



Human Rights Council panel on ending violence and discrimination against individuals based on their sexual orientation and gender identity

Geneva, 7 March 2012

Summary of discussion

I. Introduction

1. On 7 March 2012, the Human Rights Council held its first panel discussion on violence and discrimination against individuals based on their sexual orientation and gender identity. The panel, organized pursuant to resolution 17/19, was intended to facilitate a constructive, informed and transparent dialogue on the issue of discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, informed by a study on the same topic prepared by the High Commissioner for Human Rights. In accordance with resolution 17/19, the panel was also an opportunity to discuss appropriate follow-up to the recommendations contained in the High Commissioner's study.

2. The meeting was chaired by the President of the Council, H.E. Ambassador Laura Dupuy Lasserre. It opened with an introductory video message from United Nations Secretary-General Ban Ki-moon and a presentation by High Commissioner for Human Rights Navi Pillay. There followed a panel discussion – featuring four expert panelists and moderated by the Permanent Representative of South Africa, H.E. Abdul Minty – and two rounds of questions and statements from representatives of States, non-governmental organizations and national human rights institutions. The Permanent Representative of Brazil, H.E. Maria Nazareth Farani Azevêdo offered some concluding remarks from the podium.

II. Message of the United Nations Secretary-General and statement of the High Commissioner for Human Rights

3. In his video message, Secretary-General Ban Ki-moon described violence and discrimination against individuals based on their sexual orientation and gender identity as a monumental tragedy for those affected and a stain on the collective conscience. He noted that the High Commissioner's study had documented disturbing abuses in all regions – including widespread bias in workplaces, schools and hospitals, imprisonment, torture, physical assaults and killings. He called upon the Human Rights Council to respond effectively and on States to tackle homophobic violence, decriminalize consensual same-sex relationships, ban discrimination, and educate the public. Regular reporting was also needed to verify that violations are genuinely being addressed, he added.

4. High Commissioner for Human Rights Navi Pillay presented her report on discriminatory laws and practices and acts of violence against individuals based on sexual orientation and gender identity (A/HRC/19/41). She focused on three main areas of focus of the study: violence, discriminatory laws, and discriminatory practices. The study contained evidence of high-levels of violence against lesbian, gay, bisexual and transgender (LGBT) persons, including targeted killings, violent attacks, and acts of torture, including sexual violence. In at least 76 States, discriminatory criminal laws were used to punish individuals for engaging in consensual, same-sex relationships; in at least five States the death penalty applied. Negative social attitudes towards LGBT people, in many cases combined with lack of legal protection from discrimination on grounds of sexual orientation and gender identity, exposed LGBT persons to discrimination in employment, education, healthcare and within families and communities. States often refused to recognize same-sex relationships and placed onerous conditions on transgender persons seeking official recognition of their preferred gender. Discriminatory restrictions were imposed on the activities of human rights defenders, civil society organizations and others advocating for LGBT rights.

5. The High Commissioner urged States to commit to implementing the recommendations set out in her report – including measures to improve responses to incidents of homophobic violence, decriminalize consensual, same-sex relationships, enact laws prohibiting discrimination based on sexual orientation and gender identity, and institute public education programmes designed to combat negative stereotyping and tackle discriminatory attitudes in society.

III. Contributions of panelists

6. In his introductory remarks, the moderator, H.E. Ambassador Abdul Minty, explained that South Africa had consulted extensively before finalizing arrangements for today's panel. Panelists had been selected from a pool of candidates based on suggestions submitted by regional groups and others. To help frame the discussion, the moderator invited each panelist to address in their initial remarks "the impact of certain customs, practices and laws that impede the enjoyment of human rights and how they conflict with international obligations of States to ensure non-discrimination."

7. Professor Laurence Helfer (USA), Co-director at the Center for International and Comparative Law at Duke University, referred to the "categorical and unequivocal" opening words of the Universal Declaration of Human Rights, namely that "all human beings are born free and equal in dignity and rights." The drafters of the declaration and of subsequent human rights treaties had excluded "no person, no community, no group of individuals" from the enjoyment of fundamental freedoms. Nowhere in the body of international human rights law was there any exclusionary clause or footnote that would justify denying human rights to LGBT persons, permit violence against them by State or non-State actors, or give license to States to discriminate on the basis of sexual orientation or gender identity. Even so, as the High Commissioner's report showed, violence and discrimination against LGBT individuals remained pervasive in all regions, and often reflected in national laws, and in customs and practices. The issue was one of long-standing concern of United Nations human rights treaty bodies and special procedures, which had been addressing different aspects of violence and discrimination against LGBT persons for some two decades.

8. Mr Hans Ytterberg (Sweden), Chair, Council of Europe Expert Committee on Discrimination on Grounds of Sexual Orientation and Gender Identity, said the High Commissioner's report revealed that the human rights of LGBT people were being violated in all regions. The specific examples included in the report represented "just a fraction" of the total number of violations taking place. He referred to the 2010 recommendations adopted by ministers of the 47-member Council of Europe, which were based on a recognition that LGBT persons had for centuries been victims of intolerance and discrimination, including criminalization, marginalization, social exclusion and violence, sometimes even within their own families. LGBT people were not seeking special rights but rather the same rights that under international law were guaranteed to everyone without distinction. Neither culture nor tradition, neither religious values nor the rules of the dominant culture could be invoked to justify intolerance, hate speech, or violent or otherwise discriminatory actions. The obligation of States under international human rights law was not only to refrain from interferences that violate the rights of LGBT persons but extended to actively promoting and protecting these persons rights from attacks by third parties. Human rights defenders advocating for the rights of LGBT people deserved special protection because they were at constant risk of intimidation and attack.

9. Ms Itina Karla Bacci (Brazil), Vice-President, National Council for LGBT Persons, highlighted the negative impact of laws that criminalize consensual homosexual conduct, including on the effectiveness of public health policies. She stressed that while the repeal of discriminatory laws was an important objective in itself, even where these laws had been repealed human rights, violence and discrimination against individuals based on their sexual orientation and gender identity continued to occur. In many instances, LGBT people, and especial transgender persons, were treated as second-class citizens, with reduced access to education, employment and other rights. In Europe, for example, a number of States would only grant official recognition of a change of gender once an individual had undergone sterilization and surgery was still commonly performed on very young intersex children in order to adjust their sex. Such practices were predicated on certain gender norms, which reflect social attitudes. Protecting the rights of LGBT persons would require a transformation of attitudes as well as changes in the law.

10. Ms Hina Jilani (Pakistan), Chairperson, Human Rights Commission of Pakistan, spoke of the importance of discussions such as the present one in focusing attention on the steps needed to end human rights violations against LGBT people. It was not easy to integrate international rules and standards into national constitutions and legal frameworks, but it must be done if human rights were to be guaranteed for everyone. She noted the recent decision of the Supreme Court of Pakistan that recognized the right to identity of transgender persons. Other human rights challenges facing LGBT people warranted discussion and solutions needed to be found at the national level consistent with international human rights law. Interventions from other panelists had shown that there were no exceptions from the applicability of universal human rights. Special attention was needed to protect those who fight for equal rights for LGBT people. Putting in place the right laws to safeguard the rights of LGBT people would be only part of the process, further steps would be needed to ensure that such laws were being implemented and perpetrators of human rights violations held to account.

IV. Summary of the discussion

11. During the interactive dialogue, interventions were made by 32 States, four civil society organizations, one United Nations entity, one regional organization and one national human rights institution. In addition, nine States unable to speak due to lack of time submitted written statements, which were subsequently posted on the Human Rights Council extranet. A number of States had signalled their opposition to any discussion of sexual orientation and gender identity by leaving the Council chamber at the start of the meeting. Of those who remained and spoke or submitted written statements, most welcomed the opportunity to discuss the issue and expressed their concern at the gravity or prevalence of violence and discrimination based on sexual orientation and gender identity. A number voiced their opposition on cultural or religious grounds, or argued that sexual orientation and gender identity were new concepts that lay outside of the framework of international human rights law. Recurrent themes to emerge during the course of the discussion are summarized below.

Universality and non-discrimination

12. State delegations and civil society organizations emphasized the importance of the principles of universality and non-discrimination, pointing out that human rights were universal and all human beings, irrespective sexual orientation or gender identity, were entitled to enjoy them. The obligation of States to protect all individuals from discrimination covered a wide range of grounds, including instances of discrimination on grounds of sexual orientation and gender identity. No new rights or special rights were needed for LGBT people; rather, existing human rights standards needed to be applied so that LGBT people could enjoy the same rights as everyone else.

Responding to homophobic violence at the national level

13. States shared many examples of measures taken at a national level to combat bias-motivated violence against LGBT persons, including the appointment of special prosecutors, adoption of hate crime laws that establish anti-LGBT bias as an aggravating factor for the purposes of prosecution, and training for law enforcement personnel and other officials. Task forces had been established in several countries to develop policy responses in consultation with representatives of victims and civil society. States also referred to efforts to curb hate speech and prevent the dissemination of material that could incite hatred and violence against individuals based on their sexual orientation and gender identity.

Decriminalization of consensual same-sex relationships

14. The abolition of criminal sanctions for consensual, adult, same-sex relationships was identified by some States as a necessary first step towards eliminating discriminatory practices and homophobic attitudes in society at large. Decriminalization was also identified as important in the context of public health, particularly in the area of HIV where criminal sanctions for homosexuality had been shown to be an obstacle in reaching vulnerable populations and deterred people from coming forward for testing and treatment. Rates of HIV infection were higher in States that criminalized homosexuality than in States that didn't. Arguing the opposite case, one speaker referred to studies indicating that homosexuality may have a negative health impact.

Anti-discrimination legislation

15. States emphasized the importance of having anti-discrimination laws in place that prohibit discrimination on grounds of sexual orientation and gender identity, with several referring to their national experience in this regard. The scope of existing domestic legislation varied considerably: in some cases, the law was comprehensive, in others restricted in application to specific sectors, such as employment, housing or access to certain public services. Several States expressed a commitment to closing gaps in existing anti-discrimination laws. The role of ombudspersons and national human rights institutions in monitoring discrimination and handling complaints was also referenced.

Training, sensitization and public anti-homophobia campaigns

16. States referred to the value of education and training in sensitizing public officials, police, judges, teachers and other key groups to the impact of discrimination based on sexual orientation and gender identity and related human rights challenges facing LGBT persons. Similarly, a number of delegations spoke of the importance of public information campaigns aimed at countering discriminatory attitudes in society at large. The media had a critical role to play in combating negative stereotypes and promoting greater tolerance. Combating homophobia should also be taken up in schools, where curricula should promote values of diversity, non-discrimination and teach respect for others, irrespective of sexual orientation and gender identity. National human rights institutions highlighted their role in advancing public awareness of the impact of homophobic attitudes, including through education campaigns

Recognition of same-sex relationships

17. Several States referred to measures that had been taken at a national level to grant official recognition of same-sex relationships. In some cases, same-sex-couples were now treated in the same way as opposite-sex couples for purposes of tax, benefits, pensions and inheritance. Some States had also removed barriers to adoption for same-sex couples.

Gender recognition

18. Several States referred to initiatives they had taken to make it easier for transgender persons to obtain official recognition of a change of gender and to have identity documents issued that reflect the applicant's preferred gender. Civil society organizations highlighted that the violations experienced by transgender people affected enjoyment of the full range of civil, cultural, economic, political and social rights, and required a systemic response.

Objections

19. Some delegations, while noting that all people are entitled to the enjoyment of human rights, nonetheless argued that concepts of "sexual orientation" and "gender identity" had no foundation in international human rights law because they had not been sufficiently well defined and were not mentioned in any international human rights instrument. In the absence of universal agreement to require States to recognize sexual orientation and gender identity as prohibited grounds for discrimination, no State should not be compelled to do so against their wishes. Any attempt to force through change in this respect challenged the

principles of universality and cultural pluralism and threatened the common ownership of the international human rights programme.

20. The Vienna Declaration and Programme of Action was cited to demonstrate the importance of taking into account national and religious particularities in the context of any discussion of human rights and sexual orientation. Homosexuality was unacceptable to many States because it conflicted with the teachings of various religions and with the cultural and traditional values of many communities. Imposing the concept of sexual orientation would breach the social and cultural rights of communities concerned.

21. It was further suggested that devoting time to discussion of sexual orientation was a distraction from other glaring instances of intolerance and discrimination, including on the basis of colour, race, gender or religion, and discrimination against migrants in Western countries.

22. Finally, concern was expressed that drawing up new documents or agreements that focus specifically on the rights of LGBT persons was an attempt to create new or special rights and could lead to a splintering of human rights into groups and sub-groups.

Need for ongoing monitoring and dialogue

23. Several delegations stressed the need for ongoing monitoring and reporting of the human rights situation of LGBT persons, pointing out that objections raised by some States underscored the need for continued dialogue among Member States to build awareness and overcome different perspectives on the issue.

V. Comments and responses of the panelists

25. Professor Helfer highlighted two main obstacles to preventing discrimination and violence against individuals based on their sexual orientation and gender identity. The first of these was a lack of information about the full scope of human rights violations against LGBT persons; the second was the persistence of prejudice and stereotypes, leading to misunderstandings about human sexuality. Misunderstanding also contributed to the false idea of an inherent tension between protecting the human rights of LGBT persons and protecting religion, culture, society and the family, all of which in fact spring from the same source and could be advanced in a harmonious way. He called for the implementation of the recommendations set out in the High Commissioner's report, for the Human Rights Council to hold further, regular and respectful discussions on the topic informed by the facts on the ground, and for special procedures mandate-holders to include information on human rights violations based on sexual orientation and gender identity in their reporting consistent with their existing mandates.

26. Mr Ytterberg cited impunity as a key obstacle, emphasizing the importance of investigating violations and punishing perpetrators. He echoed the call for more regular discussions at the Human Rights Council and for special procedures mandate-holders to be able to integrate these human rights issues in their work without being attacked for doing so. He believed that an integrated approach was needed because violence and discrimination based on sexual orientation and gender identity were cross-cutting and relevant in the context of many existing mandates.

27. Ms Bacci argued that the level of violence against LGBT persons was increasing in many places, referring to figures from Brazil that confirmed a sharp rise in homophobic and transphobic killings, especially killings of transgender persons. Evidence suggested a similar trend in other parts of Latin America and the English-speaking Caribbean. Murders of LGBT persons were often accompanied by acts of extreme cruelty. She referred to several recent cases of violence against LGBT persons that would not have come to light had it not been for networks of activists. Incidents are often hidden by family members out of a sense of shame and are not always reflected in official data. Turning to the question of what the Council might do to address these problems, Ms Bacci said that violations based on sexual orientation and gender identity should be included both in existing reporting on areas such as health and torture, and through special reporting focused specifically on violations against LGBT persons. Referring to a recent case in Brazil in which a young person had committed suicide after suffering homophobic bullying, she argued that there should also be an emphasis on the education of children and young people. Ultimately, securing the rights of all persons would require change in the prevailing culture in many societies.

28. For Ms Jilani, the refusal by some to accept the legitimacy of concerns raised regarding violence and discrimination against individuals based on their sexual orientation or gender identity constituted a serious obstacle to progress. Invoking culture or tradition as a shield for failure to protect individuals from human rights violations was unconvincing. States were not entitled to uphold human rights selectively to or to exclude certain people from protection. She emphasized the important role of the judiciary, which is less susceptible than other branches of Government to popular prejudices. It was especially important to protect the rights of human rights defenders who must be able to exercise their rights to freedom of expression, association and assembly in order to defend the rights of others.

VI. Concluding remarks

29. In his concluding remarks, the moderator, Ambassador Minty of South Africa, said that the panel had met its objective by providing a forum where different views could be expressed and listen to with respect, and by increasing understanding of the issue at hand through constructive dialogue. The challenge was how to end the violence and discrimination that existed in all regions – including in South Africa, notwithstanding the existence of appropriate legislation. He thanked all those who had asked questions and regretted that time had not permitted panelists to respond to all questions posed. In closing, he referred to the *ubuntu* spirit in Africa, which had been mentioned by one of the speakers from the floor. *Ubuntu* could be understood as meaning “I am because you are”. In other words, all people share a link with one another through their common humanity, which also carries with it a shared responsibility to care for one another. The same principle could be said to underpin the concept of universal human rights, he added.

30. For her part, the Permanent Representative of Brazil to the United Nations in Geneva, H.E. Ambassador Maria Nazareth Farani Azevedo, said that discriminating against people on the basis of their sexual orientation or gender identity was no more acceptable than doing so on the basis of their race, religion, nationality or other grounds. Rather than referring to today’s panel as “historic”, she would prefer that it be seen as the Council going about its normal, day-to-day

business, which was to ensure that everyone was able to enjoy their human rights. Reconciling universal standards of human rights with local ideas of culture was challenging but necessary work. Just as no person is above the law, no person or group of person should be considered beneath it either. Nobody should be excluded from the protection of international human rights law.