermines this responsibility. UN Secretary-General Ban Ki-moon reiterated during the launching of Free & Equal Campaign, “these laws [criminalizing consensual, adult same-sex relationship] violate basic rights to privacy and to freedom from discrimination. Whether enforced or not, they actively encourage intolerant attitudes, giving homophobia a State seal of approval.”²² The penalties cited in laws that prohibit homosexual acts and same-sex relationships are alarming. In Brunei, homosexuality is considered a crime and the government has recently implemented the stoning of homosexuals to death as a punishment, replacing the original penalty of ten-year imprisonment.²³ Recently, Uganda joined the list of countries that criminalize homosexuality when its President signed the Anti-Homosexuality Act on 24 February 2014.²⁴ The Uganda anti-homosexuality law states that homosexual acts incur lifetime imprisonment while the attempt to commit homosexuality corresponds to seven years imprisonment.²⁵ But due to unconstitutional protest raised by gay rights campaigners in Uganda, the Constitutional Court had to deliberate the newly signed law. On August 1, 2014, the court ruled that the process of enacting the anti-homosexual law was illegal, declaring the law null and

²²“Discrimination against Lesbian, Gay, Bisexual, Transgender people must end, says Secretary-General in message at Free & Equal launch,” *United Nations*, April 30, 2014.

²³ Sharia Brunei, ‘Stone the gays’ law to be phased in starting today” *Jihad Watch*, 2014, <http://www.jihadwatch.org/2014/05/sharia-brunei-stone-the-gays-law-to-be-phased-in-starting-today>.

²⁴ “Uganda: Anti-Homosexuality Law Challenged,” *Human Rights Watch*, March 11, 2014, <http://www.hrw.org/news/2014/03/11/uganda-anti-homosexuality-law-challenged>.

²⁵“Uganda: Law Rolls Back Basic Rights,” *Human Rights Watch*, February 24, 2014, <http://www.hrw.org/news/2014/02/24/uganda-law-rolls-back-basic-rights>.

void. Despite such victory, colonial-era laws penalizing homosexuality are still implemented in the country.²⁶

In some cases, legal measures are established for the purpose of protecting LGBT persons but they lack proper enforcement to promote tolerance and downgrade discrimination and violence. Many LGBT persons around the world are still tormented with different physical and psychological violence they experience from homophobic, biphobic and transphobic individuals and groups. South Africa is the first African country to provide constitutional protection to LGBT persons in 1996 and the only African country to recognize same-sex marriage.²⁷ Nevertheless, there are still cases of crimes against LGBT persons that not only increase in number but as well as the severity and brutality of practices. Corrective rape is a rampant crime against lesbians, wherein perpetrators believe that a lesbian girl can turn into a heterosexual by having sex with a man. Ever since the release of the 1998-2000 report of the UN Office on Crime and Drugs, South Africa is known to be the rape capital of the world with an estimate of 500,000 rape cases every year.²⁸

To greater extent, South African men even murder lesbians after raping them. The case of Sizakele Sigasa, a women's and gay rights activist, not only proves that hate crimes continue to exist even in a country where legal measures are available to protect the LGBT community but also reflects the gravity of violence against lesbians in their country. Sizakele and her friend

²⁶ David Smith, "Uganda anti-gay law declared 'null and void' by constitutional court," *The Guardian*, August 1, 2014, <http://www.theguardian.com/world/2014/aug/01/uganda-anti-gay-law-null-and-void>.

²⁷ Jane Thirikwa, "Growing Violence Against LGBT Community in South Africa," *Human Rights Campaign*, September 13, 2013, <http://www.hrc.org/blog/entry/growing-violence-against-lgbt-community-in-south-africa>.

²⁸ Patrick Strudwick. "Crisis in South Africa: The shocking practice of 'corrective rape' -aimed at 'curing' lesbians," *The Independent*, January 4, 2014, <http://www.independent.co.uk/news/world/africa/crisis-in-south-africa-the-shocking-practice-of-corrective-rape--aimed-at-curing-lesbians-9033224.html>.

experienced verbal abuse when a group of men started name-calling them. They were eventually gang raped, tortured and shot in the head.²⁹ No one was ever convicted for the crime.

Moreover, murdering of individuals because of their sexual orientation and gender identity, particularly transgender individuals, continues to increase. The Trans Murder Monitoring (TMM) project, aimed at systematically monitoring, collecting and analyzing reports of homicides of trans people worldwide, reported an estimate of 1,123 killings of trans people in 57 countries worldwide from 2008-2012.³⁰ As the data showed, most of those reported cases of murder occurred in the Latin America region followed by Northern America and Asia. Yet, these are only the number of reported cases. Many cases remain to unreported and unresolved which makes the total number of violence more significant.

The UN remains firm in its stand that human rights are for all human beings regardless of their categorization. It upholds the principles of equality and non-discrimination in the application of all human rights. Similar to other status specified in different human rights treaties and resolution, as discussed earlier, sexual orientation and gender identity should not become a basis for discrimination and hinder individuals to enjoy and exercise their rights.

Questions:

1. What are other cases of gender-based violence and discrimination that are prevalent in your country?
2. How does your country view the issue of homosexuality and the LGBT community?

²⁹ Ibid.

³⁰ “Constant rise in murder rates: Transgender Europe’s Trans Murder Monitoring project reveals more than 1, 100 reported murders of trans people in the last five years,” *Transgender Europe*, http://www.transrespect-transphobia.org/uploads/downloads/2013/TMM-english/TvT-TMM2013-Update-PR_EN.pdf.

3. Does your country have existing laws that criminalize sexual acts among consensual adult same-sex relationships?
4. Should conservative States consider the resolution passed by the Human Rights Council on human rights, sexual orientation and gender identity in reviewing their anti-homosexual laws?

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Ensuring the Land and Natural Resource Rights of Indigenous Peoples

About 15 percent of today's most impoverished come from the world's indigenous peoples, which has a population of around 370 million.¹ Their survival depends largely on the resources available in the traditional lands they inhabit, which make up 20 percent of the earth's territory.² While many efforts are already being undertaken to address poverty, many indigenous peoples suffer from human rights violations that prevent them from fully benefiting from these efforts.

Human rights violations committed against indigenous peoples are rooted in issues concerning the rights of indigenous peoples over their ancestral lands, territories and natural resources. Ancestral lands and territories form a core part in indigenous peoples' identity and spirituality and are deeply rooted in their culture and history.³ Land plays a vital role in the indigenous peoples' assertion of self-determination which they consider a "prerequisite to the enjoyment of all other human rights", including the right to development⁴. Hence, in order to protect their human rights and tackle the root causes of their poverty, efforts at the local, national

¹ Joji Carino. "Poverty and Well-being." *State of the World's Indigenous Peoples*. UN Department of Economic and Social Affairs. http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf

² Neva Collings. "Environment." *State of the World's Indigenous Peoples*

³ *Backgrounder: Indigenous Peoples – Land, Territories and Natural Resources*. http://www.un.org/esa/socdev/unpfii/documents/6_session_factsheet1.pdf

⁴ Dalee Sambo Dorough. "Human Rights." *State of the World's Indigenous Peoples*

and international levels must put great emphasis on ensuring the land and natural resource rights of indigenous peoples.

In the 1950s, following the decolonization era, many indigenous rights organizations emerged in an effort to seek recognition as peoples and to struggle against further dispossession of land and marginalization. These movements have been able to raise greater interests in countries such as Australia, North America, New Zealand and some Latin American states.⁵ Among the first international efforts made in response to these movements were the ILO Convention 107 (1957) and later on, the ILO Convention 169 (1989) – both of which address the position of indigenous peoples in mainstream society and economy. In 1982, through the Economic and Social Council (ECOSOC) resolution 1982/34, the first ever United Nations mechanism exclusively dedicated to indigenous issues - the Working Group on Indigenous Populations - was established. The Working Group's efforts led the General Assembly to adopt the Declaration on the Rights of Indigenous Peoples in 2007.⁶ Since then, the United Nations system has been playing a vital role in addressing issues concerning indigenous peoples, such as that of lands, territories and natural resources.

The turning point in the discussion of indigenous peoples' rights over their environment, lands and natural resources took place at the Rio Earth Summit in 1992 which resulted to three documents namely, the Rio Declaration, Agenda 21 and the Convention on Biological Diversity.⁷ These documents acknowledge not only special relationship of indigenous peoples to

⁵ Jayantha Perera. Introduction to *Land and Cultural Survival – The Communal Land Rights of Indigenous Peoples in Asia*. Asian Development Bank. <http://www.adb.org/sites/default/files/pub/2009/land-cultural-survival.pdf>

⁶ *The Working Group on Indigenous Populations: its elimination and future within the Human Rights Council (HRC)*. Indigenous Peoples' Center for Documentation, Research and Information. <http://www.docip.org/Previous-Working-Group-on-Indi.66.0.html>

⁷ Jayantha Perera. Introduction to *Land and Cultural Survival*

their lands and territories, but also their roles in their conservation. Agenda 21, in particular, recognizes the role of indigenous peoples in the decision-making processes concerning the sustainable development practices on their lands. In order to promote awareness and cooperation as well as expert advice on dealing with indigenous issues, the UN Permanent Forum on Indigenous Issues was established in 2000. This mechanism works alongside the other two UN bodies specifically dealing with indigenous issues, the Special Rapporteur on the Rights of Indigenous People and the Expert Mechanism on the Rights of Indigenous Peoples. The Special Rapporteur's mandate is to promote laws, policies and programs to implement international standards of indigenous peoples' rights as well as to address alleged violations of these rights. The EMRIP, on the other hand, provides the Human Rights Council with study and research-based thematic expertise on indigenous peoples' rights.

The Sixth Session of the Permanent Forum in 2007 emphasized the fundamental significance of territories, lands and natural resources to indigenous communities' cultural development, poverty reduction, good governance and conflict prevention and resolution. It also acknowledged the struggles of indigenous peoples against numerous cases of discrimination arising from the management of their lands without their consent. In the Session's resulting recommendations, the Permanent Forum strongly urged for the adoption of the UN Declaration on the Rights of Indigenous Peoples to further reinforce the legal framework of indigenous peoples' rights, including their right to land and natural resources. Also highlighted was the role of governments in ensuring the consistency of programmes concerning indigenous lands to internationally recognized standards for indigenous peoples' rights protection. The UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (A/RES/61/295),

with nine of 46 articles stressing the rights of indigenous peoples over their lands, territories and natural resources. Article 26, in particular, states that:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.⁸

In spite of the efforts in the past few decades, however, indigenous peoples' struggles to assert their rights over their lands persist. While globalization provides opportunities for indigenous communities to create networks in effort to claim these rights, it also gives "easier access to multinationals to exploit the lands and natural resources in which indigenous peoples depend."⁹ States are being confronted with foreign and domestic pressures to increase their economic growth. Minority Rights Group's 2012 report on the State of the World's Minorities and Indigenous Peoples mentioned that in response to these pressures, states tend to work alongside private corporations for natural resource development projects. The problem, however, is that most of the areas targeted for such purposes are the lands occupied by indigenous peoples and while they often generate great revenues, the benefits are not all-inclusive. Development activities such as logging, dams, oil, gas and mineral extractions, commercial fisheries,

⁸ *United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)*.

http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁹ Naomi Kipuri. "Culture." *State of the World's Indigenous Peoples*

ecotourism and large-scale agriculture have detrimental consequences to indigenous peoples' livelihood, health, culture, environment and enjoyment of their human rights.

One of the most protested cases of violation of indigenous peoples' land and natural resource rights is the dispossession of lands. The UN Department of Economic and Social Affairs (DESA) also reported in its State of the World's Indigenous Peoples 2009 Report that, in countries that have at least recognized indigenous peoples' land rights, it is not uncommon that processing of land titles and demarcations are delayed or brushed off in the event of reforms in leadership and policies. There are also cases wherein land title-holding indigenous communities are robbed off of their lands due to states' deliberate negligence of their rights in favor of mining and logging projects. These instances occur without free, prior and informed consent of the affected indigenous communities. Other large-scale development activities include subsoil resource extractions, plantations and industrial plants establishment, scientific research- and tourism-based developments disguised as 'protected areas,' construction of ports, transportation networks, dams, military bases and toxic waste dumps. These activities not only result to the dispossession of lands but also displacement, loss of livelihood, environmental destruction, negative health impacts and in some cases, violence in terms of physical abuse, torture and even death. Furthermore, many developers do not extend compensations to indigenous peoples for their losses hence some are forced to work in others' lands, and often in some form of bonded labor, in order to survive.¹⁰

Due to their close relationship with their environment and natural resources, indigenous peoples are also considered among the most vulnerable to the consequences of climate change. In said DESA report, it was mentioned that among others, the changes in migratory patterns of

¹⁰ Corinne Lennox. "Natural Resource Development and the Rights of Minorities and Indigenous Peoples." *State of the World's Minorities*

animals, availability of water resources and grazing areas bring about adverse effects in the traditional hunting, fishing and agricultural practices of indigenous peoples. Indigenous communities also suffer from climate change's negative health impacts and endure dents in tourism revenues at the same time.¹¹ This adverse effect to their economy, along with the depletion of natural resources for their traditional medicines, makes it even more difficult for indigenous peoples to gain access to proper health care. Traditional cultural and ritual practices also take the blow as sacred sites are also in danger of vanishing should effects of climate change not be mitigated. Among the reported instances of indigenous peoples' struggles in surviving the impacts of climate change include the forced relocation of indigenous communities in the Arctic due to the decline in traditional food sources. In Africa, traditional agricultural practices were disrupted due to frequent droughts and in the Pacific areas, indigenous peoples suffer from coast erosions and experience rising sea levels. These changes in the environment leave the indigenous communities few options other than relocate to other indigenous territories to gain access to natural resources. They become indigenous "environmental refugees" and their unwelcome presence in other indigenous territories often have negative social, spiritual, cultural and economic implications.¹²

Indigenous women are particularly affected by these situations. Not only do they experience threats of losing their shelter and access to natural health care, their burdens in securing their family and own daily needs have also significantly increased. It has become increasingly difficult for them to gain access to water, fuel and traditional food sources hence

¹¹ Naomi Kipuri. "Culture." *State of the World's Indigenous Peoples*

¹² Ibid.

they need to take greater lengths to secure them.¹³ Some have also been forced to leave their income-earning activities, thus making them financially dependent on men.¹⁴

While in principle international treaties and laws acknowledging indigenous peoples' relationship with their land, environment and natural resources involve indigenous peoples in decision-making processes; the realization of the principle is not quite evident in actual practice. Indigenous peoples may have gained greater recognition but "current treaty-based framework of international environmental law" still gives states sovereign rights over indigenous lands and natural resources.¹⁵ This leaves indigenous peoples' political power limited and dependent on state decisions and consequently, their efforts in the international arena are still often marginalized. Also, at the national level, the failure of governments to address this reality mixed with the frustrations over poverty, inequality and displacement tend to lead indigenous peoples into taking extreme measures to defend their rights.¹⁶ Minority Rights Group acknowledges that despite the numerous indigenous peoples' initiatives to take legal action to secure land and natural resource rights, their resource usually cannot match those of their opponents from public and private sectors. Hence, resolutions through legal means do not always appeal to indigenous peoples as a sustainable course of action. Their land issues' immediate need of attention often leads them into resorting to short-term responses that do not always end peacefully.

While indigenous peoples have witnessed increased recognition of their rights over their lands and natural resources at the international level, the main problem lies in its non- or poor translation of this recognition into concrete outputs at the national and international levels. Even

¹³ Corinne Lennox. "Natural Resource Development and the Rights of Minorities and Indigenous Peoples." *State of the World's Minorities*

¹⁴ Neva Collings. "Environment." *State of the World's Indigenous Peoples*

¹⁵ Ibid.

¹⁶ Corinne Lennox. "Natural Resource Development and the Rights of Minorities and Indigenous Peoples." *State of the World's Minorities*

though collectively, indigenous peoples are being heard in international fora, their voices remain marginalized, if heard at all, within the borders of the states they reside in. To sum this up, UNDESA pointed out the factors leading to this challenge: “structural discrimination of indigenous peoples at all levels in many countries, lack of political will to prioritize indigenous issues and provide funds to address them, low level of efficacy of indigenous participation in national policy formulation and implementation and lack of awareness of international commitments amongst government officials as well as indigenous peoples themselves.”¹⁷

The Permanent Forum, however, released the Study on best practices and examples in respect of resolving land disputes and land claims (E/C.19/2014/7) in its Thirteenth Session, which reflected the establishment of commissions in Bangladesh and the Philippines to address land disputes involving indigenous peoples. While it is facing problems regarding internal politics and inadequate resources, the Chittagong Hill Tracts Land Disputes Resolution Commission in Bangladesh serves as model in terms of a state’s attempt to provide “quick, inexpensive, fair and sustainable remedies for land disputes” and to acknowledge the role of traditional institutions in such processes.¹⁸ Another practice highlighted in the Study is the establishment of the National Commission on Indigenous Peoples of the Philippines which requires states and private corporations to obtain free, prior, and informed consent of indigenous peoples prior to conduct of mining activities in their ancestral domains and lands. Issuing certificates of ancestral domains titles and ancestral land titles is one of the core mandates of the Commission, along with the establishment of model ancestral domain communities through

¹⁷ Neva Collings. “Environment.” *State of the World’s Indigenous Peoples*

¹⁸ *Study on best practices and examples in respect of resolving land disputes and land claims, including consideration of the National Commission on Indigenous Peoples (Philippines) and the Chittagong Hill Tracts Land Dispute Resolution Commission (Bangladesh) and the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples’ Rights (E/C.19/2014/7)*. UN Permanent Forum on Indigenous Issues. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/248/14/PDF/N1424814.pdf?OpenElement>

development and peace and the enforcement of human rights and indigenous peoples' empowerment. These examples of resolving land disputes are not without flaws, however. Much still remains to be done to ensure that the mandates of institutions such as the two mentioned are met through full participation of all involved sectors. Revisions and additional mechanisms continue to be options in efficiently ensuring land and natural resource rights of indigenous peoples.

Another additional effort to ensure the land and natural resource rights of indigenous peoples is the attempt to come up with a mechanism that would secure accountability in states' actions in respect to the rights of indigenous peoples. In the Study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples focusing on a voluntary mechanism (E/C.19/2014/7), a need to establish a mechanism to monitor the content and weight of the Declaration on the Rights of Indigenous Peoples was raised. An optional protocol was recommended to facilitate said action in the context of rights to land, territories and natural resources, to self-determination and to free, prior and informed consent. The optional protocol is supposed to emphasize the role of the Declaration in settling land dispute between indigenous peoples and states, such that it could be a major factor in litigation or in complaints brought before human rights treaty bodies. This particular mechanism must be "(a) voluntary (b) confined to the Declaration's provisions that pertain to lands, territories and resources (c) negotiated through extensive dialogue between indigenous peoples and nation States and (d) negotiated on the basis of an 'agreement in principle'."¹⁹ The two studies show that much still remains to be done by states, indigenous communities, the private sector and other concerned groups, in order to pursue economic development without compromising indigenous peoples'

¹⁹ UN Permanent Forum on Indigenous Issues. *E/C.19/2014/7 - Study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples focusing on a voluntary mechanism*. UN Permanent Forum on Indigenous Issues. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/252/08/PDF/N1425208.pdf?OpenElement>

access to their lands and natural resources. The Declaration of Sta. Cruz by the G77 states and China in Sta. Cruz, Bolivia on June 2014 which recognizes indigenous peoples' participation in addressing economic and environmental issues showcases yet another effort of states to highlight the importance of indigenous peoples' land and natural resource rights to development.²⁰

The protection and promotion of land and natural resource rights are essential in indigenous peoples' holistic development and enjoyment of all other human rights. In order for them to exercise their full potential in sharing their unique knowledge and capabilities in achieving greater development, national and international efforts must take into account their empowerment in all aspects of human life. A human rights-based approach is therefore vital in this process. Indigenous peoples must have equal opportunity to participate in addressing matters concerning themselves without fears of discrimination and other human rights violations. The United Nations has long since established mechanisms to address indigenous issues and while ensuring land and natural resource rights of indigenous peoples still remains difficult, the UN must continue to strive for its realization.

Questions:

1. Are there any existing mechanisms in your country that specifically cater to the protection and promotion of rights of indigenous peoples? If so, how effective are they?
2. What actions has your country undertaken to ensure the land and natural resource rights of indigenous peoples?
3. How are violations against indigenous peoples rights, especially land and natural resource rights, addressed in your country?

²⁰ *Declaration of Sta. Cruz.* <http://www.g77bolivia.com/en/declaration-santa-cruz>

4. How does your state involve indigenous peoples in decision-making processes at the national level?
5. Has your state worked with other states and international organizations to promote and protect the land and natural resource rights of indigenous peoples? If so, what are the outcomes of your collective efforts?
6. What more can be done by the United Nations and the whole international community to ensure the land and natural resource rights of indigenous peoples?

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