



An Analysis Report on the 29th Session of the Human Rights Council:

***Denying the rights of persons based on sexual
orientation, gender identity and intersex status
challenges the universality of human rights***

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For further information on HRC29:

Arvind Narrain | Geneva Director | arvind@arc-international.net

Kim Vance | Executive Director | kim@arc-international.net

<http://arc-international.net/global-advocacy/human-rights-council/hrc29>

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/29RegularSession.aspx>

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List of interventions relevant to LGBTI Rights at the 29th Human Rights Council

(available as video documentation at

<https://www.youtube.com/playlist?list=PLZOJk6RLY4fLvp9nUAoALeYchDO02Ihi6>)

1. Joint statement under item 8 by over 400 NGO's from around the world
2. Statement on panel on right to education for every girl
3. Voices of LGBTI defenders: Panel Discussion
4. Statement on Report of Special Rapporteur on violence against women
5. Statement on human rights situations that require the council's attention
6. Statement on Report of Special Rapporteur on extreme poverty as violation of human rights
7. Statement in debate on Report of Working Group on Discrimination Against Women
8. Statement on intersex and FGM issues under Item 2 and 3
9. Statement on the OHCHR Report on violence and discrimination on grounds of sexual orientation and gender identity
10. Statements on the Universal Periodic Review of Turkey, Kuwait, Sweden, Lesotho, Kenya and Kyrgyzstan
11. Statement in the annual full day discussion on women's rights
12. Statement on Report of Special Rapporteur on freedom of opinion and expression
13. Statement on Report of Special Rapporteur on right to highest attainable standard of physical and mental health
14. Joint statement under item 8 by Columbia
15. Statement on trans funding under item 8
16. Statement on the steps yet to be taken by Ireland to protect trans people under item 4

INTRODUCTION

The highlight of the 29th Session of the Human Rights Council from the point of view of the rights of LGBTI persons was the release of the Report of the High Commissioner on human rights violations based on sexual orientation and gender identity. The Report itself (which is a highly significant document) polarized state opinion into those who were totally supportive and those who were strongly opposed. However going beyond the dynamics of the Council session, the Report, as a detailed study by a credible organization, has the potential for becoming an important tool for global as well as regional and national advocacy.

The increasing mainstreaming of the rights of LGBTI persons was reflected in the fact that that as in previous sessions, LGBTI issues found mention in the Reports of many Special Rapporteurs including the Special Rapporteurs on the right to health, and the protection of human rights during counter terrorism, as well as in state and civil society responses to the same.

Even as the rights of LGBTI persons are possibly more mainstreamed than ever before, the opposition to granting these rights remains as strident as ever. Apart from openly and viciously homophobic statements by states opposed, the opposition is also crafting other strategies. Part of the new strategy is to couch their opposition in more subtle terms. An excellent example in this Council is how the resolution to protect the family became a theatre for shadow boxing wherein the code for supporting the resolution was seen as an opposition to the so-called 'LGBTI agenda'. It's important to understand that sometimes opposition is brutal and direct and at other times states oppose the rights of LGBTI persons through seemingly indirect means, such as resolutions on traditional values and resolutions on protecting the family.

This Council session also brought sobering attention to the depth and gravity of violation of the rights of LGBTI people. Perhaps of gravest significance is the war declared by ISIL against those who are LGBTI as seen by reported cases of killing on suspicion of being homosexual.

In the 29th Human Rights Council, the importance of understanding the rights of LGBTI persons as part of the wider human rights framework was addressed again and again. The larger frame under which we can envisage and understand the opposition to the rights of LGBTI persons is as a challenge to the core principle of human rights, that rights are vested in all persons by virtue of being born, i.e. the principle of universality.

REPORT OF THE HIGH COMMISSIONER ON DISCRIMINATION AND VIOLENCE ON GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY

The germinal nature of the Report, was outlined by the High Commissioner in his opening remarks in the 29th Session of the Human Rights Council. Even in the midst of many grave issues of human rights denial ranging from Palestine to Syria, the High Commissioner drew specific attention to the report on discrimination on grounds of sexual orientation and gender identity.

As Zeid Ra'ad Al Hussein observed:

*There have been many recent advances in the protection of the rights of lesbian, gay, bisexual, transgender and intersex people – including the introduction of new anti-discrimination and hate crime laws; legal recognition of same-sex relationships; protection of intersex children; and changes that make it easier for transgender people to have their gender identity legally recognized. Even so, LGBT and intersex people in all regions face continuing, pervasive, violent abuse, harassment and discrimination, as our thematic report before this Council on this issue indicates. Far more must be done to end this damaging discrimination.*¹

The Report itself was debated and discussed in three forums

- General Debate under Items 2 and 3
- The Debate on the follow up to the Vienna programme of Action under item 8
- A Side Event organized by the Latin American sponsors of the resolution, which authorized the Report

GENERAL DEBATE UNDER ITEM 2 AND 3

The General Debate under items 2 and 3 witnessed two strands of responses. On the side supportive of the Report were states from the GRULAC grouping, EU and other Western states. The side vigorously opposing the Report were the states which formed the Organisation of

¹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16074&LangID=E>

Islamic Conference (OIC), as well as states from the African group. The civil society responses were uniformly supportive.

Supportive responses

Latvia, speaking on behalf of the European Union, was concerned that discrimination against lesbian, gay, bisexual and transgender persons continued worldwide, and called on States to ensure that sexual orientation was under no circumstances the basis for criminal penalties.

Chile, speaking on behalf of Brazil, Columbia and Uruguay welcomed the report and recommendations on sexual orientation and gender identity and expressed concern about the persistent pattern of discrimination and bullying of lesbian, gay, bisexual, transgender and intersex persons. All persons were entitled to protection under international human rights law and States had the obligation to ensure this protection. The Council needed to continue to combat all forms of violence and discrimination, particularly on the grounds of sexual orientation and gender identity.

Germany remained deeply concerned about continuing severe discrimination against people based on their sexual orientation and gender identity as described in the report and said that discrimination by private actors remained a challenge. Germany asked for a regular update on the issue by the Office of the High Commissioner for Human Rights and said that this issue was too important to be left off the agenda of the Human Rights Council.

United Kingdom noted that it was unacceptable that lesbian, gay, bisexual and transgender persons should be subjected to continuing, pervasive, violent abuse, harassment and discrimination.

Montenegro noted that it was worrisome that many people in all countries were exposed to many forms of violence, discrimination and exclusion on the basis of sexual orientation and gender equality, both in families and societies.

Slovenia said it was a strong supporter of the Council's resolution on human rights and sexual orientation, adding that cultural relativism could not be used to contradict the rights of lesbian, gay, bisexual and transgender persons. Slovenia condemned all criminalization of same-sex behaviour, or cases where authorities failed to investigate violence against lesbian, gay, bisexual and transgender persons.

Australia condemned continuing acts of violence, torture, discrimination and other denials of human rights of lesbian, gay, bisexual, transgender and intersex persons. It noted that in some countries the death penalty could still be applied in cases of consensual homosexual conduct, and it urged all countries to end discrimination against lesbian, gay, bisexual, transgender and intersex persons.

Critical responses

Qatar, speaking on behalf of the Gulf Cooperation Council, upheld the human rights mechanisms, especially the Special Procedures. However Qatar had an issue with homosexuality and was of the opinion that it clashed with the precepts of the Shariat and Islam. It seemed that Special Rapporteurs went beyond the code of conduct and beyond their mandate. Some reports rested on unreliable information and an image that was far removed from the situation on the ground in the Gulf States, such as for example, the rights of homosexuals.

Pakistan, speaking on behalf of the Organization of Islamic Cooperation, noted that the OIC Council of foreign ministers rejected the resolution which mandated the report by the OHCHR on sexual orientation and gender identity. The family formed the basic unit of fabric of society and significantly contributed to the enjoyment of human rights of men, women and children. It regretted that the High Commissioner's recommendations stated in the report infringed on the internal affairs of Member States, and expressed serious concern over the fact that the report of the Working Group on the issue of discrimination of women in law and practice attempted to redefine family. Pakistan regretted the fact that for the propagation of so called LGBT rights the Working group has engaged in a distorted interpretation of the family and challenged universally accepted notion of the family.

Saudi Arabia regretted that the report and some countries wanted to impose new realities, and politicize human rights through double standards. Saudi Arabia did not support the theme of homosexuality, and totally rejected the recommendations by the High Commissioner, which it considered a violation of the sovereignty of countries and of Islam, which was a religion of peace. Saudi Arabia expressed concern about the rise of Islamophobia and called on countries to criminalize such hate speech.

Nigeria said that by signing into law the same sex prohibition bill it had discharged its responsibility to its people. The Bill was in sync with the aspirations of its 170 million people whose majority are Muslims and Christians. Its population and two main religions rejected sex-

same marriage and lesbian, gay, bisexual and transgender attitudes, adding that human rights should not be used to impose wrong values on people. Gay rights or same-sex orientation would limit the population and impose unintended consequences on the family as an institution. The State had a duty to ensure that the family and the religious and cultural values of its citizens were respected. Nigeria totally rejected the update report of the Office of the High Commissioner as meddling in the internal affairs of certain States.

Response of UN Agencies and NGO's

UNAIDS said a human rights-based approach was the most effective way to address HIV/AIDS, and regretted that members of the lesbian, gay, bisexual and transgender community remained more likely to live with HIV than the rest of the population. This was a result of discrimination and criminalization of same-sex conduct, resulting in lack of access to health. The link between criminalization and HIV was clear.

Allied Rainbow Communities International in a joint statement with International Lesbian and Gay Association, welcomed that fact that the report of the Office of the High Commissioner for Human Rights broadened the understanding of the violations faced by lesbian, gay, bisexual, transgender and intersex people by drawing attention to the unnecessary surgical intervention inflicted on children who were born intersex. It called for the adoption of a resolution to ensure regular reporting, constructive dialogue and sustained, systematic attention to the breadth of human rights violations on grounds of sexual orientation, gender identity and intersex status.

International Humanist and Ethical Union stated that the right to equality protected individuals on the basis of their sexual orientation and gender identity. It was perplexing that States such as Russia and Nigeria violated those rights through discriminatory laws. To deny a person the right to express who they were and whom they loved was to deny them the right to be themselves.

International Service for Human Rights stated that the current arrangements to protect the rights of lesbian, gay, transgender and bisexual persons were inappropriate. Recent studies showed that, nonetheless, a number of advancements were being made. In all regions of the world, lesbian, gay, transgender and bisexual persons were more active and visible. The so-called anti-propaganda laws in a number of countries were disturbing. States had the obligation to protect lesbian, gay, transgender and bisexual defenders from reprisals.

Amnesty International said that in some cases, abuses of lesbian, gay, bisexual, transgender and intersex individuals had been linked to existing or new restrictive legislation. In some 76 countries, consensual sexual activity between adults of the same sex continued to be criminalized, and many transgender individuals were not able to obtain legal recognition of their gender. The Council was urged to remain seized on the issue.

GENERAL DEBATE ON THE VIENNA DECLARATION AND PROGRAMME OF ACTION UNDER ITEM 8

The debate under item 8 also witnessed the same two strands of responses with one group of broadly western states and Latin American states supportive of the report with Pakistan representing the OIC group vigorously opposed. The highlight of the civil society response was a statement by more than 400 NGO's from over 105 countries around the world asking for systematic attention to systemic abuses against LGBTI persons from the Human Rights Council.

Supportive Responses

Colombia, speaking on behalf of a trans-regional group of over 72 countries, expressed concern about continued evidence in every region of acts of violence and related human rights violations based on sexual orientation and gender identity. The grouping then called upon states to take steps to end acts of violence, discrimination, criminal sanctions and related human rights violations committed against individuals because of their sexual orientation or gender identity, encourage Special Procedures, treaty bodies and other stakeholders to continue to integrate these issues to their relevant mandates, and to report to the Council, and urge the Council to address these important human rights issues.

Latvia, speaking on behalf of the European Union, said it attached great importance to the principle of universality enshrined in the Vienna Declaration and Programme of Action, and underlined that this principle implied equality. Violation of the rights of lesbian, gay, bisexual and transgender persons were a great challenge of our time. States had an obligation to protect all their citizens from violence. At least 76 States had laws criminalizing same-sex

relationships. Some States even applied the death penalty for consensual same-sex relations. These laws had to be repealed. Lesbian, gay, bisexual and transgender persons were entitled to the same human rights as everybody else.

United States shared the High Commissioner's concerns regarding the continuing, serious and widespread violations and abuses perpetrated against individuals based on their sexual orientation or gender identity. It supported the High Commissioner's call for continued robust engagement at the Human Rights Council to address violence and discrimination based on sexual orientation, noting that discriminatory practices continued to occur at alarmingly high rates in all regions of the world.

Ireland commended the Office of the High Commissioner for Human Rights for its report on discrimination and violence against individuals based on their sexual orientation and gender identity. Since the publication of the report, Ireland had joined those States which provided for same-sex marriage and became the first state to do so by way of popular vote. The referendum was passed with an overwhelming majority, demonstrating Ireland's commitment to equality and sending a strong signal that change was possible.

Netherlands said the Vienna Declaration and Programme of Action had unified the international community on the conviction that the promotion and protection of human rights was a global concern. Therefore the Netherlands could not refrain from focusing on concrete country situations. Any cultural or religious traditions and values would have to be tested against the principle of universality of human rights. The mere fact that certain practices had a long history could not be the basis for acceptance. Governments had to prevent violence and discrimination against all people, regardless of their sexual orientation or gender identity.

Norway said that lesbian, gay, bisexual, transgender and intersex persons continued to be denied their rights in all parts of the world, while in some countries those who stood up for the rights of lesbian, gay, bisexual, transgender and intersex persons risked being threatened, imprisoned or even killed. That was why Norway supported organizations that offered concrete security measures to human rights defenders and enabled them to continue their work.

Spain said that non-discrimination was a key theme of the Vienna Declaration and Programme of Action, which was clear on rejecting any form of discrimination. No State in the United Nations could justify discrimination and violence against persons, not on the basis of religion, lifestyle,

ethnicity, sexual orientation, or any other reason. Equality was the basic driving force of the Vienna Declaration to which there could be no exceptions.

Israel said that States had a well-established obligation to respect and protect the rights of all persons, including lesbian, gay, bisexual, transgender and intersex persons. Israel deplored the horrifying conditions of the lesbian, gay, bisexual, transgender and intersex community in most of the countries in the Middle East, which forbade same sex relationship by law. Human rights should be granted to all without questioning one's sexual orientation.

Switzerland condemned discrimination of individuals based on their sexual orientation and gender identity. It welcomed good practices in overcoming the problem, and to that end it would host in Geneva a roundtable of focal lesbian, gay, bisexual, transgender and intersex points of the Council of Europe. That event would allow for interaction with other interested States, United Nations bodies, civil society and local communities in order to identify and intensify concerted efforts to combat violence and discrimination based on sexual orientation.

Croatia stated that it was committed to combatting homophobia, transphobia and biphobia in order to eliminate any direct or indirect discrimination on the basis of sexual orientation and gender identity, and it continuously promoted social acceptance of lesbian, gay, bisexual, transgender and intersex persons. Croatia actively worked to ensure the further promotion of the effective implementation of legal and other measures in order to eradicate discrimination based on sexual orientation.

Sweden said human rights were universal and no one should be subjected to torture, violence, summary execution, inhumane treatment, arbitrary arrest, discrimination or be silenced in any way due to their sexual orientation or gender identity. It was especially concerning to note that violence and discrimination against lesbian, gay, bisexual and transgender persons was carried out without any accountability, even with the pretext of societal norms and traditions.

Hostile State responses

Pakistan, speaking on behalf of the Organization of Islamic Cooperation, expressed concern at attempts to introduce into the Council and the United Nations system concepts that had no legal foundation in any international human rights instrument, such as the so-called notion of "sexual orientation". According to Pakistan, the work of the Council should be guided by the unanimously-agreed human rights normative framework and should avoid attempts to impose value systems without any regard for cultural or religious sensitivities and differences.

Civil Society responses

International Lesbian and Gay Association, in a joint statement with Allied Rainbow Communities International, Amnesty International, International Federation for Human Rights Leagues (FIDH), International Humanist and Ethical Union, Article 19-International Centre Against Censorship, Verein Sudwind Entwicklungspolitik, Forum for Women and Development-FOKUS, International Service for Human Rights, Human Rights Watch, International HIV/AIDS Alliance, and International Gay and Lesbian Human Rights Commission, along with over 400 NGO's from around the world in over 105 countries said that in too many countries lesbian, gay, bisexual, transgender and intersex persons faced grave violations of human rights; they were criminalized, faced the death penalty, and were subjected to so-called "conversion therapies", rape and forced marriage. The violations extended to the family sphere, where rejection and discriminatory treatment and violence could have serious, negative consequences for the enjoyment of human rights. The joint statement welcomed the resolution passed in September, and the recent report of the OHCHR, as additional positive steps forward and reiterated that these violations are systemic, and require systemic responses from the Human Rights Council.

Action Canada for Population and Development, in a joint statement, said the Council had an obligation to ensure the rights of all persons to make and carry out decisions regarding their bodies and lives. The need for proactive attention to human rights related to sexuality and gender had become clearer and more pressing. Human rights could not be realized in the absence of an open and informed conversation about these issues.

Alliance Defending Freedom said that the report on the human rights violations of lesbian, gay, bisexual, transgender and intersex persons issued by the Office of the High Commissioner for Human Rights mixed up the notions of international law and was an effort to push on the agenda issues that had no basis in international law.

Sudwind said that the poor treatment of lesbian, gay, bisexual, transgender and intersex persons was a reflection of how the general human rights stance was in any society. The Vienna Declaration stated that fundamental freedoms without distinction of any kind were a significant rule of international human rights law.

International Humanist and Ethical Union said it was dismayed by the opposition expressed by the representatives of the Organization of Islamic Cooperation and by several States to any discussion of the issue of violence against persons on the basis of their sexual orientation. It was

a tacit admission that Islamic States did not accept the universality of rights. The Council was not created to promote and protect the Sharia law, but to promote and protect human rights. If there was any conflict between the two, then human rights had to prevail.

Rencontre Africaine pour la defense des droits de l'homme stressed the obligations of States to promote and protect human rights of all and said that in many areas of the world, individuals were subjected to violence and discrimination based on their sexual orientation and gender identity. The Vienna Declaration and Programme of Action recognized the important role of non-governmental organizations in promoting human rights and called on States to protect them.

International Federation of Human Rights Leagues said that in view of systemic violations of lesbian, gay, bisexual, transgender and intersex persons, the Federation called upon the Council to create a regular mechanism to address sexual orientation and gender identity issues, ideally a dedicated Special Procedure and the minimum bi-annual reporting by Office of the High Commissioner for Human Rights to the Council.

International Gay and Lesbian Human Rights Commission in a joint statement with International Lesbian and Gay Association called upon governments to provide resources to Trans civil society to help turn the tide, and to include Trans voices at all levels of decision and policy making. IGLHRC affirmed that, trans people are not seeking new rights. They simply seek the same human rights as other people – to live free from violence and discrimination, to form families of their choosing, to self-define their own futures, to have full access to education, employment and healthcare, and to receive dignified care and support in their old age.

Minnesota Citizens Concerned for Life said that the family protection resolution was not intended to promote dysfunction, but to promote policies that facilitated bringing up of children. Broadening the definition of family would not serve the purpose of the resolution. Nations could define the family according to their own cultures, laws, judicial actions, all without the questionable benefit of novel or politically motivated definitions inserted into United Nations texts.

CIVICUS noted the ongoing persecution of lesbian, gay, bisexual, transgender and intersex persons and activists. Efforts by a number of Governments to introduce laws to reduce violence against lesbian, gay, bisexual, transgender and intersex persons continued to be overshadowed by serious human rights violations against them, including in Zambia, Turkey, and Russia.

DEBATE UNDER ITEM 4: HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

ILGA Europe noted that the Irish Government has taken great strides to protect the rights of trans people through a model of self-determination for individuals over 18 years of age. Despite this incredible progress, young trans people are being left behind and their rights will not be vindicated by this legislation. Under the proposed scheme, trans people ages 16 & 17 may apply for legal recognition. However, the process is very onerous and will act as a barrier to many young people obtaining legal recognition. Moreover, there is no process for legal recognition of minors under 16. This means that, in effect, the Irish state will not recognise the existence of trans children. It was recommended that this gap that should be addressed to protect and vindicate the human rights of young trans people.

'FREE AND EQUAL IN RIGHTS': A SIDE EVENT ON THE OHCHR REPORT

One of the strategies favoured by the LAC-4 (Brazil, Uruguay, Chile and Columbia) for further visibilising the OHCHR Report was the organizing of a discussion on the release of the OHCHR Report. The discussion itself was widely attended by a number of supportive states as well as civil society.

The contents of the report were introduced by Charles Radcliffe, Senior Adviser on sexual orientation and gender identity at the OHCHR. Mr. Radcliffe noted there were remarkable advances on LGBTI rights around the world including the fact for example, that since 2011, 14 States have adopted or strengthened anti-discrimination and hate crime laws, extending protection on grounds of sexual orientation and/or gender identity and, in two cases, also introducing legal protections for intersex persons. Three States have abolished criminal sanctions for homosexuality; 12 have introduced marriage or civil unions for same-sex couples nationally; and 10 have introduced reforms that, to varying degrees, make it easier for transgender persons to obtain legal recognition of their gender identity. However Mr. Radcliffe also said that in spite of these changes serious and widespread human rights violations are perpetrated with impunity. This situation he aptly characterized as 'the best of times and the worst of times'.

The Ambassador of Malta observed that Malta was not generally known for lesbian, gay, bisexual, trans, intersex and genderqueer equality. However, due to sustained activism as well as government support Malta has enacted a Gender Identity, Gender Expression and Sex Characteristics Act which has been hailed across the world as well as civil union law.

There was also a sharing of best practices from Albania, Malta and Montenegro. The Ambassadors of Chile, Brazil and Columbia also shared their opinions and support for the Report.

The final speaker was Arvind Narrain from ARC International who articulated some of the nature of the violations which LGBTI people experience, and reiterated the need of the Human Rights Council to respond to persistent structural violations and work to amplify the small voice at the grassroots so that it can no longer be ignored.

THE INTERSECTION OF RIGHTS OF LGBTI PERSONS WITH BROADER HUMAN RIGHTS FRAMEWORKS

It's impossible to see the rights of LGBTI persons in isolation. Rather these rights are part of the wider human rights discourse. This trend of understanding the intersectionality of rights was visible in the 29th HRC in at least three distinct spaces

- The Reports of Special Rapporteurs and the ensuing debate
- Panel Discussions
- Side events

THE REPORTS OF SPECIAL RAPORTEURS AND THE ENSUING DEBATE

As in previous Council Sessions a range of mandate holders continued to reference the rights of LGBTI persons even within their existing mandate thereby weaving these rights within a larger narrative of both rights violation as well as rights protection. The rights of LGBTI persons also figured in the annual debate on the rights of women and girls. Finally some of the side events were also an opportunity for making the connections between LGBTI rights and a broader human rights framework.

Special Rapporteur on the promotion and protection of the freedom of opinion and expression

The Special Rapporteur Mr. David Kaye in his report stressed that encryption and other technology should be freely available to individuals to ensure that they can protect their privacy and anonymity online. Even as this freedom is important for all persons, the Special Rapporteur David Kaye made it a point to note that,

*Encryption and anonymity, today's leading vehicles for online security, provide individuals with a means to protect their privacy, empowering them to browse, read and develop and share opinions and information without interference and enabling journalists, civil society organizations, members of ethnic or religious groups, those persecuted because of their sexual orientation or gender identity, activists, scholars, artists and others to exercise the rights of freedom of opinion and expression.*²

² A/HRC/29/32

The International Gay and Lesbian Human Rights Commission in a joint statement with International Gay and Lesbian Association stated that anonymity was a crucial tool for human rights defenders and individuals forced to hide their sexual orientation. It expressed grave concern about censorship on sexual health, safety and reproductive rights for sexual minorities, as well as the obligation to use one's real name on certain platforms.

Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health

Mr. Dainius Pūras, the Special Rapporteur observed that

Moreover, the work of the mandate has focused on the serious detrimental impact that the criminalization of identities, behaviours and health status can have on the full enjoyment of the right to health. Criminalization and restrictive laws are ineffective as public health interventions and fuel underreporting of health indicators. For instance, the work done has shown that legal restrictions on access to abortion services, comprehensive sexual and reproductive education and information, and contraception and family planning methods can have a serious detrimental impact on the enjoyment of the right to health. Evidence shows that this includes a negative impact not only on access to goods, services and information, but also on the enjoyment of fundamental freedoms and entitlements, and on the dignity and autonomy of individuals, in particular women (see A/66/254).

Previous mandate holders have also looked into the negative impact of the criminalization of consensual same-sex conduct, of sexual orientation and gender identity, of sex work and of HIV transmission (see A/HRC/14/20). Such work has shown that punitive policies and criminalization are not effective and act as a barrier to access health services, fuel social stigma and exclusion and lead to poor health outcomes.

The Special Rapporteur concurs with his predecessors that a comprehensive right-to-health approach is necessary, which includes decriminalization of sexual orientation and gender identities, certain behaviours and health status, as well as the establishment of conducive legal and administrative frameworks with emphasis on human rights education, meaningful participation and empowerment of the groups targeted, and serious efforts to reduce stigma and discrimination in society as a whole.

Despite the work of many who have convincingly highlighted the need and benefits to adhere to universal human rights principles, there continues to be a tendency to apply and justify a narrow and selective approach to human rights, including to the right to health. That tendency has been accentuated during the last decade and questions the very essence of universal human rights principles and standards.

For example, such a retrogressive tendency has been observed in the area of sexual and reproductive health and rights, and with regard to discrimination against groups in vulnerable situations, including children, documented and undocumented migrants, persons with disabilities and lesbian, gay, bisexual and transgender persons. In his reports and through his other activities, the Special Rapporteur will highlight the need and importance of applying the principle of the interdependence and indivisibility of human rights, and will underline how essential this is for the full realization of the right to health.³

Commenting on his trip to Malaysia, the Special Rapporteur recognized Malaysia's commitment to realizing the right to health, in particular for advances made in reducing poverty, increasing spending on health, and improving basic health related indicators. He also encouraged the Government to address a number of serious challenges, which were connected to a selective approach to human rights and discrimination against groups in vulnerable situations. Some of the barriers to exercising the right to health were faced by women and girls, indigenous communities, migrants, refugees, asylum seekers, lesbian, gay, bisexual and transgender persons, and persons living with HIV/AIDS.

With regards to the right to health, Egypt encouraged the Special Rapporteur to continue to pay attention to access to medicine as a vital component of his mandate. Egypt cautioned against the use of concepts and notions such as "sexual orientation and gender identity" that lacked international consensus.

Allied Rainbow Communities International in a joint statement with International Lesbian and Gay Association, called attention to the fact that criminalization of sexual orientation and gender identity acted as a barrier to access to health and that discrimination and stigma led to poor health outcomes. ARC noted that this is a conclusion with global repercussions for vast sections of the human population as the expression of same sex intimacy remains criminalized in 79 countries around the world.

Action Canada for Population and Development observed that there was a tendency by some States to apply a narrow and selective approach to human rights which had direct implication on sexual and reproductive health rights. The politicization of the right to health through both criminalization and the imposition of restrictions like the criminalization of sex work, abortion, same gender sexuality, drug use, and restrictions on emergency contraception, was a violation of this right.

³ A/HRC/29/33

Special Rapporteur on extreme poverty and human rights

The Special Rapporteur, Mr. Phillip Alston in his report observes that inequality is increasing in the world today. He quotes an Oxfam study to note that in 2015, ‘the richest 1 per cent of the world have seen their share of global wealth increase from 44 per cent in 2009 to 48 per cent in 2014, with a prediction that it will exceed 50 per cent by 2016. Of the remaining wealth only 5.5 per cent goes to those outside the top quintile’⁴

Those at the bottom of the economic hierarchy were often the same as those who belong to specific social groups which suffered discrimination. As the Special Rapporteur noted,

*Vertical and horizontal inequalities, including economic inequalities, are often closely related to discrimination. In many countries, the poorest sector of the population coincides with social and ethnic groups that experience discrimination. It is therefore possible that levels of economic inequality in many countries would be lower today in the absence of discrimination. When dealing with economic inequalities, we should therefore pay specific attention to the overlap between economic inequalities and group-based inequalities (horizontal inequalities), because they can indicate discrimination as an important cause of inequality. As Mr. Stiglitz has written: One of the most invidious — and hardest to eradicate — sources of inequality is discrimination, both ongoing discrimination and the legacy of past discrimination.*⁵

While the Special Rapporteur did not specifically mention LGBTI groups, his analysis of group based inequality was applicable to the LGBTI community. ILGA made a statement in the interactive dialogue making the connection between extreme inequality and discrimination on grounds of sexual orientation, gender identity and intersex status. ILGA called on States to take immediate steps to prohibit all forms of discrimination and to ensure that LGBTI people are included in their poverty reduction strategies. States should also increase their access to formal education, quality health services, equal employment opportunities, decent treatment at work, full social benefits and guarantee other means for LGBTI people to step out of poverty. ILGA also called upon the Special Rapporteur on extreme poverty and human rights, Mr. Philip Alston, to ensure that LGBTI people are systematically included in the mandate’s future reports and country missions.

Special Rapporteur on Violence against Women, its Causes and Consequences

The Special Rapporteur, Rashida Manjoo carried out an analysis of three regional systems, the

⁴ <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx>

⁵ *ibid.*

African, the Inter American and the European, and outlined the ways in which women have been sought protection from violence. In her conclusion, Ms. Manjoo said,

The limitations of the international system, including the lack of a legally binding specific instrument on violence against women, serves to weaken the aspiration of the Human Rights Council that regional arrangements should reinforce universal human rights standards, as contained in international human rights instruments (see Council resolution 12/15). The current norms and standards within the United Nations system emanate from soft law developments and are of persuasive value, but are not legally binding. The normative gap under international human rights law raises crucial questions about the State responsibility to act with due diligence and the responsibility of the State as the ultimate duty bearer to protect women and girls from violence, its causes and consequences.⁶

It should also be noted that the concern of violence against women on grounds of their sexual orientation or gender identity did not find a mention in the regional frameworks outlined by the Special Rapporteur.

ILGA in their statement observed that States must move to a systematic response to eliminate all forms of violence against women and girls, which is a systemic problem. In all efforts made to address VAW, States must include disaggregated data, which identifies ways in which women experience intersectional discrimination, including targeted violence of LGBTI women. LGBTI women and girls across the globe urge Member States dedicate targeted and sustained funding to ensure any legislation and policy on violence against women is implemented with measurable goals and review mechanisms - ensuring concrete, positive impacts on the lived experiences of LGBTI women.

ANNUAL FULL-DAY DISCUSSION ON THE HUMAN RIGHTS OF WOMEN

The Annual full day discussion on the human rights of women also provided an opportunity for civil society to raise concerns related to LGBTI rights.

Allied Rainbow Communities International along with ILGA observed that, in our own research, we have found that gender non-conforming individuals, such as lesbians, bisexual women, as well as trans and intersex persons, are particularly at risk for discrimination and violence within the family, and that many States do not adequately protect against this type of violence. We urge

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<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/Documentation.aspx>

Member States to heed the recommendations of the Working Group to actively work to eliminate gender stereotypes perpetuated through gender-based violence within families. forms of oppression and violence were accentuated against lesbian, bisexual, transgender women.

Peru, speaking as a concerned country, said since Peru had issued a standing invitation to the Special Procedures in 2002, it had received 12 mandate holders visits carried out on the basis of constructive dialogue. Regarding the Working Group formulating recommendations beyond its mandate, in paragraph 86 (d), it recommended that Peru include sexual orientation and gender identity as protected categories by law. As far as Peru knew, no Special Procedure had the mandate to talk about sexual orientation.

Working Group on Discrimination Against Women

Federatie van Nederlandse Verenigingen tot Integratie Van Homoseksualiteit - COC Nederland, in a joint statement with The Swedish Federation of lesbian, Gay, Bisexual and Transgender Rights and International Lesbian and Gay Association, said that lesbian, gay, bisexual and transgender persons were specifically vulnerable to gender violence, and underlined the importance for States to adopt legislations that protected all forms of family without discrimination, in accordance with the already existing international human rights standards.

Panel discussion on realizing the equal enjoyment of the right to education by every girl

ILGA in the panel discussion observed that states must repeal any laws, including state-enforced religious or secular laws that reinforce patriarchy and limit girls' access to education. All efforts to uphold the right to education of girls must take into account intersectional discrimination, including on the basis of sexual orientation, gender identity, intersex status and many other grounds including faith. School curricula must also include comprehensive education on sexual health; reproductive rights; sexuality; the diversity of genders, identities and bodies; and family life – including non-traditional families.

Even as Special Rapporteurs showed that they were keenly tuned into intesectionalities of oppression, equally activists from the ground who participated in the side events, made a forceful case for intersectionality as a key component of their strategy as activists.

In the panel on LGBTI Human Rights Defenders organized by ISHR, ILGA and ARC, activists from St Lucia, South Africa, Singapore and Costa Rica spoke about a range of issues including continuing violence faced by trans people, the lack of specific funding for trans organisations as well as the invisibility of lesbian issues. The debate keenly ranged around the question of intersectionality of oppression and the need to connect the specific LGBTI identity based struggle to other oppressions and work with a range of activisms.

In the panel co-hosted by the US Mission, Brazilian Mission and ILGA, the new US envoy on LGBT rights, Randy Berry, the ambassador of Brazil as well as an activist from Turkey spoke. Randy Berry spoke of how there was a need to address three pillars including states, civil society and business to move the LGBT rights agenda forward. The ambassador of Brazil shared her experiences of the steps Brazil had taken to move forward on LGBT rights. The question of intersectionality was brought up forcefully by Ezgi Kocak from KAOS, an LGBTI organization in Turkey, who spoke about how LGBTI activism in Turkey had changed the vocabulary of resistance to the demolition of Gezi park and had succeeded in building a broad coalition. As an example of this building of broad support Kocak noted that 50000 people marched in the recent pride march.

THE RESOLUTION TO PROTECT THE FAMILY

The Resolution to protect the family was sponsored by a cross regional group of states including Egypt, Cote D'Ivoire, El Salvador, Mauritania, Morocco, Russian Federation, Tunisia, Uganda, Qatar, Belarus, China and Bangladesh. The co sponsors were 85 states including from the Arab Group, the African Group and 55 members of the OIC. The resolution was titled "protection of the family" and sought to bring in a developmental angle in its subtitle, which was 'The contribution of the family to the realization of the right to adequate standard of living for its members particularly through its role in poverty eradication and achieving sustainable development'.

The resolution went through three rounds of negotiation, during which states which wanted changes in the resolution engaged with the process to make the following key points

- The resolution was titled protection of the family, while in reality in regions around the world, there were a diversity of family forms. South Africa was consistent in advocating for a wider language, which sought to recognize and protect a diversity of family forms.
- The mandate of human rights law was to protect individuals and not institutions. Rights holders had to be individuals, hence it was misplaced to attempt to protect the family. This was particularly important as very often families could be sites of incredible violence against family members be it women or young people and hence it would be unbalanced to protect the family.
- The resolution did not strongly enough recognize the fact that families are sites of violence and that the state must apply the principle of due diligence and tackle violence even in the private sphere.
- The resolution also refused to acknowledge that at points there may be a conflict between individual rights and tradition and morals and uncritically noted that 'the family plays a crucial role in the preservation of cultural identity, traditions, morals heritage and value system in society'

The states that were supportive of the resolution, repeatedly reiterated the proposition that the family was the fundamental unit of society and should be protected.

In response to concerns raised by those who could not support the draft resolution as it stood, the core sponsors led by Egypt amended sections of the draft, introducing a few caveats while retaining its substance. One caveat was with respect to the fact that 'support for the family had to recognize that equality between men and women and respect for all the human rights and fundamental freedoms of all family members are essential to family well being'. Another caveat

stressed the ‘fundamental importance of full respect for human rights and fundamental freedoms of all family members’.

However, in response to repeated suggestions by states such as Brazil, Uruguay, South Africa, USA and the EU, on questions such as the resolution focusing on the individual as a rights holder, deleting of the language on the family transmitting morals and values, introducing the concept of due diligence and protecting a diversity of family forms, the core group led by Egypt refused to concede any ground.

As such the final text of the resolution was fatally flawed from the perspective of women’s rights, child rights as well as rights of LGBTI persons. In all three cases, mainstream interpretations of religion/tradition/morals had severely limited the human rights of women, children and LGBTI persons. Any stress on the rights of the family was bound to negatively impact those who, while members of families also at times, suffered abuse at the hands of the family.

Once the fact that the proposed resolution did not take on board the concerns expressed was clear, then the strategic response had two components. First was to vote against and to get as many states to vote against as possible and second to dilute the resolution through proposing amendments.

While the EU decided that as a bloc they would vote against the resolution, while some other states led by GRULAC decided to propose amendments to the resolution to introduce some of the concepts which failed to make it into the resolution

Among the four amendments proposed were

- 1) Ensure recognition of a diversity of family forms by explicitly stating that ‘in different cultural, political and social systems, various forms of the family exist’
- 2) The proposal that the language ‘the family plays a critical role in the preservation of cultural identity, traditions, morals heritage and value system of the society’ be deleted.
- 3) To dilute the notion of protecting the ‘family’ per se by inserting protecting the ‘family and its members’.
- 4) To dilute the notion of total parental control vis-a-vis the child by emphasizing the principle of ‘the best interest of the child’.

The core group of countries sponsoring the resolution accepted the recommendation vis a vis stressing ‘the best interest of the child principle’ thereby somewhat diluting the notion of total parental control. The core group rejected the amendment on deleting the reference to morals/tradition and on ensuring that protection was not only for the family unit but also for family members. However what indicated the key concern of the group behind the resolution was the response to the South African amendment that proposed that the resolution recognize that a

diversity of families did exist. The response of the core group was to move a no action motion so that no debate would be allowed on the amendment. This, in a sense, was really the crux of what an otherwise wordy and confusing resolution was trying to protect. The procedural move of introducing a no action motion to stifle debate was a bit of a gamble that did pay off as far as the movers of the resolution were concerned, as the final vote count indicated a victory by one vote only. (22 Yes, 3 Abstention, 21 No)

The amendments on morals as well as the one on introducing the notion of protecting members of the family were defeated. The voting records were as follows

Amendment on deleting the reference to morals and traditions. The amendment was defeated (18 Yes, 23 No and 5 Abstentions)

The amendment on protecting members of the family in addition to the family was defeated (19 Yes, 23 No and 4 Abstentions)

The resolution in its amended form passed and the voting was as follows (29 Yes, 14 No and 4 abstentions)

The fact that the resolution at its heart was premised on the targeting of LGBTI rights and the use of the language of ‘protection of the family’ was only a means to an end emerged most strongly in the core group’s resolute opposition to accepting language on protecting diverse forms of the family. This emerged most critically in Egypt’s statement introducing the draft. As Egypt noted,

The main sponsors avoided to accept ambiguous and absolute language on diverse forms of family. A language which disappeared from UN documents years ago due to its divisive nature to the extent that the Council one year refrained from even considering. Speaking about absolute and unspecified diversity can be an invitation to cast protection on family settings where human rights may not flourish to be respected. Family is family everywhere as a unit that bonds men, women and children together, even if families such as single headed families including widows and divorcees, extended families, and migrant and indigenous families for example, existed in various settings and faced diverse circumstances; they should remain reflective of similar essence and shared values.

The crucial intent of the resolution was to circumscribe diversity within the notion that a family was a bond between men, women and children. This core intent was manifested in another amendment moved by Pakistan which called for a recognition that ‘men and women of full age, without any limitation due to race, nationality or religion, have the rights to marry and to found a family, bearing in mind that *marriage is a union between a man and a woman*’⁷ (emphasis provided)

⁷ However, it should be noted that the proposed amendment was withdrawn once the core sponsors of the resolution had won the no action motion the amendment proposing that a diversity of family forms be protected.

During the course of the debate on the resolution as well as its amendments the states which spoke were Qatar, Estonia, Russia, Bangladesh, Algeria, Ireland, UAE, Sierra Leone, Morocco, Indonesia, USA, Pakistan, Netherlands, Mexico, Paraguay and South Africa.

A careful reading of the various statements made by states supporting the family resolution and opposing hostile amendments indicates that the key element the sponsoring states were protecting was the idea of the family as meaning ‘men, women and children’. As Russia noted the ‘family unit brings together all aspects of human life and the task of family is to continue humanity in the broadest sense of the word.’

Clearly the states which were opposed to the resolution in the form in which it was tabled preferred to express their opposition in more general terms such as the failure to protect individuals within the family who may suffer violence or discrimination or a more general opposition to vague language such as ‘morals or tradition’. However South Africa specifically named recognition of same sex families as coming within the notion of diversity. South Africa supported ‘various forms of the family including cohabitation, single parent led, child led, same sex and polygamous’.

The work around the resolution also provided an opportunity for groups working on women’s rights, LGBTI rights as well as child rights to work together as regardless of the latent intent of the resolution, the resolution would end up weakening women’s rights, child rights and LGBTI rights. As such, though the resolution itself was passed, (after significant opposition had been voiced) an opportunity arose for the LGBTI rights advocacy groups to build broader coalitions and networks of solidarity.

RISE OF THE ISLAMIC STATE OF IRAQ AND SYRIA AND ITS CHALLENGE TO LGBTI EXISTENCE

The rise of the Islamic State of Iraq and Syria (ISIS) presents a difficult challenge for a range of human rights issues, ranging from the rights of religious and ethnic minorities such as the Yazidis, Kurds, Christians and Shias to the rights of women and the rights of LGBTI persons. The role of ISIS in these brutal violations was again visibilized in the 29th Session of the Human Rights Council through the report of the Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson. Emmerson referred, in particular, to life in the territory which was under the de facto control of ISIS in which millions of people lived. As Mr. Emmerson noted:

*ISIL is an organized group, that functions under a formalized command with an essentially vertical and hierarchical command structure. It is composed of an armed force, an administrative wing and a religious wing, all under the control of the self proclaimed caliph, Al-Bagdadi. It operates a harsh rigid, administrative system that is based on provinces and comprises the Al-Hisbah morality police, the general police force, courts and entities managing recruitment, tribal relations and education.*⁸

Among the litany of abuses perpetrated by ISIL and groups targeted by ISIL include

*There are scores of allegations of torture and ill-treatment of individuals in detention centers, as well as summary punishments for theft, watching football matches, smoking, improper attire, not attending Friday prayers and having tattoos in breach of ISIL edicts.... The targeting of homosexual men has also been highlighted.*⁹

The Special Rapporteur also referred back to the Report of the High Commissioner on human rights abuses in Iraq and the Levant by the so called Islamic State in which it was observed that:

*ISIL established sharia courts in Mosul allegedly sentence people to cruel, inhuman and degrading treatment as stoning and amputation. Two men accused of homosexuality were convicted by an ISIL 'court' and thrown from the top of a tall building.*¹⁰

⁸ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, A/HRC/29/51

⁹ Ibid.

¹⁰ Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so called Islamic State in Iraq and the Levant and associated groups, A/HRC/28/18

ISIS calls into question the very right to life of those who are perceived to be different. ISIS goes beyond persecution of LGBTI people, and moves towards elimination of LGBTI people. The targeted killing of those perceived to be LGBTI is nothing less than an attempt to build ISIS's version of a so called Islamic state eliminating those considered impure like homosexuals as well as religious minorities. This calls to mind the Nazi regime which in its pursuit of an Aryan nation exterminated Jews, the disabled as well as homosexuals. This is one of the grave contemporary challenges faced by the LGBTI community particularly in areas controlled by the Islamic State.

THE QUESTION OF UNIVERSALITY OF HUMAN RIGHTS

The various interventions by states in defence of the rights of LGBTI persons were phrased in the language of universality of human rights. Those supportive of LGBTI rights repeatedly made the point that the language that human rights treaties and declarations use is that of 'all persons'. No human rights body explicitly states except LGBTI persons. Hence LGBTI persons are obviously included within the framework of human rights protection.

However the principle of universality can cut both ways as hostile states on LGBTI rights claims were quick to point out. The lack of an adequate response by states supportive of LGBTI rights to concerns such as migration across the Mediterranean as well as other issues such as Palestine were seen as 'double standards', or troubling instances of a failure of universality. Thus 'universality' itself remained very much an aspirational norm for a range of states.

The critique of state positions on universality emerged very strongly in a side event organized by CIVICUS, which attempted to give an overview of the 29th HRC.

Nicola Agostini from FIDH noted that there was a coordinated attack on the universality of human rights in this session. According to Agostini, the amendments proposed by Bahrain, Egypt and Saudi Arabia to remove reference in the resolution on domestic violence against women and girls to 'intimate partner violence', 'marital rape' and 'comprehensive sexuality education' was one troubling instance of this effort. Very similarly the fact that the protection of the family resolution moved by the same countries excluded protection for a diversity of families was another such example. However it should be noted that with respect to the rights of migrants, the European countries practiced double standards.

In the same event Philippe Dam from Human Rights Watch also pointed to this question of 'double standards' and 'inconsistency' when states which were supportive of some human rights issues turned a blind eye to others. An example would be the state responses to the war in Gaza, where the US continued to support Israel unconditionally. Palestine thus raises the question of 'universality' of human rights in another form, as the issue is one of consensus among states apart from the US, which was the only country to vote no to the resolution.

In the panel discussion organized by Association of Women in Development (AWID) on Universal Human Rights, there was a forceful analysis by Shareen Gokal from AWID on looking at the rise of fundamentalism from a wider lens which allowed us to comprehend fundamentalism as a result of wider structural factors such as increasing inequality. Karolina Więckiewicz focused on the threat to women's rights in Poland from fundamentalist forces. Cynthia Rothschild from the US focused on the emerging threat to universality of human rights and Arvind Narrain from ARC outlined how universality was under threat and the philosophical reasons why one needed to defend the principle of universality.

Once we see the challenge to LGBTI rights as a challenge to the principle of universality, a whole spectrum of other issues that have been actively debated at the Council also come within the framework. The challenge for activists is to build the connections between the myriad forms of activism and to disentangle (often instrumental) state agendas and position from the real interests of LGBTI people around the world.

UPR OUTCOME REPORTS

Outcome Reports were adopted for the countries of Guyana, Kiribati, Spain, Laos, Lesotho, Sweden, Granada, Turkey, Kuwait, Kenya, Armenia, Kyrgyzstan and Guinea. LGBTI specific concerns were represented in either state responses or NGO responses in the following countries.

GUYANA

BEYON RODIN McDONALD, Charge d’Affaires of the Embassy of Guyana in Brussels, observed that Guyana noted the recommendation regarding the rights of lesbian, bisexual, gay, transgender and intersex persons and would convene a parliamentary session on the issue.

Action Canada for Population and Development was disappointed at the lack of response regarding recommendations to repeal the criminalization of consensual adult same-sex activities, and condemned that homophobia was State-sponsored in Guyana, preventing lesbian, gay, bisexual and transgender persons from reporting abuses to the authorities.

Amnesty International urged Guyana to ensure that hate crimes based on sexual orientation and gender identity were investigated and prosecuted, and to repeal all legislation criminalizing same sex relations among adults.

LESOTHO

COC Nederland said lesbian, gay, bisexual and transgender persons faced tremendous difficulties, discrimination and abuses in Lesotho. Their right to privacy and their access to justice were limited. They also faced discrimination at work and in terms of access to health, making them vulnerable to HIV/ AIDS. Their rights had to be respected irrespective of their sexual orientation or gender identity.

SWEDEN

Swedish Federation of Lesbian, Gay, Bisexual and Transgender Rights, in a joint statement with the Swedish Association for Sexuality Education, commended Sweden's efforts to prosecute hate speech, but urged the Government to protect transgender persons under the law against discrimination. It was critical that the rule of non-refoulement also be applied on the basis of sexual orientation. It welcomed the Government's decision to establish a national human institution in line with the Paris Principles.

TURKEY

Sudwind noted that lesbian, gay, bisexual, transgender and intersex persons, political prisoners and women victims of domestic violence were especially vulnerable groups. Refugees and asylum seekers did not enjoy full rights, even though Turkey had ratified the Convention on the Rights of Migrants and Their Family Members. They did not enjoy the right to work and health service.

International Gay and Lesbian Human Rights Commission, in a joint statement with International Lesbian and Gay Association, welcomed Turkey's statement affirming that discrimination against the lesbian, gay, bi-sexual, and transsexual community would not be tolerated, and thanked Turkey for ensuring the punishment of violence against them. It urged Turkey to bring its domestic laws in line with international legislation to prohibit and prevent discrimination on the basis of sexual orientation.

KUWAIT

International Lesbian and Gay Association expressed its concern about the deteriorating situation of the human rights of lesbian, gay, bisexual and transgender persons in Kuwait, who suffered discrimination, stigma and lack of access to almost all services, including necessary health service.

KYRGYZSTAN

Ulan Djusupov, Permanent Representative of Kyrgyzstan to the United Nations Office at Geneva, said that its laws ensured protection from discrimination for all people within its territory and under its jurisdiction, on the grounds of sex, gender, ethnicity, language, and others. The current legislation did not violate the rights of sexual minorities. The legislation on limiting propaganda on non-traditional sexual relations was currently being considered by Parliament.

COC Nederland stated that the violations of the basic rights of lesbian, gay, bisexual, transgender and intersex persons were on rise in Kyrgyzstan, and the currently proposed amendments would make the situation worse. Even the Ministry of Justice had recommended to Parliament to withdraw the bill as it ignored the Constitution. Lesbian, gay, bisexual, transgender and intersex people needed to be protected and treated as equal citizens.

Sudwind regretted that Kyrgyzstan refused to enact specific legislation to prohibit discrimination against persons based on sex, race, colour, religion and sexual orientation.

CONCLUSION: SOME THOUGHTS ON THE WAY FORWARD

Movement in the HRC ultimately depends upon states. While civil society voices can move states in certain directions through a combination of suggestions, moral pressure and the fear of adverse public opinion, at the end of the day it is states that need to act. So the question for civil society is how can moral persuasion/ pressure be applied upon states?

If one looks at LGBTI issues, there is a core group of states who are supportive and an equally core group of states which are deeply opposed. There is a middle ground of states that might be voting no or abstaining that could, in future, move to voting yes on these issues. What could our strategies be with respect to these three groups of states?

With respect to the states that are generally supportive of the rights of LGBTI persons

As has been noted before the supportive states often have a long way to go to embrace more fully, the principle of universality. Till such time as they embody a less instrumental and more ethical approach to the principle of universality they will always be vulnerable to the charge of double standards. As such any movement of this group on to other human rights issues is of key importance to the LGBTI issues. In this context one must appreciate the shift of the EU on resolutions on human rights violations in Palestine, where it has moved from abstention to a yes vote. This aligns the EU more with a key human rights concern on which a large part of the world is in agreement. However, there is a long way to go on numerous human rights issues from the rights of migrants, protection of privacy to the rights of indigenous people.

With respect to states that are generally opposed to the rights of LGBTI persons

In all the statements by states that are opposed to the rights of LGBTI persons the issue has always been put in a polarized fashion. LGBTI people are seen as outside the country's national culture and outside the framework of religion. The issue of their rights is seen as a 'western agenda' with no relationship to the context of the developing world. However one needs to understand the reasons for the deep and unremitting hostility to LGBTI people in these states. To take an example, Egypt is at the forefront of those who oppose the very mention of sexual orientation or gender identity at the Council. Egypt has a long history of opposing this language at the Council right from the introduction of the first resolution by Brazil in 2003. However the opposition has acquired a new saliency under the current administration of President Sisi.

The current administration by General Sisi ever since its take over in 2013 is fast acquiring a reputation of being the most repressive regime in the history of Egypt, even in a country with a

track record of repressive regimes. Perhaps emblematic of the Egyptian state's war on its own people is the unprecedented massacre of thousands of Egyptians who were demonstrating against the army take over in 2013. According to a Human Rights Watch Fact Finding Report on these massacres the Egyptian forces used

‘armored personnel carriers (APCs), bulldozers, ground forces, and snipers to attacked the makeshift protest encampment, where demonstrators, including women and children, had been camped out for over 45 days, and opened fire on the protesters, killing at least 817 and likely more than 1,000. The indiscriminate and deliberate use of lethal force resulted in one of the world's largest killings of demonstrators in a single day in recent history. By way of contrast, credible estimates indicate that Chinese government forces killed between 400-800 protesters largely over a 24-hour span during the Tiananmen Massacre on June 3-4, 1989...’¹¹

Added to this blanket violation of the right to life is the use of mass arbitrary arrests, torture and sexual violence as an instrument of state policy against the Egyptian people.

This crisis of legitimacy, had led to an intensified campaign against LGBT people. As FIDH in its report notes that, ‘since October 2011, campaigns targeting LGBT persons have become more frequent’. Sensationalist coverage, ‘depicts homosexuality as a crime, gives common currency to the idea that since the revolution LGBT persons have increased in number and are part of a foreign plot threatening Egyptian society.’ The targeting of LGBT people is nothing else but ‘the regime’s strategy to demonstrate its moral conservatism in an attempt to gain the support of Islamist fringes of the population whose support brought the Muslim Brotherhood to power’¹²

It is in the context of this unprecedented mass repression back in Egypt that the reasons for the Egyptian government’s leadership of the resolution to protect the family need to be understood. The championing of the resolution to protect the family, refurbishes the base of legitimacy of the current Egyptian administration as the protector of notions of family, culture, religion and tradition. This tactic of the Egyptian government needs to be exposed.

If the Egyptian government is indeed serious about protecting the family, it must stop the war against the Egyptian family which is being carried out through disappearance, extra judicial executions, and possible crimes against humanity. These policies of the Egyptian state are a profound attack on the family and affect the ‘stability and structure of the family.’ Behind each arbitrary arrest and disappearance, ‘there is often a family that is destroyed or dismembered, and always a family that is assaulted in what is most intimate: its right to privacy, to the security of

¹¹ https://www.hrw.org/report/2014/08/12/all-according-plan/raba-massacre-and-mass-killings-protesters-egypt?_ga=1.118538569.192170602.1433342672

¹² See FIDH, Exposing State hypocrisy : Sexual violence by Security Forces in Egypt, https://www.fidh.org/IMG/pdf/egypt_report.pdf

its members, and to respect for the profoundly affectionate relations that are the reason for its existence.¹³

The middle ground of states

With respect to the middle ground of states that are not viciously opposed but neither are they vociferously supportive, the process of open and continued engagement is important. As far as these states are concerned the concerns around family, tradition, culture need to be continuously addressed in a culturally appropriate manner.

One strategy is to demonstrate that LGBTI people are not alien to that particular national context. This calls for enhanced civil society participation from these countries in the Human Rights Council, so the myth of being alien or outside culture and religion can be broken. Clearly there is a strong need for LGBTI people to show that while they are LGBTI they do not renounce their cultural and religious identity. Groups such as Muslims for Progressive Values are important in slowly taking apart the claim that it is the nation state that solely embodies a nations cultural and religious identity.

Resources on religion and questions of sexuality as well as the long cultural presence of LGBTI people in history are important to build in this context. All this of course has to go hand in hand with changes at the national level that can be the real driver of change in the middle ground states.

¹³ See the famous report on disappearances in Argentina (1979-83) known to the world as *Nunca Mas* for an extensive analysis of what these crimes mean to the family. As *Nunca Mas* observed:

It is a feature of the disappearance syndrome that the stability and structure of the family of the person who disappears is profoundly affected. The arrest (generally carried out in the presence of the family or of people connected to the family); the anxious search for news at public offices, law courts, police stations and military garrisons; the hope that some information will arrive, the fantasy of a bereavement that is never confirmed; these are factors that destabilize a family group just as much as the individual members. Behind each disappearance, there is often a family that is destroyed or dismembered, and always a family that is assaulted in what is most intimate: its right to privacy, to the security of its members, and to respect for the profoundly affectionate relations that are the reason for its existence.

http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_226.htm

With respect to entities which are opposed to LGBTI existence in toto

A new challenge is posed by the emergence of groups such as ISIS that do not, at the normative level, acknowledge the legitimacy of the human rights framework. What appear as abhorrent to international public opinion and what appears as crimes against humanity to international law is of no consequence to ISIS. ISIS has gone one step further than other states when it comes to the treatment of LGBTI persons. It has moved beyond the stage of persecution and moved on to elimination of those found to be LGBTI. As such ISIS poses an existential threat to the existence of LGBTI people in the domains under its control. The strategies of coping with this new form of threat have to be evolved in common with other groups under a similar existential threat including the Christian minorities, Yazidis, Kurds and Shia Muslims.