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UN Commission on Human Rights: Sexual rights are human rights

(Geneva) As the UN Commission on Human Rights draws to an end, activists and like-minded governments have achieved an important victory over a concerted backlash against sexual rights, with the reaffirmation in the Commission's resolution on violence against women that "...women have the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence". The text had proved contentious during negotiations but was adopted without challenge.

"Sexual rights are human rights," Amnesty International affirmed today. "There is a long legacy of advocacy on sexuality and human rights within the UN arena that will continue until all people are free to exercise all their human rights without discrimination of any kind. The lives and security of countless people across the globe will depend on it."

The issue of sexual rights emerged as a theme cutting across several resolutions at this year's Commission. Paul Hunt, UN Special Rapporteur on the right to health, in his 2004 report noted that "...sexuality is a characteristic of all human beings. It is a fundamental aspect of an individual's identity. It helps to define who a person is" (E/CN.4.2004/49 paragraph 54). However, sexuality also proved the basis for attempts to deny individuals the full enjoyment of their human rights, by a small number of delegations, including USA, Egypt, Pakistan and Saudi Arabia who claim that the Special Rapporteur exceeded his mandate in addressing these issues.

"Delegations have invoked incorrect interpretations of international law and resorted to long disproved 'medical' arguments to dismiss sexual rights concerns. Just reaffirming previously agreed language has proved a real challenge," Amnesty International stated.

At the request of Brazil as the lead sponsor, the draft resolution on human rights and sexual orientation, which sought only to reaffirm human rights long-established in international law, was again postponed until next year's session. This resulted from opposition by a number of states questioning whether this issue belonged on the human rights agenda at all.

As in previous years, some states objected to the Commission reaffirming the obligation of states to protect the right to life of all persons under their jurisdiction, including those killed because of their sexual orientation. The resolution on extrajudicial, summary and arbitrary executions was only adopted after this paragraph survived a vote called by Pakistan on behalf of the Organisation of the Islamic Conference.

The Canadian-led resolution on the elimination of violence against women was also adopted by consensus but only after two amendments tabled by the USA had been defeated. The purpose

of the draft amendments had been to weaken the language on sexual and reproductive health care services and delete language calling on states to ratify the Rome Statute of the International Criminal Court, which recognizes that sexual violence, including rape, can constitute a war crime or a crime against humanity.

"The Commission on Human Rights must act on the findings of its own appointed human rights experts, most recently the Special Rapporteur on the right to health, who notes in his report that 'the correct understanding of fundamental human rights principles, as well as existing human rights norms, leads ineluctably to the recognition of sexual rights as human rights' (E/CN.4.2004/49 paragraph 54)."

Background

Issues of sexuality and human rights, encompassing sexual orientation, gender identity and sexual and reproductive health and rights, have been addressed in a number of resolutions adopted at the 60th Session: extrajudicial, summary or arbitrary executions; violence against women; the right to everyone to the enjoyment of the highest attainable standard of physical and mental health and human rights and sexual orientation, the latter of which was postponed until 2005.

In its decision in *Toonen v. Australia* (CCPR/C/50/D/488/1992 (Australia), 4 April 1992, para.8.7) on 31 March 1994, the Human Rights Committee clearly stated that: "...in its view, the reference to "sex" in articles 2, paragraph 1, and 26 is to be taken as including sexual orientation". The Committee on Economic, Social and Cultural Rights has also repeatedly addressed the impact of sexual orientation discrimination on the enjoyment of economic, social and cultural rights. Both monitoring bodies have for years called on governments to end violations based on sexual orientation, from the criminalization of homosexuality to discrimination in employment. Human Rights violations based on sexual orientation or gender identity have been addressed by all the UN treaty bodies and many of the Special Rapporteurs. The UN Special Rapporteur on the right to health dedicated the bulk of his 2004 report (E/CN.4/2004/49, 16 February 2004) to issues of sexual and reproductive health and rights.

Amnesty International is currently running a campaign to Stop Violence Against Women, for more information see <http://web.amnesty.org/actforwomen/index-eng>