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Promotion et protection de tous les droits de l'homme, civils, politiques, économiques, sociaux et culturels, y compris le droit au développement

Lettre datée du 3 novembre 2010, adressée au Président du Conseil des droits de l'homme par le Représentant permanent de la Slovénie

À la quinzième session du Conseil des droits de l'homme, la Slovénie, l'Argentine, le Brésil, la Colombie, les États-Unis d'Amérique, la Finlande, la France, l'Irlande, le Mexique, la Norvège, la Roumanie, le Timor-Leste et l'Uruguay ont coparrainé un débat d'experts de haut niveau consacré à l'élimination de la violence et des sanctions pénales fondées sur l'orientation sexuelle et l'identité de genre. Ce débat, qui a eu lieu le 17 septembre 2010, a porté principalement sur la question de savoir comment le Conseil et d'autres mécanismes internationaux pouvaient examiner ces importantes préoccupations en matière de droits de l'homme.

On trouvera en annexe un rapport sur le débat*. Je vous serais reconnaissant de bien vouloir faire distribuer le texte de la présente lettre et de son annexe en tant que document officiel du Conseil des droits de l'homme à sa quinzième session, au titre du point 3 de l'ordre du jour.

L'Ambassadeur,
Représentant permanent
(*Signé*) Matjaž **Kovačič**

* Reproduit en annexe tel qu'il a été reçu, dans la langue originale seulement.

Merci de recycler

Annexe

Report of the high-level panel on ending violence and criminal sanctions based on sexual orientation and gender identity

September 2010, Geneva

I. Introduction and overview

At a high level event at the United Nations in Geneva on 17 September, 2010, a panel of experts stressed the need to end violence and criminal sanctions on the basis of sexual orientation and gender identity.

UN Secretary General Ban Ki-moon, UN High Commissioner for Human Rights Navi Pillay, and Nobel Peace Prize Winner Archbishop Desmond Tutu joined with civil society representatives from Cameroon, Guyana and India to call for an end to human rights violations directed against persons because of their sexual orientation and gender identity. The panel was co-sponsored by a cross-regional group of 13 States (Argentina, Brazil, Colombia, Finland, France, Ireland, Mexico, Norway, Romania, Slovenia, Timor-Leste, United States of America and Uruguay), with support from ARC International, the International Commission of Jurists and COC Netherlands.

The event, held in parallel with the 15th session of the UN Human Rights Council, was moderated by Daniel Baer, US Deputy Assistant Secretary for the Bureau of Democracy, Human Rights, and Labor, who highlighted that hate crimes and violence directed against lesbian, gay, bisexual, transgender and intersex (LGBTI) people occur in the US as elsewhere, that LGBTI people are part of all regions and societies, and that it is important to reach across our differences to address these issues from a human rights perspective.

In a statement read out by the High Commissioner for Human Rights, UN Secretary General Ban Ki-Moon emphasised the necessity of protecting everyone without distinction or discrimination. The Secretary General stated that criminalising people because of their sexual orientation or gender identity violated the principle of non-discrimination, and could only contribute to a climate of hate. He pointed out that cultural considerations should not stand in the way of basic human rights, and reiterated his appeal to all countries that impose criminal sanctions on the basis of sexual orientation or gender identity to take the steps necessary to remove such offences from their statute books.

The High Commissioner for Human Rights, Navanethem Pillay, highlighted the discrimination and physical threats facing LBGTI people in everyday life, and drew attention to the fact that criminalisation perpetuates stigma and contributes to a climate of intolerance and violence. She underlined the need to frame and address this as a human rights issue. The High Commissioner outlined the application of international human rights instruments to these issues and the jurisprudence of relevant human rights bodies. She affirmed that decriminalisation is an important priority, whilst also stressing that greater efforts are needed to counter discrimination and homophobia, including both legislative and educational initiatives. She called upon UN mechanisms, States, and members of civil

society to play their part in enabling change to take place, whilst affirming the support of her Office.

Lawyer Alice Nkom spoke about her work advocating against the criminalisation of homosexuality in Cameroon. She discussed some of the cases she had worked on, outlined the lack of due process in the justice system in resolving these cases, and emphasised the toll that such criminal laws take upon both those arrested and the broader community. She stressed the importance of decriminalising homosexuality, in Cameroon and elsewhere, especially with regards to the fight against HIV/AIDS.

David Clarke, from the Society Against Sexual Orientation Discrimination (SASOD), Guyana, spoke about criminal laws in the Caribbean, directed against diverse forms of gender expression as well as consensual same-sex conduct. He underlined the impact that such laws have, including State-sanctioned harassment and violence against transgender persons in Guyana, and discussed positive initiatives to move these issues forward in the Inter-American human rights system.

Sunita Kujur, from Creating Resources for Empowerment in Action (CREA), discussed the landmark judgment of the Delhi High Court reading down s. 377 of the Indian Penal Code to decriminalise same-sex conduct between consenting adults. She also highlighted the high incidence of lesbian suicides resulting from pressures in India to conform to societal expectations of gender.

In a video message, Archbishop Desmond Tutu recalled the lessons learnt from the apartheid system in South Africa about the impact of discrimination and the denial of fundamental human rights, and emphasised the role of the international community in ending such discrimination. He expressed concern at the continued violence and discrimination directed against people because of their sexual orientation and gender identity, and called upon the UN and the Human Rights Council to recognise the rights of LGBTI people to equal dignity and respect and to stand up for the principles of universal humanity and fellowship.

Another video provided three testimonies of violence experienced by transgender people in regions around the world, explored the broad range of human rights violations on grounds of both sexual orientation and gender identity, and highlighted problems of homophobia and transphobia in HIV/AIDS healthcare institutions.

II. Summary of the proceedings

A. Presentations by Panellists

Mr. Daniel Baer, US Deputy Assistant Secretary for the Bureau of Democracy, Human Rights, and Labor, thanked the co-sponsors of the panel event, and welcomed the panellists, as well as the representatives of States, international organisations and civil society. He introduced the subject of the event, stating that everyone counts as a human being, and is entitled to the full enjoyment of their rights on the basis of that humanity. He noted that discrimination based on sexual orientation and gender identity is a universal phenomenon, and illustrated that in his own country, the United States, hate crime remains a serious problem. He stressed that human rights are indivisible and that they are a human responsibility – just as men need to advocate for women's human rights, so too do heterosexual people need to advocate for the human rights of LGBTI people.

UN Secretary General Ban Ki-Moon, provided a statement which was read out by Ms. Navanethem Pillay, UN High Commissioner for Human Rights. The Secretary General emphasised that human rights make up one of the three pillars of the United Nations, alongside development, and peace and security. Protecting human rights means protecting the rights of everyone, without distinction or discrimination and paying particular attention to the most vulnerable and marginalised, who may face special obstacles to the full enjoyment of their rights.

In this context, the Secretary-General recognised the particular vulnerability of individuals who face criminal sanctions, including imprisonment and in some cases the death penalty, on the basis of their sexual orientation or gender identity. He stated that laws criminalising people on grounds of sexual orientation and gender identity violate the principle on non-discrimination, and that they fuel violence, legitimise homophobia, and contribute to a climate of hate.

The Secretary-General agreed that deeply rooted cultural sensitivities can be aroused when we talk about sexual orientation, that social attitudes run deep and take time to change. However, cultural considerations should not stand in the way of basic human rights.

The Secretary-General said that the responsibilities of the United Nations and the obligations of States were clear. No one, regardless of their sexual orientation or gender identity, should be subjected to torture or to cruel, inhuman or degrading treatment. No one should be prosecuted for their ideas or beliefs, or punished for exercising their right to freedom of expression.

He reiterated his appeal for all countries that criminalise people on the basis of their sexual orientation or gender identity to take the steps necessary to remove such offences from the statute books and to encourage greater respect for all people, irrespective of their sexual orientation or gender identity.

The Secretary-General hoped that the discussions at the panel would further the inter-governmental dialogue on this issue and raise awareness of the need for reform.

Ms. Navanethem Pillay, UN High Commissioner for Human Rights, expressed her feeling of privilege to be joining the panel of inspiring individuals and to have the opportunity to speak about ending violations of human rights based on sexual orientation or gender identity.

The High Commissioner regretted that in spite of significant progress made in a number of States, there is still no region in the world today where people who are gay, lesbian, bisexual, transgender or intersex can live free from discrimination or from the threat of harassment and physical attack.

In more than 70 countries, individuals still face criminal sanctions on the basis of their sexual orientation or gender identity. The existence of such laws poses a serious threat to the fundamental rights of LGBTI individuals, exposing them to the risk of arrest, detention and, in some cases, torture and execution. The High Commissioner stated that criminal sanctions are commonly accompanied by a host of other discriminatory measures that affect access to a wide range of rights – civil, political, economic, social and cultural. She continued saying that criminalisation perpetuates stigma and contributes to a climate of homophobia, intolerance and violence.

Ms. Pillay called for this to be framed squarely as a human rights issue, and emphasised that it was her rôle as High Commissioner for Human Rights to encourage States to promote and protect the human rights of all people without discrimination. She stated that to believe in human rights is to believe in equality for all people, regardless of who they are of where they are from.

The General Assembly, in its resolution 60/251 establishing the Human Rights Council, entrusted the Council to promote "universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner."

The language of the Universal Declaration of Human Rights was also very clear, with reference in the preamble to the "inherent dignity" and the "equal and inalienable rights of all members of the human family" as the "foundation of freedom, justice and peace in the world."

The High Commissioner quoted Article 1 of the Universal Declaration, stating that "All human beings are born free and equal in dignity and rights," and Article 2, affirming that "everyone is entitled to all the rights and freedoms set forth in this Declaration", and underlined that these universal norms should guide us in all human rights work, including the present discussion.

The High Commissioner stated that it could never be acceptable to deprive individuals of their rights, nor to impose criminal sanctions on those individuals, because of their innate sexual orientation or gender identity. To do so would be to deliberately exclude a whole group of people from the protection of international human rights law, and is an affront to the very principles of human rights and non-discrimination.

Ms. Pillay continued to explain that whilst the various international treaties and other instruments which offer an evolving patchwork of protection against violations of human rights do not explicitly refer to violations based on sexual orientation and gender identity, the inclusiveness of the language on non-discrimination provides a good basis for extending protection in this direction. She stressed that we should be looking for ways to ensure that everyone enjoys the full protection of international human rights law, not for grounds to justify excluding certain individuals.

Furthermore, the treaty bodies have interpreted the language of the treaties to this effect. The UN Human Rights Committee found that sexual orientation is included within the grounds of discrimination in articles 2 and 26 of the ICCPR. In various General Comments, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have recognised the applicability of existing human rights law in this context, noting that treaty language prohibiting discrimination on various grounds or "any other status" should be interpreted to cover discrimination on grounds of sexual orientation and gender identity. The Committee on the Elimination of Discrimination against Women has urged the Special Procedures "to ensure that the rights of lesbians, bisexual and transgendered women are fully protected". The High Commissioner called for the views of these bodies to be taken seriously and implemented by States.

Ms. Pillay stated that the Yogyakarta Principles on the application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, which were developed by experts, offered additional guidance on the obligations of States under existing international legal instruments and contain useful recommendations for implementation at the national level.

She called for worldwide decriminalisation as a first priority, whilst stressing that this was only a first step. Experience had shown that in those countries that have already taken this step, greater efforts were needed to counter discrimination and homophobia, including both legislative and educational initiatives. Much of what needs to be done would require political leadership at the national level and progress in discussions at an intergovernmental level, including at the General Assembly and the HRC and through various regional organisations.

Ms. Pillay highlighted the role of civil society, human rights defenders and faith-based organisations in this cause. UN human rights mechanisms also had a vital role, including the treaty bodies, the Special Procedures, and the Universal Periodic Review.

The High Commissioner concluded by offering the support of her Office at multiple levels, including facilitating the sharing of experience between countries that have implemented reforms and those considering doing so, encouraging the engagement of civil society in debates on the shape and extent of necessary reforms, and providing legislative advice. She was pleased to report that she had recently appointed an expert on this issue. She looked forward to the time when it would be equally unthinkable to impose criminal sanctions on people because of their sexual orientation or gender identity as to impose sanctions on people because of their gender or the colour of their skin.

In video testimonials, Sass Rogando Sasot of the Philippines highlighted violations faced by transgender people. Transgender people had been burned, strangled and hanged, raped, shot and stabbed to death. These were just some of the ways transgender people were killed in different parts of the world, in different times in the history of humanity. Ms. Sasot emphasised the extreme acts of cruelty that transgender people experience, and called for an end to such violations.

Viktor Mukasa from Uganda stated that a lack of security, arbitrary arrests, and detentions, violence and executions of LGBTI people had become the order of the day in some parts of the world. As an activist, he had himself experienced violations by the State. He had been beaten by police a number of times. Reasons included walking past policemen who knew he was homosexual, or peacefully protesting the injustices committed against him or other LGBTI people.

Syinat Sultanalieva emphasized that the LGBTI movement in Kyrgyzstan and Central Asia was only at the beginning of a very long road towards recognition and equality. With regards to HIV/AIDS prevention, there was still a lot of work to be done. There was still a high level of homophobia and transphobia in healthcare institutions and HIV/AIDS organisations. This led to the inaccessibility of healthcare for LGBTI people, and had a detrimental impact upon efforts to address HIV/AIDS both for LGBTI people and the general population.

Alice Nkom, lawyer and founder of the Association for the Defence of Homosexuals, said that homosexuality has been criminalised in Cameroon under the penal code since 1972. The situation had deteriorated since 2005, when the archbishop of Yaoundé started a campaign accusing homosexual people in Cameroon of being responsible for unemployment. This campaign was taken over and carried away by the media, which published lists of officials, presenting them as homosexual. This had adverse affects on the families of those targeted, especially the children who were suffering discrimination from their peers at school for having a parent identified as homosexual. The President of Cameroon intervened, stating that freedom of expression for the press was essential, but the

press must respect people's right to privacy. Whilst the media hunt stopped, the harassment and torture of people suspected of being LGBTI continued.

Ms. Nkom stated that in one case on which she had worked, nine people were arrested in a bar that was known to be LGBTI-friendly. The judge directed that the men be given anal examinations to provide "evidence" of their sexuality, but luckily the doctors refused to carry out such invasive and non-consensual medical examinations. After spending ten months in detention without trial, the men were eventually brought to court. Seven of the men were convicted. Ms. Nkom noted that the men imprisoned on charges of homosexuality had experienced rape and a lack of primary health care. Several had left prison infected with HIV, and one man had died soon after release after being refused access to antiretroviral drug treatment in prison.

Ms. Nkom expressed the view that the only path towards decriminalisation was through the courts. She spoke about the need to disseminate information about international human rights instruments so that LGBTI people can be equipped with the knowledge to advocate for their fundamental rights and freedoms effectively in both the national and international arenas. She stated that only once the core principles of equality and non-discrimination are applied, and the human rights and fundamental freedoms of LGBTI people recognised in Cameroon, could the government expect to make progress in the fight against HIV/AIDS.

Ms. Nkom thanked the High Commissioner for Human Rights for her statement, and said that she felt surrounded by allies during the panel, whereas in her own country she had been harassed for defending LGBTI people.

David Clarke affirmed the commitment of the Society Against Sexual Orientation Discrimination (SASOD), Guyana, to equal rights for all persons. SASOD worked on issues relating to homophobia, transphobia, health and human rights, specifically as they relate to the interests of the LGBTI population.

In February 2009 there was a State-sanctioned crackdown on transgender persons. During the crackdowns, 7 male-to-female transgender individuals were arrested, prosecuted and convicted for cross-dressing. In Guyana it was an offence under colonial-inherited laws if "a man, in any public way or public place, for any improper purpose, appears in female attire, or a woman, in any public way or public place, for any improper purpose, appears in male attire". On February 19, 2010, on the eve of the World Day of Social Justice, SASOD filed a constitutional case to have the cross-dressing laws invalidated.

Mr. Clarke further stated that the Republic of Guyana, along with 10 other English-speaking Caribbean territories, criminalised same-sex activities between males, with sentences ranging from 2 years in some territories, to up to life imprisonment in Guyana and Barbados. Even when these laws are not enforced, the mere existence of such laws legitimised discriminatory actions. The LGBTI people of Guyana, and particularly the out transgender population, were constantly victims of harassment by police officers and private citizens.

Mr. Clarke stated that although the Caribbean region had a tarnished history when it came to discrimination and LGBTI people, there were emerging signs that the work of LGBTI rights groups through the region were having an impact on society's views on the issue. In August 2010, former Cuban president Fidel Castro made the headlines when he apologised for the treatment of LGBTI people during the years after the Cuban revolution.

At the Americas level, SASOD had been actively involved in a coalition of Latin American and Caribbean LGBTI groups since late 2006 pressing for recognition and advancement of sexual orientation and gender identity issues in the Inter-American human rights system. Guyana and the rest of the Caribbean signed on to three consecutive OAS resolutions in 2008, 2009 and 2010 to end violence and discrimination based on sexual orientation and gender identity. Each of these resolutions was unanimously adopted. On 27-29 August 2010 SASOD, in collaboration with Global Rights and the International Gay and Lesbian Human Rights Commission, hosted a regional training workshop and preparatory meeting for Caribbean LGBTI activists who were working on a thematic report of rights violations in the region. This report will be presented at a thematic hearing of the Inter-American Commission on Human Rights later this year.

Sunita Kujur from Creating Resources for Empowerment in Action (CREA) began her presentation by reading three narratives. The first, from a protest letter by civil society organisations, recounted the suicide on 17 May 2008 of Christy Jayanthi Malar (38) and Rukmani (40). Police reports indicated that they were hugging each other when they set themselves ablaze and succumbed to their wounds. Christy and Rukmani had been lovers for the previous ten years against the wishes of their natal families. Ms. Kujur explained that this suicide represented just one of at least eight lesbian suicides that had been reported since 2008 in the Indian State of Tamil Nadu alone. More than 35 lesbian couples were reported to have committed suicide in the State of Kerala in the past 12 years. The figure only represented the reported cases.

The second narrative, from an article in the Deccan Herald explained that hijras faced discrimination in restaurants and public transport, from people in the street and officials. They had been randomly picked up by the police and beaten. Their crime was not fitting into the gender roles determined by society.

The third narrative involved a letter regarding a university professor whose private life was made public, and who was forced to move out of his university accommodation, and ultimately committed suicide. This incident was particularly disturbing as it came soon after the Delhi High Court judgment, based on the four concepts of dignity, privacy, equality and non-discrimination.

Ms. Kujur explained that the judgment ended one phase of a long struggle. In 2001, Naz Foundation (India) filed a Public Interest Litigation in the Delhi High Court challenging the constitutional validity of Section 377 of the Indian Penal Code. Naz had observed in its HIV/AIDS work that s. 377 was one of the most significant barriers to effective HIV/AIDS prevention because it criminalised a section of the population with whom it worked – men who have sex with men. Police routinely used this law to intimidate, harass and extort money and seek sexual favours from men who had sex with men and hijras.

Ms. Kujur stated that in 2006, Voices Against 377 became a co-petitioner, providing affidavits to the Court from people who had faced violence and discrimination because of their sexual orientation or gender identity. Voices Against 377 was a broad based coalition of organisations in Delhi working on sexuality and gender issues, involving women's, child, health and human rights advocates, as well as LGBTI rights defenders. It came into being because the organisations involved felt that s. 377 had broader societal implications, in addition to the violence and discrimination faced on the basis of sexual orientation and gender identity.

She explained that since 2004, CREA and Voices against 377 had worked with the media, other social movements, health professionals and the general public, creating awareness of sexual orientation and gender identity; the link to broader sexuality and human rights issues; making the connection between consent, choice, autonomy and human rights. Consent, choice and autonomy were particularly important in the Indian context with respect to choosing one's partner. Many young women and men who chose their own partners faced significant violence from their family members and sometimes the entire community, especially if they chose partners outside their caste or religion. Ms. Kujur stressed that this was not a rural phenomenon or something only involving the poor or illiterate. The violence and discrimination faced by women who chose other women is even more pronounced, as there was tremendous pressure on women to get married by a certain age, and to hide their sexuality (whether homosexual or heterosexual).

The Delhi High Court judgment triggered a wider conversation on sexual orientation and gender identity across the country. The challenge now was to successfully fight the appeal in the Supreme Court, where 15 petitions had been filed to stay the Delhi High Court judgment. Significantly, however, the Government of India is not supporting the appeal, reflecting a positive shift in the State position.

Ms. Kujur urged the Human Rights Council to continue its efforts to end violence and discrimination based on sexual orientation and gender identity.

In a video message prepared for the panel event, Nobel Peace Prize winner Archbishop Desmond Tutu appealed to the principle of common humanity. He called upon the ideals of the United Nations of equality, dignity and respect for all. Archbishop Tutu stated that LGBTI people were persecuted all over the world. They faced violence, torture and criminal sanctions because of how they lived and whom they loved. He stated that it must be nearly the ultimate blasphemy to make LBGT people doubt that they were children of God.

Archbishop Tutu recalled the struggle against apartheid in South Africa, which divided human beings by racial classification, and then denied many of them fundamental human rights. He was thankful that the international community had supported South Africans in their struggle for freedom and dignity. He was proud that when they built the new Constitution in South Africa, they included sexual orientation in the laws, because they knew from bitter experience that an injury to one was an injury to all.

He stated that people were once again being denied fundamental rights and freedoms. Gay men had been jailed and humiliated, transgender people attacked, and lesbians raped. He stated that lesbian and gay people were living in fear across Africa and elsewhere. They were living in hiding, away from care and away from the protection the State should offer to every citizen. They were also living away from health care, when everyone should have access to essential HIV services, especially in Africa.

Archbishop Tutu called for this wave of hate to stop.

He stated that sexual orientation, like skin colour, is a feature of our diversity. He lamented the obsession with human sexuality when God's children were facing massive problems such as poverty, disease, corruption and conflict. Gay, lesbian, bisexual and transgender people were not only part of many families, but they were also a part of God's family and the African family.

The Archbishop called on the United Nations to face up to its responsibilities. He stated that whenever one group of human beings was treated as inferior to another, hatred and intolerance would triumph. LGBTI people were sons, daughters, families, friends, colleagues and co-workers. They were equal members of the human family whose rights the UN had sworn to uphold. Those who faced hatred, violence and criminal sanctions looked to the UN for leadership and protection, and for the recognition of their right to equal dignity and respect. Archbishop Tutu called upon the UN not to fail them, but to stand up for the principles of universal humanity and fellowship. Exclusion would never be the way forward on shared paths to freedom and justice.

B. Interactive Dialogue

Finland thanked the High Commissioner and other panellists for their statements. It said it was essential for the High Commissioner and Secretary-General as leaders to guide and support the work of States at the UN. Finland found Archbishop Desmond Tutu's message to be very important, and underlined that it was imperative for the United Nations to address this issue.

Finland said the panellists had painted a very bleak picture, and agreed with Mr Daniel Baer from the United States that discrimination was not over in any country, not even its own.

Finland wanted to be at the forefront in helping to fight discrimination based on sexual orientation and gender identity. It stated that every individual has the right to equal treatment; that a different sexual orientation or gender identity does not translate to a different claim to human rights. It stressed the need to work towards a universal consensus on human rights regardless of sexual orientation or gender identity, and suggested that focusing on reproductive and health rights might be key.

Finland congratulated Archbishop Desmond Tutu for chairing the United Nations Commission on HIV Prevention to advance the 6th Millennium Development Goal. It said that with regards to HIV, whilst men who have sex with men (MSM) are more likely to be affected than others, prevention services only reach 9% of MSM worldwide.

Finland called for an end to stigma, discrimination, homophobia and transphobia, as well as impunity for all forms of violence against people based on their sexual orientation or gender identity. Finland supported the EU Commission for fundamental rights in protecting the rights of sexual and gender minorities. It concluded that no society could rest, thinking that they could do no more to help.

Nepal welcomed the initiatives of co-sponsors and organisers, and shared recent positive developments in Nepal. It said that the government held no discriminatory policy against anyone. The Nepalese Constitution guaranteed the right to equality, and with a landmark verdict, the Supreme Court of Nepal had instructed the government to recognise third gender people, and to guarantee full rights to LGBTI people, including the right to equal relationship recognition.

The Netherlands thanked the Secretary-General, the High Commissioner, the panellists, and Archbishop Desmond Tutu for their statements and testimonials. It drew attention to a new publication detailing research which showed that government acceptance of homosexuality also resulted in increased public acceptance. In addition, acceptance grew when LGBTI people turned out to be friends, families and colleagues; criminalisation undermined this

acceptance. The Netherlands asked the panellists how the government could promote the rights of LGBTI people whilst being culturally sensitive?

Colombia stated that it would remain firm in the fight against all forms of discrimination. It quoted the Universal Declaration of Human Rights, calling for the promotion and protection of the human rights of everyone without distinction. Colombia agreed with Daniel Baer that one did not have to be a member of a particular marginalised group in order to promote the human rights of that group. Colombia thanked the panellists and asked how they thought efforts to tackle discrimination based on sexual orientation and gender identity could be strengthened in UN bodies. It also asked for advice on moving forward in collective efforts towards decriminalisation.

Ethiopia thanked the panellists, and stated that while it still criminalised homosexuality, it sought to engage constructively in UN discussions on the matter. It said it was a myth that this is only about the West, but indicated that the question was how to address the issue. Ethiopia suggested that while criminalisation may be a colonial import, one challenge is that there remains a lot of support within society for these laws. Nevertheless Ethiopia stressed that processes such as those undertaken by UNAIDS were very useful and Ethiopia was engaged with them. Ethiopia stated that social forces were supporting these laws and thus cultural sensitivity was needed. It underlined the need for vulnerable groups to access HIV/AIDS treatment. Ethiopia stressed the need to understand that there were positive steps being taken in Africa, such as emerging social and administrative spaces, and that these needed to be supported.

Argentina thanked the Secretary-General, the High Commissioner for Human Rights, Archbishop Desmond Tutu and the panellists for their statements and their work, and stressed the need to end violence against sexual minorities. Argentina found it concerning that people were criminalised based on sexual orientation and gender identity, and punished for religious and moral reasons. It underlined the high social and economic vulnerability of these peoples. Argentina stressed the importance of equality, which was enshrined in its constitution as well as international instruments. Argentina had recently passed a law allowing same-sex couples to marry, and providing same-sex couples the same rights as opposite-sex couples. Argentina participated in the Durban conference and included transgender people in its national action plan. Argentina was making domestic and international efforts to fight against legislated discrimination. Argentina asked the panel how it could contribute to raising awareness and fighting against inequality in this area in the Human Rights Council?

Switzerland thanked all of the panellists and stated that LGBTI people were still victims of discrimination and oppression, and subject to violence and persecution. Switzerland acknowledged that it was not an exception in this, but said all must condemn this discrimination wherever it may occur. It insisted that the debates surrounding the promotion and protection of the rights of LGBTI people must go on. Switzerland hoped that the recommendations of the Minister of the Council of Europe would feed into the debates in Geneva. It asked the panellists how best to reinforce dialogue on these issues at the Human Rights Council?

Mexico said it was pleased to be a co-sponsor of this event. Mexico City had recently passed reforms to the civil code so that couples in same-sex relationships have the same rights as heterosexual couples. However, the issue had not been an easy one. Whilst Mexico City passed the legislation, other states had appealed to the Supreme Court to oppose such reform. The Supreme Court ruled that the reform would become valid across the whole country, and not just in Mexico City. Mexico commended the panellists for their courage

and their valuable initiatives. It asked the panel what experiences they have had advocating not just in the UN, but also in regional bodies and related mechanisms?

Slovenia thanked the panellists for their statements. Slovenia was committed to the rights of LGBTI people and is concerned about sanctions and criminalisation of same-sex relations in countries around the world. Sexual orientation and gender identity were not bases for criminalisation. Slovenia reiterated its call for a worldwide repeal of such laws, and recalled the rights to privacy, to health, to freedom of expression and association. It stated that there was equality in human rights and fundamental freedoms in Slovenia, and a new draft of the family code would provide equal rights to same-sex couples.

UNAIDS stated that criminalisation based on sexual orientation and gender identity blocked an effective response to HIV/AIDS. The importance of decriminalisation was clear in their work. UNAIDS said this was a question of recognising fundamental aspects of human identity, not about criminal intent or moral deviance. UNAIDS asked the panel how such concepts, which were at the basis of criminalisation laws, could be changed?

ARC International stated that it was important to acknowledge the increasing attention being paid to these issues by States from all UN regions. ARC underlined that the struggle against discrimination based on sexual orientation and gender identity must be situated within a broader commitment to fight discrimination in all its forms, including racism, xenophobia and racial and religious profiling. Too often, the Human Rights Council becomes polarised along regional or political lines. Rather than creating artificial divides between what are often wrongly characterised as "competing" priorities, States and civil society must seek to reach across regional and political divides to address all issues of discrimination in a fair and equal manner.

Minority Women in Action, a Kenyan organisation promoting the rights of LBTI women, stated that intersex people – those whose biological make-up did not correspond with societal assumptions regarding male or female characteristics – were a hidden population with much stigma, who did not fit into the LGBT categorisation. MWA stated that there would always be social forces supporting discrimination, such as those who supported apartheid, or opposed equality for women, but emphasised that in the work of human rights it was necessary to rise above such forces. Regarding culture, there had only been the promotion of violence against LGBTI people since the introduction of colonial laws – there was no previous history of such repression in Indigenous African cultures. MWA said that the State must be committed to enforcing the human rights of all individuals regardless of their sexual orientation or gender identity. MWA expressed concern at a case in Kenya in which a group of individuals had attempted to identify and expel all homosexuals from a coastal area, and the State had refused to condemn or comment on the case. States could make a difference by applying international human rights standards irrespective of national laws. MWA said it was the responsibility of Africans and all people to vote in favour of governments which are committed to social justice.

Norway said this was a process on which we could all move forward together, and affirmed the joint statement on human rights, sexual orientation and gender identity it had presented on behalf of 54 States at the Human Rights Council in 2006. It hoped that more such constructive initiatives for building awareness and support could be identified, and called for the Council to pay increased attention to these issues.

The Coalition of African Lesbians thanked the panel, and thanked the Ethiopian delegate for engaging with the panel. LGBTI people wanted to talk and listen, but could not if they were being killed and raped and harmed. The Coalition stated that LGBTI people had a

long list of claims and demands, no different from any other human being, and called for an end to the violence. States had a responsibility to respond to hate crimes and violence, including through public education and police training.

Cynthia Rothschild, a gender consultant, noted that conservative or fundamentalist forces are promoting discrimination in the USA, as in other regions, and stated that no country had a monopoly on hatred. In the USA, especially at the time of the election, opposition had been voiced to women's and LGBTI rights. Discussions around decriminalisation were often focused on sodomy laws; it is important to pay equal attention to the impact of repressive laws, violence and social environments on lesbians, women, transgender people and others whose needs are often overlooked.

France indicated it was proud to have hosted the World Congress on Human Rights, Sexual Orientation and Gender Identity last year, which brought together representatives from many countries around the world, and from all regions, to consider how best to end criminal sanctions based on sexual orientation and gender identity. France noted that a fund had been set up to support those facing human rights violations on these grounds, and urged States to work towards the removal of criminal penalties.

It was also asked what possibility there would be in creating a UN Special Procedures Working Group or other mechanisms on this issue?

C. Responses from the panellists

Sunita Kujur (CREA) responded that there was a need for a multi-pronged approach at the HRC, the UN and at home. She stated that sexual orientation and gender identity should not be seen as a stand-alone issue at the Human Rights Council, but should be integrated throughout the work of the UN. Special Procedures mandate holders need to have the independence to report on such issues. Gains in the right to health should be protected, and ground cannot be lost. Work at the country level was important. In India, a coalition of many people working together had already achieved some successes. They would now work to ensure that the gains won in the Supreme Court would work in their favour, and that laws would be implemented.

Ms. Kujur stated that culture, tradition and religion are often used to hinder rights. None of these should be used to violate human rights, as is the case for example with caste issues and child marriage. She said it was the duty of States to rise above this.

Alice Nkom said that decriminalisation went hand in hand with the rule of law. Therefore the capacity of LGBTI people needs to be enhanced. There was a need to build trust and teach rights so that LGBTI people can defend themselves. The promotion of knowledge and the dissemination of information would enable LGBTI people to defend their own rights. Alice Nkom outlined the problem of creating organisations in Cameroon, as official registration and documentation were hard to achieve, making fundraising problematic.

Ms. Nkom also mentioned some opposition to the Maputo Protocol (the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa), which was claimed to support homosexuality and abortion. There had been marches against the protocol on these grounds. Female members of the judiciary in Cameroon tended to be more accepting, but were also subject to discrimination by their peers. Ms. Nkom supported bringing together female lawyers, judges and magistrates to raise their awareness of the international legal texts they could be applying, and to learn from available international instruments.

David Clarke (SASOD) replied that decriminalisation was only a very small step. He outlined the need to channel aid to social projects such as radio programs to sensitise people on HIV issues, and to lessen discrimination. Intolerance in the courts was still a problem.

In his concluding remarks, Daniel Baer, US Deputy Assistant Secretary for the Bureau of Democracy, Human Rights, and Labor, underlined the need to combat violence and discrimination against LGBTI people. Universal human rights must frame the debate for the United Nations and the Human Rights Council. The courage of the panellists and the people speaking from the floor was inspiring. He stated that the enjoyment of human rights starts in small places, at home, spending time with those we love, while respecting the rights and freedoms of others. We have a mutual obligation to practise and affirm these values in our own lives and in our interaction with other human beings.

III. Conclusions and recommendations

1. Global nature of the problem:

a. Discrimination on the basis on sexual orientation and gender identity is a universal phenomenon (Daniel Baer, Finland, Switzerland);

b. There is still no region in the world today where people who are gay, lesbian, bisexual, transgender or intersex can live free from discrimination or from the threat of harassment and physical attack (Navi Pillay).

2. Criminalisation contributes to violence and intolerance:

a. Laws criminalising people on grounds of sexual orientation and gender identity violate the principle on non-discrimination, fuel violence, help to legitimise homophobia, and contribute to a climate of hate (Ban Ki-Moon);

b. The existence of such laws poses a serious threat to the fundamental rights of LGBTI individuals, exposing them to the risk of arrest, detention and, in some cases, torture and execution (Navi Pillay);

c. Criminal sanctions are commonly accompanied by many other discriminatory measures that affect access to a wide range of rights – civil, political, economic, social and cultural (Navi Pillay);

d. Criminalisation perpetuates stigma and contributes to a climate of homophobia, intolerance and violence (Navi Pillay)

e. Discrimination and criminalisation often result in the denial of the right to a fair trial and lack of due process for LGBTI people (Alice Nkom);

f. Criminal laws and provisions have been used to target not only consensual same-sex conduct but also diverse forms of gender expression (David Clarke);

g. Even when not directly enforced, criminal laws often justify abusive and discriminatory behaviour on the part of law enforcement officials as well as individual citizens (David Clarke);

h. Decriminalisation leads to a wider acceptance of LGBTI people in society (Netherlands);

i. LGBTI people suffer severe physical, psychological and emotional distress as a result of discrimination (Sunita Kujur).

3. Universal nature of human rights:

a. No one, regardless of their sexual orientation or gender identity, should be subjected to torture or to cruel, inhuman or degrading treatment. (Ban Ki-Moon);

b. No one should be prosecuted for their ideas or beliefs, or punished for exercising their right to freedom of expression (Ban Ki-Moon);

c. Protecting human rights means protecting the rights of everyone, without distinction or discrimination and paying particular attention to the most vulnerable and marginalised, who may face special obstacles to the full enjoyment of their rights (Ban Ki-Moon);

d. All countries that criminalise people on the basis of their sexual orientation or gender identity should take the steps necessary to remove such offences from the statute books and to encourage greater respect for all people, irrespective of their sexual orientation or gender identity (Ban Ki-Moon, Slovenia);

e. The State must be committed to enforcing the human rights of all individuals regardless of their sexual orientation or gender identity (Minority Women in Action), with particular attention to women, lesbians, transgender people and others whose needs are commonly overlooked (Cynthia Rothschild);

f. Every individual has the right to equal treatment; a different sexual orientation or gender identity does not translate into a different claim to human rights. (Finland).

4. Culture/tradition cannot be used to justify human rights violations:

a. Cultural considerations should not stand in the way of basic human rights (Ban Ki-Moon);

b. It is the duty of States to rise above using culture, tradition and religion to hinder human rights as is the case for example with caste issues and child marriage (Sunita Kujur);

c. Cultural and social considerations are also invoked in the West in an attempt to maintain discrimination, but all people, whether they are a member of a particular marginalised group or not, have an obligation to oppose discrimination and injustice (Dan Baer, Cynthia Rothschild, Archbishop Tutu).

5. Criminalisation is not compatible with international human rights law:

a. The General Assembly, in its resolution 60/251 establishing the Human Rights Council, entrusted the Council to promote "universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner." (Navi Pillay);

b. Article 1 of the Universal Declaration of Human Rights, states that "All human beings are born free and equal in dignity and rights," and Article 2, declares that "everyone is entitled to all the rights and freedoms set forth in this Declaration" (Navi Pillay, Colombia);

c. There is no exception based on sexual orientation or gender identity to the universal human rights protection to which "all human beings" are entitled (Navi Pillay, Ban Ki-moon);

d. To deprive individuals of their rights, or to impose criminal sanctions on those individuals, for their innate sexual orientation or gender identity would be to deliberately exclude a significant segment of the population from the protection of international human rights law, and is an affront to the very principles of human rights and non-discrimination (Navi Pillay);

e. Whilst the various international treaties and other instruments, which offer an evolving patchwork of protection against violations of human rights, do not explicitly refer to violations based on sexual orientation and gender identity, the inclusiveness on the language on non-discrimination provides a good basis for extending protection in this direction (Navi Pillay);

f. The Yogyakarta Principles on the application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, which were developed by experts, offer additional guidance on the obligations of States under existing international legal instruments and contain useful recommendations for implementation at the national level (Navi Pillay).

6. Criminalisation undermines the fight against HIV/AIDS

a. Decriminalisation of homosexuality is essential in the fight against HIV/AIDS (Alice Nkom);

b. Criminalisation based on sexual orientation and gender identity is one of the most significant barriers to effective HIV/AIDS prevention, and undermines an effective response to HIV/AIDS (UNAIDS);

c. Criminal sanctions based on sexual orientation and gender identity are inextricably connected to restrictions on personal autonomy, sexuality and the right to health (Sunita Kujur);

d. The high level of homophobia and transphobia in healthcare institutions and HIV/AIDS organisations in Central Asia has led to the inaccessibility of healthcare for LGBTI people, and has had a detrimental impact upon efforts to address HIV/AIDS both for LGBTI people and the general population (Syinat Sultanalieva);

e. Vulnerable groups need access to HIV/AIDS treatment, and it is important to engage in this respect with processes established by UNAIDS (Ethiopia).

7. LGBTI people subject to violence and related human rights violations:

a. LGBTI people are persecuted all over the world, facing violence, torture and criminal sanctions because of how they live and whom they love (Archbishop Tutu, Navi Pillay, Ban Ki-moon, Sunita Kujur, David Clarke, Alice Nkom);

b. Gay men are jailed and humiliated, transgender people are attacked, and lesbians are raped. A lack of security, arbitrary arrests, violence and extrajudicial executions of LGBTI people have become routine in some parts of the world, where LGBTI people are living in fear (Archbishop Tutu, Viktor Mukasa, Alice Nkom);

c. Those who do not fit gender roles determined by society face discrimination from the general populace, as well as harassment and violence at the hands of police (Sunita Kujur, David Clarke);

d. Transgender people experience particularly extreme acts of cruelty, and States must take action to end such violations (Sass Rogando Sasot);

e. Violence against women who choose women as their partners face pronounced discrimination and violence, including from their family members and communities (Sunita Kujur);

f. Violence, persecution, and rejection by families and the broader society have also resulted in increased rates of suicide, particularly involving lesbians (Sunita Kujur);

g. Men imprisoned on charges of homosexuality face particularly harsh conditions in detention, including rape, and some have contracted HIV as a result (Alice Nkom);

h. Defenders of the human rights of LGBTI people also face harassment and threats of violence (Alice Nkom);

i. States must work to end stigma, discrimination, homophobia and transphobia, as well as impunity for all forms of violence against people based on their sexual orientation or gender identity (Archbishop Tutu, Navi Pillay, Finland, Argentina, Switzerland);

j. State initiatives to end violence against LGBTI people should include public education and police training programmes (David Clarke, Coalition of African Lesbians).

8. The UN's responsibility:

a. LGBTI people must be recognised as equal members of the human family whose rights the UN had sworn to uphold (Archbishop Tutu);

b. The Human Rights Council should strengthen its efforts to end violence and discrimination based on sexual orientation and gender identity (Sunita Kujur);

c. The UN should provide leadership and protection and recognise the right to equal dignity and respect of those who face hatred, violence and criminal sanctions (Desmond Tutu);

d. The UN must stand up for the principles of universal humanity and fellowship (Desmond Tutu);

e. Sexual orientation and gender identity should not be seen as stand-alone issues at the Human Rights Council. Special Procedures mandate holders need to have the independence to report on such issues (Sunita Kujur);

f. Civil society, human rights defenders, faith-based organisations, UN human rights mechanisms, the treaty bodies, the Special Procedures, and the Universal Periodic Review all have a vital role to play in this cause (Navi Pillay);

g. The Council must dedicate increased attention to these issues (Norway) and there may be value in exploring new mechanisms, such as a Special Procedures Working Group or other tools to integrate these issues throughout the UN system (Sunita Kujur);

h. There is a need to situate the struggle against discrimination based on sexual orientation and gender identity within a broader commitment to fight discrimination in all its forms, and reach across regional and political divides to address all issues of discrimination in a fair and equal manner (ARC International);

i. There is a need to work towards a universal consensus on human rights for all persons regardless of sexual orientation or gender identity (Finland).