



General Assembly

Seventy-third session

Official Records

Distr.: General
10 January 2019

Original: English

Third Committee

Summary record of the 33rd meeting

Held at Headquarters, New York, on Thursday, 25 October 2018, at 10 a.m.

Chair: Mr. Saikal (Afghanistan)

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The meeting was called to order at 10.05 a.m.

Agenda item 74: Promotion and protection of human rights (*continued*)

(a) Implementation of human rights instruments (*continued*) ([A/73/40](#), [A/73/44](#), [A/73/48](#), [A/73/56](#), [A/73/140](#), [A/73/207](#), [A/73/264](#), [A/73/281](#), [A/73/282](#) and [A/73/309](#))

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(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) ([A/73/299](#), [A/73/308](#), [A/73/330](#), [A/73/332](#), [A/73/363](#), [A/73/380](#), [A/73/386](#), [A/73/397](#), [A/73/398](#) and [A/73/404](#))

(d) Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action (*continued*) ([A/73/36](#) and [A/73/399](#))

1. **Mr. Salvioli** (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence), introducing his report ([A/73/336](#)), said that the report identified the four main lines of engagement between his office and the General Assembly. The first was transitional justice, prevention and sustaining peace, taking into account General Assembly resolution [70/262](#) and Security Council resolution [2282](#) (2016). His work would be focused on trust-building and reconciliation from a human rights perspective. Given that institutional reforms were not guarantees of non-recurrence if they were not complemented by initiatives at the societal and individual levels, he would also study the inclusion of comprehensive transitional justice measures in the context of prevention.

2. The second line of engagement referred to the need to harness young people's creative agency for transitional justice, taking into account that they were often excluded from transitional justice discussions and processes, or limitations were placed on their participation. Young people needed to play a central role as agents of change in transitional justice processes based on respect and ensuring human rights. A lack of basic information available to young people regarding

their country's violent past and gross violations was a cause for concern, and there was an urgent need for educational reform to break cycles of violence.

3. The third line of engagement was accentuating the gender perspective in transitional justice efforts, for which he would build on Security Council resolution [1325](#) (2000) and work with the Informal Expert Group on Women and Peace and Security to facilitate a more systematic approach to women and peace and security in the work of the Security Council. Given the need for women to play an active leadership role in transitional justice processes, another area of focus would be general recommendation No. 30 (2013) of the Committee on the Elimination of Discrimination against Women, on women in conflict prevention, conflict and post-conflict situations.

4. The fourth line of engagement was the intersection of human rights and the Sustainable Development Goals in the context of transitional justice. The need for such a perspective had been set out by the Human Rights Council in its resolution [12/11](#) and by the Secretary-General in the guidance note entitled "United Nations Approach to Transitional Justice". Violations of economic, social and cultural rights often sparked conflict; other times, conflict had led to the violation of such rights. Truth commissions could therefore no longer focus solely on civil and political rights abuses, but should include economic, social and cultural rights with a view to reaching durable solutions to conflict.

5. An effective strategy to achieve sustainable peace should address the underlying causes of conflict holistically through an array of public policies. Consequently, the universality, interdependence and indivisibility of human rights must be present in the design and implementation of transitional justice programmes. Addressing the root causes of violence from the perspective of economic, social and cultural rights could be a powerful tool for prevention and a guarantee of non-recurrence, and comprehensive transitional justice measures could contribute to the achievement of the Sustainable Development Goals. A practice-oriented study would be undertaken on the effectiveness of measures to redress economic, social and cultural rights violations with the aim of contributing to the development of communities affected by serious human rights violations.

6. **Mr. García Moritán** (Argentina) said that to strengthen, systematize and consolidate public policies on human rights, the Government of Argentina had recently launched a national human rights plan for the period 2017–2020, which included memory, truth, justice and reparative policies as some of its central

themes. Likewise, Argentina had traditionally promoted and supported the inclusion on the international agenda of measures to ensure the right to truth and initiatives on forensic genetics, transitional justice and forced disappearances. In relation to the report of the Special Rapporteur, which highlighted the relationship between corruption and blatant human rights violations in a transitional context, it would be useful to receive more details about the main difficulties posed by corruption in strengthening State institutions and accountability.

7. **Ms. Whitehead** (United States of America) said that her country supported both judicial and non-judicial accountability mechanisms to hold perpetrators of human rights violations to account and endorsed truth and reconciliation commissions and reparations programmes. The United States called for a political solution to the Syrian conflict through a credible, United Nations-led process. It urged the Government of Burma to pursue accountability for human rights violations, implement the recommendations of the Advisory Commission on Rakhine State, and create the conditions necessary for the voluntary return of Rohingya refugees. The United States also supported advances in the Central African Republic and Colombia towards accountability for human rights abuses and called on the Government of Sri Lanka to continue implementing all aspects of the process outlined in Human Rights Council resolution 30/1. She asked what lessons could be learned from countries that had conducted successful reconciliation processes.

8. **Ms. Sukacheva** (Russian Federation) said that parts of the report exceeded the Special Rapporteur's mandate and duplicated work done by other United Nations bodies. The Special Rapporteur had himself admitted that his mandate for transitional justice, prevention and sustaining peace in many ways overlapped with that of the Security Council. It was also difficult to understand the legal and procedural basis for him to study the inclusion of transitional justice measures, or components thereof, in Security Council resolutions relating to countries in conflict and post-conflict settings. Although the commitment to harnessing the creative agency of youth for transitional justice was praiseworthy, the Special Rapporteur must make sure not to encroach on similar mandates of other United Nations bodies, including the Security Council. Efforts to improve transitional justice would never entirely resolve socioeconomic problems, but they could eliminate certain shortcomings by restoring economic, social and cultural rights that had been violated during conflict situations. The Russian Federation therefore welcomed his intention to study the effectiveness of measures in redressing violations of economic, social

and cultural rights and contributing to the development of the communities affected by gross human rights violations.

9. **Mr. Forax** (Observer for the European Union) said that the Special Rapporteur had discussed leveraging the creative energy of young people to support transitional justice processes, noting the limitations they experienced in that regard and calling for a more inclusive approach. He asked the Special Rapporteur to elaborate on methods for realizing that objective. Also, noting the observation that women's voices were marginalized in post-conflict and transition environments, he asked the Special Rapporteur how he planned to incorporate a gender perspective into his mandate.

10. **Mr. Kelly** (Ireland) said that it was clear from the report that the Special Rapporteur intended to maximize the resources of his mandate to ensure that the issues of truth, justice, reparations and guarantees of non-recurrence remained priorities within the structures of the United Nations. Noting that the Special Rapporteur also intended to compare the conceptual understandings of healing and reconciliation with their usage in practice, he asked how States could support him in that work.

11. **Ms. Fontana** (Switzerland) said that her delegation welcomed the Special Rapporteur's intention to link his work closely with the issues of sustainable peace and the 2030 Agenda for Sustainable Development. With respect to transitional justice, there was often a disconnect between the decisions made by the United Nations and their implementation on the ground. The Swiss delegation had noted situations in which women had been able to contribute substantively to transitional justice or guide processes. The focus on the inclusion of youth was also of interest, and her delegation asked him to share further thoughts on the subject.

12. The link between transitional justice and attacks on economic, social and cultural rights remained the least developed part of the field. The 2030 Agenda for Sustainable Development provided avenues for addressing that gap, and Switzerland encouraged the Special Rapporteur to explore the issue further.

13. **Mr. Al Khalil** (Syrian Arab Republic) said that said that his delegation strenuously objected to the claims made by the representative of the United States about Syria and reiterated the need to condemn crimes against Syrian civilians committed by the illegitimate international coalition led by the United States. The most recent such crime had taken place six days earlier

in Dayr al-Zawr governorate, where shelling had killed over 60 civilians and wounded others.

14. **Mr. Salvioli** (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence) said that the human rights plans of countries that had gone through transitional justice procedures should indeed contain references to memory, truth and justice. Regarding the relationship between corruption and human rights violations and the difficulties that corruption posed for strengthening State institutions and accountability, he said that corruption was a phenomenon that violated civil, political, economic, social and cultural rights. International bodies, including the Human Rights Council, were working to address issues of corruption and to identify how it affected the administration of justice. In that context, truth commissions were crucial to ensuring non-recurrence, but they should not be seen in opposition to bringing perpetrators of serious human rights violations to justice.

15. Good practices would be identified in the areas of fighting corruption, holding perpetrators of human rights abuses to account and establishing reparations programmes with a view to providing technical assistance to States to help them to develop transitional justice strategies, with due consideration for their national specificities. Although he did not aim to address issues pertaining to other United Nations bodies, he was open to establishing links and working in collaboration with the Security Council on transitional justice issues, for instance, given the strong connection between peace, development and human rights.

16. It was essential for young people to participate in transitional justice processes. Comprehensive State policies aimed at encouraging young people to become human rights defenders and promoters could assist in efforts to counter intolerance and violent extremism. Moreover, the lack of participation of young people was in stark contrast with the violations of human rights and humanitarian law, such as forced recruitments, sexual slavery and suppression of identity, that they suffered in conflicts. In that context, school curricula and study programmes should include information on a country's violent past and human rights violations to encourage young people to play an active role in preventing the recurrence of such violations.

17. On the issue of applying the gender perspective to the work of his mandate, the Security Council resolutions on the empowerment of women as agents of peace and security were of the utmost importance. It was vital for women to take on a leadership role in transitional justice programmes as they were often the

victims of human rights violations during conflict situations, which would subsequently give rise to transitional justice processes.

18. In response to the question on reconciliation and how to support his mandate, he said that the concept of reconciliation had been poorly used in transitional justice programmes in the past as it had often been linked to impunity, an idea that needed to be debunked. When a State was responsible for violating human rights rather than upholding them, people lost trust in that State; thus reconciliation was necessary for society to recover its trust in the State. That was a perspective that could propel transitional justice strategies.

19. **Mr. Madrigal-Borloz** (Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity), introducing his report ([A/73/152](#)), said that the report examined the process of abandoning the classification of certain forms of sexual and gender diversity as pathologies and the full scope of the duty of States to respect and promote respect of gender recognition as a component of identity. It also described effective State measures to protect the right to life, physical and mental integrity, freedom and dignity of trans persons.

20. Trans and gender-diverse people around the world were victims of alarming levels of transphobic violence, including cases of arbitrary detention in psychiatric facilities and alleged conversion therapies. The risk of violence and discrimination against transgender people was aggravated when their name and gender on official records did not match their appearance. In such cases, victims suffered additional harassment, humiliation, abuse or arrest when attempting to denounce attacks and seek police protection. Most trans and gender-diverse people in the world did not have access to gender recognition by the State, which created a climate that tacitly allowed, encouraged and rewarded with impunity acts of violence and discrimination against them. Persecution was also enabled through laws or regulations that criminalized people for their identity or expression. Even in cases where States recognized the gender identity of trans persons, they often imposed abusive requirements for such recognition, including mental health diagnoses and forced or involuntary treatments and procedures. The report detailed why such requirements could be viewed as violating the right to integrity and constituted torture or ill-treatment.

21. States had the power and duty to put an end to the terrible experience faced by trans and gender diverse people. The report highlighted key decisions of international and regional bodies as well as effective measures taken by States such as the depathologization

of trans and gender-diverse identities and the legal recognition of gender identity, including the elimination of abusive requirements for such recognition. States were encouraged to draw inspiration from the positive developments at the global, regional and national levels that were highlighted in the report. States should begin by providing a simple administrative process for gender recognition procedures, based on self-determination and exempt from abusive requirements, and they should refrain from collecting and displaying gender data and markers unnecessarily.

22. The impact of the misperception that certain forms of gender diversity were pathologies on public policies, legislation and jurisprudence had been profound, affecting State action in all regions of the world and permeating the collective consciousness. The deconstruction of those structures would require coordinated and deliberate action by States. Those States that had already prepared or were in the process of preparing comprehensive public policies to address the problems of trans and gender-diverse people were to be commended.

23. **Ms. León Murillo** (Costa Rica) said that, as stated in the report of the Independent Expert, trans and gender diverse persons whose identity was not properly recognized suffered from the denial of their rights and were discriminated against in educational, employment, housing, health and other contexts. Costa Rica had recently adopted a resolution that allowed people to change the name under which they were registered to match their gender identity through a simple and free administrative procedure, based exclusively on the free and informed consent of the applicant, thus complying with the provisions of an advisory opinion of the Inter-American Court of Human Rights that had been requested by Costa Rica and had binding effects. In addition, information on the sex assigned at birth had been eliminated from identity documents to avoid stigmatizing effects, and an executive decree required all State institutions to amend the documents, formalities and internal records of transgender persons who wished to change their name, photograph or gender.

24. The Government of Costa Rica was committed to the fight for equality and non-discrimination of all people, for which it had appointed an executive commissioner responsible for ensuring the promotion and advancement of bills and public policies aimed at recognizing the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.

25. **Ms. Hammarskjöld** (Sweden), speaking also on behalf of Denmark, Estonia, Finland, Iceland, Latvia, Lithuania and Norway, said that transphobic violence

occurred in all regions and that violence and discrimination against transgender and gender-diverse persons must come to an end. The Independent Expert recommended that States adopt laws, policies and judicial decisions to address the problem, but such measures must also be implemented. Therefore, she asked him to share best practices on how States, working with civil society, could ensure that such measures were effective in combating transphobic violence and discrimination.

26. The recent decision by the Supreme Court of India to legalize gay sex was welcome. However, 70 other countries still criminalized consensual same-sex relationships, and some States even applied the death penalty. Countries' cultural traditions and political histories could never be used to justify human rights violations.

27. **Mr. de Souza Monteiro** (Brazil) said that his delegation appreciated the attention given in the report to the trend of depathologization of certain forms of gender identity. In that regard, the removal by the World Health Organization International Classification of Diseases of transsexuality from the chapter on mental health and behavioural disorders was an important step, as it allowed medical professionals to address the actual needs of transgender persons rather than trying to cure a condition that was not a disease. Moreover, imposing unreasonable stipulations, such as surgery or clinical treatment, as prerequisites for gender recognition could be an abuse of human rights. In March, the Brazilian Supreme Court had ruled that transgender persons could change their names and gender markers through a simple administrative procedure, without needing to produce a medical certificate or court order.

28. **Mr. García Moritán** (Argentina) said that his country reiterated its call for the full realization and recognition of the human rights of LGBTI persons with the urgent aim of eliminating all forms of violence or discrimination. His Government agreed that States should adopt all measures necessary to eliminate the social stigma associated with gender diversity; enact hate crime legislation that established transphobia as an aggravating factor for the purpose of sentencing; and enact gender recognition systems that ensured due respect for free and informed choice and bodily autonomy. He asked what the main obstacles were for transgender persons in the exercise of their human rights and which obstacles should be addressed by States as a matter of urgency.

29. **Mr. Oppenheimer** (Netherlands) said that the report had come at a time when several countries, including Uruguay, had made positive steps on the issue

of legal recognition of gender diversity. The trend, however, was not positive everywhere. New limitations on gender-diverse persons were being discussed in certain States, and therefore the United Nations LGBTI Core Group and the Equal Rights Coalition must ensure that the issue remained a priority. The Netherlands was committed to equality, non-discrimination and the entitlement of all persons, regardless of sexual orientation, gender identity or sex characteristics, to the full enjoyment of human rights. The Government planned to increase its funding for LGBTI human rights programmes. He asked how the issue of recognition of diversity of gender identity and expression related to equal rights for persons of different sexual orientations.

30. **Ms. Kipiani** (Georgia) said that her country had supported the establishment of the Independent Expert's important mandate and condemned discrimination and violence towards the LGBTI community around the world. In order to reduce violence and discrimination based on gender identity, Member States must adopt laws, policies and judicial decisions; in doing so, they should seek involvement from civil society and relevant communities so that such measures were designed in an inclusive manner. Georgia welcomed the recommendation of the Independent Expert regarding the need to eliminate the social stigma associated with gender diversity, and transgender children must be protected from bullying. In light of the discussion in the report on children's right to identity, she asked what the optimal age was for a child to change his or her gender identity.

31. **Mr. Carabalí Baquero** (Colombia) said that his country welcomed the fact that the report of the Independent Expert included effective measures to ensure respect for gender identity and provided guidance to States on ways to address gender-based violence and discrimination. It was important to understand the multidimensional nature of violence and discrimination and to underline that there were no legal grounds to exclude LGBTI persons from justice and solidarity. Their full enjoyment of human rights was a cross-cutting challenge that started in the home and extended to the education system, work and other areas of life.

32. The Government of Colombia agreed on the need for effective anti-discrimination measures that encompassed the public and private spheres and were comprehensive in nature. It also recognized that discrimination and violence resulting from sexual prejudice was a social problem that needed to be addressed by public policies.

33. **Mr. Bastida Peydro** (Spain), noting the personal and professional commitment of the Independent Expert in the fight against violence and discrimination on the grounds of sexual orientation and gender identity, said that his delegation would welcome a preliminary assessment of his first year in office, including the main challenges he faced and whether States could contribute to facilitating his work. The decision of the Independent Expert to focus his report on gender identity and in particular on progress towards the depathologization of transsexuality was to be commended. The report had taken into account the doctrine of the Committee on the Rights of the Child concerning the recognition of children's gender identity. It would be useful to hear his views on a possible general comment on children's sexual orientation and gender identity. Spain had recently made a number of commitments in the promotion and protection of equality and non-discrimination, including the creation of a general directorate for equal treatment and diversity and the return of the right of access to assisted reproduction techniques, financed by the Spanish public health system, to lesbian or bisexual women.

34. **Ms. Diedricks** (South Africa) said that the South African constitution was premised on human dignity, equality, non-discrimination and universal justice, and that respect for human rights was a critical pillar of the country's domestic and foreign policy. Her delegation agreed that the depathologization of some forms of gender would be a long and difficult process that required engagement from all stakeholders. Furthermore, definitions of identity contained in laws and policies had a significant impact on the recognition and protection of human rights.

35. Her delegation wondered whether the Independent Expert could elaborate on issues related to gender-disaggregated data, given that the report noted that gender markers remained pervasive and recommended that States refrain from imposing them on official documentation. How could States promote gender equality through collection of disaggregated data while remaining sensitive to gender issues?

36. **Ms. Lemus** (Mexico) said that her country reaffirmed its firm conviction that hate speech, violence and discrimination were unacceptable in any form and for any purpose. The Independent Expert had emphasized that there was a well-established framework in international human rights law that prescribed respect for gender identity. It would be useful to hear his experience with regard to the scope of international cooperation on the depathologization of gender identity and the role played by the United Nations in that area,

as well as his proposals for increasing cooperation and making it more effective.

37. **Ms. Stankiewicz von Ernst** (Iceland) said that her country was committed to promoting equal rights and non-discrimination with respect to lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals at home and abroad. According to a 2017 study by the Organization for Economic Cooperation and Development, Iceland had the highest rates of social acceptance of LGBTI persons. Domestic funding for LGBTI issues had been doubled and an ambitious law on gender identity recognition was in development.

38. The report concluded that strong national and international countermeasures were needed to combat violence based on sexual orientation and gender identity. She asked what the Independent Expert saw as the most common structural barriers facing LGBTI persons in States with existing anti-discrimination measures.

39. **Ms. Wacker** (Observer for the European Union) said that the European Union, in line with its Guidelines to Promote and Protect the Enjoyment of All Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons and the Council conclusions on LGBTI equality, was strongly committed to equality, non-discrimination and equal enjoyment of human rights by all regardless of sexual orientation or gender identity. Although a wide range of gender identities and gender expressions existed in all regions, LGBTI individuals were subjected to alarming rates of discrimination and violence.

40. The European Union also welcomed the removal by the World Health Organization of transgender identity from its list of mental and behavioural disorders in 2018. Through a combination of political dialogues, awareness-raising activities and financial assistance, the European Union would continue to address discrimination and violence. Her delegation would be interested to hear more about how recognition of gender diversity in law or in culture impacted societies.

41. **Ms. Prizreni** (Albania) said that her delegation regretted that over 70 countries criminalized sexual orientation. Laws targeting LGBTI persons undermined the rule of law and did not add value to national traditions; rather, they served to legitimize discrimination, violence and hatred of those who were different. An alarming aspect of the refusal to decriminalize sexual orientation was that it increased rates of domestic violence and violence against women. Countries should develop action plans to combat the scourge of discrimination and stigmatization. Albania was implementing such an action plan, which had led to

the drafting of other plans and laws. Civil society organizations also had an important role to play in addressing LGBTI issues.

42. **Ms. Charrier** (France) said that the lives of LGBTI persons were often under threat, and protection against violence and discrimination based on sexual orientation and gender identity was a national and international priority for France. France welcomed the attention to depathologization of gender identity in the report and its multidimensional approach in recognizing different types of discrimination against LGBTI persons, particularly transgender persons. While reliable data painted a grim picture of the scope of the violence and discrimination suffered by LGBTI persons around the world, the situation was improving in some regions; France thus welcomed the decriminalization of homosexuality in India. She asked what were the most effective strategies for expanding the decriminalization movement without provoking counterproductive reactions within the States concerned.

43. **Ms. Buist-Catherwood** (New Zealand) said that despite the well-established human rights framework that prohibited discrimination on the grounds of sexual orientation and gender identity, United Nations human rights mechanisms continued to receive reports of violence against individuals in the LGBTI community. Moreover, when those individuals sought protection, they could be subjected to harassment, arrest, humiliation and abuse. New Zealand was concerned by the level of violence faced by LGBTI individuals and urged Member States to condemn the phenomenon. Protecting LGBTI individuals from violence did not require the creation of new rights, as the legal obligations of States to uphold the human rights of all persons were well-established. Violence against LGBTI persons undermined the realization of the 2030 Agenda, and Governments should therefore offer support to them, so as not to leave anyone behind.

44. **Mr. Anthierens** (Belgium) said that the fight against human rights violations based on sexual orientation, gender identity or gender expression remained at the top of his country's national and international priorities. Belgium believed that special attention to gender expression as a legitimate ground for gender identity would benefit the fight against violence related to gender identity. To that end, Belgian legislation prohibiting discrimination on the basis of sex had been amended in 2014 to include gender identity and gender expression as equally illegitimate grounds for discrimination. The Government had also amended legislation on transsexuality in 2018, allowing transgender persons to change their registered sex on their identification documents without requiring

medical certificates or involuntary medical treatment. The aim of the reforms was to depathologize transsexuality and legally recognize gender identity and expression. He asked how civil society could help to create an environment conducive to respect for gender identity.

45. **Ms. Učakar** (Slovenia) said that despite some progress, LGBTI persons continued to face hatred, harassment and violence. Gender diversity was often stigmatized and, in some places, criminalized due to cultural norms. Transgender persons were likely to encounter discrimination and were pushed to the margins of society, and their gender identity often intersected with issues of race, class and religion, increasing their vulnerability. Transgender and gender-diverse children and adolescents were more vulnerable than other children to violence and exclusion in classrooms and cyber-bullying. In that regard, human rights education was an important tool for raising awareness and acceptance of diversity. She asked how exclusion and discrimination should be addressed in the light of deep-rooted social prejudice.

46. **Ms. Haime** (El Salvador) said that the Government of El Salvador had adopted an executive decree in 2010 to protect against any form of discrimination in the public administration on the grounds of gender identity and sexual orientation, as well as a sexual diversity directorate within the country's Social Inclusion Secretariat. Stereotypes often resulted in violence and inhumane treatment, and discrimination and stigma led to restrictions on housing and other basic social services. Although there were many challenges ahead, El Salvador was committed to guaranteeing respect for the human rights of LGBTI persons and reiterated its strong support for the mandate of the Independent Expert.

47. **Ms. Brink** (Australia) said that her country was committed to equal rights and protections for all. LGBTI individuals faced higher levels of violence globally, a situation that must be addressed. Australia welcomed the acknowledgement in the report that gender and sex were not rigid, immutable concepts, and that there was a rich diversity of gender identities and expressions globally. Australia was home to Aboriginal peoples with a long history of diverse gender identities, and the country was pleased to support the self-identification and empowerment of many gender-diverse communities across the Pacific region. While Australia was proud to have adopted legislation and policies that supported LGBTI rights, it acknowledged that it had more to do in that regard.

48. **Mr. Kelly** (Ireland) said that the creation of the Independent Expert's mandate had sent an important message of solidarity to the members of the LGBTI community. In 2015, the Irish Government had passed the Gender Recognition Act, which enabled transgender persons to obtain full legal recognition of their preferred gender and allowed them to acquire a new birth certificate reflecting that change. That was an important first step in ensuring that the human rights of all citizens were respected. The report recommended that States adopt laws and policies to address violence and discrimination based on gender identity, and that civil society organizations should be involved in their design and implementation. He asked for examples of best practices in that regard.

49. **Ms. Korac** (United States of America) said that her delegation strongly opposed bias-motivated violence against LGBTI persons, the criminalization of LGBTI status or conduct and discrimination against LGBTI persons in matters such as employment, housing, health care and access to government services. Dignity and equality were not only core American values enshrined in the constitution, but principles that underpinned universal human rights and fundamental freedoms. She asked what steps had been taken to discuss with the Russian Government the violence, deaths, beatings, arbitrary arrests and forced disappearances against LGBTI, or suspected LGBTI, persons the previous year.

50. **Ms. Eyheralde Geymonat** (Uruguay) said that despite the progress made, LGBTI persons continued to be victims of violence, prejudice, discrimination and stigma around the world. Uruguay was firmly committed to its efforts to protect and defend the rights of all people and raising awareness of the specific challenges faced by the LGBTI community. The report of the Independent Expert contained data and observations that could serve as a guide for States in addressing violence and discrimination on the basis of gender identity. Her delegation agreed that to address gender-based violence and discrimination, States must adopt appropriate laws, policies and judicial decisions. She asked the Independent Expert to expand on the recommendation that States should ensure that such measures were evidence-based, and that the relevant communities and civil society organizations should be involved in their design and implementation. Additional information on his experience during recent visits and the challenges he had faced in the fulfilment of his mandate would also be welcome.

51. **Ms. Godin** (Canada) said that the report highlighted the crucial relationship between state recognition of gender identity and the ability of

transgender and gender-diverse persons to enjoy the full spectrum of human rights. Canada acknowledged that while issues of gender identity could be sensitive for many States, they must address the relevant gaps in their legal and policy frameworks if they wished to meaningfully ensure the human rights of all their inhabitants. At the recent Equal Rights Coalition Global Conference in Vancouver, Coalition members recognized that while progress was being made in safeguarding the rights of LGBTI persons, more remained to be done. She asked for examples of education and sensitization campaigns that had appeared to be effective in changing public attitudes.

52. **Mr. Holtz** (United Kingdom) said that his delegation supported the recommendations in the report, particularly the suggestion that States adopt measures to protect defenders and supporters of the rights of transgender and gender diverse persons from attacks, intimidation and other abuses. The United Kingdom was deeply concerned by all reports of arrests, arbitrary detention and torture targeting LGBT persons. Given the increase in anti-rights discourse from some political and religious leaders that sought to limit the human rights of LGBT persons, how did the Independent Expert propose to examine that narrative under the parameters of hate speech?

53. The United Kingdom had published an ambitious LGBT action plan, committing to 75 measures to improve the lives of LGBT people domestically. They included improvements to the recording and reporting of LGBT hate crimes, police responses and gender identity services for transgender people, as well as steps to ensure that the gender recognition process was less intrusive and bureaucratic.

54. **Ms. Wundsch** (Germany) said that her country considered the establishment of the mandate to be a major achievement and would continue to support the work of the Independent Expert. While the depathologization of certain forms of gender identity was an important step towards improving the situation of LGBTI persons worldwide, much remained to be done in the global struggle for equal rights for all regardless of sexual orientation and gender identity. Governments had an obligation to respect, protect and promote the human rights of all individuals, including LGBTI persons, but despite recent encouraging developments such as decriminalization measures in India and Trinidad and Tobago, one third of the world's population lived in countries that criminalized LGBTI persons for who they were and whom they loved.

55. Around the world, civil society organizations fought for LGBTI rights, sometimes at risk to their lives.

She asked how Member States could best support and protect those human rights defenders.

56. **Mr. Madrigal-Borloz** (Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity) said that, since taking up his mandate in January 2018, he had received many reports of good practices on the legal recognition of gender identity from all regions of the world. It was encouraging to see that there was a unifying factor in understanding the importance of gender identity as a pillar of work for ending violence and discrimination. It was also a highly dynamic area of international law and practice, with several new measures being adopted since his report had been published.

57. With regard to the challenges faced, criminalization remained an issue of deep concern, given that homosexuality was still criminalized in 71 countries, including 10 in which it could result in the death penalty. Furthermore, there was an inextricable link between criminalization and the inability of States to adopt mitigation and protection measures in relation to sexual orientation and gender identity, so some States were effectively hindering their own efforts to protect their citizens. It was also impossible to undertake comprehensive data gathering exercises on the basis of LGBTI identity in contexts that maintained criminalization, as that would require the self-incrimination of LGBTI persons. On the question of the expansion of the decriminalization movement taking into account specific political realities, he said that there was evidence that criminalization was contrary to international law, the imposition of the death penalty was tantamount to arbitrary killing and the deprivation of liberty was tantamount to arbitrary detention. Decriminalization needed to be made concrete through legislation, public policy or jurisprudence, depending on the national context.

58. Another issue of concern was negation, a scourge that disabled any action of protection and recognition by States of their international duties. Although there was a lack of recognition of LGBTI persons in certain environments, there was firm evidence that they existed in all regions of the world. On the increase in anti-rights discourse, he intended to analyse anti-rights narratives and their intersection with hate speech and work on the issue in collaboration with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on freedom of religion or belief.

59. On the issue of education and sensitization campaigns that had assisted in changing public attitudes, he said that such campaigns and comprehensive public

policies to provide LGBTI persons with legal protection had resulted in an increase in the life expectancy of trans persons, which in some regions of the world was estimated to be 35 years. Any measures to increase protection and awareness was therefore essential.

60. With regard to country visits, he thanked the Government of Georgia for its cooperation during his recent visit to the country, where he had been granted access to ample sectors of the State, including religious communities, civil society and victims of violations. He also expressed his appreciation to those States that had accepted his requests for country visits for their openness in helping him to carry out his mandate effectively. He reiterated his commitment to bringing visibility to violence and discrimination based on sexual orientation and gender identity and to providing advice to States on effective measures for addressing those issues, and was always open to engaging in dialogue with States through active listening as part of his mandate.

61. On the role of civil society organizations, he said that any measures to improve the lives of LGBTI persons required the active participation of the people concerned. Information on gender identity and trans persons was limited, for instance, and only the communities themselves could provide accurate data. It was therefore vital for grassroots organizations to receive adequate funding.

62. Lastly, he said that once legal gender recognition existed, it was essential for States to ensure that regressive measures were rejected.

63. **Ms. Callamard** (Special Rapporteur on extrajudicial, summary or arbitrary executions), introducing her report, said that she joined the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in calling for an international investigation into the murder of the Saudi Arabian journalist, Jamal Khashoggi. She also congratulated the Government of Malaysia for its recent decision to abolish the death penalty. Drawing attention to a report she had submitted to the Human Rights Council in June 2018 on armed non-State actors ([A/HRC/38/44](#)), she underscored her concern for the continued lack of accountability for war crimes, crimes against humanity and genocide committed against the Iraqi people, especially the Yazidis and other minorities.

64. Humanitarian interventions were essential in the contemporary world, as they helped victims of conflicts and those fleeing persecution, climate degradation and poverty; provided services to communities neglected by overstretched public health facilities or subject to stigmatization; and ensured that States could meet their

human rights obligations. The right not to be arbitrarily deprived of life was a supreme right that must be upheld without any form of discrimination, but when a State was unable to provide food, water, shelter or rescue mechanisms sufficient to protect life and dignity, humanitarian actors were indispensable. Humanitarian actors must therefore be protected not only from attack, but also from harassment, intimidation and impediments to accessing populations in need. Under international human rights law, States had a positive obligation to facilitate humanitarian action and a negative obligation not to prevent it.

65. Life-saving interventions were under threat in a variety of ways: the lack of a globally agreed definition of terrorism meant that many humanitarian acts were tagged as supportive of terrorism and bans on funding or providing economic resources had imposed significant administrative burdens, with the net effect of a significant decrease in aid for critically endangered populations. Countries were also increasingly shielding themselves from irregular migration, largely through the criminalization of humanitarian services. Meanwhile, emboldened by Government actions, anti-migrant segments threatened or attacked humanitarian actors. The provision of life-saving services to women and LGBTI persons was also increasingly subject to criminalization, deterrence or stigmatization. Under the global gag rule, for example, life-saving aid to the poorest, most disenfranchized and stigmatized was being held hostage to ideology.

66. The report included numerous recommendations on the need to prevent unacceptable encroachments on humanitarian actions at the legal, programmatic and rhetorical level. In particular, she encouraged all States to continue their efforts to replace shortfalls caused by the global gag rule and similar policies in order to narrow the funding gap for comprehensive sexual and reproductive health services. She also urged the Secretary-General and all public figures to use their moral authority to champion the work of humanitarian actors.

67. **Ms. Sukacheva** (Russian Federation) said that the Special Rapporteur had chosen a theme for her report that was only loosely connected to her mandate, while continuing to disregard certain serious issues directly related to the prevention of extrajudicial executions. Since there was no definition of extrajudicial, summary or arbitrary executions in international law, much of the report was contrived and, from a legal standpoint, unsubstantiated. It was certainly not within the Special Rapporteur's mandate to analyse documents adopted by the Security Council, let alone to offer the Council recommendations.

68. The Geneva Conventions established that during armed conflicts, States had a vital role to play in the protection of humanitarian services within their territory. Their protection was underpinned by observance of guiding principles on international humanitarian assistance set out in General Assembly resolutions, including respect for sovereignty, neutrality, humanity, objectivity and independence. Humanitarian workers also must scrupulously follow their professional principles and code of ethics to carry out their duties assiduously, efficiently and safely. When working in conflict zones or the territories of foreign States, they must comply with local laws and customs. The Russian Federation therefore disagreed with the Special Rapporteur that humanitarian workers should have unimpeded access to armed non-State actors: access should be provided only with the consent of legitimate State bodies. Syria was a prime example of what could happen when such matters were not controlled, as the assistance provided by humanitarian organizations had fallen into the hands of terrorists.

69. **Ms. Charrier** (France), speaking also on behalf of Germany, said that extrajudicial, summary or arbitrary executions were grave violations of human rights, and yet those responsible sometimes enjoyed total impunity. In line with their requirements under international human rights law to respect and protect the right to life, Governments should always guarantee the right to health, including sexual and reproductive health. Punitive measures that limited health services to certain groups were unacceptable, while withdrawing services altogether could lead to discrimination or have other serious consequences on the lives of those deprived of their rights. Reductions in the availability of high-quality contraception and prenatal services, as well as in access to HIV/AIDS treatment and medical abortion, led to higher levels of preventable death, especially maternal and infant mortality, and an increase in the number of injuries sustained from the practice of abortions in dangerous conditions. She asked how best to protect the right to sexual and reproductive health care from restrictions based on discrimination or intimidation.

70. **Mr. Playford** (Australia), taking note of the reference to the Australian system in paragraph 51 of the report, said that his country's counter-terrorism laws had been carefully drafted to ensure that they criminalized solely actions and organizations associated with terrorist organizations and did not hinder the provision of humanitarian aid. Australia also had laws on foreign incursions to provide additional safeguards to humanitarian activities undertaken in conflict zones abroad.

71. **Ms. Buist-Catherwood** (New Zealand) agreed with the statement in the report that a State that failed to exempt humanitarian services from the overreach of punishing policies was violating its obligation to protect the right to life. Such laws had a disproportionate impact on civilians and, according to empirical evidence, increased the rates of unsafe abortion and preventable maternal mortality and morbidity among women and girls. Her delegation therefore welcomed the adoption of Human Rights Council resolution 39/10, which urged States to: bring laws and policies on sexual and reproductive health into line with international human rights law; repeal discriminatory laws relating to third-party authorization for health information and health-care services; and combat discriminatory gender stereotypes, norms and behaviours. She asked the Special Rapporteur her view on the biggest challenge that Member States faced in their efforts to ensure that humanitarian and other international organizations could provide life-saving services without hindrance.

72. **Mr. Sigurdsson** (Iceland) said that the right not to be arbitrarily deprived of life was not universally respected, as had been demonstrated by the recent death of Saudi journalist, Jamal Khashoggi. He called for an independent investigation into that murder and asked the Special Rapporteur for recommendations on how proceedings should be conducted. He also asked whether she had considered investigating the situation in Yemen, where a brutal conflict had caused thousands of deaths and indiscriminate air strikes had seriously affected the ability of humanitarian workers to provide assistance.

73. **Mr. de Souza Monteiro** (Brazil) said that his delegation agreed that by deterring the provision of humanitarian services to migrants and refugees, States violated their obligation to prevent, combat and eliminate arbitrary killings and the deprivation of life. States should not view migration as grounds for declaring a state of emergency or use it to claim exemptions from their obligations under international laws and undisputed peremptory norms. Brazil had passed a migration law that protected the human dignity of migrants and repealed any provisions that criminalized irregular migrants or the assistance provided to them. His delegation urged States to follow suit by refraining from penalizing assistance provided to migrants, as well as to women and LGBTI persons. He asked what practical steps countries could take to improve the protection of organizations and individuals that provided life-saving services.

74. **Ms. Haime** (El Salvador), thanking the Special rapporteur for her visit to her country, said that El Salvador was firmly committed to strengthening the

protection of human rights in its domestic and foreign policies. In recent years, it had extended protection of the rights of vulnerable people; carried out numerous programmes to support young people; launched a campaign against underage pregnancy; and established a national youth policy.

75. **Ms. Fontana** (Switzerland) said that a variety of obstacles prevented humanitarian actors and human rights defenders from helping populations in need. Although States were entitled to take security measures to protect themselves, they should not use conflict prevention, the fight against terrorism or their right to control their borders as pretexts for failing to meet their obligations under international human rights law and international humanitarian law; nor should they criminalize neutral, impartial and independent activities undertaken by humanitarian organizations or prevent such organizations from accessing the funds and banking services necessary for conducting those activities. Given current gaps in funding for humanitarian actions in relation to counter-terrorism, she asked what mechanisms could be established to guarantee unfettered access to humanitarian aid and yet also prevent financing of terrorism.

76. **Ms. Whitehead** (United States of America) said that her country was concerned that impunity for extrajudicial killings had become common in many parts of the world: government authorities and security forces had allegedly been involved in extrajudicial killings in Nicaragua, the Philippines, Mali and Cameroon. In Saudi Arabia, the United States would not tolerate the use of ruthless violence to silence Mr. Khashoggi: it would continue to seek all relevant facts about his death and would hold consultations in Congress and with partners about how to ensure that those responsible were held accountable. She urged Governments to conduct thorough and transparent investigations into all reports of extrajudicial killings and ensure that law enforcement efforts complied with domestic and international human rights law. She asked what the most effective mechanisms were for reducing the occurrence of extrajudicial killings.

77. **Mr. Lafta** (Iraq) said that in Iraq, the lengthy prosecution process, from arrest through investigation, collection of evidence, trial, sentencing and punishment, involved more than 30 steps. The Iraqi constitution granted all accused persons the right to legal representation at all stages of that process. Iraq imposed the death penalty for only the most serious cases, as was its right in accordance with national sovereignty and article 6.2 of the International Covenant on Civil and Political Rights, and in line with the procedural safeguards granted under Iraqi law.

78. In compliance with the principle of transparency, the Iraqi Government had in November 2017 hosted the Special Rapporteur, a visit which had involved many meetings with high-level Iraqi officials and a review of the procedural guarantees afforded by the Government. Despite the Iraqi Government's sincere wish to adopt international human rights standards with respect to executions, application of the death penalty stemmed from the country's exercise of its sovereignty and from popular demands for justice for the victims and their families, not from a desire for revenge.

79. **Mr. Forax** (Observer for the European Union) said that the European Union remained committed to preventing and ending extrajudicial, summary or arbitrary executions in all circumstances and to ensuring respect for international human rights law and international humanitarian law and accountability for violations of international law and the right to life.

80. The killing of humanitarian workers had escalated into a global problem. In response, the humanitarian community had mobilized support to protect such workers through the #NotATarget campaign. States had an obligation to guarantee and not hinder humanitarian access to populations in need. As one of the largest donors to humanitarian organizations worldwide, the European Union was fully committed to ensuring that humanitarian aid reached populations in need and was concerned whenever those delivering aid faced harassment, intimidation, violence or death. He asked in what way the United Nations could enhance cooperation with humanitarian organizations, including local community-based organizations, to improve the protection of humanitarian workers and medical personnel. He was interested to know more about the Special Rapporteur's priorities and plans for future country visits and called on States to fully cooperate with the Special Rapporteur, including her requests to conduct visits.

81. **Ms. Lemus** (Mexico) said that her Government was committed to investigating acts related to extrajudicial executions and was particularly sensitive to the specific vulnerabilities faced by women. In June 2012, it had incorporated femicide into its Criminal Code and harmonized the application of national laws on the investigation of such cases and the establishment of specific powers for relevant authorities. It had also established a mechanism for raising alerts in the event of gender-based violence against women, with the aim of enhancing the safety of women and girls and eliminating inequalities produced by legislation or public policies. She asked what preventive measures were best suited to tackling the root causes of problems

related to violence against women and other vulnerable groups.

82. **Mr. Fahad** (Saudi Arabia) said that his delegation urged the Special Rapporteur to adhere to General Assembly rules and not diverge from her mandate, which concerned extrajudicial executions. The Saudi Arabian delegation rejected the airing of her personal views at the meeting.

83. **Mr. Carabali Baquero** (Colombia) said that his delegation appreciated the statement in the report issued in 2017 by Holocaust survivors. Protection from arbitrary deprivation of life was a fundamental and universally recognized right that applied under all circumstances, including during armed conflicts and other emergency situations. Colombia welcomed mechanisms that assigned liability for violations of that right in post-conflict situations, such as the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, and recognized the work of humanitarian actors in helping States to protect and promote the right to life and prevent the arbitrary deprivation of life.

84. **Ms. Callamard** (Special Rapporteur on extrajudicial, summary or arbitrary executions) said that the primary concern in the report was the protection of victims. The report must also be read in the context of the work and legal analysis of her five predecessors, as well as her own work on a gender-sensitive approach to arbitrary executions. From that perspective, delegations that claimed she had strayed outside her mandate should be able to understand that in the current report, she had sound legal grounds to concentrate on positive and negative obligations with regard to the right to life.

85. The biggest challenge to humanitarian actors was a normative one, as there were currently challenging and detrimental conditions for those seeking to prevent the arbitrary deprivation of life. The criminalization of life-saving interventions on the grounds of counter-terrorism, deterrence of migration or social mores was becoming normalized in some places. She firmly condemned that trend, which seriously threatened not only the humanitarian actions, but also the very pillars of international law. The threat could be countered by insisting on exemptions for humanitarian actions in national policies, particularly with the help of the General Assembly and Security Council. Some policies were legitimate per se, but they must be implemented in a way that was consistent with each State's obligations to prevent people from further victimization. Affected populations were doubly affected when access to humanitarian actors was impeded: on the one hand, they were victims of the controlling group, and, on the other

hand, they were prevented from obtaining food and medical care from humanitarian actors. Various States and regions, including Australia, the United Kingdom, Switzerland and the European Union, had already taken the first normative steps to providing for the exemption of humanitarian actors.

86. She was aware of the negative impact that counter-terrorism measures could have on the funding of humanitarian actions and was therefore pleased that some groups were working with financial institutions to address the problem. She hoped that the General Assembly, Security Council and Secretary-General could prioritize those matters by bringing together stakeholders to draft clearer guidelines and develop more robust policies in that regard.

87. With regard to the stigmatization and criminalization of humanitarian actors providing sexual and reproductive health services, she supported the measures taken by Sweden, the Netherlands and other Member States to narrow funding gaps arising from certain unwise policies that violated human rights. It was incumbent on the international community to fill any gaps created by policies that violated human rights. Even if Member States could not completely compensate for the shortfall, positive measures of any kind communicated to those supporting LGBTI persons and communities that they were not alone.

88. Her report contained numerous recommendations on how United Nations bodies could work with humanitarian actors to protect humanitarian actions. Although some steps had already been taken to mitigate the impact of counter-terrorism measures, the international community must move from mitigating counter-terrorism measures to counteracting them.

89. Her earlier comment on the death of Mr. Khashoggi had not been a personal one, but his killing had allegedly been arbitrary and therefore fell squarely within her mandate. She had called for international investigations in that respect not because Turkey or Saudi Arabia lacked the technical capacity to carry out such an inquiry, but because of the involvement of several countries in the matter and the identity of the victim. An international investigation would represent a bold statement against the arbitrary killing of journalists and could provide the international community with valuable best practices for future cases. At the very least, it would be useful to have a mandate to review evidence collected by Turkey and Saudi Arabia; ideally, the Turkish Government would also collaborate with an international team of experts mandated by the international community when and if the victim's body was found. The first step was to ensure that an

international team of experts was furnished with all available evidence.

90. She shared the concern of the United States delegation regarding extrajudicial killings in Cameroon, Mali, Nicaragua and the Philippines and had sent repeated letters and communications to all four Governments. She was particularly troubled by the occurrence in the Philippines of the world's gravest human rights crisis, besides armed conflicts, and the absence of investigations into allegations of police killings.

91. In reply to the representative of Iraq, she explained that she had not been questioning what the Government was currently doing in her earlier comment, but rather what it and the international community were not doing. The latest evidence indicated that the offences committed by groups in Iraq during the Iraq War probably amounted to crimes against humanity and genocide, and yet the accountability process was not in keeping with the gravity of the violation committed: Iraq and all States involved must domesticize international criminal law so that the perpetrators could be tried in accordance with it. Failing to do so could lead to the impunity of those responsible for the crimes and set a bad precedent for the prevention of such offences in the future.

92. **Mr. Khane** (Secretary of the Committee) said that the Chairperson-Rapporteur of the Ad Hoc Committee on the Elaboration of Complementary Standards would not address the Committee at the current session because the tenth session of the Ad Hoc Committee had recently been postponed by one year.

The meeting rose at 1.05 p.m.