

Report of the Consultative Group to the President of the Human Rights Council relating to the vacancy of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, to be appointed at the organizational session of the Human Rights Council

8 November 2017

I. Background

1. In paragraph 47 of the annex to its resolution 5/1, the Human Rights Council decided to establish a Consultative Group comprised of Permanent Representatives identified by Regional Groups and serving in their personal capacity. The Consultative Group is mandated by the Council to propose to the President a list of candidates who possess the highest qualifications for the mandate in question and meet the general criteria and particular requirements. Recommendations to the President of the Human Rights Council are required to be made public and substantiated pursuant to paragraph 50 of the annex to resolution 5/1.

2. The members of the Consultative Group for the selection of mandate holders to be appointed at the thirty-sixth session of the Human Rights Council are: H.E. Mr. Hans Brattskar (Norway), H.E. Mr. Israhyananda Dhalladoo (Mauritius), H.E. Mr. Giampaolo Carmelo Rizzo Alvarado (Honduras), H.E. Mr. Amran Mohamed Zin (Malaysia) and H.E. Ms. Vesna Batistić Kos (Croatia) who assumed her functions as the Eastern European member of the Group on 28 June 2017, following the resignation of H.E. Mr. Jan Kára (Czechia) on 19 June 2017. The working cycle of the current Consultative Group commenced on 1 April 2017 and will end on 31 March 2018, pursuant to paragraph 1(b) of Council decision 30/115.

3. This report covers the unexpected vacancy of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (Human Rights Council resolution 32/2), which arose due to the resignation of the current mandate holder, Mr. Vitit Muntarbhorn (Thailand), on 8 September 2017.¹

4. Given the timing of the resignation, it was impossible to complete the appointment during the Council's 36th session (11 to 29 September 2017). In order to minimize the protection gap, it was decided that the appointment would be made by the Human Rights Council at the next possible opportunity, namely during the Council's organizational session of 4 December 2017.

II. Process

5. The Consultative Group held two formal meetings on 2 November 2017 to interview short listed candidates for the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. H.E. Ms. Vesna Batistić Kos (Croatia) chaired the meetings held by the Consultative Group in relation to the aforementioned mandate. H.E. Mr. Amran Mohamed Zin (Malaysia) did not participate in the work of the Consultative Group in relation to its selection and recommendation of candidates for this mandate as indicated in his letter addressed to the President of the Council on 23 October 2017, which was subsequently published on the Human Rights Council Extranet.

¹ See letter from Mr. Vitit Muntarbhorn to the President of the Human Rights Council, dated 8 September 2017.

6. The time frame for the submission of applications for the mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity was from 14 September to 11 October 2017.

7. The Consultative Group considered 11 individual applications from 11 candidates submitted for the aforementioned specific vacancy in accordance with the relevant paragraphs of Human Rights Council resolution 16/21. The applications were made public on the designated OHCHR web page² of special procedures as provided for in paragraph 22 (b) of the annex to Council resolution 16/21 (see annex I of this report). The Group noted that from the total number of 11 eligible candidates who applied within the deadline, only 1 candidate was a woman, representing 9.1 per cent of all eligible candidates.

8. The Group followed the same process as for the vacancies covered in its previous reports dated 12 May, 10 August and 8 September 2017. Reference is made to the relevant paragraphs under section II entitled “Process” of those reports.

9. The members of the Consultative Group took into full consideration the technical and objective requirements as stipulated in paragraphs 39-41, 44-46, 48, 50-51 of the annex to Human Rights Council resolution 5/1, decision 6/102 and paragraph 22 of resolution 16/21, and resolution 32/2 establishing the specific mandate under consideration. As per paragraph 51 of the annex to Council resolution 5/1, the Consultative Group also took note of the perspectives offered by the outgoing mandate holder in determining the necessary expertise, experience, skills and other relevant requirements for the mandate in question.³

10. In accordance with established practice, it was decided that each member of the Consultative Group would individually rank and propose a list of candidates for each vacancy drawing on the written applications received, reflecting on their stated qualifications, relevant experience, expertise, independence, impartiality, personal integrity, objectivity, availability and motivation in compliance with relevant provisions of Human Rights Council resolution 5/1, decision 6/102, resolution 16/21 and resolution 32/2 establishing the specific mandate under consideration. As a result of this ranking exercise, a shortlist of candidates to be interviewed was established for the mandate.

11. The Group interviewed a total of six shortlisted candidates for the aforementioned vacancy (see annex II of this report). These interviews, which took place on 2 November 2017, were held pursuant to paragraph 22 (c) of the annex to Human Rights Council resolution 16/21. Each candidate was asked similar questions based on the relevant provisions of Council resolution 5/1, decision 6/102, resolution 16/21 and resolution 32/2 establishing the specific mandate under consideration. Decisions of the members of the Consultative Group participating in the selection process were made by consensus.

III. Candidates proposed by the Consultative Group to the President for the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

12. There were 11 eligible candidates for this vacancy. Of the six candidates interviewed, the Consultative Group decided to recommend the following three candidates as best qualified to fulfil the mandate, ranking them in the order of preference below and unanimously expressing a strong support for the first candidate.

² <http://www.ohchr.org/EN/HRBodies/SP/Pages/HRCOS.aspx>

³ Letter from the Chairperson of the Coordination Committee of Special Procedures (dated 1 November 2017).

1. Victor MADRIGAL-BORLOZ (M) (Costa Rica)

2. Krzysztof ŚMISZEK (M) (Poland)

3. Carlos J. ZELADA (M) (Peru)

13. Victor Madrigal-Borloz is the Secretary-General of the International Rehabilitation Council for Torture Victims, an umbrella organization based in Denmark that supports health-based rehabilitation of torture victims worldwide. At the Inter-American Commission on Human Rights of the Organization for American States, he worked as the Head of Litigation and Registry and was also Chief Advisor on LGTBI rights, inter alia engaged in consultations and preparation of the Plan of Action of the Commission in relation to the rights of LGBTI persons. Previously, he worked with the Danish Institute of Human Rights and as Head of the Legal Department at the Inter-American Court of Human Rights. Victor Madrigal-Borloz served as a member of the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, having been elected for a four-year term (1 January 2013 to 31 December 2016). In that capacity, he contributed to the draft policy of the Subcommittee on the prevention of torture and LGBTI persons. He has drafted legal opinions, taught, lectured and published on international human rights law, torture prevention, accountability and rehabilitation, and on LGBTI rights. The Consultative Group noted his outstanding and in-depth knowledge and understanding of the intersectionality of the mandate and his vision on advancing the issue within the United Nations framework. The Group also appreciated his willingness to consult broadly among all states and stakeholders and his deep understanding of the challenges and sensitivities of the mandate.

14. Krzysztof Śmiszek is a lawyer, gender equality and non-discrimination expert with professional experience in the academia at the Centre for Human Rights, Faculty of Law and Administration at the University of Warsaw, Poland, in the government as Legal Specialist in the Chancellery of the Prime Minister of Poland, and in civil society as founder and chair of the Polish Society of Antidiscrimination Law. His experience at the regional level includes work as Policy Officer and Policy Coordinator for Equinet (European Network of Equality Bodies), collaboration with the Council of Europe's Sexual Orientation and Gender Identity Unit and membership – as Senior expert on sexual orientation – in the European network of legal experts in gender equality and non-discrimination (EELN). He has litigated discrimination cases before Polish and European courts and has contributed to treaty body reporting on issues of gender equality. The Consultative Group noted his good understanding of the complexity and sensitivity of the issues at stake and his views on the importance to consult with stakeholders.

15. Carlos J. Zelada is Chair of the Department of Law at Universidad del Pacífico in Lima, Peru. He has worked as human rights specialist for the Inter-American Commission on Human Rights and as a consultant for the Office of the United Nations High Commissioner for Human Rights and the Pan American Health Organization, and has litigated cases before the Inter-American Court of Human Rights. He has taught international law and human rights at George Washington University Law School (USA) and Universidad Nacional de San Martín (Argentina), among others. Carlos J. Zelada has interacted with a variety of actors including governments, international organizations, national human rights institutions, academia and civil society and his research and writing has focused on issues related to gender identity and sexual orientation. The Consultative Group noted his rich academic experience and his understanding of possible ways of using effectively United Nations mechanisms and human rights norms and standards to fulfil the mandate.

Annex I - List of eligible candidates considered by mandate⁴

Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

First name	Last name	Nationality	Gender
Lubna	AHMED	Sudan	F
Marco	BALBONI	Italy	M
Dmitri	BARTENEV	Russian Federation	M
S	CHELVAN	United Kingdom of Great Britain and Northern Ireland	M
Zane	DANGOR	South Africa	M
Aeyal	GROSS	Israel	M
Michael	KIRBY	Australia	M
Victor	MADRIGAL-BORLOZ	Costa Rica	M
Andrew	REYNOLDS	United Kingdom of Great Britain and Northern Ireland	M
Krzysztof	ŚMISZEK	Poland	M
Carlos J.	ZELADA	Peru	M

⁴ The list of candidates is provided in alphabetical order.

Annex II – List of shortlisted candidates interviewed by the Consultative Group⁵

Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

First name	Last name	Nationality	Gender
S	CHELVAN	United Kingdom of Great Britain and Northern Ireland	M
Michael	KIRBY	Australia	M
Victor	MADRIGAL-BORLOZ	Costa Rica	M
Andrew	REYNOLDS	United Kingdom of Great Britain and Northern Ireland	M
Krzysztof	ŚMISZEK	Poland	M
Carlos J.	ZELADA	Peru	M

⁵ The list of candidates is provided in alphabetical order.