



Appointing an Independent Expert on Sexual Orientation and Gender identity: An Analysis of Process, Results and Implications

32nd Session of the Human Rights Council

June 13 – 1st July, 2016

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<http://arc-international.net/global-advocacy/human-rights-council/32nd-session-of-the-human-rights-council/>

All documents referenced in this Report can be found at:

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Pages/ResDe-cStat.aspx>

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I Introduction

The defining event of the 32nd Session of the Human Rights Council was the passing of the resolution appointing an Independent Expert on Sexual Orientation and Gender Identity.¹

The process began in 2011, when South Africa introduced the very first resolution on sexual orientation and gender identity, asking the High Commissioner to produce a Report on violations and best practices relating to discrimination and violence on grounds of sexual orientation and gender identity. In 2014, the Human Rights Council passed the second resolution on sexual orientation and gender identity, which asked the High Commissioner to update the report authorized by the 2011 resolution.

The 2016 resolution, apart from being the third resolution on sexual orientation and gender identity (SOGI) at the Council, went several steps further and set in place a dedicated mechanism tasked with examining discrimination and violence on grounds of sexual orientation and gender identity over the next three years.

The passing of the resolution will now ensure sustained and systematic attention by a major organ of the United Nations to human rights violations on grounds of sexual orientation and gender identity. The work of the Independent Expert can give greater depth to the notion that violations on grounds of sexual orientation and gender identity are human rights violations which should be taken seriously. The creation of this mandate will enable activists from around the world to focus a global spotlight on brutal violations in diverse local and national contexts. In effect, the resolution creates a lever or mechanism that can be activated in aid of local struggles, bringing one more level of pressure to ensure accountability for violations on grounds of SOGI.

¹There were other important references to sexual orientation and gender identity both by the High Commissioner in his report, in the general debate as well as in the interactive dialogues. For a brief listing of the same See Annexure I

This Report will examine the Resolution in all its facets, examining the process leading up to the resolution, analysing the text of the resolution, and attempting to understand the political landscape i.e. why states voted the way they did. An underlying theme of the analysis is an effort to grapple with the implications of the resolution.

II The process leading up to the resolution 2016

The logic underlying a resolution on sexual orientation and gender identity

The core group (Mexico, Uruguay, Chile, Argentina, Brazil and Colombia) announced at the organizational meeting of the 32nd Session of the Human Rights Council, the intention to take forward the conclusions of the 2015 High Commissioners Report on sexual orientation and gender identity. The High Commissioners Report of 2015 on SOGI had indicated that when it came to the question of sexual orientation and gender identity there was a protection gap which required a dedicated mechanism at the Human Rights Council.

Following the announcement at the organizational meeting, the Core group, which was previously the LAC 6, expanded to include Costa Rica, making it the LAC 7. The LAC 7 circulated a concept note that made the case for why an Independent Expert was required. The concept note referenced the previous report of the Office of the High Commissioner on SOGI which documented brutal violations on grounds of sexual orientation and gender identity around the world and highlighted the inadequacy of current arrangements to protect individuals from violations on these grounds.

The Concept note then went on to argue that:

We are convinced that the scale, seriousness and widespread nature of violence and discrimination against individuals based on their actual or perceived sexual orientation or gender identity requires a specific response from the Human Rights Council in the form of a dedicated mechanism.

The concept note also made clear that the inspiration for the proposed resolution remained the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action.

We recall that the Vienna Declaration and Programme of Action indicates that ‘while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States regardless of their political, economic and cultural systems to promote and protect all human rights and fundamental freedoms.

The balance articulated in the Vienna Declaration of taking into account national and regional particularities while remaining committed to universal human rights was reiterated in the concept note. The concept note then went on to make the case that the universal basis of the resolution lay in the fact that:

There is no country or region that has called for or has tolerance to violence or discrimination. There is no country or region that is opposed to dialogue. In fact, one hundred States from all regions of the world have made voluntary commitments to address violence and discrimination based on sexual orientation and gender identity in the context of the Universal Periodic Review. More than two thirds of all States that received such recommendations accepted at least one (and often several) such recommendations, indicating that a majority of States welcome constructive dialogue and have made express commitment to address these human rights concerns.

The LAC 7 by circulating the concept note, sought to frame the issue of violence and discrimination on grounds of sexual orientation and gender identity within the logic of universal human rights and also within the framework of the Council’s function to promote constructive dialogue. As such, the LAC 7 sought to portray the resolution as drawing from international

law and being based on an approach which eschewed conflict in favour of promoting dialogue.

The draft resolution

The draft resolution, circulated by the LAC 7 fleshed out the themes outlined in the concept note. The preambular paragraphs inter alia, reaffirmed the Universal Declaration of Human Rights and recalled the Vienna Declaration and the two Human Rights Council resolutions on sexual orientation and gender identity in 2011 and 2014. The operative paragraphs inter alia, deplored violence and discrimination in all regions of the world, committed against individuals because of their sexual orientation and gender identity and in operative paragraph 2, 'decides to appoint for a period of three years, an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity'.

The mandate of the Independent Expert as per operative para 2 is as follows:

- a) To assess the implementation of existing international human rights laws and standards with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity while identifying both best practices and gaps;
- b) To raise awareness of violence and discrimination against persons on the basis of their sexual orientation or gender identity and to address the root causes of such violations;
- c) To engage in dialogue and consult with States and other relevant stakeholders, including United Nations agencies, programmes and funds, regional human rights mechanisms, national human rights institutions, civil society organizations and academic institutions;
- d) To work in cooperation with States in order to foster the implementation of measures that contribute to the protection of all

persons against violence and discrimination based on sexual orientation and gender identity;

e) To address the multiple, intersecting and aggravated forms of violence and discrimination faced by persons on the basis of their sexual orientation and gender identity;

f) To conduct, facilitate and support the provision of advisory services, technical assistance, capacity-building and international cooperation in support of national efforts to combat violence and discrimination against persons on the basis of their sexual orientation or gender identity;

The mandate, while focused on sexual orientation and gender identity, understands that it's not possible to abstract these concepts from older histories of domination. Hence, the mandate is expressly envisaged as having a focus on intersectionality as noted by the reference to 'multiple, intersecting and aggravated forms of violence and discrimination and to addressing 'root causes of such violations.'

Informals on the draft resolution

It was this text which was the subject of two informals conducted by the core sponsors of the resolution. The first informal was attended by 51 states.² The key highlight of the informal was the fact that many vocal opponents who were members of the Organisation of Islamic Conference (OIC) and the African group, chose not to attend. Thus, Nigeria, Egypt, Saudi Arabia and Pakistan were prominent by their absence. Among the members who were present, there were two kinds of responses from opposite ends of the spectrum.

²Albania, Argentina, Armenia, Australia, Belgium, Brazil, Canada, Czech Republic, Chile, China, Colombia, Costa Rica, Cuba, Denmark, El Salvador, Estonia, European Union, Finland, Guatemala, Holy See, Honduras, Iceland, India, Iran, Ireland, Italy, Lithuania, Liechtenstein, Mexico, Mongolia, Morocco Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Russia, Samoa, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Togo, Tuvalu, United Kingdom and USA.

First was a response from some supportive states wondering why the sponsors chose an Independent Expert and not a Special Rapporteur. The European Union, for example, noted that it preferred a Special Rapporteur due to the grave situation and that a Special Rapporteur would result in better and more systematic monitoring of the situation worldwide and would send a strong signal to end violence and discrimination. This proposal was also seconded by Canada and New Zealand.

Uruguay, in response, noted that the choice of an Independent Expert over Special Rapporteur was based on the need to have a special procedure that is perceived in a more constructive manner. A Special Rapporteur is perceived as more of a mechanism of monitoring, while the Independent Expert can enter into a dialogue in a more constructive way. Uruguay said that their approach since 2014 has been to take into account everybody's views and that they had spent a long time talking to many delegations, and the choice of the special procedure was based upon an understanding of which special procedure was going to be perceived in the best possible way.

Apart from supportive statements from states in Europe, North America and Latin America, there was also a supportive statement by the small Pacific Island state of Samoa who said that the Samoan Constitution recognizes all people, and that Samoa would support the establishment of an Independent Expert. The attendance of some Pacific states and the strong statement by Samoa, in particular, was possibly linked to the presence of a strong civil society representative from the region who did significant outreach to Pacific delegations.

The strongest opposing statement was made by Russia, who noted that it was deeply disappointed that the resolution proposed to put forward such a complicated, controversial and unacceptable topic. Russia noted that, while it agreed that every country should do its best to eliminate discrimination for all people, they were against creating a new category with a special regime of protection. They felt the majority of the world's population would not support such ideas, and that even though the sponsors spoke about dialogue, it was

clear to Russia that two groups were absent, namely the Africa group and the OIC group. Russia stated that there is no agreement in law or science on what is meant by sexual orientation and gender identity. Russia also said that it was against this idea in principle and hence they were not ready to engage in the drafting process. Russia then requested the sponsors to reconsider and withdraw the resolution.

China also took the floor to observe that the sponsors had chosen a controversial topic. As there were already a lot of mandates, China choose to reserve its position on the establishment of the Independent Expert.

Albania was in the unique position of both being a member of the OIC as well as a part of the Eastern European grouping. Albania commended the leadership of the sponsors and highlighted that it was disappointed that OIC partners were not there. They also noted that as an OIC member state, it had encouraged others in the OIC to engage in an open dialogue.

Although they were present in the informal there was intriguing silence from both India and South Africa.

The first informal was followed by the second informal to discuss the draft resolution. This informal was attended by 35 countries.³ There were no substantive discussions and the session wound up in half an hour despite being scheduled to go on for two hours. However, the fact that the informal was short only indicated that the hard work of getting members of the Council to agree to the text had to be done outside the space of the informal through bilateral negotiations.

³Armenia, Australia, Austria, Belgium, Botswana, Canada, China, Cuba, Czech Republic, Denmark, EU, France, Germany, Guatemala, Honduras, Ireland, Japan, Latvia, Morocco, Namibia, Panama, Paraguay, Poland, Singapore, Sweden, Thailand, UK, US, Mexico, Uruguay, Colombia, Chile, Brazil, Argentina and Costa Rica.

Civil Society Advocacy Efforts

The time period from the announcement of the resolution to the final vote on June 30 was the crucial time when states who were members of the Human Rights Council were the subjects of intense lobbying and advocacy efforts from states supportive of the resolution, as well as civil society at both national and global levels.

It was this intensive effort that resulted in the resolution passing. Indicative of the forms of pressure to which states were subjected to, was a letter by 12 organisations from El Salvador to their government asking them to vote yes. Similarly, there were letters from civil society groups in Vietnam, Mongolia, Philippines, India and South Africa all urging their governments to vote in favour of the resolution. In some countries, like India, civil society also engaged in a media campaign in both print and television, in which the government was urged to vote in favour of the resolution.

On a more global level one of the remarkable activist efforts was a joint letter, signed by 628 NGOs from 151 countries, asking their governments to ‘move beyond one-off initiatives and piecemeal measures’ and urgently address the ‘protection gap’. The joint letter called upon ‘the Human Rights Council to address this gap through the creation of an Independent Expert to address discrimination and violence against persons based on sexual orientation and gender identity.’⁴

The geographical diversity and breadth of the signatories is indicated below:

⁴<http://arc-international.net/global-advocacy/human-rights-council/32nd-session-of-the-human-rights-council/628-ngos-from-151-countries-call-for-a-sogi-independent-expert-at-the-un/>

List of Signatories: Regional Overview

Region	Countries	NGOs
LAC	29	158
Asia Pacific	39	160
Africa	35	114
Western Europe	21	90
Eastern Europe	25	56
North America	2	36
Global	0	14
Total	151	628

The telling statistic is that the majority of signatories (sixty-eight percent), are from the global south, coming from the Asia Pacific, LAC and African regions. This indicates the deeply felt need among LGBT groups in the global south for more systematic attention to violations against LGBT persons at the UN level.

Joint statements by civil society

There were four important civil society joint statements delivered at the Human Rights Council making the case as to why an independent Expert on SOGI was required from diverse perspectives.

Firstly, there was the joint statement delivered on behalf of 628 civil society organisations from 151 countries around the world.

We, the 628 NGOs listed at the end, call for a SOGI Independent Expert to monitor and document human rights violations, prepare regular reports on issues such as root causes, trans rights, and protection gaps, engage with States from around the world to build awareness of SOGI issues, identify good practices and encourage

reforms, help ensure the issues are better integrated throughout the UN system, work to support civil society and NGOs working on these issues, enhance regional and cross-regional collaborations and strengthen attention to the issues at the national, regional and international levels, highlight multiple and intersecting forms of discrimination, and further articulate and increases awareness of these connections, particularly by recognizing that SOGI issues are connected with a broad range of issues including gender equality, class, bodily autonomy, sexual and reproductive health and rights.

The establishment of a dedicated protection mechanism to address SOGI-related human rights violations is a necessary step towards urgently addressing the serious abuses on these grounds in every region of the world. We urge the Human Rights Council to act urgently and establish such a mandate. As UN Secretary General Ban Ki-moon affirmed: *“The time has come”*.⁵

There was a joint statement delivered by RSFL⁶ on the question of gender identity.

Each person’s self-defined gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. Too many transgender persons are forced to live with identity documents that do not correspond to their self-defined gender. Opening a bank account, applying for a job, boarding a plane, or lodging a harassment complaint can become a repeated source of harassment, unfounded suspicion, and even violence.

However, many States in all regions require the individual to give up one or more human rights to gain another for the protection of private

⁵<http://arc-international.net/global-advocacy/human-rights-council/32nd-session-of-the-human-rights-council/628-ngos-from-151-countries-call-for-a-sogi-independent-expert-at-the-un/>

⁶ The other cosponsors were Human Rights Law Centre, ILGA, International Humanist and Ethical Union, International Federation for Human Rights Leagues, LGBT Denmark and Lesbian and Gay Federation in Germany, LSVD

life. Requirements may include diagnosis of a mental disorder, sex reassignment surgery, forced sterilization or hormonal therapy, and being single or divorced. These violate a person's dignity, right to form a family and right to be free from degrading and inhumane treatment.

The creation of an independent expert mandate on sexual orientation and gender identity would raise awareness and bring greater understanding of these issues. It would also be a platform to share best practices and provide technical assistance to States in ensuring human rights based laws, policies and procedures on the legal gender recognition of all persons.

There was a statement from NGOs in the LAC region commending the leadership of the LAC 7 delivered by COC Netherlands and others.

Argentina, Brazil, Colombia, Costa Rica, Chile, Mexico and Uruguay have presented before this Council a historic resolution recognizing the discrimination and violence against persons on grounds of sexual orientation and gender identity and support the creation of an Independent Expert. These seven states have the support of the voices of 140 NGO's from 25 countries in the Latin American and Caribbean region. We would like to state with joy that we are not alone and civil society in more than 130 countries support this call.

Finally, there was a statement from Mantiqitna Network, PAN Africa ILGA and ARC International.

In Africa some 36 countries maintain laws that criminalise homosexuality. We call for the immediate decriminalization of homosexuality, including a review of all legislation which could result in the discrimination, prosecution and punishment of people solely for their sexual orientation or gender identity. Where these laws have been scrapped and repealed, we urge leaders to ensure adequate follow up legislation such as anti-discriminatory laws to ensure full human rights of all its citizens- without exception.

We are proudly African and we are proudly LGBTI. We want our governments to acknowledge the reality that LGBT people exist and suffer brutal violations of human rights. It would be in keeping with the principles of the Universal Declaration of Human Rights as well as the African Charter on Human and People's Rights for African countries to vote for the resolution at the Human Rights Council establishing an Independent expert on Sexual Orientation and Gender identity.

The four statements sought to make four separate but related points. Firstly, the fact that discrimination on grounds of sexual orientation and gender identity is an issue of global significance and hence needs to be addressed. Secondly, that Latin American NGOs stand with the LAC 7's advocacy of the resolution. Thirdly, from the African civil society perspective, the passing of the resolution would be in keeping with African Charter on Peoples and Human Rights. The final point was the fact that the passing of the resolution would enormously benefit advocacy around gender identity issues. As such, a compelling case for the passing of the resolution emerged from a global civil society perspective.

Making the case for an Independent Expert at the Human Rights Council

While joint statements are one way of making a case before the Council, the time limit precludes more in-depth engagement. Side events provide this opportunity for a more in-depth engagement. Mid-way through the second week of the Council, a side event on 'Ending violence against LGBT people? Addressing the protection gap in the UN system'⁷, made a more detailed case

⁷The side event was organized jointly by Arc International, COC Netherlands, Mantiqitna Network, Tonga Leitis Association. For a perspective on the side event see Sharan Bhavnani, Progression of a Progressive International Stance: ARCs Side Event at the 32nd Session of the Human Rights Council.

<http://arc-international.net/global-advocacy/human-rights-council/32nd-session-of-the-human-rights-council/side-event-ending-violence-against-lgbt-people-addressing-the-protection-gaps-in-the-un-system/progression-of-a-progressive-international-stance-arcs-side-event-at-the-32nd-session-of-the-human-rights-council/>

for why the Independent Expert was so vital for taking forward the struggle of LGBT communities globally.

The event was chaired by Arvind Narrain, ARC International, and the speakers in the event were:

- Joleen Brown Mataele, Tonga Leiti's Association
- Fadi Saleh, Syrian LGBT activist
- Yahia Zaidi, Mantiqitna Network
- Sheherezade Kara, Human Rights Consultant
- John Fisher, Human Rights Watch

Arvind Narrain began by paying a tribute to the victims of the brutal attack on Orlando. He stated that the outrage provoked by the mass shooting of 49 people at a gay night club in Orlando resonated with LGBT communities around the world from Chandigarh, Nellore, Delhi in India to Kampala, Nairobi, Rabat and Tunis in Africa from Mexico city and Bogota in Latin America to Suva, Tonga, Seoul and Bangkok in Asia. While the global media covered the outpouring of support and solidarity from cities around the global north, it did not highlight the important fact that the horror of the Orlando shooting resonated very strongly with LGBT communities in the global south. At this point a slide photo presentation highlighting the moving tributes from LGBT communities from places as diverse as Suva, Kampala, Nellore and Mexico City was played.⁸ According to the moderator, the grief and pain of Orlando resonated with LGBT communities in the global south because the sting of discrimination and the pain of violence was something that was a part of the everyday experience of being LGBT. He said that he wanted to explore a bit more of this resonance by asking the panelists who worked in the difficult contexts of Syria, North Africa and Tonga, as well as globally, to share their thoughts on two points:

⁸ This slide presentation can be accessed at <http://arc-international.net/global-advocacy/human-rights-council/32nd-session-of-the-human-rights-council/>

- 1) The forms of violence faced by LGBT persons and whether there is specificity to the violence faced by LGBT persons.
- 2) How can the proposal of the LAC 7 to establish an Independent Expert at the Human Rights Council address the endemic violence which is a reality in LGBT lives around the world?

With respect to the first question the panelists responded as follows:

Joleen Brown Mataele, from Tonga Leiti's Association observed that LGBT people encounter many difficulties coming out in public, speaking out and forming associations and communities. From her personal experience as a transgender woman, Joleen Mataele explained how she was abused by both parents and classmates. In these conditions of loneliness and hardship, it takes a lot of courage to be oneself, as society is hardly accepting.

Fadi Saleh, a Syrian LGBT activist, stated that unlike what media coverage portrays, violence against LGBT people happens not just under ISIS but also in areas controlled by the regime in Syria. There are very specific forms of violence that remain undocumented and un-talked about. They don't seem to capture the same media attention for there are not on the scale of ISIS' atrocities nor as spectacular. LGBT people are punished without legal authority, arrested and tortured. Transwomen tend to be the group most targeted, especially by the (Free) Syrian Army. Arbitrary arrests happen frequently: recently, six people were arbitrary arrested based on their looks, and amongst them a trans-woman. Without any connections or money to help them out, some of these people had to spend many days in jail, though they didn't commit any infractions.

Yahia Zaidi, of Mantiqitna Network, stated that North Africa has also a high rate of violence against LGBT people: "proved" homosexuality, often through the practice of humiliating anal testings, can lead to jail. There are many types of violence: violence in the family sphere, violence condoned by religious figures and violence by the state. Nowadays, the tendency seems to have shifted towards violence from non-states agents particularly focused on gay

men and trans-women. For the last two years, LGBT people have endured a new wave of increased violence, by groups of harassers, who also tend to film and publicly spread their violent acts on platforms such as internet.

Sheherezade Kara, Human Rights Consultant, expressed her wish to bring more attention to LBT women. Women suffer from different types of violence: one of the forms it can take is lesbians being submitted to corrective rapes, a subject which has been addressed in the session of the Council. The working group on discrimination against women also showed that LBT women face double discrimination for being, for instance, both women and part of LGBT communities.

John Fisher from Human Rights Watch stressed the importance of doing an homage to LGBT people killed in Orlando, as the event is representative of the sufferings endured by LGBT people in the world.

On the importance of having an UN independent expert to ensure sustained attention to human rights violations based on sexual orientation and gender identity the panelists responded as follows:

The panelists highlighted the importance and the need of having an UN independent expert on sexual orientation and gender identity. The establishment of the Independent Expert would be an important contribution as the mandate would be able to engage with States, the civil society, media and raise awareness while enabling better conceptual understanding of SOGI issues. Any systematic violation requires a systematic solution from the UN, and a mechanism would do that.

The activists also strongly contended that from the perspective of the global south, a dedicated mechanism on sexual orientation and gender identity would focus attention on the problems faced by LGBT persons and be of concrete relevance in national level struggles.

The demand for an independent mechanism was really from civil society groups in the global south. An analysis of the joint NGO letter by 628

organisations to the Human Rights Council reveals that the vast majority of organisations which had demanded the creation of such a mechanism, were from Africa, the LAC region and Asia Pacific. Hence the heartfelt need for an UN mechanism really came from these regions.

The contributions of the panelists was summed up by the moderator who stated that the panelists highlighted the dire human rights situation in many regions of the world which included violence by the state, vigilante elements, families and medical establishments. As such the scale and nature of the violations made a compelling case for urgent action. Being in Geneva, one of the key contributions towards addressing this state of rightlessness would be to establish an Independent Expert who could help take the struggle of LGBT people for a life free of discrimination and violence forward.

The panelists also thanked the LAC 7 for the important initiative to place issues of sexual orientation and gender identity on the human rights agenda of the UN.

A number of states including France, The European Union, the United Kingdom, Uruguay and Colombia spoke after the presentations. In response to a question as to whether the issue of LGBT rights was a western agenda, the delegates from Colombia and Uruguay drew attention to the fact that these issues were issues they confronted within their own national contexts and hence it was a personal matter for them. As the delegate from Colombia put it, he knew people who had been killed for their sexual orientation. Both Uruguay and Colombia concluded by stating that they felt energized after this meeting and would now go and fight even harder to ensure that the resolution passed.

III Understanding the SOGI Resolution 2016

The voting results

The culmination of the entire process was the vote which was held on June 30, 2016. After the resolution was introduced by Chile, there were 17 votes in all which can be grouped into four broad categories.⁹

- The vote on a no-action motion proposed by Saudi Arabia which was rejected (15 yes, 22 no and 9 abstention).
- The votes on the eleven separate amendments, out of which seven were passed with varying majorities.
- The separate votes on paragraphs of the resolution, all of which were rejected.
- The final vote on the resolution, as amended, which was passed (23 yes, 18 no and 6 abstention).

The proceedings began with the tabling of a no-action motion. The no-action motion was a strategic manoeuvre which aimed to make the point that the issue was so problematic that it should not even be brought to the floor of the Council and did not merit the dignity of discussion. Once this was defeated, the next strategy adopted by those opposed to the resolution was to introduce a slew of hostile amendments all of which sought to subvert the intent and purpose of the resolution. This strategy was partially successful, as seven out of the eleven amendments got through. This was followed by a vote on separate paragraphs that was defeated. Finally, the Council voted on the amended resolution as a whole, and this vote passed.

There were over 78 interventions made by over 31 states over the course of the debate spanning the four sections highlighted above. (A descriptive account of the vote is available in **Annex II**)

The resolution on protection against violence and discrimination based on sexual orientation and gender identity was finally adopted by a vote of 23 in favour, 18 against and 6 abstentions. The result of the passing of the resolution was that the Council decides to appoint, for a period of three years,

⁹ For a copy of the resolution as tabled See

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/L.2/Rev.1

an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, with the mandate to assess the implementation of existing international human rights instruments with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity; raise awareness of violence and discrimination against persons on the basis of their sexual orientation or gender identity, and to identify and address the root causes of violence and discrimination; and engage in dialogue and to consult with States and other relevant stakeholders. The Council also requests the Independent Expert to report annually to the Human Rights Council, starting from its thirty-fifth session, and to the General Assembly, starting from its seventy-second session.

The result of the vote was as follows:

In favour (23): Albania, Belgium, Bolivia, Cuba, Ecuador, El Salvador, France, Georgia, Germany, Latvia, Mexico, Mongolia, Netherlands, Panama, Paraguay, Portugal, Republic of Korea, Slovenia, Switzerland, The former Yugoslav Republic of Macedonia, United Kingdom, Venezuela and Viet Nam.

Against (18): Algeria, Bangladesh, Burundi, China, Congo, Côte d'Ivoire, Ethiopia, Indonesia, Kenya, Kyrgyzstan, Maldives, Morocco, Nigeria, Qatar, Russian Federation, Saudi Arabia, Togo and United Arab Emirates.

Abstentions (6): Botswana, Ghana, India, Namibia, Philippines and South Africa.

It is clear that no party completely got what they wanted. The sponsors of the resolution obviously wanted the passage of the resolution and the rejection of all hostile amendments. What they got instead was the passage of the resolution in which seven out of the eleven amendments were passed. So the resolution, as passed, was very different from the resolution as tabled.¹⁰To

¹⁰ A copy of the resolution as passed is available at

http://www.ohchr.org/Documents/HRBodies/SP/CallApplications/HRC33/A.HRC.RES.32.2_AEV.docx

understand the implications of the amended resolution will require a detailed analysis of both the amendments as well a broader understanding of what the effect of the amended resolution would be.

An analysis of the Hostile Amendments

The strategy adopted by the OIC states was to propose hostile amendments, with the aim of derailing the resolution from its stated intent and purpose. Pakistan, on behalf of all OIC states other than Albania, proposed eleven amendments to the text of the resolution. Pakistan was quite explicit about the hostile intention underlying the amendments stating that:

At a time when the Council needs to return to its foundational principles of cooperation and mutual respect for each other's cultural and religious particularities, this draft resolution, we believe will create further mistrust within the Council which should be avoided. Mr. President, for these reasons, OIC member states, except Albania, present eleven amendments from L.71 to L.81 to the draft resolution entitled 'Protection against violence and discrimination based on sexual orientation and gender identity.'

The amendments tabled were L.71 to L.81

L.71

'Protection against violence and discrimination due to any basis such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'

Instead of:

'Protection against violence and discrimination based on sexual orientation and gender identity'

L.72

‘Recalling further all Human Rights Council resolutions relevant to protection against violence and discrimination due to any basis such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’

Instead of:

Recalling further Human Rights Council resolutions 17/19 of 17th June 2011 and 27/32 of 26th September 2014’

L.73

Stressing the need to maintain joint ownership of the international human rights agenda and to consider human rights issues in an objective and non-confrontational manner.

L.74

Undertaking to support its broad and balanced agenda, and to strengthen the mechanisms addressing issues of importance, including fighting racism, racial discrimination, xenophobia and related intolerance in all their forms.

L.75

Reiterating the importance of respecting regional, cultural and religious value systems as well as particularities in considering human rights issues.

L.76

Underlining the fundamental importance of respecting relevant domestic debates at the national level on matters associated with historical, cultural, social and religious sensitivities.

L.77

Deploring the use of external pressures and coercive measures against States, particularly developing countries, including through the use and threat

of use of economic sanctions and/or application of conditionality on official development assistance, with the aim of influencing the relevant domestic debates and decision-making processes at the national level.

L.78

Concerned by any attempt to undermine the international human rights system by seeking to impose concepts or notions pertaining to social matters, including private individual conduct, that fall outside the internationally agreed human rights legal framework, and taking into account that such attempts constitute an expression of disregard for the universality of human rights.

L.79

Underlining that the present resolution should be implemented while ensuring respect for the sovereign right of each country as well as its national laws, development priorities, the various religious and ethical values and cultural backgrounds of its people, and should also be in full conformity with universally recognized international human rights.

L.80

‘Deplores acts of violence and discrimination, in all regions of the world, committed against individuals because of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’

Instead of:

‘Strongly deplores acts of violence and discrimination in all regions of the world, committed against individuals because of their sexual orientation or gender identity’.

L.81

To replace Op 3, 4, 5, 6, 7 and 8 with one operative paragraph reading:

‘Requests the High Commissioner for Human Rights to present a report to the Thirty fifth session on protection of all individuals against violence and discrimination committed against individuals because of their race, colour sex, language, religion, political or other opinion, national or social origin, property, birth or other status with a focus on major challenges and best practices in this regard.’

The eleven amendments could be grouped in the following ways:

- 1) Amendments which sought to strip the words of the specificity of the language of sexual orientation and gender identity and replace it with other categories of discrimination such as ‘race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Amendments L 71, L72, L80). All these amendments were rejected.
- 2) Amendments which sought to introduce problematic notions of cultural relativity, importance of respecting domestic debates, importance of respecting regional, cultural and religious values systems in interpreting human rights (Amendments L 73, L.75, L.76, L.78 and L.79). All these amendments were passed.
- 3) Amendments which were not problematic on substantive grounds but were moved with hostile intent. These included an amendment on combating racism and on deploring the use of coercive measures against developing nations (Amendments L. 74 and L.77). These amendments were passed.
- 4) An Amendment which went to the heart of the resolution and replaced the operative paragraph setting up the mandate of the Independent Expert (Amendment L. 81)

The hostile amendments which were rejected were to do with those which sought to strip all references to sexual orientation and gender identity in the preambular paragraphs of the resolution and replace them with more general categories of discrimination. (L.71, L.72 and L.80) Thus the efforts to invisibilise sexual orientation and gender identity and to remove the

references to the specificity of the oppression based on sexual orientation and gender identity failed. The other key hostile amendment that failed, sought to replace the operative paragraphs calling for the establishment of an Independent Expert with a call for a Report of the High Commissioner on protection of all individuals against violence and discrimination under more general categories of discrimination. (L.81)

What stood preserved, in unequivocal terms, was the fact that the Independent Expert stood established, that the Independent Expert had a mandate to examine violence and discrimination based on sexual orientation and gender identity, and the fact that the mandate of the Independent Expert built upon the previous resolutions of the Council on sexual orientation and gender identity.

The hostile amendments which succeeded were all made to the preambular paragraphs and could be grouped as follows:

- 1) Amendments (L.75, L.76, L.77 and L.78) which invoked the idea of respecting 'regional, cultural and religious value systems', 'domestic debates', 'sovereign priorities' and expressing concern around 'concepts pertaining to social matters including private individual conduct'.
- 2) Amendment (L.73) which stressed the need to 'maintain joint ownership of the international human rights agenda and to consider human rights in an 'objective and non confrontational manner'.
- 3) Amendment (L.74) which supported 'fighting racism, racial discrimination, xenophobia and related intolerance in all its forms'.
- 4) Amendment (L.77) which deplored the use of 'economic sanctions and conditionality on official development assistance' particularly against 'developing countries' with the aim of influencing domestic debates.

Amendment L.74, with its commitment to fighting racism, is really an attempt at using an issue that has universal consensus, to try and dilute the agenda of

fighting discrimination on grounds of sexual orientation and gender identity. It tries to pit the importance of sexual orientation and gender identity against the importance of race as a human rights issue. However, this way of framing the two issues as mutually distinct and separate and perhaps even hostile to each other does injustice to the intent of the resolution. The resolution in operative paragraph 2(e) and 2(b) calls for fighting 'multiple, intersecting and aggravated forms of violence' as well as expresses commitment to addressing 'root causes of violence and discrimination'. Ironically, though the intent of the movers of the amendment was hostile, there is no contradiction between L74 and the resolution, and in fact there is a strong synergy between the amendment and operative paragraph 2.

Amendment L.77 with its language of 'coercive measures against developing states' is another attempt at reframing the debate. This aims at exploiting the very real divide between developing and developed states to make the point that this resolution is a developed country issue imposed on developing countries. The fundamental point to note is that the sponsors of the resolution are not developed countries, but rather developing countries, hence the framing of the SOGI resolution as a battle between developed and developing countries is a false dichotomy. To expose the motivation of the movers of the amendment does not necessarily mean that the sponsors are against the language of the amendment. The 'deploring of coercive measures' is something on which the sponsors of the resolution are unlikely to differ. As the resolution movers noted in their concept note, their aim was 'dialogue' hence there is no disagreement on the substance of the amendment. Clearly, the substantive content of the resolution does not authorize coercive measures and hence the amendment itself exhibits misplaced anxiety at best, and at worst it is mischievous in its intent.

Amendment L.73 on the joint ownership of the human rights agenda is more problematic. The founding document of the Human Rights Council, General Assembly Resolution 60/251, clearly outlines 'objectivity, cooperation and genuine dialogue' as principles on which the 'promotion and protection of human rights' is based. Hence, while there can be no quarrel with the

amendment seeking objectivity and a non confrontational manner, the question of joint ownership however raises some questions. It cannot be the case that unless and until every human rights issue has 'joint ownership', the issue cannot move forward. The language of joint ownership as used by the movers of the amendment has precisely that connotation. You cannot move forward on sexual orientation and gender identity until and unless the issue is jointly owned, i.e. has complete consensus. It's interesting to note that the founding document of the Human Rights Council (GA Res 60/251) while it stressed 'objectivity, cooperation and genuine dialogue' did not use the language of joint ownership. The understanding is that 'genuine dialogue' is the basis, not joint ownership, which can only be an aspiration not a principle of fulfilling the mandate of 'promotion of human rights'

The most noxious of the amendments to pass belonged to the first grouping (L.75, L.76, L.77 and L.78). All of these, in different tones of shrillness, sought to dilute the obligation to respect universal human rights with reiterations of the importance of culture, religion and national sovereignty.

The answer to this invocation of culture, religion, region and sovereignty has rightly been the Vienna Declaration and Programme of Action wherein the issue of the right balance between cultural and regional sensitivity was resolved in paragraph 5 which bears full citing.

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

Thus, as far as the position of international law is concerned, the balance between respect for national and regional particularities and universal human

rights, is resolved in favour of the norm that 'it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.'

The question to be asked is how do we interpret the effect of the amendments on the resolution as a whole?

What the resolution does is more important than what the resolution says

The most noxious amendments are the ones which invoke the norm of national sovereignty, religious and cultural particularity as competing norms to the norm of universal human rights. If there can be any ambivalence about this resolution at all, it would be with regard to whether these amendments in particular, succeed in altering the very shape of the resolution and whether these amendments become artillery which will in the long-term be used to dismantle the very edifice of international human rights law. In short, do these amendments result in a mutation of the very purpose of the resolution and is the SOGI mandate a pyrrhic victory? Will a SOGI win in the long term, become a loss for human rights?

To answer these questions we will have to go into a deeper analysis of the status of the resolutions of the Human Rights Council. The Human Rights Council was established by GA Resolution 60/251. The instruments invoked by GA 60/251 in setting forth the mandate of the Human Rights Council are worth noting.

Reaffirming also the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action, and recalling the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other human rights instruments

Specifically GA Resolution 60/251 notes that:

Reaffirming further that all human rights are universal, indivisible,

interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis.

Reaffirming that, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms.

In specific terms, the resolutions of the Human Rights Council should be in conformity with what its founding mandate articulates, the Universal Declaration, the Covenant on Civil and Political Rights, Covenant on Social and Economic Right and the Vienna Declaration. Further, the resolutions should also be in conformity with Article 5 of the Vienna Declaration which is expressly cited in preambular paragraph four of GA Res 60/251, and hence a founding mandate of the Human Rights Council.

The intriguing question is what is the status of amendments (L.75, L.76, L.77 and L.78) which expressly seek to dilute the core commitment on which the Human Rights Council was founded?

The fact that the amendments were passed at all indicates a lack of institutional memory and points to a willful forgetting of the founding documents through which the mandate of the Human Rights Council was established. Within a national domestic context with a strong constitutional framework, it would be inevitable that such amendments would be struck down by a Constitutional Court as being ultra vires the Constitution. However, at the international level there is no similar mechanism for analyzing whether the Human Rights Council does indeed work within its established mandate, and there is absolutely no mechanism to ensure that amendments repugnant to the very charter of the institution are struck down.

The lack of precisely such a mechanism raises the question as to the status of the resolutions of the Human Rights Council: Are they legal instruments? Or

are they political instruments? Or are they a hybrid entity comprising elements of both?

Bertrand Ramcharan argues that we need to understand the output of the Human Rights Council as playing a role in setting forth a policy agenda, but which works within the framework of relevant international law. The two are distinct but related points.

According to Ramcharan, the fundamental work of the Human Rights Council is not necessarily the making of law but would rather fall within the frame of making international policy.

The Human Rights Council is performing on the basis of general public agreement, a useful international public policy function, drawing attention to problems affecting the enjoyment of human rights being encountered by different groups of people and advancing recommendations for addressing them.¹¹

Of course when one says international policy, it is international policy which as per GA Res 60/251 'promote(s) universal respect for the protection of all human rights' and 'addresses situations of violations of human rights, including gross and systematic violations'

The resolutions in themselves do not necessarily do the work outlined by GA Res 60/251. One of the most effective ways in which the Human Rights Council fulfills its mandate is through the work of the Special Procedures. The Special Procedures take three forms i.e., the Independent Expert, The Special Rapporteur and the Working Group. The former United Nations Secretary-General Kofi Annan, called the Special Procedures the 'crown jewel' of the international human rights system in recognition of their enormous contribution to the work of human rights protection.

Some of what the special procedures do include:

¹¹ Bertrand Ramcharan, *The law, policy and politics of the UN Human Rights Council*, Brill, 2015. p.64.

- The development of norms through studies and reports
- Provide channels for victims of human rights abuses to publicise their plight
- Containment and mitigation of the problem by transmittal of the complaint to the government
- Help pioneer new approaches through innovative analysis and framing of human rights issues

The Reports produced by the special procedures mandate holders are really examples of international fact-finding. Fact-finding reports are always powerful documents which can be used in aid of national level struggles for SOGI rights protection.¹² As Ramcharan rightly notes the 'fact finding work of the special procedures is without doubt among the strongest protection activities of the United Nations'¹³

This emphasis on how the Human Rights Council achieves its mandate, takes us back to another form of analysis of the SOGI resolution. Within this framework of analysis what is important is not to parse the resolution with a fine legal toothcomb but rather to understand what the resolution sets into motion or effectuates.

Simply put, what the resolution does is more important than what the resolution says. To understand what the resolution does we need to go to the operative paragraphs and not to the preambular paragraphs. As noted above, all successful amendments were to the preambular paragraphs, and not to the operative paragraphs. Thus the nub or heart of the resolution, which was the establishment of the mandate of the Independent Expert, was entirely preserved.

What the resolution does is to set in place a mechanism of international fact-finding and enable us to take the struggle against violence and discrimination

¹² To give one example, the first report produced by the High Commissioner for Human Rights was cited before the Indian Supreme Court as the most recent most authoritative finding on the status of sexual orientation and gender identity from a global perspective.

¹³ Bertrand Ramcharan, *The law, policy and politics of the UN Human Rights Council*, Brill, 2015. p.228.

to the next level. The reports of the Independent Expert will hopefully produce new normative understandings and give greater depth to the notion that violence and discrimination on grounds of sexual orientation and gender identity are a core violation of the human rights framework. These reports could also be key documents in different struggles at the national level.

If the work of the Human Rights Council is analysed from the point of view of its contribution to the core mandate of 'protection' of human rights, clearly the resolution is successful as it sets in place a mechanism that will work towards fulfilling the mandate of protection. Within this framework of analysis, the language of the amendments is largely redundant, as it has no influence on way the mandate will be fulfilled.

The question of whether this victory for the mandate, is a loss for the larger human rights agenda, is to be answered in the negative, as these preambular paragraphs do not enjoy the status of law. They are at best indications of state practise which come in conflict with the legal framework of the Vienna Convention, GA Resolution 60/251 and arguably the ICCPR and ESCR, as well. This is not a loss for the larger human rights framework as these preambular paragraphs are not law but merely indications of policy.

However, this is not to say that the extensive legal analysis carried out above is of no value but rather to contextualize the analysis. The analysis will serve the purpose of understanding the scope and ambit of resolutions and the need for even political organs of the United Nations to conform to relevant international legal standards and instruments. Thus the political organs of the UN cannot work outside a legal frame, and it's shameful when amendments such as the ones discussed are moved and even passed. The education effort at the Human Rights Council must continue and we must continue to press states to hew closely to the original mandate and operate within the framework of the international treaties that they have ratified as well as customary international law.

Thus even while we understand the Human Rights Council as a body which is

advancing a form of international policy, there is always an expectation of conformity to international law. As Ramcharan puts it:

It is legitimate to expect that governments will comply with their legal obligation under the UN Charter and under international human rights law while participating in UN organs, even political ones and that they will carry out their obligations in good faith under human rights treaties.¹⁴

To convert this expectation into reality is a continuing struggle.

IV Understanding the Political: Why did states vote the way they did?

The Resolution as noted above passed with 23 for, 18 against and 6 abstentions. How do we understand the nature of the vote in both its separate as well as collective character? To do so, we will examine some of the key issues underpinning the yes vote, the abstentions and the no vote.

Understanding the Yes vote

The Yes vote will have to be analysed and understood within the larger trajectory of the treatment of the SOGI issue within the Human Rights Council. There seems to be a certain fluctuation when it comes to support for SOGI issues within the Human Rights Council. In 2011, when the first SOGI resolution was passed there were 23 in favour, 19 against and three abstentions. In 2014, the second SOGI resolution was co-sponsored by 50 states. It was passed with a vote of 25 in favour, 14 against, and 7 abstentions. In 2016, the third SOGI resolution was co-sponsored by 49 states. The resolution was passed by a vote of 23 in favour, 18 against and 6 abstentions.

¹⁴ Ibid. p. 125.

What one can note is that from 2011 to 2014 there has been a steady increase in support. However, 2016 seems to imply a certain backsliding as the votes seem closer to the 2011 margin than the 2014 margin.

How do we explain this apparent backsliding? One way of doing so is by reference to the fact that the votes always depend upon which countries were members of the Human Rights Council. Arguably, the most favourable membership was in 2014 accounting for the larger majority. Fortuitously in 2014 the composition was such that Asia was represented by four countries from East and South East Asia (South Korea, Japan, Philippines and Vietnam) all of whom all whom voted for the resolution. In 2016, by contrast was a more difficult year for SOGI issues as some key supporters (Japan) and some of those who abstained (Sierra Leone, Kazakhstan) were no more on the Council.

Arguably what the resolution sought to do in 2016 was also way more ambitious than in 2014. The fact that the resolution sought to establish an Independent Expert, possibly got some states to turn from abstention to no (China and Congo) and from yes to abstention (Philippines and South Africa).

Finally, one should not discount the important role played by the more organized opposition lead by the OIC with strong support from Russia. The 2014 resolution was a wake up call for the OIC which went on to note that the resolution was against Islam and vowed to overturn it. The 2016 vote bears some imprints of the OIC determination to fight against SOGI issues at the UN.

The leadership of the LAC 7

What cannot be underestimated is the leadership role of the LAC 7, not only in the LAC region, but across the world. The LAC 7 were instrumental in ensuring that their region was completely behind the vote. The significance of this consensual presentation of the position of the region as whole, apart from ensuring that the bloc of votes was in support, was to demonstrate that the

issue of discrimination and violence on grounds of SOGI was not a western issue but rather an issue of grave concern to global south countries.

The leadership was also evident in the degree of care with which the lobbying for the resolution was approached. There was open and close consultation with civil society and a willingness to take suggestions on board as well as an effort to get on board the maximum number of states. It is entirely possible that the Asian and African countries which either voted for or abstained on the resolution, did so because the leadership on the SOGI resolution 2016 came from the global south.

The Asian yes vote

A key part of the success of the yes vote was underpinned by the fact that three Asian countries voted for the resolution. Of the three only Vietnam, in an explanation before the vote, addressed the Council. Vietnam said:

Mr. President, Vietnam welcomes the initiative and efforts of members of international community to prevent and combat violence and discrimination based on sexual orientation and gender identity. We are going to vote in favor of draft L.2/Rev.1 as amended. Vietnam would like to stress that the mandate holder of the new Special Procedures endorsed in this draft will discharge her/his duty strictly in conformity with codes of conduct enshrined in HRC resolution 5/2 - contributing to the efforts of addressing violence and discrimination in this regard.

It is imperative that this Special Procedure when established in the future will have fostering genuine dialogue among all relevant stakeholders with a view to bringing about positive impact people around the world. In this process, differences among diversified society must be respected and taken into account instead of being negatively amplified.

The reason for Vietnam's yes vote lay in changes both in domestic as well as international policy with respect to LGBT rights. A letter by a number of civil society organisations in Vietnam noted as below:

In recent years, as a member of the UN Human Rights Council, Vietnam has shown openness and support for the equality of LGBT people within the UN as well as on the domestic front. In 2014, Vietnam voted in favour of the UN HRC resolution on Sexual Orientation and Gender Identity. During the country's 2nd cycle of the Universal Periodic Review, Vietnam accepted a recommendation to enact a law to fight discrimination that guarantees equality for all citizens regardless of their sexual orientation and gender identity. We note that the government has taken positive steps to realize its international commitments such as by amending the 2005 Civil Code thereby allowing transgender persons to undergo sex transition and subsequently change their gender markers in legal documents.¹⁵

Vietnam's yes vote, was the result of a strong movement which has brought about dramatic changes at the national level. As Tran Tung the Director of the ICS Center observed:

When we started our movement in Vietnam in 2008, we always put community empowerment and social change at the heart of our campaign. Gradually, we gained the support of the media, and then the general public. The SOGIE issues are no longer sensitive in Vietnam. People understand that we exist, we are part of life and our rights should be protected. The social change and wider support that we enjoy in society plays a key role. On one hand, it gives us a leverage to negotiate with the government. And on the other hand, it makes it easier for people to publicly say that they are supporters/allies. As a result the government of Vietnam has started taking measures to protect rights of LGBTIQ, including revision of laws on marriage and family (to remove the prohibition on same-sex marriage) and civil codes (to allow gender transition in the country). During the process, we built good partnerships with Ministry of Justice, Ministry of Health,

¹⁵ Letter dated 24.06.16 addressed to His Excellency, Mr Pham Binh Minh, Minister of Foreign Affairs, Vietnam from ICS Center, ISEE, PFLAG Vietnam.

Ministry of Foreign Affairs, who are consulted about what to vote. All these factors played a key role in influencing the government's position on SOGIE issues.¹⁶

While Mongolia did not speak in this session, a clue as to why they voted yes is offered in the statement of Undeg Purevsuren, Minister for Foreign Affairs of Mongolia, at the 31st Session of the Human Rights Council. Mr. Purevsuren stated that his country had made an enduring commitment to human rights when it embarked on the path of democracy 25 years ago, and when in 1992 it had adopted its first democratic constitution. Mongolia had abolished the death penalty in law with the adoption of the revised Criminal Code. The revised Criminal Code's definition of torture was brought into conformity with Article 1 of the Convention against Torture. Furthermore, the revised Criminal Code criminalized domestic violence, discrimination against lesbian, gay, bisexual, transgender and intersex persons, forced child labour and corporal punishment of children.

The Mongolian yes vote can also be seen as an outcome of very advocacy for LGBT equality both at nationally as well as international levels. As Anaraa Nyamdorj, Executive Director of the LGBT Centre notes:

The Government of Mongolia received a huge wake-up call during its first UPR Review in November 2010 where issues of SOGIE-related human rights situation in Mongolia was highlighted by 9 countries of which 8 made a recommendation to start implementing concerted efforts to end discrimination against LGBT people. This review was followed a few days later by the UN Committee against Torture review of Mongolia, to which the Centre has also submitted a shadow report highlighting various issues, especially hate crimes, against LGBT people in Mongolia. Four months following that, the UN Human Rights Committee (CCPR) has also made two recommendations on the situation of LGBT people in Mongolia. These back-to-back international

¹⁶Email communication with Tran Tung, Director of the ICS Center, Vietnam.

advocacy efforts and the response provided by the international instruments appears to have been a great reminder of the fact that there is a specific segment of the population that still is not protected equally despite the fact that both the Constitution and international law mandate equality. On top of these recommendations, the LGBT Centre continued its international advocacy at the UN level, obtaining 17 more recommendations in 2015 UPR Review of Mongolia around LGBTI and non-discrimination, CESCER recommendations in 2015, and CEDAW recommendations in 2016.

At the domestic level, the Centre continued to engage various ministries and agencies constructively through individual meetings, meetings with the government and civil society, especially through the Human Rights NGO's Forum that has been appointed as an unofficial focal point for civil society engagement for UPR implementation by the Government. There was also continued visibility and humanising of the LGBTI rights movement throughout and visible LGBTI activists of the LGBT Centre and its public events such as Equality and Pride Days all of which played an enormous role. The continued engagement of the Government led to the inclusion of hate crimes/hate speech in a very broad conceptualisation in the present Criminal Code passed in December 2015, which now criminalises broad concept of any discrimination, with protected grounds expressly including SOGIE.

When the Centre was informed of the upcoming vote, we engaged the Government. We called the Ministry of Foreign Affairs to inform them of the impending vote and organized within the civil society to add their signatures to the international petition to civil society to establish the mandate, as well as organized with the Human Rights NGOs' Forum to send a joint letter reminding the Mongolian government of their intentional obligation and urging them to well as urging them to

maintain their leadership in the region on equality and non-discrimination, which they had assured via the new Criminal Code.¹⁷

South Korea did not speak during the proceedings, but South Korea also voted yes for the 2014 resolution, so there is a consistent track record of support. The consistent Korean support for LGBT rights can be attributed to a mixture of factors including domestic level activism, the aspiration of the Korean state to be seen as a 'first world country', the fact that Ban Ki Moon who is South Korean has been a vocal supporter of LGBT rights as well as a desire not to be seen as less progressive than Japan.¹⁸

The one conclusion one can make about the Asian yes vote is that the strength of domestic level activism plays a strong role in influencing the country's foreign policy priorities. If South Korea, Vietnam and Mongolia voted yes, the vote is the result of strong domestic level campaigning on LGBT rights.

The failed rhetoric of developed versus developing countries

Part of the rhetoric of those that opposed the resolution was that it was largely an issue which concerned the developed world. On this point it would be useful to analyse the voting record.

It is worthwhile noting that the strongest support for the resolution was from the Latin American region, with all eight countries voting for the resolution. There was also complete support from Western Europe with all seven voting for the resolution. In Eastern Europe as well, apart from Russia, all five other members voted for the resolution. When it came to Asia-Pacific, while eight countries voted against the resolution, Mongolia, South Korea and Vietnam voted for the resolution. Significantly, Philippines and India abstained. When it came to Africa, 9 members voted against the resolution, while Botswana, Ghana, Namibia and South Africa choose to abstain. The key region in the

¹⁷ Based on email exchange with Anaraa Nyamdorj, Executive Director of the LGBT Centre, Mongolia.

¹⁸Based on an email exchange with Minhee Ryu, Korean Lawyers for Public Interest and Human Rights(KLPH), South Korea

global south, Latin America is almost uniformly supportive, while in Asia there is an emerging base of strong support led by East and South East Asia. Even within Africa, there was no bloc voting with four key abstentions on the resolution. It is also worth noting that the key bloc, the Organisation of Islamic Conference (OIC) was also not fully unified on opposing the resolution. Albania broke with the OIC consensus and voted in favour of the resolution. The success of the vote indicates that the myth of the global south opposition to issues of sexual orientation and gender identity needs to be laid to rest.

The passion underlying the yes vote

One of the important ways of understanding global politics is in terms of interest of national states and how issues can be instrumentalised by states to serve their own agendas of power. While one will have to apply this framework to understand the yes vote, it is also important to understand the emotion or passion, which underlay the yes vote.

Significantly, when the votes were tallied on screen and it was clear that the resolution was through, there was an eruption of emotion across the room as delegates and observers cheered and then hugged each other, exchanging congratulations. Where did this deep emotion come from?

Two specific instances during the debate captured some part of the story of where the passion underlying the yes vote came from. The speech of the Ambassador of the United Kingdom, Julian Braithwaite did something unprecedented by reminding delegates that this was not an abstract disembodied issue but rather a deeply personal one affecting people in room XX of the Palais Des Nations.

By voting against this resolution you are voting to block the UN from trying to stop violence and discrimination. How is that acceptable? This affects people in this room, and people in my team who are LGBT. Are you saying it is OK to discriminate against them based on their sexual orientation and gender identity? To hit, torture, or possibly kill them?

Because that is what you are supporting, if you vote against this resolution.

Violence and discrimination has to stop. And the UN should be allowed to play its part in preventing violence and discrimination. For all these reasons, the UK strongly urges all other states to support this resolution. I urge you to remember the persons who depend on this resolution – brothers, sisters, sons, daughters, mothers and fathers.

The emotion, which was articulated by Ambassador Julian Braithwaite, found a larger political resonance in the invocations of the shooting at the gay night club in Orlando by Mexico, the United Kingdom and Ghana.

As Mexico observed:

Mr. President, at the opening of this Council session, delegations from all regions strongly condemned the recent killings in Orlando. Those dreadful attacks targeted people because of their sexual orientation and gender identity. The proposed amendment is contrary to the common condemnation, pretending the human rights of such individuals are no longer concerned for this Council.

The United Kingdom observed:

This Council opens in the shadow of the Orlando killing where individuals were targeted because of their sexual orientation and gender identity leaving 49 dead and 53 wounded. States from different regions join together to condemn the killings. It would send a tragic message about the Council's willingness to sincerely address such acts of violence if this amendment is adopted eliminating 'sexual orientation' and 'gender identity' from the list of grounds based on which violence is deplored.

Ghana observed:

But there has been evolution in thinking - partly because of the Orlando situation and also because of the resolution of the African Commission on Human and Peoples' Rights, which I have just cited.

The commitment of the yes vote was fuelled and fed by the experiences of discrimination and violence by LGBT people, which Orlando signified. Orlando symbolized a wider, longer and deeper history of systematic violence experienced by LGBT people across the globe. In short, it was this passion, which emerged from the LGBT grassroots which found expression through the yes vote to which the speeches of all the supporting countries including Netherlands, Uruguay, Brazil, Uruguay, Slovenia, Vietnam, Mexico and the UK were testament to.

Understanding the abstentions

The six abstentions were by South Africa, India, Philippines, Botswana, Ghana and Namibia. South Africa and Philippines shifted from a yes in 2014 to an abstention in 2016. Namibia and India abstained in both 2014 and 2016 and Botswana shifted from a no in 2014 to an abstention in 2016. Ghana voted no in 2011 and in 2016 chose to abstain. Each of these abstentions will be analysed in greater detail.

South Africa: Abstention as regression

One of the key votes, which merit further analysis, was the vote by South Africa. South Africa, it bears recalling, was the country which sponsored the first resolution on sexual orientation and gender identity at the Human Rights Council in 2011. From sponsoring the SOGI resolution in 2011, to voting in favour of the next resolution in 2014, South Africa moved to an abstention in 2016. What accounted for this fairly dramatic shift?

The vote by South Africa can perhaps be best understood through an analysis of the statement by the South African Ambassador Ms. Nozipho Mxakato-Diseko, which bears full citation:

For South Africa, *respect for the promotion, protection and fulfillment of human rights and fundamental freedoms as enshrined in our Constitution constitutes the critical pillar of our foreign policy.* We believe that no person should be subjected to discrimination and violence on any ground including on the basis of sexual orientation.

Guided by this conviction, South Africa tabled the original resolution on the SOGI and the LGBTI issue in 2011. Our approach on the issue of protection against violence and discrimination of LGBTI persons was and remains to focus on issues that will draw maximum unity in this Council and carry even countries that have some challenges with this issue. How the current sponsors have sought to build on South Africa's initiative on 2011, has added divisiveness and created unnecessary acrimony in this Council. *We learnt from our struggle against apartheid that if we are clear about the end goal which for us is to end the violence and the discrimination against LGBTI persons a better approach is built in maximum consensus.* This could have been achieved had it not been for the arrogant and confrontational approach which adopted.

Mr. President, there is an African proverb that says, "If you want to walk fast, then walk alone. If you want to walk far, walk together with others".

South Africa remains firmly committed to invest all its resources to ensure the violence and discrimination against LGBTI persons is eradicated, leaving no one behind. Recklessness, pointing fingers to others and brinkmanship will not take us anywhere. Lives are at stake.

It is for these reasons that while we have supported those parts of this resolution which focus primarily on ending violence and discrimination against LGBTI persons, South Africa cannot support this resolution as it stands and will therefore abstain. I thank you. **(Emphasis added)**

The themes Ms. Nozipho Mxakato-Diseko's addresses were important ones. As highlighted above she emphasised the importance of the South African Constitution, the anti apartheid struggle as well as the need for dialogue as justifications of the South African vote. Interestingly these themes were also the subject of the address by Ambassador JM Matija who introduced the first resolution sponsored by South Africa on sexual orientation and gender identity in 2011. Like Ms.Nozipho Mxakato-Diseko, Ambassador Matija also invoked the anti apartheid struggle and the South African Constitution to make the case for why South Africa was sponsoring the SOGI resolution.

South Africa believes that no-one should be subjected to discrimination or violence based on their sexual orientation or gender identity. No-one should have to fear for their lives because of their sexual orientation or gender identity. No-one should be denied services because of sexual orientation and gender identity. The resolution before us today does not seek to impose values on Member States but it seeks to initiate a dialogue which will contribute towards ending discrimination and violence based on sexual orientation or gender identity. *In South Africa non-discrimination on the basis of sexual orientation is constitutionally guaranteed, yet we still have challenges related to violent acts against individuals because of their sexual orientation and gender identity.*

All of us, who were engaged in liberation struggles, without exception, drew our aspiration from the 1948 Universal Declaration of Human Rights, whose very opening preambular paragraphs became a clarion call to fight for freedom. It says and I quote "All human beings are born free and equal in dignity and right and that everyone is entitled to all rights and freedoms set forth in that Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status".

When we were imprisoned, tortured and forced into exile, we received moral, political and material support from all sections of society all over the world. We never said we cannot accept your support due to gender

identity. Our migrants, refugees and those who are continuously visited by severe hunger, receives help from everyone and we never say, we don't want help from you due to your sexual orientation and gender identity. When we seek jobs, investments, capacity building and technology, we never say only from that section of society and not from that section of society, depending on gender identity. (Emphasis added)

While the anti-apartheid struggle is invoked by both speakers, they do so to make very different points. For Ms. Nozipho Mxakato-Diseko, the lesson drawn from the anti apartheid struggle is that to 'end the violence and the discrimination against LGBTI persons a better approach is built in maximum consensus', without being 'arrogant and confrontational'. For JM Matija, the anti-apartheid struggle was one which broadened human rights thinking and taught one that discriminating against anyone on any ground including SOGI is unacceptable.

Perhaps one needs to go back to South African history to ponder as to whether both interpretations are equally valid. One of the great contributions of the anti-apartheid struggle was that it made possible for one to see that discrimination had many facets and a true liberation movement would commit to combating the many facets of discrimination. Seen from this perspective, JM Matija's statement is true to the history of the South African liberation movement and implicitly acknowledges and builds on the historic contribution of people like Simon Nkoli who played a key role in both the anti apartheid movement as well as the gay movement. As Simon Nkoli put it, "I am black and I am gay. I cannot separate the two into secondary or primary struggles."¹⁹ Within JM Matija's vision there is no primary and secondary struggle, hence South Africa will move the resolution on violence and discrimination on grounds of sexual orientation and gender identity. It is precisely this unwavering commitment to liberation to which Ms. Nozipho Mxakato-Diseko does great disservice, by implying that when it comes to the

¹⁹<http://lgbthistorymonth.com/simon-nkoli?tab=biography>

core agenda of ensuring a life free of violence and discrimination for LGBT people, it's okay for notions of consensus to take precedence over the need to combat violence and discrimination. By invoking the anti apartheid struggle in service of a vote which does grave injustice to the ideals of the struggle, Ms. Nozipho Mxakato-Diseko's violently distorts the very meaning of the liberation struggle.

Ms. Nozipho Mxakato-Diseko's statement should be analysed within the framework outlined by Orwell in his classic work 1984, where he describes the creation of a new language for a totalitarian state. In Orwell's totalitarian state, Newspeak replaces English which is then called Oldspeak. The predominant characteristic of Newspeak is that words begin to lose the specificity of what they signified and begin to have the opposite meaning. The example Orwell gives is of the Declaration of Independence which begins with 'We declare these truths to be self evident, that all men are created equal and that they are endowed by their creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness...' In Newspeak the only word which can capture this sentiment is crimethink ²⁰.

Ms. Nozipho Mxakato-Diseko's ill-thought invocation of the anti-apartheid struggle seeks to empty the liberation struggle of its subversive content and replace it with the bland notion of consensus. Today the anti-apartheid struggle is used to justify not acting to rectify violence and discrimination and tomorrow, in the final Orwellian nightmare, it will be used to justify violence and discrimination.

Further, the invocation of the South African Constitutional commitment to non-discrimination on grounds of sexual orientation to abstain on a vote on violence and discrimination on grounds of SOGI has similar problems. The 2011 statement by Ambassador Matija specifically drew attention to the fact that 'non-discrimination on the basis of sexual orientation is constitutionally guaranteed'

²⁰ George Orwell, *1984*, Penguin, London, 2000.

In 2014, in an explanation after the vote South Africa again drew support for its vote from the Constitution

No person should fear for their safety or be deprived of their dignity because of their sexual orientation or gender identity. South Africa had lent its support for similar resolutions in other multilateral fora. Guided by the principle of supremacy of its Constitution and the rule of law, the Government was enjoined to promote and respect the rights of all persons without discrimination.

In 2016, the same constitution was invoked to support an abstention. Clearly the Constitution cannot be invoked to both support a SOGI resolution in 2011 and 2014 and to abstain on a SOGI resolution in 2016. If it is so invoked, one of those doing the invoking is doing violence to the plain language of the Constitution which enshrines a fundamental commitment to non discrimination on grounds of sexual orientation. In fact the 2016 vote abdicated Constitutional responsibility and eschewed fidelity to the Constitution in the name of the Constitution.

As South African academic Melanie Judge aptly put it:

The rights and justice principles in the Constitution mandate the terms for how leaders are to govern, both inside and outside our borders. As a consequence, retrogressive and contradictory stances on sexual orientation and gender identity must be accounted for. Leaders who determine the pace and content of sexual and gender politics in ways that undermine constitutional rights and protections are, in the words of Mxakato-Diseko herself, guilty of arrogance and recklessness.²¹

Ghana, Botswana and Namibia: Abstention as progress

The abstentions by Botswana, Namibia and Ghana can be viewed more positively than South Africa. This is because none of these countries have a

²¹<http://mg.co.za/article/2016-07-06-00-sa-reckless-on-un-gender-and-sexual-rights-vote/>

domestic constitutional or policy framework that is unequivocally supportive of SOGI issues. It was interesting to note that in spite of not having a specific constitutional provision on sexual orientation or gender identity, all three countries referenced the framework of universal human rights as constitutionally prohibiting discrimination.

Botswana noted:

The Constitution of Botswana doesn't condone violence against any person, nor does it allow discrimination against any person.

Namibia noted:

The Government of Namibia is opposed to any violence against individuals based on sexual orientation and gender identity. We have repeatedly stated that such acts are prohibited and punishable by our domestic criminal laws and there no single case has reported to the authorities alleging persecution of LGBT people in Namibia.

Article 10 of Namibian Constitution states:

All persons shall be equal before the law and no person may be discriminated against on the grounds of sex, race, color, ethnic origin, religion, creed, socio or economic status.

Ghana noted:

In 2014, the African Commission on Human and Peoples' Rights, meeting at its 55th Ordinary Session held in Luanda, Angola, adopted a resolution No. 275 entitled, "Resolution on Protection against Violence and Other Human Rights Violations against Persons on the Basis of Their Actual or Imputed Sexual Orientation and Gender Identity".

This resolution was adopted against the background of what the Commission found to be alarming incidents of acts of violence, discrimination and other human rights violations that continue to be

committed against individuals in any part of Africa because of their actual or imputed sexual orientation or gender identity. The resolution also expressed deep concern over failure of law enforcement agencies to diligently investigate and persecute perpetrators of violence and other human rights violations against persons on the basis of their real or imputed sexual orientation and gender identity. It condemned the increasing incidents of violence and other human rights violations including murder, rape, assault and other forms of persecution of persons on the basis of their imputed or real sexual orientation and gender identity.

Mr. President, we are meeting at this time against the backdrop of what happened in Orlando. Ghana's Constitution prohibits discrimination of all kinds. And therefore, the resolution of the African Commission of Human and Peoples' Rights is in conformity with our Constitution. The laws of Ghana will not permit any individual to be persecuted or assaulted because of their sexual orientation.

Thus all three countries referenced a national constitutional framework of universal rights. Ghana went one step further and also referenced the Resolution on Sexual Orientation and Gender Identity at the African Commissions on People and Human Rights as well as the mass murder in Orlando.

As Ghana put it:

Mr. President in 2011 Ghana voted against the resolution that has been referred to in the preambular paragraph. But there has been evolution in thinking - partly because of the Orlando situation and also because of the resolution of the African Commission on Human and Peoples' Rights, which I have just cited.

However, all three countries balanced this framework of universal human rights with the so-called lack of consensus on the notion of sexual orientation and gender identity.

As Botswana put it:

It must be noted, however, that at international level and within international law there is no agreed definition and acceptance on the use of the terminology on sexual orientation and gender identity as discussed under the current resolution. It is in fact a concept that is still developing even at the international level. The reason that we abstain at this stage, takes into consideration the fundamental importance of respecting the relevant domestic debates with matters associated with historical, cultural, social and religious sensitivities.

Namibia observed:

The fact that there is no binding international instrument guiding us in the field of international human rights law which provides us with an agreed definition of sexual orientation and gender identity poses a legal lacuna for us. The same lacuna exists with regards to an instrument that establishes rights based on sexual orientation and gender identity. In the absence of international human rights law that guides our work in the Council, what instrument will guide an Independent Expert while assessing our States. We are concerned that a mandate of an Independent Expert is sought to be established by this resolution as this mandate will be allowed to interfere into sensitive issues at the national level.

Ghana echoed the concerns around cultural sensitivity:

But Mr. President, this is a very sensitive matter culturally in Ghana. Attitudes have been hardened because of the behavior of certain groups within the homosexual community. The case of the Republic of Ghana versus Dr. Sulley Ali-Gabass, who was a medical practitioner in one of our leading hospitals, and ties a young boy of under 16 years old, and forcibly had anal sex with him in a car. The victim, Basheer Mohammed, later contracted HIV. He was induced with gifts such as Samsung Galaxy and cash of 20 cedis, which was less than perhaps a

dollar in Ghana, because his poverty was exploited by this man. He denied responsibility, but an investigative journalist who went undercover to interview him got his confession on tape. So he was subsequently arrested and prosecuted and sentenced to several years in prison. This actually hardens attitudes towards issues like same-sex marriage or commercialization of homosexuality.

As all three countries described it, the conflict between these two positions resulted in the abstention. What was remarkable in the statements by all three countries is that while all of them choose to reference the Constitutional framework, neither Ghana, Botswana nor Namibia chose to reference their criminal law under which same-sex sexual acts are illegal in all three countries.²² This is the correct position as clearly, it should be the Constitution and not the penal statutes that should determine the international policy of the state. Whichever way one looks at it, the vote was a brave one for both staking out their countries positions as being against discrimination and violence on grounds of SOGI and for breaking with the African group position to pioneer a more rights affirming position.

India's abstention: Remaining in the same place?

India offered no explanation of its vote. To understand India's abstention one will have to rely on the transcript of the response by Vikas Swarup, the Official Spokesperson of the Ministry of External Affairs to a question on India's vote:

Question: Why did we abstain at the UN Human Rights Council on the appointment of an independent watchdog for protecting LGBT rights? Does that not reflect poorly on us as a liberal democracy interested in ensuring the human rights of the LGBT community?

Official Spokesperson, Shri Vikas Swarup: As you know, the issue of LGBT rights in India is a matter being considered by the Supreme Court under a batch of curative petitions filed by various institutions

²² Aengus Carroll, State Sponsored Homophobia, ILGA, 2016. p.36

and organizations. As you also know, the Supreme Court is yet to pronounce on this issue. As such we had to take this into account in terms of our vote on the third UN resolution to institutionalize the office of an independent expert to prevent discrimination against LGBT persons.²³

The reasoning given for the abstention, i.e. that the matter is before the Supreme Court, does not seem to be founded on a correct appreciation of the legal position. The Supreme Court in *Suresh Kumar Koushal v. Naz Foundation* did uphold Section 377 of the Indian Penal Code, but in doing so had clearly stated that:

Notwithstanding this verdict, the competent legislature shall be free to consider the desirability and propriety of deleting Section 377 IPC from the statute book or amend the same as per the suggestion made by the Attorney General.²⁴

In an unprecedented decision the Supreme Court activated a little used self-corrective mechanism known as the curative remedy and ordered that the decision of the Supreme Court in *Koushal* to be re-heard before a five judge bench.

It should also be noted that the Supreme Court in *NALSA v. Union of India*, had passed another judgment upholding the rights of the transgender community to equality, dignity and expression.²⁵

All these reasons, which indicate that the Court has made progress towards recognizing LGBT citizens as full citizens, should have emboldened the government to act. The parallel to the statements of Ghana, Botswana and Namibia in their abstention on the SOGI resolution, could not be more striking. These three countries invoked their respective Constitutional frameworks to

²³http://www.mea.gov.in/media-briefings.htm?dtl/26979/Transcript_of_Weekly_Media_Briefing_by_Official_Spokesperson_July_01_2016

²⁴ *Suresh Kumar Koushal v. Naz Foundation*, (2014) 1 SCC 1.

²⁵<https://indiankanoon.org/doc/193543132/>

make the case that regardless of their criminal law provision, they did not discriminate on grounds of SOGI. India instead chose to highlight the penal statute Section 377, rather than derive a policy position based on the Constitution.

While India did abstain on the resolution as a whole, it also voted for a number of the hostile amendments. Two key amendments for which India voted affirmatively cast a particularly troubling light on the government's fidelity to the Constitution.

Amendment L 75 reads: *Reiterating the importance of respecting regional, cultural and religious value systems as well as particularities in considering human rights*; while amendment

L 76 reads: *Underlining that fundamental importance of respecting the relevant domestic debates at the national level on matters associated with historical, cultural, social and religious sensitivities.*

These amendments seek to undo the international consensus that cultural sensitivity must always yield to the duty of all states to protect universal human rights as embodied in the Vienna Declaration and Programme of Action. This deference to cultural and religious value systems is particularly problematic in the Indian context as it reinforces casteist practices and gender discrimination, not to mention discrimination on grounds of sexual orientation and gender identity. An unqualified deference to cultural and religious value systems is also antithetical to the Indian constitutional framework.

The freedom of religion clause in the constitution (Article 25) is specifically subjected to the limitations imposed by the other fundamental rights. This is because the constitution accommodates the concerns of women members of the Constituent Assembly, such as Hansa Mehta, who talked about how the freedom of religion could well become the tyranny of religion, especially over women.

Similarly the practice of untouchability is at heart a cultural practice undergirded by a religious value system. This practice was declared a constitutional crime under Article 17.²⁶ What the criminalisation of the practice of untouchability indicates is that the Indian Constitution is no passive supporter of culture and tradition. Rather, the Constitution prohibits cultural practices that violate fundamental rights.

When India voted for these amendments, it shows a profound lack of respect for the Constitution and its values.²⁷

The Indian abstention did scant justice to the way the conversation on LGBT rights had evolved domestically. From being a fringe issue, it had become a matter of widespread concern as reflected in social movement positions, media coverage as well as the fact that major political parties were supportive of LGBT rights including the largest opposition party the Congress. This emerging base of solid support however did not embolden the government to play a leadership role and India preferred to be non committal in its vote.

From another perspective, India's abstention could be seen as at least not as regressive as the previous position. In 2015, India under the current Modi administration, joined Russia, Pakistan, Saudi Arabia, China and Iran to vote against the extension of same-sex partner benefits to employees of the United Nations. If that vote is taken as the benchmark, India has moved from a 'no' to an 'abstention'.

The fact that India abstained instead of voting no in 2016, can be attributed to the fear of negative media coverage which would tarnish the governments international image. The overall position of the Indian government evolved from a no vote in 2015 to an abstention in 2016 because of the fear of negative publicity of the no vote in 2015 and the desire of the current Indian

²⁶**17. Abolition of Untouchability.**—"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

²⁷<http://thewire.in/48613/diluting-human-rights-principles-indias-vote-on-the-resolution-on-sexual-orientation-and-gender-identity/>

administration to avoid the same. It is also an indirect tribute to the strength of the national level campaign to decriminalise LGBT lives mounted vigorously by LGBT groups along with media, civil society and academia.

The Philippines abstention: A step backwards

Philippines had voted for the SOGI resolution in 2014, so the abstention in 2016 was a step backwards. The Philippines observed:

Two years ago the Philippines voted to support the resolution on Human Rights, Sexual Orientation and Gender Identity (SOGI). At that time the SOGI resolution's purpose was to discuss discrimination and violence against individuals based on SOGI... We supported that resolution in the context of Philippines' strong commitment to the promotion and protection of the human rights of all individuals regardless of race, color, sex, gender, religion or any other status in line with the Universal Declaration of Human Rights and other International and regional human rights agreements to which it is a State party. It is the pursuant of this commitment that the Philippines has stood against discrimination against specific individuals and sectors including discrimination and violence against individuals based on their sexual orientation and gender identity, such as those belonging to LGBT sector.

We also supported the previous resolution with the full understanding that the resolution will neither create nor lead to the creation of new human rights specific to LGBTs and other individuals with specific sexual orientation and gender identity as it will run counter to the universality of human rights. Most important of all, we understood the previous resolution would not impose, not derogate the sovereign rights of States to formulate and define its own laws.

Today we express the same commitment and understanding. However, my delegation was not ready to support the establishment of a mandate holder specially so, when mandate holder to be created by its

very nature pursue a set of standards apply to a specific sector when there is no consensus on a set of universally accepted human rights standards. It is for this reason, Mr. President that my delegation voted to support the portion of the resolution that pertained to combatting violence and discrimination against LGBT. We voted against L.75 because it attempts to change the essence and message of Article 1.5 of the Vienna Declaration and Program of Action in the World Conference on Human Rights which reads in parts.

While the significant of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind. It is a duty of States regardless their political, economic and cultural systems to promote and protect all human rights and fundamental freedoms.

Mr. President, we are abstaining on the vote to create a new mandate holder and we will abstain on the resolution as a whole.

The abstention by Philippines generated shock among civil society groups who had advocated for Philippines to follow its previous vote, and vote in favour of the resolution. The vote on the resolution occurred on the same day that the new President, Rodrigo Duterte was inaugurated. However, this was unlikely to have influenced the vote, with the more significant factor being the 2014 White paper issued by the Department of Foreign Affairs.

The white paper argues that 'the Philippines has always been tolerant and respectful of the LGBT/SOGI community' with the respect and tolerance being 'firmly anchored on the equal protection clause of the 1987 Constitution.' However the white paper notes that 'currently there are no domestic law that ensures that upholding and respect for their rights. Specifically there is an absence of PH legislation explicitly (i) recognizing and regulating same sex marriage and civil partnerships between persons of the same sex; and (ii) regulating the effects of changes in a person's legal status which may have been brought about by sex reassignment.'

Combined with this perceived lack of clear guidance or domestic mandate, the white paper also articulated the implications of Philippines taking a more proactive SOGI supportive position internationally.

PH's consistent pursuit of SOGI in every CSW session without a clear resolution on this issue creates the impression that this forms part of the country's foreign policy, which impacts on our relations with specific states and regional partners such as the OIC and Holy See.²⁸

The white paper also put forth domestic concerns:

It should be noted that the Catholic Church and the Muslim community in the Philippines, which realistically influence the formulation of PH policy, may incite further the controversy that will create a difficult process towards achieving consensus on the issue.²⁹

This paper, which was authored after the 'yes' vote by the Philippines to the SOGI resolution in 2014, was conspicuous by its silence on its analysis of the 2014 vote. However, reading between the lines, one can infer that there was significant push back both domestically as well as in terms of relations with friendly states which ensured that overt support by the Philippines for SOGI issues globally was not feasible any more.

As the white paper concluded:

It is recommended that PH adopt for now a policy of 'strategic silence' until such time that the country passes a law that comprehensively covers LGBT/ SOGI rights which could then serve as a framework for any change in the recommended policy.

We will have to see if the position of 'strategic silence' articulated in the white paper changes under the new administration of President Duterte, as Filipino

²⁸ This section is based on exchanges with members of the ASEAN SOGI Caucus, Ryan Silverio and Cornelius Darpito who shared relevant material and analysis.

²⁹ Ibid.

LGBT groups work to ensure that respect for LGBT rights becomes a part of the national and international policy of the Philippines.

Understanding the 'no' vote

There were 18 countries that voted against the resolution, with 9 of them coming from Africa, 8 from Asia and one from Eastern Europe. The key points of the opposition unity were really around the African group and the OIC supported by Russia and China.

The leadership of the OIC

There were 18 countries which voted against the resolution with ten of them belonging to the OIC. Apart from Albania the other nine OIC members (Algeria, Morocco, Bangladesh, Indonesia, Maldives, Saudi Arabia, Nigeria, UAE and Qatar) voted against the resolution.

Thus, the key locus of organized opposition was really the OIC. All the OIC countries which spoke highlighted the fact that in their perception, the resolution was opposed to religion, culture, and tradition and was hence an unacceptable imposition of values.

Qatar observed:

That's why the rights advocated by this draft proposal at the Human Rights Council are, according to us, contrary to the sound human instinct and to all values, cultures and religious beliefs. Such a selective approach is an unprecedented move that would threaten all the efforts of the Human Rights Council. We know that there are some practices that might be accepted by some people in some communities and societies. However, this does not mean at all that such practices can be imposed on other countries. And they shouldn't be described as being collectively accepted and endorsed. This might open the way to inserting new concepts that are irrelevant to principles of human rights

and this is why we need to recognize the specificities of our cultural and religious backgrounds as per the Vienna Action Plan 1993.

UAE observed:

We reject the instrumentalisation of United Nations Human Rights and the use of Human Rights Council for strange and bizarre concepts that run counter to the United Nations resolution that established the Council. I would like clarify that we are a society that rejects violence and discrimination in all forms and manifestations. We don't want to target any specific social group that is covered in the draft resolution L.2.

On the other hand, we as people that have nothing to do with the content of the draft resolution express our rejection of any concept that compromises our cultural and religious specificities – even if these concepts are acceptable to others societies. In addition to that, the comparative law literature and sociology literature affirm that what might be good in a specific area will not necessarily give the same outcome in the other society and area.

Saudi Arabia observed:

We would like to say once again that respecting religions and beliefs has been considered in the Universal Declaration of Human Rights. And, the universality of human rights doesn't mean that we have to impose cultures that are contravening with our Muslim religion.

Indonesia observed:

While recognizing the mandate of the Human Rights Council to promote and protect human rights, we believe that the Council should always take a constructive and cooperative approach in the consideration of issues particularly of those involving different socio-cultural and religious norms and moralities. We believe that the

members of the Council should always demonstrate the requisite sensitivity to them and refrain from imposing certain values and norms to others that do not enjoy international consensus.

Morocco observed:

Today we are facing a draft resolution that is against the values and beliefs of at least 1.5 billion that belong to one civilization. So what is the message that we would like to send to this civilization and religious community?

Algeria observed:

Yet we think that it is not useful to impose values which are not agreed upon universally upon others. This is a non-constructive approach and it will lead to divisions within the Council's cause and we do not want this. The sexual orientation is merely an option or an alternative form of behaviors and we do not want a mandate holder for just such an issue.

The OIC opposition was quite organized and flowed from OIC policy decisions. This was outlined by Pakistan in the speech introducing the amendments.

OIC foreign ministers adopted in Kuwait a resolution at the 42nd session of the council of ministers which while referring to the Human Rights Council resolution on human rights, sexual orientation and gender identity disagreed with the resolution and the concept it espoused. We have, therefore, informed the core group of the draft resolution that the OIC shall not be able to support this initiative and especially will not be able to support an Independent Expert for a concept that has not yet been adopted by any universal inter governmental negotiated treaty or convention

The Resolution referred to by Pakistan is Resolution no. 4/42c on Social and Family Issues A. Safeguarding the values of the Marriage and Family

Institutions:

Having considered the Statement of the Independent Permanent Human Rights

Commission (IPHRC); and the resolution of the Human Rights Council A/HRC/27/L.27/ Rev.1 on "Human rights, sexual orientation and gender identity";

Commending the decision taken by the Council of the League of Arab States at the ministerial level, which rejects this Resolution;

Lauding the position of the Muslim and non-Muslim States which opposed the Resolution within the Human Rights Council;

Considering that the Resolution includes many issues which cannot be accepted as they are in total contradiction with the teachings and values of Islam and other divine religions and with the human common sense;

Decides to:

1. Reject the entire content of the HRC Resolution and to endeavor to take a unified Islamic and human position to repeal it.³⁰

The policy decision of the OIC was arrived at following the 2014 resolution. The OIC resolution sees the SOGI question as 'in total contradiction of the teachings and values of Islam'. The resolution also affirmed the commitment of the OIC countries to 'reject' the 2014 resolution. Thus we must see the OIC vote and the OIC lobbying to prevent countries from voting for the resolution as flowing from the policy articulated in Resolution no. 4/42c on Social and Family Issues at the OIC.

However, in spite of this clear declaration of policy it is important to note that

³⁰http://www.oic-oci.org/oicv3/page/?p_id=68&p_ref=37&lan=en#normal

the OIC was not successful in ensuring that all OIC members voted against the resolution. Albania, who has been a member of the OIC since 1992, voted for the resolution. Albania said:

Albania fully supports the draft resolution L.2/Rev.1 that builds upon previous resolutions of 2011 and 2014 years in addressing these discrimination and violence against persons because of their sexual orientation and gender identity. The aim of this draft resolution is to appoint an Independent Expert which will work on the protection against violence and discrimination based on sexual orientation and gender identity and the current state of the resolution doesn't seek to create a new rights but simply affirms the application of existing human rights standards to those who are discriminated and abused because of who they are.

Albania chose not to address the OIC arguments head on, but rather articulated its position of voting for the SOGI resolution flowing from its support for universal human rights. The Albanian position may not be significant in terms of numbers, but very important in terms of ideas. Albania articulates the fact that opposition to SOGI issues is not a central tenet of Islam, that violence and discrimination on grounds of SOGI should be taken seriously and that all countries should follow the framework of universal human rights.

The African Group

The African group was by contrast more divided with eight countries voting against and four abstaining. In 2016, even without South African leadership there were four abstentions on the resolution from the African region. No African state which was not a member of the OIC choose to explain their no vote. The relative silence of the non OIC African states could possibly indicate a greater space for changes in viewpoint that was not effectively leveraged. The one state which could have effectively leveraged its leadership role to engage other non OIC African states to try and ensure at the least an

abstention was South Africa. However, South Africa was obviously not comfortable with the 2016 resolution and did not do anything to ensure the success of the resolution. Thus in 2014 when there was South African leadership, Congo and Sierra Leone abstained. In 2016, even without South African leadership Ghana, Namibia and Botswana abstained. This only alerts us to the possibilities that were not tapped in 2016.

This lack of leadership by South Africa had the unfortunate impact of further amplifying the most homophobic voices on the African continent during the vote. Nigeria played this role to perfection. As Nigeria observed:

Nigeria has legislated against LGBT. Nigeria opposed it in this Council in 2011. Nigeria has no ill-feelings against those States that practice same-sex attitudes and so on. All Nigeria is saying is that its laws don't accept it, and I think it goes for a number of countries that have made statements in rebuttal of this particular resolution.

The vast majority of nations have not accepted LGBT rights. In a world with population of over 7.4 billion, how can we say that the concept of human rights for LGBT people is right given a small fraction identify themselves as LGBT. My government and other governments seriously object to any attempt to consider LGBT rights as human rights. And we have legislated against LGBT because it offends the culture, religion and natural laws.

We object to this claim that a vote against this resolution is to instigate violence. We say "No no no". The opposition to this resolution is to ensure the sanctity of other rights, such as rights to religious beliefs, culture and supremacy of natural laws. Certain unnatural behaviors that pose threat to natural laws must be abolished; otherwise the concepts of marriage and family will fall apart.

The support of Russia and China

The core grouping of the OIC and the African Group was further buttressed in

its support by Russia and China. Russia said:

Russia believes that sexual orientation is an element of private life of a separately taken individual and one cannot interfere in this. This is a deeply individual choice according to one's models in particular relationships which does not lead to the need for the creation of any specific conditions for the implementation of such a choice - a particular system of protection for those who take this particular choice. In Russia human rights is extended to all. Women, elderly, people with disabilities, homosexuals, teachers, or astronauts, young people or representatives of national or religious minorities.

And what we see today, is a small group of countries who are suggesting that we set up a separate legal regime for the protection of those who take a choice for a certain model of personal relationships.

We will refrain from any comments with respect to whether this choice is a natural one. We will simply note that many thousands of years of human development were carried out by those who did not have this kind of a choice.

The establishment of an Independent Expert by the Council on issues only with respect to private matters is not something that we can see as anything else other than imposing specific behavioral models and we are against such an approach, which would simply facilitate further politicization...

In conclusion, Sir, bearing in mind the aforementioned, the Russian Federation will vote against the resolution on this post of an Independent Expert on issues of discrimination on the basis of sexual orientation and will not cooperate with it if it is established.

China, speaking in an explanation of the vote after the vote, underlined the importance of respecting the different cultural and judicial systems, and stressed the need to address human rights issues through constructive

dialogue, rather than to impose views on others. Further, the Council was facing financial constraints, and therefore China was opposed to the creation of new mandates.

Russian and Chinese opposition to the resolution may not have much to do with the opposition of the OIC countries (i.e. that it is against religion or culture). Rather the opposition should be viewed as a wider opposition to the norm of universal human rights. Both Russia and China are strong proponents of a state-centric vision of international law with little space for the notion of human rights. Thus the opposition to what Russia calls 'behaviour models' is in effect an opposition to the idea of individual rights. China in its invocation to respect different cultural and legal systems seeks to place state sovereignty on a higher pedestal than individual human rights.

Wider opposition to the framework of universal human rights

The no vote was underpinned by sustained hostility to the very idea of universal human rights. In fact the theme which underlay many of the hostile amendments was the opposition to the universality of human rights.

As Pakistan put it:

Amendments from L.73 to L.79 are inspired by the decisions taken by the OIC as well as the Africa heads of States and the governments in the Kampala summit on the promotion of cooperation, dialogue and respect the diversity in the field of human rights.

The OIC decisions referred to by Pakistan are laid out in Resolution no.1/42-leg on Follow-Up and Coordination of Action in the Field of Human Rights

1. Affirms that human rights are of a universal character and must be perceived within the framework of a dynamic non-static process for the evolvement of international standards with due consideration to national and regional specificities and to the diverse historic, cultural, and religious backgrounds.

2. Stresses the need for the international community to tackle the issue of human rights objectively and from the perspective that these rights are indivisible and inclusive of all states on a non-selective and non-discriminatory basis.
3. Calls for human rights to be perceived in a comprehensive manner and from all their religious, political, social, economic and cultural aspects, within a framework of international cooperation and solidarity.
4. Reaffirms the right for states to uphold their religious, social and cultural specificities which represent legacies and intellectual underpinnings that in turn contribute to enriching common world concepts of human rights.
5. Urges all not to use the universality of human rights as a pretext to interfere in the internal affairs of other states and to impinge on their sovereignty.
6. Recalls the right for states to voice their reservations, when necessary, as to any international covenants, conventions or agreements which they join, inasmuch as such a right forms a sovereignty right.³¹

The points 1 to 6 of the resolution lay out a framework that goes way beyond the SOGI resolution. Clearly the objective of the OIC is to dilute the framework of universal human rights by stressing that rights are to be ‘perceived in a comprehensive manner’, by calling for rights to be understood from ‘their religious, political, social, economic and cultural aspects and by stressing that rights are to be understood within ‘the framework of international cooperation and solidarity’. The ‘right of states’ to ‘uphold their religious, social and cultural specificities’ is affirmed. States are enjoined to not to use ‘universality of human rights as a pretext to interfere in the internal affairs of other states’.

³¹http://www.oic-oci.org/oicv3/page/?p_id=68&p_ref=37&lan=en

The prefacing of 'human rights' by comprehensive and stressing for the contextualization of rights within religious and cultural frameworks is a clear attempt at diluting the protection of international human rights law. The other manoeuvre in the text is to pivot away from human rights as vesting in person to rights as vesting in states. The rights of states to affirm their religious and cultural specificities is set up as a norm which trumps individual human rights.

The question to be asked is whether what we are seeing is an attempt at supplanting the existing framework of international human rights law. The strategies to do so are varied. One aspect of the strategy is it misquotes, misapply and misinterpret existing human rights law. The hostile amendments are a classic case of misquoting the Vienna Declaration to achieve aims that are quite in conflict with the Vienna Declaration. The second aspect is to refocus the question away from the individual as rights holder to collective entities be it the family, the state or religion. The third aspect is to repeatedly attack the norm of universal human rights from the point of view of culture and religion. The final aspect is to reemphasize the importance of sovereignty and the fact that sovereignty must trump international human rights law.

The threat to the functioning of the Council

The implications of the fact that the resolution was passed was outlined in dark terms most strongly by Morocco:

Mr. President, I am taking the floor in a session which is considered a historical one and I do feel very sad and very bitter. We are celebrating the 10th anniversary for the establishment of the Human Rights Council, and we thought that such an occasion would be one that will allow us to send clear messages to our communities and to this world that is marred by terrorism, extremism and migration of all forms. We do think that this Council is responsible for building major consensus amongst all civilizations so that we develop human rights and defend the noble *principles* of human rights.

In this session, Mr. President, and while we have looked at the results

of the vote, we would like to register today and record that we are facing a very divided Council. So this Council is sending a wrong message which will be distorting and will create an ambiguity for the youth.

So, we are talking about the universality, when the common ground between human civilizations is achieved, whereas today we are facing a draft resolution that is against the values and the beliefs of at least 1.5 billion that belong to one civilization. So what is the message that we would like to send this civilization and religious community?

Mr. President, Islam is against violence. It gives all dignity to human beings and refuses all abuses. And Morocco, as a Muslim State believing in human rights, shared and participated in number of initiatives taken by this Council trying to get the positions closer and to get the human rights to win at the end. But today we are calling upon the members to vote against this draft resolution just to preserve the credibility of the Council.

We are at a very dangerous turning point. This vote and this session will be the beginning of a very dark period in the life of the Council where two-thirds of humanity and humankind will feel that they are outside the Council and that the Council is not taking into account their own convictions and feelings and the values they are condoning.

This is why we vote against the draft resolution as we think this will protect the universality of the principles of human rights. We want to vote like this because we want to preserve the Human Rights Council. If given time, the Council will undoubtedly lead to a consensus I think amongst all members. The world is going through a very serious, acute period and we don't want the Council to enter into a war between civilizations and religions, as the duty of the Council is to build upon, to draw on values that are common to all civilizations. And at least today, and in light of the outcome of the votes, we have to have this courage

to say that this draft resolution will lead us to polarization to the vision and dissension, and this does not serve at all human rights and does not put an end to any injustice. My delegation that is participating with you and with other members on a lot of other initiatives will still vote against this resolution.

In the immediate context of the SOGI resolution it would take the form of non-cooperation with the Mandate Holder once the Mandate holder took office. This was articulated explicitly by Indonesia, Algeria and Russia before the vote and by UAE, Egypt, Qatar and the OIC after the vote.

Indonesia said:

Furthermore, in line with our position, we would like to put that in record that we are not in the position to support, cooperate or engage with the mandate holder created for it. I thank you Mr. President.

Russia said:

The Russian Federation will vote against the resolution on this post of an Independent Expert on issues of discrimination on the basis of sexual orientation and will not cooperate with it if it is established.

Algeria said:

This is why we will vote against this resolution that we consider that it distracts us from the noble principles upon which the Council has been built. And we refuse to deal with any such Independent Expert if such expert is created.

In explanation after the vote the same position was again outlined by a range of states:

United Arab Emirates, speaking in an explanation of the vote after the vote, said that the adoption of the resolution was a dangerous precedent. It would

bring the Human Rights Council closer to exploiting human rights for the promotion of secondary rights. Despite the importance of the resolution, it was a provocation for many communities. The group in question did not respect the traditions. Hence, the United Arab Emirates did not accept the mechanism that had been created and did not plan to cooperate with it.

Qatar, speaking in an explanation of the vote after the vote on behalf of the Organization of Islamic Cooperation, except Albania, held that the values of non-violence were important. The Organization of Islamic Cooperation believed that protection against violence should be given to all. At the same time, it stated that the concepts and new language in the draft resolution held no place in the Universal Declaration of Human Rights and other human rights instruments. The adoption of topics not universally agreed upon, that directly impinged on the social culture and the religious sensitivities of Member States of the United Nations, compromised the work of the Human Rights Council.

The Organization of Islamic Cooperation believed that the passage of this draft resolution and the establishment of an Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity, in an act of cultural superiority, imposed one set of values on the rest of the world. The Organization called for respect of cultural, historic and religious backgrounds and particularities which were clearly set in the two Covenants. The countries of the Organization of Islamic Cooperation, except Albania, would not recognise the mandate created by the resolution, would boycott the Independent Expert, would not be in position to cooperate with that person.

Egypt was alarmed over the adoption of the deeply flawed L.2.Rev.1, which aimed to establish new rights for lesbian, gay, bisexual and transgender persons. The Council did not have the legislative power to create new rights, stressed Egypt. Egypt would not recognize nor would it cooperate with the Independent Expert emanating from L.2.Rev.1.

Iran, speaking on L.2.Rev.1, reiterated its commitment to pursue a variety of approaches to protect human rights against violence and discrimination, but any approach should address basic social or religious norms and values of communities. Iran would not cooperate with the mandate holder which this resolution had brought about.

What is being articulated by the OIC states as well as Russia is that the founding mandate of the Human Rights Council, GA Res 60/251 will no more be the framework within which states will operate.

In operative paragraph 4 of GA Res 60/251 establishing the Council the principles which should guide the work of the Council are elaborated:

Decides further that the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development;

The decision to not cooperate with the mandate holder does grave damage to the founding principle of 'constructive international dialogue and cooperation'. The further question is, once this attitude of disregarding founding norms takes root, will it institutionalize ways of dealing with conflicting viewpoints in the Council?

These fears seem to be anticipated by the High Commissioner in his address to the 32 Session of the Human Rights Council:

And yet the workable space in which we function as one community – resolving disputes, coming to consensus – is under attack. The common sets of laws, the institutions - and deeper still, the values – which bind us together, are buckling. And suffering most from this onslaught are our fellow human beings – your people – who bear the brunt of the resulting deprivation, misery, injustice, and bloodshed.

V. The interconnections to other resolutions at the 32nd Session of the Council

SOGI issues are of course closely connected to progress on range of human rights issues. The linkages between SOGI and other human rights issues was perhaps best illustrated at the Council by the voting on three important resolutions, namely violence against women, protection of the family and civil society space.

The resolution on violence against women its causes and consequences had, as its ask, the renewal of the mandate of the Special Rapporteur on violence against women, its causes and consequences. The resolution itself was adopted by consensus, though Russia introduced 11 amendments (7 of which were withdrawn), to remove references to interalia, intimate partner violence, human rights defenders and comprehensive sexuality education. All amendments were defeated.

The ask of the resolution on the protection of the family, was the holding of a one-day intersessional seminar on the impact of the implementation by States of their obligations under relevant provisions of international human rights law with regard to the role of the family in supporting the protection and promotion of the rights of persons with disabilities.

The resolution was controversial because it refused to acknowledge the fact that families were diverse, refused to concede that families while playing a role in protection of rights could also be an institution for the perpetration of violence and that morality and tradition which the family was instrumental in passing down could be concepts which violate rights. Clearly this resolution had negative implications for the rights of women, children and LBGTI persons.

It should be noted that the resolution on protection of the family passed with a large majority of 32 in favour, 12 against and three abstentions. **(For a descriptive account of the vote see Annex III)** The previous resolution on

protection of the family in the 29th Session of the Human Rights Council in 2015, passed with a majority of 29 in favour, 14 against and 4 abstentions. With respect to protection of the family resolutions, support at the Human Rights Council seems to be on an upward trajectory. There is a necessity to think about a different strategy with respect to dealing with the protection of the family.³²

The resolution on civil society space which was adopted by a vote of 31 in favour, 7 against, with 9 abstentions, emphasized the creation and maintenance of a safe and enabling environment in which civil society can operate free from hindrance and insecurity, emphasized the importance of civil society space for empowering persons belonging to minorities and vulnerable groups as well as persons espousing minority or dissenting views or beliefs and called upon states to ensure that legislation, policies and practices do not undermine the enjoyment by such persons of their human rights or the activities of civil society in defending their rights. The resolution requested the High Commissioner to prepare a report on the procedures and practices in respect of civil society involvement with regional and international organizations.

The civil society resolution was sought to be diluted by amendments proposed by Russia which sought to remove references to inter alia, 'human rights defenders' and most vitally a paragraph which aptly recognized that, 'the ability to seek, secure and use resources is essential to the existence and sustainable operation of civil society actors, and that restrictions on funding to civil society actors may constitute a violation of the right to freedom of association'. All twelve of the amendments including the two quoted above were defeated. **(For a descriptive account of the vote see Annex IV)**

Why all three resolutions are vital for thinking of any strategy going forward is because of what the voting tells us about the nature of alliances. Clearly,

³²Arvind Narrain, Decoding the Politics Underlying the Resolution on Protection of the Family, <http://www.jurist.org/hotline/2015/09/arvind-narrain-family-protection.php>

Russia, China and the OIC members are closely involved in both diluting civil society safeguards, protecting only one type of family and in opposing sexual orientation and gender identity at the Human Rights Council.

The broader principle underlying the opposition is really an opposition to the idea of universality of rights and a re-inscription of the importance of national sovereignty. The struggles around these resolutions at the Human Rights Council are only indicative of the broader range of struggles being carried out in diverse national and regional contexts where activists are seeking to broaden the space to dissent and create space for diverse ways of living and being.

ANNEX I: BRIEF SUMMARY OF OTHER REFERENCE TO SOGI IN THE 32nd SESSION OF THE HRC

GENERAL DEBATE ON THE REPORT OF THE HIGH COMMISSIONER OF HUMAN RIGHTS

The 32 session of the Human Rights Council began in the shadow of the killings at Orlando. Opening the session, Choi Kyong-lim, President of the Human Rights Council, stressed that those responsible for the despicable terrorist attacks in Orlando, Damascus, Halgan, Baghdad, Tel Aviv, Istanbul and elsewhere had to be held accountable.

The High Commissioner said that

On a daily basis, we are witness to horrors of every kind around the world. I extend my condolences and respect to all victims of human rights violations, including the victims of conflict and those who suffer violations of their civil, political, economic, social and cultural rights. I also condemn with the greatest possible force the outrageous attacks by violent extremists on innocent people, chosen at random, or because of their presumed beliefs, or opinions, or – as we saw yesterday – their sexual orientation.

I am very concerned about the dramatically increased number of brutal murders in Bangladesh that target freethinkers, liberals, religious minorities and LGBT activists. I note recent reports of police arrests, and I urge that investigating and prosecuting the perpetrators of these vicious crimes be made a priority, with full respect for human rights. I also urge all government officials and political and religious leaders to unequivocally condemn these attacks on freedom, and to do more to protect affected groups.

Hate is becoming mainstreamed. Walls – which tormented previous generations, and have never yielded any sustainable solution to any problem – are returning. Barriers of suspicion are rising, snaking

through and between our societies – and they are killers. Clampdowns on public freedoms, and crackdowns on civil society activists and human rights defenders, are hacking away at the forces which uphold the healthy functioning of societies. Judicial institutions which act as checks on executive power are being dismantled. Towering inequalities are hollowing out the sense that there are no common goods.

Didier Burkhalter, Federal Councillor, Head of the Federal Department of Foreign Affairs of Switzerland, speaking on behalf of the host country, condemned in the strongest terms the terrorist attack in Orlando, United States, and extended sympathy to families of the victims.

Chile was committed to combat discrimination on the ground of sexual orientation and gender equality, and was convinced that lesbian, gay, bisexual, transgender and intersex persons deserved protection from human rights violations. Chile expressed condolences to the United States after the Orlando attacks.

Spain stressed that the Council must address violence against lesbian, gay, bisexual, transgender and intersex persons, and also pay more attention to the current reversal in the universal abolition of the death penalty

Pakistan condemned the Orlando killings.

Jordan extended condolences to the United States for the Orlando attack.

Argentina appreciated the work of the Council on inclusion and believed that the world should be a place where gender, sexual orientation or other grounds were not reasons for exclusion. Argentina rejected the violent attack in Orlando.

INTERACTIVE DIALOGUE ON EXTREME POVERTY

Philip Alston, Special Rapporteur on poverty:

I visited Chile more than one year ago and am grateful to the Government for its cooperation. In my report, I note that while Chile has taken giant steps forward in social and economic development, it remains a highly segregated and unequal society with unacceptable rates of poverty and extreme poverty. The main factors hindering the effectiveness of the efforts of Chile in tackling poverty and inequalities include the fragmentation of anti-poverty programmes, the lack of sufficient “institutionality” to implement human rights, the attenuated role of labour market institutions to protect labour rights, persistent discrimination against and the absence of constitutional, legal and institutional protection of marginalized groups, such as indigenous peoples, children, lesbian, gay, bisexual, transgender and intersex persons and migrants. My recommendations include the adoption of a comprehensive anti-poverty programme that is well-coordinated among the various ministries and the establishment of a well-funded and well-staffed Office of the Under-Secretary for Human Rights integrating economic, social and cultural rights as a key part of its mandate.

Allied Rainbow Communities International noted:

We congratulate the Special Rapporteur for producing a Report that is not ‘painfully boring’ but rather ‘stimulates fresh thinking’. The Special Rapporteur has cast his net very wide in observing that capitalism itself is unsustainable unless the excesses and predations that are built into it are tempered by ensuring the basic welfare of all. We are in agreement with the finding that economic and social rights risk being overshadowed by the constitutional and legal entrenchment of austerity measures through bilateral and multilateral trade and investment agreements that effectively trump human rights concerns.

The broad macro picture painted by the Special Rapporteur indeed has painful and real consequences for a range of groups and people struggling to eke out a living in a context where the state has abandoned them.

The Special Rapporteur is right to observe that groups which have been historically subjected to discrimination on grounds of sexual orientation and gender identity are even more vulnerable in contexts such as this. There is a link between discrimination, poverty and inequality and it's imperative that states recognize the linkage and move to redress it.

We urge states across the world to treat socio economic rights as full fledged rights and heed the Special Rapporteur's call to recognize, institutionalize and ensure accountability for the violation of socio economic rights.

INTERACTIVE DIALOGUE ON THE RIGHT TO HEALTH

France was in favour of decriminalizing homosexuality and abortion all over the world.

International Lesbian and Gay Association in a joint statement with Federatie van Nederlandse Verenigingen tot Integratie Van Homoseksualiteit - COC Nederland; and Swedish Federation of Lesbian, Gay, Bisexual and Transgender Rights – RFSL,

We commend the Special Rapporteur's particular focus on the situations of trans and intersex persons. Trans and gender non-binary individuals are often deliberately or effectively denied the possibility of participation in professional sport. Lack of gender recognition laws based on self-identification, and laws criminalising trans people (either directly or indirectly), greatly restrict access to sport. Severe problems are posed by sex segregation policies, as well as arbitrary and unwarranted classifications of male and female. Policies must reflect international human rights norms, and should not require irrelevant clinical data or unnecessary medical procedures as a precondition to full participation. On a more practical level, States must remove barriers to participation, such as poorly designed changing rooms, requirements to wear clothing that might cause individual discomfort or hinder bodily movement, and

restrictions on the use of sex-segregated bathrooms.

We welcome the call for consensus to be reached among all international sporting bodies and national governments on trans and gender non-binary participation in sporting competitions to reflect international human rights norms and do away with medical procedures as a precondition to full participation.

For intersex persons, a variety of ‘sex tests’ conducted to avoid the supposed risk of participating under an assumed gender to obtain a competitive advantage are a grave problem. No single test determines gender, and there is insufficient clinical evidence to establish that, for example, women with higher levels of testosterone, have a ‘substantial performance advantage’ justifying their exclusion. These tests lead to stigmatization, provide a false basis for exclusion from competitive sport, and have led to women athletes being forced or coerced into ‘treatment’ for hyperandrogenism, including unnecessary irreversible and harmful surgeries amounting to female genital mutilation. Sporting organisations must act to ensure that their policies prohibit such practices and states must guarantee this aspect of intersex persons health rights.

In the report regarding adolescents, the Special Rapporteur highlights that adolescence is an especially important time for exploration and understanding of sexuality, sexual orientation and gender identity. States should respond to the specific challenges faced by LGBTI adolescents, and mandatory school curriculum should include comprehensive and inclusive sexuality education, based on scientific evidence and human rights, with special attention given to sexuality, gender identity –including non-conforming gender identities –and sex characteristics.

Health services for adolescents, in particular those for sexual and reproductive health, must be sensitive to gender identity, sexual orientation and sex characteristics. They must be non-judgemental, treating all teenagers with dignity and respect to ensure that LGBTI adolescents do not suffer stigma, discrimination, violence, rejection by families, criminalisation and other human rights violations when seeking

sexual and reproductive health services. We welcome the call to reform National Health information systems to include human rights concepts and variables, such as lesbian, gay, bisexual, intersex status. However we emphasise that transgender status should also be included.

The report notes that LGBTI adolescents are at heightened risk of mental ill-health, not least because of continued use of abusive “conversion therapies” and “treatments.” We join the Special Rapporteur’s call on States to eliminate such practices and to repeal all laws criminalising and discriminating against individuals on the basis of their sexual orientation, gender identity and expression, and sex characteristics.

We are pleased to note the Special Rapporteur’s reference to the specific hardships that intersex adolescents often experience due to irreversible and non-consensual genital and reproductive surgeries performed during their early childhood because of the natural development of their bodies. These situations may be compounded by discrimination within the family and society, and by healthcare providers, who often also lack awareness of the needs of this population and that these irreversible childhood surgeries constitute human rights violations.

We ask the Special Rapporteur whether he agrees that States should provide trans adolescents with access to gender transition-related services, affirmative counselling, balanced information and support, age-appropriate hormones and puberty blockers, and progressive steps towards self-identification of their genders.

Mr. Puras, the Special Rapporteur on the Right to health, underlined that traditions and values, while often useful, could also be used as a pretext to violate rights, for example the concept of traditional family values, which was sometimes contradictory with human rights norms and standards, as it was used to justify acts against the wellbeing of children, including various forms of violence against women, girls and children in general. In terms of measures to improve the health of adolescents, the common denominator was the recognition of their rights: the right to information, freedom of expression and

opinion, protection from violence, the right to dignity, and the right to bodily integrity. The mandate took seriously the violation of rights of lesbian, gay, bisexual, transgender and intersex persons, including adolescents, and said that it was detrimental to societal health and cohesion. The Special Rapporteur stressed that models based on excessive hospitalization and medicalization must be replaced with systems centered on prevention and full participation by adolescents.

UN COMMISSION OF INQUIRY ON SYRIA: ISIS IS COMMITTING GENOCIDE AGAINST THE YAZIDIS

A press release by the Commission of Inquiry made the important point that the deliberate actions of killing, torture, enslavement, the infliction of conditions of life that bring about a slow death; the imposition of measures to prevent Yazidi children from being born, including forced conversion of adults, the separation of Yazidi men and women, and mental trauma; and the transfer of Yazidi children from their own families and placing them with ISIS fighters, thereby cutting them off from beliefs and practices of their own religious community were all practices which indicated that the crime committed against the Yazidi population was one of genocide.

Mr. Pinheiro stressed that there must be no impunity for crimes of this nature, recalling States' obligations under the Genocide Convention to prevent and to punish genocide. The Commission repeated its call for the Security Council to refer urgently the situation in Syria to the International Criminal Court, or to establish an ad hoc tribunal to prosecute the myriad of violations of international law committed during the non-international armed conflict.

Allied Rainbow Communities International noted:

The Report details the horrific crimes committed by ISIS against Yazidi women and girls. The Report in its recommendations emphasizes the different nature of the crimes committed against the children according to their sex. It powerfully shows how sexual slavery and violence are systematically committed against women and girls. However, we would

like to highlight that there are also reports of how captured boys have also been subjected to sexual violence. Sexual violence perpetrated against boys and men, whether by ISIS, the Syrian regime, or other factions, remains an issue that is shrouded in shame and secrecy and is rendered invisible. Targeting the sexuality of women and girls as well as men and boys is an integral part of ISIS' genocidal project.

In that sense, ISIS' genocidal project also targets non normative sexualities. As previous reports have shown, ISIS in both its ideology and its practice has demonstrated that its aim is not merely persecution but elimination of the entire grouping comprising those who engage in homosexual conduct.

We call upon the Commission to take forward its pioneering analysis of genocide in the context of the Yazidi community and analyze its applicability to other groups similarly targeted by ISIS including homosexuals, Kurds, Arameans and other ethnic minorities.

We also call upon the Commission in future reports to analyze the ways in which sexual violence and rape perpetrated against men and boys can constitute both genocide and a crime against humanity.

INTERACTIVE DIALOGUE ON FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION

Chile, speaking as a concerned country, highlighted the fruitful cooperation between the authorities and civil society, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and said that Chile had set the bar high in their expectations from human rights, in particular in tackling the legacy of dictatorship and strengthening the basis of democracy. Chile was taking on the challenge of progressing to a country of vibrant democracy and full enjoyment of human rights for which the space for open debate and tolerance was indispensable. Adequate institutions had been put in place and there was regular monitoring of the level of enjoyment of human rights by all, including civil society organizations and people of different sexual

orientation. The police had an obligation to provide security and order, manage protests and avoid abuse.

Egypt underlined the importance of Special Procedures to respect the principle of non-selectivity and objectivity. It condemned the attempt by some States to impose the issue of sexual orientation and gender identity, which would further divide the Council.

GENERAL DEBATE ON THE PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS

Chile underlined the important role that Special Procedures could play as early warning mechanisms. The international community held a responsibility to protect the rights of all people, including migrants and lesbian, gay, bisexual and transgender persons. Chile regretted the polarization of the Council, and recalled that, through the Vienna Declaration and Programme of Action, States had agreed that cultural differences could not justify denying the universality of human rights. Chile was committed to the inclusive realization of the 2030 Agenda for all people.

Centre for Inquiry urged States to place considerable focus on protecting the freedoms of opinion, expression, assembly and association in undertaking efforts to combat fundamentalism and intolerance, while also protecting the rights of minorities, including sexual minorities.

GENERAL DEBATE ON HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

Switzerland was concerned about violence against sexual minorities in Honduras.

Iceland noted that, all 76 United Nations Member States that retained laws that stigmatized and discriminated against lesbian, gay, bisexual, transgender and intersex persons should abolish them.

PEN International, in a joint statement with 18 organizations, expressed concern about the situation in Bangladesh where Islamist radicals were committing violence, including the murders of journalists, bloggers and social media activists. The recent arrest of 11 people in alleged connection with the violence was feared to be the settling of political scores rather than the result of a genuine investigation.

Centre for Inquiry said that there was a human rights crisis in Bangladesh where bloggers, activists and journalists, as well as minorities and lesbian, gay, bisexual, transgender and intersex activists were being targeted. The Government failed to investigate the crimes or protect the victims, and blindly denied the existence of terrorist groups in the country, which had taken responsibility for the violence in the first place.

Human Rights Watch said that Bangladesh had taken an increasing turn toward authoritarianism in recent years, and Member States were urged to raise the concerning situation in the Council and directly with the Government.

GENERAL DEBATE ON THE IMPLEMENTATION OF THE VIENNA DECLARATION AND PROGRAMME OF ACTION

Netherlands, on behalf of the European Union, underlined that the universal nature of human rights included the responsibility to ensure equality, non-discrimination and protection from violence for lesbian, gay, bisexual, transgender and intersex persons. At least 76 States retained laws used to criminalize and harass persons on the basis of sexual orientation. The European Union supported the draft resolution on the “Protection against violence and discrimination based on Sexual Orientation, and Gender Identity”.

United Kingdom strongly condemned acts of violence and discrimination based on sexual orientation and gender identity in all regions of the world, and stressed that, when that happened, the international community had an obligation to respond. The United Kingdom welcomed the attention paid to those issues by the international human rights mechanisms, and urged the

Council to continue to address human rights violations based on sexual orientation and gender identity.

Albania recalled the commitment the States had made to protecting human rights and fundamental freedoms in Vienna, and expressed concern about the persistent discrimination on the grounds of sexual orientation and gender equality, and the reprisals and persecution of journalists and civil society. Albania reiterated the universal value of human rights and its principles of equality, and stressed that the Council ought to be free to pursue the protection of human rights of all.

Portugal said that the Vienna Declaration and Programme of Action had reaffirmed the principle of the universality of human rights. That had to include the universal protection of the human rights of sexual minorities and the combatting of discrimination and violence on the grounds of sexual orientation and gender identity. Portugal supported the resolution on creating a special procedure mandate on the protection against violence and discrimination based on sexual orientation and gender identity.

Slovenia strongly supported the draft resolution on the “Protection against violence and discrimination based on Sexual Orientation and Gender Identity”. Slovenia remained concerned about the shrinking civil society space in some countries, as well as cases of reprisals that posed serious challenges to the United Nations System. Lastly, Slovenia regretted that many countries still applied the death penalty, and urged all countries to ratify the Second Optional Protocol to the Covenant on Civil and Political Rights.

United States recalled that, on 12 June 2016, a terrorist had killed 49 people in an attack that targeted the lesbian, gay, bisexual, transgender and intersex community in Orlando, Florida, which had demonstrated that violence and discrimination based on sexual orientation and gender identity was not unique to one country, region or culture. Lesbian, gay, bisexual, transgender and intersex persons in every society in the world were entitled to the same human rights as all other people.

Pakistan believed that the work of the Council had to be guided by the principles of universality, impartiality and non-selectivity, and noted the many challenges to neutrality and effectiveness of the Council. Its agenda needed to respond to new challenges, resources for human rights mechanisms should keep up with their growth, and efforts had to be made to avoid duplications of the work with the Third Committee of the General Assembly.

Israel expressed condolences to the families of the victims of the attack in Orlando, and noted that the Vienna Declaration and Programme of Action had recognized that all human rights derived from the dignity and worth inherent in the human person. Israel was at the forefront of the struggle to end violence and discrimination against individuals based on their sexual orientation and gender identity. The international community was called on to take concrete action to eradicate such discrimination worldwide.

Denmark said that same-sex marriages were legal in Denmark, but that the country would never presume being able to impose that right on other countries in the world. A resolution on the protection of the family which failed to recognize that families could take various forms could only be understood as an attempt to impose on Denmark what the sponsors of that resolution would never accept to be imposed on them.

Australian Human Rights Commission, in a joint statement, referred to states' obligation to protect the rights of all persons, without discrimination, including on the ground of sexual orientation or gender identity. It highlighted the role of national human rights institutions in promoting all rights and combatting such discrimination. It called on the Human Rights Council to establish a mandate of an Independent Expert addressing violence and discrimination on the ground of sexual orientation or gender identity.

Action Canada for Population and Development underlined the importance of ensuring sexual and reproductive rights. Human rights related to sexuality addressed a wide range of issues, which intersected with other rights. The Council should ensure that all measures taken on sexual orientation and

gender identity recognize and address the root causes of violence and discrimination and the multiple and intersecting forms of oppression of those grounds.

International Lesbian and Gay Association, on behalf of several NGOs, was concerned about individuals facing grave human rights violations on the basis of their sexual orientation or gender identity, including discrimination and violence. It called on the Council to address the protection gap those people faced through the creation of an Independent Expert to address discrimination and violence on the ground of sexual orientation and gender identity.

Alliance Defending Freedom said that, as there was no consensus on guaranteeing equal protection before the law and to prohibit discrimination on grounds of “sexual orientation and gender identity”, the issue should remain within the purview of each Member State’s domestic legal order. It was imperative that the international community promoted and protected the family as a unique and essential good for society.

Verein Sudwind Entwicklungspolitik said that non-governmental organizations were still witnessing the violation of human rights of people on the basis of race, ethnicity, colour, sexual orientation, and other grounds. The non-governmental organization also spoke about the persecution of people in Iran, bring up a particular case of a prisoner of conscience who was suffering from cancer.

International Service for Human Rights said that the Vienna Declaration and Programme of Action had reaffirmed that the principles of universality and non-discrimination were central to human rights. Human rights defenders working to protect the rights of lesbian, gay, bisexual, and transgender persons were subject to harassment, arbitrary arrest, and more. More than 500 non-governmental organizations had appealed to the Council to address that protection gap at the international level.

Swedish Federation of Lesbian, Gay, Bisexual and Transgender Rights – RFSL, on behalf of several NGOs, said that the right to identity was one of the

most basic human rights, and welcomed the laws enabling a quick gender recognition procedure based on self-declaration. The non-governmental organization urged the establishment of the mandate on the rights of lesbian, gay, bisexual, transgender and intersex persons which would go a long way in raising the awareness of that situation.

Allied Rainbow Communities International said that, while the situation of lesbian, gay, bisexual, and transgender persons was critical in many places in Africa, it was worth noting recent positive developments. "We are proudly African and we are proudly LGBTI", said the speaker, asking for African Governments to acknowledge the reality that lesbian, gay, bisexual, and transgender persons were facing.

Federatie van Nederlandse Verenigingen tot Integratie van Homoseksualiteit – COC Nederland, in a joint statement with International Lesbian and Gay Association, appealed for an independent expert mandate. The region from which the speaker came from protected persons on the basis of their sexual orientation, and the Human Rights Council had a responsibility for promoting and protecting the human rights of all individuals. All human beings were born free and equal in all rights.

PANEL DISCUSSIONS

HUMAN RIGHTS COUNCIL HOLDS PANEL DISCUSSION ON WOMEN'S RIGHTS AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

Swedish Federation of Lesbian, Gay, Bisexual and Transgender Rights was concerned that lesbian, bisexual and transgender women were not referred to in the 2030 Agenda, and risked being left behind in its implementation. It called for the adoption of human rights sensitive indicators to monitor progress for all people.

COUNCIL HOLDS PANEL DISCUSSION ON THE USE OF SPORT AND THE OLYMPIC IDEAL TO PROMOTE HUMAN RIGHTS FOR ALL

Miki Matheson, Project Manager at the Nippon Foundation Paralympic Support Centre and three-time Paralympic gold medalist in ice sledge speed racing, said that para-sports could foster equality, fairness and inclusion, and contribute to conflict resolution.

Ms. Matheson mentioned a Japanese Government initiative called “Sport for Tomorrow”, which aimed to spread values learned through sports and increase awareness of the Olympic and Paralympic movement worldwide. This was a great example of how sporting events such as the Paralympic and Olympic Games were helpful in a human rights context as they encouraged the integration of people regardless of age, race, gender, nationality, religion, politics, physical or mental condition, marital status or sexual orientation.

United States noted that sports events could also lead to adverse human rights impact for persons with disabilities, journalists and social media users, migrant workers, lesbian, gay, bisexual, transgender and intersex persons, women and children, racial minorities and indigenous communities.

Egypt underlined that sports competitions could have significant potential in promoting human rights, especially in areas such as combatting racism and promoting tolerance, eradicating poverty and advancing gender equality and women’s empowerment.

UNIVERSAL PERIODIC REVIEW

Namibia

Albert Kawana, Minister of Justice of Namibia, said that of the 219 recommendations received, Namibia had accepted 191 while the remaining 28 were still the subject of consultations as their implementation would require constitutional amendments. For the past three years, Namibia had been affected by severe drought and Namibia was redirecting to drought relief many of the resources initially allocated to education, health and infrastructure development. Namibia would table the Child Justice Bill in 2016, said Mr. Kawana and stressed that although the Constitution did not allow same-sex

marriage, same-sex couples were not prosecuted because victimization of or violence against any person in Namibia was prohibited.

Mozambique

Norway congratulated Mozambique for accepting three of its recommendations, including a recommendation pertaining to women's rights. It encouraged Mozambique to accept recommendations to lift restrictions on non-governmental organizations working on sexual orientation and gender identity issues.

Federatie van Nederlandse Verenigingen tot Integratie Van Homoseksualiteit - COC Nederland, in a joint statement with International Lesbian and Gay Association, was disappointed that the new Penal Code in Mozambique did not prohibit discrimination on the basis of sexual orientation and gender identity and that none of the recommendations on sexual orientation and gender identity had been accepted.

Estonia

Human Rights Watch welcomed that Estonia was planning on adopting an action plan for employment and equal opportunities, as well as Estonia's steps to reduce child statelessness. Language requirements, especially for the Russian-speaking population, remained the most significant naturalization challenge. Another concern pertained to accountability for cases of violence against lesbian, gay, bisexual and transgender persons.

Paraguay

Action Canada for Population and Development welcomed Paraguay's commitment to the Universal Periodic Review, and the readiness to adopt a law against discrimination, including on the basis of sexual discrimination. Nonetheless, there was evidence of discrimination against women and sexual minorities.

Denmark

Federatie van Nederlandse Verenigingen tot Integratie Van Homoseksualiteit - COC Nederland, in a joint statement with International Lesbian and Gay Association; and LGBT Denmark - The National Organization for Gay Men, Lesbians, Bisexuals and Transgendered People applauded Denmark's efforts to combat discrimination on the ground of sexual orientation and gender identity, but regretted the continuing lack of explicit prohibition of discrimination outside the labour market.

Palau

Allied Rainbow Communities International commended Palau for its leadership in the region for implementing Universal Periodic Review recommendations which were important for lesbian, gay, bisexual, and transgender persons. However, the lesbian, gay, bisexual, and transgender community in Palau faced discrimination, and Palau was urged to bring its legislation into conformity with its commitment to equality and non-discrimination.

Seychelles

Barry Faure, Secretary of State in the Foreign Affairs Department said that Seychelles accepted 142 recommendations and noted seven. Seychelles accepted recommendations relating to the ratification of core human rights instruments and their Optional Protocols, a national human rights institution, the non-discrimination of persons based on their sexual orientation and gender identity, and gender discrimination and gender-based violence.

Solomon Islands

Allied Rainbow Communities International regretted that Solomon Islands had rejected recommendations relating to discrimination on the grounds of sexual orientation and gender identity, and referred to cases of violence against lesbian, gay, bisexual and transgender persons. It was particularly concerned about proposed constitutional reforms that would fail to protect these persons.

Latvia

Norway thanked Latvia for accepting three of the recommendations it made, and for providing information about the recommendation concerning lesbian, gay, bisexual and transgender persons.

Council of Europe said that detention conditions were so poor that they could be considered to amount to cruel and inhumane treatment. This was aggravated by the lack of investigation regarding allegations of ill-treatment by police officers. It also expressed concerns about discrimination, either language-based or directed against “non-citizens”, sexual minorities or Roma persons.

British Humanist Association remained gravely concerned about the continuing legal and social discrimination to which lesbian, gay, bisexual and transgender persons were subjected. Latvia, a member of the Council, was urged to reconsider its discriminatory laws and practices and to promote a positive image of sexual minorities.

Sierra Leone

Amnesty International welcomed Sierra Leone's steps toward abolishing the death penalty. Sierra Leone was called on to lift a ban on pregnant girls in mainstream schools, as it risked destroying their future opportunities. Regret was expressed that Sierra Leone had rejected guaranteeing the rights of lesbian, gay, bisexual, and transgender persons; the country was called on to reconsider its position on those recommendations.

Singapore

Foo Kok Jwee, Permanent Representative of Singapore to the United Nations Office at Geneva, expressed Singapore's commitment to build a strong nation and a fair and democratic society, where citizens were protected against any threat or discrimination. With this in mind, the Government had carefully reviewed the 236 recommendations received by Singapore, and decided to

support 116 of these. It did not support recommendations that were predicated on unfounded assertions, inaccurate assumptions or erroneous information, including a handful of recommendations related to freedoms of expression, association and assembly. In addition, it did not accept recommendations that were not appropriate in its national context, including on issues such as capital punishment, the lesbian, gay, bisexual and transgender community, and national security. About a quarter of the recommendations that Singapore did not support in full related to the ratification of international human rights treaties. Singapore took its treaty obligations seriously, and actively reviewed its position on human rights treaties. However, in order not to prejudge the outcome of the Review process, it did not commit itself to accede to or ratify treaties ahead of review. Singapore supported recommendations that complemented its ongoing efforts to build a fair and inclusive society.

International Lesbian and Gay Association, in a joint statement, said that 11 recommendations had referred to the decriminalisation of homosexuality, and expressed disappointment that the Government continued to deny institutionalized discrimination. That had consequences for lesbian, gay, bisexual, and transgender persons in Singapore.

Asian Forum for Human Rights and Development, in a joint statement, expressed alarm at Singapore's rejection of numerous recommendations, including key recommendations on freedom of expression. Regret was also expressed that the Government had simply noted recommendations on censorship of lesbian, gay, bisexual, and transgender content in the media.

Action Canada for Population and Development said that Singapore had received many recommendations calling for a reform of the law criminalizing homosexuality and regretted that the Government only noted them. In addition to the law, other dispositions which discriminated against lesbian, gay, bisexual, transgender and intersex persons remained.

Human Rights Watch said that major human rights issues raised during the review of Singapore had already been raised during its first review in 2011, including the continuing use of the death penalty, discrimination against lesbian, gay, bisexual, transgender and intersex persons, criminalization of consensual relationships between men, severe restrictions on freedom of expression, and the right to freedom of association and assembly.

ANNEX II: DESCRIPTION OF THE VOTE ON THE SOGI RESOLUTION

Introduction of the Resolution

Chile, introducing draft resolution L.2/Rev.1 on protection against violence and discrimination based on sexual orientation and gender identity, recalled that to date the Council had already endorsed this issue through two resolutions. The High Commissioner had issued a report underscoring the need for a mechanism focusing specifically and comprehensively on this matter. The resolution aimed to fill this gap.

Uruguay, also introducing draft resolution L.2/Rev.1, said that this type of violence required a specific response from the Council, which was why the resolution established a new mandate. The Council was already dealing with many types of violence and discrimination, and now needed to fill the gap and ensure the protection against violence and discrimination on the ground of sexual orientation and gender identity.

Brazil, also introducing draft resolution L.2/Rev.1, said that this initiative sought to promote much needed dialogue to put an end to violence and discrimination on the ground of sexual orientation and gender identity, on the basis of international human rights instruments and the Vienna Declaration and Programme of Action. The draft resolution had been translated in all official languages of the United Nations, and broad consultations had been conducted. Brazil called on all delegations to vote in favour of this text, and in favour of leaving no one behind.

Action on No-Action Motion

Saudi Arabia took the floor on a point of order to request a no-action motion, saying this was a last attempt to make co-sponsors understand the consequences of this deeply divisive proposal that failed to recognize cultural differences. The draft was contrary to international human rights law and would disregard the universality of human rights, Saudi Arabia said, calling on the main co-sponsors to reconsider the consideration of this draft resolution.

The President said he would give the floor to two speakers for the no-action motion and two speakers against it.

Mexico, taking the floor, on L.2/Rev.1, said that it opposed categorically the non-action motion and asked that it be put to a vote. Mexico deplored countries which took refuge behind a procedural rule to prevent the Human Rights Council from speaking on an initiative. It was the responsibility of the Council to openly address those situations which undermined human rights around the world. The international community might have diverging points of view, but closing the dialogue should not be an option to hinder progress on human rights protection. The no-action motion made it impossible for the Council to address those issues. Voting for the motion was tantamount to avoiding the responsibility that States had accepted when they became members of the Council and it would ignore the suffering of thousands. All were encouraged to reaffirm their support for the mechanisms of the body they had decided to be a part of. Mexico called for the motion to be rejected.

Panama rejected the no-action motion and said that it was clear that what was sought was an escape route. It was imperative that the Council addressed all forms of violence and discrimination against people. All were called on to vote against the no-action motion.

Bangladesh expressed support for the proposal made by Saudi Arabia.

Nigeria took the floor on behalf of the Organization of Islamic Cooperation, with the exception of Albania, and spoke in favour of the no-action motion on draft resolution L.2 as requested by Saudi Arabia. The Organization of Islamic Cooperation believed that the draft resolution L.2 was divisive and was concerned that the lack of definitions of sexual orientation and gender identity and the attached human rights and fundamental freedoms carried certain responsibility for States. The controversial views of those issues could not be imposed by some Member States. The adoption of the resolution would ensure that the attention on sexual orientation and gender identity issues as seen by the Western States would take root in the United Nations, without

taking into account the views of a large number of States. The draft resolution was highly divisive and would create rancour within the Council which now should be focusing on its core agenda.

The Council rejected the no-action motion by a vote of 15 in favour, 22 against and nine abstentions.

Action on Draft Amendments L.71 to L.81

Pakistan, speaking on behalf of the Member States of the Organization of Islamic Cooperation except Albania, introduced amendments L.71 to L.81 to draft resolution L.2/Rev.1, saying they strongly condemned any forms of violence and discrimination against any individual or group, as illustrated by the commitments of the Organization of Islamic Cooperation against racism and discrimination and in favour of the right to development. The Member States of the Organization of Islamic Cooperation, except Albania, disagreed with the content and concept of this resolution, and would not be able to support the appointment of an Independent Expert on this issue. The Council had to respect each culture and its particularities. This draft would further polarize the work of the Council, and should therefore be avoided. The Member States of the Organization of Islamic Cooperation, except Albania, were therefore introducing amendments L.71 to L.81, which aimed to align the text with universally agreed language, carefully crafted on the basis of the Universal Declaration of Human Rights. Amendments also highlighted the need to respect cultural, religious and traditional values, while underscoring the negative effects of imposing values on others. The amendments also replaced the creation of the mandate with a request that the High Commissioner prepare a report on violence and discrimination on grounds recognized within the Universal Declaration on Human Rights. The Organization of Islamic Cooperation, except Albania, requested that these amendments were voted on in four packages: first on L.71, L.72 and L.80, second on L.73, L.74, L.76, L.77 and L.79, third on L.78, and fourth on L.81. The Organization called on all Member States to vote in favour of these amendments.

Mexico said that the main sponsors of the resolution did not support the amendments and would call for a vote on them. Mexico formally requested that all amendments were voted on individually, one by one. Delegations had requested instructions from capitals one by one, and voting amendments in packages might lead to an environment of a lack of clarity and misleading results. The sponsors should present the amendments individually and not as packages when they had the opportunity.

The Council decided to vote on the amendments one by one.

Netherlands, speaking in a general comment on behalf of the European Union, said the concept note on the establishment of the Independent Expert had been much appreciated. Civil society organizations had made it clear that the issue needed to be addressed globally. All societies, including the European Union, faced challenges on this issue. The European Union would support L.2/Rev.1.

Saudi Arabia, speaking in a general comment, said that the universality of human rights did not mean the imposition of certain so-called human rights concepts or ideas imposed from the point of view of another party, when those ran counter to some beliefs and specificities. Protecting the universality of human rights should not go beyond the main framework of human rights and be used to interfere in the affairs of sovereign States. The draft resolution imposed a specific notion that ran counter to religions. Saudi Arabia would not compromise or barter man-made legislation against divine laws. Islam knew the true meaning of human rights. The international community had to refrain from using the Council to interfere in the affairs of other sovereign States. Such resolutions would compromise the functioning of the Council. All were called on to vote yes for the amendments.

United Kingdom, speaking in a general comment, said that the resolution would create a mandate to counter violence and discrimination and that a vote against it was a vote against the spirit of this Council. The United Kingdom noted that cultural and religious reasons were often invoked to justify violence

and discrimination against individuals on the basis of their sexual orientation and gender identity. The resolution did not request States to change their legislation or to recognize same-sex marriages; it was merely upholding the principles of the Universal Declaration of Human Rights, which guaranteed equal rights to all human beings. The United Kingdom urged upon all to vote for this resolution to stop violence and discrimination.

Maldives, speaking in a general comment, said that the draft resolution was divisive and endorsed the proposed amendments which sought to respect international standards and ensure the protection of all persons around the globe.

Qatar, speaking in a general comment, rejected violence and discrimination against everyone and condemned the attempts to involve the Human Rights Council in matters that did not enjoy consensus or were not part of international instruments which Member States had ratified. There were some practices which might be acceptable by some people in some communities, but it did not mean that they were acceptable in all communities and Qatar insisted on the need to recognize religious and cultural diversity among States.

United Arab Emirates, speaking in a general comment, rejected the instrumentalisation of the Council and of human rights to impose concepts that ran counter to international human rights instruments. The United Arab Emirates rejected all forms of violence and discrimination, but rejected this concept as it was contrary to its cultural identity. It called upon Members of the Council to vote in favour of the amendments introduced by the Organization of Islamic Cooperation.

Maldives and Qatar took the floor to request that, should the amendments be rejected, the Council should hold separate votes on some parts of the draft resolution as follows: a vote on the title of the draft resolution, a vote on the preambular paragraph 4, a vote on operational paragraph 2, and a vote on operational paragraphs 3 to 7 altogether.

Action on L.71

Mexico, speaking on behalf of the core group of sponsors in an explanation of the vote before the vote, said they wished to reject the amendment which tried to transform the initiative into something else. Modifying the title was an attempt at changing the resolution. Approving the amendment would amount to erasing racism in a resolution on racism or the word albinism in a resolution on albinism. The sponsors of the amendment were undermining all progress achieved in the field of discrimination, minorities, the rights of women, and many more. It would be a dangerous unintended consequence of the amendment. The Human Rights Council must not ignore human rights violations against persons on the basis of their sexual or gender identity. All delegations were urged to vote no on the amendment.

Slovenia, in an explanation of the vote before the vote, said that people were being discriminated against on the basis of sexual orientation and gender identity. No country was immune to that problem. It was the responsibility of the Human Rights Council to address that specific grave and widespread problem. The Human Rights Council had already showed it could step up to its role by addressing discrimination against people based on their specific traits.

L.71 was rejected by a vote of 17 in favour, 18 against and 9 abstentions.

Action on L.72

Mexico, speaking on behalf of the core group of sponsors in an explanation of the vote before the vote, strongly rejected amendment L.72 as it intended to change the objective and focus of the draft resolution. By removing a reference to the previous resolutions of the Human Rights Council, including 17/19 and 27/31, it would deny what the Council had already acknowledged in those texts: the existence of widespread violence and discrimination against persons on the grounds of their sexual orientation and gender identity. The draft resolution specifically built upon these Council resolutions. Mexico called for a vote and called upon all to vote against L.72.

Switzerland, speaking in an explanation of the vote before the vote, said that Switzerland opposed any type of discrimination but the amendment only had one objective: to delete a reference to previous Council resolutions, including resolutions 17/19 and 27/32. Switzerland could not support the amendment.

L.72 was rejected by a vote of 17 in favour, 18 against and 9 abstentions.

Action on L.73

Mexico, speaking in an explanation of the vote before the vote on behalf of the core group of sponsors, said that amendment L.73 was completely unacceptable because it implied that the resolution as drafted was not objective and was confrontational. It was exactly the opposite. The draft resolution aimed at promoting dialogue and understanding, and had been motivated by the fact that more than 100 States from all regions had, in the context of the Universal Periodic Review, committed to address violence and discrimination on the basis of sexual violation and gender identity. Mexico called on all Member States to vote against this draft amendment.

Germany, speaking in an explanation of the vote before the vote, said that this amendment was not discussed or presented during negotiations. It was vague and unclear, and implied that the co-sponsors were confrontational when they had, on the contrary, opened negotiations to all.

L.73 was adopted by a vote of 24 in favour, 17 against and 4 abstentions. By this vote, after the fourth preambular paragraph, a new paragraph will be inserted reading: Stressing the need to maintain joint ownership of the international human rights agenda and to consider human rights issues in an objective and non-confrontational manner.

Action on L.74

Mexico, speaking in an explanation of the vote before the vote on behalf of the core group of sponsors, said the sponsors were strongly committed to the fight against all forms of intolerance and discrimination. Among the different

forms of intolerance and discrimination was that suffered by those on the basis of their sexual orientation and gender identity. Mexico expressed concern that the purpose of amendment L.74 was to bring confusion into the discussion and deviate from the focus of the initiative. All were called on to vote “no” on the amendment.

Panama, speaking in an explanation of the vote before the vote, said that this amendment was out of place. It was clear that it undermined the scope and force of the resolution before the Human Rights Council. Panama insisted that the Council address all human rights violations or it would be sending a negative message to all people that the Council was not capable of providing all people without distinction with protection from human rights violations.

L.74 was adopted by a vote of 23 in favour, 17 against and 5 abstentions. By this vote, after the fourth preambular paragraph, a new paragraph will be inserted reading: Undertaking to support its broad and balanced agenda, and to strengthen the mechanisms addressing issues of importance, including fighting racism, racial discrimination, xenophobia and related intolerance in all their forms.

Action on L.75

Mexico, speaking on behalf of the core group of sponsors in an explanation of the vote before the vote, strongly rejected the proposed amendment because it misquoted the Vienna Declaration and Programme of Action. The international community must treat all human rights equally, and the core group reminded of the duty of States to promote and protect all human rights and fundamental freedoms. By rejecting L.75 the Council members would promote universality of human rights.

Netherlands, speaking in an explanation of the vote before the vote, said that after long discussions in Vienna during the World Conference, all delegations had united on the formula that was now found in article 5 of the Vienna Declaration and Programme of Action, which recognized the importance of national and regional particularities and various historical, cultural and

religious backgrounds. It was the duty of States, regardless of their political, economic or cultural systems, to promote and protect all human rights and fundamental freedoms. This was the common standard that the States had set and the mere fact that certain practices had a long history could not be the basis for acceptance. Governments must prevent violence and discrimination against all people no matter their sexual orientation or gender identity; there was no claim of special group rights.

L.75 was adopted by a vote of 20 in favour, 18 against and 6 abstentions. By that vote, after the fourth preambular paragraph, a new paragraph will be inserted which should read: Reiterating the importance of respecting regional, cultural and religious value systems as well as particularities in considering human rights issues.

Action on Draft Amendment L.76

Mexico, speaking in an explanation of the vote before the vote on behalf of the core group of sponsors, said that the Vienna Declaration and Programme of Action, in 1993, had recognized States' duty to promote all human rights, regardless of their political, economic and cultural systems. Any attempt to reinterpret this principle had to be strongly rejected. All people had an equal right to live free from violence and discrimination. Failure to uphold the human rights of all people and protect them against discrimination or violence constituted a serious violation of international human rights law.

Slovenia, speaking in an explanation of the vote before the vote, said that each State had the right to a cultural identity. However, human rights and freedoms belonged to all individuals. Human rights and fundamental freedoms could not be subjected to selective recognition or protection. Slovenia called upon all Members of the Human Rights Council to vote against this draft amendment.

L.76 was adopted by a vote of 21 in favour, 17 against and 7 abstentions. By this vote, after the fourth preambular paragraph, a new paragraph will be inserted reading: Underlining the fundamental importance of respecting

relevant domestic debates at the national level on matters associated with historical, cultural, social and religious sensitivities.

Action on L.77

Mexico, speaking in an explanation of the vote before the vote on behalf of the core group of sponsors, said that the amendment misleadingly tried to introduce the false idea that the resolution tried to use economic sanctions and coercive measures to undermine the authority of States to determine and influence their own decision-making processes. The proposed amendment damaged the goal of addressing the violence and discrimination that millions of persons around the world suffered on a daily basis.

Switzerland, speaking in an explanation of the vote before the vote, said that the amendment introduced a false idea about the resolution. The argument of sovereignty was not valid. The heart of resolution L2/Rev.1 was to recall the right to non-discrimination for all individuals. Switzerland would vote against and urged all to do likewise.

United Kingdom, speaking in an explanation of the vote before the vote, said it was the country's opinion that the paragraph contained in the amendment had no place in the text. The resolution was about stopping violence and discrimination. The United Kingdom had a longstanding tradition to reject such coercive measures at the Human Rights Council.

L.77 was adopted by a vote of 23 in favour, 18 against and 4 abstentions. By this vote, after the fourth preambular paragraph, a new paragraph will be inserted reading: Deploing the use of external pressures and coercive measures against States, particularly developing countries, including through the use and threat of use of economic sanctions and/or application of conditionality on official development assistance, with the aim of influencing the relevant domestic debates and decision-making processes at the national level.

Action on L.78

Mexico, speaking in an explanation of the vote before the vote on behalf of the core group of sponsors, said they rejected this amendment, which affirmed that the main sponsors were trying to impose notions or concepts pertaining to social matters. The objective of the draft resolution L.2/Rev.1 was the opposite. Violence and discrimination were not private matters; they were public issues that threatened the society as a whole. Moreover, the amendment was an offense against the victims of violence, discrimination and abuse suffered by thousands of people all over the world because of their sexual orientation or gender equality.

Netherland, speaking in an explanation of the vote before the vote, opposed this draft amendment. The Universal Declaration on Human Rights' spirit was to address violence and discrimination on whatever factor. The list it contained was open-ended. Every time people invented a reason to use violence or to discriminate against persons for a specific factor, the international community had to respond.

United Kingdom, speaking in an explanation of the vote before the vote, said that the universality of human rights was enshrined in the Universal Declaration on Human Rights. The Council had the mandate to address human rights for all people, without distinction of any kind. The issue of sexual orientation or gender identity did not fall outside of this international framework. The United Kingdom urged the Council's Member States to vote against this amendment.

The Council then adopted draft amendment L.78 by a vote of 17 in favour, 18 against, with 9 abstentions. By this vote, after the fourth preambular paragraph, a new paragraph will be inserted reading: Concerned by any attempt to undermine the international human rights system by seeking to impose concepts or notions pertaining to social matters, including private individual conduct, that fall outside the internationally agreed human rights legal framework, and taking into account that such attempts constitute an expression of disregard for the universality of human rights.

Action on L.79

Mexico, speaking on behalf of the core group of sponsors in an explanation of the vote before the vote, said they rejected the amendment and recalled that everyone was entitled to all rights and freedoms recognised in the Universal Declaration of Human Rights, without distinction of any kind. The amendment placed national sovereignty and cultural relativism over the universality of human rights. Human rights were universal and allegations of national sovereignty should not be invoked to perpetrate human rights violations. States could not hide themselves under their sovereignty, national laws, development priorities or religious or ethical values in order not to respect human rights.

Panama, speaking in an explanation of the vote before the vote, rejected the draft amendment that imposed specific values above the norms of human rights using sovereignty as a pretext. All were born equal and free in rights and those with different sexual orientation and gender identity had those same rights. The adoption of the draft amendment would be a denial of the mandate of the Council to protect and promote human rights of all without distinction.

United Kingdom, speaking in an explanation of the vote before the vote, opposed the draft amendment and said that the appropriate balance between cultural and religious values and universal human rights was set in article 5 of the Vienna Declaration and Programme of Action and had been adequately addressed by the draft resolution. The proposed amendment was also incomplete and confusing and the United Kingdom called on members to vote against it.

Netherlands, speaking in an explanation of the vote before the vote, opposed the draft amendment and said that the Vienna Declaration and Programme of Action had already established that the universality of human rights drummed particularities; sovereignty and national legislation must be tested against international obligations.

The Council then adopted draft amendment L.79 by a vote of 22 in favour, 17 against and 5 abstentions. By this vote, after the fourth preambular paragraph, a new paragraph will be inserted reading: Underlining that the present resolution should be implemented while ensuring respect for the sovereign right of each country as well as its national laws, development priorities, the various religious and ethical values and cultural backgrounds of its people, and should also be in full conformity with universally recognized international human rights.

Action on L.80

Mexico, speaking on behalf of the core group of sponsors in an explanation of the vote before the vote, said they rejected the proposed amendment because it sought to transform the draft resolution into a statement of such generality that lost the original focus and purpose. It would make the resolution irrelevant considering that the overall protection was provided under the Universal Declaration of Human Rights. The amendment failed to identify serious and systematic violations affecting people because of their sexual orientation and gender identity. The proposed amendment was contrary to the common condemnation of the recent killings in Orlando.

Switzerland, speaking in an explanation of the vote before the vote, stated that L.80 weakened the original draft resolution, especially the negative consideration of violations committed against individuals because of their sexual orientation and gender identity. The worldwide situation was serious enough to justify the use of the word “strongly” in the beginning of the paragraph. The goal of the draft resolution was to protect human rights, rather than a matter of calling for specific rights. It aimed to highlight that there were victims of specific violations and to avoid making those persons invisible.

United Kingdom, speaking in an explanation of the vote before the vote, opposed the proposed amendment L.80 which sought to transform the draft resolution in a way that would not deplore the violence committed against people of different sexual and gender identity. In view of the Orlando killings,

the Council would send a discouraging message to the world if it adopted the amendment.

The Council then rejected the amendment L.80 with a vote of 16 in favour, 20 against, and 8 abstentions.

Action on L.81

Mexico, speaking on behalf of the core group of sponsors in an explanation of the vote before the vote, said they strongly rejected in the most unequivocal terms the draft amendment which was an attack on the heart of the resolution: it completely rewrote the resolution, deleting six paragraphs, stripping all references to sexual orientation and gender identity, and eliminating the creation of a mechanism of Independent Expert. The amendment would fundamentally alter the nature and goal of the draft resolution. The report of the High Commissioner for Human Rights claimed that current arrangements to protect the human rights of lesbian, gay, bisexual, transgender and intersex persons were inadequate and Mexico stressed that this protection gap urgently needed to be addressed. Preventing systematic attention to issues of sexual orientation and gender identity would not reduce polarization. The core group urged all delegations to vote against the proposed amendment and give hope and dignity to millions.

United Kingdom, speaking in an explanation of the vote before the vote, said that the amendment sought to remove all references to the main issues of the draft resolution: violence and discrimination against individuals because of their sexual orientation and gender identity. By accepting this amendment, States were condoning violence, which could include death. Tragically, there had been reports of gay men being attacked and beaten simply for supporting the victims of the Orlando attack. This should not be a North-South issue, many southern countries had taken leadership on the issue. The amendment sought to remove protection from those who needed it the most. The resolution would facilitate dialogue and would fill the protection gap for some of the most vulnerable individuals.

Switzerland, speaking in an explanation of the vote before the vote, said Switzerland would vote against the proposed amendment which was completely unacceptable because it sought to make completely invisible the people who suffered violence and discrimination on the basis of their sexual orientation and gender identity.

Russian Federation, speaking in an explanation of the vote before the vote, supported draft amendment L.81. Introducing new grounds for discrimination would only cause problems and confrontation within the Council, and would not contribute to joint efforts by the international community to promote and protect human rights. Russia called on all Member States to vote in favour of this draft amendment.

Netherlands, speaking in an explanation of the vote before the vote, completely opposed this amendment, and did not agree that concepts of discrimination or violence on the grounds of sexual orientation or gender identity were introduced by the co-sponsors. These concepts were introduced by the perpetrators of such discrimination or violence, and deserved specific attention from the Council and from an Independent Expert. This issue had to be addressed nationally and internationally.

The Council then rejected draft amendment L.81 by a vote of 17 in favour, 19 against, with 8 abstentions.

Action on the Title of Draft Resolution L.2/Rev.1

Mexico, speaking on behalf of the core group of sponsors in an explanation of the vote before the vote, said that all those supporting the original draft were urged to vote in favour of the current title.

United Kingdom, speaking in an explanation of the vote before the vote, explained that the title focused on violence and discrimination, which were key to the text of the resolution. Everyone was entitled to all the rights and freedoms set out in the Universal Declaration of Human Rights without

distinction of any kind. Violence and discrimination based on sexual orientation had no place at the United Nations.

Nigeria, speaking in an explanation of the vote before the vote, called on all those who voted against the amendments to kindly consider that the title of the draft resolution was very misleading. The whole idea of the draft resolution was to appoint an Independent Expert.

Switzerland, speaking in an explanation of the vote before the vote, shared the confusion of the Mexican delegation regarding the call for the vote on the title of the draft resolution. The title reflected the overall aim of the draft resolution.

The Council then adopted the title of the draft resolution L.2/Rev.1 with a vote of 22 in favour, 15 against, and eight abstentions.

Action on Preambular Paragraph 4

Mexico, speaking on behalf of the core group of sponsors in an explanation of the vote before the vote, urged all Member States to vote in favour of retaining preambular paragraph 4 in the draft resolution.

Switzerland, speaking in an explanation of the vote before the vote, supported retaining this paragraph as well, and urged all delegations to do the same.

United Kingdom, in an explanation of the vote before the vote, said that this paragraph was important to contextualize the mandate of the Independent Expert by referring to previous Council resolutions on this issue.

By a vote of 21 in favour, 14 against, with nine abstentions, the Council decided to retain preambular paragraph 4 in draft resolution L.2/Rev.1.

Action on Operative Paragraph 2

Mexico, speaking on behalf of the core group of sponsors in an explanation of the vote before the vote, repeated that those supporting the original draft resolution should vote in favour of retaining operative paragraph 2.

United Kingdom, speaking in an explanation of the vote before the vote, said that voting against operative paragraph 2 would mean that the Human Rights Council would condone violence against persons because of their sexual orientation and gender identity. It would say to those individuals that such violence was justified and that it mattered less than other forms of violence.

Switzerland, speaking in an explanation of the vote before the vote, said it would vote in favour of operative paragraph 2 because it described a factual situation. It was important to render that category of discrimination visible. It urged all Member States to do the same.

The Council then adopted operative paragraph 2 with a vote of 23 in favour, 14 against, and 8 abstentions.

[Separate Action on Operative Paragraphs 3 to 7](#)

Mexico, speaking on behalf of the core group of sponsors in an explanation of the vote before the vote, said that operative paragraphs 3 to 7 were the heart of the resolution. This vote was an attempt to reintroduce amendments that had already been defeated. It called on all delegations to vote in favour of retaining these paragraphs.

United Kingdom, speaking in an explanation of the vote before the vote, said that these paragraphs were fundamental to the resolution. Voting against them would vote against the spirit of the resolution. These paragraphs did not seek to impose values, and they did not refer to same-sex marriage. Discrimination and violence had to stop, and the United Nations should engage towards that goal. The United Kingdom urged all States to vote in favour of maintaining operative paragraphs 3 to 7.

Russian Federation, speaking in an explanation of the vote before the vote, said that the establishment of this Special Procedure with such a confrontational approach would mean the end of dialogue within the Council. This mandate would have unclear powers, and unclear terms of reference. Its establishment would not lead to additional protection for millions of people, it would just lead to a waste of the resources of the United Nations. The Russian Federation would vote against retaining these paragraphs, and called on all delegations to do the same.

Saudi Arabia, speaking in an explanation of vote before the vote, said that the concepts of sexual orientation or gender identity were not recognized under international law, and were unclear. Adopting these paragraphs would open a Pandora's Box against Governments and individuals over rights that did not enjoy consensus. This would only create further division within the United Nations. This issue should be left for States to decide, not the United Nations.

Switzerland, speaking in an explanation of the vote before the vote, said that in light of what had just been said, an Independent Expert would contribute to clarifying those concepts. It supported retaining these paragraphs.

With a vote of 21 in favour, 17 against, with 7 abstentions, the Council decided to retain operational paragraphs 3 to 7 within draft resolution L.2/Rev.1.

Action on Draft Resolution L.2/Rev.1

Mexico, speaking on behalf of the core group of sponsors in an explanation of the vote before the vote, noted that many proposed amendments would have gone against the purpose of the draft resolution. Fortunately, they had been rejected. The main objective still stood, which was the appointment of an Independent Expert; the main purpose would be fulfilled even if the draft resolution was amended. Mexico urged all Member States to be consistent and to vote in favour of the draft resolution in order to give hope to millions of persons.

Philippines, speaking in an explanation of the vote before the vote, stated that it was its practice to protect human rights and fundamental freedoms for all. It had stood against discrimination based on sexual orientation and gender identity. However, a human rights mandate holder specific to lesbian, gay, bisexual, transgender and intersex rights would run counter to the universality of human rights. Philippines expressed hope that this would not derogate the rights of States and impinge on their sovereignty. The creation of a mandate holder would apply a set of rules specific to a certain sector on which there was no international agreement. Thus, the Philippines would abstain on the draft resolution.

Russian Federation, speaking in an explanation of the vote before the vote, said that authorities in Russia carefully investigated and prosecuted all cases of violence and discrimination. Elements of private life were deeply individual choices, and they did not need a particular system of protection. International law, and national law in Russia, was extended in all areas equally, including women, ethnic or religious minorities or homosexuals. The Russian Federation noted that many thousands of years of development was carried out by those who did not make such a private choice, and the Russian Federation regretted that the co-sponsors of this resolution were trying to prevent others from defending their own views. The Russian Federation would vote against the creation of this mandate, and should it be established nonetheless, it would not cooperate with it.

Saudi Arabia, speaking in an explanation of the vote before the vote, said that this draft resolution went contrary to its sacred values. It sought to impose issues that were prohibited by Saudi Arabia's religion. This had nothing to do with discrimination or violence. The adoption of this mandate holder would lead to discussions on controversial issues that the Council would never be in a position to impose on Saudi Arabia. Saudi Arabia would vote against this text, and would not cooperate with the Independent Expert.

South Africa, speaking in an explanation of the vote before the vote, noted that no person should be subjected to discrimination or violence on any

ground, including on the grounds of sexual orientation and gender identity. South Africa's approach to the protection of lesbian, gay, bisexual, transgender and intersex persons was focusing on maximum unity within the Council. The draft resolution added unnecessary divisiveness, building on the previous African initiative of 2012. It was an arrogant approach. Recklessness and point scoring would not take anyone anywhere. South Africa could not support the resolution as it stood and would thus abstain.

Botswana, speaking in an explanation of the vote before the vote, noted that its Constitution did not condone violence against any person. It had to be noted, however, that at the international level there was no accepted terminology on gender identity and sexual orientation. In that regard, it was important to respect local cultural, religious and historic circumstances and values.

Nigeria, speaking in an explanation of the vote before the vote, observed that the draft resolution had a lot of defects in substance and form. States had the right to make laws for the good governance of their people. That right could not be hijacked by other States to impose offensive practices. The selection of mandate holders had to be transparent. However, the procedure building up to the draft resolution had not been transparent. The Council was not yet ready for an Independent Expert on gender identity and sexual orientation as lesbian, gay, bisexual, transgender and intersex rights did not enjoy the kind of general acceptance necessary for their adoption as universally accepted rights. For those reasons Nigeria would vote against the draft resolution.

Viet Nam, speaking in an explanation of the vote before the vote, welcomed efforts to combat violence and discrimination, and would vote in favour of the draft resolution. Viet Nam stressed that the mandate holder endorsed in the draft should discharge his or her duty strictly in line with the code of conduct. Differences among societies had to be respected. That was the principle under which Viet Nam had voted on the amendments.

Indonesia, speaking in an explanation of the vote before the vote, reaffirmed its commitment to the elimination of violence against all persons as defined in international human rights treaties. The Council should take a constructive and cooperative approach, especially when concerned with issues touching on morality. Members of the Council should refrain from imposing values that did not enjoy international consensus. Indonesia was concerned that the draft resolution was divisive. While welcoming several amendments, Indonesia considered that the basic proposal remained the same, and for that reason was unable to support the draft resolution. Indonesia also wanted it put on the record that Indonesia would not engage with the mandate holder.

Albania, speaking in an explanation of the vote before the vote, commended the leadership of the core group protesting against violence based on sexual orientation and gender identity. Violence against any individual was condemned, and the inherent dignity of all individuals should be upheld. The protection from violence of lesbian, gay, bisexual, transgender and intersex persons was a priority for the Albanian Government. The aim of the draft resolution was to appoint a Special Procedure mandate holder, who could work on protection against violence and discrimination based on sexual orientation and gender identity. The current text of the resolution did not seek to create any new rights, but affirmed the application of existing human rights standards.

France, speaking in an explanation of the vote before the vote, said that it did not subscribe to the amendments brought to the text, which were contrary to the universality of human rights. France would vote in favour of the text, which was useful to enhance the fight against violence or discrimination on the ground of sexual orientation and gender equality.

Morocco, speaking in an explanation of the vote before the vote, regretted that the draft was dividing the Council, when the tenth anniversary of the Council should have been an opportunity to promote consensus. This text ran against the beliefs of more than 1.5 billion people in the world. Islam was a religion of non-violence, and Morocco had made great commitments in that

regard. But today it was forced to call on all States to vote against this text, in order to support those outside the United Nations who expected the Council to protect their culture and values.

Algeria, speaking in an explanation of the vote before the vote, reiterated its opposition to all types of violence or discrimination. However, it believed that it was not useful to impose values upon others. Sexual orientation was a private matter, and Algeria rejected appointing a mandate holder on this issue.

Ghana, speaking in an explanation of the vote before the vote, reminded that in 2013 the African Commission on Human Rights had adopted a resolution on the protection against violence and other human rights violations on the basis of gender identity. It was adopted against the background of alarming human rights violations against individuals because of their sexual orientation and gender identity. The current discussion was taking place against the background of the Orlando killings. The laws of Ghana would not permit any individual to be persecuted because of their sexual orientation. However, the matter was culturally very sensitive in Ghana. Ghana supported those who were naturally inclined to have a different sexual orientation, but it did not accept the propagation or commercialization of it. It would therefore abstain.

Namibia, speaking in an explanation of the vote before the vote, opposed any violence against individuals based on sexual orientation and gender identity. All persons in Namibia were equal under law. Lesbian, gay, bisexual, transgender and intersex persons were able to participate in government services. However, there was no internationally agreed definition of sexual orientation and gender identity, which left a lacuna in law. Namibia was concerned about the mandate of the Independent Expert and thus it would abstain.

United Kingdom, speaking in an explanation of the vote before the vote, said that although the resolution had been amended, its fundamental aim had been retained. The draft resolution did not ask countries to change their legislation. It urged States to vote in favour of the draft resolution in order to

protect some of the most vulnerable persons in society. It would give hope to many people around the world. A vote in favour would be a vote of solidarity for the countless victims of discrimination around the world.

Netherlands, speaking in an explanation of the vote before the vote, expressed gratitude to the sponsors for their thoughtful concept note. The Netherlands did not believe that the international community had to wait for absolute unity. It was important not to fail persons who belonged to minorities. The Netherlands had not supported the inclusion of a number of preambular paragraphs. If one looked at the package, universality still prevailed, and that remained the Netherlands' perspective.

The Council then adopted resolution L.2/Rev.1 by a vote of 23 in favour, 18 against and six abstentions.

ANNEX III: DESCRIPTION OF THE VOTE ON THE FAMILY RESOLUTION

In a resolution (A/HRC/C/L.35) on the **protection of the family: the role of the family in supporting the protection and promotion of human rights of persons with disabilities**, adopted by a vote of 32 in favour, 12 against, with 3 abstentions, the Council reaffirms that the family is the natural and fundamental group unit of society, and is entitled to protection by society and the State; calls upon States to recognize in their policy and legal frameworks the important role played by families in caring for and supporting persons with disabilities; urges States, in accordance with their respective obligations under international human rights law, to provide the family, as the natural and fundamental group unit of society, with effective protection, support and assistance; and decides to convene, with the support of the High Commissioner, before the thirty-fourth session of the Human Rights Council, a one-day intersessional seminar on the impact of the implementation by States of their obligations under relevant provisions of international human rights law with regard to the protection of the family on the role of the family in supporting the protection and promotion of the rights of persons with disabilities, and to discuss challenges and best practices in this regard.

The result of the vote was as follows:

In favour (32): Algeria, Bangladesh, Bolivia, Botswana, Burundi, China, Congo, Côte d'Ivoire, Cuba, Ecuador, El Salvador, Ethiopia, Ghana, India, Indonesia, Kenya, Kyrgyzstan, Maldives, Mongolia, Morocco, Namibia, Nigeria, Paraguay, Philippines, Qatar, Russian Federation, Saudi Arabia, South Africa, Togo, United Arab Emirates, Venezuela, and Viet Nam.

Against (12): Albania, Belgium, France, Germany, Latvia, Netherlands, Panama, Portugal, Republic of Korea, Slovenia, Switzerland, and United Kingdom of Great Britain and Northern Ireland.

Abstentions (3): Georgia, Mexico, and The former Yugoslav Republic of Macedonia.

Egypt, introducing the draft resolution on behalf of a cross-regional core group, said that the family was an undisputable social, cultural, moral, and religious value that should be celebrated and nurtured. The draft resolution addressed the role and the potential of the family in supporting the rights of persons with disabilities as well as many other aspects of the same topic. Key foundations of the draft resolution from previous years were enumerated; they included the status of the family under international law and its role, including in fostering social cohesion and preserving societies' values, morals, cultural heritage and value system. The draft also reaffirmed equality between women and men in the family. It continued to impose no one-size-fits-all definition of the family and left that matter to the discretion of each State and society. The main sponsors had avoided ambiguous language on diverse forms of family. It was hoped that the Council would adopt the draft resolution as tabled without any changes.

Belarus, also in introduction of draft resolution L.35 on behalf of the co-sponsors, said it was important to pay attention to the family. The family was the center of life, and played an important role in sustainable development. In adoption of the draft resolution, the Human Rights Council would be strengthening the role of the family. The co-sponsors were convinced that the family could unite all, regardless of the definition it was given in national legislation. The diversity of the group of co-sponsors was proof of that fact.

Qatar, also introducing draft resolution L.35 on behalf of the co-sponsors, said today marked the tenth anniversary of the Convention on the Rights of Persons with Disabilities, which emphasised the role of the family as a caregiver for persons with disabilities. The draft resolution called on States to recognize and further enhance the role of the family. Unfortunately due to a stance on behalf of some States, consensus could not be reached.

Action on amendments L.82, L.83, L.84, L.89

United Kingdom, introducing the amendments, said it was compelled to introduce amendment L.82 which would state that various forms of family

existed. That amendment did not specify various forms of family and it did not seek to define family. It used United Nations agreed language. It was a shame that States tried to backtrack on the previously agreed terminology. The United Kingdom called on Council Member States to vote for amendment L.82. As for amendment L.83, it proposed a change in the reference to “families”. Individuals in families were those who had to take action. The amendment also suggested deletion of the reference to the 2030 Agenda for Development because there was no reference to family in the Agenda. The Council should not be used to renegotiate the 2030 Agenda. Amendment L.84 reflected the fact that family was not recognized as a rights holder in international law. It was individuals who were rights holders. The United Kingdom called on Council Members to support those amendments in separate votes.

Switzerland, also introducing the amendments, explained that the amendment proposed the change of “family” to “families”, Switzerland was a strong supporter of families and their contribution to the strengthening of societies. In different political and cultural systems, different forms of families existed, which the draft resolution did not recognize. If true progress was to be made, that had to be taken into account. Likewise, the draft resolution aimed to protect the family as such, but not to protect human rights of family members in different family contexts without discrimination. Switzerland thus called for Council Members to vote for amendment L.89.

Russia, speaking in a general comment on behalf of the main co-sponsors, said amendment L.82 had no relevance and compromised the delicate balance on which the draft resolution had been built. The draft resolution neither prescribed a definition for a family, nor imposed single or multiple forms of the family. It already recognized the diversity of families, including single mothers, child-headed families, and families with members with disabilities. This amendment had been proposed both in 2014 and 2015, and the Human Rights Council had not even wanted to consider it. Though the amendment looked innocent, its main problem was that it included an open ended invitation for incestuous arrangements, child marriages and other

arrangements where human rights could not flourish. The Human Rights Council could not be used as a cover for violations of human rights. The co-sponsors strongly rejected amendment L.82 and called on all Member States of the Human Rights Council to vote against this hostile amendment.

Qatar, speaking in a general comment on behalf of the main co-sponsors, said amendment L.83 denied that the family had a huge role to play as a development actor, and that it was a driving force for educational development. The family would continue to have a positive role in sustainable development. The main co-sponsors rejected amendment L.83 and called on Council Members to vote against it.

Saudi Arabia, speaking in a general comment on behalf of the main co-sponsors, said that amendment L.84 could not be accepted. The family had a great role, including in moral, emotional, material and spiritual support. The family continued to have a role in the promotion and protection of human rights. The amendment failed to capture this role, through family contributions, community support and inter-familiar arrangements. Although the second part of the amendment looked harmless, it totally changed the topic and scope of the draft resolution. The sponsors therefore rejected amendment L.84 and called on all Member States to vote against it.

Morocco, also speaking on behalf of the co-sponsors in a general comment, said that the family was a vital institution for individuals and the closest environment in which human beings grew up, including those with disability. Several international instruments encouraged States to support the members of the family, and the proposal to change the title of the resolution would restrict the protection provided to persons with disabilities. The purpose of the draft resolution was to strengthen the protection and promotion of human rights by strengthening the role of the family. Morocco called upon the Council members to vote against the proposed amendments.

Nigeria, speaking in a general comment, was dedicated to the protection of marriage and family and that was why Nigeria was supporting the draft

resolution, particularly because the draft resolution reminded Member States of their duty to protect the family as a fundamental unit of society. However, Nigeria was deeply worried by the opposition launched by draft amendments. The family was the first protector of children's rights and Nigeria strongly rejected the draft amendment and encouraged other States to vote against it.

United Arab Emirates, speaking in a general comment, said that children had to grow in a balanced family atmosphere. The family was a basic natural unit of society and any attempt to change this arrangement was going against nature. Cultural background and cultural and religious specificities must be taken into account when various issues were being tackled in the Council. The Council was a forum for a positive dialogue between different cultures and religions. The United Arab Emirates would reject all amendments.

Saudi Arabia, speaking in a general comment, said that the protection of the family unit was essential for protecting cultural and religious beliefs, as well as morality. The term "family" was recognized in international law, and Saudi Arabia did not understand the added value of amendments put forward. On the contrary, they compromised the protection of the family and its members. All delegations should vote against these amendments.

Algeria, speaking in a general comment, said that this draft resolution was inspired by major human rights texts, which recognized the centrality of the family unit within societies. Algeria supported the resolution, and would vote in favour of it. It would vote against the proposed draft amendments.

Bangladesh, speaking in a general comment, said that both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights clearly recognized the importance of the family and its members. The Convention on the Rights of the Child, as well as the Universal Declaration on Human Rights also recognized this importance. Opposition to this resolution was therefore incomprehensible. The family, as a natural unit of society, had an important role to play to contribute to

development. The text also sought to better protect members of family with disabilities.

Namibia, speaking in a general comment, said the family as a fundamental group in society was entitled to protection. It was essential to give the family a role to ensure the promotion and protection of rights of persons with disabilities. Numerous documents and organizations had recognised that families had a role in this respect. The Convention on the Rights of Persons with Disabilities underlined that family members should receive assistance to enable the realisation of full rights for persons with disabilities. Families included all types of families, including single-headed families. The resolution did not endeavour to define families. Therefore Namibia requested States to support this draft resolution.

Maldives, speaking in a general comment, said the family had an important role, and the future generations should be fully protected. The draft resolution emphasized the important role played by the family. More attention needed to be paid to the promotion and protection of persons with disabilities, especially within the family. This was reflected in the draft resolution which recognised the role of families in this respect. Therefore the Maldives would vote against the amendments and for the draft resolution.

Slovenia, speaking in a general comment, recognized the value of families that contributed to the strengthening of societies. However, family policies should support all families, no matter their shape or size. Individuals, including those without a family, must enjoy equal protection by the State. Families had to protect the rights of the child, including the vulnerable, elderly and persons with disabilities. They had to promote gender equality. The draft resolution did not emphasise the rights of individuals within families, and did not encompass all families. Therefore Slovenia would vote against the draft resolution, and in favour of the amendments.

Kenya, speaking in a general comment, recognized the importance of the family as a natural environment for growth and nurturing of all its members,

particularly the vulnerable such as children and persons with disabilities. The Kenyan Constitution was acclaimed as one of the most progressive, domesticated binding international treaties and defined family as the basic unit of society and recognized the right of every adult person to marry a person of the opposite sex. Any attempt to alter such understanding of the family was not acceptable, and Kenya called on the Council's members to support the draft resolution without amendments.

Indonesia, speaking in a general comment, said that the draft resolution recognized the challenges facing the family and aimed to protect members with disabilities from any violations, including within the family. The family was clearly defined in Indonesia as a fundamental unit in society that had a crucial role to contribute to development. Indonesia hoped that the draft resolution could be adopted by consensus without any changes.

Qatar, speaking in a general comment, said that the protection of the family was automatically the protection of all individuals in societies. The family had a particular role to play in the protection of its members who needed special protection, such as children or the elderly. The draft resolution placed a particular emphasis on the right of children with disabilities and their equal right to family life and proposed strengthening the role of the family and so achieving the international goals contained in the 2030 Agenda for Sustainable Development.

Côte d'Ivoire, speaking in a general comment, called upon States parties to support this draft resolution, which was based on key provisions of the Convention on the Rights of Persons with Disabilities. States had to provide the family with effective means to address the needs of persons with disabilities therein. Côte d'Ivoire was convinced of the relevance of this issue within the Council. Member States should vote against the proposed amendments.

Belgium, speaking in a general comment, said that rights holders were individuals, and as such members of the family. It was important to note that

families existed in various forms. Belgium was attached to the protection of persons with disabilities, and to protect women and children within the family. Culture or religion should not be used in any way to justify violence against members of the family.

Action on Draft Amendment L.82

Russian Federation, in an explanation of the vote before the vote on behalf of the sponsors, urged all delegations to vote against this draft amendment.

The Council then rejected draft amendment L.82 by a vote of 16 in favour, 25 against, with 4 abstentions.

Action on Draft Amendment L.83

Russia, speaking in an explanation of the vote before the vote on behalf of the sponsors, called upon all members of the Human Rights Council who supported draft resolution L.35 to vote against amendment L.83.

The Council then rejected draft amendment L.83 by a vote of 13 in favour, 27 against and 5 abstentions.

Action on Draft Amendment L.84

Russia, speaking in an explanation of the vote before the vote on behalf of the sponsors of the draft resolution on the protection of the family, urged all members of the Human Rights Council to vote against amendment L.84.

The Council then rejected draft amendment L.84 by a vote of 14 in favour, 27 against and 4 abstentions.

Action on Draft Amendment L.89

Russia, speaking in an explanation of the vote before the vote on behalf of the sponsors, urged all members of the Human Rights Council to vote against amendment L.89.

The Council then rejected draft amendment L.89 by a vote of 14 in favour, 27 against and 4 abstentions.

Action on Draft Resolution L.35

United Kingdom, speaking in an explanation of the vote before the vote, said that its requests had been simple and clear, and listed some requests made. They had also asked to delete an incorrect reference to the 2030 Agenda. The family as a unit was not a rights-holder under international law; rights were held by individuals. The United Kingdom was therefore calling for a vote and would urge Council members to vote against this resolution.

Mexico, speaking in an explanation of the vote before the vote, reaffirmed its commitment to development and to the organization of the family. Mexico also recognized the rights of each Member State of the Council to present draft resolutions. Initiatives with restrictive issues negatively affected the impression of the quality of work undertaken by the Human Rights Council. For Mexico, it was important that the Human Rights Council protected different types of families and their members. In Mexico there were numerous types of family structures, including single parent households, civil law and same-sex marriages. Mexico was concerned that the resolution treated persons with disabilities in a partial manner, not recognizing their autonomy as recognized in the Convention on the Rights of Persons with Disabilities. L.35 did draw from that Convention, but quoted that instrument only partially. Mexico was concerned about the precedent that could be set. Mexico lamented that constructive amendments had been rejected.

Panama, speaking in an explanation of the vote before the vote, expressed concern about the fact that the text had a restrictive focus and did not adequately address the rights and equality of women and children. Members of the family were individual rights-holders, said Panama, adding that the language on different forms of families had already been agreed by this Council. Panama would vote against this draft resolution.

The Council adopted draft resolution L.35 by a vote of 32 in favour, 12 against and 3 abstentions.

ANNEXURE IV: DESCRIPTION OF THE VOTE ON CIVIL SOCIETY SPACE RESOLUTION

Action on Resolution on Civil Society Space

In a resolution (A/HRC/C/L.29) on **civil society space**, adopted with a vote of 31 in favour, 7 against, with 9 abstentions, the Council urges States to create and maintain, in law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity; also urges States to ensure access to justice, and accountability, and to end impunity for human rights violations and abuses against civil society actors; and calls upon States to ensure that domestic provisions on funding to civil society actors are in compliance with their international human rights obligations and commitments. The Council invites States to seek technical assistance and advice in this regard; and requests the High Commissioner to prepare a report compiling information on the procedures and practices in respect of civil society involvement with regional and international organizations, and to submit the compilation to the Human Rights Council at its thirty-eighth session.

The result of the vote was as follows:

In favour (31): Albania, Algeria, Bangladesh, Belgium, Botswana, Côte d'Ivoire, Ecuador, El Salvador, France, Georgia, Germany, Ghana, India, Indonesia, Latvia, Maldives, Mexico, Mongolia, Morocco, Namibia, Netherlands, Panama, Paraguay, Philippines, Portugal, Republic of Korea, Slovenia, Switzerland, The former Yugoslav Republic of Macedonia, Togo, and United Kingdom of Great Britain and Northern Ireland.

Against (7): China, Congo, Cuba, Nigeria, Russian Federation, South Africa, and Venezuela.

Abstentions (9): Bolivia, Burundi, Ethiopia, Kenya, Kyrgyzstan, Qatar, Saudi Arabia, United Arab Emirates, and Viet Nam.

Ireland, introducing draft resolution L.29 on civil society space, said ensuring that the space in which civil society operated was safe was a priority. The draft resolution was about enabling civil society with the freedoms and rights that allowed them to carry out their work, including social assembly, association and expression. The work of civil society was to promote human rights, development, peace and security. This was work that underscored the purposes of the United Nations. The draft resolution was practical, capturing some challenges that civil society faced, as well as their contributions. Ireland thanked all States for their participation in the negotiations, and said that 30 revisions had been done to respond to all the differences. It regretted that 15 amendments had been proposed despite the revisions. Ireland hoped that these oral revisions would convince all those Member States who had proposed amendments to withdraw them.

Sierra Leone, also introducing draft resolution L.29 on civil society space, said civil society played a key role in the promotion and protection of human rights. The core group had a representation which reflected the broad scope of this issue. To ensure that all voices were heard and no one was left behind, the process had been an inclusive one. Over 34 revisions had been accepted since the negotiations. One of the primary objectives was to ensure not only the momentum of the past resolution, but to achieve a consensus text that would further ensure the promotion and protection of civil society actors. Sierra Leone hoped that the draft resolution would be supported by Member States.

Russian Federation, introducing amendments L.51 through L.65, said that it was presenting a set of amendments on behalf of a number of countries. The amendments were a necessary step. The countries on whose behalf the Russian Federation was speaking today attached importance to the issue under discussion. Regret was expressed that the main sponsors had only looked at civil and political rights. The inclusion of economic and cultural rights had been suggested many times but that suggestion had not been heeded. The amendments contained in L.51, L.57 and L.58 were withdrawn. Amendment L.63 had been proposed, which removed the direct quotes and

references to that report. Other amendments and their contents were detailed. Regret was expressed that the main sponsors of the initiative were not prepared to find mutually acceptable solutions. Many of the issues and concerns could have been resolved through additional meetings. There had been defamatory media messages and messages on social media; the latter had included non-governmental organizations' participation. That behaviour was an attempt to prevent countries from expressing concerns, and was a violation of the conduct of negotiations. Russian Federation asked for the consideration of the amendments separately.

Switzerland, speaking in a general comment on behalf of the co-sponsors, regretted that so many amendments had been made in spite of the multiple revisions that had aimed at satisfying the differences. Therefore, the co-sponsors would vote against all the amendments.

The President of the Human Rights Council announced that amendments L. 51 L.57 L.58 had been withdrawn.

United Kingdom, speaking in a general comment, said it strongly supported draft resolution L.29. Civil society organizations provided life-saving and life-changing services, in health, development and many more fields Civil society actors dedicated their lives to help others, often at personal risk. It regretted that such a large number of amendments had been tabled, many of them related to points already raised during the negotiations. The United Kingdom would vote against all amendments and called on all those who valued civil society to do the same.

Paraguay, speaking in a general comment, said it opposed amendments L.53 and L.64. The term human rights defenders was clear and understood, and it had been accepted in hundreds of resolutions, many of which had been adopted by consensus. In relation to L.53, the operations of civil society needed protection. The mention of Nobel Peace Prize actors did not set special rights for anyone. Paraguay also specified its rejection of amendment

L.64. Paraguay called upon Member States to vote against these amendments.

Belgium, speaking in a general comment, said that human rights defenders played a key role in societies. Concern was expressed because space given to civil society was shrinking in many places. Belgium supported the resolution and called on all members to support the text as it was, without weakening its content, and to reject the amendments which were not accepted by all.

Portugal, speaking in a general comment, said civil society was crucial to all societies. The draft resolution recognized that important role for civil society. It provided practical options on how to maintain a safe and enabling environment for civil society.

Republic of Korea, speaking in a general comment, said it was a matter of priority to ensure a safe environment for civil society. Appreciation was expressed for the main sponsors' efforts to strengthen the text. The text before the Council addressed a wide range of issues regarding the participation of civil society. A crucial part of the text was found in operative paragraph 13 on civil society in the Universal Periodic Review process. The Republic of Korea lent its support to the resolution as it stood and its opposition to all amendments.

Action on Draft Amendment L.52

Albania, speaking in an explanation of the vote before the vote on behalf of co-sponsors, rejected amendment L.52 and said that civil society facilitated the achievement of principles and purposes of the United Nations.

Mexico, speaking in an explanation of the vote before the vote, said that the draft resolution recognized the important role of civil society on local, national, regional and international levels. Mexico would vote against this amendment.

The Council rejected draft amendment L.52 by a vote of 12 in favour, 22 against and 12 abstentions.

Action on Draft Amendment L.53

Panama, speaking in an explanation of the vote before the vote, said that the concept of human rights defenders was well established in the Human Rights Council, the General Assembly and in the regional human rights mechanisms. Panama rejected amendment L.53.

United Kingdom, speaking in an explanation of the vote before the vote, welcomed the award of the Nobel peace prize to civil society, which was a reflection of the profoundly crucial role that civil society could play. Such was an example of the Tunisian Quartet. The United Kingdom firmly opposed the amendment which sought to delete the terms human rights defenders, which had been recognized by the Human Rights Council since its inception, and had been mentioned in many of its resolutions. There was no rational reason for its deletion; it was an attempt to remove legitimacy of those figures engaged on the frontline of the promotion of human rights.

The Council rejected draft amendment L.53 by a vote of 12 in favour, 23 against and 12 abstentions.

Actions on Draft Amendment L.54

Slovenia, speaking in an explanation of the vote before the vote, said it strongly opposed amendment L.54. Civil society presented a moral compass and was a mirror of success and failure. It was the Human Rights Council's duty to protect these rights. For these reasons, Slovenia would vote against the amendment, and called upon other Member States to do the same.

Latvia, speaking in an explanation of the vote before the vote, said the reprisals against those engaged in human rights and the retaliation against them was a harsh reality. Acts against civil society actions as well the

increase in curbing their rights was a reality. For this reason, Latvia would vote no on amendment L.54 and requested all to do the same.

Netherlands, speaking in an explanation of the vote before the vote, opposed the amendment. Civil society helped to make the case for stronger protection of human rights and as such was an indispensable partner of the Human Rights Council. It was important that the resolution on civil society space addressed their safety. Not doing so would send the wrong signal. It would say that this Council does not value their space and safety. Therefore, the Netherlands would vote against this amendment and called upon all others to do likewise.

Amendment L.54 was rejected by a vote of 13 in favour, 23 against, with 11 abstentions.

Action on Draft Amendment L.55

Netherlands, speaking in an explanation of the vote before the vote, opposed amendment L.55 as it would undermine the draft resolution as a whole and reminded all that the language used in the draft resolution was a result of the consensus. Who would decide what constituted a “responsible civil society” that the amendment sought to introduce, and on what basis, asked the Netherlands. It noted that this qualifier would undermine the activity and safety of civil society activists, and would restrict rather than facilitate the work of civil society. The Netherlands would vote against the amendment.

United Kingdom, speaking in an explanation of the vote before the vote, said that the new wording would introduce qualifiers in relation to civil society which were worrisome and would ensure the protection of civil society only of it acted in an “open, transparent and responsible manner”. The term “responsible” was highly open and it would be up to each State to define its meaning, and this would open the space for abuse, especially for civil society which raised issues that State authorities found hard to hear. The United Kingdom would vote no and called on all other Council members to do the same.

The Council rejected draft amendment L.55 by a vote of 17 in favour, 21 against, with 9 abstentions.

Action on Draft Amendment L.56

Germany, speaking in an explanation of the vote before the vote on behalf of co-sponsors, opposed this draft amendment and said that this paragraph was the heart of the resolution as it described the challenging environments in which civil society actors operated. Germany would vote no on amendment L.56 and called on all other Council members to do the same.

Switzerland, speaking in an explanation of the vote before the vote, said that the draft amendment would change the aim of the resolution and would dramatically change the scope of preambular paragraph 12, which referred to instances where domestic legislation had a negative impact on civil society, instances where domestic legislation was not in line with international legislation, or if it was, it was used for different purposes. Switzerland would vote against this draft amendment.

The Council rejected draft amendment L.56 with a vote of 16 in favour, 22 against and nine abstentions.

Action on Draft Amendment L.59

The former Yugoslav Republic of Macedonia, speaking in an explanation of the vote before the vote, said it gave utmost importance to civil society space. Regarding L.59, the core group and co-sponsors opposed this amendment. The language used in the draft resolution was agreed upon language. It was a broad term which was aimed at integrating all groups, empowering those most at risk. For these reasons, the former Yugoslav Republic of Macedonia would vote no on this amendment, and called upon others to vote against it.

Belgium, speaking in an explanation of the vote before the vote, called on all to vote against L.59. The deletion of the views would be very unhealthy. Indeed an important part of civil society was that it brought a significant

perspective to bear on society as a whole. The right to freedom of expression was not and could not be limited to views of government. This was unacceptable. Belgium would vote no on this amendment and called on all members to do likewise.

Amendment L.59 was rejected with 9 votes in favour, 22 against, and 15 abstentions.

Action on draft amendment L.60

Mexico, speaking in an explanation of the vote before the vote on amendment L.60, expressed surprise at the amendment which attempted to modify agreed language. The proponents of the amendment had agreed on that very language. It was incomprehensible why that discussion should be re-opened. All were called on to vote no.

Lithuania, speaking in an explanation of the vote before the vote, said it would vote against the amendment and invited all Council members to do the same.

The Council then rejected amendment L.60 with a vote of 13 in favour, 22 against, with 12 abstentions.

Action on draft amendment L.61

Latvia, speaking in an explanation of the vote before the vote, said amendment L.61 was a re-write that did not just reorder operative paragraph 8, but was also in other ways neither appropriate nor acceptable. Other measures of the amendment were unnecessary and confusing.

Germany, speaking in an explanation of the vote before the vote, said as a co-sponsor of the resolution, the amendment would remove a key concept from the resolution, adding that Germany would vote no, and invited all Council members to do likewise.

The Council then rejected the amendment by a vote of 15 in favour, 22 against, with 10 abstentions.

Action on draft amendment L.62

Republic of Korea, speaking in an explanation of the vote before the vote, said it did not support amendment L.62, as it would weaken civil society space. Operative paragraph 13 was fully in line with the Universal Periodic Review. More importantly, its purpose was to encourage the involvement of civil society in the Universal Periodic Review process. Therefore, the Republic of Korea would vote no on this amendment and called on all States to do the same.

Belgium, speaking in an explanation of the vote before the vote, opposed the amendment and called on all others to do the same. Consulting civil society when preparing the report and involving them during the recommendations were key for the Universal Periodic Review. Belgium would vote no on this amendment and called upon others to do likewise.

Amendment L.62 was rejected, with a vote of 15 in favour, 22 against, and 10 abstentions.

Action on draft amendment L.63

France, speaking in an explanation of the vote before the vote on amendment L.63, said that France opposed it because it aimed at withdrawing a key paragraph from the resolution. Freedom of expression for civil society was sine qua non for smooth expression of civil and political rights. For that reason France called for a vote on the amendment and would vote no.

Slovenia, speaking in an explanation of the vote before the vote, said that Slovenia rejected the amendment which was aimed at the heart of the resolution. The paragraph did not impose anything on States, but encouraged them to identify good practices. Slovenia would vote no.

The Council then rejected the amendment by a vote of 13 in favour, to 22 against, with 12 abstentions.

Action on draft amendment L.64

Albania, speaking in an explanation of the vote before the vote on amendment L.64, said that the core group opposed the amendment. The rationale of the amendment was difficult to understand. The paragraph was expressed as an invitation on a voluntary basis. A vote was called on the amendment, and Albania would vote against it.

The Council then rejected the amendment by a vote of 11 in favour, to 23 against, with 13 abstentions.

Action on draft amendment L.65

Germany, speaking in an explanation of the vote before the vote on amendment L.65, said that the amendment could not be accepted. Germany would vote no and called on all members of the Council to do likewise.

Georgia, speaking in an explanation of the vote before the vote on amendment L.65, said the rationale for the draft resolution's request for the participation of civil society was a constructive one, which would be useful to all relevant actors.

The Council then rejected the amendment by a vote of 9 in favour, to 22 against, with 15 abstentions.

Action on Draft Resolution L.29 on Civil Society Space as a Whole as Orally Revised

South Africa, speaking in an explanation of the vote before the vote, said the delegation of South Africa would never challenge the role of civil society. The role of civil society in post-apartheid South Africa was established in the Constitution, in a context which was clear, and with separation of powers. South Africa pointed out that it would vote against the draft resolution because it made a claim that there was a clampdown on civil society in South Africa, which was not the case. In addition, it made a claim that the registration of civil society organizations was contrary to international law. Three, it did not address limits to freedom of expression. Four, it created new obligations.

South Africa could not support the draft resolution because it placed obligations on States that allowed transfer of funding, provided tax incentives for donors, and allowed unregistered organizations to operate. It also exonerated private entities. It deliberately omitted the Economic and Social Council resolution governing the participation of civil society in the United Nations system. Therefore South Africa could not support the resolution.

India, speaking in an explanation of the vote before the vote, said despite differences of opinions, the sponsors of the resolution had come to adopt a highly one-sided approach, as well as over generalisation and unsubstantiated assertions. India could not agree with a proposal that limited any restriction on funding. The world had to acknowledge that funding of civil society could be misused. This misuse adversely impacted the credibility of the entire civil society. Both the report and the draft resolution ignored the fact that civil society was often made up of diverse groups. The report only listed those rights which some States chose in a selective manner. Civil society must function within the laws. Advocacy should be tempered by the need of transparency and sobriety. While India supported the gist of the overall resolution, it regretted that its principal concerns had been unacknowledged. Therefore India disassociated itself from preambular paragraph 13, and operative paragraphs 8, 14 and 16 of the draft resolution.

Saudi Arabia, speaking in an explanation of the vote before the vote on behalf of Bahrain, Oman, Saudi Arabia, Kuwait, and United Arab Emirates, said they supported civil society organizations. The support that these countries provided allowed civil society organizations to act within a framework of social responsibility and was based on financing and transparency of the organizations. The draft resolution proposed operational conditions which would open the door endlessly. The group of countries insisted on using criteria that prevented creative acts and freedom of speech from being taken to the detriment of other human rights, including ethnic or racial discrimination. Rights and freedoms were guaranteed by law in this group of countries. Freedom must not give rise to public disorder nor undermine the freedom of others. Saudi Arabia noted that preambular paragraphs 6, 8, 9, 11

and 14, as well as operative paragraphs 1,4,7, 8, 13, and 14 were all of concern.

China, speaking in an explanation of the vote before the vote, regretted that most of the amendments had not been adopted. It believed that the orally adopted draft resolution had many defects. First, it failed to deal with the concept of civil society. One should respect countries and their national domestic laws in guiding the healthy development of civil society. Second, it distorted the concept of democracy and traditional consensus. It put labels on normal practices. Third, it weakened economic and social rights and the right to development. Fourth, it failed to balance the rights and obligations of civil society organizations. It stressed their freedoms while avoiding mentioning that these should operate in a constructive manner in accordance with the law. Finally, it used non-validated information as a tool to force upon countries obligations and so-called standards on communication technology applications and so forth. These jeopardized relevant and credible civil society initiatives and did not promote consensus. In view of the above, China would vote against L.29.

Viet Nam, speaking in an explanation of the vote before the vote on L.29, said it was clear that there were still different views on the subject that L.29 was dealing with. Constructive contributions had been rejected, and some concerns raised by other speakers had to be addressed.

Russian Federation, speaking in an explanation of the vote before the vote on L.29, said that Russia was committed to the promotion and protection of human rights and freedoms. A mature civil society was something Russia was giving attention to, developing dialogue with civil society through coordinating and advisory structures. The Russian Federation welcomed the attention of the Council to legitimate activities of civil society. It regretted that the co-sponsors of L.29 had not wished for an open, constructive dialogue and refused to take in amendments. The State should provide support and provide a favourable environment to various structures in civil society. In various countries there had been considerable progress. The Russian Federation

wished to draw attention to the fact that of the amendments it had proposed, not one was rejected by a majority of the Council. That showed that the co-sponsors were in the minority and were trying to impose their views. The Russian Federation, together with China requested a vote on the text of L.29 and would vote against the draft, calling on other members of the Council to do the same.

Cuba, speaking in an explanation of the vote before the vote on L.29, said the draft resolution before the Council did not promote a cooperative focus. Cuba did not favour attempts to impose solutions on States. For the aforementioned reasons, Cuba could not support the draft resolution.

United Kingdom, speaking in an explanation of the vote before the vote, said that the Council should not shy away from addressing the challenges that civil society faced. Non-governmental organizations (NGOs) were central to the Council's work. The United Kingdom shared concerns about the way the NGO Committee of the United Nations Economic and Social Council had been misused to defer the accreditation of human rights organizations, in order to prevent them from participating in the activities of the Council. There were also very serious allegations that human rights defenders had received death threats on social media from a delegate at the end of the previous session of the Council. At this session, travel bans had been imposed on activists to prevent them from coming to Geneva. The United Kingdom called on all Member States to vote in favour of the draft resolution.

The Council then adopted draft resolution L.29, as orally revised, by a vote of 31 in favour, 7 against, with 9 abstentions.